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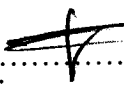
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**A CRITICAL ANALYSIS OF THE LAW RELATING TO THE
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**A CRITICAL ANALYSIS OF THE LAW RELATING TO THE
COMPULSORY ACQUISITION OF LAND IN ZAMBIA**

by

VERONICA KATHLLEN SCOTT

An Obligatory Essay submitted to the University of Zambia, Law Faculty, in
partial fulfillment of the requirements of the Degree of Bachelor of Laws.

The University of Zambia
P.O. BOX 32379
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May, 2000

To Razia, Dawn and Chantal:

“Gold there is and rubies in abundance, but lips that speak knowledge are a rare jewel.”

Proverbs 20:15

ACKNOWLEDGEMENTS

To Mr. Patrick Matibini, my Supervisor: I shall forever be indebted to you for your guidance, encouragement and tireless examination of my manuscript. I thank you.

To my family: You are indeed, my pillar of strength. Thanks so much for everything.

To Anthony Andrews: Thank you for being a part of my life.

To Ms. Catherine Mwanza: Special thanks go to you for typing my manuscript and your undying patience.

ABSTRACT

The government of Zambia has been slow to utilise the powers granted by the Lands Acquisition Act. It is appreciated, that perhaps this could be due to the lack of financial resources for compensatory purposes. However, there still exists large areas of Land that is both undeveloped and unutilised, that would not give rise to a right of compensation, yet remain in the hands of its owners at the expense of redistribution.

Presently, this perhaps may not appear to be a dire problem, yet with the rise in economic investment by both foreign and local investors, the need for viable land will also increase, land being the very foundation and framework on which social, political and economic activities of the nation are hinged.

It is stated that land or an interest in it, is said to have been compulsorily acquired, if it is purchased or taken under statutory powers without the agreement of the owner.¹

It has further been observed, that compulsory acquisition of land, irrespective of whether it is termed compulsory purchase, is essentially the coercive taking of land and interests in land for public purposes.²

¹ Davies, K Law of Compulsory Purchase and Compensation. London, 1978: p. 3.

² Ibid.

The rationale advanced for compulsory acquisition or the law relating to it is that if real property were a *res nullis*, meaning the property of no one, it would be valueless in the economic sense and basically there would be no purpose for compulsorily acquiring it as it would in effect belong to no one.

Conversely, if all land belonged to the state there would be no need for compensation either. The state in its all-encompassing power could simply divert that land, irrespective of whether or not it was occupied. The state, in effect, would incur no “liability” and therefore, there would not arise the need for compensation.

It follows, therefore, that the existence of a system of private ownership of land is a pre-requisite to any compulsory acquisition of land and the attendant compensation by the state..

The principle concern of this essay, therefore, is to critically assess the main provisions of the law that governs the compulsory acquisition of land in Zambia. It should be noted, however, that a number of socio-economic, and particularly, political changes have occurred in Zambia since the enactment of the Lands Acquisition Act in 1970. The question, therefore, that has to be addressed is whether the Act in its present form still has any real legal significance.

METHODOLOGY AND DATA COLLECTION

The methodology to be employed for data collection was basically two-fold, desk research and field research:

- a) A predominant portion of the research was by way of a review of relevant literature, both published and unpublished, that is available in the University Library. Literature included Doctorate and Masters' theses, local journal publications and newspaper articles.
- b) Case law formed a major source of material in as far as illustrating the application of the law of compulsory acquisition and to illustrate the court's interpretation of the law governing acquisition.
- c) Detailed examination was also made of relevant legislation such as the Lands Acquisition Act and the Constitution of Zambia.
- d) Further data was sought from relevant authorities at the Ministry of Lands by way of personal interviews.

SCOPE OF THE STUDY

1. The general historical background of the Law relating to compulsory acquisition forms the 'back drop' of the study. In this regard, the study places emphasis on the development of the law relating to compulsory acquisition of land. Thus, the paper firstly examines the period prior to 1924, during the administration of the country by the British South Africa (BSA) Company, examination is further made of the colonial period running from 1924 to 1964. It should be noted that any radical reform in policy relating to the acquisition of land only in fact occurred after independence. The study looks at the objectives and nature of the acquisition of land during the aforementioned period, taking into account the regulations made by the BSA Company as an administering authority prior to 1924 and the Colonial Public Lands Acquisition Ordinance that governed acquisitions of land after the end of company rule.
2. The research further, makes an in-depth study of the nature of compulsory acquisition. This includes an examination of the meaning of compulsory acquisition and its subject matter and the sources of compulsory acquisition powers, being both the Constitution and the Lands Acquisitions Act. Questions addressed include issues such as whether the current legislation conforms with the socio-economic and political atmosphere in the country. The current legislation can be said to be lacking in some areas. For instance

there is a lacuna regarding the definition of 'Public Interest', public interest being the basis for a presidential decision to acquire land compulsorily. The President can thus acquire land or property of any description whenever he is of the opinion that it is desirable or expedient, in the interest of the Republic to do so. The problem that arises, however, is whether this decision made upon only the subjective determination of one person can be justified. The Act is silent on any laid down mechanism or guidelines that may be used by the President. It is hoped that the study will be able to address this problem.

3. A problem also arises regarding the determination of compensation, the yardstick being merely that compensation be deemed 'adequate'. The State, thus has the power to determine compensation in quite an arbitrary manner. It should be noted, however, that compensation in some instances may never adequately replace the property.

Further, there arises the problem related to the total lack of funds available for the payment of compensation in the event that a compensatory amount is agreed upon. No funds are set aside for compensatory purposes nor does the Act make it mandatory for the dispossessed individual to be allocated an alternative piece of land. This perhaps may form an alternative 'remedy' in place of monetary compensation, taking onto account the already existing problem of non availability of funds for compensatory purposes.

4. The question also arises whether there is infact such a critical shortage of land in Zambia as to warrant legislation that permits the acquisition of private property compulsorily, particularly that there does still exists tracks of unsurveyed land. It should be noted, however, that there is a critical shortage of land around the urban areas. This problem has been attributed to the nature of land allocation during the colonial period, when farmers were allocated land close to the line of rail and the towns. Today towns are surrounded by farms resulting in the inhibition of growth in both the commercial and housing sectors of the urban areas.
5. The study for practical purposes also makes examination of the judicial interpretation of the law relating to compulsory acquisition. Case law, by and large, provides the most practical illustration of the application of the law relating to compulsory acquisition. This provides some basis to assess the achievements of the said law and is a means by which any inadequacies in the present law may be explored.
6. Having identified the various factors involved in the acquisition of land, the study proceeds to make recommendations for its modification and reform.

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CHAPTER ONE

THE BASIS OF COMPULSORY ACQUISITION

1. INTRODUCTION

The government of Zambia has been slow to utilize the powers granted by the Lands Acquisition Act, Cap. 189 of the Laws of Zambia. It is appreciated that perhaps this could be attributed to the lack of financial resources necessary for the payment of compensation. Some scholars have also proposed that this unavailability of funds may, however, underline government's intentions to use the Act primarily to acquire those parcels of land which are not subject to compensation.¹ However, there still exists large areas of land that is both unutilised and undeveloped, that would not give rise to the right of compensation, yet remain in the hands of its owners at the expense of redistribution.

It may be suggested that perhaps the terms "*undeveloped*" and "*unutilised*" used in the Act as a determining factor in the granting of compensation lack precision and thus cause difficulty in determining which land can or cannot be compulsorily acquired without the grant of any compensation whatsoever.

¹ Mvunga, M. Land Law and Policy in Zambia. University of Zambia Institute for African Studies Zambia, paper No. 17, 1982: p. 76.

Presently, this perhaps may not be a dire problem, yet with the rise in economic investment by both foreign and local investors, the need for viable land close to the economic centres of the country will also increase, land being the very foundation and framework on which social, political and economic activities of the nation are hinged.

Zambia, as a developing country, particularly requires an efficient and effective means of managing its land resource to ensure that the land is used optimally and for the benefit of national growth and development.

One such method of land management is that of compulsory acquisition by the state. The basis of such a law being that the government can acquire privately owned land and put that land at its disposal.

Land or an interest in land is said to have been compulsorily acquired if it is purchased or taken under statutory powers without the agreement of the owner.²

There are, however, varying views regarding the need for such a law particularly in countries that face no particular or immediate shortage of land. One author, for instance, observed that compulsory acquisition of land, irrespective of whether it

² Halsburys Law of England. Volume 8: p 6.

is sugar coated with palatable terminology such as compulsory purchase is essentially the coercive taking of land and interests in land for public purposes.³

Thus, in essence, the owner is compelled and in some cases against his will to forfeit his property to the government. The rationale advanced for such a law is that if real property were a *res nullis* or the property of no one, it would be valueless in the economic sense and basically there would be no purpose for compulsorily acquiring it, as in effect, it would belong to no one.

Conversely, if all land belonged to the state there would be no need for compensation. The state in its all encompassing power could simply divert land irrespective of whether or not it was occupied. The state, would, in this scenario incur no “*liability*” and therefore the question of compensation would not even arise.

In effect, therefore, compulsory acquisition of land or indeed property, rests upon the presupposition that there exists a right to own property as an individual and indeed the right of private ownership. Some reference will now be made to the philosophical basis for this.

³ Ume John. Compulsory Acquisition of Land and Compensation in Nigeria, Sweet and Maxwell, London (1993): p. 1.

2. THEORIES ON THE RIGHT TO PRIVATE OWNERSHIP

There is a wide range of theories advanced by philosophers regarding the inviolability of the right to private ownership. The Natural Law theorists, for instance, espoused that certain values were inherent. These values were those of liberty, security, self defence, equality and property.⁴

“So great is the regard of the law for private property that it will not authorize the least violation of it; not even for the general good of the whole community”.⁵

Distinct from the Natural Law theoretical conception of the right to private ownership, is the theory advanced by the School of Labour theorists that is often attributed to John Locke. The basis of the labour theory being essentially that a man has the right to that which he produces or acquires by his own labour.⁶

The United States Constitution still quite reflects this position and provides:

“... the supreme power cannot take from any man any part of his property without his consent”.⁷

⁴ Asante Kwaku. Property Law and Social Codes in Ghana, 1975, University Press, Ghana: p.178

⁵ Blackstones Commentaries 1st Edition, 1965: p 135.

⁶ Browder Owen. Basic Property Law. 1966, West Publishing Company: p. 1193.

⁷ Congressional Research Library of Congress, Washington DC, US Printing Office, 1973: p. XXVII

Further illustration pertaining to the deep rooted right to private property may also be drawn from Jeremy Bentham's theory of utilitarianism. The premise of the theory being that the attainment of happiness is based on the ownership of property. Bentham further asserted that the interests of the individual were the same as those of the community as a whole. Therefore, the interests of the society would be adequately catered for by the individual. In a nutshell therefore, it can be asserted that "*public purpose*" the determining factor for compulsory acquisition would not suffice as a justification to deprive an individual of his property.

This right to absolute ownership however, did undergo some changes with the advent of the French Revolution and the Declaration of Man's Rights. The French Constitution of 1793 provided :

*"No one shall be deprived of the least portion of his property without his consent, except where the public necessity legally proved, evidently demands it, and then only on condition of just compensation previously made".*⁸

The American constitution provides a similar guarantee and cements the right further by a due process clause which imposes a limit upon government action in acquiring property without the owners' consent.⁹

⁸ Dias, R W. *Jurisprudence*. 4th Edition London, Butterworths, 1985: p 98.

⁹ Op. cit. John Umeh: p 14.

The Zambian Constitution indeed has a similar provision regarding the protection of private property.¹⁰ These provisions will be addressed in depth in a separate chapter.

From the foregoing the question arises whether there is need for a Law that grants the power to compulsorily acquire land, particularly that it may be said to defeat the right to the private ownership of property.

A prominent theory that is relied upon to justify such a law is that of eminent domain. The power of compulsory acquisition is a deeply rooted consequence of the inalienable right of every state or corresponding socio-political authority to possess the power of eminent domain.

The theory of eminent domain as defined in Blacks Law dictionary is

“... the right of a state, through its regular organization, to reassert either temporarily or permanently, its domain over any portion of the soil of the state on account of public exigency and for the public good. Thus in time of war or insurrection, the proper authority may possess and hold any part of the territory of the state for the common safety and in time of peace the legislature may authorize the appropriation of the same to public purpose, such as the opening of roads, construction of defenses or providing channels for trade or travel. Eminent domain is the highest and most exact idea of property remaining in the government or in the aggregate body of the people in their sovereign capacity. It gives the right to resume the possession of the property in the manner

¹⁰ See Article 13 – 18 of the Constitution of Zambia, Chapter 1.

directed in the constitution and the laws of the state, whenever the public interest requires it".¹¹

This school of thought that relies on the eminent domain of a state is of American origin. In England, the right to appropriate land by compulsory acquisition or purchase is available to government in the prerogative right as the sovereign power of the state.¹² The common vein running through the various theories that relate to compulsory acquisition, however, is not the procedure of acquisition but rather the need to achieve public good. In spite of the unique nature of the power that a state might possess, might, is not a right per se and as such there is an independent justification for compulsory acquisition, public good.¹³

In Europe for instance, from about the middle of the 19th Century onwards, the emphasis began to shift with ever increasing momentum towards society and away from the individual. The preoccupation was with the wants of the people as opposed to those of the individual.¹⁴ What should be appreciated is that in some stage of the developmental process there comes a time when the rights of an individual have to give way to the interests of the public at large. This is aptly stated in Blackstones Commentaries:

¹¹ Black's Law Dictionary 5th Edition St. Paul's Minnesota West Publishing Company, 1979: p 470.

¹² Burmah Oil Company (Burmah Trading) V Lord Advocate 1965, AC 75 HL.

¹³ Davies Keith. Law of Compulsory Purchase and Compensation, London, Butterworths, 1978: p. 11.

¹⁴ Op. cit. Dias: p. 427

*".. in vain may it be argued, that the good of the individual ought to yield to that of the community; for it would be dangerous to allow any private man, or even any public tribunal, to decide whether it be expedient or not. Besides, the public good is nothing more essentially interested, that the protection of every individual's private rights, as modelled by the municipal Law. In this and similar cases the legislature above can, and indeed frequently does, interpose, and compel the individual to acquiesce..."*¹⁵

In Zambia, the use of acquisition power may have a special role to play. There is indeed inadequate public facilities such as schools, hospitals and parks. For instance, the capital of Zambia only has one hospital, to cater for the entire city population. It is appreciated that this service is supplemented by medical centres. However, various inadequacies need to be addressed before the Lands Acquisition Act can play a role in fulfilling its principle objective of imposing controls on land use for the benefit of the true public good.

3. SOURCES OF COMPULSORY ACQUISITION POWERS IN ZAMBIA

The general law relating to compulsory acquisition may be found in the Lands Acquisition Act, the Town and Country Planning Act, the Mines and Minerals Act and the Constitution of the Republic of Zambia. Of particular relevance in this essay are the Republican Constitution and the Lands Acquisition Act. The

¹⁵ Op. cit. Blackstones Commentaries: p. 135.

relevant provisions and their implications on the compulsory acquisitions of land will thus be discussed in greater detail in a separate chapter.

The Republican Constitution expressly provides that:

“ no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, unless by or except under the authority of an Act of Parliament which provides for the payment of adequate compensation for the said property or interest.”¹⁶

Taking the foregoing into account therefore, and subject to the proviso in Article 16 (2) any Law purporting to give right of compulsory acquisition which does not make provision for the payment of compensation is “*ipso facto*” constitutionally invalid.

In essence, therefore, the payment of compensation upon the acquisition of developed land is a constitutional right.

The Land Acquisition Act, the main focus of this essay, is essentially the principal legislation which authorizes the state to acquire land compulsorily. Under the afore-mentioned Act:

¹⁶ Article 16 (1).

“The President may, whenever he is of the opinion that it is desirable or expedient in the interests of the Republic so to do, compulsorily acquire any property of any description”.¹⁷

This particular provision at the outset raises a number of questions that will receive further study in a separate chapter. One question that may be asked would be whether the President’s opinion should be conclusive on the matter of determining the Republic’s interest.

The Lands Acquisition Act also provides for the payment of compensation and lays down the procedure to effect the same.¹⁸ Award of compensation, however, depends on whether the land acquired is developed and utilised or undeveloped and unutilised.¹⁹ The Act, however, is silent as to the definition of these terms. This provision may cause problems for administrators, particularly as they are subjective terms and each individual may have varying definitions of what they would consider a developed and utilized piece of land.

An exception, however, is made if the land is unutilised but has unexhausted improvements upon it and if the land belongs to an absent owner, who is a Zambian.²⁰ The effect of this being that a person who was not ordinarily resident

¹⁷ Section 3. Lands Acquisition Act.

¹⁸ Section 10. Lands Acquisition Act

¹⁹ Section 15. Lands Acquisition Act.

²⁰ Section 16. Lands Acquisition Act.

in Zambia, but who had in effect made some unexhausted improvements on the land could not successfully claim for compensation.

The justification for the expropriation of unutilised land belonging to an absentee or non resident owner was explained by the then Minister of Land and Natural Resources, Mr. Simon Kalulu, when he was presenting the Lands Acquisition Bill for enactment in National Assembly.²¹

"... later in the 1950s the cry for independence heated up in Northern Rhodesia, most of the settlers began to go away, of course, having fenced up their farms. Now these farms are lying idle. We cannot touch them because they legally belong to absentee owners. This gordian knot can only be untied by legal means and this is the Bill for attaining such legal means. Either this Bill passes through or the nation is held at ransom by absentee owners who demand as high as K3,000 per acre for land that was originally got at a ridiculously low fee. I will not allow my Ministry to be party to this comedy of weakness".

The Land Acquisition Act was evidently a response to the pre-ordained unfair distribution of land under the colonial government. The question that arises is whether it is an effective mechanism to solve this problem.

A number of bottlenecks exist which relate to whether firstly, adequate funds can be made available by government for compensatory purposes in the event that the need to acquire land arises. No funds are set aside to the Ministry for

²¹ National Assembly debates, 1969: p. 105.

compensatory purposes. Secondly, the Act make no provision for the dispossessed individual to be allocated an alternative piece of land.

Further, the question still arises whether there is such a critical shortage of land in Zambia to warrant legislation that permits the acquisition of private property. It should be noted however, that there does exist a shortage of land around the urban centres and this Act could perhaps play a role in remedying this situation. The question however, does arise as to whether it would be practical both in the economic and socio-political sense to attempt to relocate farmers to other areas further off from the urban centres to give these urban centres the ample free land space necessary for development.

To fully appreciate the relevance and applicability of the Lands Acquisition Act to Zambia, it is imperative that its historical context be examined. This will thus be done in the following chapter.

CHAPTER TWO

THE HISTORICAL BACKGROUND OF COMPULSORY ACQUISITION

1. INTRODUCTION

Zambia, as a territory was under foreign rule from 1890 to 1964. The British South Africa (BSA) Company administered over the area until 1924 when the territory became a British colony under the colonial office. The BSA Company land claims in the territory were mainly based on concessions obtained from the Litunga Lubasi Lewanika, ruler of the Lozi people between 1886 and 1916.¹ The attainment of such land from the native inhabitants of a territory was, in effect, the main focus of the company's activities. As is evidenced in the provision of the Charter of the British South Africa Company, that provides:

"The Company is hereby authorized and empowered (by Victoria, Queen of the United Kingdom of Great Britain and Ireland), subject to the approval of our Principal Secretaries of State from time to time, to acquire by a concession, agreement, grant or treaty, all or any rights, interests, authorities, including powers of any kind or nature whatever, including powers necessary for the purpose of government, and the preservation of public order in or for the protection of territories, lands or property ... in Africa, or the inhabitants thereof, and to hold, use and exercise such territories, lands, property, rights, interests, authorities and power

¹ Chipungu, Samuel. Guardians of our Times.: The Experiences of Zambia Under Colonial Rule, London, 1992: p. 1.

respectively for the purpose of the Company and on terms of this Our Charter."²

The BSA Company, in essence, had an all-encompassing power over the territory it controlled. A number of Orders-in-Council were however, passed by the crown that provided a legislative framework for company administration.

For instance, in 1899, by an Order-in-Council, the two territories, of North Eastern Rhodesia and North Western Rhodesia were formerly divided into two.

When the BSA Company assumed control of North Eastern Rhodesia, no efficient system of tribal administration existed. It was, therefore, necessary to establish a strong government.³ Thus, detailed provisions were made for the administration of the territory under the North Eastern Order-in-Council of 1900. The BSA Company, thus in effect derived administrative powers from the Charter and this Order-in-Council. At the head of the administration was a company appointed administrator.⁴

The Administrator and his Council were empowered to make, alter and repeal regulations for the administration of justice, the raising of revenue and generally for the peace, order and good government.⁵

² Royal Charter of Incorporation to the BSA Company, Section 3.

³ Chanda, A W : Zambia: A Case Study in Human Rights. JSD Thesis, p. 42

⁴ North Eastern Rhodesia Order-in-Council, S. 7.

⁵ To be valid such regulation had to be approved by the High Commission to Nyasaland.

The company, was required within these regulations, from time to time to assign land to Africans for their occupation. However, all mineral rights in such land were vested in the Company. Therefore, the Company could remove natives from their land if it needed the land for mineral development.⁶

The style of administration as well as the degree and extent of imperial control in North Western Rhodesia differed from that of North Eastern Rhodesia, because in North Western Rhodesia there already existed some kind of state under Lewanika, the Litunga.⁷ Indeed, the Land and Mineral Treaty of 1900 specifically provided that the BSA Company was not to interfere with matters concerning the Litunga's power and authority over his subjects.

In 1911, North Eastern Rhodesia and North Western Rhodesia were amalgamated pursuant to the Northern Rhodesia Order-in-Council of August 17, 1911.

The BSA Company continued to administer the territory until 1924 when the company's land rights were transferred to the Crown.⁸

⁶ Op. cit., S. 40, 42 and 43.

⁷ Op. cit. Chanda, A W: p. 44.

⁸ Under the 1923 Devonshire Agreement the Company would receive one half of the sums paid to the Crown under the sale or lease of land.

2. COMPULSORY ACQUISITION OF LAND DURING BRITISH SOUTH AFRICAN COMPANY RULE

Prior to 1924, the British South Africa Company, as the administering authority over the Northern Rhodesia territory, made regulations relating to the compulsory acquisition of land. These regulations were made pursuant to the 1899 Order in Council, which order did *inter alia* empower the company to make regulations “for peace, order and good governance”.⁹

These regulations effectively reflected the BSA Company’s conception of the protectorate status as being that it owned the vacant and unalienated land. Thus, the BSA Company, as of January, 1902, could grant land to white settlers on the payment of a ridiculously low perpetual quit rent.¹⁰ Any European who had the courage to cross the Victoria Falls and helped in the construction of the railway line was handsomely rewarded by at least a square mile of land on either side of the railway line.¹¹

The 1900 Lands and Deeds Regulations, further established a Land Registry in which various interests in land and owners of these interests were recorded. The certificate of title issued to settlers reserved the power to acquire the land with compensation if the land was needed for public purpose.¹²

⁹ Mvunga Patrick. *Land Law and Policy in Zambia*. Ph. D Thesis, 1977: p. 463.

¹⁰ National Assembly Debates, 4th December, 1969: p. 103

¹¹ Ibid. National Assembly Debates: p. 103.

¹² Op. cit. Mvunga Patrick: p 465.

The BSA company was essentially a self appointed landlord who could dish out land indiscriminately to white settlers, particularly land along the line of rail and in the areas that were deemed fertile.

Taking into account the fact that land was in abundance it may not conclusively be asserted that there was a systematic and frequent use of the clauses reserving the company's right to acquire land for public purpose.¹³ Thus, if any consideration was given to whether the reason for acquisition was indeed public purpose is debatable.

It should, however, be noted that these grants of lands in areas along the line of rail indeed did involve, the displacement of the indigenous population that resided in these choice areas of land. The population was infact rehabilitated and put on land further afar from the line of rail without compensation.¹⁴

It can thus, safely, be concluded that the BSA company did not regard the indigenous population as having any interest in the land that they occupied, specifically because although, the North Eastern Rhodesia Order-in-Council of 1900 entrenched land rights in favour of natives and prohibited the arbitrary acquisition of natives land by "any person," the enjoyment of this right was

¹³ Zimba Lawrence. The Constitutional Protection of Fundamental Rights and Freedoms in Zambia. LLM Thesis: p. 38

¹⁴ Ibid.: p. 42.

curtailed to a great extent by further provision that “the Company should retain the mineral rights in all the land assigned to natives.”¹⁵

In effect, this meant that if the BSA Company required any such land “for the purpose of mineral development” or even for sites of townships, railways or other public works associated with the mining of any minerals discovered, natives could be ordered to leave such lands.¹⁶ The only condition contingent upon such removal of natives from this land was that they be assigned “just and liberal compensation in kind” elsewhere sufficient and suitable to sustain their agricultural and pastoral requirements.¹⁷ No basis, however, was provided to determine what indeed were the natives’ agricultural or pastoral land requirements and in effect natives were resettled arbitrarily.¹⁸

The Northern Rhodesia Order-in-Council of 1911, provided for the amalgamation of the two territories; North Western Rhodesia and North Eastern Rhodesia. The provision relating to land basically reinstated the assurances of natives’ rights to land in their occupation and conferred power on the Company to assign sufficient land for native occupation. This land, however, was still subject to acquisition if the Company needed the land for exploration or mining purposes. Outside of this

¹⁵ Article 43 North-Eastern Rhodesia Order-in-Council of 1900.

¹⁶ Op. cit. Chanda, A W, JSD Thesis, 1992: p. 42.

¹⁷ Ibid.

¹⁸ The Africans displaced by the North Charter Land Company were resettled in unfertile, tsetse-infested areas.

purpose the Order-in-Council explicitly prohibited the removal of natives from any land assigned to them.¹⁹

In spite of these regulations, there is a number of examples that exhibit the disregard that the BSA company had for the natives that occupied the areas of land along the line of rail or in fact areas that were declared arable for farming. For instance headmen; Lusaka, Mukabulonga, Chikumbi and Momba were cited by the incumbent Minister of Land and Natural Resources, Mr. Simon Kalulu, as having been forcibly removed from their land along with their subjects. No compensation was paid to these people nor was the requisite prior consent sought as provided for in the Orders in Council of 1899 and 1911.²⁰

Another example to illustrate the BSA Company's total disregard for the local inhabitants would be the incident where the North Eastern Charter Land Exploration Company was allotted six and a half million hectares of land in areas densely populated by Africans. The Africans so displaced either had to remain in such areas to provide labour for the settlers or relocate to other areas of land which were comparatively poor, dry and tsetsefly infested.²¹

¹⁹ Article 43.

²⁰ The Headmen were cited at the 2nd Reading of the Lands Acquisition Bill in 1969.

²¹ Op. cit. National Assembly Debates, 1969: p. 103.

In addition to the power the BSA Company had to allocate and redistribute land, the company also owned the mineral rights in perpetuity with respect to the mineral resources in Northern Rhodesia. Apart from the ownership of the title to the minerals, the BSA Company also had the power to decide who should prospect for mineral deposits and where such prospecting could be conducted.²²

A prospector had to obtain the license from the BSA Company to operate, if and when he desired to start mining operations. In the event that such mining was successful, the prospector had to pay royalties on the production to the BSA Company.²³

The BSA Company, within its discretion, granted exclusive rights to the Rhodesian Anglo American Limited and the Rhodesian Select Trust Limited Company to prospect, explore and mine certain areas of the country ultimately culminating into 70% of the country's land surface.²⁴ These rights were in force from the 1920s up until 1969 when a Constitutional Amendment was passed to remedy this situation. This will be discussed in more detail when the postcolonial era is addressed in this same chapter.

Company rule was terminated by the Northern Rhodesia Order-in-Council of 1924. Administration of the Northern Rhodesia territory was thus, effectively,

²² Op. cit. Zimba Lawrence: p. 381.

²³ Op. cit. Zimba Lawrence: p. 381.

²⁴ Op. cit. Mvunga Patrick: p 483.

transferred, to the crown and placed under the colonial administration of the British Government.

Section 2 of the Northern Rhodesia Order-in-Council of 1924 provides:

“The Northern Rhodesia Order-in-Council, 1911 and other Orders-in-Council specified in the schedule here to, are revoked as and from the commencement of this Order ...”

It was further provided in Section 6 of the same Order that:

“In place of the Administrator for whose appointment provision is made by the Northern Rhodesia Order-in-Council, 1911, there shall be a Governor and Commissioner-in-Chief in and over Northern Rhodesia and appointments to the said office shall be made by Commission under Her Majesty’s sign manual and signet”.

3. COMPULSORY ACQUISITION OF LAND DURING THE COLONIAL PERIOD: 1924 – 1964

The Crown administration originates from the 1924 Northern Rhodesia Order in Council. This order established a legislative council which was empowered to establish such ordinances as may be necessary for the administration of justice, the raising of revenue and generally for the peace, order and good governance of Northern Rhodesia.²⁵ With the establishment of the colonial administration, some

²⁵ See S. 20 1924 Northern Rhodesia Order-in-Council

changes were seen in the law or regulations governing the compulsory acquisition of land.

The colonial administration, in line with the powers granted by the 1924 Order-in-Council, enacted the Public Lands Acquisition Ordinance of 1929.²⁶ This ordinance governed the acquisition of land during the colonial period and the early years of the post independence era.

The Public Lands Acquisition Ordinance was subject to the approval of the governor. According to the incumbent Attorney General this ordinance was passed essentially to clearly define “public purpose” which had been the subject of much litigation.²⁷

The Public Lands Acquisition Ordinance empowered the Governor of Northern Rhodesia to acquire land when it was required for public purposes. Section 3 of the Ordinance provided for the payment of such consideration or compensation as may be agreed upon or determined under the provisions of the ordinance.

²⁶ Cap 87 Laws of Northern Rhodesia 1958 Edition.

²⁷ Legislative Council Debates (Northern Rhodesia) No. 10, 1930: pp. 112 – 114. It should be noted however, that no proof was found of such litigation as per Kakoma Sefulo Compulsory Acquisition of Land in Zambia, 1979: p. 7.

The ordinance also made provision for the definition of public purpose to the effect that it included the following:²⁸

- i. For exclusive use of the government or of the federal government or for general public use;
 - ii. For or in connection with sanitary improvements of any kind, including reclamations;
 - iii. For or in connection with the laying out of any new municipality, township or government station or the extension or improvement of any existing municipality, township or government station;
 - iv. For obtaining control over land contiguous, or required for or in connection with, any port, airport, railway, road or other public works of convenience by the government or the federal government;
 - v. For obtaining control over land required for or in connection with mining purposes;
 - vi. For the construction of any railway authorized by legislation;
 - vii. For or in connection with constitution of native reserves as defined in Article 2 of the Northern Rhodesia (Crown land and Native Reserves) Orders-In-Council, 1928 to 1956;
 - viii. For or in connection with conservation or improvement of natural resources;
- and

²⁸ See Section 2.

ix. For or in connection with the supply by the government, the federal government or a statutory corporation of electricity or water to the public.

Taking into account the foregoing provision, it becomes apparent that the Ordinance was very restrictive on the government's power to compulsorily acquire privately owned land. The acquisition of such land had to qualify the "public purpose" test, that was, in essence, very specific and particular as can be seen from the provision just previously cited. If the purpose for an acquisition did not fall within the realm of public purpose, such an acquisition would be illegal.

It has been suggested by one scholar that the Ordinance was constructed in such a way so as to protect the private property owned by white settlers.²⁹ Indeed, this supposition, can be further strengthened when one takes into account the content of the legislative council debate when a bill was proposed to amend the provision relating to 'public purpose' to include a more broader definition of the term. One Parliamentarian expressed the following opinion:

*"... Mr. Speaker, I would be the last one to suggest any sort of power in the hands of any government which infringed unduly on the rights of a private land owner"*³⁰

²⁹ Op. cit. Mvunga Patrick: p. 313.

³⁰ Legislative Council Debates (Northern Rhodesia) No. 9, 1957: p. 391.

Further, encumbrance was placed on the government's power to utilize its power of compulsory acquisition by the inclusion of unconditional compensation. The compensation payable was either as agreed upon between the parties or in default of agreement, was to be assessed according to the market value of the land at the time of acquisition.³¹

It can therefore, safely be adduced, taking into account the foregoing, that the practical effect of the law of compulsory acquisition of land was limited to areas where the government felt that by providing and facilitating administrative expansion, it would effectively secure the economic interests of the colonial entrepreneurs.

4. COMPULSORY ACQUISITION OF LAND IN THE POST INDEPENDENCE PERIOD: 1964 – 1970

Zambia gained her independence from the colonial administration on October 24, 1964. In spite of the attainment of independence, however, little change was seen with regards to the law relating to the acquisition of land. This has been attributed to three legal impediments:

³¹ Section 3 Cap. 87 of the Laws of Northern Rhodesia.

(a) The new government promised not to interfere with the property of individuals and it could not justify such interference unless as provided for in the law, the land was not being exploited.³² The Independence Constitution provided that the acquisition of private property was prohibited except under an Act of Parliament which allowed for compensation.³³

The Independence Constitution further provided that no alteration could be made to provisions of the constitution pertaining to the protection of fundamental human rights, unless a referendum was held.³⁴ The particular right relevant in this context is the right to private ownership of property.

(b) The Zambia Independence Act, provided for the continued operation of existing law notwithstanding the change in the constitutional status.³⁵ The Act further provided that:

*“Her Majesty may by Order in Council make such adaptations in any Act of Parliament passed before this Act, or in any instrument made or having effect under any such Act, as appear to her necessary or expedient in consequence of the change in the status of Northern Rhodesia taking effect on the appointed day”.*³⁶

³² Bastian De Gray Fortman. After Mulungushi: The Economics of Zambian Humanism, Nairobi, East African Publishers, 1969: p. 21.

³³ The Independence Constitution, 1964, Section 18.

³⁴ Ibid.

³⁵ Section 5 (1).

³⁶ Section 9.

(c) Further, the Zambia Independence Order of 1964 declared that the law existing at the time of independence would continue in force after the commencement of the order.³⁷

Taking into account the aforementioned, it becomes apparent that the new independence government could only acquire land within the confines of the already existing laws, namely the Public Lands Acquisition Ordinance and the Independence Constitution of 1964. It follows, therefore, that the new government, essentially had its hands tied. The BSA Company for instance, still owned exclusive title to the mineral and mining rights of Zambia. Further, the large tracts of land already granted to the white settlers were protected, inspite of the fact, that several hundred hectares of the lands still lay unused, either because the owners were long dead or had since left the country in the hope of reselling their land at a gigantic profit in the future.³⁸

If one examines this scenario in the context of the socio-economic and political atmosphere pertaining at the time, it becomes apparent that there was need to revisit the legislation relating to compulsory acquisition.

³⁷ See Section 4 (1).

³⁸ Timothy Kandeke. Fundamentals of Zambian Humanism, Lusaka, NECZAM, 1977: p 171.

Practically, all leaders of emergent states asserted that they had opted for some kind of “*socialism*” as an appropriate system through which economic development could successfully be attained.³⁹ This naturally raised a problem in the case of newly independent Zambia, since the former colonial power prior to giving up the hands of power, had ensured that the capitalist economic system should continue to operate. For instance, it is not surprising that at independence the inherited economic institutions continued, as before, to operate on capitalist lines and continued to transfer large amounts of money to their overseas shareholders.⁴⁰ In the process, the inherited *status quo* was maintained, inspite of the attainment of political independence.

In order for the newly independent government to pursue its own choice of economic development and growth there was need to restructure and completely remove any impediments that arose under the auspices of the *laissez fair* system as promulgated by the colonial regime. One such impediment, being the restrictive legislation that governed compulsory acquisition.

One author aptly represented the sentiments of a vast majority of the African population after independence.

³⁹ Op. cit. Zimba Lawrence: p, 372,

⁴⁰ Op. cit. Zimba Lawrence: p. 372.

*"Africans resent alien economic control as much as they resent alien political control. They are frustrated by alien ownership of mines, plantations and factories and by the racial inequality of alien management, alien skilled crafts, alien workers paid more than african workers on similar jobs ... They resent the way in which white settlers and financial corporations have taken possession of their best land ..."*⁴¹

In this light, it became of paramount importance that the new government change this restrictive legislation and thereby, gain some control over alienated state land and indeed private lands that in some instances still lay unused.⁴² It should however be noted that the new government could not acquire these lands except upon the payment of compensation and further upon the ascertainment that the acquisition of such lands was indeed for '*public purposes*'.

Further, the prohibition of expropriation without compensation in the Zambia Independence Constitution was a very serious legal hurdle to the utilization of mineral resources for the development of the country and for the benefit of the community as a whole.⁴³

⁴¹ Lord Brockway. *African Socialism*, 1963: p. 14.

⁴² Several hundred hectares of land still lay unused, either because the owners had returned to Britain or migrated to Southern Rhodesia, to escape the effects of the liberation struggle in Northern Rhodesia.

⁴³ Exclusive Rights were held by both Rho Anglo and Roan Select Trust Limited to explore and mine in areas of the country amounting to 70% of the country's surface.

For the indigenous people, who were now politically sovereign, with new aspirations demanding a new “*modus operandi*” for the distribution and enjoyment of the country’s resources amongst which land was the most important resource, the protective nature of the Independence Constitution and the Public Lands Acquisition Ordinance was an obvious and indeed intolerable hindrance to the achievement of their economic objectives.⁴⁴

The position of the new government was reflected in a speech made by former Republican President Kenneth Kaunda prior to the enactment of a new constitution in 1969 in which he said that:

*“...Perhaps this is an appropriate time for me to announce that government has accepted, in principle, the need to amend that part of the constitution which relates to compulsory acquisition of property.. The existing section 18 of the constitution must be examined and replaced by a more realistic provision”.*⁴⁵

In response to the problems identified by the independence government an amendment to the 1969 Constitution was passed to give effect to the new government policy, namely, the acquisition of the rights granted in perpetuity by

⁴⁴ Op. cit. Mvunga Patrick: p. 76

⁴⁵ Towards Economic Independence. Address to UNIP National Council, 19th April, 1968.

the state without compensation. The amendment, extended the scope of confiscation beyond that stipulated in the independence constitution.

The important areas in which confiscation was allowed included:⁴⁶

- i. Mining, through a law which vested in the President rights of ownership, searching for minerals and disposal of minerals;
- ii. Abandoned, unoccupied, unutilised or undeveloped land;
- iii. Land from absent or non-resident owners;
- iv. The acquisition of shares; and
- v. Property.

To effectively implement this new government policy two pieces of legislation were enacted, namely the Mining and Minerals Act of 1969 and the Lands Acquisition Act of 1970. Of particular relevance in this study is the Lands Acquisition Act of 1970. It will thus receive a more in depth discussion in a separate chapter.

The Lands Acquisition Act of 1970, for all intents and purposes replaced the colonial Public Lands Acquisition Ordinance. The Lands Acquisition Act empowered the President to compulsorily acquire any property of any description

⁴⁶ No. 33 of 1969 The (Constitution Amendment) Act.

whenever he is of the opinion that it is desirable or expedient in the interest of the Republic so to do.⁴⁷

This immediately removed the frustration that existed under the colonial ordinance relating to '*public purpose*'. The new government no longer had to show that it was justified to acquire land on the ground that the particular property was needed for a public purpose.

The new Act also placed discretionary power on the President, who in effect, merely had to be subjectively satisfied that the acquisition was in the interest of the Republic. The effect of this provision is two fold: The State has the advantage over the owner because it would prove extremely difficult to defeat government action in a court of law merely by arguing that the acquisition was not in the interest of the Republic. Secondly, the Courts could choose to utilize an objective test to establish whether, indeed, a public interest has been served by an acquisition.⁴⁸

The Lands Acquisition Act further, also removed the compensatory right that was attached to undeveloped land. No compensation under this new Act was to be

⁴⁷ See Section 3. Lands Acquisition Act of 1970.

⁴⁸ Many judicial decisions are to the effect that the exercise of discretionary power cannot be challenged unless it can be shown that the person vested with the power acted in bad faith or from improper motives or extraneous considerations or under the facts or law which could not reasonably be entertained see the decision in Nkumbula V Attorney General (1992) ZR 11).

paid in respect of undeveloped land.⁴⁹ An exception however is made if the land is unutilised but has unexhausted improvements upon it and if the land belongs to an absent owner, who is a Zambian.

The effect being that a person who was not ordinarily resident in Zambia, but who had in effect made some unexhausted improvements on the land could not successfully claim for compensation if he was not a resident in Zambia.⁵⁰

The justification for the appropriation of unutilised land belonging to an absentee landlord or non-resident owner was essentially that now land that had been laying unused since the majority of white settlers had moved away, could now be compulsorily acquired by the government and re-distributed.

Essentially upon the enactment of the Lands Acquisition Act, the government of Zambia was now armed legally to obtain land by forfeit. The Act evidently was a

⁴⁹ Op. cit. Zimba Lawrence: p. 384.

⁵⁰ See Harry Nkumbula V Attorney General, 1972 ZLR: p. 205 at p. 206

response to the pre-ordained unfair distribution of land under the colonial government.

The reform to the Law that governed compulsory acquisition was inevitable if the new government was to look at the issue of development on a more comprehensive level as opposed to the *laissez faire* policy that had the object of safeguarding the European private enterprise. The question, however, needs to be asked whether this legislation still is an effective means of remedying the unfair distribution of land in post independent Zambia. Particularly taking into account, the fact that the Zambian economy can now be said to have become essentially capitalist based.

To adequately address this, the next chapter will focus on the mechanism of compulsory acquisition of land, taking into account the procedure for compulsory acquisition, the dispute settlement procedure, the principles governing the payment of compensation and other related issues. Essentially, therefore, the next chapter will involve an analysis of the Lands Acquisition Act.

CHAPTER THREE

THE LANDS ACQUISITION ACT

1. INTRODUCTION

The power of a state to acquire land compulsorily for what has been designated public purpose appears well settled and accepted as an attribute of political sovereignty.¹

Prior to the enactment of the Lands Acquisition Act, Chapter 189 of the Laws of Zambia, compulsory acquisition of land in the colonial era and up until a few years after independence was regulated by the Public Lands Acquisition Ordinance.²

As aforementioned in the preceding chapter, this ordinance was very restrictive on the government's powers of compulsory acquisition. The Governor could only acquire land required for specified public purposes.³ The government could, therefore, not acquire land compulsorily outside this pre-ordained 'public purpose' provision. Acquisition was further conditional upon the payment of compensation. The compensation payable was either as agreed upon between the parties or in default of such agreement was to be determined by the market value of the land at the time of acquisition.⁴

¹ This supposition received more in-depth discussion in the first chapter of this essay.

² Cap. 87 Laws of Northern Rhodesia (1958 Edition).

³ The specified Public Purpose included Public utilities such as a railway line, sanitary services and townships.

⁴ Op. cit. Mvunga Patrick, p. 464.

By 1968, however, it became apparent that the post independence government was displeased with the state of the law that governed compulsory acquisition. The government became concerned that there were vast tracts of land which were idle either for speculative purposes or because the owners had since left the country.⁵ Further, it was felt that idle land did not warrant compensation, particularly when at the time of purchase the price for this land was a meager six pence per acre.⁶

The government in spite of the fact that these lands in most instances lay vacant, could not acquire the land unless, indeed, the land was required for public purpose. In effect, therefore, the government continued to have no control over alienated State Lands or private lands. This lack of control over land by the state up until 1969 has in fact been cited by one author as the main cause for the uncoordinated development in the country, particularly in urban areas.⁷

It should be noted however, that at the time, the Constitution of newly independent Zambia contained an entrenched provision relating to the protection of rights. Compulsory acquisition of private property could only be justified if the acquisition was on the ground that it was either 'expedient' or 'necessary' in regards to any of the specified interests. Thus the necessity or expediency of the acquisition was a condition precedent to the constitutionality of compulsory acquisition.⁸ The Constitution also

⁵ Op. cit., Mvunga Patrick; p. 465.

⁶ See National Assembly Debates Session 2 – 18 December 1969.

⁷ Op. cit., Kandeke.

⁸ S 18 Independence Constitution.

expressly prohibited the expropriation of property without compensation. It has been asserted by one writer that this provision in the constitution merely had the intention of entrenching the Mineral Rights of the British South African Company by totally prohibiting positive confiscation of property.⁹

Government thus had to address this serious legal hurdle relating to the payment of compensation as a condition precedent to compulsorily acquire property and the need that the acquisition be necessary or expedient in certain specified interests. However, the British Government had ensured in writing the independence Constitution for Zambia that none of the fundamental rights, property rights being relevant in this instance, could be altered, except with the approval of a two thirds majority of the National Assembly and also the approval of a 51% majority of the electorate entitled to vote in a referendum.¹⁰ A referendum was duly held on the 17th of June 1969 and the following provisions were repealed from the constitution.¹¹

- (a) The requirement that compulsory acquisition had to be necessary or expedient in certain specified interests.
- (b) The requirement that compensation had to be adequate and paid promptly.
- (c) The guarantee of the right of the owner to remit the compensation money to any country of his choice.

⁹ Op. cit., Zimba, L. Ph. D Thesis: p 382.

¹⁰ S 72 (3) Independence Constitution of 1964.

¹¹ No. 33 of 1969. The Constitution (Amendment) Act.

(d) His right of access to the court for the determination of compensation.

The amended constitution authorized compulsory acquisition effected under the authority of an Act of Parliament which provides for payment of compensation for the property. The Constitution further provided for principles upon which the compensation was to be determined and in the default of agreement between the parties that the compensation be determined by National Assembly.¹² The Lands Acquisition Act was thus enacted to give effect to these provisions in 1970.

The Land Acquisition Act will thus now be explained in greater depth giving particular attention to the provisions relating to the procedure of acquisition, the assessment of compensation and the settlement of dispute mechanism.

2. PROCEDURE FOR ACQUISITION

At the outset it should be noted that the power to acquire property lies with the President.

The Lands Acquisition Act in its third section provides:

"Subject to the provisions of this Act, the President may, whenever he is of the opinion that it is desirable or expedient in the interests of the Republic so to do compulsorily acquire any property of any description".

¹² The Referendum (Amendment) Act No. 5 of 1969. In the present Constitution see Art. 16 (3) The National Assembly is no longer the determining authority. Compensation is to be determined by a Court of Competent Jurisdiction.

Thus a Presidential resolve must be obtained to the effect that some land is required in the interest of the Republic. A Notice of Intention to acquire the property within a specified time, but not less than two months must be served on those having interest in the property. The notice also invites the interested person to submit claims, if any to the Minister within four weeks of the publication of the Notice in the Government Gazette.¹³

In the event that the property is urgently required, the persons interested in the property may be required to yield up possession of the property at the expiration of such lesser period as the President may direct.¹⁴ On the expiration of this lesser period the President and all persons authorized by him may take possession of the property.

In effect, therefore, the Minister of Lands and the Commissioner of Lands may act for and on behalf of the President as provided in Section 4 (1) of the Act.

"Whenever it appears to the President that it may be desirable or expedient to acquire any land it shall be lawful for any person authorised either generally or specially by the Minister in that behalf and for his servants and agents".

Thus, the Minister acts for and on behalf of the President and may effectively enter upon the land in question or any land in its vicinity thereof and survey, dig or bore under the subsoil and do all other necessary acts to ascertain whether the land is or may be suitable

¹³ Section 5 Lands Acquisition Act Cap. 189.

¹⁴ Ibid. Section 6 (1)

for the purpose in question or indeed clear, set out and mark the boundaries of the land proposed to be acquired.¹⁵

The implication being that the Minister and his agents possess some degree of discretion in determining whether the land is or is not suitable for the prescribed purpose. It should however, be noted that the landowner is protected to some extent. This protection is provided in the following ways: firstly, the Minister or his agent are precluded from entering into any building or upon any enclosed court or garden attached to a dwelling house. The exception, however, being that the agent has previously given the occupier of the said dwelling house a notice of his intention to enter of not less than seven days. In the event however that consent is granted by the occupier the seven-day notice falls away.¹⁶ Secondly, the government is obliged to pay for all damages done by the persons so entering the land. Indeed, if a dispute as to the amount to be paid arises between the Minister and the person claiming payment such dispute may be referred to a court of competent jurisdiction.¹⁷

Further, to this protection the obligation to serve notice of intention to take land on the person interested or claiming such an interest arises in section 5 (1) of the Act which provides:

¹⁵ Op. cit. Section 41 Lands Acquisition Act.

¹⁶ Ibid.

¹⁷ Section 4 (2) Court of Competent Jurisdiction being defined as the High Court in S 2 of the Act.

"If the President resolves that it is desirable or expedient in the interests of the Republic to acquire any property, the Minister shall give notice in the prescribed form to the persons entitled to transfer the same or to such of them as shall after reasonable inquiry be known to him".

The implication of this section being that notice should be issued to the owner or interest holder, taking into account the fact that in many instances the occupier of a premises is not always the owner. The section further places an obligation upon the Minister to make 'reasonable inquiry' to ascertain who has an interest in the property.

The Act further, provides for a notice period of up to four weeks within which any person claiming to be interested in such property may submit a claim to the Minister. The four-week period commences after the publication of the gazette, essentially giving interest holders adequate time to lodge their claims.¹⁸ The Act further specifies methods and media for the effective transmission of notices issued with respect to the landowner or other interested parties and the stipulation requiring the publication of all such notices having been properly served. Thus, every Notice of Intention or to yield up possession is to be served on the person to be served personally or at their usual place of residence or business. However, if the person is absent from Zambia such a notice shall be left with the occupiers of the premises or affixed upon such conspicuous part of such property.¹⁹

It should, however, be noted that the two month notice period to yield up possession may be reduced by the President if he certifies that the property in question is urgently

¹⁸ S 5 (2).

¹⁹ S 7 (1).

required. The President essentially has the discretion to determine a period of less than two months.²⁰

The President, however, may not acquire a portion of land if the residue of it would be less than half an acre. The owner of such land may, within thirty days of the publication in the Gazette of the notice to yield up possession, by notice in writing served upon the Minister require the President to acquire the whole of the land upon which such notice has been served and the President shall acquire the whole of such land.²¹ There is, however, a proviso to this where the owner of the land amounting to a residue of less than half an acre has adjoining land which together with the residue would exceed half an acre.²² This however does not apply to any land situated in an urban area.

The intention to acquire property may be as in form L.A.1 as provided for by the subsidiary legislation of the Act. The notice must clearly draw the attention of the persons interested in the property to transfer the land to the President within four weeks of the publication of the notice.²³

It should be noted that although these provisions, to some extent, appear to be in the interest of the individual who may have an interest in the land, there are indeed some

²⁰ Proviso to Section 6 (1)

²¹ Section 8 (1)

²² Section 8 (2).

²³ Section 17.

procedural provisions that protect the acquiring authority from undue delay by the land owners to yield up possession and to ensure that notice to yield up is complied with.

For instance, section 4 of the Act expressly allows representatives from the Ministry to conduct preliminary investigations on land to determine its suitability. A mere seven-day notice period is required.

Further, Section 11, bestows the right to go to the High Court, within six weeks after publication of notice to give up possession, for the settlement of any dispute relating to or in connection with the property; and provides:

*“If within six weeks after the publication in the Gazette under section seven of the notice to yield up possession, there remains outstanding a dispute relating to or in connection with the property, other than a dispute as to the amount of compensation the Minister or any person claiming any interest in the property may institute proceedings in the court for determination of such dispute”.*²⁴

The Act however in spite of this right to seek legal redress does provide that:

*“The existence of any dispute .. shall not affect the right of the President and persons authorised by him to take possession of the property”.*²⁵

²⁴ Up until 1992 the person who had his property compulsorily acquired could go to the National Assembly within six weeks after the notice to yield up if any dispute as to the amount of compensation arose.

²⁵ Section 11(4).

It should, however, be noted that the right of the President to acquire property may be affected for instance in the case of a dispute as to the right to acquire the property without compensation being in court or indeed in the case that a dispute as to the amount of compensation to be payable to the person entitled to compensation is in court.²⁶

Further, to this, a notice to acquire may not be held invalid, by reason only that an irregularity existed in the service of the notice or by reason of it having been published prior to its service on any person required to be served therewith.²⁷

The Subsidiary Legislation provides the format for the notice to yield up possession, notice of intention to acquire property and notice to yield up possession and the application for entry in the register recording compulsory acquisition. The forms in the schedule shall be used in all matters to which they refer or are capable of being applied or adapted with such modifications as the circumstances may require.²⁸

3. ASSESSMENT OF COMPENSATION

The Zambian Constitution in its Bill of Rights provides for the payment of adequate compensation to persons whose property is taken compulsorily.²⁹

²⁶ Section 11 (4) (1) and (11)

²⁷ Sec. 7 (4)

²⁸ See statutory instrument 60 of 1970

²⁹ Article 16 Constitution of Zambia Cap 1.

“Except as provided in this Article, no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, unless by or under the authority of an Act of Parliament which provides for payment of adequate compensation for the property or interest or right to be taken possession of or acquired.”

The Lands Acquisition Act further provides:

“Subject to the provisions of this Act, where any property is acquired by the President under this Act the Minister shall on behalf of the government pay in respect thereof, out of moneys provided for the purpose by Parliament, such compensation in money as may be agreed or, in default of agreement, determined in accordance with the provisions of this Act”.³⁰

However, with the consent of the person entitled to compensation, the President may make to such person, in lieu or in addition to any monetary compensation, a grant of state land. The land granted however should not exceed the value of the land that has been compulsorily acquired.³¹

The Act expressly provides for principles to be followed in the assessment of compensation and states that in assessing adequate compensation as provided in the Constitution these principles shall be adhered to. The principles are:

- (a) that no allowance shall be made on account of the acquisition being compulsory.

³⁰ Section 10 Lands Acquisition Act.

³¹ Ibid.

- (b) that the value of the property .. shall be the amount which the property might be expected to realize if sold in the open market by a willing seller at the time of publication ... of the notice to yield up possession; provided that there may be taken into account and deducted.
- (i) any returns and assessments of capital value for taxation made or acquiesced by the claimant;
 - (ii) any money granted by the government for the development of the property ... unless any contributor indicates in writing that the contribution was made for the case and benefit of the registered owner.
- (c) The special suitability or adaptability of the property for any purpose shall not be taken into account ...
- (d) No allowance shall be made on account of any improvements effected or works constructed after the publication of the notice to yield up possession.
- (e) Where part only of the land held by any person is acquired.
- (f) Allowance shall be made for the damage, if any, sustained by the person having an estate or interest in land by reason of the severance of such land from any other land ... or such injuries effect upon such other land.

(g) No allowance shall be made for any probable enhancement in the future...³²

As regards compensation, the Lands the Acquisition Act should be read in conjunction with the Constitution which provides that in default of agreement regarding the amount of compensation provided for by any Act of Parliament, the amount should be determined by a court of competent jurisdiction.³³

Under the Act there are two types of acquisition and these are basically different because one attracts compensation and the other does not.

Award of compensation depends on whether the land acquired is developed and utilised or undeveloped and unutilised. It follows therefore that the underlying government policy is that the nature of use that the land is put to will determine whether or not compensation will be paid. The then Minister of Lands and Natural Resources, Mr. Simon Kalulu was of the opinion that this policy would allow government to repossess or acquire land owned by absentee landlords.³⁴

The Act, thus makes no provision for compensation where land is undeveloped or unutilised. Section 15 (1) provides that notwithstanding anything contained in this Act or any other law ... no compensation shall be payable in respect of undeveloped land or

³² Section 12

³³ See Article 18 (4) Cap. 1

³⁴ National Assembly Debates 2 – 18, December 1969.

unutilised land. Section 15 (2) however, provides for compensation in respect of unexhausted improvements on unutilized land belonging to a resident in Zambia. It should be noted however, that if the land is unutilised land and it belongs to an absentee owner who is not ordinarily resident in Zambia, no compensation is payable.

The Act defines land as undeveloped and unutilised in relation to rural and urban areas. Land is deemed to be undeveloped if it is inadequately developed bearing in mind the national need but, without derogating from the generality of this criterion, land does not cease to be undeveloped by reason only that:

- a) It has been fenced or hedged or;
- b) It has been cleared, leveled or ploughed;
- c) It consists of a cleared or partially cleared site of some former development;
- d) It is being used, otherwise than as an ancillary to adjacent land which is not undeveloped or unutilised land, as a place of deposit for refuse or waste or as standing or partaking places for vehicles.³⁵

In the case of land in the rural areas, presumption is that it is not undeveloped unless it has not been used for agricultural and pastoral use.

³⁵ S. 15 (3)

Land in an urban area shall be deemed unutilised if it has been developed by erection of buildings, structures or works which have fallen into substantial disrepair or into disuse and the land has been unoccupied or occupied by persons solely employed as watchmen, for a continuous period of not less than three months or if it is used solely for habitation, in dwellings of their own construction or adopted from buildings formerly abandoned by persons holding at the will or sufferance of a person having title to the land or by trespassing.³⁶

4. DISPUTE SETTLEMENT UNDER THE LANDS ACQUISITION ACT

Prior to the repeal of Section 11 (3) and Section 13³⁷ of the Lands Acquisition Act, the Act made a distinction between disputes relating to or in connection with the property and disputes arising as to the amount of compensation and vested the power to settle them in the High Court and the National Assembly respectively.

After the repeal of the two aforementioned sections this distinction is no longer valid.

Essentially therefore if within six weeks after the publication in the Gazette of the notice to yield up possession, there remains outstanding any dispute relating to or in connection with the property, the Minister or any person claiming any interest in the property may institute proceedings in the court for the determination of the dispute. In addition, if the

³⁶ S. 15 (b) (i) (iii).

³⁷ Repealed by Statutory Instrument No 110 of 1992

dispute pertains to the amount of compensation, such a dispute will also be referred to a court of competent jurisdiction which shall determine the amount of compensation to be paid. It should be noted however that the pre-requisite six-week negotiation period is mandatory prior to referring such disputes to the Court.³⁸

The repeal of Section 11 (3) and Section 13 effectively removed the role that National Assembly played in the settlement of disputes regarding compulsory acquisition and gave the court full jurisdiction to question the right to acquire property without compensation and indeed in the event that compensation is granted, whether such compensation is adequate.

It must be noted, however, that the Act does provide that if the court determines an amount less than that determined by the Minister as adequate compensation any sum paid in excess of any compensation lawfully payable shall be a debt recoverable by action or shall be paid out of court as the case may be.³⁹

The effect of the courts decision will therefore be final and conclusive as between the parties to the proceedings in question.

³⁸ S. 11 (1) and (2).

³⁹ Sec. 11 (5).

Having analysed the various provisions of the Lands Acquisition Act, it now becomes necessary to direct our attention to how the said Act is utilized. This will be done in the next chapter of this essay.

CHAPTER FOUR

ADMINISTRATION OF THE LANDS ACQUISITION ACT

1. INTRODUCTION

Zambia as a country has undergone a number of changes in its socio-economic and political realm. These changes, in principle, should have an effect upon the law and its administration. For instance, prior to the advent of the third republic, the liberty to use and dispose of land did not exist, rather an actual duty to use land efficiently was a pre-requisite to a right to land.¹ The Land (Conversion of Title) Act of 1975 effectively abolished the sale, transfer and other alienation of land for value.² In essence therefore, the effect of the Act was to disregard the factors such as supply and demand, location and potential use of the land in the determination of its value or price.

The enactment of such a law by the State was to remedy the rampant speculation in land in the country after the attainment of independence. The President, therefore, was given the discretion to fix the maximum amount that could be

¹ Kaunda, M. Ownership of Property Rights in Land in the First Two Republics of Zambia. The *Zambian Law Journal*, Volume 21 – 24, 1989 – 1992: p. 62

² The Land (Conversion of Title) Act Preamble.

received under various land transactions.³

Conversely, the political party presently in power in Zambia, the Movement for Multiparty Democracy (MMD) pledged in paragraph 3(a) of its election manifesto “to bring about a new era of opportunity of economic realism which rewards and motivates individual initiative”. Thus, when the MMD was voted into power in 1991, by an overwhelming majority, it was committed to an open political system and to a market economy. Accordingly, the MMD’s economic strategy recognizes the importance of market forces and that government should not undertake to do what the private sector can do, at least, as well.⁴ This strategy was grounded in the belief that individual initiative and freedom in the market place and political arena are essential for a thriving economy and responsive political system.⁵

This approach to development was clearly set out in the new government’s Policy Framework Paper that provides:

“The engine of growth must be private initiative guided by market incentives”.

³ Op. cit., Kaunda, M: p. 68.

⁴ GRZ, Ministry of Finance. New Economic Recovery Programme, Economic and financial Policy Framework. 1992-1994 at 1.

⁵ Quoted in P D B Munungwe. Paper presented for a Discussion on Privatisation with Copperbelt University: p. 1. 5th June, 1994.

In essence, therefore, the present government has adopted a minimalist approach to intervention in the economy. With respect to land, this means removing all those obstacles that impinge on the rights of its ownership, disposal and utilisation.

This change in government policy and ideology should, in essence, be reflected in the Law. A typical illustration to show a shift in policy reflected in the Law is the Land Act of 1995, which makes no provision for the fixing of maximum consideration for land transactions or for the delimiting of exchange value for bare land.⁶

With regards to the economy, Zambia as a colony had a prosperous economy with a well established private sector. The copper industry for instance, was infact under the private sector in the hands of the Anglo American Corporation and the Roan Select Trust. Upon the attainment of independence government participation was limited to a few activities such as railway, electricity and water.⁷ The new independence government found all the major means of production and services were owned and controlled by foreigners. In an effort to enhance

⁶ The Land Act of 1975 was repealed and replaced by the Land Act of 1995, No. 29 of 1995.

⁷ Mulwila, J M. Parastatal Companies and the Law in Zambia. Ph. D Thesis, 1980: p. 4

economic development, the newly independent state decided to embark on nationalization.

In line with this, the government embarked on a series of economic reforms. The Lands Acquisition Act of 1970, indeed, being a component of one such reform. These reforms, coupled with other factors, such as the fall in copper prices in the 1970s and the political instability in the Southern African region, failed to result in any tangible economic growth. Indeed, it has been observed by one author that nationalization of the economic sector is one of the strongest possible measures a government can take against investor interest and accordingly, the fear of nationalization constitutes a serious deterrent to capital investment.⁸

When the MMD came into power, it inherited an unproductive economy with a crippling external debt and eroded infrastructure. The government of the MMD assumed office with a mandate to bring about political and economic change in Zambia.⁹

This was to be achieved through a number of means such as the scaling down of the government's direct initiative in economic activities, the growth of capital

⁸ Fotoros, B. Government Guarantee to Foreign Investment. 1962: p. 50.

⁹ Mwanakatwe, J. End of an Era. 1994: p 264.

markets and indeed the minimization of government involvement and bureaucracy in economic operation. In essence, therefore, the aim of government was to encourage investment of both local and foreign investors through the creation of an atmosphere that allows all categories of individuals not to suffer their rights in all categories of property, movable and immovable, tangible or intangible.¹⁰

Taking the foregoing into account, the question arises as to whether the Land Acquisition Act in its present form still has any real significance in the light of the new economic order of the country, particularly taking into account, the fact that it has been argued that compulsory acquisition laws are a direct interference with the right to privately own property.¹¹

2. UTILISATION OF THE LANDS ACQUISITION ACT

Although it is difficult to show in the most perceive terms how much land has been acquired by the government since 1970, when the Lands Acquisition Act was enacted, it would not be wrong to say that the numerous notices of intention to acquire and yield up possession of property are clear evidence of how the Act

¹⁰ Op. cit., Mulwila, J M: p. 17

¹¹ This was discussed extensively in the first chapter of this essay.

was used.¹² For instance, between December 1986 and July 1988, a total of 28027.5256 Hectares of land were compulsorily acquired by the government.¹³

Taking into account the broad objective of the Lands Acquisition Act, this indeed may be read as an achievement. The major objective of the Act being that farms lying idle in State lands could be acquired and placed under government control. In effect, therefore, even if the government had no specific use for the land, it would invariably be in its hands.

There is also ground for the view that the Act has been a success when one takes into account the possibility of challenging an acquisition. The Act in section 3 provides:

"The President may, whenever, he is of the opinion that it is desirable or expedient in the interests of the Republic so to do, compulsorily acquire any property of any description".

This provision may be interpreted in two ways: firstly literally, that the President's opinion is conclusive in the matter, in as much, as he is the sole arbiter of public interests and secondly; by using an objective test. Thus, if it can be

¹² Mulimba, Anthony. Land Policy and Economic Development in Zambia. Zambia Law Journal, 1998. Special Edition: p. 79.

¹³ See Gazette Notice of 19/12/86 and Gazette Notice of 24/04/1989.

shown that no public interest will be served by an acquisition, a proposition, no doubt quite onerous to discharge, the President's decision is open to challenge in the courts.¹⁴

The Supreme Court had occasion to comment on the words "in the opinion of the President" in the case of Nkumbula v The Attorney General.¹⁵ The court held:

"... the words clearly make the matter one for the subjective decision of the President and it has never been doubted that a decision made under a power expressed in such terms cannot be challenged unless it can be shown that the person vested with the power acted in bad faith or from improper motives or consideration".

It follows, therefore, that it could well be that if the President's opinion were conclusive, in determining the "interest of the Republic", a notice for an acquisition could not be successfully challenged. In its present form the terminology of the Act makes it possible for the President under the broad and all encompassing term of "republic interest" to take land belonging to one person and give it to another. Indeed, as early as 1972, merely two years after the enactment of the Lands Acquisition Act, the public began to debate the question of who would get land after it had been compulsorily acquired.¹⁶

¹⁴ Mvunga, M. land Law and Policy in Zambia: p 92.

¹⁵ Appeal No. 6 of 1972 at p. 6. It should be noted that this was not an appeal against an acquisition but one brought under the Inquiries' Act Cap. 181.

¹⁶ Times of Zambia Editorial Comment, 24th May, 1972: p. 1. See also the case of William Wise v A G. Discussed later in the Chapter.

In many instances, the government just transferred land from one owner to another, serving no interest for the Republic particularly.¹⁷ A typical illustration for the government's disregard for proper determination of the Republic interest is the case in which an investor in tobacco farming prior to the Commission of Inquiry in land matters, in Southern Province, was leased land by the Tobacco Board of Zambia. This investor went into production and proceeded to employ a total of three hundred people. The land was nevertheless compulsorily acquired by the government to resettle some people.¹⁸ These settlers were less than fifty in number and would, in effect, only conduct small scale farming that could hardly achieve the same extent of development or returns as a commercial farmer. The land was acquired with no consideration of these economic factors. The question that arises, however, is whether indeed the Republic's interest was served.

The Act, in addition to this great discretion placed in the President to determine the interest of the Republic fails to lay down a procedure for the President to determine which land may or may not be acquired. It follows, therefore, that the President may easily be influenced by public political opinion.

An illustration of this stems from the infamous Chiyawa land saga. It is noted

¹⁷ Zimba, Lawrence. Ph. D thesis extracted from an Interview with Hudson, J. Commercial Farmers Bureau on 30/6/1987; p. 369.

¹⁸ See Gazette Notices No. 467 of 27/04/1987

that the investors in this land were indeed found to have some 'irregularities' but *the Act, however, still fails to provide any protection for investors and individuals who have valid plans to utilize the land.*¹⁹ *Investment by both foreigners and nationals, if properly managed, can play an important role in improving the country's economy.*

With regard to the Chiyawa land case, the government allocated 20,500 hectares of land to a foreign company called "New A G Williams Limited" owned by one A G Williams of Britain and Francis Mbula of Kenya, for a farming venture in Chief Chiyawa's area in Lusaka Rural. The allocation of such a large proportion of land to a foreign company received strong objection from the backbenchers of Parliament. The members of Parliament alleged that the authorities had ignored earlier recommendations made by the Lusaka Rural District Council Subcommittee on land, that the said land not be allocated to Williams. It was also alleged that the Deputy Speaker of the Cabinet directed the Commissioner of Lands to issue title deeds to the two foreigners.²⁰

Government nevertheless, insisted that the allocation was in order and above board. The President, however, after increased public pressure against the said

¹⁹ See Gazette Notice No. 30 of 10/1.1986 and President Kaunda's remarks reported in the times of Zambia of 28/11/1986.

²⁰ Parliamentary Debates for the 20th to the 27th of February, 1985: p 1843 and p. 2179.

allocation, proceeded to utilise the powers granted to him and compulsorily acquired the said land from the company.²¹

From the foregoing, it becomes apparent that in practice, the Act in its present form can be abused and indeed be used as a political tool by the executive arm of government.

The Act further, places no restriction upon the President's right to decide upon the use to which land that has been compulsorily acquired may be put. For instance, by a Gazette Notice of December 19, 1987, the government issued a notice that the President had resolved that it was desirable or expedient in the interest of the Republic to acquire fifty-five farms, in extent of 19,000 hectares in the Mwembeshi farming area of Lusaka West. The land was to be reallocated to the Industrial Development Corporation (INDECO) and a Belgium Multinational Corporation, Monterey Huys, who were to undertake a joint Barley growing project.²² No regard as to the large number of persons to be displaced from their farmlands was taken.

The view of Parliament was that multi national corporations who had the capital

²¹ Ibid.

²² Gazette Notice No. 52, 1987. The said Project never commenced. The land was eventually returned to the farmers.

to clear land elsewhere, should not have been given the privilege to utilise land that had already been cleared and was utilized by the small scale farmers in the Mwembeshi area.²³ This view, indeed, is valid, particularly taking into account the fact that the Lands Acquisition Act fails to address the pertinent matter of what is to happen to such displaced farmers to whom monetary compensation provided is inadequate and further, if the President chooses not to exercise his discretion to make a grant of state land in lieu or in addition to monetary compensation.²⁴

It follows, that in some instances, the President may lack adequate information or indeed accurate information and proceed to acquire land, that in essence, does not qualify for compulsory acquisition. For instance, in April 1977, the government acquired 161 farms around Lusaka on the basis that the farms were vacant and unutilized.²⁵ After representations were made by concerned parties a total of 42 farms were returned to the farmers. The then Minister of Lands and Natural Resources, described the return of these farms as a humanistic act by the President, but it has been asserted, however, that it is probable that further investigation could have shown that no regard was had to whether the farms were

²³ Times of Zambia, 21/01/1987: p. 4

²⁴ It should be noted that prior to the Amendment of this Act, the National Assembly determined Compensation.

²⁵ Times of Zambia, 16/04/1977.

really vacant and unutilized.²⁶

Another source of concern in the practice of the law of compulsory acquisition, stems from the definition of "unexhaustive improvements" to which compensation is attached. The Act provides that unexhaustive improvements refer to any development permanently effected to the land directly resulting from the expenditure of capital or labour and increasing the productive capacity, utility or amenity thereof, but does not include the results of ordinary cultivation other than standing crops and growing produce.²⁷

In essence, therefore, no compensation is granted for preparatory work on the land such as surveying, stumping of trees or placement of beacons for the demarcation of land areas.²⁸ This definition, further, excludes any machinery that may be brought on to the land for a particular purpose. No regard is had to whether or not the machinery can be resold. A most extreme example, would be equipment that can only be used for a particular purpose, for instance, diamond cutting, in the event that a piece of land on which this diamond cutting industry is situated was to be compulsorily acquired, the owner of the industry would in essence, be left with equipment that would not have a resale value in Zambia.

²⁶ Zimba, L: p. 246.

²⁷ Lands Acquisition Act. Section 15(6).

²⁸ It should be noted however, that surveying and demarcation of land areas is in fact a costly procedure.

With regards to the determination of compensation further difficulties arise. Compensation indeed being the most central aspect of compulsory acquisition, the Act lays down specific principles for the determination of compensation. The Constitution further provides in the Bill of Rights for the payment of adequate compensation.

The inherent problem here is one of finding a workable definition for the term "adequate", should this for instance, be taken to mean that the owner of the property acquired should be indemnified the full and perfect equivalent in money of the property taken. In the case of the United States v Miller.²⁹ The United States of America Supreme Court adopted the concept of market value. The owner of the property was thus entitled to an amount in compensation equivalent to the price he would have bargained for if he was a willing seller dealing in the open market.

This approach is not without problems because firstly, there arises the problem of imagining circumstances equivalent to those in an open sale. This would pose difficulties particularly in instances, where improvements resulting in an increase in value cannot be truly reflected. The assessment of ordinary market value in

²⁹ (1942) 317 US 369.

such an instant would really just involve assumptions which would make it unlikely that the appraisal would reflect the true value in any precise terms.

Secondly, in the event that adequate compensation is deemed to be the fair market value of the property which however is less than the full value, the amount would be open to challenge by the owner of the property. The basis of the action being that the fair market value was something less than adequate compensation.

The question of compensation presents particular difficulties in regards to developing countries that are riddled by the unavailability of funds. Indeed, the Commissioner of Lands, Mr. Mark Zulu observed that no funds were made available for compensatory purposes. In the same breath, however, he said no funds were required by the Ministry of Lands for compensatory purposes because the Ministry had no intention of compulsorily acquiring any land, taking into account the new democratic economic order.³⁰ This argument, however, can hardly suffice because in the eventuality that the Republic indeed did require some land urgently, there would, in effect be completely no funds available for compensatory purposes.

³⁰ Interview with the Commissioner of Lands, Mr. Mark Zulu, on 12th March 2000.

The unavailability of funds for compensatory purposes, conversely, may reflect the governments policy to only compulsorily acquire tracts of land that do not attract compensation.³¹ This policy, however, still cannot be effectively implemented or administered because there is a shortage of both manpower and transport in the Lands Department.³² Therefore, the task of identifying such land would prove beyond their capacity.

3. JUDICIAL INTERPRETATION OF THE LANDS ACQUISITION ACT

In the case of William David Cerlise Wise v The Attorney General.³³ The plaintiff claimed for an order and, or a declaration that the notices of intention to acquire property and to yield up possession dated 13th January, 1989, served on the plaintiff's representative, in which the defendant purported to compulsory acquire the plaintiff's two farms pursuant to section 5 and 6 of the Lands Acquisition Act, 1970, namely of Farm 136a both at Mazabuka, Southern Province of Zambia were wrongful and of no legal effect whatsoever.

The plaintiff, further, sought an order or declaration that, he was the owner of the said two farms.

³¹ Land that does not attract compensation would include vacant and idle land. See section 15(1) Lands Acquisition Act.

³² Op. cit. Interview with Mr. Mark Zulu.

³³ HP/668 of 1989 Judgment on 16/12/1991.

The facts of the instant case being that, by a will dated 18th January, 1979, the late Eric Falkenburg Hervey (the deceased) bequeathed to his nephew, the plaintiff, his leasehold property being a farm in Mazabuka.

The deceased died on 10th May, 1979, and the executors of the deceased assented to the bequest of the farm in favour of the plaintiff. One E F Hervey was, however, at the date of the death of the deceased, working the farm and by an agreement in writing, the plaintiff granted a lease of the farm to E F Hervey Limited setting the rent at K2.5 million per month. E F Hervey Limited however, was to vacate the farm by 31st August, 1983.

E F Hervey Limited on the expiry of this period continued to occupy the farm inspite of a written notice from the plaintiff. The plaintiff thus, commenced legal proceedings against E F Hervey Limited for *inter alia*, possession of the said farm, arrears of rental and *mesne* profits. The High Court adjudged that the plaintiff was the owner of the farm and was thus entitled to possession thereof and *mesne* profits.³⁴

³⁴ See Case No. 1983/HP/1471 Judgment by Judge Irene Mambilima

E F Hervey Limited, appealed to the Supreme Court on the 18th of December, 1987, and secured a stay of execution of the order for possession for six months and a further four months thereafter. Honourable Ngulube, Deputy Chief Justice in chambers found no basis to stay execution on the award for the possession of the farm as the two previous stays of execution were essentially for the purpose of E F Hervey Limited harvesting its crop and removing themselves and it would be totally inequitable to allow them to plant new crops and so again stretch their claim for further relief against the lower court's judgment in that respect.

In spite of the Supreme Court's refusal to grant any further stays of execution E F Hervey Limited continued to occupy the land. Indeed, one Raymond Barrett of E F Hervey Limited proceeded to make representations to the then Prime Minister, Kebby Musokotwane, who called the plaintiff to his office and informed him that on the basis of representations made to him, Barrett and his company should be allowed to continue farming the plaintiff's land. The plaintiff declined to agree to the request of the Prime Minister, placing his reliance on the decision of the Court aforementioned.³⁵

On the 9th of January, 1989, the Sheriff of Zambia sought to enforce a writ of

³⁵ It should be noted that E F Hervey Limited moved the full Bench of the Supreme Court to set aside the decision of Mr. Ngulube., but later withdrew the substantive appeal.

possession issued by the High Court for Zambia and on the same day, immigration officers showed a deportation order purported to have been signed by the Minister of Home Affairs to the plaintiff. The plaintiff was thus detained in prison pending deportation. While in prison, he was served with two notices of intention to acquire property and to yield up possession pursuant to sections 5 and 6 of the Lands Acquisition Act.

E F Hervey Limited continued to occupy the farm, notwithstanding the judgment of the High Court and the orders of the Supreme Court that E F Hervey Limited was subject to removal from the farm by the sheriff. The plaintiff, notwithstanding the fact that he was an established resident of Zambia, was compelled to leave the country and did so shortly after being served with a deportation order.

The court in delivering judgment observed that this case hinged on the question of whether the said compulsory acquisition of the farm was done *mala fide* (in bad faith).

Judge Bwalya, B M referred to section 3 of the Act that empowers the President

to compulsorily acquire any property if he is of the opinion that it is desirable or expedient in the interest of the Republic so to do. Judge Bwalya observed that:

*"The Act does not stipulate the purpose for such compulsory acquisition. I should not hasten to say that the silence of the Act on the question of purpose for which the state may compulsorily acquire property upon the payment of compensation does not per se give the state a blanket compulsory acquisition without any cause or purpose. There is a plethora of case law in common law jurisdiction which show that where no purpose has been indicated in the statute the courts will look at the intention of the Legislature and invariably give an implied purpose."*³⁶

The judge, further, observed that because E F Hervey Limited remained in occupation of the said farm for an agreed rental, the compulsory acquisition was put into question. Judge Bwalya, further observed that:

*"it is needless to say this transaction tainted the compulsory acquisition and is an indication that it could not have been done in good faith ... The purported interest of the Republic is too remote, if at all a reason. It cannot be sustained in law ... What failed to be acquired before the courts of law cannot be allowed to be acquired through the intervention of the State (executive) acting in violation of the law."*³⁷

The court thus, held the acquisition orders null and void *ab initio* and awarded the

³⁶ Ibid.: p 129.

³⁷ Op. cit. Judgment HP/688 of 1991: p. 129.

plaintiff damages.

From the foregoing it becomes apparent that the lack of a precise definition of the Republic's interest in the Act can, in essence, lead to the abuse of the Act by the Executive.

The interpretation of the Republic's interest is essentially left to the court of law. As was held in the instance case, what constitutes public use frequently and largely depends upon the facts surrounding the subject. It follows, therefore, that because the issue of public use is a judicial question, the abuse of the provision relating to the Republic's interest may not necessarily be curtailed unless firstly, the question is placed before the court and secondly, that the court applies similar principles to those in the aforementioned case, in order to determine whether indeed, the Republic's interest has been served by a particular acquisition. In essence, therefore there exists an element of discretion.

Further, in the absence of a clear definition of what constitutes the "Republic's interest" it follows that there is a possibility that the provision may be abused.

In the case of Zambia National Holdings and United National Independence Party v The Attorney General³⁸ the court also had occasion to interpret the Lands Acquisition Act and the constitutional provisions relating to compulsory acquisition.

The facts of the case being that the appellants brought a petition in the High Court to challenge the decision of the respondent to acquire compulsorily, under the Lands Acquisition Act, the appellant's land known as the UNIP Headquarters.

The President, resolved that it was desirable or expedient in the interest of the Republic to acquire this property and there upon the appropriate Minister gave notice to the appellants of the government's intention to acquire. The formalities under the Act were thus commenced. The appellants upon receiving this notification wrote to the respondents suggesting that a sum of money be paid as compensation. As it turned out, however, and as the parties specially informed the learned Trial Judge the question relating to compensation was to be postponed until after the constitutionality of the acquisition had been determined. The case therefore proceeded on this basis.

³⁸ Selected Judgment of Zambia, No. 3 of 1994.

The Supreme Court in its judgment observed:

*"The third ground of appeal alleged error on the part of the learned trial judge when he held that the compulsory acquisition of the appellants property had not been done in bad faith. It was not in dispute that the Lands Acquisition Act gives power to the President to resolve in his sole judgment, when and if it is desirable or expedient in the interest of the Republic to acquire any particular land. Quite clearly, a provision of this kind does not mean that the President's resolve cannot be challenged in the courts both as to legality and other available challenges where by arbitrariness and other vices may be checked. There was no dispute on the roles that the exercise of statutory powers could be challenged if based on bad faith or some such other arbitrary, capricious of other ulterior ground not supportable within the enabling power."*³⁹

It was also argued by the appellants that section 16 of the State Proceeding Act was unconstitutional as it was contrary to Article 94 of the Constitution, because it limited the jurisdiction of the High Court.⁴⁰ The Supreme Court observed:

*"As a general rule, no cause is beyond the competence and authority of the High Court, no restriction applies as to type of cause and matters as would apply to the lesser courts. However, the High Court is not exempt from adjudicating in accordance with the Law ..."*⁴¹

³⁹ UNIP V AG: p. 54.

⁴⁰ S 16 of the State Proceeding Act provides that the Court shall not grant an injunction or an order of specific performance against the State. Article 94 grants the High Court unfettered Jurisdiction.

⁴¹ Op. cit, UNIP v Attorney General: P. 56.

In essence, therefore, the Supreme Court held that section 16 of the state proceeding Act was constitutional. The appellants were therefore barred from lodging an injunction against the state to prohibit it from entering the appellants' property until after the trial.

The second ground of appeal raised by the appellants alleged that the learned trial judge erred in law and in fact when he decided that the Lands Acquisition Act did not contravene the spirit and intent of Article 15(1) of the constitution which reads:

"Except as provided for in this Article, no property of any description shall be compulsorily acquired ... unless by or under the Authority of an Act of Parliament which provides for payment of adequate compensation ..."

The Supreme Court further observed that in conformity with the old constitutional regime, the Lands Acquisition Act before the amendments required disputes as to compensation to be referred to the National Assembly while the current Constitution provides that they be referred to the High Court. Secondly, the amended law simply referred to compensation while the present constitution provides for 'adequate compensation.'

Due to these discrepancies the appellants sought that the Lands Acquisition Act be deemed obsolete because it contradicted the Supreme Law of the land, the Constitution.

The Supreme Court rejected this argument on the grounds that the Constitution in Section 6(1) provides that:

“subject to the other provisions of this Act, and so far as they are not inconsistent with the constitution, the existing laws shall continue in force after the commencement of this Act as if they had been made in pursuance of the Constitution, but shall be construed with such modifications ... as may be necessary to bring them into conformity with the constitution.”

Section 6(2) further provides:

“The President may by Statutory Instrument at any time within two years ... make such amendments to any existing law ... for bringing that law into conformity with the provisions of this Act ... for giving effect or enabling effect to be given to those provisions.”

The Supreme Court held therefore, that it was obliged to read the existing law as conformable to the Constitution. Thus the word ‘adequate’ and the referral of disputes to the court as opposed to the National Assembly were to be ‘imported’

into the Lands Acquisition Act.

Further, with regards to the argument raised by the appellants that the amendments affected fundamental rights thus Parliament could only legislate on such matters when Article 79 had been complied with, the Supreme Court held that the Lands Acquisition Act was not part of the Constitution and was infact simply a law envisaged under the Constitution.

Article 79 of the Constitution relates to alterations to the Constitution and the special procedures that need to be complied with including a national referendum to endorse changes to the part of the Constitution dealing with fundamental rights.

With regards to compensation, the Supreme Court found that the bulk of the money, if not all used to build the complex came from government grants approved by the legislature during the one party era. The Court also found that the donations were made under undue influence, because there was, in effect, no distinction between the donor (government) and the party (UNIP).

The Court, however, did not enter into the question of compensation per se

because to invoke Section 11(4) of the Lands Acquisition Act which sets out the procedures for dealing with disputes relating to compensation, there has to be, in the first instant, a dispute between the parties.

*“It is clear that the existence of a dispute in fact is a **sine qua non** for the invocation of this proviso ... on the facts of this case ... there was no dispute between the parties or before the Court concerning the amount of compensation ...”⁴²*

The parties had neither agreed, nor disagreed on any sum of money and the appellants had in fact specifically requested the court not to go into the question of compensation which was postponed until after the determination of the challenge based on legality and constitutionality. The Court however, observed that the acquisition was not unlawful for want of a prior tender of compensation.

From the foregoing, it becomes evident that the role of the courts in determining whether or not compensation for compulsory acquired land is adequate, only comes into play in the event that a dispute exists between the parties regarding the question of compensation. The right to refer such a dispute to court may be done by the Minister or any person claiming an interest in the land.

⁴² Judgment delivered by Chief Justice Ngulube at p. 49.

Taking into account the reasoning in the cases discussed in this chapter it becomes apparent that the power granted to the President to determine when and if it is desirable or expedient in the interest of the Republic to acquire any particular land is not in dispute. The provision does not necessarily mean that the President's resolve to acquire cannot be challenged in the courts both as to legality and other available challenges whereby arbitrariness and other vices may be checked. However, the Lands Acquisition Act does not make provision for safeguards in relation to determining which land can or cannot be acquired. Further, the question of the presence of bad faith in the decision to compulsory acquire land on the part of the President, can only be determined if the acquisition is challenged before the courts. This indeed would be a costly and time consuming endeavour, particularly taking into account the backlog of cases in the courts.⁴³ The burden to prove that an acquisition was done in bad faith lies with the person whose land has been acquired. This burden in some instances may prove difficult to discharge.

Having shown the various inadequacies relating to the administration of the Lands Acquisition Act, the question arises as to whether there is need for further reform to the law relating to the compulsory Acquisition of Land. It is appreciated that an

⁴³ The backlog of cases in the courts is a general problem that generally affects the disposal of cases.

attempt has been made for some reform of the law through the repeal of certain provisions, but this can hardly be deemed adequate. Further reform is necessary to ensure that the right to privately own property is not unnecessarily interfered with. The next Chapter will thus address specific recommendations for the reform of the law relating to compulsory acquisition of land, particularly taking into account the new economic order prevailing in the country that is essentially based on the principles of *laissez faire*.

CHAPTER FIVE

THE LANDS ACQUISITION ACT: PROSPECTS FOR THE FUTURE

1. INTRODUCTION

It has never been seriously doubted that in the exercise of a sovereign power, private property can be taken or expropriated for the public good. Indeed, even Sir William Blackstone, whose writings in the late 18th Century reflected the total commitment of the common law to the protection of rights of property, recognized that in the face of public need, private property rights could never remain sacrosanct and inviolate.¹

It is clear that compulsory acquisition involves compulsion, and compulsion may not be admirable but, everyone will recognize some circumstances in which it is unavoidable as a matter of practical politics.² Infact, all civilized legal systems have had property rights progressively delimited in the interests of society by powers of eminent domain. It follows, therefore, that the absolutist conception of

¹ Blackstones Commentaries, 1st Edition, 1965: p. 138.

² Davies, K. Law of Compulsory Purchase and Compensation. London, 1978: p. 2.

private property no longer prevails. This supposition was aptly stated by Professor Powell who stated that:

*“The history of the law of private ownership has witnessed simultaneously the playing-down of absolute rights and a playing-up of the social concern as to the use of property.”*³

Thus, although compulsory acquisition of land in the interest of the Republic clearly makes an inroad into private ownership of land, it is necessary and justifiable in certain instances.⁴

The acquisition of privately owned land by the state however, should be done within the confines of a well articulated law, that ultimately does not result in the state unnecessarily depriving the individual of his right to own property. Provision is made for this in the Magna Carta of 1215, which can aptly be referred to as at the very basis upon which the right of private ownership is hinged. The Charter provides that:

*“no free man shall be ... disseised of his freehold or liberties of free custom ... but by the law of the land.”*⁵

³ Asante, K. Property Law and Social Goals in Ghana: 1844-1966, 1975 Quoted at p. 183.

⁴ This proposition received more in-depth analysis in Chapter one of this essay.

⁵ Dias, R W M. Jurisprudence: p. 411.

The law referred to above essentially should be an enabling statute under which specific guidelines are provided for the compulsory acquisition of land.

Inextricably linked to the power to take property for public purpose is the question of the price to be paid for the land by the authority taking it. Both the power to take private land for public use and the obligation to pay for the rights acquired through the exercise of that power may now fairly be said to be an integral part of the law relating to compulsory acquisition of land.

The preceding chapter of this essay identified a number of problems associated with the effective administration of the Lands Acquisition Act. This chapter, thus will endeavour to make specific recommendations for the reform of this law to enable a more effective administration and management of the land resource in the country.

The problems identified in the administration of the Lands Acquisition Act may be summarized as follows:

- a) Section 3 of the Act endows the President with the discretion to decide which land may be compulsorily acquired in the Republic's interest.
- b) The phrase "Republic's Interest" is too vague a term to define which land may be acquired and for what purpose the land so acquired may be put to.

- c) The Act in its present form, particularly, regarding the concept of the 'Republic's Interest' may be used as a political tool by the Executive.
- d) The Act fails to provide an information mechanism that may be used by the President to determine which land indeed, may be compulsorily acquired without compensation.
- e) The Act further fails to provide a clear definition of unexhaustive improvements. This irregularity is likely to cause difficulty in determining which land can and cannot be acquired without the requisite monetary compensation.
- f) The Act further fails to adequately address the question of compensation.

2. RECOMMENDATIONS FOR THE REFORM OF THE LANDS ACQUISITION ACT

At the outset, it is suggested that to prevent the abuse of powers of compulsory acquisition and ultimately ensure that such powers are used in the nation's interests an amendment to the undefined "interests of the republic" should be considered. The Republic's interest as a determining factor for the acquisition of land should be clearly defined to include only such public and social amenities that are necessary, such as schools, railway lines and hospitals, for the public's well being.

It is further suggested that the interpretation of such a restricted provision by the courts, should be done using the *ejusdem generis* rule of interpretation. That is to say, the rule where if particular words are followed by general words, the general words are limited to the same kind or nature as the particular words.⁶

A similar proposition was made in Ghana to prevent the abuse of compulsory acquisition powers. During the First and Second Republics of Ghana, the country experienced the rampant abuse of the powers of compulsory acquisition. One author, even observed that the abuse of the power was so rampant resulting from the vague definition of public interest, that the president, under the guise of land required 'in the public's interest', could take land from the opposition and give it to his girlfriends for her to build thereon.⁷ The author further cited a case of the Latebiokorshie Estate in Accra. In this case on 18th February, 1962, the then Minister of Justice issued an executive instrument declaring that, by the command of the President, the Latebiokorshie land was required in the public interest. The land ultimately acquired thereafter was placed permanently in the hands of the President and become his personal property.⁸

⁶ Burke, J Osborne. Concise Law Dictionary, 1976: p. 128.

⁷ Mettle, M A Compulsory Acquisition of Land, Vol. IV, No. 2.

⁸ Ibid.: p. 131

It is appreciated that the absence of a concise definition of public interest in Zambia has not led to such dire consequences, but nevertheless, the possibility of abuse still exists. Indeed, in the early years after the Lands Acquisition Act was enacted, the provision was used to transfer land from one individual to another or indeed displace persons in favour of a single individual.⁹

Further, now that Zambia has once again embarked on a capitalist means of economy, under which the interference of government in private enterprise should be limited, the provision of a more precise definition of public interest would be necessary. In effect, therefore, private property ownership should only be interfered with, if indeed, the land was required for such specific public purpose.

It should be recalled that the Public Lands Acquisition Ordinance laid down specified public purposes under which acquisition could be effected and this resulted in an almost 'air-tight' protection of privately owned land. A similar provision could be thus reintroduced. It should be noted, however, that such a provision does not in any way, delimit the State's right to compulsorily acquire land if such land is needed to serve the public's interest. Thus, the right of a state

⁹ See the Chiyawa Land Case. Already discussed in the previous chapter.

to eminent domain is not unduly restricted yet at the same time investors, both Zambian and foreign would be able to own land with no interference from government, except upon the condition that the land was needed for such public amenities that would be laid down in the provision.

A further insurance may be gained, if a specified time limit is laid down within which government should utilise the acquired land for the construction of such public amenity. In the event that this period lapses the land should revert to the owner. The state, by failing to utilise the land within this specified time limit, thereby discharging its claim to such land.

It is further suggested that the power of the state to compulsorily acquire land through a presidential resolve continues but the president should make such resolve, in consultation with the Lands Tribunal.

The Land Act of 1995 provides for the establishment of the Lands Tribunal, whose function includes the settlement of disputes under the Land Act.¹⁰ The Lands Tribunal, is also charged with the task of inquiring into and adjudicating upon any matter affecting land rights and obligations, under the Land Act. The

¹⁰ The Lands Act No. 29 of 1995. Section 20(1) and 22(a).

Tribunal could thus further be charged with the responsibility to monitor the degree and extent to which land that has been acquired is been used by the State.

It should be noted, that the membership of the Lands Tribunal consists of professionals, whose areas of specialization are relevant to land development, distribution and utilization, thus the Tribunal is adequately equipped to monitor such land use by the State to determine whether, indeed, land so acquired, is been used for the specified interest and to provide the President with relevant information and advise to determining which land should be acquired, particularly land that would not attract the payment of compensation.¹¹

In essence, therefore, the tribunal would serve three purposes: firstly, to ensure that if the State compulsorily acquired any land it should be used for the public purpose so specified and within the predetermined time frame.

Secondly, the tribunal would advise the President, ultimately ensuring that only land that is indeed unutilised and undeveloped was compulsorily acquired. This would go a long way in addressing the bottleneck regarding the inadequacy of

¹¹ See Section 20(2)(a) through (g). The Lands Act.

funds for compensatory purposes because only land that did not attract compensation would be acquired. It is noted that in some instances the compulsory acquisition of land that is developed cannot be avoided.

Thirdly, the tribunal would act as a check on the President's powers of compulsory acquisition. All in all, ensuring that ultimately the right to own land was not unduly interfered with.

The tribunal already, is equipped with a dispute settlement mechanism, it is interesting to note that the tribunal is not, however, bound by the rules of evidence applied in civil proceedings.¹² The facility provided for the settlement of disputes regarding land can indeed be extended to include the hearing of petitions by individuals, whose land has been targeted for compulsory acquisition by the state. The inquiry could be informal in nature, yet effectively allow property owners to petition against proposed acquisitions without the added cost of legal proceedings. The inquiry into an acquisition by the tribunal, however, should not delimit the right of a property owner to challenge an acquisition in the courts of law.

¹² Ibid, Section 23(5)

Further, reform is also necessary regarding the president's discretion to grant land in lieu of or in addition to any compensation payable to an individual who has had his land compulsorily acquired.¹³

The discretionary component of the provision should be replaced by a provision that obliges the president to give such a displaced individual an alternative piece of land either in lieu or in addition to the monetary compensation. This provision would be of particular relevance in farming areas where the State might need to acquire land. The farmer, thus can be reallocated some other land and continue farming. It should be noted, however, that the requisite public interest would always be the determining factor of whether land could or could not be acquired.

Further, once again making reference to the new economic environment that is being encouraged by the government, there is need for the provisions relating to the definition of 'unexhaustive improvements' to be revisited. It is probably safer to say that compensation should be payable to persons who through their labour and money have improved the land. A typical illustration here would be the non-traditional industry of game ranching that has recently taken root in Zambia. In most instances, no permanent attachments are made to the land, yet large

¹³ The Lands Acquisition Act, Section 10.

monetary investment is made to ensure a variety of animals are available for game viewing purposes. In some instances, such ranches are located in urban areas.¹⁴

The most pressing problem regarding the administration of the Lands Acquisition Act is the lack of funds for the purposes of compensation. It should be noted, however, that ultimately the success of the law of compulsory acquisition depends on the availability of adequate funds for compensatory purpose. The Ministry of Lands, therefore, should opt for the creation of a compensatory fund similar to that provided for under the Land Act, in the nature of the Land Development Fund.

As aforementioned, no compensation is payable for unutilised and undeveloped land, it follows therefore, that upon the acquisition of such land and its redistribution such funds realized from its distribution should be reserved for compensatory purposes when an acquisition that attracts compensation does become necessary. The failure by the government to make funds available for compensatory purposes may indicate the lack of commitment on the part of government to pay adequate compensation to individuals whose land has been compulsorily acquired. It should, however, be noted that the right to

¹⁴ Perry Ranch is less than 15 km from Lusaka City Centre and indeed is in an urban area. Land in an urban area is regarded as unutilized if it is used for pastoral purpose.

compensation is in fact a requirement of international law as was opined by Martin Dome in his book 'Foreign Nationalisation':

*"Irrespective of the national policy underlying the expropriation, be it a general reform measure calculated to achieve social justice or an ordinary taking for the construction of a highway, for example, foreigners are entitled to compensation pursuant to the requirement of international law."*¹⁵

It follows, therefore, that the government in line with its democratic principles should make concrete commitment to provide funds to the Ministry of Lands for compensatory purposes. There is also further, the need for systematic field investigation by the Ministry. The information so collected could then be submitted to the Land Tribunal, to identify land for acquisition.

In addition to the legal impediments of the Act that relate to procedure and legal provisions there is also the need for the typical administrative problems relating to the need to improve efficiency, number and quality of staff to be addressed by the government.¹⁶

¹⁵ Referred to by Ree E D: The Nationalisation of Foreign Owned Property. Minnesota Law Review, 1951-195: p. 323.

¹⁶ In an interview with Mr. Mark Zulu, he observed that the staff do not make any field trips to assess which land is unutilised and undeveloped.

3. CONCLUSION

Taking into account the foregoing, it becomes apparent that the Lands Acquisition Act in its present form cannot adequately address the unfair distribution of land in the country or indeed play any significant role in bringing about beneficial social change in Zambia. The importance of land to man cannot be overemphasized, it is, and has always been an eternal source of livelihood and means of sustenance to mankind.

It follows, therefore, that necessary reform needs to be effected to the Lands Acquisition Act so that the provisions of the Act adequately reflect the new economic environment of the country, which essentially places private ownership of property at its core. The Lands Acquisition Act in its present form, if abused, can ultimately lead, to an effective defeat of the government's policy that encourages foreign investment.

It should be noted, however, that there will always exist the need for governments to have such laws, particularly for as long as, governments continue to play a significant role in protecting the interests of the public and ensuring the provision of public amenities and structures. It follows, therefore, for such a law to be in line with internationally accepted standards, it should firstly, provide for just

compensation and secondly, the very basis of the acquisition should be for the public good.¹⁷

This position indeed is most aptly expressed in the French Constitution of 1793 that provides:

"No one shall be deprived of the least portion of his property without his consent, except where the public necessity legally proved, evidently demands it, and then only on condition of just compensation previously made."

The Zambian Lands Acquisition Act thus has to be reformed to ensure that the President's power to compulsorily acquire land is not abused by the executive. This can only be achieved by firstly, putting in place parameters within which the powers to compulsorily acquire land may be used, and secondly, by ensuring the president's right to compulsorily acquire land is checked by an independent, impartial tribunal.

¹⁷ Op. cit. Davies, K : p. 123.

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