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# Illegal Settlers on Urban Land: Law and the Quest for Urban Development Sanitisation in Zimbabwe

GAMALIEL MABHODYERA<sup>1</sup> AND INNOCENT CHIRISA<sup>2</sup>

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## ABSTRACT

*Rapid urbanisation has tumbled over the past decades and has led to settlement in the urban sphere being regarded as illegal. The article contributes to the on-going debate on which should override the other, the legalisation of illegal settlements or the quest for urban sanitisation. The article understands sanitisation to mean development, especially that of attaining an upper middle-income economy. Different governments have undertaken different ways of solving urban settlement challenges. They have hinted that such settlements should comply with the law. The study focuses on how the government has responded in times of urban illegal settlement. The purpose of the research is to contribute to the stock of knowledge on how illegal settlements have increased over the past years and the solutions needed to address the issue thereafter. The article draws inferences also from the position of the law regarding illegal settlements.*

**Keywords:** illegal structures, urbanisation, illegality, violation, enforceability

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## INTRODUCTION

Unemployment has been common in most African countries, including Zimbabwe. The consequences of unemployment have reached unprecedented levels. The ordinary citizens are not spared. Poverty in rural areas has forced many people to relocate in a bid to seek a better living. The quest for greener pastures has forced people to settle on land without following due processes of law. In most cases, there is settling on prohibited or uninspected areas such as wetlands and council land. These settlements have become hubs of crime, and the abuse of drug and substances has become common. The Zimbabwean government, in observing the challenges, takes heed to address the problems by implementing policies and measures to curb the danger through the motto of creating an upper middle-income economy by 2030 (Zim Live, 2022). Such a vision involves the demolition of illegal structures. The results posed are irreparable, loss of property becomes common, and stress and anxiety will haunt the victims. In general, the most affected are children, women and the marginalised, among others. In developing countries, many the urban poor depend on daily incomes from informal work (Avetisyan, 2020). When aggrieved, the only recourse left available is to approach the courts of law for intervention. The only remedy or shield is to respect the law. Questions exist, are the laws of our land strong and fair enough to protect the right to shelter? It is agreed that urban innovation and development are core drivers for promoting the industrial, economic and social development of cities (Zhang and Cheng 2023).

The article draws from analysis that, in early 2000, the government of Zimbabwe made strides to implement measures to curb rapid urbanisation. This followed the implementation of what was called *Operation Murambatsvina* (Zimbabwe Human Rights Report, 2005). The policy or strategy involved the destruction of properties, buildings and living houses to restore order. This plan lured human rights powerheads to question government policies. It is argued that mass destruction is essential as it restores order, creates an environment that can attract investment and reduce the crime rate in the country and ensures a clean environment by the year 2030. For others, the widespread demolitions of houses, and mass evictions without notice, are a violation of human rights.

## **CONCEPTUAL FRAMEWORK**

Illegal settlement refers to a settlement that has developed without legal claims to the land or permission (Srinivas, 2013). The Government of Zimbabwe has tried to implement measures to respond, and such response has resulted in evictions and demolitions. It must be borne in mind that in Zimbabwe, the state owns the land, and such ownership of land has contributed to the manipulation of land to the detriment of the ordinary citizens (Communal Lands Act Chapter 20:04 of 1984). Over the years, the Government of Zimbabwe has tried to regularise some urban areas by providing title deeds (*The Sunday Mail*, 23 April, 2023), an example being Epworth. Regularisation is important in urban settlements and such a process includes re-planning that involves re-mapping for the informal settlements. There is also a need for land surveys, adopting international standards and modern designs. When these standards are developed, it is important to engage engineering services. However, for all this to be successful, there is need for settlement that involves agreement by the State and the inhabitants.

## **THEORIES UNDERPINNING URBAN DEVELOPMENT AND SETTLEMENT**

There are different types of theories underpinning the concept of urban settlement and development that have generally become acceptable.

Some of these theories include the Central Place Theory, the Concentric Zone Theory, the Von Thunen Model and the Radial Sector Theory. Pundits who have written pieces on this subject might use different terms and methodologies, yet all mean the same thing. They have been classified as traditional and modern theories. This study draws from Von Thunen's Model, hereinafter referred to as the VT Model. Von Thunen described a model that accounts for the spatial distribution of sites across a theoretical geographical area that would have varied rentgenerating capacities, dependent upon transportation costs and distance from a central site (Campbell, 1986). Von Thunen's Model was highly generalised and based on a series of simplifying assumptions (Krugman, 1996). Based on the VT Model, the space in which the model was framed was assumed to be an infinite or boundless, flat and featureless plane, over which climatic conditions and natural resources were uniformly distributed. The central attracting area was assumed to be a central market. Transportation to this central market was assumed to be by horse and cart.

This kind of model, though still important in other societies, has been referred to as primitive and not befitting modern standards.

Another kind of model behind urban settlement is the Concentric Zone Theory. This theory of urban land use assumes that a city grows by expanding outwards from a central area, radially, in concentric rings of development. The theory states that for urban settlement to be effective, there must be a central business district (CBD) which forms the centre of society. It also focuses on urban activity and the confluence of the city's transportation infrastructure. According to this model, for the city to grow, there must be a manufacturing district with some residential dwellings (Narain, 2014). In Zimbabwe, the expansion of Harare, the capital city, has been the topic for discussion. Harare, for example, has been growing, expanding outwards, resulting in the formation of other cities. An example of this result is the emergence of Mount Hampden. The emergence of this city has resulted in the construction of a new parliament building that undoubtedly is in tandem with the concentric zone model signifying that a city grows by expanding and creating a sub-city to decongest the populated areas.

Another model is the Weber's Theory of location published in 1909. This theory assumes that for the development of a new industry to take place, there must be cost location identification first (Westport, 1988). According to the theory of urban settlement, markets are fixed at certain points where transport is accessible for the transportation of goods (Michaels, 2012). Weber postulated that raw materials and markets would exert a 'pull' on the location of the industry through transport costs. Industries with a high material index would be pulled towards the raw material and those with a low material index would be pulled towards the market. Industrial location may be swayed by agglomeration economies. An example is the occurrence of Mbare in Harare and the Sakubva in Mutare. The study has shown that the marketplace at Mbare is fixed and one can easily get access to the CBD (Chara, 2023). This means that the way these towns and cities were modelled indicates post-results of Weber's Theory.

## **LITERATURE REVIEW**

The article discusses the existing literature underpinning the understanding of informal settlements through reviewing of experiences and impact of laws which govern land development. In order to fully understand the meaning of informal settlements, Data for the study has been collected from secondary sources and data was further retrieved from existing databases and already published scientific works which include Google scholar. Moreover, local newspapers and international news media provided information and data on some of practical day to day problems experienced by land developers in a bid to curb the expansion of illegal settlements. Literature review helps to determine whether the topic is worth studying, and it provides insight into ways in which the researcher can limit the scope to a needed area of inquiry (Creswell, 2014). In a bid to answer some of the debatable topics on whether the law allows for demolition of informal structures, this research design has suited to a context-specific understanding of organizational reality and allows researchers to explore and understand the meaning individuals or groups ascribe to a social or human problem (Creswell, 2009). Different terms have been used to describe the terms informal settlements which some can call slum, shantytown, squatter camp, favela, ghetto, bidonvilles, Katchi Abadi's, and Campa Mentos (Smit, Musango, Kovacic & Brent, 2017). In terms of the law, if something is deemed to be illegal, it simply means that which is not legal or allowed in terms of the law. Some have used the terms legitimacy or illegitimacy in reference to formal and informal settlements.

This study has laid down the pure definition and understanding of the term informal settlement which will make it easy to understand the extent and rate to which informal settlements have been in existence. Therefore, the definition of an —informal settlement for this research is a settlement that has been formed on a piece of land without official permission or approval, is inadequately serviced, with limited physical and social infrastructure acquired through informal arrangements made by residents or with the intervention of the local government (Nkoane, 2019)

## **RESEARCH METHODOLOGY**

This article draws its inspiration from the prevailing situation in Zimbabwe. The study covered areas such as Crowborough, Budiro and Kuwadzana in Harare

where evictions and demolition of illegal structures was carried out. Data was collected through the courts on the position of the law on these evictions and demolitions. Insights from focus group discussions (FGDs), interviews and key informant interviews focusing on urban governance, consolidated the whole research proposal.

### **CASE STUDY: THE LOOK ON ZIMBABWE'S SITUATION**

Urbanisation has been defined as a process prompted by an increase in the proportion of people living in towns and cities because of people's movement from rural areas to urban areas (Dociu and Dunarintu, 2012). In early 2000, the Government of Zimbabwe implemented what was called the Fast Track Land Reform Programme. The ultimate objective of the programme was to accelerate both land acquisition and land redistribution, favouring black Zimbabweans. Conflicts arose between blacks and white and the cases resulted in judicial interventions. The fast-track resettlement programme is officially viewed as a component of the overall National Land Reform Programme. The failure of a land distribution process that was fair, resulted in urbanisation reaching unprecedented levels and people occupying lands illegally, and in the eyes of the government, there was need to curb such illegality by implementing laws and policies that govern settlement.

It is reported that mass demolitions of illegal structures are common in Zimbabwe. It was reported in 2020, by the Harare Residents Trust (HRT, 2020), a local watchdog, that City of Harare, with the help of the police, armed with demolition orders, razed a record 150 houses, rendering more than 800 people homeless (Mawire, 2020). These demolitions affected communities like Budiro, a high-density suburb in Harare. In 2022, the Harare City Council demolished 15 houses. It was reported that those affected had settled illegally on council land. It is argued that the victims were to blame for defying directives not to build.

### ***THE LAW: A CONFLICT BETWEEN SUSTAINABLE DEVELOPMENT AND THE RIGHT TO HOUSING***

The Constitution of Zimbabwe is the supreme law and any law or practice inconsistent with it is invalid (Zimbabwean 2013 Constitution). The law has never allowed demolitions without a court directive or court order. Section 74 of the Constitution states the government must respect the right to housing by not arbitrarily evicting people from their homes. In 2022, after the demolition of illegal houses in Budiro, it was reported that a cooperative spearheaded the mass demolition claiming that the land on which the structures were built was theirs (Mbiba, 2022). The same can be said of Crowborough, a high-density suburb in the city of Harare located 20km west of Harare. There were evictions that resulted in the displacement of many households. To that effect, children, women and the marginalised are the ones in danger. Such demolitions come at a higher. The government must stop any forced evictions done without due process. What are the responsibilities of councils and local authorities? Provincial, metropolitan councils and local authorities must be guided by section 28 of the constitution which states that government and its agencies must enable every person to have access to adequate shelter. What should be done before a demolition?

### ***WHETHER OR NOT THE RIGHT TO SHELTER IS A FUNDAMENTAL RIGHT?***

The Constitution of Zimbabwe provides for the right to shelter. Some argue that no law in Zimbabwe outlines the right to shelter (Madhuku, 2010). Those in support of the existence of the right to shelter provision usually cite section 28 of the 2013 Constitution, (Tsabora, 2016). It requires the state and government agencies to ensure adequate shelter for all. There is a national housing crisis in Zimbabwe that is characterised by an acute shortage of adequate housing, mass forced evictions and unfair discrimination in the allocation of housing facilities by government. There is therefore an existing need to compel government to comply with and fulfil its international legal obligations relating to the right of every person to have access to adequate housing (Mavedzenge, 2018). The constitution of Zimbabwe, which is the supreme law does not expressly guarantee the right to adequate housing, yet the country is bedevilled with an acute national housing crisis (Mavedzenge, 2020). It therefore can be argued that the topic of the human right to property has received intertwined perceptions among activists of human rights. Despite, the constitution directly not stating out the right to shelter, an interpretation of the objectives of the

constitution can ascertain that it cannot be interpreted as a standalone right as it can also encompass in it the right to life. Thus, we would argue that, in the event of government or municipal intervention in relation to trying to regulate or control occupation of homes, however rudimentary, overcrowded and problematic in terms of health and safety considerations, that each of the occupants either as individuals or as a family in such accommodation should be protected, albeit temporarily, by section 74 of the Constitution because it is their home (Stewart, 2019).

Evictions in Zimbabwe have been justified through the inclusion of section 4 of the Communal Land Acts, which surrenders communal land to the president of the country. In Zimbabwe, there have been evictions and demolitions by the government. The government then cites the laws of the land, for example, the use of section 86 of the constitution which limits fundamental rights (Constitution of Zimbabwe 2013). This section provides for limitation of rights, but such limitation must be fair, reasonable and in the public interest. Section 72 of the Constitution of Zimbabwe empowers the government to compulsorily acquire land without compensation to the affected and further states that no person may approach the courts for an order of compensation. What it means is that, if one's land is acquired compulsorily one does not have *locus standi* in the courts of law. *Locus standi* refers to the right to be heard in a court of law. These are means of justifying the disrespect for the rights of the people. Such justification means the government can spearhead the demolition process to create order and a peaceful environment, in line with sustainable development goals.

### ***SOUTH AFRICA***

Matsuri and Myneni (2020) argue that out of desperation, poor people are forced to construct their dwellings using any materials and skills they have, but end up residing in communities and circumstances that make them susceptible to socio-ecological risks. It has been reported that the continued presence and growth of informal settlements, most of them situated in the biggest cities in the country, with little or no access to services and infrastructure is a common feature in South Africa (Chenwi, 2012). Following the State of the Cities Report, the Development Action Group noted in 2020, that 2.4 million households live in informal settlements in the country. UN-Habitat (2013) has also observed that for every 10 urban homes, three

are slum households. The Department of Human Settlements estimates stood at 1 675 000 households living in freestanding informal settlements and 525 000 households residing in backyards, farms and communal land (Tissington, 2020). From 2011 to 2020, it is reported there has been an increase in the number of informal settlements in South Africa (*ibid.*). The government's estimates stood at 2 700 informal settlements, with approximately 3.2 million households living in them (Ramaphosa, 2020). It is, however, believed that these figures could be higher. The government of South Africa has tried to implement policies to protect the rights of the citizens in the aftermath of eviction or demolition, through providence of compensation.

Section 25 of the South African Constitution is instructive. It provides that no person can be deprived of their property and also reinforces the idea of compensation, which means the law has been crafted in a way that respects human fundamental rights (Constitution of South Africa, 1996). Therefore, citizens should not disobey the laws and complain that such deprivation or removal is unlawful and a violation of people's liberties. The state must provide a clean, sustainable environment. But in the event of such policies being implemented, there is always need to respect human shelter. It forms part of the right to live in decently.

The Zimbabwean government has made strides in addressing the challenges. A new strategy has been adopted that involves the legalisation of illegal settling. The President of Zimbabwe in 2023 gave title deeds to Epworth residents, a high-density suburb in Harare (Herald, April 22, 2023). For some, it is merely a political gimmick, not a development goal. Local authorities should strive to create a conducive environment for development. Those who settle on land illegally must face the wrath of the law.

## **CHINA**

The paper also reflects the position of China with regards to informal settlements. Informal settlements are a product of rapid urbanization in China, in which large amount of rural land is expropriated by the government for urban development (Yang and Weng 2022). This is because, informal settlements in China are influenced by an urban – rural dual land system in which the collective land

ownership system means that villagers are ambiguous in their approach to land development. According to China's constitution, the form of land ownership in China is socialist public ownership, implementing two forms of property rights: state ownership and collective ownership. Land in urban areas is owned by the state, while rural land is collectively owned. This gives China two different bundles of property rights, with full property rights for state-owned land in the cities and incomplete property rights for collective land in the countryside. (Pan, 2021). What is common is to the effect that, the leading factor for informal or illegal settlements in developed or developing countries is influence of urban migration. Informal settlements in China are further described as mainly settlements that violate urban and rural planning laws and regulations, are located in built-up areas and peripheral areas of urban areas and are generated by a variety of subjects such as government, institutions, enterprises, urban residents, and rural areas (Zhang, 2011). In the future, government departments should focus on policies, rules and regulations that are beneficial to the advancement of the villagers's self-regeneration of informal settlements. The greatest move by China in land and urban development is by improving or development of informal settlements a move which has been celebrated by majority informal dwellers.

## **RESULTS**

The results of the paper present a fine-grained picture on the relationship of illegal settlement in Zimbabwe and the position of the legal frameworks governing land and housing. While settlement informality is an issue in Southern Africa Development Community (SADC), it is a common phenomenon across the globe (Avis, 2016). In principle, history has brought us to a moment when the greatest part of humanity has decided to reside in conducive places open for development. For Zimbabwe, it has long been those building materials, financing models, land and housing markets, driving unaffordability (Chaeruka and Munzwa,). The quest for general survival has contributed to rural – urban migration which has increased the volume of illegal settlements by a bigger margin. The mechanisms of government monopoly over land are justified by the goal to develop through urban development. The results of the paper have shown that, the major reason for informal settlements has been rural -urban movement which has resulted in the creation of illegal settlements. Although there is no precise provision of the law which correctly spelt out the right to shelter, the law however forbids against

arbitrary eviction without a court order. The question on whether informal settlements should be demolished is something which have received widespread universal attention. International instruments like the African Charter on human and people's rights, the Universal Declaration of human rights advice member states to include into its own laws the fundamental guarantee to the right to shelter. The results of the paper also suggest that, developing countries like Zimbabwe should adopt policies that are used by other developed nations who already have had a goal to develop and transform informal settlements to be world class settlements. The government of Zimbabwe should help in striking a balance between the right to shelter and existence of illegal structures.

## **CONCLUSION**

The existence of informal settlements in Zimbabwe has not been relatively new in Zimbabwe. What has proved to be new is the rate to which it grew after the attainment of Zimbabwe's independence in 1980. The navigation of transformative trajectory has made it difficult to separate informal settlements from formally approved ones. The article has established an interface between the development mantra and the quest to follow rules and regulations imposed to govern urban planning and development. The article has chronicled, that the major reason for illegal settlement is the prolific movement of people from rural to urban areas. Section 28 of the Constitution of Zimbabwe provides that state institutions must take appropriate measures to ensure every person access to shelter. It has been shown however that, a plain reading and interpretation of Chapter 4 of the fundamental rights can ascertain that, the constitution has been silent with regards to the right to shelter to be a fundamental right.

The article has further advocated that whilst it is unfair to demolish property without compensation, the continuous relaxation of laws in furtherance of illegal settlements has been the major stumbling block to sustainable development. The law in terms of section 74 guides against demolition of property, although an interpretation of section 86 of the constitution which limits rights and freedoms can further weaken the plain meaning of section 74. The responsible ministries of finance, government and local housing, city councils, land and development experts should all have a hand towards addressing the existence of informal settlements. Such a balance should respect the human right to shelter whilst bearing

in mind on how best a conducive environment can be created which can be a tower to trade and investment.

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