

UNIVERSITY OF THE WESTERN CAPE

FACULTY OF ECONOMIC AND MANAGEMENT SCIENCES

The Right to Adequate Housing in Zimbabwe:
A Contextual and Jurisprudential Anatomy of
Public Housing Policy Implementation; Harare
(2000-2018)

By

Tinotenda Chidhawu
UNIVERSITY of the
WESTERN CAPE

Supervisor: Professor Ebenezer Durojaye

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Abstract

Amid notable and ongoing research about housing, structural hurdles crippling state efforts to guarantee the right to adequate housing have been extensively analysed and widely recognised. Albeit study after study demonstrates bureaucratic lethargy, the housing challenge is much complex. Harare increasingly appears to be a city in a housing crisis. The depredations of politics have repeatedly frustrated orderly urbanisation. Comparatively little on the politics of housing has been written or studied. Consequently, the realisation of the right to housing is under constant threat with the city spiralling into endemic disorder. The turbulent policy landscape since 2000 plunged housing into a chaotic and unstable milieu. Such a situation has become a recipe for fractious, recalcitrant, and obstreperous urbanisation. The aftermath was marred by delegitimisation of conventional rules and regulations governing urban development. Successive ‘distributive and redistributive politics’ elevated the predicament by ignoring the qualitative analysis of the dimensions of the right to housing, resulting in urban development being executed in a manner not compliant with standard guidelines and prescriptions embodied in housing laws. Reform policies serve to promote informality that contributes to indignity and undermines ‘adequacy’ in housing. However, research regarding how the turbulent policy landscape affects realisation of the right to housing in Zimbabwe is largely lacking and such a chasm motivated this study.

To contribute towards the filling of this knowledge gap, the study examined the complexities of the housing legislation and the institutional landscape in Harare. Though the study of housing is not new, reflection on policy content and the policy context bears repeating to justify the same arguments from multiple angles. For its conceptual framework, a transformative concept, anchored on the fact that urban governance is punctuated by power relations and vested interests of elites that serve as a constraint to social change was adopted. This has manifested through what is euphemistically called ‘command housing’ but rather ‘eliticisation’ in the implementation of public housing policy. This put pressure on the number of legal housing units that shrunk and political settlements and ‘executive slums’ or ‘elite enclaves’ that emerged. The study also applied the concept of complexity that refers to the interaction of causes between, among, and within sub-systems. It helps to trace the chain of causality and the intervening variables suffocating the enjoyment of housing rights. It is also guided by a closely related concept of “The Deep State” which implies that a third force or hidden political configurations of power run the country, not in the interest of the society but the narrow interest of shadowy high-ranking government officials to the detriment of the community and the society at large. The study adopted a qualitative research design, comprising personal and targeted interviews, focus group discussions (FGDs), and thorough scrutiny of academic historical literature and review of housing policy documents. The data collected through key informant interviews was presented and analysed thematically and the data from documentary search were analysed via content analysis. The data was collated from face-to-face interviews conducted from 2018-2019 with a representative sample of 75 respondents. The study concludes that nuanced legislative interpretations that have immensely been overlooked as distant and remote, affect realisation of the right to housing. This has further been compounded by a dearth in understanding how policy spillovers contribute to housing insecurity.

Key Words: Human Rights, Housing Policy, Housing Right, Homelessness, Inequality, Informal Settlements, Harare, Zimbabwe.

Declaration

I declare that *The Right to Adequate Housing in Zimbabwe: A Contextual and Jurisprudential Anatomy of Public Housing Policy Implementation; Harare (2000-2018)* is my work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Tinotenda Chidhawu

29 October 2020.



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A handwritten signature in cursive script, appearing to read 'Tinotenda Chidhawu'.

Signed.....

Special Dedication

To my parents, Stephen and Edith Chidhawu – you accompanied me from the outset and you have my best interest at heart.



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Abbreviations and Acronyms

ANC	African National Congress
CESCR	Committee on Economic, Social and Cultural Rights
Danet	Destiny of Africa network
DHCS	Department of Housing and Community Services
ESAP	Economic Structural Adjustment Programme
FGD	Focus Group Discussions
FTLRP	Fast Track Land Reform Programme
GNU	Government of National Unity
GoZ	Government of Zimbabwe
HCC	Harare City Council
HSCA	Housing Standards Control Act
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IEEP	Indigenisation and Economic Empowerment Programme
IMF	International Monetary Fund
MJLPA	Ministry of Justice, Legal and Parliamentary Affairs
MDC	Movement for Democratic Change
MDGs	Millennium Development Goals
MLGPWNH	Ministry of Local Government, Public Works, and National Housing
MSMEC	Ministry of Small and Medium Enterprises and Co-operatives
NBS	National Building Society
NHF	National Housing Fund
NHP	National Housing Policy
NPM	New Public Management
OECD	Organisation for Economic Cooperation and Development
POSA	Public Order and Security Act
PPPs	Public-Private Partnerships
RDCA	Rural District Councils Act

RDP	Reconstruction Development Policy
RTCPA	Regional, Town and Country Planning Act
SDGs	Sustainable Development Goals
SERAC	Social and Economic Rights Action Centre
SI	Statutory Instrument
UCA	Urban Councils Act
UDHR	Universal Declaration of Human Rights
UDICORP	Urban Development Corporation
UN	United Nations
WB	World Bank
ZANU-PF	Zimbabwe African National Union-Patriotic Front
ZimAsset	Zimbabwe Agenda for Sustainable Socio-Economic Transformation
ZLHR	Zimbabwe Lawyers for Human Rights



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CHAPTER ONE: THE PEDIGREE OF HOUSING PROBLEM IN ZIMBABWE

1.1 Introduction

In an endeavour to trace the problem situation of housing discharge and the background thereof, this chapter chronologically periodised a linear progression of the causality chain to the challenges affecting the realisation of the right to housing. In analysing housing policy, it is important to periodise and historicise because of all the dynamics that have been taking place in Zimbabwe, each has its package of thinking. Statistics from the literature were infused to illustrate the nature, scope, and magnitude of the research problem. The chapter also contextualises and lays out historically the colonial systems of governance carried over to the post-independent state; presented an analogy of the successive reforms since 2000, research gap analysis, research questions, objectives, and a tentative pre-study assumption.

1.2 Housing Policy and the Legacy of Colonialism: Aspects of Continuity and Change since Independence

Contemporary processes of housing are occurring alongside the historical process of state formation and efforts to maintain political order. Bringing the colonisation aspect into the analysis of the housing challenge enables the researcher to contextualise and invoke a historical dimension in the explanation of its prevalence (cf. Mupanduki, 2012). Social problems, as rooted in the industrial revolution of the 19th century due to the growth of economies, fitted into Sub-Saharan Africa's bureaucratic structures during and after colonialism as a by-product of imperialism. Though Zimbabwe, like any other former colony, is making its history, it is not as just the country pleases. It is not making it under circumstances chosen by it, but under circumstances directly found, given, and transmitted from the past (cf. Sithole, 2009; Young, 1998; Pridham, 2000; Subramanyam, 2006; Mamdani, 1996; Crowder, 1987; Carver, 1993; Chikwanha, 2005; Mupanduki, 2012). Colonial legacy pervades, diffuse, and spread through the post-independence structures. The heritages of colonialism are still haunting the socio-economic trajectories, institutional arrangements, and the political milieu in Zimbabwe as most of the *Modus Operandi* of the colonial state re-emerged into the post-colonial epoch.

Zimbabwe's second liberation struggle for independence (1967-1979) left a significant mark on the socio-economic and political structures (Sithole, 2009). The new government inherited the

colonial version of institutional and legal frameworks and housing was not immune in terms of the adverse effects associated with the resurrection of colonial forms of governance. Instead of the government chipping at the problem, deeper structural problems like casteism were left intact, creating major downside risks that made the housing crisis inevitable. The post-independence era (1980-) saw the consolidation of the inherited capitalistic type of colonial lifestyles, contrary to the socialist rhetoric, and characterised by marginalisation and underdevelopment (cf. Mupanduki, 2012). African elites¹ adopted and adapted a western style of living while the common people persisted in traditional mores, leading to the worsening of the housing problem. The affordability crisis resurfaced as African elites maintained the prior privileged position of the whites to enrich themselves.

Because of the class structure, the distance of the peripheral lands, at the edge or constituting an outer boundary of the city and mostly occupied by low-income earners, from consumption centres and lines of communication persisted (cf. Arrighi and Rhodes, 1970). The proliferation of illegal settlements in this regard is attributable to the lack of affordable housing. The Zimbabwean government must, therefore, detach from the fixation and tendency of blaming the colonial legacy. The system forced low-income households, mostly blacks, into difficult situations and inadequate places. Aspects of segregation remained strong. Though all contours of discrimination were overtaken by events after independence, in practice, it re-emerged through the caste system. Inherited systems were formulated to suit the minority as pre-colonial structures of governance fostered self-serving tendencies (cf. Mupanduki, 2012). After independence, the caste system failed to augur well with liberation values of equality and justice in accessing land for housing.

Through 1979 Lancaster House constitution that adjudged a ceasefire, ending the 1967-1979 war of independence, it was ensured that whites evade major changes in the socio-economic structures, and the position was protected through safeguards in the form of Section 16 (right to property) (cf. Zhou and Masunungure, 2006). Property rights were used to guarantee the interest of the minority. The Lancaster House Agreement worked smoothly to protect whites from the competition and restricted blacks to peripheral spaces. The Lancaster constitution was meant to cripple the possibilities of future African rule. It provided for gradual Zimbabwean independence but ensured

¹ Elites are the “top” or most influential people in a political system (cf. Roskin et al., 2006:78).

the continuance of white minority rule. The development path is in line with the classic insights of Karl Marx who argued that the tradition of all the dead generations weighs like a nightmare on the brain of the living. “African states are the product of imperial adventure. The present African territories were incorporated as commercial interests of private monopolies in Europe. The foundation of class domination by few individuals was laid during the colonial period, and the relationship between the dominated and the rulers have changed little since independence” (Olowu, 1988:221). To understand housing development, chiselled along capitalistic orientations, there is a need to trace the colonial war antecedents of the contemporary state practices and the socio-economic and political dimensions of the colonial state to engage the institutional architecture of the colonial epoch and to understand how they have replicated or differentiated themselves in contemporary Zimbabwe.

There is an ongoing debate with some dismissing the notion of colonial legacy as irrelevant (Pridham, 2000; Young, 1998; Moore, 2007; Subramanyam, 2006). The “post” in post-colonialism appears to signal a chronologically defined periodisation and linear progression from pre-colonialism through colonialism to post-colonialism. A post-colonial reflection reveals continuity, fluidity, and interconnectedness. Despite the 1980 Zimbabwean independence, it soon became evident that there was a wholesale importation of routines, practices, and mentalities of the colonial state into its post-colonial successor (cf. Young, 1998). Pridham (2000) observes that the post-colonial state failed to rid an ulcer that was poisoning the whole system. The ulcer produced two ‘toxins’, that is, the art of refining and perfecting the colonially inherited authoritarian structures by the post-independent state and violence inadvertently produced by the nationalist movement by them fighting to dislodge the settler oligarchy. The Zimbabwean body-politic can be understood through the lens of path dependency. Historically constructed institutions, structures, and vested interests are the major determinants of political behavior in the administration of housing. This also implies the quest of seeking to increase returns as political leaders are rational actors and have ample room to digress, challenge, or maintain the status quo, resembling the pre-colonial situation.

Considering the need to increase returns of the liberation war, post-independence political actors in Zimbabwe had to contend and defend the status quo to a greater degree. Moore (2007) posits that colonial rule and the liberation war attested to the supremacy of legal, extra-legal, and violent

means of fostering and entrenching societal domination. Subramanyam (2006) notes that in the same way, the liberators turned political leaders would “suspend civil liberties and use preventive detention, a colonial practice to neutralise or eliminate political opponents and suppress criticism”. For instance, the right to protest is a basic tenet of democracy and a basic canon of human rights [cf. Section 59 of the Constitution of Zimbabwe Amendment Number 20 Act of 2013 (hereinafter referred to as the Constitution of Zimbabwe)]. However, a fortuitous to call for decent housing² in the city in Zimbabwe is likely to be met with severe criticism from the state apparatus.

Though demonstrations might revolve around strides to break with the past and advance socio-economic human rights of the residents, any demonstration during the Mugabe era was likened to political dissent and therefore criminalised. For instance, the Public Order and Security Act (POSA) [*Chapter 11:17*] of 2002, public demonstrations, and protests were effectively illegal. Furthermore, the law banning all public protests and demonstrations in Harare encapsulated as Statutory Instrument (SI) 101A of 2016, went into effect from August to September under the pretext of ‘state-of-emergency’ regulations banning protests, maintaining public order, and protecting life and property. The demonstration ban was part of a wider strategy by the Mugabe regime to silence perceived political opponents. Rather than factually presenting demonstration as a quest for human rights like urban accommodation or access to the city, demonstrations were banned just for political mileage. It was, however, a deliberately political argument displaying ingenuity in reasoning in the hope of neutralising what was deemed as ‘opposition politics’. Social, political, and economic rights were therefore sacrificed at the altar of politics.

Dispossessions are prolonging without letup and the government is showing no intention to stop. Accumulation by dispossession features are rampant and endemic in Zimbabwe. This reflects the continuity of colonial political practices of control, segregation, and exploitation³. Relocation camps can be equated to the formerly colonial reserves. The deprivation experienced by the Zimbabweans during the liberation struggle resulted in anxiety to recover by manipulating the rules and regulations and the breaching of ethics to accumulate wealth (Makumbe, 2002). Many

² Decent housing implies a house where people can get a decent night sleep, where they can cook and clean and have their lives organised. Decent housing can be equated to adequacy in housing that is much more than availability of land for housing but include adequate on site and off-site infrastructure.

³ Cf. McFarlane and Silver, (2016: 127).

of the challenges faced by the informal settlement residents in Harare cannot be separated from inner-city land, housing, and eviction struggles. Housing protests are based on the premise that providing land and social housing in inner cities could allow for some people living in the informal settlements and backyards to be provided for, and simultaneously de-densify many of the informal settlements on the peripheries. Lack of access to better-located housing and land tenure and the affordability crisis were some of the greatest challenges of housing deficit⁴ carried over from the colonial times.

The socio-economic trajectories and political patterns in Zimbabwe need to be located within the elastic and rubric of British imperialism. On the political front, colonisation, especially by Britain, entailed the classification of people into citizens while the indigenous people were relegated to the status of subjects (Mamdani, 2006). Blacks were treated as second-class citizens⁵. The class system is still persistent today, but it has taken a new dimension, shape, or twist. It is now blacks against blacks, emblematic in the classification of suburbs amongst high, medium, and low-density urban areas. The new class maintained the privileged position with 19 amendments of the 1979 Lancaster House Constitution to preserve the interest of those in power (Sithole, 2009). The new class moved beyond liberation, fighting capitalism with capitalism. Colonial direct and indirect rule were the vehicles for ensuring the minority ruled the indigenous population and that persisted post-independence as not all people benefit from the system (cf. Tocqueville, 1889).

British rule was not geared towards preparing settler colonies for self-government and independence, but repressive laws were used to contain nationalism like the Law and Order (Maintenance) Act [*Chapter 11:07*] of 1960. Roskin et al. (2006:76) describe this as the “tyranny of the minority” that is just as foreboding as executive tyranny. Resultantly, the nationalist grew up in a commandist set-up. This still characterise the fraying ties of centre-local relationships of government today in Zimbabwe whereby a top-down approach between the central government and local authorities manifests (cf. Mupanduki, 2012). This implies that the authority concerning

⁴ Housing deficit implies all housing that is inadequate due to precarious building conditions or bad infrastructure, overpopulated or located in areas not fit for residential use – flood zones, areas subject to landslides, public rights-of-ways (cf. Malta, 2006:2).

⁵ Second-class citizens were those referred by whites during colonialism as inferior considering their colour and status in community against those considered the highest classification rank in a society. Second-class citizens’ accommodation was less expensive compared to those considered first-class.

the land management system is centralised around the executive and not the local authorities. The degree of executive control is high. The Minister of Local Government appoints, dismisses, and monitors oversight bodies that control housing management, cf. Urban Councils Act (UCA) [Chapter 29:15] Section 313 and 314. This was a ‘colonial bureaucracy duplicate’ that was vested with discretionary powers⁶ and the executive was too powerful. There is executive dominance with constrained systems of checks and balances in the post-independence era.

Colonial authoritarian systems of governance were carried over as elites continue to engage in a strategic calculus. The government relied on a well-calculated network of patronage developed during the pre-independence epoch. Behind the façade of constitutional democracy or emphatic provisions in the municipal law on the right to adequate housing in Zimbabwe lay an authoritarian political system that prohibits or deny democratic space, social human rights, and the rule of law. This illustrates the extent to which after independence the situation degenerated into a regime based on the politics of patronage, loyalty, and self-aggrandisement. The “liberation culture” favours the ruling party loyalists (cf. Chikwanha, 2005). The supply and access to housing is based on political grounds. Land for housing is used to regulate the action of the party at the expense of human security (cf. Sithole, 2009). This violates the right to personal security provided under Section 52 of the Constitution of Zimbabwe. This also sought to protect and promote the interest of the state and the ruling elite (cf. Mupanduki, 2012).

There has been a long history of violence and repression on the part of both the colonialists and the nationalists. Young (1998) cogently asserts that racial supremacy over the African subject that permeated the colonial system was removed, but the vocation of domination remained. Indeed, the new African rulers who took over the reins of power from the colonialists ruled within an aura of “unspoken entitlement to command”. If the colonial state provided a model for its inheritors, it was that the government rested not on consent but force. This was emblematic in Zimbabwe during the violent, forceful, and arbitrary evictions of the 2005 Operation Restore Order or Murambatsvina. It was an act of democratic defeatism and a flagrant repudiation of international law as embodied in the legislative procedures that govern evictions. With the advent of independence, the new Zimbabwean government ventured into nation-building, and socially, the

⁶ Discretionary is the ability of officials to decide questions on their own without adjudication or higher authority (Roskin et al., 2006:309).

government embarked and prioritised reforms, among others, housing. However, they did not ‘cause’ the continuation of abuses *per se*. Rather, the colonial legacy did provide the environment, and the means, for new violations in the independent state.

On the socio-economic front, at independence, the newly elected government inherited colonial legacies that militated against its capacity to achieve the major objectives of the liberation struggle. Colonial rule was not directed towards the moral or material progress of the black people but towards maintaining control of the state by the whites. During the colonial period, blacks were driven into war due to the need to repossess their land. The post-colonial government inherited a dysfunctional economy that was heavily crippled by economic sanctions because of Former Rhodesian (now Zimbabwe) Prime Minister Mr. Ian. Smith’s Unilateral Declaration of Independence (UDI) of 11/11/1965. One of the effects of sanctions was the inheritance of extensive housing stock. The post-colonial government put in place programmes aimed at recapitalising and reintegrating the economy into the world economy. The African continent may have benefited from the infrastructure, education, commerce, and medical expertise brought by Europeans (Mupanduki, 2012). However, liberation nationalism appears to be a conduit of self-enrichment thus political liberation has become a curse or nemesis (cf. Sithole, 2009). A closer analysis of colonialism shows that the benefits tended to be self-serving. It is now being used as an instrument for propagating the political interest of those in power. The racial allocation of services is particularly important in that it established an avenue for class discrimination by the newly independent government (cf. Chikwanha, 2005).

In a bid to redress the colonial inequalities, the government tried to broaden the economy and more inclusive by integrating blacks through economic empowerment reforms. To further address colonial anomalies, the government ventured into a series of Africanisation in land ownership with far-reaching effects on land development and housing. Housing development as a result “followed the anti-colonial course”, sacrificing the essential qualities to meet accepted standards of human habitation at the altar of redressing colonial inequalities as the post-independent government was emblazoned with black empowerment rhetoric and economic sloganeering by crusading the so-called ‘black economic empowerment and indigenisation’ at the expense of implementing actual social and economic reforms. This culminated in decades of rhetoric about ‘indigenisation’ that represents a wide and categorical statement of intent. However, indigenisation is not a sure-fire

ticket into homeownership, it can be downright risky. The mantra appears to create a sentimental attachment of patriotism, loyalty, and deference or confer social status on certain groups. The proclamation of this symbolic policy does little in a material way to help indigenous blacks. It is a symbolic use of politics as governments use symbolic policies to deflect public concern (cf. Roskin et al., 2006:51).

1.3 An Epoch of Turbulence, from the late 1990s to 2008

Since the mid-1990s, Zimbabwe was embroiled in a range of socio-economic and political problems. As a result, in the late 1990s period, the implementation of public policies⁷ and the realisation of the right to housing was flawed. The epoch of 2000 to 2008 was one of Zimbabwe's most volatile episodes. The formal addition of new housing stock and ancillary space slowed down. In the post-1990, there have been umpteen allegations of corruption in the areas of public procurement, land acquisition by the government, housing for civil servants, public works, and the social welfare sector in general (Makumbe, 2012:25). Landlessness, homelessness, and the shortage of housing in Zimbabwe was inevitable for citizens, except, of course, for those who have managed to benefit from the legion scandals that are the features of the Zimbabwean economy in the post-socialist era (*Ibid.*18).

Political corruption escalated during the late 1990s. The "VIP Housing Scandal" of 1996 and the 1999 Housing Loan Scandal are few examples of plunder allegations by those who were in the positions of authority, of the funds contributed by civil servants, and meant for building houses. As a result, most of the civil servants who contributed money on the premise that the government would build houses for them remained homeless and none of the perpetrators implicated in the scandals were brought to account. Subsequently, there was no recourse and resultantly the poor suffered the most. Housing corruption is malignant and detrimental to the right to housing and without remedy, this right would be completely swallowed, trapped into the echelons of

⁷ Policy implementation is the "follow-through" process by which courses of action adopted by government are mechanically translated into routine procedures of "who gets what, when, how and why" in a society by relevant agencies (cf. Lasswell, 1936; Grindle, 1980; Hayes, 1992; Gerston, 1997; Fenna, 1998; Smith and Larimer, 2009; Howlett et al., 2009). Henceforth, housing provision will be used interchangeably with housing policy implementation. Implementation stage has sub-stages; these courses or steps include exploring and preparing activities; planning and resourcing; implementing and operationalising; and mainstreaming and ready to be evaluated (Burke, 2012; Gerston, 1997).

hibernation, and face the risk of extinction. Housing corruption not only deprives right holders of their entitlements, but it also plunges them a step closer or stone-throw away from destitution. Corruption is pushing the right to housing to extinction faster than believed.

Also, the capitalism crisis in the 1980s and late 1990s period, the conjuncture of neo-liberal reforms since the early 1990s, and two decades of Economic Structural Adjustment Programmes (ESAP) have been transforming urban space (cf. Hansen and Vaa, 2004:11). Farha (2019) painstakingly catalogues how neoliberalism has undermined affordable housing upon which the poor's very survival means depends. It identified how neoliberalism ideology promulgated by the likes of former Canadian Prime Minister Brian Mulroney in the 1980s is the root cause of the housing crisis. It resulted in the disinvesting and slashing of social programmes with the International Monetary Fund (IMF) and the World Bank (WB) having a role in worsening the housing situation. By opening social services to the unregulated market, it gave international companies unregulated political power, beyond the control of governments that is a risk of global polarisation, lack of sovereignty in which other countries would become "feudatories" of the great powers with IMF hurting countries it was claiming to help. The failure to regulate financial markets and prevent predatory lending occurred with relative impunity (*The Globe and Mail*, 15/04/17). As a result, there is a crisis of inequality, that is the crisis of contemporary capitalism. People are heavily impacted by the housing crisis that is tightly bound up with the wider social crisis in neoliberal capitalism. Tackling it will require a sustained and aggressive challenge to the gentrification and segregation machines that have long dominated cities and suburbs.

ESAP as a new political and economic global order imposed severe limits on governmental expenditures and created a much larger void in the provision of low-income housing. The human costs of ESAP have been tremendous because of the inability or failure of governments to provide housing (cf. Hansen and Vaa, 2004:11). During the 1990s, governments ceased funding social housing, dismantling social protections, and untying social transfers resulting in inadequate housing, housing insecurity, and rapid homelessness. All the problems were rooted in neoliberalism (cf. Farha, 2018). The changes risked constricting a supply that was already hugely compromised as housing was often not genuinely affordable for the poor. The programmes further aggravated the economic suffering of blacks. Against this backdrop, slums inevitably continued to exist 'as long as the poor remained poor' (Fox, 2013:7).

The Zimbabwean government cut direct funding to state public housing authorities and little new public housing has been built in recent years. Neo-liberal political and economic reforms from the early 1990s exacerbated the grim situation in many countries, making social inequality across urban space more visibly than ever before (Hansen and Vaa, 2004:12). Concerning inequality, it appears that some people's lives matter and some do not seem to (cf. Farha, 2018). In the 1990s, housing affordability declined with the rise of property prices outstripping the rise in incomes (Forster, 2006:176). Coupled with extortion, housing costs are still escalating and prices of rentals skyrocketing and not at all commensurating with incomes as they remain stagnant, resulting in moderate and low-income residents failing to manage or keep up with the housing cost. Due to inaccessibility, most of the people who make the cities function cannot afford to live in the cities but are being pushed out (cf. Farha, 2018).

Minimum-wage workers today often cannot afford their housing and, therefore, the working poor and even homeless people who have jobs cannot afford a home and live in shelters and the world is now suffering from bubbles in housing (Batra, 2007:100). For instance, the business model of Blackstone, one of the biggest private equity firms in America, is that they must keep increasing rents to satisfy their investor clients, pushing away low-income earners and moving in more affluent ones (Farha, 2018). Lives are being destroyed for corporate greed. As a result, slums emerged as a manifestation of under-investment in the housing stock (Fox, 2013:7). A confluence of financial and economic factors during a period of crisis accentuated the growing of affordability crisis and disparities between the rich and the poor (cf. Sullivan and Power, 2013:300).

Most approaches are unconvincing arguments to the emerging issues of housing affordability and new, finer-grained patterns of inequality and the disadvantaged homeless (cf. Forster, 2006:173). The period of crisis and its effect on affordable housing are undeniably pervasive. The subprime mortgage crisis, and the wider housing and economic crisis it produced, was the culmination of a long period of predatory inclusion of the poor in the housing market. After decades of exclusion, the robust housing market fueled inequality. Instead, they were subjected to rapacious lending and real-estate practices that extended familiar patterns of discrimination, the exclusionary practices that gave rise to exploitative lending in the first place. In the early-2000s, the housing bubble was peaking, 'hitting a plateau' or tipping point (cf. Taylor, 2019). This is how decades of exclusion of the poor from much of the housing market gave way to a period of predatory inclusion.

Because of the neoliberalism ideology, privatisation of housing is the order of the day. In this regard, housing rights in Harare are being sacrificed at the altar of capital accumulation. Privatisation represented a forfeiture of various citizen freedoms concerning the right and access to adequate and affordable housing. The state is compelled to enclose the urban commons to create profitable outlets for accumulating capital in the built environment. This capital-centric account does not acknowledge the political agency of the city dwellers who actively produce urban commons and create limits to entrepreneurial attempts to valorise urban space (Gillespie, 2015:73). This resulted in a ‘housing capture’⁸. Local authorities are becoming ineffective in finding new land to house the populace, culminating in the failure of the waiting list system. This also created monopolistic markets and price-fixing in the housing sector.

1.4 The Inception of Legal Ambiguities and Disruptive Lawlessness

In the wake of the post-2000, a period of crises and legal ambiguities, housing provision was marked by policy formlessness, inconsistency, missteps, mistakes, confusion, contradictions, ambiguities, disorderliness, backsliding, discontinuity, and unpredictability (cf. Masunungure and Chimankire, 2007:9). The period from 2000 to 2008 signalled an epoch of unpredictability in policy choices (Bratton, 2014:73). In chaotic, corrupt, and dictatorial systems, constitutions may not count for much (cf. Roskin et al., 2006:55). The year 2000 and onwards, post land invasions in Zimbabwe, witnessed lawlessness and the rise of illegal settlements due to the downright collapse of the legal process, rule of law, and constitutionalism⁹. In a constitutionally governed nation, laws and institutions limit the government to make sure that the fundamental rights of citizens are not violated (*Ibid.*58). In contrast, in a totalitarian or authoritarian system, the government is not limited by its constitution and the citizenry has little protection against arbitrary acts of government, despite what the constitution may say or even though their written constitutions promised human rights (*Ibid.*59).

Since 2000, Zimbabwe has taken an authoritarian hue. It has slid into the authoritarian category (*Ibid.*73). The Hobbesian state of nature marked by the FTLRP dictated the discharge of social housing. This is attributable to the multiple, short, and long-term risks associated with land reform.

⁸ ‘Housing capture’ implies monopolisation of urban land by a small cabal that has not been authorised to administer land for housing.

⁹Constitutionalism is the degree to which government limits its powers (Roskin et al., 2006:58).

The issue of housing cannot be seen in isolation to land. Housing juxtaposed with land presents a very complex scenario and hence the complexity concept, as will be discussed in the next chapter, is useful in that respect. Land reform is usually framed only as rural, even where reference is made to the urban plots. The fact that urban land is invaded, or “illegally occupied”, demonstrate that access to housing is related to distributive and redistributive politics¹⁰ that is associated with the land redistribution programme. Land reforms have some implications beyond agriculture and housing is inextricably tied to land thus anything happening in land issues spill over into housing. Housing is strongly influenced by land issues (cf. Huchzermeyer, 2003:83). The FTLRP had a domino effect on housing, emblematic of the cumulative effect produced when the reform sets off a chain of similar events in the housing market. The effects are roaring through housing, injuring its path. The damage is strewn everywhere and is with housing long after the land reform has passed. The reform was like a tornado with a long tail. The land reform discourse must, therefore, be canvassed simultaneously with urban land for housing.

This study also looked at the implications for future invasions and evictions. The public housing sector in Zimbabwe has undergone major changes through successive government reforms since 2000. Government reforms are therefore crucial for understanding the urban conditions. The discourse of land reform in Zimbabwe and the related land rhetoric triggered and catalysed the invasions into the urban land for housing to occur for urban accommodation. Multiple layers of government regulations shaped the housing legislation landscape during the 2000 epoch, yet these frequently operate alongside a range of ‘twilight’ economic and political institutions (cf. Lund, 2006). It was a turning point during which some taken-for-granted aspects of urban character experienced the momentous change (cf. Forster, 2006:173). Chirisa et al. (2016:2) note that since the violent land invasions of 2000 in Zimbabwe, struggles involving access to land and infrastructure services have enduringly pitted state apparatus, municipal authorities, and monopolistic firms against “illegal” settlers over claims to peri-urban land. Resultantly, proper

¹⁰ Though redistribution of a nation’s wealth seeks to aid the less well-off in society (cf. Roskin et al., 2006:46), distributive and redistributive politics entails patronage distribution of public/social goods based on political affiliation; legal rights are not for all; it is rather a charity or hand-outs for those deemed worthy by someone in authority. The underlying pillars of distributive and redistributive politics include politics of patronage, political manipulation, partisan targeting and political favouritism.

channels of orderly urbanisation lost real significance and value leading to the sunset of orderly urban development.

Muzondi (2014) notes that housing provisions in Harare started to decline in the year 2000 from an annual rate of 15 000 to 20 000 units in the years 1985 - 1995 to a paltry 5000 units in 2000. Annual provision plummeted from an average rate of 20 000 between the years the 1980s and 2000 to a contraction of 5000 units. In 2003, the MLGPWNH noted the inability of the government to provide decent and affordable housing. Housing plans fell far short of the annual target of 162 000 units between 1985 and 2000 with actual production ranging between 15 000 and 20 000 units per annum. By 2002, formal housing sector production rates had decreased and only 5 500 units were serviced in eight major areas compared to an estimated annual demand of 250 000 units (*Ibid.*). This shows the scope and magnitude of the housing crisis in Zimbabwe (Zimbabwe Human Rights NGO Forum, 2005).

Ultimately, chaotic urbanisation became the order of the day. In Zimbabwe, fewer than 18% of urban dwellers were living in slum conditions in 2005, compared to an African average of 63% (Fox, 2013). The government currently creates fewer units than it did 20 years ago. In describing slum conditions, Fox (2013:1) avers that these are urban areas characterised by some combination of tenuous dwelling structures, overcrowding¹¹, and lack of access to adequate water and sanitation facilities. The absence of these conditions subverts the 'adequacy' aspect in the realisation of the right to housing. This leads to the vital question: Who decides what is adequate?¹² The element of adequacy in the right to housing refers to a place where people would be better able to realise their full potential as human beings. However, lack of facilities and other social amenities perpetuates conflict or a contradiction to adequacy.

Success stories were recorded during the heydays of independence. However, there was a partial reversal of independence gains. After 2000, a 'world-class' look of a fully accessorised housing complexes, robust, well-maintained, and class-diverse public housing vanished. Glimpses and symbols of normality in urban planning disappeared. The epoch of honeymoon, conviviality, and

¹¹ The commonly used standards of overcrowding range from indicators such as persons per bedroom.

¹² This question was posed by James Bayes on Al Jazeera in an interview with Leilani Farha, UN Special Rapporteur on Adequate Housing on the topic: 'Shameful': What's driving the Global Housing Crisis? – Published 3/11/2018.

jubilation dulled and delivery failed to match the early promise. The politics shifted and policy tragedy disastrously followed suit, characterised by unsatisfactory and disjointed urban development and a significant drop in housing production. The housing deficit quadrupled. The calamitous effects of the political and socio-economic crisis have battered Zimbabwe for decades. It has wiped out modest gains that had been made. Zimbabwe further plunged into the housing crisis after 2005 evictions, sparking mayhem that left many displaced. Homelessness spiked at an unprecedented rate, housing spending vanished and social housing collapsed.

Amid this housing apocalypse, Murambatsvina of 2005 was a cataclysmic event, a housing tragedy that eclipsed the people's standards of living, a time of apocalyptic helplessness. In the wake of the political crisis, the country's social services shrunk at an alarming rate and socio-economic progress has been derailed after independence. When public housing was a paradise, the GoZ turned away from the constructive role in addressing social problems. Public housing gained a tarnished reputation over the years, making government housing seem politically unfeasible and morally undesirable. Clean, well-maintained, and affordable housing, offering dignity and security are elements or something that is in short supply for city residents in Harare. The housing projects that followed the most counterproductive FTLRP became increasingly chaotic and the public housing system nationwide generally exhibit disaster, characterised by a spurious implementation.

It is crucial to note that housing turned into a political issue. Zimbabwean problems intensified after the FTLRP and as a result, the government took a political position in a plethora of policies as a means to garner electoral support and to counter the opposition that was on the rise. The Movement for Democratic Change (MDC), that is the main opposition party in Zimbabwe, broke and adulterated Mugabe's political virginity in 2000 after winning most of the parliamentary seats, especially in urban areas. The ruling party's main cases for re-election evaporated and this fundamentally changed the whole housing policy matrix and winds the housing clock back. The capital Harare exhibits a deep institutional dysfunctionality that has rendered orderly urbanisation and the right to housing virtually next to impossible. This implies that if the socio-political developments change, policy implementation also changes. Public policy is always in sync with political developments in any polity of any type.

Since 2000, a range of policy changes has affected housing tenure. FTLRP had far-reaching effects and outcomes in housing policy direction. Land reform was not an end and such outcomes must be something more than “unintended and unpredictable consequences”. Vestiges of land grabs persisted as land reform ushered in the scramble for the remaining open spaces in the capital, like the FTLRP, and the unscrupulous methods used are no different from the spirit of FTLRP. Land acquisition is often a prolonged political process (Lombard, 2014:40). This study maintains that a fast-tracked land reform is not a sustainable and lasting solution to the century-old problem of landlessness, housing, homelessness, property rights, and housing rights. However, the history of land reform cannot be ignored, as it informs the current understanding and approach in which urban land is being handled in Zimbabwe. Due to the policy overlaps of FTLRP, Zimbabwe’s planning regime degenerated into an informal system and the country became an informalised polity characterised by ambiguity and uncertainty.

Deeply informalised countries like the actively informalised economy of Zimbabwe are an instrument or vehicle for accumulation in all sectors. Due to informality from above, marked by the FTLRP, housing became susceptible to manipulation for profiteering purposes with some elites defending the status quo and resisting change that was a threat to private motivation or distortion of market mechanisms. The Deep State concept discussed in Chapter Two is useful in the understanding of the above notion. City policy-makers have an economic self-interest and little incentive to support affordable housing because of cost/benefits ratios (cf. Zietz et al., 2006). There has been a ‘privatisation of informality’ and informal urbanisation is as much the purview of wealthy urbanites to consolidate neo-liberalism. This kind of transformation is a process of displacements and accumulation by urban dispossession that is at the core of urbanisation under capitalism (Harvey, 2008:34; Beall et al., 2013). Harare, like Accra, Ghana, is home to a large ‘informal proletariat’ that is excluded from formal wage labour and housing markets and therefore must create ‘urban commons’ to reproduce itself (cf. Gillespie, 2015:67). This was state-led accumulation by urban dispossession that resulted in the creation of ‘defective demand’ as a response to the existential pain (cf. Harvey, 2012). Entrepreneurial urban governance in Harare, like in Accra, seeks to facilitate private-sector development by creating opportunities for accumulation through the valorisation of urban space (cf. Gillespie, 2015:67).

The increase in the value of urban space and capital assets forced the urban poor to be trapped in the peripheries leading to rapid sub-urbanisation thus denying the populace or the citizenry the right to housing based on affordability. The notion of an ‘urban periphery’ typically evokes a sense of distance, disconnectedness, and desolation – a semi-rural wasteland along the urban boundary located neither fully inside nor fully outside of it, a place of deprivation where few live by choice and where spoils of the city are tantalisingly within view but frustratingly out of reach (Pieterse, 2018:1-2). In human rights literature, the urban periphery is usually depicted as a place of servitude and displacement, where those seeking livelihoods, refuge, and inclusion in the city but excluded by its many social, economic, and physical barriers are forced to settle, or to which they are relegated after being evicted or expelled from the urban ‘inside’ (*Ibid.*).

There are extreme violations in slums including fear of infections all time, and crumbling structures with no showers (Farha, 2018). The informality zone signifies a state of abandonment or a zone of death. Peripheries are ostracised from opportunities and related propitious conditions and the poor are not treated like human beings (cf. Farha, 2018). Inhuman conditions are part of their living experiences as slums are areas of concentrated poverty. This is dehumanising if not a societal shame and goes against the right to human dignity guaranteed in the Constitution of Zimbabwe, Section 51. It also goes against the right not to be placed in servitude provided under Section 86. By settling in the informal settlements, peri-urbanism, sub-urbanism, and urban marginality¹³, not by choice but forced by the circumstances that are beyond the control of the populace, show that protecting or the realisation of the right to housing is minimal in Zimbabwe. This is marginalisation and spatial injustice in the city when it comes to the invocation of housing rights (Pieterse (2018:2). Roy (2009:86) notes that splintering of cities through privatisation of planning and persistent failure of planning explains crisis.

However, on top of ‘would be a considerable understatement, it is prevarication, analytically, and intellectually misleading to completely vituperate informal settlements in the urbanisation process. It becomes insidious in policy implications and underscoring a persistent misconception. Housing delivery is either through the state, for instance, social housing like Reconstruction Development Policy, popularly known as the RDPs in South Africa, or the private sector that is privately

¹³Urban marginality implies the population pushed to the edge of society and the economy, often said of the poor and subcultures (cf. Roskin et al., 2006:125).

financed or social housing through a bank loan or else self-help housing that is mainly characterised by unregistered extensions, backyard shacks, and informal settlements. In Harare, it is an assemblage of privately driven housing or limited social housing, a traditional mortgage financing tailor-made for those in formal employment who get payslips every month and have guarantors. In support of the latter, Fox (2013:2) notes that slums are symptoms of modernisation. The so-called slums correctly depict a productive human ecosystem (Harvey, 2012). It is a natural by-product and essential in the complementary process of urbanisation and modernisation (Fox, 2013:5).

There is a vibrancy sense of community in slums, with street names, house numbers, and community centres where people can meet and talk (Farha, 2018). This is in line with the transformative concept discussed under Chapter Two that explains how marginalised societies organise surrogate mechanisms salient to their *modus vivendi* (cf. Friedmann, 2011). In this regard, informality cannot wholly be dubbed as a zone of death but an innovative enterprise, and the state parties could draw from the creativity emanating from the informal sector. Slums exist in very different contexts and serve different functions. Through self-help, people adapted rapidly and astutely to the city and developed creative coping mechanisms to deal with the challenges they faced since the problem was that the city did not adapt to them (Perlman, 2010:37). Although slums are often places of wretched housing, they can also be places of vibrant life and livelihoods (James et al., 2015). Nevertheless, defending them as being ‘productive too’ just like ‘normal cities’ is to concede that economic productivity is the pre-eminent quantifier of what is good (*Ibid.*). Inclusion is good only when the terms of positive exclusion are negotiated with care and transparency (*Ibid.*).

More so, slums are not an aberration, but rather a part of existing city structures that need to be improved. Informal settlements are part of the solution found by people living in poverty in a context of “accumulation by dispossession” (Simpson, 2013:5; Arrighi, 2002). In this regard, informality cannot be described as a criminal enterprise. Urban planning is a counterpart to the issues of informality (Watson, 2009:190). The idea of informal settlements through the lenses of ‘rurality’ as rural communities are trans-located to the city entails a perception of residents having a ‘rural’ cultural identity (Lombard, 2014:38). In that respect, housing is a process. Households and communities in control of the basic decisions that shape their environment provide

fundamental support to their sense of well-being, and development (Simpson, 2013:9). Initially, the rural poor migrants could afford to build, buy, or rent, decent housing. Instead, they opt for cheap, substandard units close to employment opportunities. As they become integrated into the urban economy and their incomes rise, these migrants eventually enter the formal housing market or invest in upgrading their existing dwellings thereby ameliorating slum conditions (Fox, 2013:5).

Uncontrolled forms of settlements are so often distorted (Turner, 1968:107). The uncontrolled urban settlement is a vehicle for activities that are essential to the process of modernisation (Turner, 1968:117). Modernisation portrays slums as a natural and temporary manifestation of a market failure arising from the dynamics of structural change in labour markets (Fox, 2013:5). The urban poor built their settlements without any reference whatsoever to the bureaucratic apparatus of planning and control in the formal city-system of capitalistic transactions (cf. Roy, 2005:148). The biggest stumbling block to achieving, without slums is, housing because formal sector housing is well beyond the reach of most slum dwellers and without formal housing, areas are usually automatically considered to be slums (Simpson, 2013:14). Slums are therefore precursors to the “new urbanism”. In the cities of the Global South (developing countries), informal settlements are growing much faster than the cities themselves (Perlman, 2010:79).

In this study, the relations between public housing policy implementation concerning urban change and economic development were brought into focus in a period that was characterised by considerable economic and political instability. It is also worth accentuating that after the epoch of turbulence, the Global Political Agreement (GPA) or Government of National Unity (GNU)¹⁴ did little to alleviate or slow down the housing problem, evidenced by a prolonging housing waiting list. In Harare, urban transformation, public housing policy implementation, and the realisation of the right to adequate housing, was traversing or navigating a turbulent and uncertain context, and faced an unprecedented and intense set of economic, social, and environmental challenges. Taking advantage of the lawlessness that has swept Zimbabwe ever since 2000, like flouting of council rules and procedures, through land barons as conduits, the ruling elites have often targeted land for housing. The Mugabe government after 2000 failed spectacularly to

¹⁴ GNU was a unity government after a dialogue facilitated by the then South African President Thabo Mbeki between MDC opposition and ZANU-PF. It ran Zimbabwe from February 2009 to July 2013.

maintain law and order in the implementation of housing rights in Harare, evidenced by the sprouting of illegal settlements.

1.5 From the Electoral Battleground to the Urban Arena: The Anatomy of Inter-Political Game and Bargaining in Harare

In countries where opposition parties are in power at the city level, institutional conflict and fragmentation can hinder radical urban re-organisation and often leave the city as a site of power struggles (Goodfellow and Smith, 2013:22). The vertically divided authority in Harare, that is dominated by the opposition party at the local level is an ingredient for disorderly urbanisation. Policies are implemented at different levels and in Zimbabwe, as elsewhere, housing policy implementation descends from the central government to the local government, and the dominance of opposition parties in Zimbabwean local authorities was noticeable since 2000. However, concerning housing delivery, as will be discussed at length under “The Deep State”, in Harare, it seems that there is another government concealed behind and the powers of the local body are generally weak if existing at all. This is because the Minister of Local government under the UCA [Chapter 29:15] Section 313 and 314 respectively may give direction on all matters of policy and may reverse, suspend, rescind resolutions, and decisions of councils.

In policy-making, those who formulate are not necessarily those who implement, and diversity of actors implies different approaches. The mayors together with the councillors at the administrative venues are predominantly opposition yet the technocrats who set the agenda are the ruling parties like ZANU-PF in the case of Harare, Zimbabwe. As a result, there is a vast gap between what has been enunciated at the central government (the national policy intent) and what has been implemented at the local authority level. Against this setting, political manipulation is relentlessly well entrenched and rampant as the central government often seeks to dilute oppositional influence through distributing land for housing. Gerrymandering is also endemic with the urban boundaries being manipulated to create more electoral constituencies by bringing part of the rural to urban. This implies a corrupt “spoils system” in which political bosses would place their people in choice lands. It is therefore hard to find opposition distinctiveness at the local level as national politics perforate at every level.

Cities are hotly contested spaces. They are territorial and political entities. Political dynamics are at play in shaping urban settlements (Mutondoro et al., 2017:15). Having lost seats to the opposition, MDC, energies are being misdirected and ZANU-PF is trying to gain political mileage by allowing disarray in the housing system for blame-shifting. There is a haphazard allocation of residential stands without official authorisation from the municipality. This is mainly done for political convenience while entirely ignoring proper land use management in defiance to sustainable city planning and existing legal regulations. The ongoing mismanagement defies all planning and forecasts (*Ibid.*). This is a deliberate political move in the hope of diverting attention from the failures of the ruling party for blame-shifting, damage control, and impression management to the electorate. This is also a form of sabotage by the ruling party in an endeavour to create some sort of destabilisation in Harare, and other cities. A lot is going on in the capital Harare, signifying elevated standards of incoherence and preferential access to land, leading to informal housing politics. This leads to a vital question: Is housing delivered as a social and public good or it is directed at clientele? (cf. Meinert and Mette, 2016:770).

Moreover, political parties buy votes with land promises and access thereby encouraging squatting on investors' land to create conflicts over claims and gain popularity (cf. Meinert and Mette, 2016:769). Through the lenses of expectancy, the citizenry is lured and motivated by the promises of urban land for housing. This is part of soft power, informal strategies of rule, and the politics of regime maintenance to win and maintain the support of diverse groups (cf. Golooba-Mutebi and Hickey, 2016:602). Ruling political parties try to reinforce their legitimacy and assert their political authority through the creation of satellite cities and housing developments. They realise their political objectives through housing provision (cf. Croese and Pitcher, 2017:13). Politicians use a range of both soft and hard power to retain power and formal and informal modes of governance (Golooba-Mutebi and Hickey, 2016:613). Maintaining power in Harare requires constant engagement in the processes of the land, the informal, and the formal, the illegal, and the legal (*Ibid.*). The GoZ understandably use every weapon at their disposal, land for housing included, to have a grip on power.

Moreover, housing is provided not only to alleviate housing shortages, or bolster a burgeoning real estate market, or to uphold the right to adequate housing, but also to 'order power' and buy the loyalty of residents (cf. Croese and Pitcher, 2017:4). Elites are enthused by the reformist policies

and zeal of election victory associated with new policies. This implies that the provision of housing by politicians seeking re-election has nothing to do with acceptable standards of human habitation. The 'adequacy' aspect of housing is not a priority. The essential qualities to meet accepted standards of human habitation can be underplayed by candidates seeking election, by political leaders seeking to enhance their reputation and prospects for re-election, and by political parties seeking to define their principles or create favourable or propitious popular images of themselves (cf. Dye, 2013:34). What matters is getting re-elected, and for this, personality counts for more than policy, and symbols more than performance (Roskin et al., 2006:291). Governments prioritise all that has to do with political power and not the welfare of the people. With no thought for the consequences for those that follow, there is no past and no future and, as things stand, there is not much of a present with regards to proper planning in housing. State-led housing delivery has been as much about guaranteeing the ruling party's survival (Croese and Pitcher, 2017: 5). The ruling party has been using the land as good for the enticement of the urban homeless and housing cooperatives as a vehicle for achieving its goal of control of the urban citizens. Housing policy is contaminated.

Additionally, politicians deceive society that they are fighting against land-grabbing, yet they are the perpetrators of grabbing land (Golooba-Mutebi and Hickey, 2016:778). Electoral popularity encourages land grabs despite how they might use the land. It allows the unlawful occupation of land¹⁵. Political parties are plunging headlong into head-to-head campaigns through councils. Local authorities fall victim to being used as 'proxies' for political battles. Councils are adjusting to party interest in the political game, balancing the conflicting interests of political parties in a polarised-torn environment like Zimbabwe thus cannot do anything. Many cities are fought over by factional groups and constitute a 'price' to be won in political conflict (Goodfellow, 2010:2). Harare has degenerated into a battleground in the political battles between the ruling party and the opposition. As a strategy for regime survival, it is a deliberately political gimmick in the hope of maintaining political grip. A classic example would be Operation Murambatsvina of 2005 that saw local councils as a proxy war zone for ZANU-PF and the opposition with allegations that it was an 'opposition cleansing' operation and as part of campaigning with evictions. The violation of

¹⁵South African Former Minister for Rural Development and Land Reform, Mr. G Nkwinti, during a Parliamentary Portfolio Committee on Rural Development and Land Reform attended by the researcher (04/10/17).

housing rights was caught up in the process. When politicians are seeking re-election, housing becomes a place of discord, deeply contested with diverse political agendas or ‘a site of contradictions’ with political parties escalating tensions on how to control urban areas¹⁶. Cities are therefore political spaces of co-existence (Porter, 2016).

The adversarial relationship between the national government and the opposition-led city administrations in Harare proved to be problematic as the Mugabe administration became asphyxiated with power and increasingly consumed by opportunities for self-accumulation and simultaneously more populist to halt the growth of the opposition. Attempts to embarrass an opposition-led administration became a possible vote catcher. In this respect, a proxy or ‘cold’ war was and is still playing out in Harare between the MDC and the ruling party ZANU-PF. There is a tendency to align with one political party in the discharge of services against the other. The focus is on politics at the expense of governance and service delivery. The residents are used as a shield in the political games for power. There is a great power confrontation in housing as political parties vie to consolidate their interest using housing to settle political differences. Housing administration is characterised by the adage: Success has many fathers, but failure is an orphan. This analogy is a classic recipe of power struggles and housing complexities as all political parties seek to claim successful developments for political expedience. Resultantly, housing is not viewed as a human right until there are ‘casualties’ among the elites but a ‘pawn’ or strategic political resource variable for impression management, damage control, and blame-shifting. Housing efforts are of little significance. Housing had become the primary mode for electioneering and regime maintenance.

Furthermore, there is an underlying power game whereby politicians and policy-makers determine developments in housing (cf. Boelhouwer and Van der Heijden, 1993:378; Bardach, 1977). This sabotages a cooperative atmosphere across the spheres of central and local government. Housing policies at times seem to emerge on the ground in a quite different form than one might have expected from reading the original policy document. Policy-making is being handled more by politicians and less by policy administrators. Decisions are filtered by the most powerful people. In short, this can be equated to Pressman and Wildavsky’s (1973) analogy of how great

¹⁶ Cf. McFarlane and Silver, (2016: 127).

expectations in Washington DC are dashed in Oakland. Housing provision in Harare is very often deeply contested with diverse political agendas. Owing to this vertically bifurcated nature of urban governance, there should be little surprise as to the ongoing, eventuality, and the looming crisis in the implementation of housing rights.

Following revelations of land barons¹⁷ and sporadic urbanisation, under and over-pricing of urban land, the wave of mega salaries in 2014, HCC included, and purchases of urban land by individuals without following the proper channels, the rural-urban transition zones were awarded and given to private individuals irregularly and without following prescripts of local government, questions can be raised if the institutions of integrity were executing their mandates: Why large tracks of urban land are now in the hands or ownership of private individuals or corporations? Why is the urban expansion idle or not keeping up with the demand for housing delivery and other provisions? Who are the actors involved in the unlawful methods of acquisition and allocation of land to the current occupants or owners? Was the land for housing acquired in the interest of public purpose? What criterion was used to ascertain the beneficiaries' currently occupying public land? Can the public interest of the city be left in the hands of private developers? How did the situation look like the way it is today? (cf. Farha, 2019) Are Harare City by-laws still in force? Why does housing quality keep dwindling? and Why is the housing situation unstable and appears as if 'nobody can fix it'? There is a need to look beyond housing insecurity to seek answers.

Of the large tracks of land, an approximate of 50% is in the private hands and merely 50% is shared by the government as state land and the local authorities as council land¹⁸. The unregulated market was left to take care of social services and housing was left wide open. In this regard, the government abandoned their responsibility and their commitment to realising housing rights. The government abandoned low-incomes and had certainly not abandoned private investors. Emerging economies face enormous problems and end up not interested in housing that is seen as an ambitious right but focusing on other pressing responsibilities. This kind of privatisation of a large share of the housing stock left the majority with an impoverished social housing sector (cf. Mandic and HrastFilipovic, 2015:69). Therefore, there is growing landlessness and homelessness, high indebtedness among the indigenous population, and vulnerability to displacement (cf. Li,

¹⁷ Land barons are those people who sell land or lease without legal titles to it.

¹⁸ Follow-up interview with former secretary for local government in the opposition, Harare, 06/10/2020.

2007:126). What is presented as the private market gone mad is, in fact, something far more deliberate: the failure of governments to govern in a manner that is consistent with human rights (*The Globe and Mail*, 15/04/17).

In the same vein, there are allegations of organised crime as the former President R. G Mugabe allegedly steers the sale of urban land to his cronies and businesspeople who supported his rule (cf. Alao, 2012). Segregation veered from the dimension of racism to propitiously benefiting some segments of society based on a patron-clientele system (cf. Parliament of Zimbabwe, 2011). As the housing situation continues to deteriorate, GoZ under the former President on 08 September, by Proclamation 4 SI 102 of 2017, appointed a Commission of Inquiry (CoI) into the Matter of Sale of State Land in and around Urban Areas since 2005, hereinafter referred to as Commission of Inquiry into Sale of Urban State Land, to investigate, report findings and recommendations, a supposed panacea to the over decade-old problem of misgovernance of urban state land. The members of the Commission took their oaths of office of 01 February 2018 under the new President E.D Mnangagwa. In some sense, this shows a human rights approach to ensure rights-based participation, meaning engagement and access to justice, for instance, public hearings and remedies, identifying the systemic barriers to housing, and ensure effective responses, like commissions through tribunals (cf. Farha, 2018). Now the question remains: Is the Commission a genuine concern or a high-level public relations stunt? The government appears to be using various forms of misrepresentation to suit a particular outcome.

1.6 The State in Embarrassing Gaffe and the Extreme levels of Power Politics in Zimbabwe: Operation Murambatsvina (2005)

In May 2005, the GoZ embarked on Operation Murambatsvina, translated by the GoZ in the state party report as “Restore Order” that was just but a public relations exercise¹⁹. Operation Murambatsvina was a programme of mass forced evictions in total disregard of the due process (Human Rights Watch, 2007:3). It was as if international law is of no relevance. The arbitrary evictions resulted in the housing crisis and fuelled homelessness. The operation was in total disregard with the realisation of housing rights. Instead of coming up with alternative accommodation before the evictions as required by the international, regional, and national law,

¹⁹ Human Rights Watch (2007:3-4).

the government indiscriminately destroyed the houses first. Romero (2007:295) described eviction without alternative accommodation as a government's unwillingness to accommodate the displaced. The scale of the problem was too large and exceeded the ability of the government to address the basic needs of those affected by Operation Restore Order through Operation Garikai/Hlalani Kunhle (Better Life) (Romero, 2007:295).

Article 7 of the African Charter on the right to have one's cause heard was violated and the legal remedies were subverted (cf. Romero, 2007:275). International law has been unrelentingly violated (cf. Archibugi, 2004). It is worth accentuating that houses constructed under the so-called "Operation Garikai" benefited people not affected by the mass evictions but police, soldiers, and other civil servants (Human Rights Watch, 2007:4). It is disquieting to notice that much of the overhyped appear not to be reaching where it was needed the most. This brings in the fundamental question: Was Operation Garikai a genuine concern or a public stunt to pre-empt any negative publicity? Available evidence suggests that it was a smokescreen for the government's failure of Murambatsvina that was legally, procedurally, and constitutionally flawed – one of the greatest hoaxes perpetrated on the people of Zimbabwe. The government failed to protect those affected and displaced by the evictions. Operation Garikai failed to address the immediate needs of the victims of the eviction (*Ibid.*13). Murambatsvina was with little or no warning. The government claimed it was a long plan to clean up the urban areas, restore sanity and order, rid the cities of criminal elements, and restore dignity to the people (*Ibid.*6).

In the same vein, Romero (2007:275) acquiesced with Tibaijuka (2005) that the government issued an enforcement order for Operation Murambatsvina on 24 May 2005, days after the demolitions in the capital of Harare had already begun on May 19. Relevant agencies did not provide genuine consultation with affected persons and groups before the demolition being carried out as required by international law²⁰ (cf. Romero, 2007:275). This was, however, political sophistry where the government was deliberately crusading invalid political arguments and contradictory counter-narratives, displaying ingenuity in reasoning and maintaining that there is no housing crisis in Zimbabwe, in the hope of diverting the attention of the international community and deceiving the UN Envoy on Human Settlement Issues in Zimbabwe, by Anna Kajumulo Tibaijuka, that

²⁰ Cf. CESCR, general comment No.4 (1991).

monitored the situation. The political argument was trying to subvert the right from arbitrary eviction, citing it was a long plan to beautify the city and to get rid of criminals. In this respect, the housing case has the element of politics. It was more political than a matter of rule of law.

Zimbabwean local government officials continue to experience coercive action by the executive and a lack of judicial independence (Romero, 2007:289). Operation Murambatsvina was in total contradiction with the right to shelter, Article 14 of the 1981 African Charter on Human and Peoples' Rights (ACHPR) (hereinafter the African Charter) recognises the right to property and place an obligation on the state parties and the entirety of its agencies, institutions, bodies, and organs to abstain from tolerating any practice, policy or legal measure violating community housing needs. Despite this, there was no meaningful legal implication for the government. The UN Envoy on Human Settlement Issues in Zimbabwe (Tibaijuka, 2005) described Operation Murambatsvina as indiscriminate and unjustified, with indifference to human suffering and with disregard to several provisions of national and international legal frameworks. Its illegality revealed inhumanness and disregard of human rights. There were allegations that Operation Murambatsvina was an 'opposition cleansing' exercise in the urban areas and a forced relocation of urban dwellers to rural areas that are mainly controlled by the ruling party, ZANU-PF's strongholds, for them to be reoriented about the party dogmas. One of the apparent objectives of Operation Murambatsvina was to disperse selected urban populations to rural areas, where ZANU-PF could more easily oversee their activities (Bratton and Masunungure, 2006:36). Due to the interdependency of rights, the rights to health, education, and work were consequently violated as the right to housing has appendages into every other human right. On this account of policy content²¹ and policy context²², the research gap analysis is presented below.

²¹ Policy content of public policy entails the kind of the policy, the decision units or actors involved and their interest in the policy and real or potential impact a policy or programme may have on a given social, political, and the economic setting; embody constituent parts or basis of the legislation (cf. Grindle, 1980; Pressman and Wildavsky, 1973).

²² Policy context of public policy implies the political calculus, elite interest - priorities of political officials, the legislative frameworks and institutions involved in policy, the characteristic of the regime in which policies and programmes interact, matters of ideology, culture, political alliances and payoffs, international events and global dynamics, and the outcome of other programmes (cf. Grindle, 1980).

1.7 Problematising the Housing Challenge in Harare

Albeit voluminous literature that has been published on the housing development in Zimbabwe, a few if any of these studies have attention to the ‘housing policy implementation tragedy’ posed by the policy content and policy context concerning housing rights. Li (2007:123) describes this as a lack of attention to political-economic structures. Available literature fails to notice the myth of policy overlaps and establishes a mundane or new common sense about urban informality attributed to structural issues and technical encumbrances. It would then appear that policy overlaps and realities situated beyond the legal realm, not structural hurdles, are the source if not the leading architect of housing crises. Urban researchers discuss what is already known and suspected. Obstacles to implementation are political rather than bureaucratic (Goodfellow, 2013:85). Implementing plans are far from being the primary technical exercise that has often been conceived as in policy circles (Goodfellow, 2013:85). The researchers underestimated the deeply problematic politics. Housing is well documented but there is little discussion about how overwhelmingly politics retard the right to housing. There is an intellectual impoverishment. Systematic exclusion by overlooking the role of politics and legal ambiguities is an intellectually bankrupting exercise.

It has been decades since urban scholars were dissecting urban governance. While there is considerable literature on urban development and planning that has been analysed and over-analysed, the policy content and contexts are not being referred to or recognised as one of the independent variables or factors influencing and accounting for the change in the housing market. The far-reaching effects of other policies on the housing frontier remain a mystery, shrouded in secrecy, murky, and veld in obscurity. The study seeks to detach from over accentuated challenges of housing usually associated with corrupt politicians, political expedience, lack of proper planning and supply overtaken by demand, and zero in on the unchartered routes of jurisprudential encumbrances disturbing the realisation of housing rights.

Current understandings of housing tend to over-accentuate the role of structural factors and neglect the extent to which the context shapes the housing dilemma. Despite years of research on housing policy, there are still gaps in urban theory and limited understandings of urban informal settlements. The housing debate is void of real context-sensitive analyses whilst urban conditions

are particular to context (cf. Watson, 2009:154). By defining specific and localised issues in Harare, tackling, and dissecting merely the technical or structural problems, the urban researchers have not recognised the policy context, content, and conditions that fomented challenges. Zimbabwe's housing issues must be canvassed considering the changing context thus this study looked at how and why housing is begging for an urgent reconsideration, refocusing, redefinition, and reformulation²³. The study is therefore necessary to realistically provide an understanding of an ever-changing society that is constantly moving. The study considered the overhaul housing planning rules and the need for a new legal doctrine (cf. De Vietri, 2008). Implementation incentives are historically and contextually specific and may depend on factors such as the nature of the political party or group in power, their need to establish credibility with certain groups, and the extent of political competition (Goodfellow, 2013:85). The institutions and people responsible for the safeguarding of the right to housing and related development programmes did not initially examine other practices of the state as potentially responsible for marginalisation of the poor and as an impediment to orderly urbanisation. The right to housing is a socio-economic right and a basic principle of a civilised society and to be protected by the state.

The Constitution of Zimbabwe remotely provides for the right to housing in terms of Sections 28, 71, and 74. Property rights (Section 71) and the right from arbitrary eviction (Section 74) are now capable of being decided at law. They can be legally enforceable or reviewed by the courts of law, including a constitutional court, in case there is an infringement by the executive or responsible administrative authorities. Since they are under the Bill of Rights, they are subject to judicial enforcement. Section 28, however, is not justiciable as it is not under the Bill of Rights. More so, provision of public housing is generally realised through fiscal spending at the central and local levels and financial mechanisms in the form of loan or mortgage systems (Yamazaki, 2017:1). Financial mechanisms assist in homeownership through subsidies and low monthly installments. The resource base of a country is a key element to the realisation of housing rights and countries

²³Cf. The first biennial symposium attended by the researcher on human settlements planning, development and sustainability in Zimbabwe; Zimbabwe's spatial and physical planning in a changing context: how and why planning is begging for refocusing and redefinition, paper presented at the University of Zimbabwe Conference, Department of Political and Administrative Studies, 17-19/08/16.

can be judged from the human rights point of view based on the resources it could harness (Farha, 2019).

Concerning the state acting within the limits of the resources available to it, urban population growth places enormous strain on government resources and capacities (cf. Fox, 2013:3). With the population ageing comes with policy issues (cf. Burdell, 2016:18). Zimbabwe under Section 28, like in the South African Constitution, is guided by a clause "...within the limits of the resources available...". This implies that the state is not obliged to do more than its available resources permit. The obligation is merely governed by the availability of resources. The state's obligation is not qualified by considerations relating to its available resources. This means that housing rights in Zimbabwe, like in the case of South Africa, due to similarities in the wording of clauses, are dependent upon available resources. This would mean an erosion of the content of rights and obligations. The availability of resources affects the rate and the extent to which the right to housing can be realised in practice. A limited amount of government resources results in a housing deficit. It is the source of 'excessive demand' (Fox, 2013:8).

Section 28 vaguely provides for shelter. It does not expressly provide for the right. It appears to be an incomplete explanation even in the related SIs. Yang et al. (2014:522) note that housing means more than just shelter. There must be land, services, and dwelling. Also, Section 28 merely stipulates shelter as a national objective and not as a right thus reverberates 'legal limbo' concerning housing. Shelter can imply any habitation or makeshift²⁴ of any type. Adequate housing entails having the requisite qualities to meet the decent and accepted standards of permanent human habitation. Shelter can be temporary and is not meant to be a permanent home. It is just to provide a temporary cover. On the other hand, housing implies decency concerning health issues and developments like roads, drainage systems, and clean water²⁵. A house is sustainable and ethical. Shelter can imply a house without services and housing without services or fundamental necessities of human life is not complete and does not qualify in the realisation of the right of access to adequate housing (cf. Hulchanski and Leckie, 2000:3). Denying man facilities is like seeing a man as a subhuman. This implies that housing as a right in Zimbabwe is not emphatic as compared to other jurisdictions elsewhere, like in the Constitution of the Republic of

²⁴ A makeshift in this context implies a place not meant for human habitation.

²⁵ Cf. CESCR, general comment No. 14 (2000).

South Africa, 1996. Its Chapter 2: Bill of Rights, Section 26 prescribes for the rights to have access to adequate housing and from arbitrary evictions. This comparative analysis helps to identify constitutional impediments to housing within jurisdictions. More so, the word “access” entails availability and handiness but Section 28 of the Zimbabwean Constitution is not obliging the state to create an enabling environment for all persons to access affordable housing irrespective of all statuses.

Furthermore, Section 71 of the Constitution of Zimbabwe legally enshrines and protects private ownership of property rights. However, it appears to protect those with properties and not obliging the state to uphold the right to adequate housing to everyone. This implies that the Zimbabwean legal framework is hostile to the worse off groups in society. The property right applies only to the development of well-located medium density housing for those with regular income. It does not address the housing inadequacy (cf. Huchzermeyer, 2003:101). The right to housing is broader than the right to own property as it addresses rights not related to ownership and is intended to ensure that everyone has a safe and secure place to live in peace and dignity, including non-owners of property, safety, happiness, and hope (UN-Habitat, 2014:7; UN-Habitat, 2001). Security of tenure can include mentioning a few, rental accommodation, lease, and informal settlements. As such, it is not limited to the conferral of formal legal titles (UN-Habitat, 2014:7). Given the broader protection afforded by the right to housing, a sole focus on property rights might lead to violations of the right to housing, for instance, by forcibly evicting slum-dwellers residing on private property (UN-Habitat, 2014:8). It is, however, worth accentuating that the right to the property remains crucial in the realisation of the right to housing. However, the right to adequate housing is not the same as the right to property. Protection of property rights might be crucial to ensure that certain groups can enjoy their right to housing (UN-Habitat, 2014:7-8).

Additionally, Section 74 of the Constitution of Zimbabwe provides that ‘no person may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances’. It appears to be elusive and peripheral, failing to poignantly zero in on the right to housing but rather focus merely on the freedom from arbitrary eviction. The legislation prohibiting arbitrary eviction is also permitted by the same provision based on a court order or considering all germane circumstances to evict. This implies that the right is given by the right hand and taken by the left hand. The judicial ambiguities on property rights and the

jurisprudential constraints on arbitrary eviction are just but conferring rights on a beneficiary class, for instance, property. This implies that the locus of Section 74 is not directly referring to the right to housing. These loose provisions have serious implications on the delivery of the right to housing. The sections do not create any primary state obligation to provide housing.

Ironically, Zimbabwe has ratified both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter. Accordingly, as a state party, it is therefore obligated to realise the right to housing for all Zimbabweans as discussed at length in Chapter Three. The government should provide for the lives, stability, and economic and social well-being of citizens since the government is obliged to protect rights and property. Furthermore, it is the medium through which the preservation of property and natural rights is achieved (cf. Roskin et al., 2006:44-45). The right to housing is “vaguely worded” in a manner that makes adjudicating such rights raise questions of what constitutes the right to adequate housing (cf. The Human Rights Fact Sheet, 2008:30). Despite this, there is a disjuncture between what is stipulated in the Constitution, legislation and incidental regulations, and the *Modus Operandi* and modalities of local councils. Against this backdrop, in Harare, like other cities in Zimbabwe, available evidence attests that residents are finding it difficult to access equitable, adequate, decent, and affordable housing based on the principles of distributive justice as housing is about social justice (cf. Pugh, 1980:286).

The National Housing Policy (NHP) of 2012 in Zimbabwe is failing to effect change in its sole purpose of equalisation in the disparities between upper and low-income classes, in other words, “equitable share” to accommodate those in the category of underemployment. There is, therefore, a need for the redistribution of wealth. Despite this existential reality, little is known about the influence of policy content and policy context vis-à-vis the provision of the right to housing in Zimbabwe. This study is motivated by the lack of reliable information on policy content and policy context influences. Little has been done to understand the politics of housing, an understanding that is needed to provide a more encompassing and expansive insight into the nature, magnitude, and scope of the housing crisis in Zimbabwe. One cannot understand the housing problem without knowing about its context or orientation of the problem. The process of solving the problem is identical to the process of understanding its nature (cf. Rittel and Webber, 1973:162).

A country, in which several persons are deprived of access to housing or temporary shelter, violates, prima facie, its duty to realise the right to housing (cf. Golay and Ozden, 2007). An approximate 100 million people are homeless/living in the streets worldwide and 1.6 billion people as an issue of cosmopolitan import lack access to an adequate home, living in slums or informal settlements under the constant threat of being evicted and daily threats to life and security (Global Survey on Homelessness, 2005). One of the initial motivations for this study stemmed from the sense that homelessness is a problem seriously and grossly underreported locally and internationally and the homeless approximates in some of the key countries are as follows: Nigeria with an estimated 24.4 million, India with an official figure of 1.77 million and an unofficial estimate of 78 million and New York in the USA with 3.5 million²⁶. A quarter of the world population is living in informal settlements and slum-like conditions. These communities are often raised by profit-driven developers and governments with little notice and no offer of substitute housing (Farha, 2018). Eight million Africans live in informal settlements (Al Jazeera on May 6, 2019).

Homelessness²⁷ of people goes beyond people living rough in the streets (street homelessness), it includes those who are in shelters couch surfing, living with family, friends, and relatives because they do not have other places to go. Homelessness is not being given the urgency, political will, social policy that it deserves, or viewed from the human rights issue that it is, that is part of the problem (Farha, 2018). Share housing is unsuitable as the conditions are insecure for accommodation. On the other hand, Zimbabwe faces a huge housing backlog estimated at 1.3 million “legitimate” units with approximately 500 000 on the Harare waiting list alone. The demand for housing is escalating with more than 3 000 new applicants joining the list every month and the figure is increasing with some renewing (Zim-Asset, 2013:21; *Sunday Mail*, 20/04/14, *The Herald*, 16/01/18). The lengthy waiting list is just a nightmare. The housing waiting list indicates a catastrophic failure of important elements in the housing system infringing duly accorded rights.

²⁶ Cf. James Bayes on Al Jazeera interview with Leilani Farha, UN Special Rapporteur on Adequate Housing.

²⁷ People sleeping in the open air, sheltered public places (structures, stations, shopping centres), shelters from social services or those who do not have a permanent residence and are temporarily staying with friends or acquaintances are considered homeless.

However, while some statistical information is available, it is highly aggregated, often out of date, and about only a handful of cities. It is important to worry about statistics and to note that the actual and real figures are likely to be bigger than estimated or higher than the reported. Patterns vary, and numbers do not stay steady. The numbers portray vicissitudinousness. It is essential to bear in mind that though, the statistical techniques used to arrive at these rates are authentic, the rates are controversial in the sense that if an unhoused person is not actively looking or applying for housing or registering to be waitlisted for a house, such person is excluded from the unhoused persons or the “legal” housing backlog list. Thus, it is not judicious to rush to celebrate figures appearing to show an impressively low housing demand without being more circumspect.

Though statistical rates are crucial in any polity, they also become a shame when these are highly politicised and mystified. The housing challenge is not a new development but it has been growing. Whichever figures are accepted, all the evidence attests to a rapid increase in the backlog. Urban scholars must therefore take a grassroots-driven stance and must dare not to simply accept these conceptual, statistical constructs and must supersede or supplant them with daily lived experimental accounts of the human condition that is the actual experiences of the ‘ordinary’ people, especially vis-à-vis the Global South that is under study with specific reference to Zimbabwe, Harare. The “official” Zimbabwean statistics as indicated in the above-mentioned unhoused rates are close to one and half million. The unhoused rate amongst the youths, persons younger than 35 years, is more than that, and disaggregation of this data has been a challenge.

Zimbabwean youths are more relying on their parents’ houses and that cannot be described as a housing development but signifying stagnancy and regression in housing provision that distorts the whole narrative of development. It seems as the economy has been designed to keep the youth depended on their parents’ homes. There is a vast gap in the lives and fortunes of Harare residents and the likely future of their children and grandchildren comparing them with the lives of their parents. ‘Implementation failure’ is manifest in this crisis and fundamental questions can be raised: “Why is it happening like this?”, “Is there any functional institution in charge of the city? “What is wrong with local authorities?”, “How do the local bodies administer/direct the housing policy?” “Why Harare municipality is failing to keep up with/stop/meet the growth of housing units?” “Why there is municipal fragmentation/inertia/anarchy?” and “Why is Harare municipality in a messy

state?” The escalating and taken-for-granted waiting list in a rather short period warrant critical reflection.

Affordability has also been ignored in urban studies. Current approaches to stimulating the development of affordable units have largely been failures as many high officials are clandestinely blocking such initiatives, eyeing for the ‘big businesses’ usually associated with public rental housing or housing in general and real estate management. The unprecedented concentration of wealth in housing is rising and beginning to assume menacing levels. Real-estate interests have long wielded an outsized influence over NHP. Housing is seen as the safest investment to secure money than families. As the biggest of all businesses, the residential real estate market is now valuing at an estimated global net worth of US\$163 trillion, more than twice the world’s GDP²⁸ and almost three times the world’s GDP against US\$7 trillion of all the gold that has been mined (Farha, 2019). It is now the world’s largest alternative for investment. This does not necessarily mean equating housing with gold. Farha (2019) avers that housing is not a commodity but gold is and housing is not gold, it is a human right. Parking capital in real estate with no intention of living there is a manifestation of the financialisation of housing that befuddles realisation of the right to housing. Indeed, the real estate industry grew in tandem with and helped to popularise elitist, even eugenic ideas about the poor.

Describing pressing issues grappling with cities around the world, Farha (2019) relates the situation to corporate capture of housing. The residential real estate market is equivalent to more than twice the world’s total economy and dwarfs. Housing affordability remains a chronic problem in both developing and developed societies²⁹. Rent hikes will only leave more people without stable housing, making it harder for them to climb the economic ladder. Many are not affording the cost associated with accommodation. The government is failing to come up with housing units priced reasonably to put some downward pressure on the housing market. The economic situation in Zimbabwe with more people made homeless pushed many people into paying excessive rents. The massive influx of new renters and the complete lack of government involvement in producing new housing units have given the market overwhelming power to squeeze every hard-earned and

²⁸ Gross Domestic Product (GDP) is the sum of goods and services produced in a given country in one year, often expressed per capita (GDPpc), by dividing population into GDP (Roskin et al., 2006:31).

²⁹ Cf. Review of Australia Fifth Periodic Report under the ICESCR, 2017.

last dollar from the low-income Zimbabweans' pockets. Rents are typically set at around 30% of income. High level of rents and rent increases, the acute shortage of affordable housing, coupled with the decreased number of social rental apartments and the decreasing and low level of public spending on housing is pricing housing out of most people's salaries. The market has downgraded people into squatters. The government is failing to deliver public and affordable housing and failing to control rents. Zimbabwe in general and Harare is in the midst of an affordable housing crisis. There is no universal rent control to end speculative profiteering and elimination of homelessness. The most immediate path to staunch the bleeding of affordable units would be to impose effective rent controls on landlords across the country.

Models of financial rental housing are woefully inadequate. Due to the declining homeownership rate, housing insecurity is a growing reality in Zimbabwe. There is, therefore, a need to canvass the concept of human security as the homeless population is rising in the booming city of Harare. The betrayed promises of homeownership are no longer making any sense to many people as they have been waitlisted for decades. This signifies decaying remains of independence gains. Affordable housing is scarce, but demand is high. Zimbabweans under the age of 35 are involved in "cohabitation", more likely to be living with their parents or their parent's house than alone in their own new homes. This has become the "new normal" in the housing fraternity. It is imperative to unsettle the common cause usually associated with urban researchers as politics appears to be deliberately stalling efforts of affordable housing in the hope of profiteering from public rental housing.

Furthermore, one ever-present risk for all urban researchers is making a home within their discipline. Trusting the urban researchers and not understanding the policy dynamics of their society and the political economy creates a problem of selective consultation, leaving the gap of not fully understanding the society around or tapping into the panoply of its factors. Seeing housing merely through the lenses of urban planning yet that same housing society looks very different through the eyes of a policy analyst justifies further research. While there is no doubt that structural factors contribute or drive the development of the housing challenges, perhaps they should not be the only ones discussed for years. The tendency of urban researchers to only pursue writing for their discipline and only within-discipline is risky. It is an indication of how out of touch with reality in the housing discourse and the choice to institutionalise deceiving the world, deceiving

the people, and deceiving themselves. The possibility of too subjective an interpretation seems to be a necessary risk to the concept or study of housing. There is a field bias as much focus is limited to urban planning that rather misses the point as housing has the policy and legal characteristics that are more convincing, reflective, and important in explaining the bigger story and emphasising the sequencing. Due to this ill-informed simplicity, lack of balance, and one-sided presumption, there is a need for stalemating disciplinary powers. While the housing challenge question is an obvious starting point, answering it is complicated by the fact that definitions or understandings of public administration often tend to fall into the trap of urban planning approaches to something that is otherwise quite mundane as an everyday phenomenon. It is, therefore, unwise to define the housing problem with a mere reference to urban scholars. A better approach is to use a collective or shared experience of disciplines as this study seeks common solutions to common problems.

Urban scholars close themselves off to different ways of looking at the housing challenge, different challenges, policy networks, policy communities, jurisprudential, contextual and policy analysis, and the diversification of their skillset. Their arguments are not sustained, could remain speculative. They are grappling to separate the structural and symptomatic challenges. It is the symptoms that have appeared more frequently in the study of the housing challenges. A plethora of leading causes to the housing challenge emanate from other disciplines thus urban researchers can learn a great deal from experiences outside their discipline; in particular, public policy analysis and human rights law. To consider the multiple, short, and long-term potential risks, there is a need to incorporate other disciplines. Primarily, the focus of this study is to fill this research gap as urban researchers tend to neglect the intertwining nexus of disciplines in the study of housing. Through this study, a framework for which urban researchers can use throughout their careers emerged as enunciated in the analytical framework in Chapter Two.

More importantly, urban scholars reveal various challenges and the influence of policy content and policy context is seemingly blurring vis-à-vis housing crisis as they seem to draw their findings from urban planning. However, the fact that policy content and policy context gave birth to the housing crisis is arguably most developed in public policy analysis and human rights law literature that further provides the rationale for this study; that is, to examine challenges of housing as a networked problem of policy content and policy context, from public policy analysis and human rights law perspective. Human rights incorporate universal norms that bring coherence and

coordination to multiple areas of law and policy through a common purpose and a shared set of values (Farha, 2018). Housing rights, therefore, must be canvassed from a transdisciplinary standpoint. This study seeks to map out overlapping programmes in the implementation of social housing thereby filling the knowledge gap in the urban studies that urban planners tend to overlook. The tragedy is that people are not aware of the far-flung effects of other policy fields on the housing cluster. This can help housing policy analysis, that seems to be merely enamored, beguiled, besotted, blitzed, and captured with urban planning. Much of what planners think of the implementation process does not come from their field but has been borrowed from the field of policy analysis (Chognill, 1987:3). Canvassing housing through the lenses of development planning only offers a myopic and a one way or one-sided understanding of the housing realities. Thus, there is a need to offer a heuristic dichotomy on housing rights.

Furthermore, development planning rarely captures the complexities of local government contexts and urban planning thus longing for further research. Very often other things intervene. Therefore, there is a need to canvass the politics-public policy dichotomy or the law-politics-policy tripartite puzzle to come up with an overall picture of local governance challenges concerning housing. This lexicon of planning not only has the flavour of a causal shrug but also implies the inability to think about the complex social systems through which plans must be implemented yet the implementation of housing policy is context-sensitive (Roy, 2005:156). Urban researchers imply a poor grasp of power politics that is very much divorced and disconnected from reality, limited and less reflective of the broader context of the housing situation in Zimbabwe, and looks different to the 'public policy eye'. They do not establish new realities on the ground. Urban researchers' findings are a bit of a ramble, desultory and limited to urban planning, that at a minimum, are at the extreme end of the housing situation spectrum. They failed to consider how politics is impacting the enjoyment and realisation of the right to housing. Thus, this study seeks to appreciate the extent of the road not travelled or heavily traversed 'law-politics-policy' junction by urban planning researchers. This lends support to the argument that housing is neither an urban planning or policy issue alone nor a legal subject, but a mixture of the three. This approach provides a counter to the simplistic tales often told. Zimbabwe's Housing Policy Document of 2012 is the most important factor in this study, although it does not directly account for the functioning of the housing system (cf. Boelhouwer and Van der Heijden, 1993:378). This implies that the analysis of

structural challenges in the policy document does not explain the direction or location upon which leading causes are emanating from. Such an explanation can, therefore, ensure greater utilisation of social sciences and technical investigation before housing policies are made concrete. Throwing policy interventions at the leading causes can help solve the housing development problem.

Separating the housing problem from the overlapping nature of national reform interventions obscures the importance of policy overlaps as an ingredient to the housing crisis. There has been much focus on what has happened to housing policy only without taking on board the influence of other policy clusters. There has been little study with regards to the role of land reform in generating housing chaos especially given the changes happening outside the housing radius or urban planning pie chart, that are, however, affecting the housing policy field. Land invasions did not die since 2000, though the magnitude and scope were bigger than ever in 2000, it is still alive and strive with far-flung effects on the realisation of the right to housing. These are some of the mysteries of predatory politics that can be brought into the light and formulate political solutions to political problems bedeviling and stalling the realisation of the right to housing. This study goes some way to redress this enclave and depict the scale of the old century problem of housing that has resulted from chaotic reform programmes.

With this study's focus on the public policy implementation of housing, the research merged bodies of social science and humanities that have tended to be separated in most work on urban Africa, in particular, Zimbabwe, to get to the bottom of the matter as it pertains to this century-old problem of housing. These bodies are public policy analysis, human rights law, and urban planning and development. There is a need to get to the epicentre of the housing crisis in Harare, Zimbabwe, and draw lessons that can be applied in similar contexts. This brings an interdisciplinary perspective concerning the housing discourse through bringing together trends from a tripartite transdisciplinary analysis of law, public policy, and urban planning rather than bifurcating these closely intertwined disciplines. There has been a tendency in the planning literature to have a mono-dimensional view of housing. Urban planning as a discipline provides the skeletal or abbreviated summary of the housing challenge. The flesh and blood of the body are vested and more captured in public policy analysis and jurisprudence.

Urban planning literature omits some of the important elements captured in the public policy analysis literature and statutes or legal systems that undergird housing. Numerous articles tout the importance of urban planning and, in doing so, ignore the importance of public policy analysis. The study of urban planning alone does not go far in solving real problems of housing. After going through the literature, important aspects are not captured in the urban planning studies. The overlapping policy component is part of this housing challenge that led to the deviation of the urbanisation process from order. There is none of the policy overlaps in the urban planning literature that did more to galvanise or stimulate the housing challenge. It is the common denominator when it comes to housing challenges in Zimbabwe. There is, therefore, a need to establish a counterbalance or an essential linkage among broad disciplines to explore the housing challenge and to address its causation. Lack of balance becomes a recipe for this study. This study provides the intersection of housing, public policy, and human rights law. The outcome depicts explorations and juxtaposition of arts, humanities, and social sciences.

1.8 Study Objectives

Based on the gap analysis above, this study seeks to: -

- a) Describe the scope, nature, magnitude, and content of the right to adequate housing in Zimbabwe.
- b) Examine the utility of the International, Regional, and National Law in the realisation of the right to adequate housing in Zimbabwe.
- c) Probe the effects of successive reforms to the realisation of the right to adequate housing in Zimbabwe.
- d) Analyse the effects of policy content and policy context in the realisation of adequate housing rights in Zimbabwe.
- e) Investigate other public policy fields affecting the right to adequate housing in Zimbabwe.
- f) Suggest ways of enhancing effectiveness in the realisation of the right to adequate housing.

1.9 Research Questions

Against this backdrop, this study seeks to answer the following key questions: -

- a) What constitutes the scope, content, and magnitude of the right to adequate housing in Zimbabwe?
- b) Does the ratification of the international and regional provisions help to realise the right to adequate housing in Zimbabwe?
- c) What are the effects of successive reforms to the realisation of the right to adequate housing in Zimbabwe?

- d) How does the policy content and policy context affect the realisation of adequate housing rights in Zimbabwe?
- e) How does other public policy clusters affect the right to adequate housing in Zimbabwe?
- f) What recommendations can be made to ensure the realisation of the right to adequate housing?

The questions stem not only from an acknowledgement of the importance but also the inadequacy of literature on the causal-effect relationship between policy content and policy context with the implementation of public housing policy and realisation of the right to housing. The relationship between public housing policy implementation with policy content and policy context is blurred. The research questions and objectives help to unbundle, explore, and canvass the contextual, jurisprudential, and policy proclivities undergirding the right to housing in Zimbabwe.

1.10 Research Assumptions

- Jurisprudential and policy contextual landscape (politics, culture, society, and economics) exert influence and change the direction of policy implementation in the realisation of the right to adequate housing.
- The deprivation of the right to adequate housing is not only about programme failures or policy challenges but also about the violation of the fundamental and justiciable human right to housing.

1.11 Research Methodology

Research methodology refers to “methods, techniques, and procedures that are employed in the process of implementing the research design or research plan, and the underlying principles and assumptions that underlie their use” (Babbie and Mouton, 2002:647). This study applied a qualitative design comprising FGDs, personal interviews, and historical records. Interviews and documentary searches were used as data collection techniques to collect qualitative data and a purposive sampling procedure was used to select respondents. Site visits to housing projects were also conducted.

A group of 75 respondents who constitute key informants was selected using purposive sampling that is a technique of identifying people who can serve as key informants, giving inside information, and discussing topics on the research agenda. Members of the MLGPWNH and HCC, department of Public Works and National Housing, participated to have an in-depth understanding

of the encumbrances impeding realisation of the right to housing in Harare, Zimbabwe. Both structured and unstructured interviews were conducted. Documents and SIs were also reviewed.

An interdisciplinary and multifaceted research framework informed by history, the ‘Deep State’, transformation, complexity, human rights law with specific reference to international law and the Zimbabwean legislation, policy, and jurisprudence allowed the researcher to examine and explore the housing challenges (cf. Hennink et al., 2011: 9-10). As the concepts inform this research, they received considerable attention throughout the study. The research ferrets out theoretical insights, construct descriptive codes, categories, or themes gleaned from the fieldwork data to conclude.

1.11.1 Research Design

Babbie and Mouton (2002:74) define research design as “a plan or blueprint of how you intend conducting the research”. Research design can be categorised into exploration, description, and explanation. Babbie (2002:84) notes that exploration refers to familiarising with a topic. The description entails observing and describing what was observed (Babbie, 2002: 85). Explanation, on the other hand, entails descriptive studies that seek to answer questions of what, where, when, and explanatory questions of how (Babbie, 2002: 86). Given this, the study is best understood as exploratory as the researcher acquainted and familiarised with the right to housing and the challenges being encountered in the realisation of that right. A descriptive-explanatory survey plan was designed for this study to answer questions of “what” and “how” and different research instruments like documentary search and interviews were used to collect data. Before asking “why”, the researcher first established “what” and “how” and then the inevitable “why”. That is the philosophical proclivity adopted by the researcher in a bid to come up with solutions to the housing crisis and bring joy to the housing consumers and home seekers across the globe who are being denied the right to housing. A qualitative design helps to build a study based on the strength of qualitative tradition. Key informant interviews were used to collect qualitative data. The researcher also used a documentary search to collect qualitative data. The data was collected through key informant interviews and presented after being analysed thematically.

1.11.2 Study Area

The study focused on the implementation of housing rights in the City of Harare.

1.11.2.1 Harare City Profile

Harare was founded in 1890 as a fort by the Pioneer Column. Formally known as Salisbury during the pre-colonial epoch, it got the city status in 1935 and the capital of the Federation of Rhodesia and Nyasaland from 1953 to 1963. Thenceforward, it assumed the position of the capital city of Southern Rhodesia. It was re-named Harare on 18 April 1982 during the second anniversary of Zimbabwe's independence. Harare exceeded the 1982 definition of an urban area as a place with 2500 people. The Harare residents must, therefore, be treated, as such, the type of living there is not rural, it is urban. The city of Harare often referred to as the sunshine city, is now the capital and the largest city of Zimbabwe, situated in the northeastern part.

Harare was developed along racial lines with the eradication of black spots in European areas (cf. DfID, 2015:2). Years after independence, the spatial structure still has not changed and the short supply of affordable housing remains a thorny issue (cf. Parliament of Zimbabwe, 2011). The whites were mainly found in the northern and northeastern suburbs and the blacks were found in the south with an ethnic composition to the city, Indians in Belvedere, Coloureds in Acadia and Adebennie, Mixed couples in West-end near Kambuzuma, rich blacks in Marimba near Mufakose (*Ibid.*). Harare housing provision, therefore, has not been spared the effects of colonial legacy, emblematic in the sprouting of informal settlements, and the continuity of spatial structures over the years (Harare Slum Upgrading Profile Report, 2014) as demonstrated below: -.

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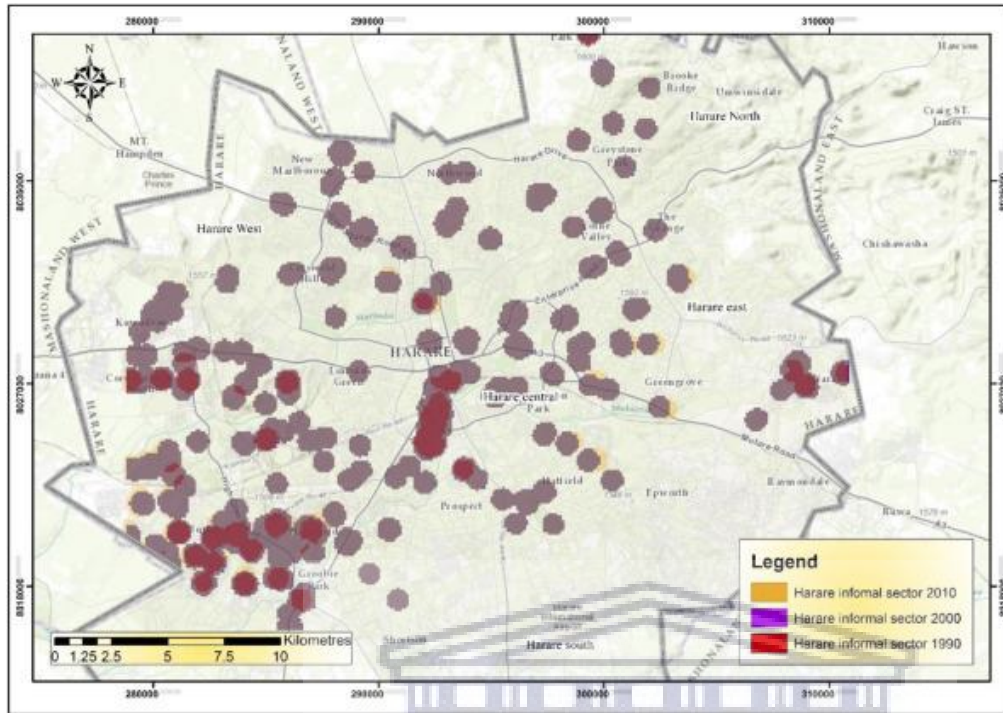


Figure 1 Harare city, showing the development of slums and informal settlements.

Source: Gumbo et al. (2018:1698); cf. Harare Slum Upgrading Profile Report (2014).

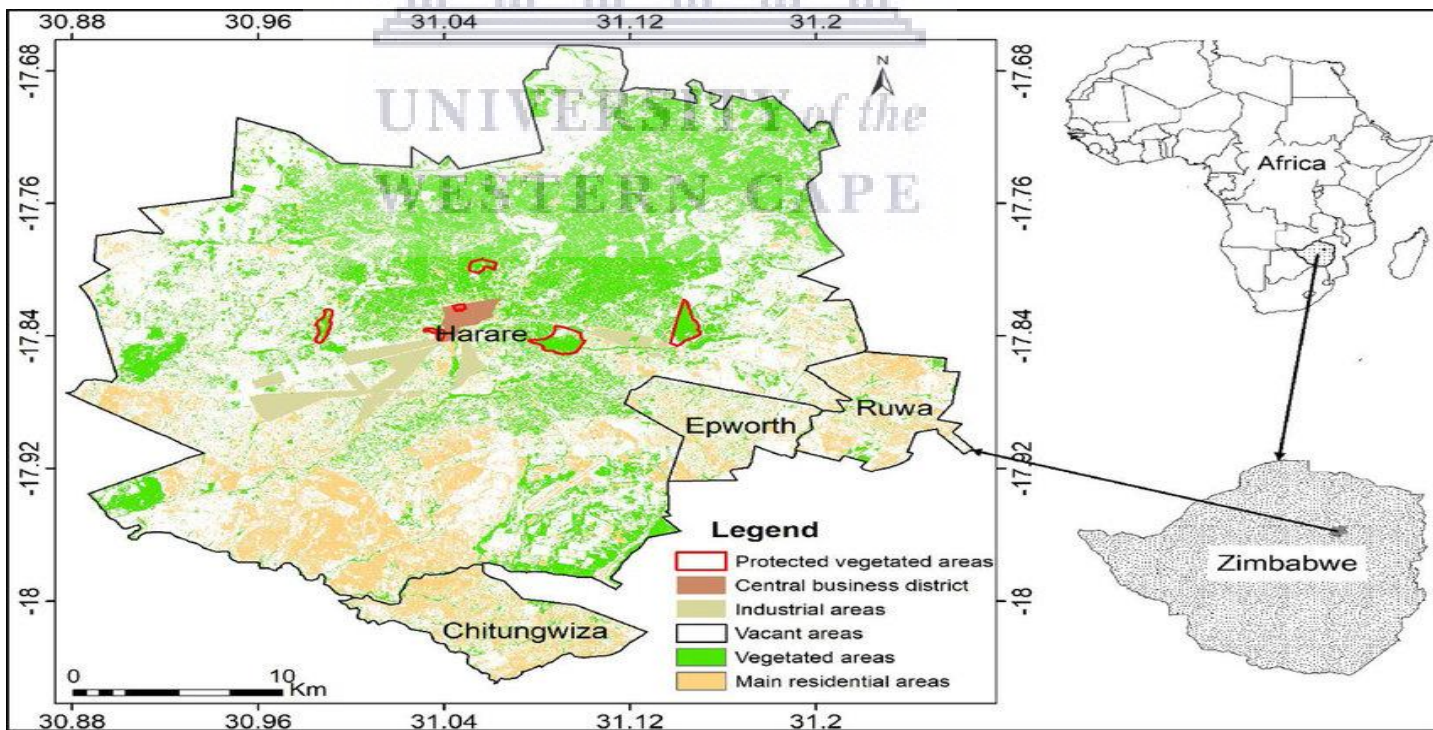


Figure 2 Harare city, showing spatial planning.

Harare is also a stand-alone province with a total population of 2 123 132 (1 025 596 males and 1 097 536 females) (ZIMSTAT, 2012), an increase from a 2002 total population of 1 896 134 (947 386 males and 948 748 females) (Parliament of Zimbabwe, 2011). However, there is an estimated population of three million (*Ibid.*). Persons of African origin made up 98% of the population while those of non-African ethnic origin accounted for 2% and the citizens of Malawi and Mozambique constituted 35% and 22% respectively (ZIMSTAT, 2012). 29% of the households lived in their dwelling units as owners or purchasers whilst 48% were renting (*Ibid.*). Approximately 94% of the population lived in modern dwelling units, while 0.8% occupied traditional or mixed units (*Ibid.*). Harare is the largest city in Zimbabwe and center for administrative, commercial, and communication activities as demonstrated in the map below: -



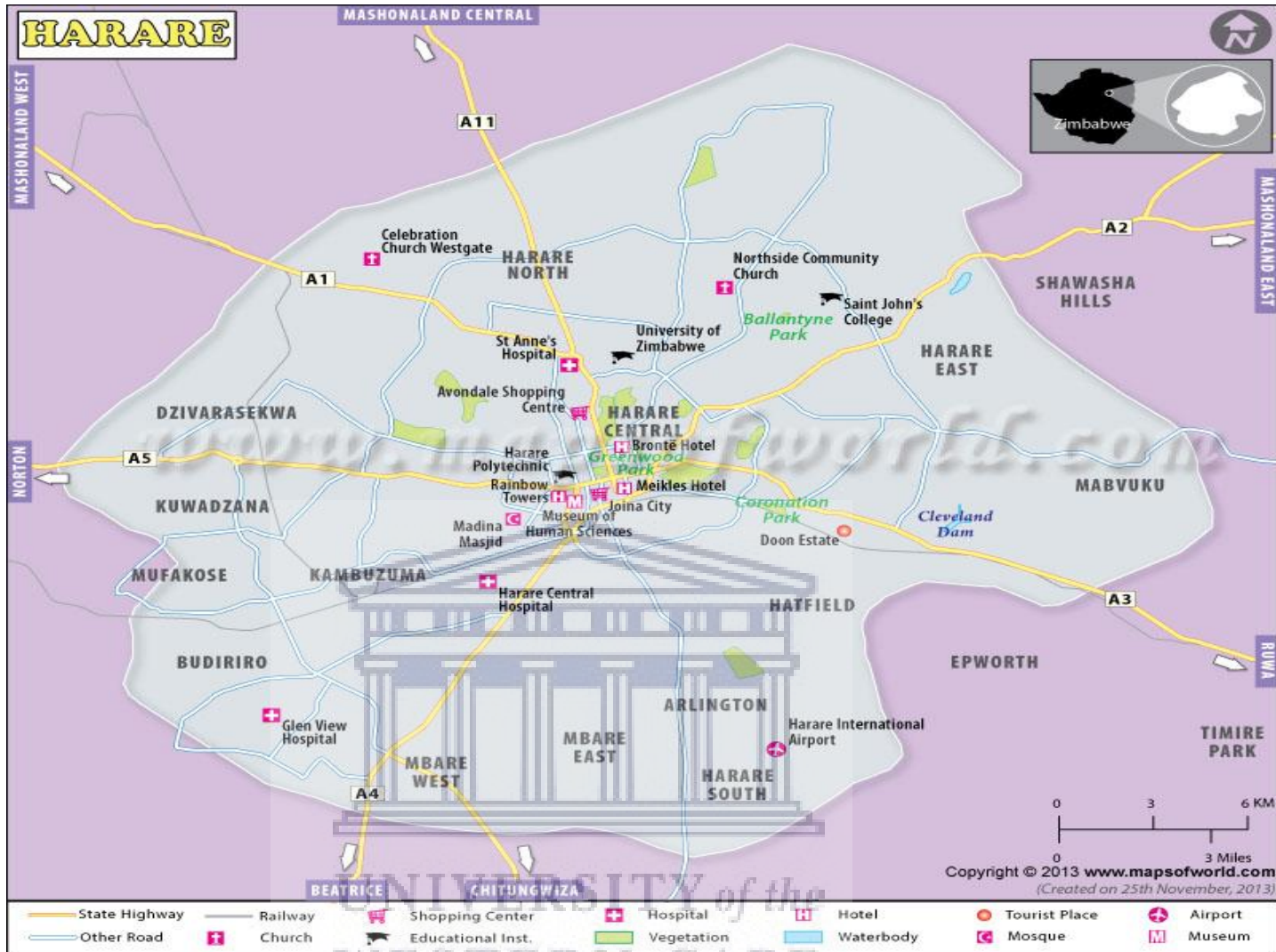


Figure 3 Harare city, showing the concentration of administrative, commercial, and communication activities.

Due to the political, historical, geographic, and demographic reasons demonstrated above, the research zeroed in on Harare city that constitutes about 20% of Zimbabwe’s population while the other nine provinces contribute between 4% and 14% each (ZIMSTAT, 2002; ZIMSTAT, 2012:110). Harare’s overheated housing market is now being called a crisis, and evidence has been offered to support wildly divergent opinions on its causes. Some suggest it is a problem of unprecedented demand for housing. Others opine that it is all about lack of enough supply. The researcher suggests that it is neither of them, but the failure to understand housing as a human right. After conducting a data review, it was appalling to notice this huge gap. The initial research assumption was that of jurisprudential and policy contextual landscape exerting influence and

changing the direction of policy implementation in the realisation of housing rights. However, further analysis and research revealed that the deprivation of the right to adequate housing is about the failure to understand housing as a human right and brought to light that the application of the human rights-based approach is critical. What is happening in Harare is not a new phenomenon. It is rampant elsewhere as discussed in Chapter Four on the global overview of the housing crisis. Harare can be termed a “hedge city” as it offers insight into the heart of the matter in Zimbabwe.

1.11.3 Target Population

The target population entails the entire aggregation of respondents that meet the designated set of criteria (Burns and Grove, 1997:236). Considering this, the target population implies the populace from which the sample was chosen and to which the study findings were generalised. A matrix stating the criteria upon which respondents were purposively selected based on race, income, gender, age, and experience about housing, professional educational qualifications, political party, representation in terms of low, medium, and high-density suburbs was designed. Based on these factors, 75 respondents were purposively chosen from the following ideal stakeholders: -

- a) Ministry responsible for Small and Medium Enterprises and Co-operatives;
- b) Ministry responsible for Local Government, Public Works, and National Housing
- c) Ministry of Lands and Rural Resettlement;
- d) Ministry responsible for Justice, Legal and Parliamentary Affairs;
- e) The Parliamentary Portfolio Committee on Local Government, Public Works, and National Housing;
- f) The HCC DHCS;
- g) Former and current ministers, mayors, and councillors in Harare;
- h) Residents from Harare suburbs;
- i) The Zimbabwe National Association of Housing Cooperatives (ZINAHCO);
- j) The academia from Urban Planning, Political and Administrative Studies and Law;
- k) The Dialogue on Shelter for the Homeless in Zimbabwe Trust (DOS);
- l) The Zimbabwe Homeless People’s Federation (ZHPF);
- m) Housing People of Zimbabwe (HPZ);
- n) Civic Forum on Housing;
- o) Real Estate Institute of Zimbabwe (REIZ);
- p) Community-based organisations (CBOs) involved with housing cooperatives; and
- q) The ZIMHABITAT
- r) The Zimbabwe Lawyers for Human Rights (ZLHR)
- s) The Infrastructure Development Bank of Zimbabwe (IDBZ)

These actors adequately captured the reality of Zimbabwe's housing sector. The Ministry responsible for Small and Medium Enterprises and Co-operatives helped to explore the trends of housing cooperatives since 2000. In this case, the appropriateness of the above-chosen population is that it is representative of the interests of all agencies and stakeholders involved in the realisation of housing rights in Zimbabwe. Civil Society Organisations (CSOs) stand as capacity builders for Parliamentary Portfolio Committees legally thus in trying to enhance the capacity of committees, the organisations constitute an important target population for gathering appropriate information about the right to housing. The ZLHR assisted in unravelling the cases related to housing. Due to the overlapping responsibilities, duplication, and coordination of roles amongst ministries and unclear, conflicted, and contradictory policy and institutional frameworks, many ministries were taken on board in this research. While it is good to examine the various agencies involved in, among other things, the administration and management of land for housing, the focus was on the anchor institutions and agencies directly involved in the implementation of the right to adequate housing, that is the MLGPWNH responsible for the administration of the (UCA) [Chapter 29:15] and HCC, in particular, Department of Public Works and National Housing.

1.11.4 Sample size

A matrix was designed to state the criteria upon which respondents were chosen. Factors that informed the choice of a sample size included gender, age, and experience about the years spent in the respective bodies, institutions, agencies, and Ministries, professional educational qualifications, political party, and representation in terms of high, medium, and low-density urban constituencies. The appropriateness of the above-chosen sample size to the study is that in terms of diversity, it suffices to capture the reality of Zimbabwe's housing challenges.

1.11.5 Methods of Data Collection

Burns and Grove (1997:383) define data collection as the systematic way of gathering data that is relevant to the research objectives, purpose, or questions. Qualitative methods were used to collect data.

1.11.6 Documentary Search

Payne and Payne (2004:60) describe documentary searches as the techniques used to categorize, investigate, interpret, and identify the most commonly written documents whether in the private or public domain. This implies published information to support viewpoints and arguments. Secondary qualitative data was collected using documents related to the right to housing. These documents among others include legislation on land and housing, journal articles on local government and urban planning, Hansard booklets from the Parliament of Zimbabwe, a raft of MLGPWNH publications that are accessible on the Ministry website, reports from the Committee Clerk, and media articles like newspaper articles and press statements. The various policies, programmes, and projects that were instituted in Harare and implemented by the Department of Housing and Community Services (DHCS)³⁰ during the reporting period (2000-2018), for instance, the 2017 Housing Scheme for Civil servants, the 2005 Operation Murambatsvina, Operation Garikai were reviewed. It is pivotal to note that no mechanism had been developed for the 2017 Housing Scheme for Civil Servants at the time of writing the study. It should also be noted that housing insecurities are still prevalent today, although only the period from 2000-2018 was examined.

Besides, the study analysed GoZ Budget Estimates from 2000 to 2018 to examine the adequacy or inadequacy of budgetary allocations concerning housing. A longitudinal observation documenting the changing dynamics of the urban policy context and housing policy content and its impact on urban development was conducted in this study. Documents describe, justify, and explain (Silverman, 2011:84). Documentary search saves time and the data is unobtrusive/non-reactive and highly reliable. Documentary research has been a staple of social research since its earliest inception (Ahmed, 2010:2). Documentary products provide a “rich vein for analysis” (Hammersley and Atkinson, 1995:173). Nevertheless, documentary information has limitations of data with a different purpose, difficulty with access, out of date, and validity problems. Labovits and Hagedorn (1976:84) observe that secondary sources often cover a wide range of topics for several years and are not current thus a picture of the present is hard to determine with accuracy. In the case of public records, their compatibility with current trends is usually problematic.

³⁰ Also referred to as the Department of Housing and Social Development or Department of Community Services, Housing and Estates Section.

Documents are sometimes not neutral (Silverman, 2011:77). In-depth interviews and FGDs, however, complement historical records. Documentary search is important, but interviews and discussions are more and highly important. Fieldwork data is thus integrated to complement documentary searches.

1.11.7 Key Informant Interviews

Kvale (1996:14) regards interviews as an interchange of views between two or more people on a topic of mutual interest. Payne and Payne (2004:129) highlight that interviewing is data collection in face-to-face settings, using an oral question-and-answer format that either employs the same questions in a systematic and structured way for all respondents or allows respondents to talk about issues in a less directed but discursive manner. A key informant interview is a loosely structured conversation with people who have specialised knowledge about the topic (Scott, 1990:54). Interviews are a systematic way of talking and listening to people in a bid to collect data through conversations. A semi-structured key informant guide was used to solicit information from purposively selected key informants. Interviews were conducted with key and ideal stakeholders. The stakeholders served as key informants, giving germane information and nitty-gritty issues on the research agenda of housing issues in Harare. Primary qualitative data was sourced through in-depth interviews with key informants, mainly top government officials in charge of housing delivery. Complex and detailed understanding of the issue can only be established by talking directly to the people, giving them ample room to tell the stories, and equate with literature (Creswell, 2013:48).

The strength of in-depth interviews lies in the fact that interviewees can respond in a way that is comfortable and the interviewer can ask more questions for clarity. In-depth interviews provide a meaning, full opportunity to study, and theorise about the social world (Silverman, 2011:131). Answers from in-depth interviews are relatively unequivocal (King et al., 1994:44). Selected interviews were conducted with government officials, both central and local, academic officials, and other non-state actors to illustrate how the state and related relevant authorities or agencies are executing their roles in realisation of the right to housing. 28 selected interviews included, among other officials, former and current ministers and officials from the MLGPWNH and HCC, Department of Public Works, and National Housing. This method gave the researcher an

opportunity for greater flexibility in soliciting information. There was ample room to ask for an explanation of difficult questions as the researcher had the opportunity to observe both the subject and the total situation to which the researcher was responding to. There was also a chance of reiterating and probing questions to clarify the meaning. The advantages of interviews included the ability to collect unobtrusive information. Interviews yield diverse opinions from the targeted officials as enunciated by Bless and Higison-Smith (1995:111). However, the method has its inherent weaknesses. It can be prone to bias because respondents were aware that they were being interviewed, hence might not behave in their natural settings. By being aware, responses might not be authentic. Some respondents interviewed and surveyed had recently been evicted, and the distress and outrage were overt, clearly affecting their responses. To circumvent these loopholes, the researcher cross-validated the data gathered using this method by other data collection methods.

1.11.8 Focus Group Discussions (FGDs)

This study employed FGDs guided by an FGD interview guide and the type of questions that were asked. Out of five FGDs that were conducted, a total of 47 were interviewed. FGDs are discussions with pre-selected respondents and it helps the researcher to gain a broad range of views (Hennink et al., 2011:136). Silverman (2011:181) states that FGDs offer opportunities for the study of the interaction between research respondents. Since it is an unstructured dialogue between the members of a group and an experienced moderator that meets in a convenient location, FGDs are flexible. FGDs were conducted with community-based and civil society organisations and tertiary research institutions, housing cooperatives, and the general citizenry.

1.11.9 Sampling Procedure

The sampling procedure involves the selection of a sample that best ‘represents’ a larger population (Babbie, 2012; O’Leary, 2004). Sampling simplifies the research as it is easier to study a representative sample of an organisation than to study the entire institution, agency, body, or Ministry. Qualitative techniques included non-probability and purposive sampling in the selection of units of analysis. Babbie (2012:193) notes that non-probability is a sampling method in which the units to be observed are selected based on the researcher’s judgment about which ones will be most useful or representative. The respondents were not representative of the entire Zimbabwean

population thus results cannot be generalised to the entire nation. Kumar (2005:179), states that purposive sampling is useful when constructing a historical reality, describing a phenomenon, or developing something about which only a little is known. The research employed purposive sampling in selecting respondents in this study, selecting individuals who can inform an understanding of the problem and central phenomenon in the study (Creswell, 2013:154). Considering the above, purposive sampling was used to select respondents who can be interviewed as key informants.

The researcher purposively selected 28 respondents from the key and ideal stakeholders, among others, parliamentarians and academia. The reason was that these are pundits, with profound knowledge about housing as a social right. These people served as key informants, bringing a unique flavour by giving inside information, and discussing topics on the research agenda thus were selected based on their unique knowledge of the phenomenon under investigation. Furthermore, snow-balling sampling was also used to interview other key informants whom the researcher knew through other key informants. This included those who are useful but not listed in the target population. Snow-balling sampling considers how research subjects are recruited and then asked to help recruit. This technique helped to identify subjects that are hard to locate, for example, previous ministers, councillors, civil servants, political advisors, and parliamentary portfolio members who served during the historical period under study, 2000-2018. To enable this, the following question was posed in FGDs and interviews: To whom should I talk to, to find out more about challenges experienced in the realisation of the right to housing?

1.12 Data Analysis

Data analysis consists of preparing, organising, reducing, examining, and categorising, tabulating, and recombining evidence into themes and presents the data in figures, tables, or discussion (Creswell, 2005; Yin 1994). Figures included the number of people housed or waitlisted over the years. Grouping data into themes helped to make the analysis of data easy and manageable. This study used qualitative data analysis techniques. Data collected through the documentary search were analysed through content analysis and data collected through key informant interviews were analysed thematically.

1.12.1 Content Analysis

Content analysis is the study of recorded human communications, such as books, websites, and laws (Babbie, 2010:156). The researcher used this method to analyse data and results of the experimental or observational method such as books, articles, journals, reports, newspapers among other primary and secondary data sources.

1.12.2 Thematic Analysis

The thematic analysis involves the identification of themes through careful reading and re-reading of data (Rice and Ezzy, 1999:258). Thus, data gathered through key informant interviews was grouped into themes of similar characteristics and was then examined case by case. The objectives of the study helped the researcher to present data in related themes to maintain coherence and significance.

1.12.3 Data Presentation

Creswell (2005:139) states that qualitative research aims to describe certain aspects of a phenomenon with a view of explaining the subject of the study. The researcher summarised data in a way that revealed the information necessary to confirm or reject the research assumption. To recapitulate data analysis, data was analysed by categorising it into themes such as the commonality patterns across data sets. Themes are important in the description of the housing phenomenon and are associated with specific research questions. Nonetheless, the literature review themes are subject to revision based on the research results. This affirms that many of the themes read in literature and expectations found during fieldwork turn out to be very much ‘way off track’ as very often, a different picture emerges.

Bernard and Ryan (2010:109) note that “... analysis is the search for patterns in data and for ideas that help explain those patterns, interpreting those patterns, deciding what they mean, and linking findings to those of other research”. Systematic comparisons were made between the themes to establish similarities. Consistency was ensured by comparing themes and audio recordings. Audio recordings were transcribed to enable visual scrutiny. Data was presented in a thematic approach and issues that answer similar research questions were brought together in small sub-headings through making use of thematic sub-headings. To maintain coherence, the research used the

objectives of the study to present data in related themes. Thematic analysis entails grouping the data into themes that can help answer the research questions. To ascertain that patterns of interviews are captured, the researcher coded the pieces of interviews with numbers to identify themes and equate with related literature. Content analysis was used to analyse secondary data and the election manifestos and pronouncements from political rallies from 2000 to 2018. Content analysis was used to analyse data concerning housing availability, accessibility, and quality (acceptability) in Zimbabwe. Content analysis entails coding the data for certain words or content, identifying their patterns, interpreting their meanings, going through texts, and labelling words, phrases that relate to research questions. Results from a public opinion survey of Harare residents were presented.

1.13 Research Ethics

Like any research of any type, the researcher observed and adhered to research ethics. The researcher was guided by the following ethical considerations; authorisation of entry or research, respect for anonymity and confidentiality, informed consent, and avoidance of harm. The researcher must never coerce respondents to participate in their research (Neuman, 2014:151). The purpose of the study was explained in detail in a language that respondents are familiar with. Respondents were rest-assured that their participation in the research is voluntary and they can withdraw at any time if they are no longer interested in the study. Also, after giving a detailed account of the study, respondents were given a chance to ask questions to make sure that they have understood the purpose of the research and the risks and benefits associated. Housing has always been associated with politics. Consequently, some respondents were reluctant to provide useful information because of fear of victimisation. To assuage this, consent forms were used to be signed by both the researcher and the respondents. Besides, the researcher made concerted efforts to ensure that the respondents read and understood the contents of the form. The researcher further assured that participation is voluntary and that the study is purely academic.

The identity of respondents was always protected. Interview schedules were designed in a manner that enhances respondents' anonymity and numbers were assigned to different interview schedules to help the researcher in data analysis. Implied is that in analysing data, names or positions of respondents was optional to enhance anonymity and confidentiality. Before conducting fieldwork

for this study, permission was first sought to research from the Public Service Commission (PSC), MLGPWNH that is the lead sector agency and the parent ministry in charge of housing administration in Zimbabwe, and the HCC – administration body tasked with providing housing among other services (letters attached in the appendices). This enabled access to respondents. Since housing is politically perceived in Zimbabwe, an ethical letter from the University of the Western Cape showing that the research is being done for academic purposes was used. Also, all the necessary steps were taken to avoid all forms of harm to respondents.

Notwithstanding the official letters from responsible bodies, Ministry, agencies, or institutions, in some cases, officials were unresponsive and unreceptive during interviews, often pointing to the Official Secrets Act public officials sign. There is a Declaration of Secrecy attached to the unauthorised disclosure and use of illegally or inadvertently obtained confidential government documents and information. The MLGPWNH compelled the researcher to sign the Declaration of Secrecy as a condition for being granted research clearance (attached in the appendices) although it is for government employees thus could not ascertain why students that are not employed by the government are compelled to sign. The Ministry said it valued the need for research of the dysfunctionalities bedevelling the enjoyment of the right to housing and gathering data or knowledge bank needed to aid or contribute towards solving the housing crisis, but the release of some information to the public domain could compromise national security. As such, they appealed to the sense of responsibility and patriotism of all concerned. In some instances, an official from the MLGPWNH during an interview advised the researcher to turn off the recorder on some issues deemed “sensitive”. Hence, rather than mentioning all the names of interviewees in this study, the researchers referred to official positions in the text instead and was selective in the names of the interviewees in the appendices to honour some of the requests for anonymity.

In Zimbabwe, POSA does not allow people to form groupings to discuss matters related to public interest without the consent of the police. POSA Part I, of the interpretation clause, provides that public gatherings of more than 15 persons are prohibited in a bid to avoid public disorder unless there is a notification to the regulating authority that is the Zimbabwe Republic Police (ZRP), of intention to hold a public meeting. Since the respondents were acting within the course and purview of this research, and to avoid the researcher being vicariously liable for any legal action if the group is deemed to be a threat to public order, the researcher sought permission from the

ZRP before conducting FGDs that were typically around 7 to 15 respondents. This helped to protect respondents from forms of harm from law enforcement agents. It was also ensured that respondents, in their responses, were not directly linked to them by assigning codes to each respondent. These codes were also used in analysing the data gathered, thus protecting the privacy and right of respondents to withdraw at any stage of the research from this research. In this case, the researcher used codes in data analysis.

1.14 Structure of the Thesis

Chapter one presents the preambular background, introducing the research topic, and study background. The chapter presented an analogy of the colonial heritages and their far-flung effects on the housing crisis. The methodology also forms part of chapter one. This is more indicative than substantive for instance, the methodological paradigm of a qualitative study that is proposed to be used and the instruments, for example, focus group guide or key informant interviews using a key informant guide was discussed. It presents the research methodology, how data was collected and analysed, in particular, the sampling procedure, likely field experiences, presentation and analysis of data, and ethical considerations.

Chapter two presents a critical analogy of the analytical discourses, considering salient underpinnings in housing. The conceptual framework highlights the consulted literature and is derived from the topic and the gap analysis. Concerning housing, the study zeroes in on the closely related concepts: transformation, complexity, and “The Deep State”. The complexity concept analyses, assess, and explores the intersection and interaction of variables in the housing quandary and their influence on the right to housing. The chapter discusses how germane the analytical frameworks are to the topical aspects of housing rights.

Chapter three presents the international, regional, and municipal law that anchors the realisation of the right to housing. It also presented national law governing statutes in Zimbabwe, the new constitutional dispensation providing for the justiciability of property rights, the rights from arbitrary eviction, and the international treaties and conventions protecting the right to adequate housing. In a generic sense, the chapter debunked the housing policy paradigm through a microscopic human rights lens system. A ‘funnel or pyramidal approach’ was used, starting at a

broad international level and then narrowing down to a specific topic and the case study of Zimbabwe, Harare, for instance, international law, regional and national case illustration.

Chapter four discusses the 'Housing Challenge' from a public policy analysis perspective and unpacks the factors hindering smooth flow implementation of housing as a public policy. This chapter tells the stories from a global overview of the growing housing crisis and the steep challenges faced in the implementation of housing public policy.

Chapter five discusses policy ruptures in Zimbabwe and their impact on the implementation of housing public policy. The phases include the post-independence era of socialism, market provision of the late 1990s, and post-2000 marked by socio-economic and political turbulence. Driven by the need to empower the analysis of the study of housing policy in Zimbabwe, certain success cases or countries were picked.

Chapter six presents case study experiences in an endeavour to trace the commonalities and discrepancies of court cases concerning the realisation of the right to housing. The South African, Colombian, and Brazilian experiences were discussed as a comparative analysis with experiences from Zimbabwe, considering the recurrent features emblematic in the jurisdictions of selected countries. The rationale behind this chapter is to see if Zimbabwe can ferret some lessons that can be drawn from regional and Latin American countries. The chapter also referred to a few instances from the Global North (developed countries).

Chapter seven comprised the presentation and analysis of findings. Complaints from oral presentations from the Commission of Enquiry into the matter of Sale of State Land in and around urban areas since 2005 was of paramount importance. The researcher attended court hearings that were open to the public and the written evidence and video and audio material that was collated helped in data analysis. The various policies, programmes, and projects that were instituted in Harare and implemented by the DHCS during the period 2000-2018 were presented. HCC and a raft of other agencies involved in the realisation of the right to housing, politicians, monitoring the daily press, government policy statements directed towards ameliorating housing conditions were also part of the review.

Chapter eight presents concluding remarks based on the findings of the study and proffering some policy measures on how to alleviate the old century problem of housing. These include policy lessons and policy measures to safeguard and guarantee the right to housing and a change in policy approach to suit different contexts. Considering the context-sensitivity of the Gordian-Knot-like ‘wicked problem’ of housing, the study suggests that political resource variables must be fully recognised and any exit strategy needs to be hardwired and chiselled concerning the environment upon which housing policy is being implemented and the variables have to be injected into the planning systems.

1.15 Conclusion

The position of this chapter is to trace the genesis of the housing problem from the colonial heritages through successive and unfolding reforms aimed at addressing the causation of the housing crisis. The argument traces the ancestry of the housing challenges associated with the anomalies of colonisation and politicisation of the entire housing policy matrix. The study attributes the housing challenges to the creeping nature of the distributive and redistributive policies into other policy clusters. The central foci or epicentre of this chapter was to illuminate the influence of policy content and policy context in the implementation and the realisation of the right to housing in Harare, Zimbabwe. This study interrogated regulations and public policies affecting housing. It also lays out the structure of the thesis. The next chapter will present the analytical and conceptual framework of the study.

CHAPTER TWO: TOWARDS AN ANALYTICAL FRAMEWORK UNDERPINNING HOUSING TRANSFORMATION AND COMPLEXITIES

2.1 Introduction

This chapter assesses conceptual frameworks informing the understanding of factors obstructing the realisation of housing rights. It discusses housing as a vicious transformational cycle, passing through various stages throughout history with progress and setbacks (cf. Monteiro and Veras, 2002:2). Transformation supports to identify major agents of change. On the other hand, complexity helps to canvass housing as a process with many actors contributing and how institutional multiplicity adds an extra layer of the composite to the already crowded housing sector playing field. The concept of a house as a thing or commodity paves the way to the concept of “housing as a verb” and therefore a process (cf. Perlman, 2010:266). The heuristic value of complexity helps to unbundle the composite nature of housing problems and the interaction of concepts to the study of housing insecurity, inter alia, the policy community, policy paradigms and ideology, policy networks, policy content, and policy contexts. Given the turning points, idiosyncratic and complex nature of the housing problem, and that housing right collides with a multiplicity of other fundamental rights, no simple answer is possible. A biased approach would not be realistic therefore complexity approach suffices in analysing housing problems that come with complexities and paradigmatic shifts.

The chapter also discussed “The Deep State” concept in a bid to unveil the often clandestine and unobservable variables obstructing the realisation of housing. “The Deep State” uncovers variables with all hazards that come with it, not likely to be visible or found, but visible in practice. Housing in Zimbabwe needs to be understood within a broader context of the country’s long history thus a compendious conceptual study to a deeper understanding of the nature and extent of housing insecurity was of paramount importance. Against this backdrop, a multiple conceptual framework approach not only unwrapped the foregone loss to scholarship caused by the absence of a dedicated African theory that investigates things African but assists to promote and elevate African studies and the development of a comprehensive framework to understand Zimbabwe’s dysfunctional housing system.

2.1 Transformative Concept

This study critically examines the transformative concept extrapolated from Mezirow's 1978 transformative learning theory and Friedmann's (2011) transformative theory. The focus is on the keywords that are centripetal to the study, that is, change and transformation. In line with housing, the researcher equates transitional changes with transforming uneven patterns of socio-economic development usually associated with post-colonial epochs. Housing is not only the production of new housing but also the replacement, reconstruction, and expansion of existing units (Malta, 2006:2). Housing as a transformational process entails a dynamic, on-going, and systemic process that leads to the re-ordering of power relations among urban dwellers and to the equitable (re)distribution of land and access to urban resources in the city (Burzynski and Simpson, 2011). However, few changes are truly transformational. While there is fundamental social change, not all change is transformation. The promises of international, regional, and national obligations have fallen far too short in terms of fulfilment. Social change at the urban level is inherently political and this profoundly affects the scope of change in society at large (Williams, 2000:170). Reforms in the housing sector are like reforms without reformers.

The elite interests often oppose complying with prevailing local authority regulations pinning professional ethics that seek to facilitate equity in the implementation of housing policy. This explains why land for housing tends to swing towards the upper class. The flaw in the pluralist heaven is that the heavenly chorus sings to be a strong upper-class accent, there is a ghostly melody accompanying the upper-class dance. Implied here is that the upper class receives the wealth of a polity. Although governments claim to pursue housing policies consistent with the good of the nation, the programmes often favour influential interest groups (cf. Schattsneider, 1960:35; Eshang, 1983; Lasswell, 1936; Roskin et al., 2006:50). The powerful can shape the "perceptions, cognitions, and preferences" of the powerless (Goodfellow, 2013a: 440). The skewed distribution of land for housing results from manipulation of authority and power by elites in political and administrative structures thus housing dilemma is hardwired within the context of politics where few changes are transformational. Local authority roles have become little more than rubber-stamping. They cannot "talk back" to the politicians or make independent inputs. Local bodies are just nonphysical judicial entities. The centralisation of policy implementation and the rhetoric

associated with housing provision attest to the government's efforts to project political power through transformation of the physical landscape (Croese and Pitcher, 2017:5).

Against this backdrop, transformation help in the understanding of conventional housing policies of slum eradication and rental housing (cf. Simpson, 2013:7). It also helps to understand land regularisation and improvements to the existing infrastructure (*Ibid.*9). Marginalised societies organise alternative measures that are of importance to their lifestyles (cf. Friedmann, 2011). Change as embedded in transformation implies that the right to the city must be to enter not just through 'the house and the bathroom' but through inter-relationships between poverty, productivity, and environment thus addressing housing in its multidimensionality (cf. Simpson, 2013:9). Transformation, therefore, assists in the understanding of profound changes in overtime. Housing insecurity is perpetrated by reformers pursuing political agendas and this explains why there are contestations when it comes to land for housing and why few changes are truly transformational despite profound changes in the housing sector. Against this backdrop, the realisation of the right to housing appears to be a fallacy and the usefulness of transformation is emblematic considering cosmetic changes in social housing policies.

2.3 Complexity Concept

Complexity is an interdisciplinary concept that grew out of systems theory – a conglomeration of interrelated and interdependent elements. It emerged in the mid-late 20th century, the 1960s. It examines uncertainty, non-linearity, and result from the interaction of interventions and variables. Complexity has a large scope of application in housing mainly because the housing systems are all complex. Complexity encompasses a body of knowledge aimed at analysing complex systems founded by Stephen Wolfram in 1987. A complex system is composed of many parts that interconnect in intricate ways and the amount of information in a system can be used as a proxy for the degree of intricateness (Ferreira, 2001). Complexity attempts to reconcile the unpredictability of non-linear dynamic systems with a sense of order and structure. While this multiplicity of influences presents a challenge in understanding its origins, complexity can also be understood generally as the study of complex adaptive systems. The word "complex" implies diversity, through a great number, and a wide variety of interdependent, yet autonomous parts.

“Adaptive” refers to the system’s ability to alter, change, and learn from past experiences. The “system” portion refers to a network, a set of connected, interdependent parts (*Ibid.*).

The study, therefore, employed complexity, that refers to the interaction of causes between, among, and within sub-systems. From a sociological point of view, housing is an issue that depends on specific economic and social realities and needs to be understood in its full dynamics and complexity (Malta, 2006:2). Urban space is not so much a product of an overall regulatory system as it is a dynamic of interaction for the economic, social, cultural, and political process (Hansen and Vaa, 2004:8). The concept helps to trace the chain of causality³¹ of the intervening variables contributing to local governance challenges. Variables are, however, not an end to the causal chain that links interacting open systems. Complex systems include chaotic, adaptive, or non-linear networks, political manipulation, and partisan targeting. This explains adaptive preferences in-terms of self-help housing whereby applicants either wait for a house through the waiting list system or they built their own houses, self-help process with or without state assistance. The salient ingredients of the complex systems captured in the diagrams below imply a jam and congestion of factors entangled in a web behind the housing crisis. These factors stretch from ideological legacies, reformist orientations, and philanthropic approaches through elitisation to capitalism in many electoral systems. Housing as a system of interconnected networks is ineluctably political and this profoundly affects the scope of implementation.

Although the situation of Harare is context-specific, the complex issues confronting its inhabitants are symptomatic of deep disjuncture that characterises current approaches to the interpretation of the housing rights of the urban poor (cf. Strauss, 2017:3). An examination of complexity brings to light integral elements of dynamical systems in housing characterised by constantly evolving and teasing problems. Regardless of structural challenges being formally acknowledged in the NHP document, administrative structures are constantly operating in a dysfunctional way in complex systems. Identifying the technical challenges does not amount to a convincing causal explanation for the nature, scale, diversity, and complexity of the phenomenon. Complexity informs the understanding of the political resource variables. Context-sensitive is the key to developing a genuinely causal explanation of the housing crisis in Harare.

³¹ Chain of causality or multicausal concerning housing implies several factors contributing for housing crisis to happen (cf. Roskin et al., 2006:221).

Housing is becoming a “wicked problem³²” with ‘no defined problem or indefinite solution’ due to the connection between complex problems to solutions. This explains the reason why the housing administration is constantly plagued with chaos and dysfunction due to conflicting views of multiple parties involved at the implementation stage. The multiplicity of players involved in land administration, weak legal frameworks, and excessive discretionary powers given to some administrators conflate and result in compromised lines of accountability and reduced systematic and operational transparency and integrity in the sector (Chiweshe et al., 2013:4). The term ‘institutional multiplicity’ helps define a situation where multiple rule systems confront economic and political actors, ‘providing distinct and different normative frameworks and incentive structures in which they act’. This is closely related to institutional hybridity that assumes a direct mixing and melding of institutional arrangements (Golooba-Mutebi and Hickey, 2016:603). Institutional multiplicity can be either concordant or discordant. Discordance occurs when informal and non-state institutions clash, overlap with, or undermine formal state institutions of land management (Golooba-Mutebi and Hickey, 2016:603; Goodfellow and Lindermann, 2013:8). Multiple parties involved in urban land management often leads to duplication and confusion over roles and a lack of coordination in compliance and oversight (Goodfellow and Lindermann, 2013: 23). With little regulatory oversight, the housing programmes have proven to be disastrously ineffective.

Furthermore, some National Development Plans (NDPs)³³ duplicate what the housing is already doing, and it would appear to be a dual response of the government, a clash of institutions and policies. This implies the overlapping roles of government actors alongside central interventions. National laws and government institutions constitute an environment for local politics and important local players within it, a structure of opportunities for distribution of resources (Lund, 2006:676). However, there is a mismatch between the NDPs objectives or strategies’ view of

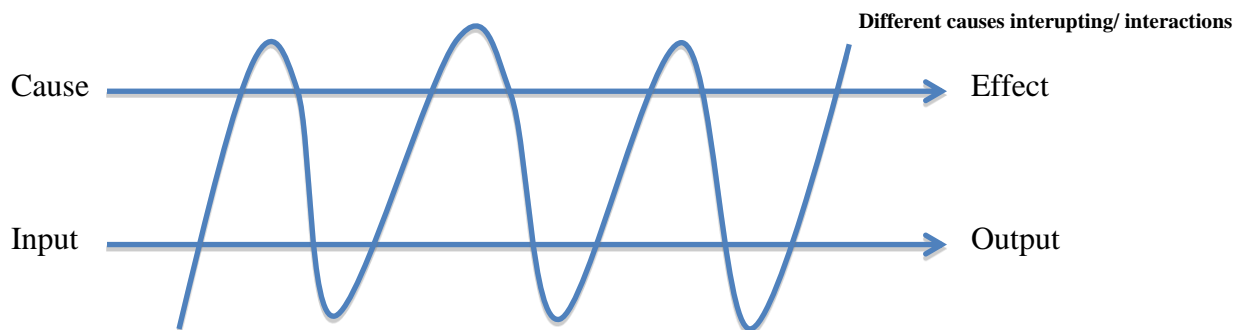
³²Wicked problems imply confronting, intractable and stubborn problems of social policy that can never be solved with finality (cf. Rittel and Webber, 1973)

³³ Since 2000, Zimbabwe adopted long-term economic plans that include Millennium Economic Recovery Programme (MERP, 2001-2002), Ten-Point Plan Based on Agriculture (2002), National Economic Revival Programme (NERP, 2003), Macro-economic Policy Framework (2005-2006), National Economic Development Priority Programme (NEDPP 2007) and the Zimbabwe Economic Development Strategy (ZEDS, 2008) that was aborted at conception, Short-Term Economic Recovery Programme (STERP I, 2009-10), Short Term Economic Recovery Programme (STERP II, 2010-2012), Medium Term Plan (2011-15), ZimAsset, (2013-2018) and the Ten-Point Plan of August 2015 (*Zimbabwe Independent*, 30/06/17).

desirable future urban structure based on redistribution, distribution, and the complex realities of the evolving urban structures (cf. Forster, 2006:173). It is therefore important to match local government structure to the objectives, that the national government wants to achieve (Bahl and Linn, 1992:470).

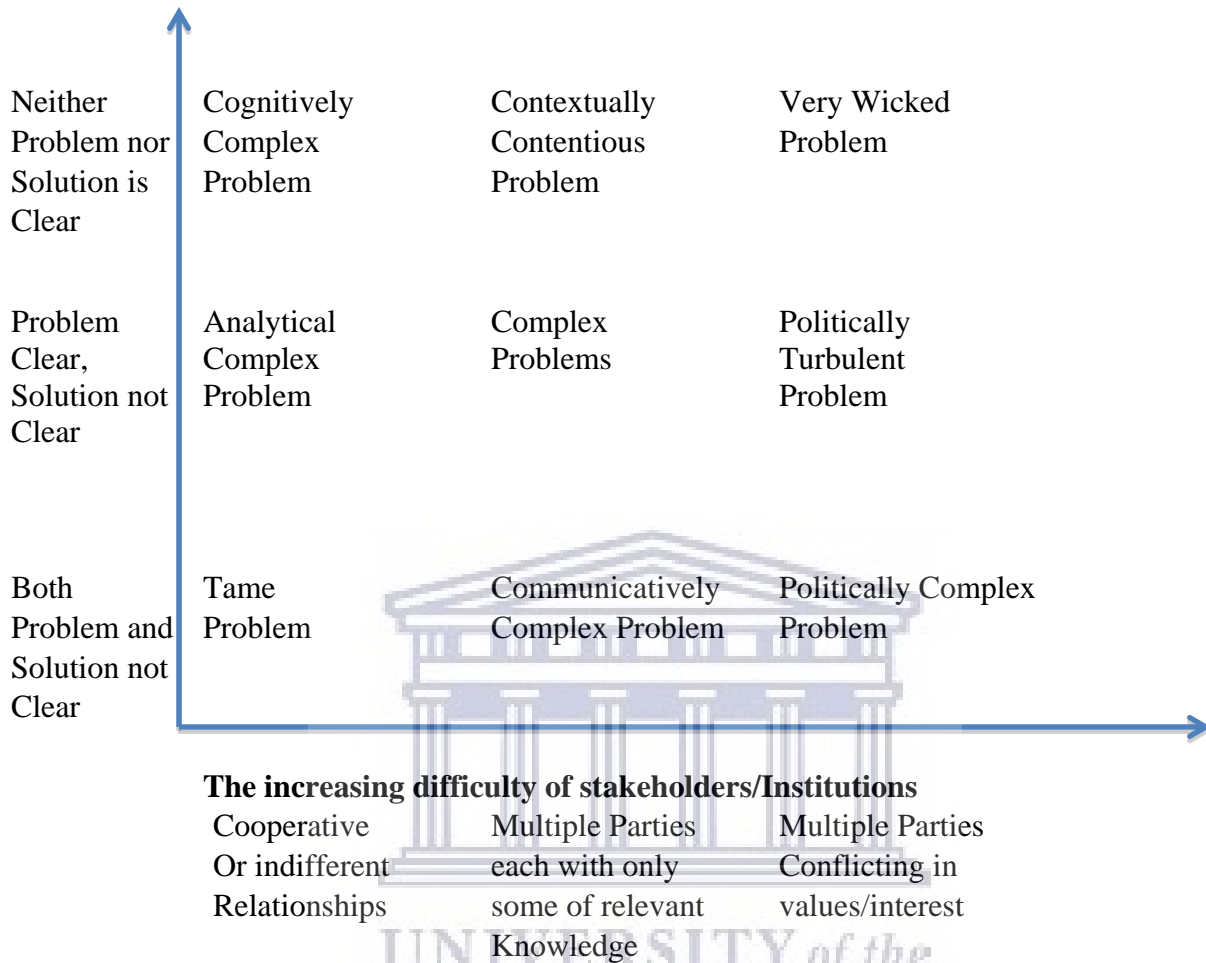
Despite policy interventions to the problem, there appear to be adaptive preferences and incremental models in housing to suit the environment couched by interacting elements. A range of complex elements often limits housing implementation and implementers end up working within a complex environment, that conditions their scope and approach to housing delivery. Anyone influencing the dynamics is part of the system and as a result, there is shared responsibility and shared blame. In line with this, complexity helps in coming up with a sophisticated analysis of the dynamics, power relationships operating in the housing systems, and how complex systems operate. Complexity explains the dynamics undergirding the housing crisis, that is, the causes of the causes. It explains the underlying causes of the ugliness and sprawling nature of cities. In this sense, housing must be inferred within the broader rubric of “complexity”. The concept helps to explain the intergenerational housing crisis in Zimbabwe, that is characterised by a revolutionary government (cf: Grindle, 1980). To truncate, housing implementation has followed or is consistent with the classic recipe of Chatiza and Mlalazi’s (2009:6) argument that urban areas are sites of socio-economic and political opportunity and centres of intense social struggles and marginalisation. The complexities capturing the housing crisis in Zimbabwe are illustrated in Figures 2.1 and 2.2 below.

Figure 2.1: Multicausal factors disrupting housing processes



Source: Author’s Construct.

Figure 2.2: The increasing complexity of problems



Source: Author's Construct.

Figures 2.1 and 2.2 above help to contextualise and demonstrates concocting and concatenation causes contributing to social housing decay and homelessness as a result. Although the figures might not accurately reflect how political forces work, it shows the ability to detect patterns and represent things in the simplest way possible. The figures are essential to get a glimpse of the bigger picture, overall structure, and a better sense of political realities. It demonstrates complex variables and political networks interrupting without following any formal instructions and how politics intercepts underlying formal patterns and structures in complex systems and network associations. It demonstrates dynamical systems change, the interaction between, within, and among intervening variables, and adaptation, that is, interacting elements. Both problems and solutions in the housing sector change over time because of the nature of the housing problem as an intergenerational crisis with a whole range of incredibly complex things and due to the

connection between complex problems to solutions. Housing systems are dynamic, and problems are evolving constantly. There are a lot of actors involved in housing and every actor influencing the housing dynamics is part of the convoluted system. The realisation of the right to housing is therefore on a slippery slope. With a few parallels, the figures help navigate the wholly complicated housing system and reinforcing the complex dynamics in housing. It also demonstrates how power politics and relations operate in complex systems.

2.4 “The Deep State”

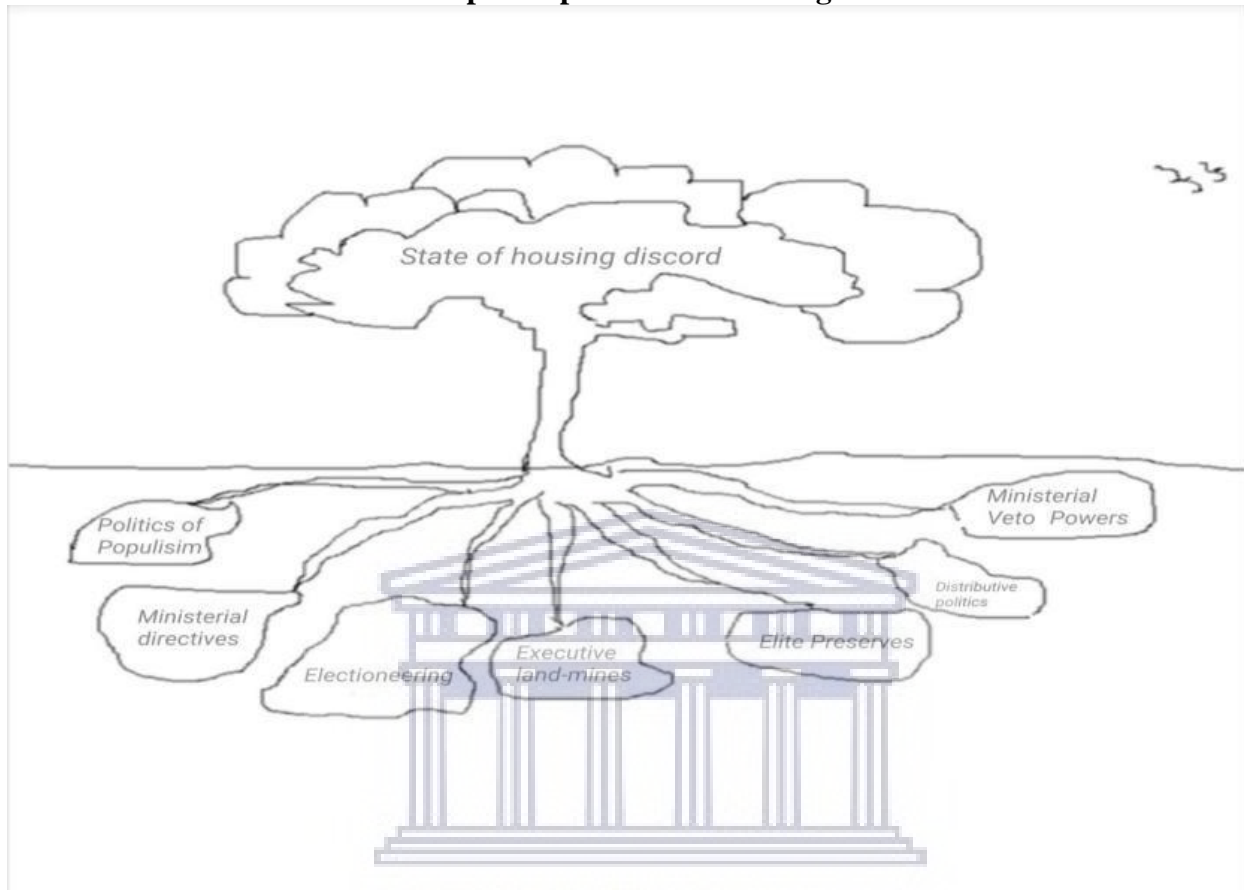
In a similar vein, the study also examined the ‘housing capture’ in Zimbabwe through the lenses of “The Deep State” concept authored by Lofgren (2014). An examination of “The Deep State” brings to light an integral element of housing implementation as a political process by uncertain yet powerful people in a polity. This entails a group of housing officials who secretly wield government power with little accountability or transparency. The realisation of the right to housing in particular and orderly urbanisation, in general, is unsettled and reconfigured, disused, and concentrated in few individuals, seen and unseen actors with known and unknown motivations thus, the housing sector administration in Zimbabwe increasingly fit the definition of a ‘deep state’. Changes are witnessed, unnoticed or obscured in distinct events, specific struggles, and social rearrangements – always with a historical context and often with some bearing on what is to come. This forms a classic recipe of oligopoly politics, bent on capturing housing with a state of limited competition in which a small number shares the housing market. The elite actions, real or perceived, amounted to housing capture. Regardless of opposition parties being formally in control of local authorities, housing delivery appears to be flowing in the direction and preferences of other hegemonic alternative structures without following the due process as guided by legislation. The power of local authorities is often limited by political elites and councils end up working within a political environment. This is consistent with Smith and Larimer’s (2009:163) description of public policy implementation as an extension of politics.

There is a hidden class running housing administration and councils are in thrall to some deeper and more hidden realities. It is inevitably elusive political elites with conspiratorial agendas that run housing from a ‘secret headquarters’ other than HCC. Local authorities in the public eye are just puppets dancing to the tune of a powerful clique in charge and their class interests matter above housing procedures. Hidden forces with hidden agendas set the social and political tone.

They quietly set the direction of a polity without reference to formal political processes. It is this invisible institution, hidden owners of land or hidden hand in which state power lies and it is through a small clique that vast powers are wielded. Local bodies do not have control over housing. The fundamental question emanating from these analyses is that: Is land for housing being determined by policy technocrats or the darker side of counterproductive and ‘irrational’ political forces? As illustrated below, “The Deep State” helps look at exactly what is behind or beyond the housing challenge. While distributive and redistributive policies entail taking from some to give to other groups, it would seem that a big portion of what is taken away is enriching the corrupted few and not filtering fully to the intended recipients. Through these ‘elite consumption practices’, this has caused an elitist black minority from benefiting handsomely through the corrupt distribution of land for housing. The most corrupt countries are the most unequal.



Figure 2.3: The Housing enclave and its concealed and entrenched tenets: A powerful movement inside the corridors of power politics and housing



Subaqueous political explosives; explodes when political opportunities are scarce, in this sense, urban local authorities that are predominantly under opposition political parties, and where economic opportunities are few, in this case, the appetite for housing ownership in Harare is much higher and Harare becomes the prime choice for property developers as housing is seen as an income or wealth creation mechanism for homeowners who will lease their properties to tenants (cf. City of Harare, Housing Investment, 2016: 3, 14). Urban housing discordance occurs when land for housing is seen as a strategic political resource. Where there is scarcity, corruption can creep in.

Source: Author’s Construct.

To find the sequence of, and to know about the ‘spillover of events’ in a bit of a ‘detective story’, the researcher looked in nature for an inspirational message and made an amazing discovery of a hidden message. A tree shows the unseeable elements ascertaining its growth. The same applies to housing processes and systems being determined by inconspicuously unforeseen and submerged events. The tree reveals an amazing potential to understand major events of how unforeseen events have shaped the housing situation in Zimbabwe. The state of housing discord is anchored to the ground, swamped, and snowed under invisible political forces. Looking at a growing tree and see it as an excellent opportunity to examine the role of politics in housing, the analogy examines the

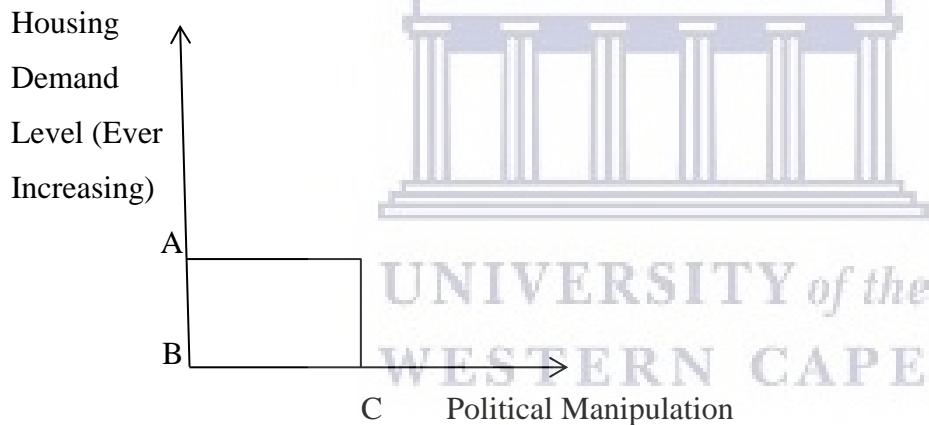
political flames, expounded, and articulately describes combustion in housing well. It is in the power of elites to put the combustion out. Under the political shadows, it is too much to expect transformational change, transactions occur ‘below the belt’ or ‘below the radar’ as they are sneakily conducted. Activities are undeclared and procedures that are supposed to be followed are not. In this case, land for housing would become a “vassal” of national politics and beyond rules. Elite involvement in dubious activities of exploitation and illegal housing settlements fit into a complex matrix of corrupted and lax local law enforcement.

Also, indigenisation as one of the forces contributing to housing ‘implementation failure’ is vague. Questions arise concerning the definition of ‘indigenous Zimbabweans’. There is ‘eliticisation’ rather than ‘indigenisation’ as the elite blacks value their interest the most whilst the rest are finding it difficult to access equitable housing services – the right to housing appears to be designed for a small clique and not the generality of Zimbabweans. The ‘indigenous’ rhetoric signalled elite hegemony in housing land administration. There seems to be a black front for an elite cause failing to emancipate the disenfranchised from the violence of poverty or prejudice. There is deprivation of housing rights. ‘Eliticisation’, as a core component of “The Deep State” impedes the smooth implementation of housing as a policy and smooth realisation of housing as a right. This conceptual basis, therefore, helps to explain the political dynamics underlying the housing crisis and proved why the local bodies are unsuccessful in addressing the inequality gaps in housing delivery. In this sense, housing must be inferred within the broader rubric of “The Deep State”.

“The Deep State”, complexity and the transformative concepts are multidisciplinary, traverse disciplines that comport well with the elasticity and multidimensionality of this study. Thus, the conceptual accounts proved to be useful units of analysis, especially for explaining the finer points of the housing crisis in Zimbabwe. Housing studies is a multidisciplinary field of research comprised of other academic and professional disciplines (cf. Ruonavaara, 2018:180). Local bodies are becoming powerless. The fact that they are responsible for administering housing delivery has not always been the case, as there would appear to be an overthrow and overriding power by politicians to make powerful decisions, micromanaging housing affairs and rendering local bodies ‘puppet governments’ and ‘risks becoming a patsy’.

In short, housing implementation has followed the classic recipe of Huntington (1968) who argued that where political opportunities are scarce, in this sense, for the ruling party due to the dominance of opposition parties in local authorities, political corruption and manipulation occurs as elites use their post to buy power, and where economic opportunities are few, in this case, housing that is highly on-demand considering the very long waiting list and huge housing backlog, corruption in the form of patronisation occur when political power is used to pursue wealth. The purpose of power is wealth and the purpose of wealth is power (Mupanduki, 2012:175). Many powerful groups draw their power from sources such as control over land. They cannot maintain this power through formal rules and rights (Goodfellow, 2017:202). This would explain the nature of the policy as housing is highly on-demand, that makes transformation prone to hijacking by politicians who will, in turn, seek to distribute to a class of people (cf. Dye, 2013:34). The relationship between housing demand and political manipulation is captured in Figure 2.4 below.

Figure 2.4: A trade-off between housing demand and political manipulation.



Source: Author’s Construct.

The conceptual construct, Figure 2.4 above, demonstrates the housing demand level and political manipulation that presents ‘housing capture’ that borders around distributive and redistributive politics. BA in the diagram above represents a constant increase in housing demand pummelling. BC represents political manipulation, that corresponds with the ever-increasing demand. Manipulation beyond BC would imply that the demand for housing is fortuitous for housing land to be sacrificed at the altar of power politics. High demand and immense pressure on urban land for housing increase its value and leave land for housing prone to political manipulation that can constitute a challenge as elites can be pushed to defy housing legislation to make their ends meet in the implementation of housing. As the housing demand increases, political manipulation is

deepening. Elites try to keep housing a scarce resource or the housing backlog to stay afloat and high as a political strategy by maintaining a monopoly on land for housing³⁴. Politicians are turning the housing deficit into profit. This implies that while the number of housing units can be reduced, the very long waiting list may not necessarily crater.

In the same vein, the law of supply and demand is that when one increases the demand and keeps the supply low, the price will go up thus elites and high-ranking officials in governments wittingly keep housing waiting lists high to increase the price. The nub/crux of the matter is that the government is riding on people's untold suffering to maintain relevance. Scarcity in this regard generates a beneficial ground for politicians. The elites are using the huge housing backlog to considerable political advantage and reducing the backlog is next to impossible. The nature of housing policy is contentious, ascertains the degree of political manipulation thus policies sometimes generate their politics. Though political manipulation results from greed, the nature of housing policy leaves land for housing vulnerable to manipulation as the demand levels go beyond greed. This means the higher the demand level of land for housing, the higher the levels of political corruption and vice versa.

2.5 Conceptual and Analytical Issues under Investigation

The root cause behind the 'implementation failure' of housing in Harare goes beyond the scope of the urban researchers. The study of housing is a complex phenomenon whose root causes are not easy to define. Extant literature in this crucial sector seems to be rather cursory of the wide policy pressures through the prism of policy content and policy context. It provides limited understanding regarding the politics of housing in Harare and beyond, presumably, across the country. There is a risk of generic treatments for the causes of informality. Informality is simply a buzzword, the tip of the iceberg of a much bigger and infinitely more complex problem. Scholarship on housing does not accentuate the influence of politics and to be more broad, distributive, and redistributive politics in the implementation of housing. It is very general and has little explanatory prowess. The presence of such ambiguities does not clarify the fact that housing is contaminated by, or not distinct from, policy content and policy context, thereby, implications to the comprehensive understanding of challenges obstructing the right to housing. It is this 'inadequacy' of literature in

³⁴ Cf. McFarlane and Silver, (2016: 125).

Zimbabwe that the researcher finds particularly problematic and seek an approach to address some of these lacunae by blending policy content and policy context with housing delivery to avoid simply driving the problem underground. One of the major problems is that the themes in the existing literature have considered a deluge of challenges in the implementation of housing without understanding the wider context in which it occurs.

Even though current scholarly work in explaining the politics of housing has made advances, how it is politicised is lacking. There is no attention to the content and context in the growth of the housing crisis. Policy content and context are increasingly central to the housing crisis in Harare. After a careful perusal, the available literature appears to be fragmented and not exhaustive and succinct enough to get into the deep-rooted cause or bottom of the problem and seems to reveal the effects, the tip of the iceberg, or scratched the surface in the understanding of politics and not providing a holistic view, that is, the adversarial influence of policy content and policy context vis-à-vis housing delivery.

More so, housing developments being curtailed by technical issues are just a smokescreen of what is happening behind the scene. Existing scholarly works overlooked lots of processes below the iceberg. Against this backdrop, an investigation of policy paradigms and political dynamics contributing to the 'implementation failure' of housing policy in Zimbabwe was explored through a conceptual framework from which perspicacious urban researchers might advantageously borrow on an issue that has not yet been satisfactorily discussed for future research directions. This study sought to share with an international readership, the ideas, and experiences of policy-makers, planners, academics, and researchers actively engaged in the day-to-day planning, design, and management of third world cities. This contributed a further understanding of a solution to the problems haunting realisation of housing rights thereof.

While the situation is ever-changing and policy ruptures are constantly moving, the knowledge gap is also expanding. This varied hugely over time and space, creating new and unpredictable threats to Zimbabwe's national housing. The housing questions surrounding these new data are complex and require thoughtful ideas to understand housing in its entirety. These shifts should be considered to resonate well with the expanding nature of the knowledge base. The study, in the relentless search for knowledge, driven by the pursuit of finding the truth, does not claim to be the

first to explain housing challenges, but after a wary of anecdote-based assumptions, it analysed further down into the dark abyss, the untapped territories, ‘horribly underexplored’, and uncharted waters of the housing stream to comport well with new demands as the situation on the ground is changing over time and to solve housing problems sensitive to human rights hardly urban researchers talk about. The road is not well-trodden, there remain lots of questions to answer, but this research seeks to provide further evidence of the importance of a human rights approach to urban planning. Due to the ever-increasing needs of each generation that presents an entirely new set of challenges, generalising housing should be seen as an unfinished journey and endless process, such that there is a lack of ability to predict today the direction in which future generations will push the forms of contestation, participation, and management (cf. Geertz, 1973; Ha, 1987:1; Archibudi, 2004:440). While some significant gains have been made in the past in tackling the housing problem, serious human rights-related violations are slipping through the net. Housing problems are now greater today than they were before. The scale of impacts on housing reflects the need for a comprehensive legally-binding approach to tackle the housing problem, embedded within the framework of international law.

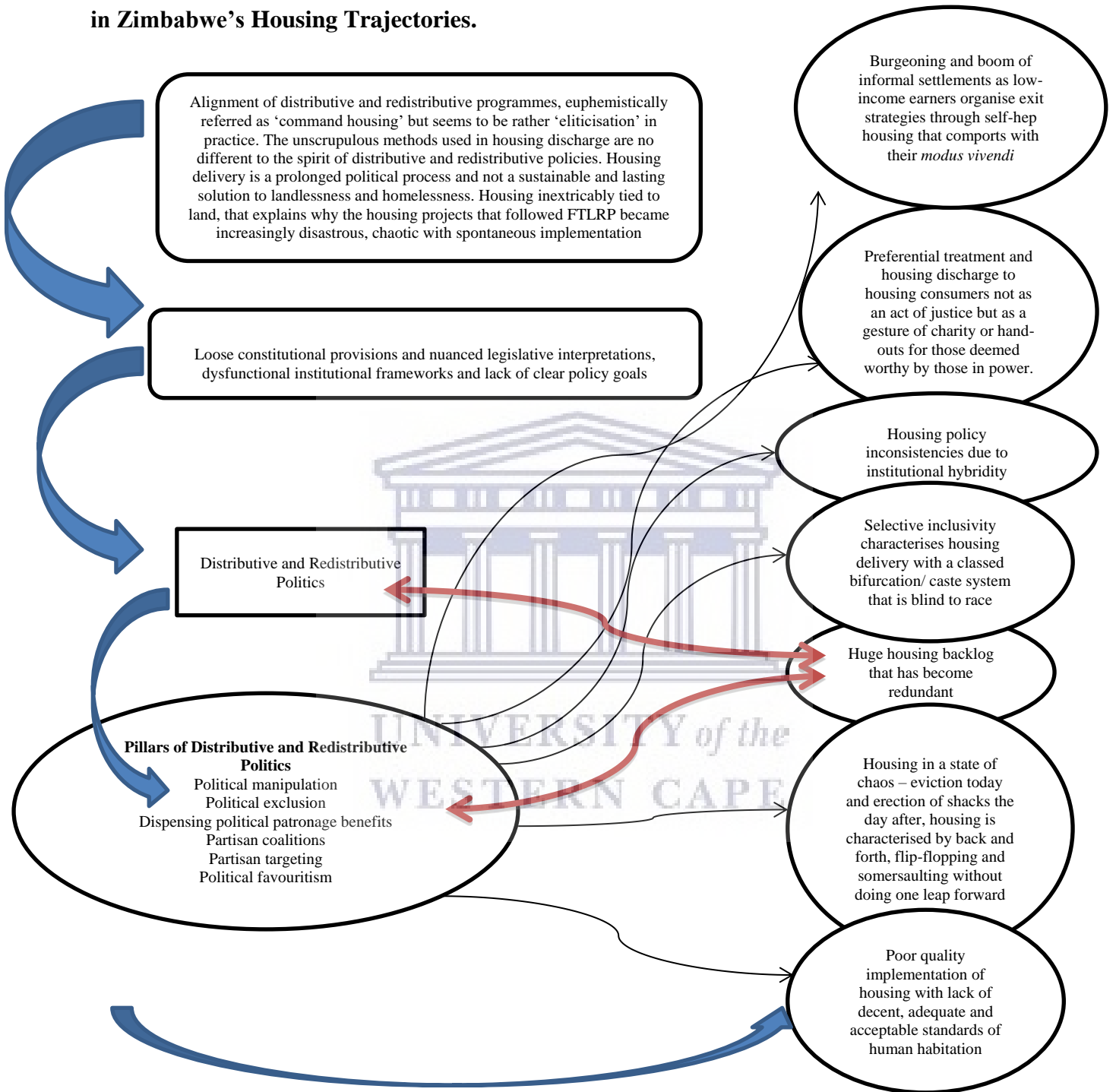
Albeit editions published, many new themes have emerged. Urban planning reflects an increasing gap between current approaches and growing problems (Watson, 2009a). Friedman (1968:147) elucidates that city planning is not new but the planning profession is young. The challenges of urban housing implementation in Zimbabwe can be studied, understood and emphatically revealed in their entirety, demonstrating housing development exclusion carved along mysterious policy contexts and content, a big recipe for stifling smooth flow housing delivery. Housing in Zimbabwe has rarely been implemented in isolation. Even though existing literature appears not to delve into the arena of policy content and policy context, housing has been strongly affected by wider intervening and unintended policy consequences from pervasive distributive and redistributive policies playing a critical role in the way cities urbanise in general and Harare to be specific.

Public housing in Zimbabwe is not implemented in isolation from other public policies. Its success may be easily affected by the priorities of political officials or the outcome of other programmes thus success or failure is anchored on policy content or policy contexts. Policies are couched in policy content and contexts that may cloud the “policy delivery system” (cf. Grindle, 1980). Consistent with complexity, the existence of interconnections between policies and programmes

is equally beyond dispute. Housing matters can never be seen in isolation but within a framework of wider interrelationships (Murie et al., 1976:249). Housing policies interact with the environment. This is environmental determinism as prevailing policies are a heavy burden on public housing. Housing is a component of an integrated programme of basic services. The linkages help to explain why policies introduced for specific purposes have side effects, that are often unforeseen (*Ibid.*). Housing is ineluctably political and based on these considerations, the researcher arrived at the analytical framework as captured in Figure 2.5 below.



Figure 2.5: ‘Housing Industrial Complex’: A Demonstration of Relational Power Dynamics in Zimbabwe’s Housing Trajectories.



Anything happening in land issues spills over into housing because of adherence to distributive and redistributive policies

Source: Author’s Construct.

The conceptual diagram, Figure 2.5 above demonstrates a ‘poisoned chalice’ and offers an instructive departure point. It provides a picture of how the housing crisis is shaped and borders around the multiplier effects of distributive and redistributive politics. The constant spillover of politics into housing provision is at the heart of this thesis. It demonstrates a simplified version of the context in which implementation takes place. The model helps on how to navigate the uncertainties, through tact, in multiple and conflicting rationalities, and shifting policy governance framework fusing legal elements and imperatives. The role of institutionalised factors is put into a firmer conceptual context (cf. Boelhouwer and Van der Heijden, 1993:378). Institutional frameworks in the housing implementation are captured with distributive and redistributive policy alignments. Housing programmes are tailored and hardwired in the reform orientations. Since 2000, significant urban development related to the FTLRP and housing delivery policies have been introduced (DFID Zimbabwe Country Engagement Report, 2017:18). Institutional overlaps in the land sector increase the risk of corruption and threaten to turn land administration into a tool of alienation of the aspirations of ordinary people (Chiweshe et al., 2013:9).

Housing policy in Zimbabwe is one among many policies that are hostage to sectional interest, trapped in the turbulence of distributive and redistributive politics. This can be described as ‘housing capture’ as housing is no longer a neutral social policy based on standardised council procedures but a strategic resource for distributing and redistributing political goodies. It is used by the elites as manure to fertilise the election outcome. It is all about re-election, thus, the discharge of housing rights can be equated to having ‘arsonists into the fire brigade’ as the focus is about benefiting from, rather than solving the housing problem. Government making land for housing available before an election is a pretext for seizing the control of resources and the electorate. There is an octopus-like-grip of the real estate and the housing industry. This explains why housing is over-accentuated in election manifestos of the ruling party in Zimbabwe. Institutions are required to be alive to the political manifesto and facilitate the achievements of the programmes articulated therein. In terms of depth, politicians are overexcited about the idea of winning an election but failing to recognise the seriousness of what happens after the counting is finished. Good governance is very thin and is mostly about elections and not what happens after. Since 2000, ZANU-PF capitalised on the land and housing for political mileage. In the 2000 parliamentary elections, the election mantra was “land is the economy and the economy is land”.

In 2008, it was “100% total empowerment and indigenisation. In 2013, it was about ZimAsset (cf. Zimbabwe Human Rights NGO Forum, 2010:5). Usually, the manifestos have no “teeth” or make no use of them. They make big propaganda and small gains.

Land for housing is a significant asset in the distribution of political power (Chiweshe et al., 2013:1). This implies the emergence of a shadow state or neopatrimonialism³⁵ that feeds off the state by establishing a well-calculated network of patronage, corruption, and state capture (cf. Bratton and Van De Walle, 1994). Capturing the NHP implies the usurpation of council powers and establishing a parallel delivery system, that is not benefiting the intended recipients. It is an ‘opaque, convoluted, devious, and knotty housing industrial complex’ with an administration or ‘housingpreneurs’ that seeks to boost the profits by creating housing demand. This implies the misinterpretation of policies and the pull of political strings from the shadows. These influences can be lumped as policy content and policy context. The arrow between the relations of power influencing housing framework and the huge housing backlog in the analytical framework is moving back and forth thus revealing the causal-effect relation between policy content, policy context, and the actual policy. Little attention was given to such a heavily traversed junction, linking characteristics with the subsequent implementation of public housing, relating challenges of implementation to characteristics of the policy contexts in which they are pursued, and exploring the general nature of the policy content and policy context of public housing in Zimbabwe.

The character of the policy itself may predetermine receptivity (cf. Grindle, 1980). This would suggest, then, that policy content is an essential force to public policy implementation and is thus worthy of investigation and analysis. The conceptual diagram shows the interface of politics and policy and that politics is the mother of policy though policies generate their politics, politics, and policies feed into each other. Power needs housing too. Reform programmes have implications for other policies as well. Emerging questions emanating from this conundrum are: Does politics cause policy? Does policy cause politics? Does policy shape events, or they are shaped by events? Policies dovetail with politics. Politics and policies are inextricably tied together. Against this backdrop, the conceptual diagram developed above generalised the political relations of power, contribute, educate and sensitise those responsible for policy-making to other types of housing

³⁵ Neopatrimonialism is a vast and well-calculated patron-clientele system, that seeks to reward those who are loyal to the political hierarchy and those who sustain the system (cf. Chikwanha, 2005).

challenges in Zimbabwe, considering factors accounting for the often-imperfect correspondence between policies adopted and services delivered and a broader environment in which programmes are pursued (cf. Grindle, 1980:3). This forms the possibility of the development of a “grand theory” of housing that could be applied to all the diverse topics investigated by housing researchers. It helps with conceptual ideas developed in the mother disciplines of housing researchers like sociology or geography and the various multidisciplinary research specialisms that are more general than just housing studies like planning or welfare state research (cf. Ruonavaara, 2018:188).

Given the past dominance of the Global North in shaping planning theory and practice, with most of the models concentrated in the West (developed countries), theories developed from the Global South can be useful in unsettling taken-for-granted assumptions about how planning differs depending on the political resource variables and addressing the socio-economic and political divide. This study offered this missing link by building on existing effort to theorise urban governance (cf. Obeng-Odoom, 2017:5). There is a shift in planning theory and practice as Global Southern cities and their growth dynamics are now the dominant urban reality and require that planning turns its attention to these kinds of issues (Watson, 2009a: 2272). Addressing the challenges posed by the contextual variable requires a paradigm capable of contextualising housing rights while viewing housing policy analysis and implementation through the normative lens of the constitution (cf. Strauss, 2017: ii). This helps to fill the conceptual gap since many of the concepts of how cities function remain rooted in the developed world and planning practices are constantly borrowed and replicated across borders (Roy, 2005:147).

Furthermore, on the problem of ‘idea borrowing’, the dominance of universalist perspectives on planning like master planning and urban modernism shaped by worldviews have impoverished and limited planning thinking and practice (Watson, 2009:186). This concept of normality is, however, directly at odds with the reality of socio-spatial dynamics and practices in cities, that have been increasingly subjected to global economic forces (Watson, 2009:186). These forces articulate in various ways, resulting in highly differentiated patterns of urban development (*Ibid.*156). Therefore, these approaches to urban planning ideals cannot be universally spread. Planning cannot be ‘parachuted in’ to replace existing approaches or obscure existing order (*Ibid.*187). Planning is inevitably ‘situated’, taking place in contexts with distinct socio-spatial and

economic characteristics. Master planning and urban modernism are incompatible in poor environments (*Ibid.*).

This study explicitly accounted for why different states would have such diverse experiences in implementing the same kinds of policies. The best practice dissemination or mantra of universal ideas or this international transfer of imported urban models fails to achieve the success, that their proponents claim for them (186). It is not always the case that liberal democracy fits all scenarios (cf. Paudel, 2009). This answers the question by de Soto (2001) on why capitalism triumphs in the West and fails everywhere else. Watson (2009a: 2269) described this as the clash of rationalities between market economies and countries with historical inequalities with individuals shaped by the need and desire to survive and thrive. The conflict of rationalities explains why, so often, sophisticated and ‘best practice’ planning and policy interventions have unintended outcomes (Watson, 2009a: 2272). The theory and practice of urban planning mean different things in different parts (Watson, 2009:156). This contributed to the rejecting of the notion that everything should be measured against how things work in the Western cities as planning in the Global South has been informed by planning traditions in the Global North (Goodfellow, 2017:200; Watson, 2009:154).

The situation within which urban planning operates today is very different from what it was when planning emerged as a profession and function of government. In the Global South, planning systems have changed (Watson, 2009:156). In other words, this study helps to decolonise urban studies and deter further inappropriate ‘borrowing’ of ideas across contexts although it is certainly not new in social sciences. Differential implementation effectiveness is due to differences in political contexts rather than bureaucratic resources available to each government (cf. Goodfellow, 2013:85). Factors such as the sources of state legitimacy, the relative autonomy of government from urban social groups, and cohesiveness of elites constitute important political resource variables (cf. Goodfellow, 2013:85). The patterns of distributive and redistributive politics, that include politics of patronage, political manipulation, partisan targeting, and political favouritism, characterise housing delivery. They constitute a gap thereby creating a frontier and stimulating interest for research. Consideration of the environment in which public housing implementation occurs motivated this study.

While it has long been observed that lack of political will may doom a development programme (Huchzermeyer, 2003:89) political activity is required to change policy if it is to truly meet the needs of the majority. This study, however, suggests that the alternative of excessive, heavy involvement, uncritical support, and interventionism in nation-building may be equally injurious to successful public policy implementation. The increased emphasis on state-building and reform policies with excessive political will and far-reaching effects on other policies have a darker side aspect (Gaynor, 2014:51). This study should be viewed as a corrective or antithesis to the widespread assumption, radical simplicity that political will is enough to condition successful policy implementation.

Little has been published concerning public housing and its socio-economic environment. The current wave of scholars on housing studies is not fully comparative. Conceptually, these studies employ models of public administration but cannot account for the contextual variables emanating from transitions and personalistic types of rule. The entire contextual factors of public policy are excluded. The study of housing has focused on organisational theory and each line of inquiry is often characterised by its own set of assumptions and interpretations, leading only to a partial view of the challenges affecting the implementation of public housing. In line with this, this thesis unveiled the fact that the nature of the policy shapes the dynamics and outcomes of its implementation, and policy changes are conditioned and embedded in policy content and policy context, assumptions often unarticulated in the housing discourse.

2.5 Conclusion

Too many rules and other creeping legislations that appear to be creating some form of anarchy, that is, increasing regulatory burdens emanating from the policy content and policy context were analysed through the lenses of transformative concept. Transformation through reform-oriented policies opened a room for the manifestation and entrenchment of “housing fragmentation”. The clumsiness, confusion, opacity, and capriciousness seem to be caused by the multiplier effects of reform-oriented policies. The reform waves currently sweeping across Africa have implications for other policies as well. These policies and programmes are changing the rules that are supposed to be followed or implemented. Some laws were formulated to cater for specific interests signaling the importance of policy content and policy context contributing to the widening of the inequality

gap by concentrating on the ‘haves’. Politically connected groups and individuals, therefore, became better positioned to access housing land as discussed under complexity and “The Deep State”. The next chapter will present the international, regional, and national legal provisions guiding the realisation and implementation of the right to housing.



CHAPTER THREE: NATIONAL, REGIONAL, AND INTERNATIONAL LEGAL PROVISIONS GUIDING HOUSING IN ZIMBABWE

3.1 Introduction

This chapter assesses the right to adequate housing given its constitutional provisions, read together with germane obligations of international human rights law. It debunks housing as a social right through a microscopic lens of the international human rights system. It is important, however, to note that despite the right to housing being affirmed as a universal right, the homeless, the inadequately housed in unhealthy and unworthy conditions and the evicted are more and more numerous in the cities across the planet (cf. Golay and Ozden, 2007).

3.2 Protecting the Right to Housing under International Law

The right to housing was first recognised as a component of the right to an adequate standard of living in the Universal Declaration of Human Rights (UDHR) adopted by the United Nations (UN) General Assembly in 1948 (cf. Hulchanski and Leckie, 2000:3; Steiner et al., 2000:133-134). The most integral principles and prominent sources of international human rights law on housing rights are provided for in the UDHR, Article 25 (1). It states that “everyone has the right to a standard of living adequate for ...housing...”. However, the UDHR is a political document with no real ratification process so it is a political commitment. However, the government can only be held accountable for something that it ratified (Farha, 2019). Through the lenses of “The Deep State”, it is the prerogative of the state elites to ascertain whether to commit state resources or not when it realises the right to housing. Against this backdrop, the UDHR is not enforceable at law, more focus is on the ICESCR, the most important treaty on the right to adequate housing.

Various international human rights instruments at the UN and regional levels codified the right to adequate housing³⁶ and provide a rich and very diverse tapestry of undertakings augmenting the

³⁶At the UN level, among others, include the ICESCR 1966 (art 11), the ICCPR 1966 (art 17(1)), the Convention on the Elimination of All Forms of Racial Discrimination 1965 (art 5(e)(iii)), the Convention on the Elimination of All Forms of Discrimination against Women 1979 (art 14(2)(h)), the Convention on the Rights of the Child 1989 (art 27(3)), the Convention Relating to the Status of Refugees 1952 (art 21), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 (art 43(1)(d)), and the Convention on the Rights of Persons with Disabilities 2008 (arts 2, 5(3), 9(1)(a), 22(1), 28(1) and 28(2)(d)). With regard to other regions, in the European human rights system, the European Social Charter of 1961 was revised in 1996 to include the right to housing (art 31; see also arts 16 and 19(4) on housing for families and migrant workers, respectively); in the Inter-American human rights system, though the Additional Protocol to the American Convention on Human Rights in the

text of the main articulation, ICESCR (cf. Hulchanski and Leckie, 2000:4; Chenwi, 2013:343). The fundamental right to housing, therefore, depicts a chain, conglomeration, as depicted in complexity. It is a complex system of interconnected human rights elements. While it is crucial to canvass all provisions, obligations, and instruments that anchor the right to adequate housing under international law, more vehemence is on, though not restricted to, ICESCR and the clarifications provided by the CESCR in its General Comments 4 and 7. The ICESCR instrument provides an integrated view of economic and social human rights and cultural needs (cf. Roskin et al., 2006:63). The Human Rights-Based Approach to housing can be branched into the Treaty Based Human Rights System and the Charter Based Human Rights System.

3.2.1 The Treaty Based Human Rights System

A Treaty Based Human Rights System refers to the conventions and bodies that result from international human rights treaties. The ICESCR [Art.2 (1)] of 1966 is the most important treaty on the right to adequate housing. ICESCR entered into force in 1976 and is the lynchpin concerning the right to adequate housing; special reference is on Article 11(1) that stipulates the right of everyone to an adequate standard of living and housing. Due to the interconnectedness, indivisibility, and interdependent nature of all human rights; the relationship of ICESCR to other human rights, the International Covenant on Civil and Political Rights (ICCPR) of 1966 was taken on board (Eide et al 2001). Norms that overlap ICESCR permeate the norms of ICCPR (cf. Scott, 1989:771; Roskin et al., 2006:63). Due to the thin margins of all human rights, and the complexity of the right to housing in general, Scott (1989:797) posed a critical question of interdependency and the two covenants, ICESCR and ICCPR: Did separation imply separability? Though the two covenants interlace and interweave, they are classified into two categories according to their nature (Scott, 1989:794).

Since this study is mainly about economic and social rights that guarantee adequate material standards of living; the newest and most controversial rights (cf. Roskin et al., 2006:63), with

Area of Economic, Social and Cultural Rights of 1988 (Protocol of San Salvador) is silent on this right; it, however, provides for the right of everyone to live in a healthy environment and to have access to basic public services (art 11(1)), that is relevant in the enjoyment of the right to adequate housing; in the African human rights system, though the African Commission on Human and People's Rights – African Commission and/or the African Charter on Human and People's Rights of 1981 (African Charter) is silent on the right to adequate housing, the African Commission interpreted other rights in the Charter to include a right to adequate housing (art14, 16, 18(1)).

specific reference to housing, civil and political aspects were inferred where components derived from politics are also descending into housing. This portrays the interrelationship of rights and not normative or jurisdictional conflicts or war but jurisdictional overlaps and complexity. Though several human rights instruments at the global, regional, and local levels embody housing, this study considers ICESCR. While it is crucial to canvass the various provisions on the right to housing under international law, focus and reference would be on the ICESCR and the clarifications provided by the Committee on ESCR in its General Comments 4 and 7.

Article 11(1) of the ICESCR avers that everyone has a right to a standard of living including housing. ICESCR obliges the state parties to improve access to housing and to protect all persons against any actions that may inhibit, infringe, or deny the enjoyment of such rights. Moreover, Article 2 of ICESCR enjoins state parties to guarantee the enjoyment of these rights without discrimination of any kind, ‘including ... property and other statuses’³⁷. State parties are also obligated to commit ‘maximum available resources’ to ‘progressively’ ensure the full realisation of these rights. Through the lenses of “The Deep State”, it is not in the interest of elites to commit resources for the realisation of the right to housing; the right is susceptible to manipulation for profiteering purposes with some elites defending the status quo in the form of the long waiting list; they resist change that is seen as a threat to private motivation or distortion of market mechanisms thus pushing up prices. Resultantly, most people have been priced out of the housing market. Though the cure is to lower prices, housing prices, as elucidated in “The Deep State” cannot be allowed to fall because another class is dependent on their exorbitance. Unless this invisible hand has not been dealt with, incessant efforts and attempts of all sorts of cheap fixes will be to no avail in dealing with fundamental problems.

It is significant to note that ICESCR invites state parties to institute judicial remedies, administrative and legislative measures to realise rights³⁸. The right to adequate housing is well established in international human rights law and Article 11 of the ICESCR is arguably the most comprehensive and important of the guarantees.³⁹ It holds a central place within the international human rights law system; it is of central importance for the enjoyment of all economic, social, and

³⁷ CESCR, general comment No. 20 (2009), para. 11.

³⁸ Cf. CESCR, general comment No. 3 (1990).

³⁹Report to the CESCR on the Occasion of the Committee’s Sixth Periodic Review of Canada, 2016.

cultural rights and it is linked to other rights that are essential if the right to adequate housing is to be realised (Chenwi, 2013:342-343). Through the lenses of complexity, the realisation of the right to housing operates within a network for it to be fully implemented. Article 11 of ICESCR recognises that all people have the right to adequate housing, that includes a right to live somewhere in security, peace, and dignity.⁴⁰ ICESCR provided general comments or general recommendations as part of the main function of the treaty bodies. They were adopted with effect by the UN treaty monitoring bodies relevant to the economic, social, and cultural rights in January 2008. It is beyond the scope of this study to discuss all 19 General Comments; though some references will be made, focus and specific reference are therefore on the CESCR, general comment No. 4 (1991) on the right to adequate housing and CESCR, general comment No.7 (1997) on forced evictions.

3.2.2 Clarification of the Right to Adequate Housing

The human right to adequate housing, that is derived from the right to have an adequate standard of living (UN Charter and UDHR), is of central importance for the enjoyment of all economic, social, and cultural rights, considering the interdependency canon⁴¹. Albeit a wide variety of international instruments address the different dimensions of the right to adequate housing, article 11(1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions⁴². Despite the international community reaffirming the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11(1) of the Covenant and the situation prevailing in many parts of the world; homelessness and inadequate housing exist in both developing countries and economically developed societies⁴³ (cf. Farha, 2019). The complexities and intricacies of housing as a human right are that though wealthy nations are expected to have less homelessness, there is, however, no correlation, homelessness is rising even in the richest countries with the largest GDPs. Everyone is, however, entitled to adequate housing regardless of age, economic status, group of other affiliation or

⁴⁰Review of Australia Fifth Periodic Report under the ICESCR, 2017.

⁴¹ CESCR, general comment No. 4 (1991), para. 1.

⁴² para. 3.

⁴³ para. 4.

statuses, and other factors⁴⁴. The enjoyment of the right to adequate housing must, per Article 2(2) of the Covenant, not be subject to any form of discrimination.

The right to housing should not be interpreted in a narrow or restrictive sense as a shelter that entails a temporal makeshift for temporary cover⁴⁵ (cf. Farha, 2019). Security, peace, and dignity make the aspect of “adequacy” complete. The right to housing is integrally linked to other human rights; consider a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. This is a direct counter to the affordability crisis that is compromising access to housing based on affordability. Due to the affordability crisis and financialisation of housing as espoused in “The Deep State”, housing cost in some cases restricts the populace’s enjoyment of the right to adequate housing (UN-Habitat, 2014). On the debate of whether housing is a fundamental human right or a commodity or a public good, it is crucial to note that, because housing is a human right, it does not necessarily mean it should be freely handed out (cf. UN-Habitat, 2014). This helps to dismiss the risk or danger of expecting too much from the government. Roskin et al. (2006:63) warned that persons must not think that economic and social rights like housing are one of the Ten Commandments or pro bono.

What is required from the government is not to provide housing for everyone for free but to create the conditions to deal with housing over time and so that people can access adequate housing progressively and the government is expected to put plans in place and to be constantly taking steps towards the realisation of the right to adequate housing; housing has to be addressed incrementally (Farha, 2018). Since money is always limited, everyone cannot get everything they want (cf. Roskin et al., 2006:50). Freedom to live adequately cost lots of taxpayer money in government programmes and conservativist argue that these are not rights at all but merely desirable things demanded by various groups; some fear a “rights industry” creating dubious rights without limit (cf. Roskin et al., 2006:63). This augurs well with complexity in that human rights are relative to the groups involved and therefore difficult to universalise.

⁴⁴ para. 6.

⁴⁵ para. 7.

The reference in Article 11(1) must be read as referring not just to housing but to adequate housing in terms of privacy, space, security, lighting and ventilation, basic infrastructure, a location for work, and basic facilities, all at a reasonable cost (Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000). This reveals the interconnectedness, interrelatedness, complexity, and usualness of all economic, social, and cultural human rights. The right to housing is a nexus right; the provision of housing is very closely tied to the provision of basic services including water, sanitation, and electricity (Dugard et al., 2017:38). Concerning accessible housing⁴⁶, it is vital to ensure attendant services to assist persons with disabilities⁴⁷. The concept of adequacy is significant; it serves to underline several factors that must be considered in determining whether particular forms of shelter can be considered “adequate housing” for the Covenant⁴⁸.

Furthermore, adequacy includes legal security of tenure; affordability; adequacy; acceptability; availability of services, materials, facilities, and infrastructure; accessibility; location; and cultural adequacy (culturally appropriate) (cf. Chenwi, 2013:346; UN-Habitat, 2014; Romero, 2007). Housing production must run parallel with promoting the security of tenure, protecting and empowering the poor and the homeless, promote accessibility, stop forced eviction, and facilitate access to remedies (UN-Habitat, 2001). All persons should possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment, and other threats⁴⁹. Nevertheless, several persons are lacking such protection that in turn compromises the “adequacy” aspect in the realisation of the right to access housing. This can be attributed to the creeping capitalism, elitisation, and financialisation of housing and unforeseen, variables depicted in “The Deep State”. The other component of “adequate housing” is availability⁵⁰. This implies the availability of services, materials, facilities, and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort, and nutrition⁵¹. All persons should have sustainable access to natural resources, safe drinking water, and energy for cooking, heating, and lighting, sanitation, and washing facilities, means of food storage, refuse disposal, site drainage,

⁴⁶ para. 8.

⁴⁷ CESCR, general comment No. 5 (1994), para. 13.

⁴⁸ CESCR, general comment No. 4 (1991), para. 8.

⁴⁹ para. 8a.

⁵⁰ para. 8b.

⁵¹ Cf. CESCR, general comment No. 14 (2000).

and emergency services. National plans and policies must protect tenure security, ensure affordability (economic accessibility), and habitability (Chenwi, 2013:350).

Another fundamental component of “adequate housing” that was underscored in the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 is affordability. Affordability is a key component in the realisation of the right to adequate housing (Farha, 2018). Household financial costs should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised⁵². Housing prices must be based on the actual income of citizens and not based on the market (Farha, 2018). Nevertheless, most low-income earners are overburdened by rent hikes or rental costs. The percentage of housing-related costs must commensurate with income levels⁵³ (cf. Farha, 2019). In line with “The Deep State”, individuals behind the scenes with strong political networks keep increasing rents to satisfy their interest; pushing away low-income earners and moving in more affluent ones, that result in the displacement of low-income residents.

Moreover, due to the adverse impact of neoliberalism in most of the low-income countries; there were major budgetary cuts to state public housing thus declining subsidies and insufficient funding in the social sector were disastrous to the component of housing affordability. There is a nexus between free markets and rising inequality. The GoZ 2018 National Budget allocated \$182 million was for housing projects (*The Herald*, 16/01/18). In line with “The Deep State”, there are invisible variables that directly impact the realisation and implementation of the right to housing; housing competes for finance and in the central government budget, it is not usually seen as a productive investment. This explains why the mobilisation of the \$182 million in the case of Zimbabwe failed to materialise on the ground. Malfunctioning in housing provision is therefore as a result of deliberate budgetary malnutrition by government elites with a self-motive to invest in more strategic sectors for regime survival politics or survival tactics. However, in the case of Zimbabwe towards the end of the period of crisis (2000-2008), landlords were charging exorbitant prices and demanding foreign currency, way before the multi-currency regime. State parties should ensure the availability of building materials⁵⁴. In Zimbabwe, this is in line with the duty-free facility

⁵² CESCR, general comment No. 4 (1991), para. 8c.

⁵³ para. 8c.

⁵⁴ para. 8c.

provided by the Zimbabwe Revenue Authority (ZIMRA) for building materials based upon the provision of a building plan showing the intention to build a house.

Another critical component that forms fundamental factors to ascertain “adequate housing” is habitability⁵⁵. Adequate housing must be habitable, that is, it must entail adequate and enough space, protection from cold, damp, heat, hazards, and disease vectors. State parties are encouraged to apply the health principles of housing prepared by the World Health Organisation (WHO). The relationships between housing conditions and human health are outlined in six major principles, some of which include several subdivisions; the subjects of the major principles are protection against communicable diseases; protection against injuries, poisonings, and chronic disease; reducing psychological and social stress; improve the housing environment; making informed use of housing; protect populations at special risk (WHO, 1989). When the road to the realisation of the right to housing is on a course of a slippery slope towards disaster, all other rights catches a cold, when the implementation of the right to housing flops against the international human rights law, the rest of other fundamental human rights will be tangled in a mess. This implies the interconnectedness and the complexity of the right to adequate housing with other rights, in this regard, the right to health⁵⁶.

However, in line with the transformative concept, the citizenry who cannot afford end up in the peripheries where there are inadequately housed without volunteering to go there. Self-help is a transformational symptom of modernisation; a natural by-product and essential in the complementary process of urbanisation and consequently, the realisation of the right to adequate housing. Complex systems embody adaptive or non-linear networks of self-help housing. Inadequate and deficient housing and squalid living conditions are invariably associated with higher mortality and morbidity rates. The other key component of “adequate housing” is accessibility⁵⁷. The disadvantaged groups must be accorded full and sustainable access to adequate housing; the aged, juveniles, disabled, ill persons, victims of natural disasters, and people living in disaster-prone areas should be ensured some degree of priority in the housing sphere. Both housing law and policy should take fully into consideration or account for the special housing needs of the

⁵⁵ para. 8d.

⁵⁶ CESCR, general comment No. 14 (2000), para. 3.

⁵⁷ CESCR, general comment No. 4 (1991), para. 8e.

disadvantaged groups; they should constitute a central policy goal. In line with “The Deep State”, the aspect of accessibility is compromised by elites who in some instances sought to favour party loyalists; preferential access to land leads to informal housing politics as housing discharge is directed at clientele.

Another component that is also closely related to the interdependency of human rights and ascertaining “adequate housing” is the location. The location must allow access to employment options, healthcare, schools, childcare centres, and other social facilities⁵⁸ (cf. Farha, 2019). This has been problematic in Zimbabwe as some settlements lack reasonable proximity to critical social amenities like schools and health centres, emblematic in some settlements located after tollgates that might be costly for citizens going to and from work in Harare. The financial cost of getting to and from the place of work can place excessive demands upon the budgets of poor households. Furthermore, housing should not be built on polluted sites or to the immediate proximity to pollution sources that threaten the right to health of the inhabitants. This reinforces the solid linkages of housing rights.

However, in Zimbabwe, some settlements are next to air polluted areas proximity to sewage ponds; the ponds are breeding grounds for mosquitos that poses a threat of malaria to the inhabitants This should never be accepted as a natural state of affairs but a profound betrayal of the most vulnerable, the erosion of socio-economic rights, allowing the poor to fall below a basic minimum standard of living. The other component is cultural adequacy in the sense that building materials and policies must enable the expression of cultural identity and diversity of housing; cultural dimensions of housing must not be sacrificed⁵⁹. Roskin et al. (2006:64) describe this as the right to live according to one’s culture. Cultural appropriateness or acceptability or adequacy refers to the realisation of housing rights in a way that is pertinent and suitable to a given cultural modality or context, that is, respectful of the culture and cultural rights of individuals and communities since how rights are implemented may have an impact on cultural life and diversity thus the need to consider cultural values⁶⁰. The fact, however, is that rights and liberties are difficult to define, and all nations restrict civil liberties in some way as few nations are homogeneous; most have citizens from several racial,

⁵⁸ para. 8f.

⁵⁹ para. 8g.

⁶⁰ CESCR, general comment No. 21 (2009), para. 16e.

ethnic, religious, cultural, or linguistic backgrounds, and their civil and cultural liberties are often compromised (Roskin et al., 2006:64). The housing situation is now paraplegic and causing discrepancies thus lack of diversity, therefore, makes the implementation of the right to housing more complex and difficult to execute. UDHR states that minorities have the right to preserve their cultural uniqueness (cf. Roskin et al., 2006:64).

The right to adequate housing cannot be viewed in isolation from other human rights, for instance, the concept of human dignity as pointed out in the UN Charter and the UDHR and the principle of non-discrimination, right to freedom of association for tenants or neighbours for any kind of assistance, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home constitute a very important dimension in defining the right to adequate housing⁶¹. One damaging social characteristic of high-rent cities is that people become peripatetic; people generally know their neighbours, can ask people for help and being part of an organic community. The general comment also refers to the abstention by the government from certain practices and a commitment to facilitate "self-help" by affected groups⁶². Moreover, policies and legislation should correspondingly not be designed to benefit already disadvantaged social groups at the expense of others⁶³. Policies and legislation should consider the economic contraction of the lack of resources in developing countries. This would mean that constitutional law is full of contradictions and complexes in the overturning and erosion of provision contents when realisation of housing rights can be judged based on the resources a country could harness.

Moreover, each state party must adopt a national housing strategy, define objectives for the development of shelter conditions, identify resources available to meet the goals, the most cost-effective way of using resources, set out the responsibilities and time frame for the implementation of measures⁶⁴. The strategy should reflect extensive consultation and participation. However, in the lexicon of the transformative concept and "The Deep State", this is not always the case. The elite interests often overshadow citizen dispersion, and this explains why land for housing tends to swing towards the upper class without the participation of citizens. There must be coordination between ministries, regional and local authorities to reconcile related policies. Through the lenses

⁶¹ CESCR, general comment No. 4 (1991), para. 9.

⁶² para. 10.

⁶³ para. 11.

⁶⁴ para. 12.

of “The Deep State”, this is, however, problematic in Zimbabwe as a result of the executive overspill. Ministers for the MLGPWNH tend to assume an executive mentality, often regarding local councils as a nuisance and many local authorities fail to independently exercise their roles because of executive domination of local government.

In the same vein, and despite that all local authorities have similar provisions that guarantee their independence that extends to their roles, the road to fulfil or realise the right to adequate housing is often littered with “Executive landmines” of varying shapes, size, and potential to maim the role of local authorities. The conundrum is mainly about power play. Though executive authority and single party politics existed before 2000 in Zimbabwe’s politics, it was also prevalent during the GNU and after since most of the powers were vested in the President. The ministers have absolute power and look down upon local authorities. Against this backdrop, the effectiveness of local authorities in their constitutional obligations is compromised.

There is, therefore, the need for effective monitoring of housing in conjunction with international cooperation to ascertain the extent of homelessness and inadequate housing⁶⁵. This forms part of the roles and responsibilities of the UN Special Rapporteur on Adequate Housing and is in line with providing detailed information about vulnerable and disadvantaged groups regarding housing to the CESCRs. The information must include homeless persons, persons inadequately housed, without basic amenities, illegal settlements, forced eviction, and low-income groups. Public-Private Partnerships (PPPs) are encouraged; attributable to the fact that experience has shown the inability of governments to fully satisfy housing deficits with publicly built housing⁶⁶. Social justice provision through PPPs implies load shedding of public and private responsibility for housing in this case. On PPPs, the council provides land whereas partners provide funding for infrastructural, both offsite and onsite development⁶⁷. Council may allow PPPs to construct superstructures, houses, and flats but the prerogative to allocate shall remain with the council. PPPs shall not allocate through the press, adverts, or estates agencies (The City of Harare, Housing

⁶⁵ para. 13.

⁶⁶ para. 14.

⁶⁷ Since independence, council has partnered different organisations such as FBC Bank, Central African Building Society (CABS), and the now defunct, Beverly Building Society in housing delivery. Partnerships, like CABS housing project, the most recent, has proven to be the most reliable way of housing delivery to low income earners. Council’s contribution is the land with the building societies providing the financial muscle to service the land and construct houses. Under the CABS scheme, 3 200 houses were built (cf. City of Harare, Housing Investment, 2016: 13).

Procedure Manual, Housing and Social Department). However, neo-liberal elements of New Public Management (NPM) like PPPs on financialisation of housing discussed at length through “The Deep State” perspective did more harm than good in as far as public housing is concerned due to the reduction of budgets and relaxation towards social housing. The budgetary and resource allocations, policy initiatives, and the role of formal legislative and administrative measures must suffice with the right to adequate housing⁶⁸.

Furthermore, international financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing⁶⁹ or international law⁷⁰. However, courtesy of ESAP in most of the African countries, social welfare budgets shrunk and social amenities like public housing suffered the most (cf. UN-Habitat, 2014). International cooperation must be based on free consent. However, in most instances, the international corporations usually force the legislatures to implement the so-called ‘austerity measures’ or ‘economic reforms’ through duress and intimidation or threats of economic sanctions; most low-income countries are subjected to ‘whips’ by the global powers. “The Deep State” concept illumines that hidden political configurations of power ascertain the direction of states, not in the interest of the society but the narrow interest of shadowy and hidden agendas at the detriment of the community and the society at large.

The right to adequate housing must be constitutionally entrenched to ensure legal and practical significance⁷¹. Details of specific cases and other ways in which entrenchment has proved helpful should be provided. This is to ensure the justifiability of rights so that they can be subject to judicial enforcement of human rights that are fundamental⁷² (cf. The Human Rights Fact Sheet, 2008:31). Furthermore, state parties must ensure the provision of domestic remedies legal appeals aimed at preventing planning evictions or demolitions through the issuance of court-ordered injunction; legal procedures seeking compensation following an illegal eviction complains against illegal actions carried out by landlords about renting levels, dwelling maintenance, and racial or other forms of discrimination in allocation and availability of access to housing; complaints against

⁶⁸ CESCR, general comment No. 4 (1991), para. 15.

⁶⁹ para. 19.

⁷⁰ CESCR, general comment No. 2 (1990), para. 6, 7 and 9.

⁷¹ CESCR, general comment No. 4 (1991), para. 16.

⁷² CESCR, general comment No. 7 (1997), para. 9.

landlords concerning unhealthy or inadequate housing conditions⁷³. These are transformational initiatives that aim to upgrade and legalise irreversible situations.

In the same vein, remedies help to act as a legal deterrence. Instances of forced eviction can only be justified in the most exceptional circumstances and following the relevant principles of international law⁷⁴. The right to live adequately and at liberty are natural, therefore government may deprive people of these basic rights only for good cause (cf. Roskin et al., 2006:63). This explains why the Kibera situation in Nairobi where 30 000 people were evicted from their shantytowns to build a new road was described as, however, mind-boggling; completely contrary to the International Human Rights Law and Kenya's constitution that protects the right to housing; it was a gross violation of human rights as no community should be evicted without viable alternatives⁷⁵.

3.2.3 Clarification of the Fundamental Freedoms from Arbitrary Eviction

The *éclaircissement* of the right from arbitrary eviction is guaranteed in the CESCR, general comment No.7 (1997) on forced evictions. All persons should possess a degree of security of tenure⁷⁶ that guarantees legal protection against forced eviction, harassment, and other threats⁷⁷. Forced evictions are incompatible and inconsistent with the requirements of the Covenant. The possibility of earning a living can be seriously impaired when a person has been relocated following a forced eviction to a place removed from economic rights⁷⁸ like employment opportunities; without proof of residence, homeless persons may not be able to enjoy social services, for instance, education and work; forced eviction can interrupt school children (UN-Habitat, 2014:9). In line with the 1976 UN Conference on Human Settlements, undertaking major clearance operations should take place only when conservation and rehabilitation are not feasible

⁷³ CESCR, general comment No. 4 (1991), para. 17.

⁷⁴ para. 18.

⁷⁵ Cf. James Bayes on Al Jazeera interview with Leilani Farha, UN Special Rapporteur on Adequate Housing.

⁷⁶ CESCR, general comment No. 4 (1991), para. 8a.

⁷⁷ CESCR, general comment No.7 (1997), para. 1.

⁷⁸ Economic rights are guarantees of adequate material standards of living; the newest and most controversial rights (Roskin et al., 2006:63).

and relocation measures are made⁷⁹. In the case of those living in slums, they are living under the constant threat of being evicted and daily threats to life and security (cf. Farha, 2019).

The 1988 Global Strategy for Shelter adopted by the General Assembly in its resolution 43/181 recognised and pointed out the “the fundamental obligation of governments to protect and improve houses and neighborhoods, rather than damage or destroy them”. This is in line with slum upgrading enunciated in the transformative concept. In line with the International Human Rights Law, the upgrade should happen in situ or on-site way; in other words, there is no need to evict or remove people from their homes unless there is absolutely no other option (cf. Farha, 2018). However, the issue of upgrading is also riddled with complexity. In some instances, private equities buy properties in areas where they call ‘undervalued’ where affordable housing units still exist and upgrade and gentrify; their renovation sometimes in the ‘the new housing landscape’ has absolutely nothing to do with upgrading slums for the benefit of the society but it is about upgrading dividends (Farha, 2019). The restoration of run-down urban areas by the middle-class result in the displacement of low-income residents. In an interview with Steve Paikin in April 2018, Leilani Farha⁸⁰ states that when Blackstone Model buys foreclosed properties, they buy it, fix it, and either sell it or increase the rents. Blackstone buys homes, flips them, and turns them into rental homes; sometimes put on the stock market (Farha, 2018).

Also, this policy incentivised real-estate speculators to buy distressed urban properties for pennies, invest in minimal maintenance and repair and then facilitate a home sale for thousands more to someone desperate for housing. Bankers and brokers are on the hunt for potential clients. Government subsidies and mortgage guarantees amplified exploitative real-estate practices, making the low-income housing market ripe for plunder. The real estate industry’s history has made it an unreliable partner in solving the longstanding shortage of dignified affordable housing. Poor families are disproportionately affected by the lack of housing precisely because long-standing discriminatory myths have been used to influence notions of value and community desirability. The government has a long and sullied history of invoking a caste system to shape the housing market as well. However, the government can be malleable to the demands of political

⁷⁹ CESCR, general comment No.7 (1997), para. 2.

⁸⁰ Leilani Farha is the current UN Special Rapporteur on Adequate Housing.

protests and organising, and changes of political representation can make it even more responsive to the public. Solving the perpetual housing crisis is complex, but it begins by disconnecting the power of government from the private sector's insatiable profit motive (cf. Taylor, 2016). It is inequality that the government must confront, eradicate, and respond to. A complex and toxic mix of socio-economic long term and worsening inequalities are deep and rigidly entrenched. The soothed wounds of colonialism caused inequalities.

Under Agenda 21, and stipulated in the Habitat Agenda, people should be protected by law against unfair eviction. When evictions are unavoidable, alternative solutions must be provided. Like in the case of Bangkok, Thailand, the government wanted to build an off-ramp from the highway right into an informal settlement, the community rallied and managed to figure out that the off-ramp can come down and the community can remain intact; the community is now living underneath an off-ramp that is better than being evicted and become homeless (Farha, 2018). This shows that citizens are not beneficiaries of charity but as rights holders and must be included in decisions that affect their lives; as active and empowered subjects in the participatory process and re-envisioning their community among themselves (Farha, 2019).

In the same vein and from a policy perspective, this means a profoundly different approach by countries in decision making and whether it is taxation policy, land-use planning, zoning, or broader housing policy, decisions must be guided by the needs of residents for adequate, affordable and secure housing, as opposed to the financial security and gain of investors; enjoyment of human rights would be the goal (*The Globe and Mail*, 15/04/17). Although governments in some instances pursue policies consistent with the good of the community, the programmes often favour influential interest groups that demonstrate elitisation. In line with the complexity of housing rights, the commission on human rights points out that forced evictions could have resulted in a gross violation of multiple human rights. A critical issue is to determine the circumstances under which forced evictions are permissible and stating the types of protection required to ensure respect for the relevant provisions of the covenant.

Forced evictions convey a sense of arbitrariness and illegality⁸¹. Unfair evictions are more subjective; it implies permanent or temporary removal against the will of individuals and families

⁸¹ CESCR, general comment No.7 (1997), para. 3.

that they occupy without legal protection. Owing to the interrelationship, interconnectedness, complexity, and interdependency that exist among all human rights, forced evictions to violate other human rights⁸². Forced eviction is in connection with forced population transfers, internal displacement, forced relocations in the context of armed conflict, mass exodus, and refugee movements; it is also associated with violence resulting from international armed conflicts, internal strife, and communal or ethnic violence⁸³. Concerning the instruments dealing with situations in armed conflicts, the Geneva Conventions of 1949 and Protocols thereto of 1977 prohibit the displacement of the civilian population and the destruction of private property as these relate to the practice of forced eviction. Full compliance with Article 4 of the Covenant is required so that any limitations imposed must be “determined by law to promote the general welfare in a democratic society”.

Forced evictions can be in the name of development, conflict over land rights, infrastructure projects, for instance, construction of dams or other large-scale projects, city beautification programmes, for agricultural purposes, sporting events⁸⁴. In the case of Zimbabwe, forced evictions as a result of development projects were recorded during the Harare International Airport Extension Project, now Robert Gabriel Mugabe International Airport. The right to housing does not prevent development, for instance, growing cities, beautification from taking place, but imposes conditions and procedural limits (UN-Habitat, 2014:7). The state must refrain from forced evictions and ensure that law is enforced against its agents or third parties who carry out forced evictions⁸⁵. This is a testimony in South Africa as discussed at length in the selected cases in Chapter Five. This is reinforced by Article 17.1 of the ICCPR that complements the right not to be forcefully evicted without adequate protection. This bolsters the right to be protected against “arbitrary or unlawful interference” with one’s home.

Legislative measures against forced evictions are an essential basis upon which to build a system of effective protection that is the security of tenure⁸⁶. The legislation must apply to all agents acting under the authority of the state. In Zimbabwe and South Africa, this is provided under Section 74

⁸² para. 4.

⁸³ para. 5 and 6.

⁸⁴ para. 7.

⁸⁵ para. 8.

⁸⁶ para. 9.

and 26 (3) respectively. State parties must ensure that legislative measures prevent forced evictions; relevant legislation and policies must, therefore, be reviewed to ensure that they are compatible with the obligations arising from the right to adequate housing. The realisation of housing rights depends heavily on government policies (The Human Rights Fact Sheet, 2008:30). State parties are urged to repeal or amend any legislation inconsistent with the requirement of the Covenant. In line with vulnerable groups like women who are prone to acts of violence and sexual abuse when they are rendered homeless; where evictions do occur, the government must ensure appropriate measures are taken to ensure that no form of discrimination is involved⁸⁷. This entails more priority to vulnerable groups. Whereas some evictions maybe are justifiable, for instance, in the case of non-payment of rent or of damage to rented property without any reasonable cause, evictions must be carried out in a manner warranted by law that is compatible with the Covenant and that all the legal resources and remedies are available to those affected⁸⁸. In Zimbabwe, evictions in rented accommodations are usually carried out as a result of dual ownership, non-payment of rent, or subletting of rented accommodation (The City of Harare, Housing Procedure Manual, Housing and Social Department).

Forced evictions and house demolitions are inconsistent with the fundamental norms of the Covenant⁸⁹. Before state parties carry out evictions, all feasible alternatives must be explored in consultation with the affected persons to minimise the need to use force⁹⁰. Legal recourse should be provided to the affected. State parties must ensure individuals concerned have a right to adequate compensation for any property as postulated under Article 2.3 of the ICCPR. In the case where eviction is justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and must be reasonable and balanced, and harmonious⁹¹.

Relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted. Due process is essential and pertinent⁹². Appropriate procedural protection is crucial, including the opportunity for consultation; adequate and reasonable notice before eviction;

⁸⁷ para. 10.

⁸⁸ para. 11.

⁸⁹ para. 12.

⁹⁰ para. 13.

⁹¹ para. 14.

⁹² para. 15.

information on the proposed eviction, the alternative purpose for which the land/housing is to be used; government officials or representatives to be present during eviction; persons carrying out eviction to be properly identified to avoid constant blame game or blame-shifting, damage control and impression management by politicians. The provision of legal remedies and legal aid to persons who need it to seek redress from the courts is also crucial before carrying out evictions. However, as demonstrated in “The Deep State” the GoZ evicted thousands of families towards winter season in May 2005; it embarked on operation Murambatsvina, and since it was alleged to be an ‘opposition cleansing’ exercise, politics of regime maintenance as a hidden agenda looms large.

Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights⁹³. This is in line with a cusp ruling in the *Grootboom* case that was discussed at length under comparative jurisprudence in Chapter five. The state party must take all appropriate measures, to the maximum of its available resources, to ensure that alternative housing, resettlement/access to productive land is available. States parties must make sure that they are in context with valid legal frameworks. Development projects by international agencies must not result in forced evictions⁹⁴. International agencies should avoid involvement in projects that involve large-scale evictions or displacement without the provision of appropriate protection and compensation. Rights contained in the Covenant must be duly considered⁹⁵. However, through financialisation of housing demonstrated in “The Deep State”, private equities are not sure or aware of the human rights standards as it is not in their mindset or business model.

States parties must embrace the guidelines by the World Bank (WB) and Organisation for Economic Cooperation and Development (OECD) on relocation or resettlement to limit the scale of human suffering associated with forced evictions of large-scale projects⁹⁶. The WB defines relocation or resettlement as follows: “involuntary resettlement refers to two distinct but related processes. Displacement is a process by which development projects cause people to lose land or other assets, or access to resources. This may result in physical dislocation, loss of income, or other

⁹³ para. 16.

⁹⁴ para. 17.

⁹⁵ Cf. CESCR, general comment No. 4 (1991), para. 19.

⁹⁶ CESCR, general comment No.7 (1997), para. 18.

adverse impacts. Resettlement or rehabilitation is a transformational process by which those adversely affected are assisted in their efforts to improve, or at least to restore, their incomes and living standards⁹⁷” (cf. WB, 2004). Both the WB’s policy and the OECD guidelines explicitly state that all resettlement programmes must be development programmes as well and that measures must be taken to improve the conditions of those dislocated and prevent them from becoming permanently impoverished and destitute (OECD, 1991). It is essential to note that though human suffering usually associated with forced evictions can be minimised, the scale of human suffering cannot be reduced to zero or an infinitesimal percentage.

State parties must provide to the committee, the number of persons evicted within the last 5 years and the numbers currently lacking legal protection against arbitrary eviction; legislation concerning the rights of tenants to the security of tenure⁹⁸, to protection from eviction; and legislation prohibiting any form of eviction⁹⁹. However, among other hidden motives, governments can falsify to avoid tarnishing their image. In Zimbabwe, Human Rights Watch (2007) in response to the GoZ submission to the CESCRs pushed to counter a state report by a shadow report to the African Commission on Human and People’s rights on the human rights crisis. The information on measures taken during urban renewal programmes, redevelopment projects, site upgrading, and preparation for international events must be presented to the committee¹⁰⁰. There is a need for effective monitoring of the right to adequate housing by the state parties¹⁰¹. Appropriate and necessary data must be reflected in the reports submitted under the Covenant.

The first and recent decision of the CESCR given judicial protection concerning the right to adequate housing in mortgage foreclosure proceedings was the *I.D.G. v. Spain* 2015 case. The case was an alleged violation of the right to housing by Spain in the context of the judicial protection for individuals and families against mortgage foreclosure proceedings. The plaintiff, herein referred to as *I.D.G.*, was inadequately notified of the court’s order authorising a foreclosure of the

⁹⁷ See:

<http://documents.worldbank.org/curated/en/206671468782373680/pdf/301180v110PAPE1ettlement0sourcebook.pdf>.

⁹⁸ Cf. CESCR, general comment No. 4 (1991), para. 13.

⁹⁹ CESCR, general comment No.7 (1997), para. 20.

¹⁰⁰ Cf. CESCR, general comment No. 4 (1991), para. 13 and CESCR, general comment No.7 (1997), para. 20.

¹⁰¹ CESCR, general comment No.7 (1997), para. 20.

mortgaged apartment where she had established her primary residence and became aware of the proceedings against her only after the court had convened an auction of the property. The court's failure to adequately notify deprived her of an effective remedy to protect her right to housing, in contravention of Article 11(1) of the ICESCR¹⁰².

The case posed crucial issues concerning the material guarantees required by the right to adequate housing under the Covenant, especially as regards the protection against mortgage foreclosure proceedings for individuals and families. The Committee clarified that the serving of notice of the most important acts and orders in an administrative or judicial proceeding must be conducted effectively so that the persons affected have a real opportunity to participate in the proceedings in defense of their rights, and appropriate judicial remedies must be available to this effect. However, the Committee has shown a somehow disengaged approach by confining the inadequacy of the notification to the case at hand, instead of setting out the characteristics that public posting of the notice must present to respect the right to adequate housing. The Committee overlooked the existence of crucial procedural avenues. The availability of such remedy seems to alter the premises on which the conclusions reached by the Committee are based, both at the admissibility and the merits stage.

The second decision concerning the right to housing was the *Ben Djazia and Bellili hereinafter referred to as M.B.D. et al., v. Spain*. This decision involved a family evicted from their home they had rented in Madrid, Spain, on 3 October 2013, after their lease contract expired. The subject matter was the eviction of lessees as a result of judicial proceedings initiated by the lessor. Article 11 of the ICESCR was violated in its terms and its relation to the duty of progressive realisation, and concerning General Comments No. 4 and 7 by the UN CESCR referring to the right to housing and the prohibition of forced evictions, respectively.

In its decision, the Committee on CESCR found that evictions should not render individuals or families homeless and that states party are obliged to provide suitable alternative accommodation to individuals or families that would be rendered homeless during an eviction¹⁰³. More importantly, the Committee held that protection from evictions applies to tenants in rental accommodation

¹⁰² Sánchez, J. C. B, The UN Committee on Economic, Social and Cultural Rights' Decision in I.D.G. v. Spain.

¹⁰³ Cf. CESCR, general comment No.7 (1997), para. 16.

whether public or private. The government of Spain was found wanting of its obligation to realise the right to adequate housing under the ICESCR. It was established that states must ensure access to justice for the right to housing by all appropriate means, including legislation¹⁰⁴, to the maximum of available resources, and without discrimination¹⁰⁵.

The Committee assessed measures taken by the state party considering the circumstances of a family who became homeless after an eviction. The reasonable standard was formulated as requiring the state to make “all possible effort, using all available resources, to realise, as a matter of urgency, the right to housing of persons who are in a situation of dire need”¹⁰⁶. As a remedy, the state party was required to engage in genuine consultation¹⁰⁷ with the family to ensure that they were afforded adequate accommodation and to develop a comprehensive plan. Access to justice must ensure that eviction is only carried out as a last resort, following all legal requirements and with prior genuine consultation with those affected, that all viable alternatives to the eviction are explored¹⁰⁸. Courts must require all appropriate measures to be taken to ensure, where possible, that adequate alternative land and housing¹⁰⁹ are available¹¹⁰.

The Spanish government failed to take all appropriate measures to the maximum of its available resources to guarantee suitable alternative accommodation in the context of eviction. States must be able to justify broader measures impacting on the right to housing, including sales of public housing stock and the application of tax revenue. To avoid similar violations in the future, the CESCR requested: (a) the adoption of legislative and/or administrative measures to ensure that tenants have access to judicial proceedings where a judge might consider the consequences of eviction; (b) the adoption of measures to resolve the lack of coordination between court decisions and the actions of social services; (c) the adoption of measures to guarantee that evictions of those without the means to obtain alternative housing involve genuine consultation and essential steps regarding alternative housing; (d) special protection for those who are in a situation of

¹⁰⁴ United Nations, General Assembly Human Rights Council, Fortieth session, 25 February–22 March 2019.

¹⁰⁵ Cf. CESCR, general comment No.7 (1997), para. 10 and 16.

¹⁰⁶ para. 16.

¹⁰⁷ para. 15a.

¹⁰⁸ para. 13.

¹⁰⁹ para. 16.

¹¹⁰ United Nations, General Assembly Human Rights Council, fortieth session, 25 February–22 March 2019.

vulnerability; and (e) the development and implementation of a national plan to guarantee the right to adequate housing for low-income persons¹¹¹.

The Committee recalls the legal obligations imposed by the ICESCR on States parties regarding the right to housing. It advances that all persons should possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment, and other threats¹¹². The obligation of States to provide suitable alternative accommodation requires them to take all necessary measures in this regard, to the maximum of their available resources and measures should be adapted to the urgency of the situation and the particular needs of the persons in a situation of vulnerability, for instance, when children are involved, like in this case, two minor children were involved. States parties must, therefore, take coherent and coordinated measures to tackle the structural causes of homelessness and housing vulnerability¹¹³.

The Committee reaffirmed that the legal guarantees surrounding the right to adequate housing do not only concern homeowners, but also people living in rented accommodation. Adequate housing should be provided irrespective of whether the affected person holds the title to the property or not (cf. Chenwi, 2013). In a housing paradigm that privileges owner-occupation, it is useful to recall that these guarantees extend beyond homeownership and cover situations arising from tenancy agreements, such as rental arrears and tenancy expiry. Although the housing rights of tenants will often enjoy weaker statutory protection in national legislation when compared to homeowners, it becomes clear that the right to adequate housing contained in the ICESCR sets minimum safeguards applicable notwithstanding the type of tenure. The decision confirms that any eviction of tenants from private rental accommodation must comply with the right to adequate housing¹¹⁴, particularly in contexts of vulnerability. More so, in line with follow-up measures like in the *Grootboom* case discussed in Chapter Five, the Spanish government is required to submit to the Committee, within six months, a written response outlining implementation measures and to distribute them widely, in an accessible format, so that they reach all sectors of the population thus

¹¹¹ United Nations, General Assembly Human Rights Council, Fortieth session, 25 February–22 March 2019.

¹¹² Cf. General Comment No. 4 and 7.

¹¹³ Cf. United Nations, Economic and Social Council (E/C.12/61/D/5/2015) CESCR.

¹¹⁴ Cf. CESCR, general comment No.7 (1997), para. 11.

constantly assessing and examining implementation processes in a bid to check satisfactory conditions.

In summary, the key lessons emanating from this significant case are that states parties must protect the right to housing for all persons in their jurisdictions, including people living in rented accommodation¹¹⁵. Forced eviction must follow General Comment No. 7 on forced evictions. States parties must guarantee special protection to vulnerable groups, including children, and must take all appropriate measures to fulfil the right to housing, to the maximum of their available resources¹¹⁶ through proportionate and reasonable budgetary measures. Tax measures must not disproportionately affect the already disadvantaged groups. States parties must guarantee the right to effective remedies¹¹⁷ and the justiciability of the right to adequate housing.

3.4 The Charter Based Human Rights System

The Charter Based Human Rights System refers to the provisions and the Human Rights reporting systems in the international obligations like the UN Charter; the African Charter and Commission on Human and Peoples' Rights. The notion of human rights has begun to be broadened in recent years, going beyond the state to include individuals, groups of people, and other non-state actors. It is beyond the scope of this study to discuss all the international covenants reflecting the right to adequate housing. Nevertheless, it is crucial to note that the UN Charter is the pinnacle of the human rights system and its significance is through interpretation and extrapolation (Steiner, 2000:137). The UN Charter of 1945 in its preamble vaguely and simply referred to the promotion of social progress and better standards of life. The charter is very short and leaves much unsaid, it is less detailed and comprehensive. In this regard, a thorough analysis of these outstanding issues has a substantive basis in filling this literature gap.

3.4.1 The Right to Adequate Housing in the African Regional Human Rights System

The African Commission on Human and People's Rights (The African Commission) is a quasi-judicial body at the African regional level that has engaged with the enforcement of the right to adequate housing (Chenwi, 2013:344). The African Charter provides for both civil and political

¹¹⁵ para. 11.

¹¹⁶ para. 10 and 16.

¹¹⁷ para. 11, 13 and 15.

rights and economic, social, and cultural rights; this is a recognition of the interdependence of rights that are explicitly stated in the preamble of the charter: – “civil and political rights cannot be dissociated from economic, social and cultural rights; the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights” (Chenwi, 2013:344). ESCR was also recognised along with civil and political rights in the UDHR (Hulchanski and Leckie, 2000:3). The African Charter is silent on the right to adequate housing; African Commission interpreted other rights in the Charter to include a right to adequate housing concerning the principle of the interdependency of rights (Chenwi, 2013:345). Article 16 of the Charter provides for the property right; the combined effect of Articles 14, 16, and 18(1) reads into the Charter a right to shelter/housing (cf. Chenwi, 2013:345). This shows housing right as an inferred component and not explicitly stated as a standalone human right. Realising the right to housing as a networked problem makes the implementation of the right more complex as the facilitation will not be directly dealing with the right but as an inferred component.

Albeit the right to adequate housing is not emphatically and expressly provided for in the African Charter, African Commission on Human and People’s Rights outlined that housing rights are protected through the combination of provisions protecting the right to property (Article 14), the right to health (Article 16), and the protection accorded to the family [Article 18 (1)]. The FTLRP in Zimbabwe violated Article 14 and 4 of the African Charter, the right to property and the right to life respectively (Human Rights Watch, 2007:5). More so, the combined effect of Article 4 (the right to life) and Article 24 (the right of peoples to a ‘general satisfactory environment propitious to their development’) would seem to affirm such right. Inference of the right to housing, however, makes it herculean and complex to fully realise in its multidimensionality.

The nexus between the right to life and the right to adequate housing is that a lack of adequate and affordable housing contributes to housing stress and homelessness and is detrimental to people’s physical and mental health. Homelessness affects the expectancy, with homeless people estimated to live 15 to 20 years less than the mainstream population (cf. Scutella, 2018). Homeless populations are deeply traumatised as a result of living in the street; once people lose their housing and become homeless, they are often open to any of several social ills, and the completely traumatising experience trigger psycho-social disability (Farha, 2018). The United Kingdom (UK)

National Health Service observed that a homeless person has a life expectancy of 47 years¹¹⁸. One-third of deaths worldwide are caused by poverty and inadequate housing and homeless people are ten times more likely to die than if there were housed thus the connection with the right to life is so very clear and crucial (Farha, 2018). The protection of the family is provided for in Section 25 of the Zimbabwean Constitution.

3.5 Selected decisions of the African Commission relating to the interconnectedness of rights

3.5.1 Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya Communication 276/2003 (2009) AHRLR 75 (ACHPR 2009) hereinafter referred to the Endorois case

The decision of the African Commission in the *Endorois case* illustrates interdependency between the right to free disposition of natural resources and the right to adequate housing. The Commission associated ownership of natural resources with the right to shelter. The interdependency of the right not to be forcibly evicted and the property right is underscored. The Commission held that “forced evictions, by their very definition, cannot be deemed to satisfy Article 14 [right to property] of the Charter’s test of being done ‘following the law’”. The case illustrates the interdependence between the right to culture and the right not to be forcibly evicted, holding that the forced eviction has denied the Endorois people the very essence of their right to culture, “rendering the right, to all intents and purposes, illusory”, in violation of articles 17(2) and (3) of the African Charter (cf. Chenwi, 2013).

In the *Endorois case*, the African Commission indicates an openness to dialogic remedies, specifically dialogue in the implementation of its recommendations, by requesting that the Kenyan government engage in dialogue with the claimants to ensure that its recommendations are implemented effectively (cf. Chenwi, 2013). The Commission, however, does not explain what the dialogue entails or its nature. The African Commission, drawing from the CDESCR, has set down elaborate substantive and procedural obligations about the right to protection against forced evictions as a component of the right to adequate housing. The Commission sees an eviction as an exceptional measure that must be authorised by law¹¹⁹. The position, conclusions, and ruling of

¹¹⁸ Cf. James Bayes on Al Jazeera interview with Leilani Farha, UN Special Rapporteur on Adequate Housing.

¹¹⁹ Cf. CDESCR, general comment No.7 (1997), para. 13.

the Commission resonate with that of the CESC. It advances that the eviction process should include among other things appropriate; effective dissemination of relevant information by relevant authorities in advance; a reasonable period for public review; holding of a public hearing with opportunities to challenge the eviction decision and to present alternative proposals¹²⁰ (cf. Chenwi, 2013).

3.5.2 African Court on Human and Peoples' Rights, African Commission on Human and Peoples' Rights v. the Republic of Kenya (application No. 006/2012), Judgment of 26 May 2017

Some indigenous claims to the right to land and housing that had been denied within national systems were addressed within regional systems. Considering the eviction of the Ogiek community from ancestral lands in the Mau Forest of Kenya, the African Court on Human and Peoples' Rights drew on the United Nations Declaration to recognise the obligations of the State to take positive measures to support the rights of indigenous peoples to development and culture and to remain on their traditional territories.

3.5.3 The Sudan Human Rights Organisation and Centre on Housing Rights and Evictions v Sudan (Sudan case)

This case depicted interdependency between housing and health and between the right not to be forcibly evicted and other rights. The prohibition of forced evictions and the right to freedom of movement and residence were interdependent since forced evictions restrict freedom of movement and residence. The African Commission did not find the restriction to be justifiable, because the state, in this case, the government of Sudan had failed to prevent the evictions or take urgent steps to ensure that displaced persons return to their homes. The Commission was of the view that the right to liberty complements freedom of movement, as the destruction of homes results in internally displaced persons not being able to move freely to their homes, and consequently, their liberty and freedom are proscribed. The case dealt with alleged “gross, massive and systematic” violations of human rights in the Darfur region of Sudan, including forced evictions, destruction of public facilities, properties, looting and destruction of foodstuffs, crops, and livestock, and the poisoning of wells and denial of access to water (cf. Chenwi, 2013).

The failure of the government to take steps to protect the victims thus amounted to a violation of the right to liberty. Furthermore, forced eviction of people from their homes and the killing of

¹²⁰ para. 15.

some family members threatened the very foundation of the family, thus rendering the enjoyment of the right to family life difficult. This was compounded by the fact that the government did nothing to prevent the violation. A violation of the property right was found on the basis that the government failed to refrain from eviction or demolition of the houses and property and did not take steps to protect the victims (cf. Chenwi, 2013). Like the *SERAC* decision, as will be discussed in the following case, the African Commission found the right to adequate housing and the right to health to be interdependent, as the destruction of homes, amongst others, exposes victims to serious health risks. The decision further to demonstrate an interaction between peoples' right to economic, social, and cultural development, the right to education, and the right to be protected against forced evictions. The Commission held that forced eviction and displacement of Darfurian people denied them the opportunity to engage in economic, social, and cultural activities, and impeded their children's right to education (cf. Chenwi, 2013).

3.5.4. Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights Vs Nigeria (The SERAC Case)

The African Commission refers to the right to housing in the *SERAC* case. In the *SERAC* case, the African Commission stated that the Nigerian government violated the right to shelter/housing through condoning and facilitating the operations in Ogoniland resulting in the destruction and burning of houses (Chenwi, 2013:345). In 1996, it was alleged that the military government had, through its business relationship with Shell Petroleum Development Corporation (SPDC), exploited oil reserves in Ogoniland. Even though courts and laws protecting the right to housing in Nigeria are good, the ongoing problem revolved around respect for rule of law as the government heeded not what the courts ruled (Farha, 2019). The right to housing forms part of the property right, read together because a property is affected when housing is destroyed; the same applies to health and family life (Chenwi, 2013:345). The right to adequate housing, in the context of the African Charter, includes the right to protection against forced evictions, for instance, in the *SERAC* case, the African Commission held that “the right to adequate housing as implicitly protected in the Charter encompasses the right to protection against forced eviction” (Chenwi, 2013:345; UN-Habitat, 2014). The right to protection from forced eviction is thus a derivative of the right to housing, that is itself a derivative of other rights (Chenwi, 2013:345). Complexity is therefore embedded in the realisation of the right to adequate housing as a networked component of a multiplicity of other rights.

From the legal proceedings, it can be deduced that people do not demand houses, they demand habitats; a house is an object, a habitat is a node in a multiplicity of overlapping networks, that is physical (power, water, and sanitation, roads), economic (urban transport, labour markets, distribution and retail, entertainment) and social (education, health, security, family, friends) (Dugard et al., 2017:38). This makes housing habitable. The ability to connect all these makes a habitat valuable and complicated (*Ibid.*). According to the African Commission, the right to shelter goes further than a roof over one's head; it extends to an individual's right to live in peace (Chenwi, 2013:345). Housing is not just about four walls and a roof, it is about living in a place where a person has peace, the security of tenure, and most importantly dignity¹²¹ (Farha, 2018). African Commission's definition of shelter is a derivative of the definition by UN CESCR that defines the right to adequate housing as the right to live in security, peace, and dignity.

The phrasing of the right to housing in the African Charter can be distinguished from the way it is phrased in other contexts or jurisdiction, for instance, Zimbabwe and South Africa (cf. Chenwi, 2013:346). The African Charter used the terminology of the right to adequate housing. However, the Zimbabwean and South African constitution provided for the right to have 'access' to land, appropriate services, for instance, the provision of water and the removal of sewage (cf. Chenwi, 2013:346). This, however, reflects congruousness in understanding the meaning of the right in line with ICESCR and the African Commission (Chenwi, 2013:346). Irrespective of how the right is phrased, it implies something more than a roof over one's head (Chenwi, 2013:346).

More so, the African Charter on Rights and Welfare of the Child of 1990 (African Children's Charter) in Article 20(2)(9) on parental responsibilities requires state parties to take appropriate measures following their means and national conditions towards assisting parents for the child concerning housing (Chenwi, 2013:346). In the Constitution of Zimbabwe, this is codified under sections 19 (2) (b) and 81(1) (f). For South African, it is under section 28 (1) (c). These constitutions are therefore congruent with the African charter. In the African Children's charter, the state bears the obligation to provide the legal and administrative infrastructure necessary to

¹²¹ Dignity entails basic tenets like proper sanitation and basic services, toilets, running water, place close to employment so that one can generate income for a family or household, healthcare services, childcare services, security of tenure that is one of the cornerstone of the right to housing i.e. one living in no fear that he/she is going to be losing a home at any time, living in a place without experiencing discrimination and access to housing without discrimination (cf. Farha, 2018).

ensure that children enjoy their right to shelter (Chenwi, 2013:347). The African Charter does not provide adequate protection to women and this recognition gave birth to the protocol to the African Charter on the Rights of Woman in Africa of 2003 (African Women's Protocol). Article 16 of the protocol guarantees women the right to adequate housing irrespective of the marital status that is in contrast with the case South African that requires that a woman should be married or single with financial dependents (cf. Chenwi, 2013:347). The protocol is in congruency with Zimbabwe section 80 (1).

While there seems to be a divergence in the realisation of the right to housing, the practical implementation reflects congruence. State parties are under a continuing duty to move as expeditiously and effectively as possible towards the full realisation of ESCR (Chenwi, 2013:348). According to the African charter, the state needs sufficient resources to ensure ESCRs are prioritised (Chenwi, 2013:348). The African Commission in the *SERAC* case recognised four state obligations about the right to adequate housing and protect, promote, and fulfill (Chenwi, 2013:349; UN-Habitat, 2014:33). This entails abstaining from tolerating violation of the integrity of individuals, satisfy housing needs, prevent violation of the individual right to housing, and guarantee access to legal remedies, and acting to preclude further deprivations (Chenwi, 2013:349).

Section 44 of the Zimbabwe constitution and 7(2) of the South African Constitution recognises these obligations that reflect congruence. The African Charter recognise individual duties in Articles 27 and 29 like in the *Grootboom* case; individuals and other agents are also responsible for the provision of housing (Chenwi:349). The African Commission Principle and Guidelines summon the state to undertake comprehensive reviews of relevant national legislation and policies to ensure conformity with international human rights provisions, so as not to lead to, or facilitate forced evictions (Chenwi, 2013:350). National human rights institutions, like the Human Rights Commission in the case of Zimbabwe, were entrusted to monitor state compliance including investigation of forced eviction and ensuring the prosecution of perpetrators (Chenwi, 2013:351). This is a prerogative of human rights commissions.

Article 18(4) of the African Charter recognises the need for special measures of protection for older persons and persons with disabilities¹²²; the article prioritises houses and land allocations; ensure access to land, adequate housing or shelter regardless of sex, and protection against forced evictions. Also, housing for the elderly must be viewed as more than mere shelter and that, in addition to the physical, it has a psychological and social significance that should be considered¹²³. Older persons must live out their golden years with dignity. States, according to the African Commission's Principles and Guidelines, are required to provide alternative and safe programmes for women fleeing from situations of domestic violence (Chenwi, 2013:352). The African Commission about the right to protection against forced evictions as a component of the right to adequate housing states that an eviction must be authorised by law¹²⁴. Procedures to be taken by the state include appropriate notice to potentially affected persons; dissemination of relevant information; reasonable time for public review or comment or objection to the proposed plan; opportunities for legal advice or aid; and public hearings.

State parties must demonstrate that the eviction is unavoidable and consistent with international human rights commitments protective of the general welfare¹²⁵ (Chenwi, 2013:353). Considering that the state has to adhere to a plethora of procedures and substantive requirements, eviction is next to impossible according to international human rights law. The African Commission Principles and Guidelines, that are minimum core obligations, include refraining from and protecting against forced eviction; guaranteeing a degree of security of tenure to all persons, and ensuring basic shelter for everybody (Chenwi, 2013:354). Against this backdrop, there is more congruency than diversion between regional and national laws about the protection of the right to adequate housing.

3.6 Housing as an Indivisible Right

In 1993 at Vienna, the international community classified all human rights as universal, indivisible, interdependent, and interrelated. A network of interrelated fundamental rights consisting of many different and connected parts makes the study of housing as a human right more complex. A closer

¹²² Cf. CESCR, general comment No. 5 (1994), para. 13.

¹²³ CESCR, general comment No.6 (1996), para. 33.

¹²⁴ Cf. CESCR, general comment No.7 (1997).

¹²⁵ *ibid.*

inspection into the relevance of the chain of ancestry or the possibility of systematic causality discussed in complexity is therefore pertinent. The right to adequate housing clearly expresses the principle of the interdependency of rights (Chenwi, 2013:343). There is a mutually reinforcing dynamic between different categories of rights. Effective implementation of one category of rights can contribute to the effective implementation of other categories of rights and vice versa. For instance, those deprived of economic, social, and cultural rights such as the right to housing may also find themselves locked or deprived of civil and political rights like suffrage due to forced displacements (cf. Roskin et al., 2006:63). This comports well with complexity on the causality chain of violations. The denial, de jure or de facto, of the right to adequate housing, brings in its wake dramatic consequences and causes numerous violations of human rights in such areas as employment, education, health, social ties, participation in decision making, and denial of civil rights¹²⁶ among others (cf. Golay and Osden, 2007). Human rights are interdependent, indivisible, and interrelated; access to housing can be a precondition for the enjoyment of several human rights, including the right to work, health, vote, and etcetera (UN-Habitat, 2014:9). Insecure housing results in insecure jobs at the same time (Farha, 2018). Scott (1989:782) described these related rights as mutually reinforcing and dependent. It is therefore herculean and complex to realise the right to housing considering its elasticity and multidimensionality with other rights, be it civil, social, political, economic, or cultural.

Due to the language of indivisible legal rights for all, the right to adequate housing must be given the seriousness it rightly deserves rather than being discharged as charity or hand-outs for those deemed worthy by someone in authority (cf. Hulchanski and Leckie, 2000:3). Overcoming homelessness is not a gesture of charity, it is an act of justice. It is the protection of a fundamental human right, the right to adequate housing. The right to adequate housing forms a part of other fundamental freedoms (cf. Chenwi, 2013:343). The right to housing has tentacles into every other human right practically, for example, life and security (Farha, 2018). From a complexity viewpoint, tangled/entangled rights like health make housing right and homeless circumstances more complicated. Housing right is just central to everything, be it health, education, life, water, sanitation (cf. Farha, 2019). The interdependency of rights is one of the guiding principles of

¹²⁶ Civil rights imply the ability to participate in politics and society, such as voting. It is sometimes confused with but at a higher level than human rights (Roskin et al., 2006:63).

international human rights law (Chenwi, 2013:359). Despite the principle of the interdependency of rights (cf. Scott, 1989; Quane, 2012), the study is restricted to the realisation of the right to adequate housing. At this vital grave point, it is essential to note that one must not get carried away by the intractably intertwining complex nature of human rights and ending up canvassing all covenants courtesy of recurrent features.

3.7 Other Concomitant and Attendant International Human Rights Instruments

There are other rights guaranteed by international instruments that may be ancillary to the right to housing, and that becomes relevant from time to time, in the context of forced eviction, for example, Article 17(1) of the ICCPR extends protection to privacy and homes; and article 5(e) (iii) of the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), that prohibits discrimination about the protection of the right to housing. The right to housing is also safeguarded under Article 17 of ICCPR, that prohibits ‘unlawful interference with privacy, family, home or correspondence’. Albeit international law protects several vulnerable groups, other disadvantaged groups appear to be overlooked. These embody the youths, the elderly persons, and veterans of the liberation struggles. In the Constitution of Zimbabwe, the rights of the youths, the aged, and the veterans are guaranteed in Sections 20, 21, 23, 82, and 84. However, the sections provide for the abbreviated summary of the generic human rights, and the right to housing is vaguely defined. It can merely be inferred intuitively from the social aspect of rights. This exposed some disadvantaged groups at risk since there are not well protected both by municipal and international law.

Polities sign, ratify and domesticates international treaties for it to be enforced in a constitutional court. States, therefore, have that obligation and commitment to ensure accountability and equality to guide housing policy for the benefit of the populace. However, in Argentina, Article 14 of the Argentine Constitution provides for the right to adequate and decent housing and Article 75 further recognises that international and regional treaties are at par with the constitution and should be considered as complementary to the rights recognised by the constitution. The nature and content of standards established by international regimes in some cases resonate well with the constitutional dispensation in Zimbabwe. The Convention on the Rights of Persons with Disabilities (CRPD), Article 9 (1) (a) emphasise the importance of accessibility of persons with disabilities to facilities, including housing facilities. Article 28 (1), (2) (d) provides for the adequate

standard of living and state parties must ensure that persons with disabilities and their families have access to shelter; that persons with disabilities have equal access to government social safety nets, for instance, public housing and social protection¹²⁷. In the Constitution of Zimbabwe, this is guaranteed in Sections 22 and 83.

Nevertheless, the sections fail to poignantly zero in on the right to housing but rather focus merely on social rights in general. The CEDAW under Article 14(2) (h) guarantees adequate living conditions, particularly about housing. In the Constitution of Zimbabwe, this is provided for in Sections 17 and 80; that the state must promote full women dispersion. However, the sections are vague concerning the right to housing. In line with housing for the juveniles, the Convention on the Rights of the Child (CRC) Article 27 (3) provides that states parties, following national conditions and within their means, shall take appropriate measures to assist parents or guardians and others responsible for the child to implement the right to housing and shall in case of need provide material assistance and support programmes, particularly about housing. In the Constitution of Zimbabwe, this is provided for in Sections 19 and 81. However, the sections are sketchy concerning the right to housing. In most instances, governments flout international law or fail to comply with the treaties they have signed mainly due to resource constraints.

The UN Global Strategy for the Shelter to the year 2000 (GSS), adopted by the UN Commission on Human Settlement broadened the meaning of shelter to include ‘adequate’ concerning privacy, space, security, lighting and ventilation, basic structure, and location about work and basic facilities, all at a reasonable cost. It is this same understanding of shelter that the community of nations affirmed at the second UN Conference on Human Settlement held in Istanbul in 1996. At the Conference, member states committed themselves to provide legal security of tenure and equal access to land to all people, including women and those living in poverty ... ensuring transparent, comprehensive, and accessible systems in transferring land rights and legal security of tenure ... increasing the supply of affordable housing through encouraging and promoting affordable homeownership and increasing the supply of affordable rental, communal, co-operative and other housing through partnerships among public, private and community initiatives, creating and promoting market-based incentives.

¹²⁷ Cf. CESCR, general comment No. 5 (1994), para. 13.

In line with the aforementioned global best practices and international standards on housing, there is consensus that revolves around the universal recognition of the right to adequate housing and the possibilities that the rights regime, in general, presents for eliminating obstacles to the full realisation of fundamental dignity for all human beings (Juma, 2012:472). The current constitutional dispensation in Zimbabwe offers some opportunity for the fulfilment of these expectations and, therefore, the realisation of the rights to adequate housing within the framework of protection underwritten by international human rights law. The nature and content of standards established by international regimes comport well with the constitutional dispensation in Zimbabwe.

Chatiza and Mlalazi (2009:7) note that the MLGPWNH engages UN-Habitat seeking technical support to undertake a national housing needs analysis. UN-Habitat (2013) on sustainable cities and human settlements, presents three possibilities for consideration, that are all closely linked to the title and content of the “Sustainable Cities and Human Settlements”. These include achieving sustainable cities and human settlements; safe, inclusive, productive, and resilient cities and human settlements; and well-planned cities and human settlements. The first core cluster of targets focuses on spatial aspects of sustainable cities by 2030, that is, resource-efficient use of urban land, halve the acceleration of sprawl (urban land cover) relative to population increase and proportion of public space, increase by one third the amount of urban public space over the total urban land area, with particular consideration of urban safety.

The second core cluster of targets focuses on the important unfinished business of the Millennium Development Goals (MDGs) by 2030. The targets, among others, include Urban Slums and Adequate Housing, to halve the proportion of people living in slums in each country towards inclusive and adequate housing and Land Tenure Security, communities and businesses with secure rights to land, property, and other assets, ensure the equal right of women to own and inherit property, sign a contract, register a business and open a bank account. The third cluster of targets focuses on enabling urban policies that are required to achieve many of the targets in the previous two clusters. The targets include Inclusive National Urban Policies by 2030, increase to 50% the number of countries adopting and implementing inclusive national urban policies to coordinate ministerial and sectoral efforts at different levels of government for sustainable urban development, territorial cohesion, and urban-rural linkages; Multi-sectoral Urban Resilience

Policies by 2030, increase to 20% the number of cities adopting and implementing policies and plans that integrate comprehensive measures to strengthen resilience Public Expenditure by Local Government by 2030, and reach a 15% of total public expenditure by local governments.

SDGs for cities are part and parcel of the international obligations guiding the implementation of national housing policies across the globe. There are 17 SDGs in Agenda 2030 and on Liveable cities, SDG Goal Number 11 seeks to ensure that cities and human settlements are inclusive, safe, resilient, and sustainable by 2030 (Finnveden and Gunnarsson-Östling, 2016:5; UN, 2015). The goals include to make cities and human settlements inclusive in management and planning, safe, resilient, and sustainable; to ensure access for all to adequate, safe, and affordable housing and basic services and upgrade slums; strengthening national and regional development planning and substantially increase the number of cities and human settlements adopting and implementing integrated policies and plans towards inclusion. Slum upgrading resonates well with the improvements to the existing structures depicted in the transformative concept; housing is more than the provision and discharge of new structures, it is also about replacement, reconstruction, and expansion of existing units, and housing as a transformational process entails a dynamic on-going and systemic process. SDGs, however, omitted to mention homelessness, forced evictions, and no reference to international human rights standards (Farha, 2019). On the UN goal to improve the world, to ensure to all, adequate, safe, and affordable housing and basic services and upgrading slums by 2030, everything seems to be going backward and the UN is likely not to reach that goal in 12 years¹²⁸. The Habitat III is, nevertheless, monitoring the implementation of the right to housing and following SDGs very closely (cf. Farha, 2019).

3.8 Constitutionalising National Housing in Zimbabwe: Protecting the Right to Housing under the Zimbabwean Constitution

The Constitution of Zimbabwe overarches the entire system of the domestic laws guiding housing development in the country. The dispensation explores some opportunities for the right to shelter and has also created a fortuitous for the protection of property rights and freedoms against unlawful eviction of persons. The content of the right to accessible and adequate shelter is provided for in Chapter 2: National Objectives and Chapter 4: Declaration of Rights; Sections 28, 71, and 74 of

¹²⁸ Cf. James Bayes on Al Jazeera interview with Leilani Farha, UN Special Rapporteur on Adequate Housing.

the Constitution of Zimbabwe. It is a tripartite typology that consists of three types of human rights obligations of the state to ensure adequate shelter, protection of property rights, and detaches from arbitrary evictions. These provisions guarantee, for every person, the right to shelter, property rights, and freedom from arbitrary eviction respectively. Moreover, the Constitution of Zimbabwe obliges the state to uphold these rights and to take legislative and policy measures to achieve the progressive realisation of housing and sustainable housing development. In doing so, the state must take into cognisance the global best practices articulated in various international instruments as discussed under the right to housing and international law.

The new constitutional dispensation has opened possibilities for rights enforcement that the courts, and administrative organs, should take advantage of. It also makes tangible suggestions on how to improve rights litigation in this regard, such as affirming the rights of access to courts and seeking further judicial oversight before any eviction and the promulgation of enabling legislation. It is worth noting that in practical terms, nevertheless, the implementation of this housing law framework as constitutionally enshrined housing rights remains distorted and appear to be failing to adequately respond to the country's realities and complex housing crisis. There is, therefore, a need for contextualising housing rights interpretation about the real challenges characterising state decision-making processes, housing delivery, and planning practices (Strauss, 2017:3).

3.8.1 The Justiciability of the Right to Shelter in the Constitution of Zimbabwe

The Constitution of Zimbabwe has made the right to shelter justiciable through legitimisation of property rights and freedom from arbitrary eviction in the Constitution and binding and compelling the state to protect these rights or else face court action. Justiciable means a case is suitable for the courts to hear and decide on its merits, capable of being decided by legal principles or liable in the court of justice. This entails that in Zimbabwe, the rights concerning shelter are capable of being decided at law; can be legally enforceable and violation by the executive can be reviewed by the courts. Roskin et al. (2006:63) aver that a right is the child of law and something becomes a right only when it is put into a constitution or statutes. Justiciability refers to the ability of courts to adjudicate¹²⁹ and enforce rights. The idea is that a court should be able to provide a remedy if it finds that there has been a violation of the rights under study. Non-justiciable, like in the previous

¹²⁹ Adjudication in line with housing entails settling housing disputes through courts of law (Roskin et al., 2006:307).

Lancaster House Constitution of Zimbabwe, usually embody the rights that fall under the category of matters best left to the executive or state obligations, not individual rights. This also reflects elites safeguarding their interest as espoused in “The Deep State”. Through constitutional safeguards, elites ensure that no major changes in the socio-economic structures would be made. Concerning non-justiciable rights, the courts cannot review or action them based on irrationality or violation of the doctrine of Separation or Fusion of Powers (SOP)¹³⁰.

Justiciability, therefore, refers to the judicial review¹³¹ mechanism that allows an affected party to enforce his or her rights in a court of law. It is also a Constitutional exercise of fully protecting and promoting the enforceability of fundamental human rights by including them in the Bill of Rights of national constitutions. In spite, the constitution of Zimbabwe being in a transformative direction; expanded provisions in the bill of rights, the right to shelter in Zimbabwe is, however, not provided for under the Bill of Rights but under the National Objectives. By the right to adequate housing being omitted in the Bill of Rights that affirms the basic civil and human rights that government may not arbitrarily take away; it implies that the right to housing in Zimbabwe is not full-fledged and is still far from having gained full status or having reached full development (cf. Roskin et al., 2006:63). A justiciable right allows the plaintiff to approach a relevant court to have their rights protected since the courts have such power to enforce the affected rights. Justiciability doctrine, among other elements, includes legal standing/*locus standi*, the content of the right known at law-statute, constitutionally protected right, relevant courts given jurisdiction in presiding over cases, the remedy provided by law, a legally enforceable right, the limitations provided, the law that codifies the right as a fundamental individual right and not just a state obligation, full realisation of rights and the enforcement procedure.

¹³⁰ SOP is a U.S. doctrine that branches of government (the legislative, the judiciary and the executive) should be distinct and should check and balance each other, the executive is seen as a leading offshoot of legislature, found in few other governments. Each branch of government has the authority to restrain the actions of either of the other two branches. SOP is intended to prevent misuse of power by any of the three branches of government (Roskin et al., 2006:60, 257, 258; McClenaghan, 2002).

¹³¹ Judicial review entails the ability of courts to decide if laws are constitutional: not present in all countries. Courts decides whether an act of government oversteps the limits placed on it by the Constitution, courts have the power to review governmental actions and to nullify (cancel) any that are unconstitutional, any that violate some provision of the Constitution. It is a procedure by which the court rules on the constitutionality of a government act and declares null and void or unreasonable those acts it considers unconstitutional (*Ibid.*).

The Constitution of Zimbabwe Sections 28, 71, 74, and the SIs mainly the UCA and Rural District Councils Act (RDCA) make the above elements clear in tracing the right to have access to adequate shelter. It is worth noting that the right to shelter alone cannot be protected as a justiciable fundamental human right because it is not part of the Bill of Rights. The 2013 Constitution omits the right to shelter in the Expanded Bill/ Declaration of Rights. Withal, freedom from arbitrary eviction and property rights are protected. Nevertheless, the right to shelter dovetails with property rights and freedom from arbitrary eviction and this implies a more substantive subordination of the property rights regime to a constitutional rights system. In complex scenarios, however, the right to property and the right to housing collide as they are both protected by the constitution; the inseparability of these rights that appear to be siblings or cousins in the full realisation of the right to housing compromise courts decisions that in a real collision between the right to housing and the right to private property, court orders tend to swing towards protecting the right to property.

The 2013 Constitution of Zimbabwe makes the right to shelter justiciable by providing a ground for a legal standing/locus standi. Locus standi provides a framework for the plaintiff to launch a complaint against unlawful deprivation of persons of their property and arbitrary eviction as enshrined in Sections 68 and 85 of the Zimbabwean Constitution and the Acts of Parliament, UCA and RDCA. The courts can examine the matter concerning its legal framework and how the responded/administrative authority was supposed to act in protecting such a right. Section 68 of the Zimbabwean Constitution codifies the administrative justice rights that are entitled to an individual and Section 85 of the same Constitution further allows the affected party to reclaim his/her right protected in a relevant court of law.

On the same note, though the UCA and RDCA provide the same provisions to the affected party; however, in line with “The Deep State”, the overriding powers of the Minister takes away the rights of citizens to administrative justice by allowing the administrative authorities sometimes or the Minister to act unfairly and unlawfully or exercise executive powers at the detriment of the citizenry. This, in turn, makes it difficult for administrative justice to be justiciable hence there is a need for realignment of Acts of Parliament with the provisions of the 2013 Constitution of Zimbabwe. Section 85 of the Zimbabwean Constitution broadens locus standi and those who can challenge violations of rights include among others, associations, and public interest groups.

The Constitution of Zimbabwe makes the right to housing justiciable by providing content of the right in a law/statute. Content of the statute cement the right to housing by facilitating the propositions that comprehend that right. For instance, Sections 28, 71, and 74 of the Zimbabwean Constitution wholly articulates the content or components of shelter or housing rights given to every person by both the state and all institutions and agencies of government at every level. On the part of UCA and RDCA, it also contains the content of how administrative authorities are supposed to act in the conduct of their duties and functions. Furthermore, the Constitution of Zimbabwe makes the right to shelter a justiciable right by protecting it in the supreme law of the land. In Sections 28, 71, and 74, the constitution provides a guiding framework as to how the right to shelter is supposed to be conceptualised by any court of law, tribunal, or a responsive board dealing with matters relating to administrative issues. Section 85 of the Zimbabwean Constitution gives ground for the enforcement of the provisions in Section 68. In support of the justiciability of the right to shelter, UCA and RDCA provide the content that defines the administrative authority, procedural, substantive, and principles of natural justice.

A justiciable right has relevant courts given jurisdiction to preside over such cases as enshrined in the Zimbabwean Constitution. Several courts in Zimbabwe have been given the mandate to enforce and deal with issues relating to housing and administrative justice. These courts are given in both the Constitution and the Acts of Parliaments, for example, the Administrative Court, Tribunals, High Court, Supreme Court among others play a crucial role in enabling every citizen to have access to adequate shelter. The Constitution of Zimbabwe specifies such provisions of the courts in section 85 (1e), (2), (3) (a), (c), (d), and (4). However, its weaknesses are that it does not specify the type of courts supposed to decide matters relating to the violations of housing rights. More so, the right to shelter is justiciable because there is a remedy provided by law. This stipulates that any adversely affected the right of an individual to the right to shelter can be compensated by a relevant court dealing with the matter. A remedy is a relief that can be granted to the plaintiff by a competent court after assessing and finding it worth that such right has been affected by administrative conduct in pursuance of his/her obligatory functions or outside in a bid to further his/her private interests. Section 85 (1) (e) of the Zimbabwean Constitution states that "...is entitled to approach a court, alleging that a fundamental right or freedom enshrined in this Chapter has been, is being or is likely to be infringed, and the court may grant appropriate relief, including

a declaration of rights and an award of compensation.” As such, the right to shelter has been made justiciable under the Constitution of Zimbabwe as it is part and parcel of fundamental human rights.

The Constitution of Zimbabwe makes the right to housing justiciable by providing the limitations of such a right. Limitations of rights under the Declaration of Human Rights is a principle found in Section 86 that states that a person’s rights can be limited in a fair, procedural, reasonable, and justifiable in a democratic society based on openness, justice, human dignity, equality, and freedom; considering all relevant factors including the purpose of limitation of that right. Section 87 of the same Constitution provides a framework that limits the rights of individuals in public emergencies. Thus, when such a right in concern is compromised, it will be done in a justiciable manner, in openness and democratic manner. The Constitution of Zimbabwe makes the right to shelter and administrative justiciable as a law that codifies the right as a fundamental individual right and not just as a state obligation. A fundamental right is commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being. They are rights inherent to all human beings, regardless of nationality, place of residence, sex, ethnic origin, colour, religion, language, or any other status or matrix. It values humans as equally entitled to human rights without discrimination. The Constitution of Zimbabwe gives such fundamental human rights and freedoms in Chapters 2 and 4 and Sections 28, 71, and 74 that allow persons to enjoy the right to shelter, property rights, and freedom from arbitrary eviction.

The Constitution obliges the state to take reasonable legislative and other measures at its disposal and within its available resources, to achieve the progressive realisation of each of the right to shelter. Enforcing the right to shelter is enmeshed in good governance elements such as fairness, decency, accountability, transparency, efficiency, and participation. The justiciability of rights implies constitutional court making numerous decisions on the constitutionality of laws, conduct, and policy including those about the realisation of constitutionally mandated basic services. Advantages of justiciability include imposing duties on the government to act; regulate progressive realisation processes; citizen/government monitoring, evaluation, and advocacy; media awareness; litigation becomes effective and efficient; civil and political rights become fully realised; compliance with international laws; improves rights literacy amongst citizens; increases the levels

of public trust in public institutions; improves jurisprudence on the interdependence between various human rights, and affords individual's protection in human rights.

3.8.2 Recapitulate of Selected Acts of Parliament and SIs Regulating Housing in Zimbabwe

About the Acts of Parliament, the legal framework undergirding housing in Zimbabwe can be subcategorised into rural councils and urban councils. For this study, more emphasis is on the framework for urban councils considering the case in question; the Harare City. It is beyond the scope of this study to dwell on Rural District Councils; the research, therefore, focused more on Harare Urban Council. Withal, it is important to engage the urban, provincial, local, district, and rural authorities as they play an essential role in planning and housing development. Though housing is spread in both rural and urban, the focus is on urban housing with specific reference to Harare.

The legal framework forces local authorities to operate according to a strict *ultra vires* doctrine and points towards the 'omnipresence' of the central government in the actual operational discharge of local authority functions (de Visser et al., 2010). The institutional and regulatory framework governing low-cost housing development in Zimbabwe and defining the modus operandi of the Local Government sector apart from the Constitution include the Local Government Law (Urban Councils, Rural District Councils, and Traditional Leaders Acts, hereinafter referred to as UCA and RDCA respectively); Land Law (Land Acquisition, Land Survey and Deeds Registration Acts); Environmental Management Act; Regional, Town, and Country Planning Act (RTCPA) [Chapter 29:12] (1976 revised 1996); Model Building By-Laws; Building Societies Act; Acts governing professions (Architects, Engineering Council, and Quantity Surveyors Acts); Housing and Building Acts; and Housing Standards Control Act (HSCA) [Chapter 29:08].

The RTCPA guides the planning of regions, districts, and local areas (Chaeruka and Munzwa, 2009:18). The Act authorises the preparation of plans concerning the allocation and management of land for housing. In line with this Act, the SI 216 of 1994 effectively authorised non-residential activities in residential areas in a bid to lessen the effect of the Act. As a result, Harare, like other cities, became chaotic. Housing development went into a go-slow to meet lower ceilings as SI 216 of 1994 compromise adequacy due to the relaxation of requirements. This implies that the

sprawling of cities is not unique to Harare; it is peculiar to the capital and yet can be detected in many other contexts. The UCA, among other things, provides for the management of urban settlements concerning housing provision and development.

It is pivotal and integral to note that the Act contains excessive powers of the minister as espoused in “The Deep State”. Councils in the past have failed to effectively carry out their mandate because of the power of the minister to veto any decisions they make, and the minister consistently utilised these powers to overturn decisions made by councillors. Behind the powers of local authorities, there are concealed, or obscured, and more serious problems posed by the executive dominance. The minister has a high degree of discretion over urban regulations including control over housing. For instance, in the RDCA alone, there are more than 250 instances where the Minister can intervene in the day to day running of Rural District Councils. Like in the case of Rural District Councils; there is simply too much of the “Minister shall” concept in the UCA and the Zimbabwean local government in general. This has entrenched excessive central executive intervention. In this regard, local councils enjoyed delegated authority and thus follow government, and by extension, political party lines that are a classic recipe of “The Deep State”.

ZLHR (2015:9) advances that several members of councils have also been dismissed arbitrarily and on party lines at the whim of the minister. The excessive powers of the minister in the local government laws curtail smooth allocation of land and housing development in a systematic and non-partisan manner; devolution of power and security of tenure for mayors and councillors. The Act also omits provisions on devolution of power as provided for in Section 264 of the Constitution to empower councils to take more control and responsibility for their works and activities. The Act does not provide for additions to reflect the socio-economic rights obligations of councils. There is no inclusion of set frameworks for councils to implement progressive realisation of social and economic rights such as the discharge of certain services like housing. Against this backdrop, there is a need for realignment with the new constitutional dispensation.

The Land Acquisition Act (LAA) [Chapter 20:10] largely covers the acquisition of rural land for either redistribution, social and economic infrastructure development, or for incorporation into urban areas for urban uses, for instance, land acquired in peri-urban areas during Zimbabwe’s FTLRP and earmarked for urban incorporation. Consistent with “The Deep State”, gerrymandering

is endemic with the urban boundaries being politically manipulated to create more electoral constituencies through the incorporation of the rural into urban. The HSCA and Model Building By-Laws constitute the policy instruments governing superstructure (housing unit) development. It enables the government to deal with buildings of unsatisfactory standards, issues of overcrowding, and control of harmful use of premises including the protection of the rights of neighbours.

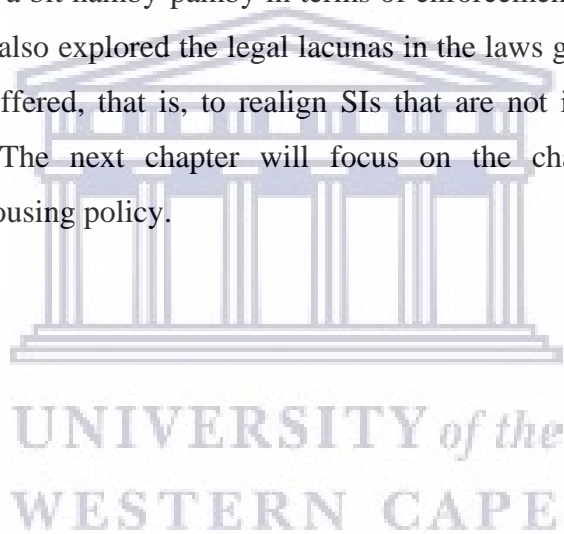
However, consistent with “The Deep State”, dealing with unsatisfactory, nonstandardised, and illegal structures is rather a complex political struggle as demolitions are usually marred by selective inclusivity or marginalisation by inclusion; there are subjective interpretations and selective application of the law by elites in trying to protect their interest like in the case of Operation Murambatsvina in Zimbabwe that protected elite suburbs. The HSCA defines the room size, council powers to monitor housing development and to order demolition where necessary. Housing and Building Act establishes the Housing and Guarantee Fund (National Housing Fund) that benefits civil servants and non-civil servants for purchasing or construction of houses. The National Housing Fund is financed through money transferred from the Housing and Guarantee Fund, money appropriated for the purpose by Parliament, interest or rent received from financial resources and properties owned by the Fund, and commission for fund-guaranteed mortgages guaranteed by the fund.

Moreover, though Gazetted Lands (Consequential Provisions) Act (GLA) [Chapter 20:28] is not directly linked to housing, it provides with some Sections that dovetails with the discharge of housing. Withal, the Act embodies provisions that criminalise continued occupation of gazetted land to ensure that the right to shelter is guaranteed for those affected, and who do not have alternative housing. There is no clear law or policy on how to deal with former farmworkers who continue to be prosecuted for occupying gazetted land, although they have not been relocated. This results in the continuous arbitrary evictions of such communities and there are no provisions for consultations and compensation. The far-flung effects of the FTLRP are evident in this respect as the homelessness and destitution of former farmworkers is a by-product of land reform. Overall, there appears to be a “weak link” if not a “disconnect” between Acts of Parliament undergirding low-cost housing in the Zimbabwean Local Government cluster and the fundamental law of the land. Therefore, there is a need for realignments with the new constitution to ensure that no one is

subject to arbitrary or forced eviction or violation of property rights or the infringement of the right to shelter for all persons.

3.9 Conclusion

This chapter presented the municipal and international law informing the realisation of housing rights. From the preceding discussion, it can be concluded that the right to housing is well protected under international law, mainly the ICESCR. The key lessons from the recent decisions establish a *terminus a quo* of the realisation of the right to housing. However, an adaptation of international law to intimate relations between the ICESCR and legal principles at the national level is on a low note. In other words, domestication is taking longer than expected. Moreover, the right to housing under national objectives is a bit namby-pamby in terms of enforcement when it is not under the Bill of Rights. The chapter also explored the legal lacunas in the laws governing housing. Policy recommendations were proffered, that is, to realign SIs that are not in tandem with the 2013 Constitutional landscape. The next chapter will focus on the challenges obstructing the implementation of public housing policy.



CHAPTER FOUR: THE 'HOUSING CHALLENGE': AN OVERVIEW OF THE OBSTACLES MILITATING AGAINST HOUSING POLICY IMPLEMENTATION

4.1 Introduction

This chapter details a global overview of the growing housing crisis and the steep challenges faced in the implementation of housing policy. The discussion focuses on housing as a public policy than housing as a fundamental human right. This does not necessarily mean that housing as a policy or housing policy collide or cannot be equated with housing as a human right or housing law. Housing is more than a policy issue. It is a fundamental human right. However, it is centripetal to comprehend challenges housing grapples with as a policy as well in an endeavour to explain encumbrances obstructing the flow, realisation, and implementation of the human right to housing. Policy implementation is accompanied by an interplay of obstacles that embody a lack of technical soundness, fiscal quagmire, economic malaise, political rifts, and diversity of policy-makers. If policy adoption is courtship, then implementation is marriage (Weimer and Vining, 2011:286). Not all courtships are successful, and they are problems associated with the implementation of a marriage agreement. The chapter, as a comparative study, traces the commonalities and divergencies concerning the housing crisis among different countries. The chapter also discusses factors hindering the implementation of housing public policy; that is housing challenges and lessons from the global discourse, the Global South, and the Far East (Middle East) with little Global North references.

4.2 Public Policy Implementation

Gerston (1997:97) postulates that implementation represents the conscious conversion of rhetoric or policy plans into reality; if one visualises a seesaw with policy formulation at one hand, implementation is the balance on the other side. In line with this, the implementation process is an operational phase where policy is translated into action. Policy implementation is simply putting the decision into practice (Howlett and Ramesh, 2003:153). Technically, this is the doing part of public administration. Policy implementation involves the translation of policy decisions into specific courses of action, major actors being administrative agents, courts, legislature, inter alia Fenna (1898:63). The translation of plans into practices can, therefore, be extrapolated. Policy-making does not end with the passage of a law by parliament but adopted policies must be executed. Implementation is the “follow-through” component of the public policy-making process

(Gerston, 1997:95). Hayes (1992:2), posits that implementation consists primarily of the execution of policy. Smith and Larimer (2009:263), point that implementation is the process by which policies enacted by the government are put into effect by the relevant agencies. Implementation, therefore, entails a continuation of directives orchestrated by government institutions and decision-making authorities. More so, closely related to the complexity concept is institutional hybridity and multiplicity at the implementation stage of a policy cycle. A bewildering mix of factors and parties is involved in urban land management and often leads to duplication, contestation, complexity, incoordination, and confusion over roles.

4.2.1 Implementation Stages

The implementation stage from several stages in the ‘stagist’ heuristic of policy cycle has sub-stages. Burke et al. (2012:5) advance that implementation has four stages, exploring and preparing activities; planning and resourcing; implementing and operationalising; and business as usual. The first stage of exploring and preparing entails consultation with stakeholders. Concerning the implementation of housing policy, this can be equated to viewing citizens as rights holders who must be included in decisions that affect their lives; as active and empowered subjects in a participatory process, and re-envisioning their community among themselves. Planning and resourcing are about assigning responsibilities and preparing activities to ensure that the necessary structural changes are in place to incorporate the policy. This is in tandem with Gerston’s (1997:97), notion that implementation represents the effort to put policy-making effort into place. Resourcing is, however, compromised by clawback clauses and considering the “The Deep State”, elites might not want to tie themselves to providing housing as it is susceptible to manipulation for profiteering purposes with some elites defending the long waiting list; reducing the housing list is seen as a threat to private motivation. Furthermore, implementing and operationalising as noted by Burke et al. (2012:8), include, among other things, providing on-going coaching and assistance to staff; monitoring on-going implementation; and creating feedback mechanisms to inform future actions. This stage is guided by the implementation plan. In the fourth stage, the policy is mainstreamed and fully operational. It has become culturally embedded and outcomes are ready to be evaluated (Burke et al., 2012:8).

4.3 ‘Implementation Failure’: A cataclysmic deterioration of cardinal elements in the housing system

Public policies, though well-crafted and with clear policy pronouncements, are sometimes fraught with several obstacles and suffer on the seedbed of implementation, leading to ‘implementation failure’ (cf. Gerston, 1997; Weimer and Vining, 2011). Contemporary scholarly works of different authors, writing from different angles and disciplines indicate different diagnoses of the challenges affecting the provision of housing, the world over, and have been dominated by several broad themes. The commonly cited and the most salient patterns among others; that many countries share are: colonial legacy, institutional bureaucracy, urbanisation and migration leading to huge housing backlog and very long waiting lists, economic challenges, political instability, and politics around centre-local relations levels of government leading to policy inconsistencies and formalising the informal (Aldrich and Sandhu, 1995; Burgoyne, 2008; Dhladhla, 2014; Khan and Thring, 2003; Keohane and Broughton, 2013; King, 2009; Landau, 2016; Le Roux, 2011; Merrill et al., 2006; Mnisi-Mudunungu, 2011; Moyo, 2014; Pressman and Wildavsky, 1973; Ranson, 1991; The South Africa Department of Housing, 1995; Thompson and Bidandi, 2013; Tibaijuka and Janneh, 2008; Van Westen, 1995; Zamchiya, 2014; Bidandi and Williams, 2017). Even though these trends are typical of many developing countries, variations are evident and counterarguments characterise these analyses.

4.3.1 Migration - Rapid Urbanisation Nexus

The themes show a consensus by different scholars about a myriad of challenges and factors hindering and plaguing the implementation of housing policies across the globe. It is noteworthy that these challenges evolve and are transformational. The African housing shortage is not a new phenomenon, but it has been growing; whichever figures are accepted, all the evidence indicates a rapid increase in the backlog (Hendler, 1988:2). Many scholars acquiesced that the problem of housing as a social policy is of huge backlog, that is typical in many developing countries (Moyo, 2014; Burgoyne, 2008). Slum housing is widespread given the rate of urban population growth and such problems are not confined to any one region of the world (Ranson, 1991:2). Hansen and Vaa (2004:9) note that there is a vast gap between the number of housing units produced by the formal sector and the growth of urban populations in most African cities. For Van Westen (1995:20), urbanisation is the most pervasive spatial phenomenon affecting the globe. Le Roux

(2008:2) described this problem as a “wicked problem”, implying that it can never be fully resolved or there is no ultimate solution as highlighted in complexity. Grindle (1980:166) described it as a permanent huge housing backlog. The challenge of housing policy given the huge backlog becomes unending. Wicked problems as elucidated in the ‘Increasing Complexity of Problems’ construct by the researcher in Chapter Two imply problems that are obstinate to any concerted efforts to address the challenges confronting a policy. Complexity explains why the housing crisis is recurrent and perennial.

Rural-urban migration due to the underdevelopment of rural areas in most of the low-income countries is also one of the acute challenges driving the housing crisis. Erasing the backlog with finality when dealing with ‘wicked problems’ like housing has proved to be problematic because of population ageing. Aldrich and Sandhu (1995:256) argue that solving the housing problem is a question of definition to a certain extent, and acceptable standards tend to be moving all the time. This is in line with the transformative and complex concepts as the housing challenges evolve and are transformational. The problem is intergenerational with a limited successful way to address it. Khan and Thring (2003: xxvi) note that housing delivery falls short of meeting new demands and backlogs. Rittel and Webber (1973:160) detail that social problems are never solved; at best they are only resolved repeatedly. Efforts to address the problem are characterised by complexity; solving, resolving, and solving again without one leap forward. This is in line with the transformative concept; few changes are truly transformational; while there are changes, not all change is transformation.

Albeit good governance, “The Deep State” elements or unforeseen events in the legislative framework and public policy sphere always keep the housing backlog afloat in many developing countries. Aldrich and Sandhu (1995:294) argue that these problems impede making land available to the right people, in the right places at the right time because of the standards moving all the time. Urbanisation and population growth compound housing challenges in Africa and Asia (Burgoyne, 2008:43). Tibaijuka and Janneh (2008:22) note that this challenging trend of the rise of the urban population is typical of many developing countries. The challenge of rapid urbanisation is a commonality and a recurrent feature in the housing literature. Muchadenyika (2015) notes that the rapid population growth and the existence of slums demonstrate the extent

and magnitude of the housing challenge in Africa. Population change had dramatic consequences in local governments the world over (McClenaghan, 2002:725).

Besides the enormous size of the housing backlog, the South Africa Department of Housing (1995) attributed the proliferation of slums to desperation and impatience of the homeless thus the growing frustration at the snail's pace of development results in the booming of shacks. The waiting list system creates a legitimate expectation-like in housing development. Withal, the chameleon-like-style of housing delivery that appears to be mainly for the rich and creating elite hegemony increased urban dissatisfaction; made the people not to wait any longer but to resort to adaptive preferences for self-help housing. In line with the transformative concept, this explains how marginalised organise alternative services pertinent to their lifestyles. The informal settlements in Harare, Zimbabwe, have been growing primarily because of the inability of the local council to provide land for housing and expediting housing units at a rate that is in sync with the increasing demands. The existing housing-related laws and policies provide for centralised and proscriptively interpreted institutions and procedures that appear ill-adapted and does not comport well with the current challenges. The system is overly bureaucratic with decisions and processes taking longer, that makes the right to access low-income or affordable housing complicated and complex. This implies that the waiting list is too cumbersome and delay prone with long gestation periods for the formulation of projects; approval and actual commencement represents a duplication of bureaucracy and a "sclerotic" administrative structure.

4.3.2 Institutional Decay and Policy Inconsistencies

Hansen and Vaa (2004:84) note that unfavourable state laws and policies, the poor performance of municipalities or municipal and/or planning failure on incompetence, and declining opportunities prompt urban residents to develop alternative solutions such as circumventing official channels and regulations. Ha (1987:29) notes that people in the long queue waiting to be rehoused in government housing would think otherwise. The snail's pace of land development results in the mushrooming of unauthorised squatter settlements everywhere (Ha, 1987:62). In line with the transformative concept, delays result in people resorting to adaptive preferences for self-help housing. Soto (2001:167) avers that laws can become so cumbersome that they can constitute a major stumbling block for the populace who want to secure housing and thus breakout of their

status as 'squatters'. This means housing chaos as it is patchily implemented through 'gut-filling'. Squatters are a complex and transformative symptom of modernisation; a natural by-product and essential in the complementary process of urbanisation and consequently, the implementation of housing.

More so, tight controls and restrictions encourage illegal settlements and can push people towards unauthorised channels; restrictions can be counter-productive and ineffective – long waiting list can push people who want to stay within the law towards illegal channels. It has created a system forcing families to prove desperation. This explains why illegal settlements emerge as a transformative and complementary process to people's lifestyles. Only a minority of home seekers consider acquiring a house legally after years of chasing affordable housing. When housing policies or the obligation of the state to implement the right to housing become too restrictive, they left home seekers with few options. Squatters are an exhibit of families and individuals who cannot keep up, resultantly, as elucidated in the transformative concept, families organise alternative services like self-help housing pertinent to their *modus vivendi*. Legal processes are lengthy and costly, often long and may be further complicated by the misalignment of powers and functions concerning land development that cut across national, provincial, and local governments (Lester, 2017:2). More stringent regulatory requirements have pushed people out of the queue, resulting in unintended consequences.

4.3.3 Political Interference

Political instability is another challenge militating against a sustainable trajectory in the urbanisation processes. Ha (1987:6) notes that political systems and institutions in developing countries have been characterised by greater instability. The lack of political stability is recognised as one of the major problems of development. Unstable political systems and institutions critically affect the process of formulating and implementing housing programmes. Pugh (1980:286) notes that the quality of housing performance depends on the character of institutionalisation. In Nigeria, planning inconsistency and organisational structures of public housing policy result from political instability (Mnisi-Mudunungu, 2011:9). Tibaijuka and Janneh (2008:60) assert that civil war and ethnic violence have undermined the smooth flow implementation of housing policies in Southern Sudan. Tibaijuka and Janneh (2008:125) further note that in East Africa, central authority is typically weak, if existing at all; housing service delivery is therefore minimal. Aldrich and Sandhu

(1995:312) note that change of governments has a major effect in formulating the housing policy within the country; back and forth results in flip-flopping and complexity. Closely related to this is poor quality implementation. Most of the houses built in a politically unstable environment are of poor quality (Mnisi-Mudunungu, 2011:15). This is also in line with the allocation of stands or plots that are not serviced (Tibajjuka and Janneh, 2008:22). Khayelitsha and Langa in Cape Town, South Africa, are graphical examples of poor implementation of housing policy (cf. Thompson and Bidandi, 2013). Instability results in the construction of temporal and smaller houses of dubious quality, that are far from being acceptable in respect adequacy in the implementation and realisation of the right to adequate housing.

Additionally, political realities are also other factors hampering the smooth implementation of housing. Housing is a highly politicised social policy (Burgoyne, 2008:25, Muchadenyika, 2015). Consistent with elitisation and “The Deep State”, Aldrich and Sandhu (1995:22) note that competition among political elites has often increased the power of squatters, as they can use political pressure to obtain greater tenure guarantees or more services to their areas. Aldrich and Sandhu (1995:22) argue that the cynical exploitation of the housing and service needs of slums and squatters for political gain has been widespread. In Lusaka, Zambia, this suspicion emanates from the erosion of trust and confidence due to inactions towards the corrupt housing officials. Chiweshe et al. (2013:37) note that the urban population in Harare has little faith in local government processes due to multiple land allocation; also, the legitimate expectation in the formal channels has been shuttered by the waiting list systems that proved to be useless; there is no information on who manages the whole process of urban land allocation and it also seems to be an easy process for the rich. Considering “The Deep State”, elitisation and hidden agendas by high-ranking officials are frustrating progress in the implementation and realisation of the right to housing. In other words, when people think of urban housing, they think of land barons since it is a hustle to get land for housing through the waiting list system. The land acquisition process is facilitated by political connections on part of the groups who negotiated the sale on behalf of individuals; intermediaries are extremely common, and this role is played by political group leaders (Lombard, 2014:40), thus making housing and the urbanisation process more complex. In some instances, one cannot have a house without having canny Machiavellian skills and tact to navigate multiple rationalities.

Considering the uneven pace of housing sales, even individuals and families who can purchase are not rushing to buy as the housing system is characterised by uncertainty, complexity, and no longer reliable source for housing based on professional ethics (cf. Sullivan and Power, 2013; 300-301). One cannot just go and buy a piece of land anywhere and build on it (cf. Goodfellow, 2013:90). Local authorities seek to keep an equipoise between the waiting list and the housing demand but to little avail; new applicants join the waiting list system even if it means being waitlisted forever. The waiting list is supposed to create an ample way for planned development and land use planning is supposed to be aligned to the waiting list system; nevertheless, its inefficiency undermines the possibility of rational planning. Rationale planning now shows reflections on short cuts and compromises. This implies “accommodationist” policies trying to compromise with the rise of demand. People end up taking over for themselves as they are fading up with the inefficiency of the formal channels. As espoused in the transformative concept, people end up organising exit strategies for themselves. Following proper housing and service delivery processes have failed the ‘backyarders’ for years to no success and they have been exposed to squatting as the only way to go. Owing to this ineffective waiting list system, questions emerge from this pattern that is: Why do people have to engage in queue jumping? Is it that people do not have patience? Is the waiting list system only for the poor? The inefficiency of the waiting list system, however, results in self-help, a transformative and complex symptom of modernisation, and an essential element in the process of urbanisation. Home seekers keep waiting until they cannot wait anymore.

Consistent with “The Deep State”, the waiting list system is not an expressway unless for the politically connected people thus people end up in the informality¹³², that undermines the possibilities of rational planning (cf. Roy, 2009:80). Informal settlements are bound to occur but, while using the legal route to acquire land for housing may be appropriate; it is not an easy go. Where urban citizens feel state institutions failed them, unplanned and uncontrolled settlements and anarchic growth can be seen as a more effective tool for housing than formal channels. This results in people improving their housing standards for themselves without relying on the government. Aldrich and Sandhu (1995:295) supported this notion by giving exemplification of

¹³² Informality concerning urban development and planning is a state of deregulation where the ownership, use, and purpose of land cannot be fixed and mapped according to any prescribed set of regulations or the law; it is inscribed in the ever-shifting relationship between what is legal and illegal, legitimate and illegitimate, authorised and unauthorised (Roy, 2009:80).

the scarcity of good governance in Pakistan. Aldrich and Sandhu (1995:312) note that political will can encourage/discourage housing production, either formally or informally, within the country. King (2009:7) avers that housing is part of a wider set of relationships between government and individuals, that is the domain of political economy. King (2009:84) further notes that a historically common agreement is that housing consumption is politically acceptable. However, consistent with complexity, some policies provoke resistance primarily in the bureaucratic arena because they impose costs mainly on state actors and are administratively complex (Goodfellow, 2013:85).

4.3.4 A House Divided: Politics of Centre-Local Relations Levels of Government

Centre-local relations that are at two polar-opposites are also at play in destructing the implementation of housing policies. Tibaijuka and Janneh (2008:22) note that inconsistencies between central and local government roles and responsibilities plague the implementation of housing. Issues of effective decentralisation are at stake as there is a lack of coordination between central and local government due to inter power party politics resulting in delays; a classic recipe of “The Deep State” and complexity. Tibaijuka and Janneh (2008:60) state that important local-level decisions are still being taken at the cabinet and ministerial level and must be approved by the president or king in the case of Morocco. Tibaijuka and Janneh (2008:123) further note that decentralisation has not come into effect because of national governments’ fear of strong opposition. Opposition parties at the national level have a majority of the elected urban councillors as in the case of, among other cities, Kampala, Uganda; Lusaka, Zambia; Harare, Zimbabwe and Cape Town, South Africa. Dar es Salaam also provides a useful illustration of this dynamic (cf. Fox, 2013:20). As a result, the national presidents will be in ‘foreign’ political territory. With a changed and shifted political economy, this makes presidents less fashionable because they will be precipitating into a political cadaver. This situation has deep repercussions for revenue allocation (cf. Fox, 2013:20). Against this setting, and in line with “The Deep State”, political manipulation through an invisible hand is relentlessly well entrenched and rampant as the central government often seeks to sabotage oppositional influence through distributing land for housing.

In cities where the national ruling party has no political control, local politics and governance are largely subsumed by national politics (Fox, 2013:20). In the case of Congo-Brazzaville, Hansen, and Vaa (2004:12) note that during the recurrent upheavals since the early 1990s, political conflicts

have become urbanised, fueling the informalisation of services. Urban areas in Zimbabwe are shaped by multiple factors, macroeconomic and political factors including the strong influence of informality shape cities and towns (DFID Zimbabwe Country Engagement Report, 2017: i). Multiple factors resonate well with complexity in the understanding of the housing crisis. King (2009:75) cited the 2003 dispute over households building targets in the south of England when a Labour central government insisted on certain numbers of new dwellings in high demand areas, many of which were under conservative control. King (2009:75) states that planning and implementation take place at different levels; central government plans, legislate, and dispenses finance, local authority implements hence there is a possibility of political conflict, divergence of interest, and misunderstanding and misinterpretation because of local interest or different political control. There is not necessarily a shared interest across all levels (King, 2009:75).

4.3.5 Economic Challenges

Housing crises can also be attributed to economic realities, that is, poverty and unemployment, economic realities stall housing development. The proliferation of slums¹³³ can be widely attributed to economic challenges (Dhladhla, 2014). Poverty-fueled informalisation is rampant due to economic realities. Tibaijuka (2005:25) notes that the explosive growth of squatter settlement is a characteristic of African cities. Aldrich and Sandhu (1995:20) describe over-urbanisation as a situation of more urban workers than urban industrial jobs. Fox (2013:5-9) postulates that slum settlements grow to accommodate labour migrants, but the link between urban population growth and urban economic growth is tenuous, particularly in Sub-Saharan Africa, that experienced two decades of “urbanisation without growth” as population growth outpaces economic and institutional development. Slums are a manifestation of land and housing market failures arising from demographic, economic, and institutional factors (Fox, 2013:5-9). Eliticisation and financialisation of housing through the lenses of “The Deep State” and complexity is also a factor

¹³³ Slums, also referred to as ghettos, townships or shacks are overcrowded and over-urbanised substandard settlements, mostly informal and backyard extensions with limited or no health and safety standards for salubrious housing. Slums lack all the tenets/elements of ‘adequacy’ i.e. peace, security of tenure and dignity. People living in slums live-in life-threatening places, close to railway lines, underneath power lines and underneath rocks that could fall (cf. Tissington et al., 2013; Farha, 2018). There is also inadequate/absent insulation, ad hoc electrical wiring, poor drained sites expose occupants to serious health and safety risks and increasing fire risks (cf. Gurran et al., 2018).

at play in the proliferation of slums. The transformative concept also helps to justify slums as exit strategies in a response to government failure.

In another more complex scenario, Aldrich and Sandhu (1995:138) note that recipients of housing grants in Costa Rica often sell their lot and houses at considerable profit, return to their rural area of origin, only to come back to the city sometime later, once more eligible for a subsidy. This vicious cycle in the housing problem explains complexities embedded in the study and analysis of the housing crisis. In other words, this implies that poor people enjoy being poor. This is also rampant in South Africa where the beneficiaries from RDP houses misuse the houses by renting out and/or to make matters worse and housing more complex, sell the house and go back to the shacks¹³⁴. As a result, housing problems continue to worsen. Farha (2019) described this as the new financialisation of housing through short-term rental platforms. This is consistent with Tissington's et al. (2013:7) argument that in reality, it appears that a very high percentage of people who receive state-subsidised houses engage in informal transfers, either renting or selling their houses for cash, and move back to shacks in backyards or informal settlements to be close to economic and social opportunities. Rich people are using the units as investment vehicles rather than places to live and short-term rentals take units off the market. Emerging question emanating from this pattern is: Does the existence of squatters about a housing crisis or it is a means of qualifying for more social housing opportunities?

Though short rental housing facilities are market mechanisms, they are also a critical path in the provision of housing if there are regulated by the state to ensure affordable renting; housing can be through homeownership, rent accommodation, and public/subsidised housing. Aldrich and Sandhu (1995:130) note that in Costa Rica, urbanisation occurred together with an increase in poverty and inadequate housing. In the case of Cuba, Aldrich and Sandhu (1995:256) argue that the problem of urbanisation and demographic growth was inherited from the pre-revolutionary period, as an economically difficult period obliges the Cuban state to cut its traditionally very generous budget for social expenditure drastically in 2000. Housing policy converges between economic and demographic developments (Boelhouwer and Van derHeijden, 1993:373). Aldrich and Sandhu (1995:293-4) further note that as a result of colonial exploitation in Zambia, the lack

¹³⁴ The Human Settlements spokesperson, Lwandile on SABC News, 29/05/18, Government Houses are not for sale within the first eight years of allocation.

of economic development means that the housing, that is built and improved, is never maintained and the cyclical process continues when there is no change in the political and economic situation. The housing sector remains constrained, with the lives lessened and threatened. Housing challenges evolve and are transformational.

4.3.6 Institutional Bureaucracy

There is a consensus by different scholars about the bureaucratic hurdles stalling the implementation of housing policies across the globe. Edwards 111 (1980:50) described the bureaucracy as “a 700-pound marshmallow” ‘you can kick it, scream at it, and cuss it, but it is very reluctant to move’. In line with this, Gerston (1997:96), notes that the reluctance of an assigned government unit to carry out the legal directive of another unit shows the tentative state of implementation. This results in a lack of timely and immediate action due to red tape (Weber, 2002:156). Bureaucracy is not an engine for policy implementation (cf. Moyo, 1992:116). The main causes of bureaucratic tardiness date back to the ineffectiveness of colonial institutional frameworks. Bureaucratic pathology can be attributed to the adoption and influence of colonial public administration structure designed to meet the needs of a minority. A raft of literature attributes the challenges in housing as a spinoff of colonialism. There is no doubt that the unjust legacy of the past has left some deep scars on the South African society, visible in the form of land ownership for development and affordability that is a serious bottleneck to the implementation of the government housing programme (Mnisi-Mudunungu, 2011:9). Housing implementation is slow as a result of an extremely complicated bureaucratic administrative, financial, and institutional framework inherited from the previous governments (The South Africa Department of Housing, 1995). What makes the already slow practice even more complex are the inherent interdependencies, where no one party is likely to act on their own without affecting the others thus challenges are exacerbated by the complex constitutional powers and functions assigned to different spheres of government (Lester, 2017:2). Inherent interdependencies result in an implementation chain with multiple parties and discrepancies in direction. Housing policy has been subjected to several levels of authority (cf. Daniell and Kay, 2017:233; Kay, 2006). Having too many players, institutional hybridity, multiplicity, and complexity spoil the smooth implementation and realisation of the right to adequate housing.

Legal processes and challenges may increase and further delay the desired urban spatial transformation; it is a strain on the already limited technical capacity at the municipal level. This has led to the emergence of inconsistencies. The institutional framework for land administration in Zimbabwe is fragmented, with overlapping responsibilities and poor coordination, the corruption vulnerabilities presented by such conflicted and contradictory policy and institutional frameworks derail housing implementation from its intended course (Chiweshe et al., 2013:11). The local government is facing challenges of overlapping and unclear responsibilities; the responsibilities of national and local governments are complicated (cf. UN-Habitat, 2014). Housing policy does not engage with the question of land rights due to contradictions in government ministries, for instance, the Ministry of Lands and MLGPWNH (cf. Huchzermeyer, 2003:83). It created a system that creates perks for officials in the position of power. Land for housing is therefore susceptible to corruption in the context and nature of its overall governance and management (Huchzermeyer, 2003:83). Consistent with complexity, Tibaijuka, and Janneh (2008:147) note that national policies to finance the delivery of housing must be understood in the context of broader political processes and historical legacies.

Huchzermeyer (2009:59) notes that unauthorised occupation of contested land, usually with non-adherence to land use and building regulations adds to the factors derailing and obstructing the implementation of housing policy. Aldrich and Sandhu (1995:256) note that bureaucratic hurdles in the case of Cuba are some of the recurrent problems of real socialism that the central state can guarantee welfare to everybody. This reveals that in the socialist world like China and Cuba, bureaucratic trajectories differ from the other Global South countries. Aldrich and Sandhu (1995:278) note that poor housing conditions in China were historically determined as a socialist policy and helped to shape the permanence of the relatively poor living conditions. Aldrich and Sandhu (1995:281) described this as people's tolerance for poor conditions in China with an aspiration for a better society. Aldrich and Sandhu (1995:294) aver that in Tanzania, problems of new squatter housing are outpacing the upgrading given the long bureaucratic process of planning, surveying, and servicing. Emblematic in complexity, this circuitous procedure adds to the long waiting list and resultantly housing crisis. Aldrich and Sandhu (1995:296) argue that in India, bureaucratic red tape, corruption, and lack of a clear understanding of the problem prevented

implementation. In Tanzania, the bureaucratic procedure of planning, surveying, and servicing of plots and red tape in allocation is a big challenge (Aldrich and Sandhu, 1995:343).

4.3.7 Resource Constraints

Budgetary malnutrition, that is, insufficient state resources, cannot be spared as one of the factors impeding the effective realisation of housing rights (Burgoyne, 2008:43; Dhladhla (2014). Imurana (2014:200) notes that implementation is restricted by the weak extractive capacity of the state concerning the economy and by the dissipation of public resources through corruption. Policy actors both at the top level and at the field siphon financial resources to satisfy themselves. In the end, the system is weakened, and the formulated policies are unable to achieve their stated goals (Makinde, 2005). Lack of resources can undermine the objectives set forth by decision-makers. Gerston (1997:113) therefore avers that inadequate resources are a virtual guarantee of the programmatic disaster at the point of implementation. Furthermore, Lindblom (1980:64) notes that the mere size of government efforts at administering or implementing policy poses staggering problems of arranging cooperation. The largesse of government effort at the national level obviates the above notion. Tibaijuka and Janneh (2008:147) note that lack of finance for housing and broader urban development processes is central to the housing crises in Southern Africa. Aldrich and Sandhu (1995:126) argue that housing competes for finance and is not usually seen as a productive investment; it is the military that frequently represents a disproportionate share of the central governments' budget. In line with "The Deep State", there are invisible variables directly impacting the implementation of housing policy; housing competes for finance and in the central government budget, it is not usually seen as a productive investment by elites; they ascertain where to commit resources. King (2009:130) notes that social housing does not win many votes at the national level. Aldrich and Sandhu (1995:300) argue that there is a limited public Budget allocated to housing investment in Egypt. Khan and Thring (2003:169) observed declining subsidy values and housing budgets and attributed the failure to decrease large housing backlog to insufficient funding. Hansen and Vaa (2004:12) argue that the lack of appropriate finance systems makes it difficult for government authorities and municipal councils to meet the low-income population's demand for land and housing.

4.3.8 Policy Inconsistencies and Formalising the Informal Settlements

Several scholars acquiesced that there is the informalisation of cities as a challenge in the implementation of housing. Cities are becoming ugly and sprawling as a result of the uncoordinated informal settlements. Cities are becoming comfortable with the uncomfortable. Since local councils are now operating informally, Muchadenyika (2015) described this as formalising the informal in Africa, unlike other scholars who attributed the growth of informal settlements to population ageing. Consistent with “The Deep State”, Tibaijuka and Janneh (2008:115) attributed this to a lack of political will to address issues of informal settlements that are often politicised in party lines, current in election years and forgotten as soon as the ballot count is complete. The constant election cycles exacerbate short-term planning and result in the perpetual process of adjusting. Electoral pressures make planning a very complex process.

In the same vein, an election year provides an opportunity that impacts housing policy (Ammann, 2004:153). For instance, Hatcliffe in Harare was affected by Operation Murambatsvina of 2005; the same year after 31 March parliamentary elections; the same government that demolished houses made a somersault and gave people a go-ahead to rebuild houses and construct roads possibly as a move to gain popularity and support. Resultantly, shacks were re-erected. Fox (2013:20) in concurrence with Goodfellow (2012) notes that a notable feature of postcolonial African politics has been the emergence of populist political parties in urban areas that cultivate support among the neglected urban poor as many African cities are dominated by opposition political parties; this results in political wrangling between central government and city governments. Ammann (2004:148) states that elections determine public policy, the course of housing policy. This shows that the central government relies on politics despite laws against informal planning.

The legalisation of informal property is not simply a bureaucratic or technical problem but rather a complex political struggle (Roy, 2005:150). Demolitions in fragile environments are usually marred by selective inclusivity; there are subjective interpretations and selective application of the law, culminating in the crucial analytical (and political) questions of why some townships were designated as illegal and worthy of demolition while other suburbs were protected and formalised? Why some forms of informality were criminalised and thus rendered illegal while others enjoyed

state sanction or were even practices of the state? Who authorises the misuse of the law concerning planning? Who authorises to misuse the law in such ways to declare property ownership, zones of exception, and enclaves of value? Who determines what is informal and what is not? Developments in the low-density urban suburbs; some without the “world-class” look, despite violating zoning of building by-laws, were granted amnesty and heralded as monuments of modernity (cf. Ghertner, 2008: 66). It is also difficult to destroy the state-of-the-art buildings being constructed on unlawful land¹³⁵. Such differentiation between the legal and the informal (rather than between the legal and the paralegal) is a fundamental axis of inequality in urban Harare.

Concerning squatter settlements formed through land invasion and self-help housing, the divide is not between formality and informality but rather a differentiation within formality (Roy, 2005:149). This implies that urban planning is continuously exposed to compromise. On the electoral cycle-housing nexus, the Ndungu Commission on the illegal and irregular allocation of public land in Kenya found that most illegal allocations of public land took place before or soon after the multiparty general elections of 1992, 1997, and 2002; reinforcing the view that public land was allocated as political reward or patronage (Southaw, 2005:147). Meinert and Mette (2016:779) argue that elections provide an incentive for the ruling elite to give land to individuals or groups who would otherwise have been able to challenge the government. Tibaijuka and Janneh (2008:157) aver that in Zambia, those involved in improper land allocations resorted to formal rules and regulations to legitimize and secure the economic value of their loot thus making the housing issue more complex. This transcends to normalising the abnormal as informal settlements have gone haywire, the unthinkable becoming more likely. Aldrich and Sandhu (1995:19) argue that much of the conflicting analysis of squatter settlements centres on whether the people in these settlements are part of the problem or part of the solution. The illegality of settlements that consist of structures that violate planning regulations or contravene property rights often discourages public investments in infrastructure, either because such settlements will constitute tacit recognition of legitimate occupancy rights or encourage further illegal settlement (Fox, 2013:8).

Aldrich and Sandhu (1995:262) argue that slums and squatter settlements are built on vacant land without the agreement of the landowner and/or permission of the authorities, this proves to provide

¹³⁵ South African Former Minister for Rural Development and Land Reform, Mr. G Nkwinti, during a Parliamentary Portfolio Committee on Rural Development and Land Reform attended by the researcher (04/10/17).

affordable housing for the low-income population in Thailand. It is not surprising that the most effective supply of housing takes place outside the law (Hansen and Vaa, 2012:12). A majority of urban residents in the cities of the developing countries find it difficult to obtain land and housing through established legal or formal processes; they, therefore, step outside the law to gain access to land and housing (Watson, 2009:186; Hansen and Vaa, 2012:176). Considering the transformative concept, to explain how societies, those who find it difficult to obtain land and housing through established legal or formal processes organise alternative means to suit their situations. In doing so, they render themselves even more vulnerable to political predation and criminal threat, than they might otherwise have been (Watson, 2009:186). The greatest part of urban development in Tanzania, Dar es Salaam, is taking place in unplanned settlements beyond the control of the formal planning system (Watson, 2009:143). In Cape Town, South Africa, informal settlements are also growing faster than formal housing (Watson, 2009:199).

The emerging picture of cities is shocking (Goodfellow, 2013:83). Aldrich and Sandhu (1995:273) in line with the transformative concept argue that in several Asian countries, governments are now protecting the residents of informal settlements, policies range from granting de jure security of tenure to regularising the unauthorised settlements. Hansen and Vaa (2012:140) note that formal state rules at times impeded the delivery of land for urban housing. Like in the case of Maseru, Lesotho, formal rules were arbitrary and on occasion inconsistently enforced, that rendered the formal land delivery system less reliable than alternative systems (Vaa, 2012:140). This is tantamount to inviting other people to occupy vacant land without permission from the owner or the authorities and criminals take advantage of the inconsistencies inherent in the formal rules (cf. Aldrich and Sandhu, 1995:273). This would encourage landowners to evict the slum-dwellers before such a policy takes effect thus worsening the land conundrum (Aldrich and Sandhu, 1995:273).

Furthermore, new unauthorised settlements are appearing at the same time as the old ones continue to grow (Hansen and Vaa, 2004:9). Aldrich and Sandhu (1995:299) note that in Egypt, the scarcity of affordable housing for low-income groups influences the formulation of informal settlements. 40% of the population in Egypt are living in informal settlements or slums; though the government is doing a concerted effort to save lives, the models being used are not people-centred (Farha, 2018). For Van Westen (1995:33), unauthorised housing is nothing new in urban areas. This is

also in line with policy inconsistencies. Public housing in Nairobi, Kenya, reveals a considerable discrepancy between officially stated policy preferences and actual results (Grindle, 1980:224).

In the same vein, Southaw (2005:146) notes that following the Report of the Ndungu Commission on the illegal and irregular allocation of public land in Kenya, unbridled plunder was revealed; forged letters and documents were used to allocate land, and the land was sold by grantees without any adherence to the conditions laid down by letters of allotment and many illegal titles to public land were transferred to third parties, often State Corporations, for large sums of money. In a particular vein, there is no clear national urban planning policy, no clear housing policy, no clear plan or strategy in Egypt (Aldrich and Sandhu, 1995:301-312). Egypt is intransigent when it comes to housing (Farha, 2019). This also explains the ‘infilling’¹³⁶ of existing townships rather than the creation of new ones (Hendler, (1988:26). The planning authorities adopted policies favouring urban consolidation: trying to cut the rate of suburban¹³⁷ expansion by encouraging the construction of new dwellings usually at higher densities, within the existing built-up areas of the cities in the form of infills and extensions (cf. Forster, 2006:174). As a result, an increasing percentage of the new dwellings in recent years have been apartments, townhouses, duplexes, or other forms of medium density housing (Forster, 2006:174).

4.3.9 The Legacy of Colonialism: Connecting the Present with the Past

Outside of the realpolitik, and in line with “The Deep State”, there are other powerful forces that also shape the matrix of housing problem that is, history and ideology. Zimbabwe is reaping what the pre-colonial era has been sowing almost from the beginning of its transition. Colonial legacy is a contributing factor to implementation failure in housing policies. The challenges of the transitions are less defined by policy and more by legacy. Lennan and Munslow (2009:19) argue that given apartheid¹³⁸ and its legacies (cf. *Cape Times*, 22/03/18), service delivery in South Africa is linked to politics of distribution focused on providing access to services previously denied or

¹³⁶ In-fills in urban development entails the extension or recycling of formal urban open-space and undeveloped land; though it is seen as a panacea to urban sprawl, it overloads urban services therefore described as an extension of informal to something seen as informal.

¹³⁷ A suburban area can be defined as a relatively densely inhabited urban district characterised by predominance of housing land-use – as a residential zone in an urban area contiguous with a city centre, as a zone outside the politically defined limits of a city centre, or as a zone on the outer rim of an urban region (sometimes called a peri-urban area) (James, 2015).

¹³⁸ Apartheid was a system of strict racial segregation formerly practiced in South Africa (cf. Roskin et al., 2006:267).

limited. Ha (1987:1) attributed the chaotic housing situation in Asia to colonialism. Pugh (1980:2) notes that housing is closely associated with historical times and reforms in social and urban policies. This implies that housing quality drawdowns date back as far as the colonial era. Aldrich and Sandhu (1995:336) point out that the new government of Zambia inherited a country in a state of deterioration housing stock and tremendous housing shortage. As a result, Ranson (1991:2) argues that unauthorised residential expansion outpaces and impede the provision of adequate infrastructure and public services.

Khan and Thring (2003: xxvi) note that the elite is more disposed to listen to and accommodate international business and former colonial masters than its own grassroots supporters; local development activist; parliamentary opposition and local business. This clearly shows the remnants of the colonial legacy. Khan and Thring (2003:6) also note that in South African democracy and politics, the influence of foreign capital is visible. Lennan and Munslow (2009:23) note that while a great deal of thought was given to policies that regulate distribution, very little attention has been paid to the systems that deliver; in South Africa, the apartheid delivery system was left largely intact. Officials work within tightly defined procedures and regulatory frameworks, leaving little room for responsibility or accountability; policies are implemented down the line with relatively little space for deviance. Apartheid spatial planning, like an invisible hand, results in poor transport systems. It keeps most residents away from opportunities like healthcare and business development. There is continuity with apartheid systems of governance rather than a change in a democratic South Africa thus not all change is transformational. Khan and Thring (2003:76) argue that historically distorted ownership patterns and very unequal contractor-subcontractor relations stymie development potential.

Additionally, under the rubric of colonial legacy-housing nexus, Mutondoro et al. (2017:5) note that large areas of Zimbabwean cities still reflect colonial planning traditions designed to promote racial segregation and inequality, and colonial spinoffs of exclusion are felt in over-populated high-density areas, that were built for black labour. The existing relations are partly institutionalised by the effects of earlier developments in policy and the market and partly modified in response to developments in the housing sector (cf. Boelhouwer and Van der Heijden, 1993:377-378). Hansen and Vaa (2004:12) argue that in former British settler regions, the urban system is still residentially segregated, formerly along racial lines and now along class lines, and by rigid

zoning schemes of land use activities. In post-independence, the basis of exclusion was shifting from racially-based legislation to socio-economic processes therefore not all change is transformational. Goodfellow (2013:83) argues that the former settler colonies of Southern Africa exhibit relatively strong legacies of planning that have to some degree been carried through to the present. Raychaudhuri (2001:677) notes that European colonial regimes restructured the physical and social environments of the cities; rarely have scholars explored the possibility that these processes could have been contested and that the indigenous elites of cities could have appropriated some of the policies of the colonial governments to their advantage. Bringing the colonisation aspect into the analysis of the housing challenge enables the researcher to genuinely frame the causal explanation in terms of historical causation, recognising that contemporary correlates of slum incidence are products of historical and political processes (cf. Fox, 2013:12).

Moreover, segregation has taken a new twist and is based on a class of being rich or poor, resulting in the creation of class-based communities. Housing discharge reveals income inequality; that is, housing to the rich, a bit less to the middle-class, and practically nothing to the renters. In line with elitisation and “The Deep State”, governments claim to protect rights, but these are accorded unevenly – in a high degree to the middle class and grudgingly to the impoverished (cf. Roskin et al., 2006:73). Housing distributions are now following wealth disparities. This compromises housing as a vestige of the idea of democracy, that is, housing for everyone regardless of economic status. The reorganisation of the city brought immediate benefits for the new urban leadership leading to the control of a large extent of space in and around the city into their hands (Raychaudhuri, 2001: 710). Hansen and Vaa (2004:11) argue that most African countries inherited and have kept a legal framework for urban development that was designed to contain settlement rather than to deal with rapid growth; zoning laws and building standards were maintained thereby restricting the provision of housing affordable to the poor. Path dependency served to perpetuate colonial-era patterns of urban development (Fox, 2013:3). Growth management regulation helps cities maintain a balance in a housing development (cf. Zietz et al., 2006). Resultantly, unauthorised and illegal settlements emerge, and the roots of slums can be traced back to the colonial era, that was designed to protect the interest and lifestyles of a minority (Fox, 2013:2).

4.3.10 Financialisation and Eliticisation of Housing: Neoliberalism and Residential Capitalism

There is the death of socialism and the ascendancy of radical politics and neo-liberalism (cf. Giddens, 1991). Merrill et al. (2006:327) observed that a growing lack of affordable housing is a result of housing prices, that have increased much faster than income for low-and moderate-income households. Against this backdrop, affordability compromises the realisation of the right to adequate housing. As discussed at length in “The Deep State” and complexity concepts, commoditisation¹³⁹ and financialisation in public housing are also other contributing factors to the housing crises (cf. Appadurai, 1996). Public housing is a “big business” in many countries. Housing is now being a place to pull capital and grow wealth that is, uber-investment in housing as a commodity (cf. Farha, 2018). The neoliberal agenda has usurped to a larger degree the human rights movement and space although a capitalist system can be human rights compliant if states are held or brought to account (Farha, 2019). In line with elitisation embedded in complexity, sophisticated financial instruments have turned housing into a very lucrative stock resulting in uber-profits for some and reducing the availability of affordable units for others. Shareholders, elite or rich individuals, banks, financial actors, pension funds, private equities, Real Estate Investment Trusts (REITs) in trying to squeeze profits, invade housing and predominantly view housing as a place to park excess capital. Against this backdrop, financialisation of housing is not boosting national economies (cf. Farha, 2019). The financialisation of land and housing has been a key driver of upwardly spiraling housing costs. Housing appears to be ‘a business transaction’ and ‘not help’.

REIT is an alternative corporate structure and not a landlord, they target middle and working-class with long term rentals and their clients are investors and not tenants (cf. Farha, 2018). States have a vested interest in ensuring that the financialisation programme remains intact (Farha, 2018). Cairns et al. (2017:138) traced the ancestry of this issue from the intergenerational exchange of housing finance and how the family home is the major asset that flows through generations and provides leverage for further purchase of the property. They found this somewhat problematic. Intergenerational transfer of housing ensures a culture of ‘residential capitalism’, where houses are

¹³⁹ Commoditisation of housing entails the privatisation of housing, making it difficult for low-income earners to access the right to shelter because of the high cost of land for housing; making it a reserve for the ruling elite.

used as financial assets at the expense of those that have lower or no commodities (Cairns et al., 2017:138). In short, as canvassed in a prolix manner through the lenses of “The Deep State” concept, capitalism is to blame for the housing crisis; it is all about greed as business people have their interests detached from the human rights standards. The USA being led by a property developer leads to the vital question: What does that mean to housing?¹⁴⁰ The current president of USA, Donald Trump’s advisory group are also into residential real estate around the world; one of his advisory group members, for example, the Chief Executive Officer of ‘The Blackstone Group L.P’, one of the largest private equity firm buying properties result in creating unaffordability and price-fixing situation everywhere they go (Farha, 2018).

Since private equities do not view housing as home, buying properties in areas where they call ‘undervalued’ where affordable housing still exist results in affordable housing being completely swallowed and trapped into the echelons of hibernation, and consequently, due to financialisation, there is a risk of extinction of the low-income from cities since they are being pushed with no social safety net to turn up to. When financialisation of housing is added to the mix of neoliberalism, it creates inconceivable conditions (cf. Farha, 2018). The accelerating loss and shrinking of affordable housing can, therefore, be attributed to the direct cause of financialisation of housing. Private equity firms are preying on the economic vulnerability, misfortune, and ruin of families (Farha, 2018). This also results in the reduction of affordable housing stock that could be available for affordable rental.

The Blackstone is the third-largest landlord in New York and largest in the USA with 80 000 single-family homes and owns 300 000 units worldwide; it is the major player in the housing sector (Farha, 2018). The Blackstone has gone on a shopping spree in the United States, Spain, Ireland, and the UK. This generation is now living in a corporate world; the financialisation of housing creates impossible and unsustainable conditions because of housing being viewed as a commodity or a place to park capital. Quoting a quotable quotation from Professor Saskia Sassen, Farha (2019) asseverates that so much of what is happening concerning residential, real estate, housing, and homelessness is related to how the laws have been deployed to enable finance to move in and turn homes into financial instruments. In line with “The Deep State”, elites usually deploy laws in their

¹⁴⁰ Cf. James Bayes on Al Jazeera interview with Leilani Farha, UN Special Rapporteur on Adequate Housing.

favour. There is, therefore, a need for a reorientation of thinking on how to deal with the crisis or for a seismic paradigm shift and go back to the 1970s where housing was understood as a social good, as personal security and not necessarily wealth; there are still public schools and public hospitals for other rights like health but with not so much in the right to housing (Farha, 2019).

In cities like Vancouver, Hong Kong, London, New York, Singapore, Sydney, and Stockholm, housing prices have increased to levels that moderate and low-income residents can barely afford and in the Greater Toronto Area, for example, in the last 30 years (1986 – 2016) housing prices have increased by 425%, whereas in a similar 30-year period (1985 – 2015), average family income has only grown by 133%; housing prices have increased at three times the rate of income that is no longer commensurate with household income levels, housing prices are driven instead by demand for high-end assets among global investors (Farha, 2019). Farha reports that in Toronto, Vancouver, and elsewhere, residential and commercial real estate has become the “commodity of choice” for corporate finance, and the uber-rich.

In 2016, real estate in Canada represented the third-largest segment of the economy but accounted for half the country’s GDP growth, and the consequences of placing the interests of investors before human rights are stark (*The Globe and Mail*, 15/04/17). Housing is viewed as a way to grow wealth and that has changed how housing operates, it means having investors, private equity firms, vulture funds, and buying up housing. This leads to the vital question: Who is their primary concern? It is their investor and if they are using housing to satisfy their investor interests, the fundamental question is: What do they have to do with that housing if it is rental housing? Investors are using their interest to satisfy their investor interest; if it is rental housing, they must increase the rents (Farha, 2018). Their preoccupation is profit and not tenants; the relationship between landlords and tenants is transactional (cf. Farha, 2018; Farha, 2019).

Residential capitalism pivots housing as liquid assets and is at odds with those that cannot enter the housing market due to a lack of affordable housing and housing capital (Cairns et al., 2017:138). Capitalist urbanisation perpetually tends to destroy the city as a social, political, and livable commons (Harvey, 2012). In this respect, homelessness is directly related to the unaffordability of housing as people are being pushed with no social safety net to turn up to (Farha, 2019). Housing should be a right; however, there seems to appear as if one needs to deserve

housing by having a high income for either homeownership or renting. Watson (2009:175) argues that the poor use their dwelling as an economic unit as well. Forster (2006:176) postulates that the changes in housing have largely been driven by economic forces and government policies affecting the supply side of the market. This leads to the vital question: How to deal with commoditisation? Since mortgages by banks and building societies lend money at interest, in countries like Singapore, there is an 18% tax on foreign property thus using a tax system helps to keep investors in check (Farha, 2018).

To further deal with investors disadvantaging the poor, a law was passed in Catalonia that no mortgage for closure should result in eviction and homelessness; that would be illegal thus these small attempts help in curbing big business in housing (Farha, 2018). British Columbia has also imposed a 15% tax on foreign investment in residential real estate, and the City of Vancouver has instituted a 1% tax on self-reported vacant homes; both interventions are directing revenues toward affordable-housing options and several jurisdictions, including China, have introduced a property speculation tax, and others, such as the City of London, pushed a requirement that developers include a proportion of affordable units in new builds; Barcelona is one of a few governments to affirm the social function of housing, facilitating temporary expropriation of vacant housing and prohibiting foreclosures and evictions that would result in homelessness (*The Globe and Mail*, 15/04/17). Not sure if the companies are aware of the human rights standards as it is not in their mindset or business model, Farha (2018) also proposed to approach and reach out to private equity firms to see if they can help the problems that perhaps they are creating. While these types of concerted efforts can mitigate the effects of the financialisation of housing, the assumption that countries should simply allow markets to work according to their own rules, subject only to the requirement that private actors “do not harm,” is simply not sufficient; human rights set a more robust standard of accountability and states are required to take an active role in ensuring low- and middle-income people can enjoy housing as a home; they must insist that markets meet housing needs, including affordability (*The Globe and Mail*, 15/04/17).

Social justice provision through PPPs, that implies the share of public and private responsibility for housing in this case, did more harm than good as far as public housing is concerned. Harvey (1989:7) posits that entrepreneurialism has, as its centrepiece, the notion of a “PPP” with the use of local government powers to try and attract external sources of funding; in many instances, the

public sector assumes the risk and the private sector takes the benefits. The neo-liberal paradigm of housing market-driven development continues to shoulder the worst of this cost burden. Privatisation of public space and sales also contributes to boosting exclusion (Sager, 2011:172). Goebel (2207:293) notes that neo-liberal macro-economic policies are one of the impediments to sustainable low-cost housing; for instance, in South Africa, on the growth, employment, and redistribution (GEAR), the government struggled with its dual commitment to fiscal responsibility and the need to uplift the historically disadvantaged; neo-liberal policies limited the funds for the public. The poor fall victim to the neo-liberal policies/capitalism and the perils of unchecked liberalisation, that was associated with Structural Adjustment Programmes in Africa (cf. Roy, 2009:77).

Hansen and Vaa (2004:12) note that in the wake of neoliberal reforms, changes in land value are transforming – affecting access to housing for the low-income. Chiweshe et al. (2013:19) note that land for housing became a lucrative speculative asset for those with political power after the advent of structural adjustment. This comports well with the invisible hand tautologically referred to in “The Deep State”. Khan and Thring (2003:79) note that the profit maximisation strategies of private developers translate into smaller houses of dubious quality. Lennan and Munslow (2009:3) argue that many of the policies had the effect of privatising essential services, thereby passing on the cost to those who are the neediest and least able to afford them. The contraction of the state housing through privatisation and reduced investment and the more general exposure of housing provision to market forces have been more striking (Forrest and Murie, 1988:5). It increased homelessness, lengthened the waiting list, mounted problems of decay and despair in the housing stock, and a general squeeze on local authority resources (Forrest and Murie, 1988:8).

The privatisation of council housing remains a live political issue with new pressure and rationales for transferring the public stock to individuals and private capital (Forrest and Murie, 1988: 11). Between 1995 and 2001 in South Africa, housing delivery was private developer-driven, planned, and built by private construction companies and they controlled the process and identified beneficiaries themselves (Tissington et al., 2013:13). Despite a professed commitment to producing a massive number of housing units to serve the city’s low-income residents in Nairobi, Kenya, the government only supplied a moderate number of houses, mostly for middle- and upper-income families (Grindle, 1980:224). In the same vein, Forrest and Murie (1988:14) note that a

longstanding criticism of the public housing section is that it failed to cater for those in the most severe housing need. Ha (1987:41) argues that housing policy in Hong Kong has been constantly undermined by the government's land policy, that sells land to the highest bidder. As a result, the search for shelter by the poor in capitalist societies often pushes them into the periphery (cf. Hansen and Vaa, 2004:12).

Additionally, most developing economies lack citizen dispersion, and concerning the housing sector, without the participation of underprivileged groups, housing policies may veer towards benefiting the already privileged groups (Ha, 1987:6). Housing in capitalist societies is essentially a problem of the low-income group (Ha, 1987:6). The demand and supply relationships are dependent upon the state and other agents controlling the process of capitalistic accumulation and materialism. In the case of South Africa, there is an extreme shortage of black residential accommodation, and the relatively high price charged for township services; thus, it has made housing an issue around that anti-apartheid forces have mobilised (Hendler, 1988:2).

The provision of shelter is costly, and few African residents can afford to cover construction costs or paying off loans over an extended period (Hendler, 1988:3). Those who cannot afford face pressure to move to the peripheries, where services might be less costly (Hendler, 1989:6). This resonates with the transformative concept in explaining how the low-income earners organise alternative services pertinent to their incomes. Informal housing usually cost less because it breaches tenancy rules. However, there is nothing affordable about paying good money for inadequate structures, occupants pay more by living inadequately, the market has downgraded structures to junk. The neo-liberal market-driven economy is resulting in further segregation of citizens, most of the poor are being driven out from the core parts of cities to the peripheries, that Sharma (2010) described as enclave urbanism. The neo-liberal paradigm of market-driven development erodes affordability and creates a crisis in the housing market. Based on the complexity concept, this study suggests that residential capitalism is fanning the housing crisis.

The memories of public housing in post-independence Zimbabwe symbolised a paradise; a better life and a basic sense of dignity. However, the promise or dream has been betrayed in a world of rampant inequality due to market-driven housing policies. Chirisa et al. (2016:4) note that since many low-income households can scarcely afford the more expensive life in the city, as a

contingency plan to escape, they are forced to relocate into peri-urban areas where housing provision is either free or relatively cheap. The transformative concept provides an explanation of such scenarios to explain how low-income earners are pushed to the peripheries. As demand increased, “legal” housing became unaffordable and the number of houses in violation of local building laws grew dramatically (Romero, 2007:277). Nevertheless, it is worth noting that non-compliance is both a survival strategy and a strategy to gain access to resources that would otherwise be out of reach (Hansen and Vaal, 2004:140; Watson, 2009:2263). This is a form of marginalisation culminating in the booming of unauthorised settlements and the ubiquity of unplanned settlements and the acute challenge of slums (cf. Beall et al., 2013). Roy (2009:83) described this as economic dualism and social marginality; the emergence of a parallel privatised housing system that caters exclusively to the wealthy.

de Soto (1989:2000) sees informality as a revolution from below, the entrepreneurial strategy or tactical operations of the poor marginalised by bureaucracy and state capitalism. Based on the transformative concept, this study suggests that residential capitalism is pushing the marginalised to devise their survival means amid the housing crisis. Informal economy or informality, in general, is the people’s spontaneous and creative response to the state’s incapacity to satisfy the basic needs of the impoverished masses (cf. Roy, 2005:148). Turner (1968:108) advanced that squatters and other forms of uncontrolled urban settlement are an adequate response to the situation. Popular demand for housing can result in uncontrolled urban settlements (Turner, 1968:120). Fox (2013:2) asserts that the acute challenge of slums is a symptom of market failure. This proves to be the ability of the working poor to climb the socioeconomic ladder, particularly considering developments in the economy.

In the same vein, tactical operations of the poor due to the shortage of affordable units include the formation of church-based housing corporations and church-related development programmes. The transformative concept entails “transformative development that changes in the parameters of the systems and structures that limit peoples’ opportunities to flourish and pursue their search, individually and collectively” to enhance system changes, cooperatives resource themselves (Friedmann, 2011: xiii). Informal housing is a distributive type of market where affordability accrues through the absence of formal planning and regulation (Roy, 2005:149). As an exit strategy to circumvent the market-oriented housing policy development, and based on the transformative

concept, the poor venture into mechanisms, that allow them to work together as a group to pool their resources and contribute their labour to build homes. The transformative concept explains the structural transformation of familiar problems of people's livelihoods – water, sanitation, electricity, jobs, housing, and self-provisioning (Friedmann, 2011). Informality is therefore produced by the state and planning is implicated in this enterprise (Roy, 2005:155). Given this, Roy (2009:82) notes that the splintering of urbanism does not take place at the fissure between formality and informality but rather, in a fractal fashion, within the informalised production of space.

Privatising the housing market through the sale of municipal or state-owned housing units to sitting tenants easily favours better-off persons or property entrepreneurs who in turn push previous tenants onto the informal housing market because of their inability to buy or rent formal housing (Hansen and Vaa, 2004:12). Where privatisation or marketisation of housing markets takes place without the construction of low-cost housing by governments or private developers, the most urban population is forced to live in housing build without authorisation as coping mechanisms to housing exclusion and poverty. In South Africa, white suburbs are still white suburbs, and correcting the past appears to be an ongoing process. The transformative concept is context-sensitive and seeks to account and make sense to the current trends and years down the line. These are apartheid legacies and persistent inequalities that are the legacy of segregated neighborhoods that is stubbornly persistent (Goebel, 2007:293). People are not poor because of some personal defect; they are systematic reasons why people remain in poverty that go back to the founding of the country. Based on “The Deep State”, there is an invisible hand contributing to poverty.

Though the 1996 South African Constitution is one that is committed to remedying social and economic inequality (cf. De Vos, 2001:258), put more succinctly, South Africa is like two different countries of the rich and the poor; separation was legislated under apartheid and the post-apartheid administration struggled to bridge the divide and great disparities in social amenities continue¹⁴¹. The gap is not only widening, it is intergenerational, making it harder for South Africans to enjoy the right to adequate housing. Huchzermeyer (2003:81) advances that despite the repeal in 1991 of the legislation that determined access to land by race, many land-related laws of the apartheid

¹⁴¹ Cf. McFarlane and Silver, (2016: 127).

era continued well into the new democratic dispensation beyond 1994. This is housing exclusion based on the legal, physical, and social dimensions (Mandic and HrastFilipovic, 2015:69). This can lead to homelessness, that can be attributed to economic dislocation, and the focus should be on changing the economic system (cf. Zietz et al., 2006). These constrain have prompted conflicts leading to self-help housing and adaptive preferences by the low-income groups, forcing them to live in the margins of a majority-black society thereby undermining the official urbanisation policies. Based on the transformative concept, this study suggests that capitalism is contributing immensely to the housing crisis. Most people will not be able to prosper in a capitalist society; they will continue to remain beyond the radar of policy-makers, out of the reach of official records and thus economically invisible (de Soto, 2001:167). Cairns et al. (2017:138) described this as residential capitalism. The rapidly rising housing prices prevent people from acquiring housing because they are priced out of the market by those that have more extensive housing wealth and financial portfolios (Cairns et al., 2017:138).

Self-allocation is an opportunistic approach as people will be taking matters of housing problems into their own hands, like through the lenses of a transformative concept, people organise substitute mechanisms to circumvent government failure to provide adequate, affordable, and accessible housing (Royston, 2011:3). This is a system that is usually survivalist in nature. Hansen and Vaa (2004:92) argue that this is informalisation for survival in the context of the austerity related to adjustment policies. Hendler (1988:24) advances that many blacks have been able to implement their solutions to the overcrowded and costly shelter. There is a contraction between the stated aims of the new urbanisation policy and the means chosen to implement it; the goal is orderly African settlement, yet the means deny them land (*Ibid.*24). This results in unconventional housing. Squatters are compelled to resist eviction by the shortage of land and relatively high cost of formal housing, as the alternative to resistance is homelessness (*Ibid.*27). This implies a denial of right based on affordability. Based on the transformative concept, urban poor through social movements confront authorities in efforts to promote a just city. Watson (2009a: 2270) advances that some interventions like informal settlement upgrade or ‘urban renewal’ or improvised shelter may benefit some households but may result in the forced removal of others and often the imposition of the cost that many cannot afford and this may be met with resistance.

Furthermore, Malpass (1990:91) notes that defective housing is an indicator of a dynamic and cumulative crisis in housing. Housing is both a cry and a demand (cf. Harvey, 2012). For Hartman (1975:16), the most serious barrier to attaining a national housing goal is the sharply rising cost of housing production. For Ha (1987:5), the high cost of housing and unequal distribution of income has meant that significant sections of the population would have been unable, without assistance, to afford the full economic price of decent accommodation. Urban households in developing countries are unable to afford even the cheapest new housing unit, even where no down payment is demanded and a 25-year repayment period, at an interest rate of 10% is allowed (Ha, 1987:5). For Yamazaki (2017:21), housing durability affects demands for long-term finance; long-term finance is affected by the housing's collateral strength as the socio-economic environment can change in the long run and as a negative change can negatively affect borrower's ability to repay the debt. Any attempt to understand housing should be set into the context of an understanding of overall urbanisation trends and income distribution within countries (Ha, 1987:6).

Urban modernism and master planning as an ideal and modernist city involve characteristics, that deters the poor away. Watson (2009:175) advances that these characteristics, among others, include, spacious; do not contain poor people or informal activities; high-rise buildings; separation of pedestrian routes from vehicle routes; rail not prioritised; it is assumed that most people travel from home to work and shops by car; different residential densities for different income groups with full infrastructural services provided for wealthier families. Urban modernism fails to accommodate most inhabitants thus directly contributes to social and spatial marginalisation and subversion of the right to adequate housing. (cf. *Ibid.*175). The poor have been excluded from the formal city and modernisation projects involved the demolition of the areas accommodating the poor; displaced to peripheral and unfavourable locations at the detriment of the right to adequate housing (cf. *Ibid.*). Urban modernist planning reinforces spatial and social exclusion; cities are planned on the assumption or premise that most residents will own and travel by car thus the setup becomes highly unequal and characterised by selective inclusivity (cf. *Ibid.*). Resultantly, and based on the transformative concept, the poor organise alternative services pertinent to their lifestyles.

The state of inadequacy, inequality, and abandonment result in the poor and the homeless becoming invisible and seen as not counting in the housing matrix, with all this being attributed to

the adverse impact of neo-liberalism, Global Financial Crisis (GFC), and rapid urbanisation (Farha, 2019). The aftermath of the 2008 financial crisis made a bad problem worse, the homeownership rate dropped to its lowest point since at least the 1980s. Farha notes that in other countries like the United States, the result has been devastating five years after the 2008 mortgage crisis; nine million households were evicted due to foreclosure; in Spain during the same period, 300,000 were evicted and it can be predicted that this is the direction in which many countries are now headed (*The Globe and Mail*, 15/04/17). Through the mortgage system, housing has been financialised for long, and for many years now, housing was used as a mega profit generator (cf. Farha, 2018). Slums, therefore, become territories of exclusion in cities that increasingly criminalise poverty (Perlman, 2010:37). Lombard (2014:34) advances that spatial marginalisation is often compounded by social isolation. Low-income households are trapped in peripheral settlements or having to pay high transport costs if they want to travel to public facilities or economic opportunities (cf. Watson, 2009:175). Cape Town in South Africa provides a useful illustration of this dynamic. Harare, Zimbabwe, offers a fertile ground to explore these issues as discussed in Chapter Five.

4.4 Conclusion

The chapter reflected on the global overview of the growing housing crisis and challenges faced in the realisation of the right to adequate housing. The discussion through the lenses of Public Policy Analysis is more on housing as a public policy than housing as a fundamental human right. It is centripetal to note that housing law and housing policy are not on a collision course. The chapter traces the commonalities and discrepancies concerning the housing crisis among different countries. It discusses the factors hindering the implementation of housing public policy. Through the lenses of “The Deep State”, complexity and transformative concept, the chapter canvassed how the marginalised groups in society invent substitute mechanisms to circumvent the government’s failure to provide adequate housing. In the circumstances of residential capitalism and housing financialisation settings, the right to housing is more of self-help housing than relying on social housing, it is no longer a government priority and commitment. Based on the conceptual framework, the chapter suggested that irrational times and irrational political forces and a housing system based on private ownership have transformed urban society into unliveable cities especially for the poor, bolstering the fact that not all change is transformational. Slums and self-help housing

are usually triggered by government inertia to ensure accessible housing, and as a countermeasure, the excluded masses respond by forming corporations that coalesce towards alternative means. The housing crisis, 'defective demand', and existential pain due to the predatory nature of politics and the ravaging impact residential capitalism catalyses radical and transformative politics that seeks to confront authorities in an endeavour to transform urban injustice into just cities. The next chapter will focus on examining experiences from Zimbabwe.



CHAPTER FIVE: THE ZIMBABWEAN EXPERIENCE: HARARE AS A CASE IN POINT

5.1 Introduction

This chapter, through the lenses of the policy paradigm, discusses the usefulness of the concept in accounting for revolutionary changes and to explain fundamental shifts in the housing public policy-making in Zimbabwe (cf. Masunungure and Chimanikire, 2007:9). Housing can be well understood through the lenses of policy paradigms that characterised post-independence Zimbabwe's development policies. These policy raptures entail the socialist-oriented period from 1980 to 1990, market neo-liberalism in the second phase of 1990 to 2000, and post-2000 marked by policy fragmentation, inertia, and chaos. In this regard, the heuristic value of the concept of policy paradigm can be used to account for these volte-faces in the housing discipline.

5.2 The socialist-oriented period (1980-1990)

The Zimbabwean post-independence epoch was characterised by the view to transform the nation; growth with equity was the major tone during the first decade with welfarist social policies meant to cater for everyone; a cure-all for socio-economic and political ills (cf. Zhou and Zvoushe, 2012). Zimbabwe after independence was a committed socialist country and provision of services for all was a recurring chorus in most of the social policies. Chikwanha (2005:90) advances that immediately after independence, the GoZ was concerned with accommodating war veterans and thus had a welfare approach in housing delivery. Socialist leaders consider the party to be more important than the policies; public policy prescriptions are important, but party ideologies, dogma, and credo are more important. Given the skewed and uneven distribution of services during the colonial era, service delivery in post-independent Zimbabwe was mainly focused on the discharge of services to the previously sidelined groups. Inevitably, policy context is formed by the history and struggle against the vices and the ghost of colonialism. This was mainly a reconstruction phase that augurs well with transformation.

5.3 Market Provision of Housing

In the 1990s, privatisation was a dominant theme in Zimbabwe and what has been labelled as privatisation in housing is a very mixed bag. Roy (2005:150) states that the 1990s austerity measures and privatisation gave way to a new generation of poverty alleviation programmes that

recycled the populist ideas of an earlier era like self-help housing, microenterprises, and community initiatives. Consistent with elitisation and complexity, housing policy under the influence of NPM in the 1990s in Zimbabwe saw a ‘privatisation boom’ in response to ‘claimed pathologies of the traditional model of public administration’. Chikwanha (2005:89) avers that this period was characterised by the involvement of the private sector in the provision of low-income housing and it required the collaboration of other institutions – private investors in housing provision. Privatisation in other areas has progressed from institutional capitalism; the privatisation of council housing has in anything moved in the opposite direction (cf. Forrest and Murie, 1988:11). Chikwanha (2005:89) postulates that the introduction of rent controls came about because African housing was mostly rented with many of the tenants having lived in the same house for over thirty years. She further argues that private property owners were hiking rents at an alarming rate in response to the increased demand for housing after independence.

During the modernisation and transformation epoch and the rolling back of the state, the housing conditions in Zimbabwe, considering “The Deep State”, were punctuated by power relations and appeared to be benefiting the ruling elite. The lengthening of the waiting list can also be attributed to capitalism in housing, characterised by exorbitant prices charged by the estate agents in the sale of housing stands. Landowners and the buyers are key role players in a market transaction but there are always intermediaries of some sort as estate agents and banks (Royston, 2011:3). In Zimbabwe, housing land appears to be on auction; being sold to the highest bidder through competitive bidding. Housing is, however, a fundamental human right that is not supposed to be sold to the highest bidder (Farha, 2019). As a result, the proliferation and process of informal activities in urban development can be linked to the widespread crisis of state capitalism (cf. Hansen and Vaa, 2004:11). This is in line with Fox’s argument that market failure is associated with the emergence and persistence of slums (Fox, 2013:2) that in line with the transformative concept is a way of living for the marginalised.

Additionally, commoditisation can also be termed as the economics of housing or systems of distributive ordering and selective inclusivity. This is part of neo-liberalism, that is arguably the most useful concept available for connecting the political discourses of the economising of social life, the reformation of the welfare states, and the complex processes of globalisation (Sager, 2011:148). Farha (2018) also recognised the problems of globalisation, urbanisation, and

speculation trends; investors are eyeing property even if they are not going to live in it. This is about the marketisation of scarce goods thus housing is a compromise between the rich and the poor (cf. Young, 2015:2). The economics of housing, considering “The Deep State”, implies that allocation of land for housing is enriching the corrupted few and not filtering fully to the individual needs of the intended recipients that are struggling to access affordable housing, making them vulnerable to externalities. This explains the difficulties in reducing the inequality gaps and the booming of informal settlements.

Informality is a domain of intense market transactions (Roy, 2005:152). There appears to be the rise of the black middle class, an invisible hand, an elitist black minority benefiting largely and handsomely through the corrupt selling of land. Hansen and Vaa (2004:8) note that the informal city is not exclusively the domain of the poor; considering “The Deep State”, an invisible hand or better-off segments of the urban population also engage in illegal land occupation and construction, at times reaping extraordinarily high profits from sub-letting very sub-standard housing. This demystifies the fact that informality is often seen to be synonymous with poverty; both the wealthiest and the poorest are involved in legalised usurpations for different reasons (cf. Roy, 2009:82; Holston, 2007:207).

Informal services offer opportunities for better off entrepreneurs for rapid enrichment. The economics of housing is about supply and demand and maximisation of profit and market share in the process. This leads to the vital question: How to strike a balance between supply and demand for housing whilst avoiding saturating the housing market with low prices that can break the basic supply and demand rule of economics? The waiting list system in Zimbabwe lost its relevance due to queue jumping; considering “The Deep State”, a powerful political hand helps to jump the allocation queue. The political patronage system informally replaced the public waiting list system. This prompts one to ask: Is allocation a demand-driven or a reactive process? Young (2015:35) notes that queue-jumping relates to the availability of market access to the goods and opportunities and the subversion of queues is a quintessential example of the growing role of the market in society. The queue discriminates against those with less time, and considering “The Deep State”, it is against those without political connections while the market discriminates against those with less money (Young, 2015: 36). In market allocation, the property is allocated through “market forces” and this depends on the ability to pay, underpinned by the idea of a willing seller willing

buyer (Royston, 2011:3). Housing has been made a commodity in Zimbabwe and reserved for the super-rich; it is a luxury and it is made deliberately unaffordable. In this regard, the waiting list or housing queue is the veritable tip of the iceberg in the distributive and redistributive decisions that are made about the allocation of public-subsidised housing.

The role of housing was meant to serve a technical problem of housing the homeless, but the purpose has shifted from the mere technical agenda to the political one in which clientelism, patronage, and manipulation are the manifestations (Chirisa et al., 2015:1). This is a recent spike in the commodification of social services and the ‘casualisation’ of housing. In other words, and considering “The Deep State”, developmental trends are taking a new form under ‘black elites’ and this can be termed ‘contemporary capitalism’ that is worth a critical analysis as council housing is increasingly becoming complicit through its perceived association with a ‘new underclass’. This is a shift from politics of struggle to politics of delivery in a highly unequal and dynamic context (Lennan and Munslow, 2009:4). Resonating with “The Deep State”, housing delivery is all about who is in charge and who controls the resources resulting in the commercialisation of housing. The invisible hand is emphatic in Boelhouwer and Van der Heijden’s (1993:377-378) argument that although political actors have a certain autonomy in realising their political-ideological intentions, they use their “power resources” in a structural-institutional context that constrains and/or promotes policy choice; they have a clear influence on the policy options. Political control of the state structures is an avenue for politicians to manage policy and sometimes to accumulate power and money (Lennan and Munslow, 2009:10). The general thrust of housing provision has been towards commodification, commodifying the right to housing, that is, the re-assertion and extension of a market ideology; for instance, the 1999 housing loan in Zimbabwe; with the repayment period and interest rate reflecting a capitalist ideology or widespread predatory lending taking advantage of the least educated and financially unsophisticated in society by selling costly mortgages and hiding details of the fees in fine print incomprehensible to most people, squeezing money out of helpless borrowers who are paying absurdities of usurious interest rates while having no equity in the property (cf. Forrest and Murie (1988:5; Stiglitz, 2012).

It is therefore important to have an overview of planning-related neo-liberal policies and map their effects on urban economic development; housing provision and other aspects of urban living that

planners are professionally engaged with (Sager, 2011:148). Administrative and structural challenges outlined in the Zimbabwean NHP of 2012 appear to be diverting people's attention from the real and fundamental problems. Despite attributing challenges to colonial legacy; continuity rather than change, the housing problem is not about the former white rule; it is about the system despite being occupied by white/black, an invisible hand canvassed lengthily and in a prolix manner through the lenses of "The Deep State". Sager (2011:149) notes that neo-liberalism concept is an essential descriptor of the political trends and bureaucratic transformations forming the conditions under which planners work. The vestiges of capitalism condition their approach to planning. City marketing has become a thriving sub-field in planning (Sager, 2011: 156). Early in the 1980s, Zimbabwe low-income earners could afford to construct proper housing; in recent years, even middle-class earners cannot afford to purchase a housing stand implying that there is a problem. Some of the housing stands are going for US\$30 000; this might seem as if an inconsequential amount of money, but for families living in poverty, it is a whole lot. Moyo (2014) acquiesced with Kamete (2006:357) and argues that the average price of an urban house in the high-density suburbs costs is beyond the reach of the low-income earners as most of the people are under the poverty datum line. Resultantly, and in line with the transformative concept, the poor device exit strategies that comport well with their mode of living.

Housing rights are being denied based on affordability as the city has become a marketplace or an area of commercial dealings about land for housing (cf. Goodfellow, 2017:199). This explains why the contemporary situation of a two-price system for the rich and the poor can legitimately be thought of as a crisis. An individual working and earning minimum wage today is unable to afford a modest, two-bedroomed unit; like in the United States, the high cost of housing no longer disproportionately affects just the very low-income individuals; people earning 50 to 100% of their city's median income now spend approximately 59% of their salaries on transportation and housing rents (cf. Sullivan and Power, 2013:298). Escalating housing prices makes it difficult for low-income earners and younger people to enter the housing market (cf. Cairns, 2017:138). The middle classes are affected as well.

Other exorbitant prices creating the affordability crisis include plan approval; surveying and plan drawing thus in line with complexity, there is a need to identify hiccups to affordable housing within the housing regulation chain. Housing policy, therefore, requires a strong focusing on

affordable housing (Cairns, 2017:139). In support of the above notion that explains the dark side of planning, Watson (2009:176) points out that zoning ordinances and building regulations also impact the poor considering the process of applying for a building permit, site plan, block plan, quantity surveyor's report, town planning permission and proof of land ownership. The more requirements in terms of paperwork to fill out, deadlines to meet set the low-income groups for failure instead of success and make it hard for them to enjoy the right to adequate housing when the process is like that. This contributes to the lack of affordable housing for low-income households as government regulation designed to improve housing quality increases the cost of housing (cf. Zietz et al., 2006). Urban management is important in providing a quality-housing environment, but the added cost may exclude low-income households thus affordability is the greatest obstacle to low-income earners (*Ibid.*).

The housing challenge has several geneses and, given multiple causes, hardwired in complexity, there should be little surprise as to the pending crisis. Crises are coming from multiple locations thus the complexity of development planning and policy orientations, that generate unwanted outcomes, are the reasons for under documentation in the literature to urban studies concerning the leading causes of the housing crisis (cf. Edwards 111, 1980:3). This leaves the following question unanswered: What is wrong with the current local governance institutions? The affordability crisis is further exacerbated by the culture of many African countries; in Zimbabwe, the lack of high-rise buildings makes the land for housing scarce. In Zimbabwe, the land is finite¹⁴². A culture of low-rise residential buildings is driving land for housing prices out of reach; victimising low-income earners. Despite an uneven global economic recovery since the 2008 GFC, adequate and affordable housing is increasingly out of reach to hundreds of millions of people; the world's money markets have priced people out of cities, with speculators and investors treating housing as a "place to park capital"¹⁴³.

In line with the complex concept and terms of policy developments, the uneven impact of the transformation of economic structures has produced a complex mosaic of inequality and social polarisation and the relationships between marginalised groups and housing tenures are by no means straightforward (Forrest and Murie (1988:12). Chirisa et al. (2015:1) note that due to

¹⁴² City of Harare, Housing Investment, (2016: 17).

¹⁴³ Cf. James Bayes on Al Jazeera interview with Leilani Farha, UN Special Rapporteur on Adequate Housing.

distributive politics that hinges on housing cooperatives power dynamics, and considering “the Deep State”, there is an exclusion of those individuals not politically connected; and this has deep and undesired consequences in the management of Harare urban landscape area in the end. Housing policy in Zimbabwe, like other policies, had undergone a marked change in response to the rapidly changing political, social, and economic environment since 2000. However, Friedman (1968:16) notes that the approach/the welfare state legacy has a logical negative that the slums are beneficial to society and that slum life is beneficial to the people who live in slums – a “poverty-stricken urban proletariat” characterised by the less well-off in society.

The welfare approach considering the above notion perpetuated chronic informal settlements and in line with the transformative concept, slums, are a long-lasting and recurrent solution for the poor, characterised by long-suffering. In this regard, dealing with squatters will be only a matter of dealing with symptoms of the housing problem rather than its causes (Ha, 1987:5). This implies that housing challenges in some instances are a symptom of another problem. For instance, the Operation Restore Order (Murambatsvina) of 2005 in Zimbabwe was a government policy or attitude toward substandard settlements, that represented a slum threshold; unprecedented levels of informal housing and, thousands of shacks that have been built in the backyards of tenants and owners involved surgery (wholesale removal) instead of preventive medicine. It was used as a master planning smoke screen or excuse for forced evictions but reflects anti-poor tendencies (cf. Watson, 2009:178) and an invisible political hand, considering “The Deep State” to deal with opposition elements in the urban areas. Local and state authorities have responded in various ways to the massive process of informalisation that have taken place, from *laissez-faire*¹⁴⁴ and co-optation to coercion (Hansen and Vaa, 2004:25). Analysing through the lenses of “The Deep State”, slum eradication appears to be or continues to be an important political drawcard and housing delivery has become highly politicised and subject to mere politicking (cf. Tissington et al., 2013:6). Given the complexity, a closer look into the relevance of the chain of causality or the possibility of systematic causality is therefore required (cf. Pressman and Wildavsky, 1973: xxiv). Comprehensive policies to deal with the causes, and symptoms of the problem, are rarely formulated (Turner, 1968:122).

¹⁴⁴ *Laissez-faire* is a French term for ‘let it be’: economic system of minimal government interference and supervision; capitalism (Roskin et al., 2006:46)

5.4 Post-2000 and Housing Fragmentation

Anti-colonialism is an important force behind the implementation of public housing in Zimbabwe. It affects the ideological predispositions of both policy-makers and implementers and often results in simultaneous policy initiatives in other sectors and housing is not immune to these ideological waves. This, in turn, modifies the environment and events surrounding the implementation of housing in Zimbabwe. The circumstances moulded housing and urban strategies in ways that conflicted with the stated aims of policy-makers (cf. Hendler, 1989:1). It also implies that policy-making is closely tied up with political ideologies (Pugh, 1980:278). Grindle (1980:281) described this scenario as the influence and predilections of other policies and programmes in the political environment. As extrapolated in complexity, housing challenges must be understood within the context of policy overlaps, electoral cycle, and changing urban politics and policies¹⁴⁵ and a geopolitical milieu.

Western countries specifically the USA and European Union imposed embargoes on Zimbabwe in 2002 following the FTLRP and the sanctions are stated to have intended to effect regime change by starving citizens. If poor countries are without enough resources, usually they appeal to international cooperation. However, due to sanctions, Zimbabwe is unable to borrow therefore making housing and other social and economic services in Zimbabwe more difficult to implement. From 1982 to 2000, WB and USAID facilitated housing programmes in Harare (Chikwanha, 2005:94). This transformation drive was accompanied by several pieces of legislation, institutional frameworks, and programmes. The neo-liberalism phase constitutes the privatisation of public goods and housing was not immune; leading to striking unfairness. The nature of housing policy in terms of its content, and the context surrounding its implementation, is the main reason why public housing policy has ostensibly been directed to serving the poor been redirected to benefit higher income groups. This answers the question: How could housing policy fail so spectacularly, six years after it was signed into law? Privatising the housing stock may promote a sort of gentrification process that not only extends the housing gap between the poor and the rich but is also gender biased (Hansen and Vaa, 2004:12).

¹⁴⁵ Cf. McFarlane and Silver, 2016.

The country's accumulative nature in terms of enacting laws, establishing institutions, and implementing different programmes has created the basis for a crisis in housing. Chirisa et al. (2014) note that the housing shortage in Zimbabwe is a factor of increasing and uncontrolled urbanisation entrenched in the lifting of colonial policies and legislations. These factors cumulatively militate against orderly urbanisation. Against this backdrop, complexity would help to answer the question: How housing implementation takes place in a multiple legal and policy terrain? Housing is increasingly becoming a problem at a time of ever-increasing regulatory burdens imposed externally as the delivery system is expected to respond or cope with the reform-oriented GoZ. Housing crises develop from legal and institutional overlaps in a Zimbabwean complex milieu characterised by multi-level governance of urban development. This has consistently impeded good municipal planning.

Due to poor policy responses and rapid urbanisation, the rise of the informal urban is now rampant. Rapid urbanisation against a slow pace in the discharge of social housing is driving the poor, considering the transformative concepts, to engage in self-help housing. Policy responses include, among others, the National Housing Delivery Policy of 2000; National Housing Programme of 2003; Low-Income Urban Housing Policy and Acquisition of peri-urban farms during the FTLRP in 2000. The latter was the emergence of an outside threat as it lacked well-defined procedures for land acquisition. The conversion of agricultural and other lands to residential uses has created housing problems, for instance, Porta Farm, Harare's main informal settlement, Caledonia, that was formerly a farm was converted to residential stands as part of a product of the FTLRP. Agricultural land was acquired for private development. Ha (1987:8) argues that the land market is affected by changes in regulations concerning land use by zoning programmes and by public land appropriation. The importance of the historical moment was exemplified by the land reform policy of 2000 and has led to the unintended consequences – curtailment of authorised agencies, driving the poor to illegal squatting as the last resort.

Other wildly ambitious or ill-designed national policies like Indigenisation and Economic Empowerment of 2008, and ZimAsset of 2013, underline the paradox of policy failure as housing is heavily influenced by national policies, development plans, and guidance (cf. Mahabir et al., 2016:403). The economic restructuring that shaped and accompanied the growth in Zimbabwe may, together with political and demographic changes, be transforming some of the taken-for-

granted aspects of the urban character (cf. Forster, 2006:174). The political leadership in Zimbabwe collapse contradictory goals into one objective such as national dignity or development, obfuscate the significance of deep social cleavages through repeated references to the nation or the people, and imply that comprehensive change is just around the corner (cf. Grindle, 1980:294). In an analysis dressed in nationalistic rhetoric, these policies can be labelled “ideological” (cf. Grindle, 1980:294). The exhilaration of economic independence engendered false images of short-order change that could be achieved on economic and social fronts. Within the welfare state, it is housing that has been affected by reform policies (cf. Forrest and Murie, 1988:4). In other words, the political leadership in Zimbabwe makes periodic decisions about the priority of each sector of the economy; these decisions have multiplier effects in practice with a combination of snowballing and far-reaching impacts. Housing policies ultimately depend on political ideologies and practices (Ha, 1987:6).

Like in India, housing and urban development in Zimbabwe fall within the purview of the state; policies for economic and social planning are coordinated at the national level by the relevant ministries within the framework of the countries’ National Development Plans (NDPs) (cf. Ha, 1987:5). Resonating with the transformative concept, informal settlements that appear to have emerged in defiance of the law may be based on a mixture of political patronage, tacit permission on behalf of the local administration, and arbitrary and/or unceremonious application of some elements of existing regulatory frameworks (Hansen and Vaa, 2004:139). The law itself may be out of date and at variance with practice (Hansen and Vaa, 2004:139). As a result of this over-centralised, in other words, ‘omnipresent centralism’ that can be creeping centralism and over control by the national government, several housing agencies lack coordination and cooperation and among other factors, add or feed into the prevailing confusion of the housing problem (cf. Ha, 1987:5; Vosloo et al., 1974:25). This equates to the invisible hand in “The Deep State” fanning housing discord. Withal, Kigali’s experience in Rwanda, from a space of post-conflict trauma and instability to an internationally acclaimed ‘model’ of orderly and peaceful development has demonstrated how centralised policy-making and implementation, political determination, and donor support can help to ensure urban modernisation to take place in an extremely complex post-genocidal context.

Additionally, ZimAsset identifies affordable and decent housing as one of the main pillars of social security. This is part of government corrective measures that intend to provide housing for urban dwellers with 330 000 housing units by the year 2018 (Mutondoro et al., 2017:13). In trying to exploit themes for political support using populist rhetoric, the ZANU-PF 2018 election manifesto without realistic timelines, measurable goals, review, and monitoring mechanisms, promised to deliver 1.5 million medium-income housing units over the period 2018-2023. Under ZimAsset, Indigenisation, on the other hand, seeks to embrace citizen dispersion in socio-economic development. The nexus of these programmes and policies concerning housing is, however, a mix of controversy. This thesis advances the notion that the populist mantra hardwired in these programmes that encompass housing development is mere propaganda or mirror image designed to placate the passive and ceremonial participation of the citizenry in housing and urban development. There is, however, withholding of a promise and without any public expression of approval concerning implementation. Other populist programmes and ambitious assurances include the 2017 state-administered civil servants' National Housing Scheme. There has also been the introduction of the National Building Society (NBS), that was launched in 2016 to provide affordable loans to thousands of low-income earners (Mutondoro et al., 2017:13). Other financing strategies aimed at providing low cost serviced land for housing development include partnerships with the IDBZ and the Urban Development Corporation (UDICORP).

An enormous gap between housing public policy and the actual housing provision results in difficulties to continue providing funds to subsidize large housing programmes (cf. Malta, 2006:2). This results from wildly goals and overambitious policies with no follow up to the declarations and action plans adopted (cf. Golay and Ozden, 2007). It is important to have realistic timelines, measurable goals, review, and monitoring mechanisms (Farha, 2019). There are problems of coordination with various agencies controlling the planning, permission, and provision of services at both state and local levels. However, not all factors that impinge on an implementation outcome can be controlled or even predicted, like in “The Deep State”, some political variables are invisible. In Zimbabwe; there is the coincidence of events that appear to play an important role at a point in time concerning a policy outcome (cf. Grindle, 1980:290). In the mid-1990s, there was a crisis in urban governance as the government provided the impetus for the ascendancy of the urban informal through a series of policies. SI 216 of 1994 of the RTCPA sent a clear signal to local

authorities of the government's desire to promote non-residential activities in urban areas. The SI was a centrally driven policy that was not espoused by local authorities. It provides a pretext for many local authorities to turn a blind eye to the explosion of the informal. In this regard, perversely, the "success" of housing is creating the same problem it was designed to eliminate (cf. Grindle, 1980:251). This was further exacerbated by the harmonisation or integration of reform policies with housing delivery. Planning requirements were relaxed at the expense of supporting the indigenous and black empowerment as the government stressed African homeownership, dubbed 'Africanisation'.

Social policies in Zimbabwe in most instances endeavour to reach some sort of compromise with distributive and redistributive policies. Revolutionary policies with revolutionary orientations have, however, brought public housing to its knees as housing patterns began to change dramatically and overtime following FTLRP, the introduction of Indigenisation and Economic Empowerment, and ZimAsset – often overlapping policies. This results in extremely subtle and complicated political adjustments and maladjustments in the cities (cf. Friedman, 1968:164). Following these policies, a wave of invasions was visible in most parts of Harare; the actions resulted in the erection of shacks, and youth actions were in sync with the former President of the Republic of Zimbabwe, Robert Mugabe's directive of revolutionary rhetoric. Mugabe's symbolic and emblematic words and charm offensive extends to land appropriation, forced resettlements, and informalisation.

In the same vein, housing institutions perform more coherently if the general social, economic and political context does not produce too much unproductive discord in housing; state effectiveness is highly dependent on the political context (cf. Goodfellow, 2012:3). However, this is not always the case as the direct impact of considerable social, economic, and political change results in housing taking a new direction (cf. Pugh, 19080:286). Chikwanha (2005:101) notes that maintaining a state of chaos was an obvious strategy that would work to the ruling party's advantage. Over control by the ruling party created disorder and an era of chaos that proved to be beneficial for the electoral cycle. Forrest and Murie (1988:215) argue that to see the conflict narrowly in terms of housing policy is to strip it of its real political context. In this regard, this study considers examining housing in its wide context; examples of its relationship to 'social', 'economic', 'political', and 'physical' factors (cf. Ha, 1987:5).

The housing policy context involves housing history, the complexity of social change, outdated policies in subsidisation, and the requirement for general relationships among housing, urban, and social policies (Pugh, 1980:14). Considering the transformative concept, rigid and dinosaur urban planning regulations are typically by-passed by slum dwellers to meet their housing needs (cf. Mahabir et al., 2016:404). The successful implementation of public housing policy is difficult in 1st world countries; it is more difficult in the 3rd world and it may be most difficult for reformed-oriented governments like Zimbabwe. Reformed-oriented governments are those embarking on more ambitious, problematic programmes that are harder to implement, thereby making it difficult for other policy fields as a result of these multi-goal programmes. In turn, this result in a torturous process of housing implementation as reform policies took precedence over the work of local authorities. Regime characteristics of a reform-oriented government can help explain the trajectories in the implementation of housing policy. Because of complexity, multi-goal reform programmes may result in a redefinition of policy objectives or a redesign of delivery procedures of other policy clusters (Grindle, 1980:196). In this regard, housing policy in Zimbabwe is faced with problems of policies with distributive and redistributive goals, and the housing crisis is therefore due to the overriding and overflow of a multitude of public policies that seem to be counterproductive.

Like the experiences in Zimbabwe and elsewhere, Grindle (1980:224) notes that pressures from reforms are much stronger than the influence of housing policy preferences. If the policy context is an obstacle to government housing goals, so too is its relation with reform policies. Given “The Deep State” and complexity concepts, this study document the bias towards distributive and redistributive pressures in Harare public housing programmes, explaining why official goals of the NHP are not being achieved and why the policy can be judged to be a failure in terms of the definition of success. The close nexus between land policy in the urbanisation process and housing for the poor in Zimbabwe needs to be recognised, taking note of the failure of some of the urban land policy instruments resulting in a hiatus or an interruption between stated policy objectives and actual results. Grindle (1980:225) notes that pressures sway policy choices and influence allocational decisions.

5.5 Introspection of “The Deep State”, Complexity and Transformative concept in the Zimbabwean context

The Zimbabwean NHP document of 2012 attributes housing backlog as constrained by several factors. In summary, the key problems were catalogued as follows; lack of policy coherence regarding rural-urban integration, inadequate investment by both the public and private sector in the housing sector, lack of policies to enable effective participation of other actors in housing development, lack of institutional capacity, poor urban governance at all levels to implement housing projects, unreliable supply of affordable building materials, and bottlenecks in the land delivery process (cf. Mahabir et al., 2016:403). The policy document is silent about the contextual variables and other circumstances surrounding the implementation of the policy that are inhibiting and stalling progress. Watson (2009:154) advances that environmental processes are well beyond the scope of the most efficient and effective planning systems. On the factors perpetuating housing problems, virtually no reference was made to how policy overlaps affect the right to housing; the shortcoming has been the tendency to generalise manifestations. Housing practitioners must look for other factors that are beyond the structural constraints at the macro and sector levels and also look for political solutions to political problems as politicians in some cases apply political solutions to housing problems. The Zimbabwean case highlights how politics can override systems. This study is vital in unravelling critical patterns of development embedded in cities that urban planning as a discipline should never take for granted in its quest to bring up interventions. Indeed, urban planning is not in any way apolitical, it is trussed up with politics. There is a need for the designing of policies to ensure that the citizenry does not suffer development exclusion chiselled along political lines.

How the provision of housing and housing services is organised can be regarded as the main institutional context determining housing policy (cf. Boelhouwer and Van der Heijden, 1993:377). The institutional contexts catalogued or laid down in the NHP (2012) are not necessarily those valued the most or consider to be the most relevant. Factors outlined in the policy are analytically misleading and insidious in their policy implications. Factors necessitating the housing predicament in Zimbabwe seem to be more than institutional factors about the constitutional and legislative framework of housing. The rational implementation of public housing in Zimbabwe face a formidable set of obstacles amid complexity and the confusion and uncertainty posed by the

ever-changing policy context. There are circumstances under which structural factors are a cause of the housing crisis; would-be policy analysts must examine the circumstances and events surrounding policy implementation before leaping aboard the structural bandwagon. Outside structural factors, policy-makers must focus and look for danger signals posed by the policy content and policy contexts that policies are exposed to; that is, the formal and informal political processes involved and economic conditions underlying the proliferation of unauthorised land supply and provision.

While organisational, administrative and management factors are causing housing crisis in Zimbabwe, there has been little effort to trace the influence of policy content and policy context thus the primary focus of this study, through the lenses of “The Deep State” and complexity is on the complexities of power, influence, manipulation, compliance with policy directives and coercion that condition who gets what in terms of the housing rights and benefits. This implies that while institutional factors are important in canvassing factors impeding the smooth implementation of housing in Zimbabwe, an analysis of the policy context and policy content is more important in trying to go beyond the manifestations of institutional crisis. Political rather than technical factors exert a strong influence on the implementation of housing. While the allocation of housing for land appears to be loosely regulated by numerous policies and systems, it appears to be fundamentally about access to resources and power and has little to do with individual needs. The fact that these variables (policy content and policy context) often cannot be systematically classified analytically does not diminish their importance. Considering the above notions, there seems to be the emergence of a new housing crisis as the increasingly lengthening of the waiting lists can be attributed to circumstances outside the structural hurdles.

Efforts to explain the housing problem that ignore the context in which housing problems emerge ignore the broader macro-aspects of the urbanisation problem (Ha, 1987:3). There is, therefore, a need to pay enough attention to the context in which the problem arises as there seem to be new grounds being presented. This study, therefore, focuses on redefining the ‘Housing Problem’ considering the changing composition of problems and going beyond the confines of structural and administrative factors and other non-housing issues. This implies a contextual analysis of the housing system to provide a fair cross-section of varying socio-political systems to understand and

appreciate the nature and the extent of the problem to answer the question: How could housing policies be better coordinated with environmental and social development policies?

The housing problem, as it has been understood throughout the NHP, was essentially about the structural challenges. Nevertheless, the overall housing shortage concealed or obscured more serious problems in areas of policy content and policy context. The urban planning system is shaped and influenced by the context within which it operates; even though Global South has formal planning systems modelled on those from other parts of the world, these systems are inserted into particular institutional contexts and their ability influence land management in cities and towns is circumscribed by a wide range of local, national and international forces (Watson, 2009:156). This embodies long-term developments affecting housing implementation. There is a growing contradiction between an economic policy that stresses empowerment and indigenisation and a housing policy of expanding homeownership (cf. Malpass, 1990:125). This implies that apart from structural factors, reform policies present additional barriers to homeownership and add to the housing crisis. The economic situation exercises an all-pervasive influence on the housing system; housing policy is never free of the economic, political, and social situation (Murie et al., 1975:250). In Zimbabwe, indigenised, Afro-centric forms of governance in their evolving forms affect public housing provision.

Grindle (1980:37) notes that political leaders, in their public statements, private conversations, official directives, and formal emphases indicate the general direction that actions should take. This is in line with Economic Freedom Fighters (EFF) leader Julius Malema of South Africa when he made public statements in the South African Parliament and political gatherings in Newcastle and Bloemfontein that black South Africans must occupy the land because it belongs to blacks. Quoting a quotable quotation from Malema, he once said, “fellow South Africans, if you identify a piece of land, and if you want it, take, it is yours”. Through election talk, both ANC and the EFF in South Africa believe land expropriation will fast track the delivery of proper homes more than the current delivery rate in the country. ANC in the run-up to the 8 May 2019 elections set a housing delivery target of one million RDP houses in five years and that equates to 22 RDP houses per hour; the ambitious programme sounds unachievable. The use of political and electoral populism in response to popular concerns by politicians’ eagerness to mobilise voters in a context where property rights are plural or in transition is an increasingly common phenomenon in various

African countries (Meinert and Mette, 2016:769; cf. Golooba-Mutebi and Hickey, 2016:602). For instance, in preparation for the 2019 elections, former president of South Africa, Jacob Zuma noted that the dispossession of land from black people had brought about poverty and homelessness. These extreme rhetorics, political opportunism, cheap politics of populism, and alarmists' sentiments cause unfounded panic and an unquenchable thirst for land. Land invasions are more pronounced during elections periods; following political speeches, fresh rounds of invasions intensify (Zimbabwe Human Rights NGO Forum, 2010:4). The urgent problem of the redistribution of agricultural and urban land plays a role in forcing the housing crisis.

Withal, people want land not for food production or with the intention of agricultural land-use (cf. Huchzermeyer, 2003:83), but to build shacks; people are putting emotions to deal with the issue of land¹⁴⁶. Now the question is: How does the appropriation of land and sticking shacks up resolve the housing crisis? Southaw (2005:146) argues that numerous methods can be used to grab land; there was widespread abuse of presidential discretion regarding unalienated urban land after presidents Kenyatta and Moi granted land to individuals without any consideration of public interest; for political reasons and without the proper pursuit of legal procedures; in fact, they did not have the legal power to allocate. This implies the “*presidentialisation*” of public or social goods. In a particular vein, the former President of Zimbabwe, Robert Mugabe after the FTLRP ventured into a series of controversial and oxymoron statements and unorganised popular responses leaving some questions unanswered like, “Is it a law that follows politics or politics follow the law” (cf. Sithole et al., 2003:81). Land reforms deal with more than the present.

The Land Reform in Zimbabwe was an act of democratic defeatism with political foundations informing the constitution. Executive non-compliance with court orders was rampant because of lawlessness that prevailed in Zimbabwe since 2000. This implies that though the law is the law, it can be violated, and the ‘authoritarian’ regimes can look for alternatives. Zimbabwe after the FTLRP routinely or regularly suspends the law and sometimes concerning land issues operates outside written rules and regulations. Sometimes the government was aware that their actions are unlawful; knowingly violating the constitution. Laws were suspended in the name of creating benefits for the indigenous people as reform policies sought to restructure the social, economic,

¹⁴⁶ South African Former Minister for Rural Development and Land Reform, Mr. G Nkwinti, during a Parliamentary Portfolio Committee on Rural Development and Land Reform attended by the researcher (04/10/17).

and political relations that appear to be perpetuating inequality and exclusion. Roy (2009:81) argues that the state as the sovereign keeper of the law can place itself outside the law to practice development.

After the controversial land reform, Operation Murambatsvina of 2005 breached national law guiding evictions and was also inconsistent with the international law obligations guiding evictions; the operation was extra-legal and was widely condemned as a gross violation of fundamental human rights and freedoms (Bratton and Masunungure, 2007:22). The actions were in clear violation of the then clauses that provide that no person may be evicted from their home, or have their home demolished without an order of the court made after considering relevant circumstances and the violation of the right to property under Section 16 of the 1979 Lancaster House Constitution – protection from deprivation of property. The government disregarded its constitution and statutory protections, rendering Section 16 null and void and rendering Zimbabwe as a classic case of an authoritarian government clinging to power and using whatever methods it considers necessary to ensure its continued survival (Romero, 2007:294). It is also important to note that the ‘new messaging’ in the 2013 Constitution concerning housing is the same as the old messaging, only even vaguer and more confusing.

In the same vein, the eviction was not based on alternative accommodation or land available for resettlement or strict accordance with international legal standards. The government as a cover-up introduced other housing developments like Operation Garikai, constructing houses for the people to restore its image, that had suffered from adverse media publicity and wide negative reaction and condemnation from the international community over human rights issues. Operation Garikai was just a “charm offensive”, ‘stage-managed urban development’ a mala fide and impression management and damage control in an endeavour to deter the international community’s concerns over its Operation Murambatsvina programme when the country reached a point of illegality and constitutional outrage. It was an attempt to convince the international community, to neuter the UN and blunt international criticism. The whole exercise was a charade, a choreographed programme meant to provide a platform and/or a temporary escape route for the government to shield the entire wrongs of Murambatsvina from liability. The government was trying to deny the truth by spinning reality into something more palatable for national sensitivities that were, however, not helpful. Operation Garikai was an exculpatory programme seeking to sustain the

transformative tale since Murambatsvina did not follow or respect or ensure basic due processes or ensuring rights with particular attention to the rights and protections afforded to women and children. This is in line with the need for safe homes for children and women for a decent living.

Operation Murambatsvina resulted in forced resettlement (Li, 2007:61). The wave of lawlessness was characterised by unwritten rules to achieve the state's politically acceptable objectives. Roy (2009:80) notes that while it may seem obvious and apparent that the urban poor is engaged in informal and illegal occupation of land, much of the city itself is occupied through the 'misrule of law'. This is in sync with the doctrine of constitutional avoidance. Constitutional eschewing canon implies that a court that finds a statute unconstitutional can creatively reinterpret that statute in a way that changes its meaning to fix the constitutional violation. This tendency is rampant in HCC as they end up changing and invalidating the statute's meaning to allow the courts to avoid issuing broad rulings on matters of constitutional law, for instance, arbitrary evictions.

The power to change and alter land use has been grossly abused by officials who wantonly approve structures to be built over, or close to, sewage lines, road reserves, wetlands, high voltage power-lines, recreation grounds, and traffic island meant for road safety (Goodfellow, 2013:83). People living in high-risk areas like informal settlements located in wetlands or near ponds and natural watercourses vulnerable to flooding and storms need to be relocated to higher ground (*Cape Argus*, 16/04/2018), living in inadequate places compromises the legal mandate of local authorities in the case of housing and stifles successful implementation. The 'city in a crisis' proposition is evidenced by settlements emerging in areas that are in proximity to cemeteries, sewage ponds, island medians meant for road safety, main road reserves for future expansion, and under high voltage pylons. Settlements have mushroomed in the supposedly protected wetland areas reserved for vital ecosystem services for the city and environment. Land invasions to undesignated spaces not only pose safety risks to residents but fail the minimum standards of habitability.

In line with environmental laws, such as Section 73 of the Zimbabwean constitution that details the right to a clean environment and human habitat that has to be adequate and not harmful to health, there is a need to call for attention to the adverse environmental conditions under which many of the poor live, the only housing they can afford is near polluting factories or noisy airports and trains (cf. Stiglitz, 2012), to suit their living fashion given the transformative concept. This is

because construction is on prohibited land, for instance, housing stands in tributaries and swampy areas, too close to the main roads, rail lines, electricity pylons, water pipes/lines underneath, and cemeteries (cf. *The Herald*, 13/07/2019). Living in the prohibited spaces is not only a death trap but a life sentence of living under the threat of eviction. In line with the transformative concept, extremis situations are places that people live if the alternative is death.

Not all official responses or political pronouncements over land issues inhibit orderly urbanisation (cf. Hendler, 1988:25; Chiweshe et al., 2013:15). This implies that housing implementation is sometimes plagued by populist policies. The directives have nothing to do with the un-housed; it is unbridled urban populism (cf. Roy, 2009:84). Against the perceived causal drivers of housing challenges, informality is punctured in the politics of populist mobilisations. This is closely related to the paradox of popularity with a characteristic of ideological programmes that are expected to realise multiple goals at the same time and change the existing social settings (Grindle, 1980:41). Ideological programmes, like FTLRP, Indigenisation and Economic Empowerment, and ZimAsset in Zimbabwe are endowed with a sense of urgency and vital importance placing the implementation brigade under extreme and tremendous pressure to produce results in housing (cf. Grindle, 1980:43).

It has been observed that implementing agencies are afraid to criticize a popular program. Local authorities end up using political criteria for setting priorities and organising action. A reformed oriented government, like Zimbabwe, provides a good opportunity for testing some fundamental assumptions about the virtues of decentralisation and the power of local authorities (Grindle, 1980:147). Political popularity appears to inhibit the normal processes within the implementing agency. Parts of Harare are now ‘unliveable’ and housing security is under threat. Overall, Harare has been ranked the sixth least liveable city in the world out of 140 nation cities due to instability, inadequate infrastructure, and a poor healthcare system, faring better only against cities in conflict-ridden and highly fragile states except for Nigeria (Global Liveability Index, 2018). Harare ranked 135 out of 140 nations, scoring 42.6 on the index, with 100 being the most ideal (*The Newsday*, 16/08/18).

5.6. *Dusabe v City of Harare Judgment - HH 114/16*

This was a case of Jean Pierre Dusabe and John Peter Mutokambali versus the City of Harare, hereinafter referred to as HCC, the MLGPWNH, and the Ministry of Lands and Resettlement hereinafter referred to as *Dusabe v City of Harare*. The applicants were members of the Nyikavanhu Housing Cooperative. They constructed houses on Subdivision E of Arlington Estate. The respondents were the HCC cited in its capacity as the local authority, the MLGPWNH (Minister of Local Government), cited in his capacity as the public official responsible for the administration of the UCA, and the Ministry of Lands and Resettlement (Minister of Lands), cited in his capacity as the public official responsible for the allocation of state land. The HCC armed municipal police officers demolished the applicants' homes on 21 January 2016 without notice or court order and further threatened to destroy their household property and forcibly evict them. Since the demolitions, the applicant and his family have been sleeping outside in the rubble, or the car for shelter, as they had no alternative accommodation. Children contracted the flu; the pregnant woman started to experience stomach pains. The plaintiff himself, like the other applicant, could go to work as he had nowhere to bath. He had no savings, and nowhere to go with his family.

The applicants assert a constitutionally guaranteed protection from arbitrary eviction (Section 74), property rights (Section 71), and lawful administrative conduct (Section 68). The applicants were seeking urgent protection of the court because there were living in the open, in the rubble of their houses, and subject to health challenges. The applicants were seeking an order that the City of Harare be barred from threatening and harassing them and be prohibited from destroying their household property and for HCC, MLGPWNH, and Ministry of Lands and Resettlement to provide them with emergency alternative accommodation, together with their families. The final order sought was a *declaratur* that the demolitions of the complainants' houses without a court order was unlawful. Houses that had been built without the requisite planning authority were demolished and rased to the ground without a court order or notice, the process was not procedurally fair. There was apparent misapprehension by government departments of their duty to uphold the Constitution, by ensuring that their conduct is not only lawful but procedurally fair.

The first applicant purchased plot 1101 Arlington Estate, Hatfield from Nyikavanhu Housing Cooperative that is registered properly in terms of the Cooperative Society Act [*Chapter 24:05*].

Nyikavanhu Housing Cooperative had been offered subdivision E of Arlington estate for housing development purposes. In 2006, the MLGPWNH offered Nyikavanhu Housing Cooperative 530.25 hectares of the remainder of Arlington for development. In 2010, the remainder of Arlington Estate was gazetted and acquired by the Ministry of Lands in terms of the LAA. Civil Aviation Authority of Zimbabwe in 2011 wrote a letter giving clearance to the subdivisional proposal of the remainder of Arlington Estate. However, the developments were to be carried out following the requirements listed by the HCC Combination Master Plan. In 2012, the Administrative Court confirmed the acquisition. In 2013, the Civil Division of the Attorney General's office wrote a letter to the secretary for national housing and social amenities, on behalf of the Nyikavanhu housing Cooperative, berating and castigating the secretary for refusing to approve the layout plan reiterating that the cooperative was in lawful occupation and had the requisite government permission to develop the piece of land into residential stands. The applicant has been living on the property together with his family that includes a seven-month pregnant wife with a broken leg, minor children one of whom suffers from Bronchitis, and a teenager with a chest condition, other family members of the other applicant were living with relatives. The applicant and his family were living in the rubble of their former home, with no toilet or ablution facilities, at the mercy of the weather in the rainy season and considerable health risk.

Several meetings were convened with the leadership of Nyikavanhu Housing Cooperative that was advised of the pending evictions and verbal notices of intention to evict were given and the MLGPWNH offered Stoneridge Farm as an alternative. The applicants ignored the notices for eviction and were told to direct their claims for compensation to the cooperative that allocated stands to them. It was denied that Section 71 of the Constitution on property rights applied to the applicant's circumstances because the applicants illegally constructed structures on state land without the requisite development permits or approval from the HCC. It was denied that the MLGPWNH was obliged by the Constitution to provide the applicants with alternative accommodation.

Section 74 of the Constitution of Zimbabwe on the right from arbitrary eviction is against the unlawful demolition of homes in the absence of a court order. Notices in writing of the intention to demolish were not given thus they violated Section 74. Considering Section 71, the court accepts that Nyikavanhu Housing Cooperative was given the mandate to distribute state land on Arlington

Estate in 2006. The cooperative did not act outside its mandate until it accepted cash from home seekers, knowing full well that it could not obtain the development permit and get confirmation of a layout plan, that was a condition of its offer of state land to distribute. The problem arises from the cooperative having accepted cash for the state land that it allocated to the applicants when it had no mandate, permission, or authority to accept the charge or receive the cash¹⁴⁷. The culpability lies squarely on the relevant government departments for not supervising housing cooperatives as they should, and for failing to act against the cooperatives when it becomes clear that they have exceeded their mandate.

Government departments' conduct to wait until structures have been put up to demolish them is a direct contravention of the right to administrative justice enshrined in Section 68 of the Constitution and the Administrative Justice Act (AJA) [Chapter 8:17]. All the administrative authorities, that is HCC, MLGPWNH, and the Ministry of Lands were supposed to comply with certain formalities and follow procedures when exercising their powers. Any action taken by the administrative authorities must be reasonable, and substantively and procedurally fair. The duty of the courts is not to dismiss the authority and take over its functions, but to ensure, as far as humanly possible, that it carries out its functions fairly and transparently. In the *Dusabe v City of Harare* case, the right to lawful, prompt, efficient, reasonable, proportionate, impartial, substantive, and procedurally fair administrative conduct was violated. Notice of the impending evictions was not given to the applicants in writing, in violation of Section 68 (2) of the Constitution.

The HCC and the MLGPWNH did not act fairly, or transparently. They failed to refer to proper considerations, such as the need to get authority from the court to demolish the applicants' properties, and the need to give notice in writing to the applicants and all those likely to be affected by the demolitions. There was no openness, frankness, or honesty with the residents of Arlington Estates. In light of "The Deep State", the respondents' position that there was no privity between them and the residents' smacks of bias, and collusion, and underhand dealings with Nyikavanhu Housing Cooperative.

¹⁴⁷ Cf. Evidence from Commission of Inquiry into Sale of Urban State Land attended by the researcher, Harare, 07/05/19.

It is not good enough for the MLGPWNH to point out to meetings held between it and Nyikavanhu Housing Cooperative as being adequate notice. The constitutionally protected right to administrative justice demands that the applicants be given notice of the intended eviction, in writing, as people whose rights, freedom, interest, or legitimate expectation were likely to be adversely affected by the demolitions that constitute administrative conduct. The HCC that only provided the equipment to the MLGPWNH is duty-bound by Section 68 and ought to have refused to loan its equipment to the ministry in the absence of a court order. The HCC acted in concert with the MLGPWNH, in contravention of Section 68 (1) and (2) of the Constitution. Both the HCC and the MLGPWNH's conduct was unlawful and procedurally unfair. It is, however, arguable that the demolition of structures built illegally was procedurally fair, but the absence of a court order authorising the demolitions makes the administrative conduct unlawful.

Against this backdrop, ZLHR (2015:15) advances that administrative authorities continue to violate the Constitution by refusing to comply with the rules and tenets of natural and administrative justice, particularly in decisions that are taken in state institutions and by and against the state (and non-state actors). While such action can be legally challenged after the fact, like in the *Dusabe v City of Harare* case, it is critical to prevent such abuse in the first place. Where legal action is taken, decisions (and the reason for such decisions) must be furnished expeditiously (ZLHR, 2015:15). Considering these loopholes in the AJA, there is a need for a review of the Act to incorporate administrative justice as a fundamental right as provided in the Constitution. There is also a need for the inclusion of timeframes within which courts provide judgements in cases that have been adjudicated, to comply with the timely administration of justice (ZLHR, 2015:15).

Considering the *Dusabe v City of Harare* case, Section 74 had no application in the circumstances, as it is designed to regulate the compulsory acquisition of land by the government. The applicants did not have legitimate entitlement or title to the stands that they were allocated by Nyikavanhu Housing Cooperative. The land is vested in the MLGPWNH thus it cannot be said that the demolition of the applicants' houses was the compulsory acquisition of their land in the sense intended to be regulated by Section 74 even though the HCC and the MLGPWNH's conduct of demolishing the applicant's property without notice and a court order was unlawful. The applicants themselves did not have legitimate title to the land, Nyikavanhu Housing Cooperative did not have any legitimate title to pass to the applicants but merely to distribute state land belonging to the

MLGPWNH. Furthermore, when it was offered the land in 2006, the offer was subject to certain conditions that were not met and the remainder of Arlington state remained state land and the cooperative had no right to accept money for the ‘purchase’ of the stands from the applicants.

However, the unlawful conduct of demolishing houses without notice and a court order was deplorable, unconstitutional, unlawful, and not justifiable in a democratic society. Under no circumstances are the government departments at liberty to demolish any structures in the absence of a court order authorising them to do so, whether the structures are illegal, or an eyesore. The court acceded to the request for an order barring the respondents from threatening or harassing the applicants or further destroying their property without a court order. As a mark of displeasure at the unlawful conduct of the HCC and the MLGPWNH, a punitive order as to costs was made against them as a deterrent or to discourage such blatant disregard of the law, in the future.

5.6.1 Lessons that can be drawn from the *Dusabe v City of Harare* case

Every citizen of Zimbabwe has the right to administrative justice that is enshrined in Section 68 of the Constitution thus administrative conduct must be lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair. Under no circumstances are government departments at liberty to unilaterally and arbitrarily demolish any structures in the absence of a court order, whether the structures were built without complying with any legal requirement. The MLGPWNH deposed to an opposing affidavit in 2016 averring that urban state land is allocated by the MLGPWNH and not by the Ministry of Land and disputing that housing cooperatives are mandated to sell state land. They may be mandated to distribute state land only¹⁴⁸. The Civil Aviation Authority had no authority over the development of state land. This makes the applicants’ structures, that they built on the land, illegal and unauthorised. The culture of impunity that has pervaded and corroded government departments should be roundly condemned. Housing Cooperatives are registered and supervised by a government ministry and it is the responsibility of that ministry to disseminate information to members of the public about the mandate and authority of housing cooperatives.

Government departments must not wait until structures have been put up for them to demolish them. They must hold meetings periodically in which the cooperatives should be reigned in and

¹⁴⁸ Evidence from Commission of Inquiry into Sale of Urban State Land attended by the researcher, Harare, 07/05/19.

put on strict terms. Applicants have remedies against the negligence and unconstitutionality conduct of government departments or administrative authorities for failing to protect them from the actions or omissions of Nyikavanhu Housing Cooperative, when they knew that the cooperative was continuing to allocate and take cash from the members of the public, for stands on Arlington estate when it no longer had the mandate to do so. This is in line with the invisible hand in land deals as canvassed lengthily in “The Deep State”.

5.7 Conclusion

This chapter accounting for policy ruptures ascertaining fundamental shifts in the housing public policy-making in Zimbabwe. Policy paradigms characterised post-independence Zimbabwe’s development policies hence explaining fundamental shifts in housing development. There was a trajectory from the socialist-oriented period through the market provision into housing fragmentation that was associated with the post-2000 period of inertia concerning infrastructural and developmental projects. The Zimbabwean experience was discussed considering the paradigmatic shifts in public housing policy-making. It demonstrates that the right to housing becomes more elusive for the groups that live on the margins implying that perhaps there is a need to come up with various models of transformation that do not lead to manipulation and impoverishment in the values of distributive justice. The chapter further explored the dynamics of public policy implementation, housing as a political process, and the domestic and contemporary capitalism to housing; that is privatisation of public housing. To draw comparative analyses, the next chapter will focus on South African, Colombian, and Brazilian experiences.

CHAPTER SIX: A COMPARATIVE JURISPRUDENTIAL ANALYSIS: LESSONS FROM SOUTH AFRICA, COLOMBIA, AND BRAZIL

6.1 Introduction

This chapter discusses the South African, Colombian, and Brazilian experiences as standalone cases to draw comparative analyses, considering recurrent features emblematic in different jurisdictions of countries at the same level of development as Zimbabwe. The rationale behind this comparative housing system is to trace episodes concerning the housing crisis between countries to ferret lessons from court decisions of other jurisdictions regarding South-South cooperation that is, regional and Latin American countries. A few instances from the Global North will also be discussed to benchmark global practices concerning the realisation of the right to adequate housing. Given a global overview of housing insecurities discussed in Chapter Four, this chapter considers courts' decisions from selected jurisdictions that are relevant to the issue under study. In line with comparative jurisprudential landscaping, lessons can be drawn from South Africa, Colombia, and Brazil's case experiences as juxtaposed to Zimbabwe. Zimbabwe's place in the world will be compared, linking discussions of other countries with the Zimbabwean situation. In cases where Zimbabwean's experiences constitute a departure with scenarios in other case experiences, congruencies, variance, or divergences or where approaches differ will be revealed citing clauses outside the Zimbabwean jurisprudence.

6.2 Debunking Regional Experiences: The South African Case

South Africa is well-known for its comprehensive and progressive jurisprudence on socio-economic. It is known for its progressive housing laws, jurisprudence, policies, and programmes (Chenwi, 2013:344). The state of comparative constitutional law remains on the theoretical concerns and a comparative analysis of Zimbabwe constitutional law and other experiences seek to solve problems that come out of Zimbabwe's constitutional experience and theorising thus taking Zimbabwe seriously as a theory maker. Comparative constitutional law, as a discipline, might have a different perspective if it adopted its theoretical foundations from the core concerns of countries outside the region; the basic underpinnings of constitutional law seem to be more technical and less political elsewhere. This requires thinking about the role that courts are playing in different kinds of environments (Landau, 2012:12).

In the same vein, Sections 7 and 8 of the South African Constitution oblige local, provincial, and national governments to respect, protect, and realise the right to adequate housing. Some lessons can be learned from the decisions of the South African courts in as far as the realisation of the right to adequate housing is concerned. Some of the appropriate cases that will be used include the *Grootboom* case, the *Alexandra* case, and the *Bredell* case. The case of South Africa was chosen because of the recurrent features in its jurisprudence that are similar to that of the Zimbabwean Constitution, given that there are harmonies concerning the wording in the Zimbabwean Constitution [Section 28 (shelter), 71(3)(a)(b) (property) and 74 (eviction, invasion, and relocation)] and the South African Constitution/legislation governing housing [Chapter 2, Section 26(1)(2) (housing), 26 (3) (eviction, invasion, and relocation), 27 (1)(c) (further housing-related right to every child to shelter) 25(4) (property)]. Relevant provisions of the above cases on the concepts about the obligations of the state towards the realisation of economic, social, and cultural rights form part of the assessment. The South African national housing backlog is reportedly at 2.3 million (South Africa Department of Housing).

6.2.1 The Fight for the Right to Adequate Housing in South Africa: the *Grootboom* Affair

The Grootboom case was between the Government of the Republic of South Africa and Others Vs. Grootboom (Grootboom) 2001 (1) SA 46 (CC), 2000 (11) BCLR 1169 (CC). The *Grootboom* case is described as a cusp ruling on socio-economic rights. Mrs. Grootboom, who in 2000, together with some 900 other people of the Wallacedene Settlement in Cape Town, challenged the Tygerberg Municipality in the High Court based on the progressive constitutional right to adequate housing, and the children's unqualified right to shelter (Huchzermeyer, 2003:81). It was a successful High Court application in the children's best interest to be sheltered with their parents as provided for in Section 28 (1)(c) in the South African Constitution (Huchzermeyer, 2003:86). The decision acts as a priority setting and pushes out the boundaries of socio-economic rights adjudication beyond a point that many commentators believed possible (Roux, 2002: 46). The municipality challenged the High Court ruling in the Constitutional Court that in turn ruled for temporary provision of shelter and services to the *Grootboom* community and for an extension to the national housing programme to cater to the immediate needs of those living in intolerable conditions (Huchzermeyer, 2003:81).

From an administrative law perspective, the court in the *Grootboom* case made an important conceptual gain; it mapped out a role for the judiciary in adjudicating the often-polycentric issues raised by social right claims; the case illustrates that vindicating social rights is not as far removed from courts' "ordinary" review function as is often contended (Sunstein, 2001:234). Low-income residents in urban South Africa have made use of the courts to fight for what they perceive as their democratic right to a home in the city (Huchzermeyer, 2003:80). The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act of 1998 states that if occupation exceeded six months, there is a need to consider whether alternative land can be reasonably be made available by a municipality or other organ of the state or another landowner. Where the land has been occupied for less than six months, an eviction order may only be granted after considering all relevant circumstances, for instance, the rights of the disadvantaged groups such as the aged, juveniles, disabled persons, and households headed by women.

More so, the liberal sense was exemplified in the *Grootboom* case, that is to refrain from requesting the government to give permanent rights to the illegal occupiers of land and to upgrade infrastructure and services as this would condone land invasions; the state could not be easily bound even by a liberal order of the court (Huchzermeyer, 2003:85). In the conservative sense, the judgment was informed by the "correct" legal interpretation; there was also a tough approach where the competitiveness was considered and the ruling is weighted in favour of property rights and the sentiment of investors (Huchzermeyer, 2003:85). It is important to note that though the judgments support illegal occupiers, there are no radical judgments (Huchzermeyer, 2003:84). The provincial and national governments feared a flood of demands from other squatters invading like locust (Huchzermeyer, 2003:86-87), in line with the transformative concept, this will be defective demand where people engage in more self-help housing if the alternative is homelessness. The growing demand for housing is fuelling a wave of occupations.

Consistent with "The Deep State", the High Court was slow to interfere with rational decisions taken in good faith by political organs as some issues were reserved to be adjudicated by politicians; the ruling was, however, challenged by the municipality in the Constitutional Court (Huchzermeyer, 2003:87). The Constitutional Court ruled that meeting the housing needs of those living under the worst conditions would deflect resources from the medium-to-long-term housing delivery programme; the housing programme must plan for the fulfillment of the immediate needs

and the management of crisis (Huchzermeyer, 2003:88). Recognising the difficulties associated with the prevailing socio-economic conditions, the court did not oblige the state to go beyond its available resources or to realise the right immediately (Williams, 2005:226). This implies considering the economic contraction of the lack of resources in developing countries. Material public-policy decisions require the expenditure of public funds, that are always scarce (cf. Roskin, 2006:51).

The qualification of the state, considering resources available, does not mean it must detach from its constitutional obligation (cf. Review of Australia Fifth Periodic Report under the ICESCR, 2017). Roux (2002:40) and Sunstein (2000:131) acquiesced that from an “administrative law model of socio-economic rights”, the case gave the courts the power to order the government to “devote more resources than it could otherwise would”. The other outcome linked to the case is the allocation of a fixed percentage of the annual national housing budget, by the National Treasury Department, for the provision of emergency housing services that was dubbed, the *Grootboom* allocation (Chenwi, 2015:83). The approach, however, leaves many issues unresolved; any allocation of resources for providing shelter prevents resources from going elsewhere (Sunstein, 2000:132).

The court was temporarily overstepping the boundaries of judicial role (Landau, 2012:12). However, Roux (2002:40) notes that concerning the justiciability of socio-economic rights, the decision provides a partial answer. There is, therefore, a need to make social rights “real” and not just paper rights and the need to lessen the tension between judicial review and democracy (cf. Landau, 2012:1). In view of Roux (2002:46), the *Grootboom* decision did not provide the anticipated legal ammunition. Despite the international praise of *Grootboom*, the actual impact of that judgment on the housing situation has been very limited (Review of Australia Fifth Periodic Report under the ICESCR, 2017). Irene Grootboom, the main litigant in the 2001 landmark case, died homeless in 2008, without having received permanent housing and still living in an informal settlement; conditions had not yet improved despite the positive judgment delivered in 2000 and the decision of the court did not translate into effective implementation (Sunstein, 2001; Nevondwe and Odeku, 2012:11327; Chenwi, 2015:82-83; Review of Australia Fifth Periodic Report under the ICESCR, 2017). This bolsters the fact advanced in the transformative concept that few changes are truly transformational; while the case is celebrated internationally, the

decisions have fallen far too short in terms of fulfilment. *Grootboom* presents a stark reminder that the realisation of ‘true’ equality and attendant attainment of a society in which all South Africans are guaranteed access to housing remains a laudable but unattainable goal (De Vos, 2001:268). However, there is a need to look at the particulars of inequality and disparities before talking about equality (Farha, 2019).

There were general delays in the enforcement of the decision and provision of housing (Chenwi, 2015:82-83). The state parties failed in their obligation to expedite and effectively work towards the full realisation of the right to adequate housing (Chenwi, 2013:348). Despite the absence of sweeping change for South Africans living in informal settlements; *Grootboom* provided a powerful tool for communities involved in eviction proceedings, building a growing body of right-to-housing case-law based on discrete victories for various communities (Sunstein, 2001; Nevondwe and Odeku, 2012:11327). From a constitutional law perspective, the *Grootboom* judgment propelled the jurisprudence on economic and social rights and even influenced the wording of a new international treaty; the picture is however/rather bleak if one measures the success according to end-based criteria about the concrete realisation of the economic and social rights of the litigants and other similarly placed (Review of Australia Fifth Periodic Report under the ICESCR, 2017). Due to this weakly implemented decision in practice, the means justify the end and not the end to justify the means.

5.2.1.1 Lessons that can be drawn from the *Grootboom* Case

Emerging fundamental questions emanating from this landmark ruling are: Is the court helping to build a constitutional culture? Is it helping to build up historically weak civil society groups? Is it helping, through time, to counteract the biases inherent in the existing political system? The case marked a historic period concerning the right to adequate housing; a watershed of the creation of new social policies addressing the social and economic rights (Huchzermeyer, 2003:88). The *Grootboom* rubric represents a democratic pedigree (Landau, 2012:2). The case reveals the role of the Bill of Rights and the judiciary concerning policy-making, resource allocation, and implementation of public policies (Huchzermeyer, 2003:89). It represents judicial creativity as it seems to be more creative in coming up with remedies, particularly that the constitutional theorist can advantageously borrow (cf. Landau, 2012:9). It is a remarkable new commitment to finding new ways of enforcing the social and economic rights guaranteed in the constitution (De Vos,

2001:259). It helps to build theories of the judicial role that are better suited or can be replicated to many countries that have been most affected by the explosion of judicialisation (Landau, 2012:12). It sets a judicial precedent or case law or a priority setting that was also used to declare the *Bredell* eviction unconstitutional, thus, it is now an example that can be used to justify or ascertain similar occurrences in due course.

The *Grootboom* case set the stage and a remarkable precedent (Williams, 2005:233). The case provides a safety net in situations where communities are faced with eviction that will leave them in crisis (Chenwi, 2015:83). The *Grootboom* decision has been hailed for its use of international law as a great victory for the homeless and landless people in South Africa, and for its contribution to the development of the jurisprudence on the nature of the state's obligation to progressively realise a specific socio-economic right (Chenwi, 2015:82). *Grootboom* case helps to build a stronger democracy in the long run (Landau, 2012:12). The extraordinary decision by the Constitutional Court in the *Grootboom* case carries significant lessons for the future of housing and the role of judicial protection (Sunstein, 2000:123).

The case act as a model for the protection of the right to housing, that is children's rights concerning basic shelter (Section 28 of the South African Constitution), laws guiding eviction, that is right not to be evicted without a court order, housing rights in general concerning access to adequate housing and socio-economic rights concerning minimum core obligations provided for under section 26 of the South African Constitution (Landau, 2012:12). The court places a duty on the state to act positively to ameliorate the deplorable living conditions in which hundreds of thousands of South Africans live; it places a duty on the state to take appropriate and reasonable steps to address the housing needs of society (De Vos, 2001:271). What the *Grootboom* case achieved was to draw the nation's attention in a very graphic way to what such deprivation meant in terms of everyday living conditions (Williams, 2005:223). Considering complexity, the *Grootboom* support the doctrine of the interdependency of human rights; the Constitutional Court confirmed that if the constitution is to operate as a vehicle to facilitate and advance transformative goals set out in Section 1 of the South African Constitution, then all rights in the Bill of Rights must be viewed as interrelated and mutually supporting (De Vos, 2001:270). The *Grootboom* case laid the foundation for future decisions.

Albeit few changes are truly transformational and while the decisions have fallen far too short in terms of fulfilment advanced light of the transformative concept, unsuccessful cases can sometimes lead to changes in policies during the process of litigation, while successful but unimplemented case like *Grootboom* can lay the foundation for effective future decisions (Sunstein, 2001). Because of the *Grootboom* decision where the court found that the government was in breach of its constitution, the state is constitutionally obliged directly to assist persons who are living in crises and intolerable conditions (Huchzermeyer, 2003:88). The Constitutional Court held that the constitution was violated by failing to develop a housing plan that would meet the immediate needs of the poorest people most in need of assistance (Landau, 2012:2). The *Grootboom* judgment spells out the duties of the state in progressively realising the right access to housing (Nevondwe and Odeku, 2012:11327).

In the same vein, the court decision was respectful of democratic prerogatives and the limited nature of public resources, while, also, requiring special deliberative attention to those whose minimal needs are not being met (Sunstein, 2000:132). A democratic constitution can protect rights without placing an undue strain on judicial capacities (Sunstein, 2000:132). In terms of housing policy, the ruling obliged the government to develop temporary or emergency shelter for those living under the worst conditions (Huchzermeyer, 2003:88). *Grootboom* Court's approach involves a judicial review of inaction by government agencies (Sunstein, 2000:131).

The *Grootboom* declared the state's housing policy to be unreasonable and thus invalid for not catering for the homeless (Nevondwe and Odeku, 2012:11327). The housing policy provided no short-term measures to aid the poorest, therefore, obliging the state to revise its housing policy. The problem was with the housing policy and not the people. Since there was no alternative housing solution, eviction was not reasonable. The court ruled that existing housing policies and their implementation did not meet the obligations set out in Section 26 of the Bill of Rights in the South African Constitution (De Vos, 2001:269). This reveals the possibility of a court to assess the progressive realisation of rights (The Human Rights Fact Sheet, 2008:30).

In South Africa, courts have assessed whether the state is meeting its obligations towards progressive realisation by considering whether the steps taken by the court are reasonable (The Human Rights Fact Sheet, 2008:31). In the *Grootboom* case, the court went so far as to declare

that the housing policy of the state is unreasonable for overlooking particularly vulnerable groups; homeless people, and babies at health risks (Ferraz, 2011:1649). States must give priority to persons in desperate need of emergency housing (Chenwi, 2013:350). It is a strong bearing that the eradication of homelessness was found to be unreasonable thereby reinforcing the right to equality (De Vos, 2001:270). It is gross unreasonableness in the sense that households living in inadequate conditions, that are then exacerbated by the state through forceful eviction (Huchzermeyer, 2003:101). A failure to consider the needs of the most vulnerable in a housing policy would suggest that the policy would not meet the litmus test of reasonableness (cf. The Human Rights Fact Sheet, 2008:31).

Although planning and policy implementation of the constitutional right to adequate housing has been systematic; the South African system allows the court to oversee not merely the implementation of these programmes and laws; but also, the overall realisation of constitutional rights (Nicholson, 2004:29). Unlike the Nigerian *SERAC* case, the South African courts remained seized with the matter when the decision was passed for government implementation. South Africa has one of the progressive courts, for instance, once the courts have made their decisions, they constantly assess and examine to assess and ascertain if there are satisfactory conditions periodically, be it three or six months or one year. The courts keep appraising of the issue (cf. Farha, 2019). In this case, implementation is transformational, over some time.

The court in the *Grootboom* used reasonableness as a yardstick to measure policy and legislative measures to achieve the progressive realisation of the right of access to adequate housing; it was found that no provision was made for shelter for homeless people; inaction by the government was gross unreasonableness (Review of Australia Fifth Periodic Report under the ICESCR, 2017). In the context of the right to access housing, the court argued that, for state policy to be reasonable, it has to consider different economic levels in society; those who can afford and those who cannot thus portray the centrality of equality (De Vos, 2001:271). A programme that excludes a significant segment of the society cannot be said to be reasonable. *Grootboom* case demonstrates that an easy case can produce a relatively good law (De Vos, 2001:258). On top of *Grootboom*, the Constitutional Court extended government obligation to all those living in inadequate housing; though not prescribing how and when (Huchzermeyer, 2003:89).

Nevertheless, despite the *Grootboom* case being comparatively celebrated, there are some gaps in the judgement on social rights. The court points out that the state violated the constitutional right to housing by failing to prioritise low-income people with immediate needs; no steps, however, were outlined on how to fill that gap (cf. Landau, 2012:1). Though the court order provided no individual relief to the applicant (De Vos, 2001:269); the existence of the case broadened the horizons or increases the possibility of those in desperate need to receive relief or assistance from the government (Chenwi, 2015:83). However, in the absence of an enforcement mechanism, the Court's declaration of constitutional invalidity has embarrassment value only (Roux, 2002:51). The administrative law remedy without a sanction is therefore without any practical relevance for people whose socio-economic rights constitute their sole claim to citizenship (*Ibid.*). This comports well with the transformative concept that few major changes are truly transformational when it comes to fulfilment. The key debate is not on whether the social rights should be included in the constitutions; they are almost automatically included; it is on how to enforce these rights to make them effective (cf. Landau, 2012:1). In failing to back up its declaration of constitutional invalidity with a proper enforcement mechanism, the court did not do justice to the remedies available under the South African Constitution; the decision, though correctly described as "extraordinary" by Sunstein (2000), was not extraordinary enough (Roux, 2002:42) to birth implementation. A right without remedy raises questions of whether it is, in fact, a right at all (The Human Rights Fact Sheet, 2008: 31).

Furthermore, the court did not mandate a policy or implementation schedule or the number of resources to be spent (Ferraz, 2011:1649). The continuing dominance of the *Grootboom* case, despite its practical unimportance, is a bit worrying; it forms a strange one case canon; critically important in academic theory but un-influential in practice (cf. Landau, 2012:1). It is important to look at how things work and not just what is written on paper; in this case, a ruling is important, but enforcement is more or highly important (Roskin et al., 2006:73). Few fields have been dominated by a single case as the literature on social rights enforcement; the case has received an extraordinary amount of attention in the scholarly literature (Landau, 2012:2). The puzzling thing about *Grootboom* is that despite its centrality to the academic literature and constitutional theory, it has not been followed by other courts around the world (Landau, 2012:4). The position of *Grootboom* as a classical case stems not only from its practical importance in other countries, (that

is close to zero) but rather because it helps to resolve important questions about the judicial role in constitutional theory (Landau, 2012:12). Weak-form or dialogue-based enforcement like *Grootboom* is pretty much confined to South Africa (Landau, 2012:6). The *Grootboom* case is ubiquitous in the work of comparative constitutional scholars yet very unimportant in comparative judicial practice (Landau, 2012:10). This is due to the case having a general and blurred legal force as accentuated in the foregoing appraisal (cf. Roskin et al., 2006:59).

6.2.2 The Alexandra Case

In 2001, the Urban Renewal Programme led to the relocation of Alexandra residents in Johannesburg based on health concerns (cf. Huchzermeyer, 2003:84). The illegality of the eviction procedure was challenged in the High Court by Mrs. Mqokomiso. She claimed for the reconstruction of her house, the loss, and inconvenience caused by the dislocation. This was followed by the generous adjustment to the relocation package of the Renewal Programme. The out-of-court settlement offered by the municipality was accepted by the claimant (*Ibid.81*). An illegal eviction claim in the *Alexandra* case was settled out of court. The High Court lodged an urgent application for eviction and relocation on the grounds of risks of flooding and cholera; however, the eviction was carried out in winter when flooding risks are lowest and it was a one-day notice and the evictees were relocated to areas with graver problems, particularly access to services and schooling for their children (*Ibid.90*).

This can be equated to Operation Murambatsvina in Zimbabwe whereby approximately 300 000 school children were disrupted (Zimbabwe Human Rights NGO Forum, 2005). Many displaced children were taken out of their original school catchment areas and without ready for affordable means of transportation; attending school became impossible (*Ibid.*). In the *Alexandra* case, however, only one person benefited from/for loss of property and other damages related to the inconvenience of her relocation; the relief sought in the application was to have the house rebuilt in its original location or equivalent convenient accommodation provided, and compensation for the dislocation, suffering, and indignity resulting from the eviction of Mrs. Mqokomiso (Huchzermeyer, 2003:91).

5.2.2.1 Lessons that can be drawn from the Alexandra Case

The case set a crucial precedent for the way the state deals with relocations in the future (*Ibid.91*). Concerning legalities, the precedent was so strong that the South African government considers

itself bound by practices developed over time thus law is not only about usually written or prescribed rules and practices of long-standing; it is also about what is practiced and something legally established or extralegal. The City of Johannesburg chose to settle the claim out of court to avoid setting a legal precedent, therefore, this landmark application had no legal implications for future cases; however, there are likely implications on the adjustments to the eviction procedures (*Ibid.92*). In the case, there was inadequate consultation, unnecessary use of force, disruption of schooling, disregard for personal belongings, insufficient provision of shack building materials, and inadequate access to services at the relocation site (*Ibid.92*).

This can further be equated to Operation Murambatsvina of 2005 in Zimbabwe concerning the disruption of school children and lack of alternative accommodation. In terms of housing rights in South Africa, housing or access to a house is not only a site, but it is also about transportation in the relocation, assistance in placing children in new schools, where re-schooling is not appropriate, shuttle transport back to the original place, the same transport to avoid job loss (*Ibid.93*). The main issue was access to facilities (*Ibid.*). The relocation entails segregation to the new townships on the urban periphery; the provincial government complied with international standards and disregarded household efforts to access anything but the distant periphery of the city (*Ibid.*).

6.2.3 The Bredell Case

In line with the transformative concept that explains how marginalised societies organise alternative mechanisms salient to their *modus vivendi*, rapid and massive land invasions on the outskirts of Johannesburg followed a month after the eviction in Alexandra. Within ten days, all illegal occupiers were forcefully evicted, even those with rights conferred upon them due to a period of occupation that exceeded six months. Like the *Alexandra* case, the other reason for the *Bredell* relocation, urgent eviction orders were granted on the grounds of health (*Ibid.84*). The final High Court judgment disregarded the rights and remained unchallenged (*Ibid.81*). Differential rights in the eviction procedure case were ignored to demonstrate to investors that the Zimbabwean land crisis was not spilling over into South Africa (*Ibid.82*). The Trespass Act of 1959, that remains on the statutes of South Africa to date, was applied in the *Bredell* invasion for the arrest of 200 of the squatters, some of them who had lived on the land for more than six months (*Ibid.85*). Colonial symbols or signs or patterns were carried over into the so-called 'democratic dispensation' of South Africa. The Trespass Act creates a reverse onus on the individual to prove

his/her innocence and therefore the presumption of innocence is violated that in turn is unconstitutional (*Ibid.*).

6.2.3.1 Lessons that can be drawn from the *Bredell* Case

A political decision to evict unlawfully remains unchallenged as the land invasion was in the context of politics within which the *Bredell* invasion in Kempton Park took place; like in Zimbabwe, the government-backed the invasion of productive farms (*Ibid.93*). Government-backed invasion can degenerate into a gradual invasion process (cf. *Ibid.94*). The course of events at *Bredell* was inextricably tied to the happenings in Zimbabwe; there were references to Zimbabwe and Namibia rather than factually presenting it as a quest for urban accommodation or access to the city just to draw international media and divert attention (*Ibid.*). This was, however, political sophistry whereby the government was deliberately crusading invalid political arguments displaying ingenuity in reasoning in the hope of diverting the attention of deceiving or subverting the right to adequate housing; citing investor confidence or perceptions or the mantra of scaring away investors. Due to these complexities, the land issues presented the sensitivities that affect the Rand, for instance, the land issue perceived vulnerability of the Rand forced the South African government to demonstrate that law prevails in South Africa despite the chaos in Zimbabwe (*Ibid.96*). However, this was just to appease international investors; the people's right to adequate housing was sacrificed at the altar of international investors.

Bredell represented a battlefield for communities losing patience with the slow pace of housing delivery (*Ibid.95*). Like in Zimbabwe, politicians from the African National Congress (ANC) took advantage of the situation and asked invaders to pay a small levy; at a later stage, Pan-Africanist Congress of Azania (PAC) took on the role of site allocation that accelerated the invasion process (*Ibid.96*). Like ZANU-PF in Zimbabwe, the dominant ANC party in South Africa is broadly speaking, ideologically on board with the transformative programme in the South African Constitution. The current developments at this time of writing the study reveal that the party is on a charm offensive campaigning, calling for the appropriation of land for people to build their houses¹⁴⁹. Considering "The Deep State", this suggests that when a PAC or ANC partisan is accused of illegal occupation, his colleagues come to the defense of their colleague as the matter

¹⁴⁹eNCA news, 18/05/18.

was mainly in the political domain. Like the *Grootboom* case, Nevondwe and Odeku (2012:11327) described this as cadre deployment policy of the ruling party. In line with “The Deep State”, this is usually associated with politicians parcelling land to supporters without the council’s approval ahead of elections; ignoring council procedures in pursuit of political power. They were also inspired by land invasions in Zimbabwe; occupation occurred/is crossed by several servitudes relating to a powerline, a petrol pipeline, and a railway line (Huchzermeyer, 2003:97). This can also be equated to Zimbabwe whereby some settlements are crossed by high voltage pylons.

The land was occupied for more than six months therefore invaders had the right to have suitable alternatives considered (*Ibid.*98). *Bredell* eviction order was granted on grounds of health risks as enough supply of potable water was not guaranteed; however, the health situation was certainly less of a hazard than the forceful eviction in freezing temperature, like Murambatsvina, with no alternative accommodation to move to (*Ibid.*). The eviction order was also based on shaky grounds of threats to the health of the occupants or that children might run into the train line, or that people might be electrocuted by the electrical power lines crossing the land, or that squatters might dig into the petrol pipeline running through the land (*Ibid.*). The authorities refused to reveal the precise location of the petrol pipeline on grounds of national security (*Ibid.*). Considering “The Deep State”, the state parties sometimes abuse and invoke the ‘State Privilege Doctrine’ on issues of mere public administration, that does not endanger state security or compromise public interest. States parties may claim certain information to have public interest immunity claiming disclosure would be prejudicial to the public interest; sometimes referred to as “Executive Privilege” or State Privilege Doctrine. The squatters were also denied the statutory and constitutional right to “adequate written and effective notice” (*Ibid.*).

The ruling was wrong and doubtful, it was a legal injury based on the *Grootboom* precedent as no minimum core provisions were provided for (cf. *Ibid.*100). The case reveals the need for land alternatives before the evictions. Considering “The Deep State”, the judgment appeared to be a political decision (*Ibid.*101), and this shows that judicial independence can be compromised. The *Bredell* case was characterised by shack-shifting procedure rather than upgrading informal settlements into permanent and adequate living environments; government takes away every effort to discourage households on informally occupied land from gradually consolidating their inadequate shacks into adequate permanent structures; the rewarding of such activities would be

interpreted as conferring of permanent rights or condoning land invasion (*Ibid.103*). It is on this point that the land reform debate in Zimbabwe can also be equated to the South African discourse.

6.3 Lessons drawn from all the cases in general

Despite the clause on adequate housing, there is little consistency in the outcome of the route of access to the city through the judiciary. The cases highlight the limitations of the judiciary as a route to democratic access to the city (*Ibid.80*). The judiciary is seemingly reluctant to interfere in the affairs of the executive arm of government; like in the *Grootboom* case, the court applied the standard of inclusion of all social groups in a governmental programme but rejected the core obligations approach (*Ibid.80*). The court in the *Grootboom* case appeared to be concerned that it would lack the legitimacy and capacity to issue a stronger order to make sure that it does not overstep their bounds of democratic legitimacy and capacity (Landau, 2012:2). This augurs well with the concept of justiciability and SOP.

The *Grootboom* case is important not because it “solves” the problem of how to enforce social rights in developing countries, but because it helps defuse the tension between judicial review of social rights and the counter-majoritarian difficulty in constitutional theory (Landau, 2012:10). The court was not prepared to go that far, due to its rejection of the core obligation approach and deference observed to the other branches of government. It is also equally reluctant to rule in favour of the poor when the economy or investor confidence is at stake (Huchzermeyer, 2003:80). Legislative procedures that govern evictions, like in the case of Murambatsvina in Zimbabwe, were not followed in the case of *Bredell* and *Alexandra*; in *Bredell* case, the court would not intervene when challenged and in *Alexandra* case, a settlement was sought outside the court, to avoid setting a legal precedent; the courts were at pains to discourage any future legal challenges on grounds of unlawful eviction (*Ibid.102*).

6.4 Lessons from Colombia

The right to adequate housing is guaranteed in the 1991 Constitution of Colombia, Articles 51 and 64. Article 51 provides for dignity to all citizens. The constitutional and legal framework is committed to the idea that property rights must be defined through the principles of solidarity and equality. The property system based on solidarity was consolidated and expanded with the issuance of the 1991 Constitution and the definition of the Colombian state as a Social State of Law (Bonilla,

2011). An element of the obligation to implement, facilitate and realise the right to adequate housing is also embedded in that the state ascertains the conditions necessary to give effect to the housing right and promote plans for public housing, appropriate systems of long-term financing, and community plans for the execution of housing programmes. Under Article 64, it is the duty and responsibility of the state to promote the gradual access of agricultural workers to landed property in individual or associational form and to services involving education, health, housing, social security, recreation, credit, communications, the marketing of products, technical and management assistance to improve the incomes and quality of life of the peasants. In that respect, Colombia takes into cognisance the interdependency of fundamental human rights. Individual and associational forms also bolster the transformative concept of development individually and collectively to effect social change (cf. Friedmann, 2011).

Several obstacles retard smooth flow implementation of housing policies in Colombia. Aldrich and Sandhu (1995:226) note that invasions or land take-overs in Colombia result from the invasion of private and public lands for self-help housing and occupants lack titles to these lands. Self-help housing is in line with the transformative concept whereby the poor organise exit strategies through self-help housing that comports with their fashion of living. Ranson (1991:4) attributes this to an insufficient supply of low-cost housing. Due to unemployment and poverty, households struggle with their housing costs and seek cheaper alternatives (King, 2009:10) that comport with their mode of living. The affordability crisis, as a result, drives land occupation. Squatters are motivated basically by the need for minimum cost mainly for the unemployed and underemployed (Turner, 1968:115). Thus, poverty results in 'defective demand' (Fox, 2013:8). Affordability crisis, unemployment, and poverty in this regard are push factors whilst pull factors in informal settlements are cheaper standards of living and choicelessness due to housing development that is not fast enough to meet people's aspirations. It is affordability that continues to push the low-income earners to the squatters in the quest for affordable housing. Considering the clash of rationalities concerning market economies and former settler colonies, the interface of these rationalities is a zone of encounter and contestation shaped by the exercise of power (Watson, 2009a: 2270). For the poor and the informal settlements, it is a zone of resistance, of evasion, or of appropriation (Watson, 2009a: 2270), and in line with the transformative concept, it is a way of living for the marginalised. Aldrich and Sandhu (1995:226) note that the legal owners can

challenge improvements in such areas as a violation of property rights; hence, invasions have more difficulties in getting infrastructure, public services, and facilities.

In line with “The Deep State”, the proliferation of squatters in some cases remains untouched for political expedience. The political and financial costs of providing housing for hundreds of thousands of displaced persons are often the only deterrents to the bulldozer (Perlman, 2010:300). As a result, Aldrich and Sandhu (1995:238) argue that residents in Colombia view housing processes with suspicion particularly if they are forced to pay anything. In light of housing complexity, Aldrich and Sandhu (1995:238) aver that conditions for the urban poor in spontaneous settlements are not likely to improve much shortly based on the historical pace of implementation of reforms in Colombia, the additional cost of legal processes, potential challenges and the political muscle of affected interest. Aldrich and Sandhu (1995:227) argue that in Colombia, the government came up with policies related to spontaneous settlement through initiatives at upgrading and legalising irreversible situations. Upgrading entails transformative conversion or metamorphoses of an illegal structure into another related structure.

In Colombia, Aldrich and Sandhu (1995:226) note that occupants can occupy public or privately-owned unimproved lands, often neglected by the owners or reserved for future development. In line with the transformative concept, it is a way of living for the neglected populations. Nevertheless, liberalism has determined the structure of the property law regime in Colombia (Bonilla, 2011). In recognising the interdependency of fundamental human rights, the Colombian Constitutional Court in line with the right to life recognises the need to address the needs of internally displaced persons in the field of housing, health, education, and humanitarian aid. There is a strong jurisprudence in the field of internal displacements in Colombia (*Ibid.*).

6.4.1 The Sentencia T-025 de 2004 Case

This was a case of displacement of persons composed mainly of women, children, and the elderly. Claims of unconstitutionality were filed with the Constitutional Court by 1150 family groups. The Snow Conditions for Internally Displaced Persons Association filed the action and the Colombian Court found the displacement counterintuitive, unacceptable, and declared an unconstitutional state of affairs, considering the interconnectedness of the case with other rights, like the right to

education¹⁵⁰. Like in the *Grootboom* case, the court set the bar higher for urgent compliance, considering the interdependency of fundamental human rights concerning the right to life, dignity, family, food, water, housing, health, and sanitation.

6.4.2 Lessons from *the Sentencia Case*

The ruling on displaced and focus on the right to human dignity and housing shows that in some instances, the law is a sharp sword to protect those who need protection. It is a ground-breaking decision on behalf of the rights of displaced persons that was declared a humanitarian catastrophe and that the policies of the government were utterly ineffective. The court held that the rights of the displaced population, to a dignified life, work, health, and special protection for elderly persons, women providers, and children, have all been violated thus showing the indivisibility of rights. When it comes to housing, the violation is not attributable to a single right. Rather, all of the socio-economic and cultural rights become worse. The decision established that the government had not fulfilled its constitutional obligations to solve their humanitarian needs. However, there was no effective government reaction due to budgetary constraints, a concern that is also prevalent in many developing countries in realising social rights. The decision acknowledged that the executive had restrictions through the government to commit full protection of internally displaced persons' rights.

6.5 The Brazilian Experience

The 1988 Brazilian Constitution ranks amongst the best and celebrated regarding the right to adequate housing. It takes into cognisance the elasticity, complexity, and interdependency of the rights to adequate housing. Article 7(IX) of the Brazilian Constitution linked housing rights with the right to work in terms of transport and wages to be capable of meeting necessities of life, and the right to education, health care, and social security. Article 23(IX) asseverates that different levels of the federal government of Brazil have a responsibility to promote housing construction programmes and to improve sanitation programmes and conditions. Article 183 provides that squatters for a continuous period of five years are entitled to and/or be able to have their domain. Article 187 (VIII) provides housing for the rural workers and Article 203 (II) provides for social assistance with shelter to needy children and adolescents regardless of contribution to social

¹⁵⁰ Cf. CESCR, general comment No.13 (1999).

security. Overall, the different levels of the federal government of Brazil must respect the right from arbitrary evictions, to protect its citizenry from powerful individuals through laws, and to protect its populace from privatisation of public services.

More so, different levels of government in Brazil have a concomitant obligation to implement, to facilitate, and to realise. By implementing, the government is obligated to take into effect legislative measures, strategies, and action plans, and courses of action for housing at the national level. By facilitating, the government is obliged to construct low-cost housing as a measure to accommodate low-income groups. The government is mandated to guarantee temporary housing to those in extreme precariousness with special attention to the vulnerable groups. However, the right to housing does not create an obligation to the state to provide a house to every Brazilian family. According to the court's interpretation, the only obligation of the state is to implement, that is to create a policy solution to the housing problem (de Souza Coutinho, 2014:11). In this respect, the constitutionalisation of social rights loses its point as Brazilian courts dub social rights as nothing more than a form of Christian charity and not as actual rights that create obligations (cf. de Souza Coutinho, 2014:11). People must be recognised as right holders and not as asking for a hand or help as charity cases (Farha, 2019). Courts show deference to the administrative decisions when the right to housing is at stake; there are little advances in the implementation of the right to housing due to the attitude of courts towards the realisation of the right (cf. de Souza Coutinho, 2014).

Withal, the Brazilian constitution is full of contradictions and unexplained omissions, emblematic in the complete omission of the right to housing in the chapter dedicated to social rights (de Souza Coutinho, 2014:5). Social reality in Brazil is compounded by social exclusion, urban inequalities, injustice, and spatial segregation; the market does not operate equally for all people and reveals the fact that capitalists are deficient in many ways, particularly in the provision of housing for the poor and Brazilian society is amongst the most unequal systems in the world (Malta, 2006:2; Arellano et al., 2016:4; Perlman, 2010:79). There is, therefore, a need to provide funds to meet affordability constraints (Simpson, 2013:15). In Brazil, the housing shortage is compounded by a lack of affordability (Burdell, 2016:23). Sao Paulo and Rio de Janeiro are one of the most expensive cities in the world at number 10th and 12th positions respectively in 2015 because of very high housing prices (Burdell, 2016:23-24). Housing squeeze looms large and prices rapidly

increase. The percentage for housing loans in Brazil is around 10% of the rather small GDP (Yamazaki, 2017:14). Despite Brazil GDP 9th rank in the world, homelessness is on the rise with 101 500 homeless people in 2016.

About the growing global housing crisis, homelessness, and the steep challenges ahead for the more than one billion people who do not have adequate housing, it is noted that wealthy nations with the largest GDP are expected to have less homelessness or no homelessness at all. Nevertheless, it is a conundrum and complex, there is no correlation, there is, however, rising homelessness in the richest countries that are increasingly becoming extremely shameful territories (cf. Farha, 2018). The widespread availability of social housing combined with a Housing First homeless housing model in Finland has resulted in the near elimination of long-term homelessness and a massive drop in homelessness in general. However, due to the depth of the housing crisis and the limited resources provided, most major cities have massive populations of homeless people. Germany, the 4th largest GDP in the world has 450 000 homeless people excluding refugees; 480 000 die in the streets of France, the 6th largest GDP in the world every year; Italy, the 8th largest GDP in the world has 50 000 homeless people (Farha, 2018). Farha presenting at the National Conference on Ending Homelessness in Canada notes that Canada, the 10th largest GDP in the world and the fastest growing economy of the G7 nations has at least 235 000 people living in homelessness. The total number of homeless people aged 18-65 in the Netherlands has increased from 17 800, the estimation in 2009, to 39 300 in 2018 as revealed by the Statistics Netherlands (CBS). The lack of correlation between GDPs and homelessness reveals the complexity and the scale of the housing crisis and homelessness in rich countries is complicated with so many issues contributing to the crisis. The incidence of rising rates of homelessness in North America and Europe, the richest countries in the world is extremely shameful; the fundamental and complex questions are: How is it acceptable that GDPs are increasing all the time ... and homelessness is rising all the time? Why is it that there is so much homelessness? (cf. Farha, 2018).

Hungary was embroiled in housing issues when it introduced a law to criminalise the homeless saying people should go to emergency shelters; a policy that was regarded as cruel, misguided as criminalising and stigmatising the homeless people because of their housing status as a government response is out of step with the international human rights law and international obligations and

Sustainable Development Goals (SDGs) (Farha, 2018). Homelessness and associated social issues are not the faults of homeless people, but the system failing to provide social housing. In line with the transformative concept, homelessness implies extreme situations and places that people sleep if that is the only alternative. Cities with similar bans against sleeping in public should redirect resources to constructive solutions to homelessness, such as affordable housing and health services. Getting homeless people into housing is a win-win approach, benefitting both the individuals helped and the communities that no longer must deal with the negative impacts of people living in public spaces, at a lower cost than cycling people through the criminal justice system¹⁵¹. Though homelessness is increasing in every country, Finland and Norway, however, are doing well and sits nicely within the human rights framework in dealing with homelessness and thus, as a remedy, Brazil must draw some lessons from the Housing First Designed Model¹⁵² that is ensuring that there are no increases in homelessness though not addressing the problem of affordability and other bigger macro issues.

Farha (2019) on policy towards homelessness in the Schengen area asseverates that all good social progress roads lead to Finland except suicide rates despite being the happiest people; it is legally cultural not to see a homeless person in Finland. In contrast to the Housing First Model, other models make housing provision conditional, such as by requiring individuals to abstain from alcohol or drug use or comply with mental health programmes to qualify for housing a sanctioning characteristic of welfarist states. It is, however, important to note that people are not homeless because of their characteristics but because of structural forces and structural cause and therefore criminalising homelessness is discrimination (cf. Farha, 2019). Some scenes of homelessness in Los Angeles, California, and Johannesburg, South Africa are shown in the pictures attached below.

¹⁵¹ *Martin v. Boise (formerly Bell v. Boise)*, a case filed by the National Law Centre on Homelessness and Poverty.

¹⁵² Housing First Model, developed in Finland and where it is most successful, social policy that prescribes safe and permanent housing as the priority for the people experiencing homelessness. In contrast, other models make housing provision conditional, such as requiring individuals to abstain from alcohol and drug use or comply with mental health programmes to qualify for housing. However, it is centripetal to note that many people who hit the street are completely of sound mind; it is the trauma of being on the street that can trigger psycho-social disability or often leads people to do things like drugs to numb the experience. It is an alternative to a system of emergency shelter/transactional housing progressions (cf. Farha, 2018).



Figure 6.1: Rising homelessness in the New World: Pictures taken by the researcher on 23 February 2019, 236 S Los Angeles St, CA 90012, USA.



Figure 6.2: Escalating homelessness in the Global South: Pictures taken by the researcher on 30 April 2019, along the N1 Highway, Woodmead, Sandton, Johannesburg, South Africa.

Housing in Brazil is also characterised by distant peripheries where access to services is made difficult (cf. Pequeno and Rosa, 2015:18). Housing is a high-cost commodity with selective access, thus excluding economically disadvantaged social groups (Monteiro and Veras, 2002:1). It has forced Brazilians to live in inadequate favelas¹⁵³ (Yamazaki, 2017:2). In line with the transformative concept, favelas are part of the extremis places that people live if the alternative is death. About 6.5 million people were living in favelas in 2000; the number soared to 11.4 million in 2010, an increase of 175% (Burdell, 2016:24). Favelas were unwanted from the inception, there were seen as “leprous sores” by the formal city; squatter settlements, shantytowns, and subnormal agglomerations were seen as a menace to the city of privilege (Perlman, 2010:57). The predominance of ‘ghost’ cities, urban sprawl, the growth of peri-urban regions, and informality in ‘private’ cities and peripheralisation resulted in Perlman (2010:12) to blatantly describe social disorganisation concerning housing deterioration or squatter settlements as syphilitic sores on the beautiful body of the city.

Moreover, Brazil’s ‘right to the city’ social movement or politics of urban activism; the city’s auto-constructed peripheries, and their gradual formalisation, is a vivid example of insurgency and exploding housing demand (Roy, 2009:85). Considering the transformative concept, social movements are important agents for social change and transformation in cities (Miraftab, 2009; Fainstein, 2010; Friedmann, 2011; Harvey, 2012). The right to the city, considering access to infrastructure and urban services, is not always guaranteed; it shows to be denied considering health care and jobs exposed to environmental vulnerabilities, interruption of streams, creeks, and natural drainage, interfering with the flow of water and the proximity of the projects next to the ponds; show the city’s expansion into sectors with greater fragility (c. Pequeno and Rosa, 2015: 18-21). Apartments in Brazil are predominantly occupied by informal arrangements; hazardous areas, illegally subdivided homes, and precarious settlements (Perlman, 2010:34; Pequeno and Rosa, 2015:6; Arellano et al., 2016:7). The housing deficit is a serious and chronicle problem in Brazil (de Souza Coutinho, 2014:3).

¹⁵³ Originally, Favelas were unregulated neighborhoods build by Brazilian soldiers who had nowhere to live in the late 19th century; they experienced historical governmental neglect. Favelas are slum areas of deteriorated and/or abandoned housing. Favelas can be equated to slums in the sense that they are poorly constructed with inadequate plumbing and sanitation and are mismanaged with limited government response. Localities where quality of life is under the standard level are also called ‘subnormal agglomerations’ (cf. Perlman, 2010:37; Burdell, 2016:24).

Furthermore, despite Article 183 of the Brazilian Constitution, the government in most instances resort to using the military force to evacuate out squatters with rubber bullets and tear gas, forcing out people out of the favelas citing extremely unsafe conditions and being run by drug lords; the arbitrary eviction without providing a reasonable alternative for both housing and sustenance can only fail (Burdell, 2016:25). Only command-and-control societies, in which policy is backed by lethal force, have even come close to keeping people out of the cities, and that “success” has been of limited duration; in South Africa, the end of apartheid broke down this control (Perlman, 2010:77). Crime in slums is also rampant, emblematic in the 2018 Safe City Index (SCI) were Sao Paulo and Rio de Janeiro on numbers 326 and 330 respectively with 338 being the most unsafe. Due to limited government response, the people of the favelas still had great trouble getting access to the courts (Burdell, 2016:25).

Withal, another stumbling block to the realisation of the right to adequate housing in Brazil is that their housing policy puts more emphasis and priority on homeownership and overall performance of housing provision is therefore limited (Yamazaki, 2017:25). Subsidised rent, a common practice in European cities, is only applied in Brazil in “case of emergency” and normally relocated families are forced to wait for a new dwelling (Simpson, 2013:27). Brazilian housing policy favours people buying and not renting apartments. However, the right to adequate housing is broader than homeownership as it addresses rights not related to ownership and is intended to ensure that everyone has a safe and secure place to live in peace, dignity, safety happiness, and hope including non-owners of property. Homeless numbers will keep rising until the government change course on housing. Against this backdrop, a significant change in approach is needed in a way peculiar to each country’s historical and social context in a bid to house the poor, there is a need for a surgical overhaul in approach and Brazil must go beyond homeownership for instance through mass housing¹⁵⁴ (Yamazaki, 2017:25).

6.6 The Right Housing – Private Property Rights Nexus

Given the complexity, the right to housing collide with the right to private property and the latter tend not to enforce the right to housing (de Souza Coutinho, 2014:2). Brazilian courts tend to

¹⁵⁴ Mass housing entails affordable rental housing; like in the USA and Europe where a significant part of housing inventory consisted of government-owned rentals.

protect the right to property in a real conflict between the right to housing and the right to private property; they adopt a very conservative approach to property rights (*Ibid.*3). The introduction of the right to housing in the Bill of Rights in 2000 has not changed the way courts decide lawsuits in which the right to private property collides with the right to housing; the right to housing is the last to be enforced (*Ibid.*12). Considering the transformative concept, though there was a constitutional change, it is centripetal to note that not all changes are transformational.

The understanding of home has been lost as it is being viewed as a financial instrument and people being treated as dispensable (cf. Farha, 2018). Unprecedented wealth is being parked into the housing that is being used as an instrument to leverage capital and grow profit (Farha, 2019). Housing has lost its social function and is seen instead as a vehicle for wealth and asset growth; it has become a financial commodity, robbed of its connection to community, dignity, and the idea of home¹⁵⁵. It now appears as if housing is not a right and homelessness is; the understanding of housing as a human right is losing its currency. Housing is now predominantly valued as a commodity, traded and sold on markets, promoted and invested in as a secure place to park unprecedented amounts of excess capital. The view of housing as a human dwelling, a place to raise families, and thrive within a community has largely been eroded and despite its firm place in international human rights law, housing has lost its currency as a human right (*The Globe and Mail*, 15/04/17).

Though most governments passed and adopted a law against arbitrary eviction, it is incomplete as it does not allow for any redress before the courts in case of non-respect. Other flows include inaction of the government in the face of a catastrophic situation: increasing numbers of forced evictions, persons inadequately housed, and housing units lacking relative to overall needs. The collision of the right to housing with the right to private property emerges almost always in possessory actions after the invasion of private areas by homeless people (de Souza Coutinho, 2014:8). Property rights protect only those persons with properties, whereas significant numbers of the homeless are persons without formal assets. To speak of a 'right enforceable by the courts' in the sense of a 'right existing in practice' to adequate housing is a veritable illusion. Brazilian

¹⁵⁵ Leilani Farha, UN Special Rapporteur on Adequate Housing, 2017.

courts consider the right to housing as an aspirational or ambitious right and not immediately enforceable and that it does not impose a limitation on the right to property (*Ibid.*4).

6.7 The Favela Olga Benário Case

About 700 to 800 families including children and the elderly occupied the abandoned south area of Sao Paulo that belonged to a bus company. The occupants produced evidence that before the occupation, the area was abandoned and there were plans to expropriate it for apartment construction. The evidence was rejected by the courts without considering the reasonableness and grounds of the occupant's standpoint and the obligation of the state to protect the necessitous. In response, eviction was ordered and many occupants ended up in tents and the streets.

6.8 The Favela Fiat Case

This was about an area that was illegally occupied by 130 homeless families since 1992 through adverse possession. The occupation of land to which another person has a title with the intention of possessing it as one's own was rejected by the local judge and later by the court of appeal. Eventually, the municipal government expropriated the area after the federal government had committed to financing the construction of dwelling units resulting in arbitrary evictions and demolitions.

6.9 The Pinheirinho Case

The repossession of Pinheirinho by a judicial decision that resulted in a thousand families being evicted and their houses demolished was another serious human rights violation in Brazil. In sync with complexity and "The Deep State", the case is composed of a confluence of counterpointing interests, where capital, power, and dominance were at play. Technically, Pinheirinho was not a slum per se. There were many brick houses, electricity, and water supply. Despite this, the court ordered the eviction of five thousand families. The Federal Courts could not interfere with the government to offer an alternative to the families in the performance of orders issued by State Courts. Eventually, the order was fulfilled and the eviction was coupled with violence leaving families living in tents, a transformative way of suiting their mode of living.

6.10 Overall Lessons and Analyses

In all the cases, Brazilian courts did not question the efficiency of their decisions. Considering the interdependency of rights concept, Brazilian courts do not respect the same kind of restraint in cases involving the right to health and education (cf. de Souza Coutinho, 2014). Overall, the attitude of courts towards the right to housing plays an important role in explaining why there are so few advances in the implementation and realisation of the right to housing in Brazil (*Ibid.*12). The right to property and the right to housing collide as they are both protected by the constitution. However, through cost-benefit analysis and considering “The Deep State”, the courts tend to sacrifice the right to housing whilst the property right is given preference and is protected. The right to housing does not create an obligation to the State to provide housing in Brazil. The only state obligation is to create an enabling policy environment to address the housing problem. Social rights are seen as nothing more than a form of Christian charity. When Courts repudiate their legal requirements, the constitutionalisation of social rights loses its point. The state usually transfers to regular citizens the burden of implementing a housing right.

6.11 Conclusion

This chapter canvassed case experiences in different housing delivery systems; tracing the background of the housing problems in a bid to contextualise why it is difficult for some segments of society to enjoy the right to housing. On top of South Africa, Colombia, and Brazil, the chapter also demonstrated the challenges of housing from a global perspective through comparative analysis and cross-references. The inclusion of the right to housing in the Bill of Rights in many countries, Brazil, in particular, has not changed the way Courts decide housing-related lawsuits in which property rights collide with housing. Consequently, the right to housing is the last enforced compared to other socio-economic rights. The Courts take a cursory glance or show deference to the administrative decisions when the right to housing is at stake. Thus, the attitude of Courts towards the right to housing plays an important role in explaining the finer elements of why there are little advances in the realisation of the right to housing. The next chapter will focus on the findings and analysis from the fieldwork.

CHAPTER SEVEN: DATA PRESENTATION AND ANALYSIS OF FINDINGS

7.1 Introduction

This chapter presents the findings and analysis of the study. It examined factors that drove housing rights violations and the next chapter dealt with how to prevent their repetition. The main objective of the study was to find out how contextual and jurisprudential landscape exerts influence on the implementation of housing rights in Harare that has been a hotspot of enforced evictions since 2000.

7.2 Recap of Research Methodology

In this study, a key informant interview guide was used to solicit information from key informants who were selected using purposive sampling. Other informants were known through snowballing. The documentary search was used to complement fieldwork findings. On report structure, this research employed qualitative analysis to explore the research questions and methods included a review of housing policy and academic historical literature, providing invaluable lessons to the researcher. In-depth interviews were semi-structured interviews lasting approximately one and a half hours. Interviewees included key informants with housing experience stretching back to the early 1980s; civil servants, human rights defenders and activists, academics, and political analysts; in total, 75 people were interviewed. Content analysis of election manifestos from 2000 to 2018 was also done. This study scrutinised legislation, policy documents, government reports, and newspaper articles. The researcher cultivated a rapport with respondents and the relationship of the researcher with central and local government, Harare provincial officials and politicians produced an invaluable source of observations, reflections, discussions, and experiences; many of which have found their way to this study.

Respondents were purposively selected and through snowball sampling where respondents were able to identify and refer researchers to others with experience in housing. Data was collected largely through in-depth interviews using a semi-structured approach. After soliciting evidence from Hatcliffe residents during the Commission of Inquiry into Sale of Urban State Land, the researcher requested Harare witnesses that they share their experiences collectively, reflecting the fact that the housing problems they had experienced were all linked, and they shared similar experiences of the enforced evictions. In these cases, FGDs were made and a total of 28 people

were interviewed in individual interviews and 47 met in five FGDs. The respondents hail from several housing departments and represent the full spectrum of related fields.

7.2.1 Research Experience

Notwithstanding that the researcher followed the due processes required per every stage to gain access to the required material, the following three major challenges were encountered. Firstly, concerted efforts to get confirmation from some key informant interviews proved fruitless. Access to the MLGPWNH and HCC, DHCS annual reports was a difficult task given the bureaucratic procedures the researcher had to follow. Secondly, getting information was difficult even after the researcher made several visits to the Ministry and the Department. Some informants were suspicious of the researcher's motives. An attempt to get any corroborative and hard evidence from high profile officials in the Ministry and the Housing Department to justify the alleged corruption in housing proved fruitless as the information was described as confidential. Lastly, challenges to collecting data included cases where deep-seated fear and trauma of the Mugabe regime's past political violence prevented people from talking openly and others where families themselves were implicated in the arbitrary eviction of relatives and were unwilling to speak with the researcher. This, therefore, led to some information deficit about statistics of housing from the key informants.

7.2.2 Profile of Informants

Appendix B shows a biographical sketch of the names, positions and organisation, date, time, and venue of where the interview was conducted. Few interviewees agreed to have their identity revealed in this report. Officials from the Ministry (State for Provincial Affairs and Devolution in Harare Metropolitan Province), IDBZ, and Commissioners (Inquiry into Sale of Urban State Land) agreed to participate but on anonymous identity.

7.3 Study Delimitation: The boundaries of the Research, what is in and what is excluded



Figure 7.1: Though the research made several references to Chitungwiza Town, Epworth, Caledonia, and Ruwa for the housing dynamics involved, the focus is on Harare City¹⁵⁶.

7.4 The Nature of Housing Right

A jurisprudential assessment of human rights depicts that in Harare, housing is an urgent need¹⁵⁷ that, however, has not been realised. This emerged from discussions with key informants and the same was reiterated by residents. The right to housing entails freedom from government mistreatment such as forced eviction without due process (cf. Roskin et al., 2006:63). However, the findings of this study reviewed that there has been a gross violation of this right and this has led to the nonexistent, slow, and uneven realisation of the right to housing. It is a basic and natural entitlement that accrues to people by them being people. It is an inalienable right and incapable of being repudiated, restricted, or rescinded for any reason. Of the many human rights that people have, the right to housing is one such important right though policy-makers for the case study

¹⁵⁶ There are some settlements that are down and/or adjacent to municipal farms that are in Zvimba. This is precisely because for the past 10 to 15 years, the council has not been able to delimit or move boundaries to incorporate some of these areas because of the current constitution that says delimitation can only be undertaken in 2023. Caledonia is part of Harare but through the enabling legislation, like Ruwa, it is now in Goromonzi. Hopefully, after the delimitation process, they will be incorporated. Epworth is just closer and adjacent to Harare but not part of Harare, it is a standalone and local authority on its own, same with Ruwa. (Interview with Current Harare Mayor, Harare, 29/05/19).

¹⁵⁷ Cf. Hardt and Negri (2012).

exhibited little concern over housing. The right to housing demonstrates interdependence and indivisibility, thus, no one-dimensional understanding. Housing cannot be isolated in a test tube from its social and economic determinants, but it is wholly dependant on other rights, such as security and employment. It has tentacles and like an octopus, it has the main body and spreads, stretches across a vast spectrum of human rights¹⁵⁸. Therefore, it must be balanced with an equal effort to protect other related rights. However, due to none urgency in the realisation of the right to housing, findings of this study reviewed that an ergonomic environment that allows residents to produce and to be effective in the economy has been undermined and militates against the broader umbrella of social rights¹⁵⁹. Although the constitution grants the inalienable right to life, liberty, and the pursuit of happiness, none of those things is possible without housing. Access to housing is just as much a right as a lofty ideal. Thus, violation of the right to adequate housing, that is a triadic right, forms a multilayered violation of human rights. This does not necessarily mean establishing a hierarchy of human rights, in which housing right is ‘foremost’ and distinctively more important than others.

Above all, it is a truism that realisation of housing rights with all social amenities, related services, and a host of other ancillary facilities contribute to human dignity (cf. City of Harare, Housing Investment, 2016: 5). Housing is not a means to an end; it is the first degree right¹⁶⁰. Housing is an extremely important part of the national ethos¹⁶¹ and is a social safety net that should be ring-fenced to protect the indigent. However, in Zimbabwe, the government remissly or has reneged on this constitutional duty¹⁶². The government often takes a cursory glance and instead places such responsibilities in the hands of other actors (cf. Seitz, 1968; Edwards 111, 1980:5; Gerston, 1997:116).

7.4.1 Housing as a Perennial Problem in Harare

Housing needs are a serious problem in Harare. Harare is facing a widespread housing problem ‘of biblical proportions’; the challenge is bound to turn into a ‘biblical catastrophe’, the levels not seen in recent times. They are characterised by complexity in implementation, geriatric

¹⁵⁸ Interview with a Chief Law Officer, Harare, 11/05/2019.

¹⁵⁹ *ibid.*

¹⁶⁰ Interview with former Consultant for HCC, Harare, 04/09/18.

¹⁶¹ Interview with former Secretary for Local Government in the opposition, Harare, 25/07/18.

¹⁶² Interview with a Chief Law Officer, Harare, 11/05/2019.

disorderliness, and muddled in politics. The fundamental question is: How widespread is the problem? Reflecting on the ever-increasing housing problem in Harare city, housing has spawned the issue of space barons. The problem implicates some of the policy-makers and policy implementers¹⁶³ thereby making it delicate and contested as those with power deploy the law in ways that work for them. By involving high-ranking officials, the housing issue is contested and complicated. To demonstrate the clumsy nature that muddles housing policy, it was noted that in certain instances, those whom the law must deal with have become the law unto themselves, and legality is not enforceable at law and in practice. For instance, matters involving land barons who should be arrested and outlawed¹⁶⁴ becomes an exercise in futility. It has become common in ZANU-PF to play both judge and jury in ‘an unashamed attempt to escape accountability’¹⁶⁵. Since in some instances land barons are linked to the ruling party, ZANU-PF cannot legitimately investigate itself or properly scrutinise and hold those found wanting accountable.

Inexplicable laxity by the government on land barons results in double allocations and endless disputes flooding the civil courts. The government’s detachment and nonchalance during the early stages of space barons are among the costliest decisions in housing and show that housing administration has cumulatively failed. Housing officials are always presented with a clear progression of warnings and crucial decision points far enough in advance that they could have been far better prepared in identifying the top threat of land barons. They lack prescient risk calculus to do risk-based horizon scanning. They squandered the gifts of foresight, promoted the wrongness rhetorically through space barons, and with inadequate policies for far too long. Urban dwellers are now paying the price. This finding resonates with tenets of “The Deep State” concept concerning the cryptic, less visible, and powerful force behind space barons. It was stated that when high-ranking officials subvert the regulations guiding housing, consumers are pushed to do anything to attain the right thereby creating a state of lawlessness and homelessness. A key finding under the problems embattling housing in Harare is that political interference has left housing consumers hamstrung. The government is running a shadowy parallel administrative structure and resultantly, political interference obliterates normalcy. The government’s response in such a lackadaisical manner is in sync with the abysmal implementation of housing.

¹⁶³ Interview with an expert in Public Policy, Elections, Democracy and Human Rights, Harare, 21/05/2019.

¹⁶⁴ Interview with Current Harare Mayor, Harare, 29/05/19.

¹⁶⁵ This is similar to a ‘kangaroo court’, law in someone’s pocket whilst ignoring recognised standards of justice.

According to the government tallies, the official position of housing backlog in Zimbabwe is about 1.25 million of which approximately 40% is from Harare. However, the real position is that probably the backlog is above or slightly below 2 million. A key finding of the study is that these figures are highly contested, and their reconciliation has proven problematic. The estimated number on the housing list has not been recently verified. In some urban areas, the shortfalls on housing may be as much as 50%. The lodgings in most high-density areas constitute about 40% of the population thus the housing backlog is very considerable¹⁶⁶. There is a possibility that housing waiting list figures could be understated, a little bit on the light side, relative to what is on the ground and what is officially reported. The HCC has lied, is lying, and will continue to lie to protect their image or shirking responsibility, a view shared commonly by respondents that a significant amount of data is probably missing and the numbers could be ‘troubling and astronomical’. The data on the housing waiting list is being massaged to remain far lower than the reality. The actual number that could be far higher than the official figure remains unavailable, making it difficult to corroborate the government’s official tally of the housing list. Respondents accused HCC of counter-measures and multiple overlaps to boost its image by purposely underreporting the scale of housing list numbers. There have been skeptics on HCC’s cover-up, downplay, or hiding of the accurate figures of the housing list that were described as incomplete, misleading deceptive, and flat-out fake. The rationale behind the deliberate move was that once the ‘Pandora's box’ is opened, it is like opening a can of worms and it would have a devastating chain effect on housing systems and would destroy the image of HCC.

Having a long housing list demonstrates that local authorities are experiencing several challenges in enforcing housing for all and this is partly to do with the urban drift. This is compounded by chaotic implementation practices. There is congestion in urban areas, and it is becoming difficult for local authorities delegated to provide housing¹⁶⁷. The sharp rise in population has accentuated the problem. Those on the waiting list must renew and for those not renewing, the council will assume that the person is no longer in need of a housing stand that is contrary to the realities that plague housing seekers. However, there are fundamental questions that intertwine these challenges from a rights and practice perspective: Are stands houses? Is housing backlog need-driven or

¹⁶⁶ Interview with former secretary for local government in the opposition, Harare, 25/07/18.

¹⁶⁷ Interview with an expert in Public Policy, Harare, 15/05/2019.

demand-driven? Are the people in the housing demand reflected by the housing backlog able to pay? It is not clear in terms of those who can pay with those who are not able to pay¹⁶⁸. All these mysteries remain unanswered and unsolved. However, when nearly a lakh of people are increasingly waiting for housing as their numbers continue to rise at a remarkable speed instead of closing the gap, surpassing the government's pace in the provision of housing, and when more people are migrating over to the other side of housing insecurity, it becomes too hard to look away but to recognise that housing is a failure of the system, not a failure of the housing seekers. Unfortunately, the government has a way of treating housing as a moral failure.

Moreover, by not renewing, it is not always the case that a person is no longer in need of a housing stand but home seekers will be avoiding waiting forever since the stands take ordinary persons almost a lifetime to get. Some do not renew but the need for housing is still there, evidenced by people coming if there is a scheme¹⁶⁹. Currently, Harare City stands at ±167 713 registered members on the waiting list as of May 2019¹⁷⁰. The criteria of ascertaining those in need of housing are blemished since it excludes those who cannot afford to renew their applications to remain on the waiting list. Many people fail to renew their applications before being housed, with the need for housing still there. Unfortunately, they are not counted as housing seekers. The exploding housing crisis is further increasing rapidly and in an uncontrolled manner as demonstrated in the graph below. The observation by the former Secretary of Local Government in the opposition during an interview that “the housing issue in Zimbabwe is like dynamite” is probably not too much of an exaggeration, considering the overwhelming growth of unplanned shacks like a ‘storm’. When asked what single word comes to mind when housing seekers think of housing, frequently cited words or references in their responses often tied to the housing by respondents include ‘bad’, ‘discrimination’, ‘disappointing’, ‘inequalities’, ‘confusion’ and ‘chaos’.

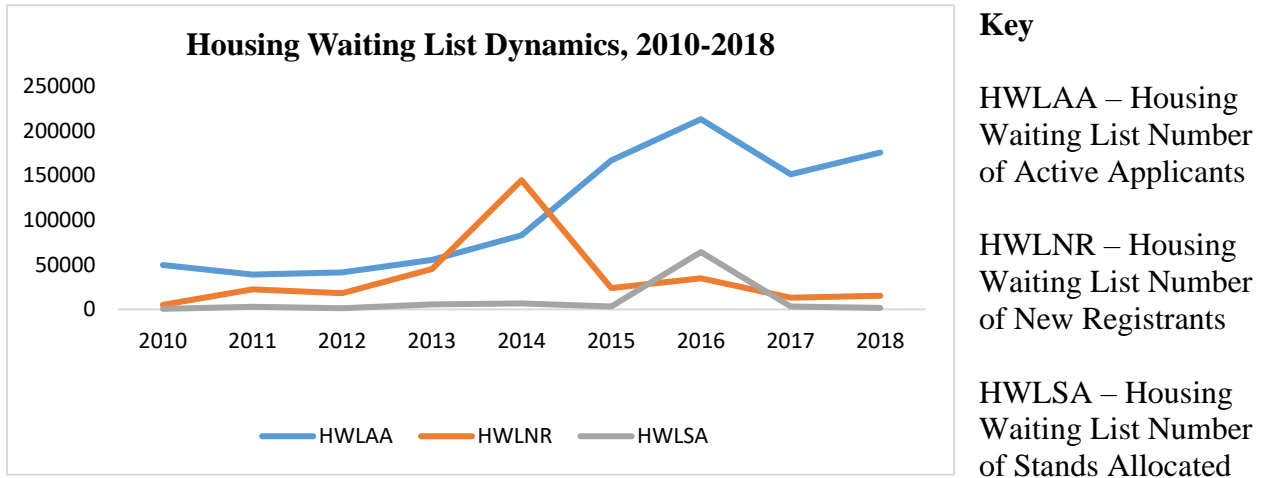
¹⁶⁸ Interview with a former Housing Officer, Harare, 23/10/18.

¹⁶⁹ Interview with the Principal Housing Officer, Harare, 17/06/19.

¹⁷⁰ *Ibid.*

7.4.1.1 Housing Waiting List (HWL)

Table 7.1



Author's Construct using City of Harare Annual Reports from 2010 to 2018

A survey of the City of Harare, Department of Housing and Community Services, Annual Reports from 2010 to 2018, and the minutes of the Education, Housing, and Community Services and Licensing Committee reveals the dynamics of the housing crisis in Harare. In 2011, there were 38 946 active applicants on the housing waiting list. However, it is important to note that the figure does not represent the actual number of people seeking accommodation in the city. It was noted that 2 970 residential stands were allocated to members of various cooperatives including 16 individuals on the housing waiting list whereas only 614 residential stands had been allocated in 2010. Considering that there is an estimation of over 500 000 home seekers in Harare, the allocations made fell far below the demand or a reasonable threshold that would class the allotment as a best practice. Because of the council's continued failure to adequately deliver the required services, the HWL had 49 672 at the end of 2010. In 2011, 22 432 new applicants registered on the HWL, an increase of 45%. Regrettably, of the 49 672 applicants, about 66% failed to renew their applications in line with the new Housing Policy that resulted in disqualification thus the number dropped to 38 946 in 2011.

At the end of 2012, the HWL had 41 461 applications. The demand for housing continued to grow in 2013 with 18 059 new applicants, an increase of 44%. Regrettably, of the 41 461, 10% failed to renew their applications. The demand for housing continued to grow in 2013 with 144 537 new applicants, an increase of 262% triggered by the CABS scheme. At the end of 2013, the number

of active applicants on the HWL amounted to 55 250 applicants. Regrettably, of the 55 250, 60% failed to renew their applications. At the end of 2015, the HWL had 166 637 applicants and 47.4% failed to renew their applications. The demand for housing continued to grow with 23 762 new applicants, an increase of 143%. Unfortunately, of the 23 762, 47.4% failed to renew their applications. At the end of the year, the number of active applicants amounted to 177 900.

In 2017, 3 228 applicants allocated serviced, partially serviced, and unserviced stands. The waiting list dropped from 212 734 in 2016 to 151 041 applicants in 2017. At the end of 2017, the HWL had 151 041 applicants. The demand for housing continued to grow in 2017 as 13 054 new applicants registered. Regrettably, of the 151 041 applicants, about 65% failed to renew their applications in line with the New Housing Policy that led to them being disqualified. Fees for waiting list renewal, new registration, or waiting list application and application for title deeds are beyond the reach of many. At the end of 2017, the number of active applicants on the HWL amounted to 52 864. Comparative analysis of 2016 and 2017 shows that the number of new registrations decreased significantly and the increase in new registrations in 2016 might have been exacerbated by regularisations of housing Pay schemes¹⁷¹ that mandated every beneficiary to be on the HWL. In 2018, 1 453 applicants were able to be allocated serviced, unserviced and semi-serviced stands respectively. There was an increase in the number of new applicants to the housing waiting list from 13 054 in 2017 to 15 162 applicants in 2018. The demand for housing continued to increase in 2018 by 16.15%. These figures exhibit the turbulence that has characterised access to housing and realisation of the right thereof.

More so, the turmoil of 2000 to 2008 economic depression and upheaval in Zimbabwe destroyed key socio-economic facets that lynchpin housing dynamics. This included erosion of bank balances, pension funds, building societies, and people could not borrow as there was no money due to hyperinflation. All developments were affected, housing development halted and the right to housing was compromised. However, during the GNU epoch, there was a rapid recovery. The gross income to the state was massive to the average of 70% per annum for four years; in 2009, it

¹⁷¹ Housing delivery schemes in Zimbabwe include Pay Schemes, PPPs (partnerships with private players, construction industry, pension funds, building societies), Employer Assisted Housing Schemes and allocations to individuals. Housing pay scheme is whereby council allocates unserviced land to individuals who then combine their resources to provide onsite infrastructure. (cf. City of Harare, Housing Investment, 2016: 4, 15).

was US\$940 million, in 2010, it was US\$1, 6 billion, 2011 it was US\$2, 7 billion, 2012 it was US\$3, 7 billion, and 2013 it was US\$4, 3 billion. The gross earnings in the GDP during GNU were very fast and with that came recovery in housing and banks¹⁷². Examples are Graniteside /Waneka Phase 2 IDBZ housing project with a contract sum of \$10,650,000.00 in 2013, Dzivarasekwa Phase 2 housing project with a contract sum of \$5,538,500.00 in 2011, and the post-GNU New Marimba housing project with a contract sum of \$2,500,000.00 in 2015¹⁷³. Nevertheless, findings indicate that after the ruling party's 'cohabitation' with the opposition for five years, the romance, rival-turned-coalition-partnership between ZANU-PF and the opposition soured, in the post-GNU, all the GNU strides went into reverse with an economic slowdown and the socio-economic situation, housing included, started deteriorating again and inflation resurfaced¹⁷⁴. The economy took a nosedive. With economic growth, housing was expected to improve. Nevertheless, correlational statistics indicate otherwise, emblematic in the ever-increasing housing waiting list. The economy has been zigzagging and on a roller coaster, contraction, and sluggish as expressed by respondents. The 2008 economic meltdown rendered the rights of individuals useless. Their legal foundations further undermined the economic and social fabric. It was outlined that the relationship between the economy and human rights is that if the economy is in a tailspin, it becomes difficult for one to assert their right to housing. Developments that took place since 2000 have undermined citizens' rights to housing that became just theoretical¹⁷⁵. The role of economic haemorrhage and its factors, however, have never been tested on the Zimbabwean housing experience.

7.4.2 The Constitution and Conspicuous Disparities

The constitution provides for the objectives and the Bill of Rights. Ordinarily, the right to housing was supposed to be encapsulated under the Bill of Rights that is advantageous in that it is directly enforceable. This has not been the case in Zimbabwe. It is different from other provisions of the constitution where there are issues of justiciability¹⁷⁶. This scenario was found to be very vexatious and constrained the full realisation of the right to housing in Zimbabwe. What it entails is that it assumes there is an automatic mechanism(s) to deal with or address housing rights challenges in

¹⁷² Interview with former secretary for local government in the opposition, Harare, 25/07/18.

¹⁷³ <https://www.idbz.co.zw/project-operations/government-projects/current-projects>.

¹⁷⁴ Interview with former secretary for local government in the opposition, Harare, 25/07/18.

¹⁷⁵ Interview with a housing expert, Harare, 09/10/18.

¹⁷⁶ Justiciability is the capacity of the right to be remedied by a court of law that is an important feature of the Bill of Rights (Interview with a Chief Law Officer, Harare, 11/05/2019).

Zimbabwe. The setup also assumes that everyone has access to courts and review processes in case of a grievance that glaringly is not the case in Zimbabwe. The subject of enforceability of the right to housing, that is how the right to housing can be calibrated, leads to the fundamental question: To what extent is the right to housing enforceable or operational in Zimbabwe? Without effectiveness, applicability, or operationalisation, the right to housing becomes redundant. It is important to measure the extent to which the right to housing is being protected, promoted, and enforced within the social human rights framework. In Zimbabwe, enforceability and operationalisation of the right to housing have not been upheld constitutionally¹⁷⁷.

7.4.2.1 Right to Housing, Right to Shelter, or None of the Above: A Jurisprudential Review of Zimbabwe's Constitutional Framework

Keeping constitutional human rights and public housing policy separate makes it inconceivable to realise the right to housing. Public housing policies and programmes are formulated in line with the constitutional provisions that are key in the operationalisation and concretising the right to housing. Respondents claimed that Zimbabwe subscribes to notions of constitutionalism, however, flipping through the provisions of the Zimbabwean Bill of Rights that is well explained¹⁷⁸, to look for the right to housing, it cannot be found that is quite problematic in a constitutional human rights dispensation¹⁷⁹. It is a rare sight. The constitution has failed the people. What it entails is that concerning Zimbabwe's constitutional provisions, there is no provision of the right to adequate housing.

Unlike in other progressive jurisprudences like Section 26 of the South African Constitution were, enforcement departments can easily refer to a clear section, the Zimbabwean Constitution offers little guidance on the right to housing. It fails to provide important legal recognition of the value of the right to adequate housing. It has taken a back seat in the 2013 Constitution. Instead, it is a delicate assemblage of sections, practices, and institutions held together by a fragile issue of inferences, conventions, understandings, and visceralness. It relies on judicial activism¹⁸⁰ and a common commitment to unwritten rules. This leaves the right to housing dangerously vulnerable

¹⁷⁷ *Ibid.*

¹⁷⁸ Interview with a renowned planner and housing expert, Harare, 17/08/18.

¹⁷⁹ Interview with a Chief Law Officer, Harare, 11/05/2019.

¹⁸⁰ Judicial activism entails willingness of some judges to override legislatures by declaring certain statutes unconstitutional (Roskin et al., 2006:57).

to the abuse of power by those in authority who are pliant rather than compliant to the few provisions guiding housing discharge. Respondents concurred that constitutional silence on housing leaves the housing seekers in a quandary. Unlike a smart constitution in South Africa, the mess in Zimbabwe is emanating from a blemished constitution.

The realisation of the right to adequate housing is left to the whims and discretion of local authorities. In Zimbabwe, there is nothing, declared or undeclared, that is compelling local authorities to facilitate the right to housing. In cases of disputes over issues of adequate housing, local authorities rely on judicial activism in which under Section 46 (c) of the Zimbabwean Constitution, the court will interpret using international standards as Zimbabwe is a signatory to ICESCR and Article 11 can be used. Courts can be an activist and give a ruling based on a judgement. The Housing Department Strategic Plan (2019-2021) is clear about the provision of housing and other attendant services. However, it is hubristic to say that the law is compelling HCC to provide housing, making it almost “constitutionally immune”. Looking at local governance, the area of local authorities is highly regulated but the area of housing to be specific is not guided by any regulation in the constitution¹⁸¹. The housing department is almost free to do as it pleases as if it is in a parallel universe. There are no clear guidelines or measures but implementation is based on an explanation of the law that is not immediately obvious, raising many questions as it answers the housing problem.

Housing guidelines are a set of ‘loose rules that are often left open for interpretation’, assuming that implementing agencies are capable of understanding. They are too ambiguous, vague, imprecise, and unenforceable. There is no clear information, unambiguous messaging, and crystal-clear guidance to enforce housing rights, explaining what exactly is expected of the HCC, so that they can do their level best to implement it. This fuels speculation and implementation is based on incomplete grounds. If the message of what is expected of the HCC is wishy-washy and not clear, it will make the job of implementing housing legislation and rights almost impossible. It is not a helpful message in terms of guiding the behavior of HCC as it does not advise as to what HCC should do.

¹⁸¹ Interview with the Principal Housing Officer, Harare, 17/06/19.

Against that backdrop, hopes of a constitutional policy document or an instrument in defense of the low-income home consumers against the most powerful in society have so far been disappointed. The only Sections in the Constitution of Zimbabwe where the right to housing can be inferred are 71 and 74 that speaks to the right to property and freedom from arbitrary eviction from property respectively. These are, however, fringe rights that sprout from one having a house or property so that a person should not be evicted without a court order¹⁸². This is problematic because Section 71 protects property-holders and the propertyless are effectively excluded (cf. Arrighi, 2002).

Looking at the mandate and terms of reference of the right to housing in Zimbabwe, shelter under Section 28 is a national aspiration and not a right, rights are in Chapter 4 of the Zimbabwean Bill of Rights Section 44 to 87 and the rights are from Section 48 to 85. The emerging questions are: What are the national objectives? Are they a wish list or a priority list? If national objectives are a priority list, then there is a need to include what is in Section 28 to Section 71 and 74. There cannot be a right to housing while using national objectives when the country has a Bill of Rights¹⁸³. More so, despite that local authorities can rely on judicial activism to guarantee the right to housing, the right to be free from eviction does not constitute an element of the right to adequate housing. What it implies is that Zimbabwe has neither the right to housing nor shelter.

The only people who have the right to shelter in Zimbabwe are children because that is found in Section 81 (1) (f). In cases of children, the government is mandated to make sure that it takes stock of how many children are in a family and Section 81 is clear that a child must have the right to shelter. The parent who does not have the right to shelter enshrined in the constitution can use freedom from arbitrary eviction by having children who need to have shelter and are protected by the constitution. Before evicting adults, who do not have the right to shelter, there is a need to look at children with the right to shelter. To get freedom from arbitrary eviction, there must be a child thus under the child's justiciable rights, parents enjoy shelter¹⁸⁴. The reasoning involved in

¹⁸² Interview with a Chief Law Officer, Harare, 11/05/2019.

¹⁸³ Interview with a former lawyer with MJLPA and ZLHR, Harare, 13/10/18.

¹⁸⁴ *Ibid.*

concluding, ferreting out, or making a logical judgment based on circumstantial evidence and prior conclusions rather than based on direct observation is, however, problematic.

What the constitution of Zimbabwe has done to remedy that gap is that, in Chapter 2, they have national objectives that guide the state and institutions and other agencies of government. The national objectives are not crafted as justiciable rights per se, they are just but a tabulation of what the government aspires to do within a certain period. It is a mere work plan of government, like a blueprint that the government must provide, among other things, housing. However, the issues of enforceability only come in the Bill of Rights and Section 85 speaks of the enforcement of these fundamental human rights. This enforcement is linked to the Bill of Rights to any person who is acting in their interest, on behalf of another person, as a member interest group or as a class or an association acting in the interest of its members. If it is aggrieved that the right to housing is not provided in this country, persons have the right to direct *locus standi* before the judiciary and can skip the magistrate, supreme or high courts and go straight to a constitutional court and provide ‘*direct locus standi in judicio*’ to the person¹⁸⁵. However, to search and discover the right to housing through persistent investigation reveals that something is wrong with the Zimbabwean constitutional framework. What it means is that since housing is not under Chapter 4, that was going to help in advancing the right, by its feature and locus in the constitution, enforceability is limited¹⁸⁶.

Moreover, though under the national objectives, enforceability is not as strong as the Bill of Rights, joy can be taken from Section 46 (1) (d) that implies that when interpreting Chapter 4 of the constitution, one should pay due regard to the principles and objectives set out in Chapter 2 of the constitution. On the issue of justiciability, there is an umbilical cord between those objectives and the Bill of Rights. There is also a membranous duct connecting the principles set out in Section 3 with the objectives set out in Chapter 2 as provided for under Section 46 (1) (b). There is, therefore, a link between the Bill of Rights and the objectives, and a person can go to court and argue in terms of Section 46 (1) (d) and render Section 28 on shelter justiciable¹⁸⁷.

¹⁸⁵ Interview with a Chief Law Officer, Harare, 11/05/2019.

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

The Zimbabwean constitution under Section 28 to a certain degree talks of access that is a bit wishy-washy and worrisome. However, the right to housing is more than that. It is about having a house, having the right towards that house where persons have got title deeds to that house, where they can go and borrow money from a bank against the title deeds of that house that is lacking in Zimbabwe. Though it might appear as if the state's obligation to avail decent housing is captured black and white in the constitution, the arrangement is dangerously limiting the realisation of housing rights¹⁸⁸. There are also fundamental definitional questions and talking points emanating from this: What constitutes a shelter? Is there a contradistinction between shelter and housing?

In contrast, however, access and opportunity to housing are crucial elements whether rental or owned¹⁸⁹. Access can either be in the form of owning property or renting. There is a wrong conception in Zimbabwe that the right to housing is about owning property¹⁹⁰. There was also a misconception after independence as the change was more of a political form and housing policy was largely based on homeownership principles. That was a roadblock to accessing housing because the Zimbabwean society is categorised into different classes, those who are not able to access housing without government support, the vulnerable people, and the indigent¹⁹¹. The best way to provide to them is through rental or social housing¹⁹². A social republic is an antidote to capitalist greed and inequality and housing subsidies or government efforts to promote housing for the poor have big effects on lowering homelessness (cf. Harvey, 2012; Stiglitz, 2012). However, due to privatisation and financialisation of social housing and the promotion of individualism and democracy¹⁹³, consolidated political ways are dismantling or rolling back the commitments of the welfare state, encouraging entrepreneurial initiative, and creating a favourable business climate to induce a strong inflow of foreign investment at the expense of the poor (cf. Harvey, 2005; Crosby, 1995).

¹⁸⁸ *Ibid.*

¹⁸⁹ Interview with the Director for Housing and Social Amenities, Harare, 17/10/18.

¹⁹⁰ Interview with a former Housing Officer, Harare, 23/10/18.

¹⁹¹ Interview with a Chief Law Officer, Harare, 11/05/2019.

¹⁹² Interview with a former Housing Officer, Harare, 23/10/18.

¹⁹³ Cf. James Bayes on Al Jazeera interview with Leilani Farha, UN Special Rapporteur on Adequate Housing.

7.4.3 An Analysis of the Legislative Frameworks

The condemned constitutional framework follows that the Acts of Parliament will not be as progressive. In progressive jurisdictions like the USA¹⁹⁴, Canada¹⁹⁵, and the UK¹⁹⁶, they have National Housing Acts that directly deal with multilayered issues of or multiple fronts around housing. These include achieving world-class housing standards through cooperation between the government and the private sector with a coordinated approach to achieving improved housing conditions and outcomes contributing to UN SDGs and in line with the ICESCR. Nevertheless, in Zimbabwe, they talk of UCA and RDCA (operations within a rural district). The enabling acts are different animals and issues of housing are fringe. It talks about institutions, how councils work but they do not have express provisions about housing. In Zimbabwe, there is no Housing Act to effect provisions in the constitution¹⁹⁷. The UCA is impacting negatively on the enforcement of housing rights as it is outdated¹⁹⁸.

The legislative enactments are supposed to align with the constitution to codify and give effect to Sections 28, 71, and 74¹⁹⁹. The adoption of NHP in 2012 and the constitution in 2013 was supposed to pave way for the review and harmonisation of various pieces of legislation, for instance, RTCPA and model building by-laws that hinder progress [cf. Zimbabwe's Medium-Term Plan (MTP) 2011-2015, 2012: 134]. However, that is not the case in Zimbabwe. To make matters worse, the housing bill has not been tabled or arrived at even during the Second Session of the Ninth Parliament with no hopes of it being expedited soon. There is a considerable lack of harmonisation to advance access to socio-economic justice²⁰⁰.

¹⁹⁴ United States National Housing Act of 1937 (Chapter 896, 50 Stat. 888) advocates for the elimination of unsafe and insanitary housing conditions, for the eradication of slums, for the provision of decent, and safe, dwellings for families.

¹⁹⁵ Among several enactments, there is the National Housing Act (R.S.C., 1985, c.N-11) and the National Housing Strategy Act (S.C.2019, c. 29, s. 313). Both Acts protect housing as an essential element to human dignity, with an emphasis on the need for access to affordable housing.

¹⁹⁶ Housing Act of 2004 (c 34) provides the legal framework for the enforcement of housing standards and regulation of housing conditions.

¹⁹⁷ Interview with a Chief Law Officer, Harare, 11/05/2019.

¹⁹⁸ Interview with an expert in Public Policy, Harare, 15/05/2019.

¹⁹⁹ Interview with a Chief Law Officer, Harare, 11/05/2019.

²⁰⁰ Cf. ZLHR (2015).

Issues of housing are not very elaborate in the legislative measures that are problematic. The legislative framework is limited and the GoZ is not committed to providing housing. There is no course of action on how to attain the right to housing, as an emphatic strategy on what has been done, how to do it, a baseline survey to see how many people want a house and how many people afford housing and for those who do not afford, what can be done about it. There is also no policy to help sub-national governments in the spirit of devolution of power. There are no clear policies and laws to guide local boards in executing housing. The NHP statement is vague on preferential attention given to indigenous players as the definition of ‘indigenous Zimbabweans’ is still shrouded in mystery, ‘as clear as mud’. Lack of standardised and formal procedures characterise housing policy implementation in Zimbabwe (cf. Gerston, 1997:98). Legislative frameworks on housing in Zimbabwe are not adequate and comprehensive²⁰¹.

The excessive powers of the minister in the UCA render urban councils powerless. Even though the legal framework provides for autonomy for local authorities, the same laws also permit interference from the MLGPWNH whose extensive powers tend to constrain council business (Chiweshe et al., 2013:7). The extensive powers vested in the ministry allow the Minister to veto council decisions arbitrarily. The Act is also incongruent with Section 264 of the Constitution that speaks to devolution of power to delegate authority to councils to take more control and responsibility for their work and activities. There are no additions to reflect on the socio-economic rights obligations of councils. There are also no inclusion frameworks for councils to implement progressive realisation of housing and its attendant services. Resultantly, councils are failing to effectively carry out their housing mandate²⁰².

The minister, on political grounds, consistently utilise veto powers to overturn decisions made by councillors in a bid to adulterate oppositional influence in urban governance. Several members of urban councils have been capriciously and whimsically dismissed by fortuitous and whim based on party lines at the impulse of the minister rather than by necessity or applying reason. They are ‘too lazy to think positively but criticises solutions’. The powers of the minister are not curtailed. Issues around allocations of land for housing are therefore bleak in terms of addressing housing

²⁰¹ Interview with a Chief Law Officer, Harare, 11/05/2019.

²⁰² *Ibid.*

rights in a systematic, non-partisan, and apolitical manner²⁰³. The ruling party cannot extract itself from council business so easily because it considers it part of its sphere of influence with a strategic objective of preventing the opposition from securing a foothold in the distribution of land for housing. A key objective by the ruling party is to paint a morbid picture for HCC. This split reality portends a rough ride for the urban councils' bid to implement efficiently and effectively housing programmes. The excess prejudice of personalism in housing politics does not allow for responsibility management based on well-defined principles of governance. An overtly political overtone hampers and defeats the concept of equitable housing distribution and important values like impartiality (cf. Moyo, 1992:116). Housing administration is often personalised as attitudinal orientations, particularistic rather than universalistic, ascriptive rather than achievement-focused, and subjective rather than objective (cf. Machokoto, 2000:33). Zimbabwe's housing administration is without any policy accountability or professional responsibility (cf. Moyo, 2011:6). What people want is a fair and equal treatment in a non-discriminatory manner that is lacking in Zimbabwe (cf. Russell, 1990:11).

More so, in other related legislative measures like the GLA, the provisions that criminalise continued occupation of gazetted land to ensure that the right to adequate housing is guaranteed for those affected is not yet reviewed. Provisions for protecting those who do not have alternative shelters are not yet reviewed. There is no clear law on how to deal with homeless people or those who are inadequately housed, living under constant threat of being evicted or to be prosecuted by occupying gazetted land, although they have not been relocated, rehoused, or that the government came up with alternative accommodation before the evictions as required by law. Little is being done by the government to address issues of demolitions without notice to give effect section 74 of the constitution, that is to ensure that arbitrary evictions of such communities cease unless and until they have been properly relocated after consultations, due notices, and/or compensated²⁰⁴.

Furthermore, in line with the Housing and Buildings Act (HBA) [Chapter 22:07], Sections 22-24 that regulate the relationship between lessor and lessee are not amended to comport with section 74 of the Constitution in ensuring that no person is subject to arbitrary eviction. Another lacuna in the Act is that there is no inclusion of provisions that an order for eviction or demolition of property

²⁰³ Cf. ZLHR (2015).

²⁰⁴ *Ibid.*

must only be made after having considered all relevant circumstances in line with international law and that it is not final until confirmed by a competent court²⁰⁵. Consequently, arbitrary evictions are rampant and the other appendages to the right to housing are increasingly being violated. The legislative Act also fails to state in bold terms that evictees have a right to alternative housing in the event of homelessness caused by such orders²⁰⁶. UN-Habitat (2014:5) described this as a lack of safeguards in the case of evictions. Against this setting, the Act fails to give effect to Sections 28, 71, and 74 of the Constitution.

Moreover, the HSCA is completely not complying with Section 28, 71, and 74 of the Constitution. Housing as a fundamental human right is not included and recognised in the Preamble of the Act. Provisions for arbitrary evictions and demolitions that deprive people of the right to housing are still part and parcel of the Act. In the same vein, Sections 4 to 15 of the same Act are not retrospectively limited to limit the powers of Housing Courts that can order the destruction of the house(s), sometimes without the right to appeal. The Act is also failing to reflect that any demolition of property can only be done after obtaining a court order and having considered all relevant circumstances. There are no safeguards that demolitions are not supposed to be carried when there is a pending appeal. There is also an omission in terms of recognition of occupants' rights, including any security of tenure. There is no inclusion of the requirement for the state to provide adequate accommodation and/or compensation in the event of homelessness caused by demolitions²⁰⁷. Overall, failure to harmonise the legislative framework in line with the new 2013 Constitution explains the rampancy and unrestrained arbitrary evictions and gross violation of housing rights and its attendant elements.

7.4.4 Dissecting the Implementation Brigade: An Overview of the Administrative Frameworks

On the administrative framework, it is difficult to imagine the realisation of the right to adequate housing without a local network of democratic institutions. HCC has got a DHCS. There is the physical planning section that authorises or approves housing plans. There is also the housing section that does the monitoring to see if the general planning is in tune with housing development

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*

provisions. The HCC gives or issues development permits and inspect after each level completed to see if developments are in sync with the by-laws on housing. Though the administrative measures are in place in terms of relevant space departments,²⁰⁸ constitutional and legislative hitches creeping and spilling over into germane departments responsible for executing public housing policy compromises effective realisation of the right to adequate housing.

Since 1980, the central government was at the centre stage and most of the housing processes were state-centric. There was the 10 key policy where those on the waiting list were allocated constructed houses. Development statism characterised the post-independence period. Just like many African countries, the aftermath of the late 1980s marked the realisation that the state was spending too much on the public and social goods. Zimbabwe like other countries through the WB prescriptions, drastically reduced public expenditure including housing through economic reforms in the name of structural adjustment programmes²⁰⁹. The involvement of the state in social housing has waxed and waned over the years (cf. Harvey, 2014:18; Klein, 2001). Global dynamics forced governments and welfare states to curtail state spending and interventions, despite different partisan commitments, all governments have been pressed in the same direction (cf. Held et al., 1999). The global financial expansion or a new stage of world capitalism nor the harbinger of a 'coming hegemony of global markets' was the clearest sign of a hegemonic crisis that ended catastrophically and calamitously (Reifer, 2009). James et al. (2015) note that in turn, this process of globalising economically has generated an increasing division of rich and poor and put tremendous pressure on the poor to access housing. Where the supply of housing is limited, the mortgage subsidies may raise prices, making homeownership less affordable (Stiglitz, 2012).

The honeymoon phase of just getting into a fully-fledged home is over. That kind of setup is now hanging by a thread. From the 10 key policy where people were provided with a core house sometimes, the trend shifted and the formula changed. People are now being given unserviced and raw land that in many circumstances is not adequate. It is a continuum where there is hardly any real public housing expenditure²¹⁰. In resonance with transformation, members of the University of Zimbabwe Association of University Teachers that were allocated virgin land in Whitecliff are

²⁰⁸ Interview with a Chief Law Officer, Harare, 11/05/2019.

²⁰⁹ Interview with a renowned planner and housing expert, Harare, 17/08/18.

²¹⁰ *Ibid.*

contributing either collectively or individually to service the area. In most cases, such areas are not habitable. The fundamental question now is: How can people clamour and yearn for attendant housing services if they do not even have access to land for housing? To debunk the myth, it is worth noting that, for most people, it is the access to land not whether it is serviced or not²¹¹. The right to housing in these circumstances is no longer a government priority and commitment, it is more of self-help. Lack of social housing is depriving the indigent of the right to housing. This is also a result of the housing pay scheme model that was adopted soon after the ushering in of neoliberal reforms so that the state would cut costs on the provision of social services at every level²¹². Adequacy is now the least of residents' concerns, they move in or take stands despite not being serviced²¹³. Respondents mentioned a place to stay far more often than the housing rights. People are providing for themselves. If they cannot afford, they do what they can, what is within their means, and sometimes become satisfied with the very minimal or below the minimum standard²¹⁴.

The private sector and the mortgages market where people used to borrow at banks in support of housing is dead and has remained redundant despite the socio-economic transformation of the landscape. There are now unattractive and unaffordable short-term and medium-term loans but not mortgage in its true or actual sense of 25-30 years²¹⁵. The system is not speaking to the current economic environment and urgently requires redesigning. Without doing more for housing, housing will not recover (cf. Stiglitz, 2012). The model that is there now is a source of unpredictable trouble and complexity, emblematic in people scrambling for land or getting hold of whatever land they think is unused and erect shacks²¹⁶. The housing seekers are scrambling to keep up with the changing logistics and the burgeoning shacks in Zimbabwe attest to the laxity of housing law enforcement agencies²¹⁷. For Harare of late, it always happens that after elections, illegal structures are destroyed arbitrarily. The question now is: Where were the local authorities

²¹¹ Interview with an expert in Public Policy, Elections, Democracy and Human Rights, Harare, 21/05/2019.

²¹² Interview with the Principal Housing Officer, Harare, 17/06/19.

²¹³ Interview with an expert in Public Policy, Elections, Democracy and Human Rights, Harare, 21/05/2019.

²¹⁴ Interview with a renowned planner and housing expert, Harare, 17/08/18.

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ Interview with a former Housing Officer, Harare, 23/10/18.

when the illegal settlements were being constructed?²¹⁸ Some destroyed structures are not even shacks, they are nicely and decently built structures but built without approval therefore illegal²¹⁹.

There is no semblance of sanity in Harare. Sprouting of unplanned settlements is the order of the day. Most houses and structures being built are without attendant roads, water, and sewer reticulation. People are just settling themselves willy-nilly on any available piece of land. There is no development control²²⁰ or hope for home seekers and no confidence in housing delivery through the waiting list system. At the time of a housing crisis, the waiting list system is supposed to be a source of inspiration and reassurance. However, all that it can manage to impart now is a sense of panic and the home-seekers are not just anxious to join the waiting list but are scared off/away by the lack of assurance in the ineffectual system, discouraged by years of fruitless waiting. With the councils mishandling of the waiting list system, and with the government that seems to be uninterested in doing what it takes to ensure order in accessing housing, the rest of the populace is unlikely to take housing policies for addressing the housing rights seriously. There is now the law of the jungle, the law of the hyena, to eat what is available, taking what is there. The government has successfully managed to convert people into local warlords, warmongers, slumlords, and slum-mongers. Cooperatives have much resemblance to the historical background and the liberation struggle. In line with the liberation culture, the opinion by the HCC Principal Housing Officer that ‘the housing issue in Zimbabwe is now the Fourth Chimurenga’²²¹ is probably not too much of an overstatement with the persistence of ‘gangsterism’ politics in its various manifestations. Demolitions and battles with the municipal police are running, escalating into amok. After eviction today, tomorrow there are there. Housing issues are turned political²²². The authorisation to reconstruct is a testament to housing policy inconsistency and a clear message that housing is deteriorating. In resonance with “The Deep State”, politics in the context of local authorities is about the invisible hand at play that is retarding. Issues to do with land barons and corruption are doing damage to the realisation of housing rights²²³. The housing situation in Harare appears to be

²¹⁸ *Ibid.*

²¹⁹ Interview with a renowned planner and housing expert, Harare, 17/08/18.

²²⁰ Interview with the Director for Housing and Social Amenities, Harare, 17/10/18.

²²¹ The First and Second Chimurenga was during the pre-independence liberation struggles. The Third Chimurenga or wave was the 2000 expropriation of land without compensation.

²²² Interview with the Principal Housing Officer, Harare, 17/06/19.

²²³ Interview with an expert in Public Policy, Harare, 15/05/2019.

on an irreversible path towards perpetual disintegration, is on 'a one-way trip' moving from a crisis to an emergency, the housing system is now a complete and total catastrophe, HCC being the worst, most corrupt, and inept local authority in Zimbabwe (if they even have been a functioning local government at all), structures are broken.

Adequate housing is a complex concept on its own. It is not straightforward because of the vital questions: What is adequate? To who? By who? For who? Field evidence shows that sometimes the poor do not worry about what to build but wherever they can build. Responses were often tied to the desire of home seekers to at least have land and uninterested in living inadequately. This explains why of late they have been an invasion of spaces of land in Harare including wetlands. Adequacy implies satisfying everything and most of the houses are not adequate at all. The government in 2004 adopted circular 70 that was about reducing the minimum standards and lowering the ladder to accommodate the low-income classes. It reduced the standards required for infrastructure, the stand sizes and building materials and houses were not adequate as it should be. The rationale was that if costing and expenses are followed accordingly, the housing prices would be unaffordable. Based on that circular, Operation Garikai of 2005 was implemented. However, the type of houses built using those standards is not adequate. They were hurriedly done, sometimes without water, sanitation, and like slums without street lighting. In this 21st century, some houses in Harare are like African traditional huts in rural areas. The superstructures are lacking impressive 21st century standards, attendant services, and fundamental issues²²⁴. It is like back to default settings, re-embracing rural life in the city. Most houses in Harare are just superstructures without services²²⁵. The lowest cost, therefore, goes against adequacy. In Kuwadzana Extension, for example, houses with too thin panels were poorly constructed to the extent that sounds in another room can be heard in the next room. The work was shoddy and not in accord with adequacy. Although circular 70 was an enabling instrument, it was not in sync with adequate housing²²⁶.

The period from the year 2000 was characterised by places without piped water, where bins have never been collected and with no proper roads though the superstructures are nicely constructed

²²⁴ Interview with a renowned planner and housing expert, Harare, 17/08/18.

²²⁵ Interview with the Director for Housing and Social Amenities, Harare, 17/10/18.

²²⁶ Interview with a former Housing Officer, Harare, 23/10/18.

like in the case of Nehanda Co-operative²²⁷. The provision of trafficable roads as one of Harare's top priorities is a key attendant service for adequate housing. However, they have not been any meaningful investment in road infrastructure for the past 30 years (City of Harare News Letter, 2019:13). Residents are paying rates that are not being rendered and HCC is not ashamed of overcharging for services that it does not provide. Respondents concur that there is a death of public administration in HCC by telling examples of fire engines that respond to fire emergencies without water as a matter of routine (cf. Moyo, 2011). The housing model in Harare has moved to self-provision and most settlements are inadequate. In Hatcliffe, residents are using wells, Non-Governmental Organisations (NGOs)-drilled-boreholes, and pit latrines²²⁸. Boreholes are all over Harare like syphilitic sores on the beautiful body of the city. Another classic example of the state-of-the-art governmental rental flats with no proper roads are Prospect Flats in Waterfalls with dust roads leading to the compound through the bush and only usable by those with cars at night. Roads are not even graveled and without street lighting, demonstrative in the pictures below.



Figure 7.2: Improper roads without street lightning in Harare: Pictures taken by the researcher on 14 May 2019, Prospect Flats, Waterfalls, Harare, Zimbabwe.

²²⁷ Interview with a renowned planner and housing expert, Harare, 17/08/18.

²²⁸ *Ibid.*



Figure 7.3: Rising inequality and social exclusion in Harare; Prospect flats are located on the assumption or premise that most residents will own and travel by car at night thus the set up becomes highly unequal and making life for non-motorised households difficult: Pictures taken by the researcher on 14 May 2019, Prospect Flats, Waterfalls, Harare, Zimbabwe.

In realising housing rights, there must be circulation, a built-up safe area, and open spaces but Harare is in a situation where circulation is made almost inconceivable by potholes despite paying vehicle licenses to the Zimbabwe National Road Administration (ZINARA). If one is to access his/her house from any point moving along potholes, that is not adequate housing²²⁹. Interviewing a renowned planner and housing expert, he sensationally said:

“The other day I had a tyre puncture near Vainona Secondary, I did not like the experience, it is at night you have just come out of the office and it is dark, and you have a puncture in June. I have been in Harare since 1995 and what I have seen is much deterioration and it is almost unrecognisable now”²³⁰.

Given this illustrative explanation, the state of Harare city and the management of public housing is worse than deplorable. It is dead. Like in the case of Prospects Flats, when it is during the wet season, people including school children put on plastics to get out of their yards and put on shoes when they are some distance away into the tarred road²³¹. The expression by a respondent is broad,

²²⁹ *Ibid.*

²³⁰ *Ibid.*

²³¹ Cf. Hatcliffe Evidence from Commission of Inquiry into Sale of Urban State Land attended by the researcher, Harare. 07/05/19.

it is not an isolated case but can be universally spread. It equates to the plight of the generality of the people and home consumers in Harare²³².

7.4.4.1 A Historical Perspective: Impact of Colonial Legacy on Housing Administration

Housing administration cannot be understood without first learning how their past socio-economic history gave rise to their present underdevelopment (cf. Rhodes, 1970, Frank, 1966). Because of benefits, the rich elites maintained the status quo of the underdeveloped country to guarantee and preserve their interest (cf. Rhodes, 1970; Zhou and Masunungure, 2006). The development of the right to freedom from arbitrary eviction and the right to housing was not given so much emphasis during the pre-independence epoch because of laws that prohibited blacks in urban areas who ended up living in peripheral areas and the so-called African townships such as Mabvuku, Highfields, Tafara, Dzivarasekwa, created in the 1950s and Mbare²³³ that is at the edge of town about three kilometers away after white graveyards²³⁴ but close to the industrial areas to sell their labour. Historically, adequate housing was not for the poor²³⁵. The colonial powers did not want to give the indigenous populations decent title of housing because they felt that such a move would empower them. The colonialists build islands of privilege where they inevitably gave themselves a title, but they denied that to the blacks. The imprint of that will affect African societies probably for more than a hundred years after independence²³⁶. The enormous problem of the poor in accessing adequate housing dates to the pre-independence era.

Technically, low-income groups are usually out of the equation when it comes to housing rights. Looking at the subject of sustainability and resilience of urban housing and on what constitutes a township, it was about a place that was not polished in terms of provision of services but with some rudimentary services so that black people can have barest minimum survival or decency. The housing quality did not meet the key tenets or fit the usual profile of decency such as a clean environment, good road networks, and water reticulation. Houses in Mbare were boy skies, thatched in the beginning then they improved, roofed with corrugated iron, and by nonexistent of

²³² *Ibid.*

²³³ Established in 1894, Mbare is the oldest high-density residential area in Zimbabwe located on the southern side of the city about five kilometres from the Central Business District of Harare.

²³⁴ Cf. Zinyama (1993).

²³⁵ Interview with a renowned planner and housing expert, Harare, 17/08/18.

²³⁶ Interview with former secretary for local government in the opposition, Harare, 25/07/18.

quality services, the town was not belonging to blacks²³⁷. In white settlements like Mabelreign, however, there was a Radburn²³⁸ planning concept of big yards. Peri-urban plots like Ruwa were the haven of poor whites supporting the city.

When the new government came in 1980, one of the core issues was the right to land, not only for agriculture but for other developmental purposes such as the right to housing. The constitution that came into force at Lancaster had 10-year entrenchments and the issue of land was supposed to accrue to the people on a willing buyer, willing seller basis. However, much of the land was not surrendered that pushed the government to amend the constitution in 2000, a historical amendment number 16 where under 16a provides that people have access to land and triggered the FTLRP²³⁹. About 40 000 hectares were released towards housing where the Minister of Lands, who in terms of the LAA has got the power to acquire the land on behalf of the president, handed over 40 000 hectares to the MLPWNH. However, as to what exactly happened to the 40 000 hectares, many questions remain unanswered. Only elites benefited. The poor that constitutes most of the masses continue to be cramped in the locations as lodgers²⁴⁰. The colonial legacy continues from that perspective as people who have got the means to continue to dominate in the housing sector²⁴¹.

The displacements of peri-urban places by the FTLRP created space for the black elites who are now holding land for speculation²⁴² knowing that there are opportunities for urban incorporation for house-hungry citizens in peri-urban areas²⁴³. Hatcliffe used to be a former Vice President Joseph Msika's farm, Glaudina used to be former Vice President Joshua Nkomo's farm, Damofalls was former Vice President Mujuru's farm, Churu farm was former politician Ndabaningi Sithole's farm, Hatcliffe is now former minister Nyasha Chikwinya's farm and Mt Pleasant farm where the University of Zimbabwe was built. Looking at these dynamics, little has changed in terms of instrumentation²⁴⁴, and speculation is detrimental when it comes to affordable housing²⁴⁵. The

²³⁷ Interview with a renowned planner and housing expert, Harare, 17/08/18.

²³⁸ Radburn design/housing/principle is a concept for planned housing estates, based on a design that was originally used in Radburn, New Jersey, United States.

²³⁹ Interview with a Chief Law Officer, Harare, 11/05/2019.

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*

²⁴² *Ibid.*

²⁴³ Cf. Murowe and Chirisa (2006).

²⁴⁴ Interview with a renowned planner and housing expert, Harare, 17/08/18.

²⁴⁵ Cf. Murowe and Chirisa (2006).

whites used to do it in a formal way and corruption was minimal. However, post-independence has gone the most informal way with a lot of politicisation in the process (cf. Amukowa, 2007). Capital accumulation on the land through real estate activity booms as land is acquired at almost no cost and monopoly rent arises because the ‘haves’ by their exclusive control over land for housing can realise an enhanced income stream over an extended time (Harvey, 2012).

In the name of indigenisation, black elites got land for nothing because farmland was cheaper as it could be subdivided. However, stands were sold at huge prices and that speculation is killing the city²⁴⁶. Housing is built speculatively as a commodity to be sold on the market to whoever can afford it and whoever needs it (cf. Harvey, 2014). It creates an affordability crisis that is at odds with realising the right to housing on an affordable basis²⁴⁷. Speculation causes massive under fulfillment of the affordable right to housing (cf. Held and McGrew, 2005:519). The affordability crisis is, therefore, obstructing the realisation of housing rights thus an affordability-driven housing crisis.

Land for housing is at the core of politics not only in the post-independence era but even before. The black elites were knocking on white doors to enjoy the kinds of things that whites have been enjoying. Had those doors been opened, the nationalist struggle would have been delayed indefinitely. The appetite for that kind of life was already there²⁴⁸. However, it was frustrating and that is what triggered the nationalist struggle to enjoy the fruits that were there and that is where the liberation legacy is very much connected to²⁴⁹. Most housing co-operatives that have emerged had some names of late heroes: among others, Joshua Mqabuko Nkomo, Sally Mugabe, Josiah Magama Tongogara, and Herbert Chitepo. However, settlements are not be serviced half the time. Due to lack of social services, school children walk long distances to go to schools in the nearby districts (cf. City of Harare, Department of Housing and Community Services, Annual Report, 2018:18). Names of heroes are a way of trying to protect themselves through allegiance to the ruling party. A renowned planner and housing expert sensationally said:

“I stay in Hatcliffe, but I still go to Masasa Park for church because of poor services. Some areas have a mosaic of structures but there are no roads. People drill some wells on a very

²⁴⁶ Former Minister of Local Government, Ignatius Chombo during a Housing Convention of 2009 in Victoria Falls.

²⁴⁷ *Ibid.*

²⁴⁸ Interview with an expert in Public Policy, Elections, Democracy and Human Rights, Harare, 21/05/2019.

²⁴⁹ *Ibid.*

small plot that exposes them to the dangers of diseases through soil or water contamination. Looking at it from this point of view, there is no adequate housing in Hatcliffe²⁵⁰.

Moreover, the housing problem correlates with the growth pattern in the population trend. It is a manifestation of the long history of rural to urban migration. As the war intensified, that was essentially a rural-based war, some in that theatre of the liberation were fleeing the war and flooding the urban areas. Many settlements arose out of that and the problem did not recede post-independence but got worse as more people were attracted to the bright lights and to what they thought were opportunities for employment in urban areas. Parallel to rural migration and essentially an explosion in the urban population of Harare is the worsening housing problem²⁵¹. The population increased more than supply and urban researchers, after recognising problems, did not take the next step and start writing housing history concerning the invasion by people and the biological expansion of cities (cf. Crosby, 1995). HCC is struggling to keep up with the rising demand. Although housing units are being built, provision soured to putrid levels and the capacity still lags the availability of land for housing. Frequency trumped capacity and housing are in intensive care with a growing incidence of illegal dwellings. Whenever there is a shortage or barriers to access affordable social housing, a market for alternatives will emerge. Harare is in critically short supply of affordable housing. Rent-seeking behaviour and the 'NGO-isation' of public housing is rampant. The shortage has a cosy relationship with capitalism.

Closely looking at the above housing ontogenesis, maturation, and evolution, nothing much has changed after independence. The government tried to be socialist at first to provide housing for all. They introduced schemes like home ownership, trying to sell the houses to the renting tenants in Mbare and Kambuzuma. However, there was some resistance as tenants did not want to be double footed-a foot in the city and the rural areas²⁵². Because of the mentality, they preferred to rent without having any problem in staff quarters. It was therefore not a government or council policy per se that deprived people of housing in the urban areas²⁵³. This means whatever formula the white man had created was paying its dividends. In describing this interesting analogy, a renowned planner and housing expert noted that "*murume akanaka anopa mari yese yaatambira*

²⁵⁰ Interview with a renowned planner and housing expert, Harare, 17/08/18.

²⁵¹ Interview with an expert in Public Policy, Elections, Democracy and Human Rights, Harare, 21/05/2019.

²⁵² Cf. Muzvidziwa (1997).

²⁵³ Interview with a former lawyer with MJLPA and ZLHR, Harare, 13/10/18.

kumudzimai wake uye mudzimai akanaka anoiramba". Implied in this is that despite concerted efforts by the government in trying to embrace Africanisation and black advancement in housing, they faced resistance. What the whites had wanted was already working in terms of their ideological orientation. At independence, as a result, there were few blacks in town²⁵⁴. More so, like in South Africa where the ANC has not given anybody title in the housing programmes as none of the RDP houses are freehold but are all leasehold, Zimbabwe also inherited the same colonial means to control the population by having had a monopoly on housing that amounts to voters and valuable during elections²⁵⁵. HCC is deliberately not embarking on instruments of public awareness to let people in Mbare flats know that the ownership of pentagon is vested in the municipality²⁵⁶.

Against the above setting, there is an organic link between the whole colonial infrastructural architecture as much as housing is concerned. The reality is that instead of a racial bifurcation, there is now a classed bifurcation that is blind to race²⁵⁷ but based on income and economic status²⁵⁸ (cf. The City of Harare Housing Procedure Manual, Housing and Social Department). Post-independent Zimbabwe, with a hideous face of unjustified differential treatment based on a substantial and stubbornly wide gap of wealth between the rich and the poor, and with a 'little chance for an upswing', is far from being a bastion of equality, but just a matter of 'killing a monster problem of monopoly by creating a bigger monopoly status'. What is taking place today is only different in that it is no longer blacks versus whites where skin and race determined what people are and what they get and how. It is no longer taking place from a racial perspective but from an economic and class divide. There is a silent but clear institutional caste system, the poor vis-à-vis the emerging petite bourgeoisie, and several people are not fitting into this elite class model. By class, a person belongs to, accessing affordable housing is now herculean in the post-colonial state. The poor always live in the peripheries of town²⁵⁹. The class divide with a massive colonial impact on housing²⁶⁰ contributes immensely to inequality in housing and the Gini

²⁵⁴ Interview with a renowned planner and housing expert, Harare, 17/08/18.

²⁵⁵ Cf. McFarlane and Silver, (2016: 126).

²⁵⁶ Interview with a renowned planner and housing expert, Harare, 17/08/18.

²⁵⁷ Interview with an expert in Public Policy, Elections, Democracy and Human Rights, Harare, 21/05/2019.

²⁵⁸ Interview with a housing expert, Harare, 09/10/18.

²⁵⁹ Interview with a former Consultant for HCC, Harare, 04/09/18.

²⁶⁰ Interview with former secretary for local government in the opposition, Harare, 25/07/18.

coefficient²⁶¹ is messy with a very wealthy minority, as bad as South Africa²⁶². Discrimination remains embedded in the housing market. One explanation for the failure of housing policies to produce ‘fair’ housing is found in the state’s continued reliance on the private sector as the sole provider of housing in Zimbabwe. As a result, it has absorbed the real estate and banking industries’ historic embrace of housing discrimination based on class. Wealthier groups will naturally “spread their bets wide”, and boost their odds of access more sooner, and middle-and low-income groups will likely benefit or access housing later on.

In line with “The Deep State” concept, this is a somewhat shadowy vehicle for the restoration of class power with neoliberalism forces behind it and those that have benefited from it. It is a social configuration and a reconfiguration of what constitutes an upper class, an aristocratic tradition that dominates the entrepreneurial and financial elite in the city and many segments of the industry (cf. Harvey, 2005; Loyal, 2003:110). There is a situation where those who, at the heart of the genesis of nationalism felt mistreatment by the whites are now enjoying the kinds of things that whites were enjoying²⁶³. This explains why in Harare cost is socialised and profit is privatised²⁶⁴.

Although Section 56 of the Zimbabwean Constitution forbids discrimination, a privileged existence through ill-gotten gains is fueling illegal dwellings, fostering inequality and lower-income earners are facing rental discrimination. The white minority regime has been replaced by another minority regime conviviality with power and today under a black government, people still do not enjoy or have the right to housing. The achievement of independence opened the doors ajar for the black elites, now the privileged minority, to simply fulfil what they had yearned for. In the mind of government elites, it is a dream come true and not a state liability to correct a historical wrong. This then transforms a pigmentation based political economy to a class-based political economy. The class consciousness was already there, it found fulfilment and blossomed post-independence²⁶⁵. Harare is lacking a systematic consciousness in terms of planning. There is social inequality in terms of who owns what, where, and when without proper town planning and policy frameworks in a place where amenities can be availed. Harare is now characterised by settlements

²⁶¹ Gini Coefficient is a distributive statistical measure or gauge of inefficiency and inequality.

²⁶² Interview with former secretary for local government in the opposition, Harare, 25/07/18.

²⁶³ Interview with a renowned planner and housing expert, Harare, 17/08/18.

²⁶⁴ Cf. Chomsky (2011).

²⁶⁵ Interview with an expert in Public Policy, Elections, Democracy and Human Rights, Harare, 21/05/2019.

on land that is not even surveyed. Though the impact of colonialism is huge and massive, Harare is now in a worse situation than it was in the colonial era with most of the people living in impoverished conditions that renders it amongst the least liveable cities in the world, demonstrative in the pictures below of some dilapidated flats for rental housing in Mbare.

7.4.4.2 An Exhibit of Poor Housing Administration in Harare

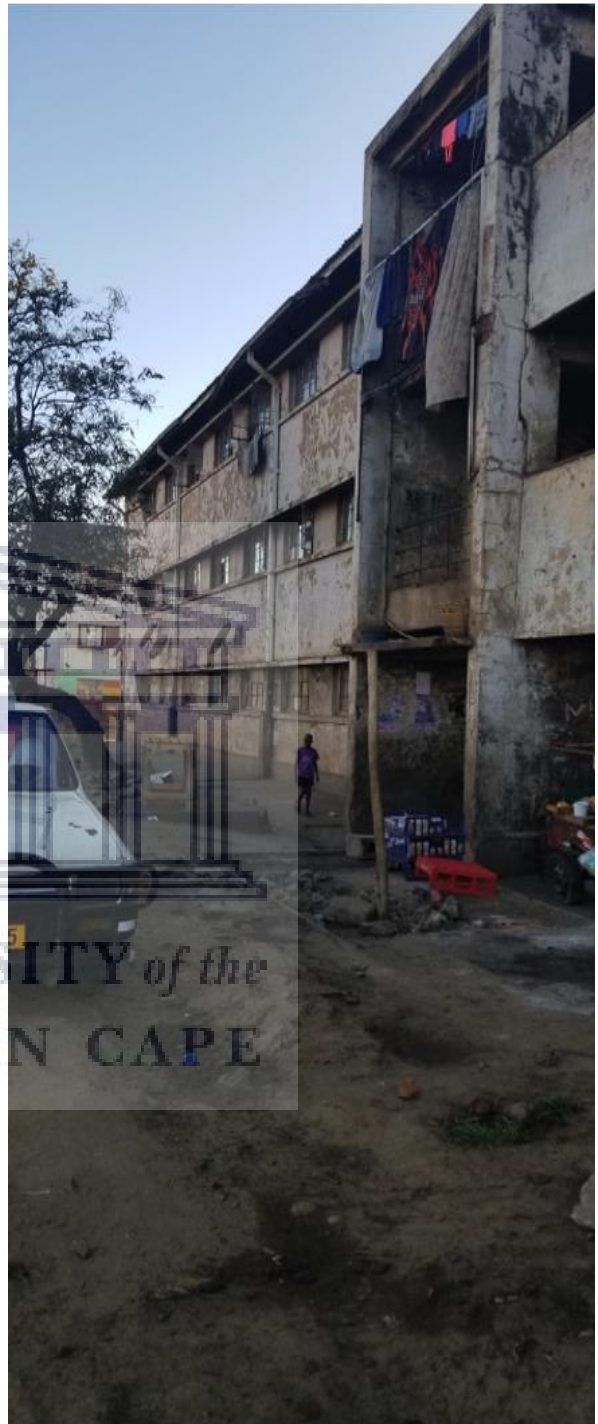


Figure 7.4: An Eyesore, Dilapidated structures distorting the ambience and attractiveness of a capital city: A classical epitome of unattractiveness, Pictures were taken by the researcher on 09 May 2019, Mbare, Harare, Zimbabwe.

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The above scary pictures exhibit a death trap, a health hazard of Mashawasha, and Matapi flats in Mbare in a state that is still a long way to go to hygiene. Section 73 of the Zimbabwean constitution talks about the right to a clean environment and human habitat that must be adequate and not harmful to health. In terms of health requirements, housing must be clean and in a hygienic state and compliance with health regulations stipulated in the Public Health Act [*Chapter 15:09*] and the relevant Health By-laws (cf. The City of Harare, Informal Sector Policy, Housing, and Social Department). On the ground, however, the story is different. From lead poisoning to a lack of indoor plumbing to general dilapidation and filthy, urban housing occupied by the poor is overwhelmingly in substandard conditions. The already distressed condition was then exacerbated by residential segregation that led to overcrowding, as poor residents were hemmed into a few clustered neighborhoods. There is a lack of quality housing choices available to the poor who are now a captured market with nowhere else to turn. In 2017, Mbare District Office received reports as follows; 902 burst water mains, 183 low pressure, and no water at all, 42 blocked toilets.

Hostels are so over-crowded that almost 75% of the Hostels were illegally occupied. They used to have Housing Assistants who used to strictly monitor the occupancy of the rooms. There is also a rapid accumulation of refuse. Dilapidated water and sewer pipes pose a health time bomb in the area. (cf. The City of Harare, Department of Housing and Community Services, Annual Report, 2011:13-14). There are perennial sewer blockages in Mbare rental flats (cf. City of Harare, Department of Housing and Community Services, Annual Report, 2017:21). There is no privacy as many families use one door²⁶⁶. In sum, families are living inadequately.

7.4.4.3 Discouraging Council Procedures in Housing Administration

Harare was simply changed from Salisbury but the housing policies remained the same²⁶⁷. The RTCPA and the building by-laws of 1977 are rigid and old. The latter tells if a person is building a structure considering ventilation, lighting, and material needs. However, when people are told to use a stronger material; the vital question is: Is it bad?²⁶⁸. These by-laws are still useful. Zoning schemes of land use activities cannot be wholly described as antiquate and dinosaur urban planning regulations (cf. Mahabir et al., 2016), or that the restriction had outlived their purpose. One thing

²⁶⁶ Interview with a former lawyer with MJLPA and ZLHR, Harare, 13/10/18.

²⁶⁷ *ibid.*

²⁶⁸ Interview with a renowned planner and housing expert, Harare, 17/08/18.

that people must understand is that a law is a law. It might have been enacted during the colonial period, but it is still useful. Housing legislative frameworks were necessary then and still necessary now. In planning, RTCPA is certainly a law that is very necessary for enabling local authorities to plan following the accepted/expected standard. It cannot be said to be outdated by merely looking at the date at which it was enacted. There is a need to look at clauses within the law, to see whether they are still functional to address contemporary issues. It is still necessary to have some of the legislation, despite the current constitution. However, there is a need to embrace the things that are happening now, and that were not happening before²⁶⁹. For instance, because of population ageing, the 1982 definition of an urban area as a place with 2500 people is no longer the case as most if not all urban areas have exceeded²⁷⁰. There is a need to use what was done in the past as a basis for coming up with fairer legislation that addresses contemporary issues²⁷¹. Nevertheless, there is a lack of a tradeoff between constitutional rights and planning regulations.

Although during colonialism, failure to secure houses was due to repressive laws, after colonialism, the failure to acquire houses or realise the right to adequate housing is largely due to prohibitive causes, council procedures particularly relating to the fact that there is a need to register on the waiting list but with high chances of never getting called²⁷². Vital questions emanating from this are: How many people are on the backlog? Are local authorities still doing their job? People are still registering on the HCC housing waiting lists system. However, to formally apply for accommodation through the system has become redundant and useless²⁷³. Interviewing a Chief Law Officer, he said that:

“These days, it is about having money and if you have money today, you do not need to be on the waiting list. There are many developers, you just go to the paper and you hear Madokero Estate and you pay, you are good”²⁷⁴.

Furthermore, in an FGD with Hatcliffe residents, there were questions over unfair queue-jumping amid long waits for housing. The question was whether the council is allowing unfair queue-jumping? While queues for housing are lengthening, not everyone is having to wait at the same

²⁶⁹ Interview with Current Harare Mayor, Harare, 29/05/19.

²⁷⁰ Cf. Interview with a renowned planner and housing expert, Harare, 17/08/18.

²⁷¹ Interview with Current Harare Mayor, Harare, 29/05/19.

²⁷² Interview with a former lawyer with MJLPA and ZLHR, Harare, 13/10/18.

²⁷³ Interview with a Chief Law Officer, Harare, 11/05/2019.

²⁷⁴ *Ibid.*

time. Housing is now an astounding situation in both delays and lack of transparency. For many years, the allocation was done on a 'first-in, first-out basis'. However, the current approach to the allocation of stands is incredibly unfair to most applicants who are invited to apply based on having the requirements, only to have other applicants jump the queue in front of them simply because the HCC have set their criteria for those they deem deserve residence more quickly than others. HCC is not operating fairly or transparently by continuing with this practice. The oldest applications are not allocated and still had not been allocated, in most cases at the tail of the queue, whilst housing stands are being distributed that showed how many later applications had been picked out first. The fundamental question is: Does the queue matter? Field evidence shows that it is never the longanimity and pertinacity on the queue, but the 'connections' that matters in accessing housing. The arising question is: Is it that those getting houses qualify or they ride on privilege? Housing seekers join the waiting list but the 'politically connected' ends up getting houses, riding on political privilege. There is a correlation between political titles, interests, links, and access to housing. Holding on to the waiting list no longer necessarily ensures access to housing. Rather than a first come first serve algorithm considerations that typically ascertain queued requests and processes in order of their arrival, a different, often superseding factor has emerged, disadvantaging "legitimate access" to those who are "legitimately" in the queue ahead of the "privileged invaders". It has become a pork barrel for the well connected. The 'enterprising' housing officials enjoy the company of well-meaning citizens, mostly desperate home seekers. Money exchange hands for one's position to be upgraded. Information gathered from the findings indicated that some rogue housing officials work with interlocutors who are the link between those willing to pay bribes and the housing officials. Also, it appears that the syndicates create unnecessary demand for housing. Their tactics have become more organised and sophisticated that it can be hard to detect. Housing has become a crucial avenue for criminality.

There must be no circumstances that give HCC a prerogative to warrant prioritising other applications or to indulge in preferential treatment of applicants. However, getting a housing stand in Harare is just a long trek. Not everyone finds the process quick or straightforward. There is always an element of connections. Those at the auspices of HCC tend to promote background relatives and at times are obliged to share the proceeds of their public offices with people they know (cf. Hyden and Venter, 2001:118). As confirmed by respondents, the policy is set by the top

political leadership to reward their support coalitions with public goods and due to differences, politics justifies treating people differently. Sadly, no one touches on the complexities associated with navigating these rationalities.

Considering the procedure in the allocation process, as detailed in the City of Harare Housing Procedure Manual, Housing and Social Department, any person seeking residential accommodation in Harare should be registered on the waiting list for at least six months before they can be considered for allocation to avoid new entrants super-ceding those registered earlier. Applications used to renew annually at a fee on the anniversary of the initial allocation, failure to renew results in applicants being deleted from the waiting list. There are no shortcuts in accessing a housing stand (City of Harare, Housing Investment, 2016: 3). Due to affordability, renewing applications annually, and now after six months, is a burdensome task and for many low-income, accessing a residential stand in Harare is as difficult as finding a needle in a haystack.

Moreover, the council when allocating land, screen-based on savings and capacity to develop but without looking at the historical circumstances in which someone might be led to a certain status. Three people compete per stand and the council looks at a person with better financial muscle in terms of savings and earnings. However, a large proportion of the Zimbabwean population is employed in the informal economy and notwithstanding that a person is required to give a track record of the last six months of how he/she has been trading even without a payslip. There must be the production of proof though and this is difficult for most informal traders. With much economic activity now in the informal sector, this excludes those in small to medium enterprises in mortgage schemes. The internal administrative structure has some elements of indirect discrimination in the name of trying to be procedural. However, the processes are de rigueur for housing seekers as these must be auditable in terms of a paper trail and a portfolio of evidence²⁷⁵.

Priorities on those high paying jobs and the internally set and unpublished criteria exclude lower salaries (cf. Guntz, 2011). Because of the persistent de-industrialisation and capacity under-utilisation in Zimbabwean, the informal sector ballooned (cf. Masanga and Jera, 2017:45). Due to retrenchments and high unemployment rates, people automatically lose access to formal financial services as they become 'unbankable' because they cannot provide quality collateral thus merely

²⁷⁵ Interview with the Principal Housing Officer, Harare, 17/06/19.

a few employed or with job security can access housing (*Ibid.*). The current economic climate that has seen many depend on the informal sector has resulted in the majority not accessing housing or even qualifying for mortgage financing. Additionally, there is a wide variety of screening tests that disproportionately penalise the poor people. In line with eligibility, as detailed in the City of Harare Housing Procedure Manual, Housing and Social Department, the applicant should be working in Harare. Research Officers, through interviews, verify the applicant's eligibility and the applicant should demonstrate the capacity to develop by producing proof of monthly (regular) earnings and savings or other various investments. Where an applicant fails to produce all the required documents stated in the invitation letter, he/she is disqualified. Sometimes employer's guarantee may be used as a back on applicant's capacity (City of Harare, Housing Investment, 2016:19). Like in the markets where only qualifying applicants are eligible for allocation of stands and that the allottees shall be resident in Harare, proof of available funds is also key when applying for housing (cf. The City of Harare, Informal Sector Policy, Housing, and Social Department). This entails reviving adequate housing by killing social housing with welfare-statist on trial in Zimbabwe. Home seekers are now stuck between socialism and capitalism.

Harare is now an elite city and not everyone can afford to live there as housing is now a preserve for the 'superior class of persons' in terms of economic status. The state is not showing any indicators to effect a rapture with colonial practices. The change, however, has been on the racial composition which is now being replaced by economic stratification into the rich and the poor and others in the middle (Parliament of Zimbabwe, 2011). The pricing policies are effectively generating invidious tendencies. Looking at how much it takes to get a housing stand, realising housing rights is still a distant reality. The government has furred its responsibility and low-cost housing policies are still missing²⁷⁶. This reveals the palpable failure in meeting housing rights.

7.4.4.4 Politics of Housing: An Overview of State Legal Liability to Provide Attendant Services and Protect the Vulnerable

There are issues of overcrowding in cities and conurbation. Areas that were once considered peripheral like Whitecliff, Granary, Caledonia, Domboshava, Ushewokunze, and Glenview 7, because of the conurbation, are now part of Harare. People stay in peri-urban areas, far from their

²⁷⁶ Interview with an expert in Public Policy, Harare, 15/05/2019.

sources of income, and coming to work in Harare²⁷⁷. This is not commensurate with the realisation of the right to housing. The location must allow access to employment options, healthcare, schools, and childcare centres²⁷⁸. The right to housing forms an inseparable and inherent part of human dignity and it is essential for realising other human rights like the right to work²⁷⁹. There is a strong link between employment and housing in urban areas²⁸⁰. In some ways, urban researchers bitterly acknowledged the role of housing discrimination in keeping the poor in a subordinate social position. Excluding the poor, while simultaneously disinvesting in poor communities, has kept them out of the best-funded schools and highest-paying jobs. Housing discrimination is a linchpin of inequality in society. The government is guilty of neglecting its mandate to provide affordable housing. Intermediate needs like housing have a universal satisfier characteristic and if people's intermediate needs are unmet, persons cannot fully participate in the sociopolitical processes that structure their opportunities; their potential for involvement in public and private life will remain unfulfilled (Held and McGrew, 2005:519). In this regard, the right to housing remains unrealised concerning its full potentialities. There is also a need to consider street urchins and homeless people²⁸¹. Vestiges of homelessness are still rampant in Harare, emblematic in the pictures below. Street kids were once relocated to farms, but they quickly returned. The vital question is: Was that adequate housing?



²⁷⁷ Interview with a former lawyer with MJLPA and ZLHR, Harare, 13/10/18.

²⁷⁸ Cf. CESCR, General Comment No.4 (1991, para. 8(f).

²⁷⁹ Cf. CESCR, general comment No. 18 (2005), para. 1.

²⁸⁰ Interview with a former Housing Officer, Harare, 23/10/18.

²⁸¹ Interview with a former lawyer with MJLPA and ZLHR, Harare, 13/10/18.



Figure 7.5: Signs of homelessness and crisis spiraling out of control; desperation and frustration sparked by deepening inequality and affordability crisis in Harare, Pictures were taken by the researcher on 09 May 2019, Mbare, Harare, Zimbabwe.



Figure 7.6: GoZ Fails to Tame Homelessness in Harare: Pictures taken by the researcher on 09 May 2019, Mbare, Harare, Zimbabwe.

In an interview with one of the homeless people staying in a shack in Mbare, she sensationally said that:

I do not consider myself to be national. I do not completely feel at home. They (the government) have forgotten us. I would describe myself using the Shona term

'chigunduru'²⁸². I can identify myself differently according to the circumstances. I feel most at home when I am moving about aimlessly or without any destination, often in search of food or employment. That is my daily reality. My shack is not a home, per se, it is where my stuff is. I am untethered concerning a place where I could point and say 'that is where home is'. What I may call a house is simply a claim over something, just like a dog with a bone. Political leadership maladroitness has made other areas uninhabitable. People live in shacks, seeking affordable services yet there, they find misery as shacks clash with acceptable health standards that can be equated to the medieval and chivalric world of incarceration. People are staying in desperate situations with grisly, desensitising, and murderous depravities of housing driven by capitalistic politics. Informal settlements are products of nurturing financialisation in cities. Inadequate housing is concentrated among the poor and vulnerable in society. Acts of informal housing are often caused and are directed by cruel selfish elites with a hyped narcissistic character. It is super frustrating not to get any assistance from your government. I feel completely abandoned and stranded.

7.4.4.5 Home Ownership or Rental Housing: Analysing the Right to Housing in its full potentialities

To reflect on the rationale behind some of the policies in the colonial era with regards to housing; some of them, though racist, were rationally crafted. In the colonial era, urban areas were artificial ecosystems with artificial infrastructure and many calculations involved. For the system to function, optimally there is a need to control the system. That is why blacks were restricted to come into the urban area. Blacks were not allowed to own property. Towards independence, blacks were now being accommodated and being accepted if they were gainfully employed or if they were contributing to the urban system. They could own properties. The white rule and colonialism realised that the black man also wanted to be part of the urban system permanently, so they were moving towards that direction but the ability to pay and production were key fundamentals for one to access housing. The best way to provide housing to the low-income during colonialism was through rental housing. That was the legacy in the colonial era but with independence, they converted all rental properties to homeownership as a way of empowering people. By viewing the right to housing as ownership, they are not doing justice to the right to housing. Giving people pieces of land as a way of trying to empower them resulted in the conurbation, sprawling of shacks, and structures of dubious quality²⁸³. However, housing is the engine, and to reduce the housing

²⁸² This is a derogatory name in the local slang Shona language given to vagabonds, persons with no fixed abode, without a fixed place or no home, wanderers who have no established residence or visible means of support or wandering aimlessly without ties to a place or community.

²⁸³ Interview with a former Housing Officer, Harare, 23/10/18.

backlog, HCC seeks to empower people through ownership, Harare residents prefer ownership to rental as housing is a sign of wealth and power (City of Harare, Housing Investment, 2016:3).

Home seekers' preferences should be ranked in terms of their order. Some of them just want a piece of land to construct an illegal something or using unapproved building materials and few would pass the inspectors' eye, but they have been there for years. They are some who have access to something habitable but if there had been Cyclone Idai, no structures would have survived in Hopley and Southlea Park areas. That is the case in urban Harare. Several housing units do not have access to water, electricity, and roads but for desperate home seekers, having a piece of land is the number one priority. Other attendant services are a distant second. In the mind of most people who are desirous of housing, it is the land, and then they will see what they can do after²⁸⁴. People have got stands but they do not have adequate housing so to say, resulting in the outbreaks of cholera and other water-borne diseases. It seems as if there was a change after independence where homeownership was now the order of the day by empowering people but by doing so, they are disenfranchising people of the right to housing. The government turns to run away from its responsibility of providing a conducive environment for people to have housing²⁸⁵.

7.5 Administrative, Legislative and Constitutionalism Crisis: The Complete Paralysis of Housing Implementation

Little is being done to strive to promote, deepen, and broaden housing rights in Zimbabwe or protect international human rights norms as contained in important sub-regional, regional and international human rights instruments. There are no clear mechanisms for domestication. The government is reluctant to find common ground with and work alongside other parties who share a broadly similar concern and interest in housing rights. There is a failure to translate constitutional provisions into an implementable policy programme or course of action. It seems easier said than done. Zimbabwe suffers from an acute case of 'implemenetisis', a public administration disease unique to Zimbabweans whose essence is that they are unable to implement what they can formulate²⁸⁶. Thus, the key debate is not on whether rights should be included in the constitution,

²⁸⁴ Interview with an expert in Public Policy, Elections, Democracy and Human Rights, Harare, 21/05/2019.

²⁸⁵ Interview with a former Housing Officer, Harare, 23/10/18.

²⁸⁶ Cf. Moyo (2011).

they are almost automatically included, it is on how to enforce rights to make them effective (cf. Landau, 2012:1).

However, the constitution from the viewpoint of politicians is just a piece of paper²⁸⁷. Law, as established by courts, is not always implemented (cf. Edwards 111, 1980:5). Housing court decisions in Zimbabwe are usually the judge's opinion based on a politician's interpretation of the law. Devolution in the new constitutional dispensation is just a vehicle for politicians to dip their big fingers to grab whatever is in the housing fund²⁸⁸, illicit behaviour, and predatory urban practices through mechanisms of institutional design (cf. Teorell, 2007:8; Harvey, 2012). Housing is seen as a revolutionary mode of production and politicians are always restlessly searching out new constitutional, legislative, administrative, and organisational forms, new lifestyles, and new modalities of production and exploitation (cf. Harvey, 1990:424; Hardt, and Negri, 2000).

In Zimbabwe, there is a constitutional, legislative, and administrative vacuum. The crisis is more on lack of adherence and constitutionalism that is not clear as a priority in Zimbabwe. There is no political will to adhere to the dictates of what is asserted in terms of conventions, treaties, or laws²⁸⁹. The government of the day is selective in terms of which law or policy to adhere to²⁹⁰. This resonates well with Dye's (2013) definition of public policy as whatever the government chooses to do or not to do. A view shared by respondents is that Zimbabwe is not treating housing as a priority, it is abusing the demand for housing, that has been created largely on a political basis and that have been used to exploit the hunger for housing among housing. At the tail end, accessing housing based on politics and breaching relevant legislation, processes, and procedures results in illegality, inadequacy, and housing insecurity²⁹¹.

7.6 The Utility of International, Regional and Constitutional Provisions in Realising Housing Rights

The link between international, regional, and constitutional provisions is there but it is only important provided there is political will on the part of the government to ensure that those rights

²⁸⁷ Interview with a renowned planner and housing expert, Harare, 17/08/18.

²⁸⁸ *Ibid.*

²⁸⁹ Interview with a former Consultant for HCC, Harare, 04/09/18.

²⁹⁰ *Ibid.*

²⁹¹ Interview with Current Harare Mayor, Harare, 29/05/19.

are provided for. The 1948 UDHR is the bible of human rights in the world; it spells out the framework of the global aspects of human rights including the economic, social, and cultural rights. After the 1948 declaration, there are UN Conventions, and relevant to this study is the ICESCR of 1966. Zimbabwe is a signatory to ICESCR that it ratified on 13 May 1991. It was signed without any reservations or derogations. This is to say when countries are entering or ratifying a certain international covenant, they have the right to reject to be part of certain articles of the covenant. However, concerning the ICESCR, Zimbabwe did not reject anything. It is the degree of domestication of ICESCR that must be linked to its usefulness in Zimbabwe²⁹².

The question now is: What was done by the Zimbabwean government from a constitutional, legislative, and administrative framework in ensuring that these rights are realised? However, the constitutional, legislative, and administrative frameworks were already condemned for dismally failing to provide for housing rights directly and for failing to create an enabling environment. The constitution failed to domesticate international covenants. Domestication can be in many ways; in the constitution, in Acts of Parliament, and even in public housing policies and programmes. The courses of action must be resonating with domesticating covenants through implementation and provision. The constitution, however, is not properly domesticating the article to housing besides that it was ratified. To date, Zimbabwean frameworks have not yet adopted a constitutional, legislative, and administrative system that corresponds to the contemporary understanding of international law. The affirmation of ICESCR is still far from being obtained. Rights are in constant danger, facing a daily struggle for consolidation.

International provisions help in that once a state has ratified ICESCR, they are supposed to report after two to three years to treaty body experts. There is a treaty body for ESCR that sits in Geneva where Zimbabwe is supposed to come up with a report on what they have done to implement the rights that they ratified. They will be reporting on what they would have done in the constitution that is in terms of the constitution, the right to housing is part and parcel of the constitution, Acts of Parliament, and part of administrative adjustments and functionaries. International covenants help in that the treaty body always calls upon Zimbabwe to report on the right to housing²⁹³. On the status of that reporting, right now there is a report that is before Cabinet and is supposed to be

²⁹² Interview with a Chief Law Officer, Harare, 11/05/2019.

²⁹³ Cf. CESCR, general comment No. 1 (1989).

approved for it to be reported in Geneva. It is important to note that international covenant helps but it is up to the political will of a country that ensures that the provisions are provided for. Zimbabwe reports a lot on housing, but the right is not provided for in the national constitution²⁹⁴.

However, the right to housing as enshrined in the constitution reveals contradictions from global commitments; at the operational level, not much is being done in terms of coming up with relevant policies that would extend the right to the poor. There are some voids in the policy as to how the poorest segments of society are being taken on board to realise the right to adequate housing. It should apply to everyone on an equitable basis. In terms of implementation, Zimbabwe is scoring very low due to poorly thought out policies without functional structures and legal frameworks in place to enable the realisation of the right to adequate housing²⁹⁵, an important contribution shared by informants.

The international law in line with realisation of the right to adequate housing is aiding to a lesser extent because the critical component in terms of the provision of houses needs the availability of land and other resources at the local level. If there is an international statute that does not provide for other key and necessary instruments to be there, one is bound to talk about housing as a right that cannot be provided²⁹⁶. Moreover, international law can only be applicable if it is in line with the legal system at the national level²⁹⁷. Global participation is not only a common interest that brings populations closer together (cf. Archibugi, 2004: 444). The housing element in the Zimbabwean constitution is freedom from arbitrary eviction. It is only after arbitrary decisions are taken that international law can then be applied. In terms of international law, developments in economic, social, and cultural rights are normally supervised by the CESCR so the extent to which the committee has developed general comments is not very much used in Zimbabwe²⁹⁸.

Few subordinates in the HCC are aware of international law, they understand their duties as ordinary without an understanding of housing as a right and consciousness of a human rights city in compliance with the international covenants and international best practices in the provision of

²⁹⁴ Interview with a Chief Law Officer, Harare, 11/05/2019.

²⁹⁵ *Ibid.*

²⁹⁶ Interview with Current Harare Mayor, Harare, 29/05/19.

²⁹⁷ Interview with a former lawyer with MJLPA and ZLHR, Harare, 13/10/18.

²⁹⁸ *Ibid.*

adequate housing. International law is not shared widely. Governance is not underpinned by the need for governance informed by human rights. There is a lack of an understanding that there is an international obligation to provide housing as a human right. It is now the individual paying for the services and not the obligation of the state to pay. The state is just a bystander, it is now a facilitator and that cannot translate to the issues of human rights. The issue of providing un-serviced land, that is not even land but the soil does not correlate with the respect for human rights as promulgated in the international housing law²⁹⁹.

In support of the above notion, Dahl (1999: 21) avers that ‘the international system will lie below any reasonable threshold of democracy’. Perhaps, Zimbabwe needs to start considering those but the way the constitution is framed makes it very much difficult to talk about the link between housing in Zimbabwe and international law³⁰⁰. Dahrendorf (2001: 9) states that to propose a global democracy is equal to ‘barking at the moon’. International law can only be applied in line with the legal system at the national level. The CESCR, general comments No. 4 and 7 are the ones that can be used to critique the extent to which a country is promoting economic, social, and cultural rights³⁰¹. Participation in international law necessarily requires more stringent adherence to the rule of law (cf. Archibugi, 1993; Held, 1995; Falk, 1998). It is, however, known that the rule of law above the state is only respected when states themselves are keen to abide by it, and too often autocratic states are no keener to do so (cf. Archibugi, 2004:462). International laws are ‘weak’ comparing to domestic laws, thus it is difficult to bring housing cases before the courts. Even when an international court rules that it has jurisdiction and gives the final award, Zimbabwe could simply bury its head in the sand, ignore it without paying heed to international law, a despicable act that sweeps law and morality aside while political space is forcibly cleared. The approach could only disgrace Zimbabwe’s reputation, but nothing more. Although there is strong rhetoric of denunciation from arbitrary evictions at the international level, it is not accompanied by any international campaign or serious push at the local level.

²⁹⁹ Interview with the Principal Housing Officer, Harare, 17/06/19.

³⁰⁰ Interview with a former lawyer with MJLPA and ZLHR, Harare, 13/10/18.

³⁰¹ *ibid.*

7.7 Content Analysis of the Ruling Party Election Manifestos since 2000: The Effects of Successive Reforms

The issue of housing is at the centre stage of politics³⁰² that leaves the realisation of the right to housing hanging in the balance. A challenge to accessing housing is curtailed by an uneven distribution that is sometimes not for all but for those who are allegiant to the ruling party³⁰³. The council's role is intended for all but beneficiation remains mediated by the ruling party's interest. Housing comes with critical bandwagons such as water, sewer, electricity, roads, and bridges³⁰⁴. In Harare, however, some areas like Glen View and Budiro have gone for years without tap water, with residents relying on boreholes and shallow wells, breaching the UCA. Harare residents are using firewood and the common adage is "*magetsi aenda, magetsi adzoka*" meaning 'electricity has gone, electricity is back'. That alone tells something³⁰⁵. ZESA has no shame in overcharging for electricity that it does not provide (cf. Moyo, 2011). In an interview with a former housing consultant, he stunningly said that:

"People cannot just be given a hinterland and an open space and just say this is your residential area then create your stands, peg your stands, start building structures. Yes, people do so out of desperation, a deliberate ploy by politicians to create and perpetuate crises for the sake of longevity of power as power longs for longevity³⁰⁶.

Politics of maintenance halt effective and full realisation of the right to adequate housing. The right to housing becomes domination and housing insecurity is freedom (cf. Harvey, 2014). The housing deficit in Harare is being manipulated by politicians to perpetuate their stay in power through creating desperation in the electorate so that they always come back for help and politicians become their rescuer. If a person must be connected, linked, or supposed to be a member of the ruling party to access housing, the realisation of the right of every person to have access to adequate housing is still a long way to go³⁰⁷. Housing is sensitive to the electoral cycle. It moves or vibrates with the cycle³⁰⁸. Evictions after elections have become the new normal³⁰⁹. Those are the dynamics of the urban political economy. The politics and the housing needs are intersecting,

³⁰² Cf. Wallerstein (1976).

³⁰³ Interview with a former Consultant for HCC, Harare, 04/09/18.

³⁰⁴ *Ibid.*

³⁰⁵ Interview with a renowned planner and housing expert, Harare, 17/08/18.

³⁰⁶ Interview with a former Consultant for HCC, Harare, 04/09/18.

³⁰⁷ *Ibid.*

³⁰⁸ Interview with an expert in Public Policy, Elections, Democracy and Human Rights, Harare, 21/05/2019.

³⁰⁹ *Ibid.*

and they do so sensitively for the electoral cycle³¹⁰. Politicians use these tactics for a considerable political advantage in the lead up to elections³¹¹.

7.7.1 Policy Content and Policy Context: Factors Militating Against Effective Realisation of the Right to Housing

There is a raft of factors closely tied to policy content and policy context inhibiting the effective realisation of the right to adequate housing. The two fundamental questions emanating from this conundrum are: What effect does the content of housing public policy have on the implementation and realisation of the right to adequate housing? How does the political context of administrative action affect housing policy implementation and the realisation of the right to adequate housing? In answering these questions, an assessment will be on how the content of a policy and how the political context tinges the housing policy implementation and consequently the realisation of the right to adequate housing in Harare, Zimbabwe.

7.7.1.1 The Content of Housing Public Policy and Effect on Housing Rights

Housing right is central to everything and has wide tentacles that spread into other human rights, for example, life, security, health, education, water, sanitation etcetera. Housing is a many-faceted right; there is quite an interconnectedness with various complexities and the ambiguity of housing is not in itself a proof of the many-faceted nature of housing but symptomatic of its complex nature (cf. Ruonavaara, 2018:178-179). Because of the interdependency and elasticity of housing right, it has cleavable gains. A policy with divisible benefits, that may mobilise more particularistic kinds of demands at the implementation stage, such as housing, in contrast, may exacerbate conflict and competition among parties or actors seeking to benefit from them and may be more difficult to execute as intended (cf. Grindle, 1980:9). More complicated is the case of housing policy that depends upon a network of widely dispersed decision units whose decisions are also organisationally dispersed (cf. Grindle, 1980:9). Cumbersome and excessive departmentalism in public structures retard the urgent necessities of the housing consumers and hierarchical setups restrain against effective policy implementation (cf. Pfiffner, 1960:27).

³¹⁰ *Ibid.*

³¹¹ Cf. McFarlane and Silver, (2016: 132).

The distorted, spontaneous, uncoordinated haphazard way in which the issue of housing is being presided over by many ministries makes the housing policy more tortuous and tousel. The task of realising the right to adequate housing becomes more herculean, given the increase in decision units involved (cf. Pressman and Wildavsky, 1973).

7.7.1.2 The Context of Housing Public Policy and Effect on Housing Rights

The problem is to ensure access to housing while at the same time maintaining the regime's cause. This is a delicate balance to attain and one requires considerable political savvy, acumen, and astuteness in the calculation of the probable response of the actors involved (cf. Grindle, 1980:13). Like navigating rationalities, implementers must be skilled in the art of politics as political regimes or regime type shapes policy and programme outcomes (cf. Grindle, 1980:14). Policy context exerts a considerable effect on the accomplishment of any policy of any type, in this respect, the realisation of the right to adequate housing.

7.7.1.2.1 Politics of Housing: The Murambatsvina Debacle

One of the key drivers leading to discord in the implementation of housing policy in Harare is the lack of clarity and consistency in what the chosen course of action seeks to achieve. Operation Murambatsvina launched by the government in 2005 was politically motivated. The administrators of the operation intended to 'cleanse'/contain fears of the growing population of opposition supporters. Operation Restore Order was just but action intended to conceal and obscure political motives that were far from addressing the problem of slums in urban areas (Tibajuka, 2005:20). By gleefully upping their Operation, perversely grabbing the opportunity to ratchet up the pain level on the urban dwellers, they wanted them to go back to the rural areas so that there would be politically neutralised³¹². While urbanites were mourning, for ZANU-PF, it was time for triumphalism. Out of this, the fundamental question is: Operation vs Opposition: Has the Operation disrupted the disrupter? There is no simple answer to this. Others are of the school of thought that at that time, conurbation happened, and shantytowns were being created so it was important to ensure that it chlorinates the city and starts properly planned settlements³¹³. However, some respondents described that as 'conspiracy'. Whichever school of thought that comes from what

³¹² Interview with a former Consultant for HCC, Harare, 04/09/18.

³¹³ Interview with a Chief Law Officer, Harare, 11/05/2019.

happened, polarisation resulted in arbitrary eviction and rendered people homeless. Areas like Epworth, Hatcliffe, Hopley, Southlea Park, and Whitecliff were a result of the Operation that itself was partly motivated by the urge on the part of the government to depopulate the urban areas, particularly in Harare. The larger Harare was hit largely by having people moving to rural that in other words was reverse migration. The operation did not succeed or did so temporarily; Harare has had a progressive deepening of the housing problem³¹⁴.

The operation affected 1.2 million people³¹⁵. It breached a series of laws, including those related to housing and urban councils. This is in sync with the sentiment that law follows politics not politics to follow the law (cf. Sithole et al., 2003:81). Polarisation is a huge blow to the housing policy as actors focus on issues that make political sense rather than developmental sense, abandoning housing rights but heavily tilted in favour of political imperatives. Policy actors make mistakes and errors while trying to be sensitive to political realities. The study observed that in the process of trying to contain the political issues, policies produce its politics.

Looking at Murambatsvina from the noble, justifiable reason, the government had seen the need for adhering to the concept of planning and approved structures. However, people's 'rights to the city concept' were infringed³¹⁶. This political calculus of arbitrarily evicting urbanites and indiscriminately destroying the houses first without coming up with alternative accommodation before the evictions as required by law was in total disregard with the realisation of the right to adequate housing and showed a lack of political will to combat homelessness. In Zimbabwe, once there are political incentives, there is no guarantee that a policy will be implemented consistently (cf. Sapru, 2011: 281). Implementation veered off course in line with the proper procedures, it was on overdrive and an undemocratic fatal flaw in the constitution. The targeting was wrong in terms of the modalities on implementation but the rationale was good with some positive impacts. There were, however, immediate impacts in terms of restoring sanity but the dirty is still there, sanity did not fly high, the recovery was short-lived. The response that was introduced was temporary and not institutionalised. The initiative of restoring sanity crashed on takeoff. There were also 2012 and 2013 demolitions. The problem that the government wanted to address in 2005 is still there.

³¹⁴ Interview with an expert in Public Policy, Elections, Democracy and Human Rights, Harare, 21/05/2019.

³¹⁵ Interview with former secretary for local government in the opposition, Harare, 25/07/18.

³¹⁶ Interview with a former Housing Officer, Harare, 23/10/18.

The problem is of a political culture that results in taking advantage of people in dire situations of homelessness³¹⁷. It was not holistic in the fashion in which it was implemented. Murambatsvina was all about postponing an inevitable housing implosion by introducing temporary measures that were not backed by fundamentals and rational planning. The seeds of shambolic urbanisation were sown from 2000 onwards and changes in 2005 brought it to the surface but were inevitable outcomes.

In sync with “The Deep State”, the whole idea of elite politics versus fantasies of seduction after demolishing houses was at play. They could not do the same to their backyards, the government pulled the plug on the Operation before it reached the elite suburbs. No demolitions were conducted in the middle and low-density urban areas, making Zimbabwe one of the most unequal societies. In resonance with Charles Darwin’s popularised maxim of ‘survival of the fittest’ as a mechanism underlying housing in Zimbabwe, few individuals with qualities better suited to the environment are selected for survival and pass them to the next generation. Thus, when there is a selection, the housing crisis starts all over again. Accessing housing appears to be hierarchical and during demolition crises, rules are flexible at the core and rigid at the periphery. The penalty was replaced with ‘friendly’ rules for the core. In this regard, hierarchy ascertains who can go where, get what, when, how, why, and under what conditions and it is herculean to reshuffle the hierarchy.

Murambatsvina was an unmitigated disaster if not a ‘housing accident’, and the decision to date has ‘not passed the test of rationality’. About three-quarters of a million, 750 000 people were rendered homeless and they had their sources of livelihood devastated. Mbare, Highfields, and Chitungwiza suffered a lot, grievously because of Operation³¹⁸. Families were displaced, and from a social perspective, children were relocated to farms like Porter farm that resulted in incidents of 10-year olds impregnating each other under harsh circumstances³¹⁹. This explores the interface of social problems and urban informal settlements. In a focus group with some of the families affected, one of the interviewees describing how the Operation made people unlikely figures said that:

³¹⁷ Interview with the Principal Housing Officer of HCC, DHCS, Remembrance Offices, Harare, 17/06/19.

³¹⁸ Interview with an expert in Public Policy, Elections, Democracy and Human Rights, Harare, 21/05/2019.

³¹⁹ Interview with a former lawyer with MJLPA and ZLHR, Harare, 13/10/18.

“It never rains but it pours for the poor, one of the biggest casualties of Murambatsvina...only the elite survived the housing’s reset. We went through hell with alarming levels of trauma, depression, and other mental health conditions over Murambatsvina. The sole point of the government action was cruelty, worse than the harm that refugees face when fleeing from a civil war. People were driven to the breaking point. Due to the callousness of the Operation, the situation made me feel like I had been arrested. It was excruciating and unenviable, like a pain in the neck. Living during the 2005 Operation, displaced with insufficient aid to survive had been terrible, proves to be a nadir and I felt like I was in limbo every day with our belongings spread everywhere. The aftermath of Murambatsvina resembled that of a post-civil war landscape with unprecedented levels of homelessness, leading to a humanitarian crisis. Sometimes I am unable to find words to articulate the feelings felt to see our home of so many years being bulldozed within a matter of seconds. We endured a dark and questionable episode of gross violation of property rights and arbitrary evictions in the modern history of Zimbabwe, obstruction of justice, and the darkest chapter in Zimbabwe’s housing history...constructing houses through self-help was tough and the psychological effect of being arbitrarily evicted was tougher. Murambatsvina scored a dingy and sombre footnote in housing history. We lost everything and had to start again. The adverse impact was profound with an unclear future. It was an epoch of humiliation and the psychological scars of the ordeal remain strong as it ruined lives for a very long time. In some instances, the current evictions raise fears that the housing situation could be sliding back, stirring, and revoking memories of unfathomable arbitrariness, extinguishing the flickering hopes of proper housing in Zimbabwe. There is an image of the crisis that I cannot shake loose from my head, the wave is still lingering. It was unlike anything we have seen in our lifetimes. This cannot be blamed on Murambatsvina. If anything, the Operation has done the country a ghastly favour by exposing the unsustainable foundations on which housing policies are built. It revealed what everyone always knew but few people cared enough. It exposed how the housing system is poorly set up, largely benefitting the affluent in societies and neglecting the poor, the hardest hit in such times because of their long-standing vulnerabilities. It highlighted the worst side of humanity. Most citizens were already in the ‘housing Intensive Care Unit’ before the crisis, the sentiments of housing inadequacy were already present. Operation compounded existing housing problems. The history of Murambatsvina in its fullness has not yet been told and the damage wreaked on the lives of millions for a sustained period ... and the ramifications of this on generations are still here with us as many lost their livelihoods, lives being torn apart either by the Operation or because of its devastating social and economic dislocation. There was no clear explanation for a short notice that was a disregard of peoples’ grievances and rights. The government did not even attempt to bring closure to a questionable episode of the country’s housing history or even dare to put forward factors that are more deserving of recognition, like informal settlements as a path-breaking enterprise or ‘natural laboratory of evolution’ as it offers opportunities for innovation. Murambatsvina was never prosecuted, without any consideration of matters of principle or legal justifications and since the government did not question its logic and does not want to accept responsibility to soothe the pain and uneasiness caused by their ‘rogue adventurism’, it is Zimbabwe’s unfinished business”.

Respondents unanimously agreed that since Murambatsvina was sudden with little or no notices given, it was also considering timing in May-June, there was no follow-up on the part of the state and it was just targeting the poor. It avoided low-density areas and that makes the issue of restoring sanity and order questionable. It had a dimension of class collaboration and class politics³²⁰. There is a possibility of a firm political cartel-like network claiming to maintain housing standards whilst hiding their political interest, a view commonly shared by respondents that the programme was political.

Murambatsvina was not a bad thing but maybe the way it was implemented³²¹. Taking a closer look at the interest of the state and national interest, the state had a vision that was not sold well. It was a case of achieving a cause at the expense of the livelihood of citizens that were overlooked. The negative externalities, transitional costs, and social effects ended overshadowing the good intentions of the policy of sunshine and clean city as proposed in the SDGs. The problem has to do with the way the policy was implemented. There was an element of ‘we implement as we go then the other issues follow’ that is not proper policy implementation in terms of sustainability³²².

Though Murambatsvina was horrible, it cannot be wholly castigated. Justification is that there were illegal structures equivalent to the Favelas in the case of Brazil. It was meant to encourage the orderliness of the city and proper development in line with the city council. Looking at the RTCPA, it is very clear that no development can be done without the approval of the local authority. People were building shacks and it was a sign that there was a demand for land and housing, not necessarily for ownership but even for the rental because people were renting in those shacks. The right to housing is not about ownership but besides those who were having shacks, other people invaded certain pieces of land in the name of their right to housing. Suddenly, with or without following rules, people should be served with notices procedurally. If they are breaching any piece of legislation, people must be given a notice period to vacate and the government must find alternative accommodation. If they fail to adhere, then houses are destroyed³²³.

³²⁰ Interview with the Principal Housing Officer, Harare, 17/06/19.

³²¹ Interview with a former Housing Officer, Harare, 23/10/18.

³²² Interview with an expert in Public Policy, Harare, 15/05/2019.

³²³ Interview with a former Housing Officer, Harare, 23/10/18.

To ensure transformative justice in a transitional context³²⁴, the government introduced Operation Garikai/Hlalani Kuhle. The government realised the need for transformative justice, a more bottom-up understanding and analysis of the lives and needs of populations³²⁵. The government identified about 33 farms (Appendix A) on the outskirts of Harare to provide housing. However, the intervention ignored poor people. The process became extensions of personalities and considerably contributed in a negative way to the death of housing rights. Garikai was a desperate attempt by the government to evade justice, international scrutiny, and widespread ridicule for an unconscionable act and to repair their international standing.

Furthermore, Operation Murambatsvina was not going to be necessary if all housing consumers were living within the confines of or abiding by the law so the blame is to both government and the victims. It was necessary to demolish illegal structures based on an infringement of the legislation. The fundamental question is: Was it necessary for a government to turn itself into an evil machine to destroy people's houses? It was not but victims infringed the law and that invited the evil machine from the government to come over and work on their properties. Again, both were supposed to be reasonable enough to understand the law. The operation was not a manifestation of the housing problem or government failure to provide housing because the land was still available for construction and the planners had already planned and zoned land for construction. It was a question of seeking authorisation to build houses and be provided with a stand. People chose to by-pass laws and there were bound to face some consequences. It was people building at their own allocated stands without seeking inspectors before building, without a plan or for it to be approved so it was a mixture or grill of so many deeds that happened outside the law. The council is 'leading the housing development' but the housing seekers are not following. However, some of those who had followed up on the processes had not been given an opportunity during the operation³²⁶.

7.7.1.2.2 Housing and Navigating Multiple Rationalities

The line between politics and housing in Zimbabwe is very thin and/or non-existent thereby compromising the element of accessibility in the realisation of the right to housing. A very good

³²⁴ Interview with a former lawyer with MJLPA and ZLHR, Harare, 13/10/18.

³²⁵ Gready and Robins (2019).

³²⁶ Interview with Current Harare Mayor, Harare, 29/05/19.

example is Destiny for Africa Network (Danet), an organisation owned by Rev Obadiah Msindo. For him to get land, he speaks well about the ruling party and for a person to have land, they should have a membership card as a political show of support. This speaks to accessibility problems. When people preach ZANU-PF, it is not that they want to be ZANU-PF, they also want to access land from the government. As a token, they will also give others who are ZANU-PF members. Those are the distortions and the problems in the housing market in Zimbabwe³²⁷.

The housing problem is caused by a complex combination of factors. The challenge of realising the right to housing in Zimbabwe is about balancing many rationalities and complexities and navigating conflicting rationalities. In line with the economic rationality and in as much as the housing department wants to provide housing, the decision to provide has an economic impact and economic factor and affordability housing is key. On the political dimension, the decision must make sense politically. Looking at the unitary nature of the governance system in Zimbabwe, where the central government is playing the oversight role through the ministry, every allocation is contested, it is not seen as targeting a neutral beneficiary. There are legal and technical rationalities and procedural aspects to be followed. Accessing housing in Zimbabwe is an art of navigating through multiple rationalities³²⁸

Rationalities are conflicting in their nature. Politically, it must make sense, but there is a cost that can be inhibiting. The technical and legal factors procedurally must be followed to ensure administrative justice since allocating a residential stand is an administrative decision. It must, therefore, be substantively procedural. This explains why top echelons of power in the council are highly mobile and there is no certainty, they can be replaced anytime if there seems to be a stumbling block or standing in a way of certain political interest. Factors affecting housing are not only in the legal aspect but extra-legal in the aspect of balancing political forces and appeasing political actors. There is groupthink that happens within circles. The political establishment informs how decisions and resolutions are made and implemented. Council workers are cognisance of their decisions in terms of political impact and who are the people that must be managed first so that they must be looked at to avoid infringing on other rationalities or persons³²⁹.

³²⁷ Interview with a Chief Law Officer, Harare, 11/05/2019.

³²⁸ Interview with the Principal Housing Officer, Harare, 17/06/19.

³²⁹ *Ibid.*

The web of capture is from the aspect that governance frameworks, systems, and structures in Africa are still neo-patrimonial. In Zimbabwe, there is always the ‘big man syndrome’ in every housing allocation situation and hierarchy. Philosophically in Zimbabwe, the housing administrative culture is idealistic. They believe that at every moment and time, there is a power above them that regulates how they should behave. The belief of a superior force drives housing officers to decide in compliance with the dictates and understanding of that perceived superior force. The concept of neopatrimonialism creates a web. There is a network from the president to the minister and descending to the mayor then to the town clerk and to the director of housing and community services then to the Housing Manager or Principal Housing Officer. All these are authorities, and no matter how procedurally fair the Housing Manager seeks to do, if they stamp authority, the Housing Manager must dance to the tune of the big man³³⁰. They are reduced to spectators. The interaction web is exceptionally complex. Political judgements are highly transmissible, infecting the thinking and behaviour of nearly every official or adviser who encounters the initial carrier. An initial incorrect assumption or statement by a politician cascades into day-to-day housing policy implementation. The inaccurate or disreputable political comments also have the remarkable ability to become recycled by housing officials. The exercise of the unrestrained right and unfettered control over housing by the council without considering the political interest is a distant possibility. The poor judgements contaminate all the policy-making arms of housing with almost no resistance or even reasonable questioning. If they fail to consistently parrot the big man’s proclamations with adequate intensity, they are fired. When making housing decisions, it is therefore about constantly balancing political realities. It is an inherent trade-off of balancing two opposing pressures. Housing positions have been filled by people who are ideologically aligned with the ruling party, exposing the implementation of housing to dilettante policies rather than to experts endowed with the experience or expertise needed to account for the right to housing. It is an extremely difficult old system to reshape and the values are faulty and fractured.

7.7.2 The Conflation of Party Politics and Housing

ZANU-PF affiliated co-operatives mushroom mainly before elections allocating and fast-tracking stands as a means of buying votes and patronage as land for housing is a strategic political resource

³³⁰ *Ibid.*

(cf. Muchadenyika, 2015). The government only has the wherewithal to implement housing at a lightning speed when there are incentives that motivate them to act. The cycle undermines the right to fairly accessing housing on an equitable basis. There is also a problem of legality as most of the politically motivated distributions are not in line with council procedures. They live under a constant threat of eviction. This has turned some settlements into places of discomfort and despair. Residents living in those circumstances, illegal structures, do not have a right to compensation in cases of eviction. Structures that are put up for political ends do not give the beneficiary the right to adequate housing in the sense that the person who is occupying that house does not have any registered rights over that property. What they just have is a letter of allocation or a receipt that they were given for that stand but that does not give them the legal right that one can only get after following standard and proper council procedures³³¹. Most settlements that are put up for political ends have no sewer, access roads, or water supplies. Developments are taking place based on populism and campaigning and building political constituencies that do not advance the right to housing. That undermines the right to housing³³². However, although electioneering and parcelling out of stands based on politics is not good for advancing housing, people are not supposed to make themselves susceptible to being abused during elections. The issue of housing is also a matter of being alert or conscious. People must seek council approval before constructing any structure and not indulge in unlawful matters³³³.

Due to the conflation of party politics and governance, there has not been any housing reform that is considered genuine. What has been there are polished '*nom de guerre*' or euphemisms in the name of reform. The problem in Zimbabwe is that there is no continuity of policy outside institutional positions that are long-term such as ministers that come and go and the next minister makes other pronounces. An example is cited when former Minister for the MLGPWNH Saviour Kasukuwere put in place UDICORP to preside over Caledonia phase. When July Moyo came, UDICORP silently dissolved itself. Zimbabwe is not yet at a position where there is continuity and progression of one policy. Public housing policy in Zimbabwe has always been planning, re-planning, and planning again and not doing one leap forward³³⁴. A sentiment echoed by

³³¹ Interview with a housing expert, Harare, 09/10/18.

³³² *Ibid.*

³³³ Interview with Current Harare Mayor, Harare, 29/05/19.

³³⁴ Interview with a former Consultant for HCC, Harare, 04/09/18.

respondents is that in Zimbabwe, the new housing administration fails to continue with the programmes started by previous establishments (cf. Makinde, 2005:1; Imurana et al., 2014:200). Lack of continuity is a significant headwind to the smooth realisation of housing³³⁵. Moreover, at one time Caledonia was in Harare and then Goromonzi, at one time people were directed to Ruwa that is also part of Goromonzi. The interlocking concern has been who must administer Caledonia? These are serious issues that are in the modern-day administration framework of Harare³³⁶. The trend has been that all the governments, that unfortunately were under one political party in form of ZANU-PF have discovered the cruciality of land as a political market, housing as a political tool where they can campaign³³⁷. As early as the late 1990s, Zimbabwe's housing sector was the first to be plagued by a major corruption scandal by Minister Chikowore who ended up committing suicide. This whole idea and ineptitude and the reluctance of the government to put the idea of housing to rest tell that it is more of political expediency³³⁸.

Allegiance is also one of the major stumbling blocks to the realisation of the right to adequate housing. When housing administration is under the auspices of politicians, the entourages end up being servants of political parties for they will be in a spotlight of political scrutiny, doing according to political demands and not policy goals. Housing officers in Zimbabwe are no longer maverick but are working within a political environment that conditions their approach to work (cf. Derbyshire, 1984:125). Housing officers work reasonably close to the political core face, constantly aware of political obligations and constraints. Zimbabwe's political composition force implementers not to function solely based on policy goals and objectives. Housing administration is politically driven and less goal-oriented. In line with this, the battle for power emerges thus less cooperation, defeat mutuality, and unit of direction in the housing policy implementation process. Abrupt policy changes evolve and dramatic new demands and events lead housing officers to respond with new commitments (cf. Gerston, 1997:113).

Housing in Zimbabwe is about starving the political market in a bid to realise that there is an intangible and incestuous relationship of ZANU-PF as the custodians of the land and housing

³³⁵ Interview with the Director for Housing and Social Amenities, Harare, 17/10/18.

³³⁶ Interview with a former lawyer with MJLPA and ZLHR, Harare, 13/10/18.

³³⁷ Interview with a former Consultant for HCC, Harare, 04/09/18.

³³⁸ *Ibid.*

provision. This predatory relation is evidence of state capture. People must subvert their will or be submissive to ZANU-PF first as a supporter, as a voter before they are entitled to a basic right such as housing³³⁹. This is the reason why housing in Zimbabwe gets its 'ticket' to the public policy 'ride' and while other policies fail even at the agenda-setting stage. The housing deficit is being manipulated by political candidates fortuitously seeking to enhance their prospects for re-election (cf. Dye, 2013:34). To understand the housing problem in Zimbabwe, there is a need to understand what power politics is, how it is acquired, and how it is used to prevent contending groups' issues from gaining government attention. That is the key to understand why the Zimbabwean political system does something while ignoring something else (cf. Birkland, 2011:172; Easton, 1953, 1965). One cannot find an illegal settlement during election time but will find polling stations, then after elections, settlements are described as illegal. The fundamental questions are: How do governments justify erecting polling station booths in an illegal settlement? Why is that at the centre of all the co-operatives there is a political figure? Is it ZANU-PF driven? Those are some of the contradictions and paradoxes that Zimbabwe has in as much as housing is concerned³⁴⁰. It is a poverty trap as elites try to always keep the political carrot dangling³⁴¹. Rhetorically, the vital question is: Who suffers where two elephants fight? It is the grass that symbolises the poor and the hardest hit. "Land, as a political tool, is allocated today, and tomorrow they demolish then come election time they reallocate the same pieces of land. They even erect political booths and polling stations there but after the election, it is illegal. On one hand, there are bonafide legal voters and on the other, illegal settlements, so, it is a paradox. Land and housing issues are shrouded in political contestations"³⁴² and systematic violations of housing rights coexist with the popular vote (cf. Archibugi, 2008). The assessment by the former Consultant for HCC that "one cannot talk about housing without talking about politics" is probably not too much of a magnification³⁴³. The reality is that an atmosphere of politics, one of the threads running through all processes, has percolated the housing administration.

³³⁹ *Ibid.*

³⁴⁰ *Ibid.*

³⁴¹ Cf. Chirisa et al. (2015).

³⁴² Interview with a former Consultant for HCC, Harare, 04/09/18.

³⁴³ Interview with former Consultant for HCC, Harare, 04/09/18.

Over the years, because of misunderstandings sometimes the minister only turns down or disapproves council budget based on political grounds without considering budget consultations³⁴⁴ that cloud the original issue and obstruct the completion of housing policy objectives (cf. Gerston, 1997:111-112). It is a major roadblock to the implementation of a right per its intention or design. There are inherent internal censorship mechanisms and political imperatives that result in self-censorship through memoirs and directives from the minister³⁴⁵. Whenever there are two opposing sides, it is like when two giants fight, it is the poor that suffers and that is the housing scenario in Zimbabwe³⁴⁶. The correlation of land barons and senior people in the party structures who are an authority unto themselves renders the department of physical planning, the alpha, and omega of all spatial planning powerless. This results in the triple or quadruple allocation of stands³⁴⁷. Government administrative authorities have been rendered powerless by the goings-on of the political side of things³⁴⁸.

7.7.3 Omnipresent Centralism and Executive Spillovers in Housing

The findings of the study revealed that the practice of policy was curtailed by excessive involvement of the executive wing of the government. The people who originally determine public policies are usually not the same people who implement them, there is considerable room for misunderstanding and distortion of decision-makers' intentions (Edwards 111, 1980:1). The principals and the agents usually do not share the same objectives. The relationship between local and central government is not cordial, conducive, or consistent³⁴⁹. There is top-down implementation and carrying out of a policy decision by executive order (cf. Matland, 1995:146). HCC is just a mere cog in the housing policy-making process as the executive acts with absolute power and looks down upon local government. The Zimbabwean government tends to rescue those who would have been found wanting, that is, land deals above board and stage-managed proceedings. Considering "The Deep State", this suggests that when a ZANU-PF partisan is accused of contraband channels in land deals, his colleagues come to the defense of their protégé,

³⁴⁴ Interview with a former Housing Officer, Harare, 23/10/18; cf. Chirisa et al. (2015).

³⁴⁵ Interview with the Principal Housing Officer, Harare, 17/06/19.

³⁴⁶ Interview with a former Housing Officer, Harare, 23/10/18.

³⁴⁷ Cf. Hatcliff Evidence from Commission of Inquiry into Sale of Urban State Land attended by the researcher, Harare, 07/05/19.

³⁴⁸ Interview with the Director for Housing and Social Amenities, Harare, 17/10/18.

³⁴⁹ Interview with Current Harare Mayor, Harare, 29/05/19.

accusing probes of venturing into political terrain thus resulting in no action on non-compliance. Zimbabwe has experienced a litany of housing scandals with little being done to punish the offenders. Elites abuse the system and are not accountable. Higher-ranking officials cover up lower-level corruption in exchange for a share of the pie of bribes paid at lower levels in which each law enforcer supposed to punish corrupt acts may be corruptible but at the same time depend on another potentially corruptible law-enforcer higher up in the hierarchy (cf. Teorell, 2007:9-10). The appetite for bribes has opened the housing sector to lawlessness. Against this backdrop, the effectiveness of local authorities in their roles of housing provision is compromised.

A major contributory factor to the creeping centralism is because of two levels of government controlled by two political parties and each must advance its agenda. Housing is now a central government agenda rather than the agenda of local authorities³⁵⁰. Unlike South Africa where there is devolution and provincial governments at work, in Zimbabwe, it is a central government that prevails. Due to the politics of difference, the central government and local authorities are not seeing eye to eye (cf. Harvey, 2012). There is, therefore, no incentive on the part of the central government, controlled by ZANU-PF to purchase and allocate land to the HCC. The MLGPWNH makes vigorous attempts to frustrate HCC projects (cf. Weimer and Vining, 2011:288). The political rationale is that political benefits will not be going to the central government but dividends are perceived to be benefiting councils and not neutral benefactors. This explains why most of the housing interventions are not really flying that far or alleviating the housing problem but merely benefiting some politically connected people. This dimension where the political side of the problem becomes quite eccentric and egregious turns to be a major hindrance or constraint in the delivery of housing³⁵¹. Nevertheless, councils have the autonomy, but this does not legitimise turning them into fiefdoms that disregard national interest.

7.7.4 Duplication in the Effectuation of Housing Rights

It was explained that the lack of inter-departmental arrangements and uncoordinated institutional mechanisms cause despondency in housing policy implementation. As long there are at least eight ministries with different SIs presiding over an issue where one ministry can, already there is

³⁵⁰ Interview with an expert in Public Policy, Elections, Democracy and Human Rights, Harare, 21/05/2019.

³⁵¹ *Ibid.*

something fundamentally wrong with such kind of an arrangement. Respondents shared the view that there cannot be eight agents driving one policy. The Ministry of Lands is encroaching on housing issues and the same applies to the MLGPWNH delving into the operational matters of councils. They are now more preoccupied with what councils are supposed to be doing than acquiring land that they are supposed to give to local authorities for housing development. Ministries are pursuing different agendas and at times issue directives without informing each other resulting in confusing contradictions and housing policies that are quickly reversed. Those kinds of distortions are the ones that have led the housing problem in Zimbabwe to where it is right now. The issue of housing being administered by many ministries is problematic. For instance, the Ministry of Lands is the one that acquires land and when they acquire land, they ascertain which one should be for housing and they hand it over to the MLGPWNH. When the Ministry of Land acquires land, in some instances, it would allocate people land for housing overriding the roles of the MLGPWNH. That is why there was a problem in Caledonia and Hatcliffe³⁵².

By and large, it is a deliberate gambit put by the president to try and exert some checks and balances as the concentration of housing policy in one ministry can also raise the profile of one minister at the expense of the rest³⁵³. In African politics, there is this whole issue of checks and balances and checkmating each other. In Zimbabwe, the Ministry of Lands is given the mandate to deal with the MLGPWNH. At one-point Kasukuwere said to hell with co-operatives, Sithembiso Nyoni said that is not knowing the ideology of ZANU-PF, co-operatives are first. At the end of the day, the confusion that manifests drives the implementation of housing³⁵⁴.

In Harare, and in line with “The Deep State” concept, the minister put in place some shadow commissions to preside over dissolved local authorities. A good example is the Makwavarara Land Commission after Mudzuri was fired by former Minister Chombo. It presided over the authority of Harare up until the end of the tenure of that municipality, even besides the rulings of the supreme court and the high court. That defiant spirit of constitutionality is imperiling the effective implementation of housing³⁵⁵.

³⁵² Interview with a Chief Law Officer, Harare, 11/05/2019.

³⁵³ Interview with a former Consultant for HCC, Harare, 04/09/18.

³⁵⁴ *Ibid.*

³⁵⁵ *Ibid.*

Multiple ministries governing housing works against the provision of housing. It explains why HCC had to decide on 29 January 2016 that it is no longer dealing with cooperatives regardless of them having money because the council could not control them. Management affairs were deposited in the Ministry of Cooperatives whilst council reports to the MLGPWNH. Council had to rely on Section 222 of the UCA that gives an option of whether to choose cooperatives. The council decided to relegate cooperatives with their money and their minister. As a result, there is no one centre of coordination, too many players in the housing fray compromise realisation of housing rights³⁵⁶. The issue around the realisation of the right to adequate housing is not emphatic on what is the responsible ministry. The institutional framework and responsibilities are not clearly defined. For policy analysis, once that happens, then it creates a haven for policy discord, conflicting messages, and vague announcements causing confusion and leading to multiple interpretations. Having too many players and mixed messages muddies the water, cloud the focus and spoil the broth as popularly known in the Shona proverb that *'mbeva zhinji hadzina marishe'*. Some institutions are intruding into the responsibilities of other ministries and that creates problems with the effective implementation of housing³⁵⁷. The larger the number of official and unofficial actors involved and their roles, the lower the probability of successful implementation (cf. Lineberry, 1997:78; Gerston, 1997:114-116). Multiple players are steering housing towards epiphantes and incubus. Messaging will be vague and different in different parts of the implementing agencies. This divides agencies and spreads confusion. Institutions end up pulling in completely different directions that remain a government's big gap to make up. To enhance the effective implementation of housing, it is necessary to reduce the number of institutions (cf. Tanzi, 2000).

Multiple agencies presiding over housing in Zimbabwe result in wastage of scarce resources, important functions being overlooked, haphazard and spontaneous eruption of shacks in Hatcliffe, Caledonia, Whitecliff, Ushewokunze, Stoneridge, Melboreign, and the rest of Waterfalls. The ministries include the Ministry of Lands, the MLGPWNH, Urban Planning used to be a standalone ministry with even the Ministry of Local Government and Urban Planning having something to say. The Ministry of Small and Medium Enterprises and Co-operatives (MSMEC) administering co-operatives. These ministries have been presided over by top ZANU-PF officials who occupied

³⁵⁶ Interview with the Principal Housing Officer, Harare, 17/06/19.

³⁵⁷ Interview with an expert in Public Policy, Harare, 15/05/2019.

critical positions in the party. For example, Kasukuwere became the minister at the height or immediately at the backdrop of his appointment as a political commissar. At the end of the day, commissariat duties were disguised as ministerial duties, they prevailed in cases of land allocation³⁵⁸.

Due to many players, the government wants to extinguish the obligation of housing backlog in Harare with a separate administrative wing that runs parallel with the council. The council has no control or access over it and that is why a Principal Housing Officer can be able to provide housing stock for the city of Harare only and not urban state land as the government is coordinating theirs. There is no way the council can track record or check and state administrative wing that runs parallel with the council if a person has been allocated land or not. They do not inform the council to cancel those on the waiting list who were allocated land for housing. This explains why Harare is the centre of contestation with the pressure of land barons³⁵⁹.

7.7.5 Political Contestations: The Paradox of Popularity and Politics of Populism

Housing implementation turns out to be the graveyard of policies where the intentions of the designer are often undermined by a constellation of powerful political forces (cf. Makinde, 2005: 65). This statement typifies the situation in Harare regarding housing policy implementation. Urban governance is seemingly entangled in the contested realms of political relations of power and housing delivery is politicised and highly contested (Muchadenyika, 2015:1221). Considering “The Deep State” and complexity, the unintended consequences of politics of populism include space barons and the generation of huge windfall profits for the privileged élites that manage it and restriction of housing opportunities. While the effects are essentially political, they have a major additional impact on the enjoyment of economic, social, and cultural rights³⁶⁰.

Houses built before Operation Murambatsvina were substandard, yet it was under the government’s watch that those houses were built. In this case, the government undermined the right to housing while pursuing a political agenda. As part of a political approach appealing to the real, perceived interests and prejudices of ordinary people, there is the national command housing

³⁵⁸ Interview with a former Consultant for HCC, Harare, 04/09/18.

³⁵⁹ Interview with the Principal Housing Officer, Harare, 17/06/19.

³⁶⁰ Cf. CESCR, general comment No.8 (1997), para. 3.

delivery programme in which the government intends to change the city and the housing landscape. The headlining and groundbreaking of command housing and the delivery programme was done in Mbare, demonstrative in the picture attached below. However, flats were merely painted outside to gloss the outside appearances.



Figure 7.7: A showy misrepresentation intended to conceal the unpleasant and eyesore inside

Under command housing, there is widespread confusion between policy pronouncements or policy slogans and policy design. While the command pronouncement is executive populism, policy designs are technical and thus professional (cf. Moyo, 2011). The duty of HCC is not to deal with policy pronouncements but to provide policy designs where policy pronouncements have been made clear. Command housing is crying out if not begging for policy design (cf. *Ibid.*). While what it seeks to do is known and commendable, what it is in design terms remains fuzzy from a public administration point of view. As a result, it remained a command housing slogan without housing policies from a design or implementation point of view. There is no doubt about the virtues of its pronouncements, but questions abound about its implementation design, especially with regards to its beneficiaries beyond ownership. Command housing is one of the most confusing programmes, at the levels of both policy pronouncement and policy design. It is shrouded in mystery and nobody knows what the policy on command housing is and that makes designing anything about it or realising housing particularly challenging. The policy is just about muddling through and hoping for the best as a game plan without relating to the enjoyment of the right to

adequate housing. It is not applied by policy technocrats but politicians who lack confidence in how to manage policy affairs. It is not a sustainable intervention in realising housing rights.

Furthermore, the GoZ continues to defy Section 3(2) of the Constitution that provides the need to make sure that there is transparency and accountability in their processes. Areas like Arlington, Caledonia, and Ushewokunze were once demolished due to elections but there are no regulatory frameworks that are in line with Section 3 to ensure vertical and horizontal accountability for those who were affected³⁶¹. Justice is not taking its course for those who are being swindled of their hard-earned money in terms of getting reparative or restorative judgment and their monies to be reimbursed. The ministry is also not being responsive and political parties are not coming out in the open condoning corruption³⁶². More so, although the government came up with administrative arrangements to tame homelessness in Caledonia, Harare South, and North when political seizures open, good decisions can be consumed in the madness that ensues. Currently, things have gone back to the point where the government tried to bring sanity because of power struggles. The barons took advantage of the vacuum and went back. Parcelling-out stands is underway³⁶³, keeping alive the possibility that with political realities, the council might find themselves back at the start.

Under the chaperone of UDICORP, Caledonia was re-planned into phases 4 up to 20. Out of the initial 26 000 stands, with re-planning, the ministry came to 29 000. Each household was going to pay \$50 monthly as a development fee towards attendant services. Initially, people paid and there was a bit of work being done but it was again overtaken by political events like factionalism in the ruling party³⁶⁴. People were said to be aligned with factions and everything came to a standstill and now progress is back to square one³⁶⁵. It is a cycle, just when the dust seems to be settling, an outlier or unexpected political event plunges everything back into chaos. Political contestations wind the clock back in terms of realising the right to housing. Resultantly, when factions fight, home seekers suffer unexpected consequences. Politicians in Zimbabwe are concerned with short

³⁶¹ Vertical accountability is the state action through its officials such as Members of Parliament while horizontal accountability is, before blaming government, citizens must also be aware (cf. Interview with a former lawyer with MJLPA and ZLHR, Harare, 13/10/18.

³⁶² *Ibid.*

³⁶³ Interview with the Director for Housing and Social Amenities, Harare, 17/10/18.

³⁶⁴ Cf. Hatcliff Evidence from Commission of Inquiry into Sale of Urban State Land attended by the researcher, Harare, 07/05/19.

³⁶⁵ Interview with the Director for Housing and Social Amenities, Harare, 17/10/18.

term goals or objectives where they just want to get into office making empty reassurances, false and unrealistic promises. That promotes informality and houses of dubious quality. Owning a piece of land is a long process in Zimbabwe that is one of the root causes of housing insecurity. Accessing housing is more of a political rather than an economic or rational move. After elections, informal developments are subjected to scrutiny and demolition. It affects and inhibits citizens to have access to housing³⁶⁶. Politics of populism, in turn, derail sustainable housing.

7.7.6 The Political Economy of Land: Economics of Housing

Besides housing as an extremely important part of the national ethos, more than that, housing has a very high multiplier effect in economic terms that housing development has failed to tap into as an economic opportunity³⁶⁷. Housing development plays an important role in growing the urban economy by creating employment through onsite employment and linkages with industries that produce building materials and related products (cf. Tibaijuka, 2005; City of Harare, Housing Investment, 2016: 13; Stiglitz, 2012). The economic pursuit in housing development has, however, been overtaken by self-aggrandisement purposes by politicians with means and access to land. The issue of housing is a ‘commercial activity’ and smart investment policy because of rising property values (cf. Harvey, 2014). Housing can be incentivised – housing is money and capital intensive³⁶⁸. The politicisation of money has enabled the concentration of power and wealth in a few hands – a situation that has been extremely damaging to housing (Harvey, 2014). Housing is an investment and real estate is an effective hedge against inflation³⁶⁹. Politicians obtain land for housing and rent out to whoever outbids others. The rent price usually ends up as the anticipated capital gain (Hudson, 2012). Persistent inequality has become an explosive political issue with the elites controlling more land and in a persistent wealth-creation mode, making money out of property thus a ‘housing-industrial complex’ that is not looking for a cure, but too busy making money.

Investing in housing is because of aggrandisement and Zimbabwean housing policies work best for the elite, the politicians, and the business people and not the ordinary person³⁷⁰. The magnitude of housing inequality is so high and wider. The economic divide in Zimbabwe is where one cannot

³⁶⁶ Interview with a former Housing Officer, Harare, 23/10/18.

³⁶⁷ Interview with former Secretary for Local Government in the opposition, Harare, 25/07/18.

³⁶⁸ Interview with a Chief Law Officer, Harare, 11/05/2019.

³⁶⁹ Interview with a renowned planner and housing expert, Harare, 17/08/18.

³⁷⁰ Interview with a Chief Law Officer, Harare, 11/05/2019.

separate politics from business and where a politician is also the same employer and businessperson unlike in other countries where businesspeople exist outside the political dynamics. There is an intricate relationship between business and politics such that the alleged land barons like Philip Chiyangwa were also Members of Parliament. Politics in Zimbabwe is a means to an end, and the only way elites can safeguard their business interest is to be in the political fray to make policies that protect housing big businesses³⁷¹.

In Zimbabwe, there is an inseparable political-business conflation that feeds into inequality. Judges with land for housing preside over housing issues that result in capitalist judgments. There is a convergence of capitalists, petite bourgeoisie minds who are presiding over the affairs of the poor³⁷². Capitalist accumulation usually favours a multicentric interstate system because this provides greater opportunities for the maneuverability of capital (cf. Chase-Dunn, 1991). All the policies that are being put in place have an element of preservation of an elite's club, perpetuating profits and stay in power and not looking at housing as a right. Housing has been inundated with elite preservation and to them, housing means luxury³⁷³. Zimbabwe is under a 'sophisticated housing industrial complex' with a housing administration that governs with ad hominem interests in blatant disregard of housing laws. It has decided to call it 'command housing'. The housing system is broken. It holds back the very people supposed to be adequately housed by recycling the perpetuity of the housing crisis. The location of housing is very much linked to economic activities. Money is the denominator in an urban setup and the right to housing is all about money³⁷⁴. Housing is part of the political economy of the land³⁷⁵. The problems obstructing intentions and efforts being made to make sure that the right to housing is realised are more to do with access to resources and land and people are living in an economy that is not enabling that to happen³⁷⁶.

7.7.7 Funding Constraints for Housing

Not much has been done by the GoZ in their areas of authority in the last two decades and local authorities in terms of housing provision. The National Housing Fund (NHF) is empty thus no

³⁷¹ Interview with a former Consultant for HCC, Harare, 18/02/19.

³⁷² *Ibid.*

³⁷³ *Ibid.*

³⁷⁴ Interview with a former Housing Officer, Harare, 23/10/18.

³⁷⁵ Interview with an expert in Public Policy, Elections, Democracy and Human Rights, Harare, 21/05/2019.

³⁷⁶ Interview with Current Harare Mayor, Harare, 29/05/19.

longer providing funds to borrow from for housing-related development³⁷⁷. The issue of fiscal incapacity cannot be ruled out in explaining housing insecurity in Zimbabwe. Housing is underfunded and in the lexicon of public policy, a policy without funding is a nullity. Budget allocations to the ministry over the years show that there is no prioritisation on housing³⁷⁸. Exchange value considerations often creep back in as the fiscal capacities of the state are put to the test by the need to subsidise affordable housing out of shrinking public coffers (cf. Harvey, 2014:18). Resources are a huge problem as the government does not have enough resources to deliver housing³⁷⁹. In terms of grants, nothing much is coming from the budget for several years³⁸⁰. Housing is not being accorded enough as state interests are overshadowing national interests³⁸¹. Housing delivery over the years has been affected by a persistent shortage of adequate resources (the City of Harare, Department of Housing and Community Services, Annual Report, 2011:2). Due to resource constraints at the national level and limited state grants at the municipality level, HCC is detaching from its responsibilities. The subject, therefore, starts from an atomistic point and must be looked at broadly³⁸².

5% of the national budget goes to local government but not all of it is for housing since the local government is broad. It involves service provision, water sanitation, sewage, roads, waste collection. Housing comes right at the bottom. It is very unlikely that 30 million dollars a year is being spent on housing. Not even 1% of the budget is spent on housing. Housing is not seen as a priority³⁸³. The 5% budgetary allocation is for a raft of services and it depends on what should be done in local government as an entity depending on the priority. In Zimbabwe, it has more to do with the availability of water and increasing its capacity³⁸⁴. The provision of safe, clean³⁸⁵, and potable water³⁸⁶ is one of Harare's top priorities (City of Harare Newsletter, 2019:13).

³⁷⁷ Interview with the Director for Housing and Social Amenities, Harare, 17/10/18.

³⁷⁸ Interview with an expert in Public Policy, Harare, 15/05/2019.

³⁷⁹ Interview with former secretary for local government in the opposition, Harare, 25/07/18.

³⁸⁰ Interview with an expert in Public Policy, Elections, Democracy and Human Rights, Harare, 21/05/2019.

³⁸¹ Interview with an expert in Public Policy, Harare, 15/05/2019.

³⁸² Interview with a renowned planner and housing expert, Harare, 17/08/18.

³⁸³ Interview with former secretary for local government in the opposition, Harare, 25/07/18.

³⁸⁴ Interview with Current Harare Mayor, Harare, 29/05/19.

³⁸⁵ Cf. CESCR, general comment No. 14 (2000), para. 11.

³⁸⁶ Cf. CESCR, general comment No. 15 (2002).

More so, the 5% set aside for local government is clumsy on what is allocated for local authorities. There are no modalities or frameworks on how local authorities can access that 5%. It is not clear thereby detrimental to the provision of onsite and offsite infrastructure and the latter is expensive. The budget for the past years is failing to take on board major and big capital projects on housing and is not seriously speaking to the council providing for housing. There is no money. The NHF is defunct, it is just in the Act. The local authorities are now relying on the housing pay scheme model, passing on the entire costs to the beneficiary, and on top of that, the department takes back the intrinsic land price. Council just plays the role of facilitating the acquisition of unserviced plots/stands. Beyond that, the council gives technical advice but the cost of putting infrastructure and superstructures is borne by the beneficiary. Therefore, the biggest impediments towards the provision of housing are local authority and government³⁸⁷.

Due to a lack of grants, affordability is one of the biggest government failures in Zimbabwe. The government is failing to subsidise land for housing at an affordable price especially for first-time homeowners. What makes land for housing expensive is when the government does not plan or provide enough settlements for everyone³⁸⁸. Due to the lack of housing finance, the only industry that is functional in Harare is of land barons by the so-called '*housingpreneurs*'. It correlates with the high demand for housing that is pushing the prices high. For instance, the housing department engaged Shelter Zimbabwe to provide services in the housing stands. They started charging the price of US\$7 per square metre, it pushed to US\$21, US\$35 and there were stopped at US\$80 without even finishing providing for services. The question of affordability and the relation to human rights is that a person is entitled to affordable housing by being human. The right to housing is a legal entitlement belonging to every person as a consequence of being human. Social housing framework and delivery lost track since pre-independence flats. The government is not there to cater to those who cannot afford it³⁸⁹. The price per square metre increased three times in a very short space of time.

³⁸⁷ Interview with the Principal Housing Officer, Harare, 17/06/19.

³⁸⁸ Interview with former secretary for local government in the opposition, Harare, 25/07/18.

³⁸⁹ Interview with the Principal Housing Officer, Harare, 17/06/19.

7.6.7.1 Lack of Funding-Affordability Crisis Nexus

Affordability and access to housing cannot be delinked that, however, has been frantically disregarded by the local authority. If there is adequate funding to ensure access to housing, the affordability problem either disappears, silently dissolves itself or it becomes manageable. Tenants in low-density urban areas and lodgers in high-density areas are suffering because of the high rents that they are required to pay especially with some landlords demanding payment in US dollars that are not affordable. In household economics, there is a threshold beyond that a person should not exceed, for instance, if a person is earning \$1000, there is a threshold that can be 10% or 15% of the salary if a person wants to live a comfortable life that can go to housing. Whether renting or there are rates, once a person exceeds that, it is a problem. A person may have housing but the amount that they are paying every month either in rent or rates exceeds a certain ceiling, they will have a problem with their livelihoods and affordability because of living beyond means³⁹⁰. The direct provision of adequate housing takes precedence over all other provisions through a profit-maximising market system that concentrates exchange values in a few private hands and allocates goods based on the ability to pay (Harvey, 2014).

Affordability problems cannot be tackled until and unless the access to housing is dealt with. The two must be dealt with together but whether it is accessibility or affordability, it diminishes one's enjoyment of the constitutional right to housing. If a person has access to housing but cannot afford it, the difference is the same. A person cannot enjoy constitutionally enshrined right to housing when they have access to it but can spend 90% of their gross household income on paying rents just as many are spending more than 60% of their salary on transport in Zimbabwe. For example, with regards to wages at the University of Zimbabwe, many spend a significant proportion on transport for all, whether a person is a commuter omnibus rider or a motorist. If housing is a constitutional right, it must be made accessible and affordable. There may be other conditions or prerequisites for the enjoyment of the constitutional rights, but accessibility and affordability are primary, and the onus of a constitutional right is not just with the national level but the obligation and responsibility also fall upon local authorities³⁹¹. The affordability of housing rose further and further beyond the means of most families to pay without cutting back their expenditure elsewhere

³⁹⁰ Interview with an expert in Public Policy, Elections, Democracy and Human Rights, Harare, 21/05/2019.

³⁹¹ *Ibid.*

(cf. Hudson, 2010). Due to the affordability crisis in Harare, many are forced to stay far from their sources of livelihood, in dormitory towns where workers can find some living quarters at a reasonable, affordable rate than in Harare city³⁹². Wages have been not rising quickly enough to meet the housing cost and several people have been squeaking by from paycheque to paycheque, living in constant fear that if one unexpected thing happened, they would end up inadequately housed, homeless, or a combination of both.

Issues of affordability are very important especially against a backdrop of a country where the economy is not functioning well, considering the problem of exchange rates and currency crisis. Even if the government wants to give people loans, it is very difficult. Most people live beyond the poverty datum line. It is difficult for them to afford housing. Banks usually come in to help through mortgages and loans but the currency regime in Zimbabwe is problematic and is not favourable for loans to issue those mortgage bonds. Zimbabwean politics in the past two decades have been very toxic, making it difficult to invest in the housing sector resulting in fewer players and competition in housing provision that means expensive housing³⁹³. Issues of affordability remain problematic and in line with transformation, that is the main reason why people are organised into co-operatives so that they can pull the few resources together towards housing. Concerted government efforts to strike issues of affordability and ensuring that people access housing becomes difficult. The state is always faced with the problem of quality access in the capital city that is the face of the country. The government cannot compromise on quality so it is a conundrum³⁹⁴.

In the high-density areas, people used to pay supplementary charges in the African townships. Small pieces of land like in Mufakose are now producing more taxes than large pieces of land in areas like Borrowdale³⁹⁵. The poor are being taxed higher than the rich yet properties in Borrowdale should pay more towards the benefit of those in high-density areas³⁹⁶. The poor always pay more³⁹⁷. Tax policy is another government depravity that is why Adam Smith, the father of

³⁹² *Ibid.*

³⁹³ Interview with a Chief Law Officer, Harare, 11/05/2019.

³⁹⁴ *Ibid.*

³⁹⁵ Borrowdale is one of the elite suburbs of Harare and home to the more affluent population of the city. The dwellings are mostly low-density and these usually are occupied by rich families.

³⁹⁶ Interview with a renowned planner and housing expert, Harare, 17/08/18.

³⁹⁷ UN Habitat Report (2010).

modern economics, suggested that taxes should be imposed primarily on those who can afford them (Batra, 2007:191-192). In line with the principle of progressive taxation, the poor and the middle class should be taxed little and the rich should be highly taxed. When this principle is violated, poverty increases and the effect is obvious, low after-tax income can deprive the poor of the necessities including housing (*Ibid.*).

Housing cannot be affordable considering those presiding over land in Zimbabwe. Housing is being presided over by people who are viewing the land and housing crisis as a critical tool of profiteering and for self-preservation. In that context, rights and prices do not go hand in glove. Housing services are, indispensable, necessities of life, and not choices or desires. Looking at the highest-paid civil servant or the lowest civil servant who is still earning an approximately less than US\$100, they cannot even afford to rent. People must hustle on the side-lines to afford housing³⁹⁸. By and large, the issue of affordability also comes with the issue of class. Elites are presiding over the bulk of the land with the poor not affording housing. 2% or 5 % own 95% of Zimbabwe. For those few, possession of a piece of land is a fortune where it can be subdivided and parceled to make a living out of it³⁹⁹. Albeit housing is a fundamental human right, it does not necessarily mean it should be freely handed out (cf. UN-Habitat, 2014; Roskin et al., 2006:63; Farha, 2018). What is required from the government is to create the necessary conditions so that people can access adequate and affordable housing.

Not all people can afford housing and therefore resulting in inequalities. Those who have got money continue to acquire more pieces of land and more properties at the expense of those who cannot afford; the cause being the issue of homeownership, urban entrepreneurialism (Harvey, 2012), and commoditisation of housing⁴⁰⁰. Commoditising housing is to make a profit⁴⁰¹. There are two perspectives where housing is a basic need and a social good and where housing is an economic good. As a social good, it must be affordable for everyone. However, there seems to be an overemphasis on housing as an economic good because of homeownership leading to others

³⁹⁸ Interview with a former Consultant for HCC, Harare, 04/09/18.

³⁹⁹ *Ibid.*

⁴⁰⁰ Cf. Kamete (2006).

⁴⁰¹ Interview with a former Housing Officer, Harare, 23/10/18.

accumulating more of it at the expense of the poor therefore leading to inequality. Rental housing and its various types are, however, limited for those who are not able to own⁴⁰².

The 1.25 million home seekers on the housing backlog do not mean those people are not staying somewhere. They want to own but cannot do that and because rental housing is not there, they end up going for lodging. It goes back to the designs of the properties and to the colonial era where a basic need was simply a four-roomed house. This shows that housing as a basic need simply requires something basic. The basic need must not be viewed as an end itself. The problem emanates from setting standards for people and making it difficult for certain individuals who cannot even afford, and they end up lodging and living in overcrowded houses. This is inequality and is a result of policies that are in place⁴⁰³. Obstruction of change or transformation occurs because of a combination of idealistic and materialistic motivations by elites thus resulting in inequality (cf. Archibugi and Held, 2011).

The government must, therefore, play a very significant role in providing rental social housing⁴⁰⁴. However, the Harare mayor refuted the fact that housing stands are expensive because the government does have different types of stands in high-density, medium-density, and low-density urban areas and it is a question of being able to access one that a person can afford, it is a question of fitting themselves where they can be able to access on the one they can get or afford⁴⁰⁵. However, this argument is not corresponding to the severe course of the affordability problem. Zimbabwe's Medium-Term Plan (MTP) 2011-2015, (2012:125-126) as one of its policy targets was to eliminate the national housing backlog by 2015. However, limited progress has been recorded due to resource constraints. Part of the commencement of 33 housing and social amenities projects have been stalled as demonstrated below.

⁴⁰² *Ibid.*

⁴⁰³ *Ibid.*

⁴⁰⁴ *Ibid.*

⁴⁰⁵ Interview with Current Harare Mayor, Harare, 29/05/19.

Table 7.1 Some of the Outstanding Housing Projects in Harare

Project	Location	Status	%Complete
Tafara-Mabvuku Flats	Harare	Half of the first building done, the tenth done for the second building, the third block yet to start	20%
Marrivale Flats	Harare	Not Started	0%
Mufakose Flats	Harare	The first block almost half complete, whilst the second block has just been started	25%

Source: Ministry of National Housing and Social Amenities 2012

The progress of the housing projects in Table 7.1 shows that they are behind schedule, and not on track. Underfunding is the main reason for stalling progress. Housing is suffering from fundamental problems that include defective capital structures, and interference. Due to the high capital requirements for the construction of capital-intensive infrastructure projects like housing, the government is unlikely to be able to provide the funding on its own. Resultantly, the housing infrastructural projects, like social housing, take almost a lifetime to get completed. This financing gap presents an opportunity for the private sector to kick in, with the government setting out the regulatory framework governing the housing sector, including an analysis of the relevant provisions relating to regulation, policy restructuring, and planning. On interference, housing infrastructural projects have become a pork barrel for the elites and, therefore, become an opaque drain on the council fiscus. There are so many right moves in terms of housing projects but with unexpected outcomes on execution.

7.7.8 A Crisis of Inequality in Harare City: Self-Interest in Public Housing Policy

Vested interests negatively affect housing policy implementation (cf. Burke et al., 2012:12; Weimer and Vining, 2011:287). Where housing will result in the reduction of any gains, politicians deliberately undermine its execution because its success would strip them of the benefits. The support base of the ruling party is dwindling and to counter that, there is sprouting of illegal settlements that are not the creation of local authorities but ZANU-PF that is trying to secure power

in the urban areas. The former first lady, Grace Mugabe used to tell people to build houses wherever they want. Her word was law and she by-laws became ineffective⁴⁰⁶.

From neo-patrimonialism, there is now neo patriarchy or matriarchy because the former first lady and even the current was becoming dangerous than the father with people coming and say '*tisu vekwa amai*'⁴⁰⁷ meaning 'we are coming from the mother'. The whole idea of sprouting communities is about the nostalgia of ZANU-PF to recapture the urban vote through disenfranchising people from their allegiance or lineage or support to the opposition. This is done by disempowering them through empowerment, pseudo empowerment by giving people land so that they rely on the party for that land and for those housing structures not to be demolished⁴⁰⁸. Dangerous double standards can only be found within the 'messy' world of everyday law and politics (cf. Held, 2002; Archibugi, 2004). To access housing, people are forced to rely more on ZANU-PF than the opposition because they know it is the ruling party's word that will prevail when they want to demolish. The Zimbabwean government is not conscious of housing as a right, they still view it as a critical weapon of politicisation and polarisation⁴⁰⁹.

Zimbabwe has not seen any form of town planning since 2000 but rather forms of uncoordinated and intermittent housing activities taking place all over that now masquerade as planning. This explains why there are no longer breathing spaces that were reserved for recreational purposes as they have been taken over by space barons who are pouncing on those open areas with in-fill residential development encroaching regulations. In Harare, there are yards where game animals can reside without the disturbances or interruptions of people in that same locality against someone in Kuwadzana owning a 300 square metre stand⁴¹⁰. Big yards expose the massive gaps of the haves and the have nots and long-standing inequalities. A working Zimbabwean is failing to afford a 500 square metre stand yet Kasukuwere's bedroom is 1200 square metres and he was presiding over housing policies that affect citizens. There is this populist illusion presided over by elites at the expense of the desires of the masses⁴¹¹. In some homes, there is a dedicated ZESA substation and

⁴⁰⁶ Interview with former Consultant for HCC, Harare, 04/09/18.

⁴⁰⁷ Interview with the Principal Housing Officer, Harare, 17/06/19.

⁴⁰⁸ Interview with former Consultant for HCC, Harare, 04/09/18.

⁴⁰⁹ *Ibid.*

⁴¹⁰ Cf. <https://www.newsday.co.zw/2014/07/fined-50-unleashing-dogs-neighbour-mugabes-bucks/>

⁴¹¹ Interview with former Consultant for HCC, Harare, 04/09/18.

a transformer just inside the perimeter, exposing the significant gaps of the haves and the have nots.

Politics in Zimbabwe compromised lawful issues concerning issuing of permits, allocations, change of ownership, and occupation. Political actors involved in most cases underdevelop land for housing and most of the developments are not certified by local authorities and not satisfying human occupation⁴¹². Modalities are not clear, total amounts for the stands in most cases are not stipulated in the offer letters and home seekers end up paying without knowing when to stop paying to the developer or the so-called ‘cooperatives’⁴¹³. Within policies, there are policies like, after independence, there was a policy of homeownership scheme. After a certain period, if a person has been paying rent or rates, the house must become theirs but many people do not have title deeds in areas like Kambuzuma and Mufakose. This is so because they were never empowered to go or to know that now they can ask the municipality to give them their title deeds⁴¹⁴. Right from the inception, the policies are not in tangent with what would work towards the adequate provision of housing.

At the centre of massive factional fights in ZANU-PF were chairpersons of cooperative structures presiding over critical issues of land. There was a deliberate desire and design to prop up a certain faction at the expense of others⁴¹⁵. Cooperative chairpersons put political considerations ahead of rational council decisions. The issues of factional politics before the ouster of Robert Mugabe resulted in multiple allocations of housing stands by cooperative chairpersons⁴¹⁶. The predation of politics in the housing policy cluster catalysed the magnitude of inequality in the housing crisis. In an interview with one of the affected people, he sensationally said that:

“The worst thing that would happen is that at the end of factionalism, we do not have adequate housing because we let politics interfere, adopting a policy of obstructionism that undermines the legitimate housing processes”.

⁴¹² Cf. Hatcliff Evidence from Commission of Inquiry into Sale of Urban State Land attended by the researcher, Harare, 07/05/19.

⁴¹³ *Ibid.*

⁴¹⁴ Interview with a renowned planner and housing expert, Harare, 17/08/18.

⁴¹⁵ Cf. Hatcliff Evidence from Commission of Inquiry into Sale of Urban State Land attended by the researcher, Harare, 07/05/19.

⁴¹⁶ *Ibid.*

7.8 Other Policy Fields Affecting the Realisation of the Right to Adequate Housing

In line with a panoptic study of the housing subject, there is a need to understand the background and context of housing in Zimbabwe as it is heavily premised on the contested issue of land. Due to land reform dynamics, especially the FTLRP of 2000, a geopolitical catastrophe for Zimbabwe, the study found that the whole aspect of housing becomes a politicised issue. In the current discourse shaping the perception of the government of the day, housing is premised on land, that happens to be the biggest political market since 2000 that the incumbent ruling party in the form of ZANU-PF has at its disposal as compared to the rest. The whole idea of land is interwoven in political matrices such that housing is not as ordinary as people might perceive, looking at co-operatives, the issue of land barons, all the commissions of inquiry, and some of them put in place by the government but without bearing any fruit⁴¹⁷.

The need of righting a historical injustice through the FTLRP stopped quite several ventures like the WB and IMF Urban 1 and Urban 2 projects⁴¹⁸. The water, sewer, and roads infrastructural projects were a long-term facility that the City of Harare was supposed to repay after a long period⁴¹⁹. Because of the FTLRP, they were bankrolled. The wholesale effect was that Zimbabwe could no longer be able to access international finance that would go towards human settlements development⁴²⁰. HCC is limited and bound not to be able to do most of the infrastructural projects⁴²¹. Lack of borrowing power has detrimental effects on the provision of amenities⁴²². Moreover, the effects of indigenisation crippled the economy, stopped investment⁴²³, rolled back infrastructural projects, and ultimately the provision of housing⁴²⁴. The successive reforms created investment uncertainty and hampered housing expansion.

The direct and immediate impact of the FTLRP on urban areas was population pressure due to rural-urban migration. The population of Chitungwiza is 2 million, Harare is 3 million, and Ruwa is 180 000. Altogether, Harare Metropolitan has about 6 million people. That is close to 50% of

⁴¹⁷ Interview with former Consultant for HCC, Harare, 04/09/18.

⁴¹⁸ Interview with the Director for Housing and Social Amenities, Harare, 17/10/18.

⁴¹⁹ Interview with Current Harare Mayor, Harare, 29/05/19.

⁴²⁰ Interview with the Director for Housing and Social Amenities, Harare, 17/10/18.

⁴²¹ Interview with Current Harare Mayor, Harare, 29/05/19.

⁴²² Interview with a former Consultant for HCC, Harare, 18/02/19.

⁴²³ Interview with the Director for Housing and Social Amenities, Harare, 17/10/18.

⁴²⁴ Interview with former secretary for local government in the opposition, Harare, 25/07/18.

the population in the country. Many of these people are refugees from the collapse of the rural economy⁴²⁵. Population, as a result, puts more pressure on the housing supply. The impact of FTLRP cannot be entirely discounted, it is a dominant factor in shaping the nature of the housing problem in the urban areas⁴²⁶.

7.9 Research Assumption Validation

Information gathered during fieldwork confirms that housing is part of the political economy. The existing state of the housing crisis is not only about policy failures but also about the violation of the justiciable right to housing. The findings of the study have not only validated partially the above position but also vindicated the research assumption. It has been confirmed that it is not the programme challenges alone that can exert influence on housing crisis but predatory politics have also a role to play in shaping the implementation of public housing policy and the accomplishment of the right to housing. Hypotheticals became reality. ‘What if?’ became ‘Now what?’.

7.10 Conclusion

The presentation and analysis carried out in this chapter have demonstrated the influence of politics in housing. It has been shown that contextual factors have a strong bearing, directly or indirectly, on the realisation of the right to housing. Political interference is a major variable adversely affecting the implementation of housing policy and resultantly failure in the realisation of the right to housing by overriding local authority decisions. A jurisprudential analysis provides a different perspective from the long-used narrative of the housing challenge as an administrative issue and technical factors defining the housing challenge. The right to housing in Zimbabwe rest on the debile and decrepit legal framework. Housing is also characterised by abrupt and extreme changes. Post-2000 policy-making approaches in Zimbabwe had a partisan, temperamental, exclusionary, hurried, and short-term bent (cf. Zhou and Zvoushe, 2012:1). Complexity is one word that comes to mind, or ‘rights on the edge’ is probably one phrase that sums it up in explaining this sensational trajectory of the enjoyment of housing rights ‘on the verge of extinction’. The problem is increasingly complex and contentious, hardwired, and networked in intricate politics thus a herculean task to erase with conclusiveness. It is a turbulent matter in which urbanisation and

⁴²⁵ *Ibid.*

⁴²⁶ Interview with an expert in Public Policy, Elections, Democracy and Human Rights, Harare, 21/05/2019.

urbanism are increasingly central to the political⁴²⁷. Based on financialisation of housing, the problem is becoming worse. The next chapter draws some conclusions based on the findings and analysis of this chapter. Recommendations will, in turn, be based on the listed conclusions.



⁴²⁷ Cf. McFarlane and Silver, (2016: 144).

CHAPTER EIGHT: CONCLUSIONS AND RECOMMENDATIONS

8.1 Introduction

This chapter presents the conclusions, recommendations, and legal safeguards in terms of policy measures that can be adopted to improve housing rights. Both conclusions and recommendations are based on the findings analysed and presented in the preceding chapter.

8.2 Study Conclusions

Various conclusions are drawn from this study. The data confirm that: -

8.2.1 The magnitude of the housing crisis is a considerable issue in Zimbabwe

This thesis demonstrates that the housing problem in Zimbabwe is so gigantic. Zimbabwe is still a long way to go in terms of realising housing in its full potentialities. Despite housing being a fundamental right, the GoZ is delinquently and derelictly reneging its legal liability to protect, promote, and fulfil housing rights. It can be classified as a wicked problem because of it being a political resource variable, making it difficult and doubtful whether Harare will emerge from this housing calamity and its prolonged impact with the current system intact. It is ever-increasing rapidly and uncontrollably amid tempestuous economic turbulence in Zimbabwe. The study has also brought to the fore that housing in Zimbabwe is shrouded in complexity that is something new that could be a road map for dissecting through complexities.

8.2.2 There is no right to housing in Zimbabwe

Due to discord in institutional arrangements in housing development and policy practice, the study concluded that the right to housing in Zimbabwe rests on weak constitutional, legislative, and administrative foundations with implications on enforceability and justiciability. The findings of the study are in negation about the right to housing as there cannot be a right while using national objectives when the country has an elaborate and robust Bill of Rights. Ferreting out a right on an illative basis rather than based on emphaticalness shows that something is fallaciously faulty with the constitutional, legislative, and administrative framework. Failure to consort the constitution and Acts of Parliament obturate and occlude the smooth realisation of housing rights. Lack of harmonisation is not a good ingredient.

8.2.3 The imprint of colonial legacy continues to undermine housing rights

Housing problems can be concluded through the lens of path dependency emanating from colonialism. The government offers a glimmer of hope for housing rights. Arbitrary evictions have been recycled. The history of inequality has paved the way for modern-day housing provision. Colonial traits and remnants of social injustice and exclusion have not been addressed. They have debauched into class furcation and demand is subdued because of affordability issues as market players adopted varied pricing models. Colonialism as the highest stage of capitalism⁴²⁸ created the wicked affordability crisis.

8.2.4 International law is a high-sounding nothing when it comes to housing

The constitution belies global intentions to promote the right to housing. International law is just a solo in the equation and the study concludes that international instruments that could have been applied and domesticated in housing policy implementation have been a far cry. Fundamental norms in international law seem no longer to be taken seriously, with arbitrary evictions without even attempting to offer international legal justifications for overriding the widely endorsed and rigidly interpreted international rules that govern housing. Albeit international law is indispensable, it is as well imperfect. Therefore, international law becomes a *brutum fulmen* in state's liability to legally preserve the right to housing.

8.2.5 Politics of Housing is 'a tincture of condescension'

Housing has been and is still a strategic incentive in the run-up to elections. Politics of difference tinge housing delivery and to score party political points over housing or with the intent of securing political credit is not a sustainable strategy for realising housing rights. There is a close connection between the politics of opportunism and the sprouting of illegal settlements. The whole idea of inadequate settlements is the hungriness of ZANU-PF to recapture the urban vote through neglecting proper urban planning initiatives and disenfranchising people from their allegiance to the opposition. Resultantly, housing seekers are suffering because of this political point-scoring and grandstanding.

8.2.6 Affordability and Under-funding subvert low-income classes from accessing housing

⁴²⁸ Cf. Lenin (1916).

Affordability puts housing beyond the reach of the poor. It subverts access. If a person has access to housing but cannot afford it, the difference is the same. 5% of the national budget for the local government is not enough.

8.2.7 Changes happening outside the housing radius tinge realisation of housing rights

Distributive and redistributive politics with distributive and redistributive goals are counterproductive to the realisation of adequate housing. The FTLRP opened doors for lawlessness in housing and like the indigenisation policy, stopped infrastructural investments. Contrary to populist politics that hail the FTLRP, this study concludes that the programme was a gateway for lawlessness in the housing sector. The findings of this study that illuminate discrepancies and inconsistencies that were catastrophic to housing have led to the annihilation of this cardinal right.

8.3 Recommendations

8.3.1 Need to review constitutional, legislative, and administrative housing law in Zimbabwe

8.3.1.1 Constitutional Reforms

To deal with the problems of justiciability and enforceability, laws needed to be broadened and firmer right from the beginning, a more stringent message from the outset, and a visible and direct provision about housing under the Bill of Rights with detailed guidance is much needed. When dealing with the rights of this nature, there is a need for absolute clarity with no room for nuance. The Judicial Services Commission should come up with specialised land courts, a relatively new phenomenon in judicial systems that deal with housing disputes and local dissatisfaction with existing courts' handling of housing problems, drawing lessons from other jurisdictions like New York, Massachusetts, Cleveland Municipal Housing Court and Ohio in the USA.

8.3.1.2 Legislative Reforms

It must be the government's resolve to re-look at some of the outdated by-laws on housing and infrastructure development to ensure that they speak to current standards. The government must ensure expeditious alignment of UCA with the new constitutional dispensation without delay and Sections 22-24 of the HBA, 4-15 of the HSCA. There is a need to embrace global trends of constitutionalism like the USA, Canada, and the UK and enact a Housing Act to translate

international provisions into realisable rights as prescribed by Section 324 of the Constitution. There is also a need to review the GLA in terms of the provisions that criminalise continued occupation of gazetted land and align it with Section 74 of the Constitution. To help victims of state-sanctioned violations and to cement the role of national human rights institutions⁴²⁹ in the protection of housing rights, the State Liabilities Act [*Chapter 8:14*] and the Prescription Act [*Chapter 8:11*] must be aligned with Section 85 of the Constitution on the enforcement of human rights to deal with unreasonable and unduly tight time-restrictions against state actors.

8.3.1.3 Administrative Reforms

There is a need for HCC to have a clearly defined monitoring system that can give warning signals to policy implementers concerning housing deficit. There is a need for a commission of inquiry to deal with issues of housing anomalousnesses in its entirety and not limited to state land but also council land. Housing policy must be managed by referring to POSDCORB⁴³⁰. Housing interventions must factor in the issue of sustainability and planning in the sense of intergenerational fairness and equity. The land is an infinite resource that needs to be jealously guarded for posterity if a country has any modicum of respect for the offspring thus there is a need for a mindset and attitude change for continuity to take into cognisance future generations. HCC must prioritise living in compact quarters and high-rise apartments involving new and more durable technology should begin to be acceptable to decongest Harare city. HCC as part of local government according to Section 5 and guided by Section 44 of the Constitution, must respect, protect, promote, and fulfil the right to housing. HCC must exploit media spaces, Section 7 of the constitution, to make sure that they are making the public aware of land barons and unregistered co-operatives. To further protect housing seekers from scammers, HCC must fully utilise the Deeds Registry. Its information management system must be computerised so that housing seekers will be able to verify if developers have a deed of grant or title deeds to a property. Housing must be modernised and computerised so that officials cannot take advantage of and manipulate the systems. A computerised system can reduce political interference and neopatrimonialism and just

⁴²⁹ Cf. CESCR, general comment No. 10 (1998).

⁴³⁰ POSDCORB is an acronym that means planning, organising, staffing, directing, coordinating, reporting and budgeting (Gulick and Urwick, 1937).

reject some of the anomalies automatically. HCC must come up with a complaint mechanism for those who would have been fleeced of their hard-earned money by land barons.

The internal administrative cultures must be revamped to deal with inherent biases and implications towards the poor. The council must ring-fence vulnerable groups on social safety nets bearing in mind that housing is central to everything. On the duty to respect, the council must not defy court orders and ministers must not interfere with the administration of housing. Devolution must be embraced. On fulfilment, if people are following due diligence and be on the waiting list, there must be delivery. What is needed is for the government to ensure transparency and instil confidence through the system so that home seekers know that even if they wait, there is deliverance. Estimations on the housing waiting list system baseline have not been recently updated. HCC must declutter the redundant and contaminated housing list to establish the exact number of how many people are on the backlog as some are dying and some got stands. Those must be erased for the list to be relied on or used as a measure of the magnitude of the housing deficit.

HCC must review the current urban planning practices. Having onsite and offsite infrastructure together makeup housing in its entirety thus should be the backbone in the provision of housing. Harare city has witnessed a demographic growth over the last 30 years and around then it was housing around 500 000 or even 200 000 people but now it is over 2,5 million people thus sources of water must be expanded and more dams must be constructed. Kunzvi Dam project that has been shelved for years must be prioritised. Housing must be in accord with the World Health Organisation (WHO) guidelines on healthy housing. The council policy must be clear as to what must happen in housing development, the stages that developers must go through before putting up superstructures.

8.3.2 Adopt the Housing First Model

To address the problem of homelessness, there is a need to draw some lessons from the Housing First Designed Model, developed in Finland where it is most successful, and in Norway where it was also vigorously applied. In line with the model, the Vagrancy Act [*Chapter 10:25*] must be aligned with Chapter 4 of the Constitution to deal with the enforceable restrictions on the arrest of people deemed to be of no fixed abode or without means of support like street children, the

homeless and those with mental disabilities. There is also a need to ensure adequate provision of reception facilities, including emergency shelters and hostels, and social rehabilitation centres.

8.3.3 Review internal HCC administrative structure

8.3.3.1 Get rid of the elements of indirect discrimination in the selection processes

HCC must do away with asking questions about financial background during the application and interview process nor should it be permissible to use someone's numerical credit score or source of income as a factor in judging housing applications. Rules that restrict the poor's access to housing should be eliminated to put the low-income citizens on a level playing field with everyone. Fair Housing and tenant protection laws should be given a fully staffed and dedicated enforcement agency that is empowered to investigate and prosecute discriminatory practices by developers, landlords, and local governments, and punitive exemplary penalties should be the norm for violations. The government should provide significant direct assistance through grants and zero-interest loans to the poor communities and subaltern population groups that have been worst affected by housing discrimination both historically and recently. The worst affected must be provided with assistance through reparative and transformative justice, compensations, and official and adequate apologies. A transformative housing agenda must focus on the forces of real estate capital.

8.3.3.2 Implement Housing as a Process

To address the clawback clause under Section 28 that says "...within the limits of the resources available to them..." states in transitions and young democracies like Zimbabwe must implement housing stage by stage to commensurate with their budgets and incapacity to execute, implementing as and when they have the resources. The provision of housing is supposed to be executed over a period through incremental action. The state must rise above board and not just be limitlessly within the resources available to them. To broaden access for the attainment of affordable housing, it must be conceptualised as an experience and a process and not in static terms.

8.3.3.3 Consider the home-seekers' preferences

Human rights are relative to the individuals and situations involved, exist concerning culture, society, or historical context, and are not absolute. Housing problems cannot be resolved unless the preferences of housing seekers are fully recognised in their order. Any consideration of future

urban planning needs to take place within an understanding of the factors that are shaping socio-spatial aspects of cities. There is a need to build a consensus and clarity around housing plans before delivery. The factors must be factored into planning systems and policy formulation. An appreciation of context-sensitive issues is required, and the survival strategies of the poor must be institutionalised. The background that Zimbabwe is coming from, that heavily disadvantaged the poor, must not be forgotten. Housing should be human-centred by ensuring that home seekers are part of the process every step of the way, its understanding that communities have knowledge and expertise about their communities thereby making the housing process participatory and bottom-up. There is a need to empower those communities with resources, a bottom-up approach to consider the people more reasonably impacted by the policy as a key independent variable of analysis. Subordinates at lower levels may play an active part in the implementation and may have discretion in implementing the policy.

8.3.3.4 Streamline ministries

The housing institutional arena is bloated with many players with different agendas, too obese and when there is so much interaction, the chances of implementation failure are high thus there is a need for streamlining. There is a need for clear-cut roles on who is supposed to do what and who is accountable. When there is a dispute, there must be clarity on who is the respondent. There should be harmonised laws, administrative strategies, and policies. Through devolution, hierarchical and structural roles at the central and sub-national levels must be clear. The multi-dimensional approaches in supervising and monitoring housing co-operatives must be clear to avoid those in the HCC shouldering the blame on creeping centralism. There should be complementary and collaborative efforts to ensure that co-operatives are in order. This alludes to governance issues of accountability, transparency, and inclusivity through public hearings and consultations. Clear institutional mechanisms must undergird and give effect to the execution of NHP.

8.3.3.5 Encourage dormitory type of settlements

The idea of exerting relentless pressure on Harare is exacerbating the city's problems. Areas like Caledonia need to be developed as standalone settlements. To 'flatten the curve' of the HCC housing waiting list, there is a need for commuter towns with town centres, new cities that will be coalescing around the new parliament building, as the nucleus and around it to decongest Harare.

More so, the council has not been able to delimit or move boundaries to incorporate some of the peri-urban areas because of the current constitution that says delimitation can only be undertaken in 2023. There is a need to fast track delimitation so that those who cannot afford prime locations can move to peri-urban areas where the land is communal, cheaper, and affordable. In the long run, this will help to relieve pressure in existing urban centres.

8.3.4 Need for a human rights response to marginality

The mere fact of peripheral housing location is not in and of itself a reliable indicator of destitution, marginalisation, or urban disconnectedness. To heal divisions, narrow inequalities, and discard prejudices, there is a need for effective legal remedies to informality and spatial injustices that extends beyond an exclusive focus on housing location. Courtesy of the deprivations of the right to housing that is not only about programme failures or policy challenges but human rights violations of the highest order, its recourse deserves a sophisticated human rights response deeply entrenched in the causes of homelessness and inadequate housing. A human rights lens is needed to undo the complexity of both a structural fight and a human rights issue. There is a need for a multipronged approach, from community mobilising to legal action to political advocacy to harnessing mainstream and social media. There is also a need for a human rights approach to evictions by putting in place alternatives for relocation thus giving a human face to policy and reducing resistance or negatives associated with evictions. Housing policy must be understood and implemented as a human right. The advantage of a human rights approach is that it puts the needs of the vulnerable at the centre. The answer to housing is not about ZANU-PF or MDC, the solution requires a fundamental shift, one that prioritises human over economic and political interests. Now it is 10 years to go to the 2030 UN goal after Farha declared 2018 the year of the right to housing. For the goal to be achieved, human rights-based strategies must be taken seriously with a focus on the most vulnerable to ensure equality and accountability of governments to the people. If these principles can guide housing policy, Zimbabwe will inch towards the 2030 deadline and commitment. Human rights concerns should trigger human rights approaches thus a comprehensive human rights-based housing strategies and frameworks are required as they will result in structural changes and addressing structural problems and causes and systemic barriers to the realisation of the right to adequate housing.

8.3.5 Revisit the housing problem and revise the goals of the 2012 NHP

There is a need to review the NHP in line with prevailing socio-economic conditions. The policy document's disadvantage lies in its inability to clearly explain the problem statement, to efficiently capture the parameters of what causes the housing problem. Using Leslie Pal's⁴³¹ analytical framework, the expectation is that a policy document should reflect key elements such as problem statement, articulation of goals, and policy instruments. Policy instruments must be in resonance with the chain of the guard in Zimbabwe, central government policy and reflect research and consultation. The policy document is too distant from reality to be useful because it reduces policy-making to a structured, logical methodical process that does not reflect reality. Housing that has the semblance of proceeding in stages consists of a series of reversals and repetition. Stages are sometimes fused, get driven by contingencies, not logic, and produce diffuse effects that overlap with those from other policy initiatives. Thus, the linearity and cyclical nature of the document are distorted, making it diverge from the face of reality. The policy document fails to embrace the complexity of housing that rarely if ever develops in a linear progression. The most damaging criticism is that the document assumes a linear model of policy-making, discounting the notion of feedback loops between different stages and different starting points for the entire process. More so, further criticising the above critics, the policy document theoretically gives a good descriptive account of how public policies come to be. However, the notion of a linear progression of policy as conceived by the document is a distant theory.

The policy has been overtaken by events and the problem formulation is no longer applicable. Policy context must be in resonance with current dynamics. The absence of clear goals results in cosmetic reforms thus there is a need to review policy goals on what it intends to do to reflect synergies with the housing problem. Housing policy goals must resonate with the national objectives, reflecting a fidelity with national provisions, fundamental constitutional values, and global thresholds on housing. Policy goals must not be too ambitious but actionable, realistic, and per institutional capacity. There is also a need to look at the political fidelity of instruments to see if it stands the chance of being accepted by those in authority, that is, the efficacy and feasibility. If it does not have political acceptance, it may not survive the day.

⁴³¹ Pal (1992).

8.3.6 Need for the de-commodification of housing

Neoliberal faith or ‘trickle-down economics’ that unfettered capitalism reproduces benefits that can spillover or flow to the poor must be revisited. The free market, by itself, cannot resolve the rising societal problems of inequality. The affordability crisis continues to undermine the administration of housing justice based on equitable share. There is a need to de-commodify housing as a central goal of social democracy. This implies adopting a ‘dual-track’ strategy of developing and maintaining high levels of social support and paying for it by adopting an aggressive special economic zone policy, that boost housing growth at an affordable cost. The dichotomy strategy must be crystallised by or reconcile ideological puritanism and entrenched interest in social housing. Housing should not be used, discarded, or traded like goods and services or like gold. Persons must be able to live comfortably without being dependent upon the market. Individuals must be protected such that they can access housing with little or no loss of income. That will be the beginning of the end of homelessness. There is a need to increase the provision of affordable rental and social housing units, the level of public funding on the housing sector, and the threshold for housing reimbursement under the basic social benefits to meet the market price. Social housing has been rolled back by ESAP and should be immediately reintroduced as a matter of urgency. Social housing could be provided using public investments in community land trusts, cooperatives, and regulated non-profits. Housing provision must not have a disproportionately negative impact on poor people and desegregate affluent areas thus the state must guarantee an end to speculative profiteering. There must be a stop to predatory mortgage lending that provides high-interest loans with very low-down payments to people, enabling developers and reselling homeowners to ask for higher prices and gradually pumping up the cost of owner-occupied housing. The growth of corporate landlords and real estate investment trusts that treat housing as a financial asset rather than a human need must be stopped and reversed.

The council must adhere to its constitutional duty of protecting the vulnerable groups as their fortunes are tied to government support. Homeownership is dead. The future now lies in public rental housing and the government must ensure that the rental population is not rent-burdened. Tenants should be protected against unreasonable rent levels or rent increases. The age-old stereotype or era of housing provision through homeownership does not fit anymore thus to fix the rising number of homelessness, there is a need to ditch homeownership as the mere panacea to the

housing crisis and embrace social housing. There is a huge population in Harare that requires rented accommodation in as much as there is a big population that requires houses on homeownership. What is adequate is subjective, one can still talk of adequate housing where decent rental housing is provided. The right to housing is a relative term. What may appeal to certain groups may not be a solution to other income groups. The government should, therefore, create a conducive legal, economic, and administrative environment for all players in the human settlements value chain to operate efficiently and effectively. Apart from promoting homeownership, the government should do a lot towards social housing and construction of rental housing and avoid circumscribing housing to ownership. What people need is not necessarily expensive houses in low-density urban areas but a place that is more convenient to live around town renting in a reasonably priced flat. Not all people want to buy houses, but some prefer to rent depending on the sound and correct economic fundamentals. Local authorities after the 90% policy of homeownership should now up the ante in terms of providing rental accommodation that is part of the social housing policy. In that way, there is an equilibrium for all categories of housing seekers.

To further address the affordability crisis and discrimination in all its forms, there is a need to uphold equity in fiscal policies, firm policy decisions especially for first-time homeowners, and make it possible for someone even with limited means to be able to access housing. The class divide compromise access to housing and if such conduct was unacceptable during colonialism, then it is unacceptable now. It is the government's responsibility with a particularly important role to play in ensuring a tradeoff between lives and livelihood. On real estate, the UCA used to value land to charge citizens based on the improvements that they have made to the land. If a house has a swimming pool and the other house does not, the one with a swimming pool should pay more. That is the rule called betterment charges. However, it was reversed during Chombo's tenure. To promote equitable share, the law must be reinstated to avoid people being charged on the ground as if it is empty and to debar the wealthiest individuals from paying less. There must be a situation of overlapping interest, a zero-sum game in which the utility is balanced.

8.3.7 Need for political will to drive the housing agenda

If political challenges are fixed, that are the real causes and real problems in the housing matrix, there would be no informal settlements. The size of the housing crisis can be daunting, but with a committed political movement and a little bit of state power, it can be confronted. Dealing with political corruption in housing will be a huge step, victory, and deterrence factor to address the current culture of impunity that is breeding informality, causing cacophony and discord. The government must take measures to stop the immediate crisis by cracking down on slumlords and developers interested in profits rather than providing a socially necessary good.

There is a need for executive support and not executive interference. Excessive ministerial powers must be curtailed to ensure the effective running of councils, devolution of power, and security of tenure for mayors and councillors. This will ensure that issues around the allocation of land for housing can be addressed in a systematic and non-partisan manner. There is a need to professionalise housing and not patronise. If the nation can do away with elitist ambitions and selfish interests and become committed to true public interests, the right to housing will be realised. There must be a clear-cut devolution of power to ensure checks and balances and to deal with an all-powerful executive versus a weak local authority. The constitution only mentions once that 'there shall be devolution'. At the end of the day, there is a powerful minister and a disempowered mayor. The mayor is ceremonial and cannot do anything meaningful. The town clerk is more powerful than the mayor and councillors who are elected. That must be dealt with through checks and balances. More so, there is a need for separation of housing rights and politicking. Zimbabwe has been in a political mode and instability ever since 2000. There must be a separation of housing and party business.

8.3.8 Adequate housing finance is key in the realisation of housing rights

The current 5% of the national budget set aside for local government is not specific. There is a need for a specified figure that goes for a specified service, set aside for housing. Efforts should be made under decentralisation and devolution to implement the 5% fiscal transfers to the provincial and district assemblies to strengthen their capacity to perform their multisectoral activities in support of housing rights. There is a need for capacity building of local authorities to be able to carry out massive housing development projects. In terms of revenue streams, those who

have or are benefiting from the existing infrastructure and institutions must be charged a certain percentage to those who have benefited in the past so that the money will be directed to a reinvestment account to finance housing projects. Local authorities must have a minimum core obligation like in the CESC, general comments No. 4 and 7 to say if the council or government fails, there must be a minimum threshold in which the council cannot go beyond or below that. More so, there is a need for an increase in the budgetary allocation since, throughout the fieldwork, insights on the issues show that there was no prioritisation in line with the budgetary vote to the MLGPWNH. There is a need to increase the allocation to meet the international threshold.

The government must also engage with the multilateral funding institutions and involve international or global players in the form of donors in housing. There is a need for the government to start to work towards re-engagement with the multilateral funding institutions such as the WB to boost infrastructural development. The government must also encourage regularised PPPs in the provision of housing not only with international investors per se but even with the private sector especially the banking sector since housing is capital intensive. Zimbabwe must encourage the investment promotion policy for promoting housing development and to ensure smart partnerships between the government as the public sector and non-state actors such as banks and other development partners like African Development Bank (ADB). There must be a quasi-state or parastatal framework in the country that promotes housing like with the IDBZ that is inclined to that. There is a need to interface with the IDBZ and analyse to what extent are they biased towards housing because infrastructural development is very broad. The Housing Sector Policy and draft proposals under IDBZ must be examined on how best to mobilise pension and insurance funds for the provision of housing settlements and development. The National Social Security Authority (NSSA) and NBS that are also administrative framework vehicles in investing must also be promoted to descent in the housing arena, accompanied by laws that promote an investment climate. Non-profits, community land trusts, and cooperatives have also a role to play in the provision of adequate housing. However, more oversight is needed for the non-profit sector actors to ensure accountability.

8.3.9 Vibrant Civil Society is a key driver for the effective realisation of housing rights

Another missing link in the realisation of housing rights has to do with a vacuum that exists in the form of a lack of a vibrant civil society concerning land for housing. Much gains have been made in Zimbabwe because of the watchdog role of certain organisations outside government but when it comes to the issue of land for housing, housing seekers are just loners in the wilderness. There is no vibrant civil society organisation that is proactive in terms of ensuring that people get decent housing. Civil society is following where the money is. It is following the issue of civil and political human rights but those are secondary things. Civil society is playing a deaf ear to socio-economic rights and is also presided over by the elites where a director of civil society cannot be seen living in high-density areas so there is this whole idea of contests of elites. Just like political elites, civil society comes to the high-density suburbs to tell people issues that affect them. When elephants fight or make love, people still suffer. It is not for the benefit of people but 'rigged' in favour of the elite. Civil society is the first missing link, they must focus not only in terms of civil and political but must also take the government to task in terms of observing human rights of social and economic nature.

8.3.10 Upgrading of informal settlements will steer the ship out of the tumultuous waters to the safe shores

Informal housing is not necessarily exploitative or dangerous. In fact, like self-organised housing cooperatives, it can offer solutions beyond prevailing models of public housing provision. The informal housing sector needs to be recognised and monitored within the wider housing system with measures to improve security and living conditions for occupants and to ensure informal dwellings comply with planning rules. There is no silver bullet that will make housing and other random factors stop mattering but the upgrading of informal housing and guaranteeing that every person has access to adequate housing is a very good start in that direction.

8.4 Conclusion

In the final analysis, this study discussed the background to the housing problem. The conceptualisation of jurisprudence, policy content, and policy context ascertaining the direction of housing policy was also discussed. Experiences relating to waiting list systems were also raised. Factors militating against the effective realisation of the right to adequate housing were discussed.

The presentation and analysis carried out in this study have demonstrated the nexus between jurisprudence, policy content, and policy context, and the realisation of the right to adequate housing. It has been shown that contextual factors have a strong bearing, directly or indirectly, on the effective realisation of the right to adequate housing. Political interference is a major variable adversely affecting the effective realisation of the right to adequate housing. Conclusions revealed that loopholes in jurisprudence partially affect the realisation of the right to adequate housing. However, factors such as housing as a key political resource variable curtail the full realisation of the right to housing. Finally, the study discussed the recommendations that should be adopted to improve the effective realisation of housing rights.

8.5 Areas for Further Study

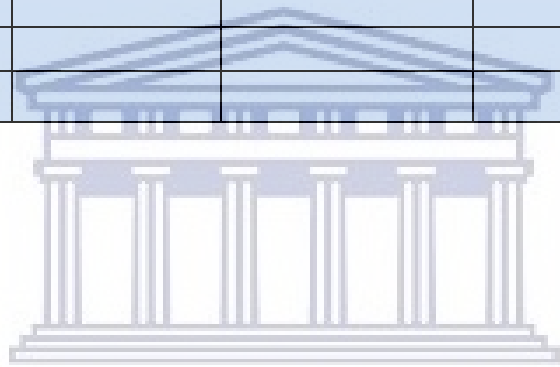
Though analyses of this study answered the original questions, it also opened other new mysteries for future studies. This study is suggesting the following areas as warranting further research: -

- As a next level housing problem solving, there is a need to conceptualise owned or rental housing in redefining what constitutes the housing problem. There are two strands, owned and rental, dueling lenses to view the problem of housing.
- Though housing is essentially and largely an urban problem, it must not be exclusively seen in the context of urban areas. There are several methodological flaws concerning calculating the housing backlog. Most of the surveys only covered urban and did not include rural dwellers. Problematising housing in urban areas only is flawed and result in the underdevelopment of rural areas, loss of meaning for rural homes, and rural dwellers being overlooked. Human settlements can be classified into rural and urban and the right to housing should not only be viewed as the provision of housing in the urban settlements. Housing can be in rural or urban areas. There is, therefore, a need to contextualise the rural side.

Appendix A: Ministry of Lands Submissions – Harare Metropolitan Province Farms

Farm/ Urban State Land Unit	Gazette Year and General Notice Number	Year handed over to Local Gvt by Min of Lands	Location of Farm and Authority it is under	Name of Former Farm Owner
1. Koala Park Farm.				
2. Lot 9 Block (S) of Hatfield Farm.				
3. Lot 1 of Twentydales of Lyndhurst Farm.				
4. Subdivision (E) of Arlington Farm.				
5. Gillingham Estate (A) Farm.				
6. Dzivarasekwa Extension Farm.				
7. Sherstone Extension of Mt Hampden Farm.				
8. Sandhurst of Mt Hampden Farm.				
9. Lot 2 of Lot 3A Observatory Farm.				
10. Subdivision (H) of Observatory Farm.				
11. Subdivision (G) of Observatory Farm.				
12. Subdivision (K) of Observatory Farm.				
13. Subdivision (J) of Observatory Farm.				
14. Subdivision (L) of Observatory Farm.				
15. Vermont Portion of Observatory Farm.				
16. Calgary Farm.				
17. Lot 12 of Philadelphia Farm.				
18. Subdivision (C) Portion of Marvel Portion of				
19. Georgic Portion of Borrowdale Estate Farm.				
20. Gletwyn Farm.				
21. Carrigh Creach Farm.				

22. Hatcliffe North Farm.				
23. Orda Farm.				
24. Remainder of Subdivision (A) of Stoneridge Farm				
25. Saturday Retreat Farm.				
26. The Rest Farm.				
27. Churu Farm.				
28. Nyarungu Farm.				
29. Lot 2 of Eyrecourt Farm.				
30. Remainder of Eyrecourt Farm.				
31. Subdivion (A) of Retreat Farm.				
32. Retreat Farm.				
33. Eyrestone Farm.				



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Appendix B: List of Key Informants Interviewed

Name	Position	Organisation	Date	Time	Venue
Mr. Lex Kuwanda	Current Director for Housing and Social Amenities	MLGPWNH	17/10/18	11:00	Chaminuka Building, Harare
Mr. Edward Cross	Former Secretary for Local Government in the opposition, MDC.	Former founder member of the mainstream MDC	25/18/18	17:00	Mt Pleasant at his house in Harare
Professor Innocent Chirisa	Renowned Planner and Housing Expert.	University of Zimbabwe Department of Rural and Urban Planning	17/08/19	14:00	The University of Zimbabwe
Mr. Alexander Rusero	Former Consultant for HCC.	Harare Polytechnic, Africa University	04/09/18	17:00	Harare Polytechnic
Mr. Kingston Magaya	Chief Law Officer, Policy, and Legal Research. He is also part of the Commission of Inquiry into Sale of Urban State Land.	MJLPA, Department of Constitutional and Parliamentary Affairs	11/05/19	15:00	New Government Complex Building, Harare
Dr. Chavunduka	Housing Expert	The University of Zimbabwe, Department of Rural and Urban Planning	09/10/18	17:00	University of Zimbabwe
Mr. Herbet Gomba	Harare Mayor	Harare Metropolitan	29/05/18	12:00	Town House, Harare CBD.
Mr. Edgar Dzehonye	The Housing Manager/Principal Housing Officer	HCC, DHCS	17/06/19	13:00	Remembrance Offices, Harare
Professor Eldred Vusomuzi Masunungure	Expert in Public Policy, Elections, Democracy, and Human Rights.	University of Zimbabwe	21/05/19	11:00	University of Zimbabwe
Mr. Nyasha Mutsindikwa	Former Housing Officer in the MLGPWNH.	University of Zimbabwe	23/10/18	17:00	University of Zimbabwe
Professor Gideon Zhou	Expert in Public Policy.	University of Zimbabwe	15/05/19	08:00	University of Zimbabwe
Mr. Sharon Hofisi	Former law officer with MJLPA and ZLHR	University of Zimbabwe, ZLHR	13/10/18	10:00	University of Zimbabwe

Appendix C: Research ethical clearance and approval letters - authorisation to carry out research



**OFFICE OF THE DIRECTOR: RESEARCH
RESEARCH AND INNOVATION DIVISION**

Private Bag X17, Bellville 7535
South Africa
T: +27 21 959 4111/2948
F: +27 21 959 3170
E: research-ethics@uwc.ac.za
www.uwc.ac.za

23 April 2018

Mr T Chidhawu
Institute for Social Development
Faculty of Economic and Management Science

Ethics Reference Number: HS17/8/35

Project Title: The challenges of public policy implementation in Zimbabwe with special reference to the National Housing Policy (Harare: 2000-2017).

Approval Period: 18 April 2018 – 18 April 2019

I hereby certify that the Humanities and Social Science Research Ethics Committee of the University of the Western Cape approved the methodology and ethics of the above mentioned research project.

Any amendments, extension or other modifications to the protocol must be submitted to the Ethics Committee for approval.

Please remember to submit a progress report in good time for annual renewal.

The Committee must be informed of any serious adverse event and/or termination of the study.

A handwritten signature in blue ink, appearing to read 'Josias'.

*Ms Patricia Josias
Research Ethics Committee Officer
University of the Western Cape*

PROVISIONAL REC NUMBER - 130416-049



CITY OF HARARE

HUMAN CAPITAL DEPARTMENT
TOWN HOUSE, HARARE, ZIMBABWE
POST OFFICE BOX 990
TELEPHONE 752979 / 753000

EMAIL: hrd@hararecity.co.zw
ADDRESS ALL CORRESPONDENCE TO THE HUMAN CAPITAL DIRECTOR

09 May 2019

University of the Western Cape
P. Bag X17
Bellville 7535
South Africa

Dear Tinotenda Chidhawu

RE: AUTHORITY TO UNDERTAKE RESEARCH: TINOTENDA CHIDHAWU

This letter serves as authority for Tinotenda Chidhawu to undertake a research study on the topic: **“THE RIGHT TO ADEQUATE HOUSING IN ZIMBABWE: A CONTEXTUAL AND JURISPRUDENTIAL ANATOMY OF PUBLIC HOUSING POLICY IMPLEMENTATION; HARARE (2000-2018).”**

The City of Harare has no financial obligation and neither shall it render any further assistance in the conduct of the research. The researcher is however requested to avail a soft and hard copy of the research to the undersigned so that residents of Harare can benefit out of it. The research should not be used for any other purpose other than the study purpose specified.

Yours faithfully

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WESTERN CAPE

RETIRED MAJOR M. MARARA
ACTING HUMAN CAPITAL DIRECTOR

Harare to achieve a WORLD CLASS CITY STATUS by 2025

Correspondence should not be addressed to individuals



ZIMBABWE

PUBLIC SERVICE COMMISSION
SOCIAL SECURITY CENTRE
P.O. BOX CY 440
Causeway
HARARE

Telephone: 700881-3/720234/793936/706066
Fax: 708771/705190

REF: A/65

21 May 2019

Mr. Tinotenda Chidhawu
2538 76th Street
Kuwadzana 4
Harare

RE: REQUEST TO CARRY OUT A PhD RESEARCH IN THE MINISTRY OF LOCAL GOVERNMENT, PUBLIC WORKS AND NATIONAL HOUSING: TINOTENDA CHIDHAWU

Reference is made to your letter dated 16 May 2019, on the above subject matter.

It is noted that you intend to carry out a PhD research in the Ministry of Local Government, Public Works and National Housing under the field research theme "The Right to Adequate Housing in Zimbabwe: A Contextual and Jurisprudential Anatomy of Public Housing Policy Implementation; Harare (2000-2018)". In this regard, you are seeking the Commission's clearance in order to carry out the research in the Ministry of Local Government, Public Works and National Housing.

Please be advised that the Commission has no objection to your request. You may proceed to approach Ministry for the clearance in the specific areas of your intended research.


AMBASSADOR J. WUTAWUNASHE
SECRETARY
PUBLIC SERVICE COMMISSION

CC: Chairman, Public Service Commission
Secretary for Local Government, Public Works and National Housing
Head, Human Resources Management and Development
General Manager, Conditions of Service
Manager, Research Planning and Skills Upgrading
Section Float



Ministry of Local Government, Public Works and National Housing

Telephone 263 4 707615

Fax 263 4 797706

REF: ADM/23/8



ZIMBABWE

Office of The Secretary
P. Bag 7706
Causeway,
Harare

14 June 2019

Mr Tinotenda Chidhawu
University of the Western Cape
Private Bag X17
Bellville 7535
Cape Town
South Africa


APPROVAL OF AUTHORITY TO UNDERTAKE ACADEMIC RESEARCH: MR TINOTENDA CHIDHAWU: UNIVERSITY OF WESTERN CAPE (UWC)

The above subject matter refers.

It is a pleasure to advise you that, the Head of Ministry, in his memorandum dated 26 March 2019, approved your application to undertake a field research on **Right to housing in Zimbabwe: A Contextual and jurisprudential anatomy of public housing policy implementation ; Harare (2000-2018)**.

Please be advised that, the research findings should not be subject to external consumption and must be solely used for academic purposes only. You are mandated to complete the Official Secrecy Act before commencement of the research project. In addition, the final copy of the research findings should be submitted to the Office of the Permanent Secretary upon completion.

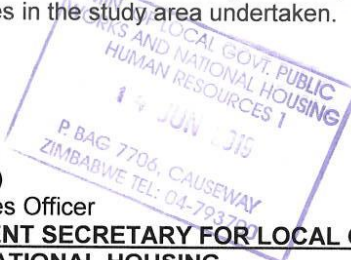
It is our hope that the research findings will help the Ministry in coming up with relevant strategies in the study area undertaken.


I. Chazuka (Miss)

Human Resources Officer

FOR: PERMANENT SECRETARY FOR LOCAL GOVERNMENT, PUBLIC WORKS AND NATIONAL HOUSING

Cc: Director, Housing and Social Amenities



DECLARATION OF SECRECY

In order that all Public servants understand their responsibilities in respect of official secrecy, the relevant extracts from those Acts which relate to official secrecy are tabled below.

a) Public Service Act - Chapter 271

First Schedule - acts of misconduct.

An officer shall be guilty of misconduct if:-

"11 Except in the discharge of his official duties or with the consent of the appropriate Minister and in accordance with such directions, if any, as the appropriate Minister may from time to time give him -

- a) he discloses information acquired in the course of such duties; or
- b) he uses for any purpose information gained by or conveyed to him through his employment in the Service, notwithstanding that he does not disclose such information; or
- c) he directly or indirectly, whether anonymously or otherwise makes any communication to the public in connection with any matter concerning the Service or any officer or department thereof, which is prejudicial to the Service;

Provided that the provisions of the sub-paragraph shall not apply in respect of a communication made with the authority or by an association recognised in terms of Section forty".

b) Official Secrets Act (Chapter 97)

This Act prohibits the wrongful disclosure of any official information and provides inter alia that any person in the employment of the state who -

- i) communicates information of a secret or confidential nature to any person other than a person who he is authorised to communicate it or a person to whom it is in the interests of the state his duty to communicate it;
- ii) uses information of a secret or confidential nature in his possession in any other manner prejudicial to the safety or interests of the State;
- iii) fails to take reasonable care of, or so conducts himself as to endanger the safety of any information of a secret or confidential nature;
- iv) retains for any purpose prejudicial to the safety or interest of the State any official document which he has no right to retain or which it is contrary to his duty to retain, or fails to comply with any directions lawfully given him with regard to the return or disposal of such document;

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- v) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code word or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code word or pass word issued for the used of some person other than himself, or on obtaining possession of any official documents by finding or otherwise neglects or fails to restore it to the person or authority by whom or for whose use it was issued;

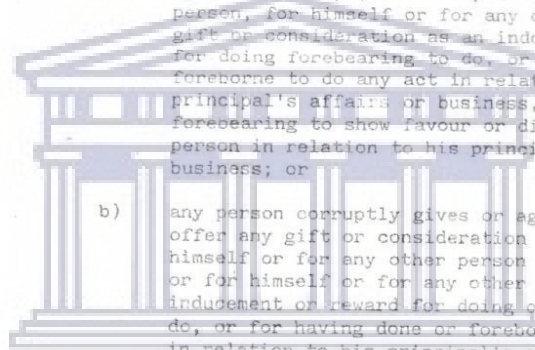
shall be guilty of an offence.

c) Prevention of Corruption Act (Chapter 70)

Section 3 of this Act reads:

- a) If any agent corruptly accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing forebearing to do, or for having done or foreborne to do any act in relation to his principal's affairs or business, or for showing or forebearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

- b) any person corruptly gives or agrees to give, or offer any gift or consideration to any agent for himself or for any other person as an inducements or for himself or for any other person as an inducement or reward for doing or forebearing to do, or for having done or foreborne to do any act in relation to his principal's affairs to business; or



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- c) any person knowingly gives to any agent, or if any agent knowingly uses, with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead his principal; or

- d) any agent, by collusive arrangement with the seller of goods or with any person engaging to render certain services, secretly offers any consideration to an agent in regard to the sale of the goods to the employment of his services;

he shall be guilty of corruption

I Chidhambaram Thiruvend acknowledge receipt of a copy of this paper on "Declaration of Secrecy"

Chidhambaram
SIGNED
P BAG 770 CAUSEWAY
ZIMBABWE TEL: 04-793700

WITNESS
064

DATE

14/06/2019

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