Chapter 4:

Land Valuation and Taxation

by

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There has been a land market in Zambia for centuries, just as there has been in every country in the world. Land and the right to use it in specific ways and for specific times are exchanged in many ways, each reflecting custom, local conditions, expected demand for what can be produced with land, and power relationships. In most societies, people get access to land on which to build or to farm in various ways. Some involve a high initial or threshold cost and little or no recurring cost. An example would be to buy a house with freehold title in an area that does not have taxes or rates. Other access to land may have a very low initial or threshold cost but relatively high periodic costs if continued access is desired. In some countries, almost everyone knows from experience and observation whether, where, and on what terms, to obtain land on which to live, work, or both. In other countries, people may be familiar with only one or two ways in which they could obtain access to land. Even in countries that declare the private sale or rental of land illegal, land or housing can usually be obtained in exchange for something.

In customary land tenure areas, access may require the consent of a headman or chief, which is often obtained more easily if one is a relative of families already there. In areas of former European settlement, the market is often more visible, and access available to persons with enough money, regardless of family or other personal characteristics. Even in areas in which the government forbids the private sale or rental of land and housing, market processes work—though with limitations and in ways that not everyone can utilize. Access to housing is sometimes part of an employment contract. Access to land or housing may be bestowed as a favor in exchange for support of a politician or party, or as a reward for superior performance in sports or other activities. Where functionaries decide who gets access to land or housing, access to better land or housing may require payment of a bribe in money, scarce goods, or services.

Much of the genius of modern developed economies is that their societies offer a high degree of personal liberty. They make it possible for almost everyone to choose among several ways in which they could get the use of various kinds of land, in different places, in varying amounts according to their own means and productivity. These societies have prospered largely because their land markets meet five standards of justice and efficiency:

(1) Everyone, not just a few powerful "insiders," can get access to land at a reasonable initial and recurring cost.

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Those who invest money and effort in improving land are allowed to collect and enjoy the fruits of their effort.

Society, usually through government, provides or finances the provision of roads, schools, and other services and productive infrastructure that most people cannot efficiently produce by and for themselves.

Recurring costs, usually in the form of taxes and interest on borrowed money, are high enough that few people can afford to speculate or control land without putting it to productive use.

Those who want to use land can identify and choose an available parcel and acquire secure use rights to it quickly, at minimal cost other than what they agree to pay to the person who gives up the right to use the land (i.e., search and transactions costs are small).

In an efficient market, people needing land for productive use can identify appropriate parcels, negotiate a price, and complete the transfer with little cost in time, energy, or money other than the amount paid to the person or entity from whom the land is obtained. In Zambia, identifying available parcels is neither easy nor inexpensive, negotiations are difficult, and heavy transfer taxes and administrative deficiencies make transfers slow and costly. Policy changes would greatly reduce the cost of finding and obtaining land; the supply could also be increased by funding council and private projects to service and sell sites.

This chapter reviews the land market in Zambia, to see how it measures up to the above standards. It then considers proposed alternative policy actions to improve its performance, considering both Zambian experience and that of other countries with such policies. In particular, the theory and practice of land valuation, including transfer taxes, annual "rates" on improvements, and ground rents, are addressed. Draft legislative changes are now under discussion, and this chapter includes an analysis of these proposals and suggestions to make them less ambiguous and more effective. Section II looks at transactions costs associated with real estate. Sections III and IV analyze taxation through rates and valuations. Section V covers ground rents as currently applied in Zambia. Section VI then summarizes and analyzes the relevant proposals in draft reform laws currently circulating. Section VII will address the proposed land development fund, an idea introduced at the July 1993 land conference (see chapter 1) and warmly endorsed by the participants. And section VIII will close with conclusions and recommendations.

II. Transfer taxes, fees, and other transactions costs

A. Transfer tax

The Property Transfer Tax Act, No. 12 of 1984, created a transfer duty. At the July 1993 land conference (see chapter 1), and in many interviews, there was a consensus that the present 7.5 percent tax on land transfers, supposedly charged on the actual market price, was unreasonably high and
curtailed transfers.' Assertions were also made that parties have been falsely underdeclaring the actual price at which leaseholds or other interests are changing hands. Theoretically, this tax should be eliminated or reduced to a nominal level, both to encourage more frequent transactions in land and improvements and to remove the present powerful incentive to falsely declare a transfer price below the real price charged and paid.

If accompanied by an adequate educational campaign, it is likely that revenues would actually rise if this rate were to be cut in half. For that to happen, buyers, sellers, and functionaries would have to be informed the government is serious about enforcement of tax collection and accurate reporting of the actual sale price. There are a number of ways to encourage honesty. One is to provide by law that in the event of any property acquisition by government, the purchase price (or compensation if expropriated) may not exceed the amount declared as the purchase price, adjusted for inflation. Another method, used in various Latin American countries, is to forbid banks to lend more than a fraction (say 60 percent) of the declared purchase price when the property is mortgaged to the bank in order to guarantee repayment (see figure 4.1). Fines or penalties represent a third option.

Figure 4.1: Central American experience with tax declarations, bank credit, and compensation for land expropriated in land reforms

Legal requirements linking value declared for tax purposes to bank credit and to compensation in the event of expropriations are common in Central America. For example, in the 1970s, Salvadoran banks still made loans to commercial farmers at interest rates below the expected rate of inflation. In 1976 and 1977, landowners were required to declare the value of their lands for annual property tax purposes. The farms were taxed at a rate of 1 percent a year, on the value declared, with the revenues going mostly to finance road construction and maintenance. When farms larger than 500 hectares were expropriated in the land reform of 1980, it turned out that about 90 percent of the owners had declared values for tax purposes that were clearly less than the market value of the land. On the other hand, about 10 percent of the large farms had been declared at more than their actual market value. In most cases, this appears to have happened because the owners expected to obtain bank loans with the land as collateral. By paying 1 percent a year on inflated declared values, they could increase the amount of money they could borrow at an expected negative real rate of interest on the order of 10 percent.

Since the beneficiaries were supposed to repay, over 30 years, whatever amount of compensation had been paid to the former owners, false overdeclaration years before also meant that the land reform beneficiaries might have to pay more than the land was worth. In practice, however, inflation has cut the real value of prices set at the time of expropriation, and beneficiaries are not actually being asked to pay more than the land is worth, even when a former owner had overdeclared its value in 1976/77.


In any event, quite apart from the temptation to declare falsely the price at which leaseholds or improvements change hands, the transfer tax is a poor way to recover government's expenditures to provide access and services in land. The first transfer, from government or traditional authority, is not subjected to the transfer tax, and if the property remains in the hands of the first transferee, no transfer tax is ever collected. It would be far more equitable to lower the rate of the transfer tax, while creating and enforcing a significant annual tax or ground rent.

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2 It is in fact quite difficult to determine whether the transfer tax has curtailed transfers. A 7.5 percent transfer fee would not be a serious constraint if landholders were allowed to greatly discount or underreport the purchase or sale price.
B. Incidence and shifting of the transfer tax

Zambian law and practice state that the transfer tax is supposed to be paid by the seller. However, the estate agents and functionaries interviewed observed that, in practice, the buyer pays it along with other costs; Zambian real estate has been a seller's market of late, so it appears that sellers can sufficiently raise their asking prices to cover the transfer tax.

Regardless of what the statutes say, a transfer tax actually affects both parties. To the buyer, it is part of the amount he or she must pay in order to acquire the property. To the seller, it is an amount that the buyer is willing to pay but which the seller does not receive. Both share in the tax burden; how much each "pays" depends on their relative bargaining power, which depends largely on how many other people are seeking such properties to buy and how many similar properties are currently for sale. If demand exceeds supply, prices will tend to rise and vice versa.

To analyze the burden of the transfer tax, one must suppose a different world, in which there is no transfer tax but government obtains the same revenue in a more neutral way, such as a value-added tax. In that hypothetical world, the actual market price might be higher or lower than the market prices in the real world (where a transfer tax is charged) depending on the other forces operating on supply and demand at the moment. Economists simply do not have a reliable way to determine the actual incidence of this tax, even in developed countries with excellent statistical data (Musgrave 1960).

C. Revenue yield and tax evasion

According to informal sources, buyer and seller frequently agree to falsely declare the purchase price to avoid paying an "excessively" high transfer tax (7.5 percent in 1993). The honest buyer and seller are thus penalized, paying much more tax on the transfer than others who buy and sell property of the same market value, but who understate the price.

The Minister of Finance announced, in the 1994 budget message (p. 14), that the government intends to reduce the Property Transfer Tax rate to 2.5 percent, to amend the Property Transfer Tax Act so that the commissioner may use property assessments by the Government Valuation Department, and to amend the Land Conversion of Titles Act revoking the provision stipulating that land has no value. This proposed 2.5 percent tax should be reduced further and perhaps even replaced by a capital gains tax. This will encourage landholders to sell more quickly when their own needs for land diminish and help the economy adjust faster to economic changes. Even so, Zambia's real estate market and institutions will still suffer from sluggish titling and registry services. According to the 1994 budget message (p. 10), the government will take an initiative in 1994 to approve terms of reference for ways of decentralizing to the district-council level and for improving the registration of land transfers and the collection of fees. (See chapter 2 for an assessment of these proposals).

The transfer tax is not the only cost in real estate transactions in Zambia. There are also user fees to be paid to the registry and the costs of survey. Attorney fees and a commission charged by an

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3 In comparison, the transfer tax in the United States is only 2 per 1,000 (0.2 percent). The amount of the tax is recorded on the actual record of the transfer, which is open to public inspection. Thus, appraisers, real estate tax assessors, and the public in general can find out rather easily the price at which properties are actually bought and sold.
estate agent may also be involved. All of these costs separate the amount paid by the buyer from the amount received by the seller and make the land market less agile, slowing economic development.

**D. Registration fees or stamp duty**

The regulations contain a number of prescribed fees set in colonial times that, while generating revenues, have become a nuisance as monetary values have eroded. For example, the stamp duty applied to real estate transfers is a nominal rate held over from colonial times. The Zambian 1994 budget message announced its abolition as of midnight, 28 January 1994.

**E. Planning department scrutiny fees**

All construction in Zambia, other than on agricultural holdings, requires a permit issued by the relevant city or council, and a scrutiny fee is normally charged for this review. The fees are based on an estimated minimum development investment per square meter and vary among councils. The current scrutiny fee for Lusaka is 0.25 percent. Thus a 100 square meter building costing K115,000 per square meter, or K11.5 million, would require a scrutiny fee of K28,750. A scrutiny fee of K40,000 is charged in Lusaka for the review of subdivision and consolidation.

Various other problems are leftovers from the previous government of Zambia. For instance, there is still a widely shared reluctance to recognize the fact that land values change rapidly and by large amounts when product markets or other relevant data change. Some who write draft legislation regularly propose legal language that is ambiguous. The proposed reforms in the Land Titles Act and the Land Registration Act are good examples of positive draft laws that need sharper focus and clarification.

The problems of the land market will not end with better laws. Those land laws are administered by government entities, some of which have employees who are not dedicated to minimizing cost and maximizing service to taxpayers.

From inertia, tradition, political concerns, or other causes, the Republic of Zambia issues 99-year negotiable leaseholds instead of freehold titles. Freehold tenure would be no more secure, as the Second Republic showed when the president simply decreed that all freehold titles must be converted into 99-year leases. More worrisome is that neither leaseholders nor hypothetical freeholders have very firm guarantees against expropriation or other actions by the state that may take their property without fair prior compensation. The best estimates available so far indicate that recording a sale of a leasehold interest may take several days; seeking, obtaining, and recording a new leasehold with the consent of a tribal chief may take several months or even years (see chapter 2). The actual cost of buying or subleasing land and improvements includes the explicit taxes and fees plus the value of the time of the interested parties (or their attorneys or other agents). Based on the above-mentioned time requirements, transfer costs would appear to be considerable.

**F. Revenues of the Lands Department**

The GOZ collects money from persons to whom state land has been allocated under three headings: registry fees, state consent fees, and annual ground rents. (There was formerly a stamp tax as well, but it was abolished in early 1994.) Table 4.1 shows that the revenues obtained from these sources have varied sharply over time in current kwacha terms. Because the year-to-year changes were
somewhat arbitrary and because the rate of inflation itself varied sharply from year to year, the revenue in real terms has been highly variable. Making matters more confusing, revenues depended on the level of transfer activity as much as on the tax rates themselves. Consent and registry fees depended on the number of transfers and new allocations recorded each year. Ground rents, however, were so low that many leaseholders failed to pay them. The main source of actual receipts was generated by registry demands that ground rents be paid up to date before a transfer would be recorded. Thus revenues in a given year depended on how many property transfers were recorded that year rather than on the rate or amount of ground rent levied.

At well under US$1 million a year, total receipts from the three forms of revenue do not begin to cover the costs of the MOL, much less make a contribution to government's investment in services and infrastructure on State Land. Equally telling, well over half of the total comes from the Registry fee levied on transfers recorded. The 1994 fee is 1 percent of declared value, and many transactions are underdeclared, probably in order to evade the property transfer tax (see above).

The existing statutes state that persons holding state lands are supposed to pay a ground rent of 4.5 percent on the value of the land, but the land board that is supposed to oversee the process of setting and collecting ground rents through the Lands Department has not met for several years. Since ground rent revenues have been running under 40 percent of the registry fee just on land transferred, it is obvious that the ground rents in place are not remotely near the theoretical 4.5 percent of land values that the statutes direct. All interviewees agreed that ground rents should be raised substantially.

As will be seen shortly, the Hammar report provided by Swedish technical assistance recommends setting ground rent levels at around 5 percent of market values of land for residential stands, and comparable levels for farm, commercial, and industrial parcels. That would be consistent with the 4.5 percent of present law, and would certainly go a long way to help the GOZ cover its budget for land development. The far more difficult problem involves the task of assessing market value given the lack of current information on land prices, land market restrictions that distort prices, high demand for newly opened stands for which land prices are difficult to estimate, and the limited supply of qualified assessors in the private and public sectors.

Further study is needed to determine the impact of a significant ground rent on different types of farms and farmers, to design an automatic updating of rents for inflation (including indexing back rents due so that the amounts actually paid at least reflect the real value of the rents when originally due), and to design a systematic program of adjusting ground rents to reflect fully the actual investments made in roads and services that increase the market value of land. Some progress has been made in computerizing the records of the Lands Department so that when leaseholders visit the office to pay, employees can inform the client immediately how much is owed. However, study is urgently needed to design and implement a system that will induce leaseholders to pay annually when due, rather than only if and when they decide to transfer the land.
Table 4.1: Analysis of Lands Department revenue, Zambia, 1985 to 1992

<table>
<thead>
<tr>
<th>Year</th>
<th>Ground rents</th>
<th>%</th>
<th>Deeds registry</th>
<th>%</th>
<th>State consents</th>
<th>%</th>
<th>Total</th>
<th>Nominal change (%)</th>
<th>Inflation (%)</th>
<th>Real revenue change (%)</th>
<th>Exchange rate US$1 = K</th>
<th>Devaluation rate (%)</th>
<th>Total revenue (US$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1985</td>
<td>566,980</td>
<td>30</td>
<td>1,084,440</td>
<td>58</td>
<td>211,123</td>
<td>11</td>
<td>1,862,543</td>
<td>5.70</td>
<td>157.00</td>
<td>326,762</td>
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<td>326,762</td>
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<tr>
<td>1986</td>
<td>807,281</td>
<td>26</td>
<td>2,028,388</td>
<td>65</td>
<td>306,445</td>
<td>10</td>
<td>3,142,114</td>
<td>69</td>
<td>55</td>
<td>3142,114</td>
<td>12.71</td>
<td>123.00</td>
<td>247,216</td>
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<tr>
<td>1987</td>
<td>1,778,407</td>
<td>32</td>
<td>3,540,247</td>
<td>63</td>
<td>303,640</td>
<td>5</td>
<td>5,622,294</td>
<td>79</td>
<td>47</td>
<td>5,622,294</td>
<td>8.69</td>
<td>(46.30)</td>
<td>646,984</td>
</tr>
<tr>
<td>1988</td>
<td>1,531,586</td>
<td>20</td>
<td>5,281,878</td>
<td>69</td>
<td>833,396</td>
<td>11</td>
<td>7,646,860</td>
<td>36</td>
<td>54</td>
<td>7,646,860</td>
<td>8.26</td>
<td>(5.20)</td>
<td>925,770</td>
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<tr>
<td>1989</td>
<td>1,764,175</td>
<td>12</td>
<td>11,383,409</td>
<td>79</td>
<td>1,251,000</td>
<td>9</td>
<td>14,398,584</td>
<td>128</td>
<td>(40)</td>
<td>14,398,584</td>
<td>13.84</td>
<td>67.60</td>
<td>1,040,360</td>
</tr>
<tr>
<td>1990</td>
<td>1,587,615</td>
<td>7</td>
<td>18,581,474</td>
<td>86</td>
<td>1,481,855</td>
<td>7</td>
<td>21,650,945</td>
<td>50</td>
<td>110</td>
<td>21,650,945</td>
<td>31.40</td>
<td>126.90</td>
<td>689,521</td>
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<td>1991</td>
<td>17,863,610</td>
<td>37</td>
<td>26,735,515</td>
<td>56</td>
<td>3,165,962</td>
<td>7</td>
<td>47,765,087</td>
<td>121</td>
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<td>47,765,087</td>
<td>64.63</td>
<td>105.80</td>
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<td>1992</td>
<td>39,882,240</td>
<td>27</td>
<td>96,315,124</td>
<td>65</td>
<td>12,144,958</td>
<td>8</td>
<td>148,342,322</td>
<td>211</td>
<td>200</td>
<td>148,342,322</td>
<td>172.21</td>
<td>166.50</td>
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<tr>
<td>Totals</td>
<td>65,781,895</td>
<td>26</td>
<td>164,950,475</td>
<td>65</td>
<td>19,698,379</td>
<td>8</td>
<td>250,430,749</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
</tbody>
</table>

a. Percent of total annual revenue.
b. Percent change in the CPI during previous year.
III. Taxation of rural and urban improvements ("rates")

A. Form of taxation

Rates and ground rents are both forms of recurring annual costs imposed on the holders or users of real estate. They are quite distinct from consent fees, transfer taxes, and scrutiny fees, which are paid only when land is transferred or when a leaseholder seeks a building permit.

In Zambia, rates are applied to the estimated value of improvements only, while ground rents are applied to the value of the land as such, not including the value of any improvements. Revenues generated by rates accrue to local government (city, municipal, and district councils), while ground rents are paid to the MOL of the central government. Neither applies to land still under customary tenure. Rates apply to the rateable areas of each district or city—referring, essentially, to the urban area, but some agricultural land near to or within the urban perimeter may be included. The fact that rates are applied only to improvements, rather than to market value of land plus improvements, is problematic. A number of economists, from Henry George to the present, consider this the wrong approach to taxation. They reason it would be far better to exempt improvements (or at least newly built ones) and apply a heavy annual tax on the site value of the land under them, thereby capturing some of the market value that results from government expenditures on infrastructure. As a result of inflation, poor administration, and lack of interest, neither the rate nor the ground rent generates significant revenue—nor has any other economic impact at present.

The current legal and institutional framework for setting and collecting rates is inadequate, but improving, particularly through the work of the Government Valuation Department. The legal and institutional framework for setting and collecting ground rents on urban and rural lands is worse. Government is aware of the problem, and officials have stated their intention to address it, but no improvement is yet in sight. Far less clear is the present and potential revenue generation of rates and ground rents, where little hard information is available. Research is needed to determine the revenues available to traditional authorities, and their relationship, if any, to land allocations and land uses.

B. Speculation

Speculators are investors who buy undeveloped land and hold it without making improvements, hoping to resell it at a higher price in the future. Their activity does not create productive employment for anyone except the speculator; their returns depend on their assessment of market information and the risks they bear in the event that higher land prices do not materialize. Speculators favor any tax that does not apply to the market value of undeveloped land. Because that market value depends almost entirely on location, or on site-specific soil and climate factors, it is often

Zambia has 3 large cities (Lusaka, Ndola, and Kitwe) and 9 smaller cities. The rest of the country is divided among some 60 districts. Each of these entities has an elected city or district council, which sets policy, and council employees, who implement it. Below the district council, in communal areas, some authority rests in tribal chiefs, who in turn oversee village headmen.

Henry George, an American whose views appeared in Progress and Poverty about 1880, believed so much revenue could be obtained by taxing site values that all other taxes, including the income tax, could be repealed. The movement he founded was thus known as the Single Tax Movement. Some cities in the United States and other English-speaking countries have adopted lower rates on improvements than on land values, and a few exempt new construction completely for a certain time.
called site value, meaning the land has value simply because of its location. A heavy tax on land alone, economists argue, will induce owners to invest as needed to improve land quality to its "highest and best use," given its location, attributes, and amenities. Skeptics respond that governments seldom if ever have the technical ability or the political courage to impose taxes high enough to affect landowners (or leaseholders) (Strasma et al. 1987).

This argument is less relevant to Zambia, where the government itself is the legal owner of land and allows individuals and companies to use it on the basis of leaseholdings. Thus as landlord, the government collects rent rather than land tax as such. It bases the rent on the value of the land, since the improvements were generally put in by the lessees. Since the basic model lease is for 99 years, it is implicitly assumed that the lessee's investment will be recovered long before the lease expires.

C. Setting rates

The level of rates in Zambia is determined exactly as in the United States or Canada, except the value of the site or land beneath improvements is theoretically excluded from the taxable value. Each house, shop, factory, or other permanent part of a building is assessed a taxable value. The city or council decides its budget, then subtracts revenues it expects to collect through other taxes, licenses, and fees. The remainder—the amount to be raised from the rates—is divided by the total rateable values for the city or district, giving the actual tax rate to be applied to the assessed value of each property. Lusaka is about three years behind in its accounts, and 1994 figures could not be located for this report. The model that follows in table 4.2 is, therefore, hypothetical.

| Table 4.2: Hypothetical example of rate determination in a city (kwacha values in billions) |
| (A) Budgeted expenditure for 1994 | K100.2 |
| (B) Other revenues expected | - 20.2 |
| (C) Amount needed from rates (A-B) | K80.0 |
| (D) Total value of rateable improvements in the city | K8,000 |
| (E) Tax rate required to generate the revenues needed for the budget (C _ D) | 1 %, or 1 ngwee in the kwacha |

By law, every city or district is supposed to reevaluate all rateable property every five years. In addition, new buildings constructed or parcels left off the rates list are supposed to be added in a supplementary roll. The owners of these properties pay the same rate that would have been applied had they been valued at the time of the last general roll rather than at the time the supplementary roll properties are actually evaluated. Inflation in Zambia has left the values assigned rateable property far below land market levels. When the next five-year revaluation is performed, it would not be unusual for the total market value of privately held land and improvements to rise substantially. In Lusaka, for example, a revaluation was just completed. The value in kwacha assigned to a typical house rose by about 11 times over the five-year period (1100 percent).
Urban services in Lusaka and other cities appear deficient in many respects, justifying the need for additional revenue. Yet, when the values of improvements are raised to adjust for inflation, Zambian taxpayers seem to expect the tax rate to drop, maintaining a constant tax bill in real terms. When a city tries to update the values without a significant drop in the rate, and without negotiations with ratepayers to win acceptance, the result is likely to produce a taxpayer revolt, as happened in Lusaka in 1993. The municipal councils and the public do not appear to understand the rate-setting process.

In practice, urban rates in Zambia fall far short of their revenue potential. First, notices are not always delivered to taxpayers, and second, there are no real penalties for late payment. The one effective collection method does not even involve the municipality; i.e., the registrar requires that persons seeking to record a property transfer bring in clearances, or certificates of payment of both rates and ground rents. As a rule, they do not, but the tax is so low that the entire arrears can be paid from pocket change. Actual revenues in any given year thus depend much more on the level of real estate transfer activity than on the total values of rateable improvements or the rate of the levy. Revenues have reportedly risen somewhat in the last two years following computerization of rates due. The MOL (ground rents) and some council offices (rates) are now able to determine instantly how much is owed by someone seeking a tax clearance.

In contrast with Zambian laxness, the United States and a few other countries have an enforcement mechanism for tax collection that is simple and extremely effective. Any property for which the tax is not paid during two years is auctioned off to the highest bidder. The successful bidder is delivered a new property title, and the occupant is evicted. In practice, almost all delinquent taxpayers manage to pay up the back taxes plus interest owed within a day or two before the property is to be auctioned.

As far as could be determined, there are no penalties for late payment in Zambia, no indexing for inflation, or interest on arrears. With inflation in 1993 of approximately 100 percent, any rational taxpayer would postpone payment. The law effecting penalties on tardy payments appears drastic enough. The council may obtain a court order for distraint, which entitles it to seize a building and remove enough furniture or other contents to cover back taxes. It may also auction the building, and if the winning bid exceeds taxes due, the law requires that the difference be paid to the now-former owner. In practice, all interviewees stated that they had never heard of such enforcement ever being practiced on delinquent ratepayers in Zambia.

D. Rate valuations

Between valuations (legally every five years), there is no indexing or other adjustments for inflation or general growth in market values. If inflation raises expenditures, the rateable values remain the same, but the arithmetic causes the tax rate itself to rise. When the next valuation is performed, the tax rate logically falls. The law contemplates supplementary valuation rolls whenever new construction occurs, or for any properties inadvertently left out of the five-year valuation. The opinions of interviewees differed as to whether this was done systematically throughout the country. The Government Valuation Department (GVD) is now able to do it for the rural councils, and does so when requested. The values of new or omitted buildings are set with tables representing kwacha values per square meter of each type of construction used at the last general valuation. This seeks to ensure horizontal equity, with like improvements being taxed alike. However, in practice,
supplementary valuation is spotty; owners who escaped the five-year valuation could well be overlooked for five years.

Most of the 55 cities and municipal and other councils with the legal authority to collect rates have no personnel trained to do valuation, so the revaluations are usually performed by the GVD, a largely autonomous professional entity attached loosely to the Ministry of Works and Supply. This agency has become much more professional and organized in the last two years with the assistance of the Overseas Development Administration (UK). For 1992, the GVD performed 11 complete revaluations (20 percent of the 55 potential client local governments), and 4 supplementary revaluations to add properties overlooked or built since the last revaluation. (See section IV for an analysis of the valuation process.) For taxpayers to accept valuation as fair and objective, it is important to have a means of resolving disputes. This is the task of the Rating Tribunal, which receives administrative support from the GVD. While not perfect, it appears to be more effective in issues of rateable values than are the mechanisms for resolving most other conflicts regarding land.

Lusaka and the other main cities have their own valuation departments, which are understaffed, but may contract with private valuers or with the GVD to help with major valuations. The GVD was not involved in the valuation exercise just completed in Lusaka in 1993, however; all other cities are now asking the GVD to help them supervise or carry out revaluations.

As the capital city, Lusaka has special problems collecting rates. First, many buildings belong to government, which does not pay taxes. The law envisions government payment of a "Contribution in Lieu of Rates." Such payments have been made in the past but have sharply decreased under the current fiscal stringency. When such payments were made, they fell short of the amount that would have been due if the same buildings were privately owned. Lusaka (city council) itself owns a lot of housing and other property (some 15,000 buildings as reported in chapter 1), but it does not tax itself. Church and nonprofit organizations do have to pay rates on the theory that they receive services. Finally, Lusaka finds that a significant share of the most valuable buildings are occupied by regional agencies and by foreign embassies and consulates. In a bizarre interpretation of international law, if one room in a building is rented to and occupied by a diplomat, the entire building is exempt from paying rates.

E. Nominal and effective rates of taxation

When Lusaka property was revalued in 1993, no official estimate was made of the average increase in assessments. It was also unclear how much of the increased valuation roll was new construction and how much a result of revaluation of improvements that were on the previous roll. Some interviewees claimed that the average increase was between 10 and 40 times. When the owners were advised of the new values, few complained because they were still below actual market values. Owners assumed that the tax rate would fall accordingly, keeping the actual tax constant in purchasing power terms. The 1993 tax rate was 11 percent, leading some ratepayers to assume that the 1994 rate would be 0.25 percent to 0.5 percent. Instead, the city council asked the Ministry of Local

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6 In 1992, according to the GVD, the central government should have paid K13 million in lieu of rates on government-owned properties in Lusaka. It actually paid K5 million. No payment was made in 1993. (Source: GVD Rating Position Paper, 1993, p. 1.)

* This quirk was reported by several interviewees and affirmed by the Minister of Local Government and Housing in a talk to the Economics Association of Zambia on 12 January 1994.
Government and Housing to approve a rate of 4.0 percent. When owners of valuable properties calculated the amounts owed, they became vociferous, and the city later bowed to their pressure. The Chamber of Commerce and Industry of Lusaka proposed that the rate instead become 0.025 percent, or 1/40 of 1 percent. On 15 January 1994, the Town Clerk of Lusaka published a notice proposing a rate of 1 percent.

Some local governments discriminate by use of the property. For example, in Chipata, the rate due in 1994 is one half ngwee per kwacha for domestic (residential) improvements, and 3 ngwee per kwacha (3.0 percent) for commercial and industrial improvements.

IV. Valuation of land and improvements in Zambia

A. Valuation process

The balance sheets of business firms in Zambia show both land and improvements as assets. When a business firm is sold as a going concern, the buyer normally seeks an up-to-date valuation. Banks and other lenders may request a valuation to determine the property's collateral. For such purposes, a valuation surveyor is usually hired, a person trained formally at the University of Zambia, followed by on-the-job practical training in firms of valuation surveyors. In practice, most such valuation surveyors also function as estate agents.

Government frequently needs the estimated value of a piece of land, or of an improvement, or both. The transfer tax is charged on the reported value of the transfer; ground rents are, or ought to be, based on the value of the property if it were rented in the market. When the government needs to acquire land or a house for public purposes, a value is needed as the basis for negotiating compensation. In these cases, the valuation is done by the GVD. Government and private sector planners also need values for land and buildings when preparing feasibility studies and cost-benefit analyses for proposed investment projects. Estimates are often prepared as to the value at present, and also for the value the same land and/or improvements will have once the proposed road, dam, or other project is built.

There is at least one significant investment fund in Zambia that enables individuals and companies to invest in a share of a set of properties. That fund in turn needs a value for each property every quarter for reporting to investors. The fund also redeems investments for cash upon...
request, during a specific period each year. The fund retains the services of a well-established private valuation surveyor for this purpose.

B. Impact of the "Watershed Speech"

In 1975 former president Kenneth Kaunda announced a sweeping new land policy. Blaming real estate brokers and land speculators for recent increases in the market value of land, he announced that since land was a gift of God it should not have market value. An obliging parliament quickly passed a law that canceled all existing freehold titles, replacing them with 99-year leaseholds. All land was nationalized, with responsibility for its management vested in the president. Anyone needing State Land for any acceptable purpose from that point forward had to request it of the Commissioner of Lands who would study the request and sign a lease on behalf of the president. Real estate agencies quickly took down their signs and vanished from the commercial telephone directories. From 1975 on, no land transactions were allowed without state consent. Maximum prices charged and paid were fixed by the state. Sellers could not legally ask, nor the buyer agree to pay, prices higher than those fixed. The law further stipulated that prices fixed by the state for private transactions could not be questioned in "court of law or tribunal." In practice, for the first few years after 1975, the GVD, which was responsible for fixing prices, was swamped with requests; it often took six to twelve months before a transfer could be assigned a price and completed.

Enforceability of the Conversion Act of 1975 depended largely on whether the documents were to be registered. The Lands and Deeds Registry Act, 1914, section 4, required registration for all transfers of land or interests in land, if for more than one year. This reportedly led many parties to sign leases for one day less than a year, and thus there was no need to officially decree a price or rent.

Estate agents themselves practically disappeared in 1975. Some emerged as surveyors, as the president had not blamed mapmakers for rising real estate prices. A new specialty arose: valuation surveyor, who specialized in studying and determining what improvements were worth. In 1990, the official 1991 budget speech lifted the ban on estate agency and announced that the Zambian economy would be liberalized. The Surveyors Institute of Zambia promptly held two seminars in 1991, at which speakers urged formulating professional guidelines for estate agency, speeding up the land delivery system, returning to freehold land tenure, and removing section 12 of the Conversion Act (the requirement that no real estate be transferred without state consent). The transfer process has been accelerated somewhat by an administrative decision: the present Commissioner of Lands has begun granting consent automatically where a professional valuation report is attached or when satisfied that the amount declared as the transfer price is reasonable. However, there is no assurance that this simplified procedure will be permanent.

The presidential edict also forced landowners to become leaseholders instead. Freehold titles were ipso facto converted into leaseholds by law. This would not have mattered greatly if possession were secure for the stated term of 99 years. However, an important corollary of the "land has no value" doctrine was the belief that the president, as landlord, could arbitrarily and unilaterally revoke a lease if the lessee was not "using" the land productively. Anyone holding land for future construction had reason to feel vulnerable. Instead of the boom in construction activity that might have been expected, holders of vacant lots and farmland tried to keep a low profile.

Land still had value, especially for location, but persons wanting to buy and sell had to go through new rituals. A would-be buyer had to find land whose holder wanted to sell. This was not as
easy as before because the holders did not deem it prudent to advertise that they had unused land. Had they done so, they correctly reasoned that the Commissioner of Lands might revoke their leasehold and take the land away without compensation. Once a buyer found a holder willing to sell a leasehold (i.e., sublet the property to someone else), they negotiated a price and then had to seek presidential consent to the transfer. The president delegated that decision to the Commissioner of Lands, but there were no clear rules as to when consent was to be granted. This situation of course favored corruption and introduced more murkiness into the land market.

The presidential action drove the land market underground, at least temporarily. However, it did not create more land, nor did it persuade those who owned land to simply give it away free or build more housing for the poor. The first concrete result was that it cut tax revenues. Thereafter, when land transfers were recorded, the Land Commissioner's office told the parties to declare only the value of the improvements on the land. In spite of the obvious fact that some land had enormous market value because of its location, that land could be bought and sold without transfer taxes being paid. Thus, although the high rate of the transfer tax (see section II, above) had already induced chronic underdeclaration of values, the presidential "devaluation" of land led to even greater underdeclaration and hence to lower transfer tax revenues.

C. Reappearance of the market

With the election of the MMD government, whose manifesto included a promise to recognize that land had value, estate agents began to reappear. In general, at least in Lusaka and the Copperbelt, it seems relatively easy to identify a parcel of land and negotiate a market price with the holder. The newspapers once again carry classified and display advertisements offering to sell houses, lots, and farms. Nonetheless, there are still occasional anecdotes suggesting a degree of backsliding from the clear promises of the manifesto. For instance, one estate agent tells of a client who wanted a site for business use one year ago. The agent found someone with suitable vacant land, who was quite willing to sell, and agreement was reached as to the price. However, when consent was sought at the Office of the Commissioner of Lands, the commissioner simply revoked the existing lease—confiscating the land on grounds that it was not being used. In effect, the buyer had to buy the leasehold twice, from the previous lessee and then from the government. There are other cases in which the supposed seller really did not have good title even as a leasehold, or in which the commissioner, thinking the land unassigned, had apparently already promised it as a new land grant to someone else.

The present Commissioner of Lands has stated that although the law still requires the consent of the president for every transfer from one party to another, the process is to be more or less automatic. His office still has a steady flow of petitioners, and delays still appear to be commonplace (see chapter 2). Problems persist of past irregularities such as surveys that do not coincide with boundaries on the ground. In countries where property transfers do not require the paternalistic consent of a functionary, it is common to require a technical scan for such irregularities in the process of recording land transfers. The difference in these countries is that recording the transfer is never forbidden arbitrarily. If a transfer is rejected, the functionary must state what must be done to correct the problem. But all parties know that as soon as the problem is corrected then recording the transfer cannot be denied.

A major problem plaguing the land market in Zambia is the lack of an accessible, low-cost, and rapid method of resolving land conflicts. The only judicial appeal is to the High Courts; anecdotal evidence suggests that this route requires a wait of several years and high costs to the parties seeking
justice. There appear to be numerous cases in which the use of a particular parcel is less than what would appear to be the "highest and best use" simply because there is an unresolved conflict over rights. Further research should establish the feasibility of creating a lands tribunal, as has been done elsewhere, to resolve such conflicts quickly and fairly. Apart from the advantage of not having a docket cluttered with every other type of dispute, the tribunal would be staffed with judges knowledgeable about land law and policy, increasing the speed of resolution as well as the consistency of decisions.

V. Determination of ground rents

A. Existing policy

In theory and in present law, no real estate in Zambia may change hands without the consent of the president. The incumbent has delegated this responsibility to the land commissioner, but a future president could cancel that delegation, or the commissioner could deny consent unreasonably, and the affected party would have little effective recourse. Because State Land is delivered as leasehold interests, holders are supposed to pay ground rent rather than property taxes on land. (Improvements, of course, are subject to the property tax called rates.) While the former government asserted that bare land had no economic value, it nevertheless collected money in the form of ground rent.

Under current law, all private properties are merely improvements, built on land which is the property of the government. However, an existing law attempts to protect tenants by controlling the level of rents charged. (In effect, they live in flats under subleases of parts of buildings built on government-owned lands.)

CAP 438 (the Rent Act), 1972, states that the correct value of rent for buildings rented to tenants by the actual holder of the government lease was 15 percent per year on the sum of the cost of construction and the value of the land. This law was not appealed nor amended when the Conversion Act, which declared in ARTICLE 12 that bare land has no value," was enacted in 1975.

By not repealing CAP 438 (the Rent Act), 1972, the government implicitly accepted the fact that bare land has value to those who control it.

The actual market value of land varies greatly from site to site, depending mainly on its size, location, and services. In Zambia, however, the MOL simply assesses a ground rent that each holder must pay annually to the government for the use of the land. These rents are established arbitrarily and change every few years by administrative decision. In the current version, ground rents per hectare differ between residential, farming, and commercial sites. Little or no effort has been made in the past to adjust the rents for site variances. In a proper ground rent system, rents would be higher on the more valuable locations (e.g., along a major highway or on the shore of a river or lake).

After the inflation of recent years, the rents under present law are so low as to be meaningless. Rent collection, aside from that required at the time of transfer, is rarely enforced. The present ground rents were set in 1991, on the basis of the locality and the land use, at rates per hectare or part of a

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Some functionaries did not see the two laws as contradictory; they put down "zero" as the value of the land, because the president said that was its value. They then calculated the maximum legal rent accordingly.
hectare. Residential land is charged at low rates; commercial or industrial interests must pay more (table 4.3). Land held by churches and charitable organizations is not exempt, although it is leased at lower annual ground rents. Agricultural land and land in mining areas are subject to ground rents that vary by size of holding and by proximity to the main cities (tables 4.4 and 4.5).

Table 4.3: Ground rent charges for nonagricultural lands, Zambia, as set in Amendment 15 (1991) of the Conversion Act

<table>
<thead>
<tr>
<th>Location</th>
<th>Commercial or industrial</th>
<th>Residential</th>
<th>Churches and charities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lusaka</td>
<td>K5,000</td>
<td>2,000</td>
<td>1,500</td>
</tr>
<tr>
<td>Ndola and Kitwe</td>
<td>5,000</td>
<td>2,000</td>
<td>200</td>
</tr>
<tr>
<td>Municipal councils</td>
<td>5,000</td>
<td>1,500</td>
<td>200</td>
</tr>
<tr>
<td>Councils</td>
<td>2,500</td>
<td>500</td>
<td>150</td>
</tr>
<tr>
<td>Rural bomas</td>
<td>1,000</td>
<td>200</td>
<td>100</td>
</tr>
</tbody>
</table>

Table 4.4: Ground rent charges for agricultural lands, Zambia, as set in Amendment 15 (1991) to the Conversion Act

<table>
<thead>
<tr>
<th>Bracket by size</th>
<th>Ground rent per year, per hectare or part of a hectare</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Within a 12 km radius of the city centers of Lusaka, Kitwe or Ndola</td>
</tr>
<tr>
<td>First hectare</td>
<td>K1,000</td>
</tr>
<tr>
<td>Next 99 ha, each</td>
<td>10</td>
</tr>
<tr>
<td>Next 150 ha, each</td>
<td>15</td>
</tr>
<tr>
<td>All over 250 ha, each</td>
<td>20</td>
</tr>
</tbody>
</table>

Table 4.5: Ground rent charges for land in mining areas, Zambia, as set in Amendment 15 (1991) to the Conversion Act

<table>
<thead>
<tr>
<th>Ground rent per year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smallholding (2,600 m² or less)</td>
</tr>
<tr>
<td>All others, per hectare or fraction’</td>
</tr>
</tbody>
</table>

a. Presumably, holdings between 2,600 square meters and 3 hectares also pay the minimum ground rent of K300/year.
B. Proposed mechanisms for setting ground rents

Three years ago, the GOZ obtained technical assistance from the Government of Sweden as part of an institutional cooperation contract between the Lands Department of the Ministry of Water, Lands and Natural Resources, and Swedsurvey, the Overseas Agency of the National Land Survey of Sweden, to study current levels of ground rents and recommend a definitive system (study hereafter referred to as the Hammar report). The final report was prepared, but no further action was taken. There is now renewed interest in the study and the Swedish Embassy has been asked to bring the team leader back in the near future.

The following preliminary analysis and recommendations were presented and discussed at a conference attended by the executive leaders of Zambian government departments dealing with land management and planning: the Commissioner of Lands, Acting Assistant Surveyor General, Director of Agriculture, Director of the Government Valuation Department, and the Deputy Commissioner of Town and Country Planning.

1. Conceptual basis for charging ground rents

A lease includes specified forms and conditions, one of which is the payment of an annual ground rent. The basic concept of ground rents is that leaseholders receive substantial benefits from access to the expensive infrastructure built and maintained by the state and ought to make a reasonable contribution toward those costs. The current system assesses the amount of ground rent solely on the basis of the zoning of the area in which the plot of land lies. As the study notes,

The rates are arbitrary and uniform in application. They are not based on any empirical data. The rents charged for all types of land are extremely low and are negligible compared with the economic benefits enjoyed by the users (Hammar 1990, p. 6).

As true as this was in 1990, by 1993, three years of inflation left the rents lower still in real terms—so low that when a leaseholder does bother to pay arrears, it can generally be done out of pocket change.

The study deals diplomatically with the myth that land has no market value, and that there is no market in land:

Only the State can own land in Zambia and, therefore, undeveloped, vacant land is not a saleable commodity....Despite this, it is clear that the leaseholder does attach value to the land depending on, in addition to its size, the privilege of using it, its location, the land capability, and the availability of physical and social infrastructure. The leaseholder does, for rational reasons, attach value to his land despite the fact that he cannot sell it. Thus land has a definite value to the lessee and it is this value that has been adopted as the value concept for this study (Hammar 1990, p. 6).

While vacant, undeveloped land does not generate income and therefore might appear to have no economic value, the exclusive right to use and improve a particularly well-located piece of land
for a stated period of time has enormous value. There is a very active market for leases giving the right to use specific plots of land for specific periods of time (99 years). If the land is said to have no value, the lease that determines who gets to use and improve it certainly does have value. The confusion is not whether God-given land has a price, but rather that the infrastructure built by governments, and the decisions whereby people decide where to live, or to build stores and factories, are what give value to location. And a desirable location will invariably have value, both from natural, God-given attributes such as climate, and from factors that stem from human actions, such as building cities, roads, and ports.

The study proposes that ground rent for agricultural land should be based on the potential annual economic output per hectare of land which is managed in an optimum manner. The leaseholder should pay a fair portion of the expected gross margins as a yearly ground rent to the state; it goes on to suggest that 20 percent would be that fair portion (Hammar 1990, p. 7).

It would appear from the study that the state ought to act like a normal landlord, charging something similar to (though a bit lower than) the going market rental prices for rural land. Around the world, agricultural land in settled farming areas tends to rent for somewhere between a third and a half of the gross value of output. However, out of that the landlord often pays part—sometimes as much as half—of the cost of purchased inputs like fertilizer, seed, and machine services. This is almost always the case when the rent is stated as half of the harvest, the landlord usually pays half of the cost of purchased inputs other than labor. On the other hand, when the rent is paid in cash, at planting time, it tends to be less—often around a third of the normal harvest in the area, and the landlord seldom helps with buying inputs.

For urban rental properties, the rent charged to occupy a flat tends to be closer to 10 to 20 percent of the capital value of the land and buildings. The urban landlord also has expenses to cover, but few of them are related to the land under the building; almost all refer to maintenance of the building, and collection of the rent. Thus, if a separate figure is needed to represent a normal return on investment in the land under a building, it is customary to estimate first the market value of the land, and then regard the rent attributable to the land as basically a return on a financial investment with relatively little risk or cost—perhaps comparable to the return to an insured certificate of deposit at a major bank.

The financial markets in Zambia are far from perfect, particularly because of recent inflation. Even government securities have paid returns as high as 100 percent a year in kwacha, but this cannot be regarded as normal. Adjusted for expected inflation, the real rate of return on capital in safe investments in other countries tends to be on the order of 4 to 6 percent a year, and this would be a reasonable standard to apply in Zambia—but with an effective provision so that actual ground rents would rise from year to year according to the actual rate of inflation.

2. Implementation: urban areas

The Hammar report further suggests that residential stands be charged an economic ground rent based on the optimum permitted use of the property, which is defined by zoning. It estimates that the "land value portion" of the total value of the property would be estimated between 10 percent of the total value of the land plus improvements (for poor quality housing) to 40 percent (for the best quality housing). After estimating the land value portion, the report suggests that the state, as landlord, could reasonably charge 5 percent of that amount per year for a normal residential stand.
At 1989 price levels, table 4.6 shows the recommendations of the Hammar report as to appropriate annual ground rents for normal-sized house plots, varying according to location.

Table 4.6: Annual ground rents, residential plots, by location (in 1989 kwacha/plot)

<table>
<thead>
<tr>
<th>Location</th>
<th>Low cost</th>
<th>Medium cost</th>
<th>High cost</th>
<th>All stands</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lusaka</td>
<td>625</td>
<td>8,000</td>
<td>54,000</td>
<td></td>
</tr>
<tr>
<td>Kitwe</td>
<td>250</td>
<td>2,000</td>
<td>10,000</td>
<td></td>
</tr>
<tr>
<td>Chingola</td>
<td>190</td>
<td>1,500</td>
<td>7,500</td>
<td></td>
</tr>
<tr>
<td>Chililabombwe</td>
<td>160</td>
<td>1,000</td>
<td>5,100</td>
<td></td>
</tr>
<tr>
<td>Provincial towns</td>
<td></td>
<td></td>
<td></td>
<td>1,340</td>
</tr>
<tr>
<td>Townships</td>
<td></td>
<td></td>
<td></td>
<td>1,200</td>
</tr>
<tr>
<td>Small townships</td>
<td></td>
<td></td>
<td></td>
<td>940</td>
</tr>
<tr>
<td>Centers</td>
<td></td>
<td></td>
<td></td>
<td>540</td>
</tr>
</tbody>
</table>


Comparing these 1989 figures with those of table 4.3, it is obvious that after inflation, the rates charged starting in 1991 do not come close to the recommended levels in kwacha. With the further inflation since 1991, it is no wonder that the Lands Department does not collect enough annual ground rent to do much (chapter 2). The Hammar report suggests that ground rents, once brought up to date, be adjusted annually by computer, to reflect price levels. The CPI would be used for residential stands, but for agricultural lands it suggests that the price of maize would also be suitable (Hammar 1990, p. 9).

3. Implementation: rural areas

It is proposed in the study that the expected gross margins for farmland, in kwacha per hectare, be estimated on the basis of attributes representing the capability of the land (estimated as the percent of the holding that is arable), the influence of agroecological zone, location with respect to markets, and available infrastructure (table 4.7). Each factor is assigned a set of brackets; for instance, land class is estimated on the basis of the percent arable: 81 percent or more, 41-80 percent, 20-40 percent, or under 20 percent. Market distance is estimated as 1-10 km, 11-30 km, 31-40 km, or over 40 km. Infrastructure is estimated as "best," "fairly good," or "very bad." The study then classifies agricultural land, at the level of regional plans, on the basis of these four factors. The result, based on 1989 price levels, ranges from gross margins of 200 to 3,000 kwacha per hectare. At 20 percent for the state acting as landlord, the annual rents would have ranged from about K40 to about K750 per hectare per year.
Table 4.7: Ground rents in 1989 prices for typical types of leases on farmland

<table>
<thead>
<tr>
<th>Agroecological zone</th>
<th>Land class (% arable)</th>
<th>Distance to market (lun)</th>
<th>Infrastructure</th>
<th>Annual ground rent due (1989 kwacha/ha)</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>81-100%</td>
<td>1-10</td>
<td>&quot;best&quot;</td>
<td>310</td>
</tr>
<tr>
<td>I</td>
<td>41-60%</td>
<td>31-40</td>
<td>&quot;fairly good&quot;</td>
<td>140</td>
</tr>
<tr>
<td>I</td>
<td>&lt;20%</td>
<td>&gt;40</td>
<td>&quot;very bad&quot;</td>
<td>35</td>
</tr>
<tr>
<td>Iia</td>
<td>81-100%</td>
<td>1-10</td>
<td>&quot;best&quot;</td>
<td>610</td>
</tr>
<tr>
<td>Iia</td>
<td>41-60%</td>
<td>31-40</td>
<td>&quot;fairly good&quot;</td>
<td>300</td>
</tr>
<tr>
<td>Iia</td>
<td>&lt;20%</td>
<td>&gt;40</td>
<td>&quot;very bad&quot;</td>
<td>70</td>
</tr>
<tr>
<td>III</td>
<td>81-100%</td>
<td>1-10</td>
<td>&quot;best&quot;</td>
<td>350</td>
</tr>
<tr>
<td>III</td>
<td>41-60%</td>
<td>31-40</td>
<td>&quot;fairly good&quot;</td>
<td>160</td>
</tr>
<tr>
<td>III</td>
<td>&lt;20%</td>
<td>&gt;40</td>
<td>&quot;very bad&quot;</td>
<td>40</td>
</tr>
</tbody>
</table>


In 1991, Amendment 15 to the Conversion Act raised ground rent charges somewhat (see table 4.4) but did not come anywhere near levels recommended in the Hammar report. The rent was set at 10 to 20 kwacha per hectare for everything above the first hectare. The first hectare was to pay K400, except if the land is within 12 km of the city centers of Lusaka, Kitwe, or Ndola, in which case the rate was raised to K1,000. At present prices, even the first hectare ground rent is scarcely worth the trouble to collect. This is clearly not even close to an appropriate contribution of the leaseholder to the cost of building and maintaining the infrastructure which the land enjoys.  

4. Prospective revenues

According to the Hammar report, if the proposed ground rent system is implemented with the suggested levels, as a fair return to the state, the potential revenue in 1989 kwacha would be about 1.1 billion if government-owned housing were included, and 800 million if it were not included (Hammar 1990, p. 9). The report does not state how much actual ground rent was collected in 1989, but it does note that the government’s total revenue from all sources that year was only K7,884 million.

C. Preliminary suggestions for ground rents in 1994 and thereafter

This study certainly agrees that ground rents should be raised considerably from present levels. One starting point has been brought forth by Sonny Mulenga, who suggests that 10 percent of the minimum development value could be presumed to be the minimum value of the land under the

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12 Of course, like ratepayers in Lusaka, some leaseholders could object that the infrastructure is badly maintained and so not worth much to them. However, potholes and other signs of poor maintenance can be improved fairly quickly. If ground rents are raised to appropriate levels similar to those a private landlord would charge, it would be good politics to spend some money immediately, so that the roads and other services are obviously being improved.
development. That amount would then be assessed an annual ground rent of 4.5 percent, which is approximately the estimated market return on a secure investment in improvable land. For example, consider a 100 square meter house in Lusaka, assigned a minimum development value of K115,000 per m², in 1993 kwacha. The improvement would be estimated to be worth at least K11.5 million. The land value would be estimated to be not less than 10 percent of that, or K1.15 million, 4.5 percent of which would give an annual ground rent due of K51,750 in calendar 1993. For 1994, of course, the ground rent should be adjusted upward by the change in the CPI during 1993. If one were to assume that the land under the average house in Lusaka were worth 25 percent of the price of the improvements, rather than 10 percent, then the ground rent due during 1993 should have been on average K129,375. However, further research aided by experts on valuation would be needed to determine whether 25 percent is in fact an appropriate estimate. Perhaps it would be feasible to follow the Hammar report model, and categorize each sector of the city into low-, medium-, and high-cost construction areas.

A related question is whether public policy should continue to subsidize residential areas with relatively large gardens behind walls, in which relatively small but high-cost houses sit. Further study should consider a mechanism that will base ground rents on an average amount of land per dwelling but charge more for estates so large that two or more houses could readily occupy the land without losing all the amenities. Eventually, as land values rise in the market, the very large stands will be divided or will be used to build condominium apartment buildings.

A private landlord will not refrain from collecting annual rent from a tenant just because the tenant chooses not to live in, or to till, a dwelling or a piece of farmland. The landlord will collect the rent in any case, since the tenant had by lease the right to dwell or the right to till, excluding anyone else from doing so. Likewise, the state should collect ground rent on vacant lots and idle farmland.

In discussions of the proposed land development fund (following section), it is usually assumed that the fund will have ground rents as an important source of funds with which to operate. It should be noted, therefore, that until and unless economic ground rents are in fact imposed and collected as effectively as a private landlord would impose and collect them, the proposed fund will lack the resources with which to work. At the same time, the state, acting as the landlord, needs to think like a good estate agent. Ground rents collected will need to go into improved road maintenance and other infrastructure investments that in turn justify the significant increase in ground rents.

VI. Proposed tax reforms

Proposed changes in land laws are now circulating in two closely related draft laws: the Land Titles Act and the Land and Deeds Registry Amendment Act. The Land Titles Act draft includes a provision that "any person who holds land under customary tenure may convert it into leasehold tenure." This would add the land in question to the supply of land on which annual ground rents

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13 The Hammar study suggests that over the world, land values tend to be from 10 to 40 percent of the value of improvements on urban residential stands, with the least desirable locations being on the low end and the best locations being on the high end. This is certainly consistent with experience in the United States and in various countries of Latin America and the Caribbean.
payable to the government would be due. Some concern has been expressed about the wisdom of allowing scattered conversion of landholdings in customary areas. A significant increase in annual ground rents would give holders a reason to hesitate before applying for conversion.

The Land Titles Act reform draft also repeals and replaces SECTIONS 10 and 12, dropping assertions that bare land has no economic value. It further provides that the president, when granting land, "may fix consideration and ground rent which may be reasonable depending on the location and the size of the land." This appears to be a prudent provision, that should provide ample authority for needed administrative reforms in valuation and in the setting of initial fees and recurring or annual ground rents.

The draft adds a provision that on expiry of a lease, if all the conditions and covenants in it have been complied with, "the lease shall be deemed to have been extended for a like term. The registrar, on production of a certificate of such compliance from the President, shall issue a Certificate of Title to that effect." To further reassure leaseholders who hesitate to invest as expiration approaches, the law should also allow holders to obtain a compliance certificate and request a 99-year renewal at any time, even if the current lease has not expired.

The draft reform provides that failure to pay ground rent on due dates will triple the amount due, and failure to pay that amount upon demand will entitle the president to enter a certificate of reentry in the register, without notice, in effect canceling the leasehold. This should increase collections, provided the regular ground rent is itself appropriately determined, and that the government acts in a responsible manner. The penalty of lease cancellation, if effectively enforced, should cause mortgage lenders to see that their debtors pay ground rents, and on time, so as not to impair the collateral on their loans.

VII. Land development fund

A. Proposals and assessment

The land conference of July 1993 (see chapter 1) strongly recommended the creation of a land development fund (LDF). There was considerable agreement that it would have as its resources ground rents paid by leaseholders, consent fees charged to the assignees of newly distributed lands, and other receipts from government or private land transactions. An MOL official memorandum suggests that the fund be used for "plot demarcations, roads and bridges construction, provision of water supplies (dams, wells, and boreholes), dip tank construction, conservation works, and fencing. Beneficiaries would repay the investment in annual installments over ten years, with interest. Payments would go back into the fund, which would operate as a revolving fund. It suggests that the fund begin by making such investments in the vast undeveloped areas (former Reserve and Trust Lands), and later include individual emergent farmers who are not in the farming blocks nor in the settlement schemes. Once the fund is serving these first two phases well, it suggests converting it into an autonomous fund that serves commercial farmers in addition to the schemes and emergent farmers. However, the participants did not reach consensus about the fund's objectives and priorities. Various possibilities

**14D. Siansumo, Principal Lands Officer, "Development Fund" memorandum, 20 October 1993.**
have been mentioned; the leaders among these are detailed below. It will not be easy to resolve these conflicting demands for the same funds.

1. Increasing the supply of serviced farmlands

When the fund first considers an area for development, it should "freeze" the area to prevent the issuance or registry of any further state or customary consents awarding land to anyone. Otherwise, insiders will grab all the land before the fund opens it up, creating at least the appearance of corruption. This grabbing would also prevent the fund from helping either the best farm operators, redundant state employees, or other disadvantaged persons needing assistance. Secondly, before committing itself to develop a specific area, the fund should make a complete inventory of land rights in the area and negotiate with existing holders of leaseholds, firewood or grazing rights, or any other land rights. The fund then would buy out holders who are willing to sell, at the current market value of their holdings (not at the value which those holdings will have after the fund develops the areaa )."

The fund should also negotiate with holders who are not willing to sell, as to the amount of money or land these holders will contribute as their fair share of the investment the fund will make in developing the area. Whenever land is already privately owned or held on long-term leaseholds before government provides improvements, it is entirely reasonable to expect those who profit thereby to contribute most or all of the cost of the improvements. (Colombia, among other countries, makes a formal determination of benefits and assigns a share to each beneficiary at the feasibility study stage of a project [Rhodes 1990]). If the landowners argue that they cannot afford to contribute the amount by which the project feasibility report says they will benefit, the government can then say that the feasibility report is wrong and that the project is not justified, so it won't be built. If the landowners respond that the project should be built anyway, without charging them for part of the increased value it will give to their property, at least their greed is demonstrated.

Payment, of course, can wait until the project is actually built and benefits realized. The amount due from each owner should be documented with promissory notes and a mortgage, properly recorded, and subject to a price index clause to guard against inflation, as well as interest at a normal rate for other investments. If there is no provision for inflation protection through indexing, the interest rate should at least be that rate which the government itself pays when borrowing. In effect, government is lending money to the property owners who benefit from a project, and they repay over time.

In some countries, such as the Dominican Republic, existing holders are required by law to turn over part of their land, without compensation, as their contribution to state-funded irrigation projects. They still benefit, because the irrigation greatly increases the value of their remaining holdings. But by turning over part of their land, they enable the government to share the benefits of that investment with landless laborers or other disadvantaged persons.

[1] Until a much more active market exists in land rights, these values will have to be estimated by capitalizing average potential net incomes. Before construction of improvements actually begins, an independent authority—perhaps an elected council, a traditional chief, or an independent auditing firm—would investigate and verify that fair compensation was actually paid to families that lose land or rights, just as is required by the World Bank when families are forced to move for Bank-financed dams and similar projects.
In other cases, when government extends services to privately owned peri-urban land which then becomes valuable residential sites, the owners of the undeveloped tracts are required to donate to the local council suitable sites for schools, clinics, markets, and other services. Their compensation for these sites consists of the state-financed roads, water and electric lines that made their landholdings more valuable. As in the irrigation case, they still gain substantially, but at least the council is not forced to later buy sites at market prices for needed community facilities.

There are several alternative ways in which the LDF could be used to increase the supply of serviced farmlands:

► improve the idle or underutilized land in the state tenure area, recaptured from those who hold leases now but are not using the land productively (once improved, it would be leased anew, preferably at open, public auction);
► rehabilitate run-down and unproductive state farms that are to be privatized (actually, we would prefer a cheaper, faster process—auctioning these state farms "as is," letting the bidders develop the land with their own funds);
► make loans to emergent farmers who do not have access to loans from commercial banks because they are unable to provide sufficient guarantees of repayment (such a plan should begin with serious analysis of alternative schemes that make it likely that the emergent-farmer borrowers will in fact repay the loans, and that enable those farmers to thereafter apply to commercial banks precisely because they have demonstrated creditworthiness);
► improve newly created leaseholds that government wants to create in customary tenure lands, thereby converting customary into State Lands; or
► finance improvements to land in traditional villages in customary areas.

2. Who pays for the land and improvements?

There are several approaches the fund could use to finance land and improvements:

► outright gifts or grants to disadvantaged persons;
► installment loans which the beneficiaries would have to repay over a period of months or years (the period might vary according to the type of improvement, and incentives such as free life insurance might be provided for those who repaid punctually and in full); or
► increase the annual ground rent payment required of the leaseholder by enough to recover the amount invested by the fund, with interest (this is similar to the case of a private landholder who finances construction of a house or flat and then rents it to a tenant).

3. Who provides the improvements?

In each approach, the state could do the actual construction, contract with private firms to do the work, or make loans to the lessees, with which they would hire the work done (and supervise it). Some types of investment (such as access roads into a new land block) would best be contracted for and supervised by the state. Most on-farm improvements (such as fences, tree crops, wells, and

See, for instance, Strasma 1992. A form of this, using two accounts (one for normal ground rent, and the other for recovery, at interest, of the premium caused by the LDF improvements), has been used in settlement schemes and in the opening of new labor blocs.
dwellings) might best be financed as long-term credit to farmers, who themselves would hire labor as needed, and supervise the job. They would supply part of the labor themselves, as well as provide more effective supervision and quality control than normally occurs with government visits.

4. Other uses of the LDF

All of the previous ideas as to uses of the LDF suppose that its purpose is to develop land. Plot demarcation, roads and bridges, dams, wells and boreholes, dip tank construction, land levelling, conservation works, and fencing were all proposed. However, in interviews, some Zambians have mentioned other possible uses of this money, as a revolving fund of loans oriented largely to increasing production by specific households or groups:

► production loans to women, redundant state or parastatal employees, and other disadvantaged persons, to enable them to become productive emerging farmers and gradually build up their own working capital;
► land purchase loans to the disadvantaged, enabling them to purchase leasehold interests from other persons who are unable to put their leased land to productive use; or
► loans to enable emerging cooperatives or farm supply companies to go into the business of supplying farming inputs and perhaps marketing production as well.

The previous set of ideas on using the LDF for loans would all be dedicated to increasing production. Still other possible uses mentioned would have social elements:

► finance the building and operating costs of community facilities, clinics, and schools to benefit small farmers in densely populated but poorly serviced rural areas;
► compensate families who lose grazing, gathering, or similar rights over customary land when it is converted into leaseholds in the state sector;
► grants or low-cost investment loans to landless rural families in overpopulated areas, to help them move to areas with available land; or
► loans to councils to help them service town plots, reducing the relative attraction of moving to shantytowns in Lusaka or the Copperbelt.

5. Donor assistance

With so many ideas floating around as to how to use the higher ground rents, consent fees, and other resources obtained by charging rents or fees closer to market values, it is no wonder that the land conference did not yield a consensus on which uses should have priority, nor even on how this would be decided. One final hope expressed by participants was that donor organizations might contribute to a well-managed LDF. These organizations generally favor charging market rents and significant taxes (rates); they might well offer matching contributions to the fund once the government actually implements such policies.

B. Legal reforms: The draft law

The draft Land Titles Act proposes in sec. 20 to establish a land development fund. The draft proposes sources for its funding, a structure for policymaking for the fund, and its objectives. However, the draft is silent on many aspects that will be critical if the LDF is to be successful.
1. Uses

SEC. 20(7) of the draft states that the moneys of the fund are for "grants to councils situated in rural areas for development of land and making of roads,...opening up of new areas for development,...the improvement and development of agriculture,...the supply of water for domestic farming and irrigation purposes,...and generally, such other purposes for the direct benefit of the people in ensuring that more land is made available for development and is developed." These objectives are quite broad and duplicate the objectives of other agencies, provided for in the annual government budget. Improvement and development of agriculture coincides with the objectives of the entire budget of the Ministry of Agriculture. The water-supply objective does the same for government agencies concerned with water projects. Also, the building of local roads is often an activity of local government, funded in part with property taxes (rates). Ground rents could also be channeled through local councils.

If ground rents and other fees collected by the state continue to be taken off to Lusaka and then routed back to some but not all rural areas, through decisions made in Lusaka, the fund may work against the government's announced goal of decentralization. If, on the other hand, the fund is politically necessary as the only way to get ground rents and fees up to economic levels, and hence pressure speculators to put land to productive use, then the fund may still be justified. It might be a good idea to include in the law provision that all moneys raised from land-related fees be invested in the same province where they are raised.

Curiously, however, the draft law does not explicitly allow investing in existing but underutilized state sector leaseholds, nor improving run-down state farms that are sold to commercial farmers, smallholders, or emerging farmers. Surely government could show visible, positive results more swiftly in that area than in opening up new land in customary tenure areas. Still, the objectives are probably broad enough to include this area too. According to the 1994 budget message (p. 10), a pilot scheme to subdivide state-owned farms for commercial use is under way.

The opening of new areas has been a main objective set forth by proponents of the LDF from the beginning, but the draft law is totally silent as to who exactly is to benefit from this. Before an area is opened, the land rights situation should be inventoried. Planning for the project should be specific as to who is expected to benefit and how much they are required to contribute to the cost of the project. Will foreign investors, who likely will have leverage in competitive bidding, be given open and full access or should controls be placed on their actions through quotas or special fees? Will newly improved lands be allocated to political insiders at little or no charge, as in previous republics? Or will ground rents close to market levels be charged, and then an open public auction used to decide who gets the most desirable parcels at those rental levels? The latter would generate far more revenues for the fund, enabling government to develop land much sooner than if land is allocated by administrative discretion. If running projects through the fund instead of the regular budget increases accountability and productivity and helps justify the change to market-level ground rents and fees, this is positive. It remains to be seen whether the fund, as proposed in the draft law, would in fact be accountable and efficiently managed.

One might suggest redrafting these objectives, perhaps based only on the "opening areas" and "other purposes" clauses and setting forth very specific provisions to ensure that (1) more land is made available for development, (2) it is in fact developed, and (3) those who get the land effectively pay market values for it, with a significant cash initial payment and an effective collection mechanism for
the remaining installments. The only exceptions to payment of full value should be persons who are clearly disadvantaged, a category that does not include the high officials and other insiders who have often received lands assigned administratively in the past. Even the disadvantaged should make some payment, and there should be a provision to recapture the subsidy element should they leave the land and sublease or transfer it to someone else.

2. Discretionary investment

SECTION 20(8) says: "Any money which is not immediately required for any of the purposes set out...above, may be invested at the discretion of the Ministers responsible for the administration of the Fund." Given the breadth of the proposed objectives, it is unlikely that the fund would have "moneys not immediately required for any of the purposes set out." However, given the total discretion the draft law offers the ministers, it is not hard to imagine that future ministers, wanting to do something entirely different from the purposes of the LDF, might be tempted to decide not to pursue its purposes, in order to "invest" the money in something else. Worse, this provision appears to allow the four ministers absolute and total discretion. They could decide to invest in banks paying less interest than Treasury bills or less than the highest rates currently available at other banks. It would appear that they could even invest in loans to private businesses. If questioned, the attorney general might be forced to say that this was permitted by the law, if enacted with the present wording. Since this is surely not the intent of the drafters of the law, the wording should be changed to avoid any doubt.

Other countries generally have transparent, professionally managed provisions to invest government agency funds not currently needed. There is no reason to require the managers or directors of the LDF itself to make decisions on short-term investment of government funds. This is part of the job of a treasurer, who manages balances for all government agencies. For example, some countries specify that all funds of parastatals, which the fund somewhat resembles, not required for disbursement within the week, must be held in an account in the central or state bank. This reduces the amount of money in circulation and hence at least contributes to controlling inflation. It also reduces the opportunities for corruption, and lets the fund directors concentrate on their main task, land development.

3. Accountability and transparency

The draft law provides, in SEC. 20(9), for annual financial statements to be provided only to the very government officials in charge of the fund: "The Ministers responsible for the administration of the Fund shall ensure that an annual statement of the income and expenditure is prepared and furnished to the President and all the four Ministers responsible for the Fund." Drafted this way, the law does not provide for:

► conducting an independent, outside, annual audit of the accounts;
► making these accounts available to the public through timely publication in the press, as banks do; nor
► submitting audited financial statements to parliament, nor to anyone other than the very persons who are given authority to spend moneys in the fund.

If these omissions are not corrected, the public will be unable to determine whether funds have been spent honestly and wisely. Given the history of some other state funds, the public might assume
the worst, and respond accordingly in the next elections. The moneys to be spent through the Fund are to be obtained through needed reforms in the present land legislation. However, if the public fears that the money will be squandered, it will not support those needed reforms. The draft provisions for the fund should therefore be modified not only to target fund activities more appropriately, but also in order to ensure support for the other needed land policy reforms.

4. Operation of the LDF

How can the fund make its investment start sooner and go farther, ensure that the disadvantaged participate, and ensure that land it develops is actually tilled? The Privatization Agency might well work closely with the LDF in order to show results quickly. For instance, an existing but unproductive state farm might be divided partly in four commercial family farms. Each would have to pay an annual ground rent at about the same level as a private owner would charge a tenant. These would be auctioned to the highest bidder while the rest of the state farm is split into another 40 smallholder plots. Their ground rent could be a little lower per acre, as a subsidy.

These smaller farms would also be auctioned to the highest bidders; but for them, bidding would be limited to persons owning no other land and who are deemed disadvantaged. For example, bids might be invited from persons who have been declared redundant in state or parastatal employment or fear that they soon will be. In order to bid, they should show some knowledge of farming and promise that they will move onto and cultivate the parcel if their bid wins. Retrenched employees should be allowed to use their separation pay toward payment for the small leaseholds. However, the LDF might also identify qualified disadvantaged persons, such as landless farm laborers, who did not have separation pay to help them bid. They could be given "seed money" grants as initial working capital, though they would still be required to make some kind of down payment in order to show that they have some capacity to save, and that they understand that the parcels are not gifts, as previous government programs have been. In both cases, provision could be made for payment of at least 25 percent of the bid price in cash, with the balance due over 10 years (commercial farms) or 15 years (small parcels), at interest. Interest and repayment should be calculated each year in the current value of maize or other principal crops of the area in order to avoid decapitalization of the LDF through inflation.

Likewise, the sale should include a reversion clause providing that the LDF would inspect all land sold one year after sale, to verify that it is in fact in cultivation and determine whether the owner did in fact live on it. If not, the lease should include full authority for the fund to nullify the sale, evict the unsatisfactory "buyer," and sell to another eligible farmer as part of its next auction. Where specific conditions made the delay justifiable, the fund would make a public finding to that effect, and give an extension of six months or a year to that buyer.

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18 Some team members question the division of large state farms into part-commercial and part-emergent or peasant farms. Others feel that diversity has merit, that each can learn from the other, and that an open land market will in time determine the best mix.

19 This example is built on a national land fund recently created in Honduras. That fund uses payments made by land reform and squatter titling program beneficiaries to help landless farm laborers buy small parcels in the land market. No one who owns more than 10 ha, including the land being bought, may receive credit from that fund. A 20 percent down payment is required. See Strasma, Meza, and Umana 1993.
However, in practice, the fund should also authorize any buyer to sell the leasehold, even before the year was up, to any person who would have been eligible to buy at the auction. For sales during the first year, the price would be the price originally bid at the auction, less the unpaid debt, which the new buyer would assume. In addition, the new buyer would pay the seller any mutually agreed-upon amount for improvements made since the purchase at auction. The object is to obtain the highest possible price at the auction while ensuring that the land is in fact farmed. If the first buyer is unable for any reason to bring the land into appropriate use, he or she should sell it to someone else who can and will do so. Thus, the fund should seldom, if ever, actually need to recover a farm itself. As long as the parcel has been sold at auction, not given away free to a favored few as in the past, the price on resale will not be very different from the auction price, and hence there is no need to control it. Once the year-end inspection has verified that the buyer has placed the land in production, there would be no further need for supervision. And any owner who wanted to sell or sublet the leasehold would be allowed to do so, just like any other small farmer.

5. Potential buyers and sellers

Since a more fluid, transparent land market would enhance Zambian development and the welfare of small farmers, the fund should invite anyone who would like to buy a farm or smallholding that becomes available to put his or her name on a list of candidates. This list would be made available to anyone, not just buyers at auction, that may want to sell land in small parcels. Likewise, the fund should invite other landholders, as well as any of its own buyers who change their minds, to advise the public, estate agents, and others that they are interested in selling and would like to receive offers. In this simple way, the LDF could do much to increase the efficiency of the Zambian land market, and reduce the cost, in time as well as money, required for someone who wants to find and buy a small farm in order to make it produce.

VIII. Summary, conclusions, and recommendations

A. Summary and conclusions

The land market in Zambia is by all accounts more visible than it was three years ago, but it is still far from efficient. People who seek access to land for productive purposes still have trouble identifying some of the land that would serve their needs, and people who think they have secure access to a specific piece of land, but have not yet built a substantial building or are using it, may find that access revoked on ground that they are not "using" it to the satisfaction of government. The converse also applies. A government functionary may decide that a piece of land is not being used and therefore may revoke its lease and promise the land to someone else. However, the new leaseholder may be informed before actually getting possession that the former leaseholder has appealed to the courts, leaving the whole issue without resolution.

In another example of the insecurity of possession of leaseholds on state land, a person who advertises the availability of vacant land suited to commercial or industrial use attracts the attention of a functionary. That functionary may cancel the original leasehold without compensation, on grounds that the previous leaseholder is not using the land, which had been a condition of the lease. Naturally, leaseholders who have not yet developed the land will once again hesitate to advertise their willingness to sell. These incidents happen frequently enough that it is fair to say that the land market is still
somewhat opaque and that secure possession of land with good potential for farming (or of other land not yet improved) is subject to insecurity.

No land may be transferred without permission from some civil authority, be it the chief of a traditional community or the Commissioner of Lands. Despite reforms making the process simpler, there is no guarantee that approval will be granted, nor any published list of conditions to fulfill in order to insure that approval will be granted. Thus a future commissioner might be tempted to fall back into corrupt practices, demanding payment of a bribe to authorize the sale of leasehold interests.

Zambian law provides that cities, towns, and rural councils may collect rates, an annual tax on the value of buildings and other improvements, but not on the value of the land under them. The law also authorizes the central government to collect a fee for assigning state land to an applicant, and then an annual ground rent for that particular land. In practice, both rates and ground rents have lagged far behind inflation and bring in very little revenue. This should be corrected, so that speculators will find it expensive not to develop leaseholds, and so that local governments can finance needed services, roads, schools, or other public goods. Yet, because of the difficulty of separating the value of land from improvements, there is also the risk of excessive double taxation—i.e., setting both rates so high as to make the combined effect regressive to production incentives.

B. Recommendations

1. Abolish impediments to the subdivision of urban or rural land.

Existing law, by requiring presidential consent before any land transfer, also in effect requires that consent be sought before any division into two or more parcels. Implicitly, this law asserts that the government (i.e., the Commissioner of Lands) knows better than anyone else what the correct size and layout of every piece of land ought to be. Since appropriate site sizes change continuously, according to many different factors affecting the supply and demand of land on the market, this requirement is absurd.

This does not mean that government should have no say on land uses and transfers. There is nothing wrong with clear, logical rules that limit land uses in specific areas in order to protect the water sources for a city, or to prevent pollution by certain activities that tend to contaminate soil and groundwater. However, an efficient land market is one in which all landholders (lease or freehold) are able to sell off part of their land, and are equally free to buy a piece of land and annex it to their own holdings in order to create a farm or a site suitable to their needs. The land market in Zambia will become more efficient, and potential investors will feel more secure, when the law is changed to provide that all land divisions or mergers that do not violate existing land-use regulations duly promulgated will be approved automatically.

One could go further, providing by law that if the government agency involved fails to act at all within a certain number of days after presentation of the paperwork, the application is deemed approved. The interested party would then need only to present to an ombudsman or to a lands tribunal proof that the application was presented in the appropriate office on a certain date, and that after the specified number of days, that same office certified that the agency had not made any determination as to whether it was in order. In that case, the ombudsman or tribunal would immediately issue a finding that the application was deemed by law to have been approved.
2. **Convert presidential consent into an automatic right of the leaseholder to transfer, subject to clear, written, verifiable, and impersonal criteria.**

The act of recording a transfer would constitute documentation of presidential consent. Refusal of the registrar to record a transfer within 90 days of the time presented could be appealed to the land tribunal, which would determine definitively whether the transfer was in order or not and instruct the registrar to proceed accordingly.

3. **Create procedures for the renewal of leases upon demand, subject to agreed investments.**

Present law states that 14-year leaseholds can be converted into 99-year leases upon demand, by proving that improvements have been built. However, there is as yet no provision for renewal of the 99-year leases. Draft laws state that these leases "may" be renewed, but do not say that they "will" be renewed upon request, nor do the laws state if any conditions are to be imposed on the renewal.

For an efficient land market, the rules for renewal should be clear. It would be logical to provide for renegotiation of the amount of the annual ground rent, for instance. The point is simply that since improvements pass to the government upon expiration of the lease, an investor should have the right to renew a 99-year lease earlier than 99 years if he/she is planning to make a further investment in improvements. Such renewals are routine in Baltimore, Maryland, for example, a US city in which much of the central business district land is leased on a ground rent basis. Owners of the buildings on those sites routinely come to the banks or insurance companies that own the land about 30 or 40 years before leases expire, to negotiate a new 99-year lease. In this way, the person or company that intends to make a major investment in expanding or modernizing knows that it will remain the owner of the building long enough to fully amortize the investment. This recommendation does not necessarily mean a change in the present law; it merely clarifies that a 99-year lease can be renewed for a further 99 years from any time, upon application by the lessee. The present law appears to be silent on the matter, although it does explicitly allow for the conversion of a 14-year lease to a 99-year lease at any time.

4. **Update valuations, and index for the future.**

As noted above, existing valuations of land and improvements in Zambia are far below market values. Not only should they be updated, it would be prudent to provide for automatic maintenance of that value in real terms in the future. Some governments set values in terms of "fiscal units of value" and then provide by law that the monetary value of the fiscal units will change automatically according to some index of prices that serves as a reference point. This policy does not take notice of changes in market values arising from population growth, economic development, or public investments that enhance the value of specific parcels of land. For that purpose, one still needs a periodic reevaluation of all property. However, Zambia has a legal requirement that this be done every five years for urban rates; that standard should probably simply be extended to annual ground rents as well. Between revaluations, however, rates are currently adjusted by increasing the rate of tax on valuations which quickly become obsolete. There is no similar automatic adjustment of annual ground rents, and there should be. But rather than increase the nominal rate of ground rent on a static market value, it might be easier for the law to specify that the amount of ground rent would be increased or
decreased each year according to the rate of increase in a price index, until the next formal revaluation.

5. Define the rights of leaseholders in the event of unilateral lease cancellation.

The present government has made it fairly clear that it intends to continue the position that it is the ultimate "owner" of land in the state leasehold sector. One reason given by senior officials is that the government has, and should have, the right of a landlord to cancel a lease under certain circumstances. Freehold ownership is not very different: government can still take land held in freehold ownership, but legal systems are usually very clear in stating that the affected owner has the right to full compensation at market value, paid before the land is taken away from its former owner. It would seem appropriate to enact a law providing that in the event that government cancels a lease before its expiration, the lessee should have the same right to full, prior, compensation for the value of improvements made by the lessee. This would then be a curb on unreasonable, arbitrary, or corrupt acts by functionaries. Enactment of such a law would be a valuable first step in the needed revision of the Land Acquisition Act, but it need not await that much lengthier process.

6. Provide for reversion between the state and traditional authorities if land transferred is not in fact developed as promised.

There are reported instances in which chiefs complained that they had assented to the transfer of land to the State based on promises by applicants to make investments and create jobs for the local people, but years later no investments had been made and no jobs created. They later learned that government transferred that land to politicians who were planning a different use for it. Just as the government reserves the right to cancel a lease if investments are not made in the land, perhaps the traditional chiefs should be allowed to write enforceable contracts specifying that if specific conditions in the application are not fulfilled, then the land would revert to the chief’s control.

7. Consider declaring customary authorities to be the municipal governments in rural areas (the Peruvian model).

Zambia now has two major sectors of landholdings and two sets of authorities governing land matters: the state and the traditional sectors. It has been proposed that all of Zambia should be considered one sector, with agencies of the government taking over land-related responsibilities. An alternative, invented in Peru in 1970, is to endow the customary authorities with the same legal powers that towns and cities have concerning land matters. This achieves the goal of having similar procedures in both sectors, although (at least in the Peruvian model) the central government respects the existing or traditional forms by which the traditional sector chooses its executive (the chiefs and headmen), rather than imposing a European style of election of authorities. Government may wish to study this variant on the suggestion of extending councils to cover the entire country.

8. Consider extending the concept of rates to include all land allocations as a tax base for local or customary authority budgets.

Present law applies urban rates only to the value of improvements, and only to the value of improvements within the so-called rateable areas of cities, towns, and councils. Taxing only improvements encourages speculative holding of valuable land with minimal improvements, which is
not favorable to development. The government should explore the feasibility of including the value of land in the tax base for rates. In addition, it is clear that there is a great scope for investment to open up rural areas of land with potential for great productivity. It would therefore be reasonable to study the extension of rates to cover improvements outside the present "rateable areas." There is no obvious reason why tourist facilities, large processing facilities, etc., should not be taxed to help finance the roads that enable people and products to get to and from those facilities; further study would therefore be in order.