

**THE EFFECT OF THE ZAMBIAN LAND TENURE  
SYSTEM ON AGRICULTURAL DEVELOPMENT**

**BY**

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(ii)

DECLARATION

I,.....*Luke Muleya*..... solemnly  
declare that this work represents my own ideas  
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(iii)

DEDICATION

To Dad and my late mother  
who passed away when I needed  
her most. 222635

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ABSTRACT

The land tenure system of any given country has a long term impact on the development of the agricultural sector. Hence for developing countries like Zambia which wish to diversify their economies through the promotion of the sector, the land tenure system must be moulded in such a way as to be conducive to agricultural development.

Such a moulding, however, and thus the agricultural development, may be achieved only if laws are passed that provide the necessary rules and infrastructures. This is because one of the purposes of law is to achieve development, agricultural development inclusive.

Zambia, being a former colony, has a dual legal system comprising of customary laws and imported English laws. During the colonial period, whilst the white settlers introduced English law to apply to them and guide their activities, the indigenous Africans were left to their own native customary laws. As far as land tenure was concerned, therefore, a dual land tenure system was introduced.

Customary rules of tenure applied to land held by Africans, and on the other hand new land laws were enacted to advance agricultural production by white settlers.

When the territory attained independence, the only changes introduced were basically political. Most of the pre-independence laws were inherited by the Government from their predecessors. Since these laws passed during the colonial period had the objectives of promoting the interests of the white settlers and of implementing the colonial Government policy, there is need to review the laws.

As regards the customary rules of land tenure, these rules are uncertain due to being unwritten. Moreover, although they might have been conducive to traditional landholding, the changes introduced by modern technology and new methods of agricultural production make such rules archaic. Hence the need for the rules to be changed to suit recent developments in the mode of production.

Despite the good intentions of the post-independence Government, its legislation has not achieved the objective of controlling land and promoting

agricultural production. This is because of ambivalence with regard to customary land tenure and non-implementation of development requirements.

## CHAPTER ONE

### INTRODUCTION

In any country, at any time, land represents the wealth and source of all food and thus it is of fundamental importance to the life of the community. In this respect then, the laws of a country regarding the tenure and disposal of land reflect the nature of its society.

The word "tenure" may mean, either the legal rules regulating the acquisition and use of land, the pattern of holdings existent in a community at a given time, the distribution of rights in land among a population or a combination of these.<sup>1</sup> In this paper the word will mean the legal rules regulating the acquisition, the distribution of rights and the use of land among a specific population.

In Zambia, the land tenure system has varied from one epoch to another and this is attributed to the fact that different administrative authorities have governed the territory. The shift from the pre-colonial era to the time the territory became a colony inevitably meant that the land tenure system had to be modified to suit the colonial settlers. The modification, however,

meant that a duality of tenure was introduced. At Independence the duality of tenure was carried on and the question that may be posed is whether the juxtaposition of the two systems of tenure that is customary land tenure and the received English tenure, are conducive to agricultural development.

The development of the agricultural sector is of fundamental importance to any developing country like Zambia. Where a nation is able to produce enough food, problems of hunger, poverty, malnutrition and the like will not occur. Hence, that the development of the agricultural sector is of utmost importance is axiomatic.

During the colonial era, Zambia, then Northern Rhodesia, relied heavily on the mining sector for its economy. This was so because the British South Africa Company (hereafter referred to simply as the B.S.A Company), as the first administrators of the territory were merely attracted to the country by the vast copper deposits and had no intention of investing in Northern Rhodesia. The Company had rights both over minerals and the administration of the territory. The promotion of development that benefitted Africans was not a policy

of the Company, and thus even in the agricultural sector very little was done to promote development. Any incentives given to encourage farming was basically meant for the whites who wanted to settle in the territory so that they could produce just enough to feed the mining community. However, even the white farmers could not produce in excess since the local people provided only a narrow market for the agricultural products.

As for the native Africans, these were left alone to use their obsolete methods of subsistence farming and shifting cultivation.

Furthermore, the territory being a signatory to the Congo Basin Treaty,<sup>2</sup> it became a dumping ground for finished products especially from the more economically powerful neighbour, the Union of South Africa. This, therefore, meant that the territory was used only as a market for manufactured goods, including food-stuffs, from other countries and thus no effort was being undertaken to promote the development of agriculture.

The land policy at this time was that as regards the natives enough land was supposed to be reserved for their exclusive occupation and the law applied was customary law. As for non-natives grants of freehold

were available to them along the line of rail. The territory having been divided into two parts, North-Western Rhodesia, different systems of tenure applied in the two territories.

In 1924, the British Colonial Office took over the administration of the territory from the B.S.A Company. All rights over land were surrendered by the Company to the colonial office under the Order-in-Council of 1924. As a way of ensuring that the policy of assigning land for native occupation was implemented native reserves were established.<sup>4</sup>

The creation of the reserves was also part of a design to promote white settlement in the territory. However, promotion of settlement inevitably meant that land should be controlled. Thus the policy of assigning land in freehold was abolished and leaseholds were encouraged to ensure that the Government had controlled over the use of land. This control was, nevertheless on crownlands only, and despite the control, the territory still relied heavily on the mining sector.

At Independence, therefore, an economy that relied on the mining sector was inherited from the colonial masters. The fluctuations in the copper prices and the

realisation that the mineral resources were depleting compelled the Government to see the need for the diversification of the economy. The Government therefore had to introduce reforms <sup>5</sup> that shifted economic reliance from the mining sector to other sectors of the economy and the emphasis was on the development of the agricultural sector. The first National Development Plan provided that:

"Almost all the key development strategies of the plan are relevant to the agricultural sector. There is the need for modification of the present dependence on copper as the principal source of revenue by encouraging other productive sectors to grow at a relatively faster rate. The copper industry is the "leading" sector in the economy and largely determines the level of economic activity in Zambia....The two sectors on which Zambia will principally rely to implement this key strategy of diversifying the economy are the <sup>6</sup>manufacturing and agricultural sectors".

It is obvious, therefore, that the policy of the Government in the economic plan as far as the agricultural sector is concerned was agricultural development through encouragement of both commercial and peasant farming. The wide disparity in agricultural development between the "line of rail" and the rural areas was conceded by the Government,<sup>7</sup> and hence the need to lay a foundation of structural changes required to transform the rural population into produc-

tive agents. It was felt that this could be done by diverting resources to the rural areas which have always been neglected. Thus the every day call by the Government to urban dwellers to go back to the land. Besides, promotion of the agrarian revolution through self-reliance is one of the principles of the Government ideology of Humanism. Moreover, lending institutions like the Lima Bank have been established specifically to assist in financing both peasant and commercial farmers.

However, for agricultural development to be realised there must be a conducive land tenure system to set it in motion.<sup>8</sup> Conditions under which land is held have a direct relation to the development of agriculture. For a country like Zambia whose population is continuously on the increase it is necessary to devise a conducive land tenure system that will ensure that agricultural development is achieved.

A number of factors determine the character of land tenure of any given country and the most prominent factors include the character of the crops grown, the climate, the systems of marketing and transport. The transport factor had adverse effects on the methods of alienating land in Northern Rhodesia during the colonial period, as will be seen later on in the paper.<sup>10</sup> Religion and systems of inheritance also determine the character of tenure especially

where land is held under customary law.

The other factors determining the land tenure system are basically political, vis-a-vis state legislation and the relation of land usage to allegiance to traditional chiefs. This paper will attempt to examine closely this political aspect and find out exactly whether the legislation passed to control thus promote agricultural development has met the objectives it was intended for. This will be done by tracing the development of the land policy in the territory from the colonial period to the post-independence period.

Thus the first Chapter will deal with the historical background of the land tenure system in Zambia as far back as the time when the first white settlers came to the country. An examination is to be made of the method employed by the earliest colonisers, i.e. the B.S.A. Company, in acquiring rights in land. Thereafter, the various land policies of the British colonial office will be examined from the time the territory became a protectorate in 1924. Hence even the land divisions introduced by the colonial Government will be analysed and a comparison to the colonial land policies of the other countries like Kenya and Tanzania will be attempted.

Although the colonial Government had throughout been pre-occupied with controlling land through the passing of legislation, this, however, was intended for the land falling under crownland, and largely occupied by the settlers. The native inhabitants were forced to occupy certain pieces of land reserved for them and nothing whatsoever was done by the colonial Government to control or develop this land. Thus despite the advances in production techniques which were taking place among the commercial farmers who were basically the white settlers, the majority of subsistence farmers the natives, remained practically untouched by these advances. The tenure to be found in the areas remained customary land tenure.

Since, even at independence, no legislation has been passed which applied to these areas termed "customary land" in this paper, it means that even at present the customary lands are still being administered by customary law. Thus in the second Chapter an attempt will be made to analyse how conducive customary land holding is to the promotion of agricultural development. The main and common features of customary land tenure will be the focus in this regard.

As it is possible under the Orders-in-Council,<sup>11</sup> that created Reserves and Trustlands, for either a native or non-native to be granted a lease or licence in these customary lands, the Chapter will also attempt to discuss whether such non-customary interests in customary land is beneficial to the promotion of agriculture.

The Third Chapter discusses the effectiveness of the Agricultural Lands Act <sup>12</sup> in promoting agricultural development. An investigation is to be carried out to establish whether there is compliance with conditions and covenants imposed by the rules on agricultural lands. The Chapters will attempt to show that although in the colonial days the Act, then an Ordinance, could have played a role in agricultural development in the territory, the advent of independence required a modification of some of the rules. This may be so because the provisions of this law were passed to enforce a different land policy from the current one.

Moreover with the enactment of the Land (Conversion of Titles) Act of 1975, <sup>13</sup> which provides the same methods of Land control as the Agricultural Lands Act, the latter should be repealed. Thus the fourth Chapter makes an appraisal of the 1975 Act in this context. An investigation will be made as to whether the conditions and covenants

imposed on stateland are being complied with in practice and if not the reasons for non-compliance will be considered.

The last Chapter contains conclusionary remarks as to whether the current land tenure system in Zambia does promote the development of agriculture. Suggestions for improvement or change will be made in this context.

FOOTNOTES

1. Colson, E., Land Law and Land Holdings among the Valley Tonga of Zambia, S.W.J.A., 1966.
2. The Treaty of Saint Germain en Laye of 1919 which created a Free Trade Zone.
3. See: Chapter Two.
4. 1928 Native Reserves and Crownlands Order-in-Council.
5. 1968 Economic Reforms also known as the "Mulungushi Reforms".
6. Republic of Zambia, The First National Development Plan, 1966-1970, (Government Printers, Lusaka), p. 21.
7. Ibid., at p.12.
8. James, W., Land Tenure and Policy in Tanzania, (East Africa Literature Bureau, Nairobi, 1971).
9. Meek, C.K., Land Law and Custom in the Colonies, (Oxford University Press, London, 1946), p.5.
10. See: Chapter Two.
11. 1928 Native Reserves and Crownlands Order-in-Council and the 1947 Reserves and Trustlands Order-in-Council.
12. Chapter 292 of the Laws of Zambia.
13. Chapter 297 of the Laws of Zambia.

## CHAPTER TWO

### HISTORICAL BACKGROUND

To understand the land tenure system of any given country, it is important to trace the historical development of that country. This is so because the tenure system in any policy seems to derive its peculiar patterning or configuration largely from the circumstances in which the particular state took shape and the accidents of its history.<sup>1</sup> This is very true for a country like Zambia, with a duality of tenure, a feature brought about by being a former colony.

Before the introduction of English law, Customary law applied to all land in Zambia. At this time there was no diversification of the economy since there were no village traders although some form of barter trade system was in practice.<sup>2</sup> Farms were scattered over large areas and as such there was no intensive farming and no profits were made. Due to the non-availability of market for the sale of the excess, subsistence farming was the mode of production. Besides, sale of food products was unheard of, since the tribal communities practised the custom of assisting any of their members without enough food by donating food from their excess products.

As there was abundant land and the population was minimal, shifting cultivation was highly practised all over the territory. Land was acquired through various ways, and the most common ones were by virtue of belonging to a tribal community, either through blood relations or through allegiance to the Chief or headman of the particular community. The Chief or headman being the administrative authority had the right to allot virgin or unoccupied land to a stranger who thereafter became the holder of interests in the land. However, in most tribal communities in the territory, the allodial ownership of the land was vested in the tribal group as either a clan or family. Individuals, despite having interests in specific portions of land, which they acquired either through clearing a portion of virgin land or through allotment by their chief, could not acquire absolute ownership of land.<sup>3</sup> The land belonged to the community as a whole who had allodial title to it.

It is apparent, therefore, that all land during the pre-colonial period was being administered under the various tribal customary laws. This position, however, changed when the white settlers came to the territory in the late 19th century. The first European settlers in

the territory were the British South Africa Company (B.S.A Company), whose prime interest was the vast Copper deposits in the North of the territory. To ensure that the mineral rights were vested in them, they acquired title to most land in the territory and two methods were employed to achieve this in the two parts of the territory, North-Western Rhodesia and North-Eastern Rhodesia.

In North-Eastern Rhodesia, which was regarded as basically Customary Land, it was deemed that all unalienated land was vested in the B.S.A Company as the Colonial administrator by the declaration of North-Eastern Rhodesia as a protectorate in 1899.<sup>4</sup> The implications here was that all unoccupied land belonged to the Company as from the date of the declaration.

Regarding the land occupied by native Africans, there was an assurance that such land could only be alienated with their consent and on payment of compensation.<sup>5</sup> Despite the assurance, however, there is no evidence to show that the consent of the Africans had ever been sought or least of all that compensation had been paid before any alienation of such land. Nevertheless, the Company often conceded that land in North-Eastern Rhodesia belonged to the natives because the

concessions secured merely granted mineral rights. It is surprising, therefore, that the Company still went ahead and alienated unoccupied land as if it had title to such land.

The question of whether declaration of a protectorate conferred title over land to the Crown was debated in a number of cases<sup>6</sup> and it was in the last case of Re Southern Rhodesia,<sup>7</sup> that the correct view was stated. In this case, the Court, refuting earlier decisions, stated that only through an Order-in-Council could the Crown create or establish Crownland in a protectorate. Thus in the absence of an Order-in-Council, a treaty, or concessions, the B.S.A. Company had no land rights in North Eastern Rhodesia. It means therefore that it was only from 1928, when the Order-in-Council that created reserves and Crownlands was passed, that the Crown owned land.<sup>8</sup>

In North-Western Rhodesia, on the other hand, the source of title to land was the concessions secured from Litunga Lewanika, the Lozi Chief. The Company claimed title to land on the basis of these concessions, one of which was the 1900 concession which restricted

the Company's capacity to grant land to whitemen for farming so long as the Litunga approved the grants. The restriction meant that no land rights were conferred on the Company. However, the subsequent concession of 1909, in which the Litunga granted all land within his territory to the Company to dispose as it may deem fit, is important as far as conferring title is concerned. These concessions were subsequently acknowledged in later Orders-in-Council.<sup>9</sup>

Despite these concessions being recognised as sources of title to land, there has been some criticism of their validity as regards the question of consent and the Chief's power to give what he granted. It is questionable whether the Litunga knew the implications of the grants and whether he had the capacity to do what he did within his society since he had no allodial title to the land whose absolute ownership was in the Community.

#### COLONIAL LAND POLICY

From the time the B.S.A. Company came to the territory up to 1923 when the British Colonial office took over the administration of the territory, very little was done to encourage agricultural development.

The main reason for this was because the company had no intention of investing in the country, its main interests being in the mineral deposits. There was no concrete land policy and it was only in the late 20's when there was a copper boom and thus more settlers that there was need for a specific policy on land. By this time, however, the Company had relinquished its rights over land to the Colonial office in 1923. By an agreement of that year between the company and the colonial office rights over land were surrendered to the colonial office, and in return rights over all minerals were conferred on to the company. Thus the crown obtained control over land in the territory, except Barotseland which had a special status, when the territory became a British protectorate in 1924.<sup>10</sup>

#### CREATION OF NATIVE RESERVES

In an attempt to implement a principle laid down by the British Government in the North-Eastern Rhodesia Order-in-Council that:

"The Company shall from time to time assign to the natives inhabiting Northern Rhodesia land sufficient for their occupation, whether as tribes or portions of tribes, and suitable for their agricultural and pastoral requirements including in all cases a fair and equitable proportion of springs or permanent water."<sup>11</sup>

Land divisions were created by the 1928 Order-in-Council that created native reserves and Crownland. The reserves established were based on the Southern Rhodesia model.

A Commission, chaired by a judge of the High Court, Justice Macdonell, was appointed to report on the creation of these reserves. In the East Luangwa District the Commission proposed the creation of several small reserves for security reasons arguing that military opinion and other considerations would be opposed to the grouping together of very large numbers of natives.<sup>12</sup> It was also felt that congregation of native population in some remote corner of the territory would be contrary to interests of labour demand and hence the reserves being the source of labour supply, should be evenly distributed throughout the country.

The Commission emphasized the need to develop the reserves so that Africans could produce economic crops. It also sought to prevent the exodus of native labour with its consequences to stability of village life. However, despite the emphasis on African interests, it was in fact the economic factor which was overwhelming. It was stated that "no avoidable difficulties be placed in the way of the mineral development of the territory."<sup>13</sup> The implication here was that all areas with mineral resources be included in Crownlands, on the establishment of reserves.

A suggestion strongly disapproved by settlers, especially Missionaries, was the proposal that no land should be leased or sold to Europeans in the reserves. However, this proposal was rejected by the Government as is evidenced by the fact that allowance was made for non-natives to be granted leases in these reserves.<sup>14</sup>

Nevertheless, native reserves and Crownlands were eventually created by an Order-in-Council although such creation of the reserves caused different reactions from both natives and settlers. The native communities objected to being removed from the land they had been occupying since time immemorial in which the spirits of their ancestors lay.

The white settlers, on the other hand, favoured the creation of reserves for various reasons. Some white farmers ~~did not wish~~ to have neighbours who had no knowledge of how to use the land properly, for instance ones who would start bush fires, cut down timber and cause damage to fences. As Gann states "The native neighbour was not feared as a competitor but as a bar to agricultural progress."<sup>15</sup> Other farmers favoured big reserves for the supply of labour in their big farms.<sup>16</sup>

The establishment of reserves created a number of problems and the most prominent ones were that the reserves had insufficient access to railways. This lack of transport inevitably meant that the native farmers in the reserves could not produce excess for sales as there was no transportation for their produce to the markets. Further, most areas were inhabitable due to absence of water supply and presence of tse-tse flies. The result was that the natives congregated themselves in the habitable areas and hence they were over-crowded. This led to the destruction of the land through over-grazing and cutting down of timber.

As for the areas left by the natives, these were without inhabitants since the white settlers were less in number than was anticipated. This, therefore, meant that most of the land with rich soils from which natives were evicted was left uninhabited whilst the natives were compelled to occupy the small reserves with poor soils.

It may be argued here that the creation of reserves was not really good intentioned as such, in that the development of agriculture on a large scale was actually hampered. No new methods of agricultural production

were introduced to the natives in these reserves. The natives still employed old methods of agricultural production.

#### CROWNLANDS.

The land termed 'crownland' was the one available for non-native settlement and mining. Nearly all the land with rich soils was included in the definition and most of it lay along the line of rail. It was felt that this was the land suitable for Europeans settlement and it also included areas the allocation of which could not be determined. Thus all vacant land was Crownland.

As regards tenure in the Crownlands, The choice was between leasehold and freehold. The Governor of Northern Rhodesia in 1924, Hubert Stanley, was for freehold arguing that white settlers would be prevented from exploiting the soil fast before going to their homes. Additionally, freehold was conducive to the use of land as security for loans.

Crawford Maxwell, the successor to Stanley, on the other hand, favoured leaseholds and his contention was that freehold tenure was not conducive to agricultural development. His argument was that once a person was granted a freehold title he had the right to deal with his land in any way without restrictions. As such even the policy of creating white zones would be defeated since the whites with freehold title could sell their land in

white areas to non-Europeans.

The Northern Rhodesian Legislative Council, however, supported Maxwell's policy of alienating land in leasehold. Thus in 1931 the former policy of only alienating land along the line of rail in freehold was dropped. Instead farms in these areas could be purchased in "fee simple" after five years' occupancy during which some conditions regarding cultivation were to be fulfilled. Some of the conditions were that during the five years period there must be personal occupation of the farm and a certain amount of development. To ensure that only those who could develop the land acquired it, there was a requirement that an applicant for the farms should have from £1,500 to £2,000 in cash, assets and implements although one without capital could still be granted a short-term lease if favourably reported upon to the commissioner of lands.

Off the line of rail, alienation of Land was under leasehold title only for periods not exceeding 99 years if it was a farm and for 33 years if it was a ranch. The occupational clause was personal occupation for the first five years tenancy during which period a certain minimum amount of development had to be carried out. Further, there should be evidence of

adequate capital although no premiums were payable. Assignment and sub-letting of land were forbidden except with the consent of the Crown.<sup>17</sup>

### TRUSTLANDS

The poor conditions of the reserves and the fact that European settlement was less than anticipated led to the formulation of a new Land policy in 1938. Under this new policy native trustlands were created based on a model adopted from Nyasaland.

The native trustland was vested in the Colonial Secretary of State and it was comprised of land set aside for the exclusive use of natives. This land differed from reserves only in one area that is in the duration of the alienable interest to a non-native.<sup>18</sup> Non-natives can be granted an interest in reserves up to five years only, whereas in trustland such an interest, termed a right of occupancy, may be for a period of up to ninety-nine years.<sup>19</sup> However alienation of the trustland to non-natives should be in the interests or for the benefit of natives as a community.<sup>20</sup> Even individual natives could be granted the rights of occupancy in these areas for specific periods.

Although this model of trustland ~~was~~ adopted from the Nyasaland Scheme, there were, however, some differences between the two. Though in both schemes the native trustland was vested in the Secretary of State for the Colonies, the difference was in respect of alienation to non-natives. In Nyasaland, now Malawi, alienation of trustlands to Europeans was not on condition that it should be in the interests of the community as a whole as was the case in Northern Rhodesia.

Once the trustland scheme was accepted by the Government, a Commission named The Land Tenure Committee, chaired by L.W. Eccles, the then Commissioner of Lands, was appointed to set the policy in motion. During its investigations the Commission was met with the demand by Africans for more land, but this reaction by some Africans was confined to areas where there was abundant European settlement.<sup>21</sup>

The Commission submitted its recommendations in 1942 to the Government. As regards Customary land tenure, it was recommended that a portion of native trustland be set aside for alienation to Africans in individual tenure. This, it was felt, would relieve

congestion in the over-crowded native reserves.

Further, another portion of the land should be made available for alienation to Europeans on the condition that the alienation was in the interests of the community as a whole.

The trustland policy was finally implemented in 1947 by an Order-In-Council of that year<sup>22</sup> and this signified the addition of a third category of land to the land tenure system of the territory. It has, however, been stated that the creation of these, trustlands could not really have helped in relieving congestion in the reserves. The argument was that as long as the obsolete methods of native cultivation were still being followed, congestion would exist since most land would still be destroyed and over-utilised. It has also been suggested that although imposition of tax or compulsory purchase of undeveloped land might have been a solution, the ultimate solution was the adoption of intensive methods of cultivation and the prevention of soil erosion.

On non-native tenures, the Commission did recommend that all Crownlands be alienated on leasehold tenure only. The reason advanced was that under freehold many abuses were possible since, although a certain amount of development was necessary to qualify for the issue of freehold title, there was no further control

over the use of land. It was as a result of this absence of control that land was lying idle and unoccupied and land was being misused. The Commission, therefore, favoured leaseholds because the Government could enforce maintenance of improvements and the proper use of the land.<sup>23</sup>

However, the Commission was for the idea that although freehold tenure be abolished, the term for the leases should be so long as to be approximate to freehold title. Thus Agricultural leases were to be of three types that is long-term leases for a period of 999 years; short-term leases for up to 30 years and the leases for small holdings for 99 years.

The Commission further recommended that for long term leases a provision was to be made for a minimum amount of development to be carried out within a specified time and for maintenance of the land. Sub-division of the land was to be prohibited except with the consent of the Crown. Developmental and occupational clauses were to be included in the leases which could be terminated for non-compliance. The same provisions applied to short-term leases where there was an option for renewal for a further term of thirty years under the same conditions.

Regarding small holdings, it was recommended that these were to be situated within a reasonable distance of markets and they were to be for a 99 year period. Developmental and occupational clauses were to be included and beneficial occupation was to be compulsory after the first three years. A good habitable house was to be built within the first five years and only one family was to be permitted to reside on each small holding.

Amongst the other recommendations were that an agricultural leaseholder's right to the naturally growing timber should only be limited to taking and using the timber required for agricultural and domestic purposes. It was further recommended that a Land valuation Board be appointed and that the Land Acquisition Ordinance be amended to ensure that a lessee of Crownland is entitled to compensation on compulsory purchase in accordance with the law in force at that time rather than by agreement.

It is interesting to note that most of these recommendations, if not all, were adopted by the Government, since most appeared in the Agricultural Lands Ordinance.

However it is questionable whether the recommendations once approved and implemented ensured that land was controlled by the government. The abolition

of freehold was a right step towards control of land but then the fact that the term of the lease was for as long as 999 years made no difference from having a freehold tenure. The difference, however, was that whereas, in freehold, once the land has been acquired the landholder had absolute rights in the land, in leasehold, on the other hand, the Government as lessor, had power to prescribe and enforce some conditions for the development of the land.

As for the development and occupational clauses the enforcement of compliance with these was questionable. Further, although beneficial occupation was compulsory after the first three years, there was no provision for the continued beneficial occupation of the land thereafter.

Finally, the recommendations were meant for Crownland only, which was land basically occupied by the whites. Customary landholders, on the other hand, were neglected and left to use their obsolete methods of agricultural production. What this implied therefore was that whilst attempts were being made to develop Crownland, the other pieces of land falling under Customary law were ignored.

COMPARISON TO LAND POLICIES OF OTHER COUNTRIES:

KENYA AND TANZANIA

The type of land tenure system that exists in a country which is a former colony reflects the relationship that was there between the native inhabitants and the settlers. In countries where European settlement had occurred on a large scale or where it was anticipated, the land tenure system was such as to encourage the purchase of land by individuals or companies.<sup>24</sup>

In Kenya, for instance, there was substantial European settlement. This necessitated the modification of the land tenure system to ensure that the interests of the settlers in land were acknowledged and secured. Rights to pieces of land in private occupation were initially recognised by the East Africa Land Regulations of 1897. This was later replaced by the Crown Lands Ordinance of 1902. The settlers' interests in land, which were basically freehold, were so established by these laws that it was virtually impossible to reconcile them with African interests and thus conflicts erupted. The violent uprisings of the 1950s were due to the exclusion of the large native tribes like the Kikuyu from the Kenya highlands.

The rights of Africans in land, on the other hand, were not actually secured by the written law although they were recognised. In all dealings with Crownland the Commissioner had to have regard to the rights of the natives and could not sell or lease any land in actual occupation of the natives. However, he was empowered to grant leases of areas of land containing native villages or settlements without excluding them. This implied, therefore, that the Commissioner had power to actually sell or lease any land whether it contained native settlements or not and in this way the native rights in land were not really secured.

The colonial Government's intention was to ensure that the settlers had more power than the natives. As aptly put by Munro:

"The basic aim of the Colonial Kenya Government was to establish a political and economic structure in which settlers could retain power through legal and Constitutional means. To assure this sort of power structure, a technique had to be found which would counteract African numerical supremacy. By creating reserves and by choosing to deal with Kenya's diverse peoples on a communal rather than an individual basis, the Government felt it had found a suitable answer".<sup>25</sup>

The British policy in Kenya as regards African rights to land proved not to be well-intentioned at all. Firstly, the land reserved for Africans became inadequate on

account of shifting agriculture which was practised in these reserves. The rapid population growth and fragmentation of the holdings caused by the inheritance systems proved uneconomical. Secondly, even the settlers themselves did not wish to shut natives in reserves and thus remove them from white farms. The farmers also felt that by reserving land for the exclusive use of natives the chances of expanding their farms would be limited. Fear of labour shortages for industry and commerce was an added factor for the settler's discontent with the policy of reserves.

At independence, the approach favoured in Kenya was to make development requirements independent of title. The legal device used by the Kenyan Government, inherited from the Colonial masters is the conditional purchase i.e. the long lease subject to development conditions and convertible into a fee simple on satisfactory compliance with the conditions. However, although this method encourages development, it does not ensure its continuance since once the fee simple is acquired no compliance with the conditions is necessary.

It is obvious from the foregoing that the state of affairs regarding land policy in Kenya was almost similar to that in Northern Rhodesia. The reason for this was because, like in Kenya, there was an anticipation of a large number of European settlers in Northern

Rhodesia. The Colonial land policy of the Government was to ensure that white settlement was encouraged.

Where, on the other hand, there were few settlers, the system was in favour of African interests. In Tanzania, for instance, due to the limited number of settlers, the land was deemed to belong to the indigenous inhabitants. The Tanganyika Land Ordinance of 1923 declared all land to be public lands and permitted alienation by the Governor of public land for a term not exceeding 99 years to both non-Africans and Africans.<sup>26</sup>

Thus the existing rights of Africans arising out of Customary law were recognised and meanwhile Europeans could acquire land by direct grants from the Governor so long as this was not detrimental to indigenous interests. To ensure that most land was in the hands of the natives, the Ordinance sought restriction of transfers of parcels of land from Africans to non-natives.<sup>27</sup>

As there was individual ownership in the Colonial days, the operative maxim was "land holding is secure while the land is being used". The basis of the principle was that attached to a grant of a right of occupancy should be statutory development conditions. Failure to develop the land would lead to revocation of the right.

These conditions later became crystallized in the Land Regulations of 1948 under the Land Ordinance.<sup>28</sup>

It is obvious, therefore, that in Tanzania, unlike in Kenya and Northern Rhodesia, the land tenure was such that it promoted the interests of the indigenous peoples.

FOOTNOTES

1. Bentsi-Enchill, K., (1965), 'Do African Systems of Land Tenure Require a Special Terminology? J.A.L., Vol. 9, No. 2, p. 78
2. Gann, L.H., A History of Northern Rhodesia. (Chatto and Windus, London, 1964) p. 212.
3. Bentsi-Enchill, Op. Cit.
4. North Eastern Rhodesia Order-in-Council, 1899.
5. Ibid.
6. See: Cox v The African Lakes Company (also known as the Kombe case and The Minerals Case.
7. 1919 A.C. 211.
8. Mvunga, M.P., The Colonial Foundations of Zambia's Land Tenure System, (NEDCOZ, Lusaka, 1980) p. 7.
9. See: Preambles to the 1911 and 1924 Northern Rhodesia Order-in-Council.
10. Id. 1924 Order-in-Council.
11. 1899 Order-in-Council, op. cit., Clause 40.
12. Northern Rhodesia Native Reserves Commission Report, 1913, Vol. 1.
13. Mvunga, op. Cit., p. 16
14. Northern Rhodesia (Crownland and Native Reserves) Order-in-Council, 1928.
15. Gann, op. cit., p. 370.
16. Ibid.
17. Northern Rhodesia Land Tenure Committee Report, 1943.
18. Mvunga, op. cit., p. 30
19. Order 5(6) Reserves and Native Trustland Order-in-Council.

20. Ibid.
21. Mvunga, passim.
22. Supra, n. 19
23. Land Tenure Committee Report, op. cit.
24. Mvunga, passim.
25. Munro, A.P., Land Law in Kenya, in Hutchinson T.W. (ed) Africa and Law, (University of Ife, Press, Ile-Ife, 1973) p. 76.
26. S.6 and S.7 of the 1923 Ordinance.
27. Ibid., S.8
28. James W., Land Tenure and Policy in Tanzania (East Africa Literature Bureau, Nairobi, 1971) p. 111.

### CHAPTER THREE

#### THE EFFECT OF CUSTOMARY LAND TENURE ON AGRICULTURAL DEVELOPMENT.

The current legal status of land in Zambia does not differ substantially from the position prior to independence since the basic categories of land have remained unaltered. Thus Reserves, Trustlands and Crownlands (now Statelands) still exist. Despite the absence of a specific mention in the relevant instruments creating reserves and trustlands, the interests in these lands, other than those held under reserve leases or occupancy licences, are held under Customary Law. An African holding such land under customary law enjoys customary interests irrespective of whether it is in a Reserve or Trustland.

These interests, however, may be referred to as de facto land rights exercised by individual Africans. They cannot be described as rights under customary law since, apart from not being codified in any form, traditional Courts rarely intervene to enforce them.<sup>1</sup> Moreover, although the lands have been vested in the

President,<sup>2</sup> no individual titles have been conveyed to Africans. In Reserves, the Order-in Council grants the land to tribes or portions of tribes but not to individual Africans. In Trustlands, the individual title provided for is a right of occupancy which confers rights less in content than those already exercised by Africans.

It is obvious, therefore, that the existing land rights have no legal basis and hence are merely *de facto*. The rights will be recognised through a legal title only when amendments have been made to the Orders-in-Council.

Since the tenure in the Reserves and Trustlands, however, has been and is still being administered under customary law, it is imperative to appraise how conducive customary land tenure is to the development of agriculture in the country. This is important because a large section of the population of Zambia derive its livelihood from land in Reserves and Trustlands, and thus these lands are of utmost importance for any development policy.<sup>3</sup>

It is always contended that the difficulty with any system of land tenure lies in its imprecision as to title, lack of security of tenure, lack of

freedom of alienability and it being prone to fragmentation, and parcellation.

1. OWNERSHIP OF LAND

The main principles of tribal societies' land holding state that rights in land are an incident of political and social status. Land rights are acquired by virtue of membership in a particular tribe and once an individual is a member he becomes entitled to a piece of land. However, these rights of tenure so acquired are maintained only if certain obligations are fulfilled. These obligations include, inter alia, allegiance to the political authority. Thus the acquisition and maintenance of rights to land are dependent on the fulfillment of the obligations and not title to land.

This feature is common amongst most tribes in Zambia. Among the Bemba of Northern Province, for instance, Richards states that:

"Rights to the use of land are part of a reciprocal series of obligations between subject and chief. The former accepts the political status of subject and membership of a village group, gives respect, labour and tribute to his chief, and in return

he is able to cultivate as much land as he pleases and to occupy it for as long as he needs. The latter prays to the tribal spirits in order to make the land productive, initiates economic effort, feeds the hungry and maintains his court and tribal Councillors."<sup>4</sup>

Rights or interests in land should, however, be differentiated from title to land. Although an individual may acquire rights in land, it does not imply that he has acquired the allodial title to such piece of land. The title theory in most tribal societies is that the allodial title is vested in the community as whole or in the chief as trustee for all the people. Amongst the Lozis of Western Province, for instance, the allodial title to land is expressed to be vested in the chief who holds such land on behalf of all the people. Thus the chief has "interests of control" whilst the individual members of the community have beneficial rights.<sup>5</sup> Reporting on the ownership of native land, the Land Tenure Committee of 1943 stated that:

"As far as it is possible to generalise, native land tenure in Northern Rhodesia can be described as communal ownership by the tribe vested in the chief coupled with an intensely individual system of land usage."<sup>6</sup>

The Committee further observed that the European conception of individual ownership of land has no part in the traditional system of african land tenure.

In other traditional societies, title is vested in lineages and family groups. The lineage or family "owns" the land although the interests in such land are held by a member of the family or clan. Thus land acquired by an individual member becomes family property and in the event of death or abandonment, the land reverts to the lineage or family. Mvunga<sup>7</sup>, cites the Luvale people of North-Western Province as an example of a tribe who acknowledge land as being owned by the lineage who may make a claim to any land in the occupation of a lineage member.

It has frequently been stated that the weakness of customary landholding as far as development of agriculture is concerned is that the farmer does not "own" the land; the family, the community or the chief is the allodial holder. Thus, having no title to the land, the individual holders will not be motivated to invest in the development of the land. This is because stable long-term investment in land requires clarity of title. Land titles under customary law are often not clear in that customary

rules are naturally unwritten and thus prone to misinterpretation; and further there is imprecision as regards boundaries.

Although allodial title may be vested in the community as a whole or in the chief as trustee for the community, however, the interests acquired by subgroups or by individuals are distinct and exclusive. Usually the first occupier, that is the one who clears virgin forest, acquires interests in that land which will endure for as long as there are heirs to succeed him unless he effectively abandons the land. These interests are so well established that they only fall short of allodial title.

Moreover, in the strict sense, it is only grazing and unoccupied land that is communally owned in the sense that it is communally used. An occupier of land acquires the exclusive use of such land. It is only in the event of non-fulfillment of certain obligations that his rights to the land may be tempered with.

There is another argument that in the particular pieces of land which are communally used, or instance

grazing land, communal lakes for fishing and wild forests for timber and fruits, there is lack of control which makes the areas susceptible to misuse and destruction. There is a tendency to over-graze and wantonly destroy timber resulting in causing soil erosion.

Certain advantages exist for communal ownership of land in the tribal societies. These include, inter alia, the fact that every member of the community by virtue of his membership has a right to a share of land. Any member may establish rights over any piece of land by opening up such land over which no individual has already established rights. Land rights are thus obtained by mere residence and not through allocation by any authority. It is only when a new-comer wishes to settle in the village that he may seek advice from the village headman as to what land is available.

Yet another advantage is that if a landholder decides to discontinue the use of his piece of land, it is abandoned to revert to bush unless someone obtains it from him by assignment. Once it is abandoned however, anyone becomes entitled to establish rights over such land.

The worst disadvantage of communal ownership of land has been said to lie in the absence of

security of tenure. It has been argued that due to the lack of security of tenure, lending institutions are reluctant to lend money to the farmers. This argument, however, overlooks the fact that the rights of individuals over their pieces of land are actually secure in that once an individual establishes his rights over land, these remain permanent and may only be lost through their transfer to another or if they are extinguished by abandonment or by death of the landholder.

This security provided by traditional rules, however, is only conducive to traditional agriculture where land is plentiful and no values are conferred by investment and advantageous location. The movement, for instance, from subsistence to commercial agriculture, will definitely require alternative tenure arrangements which provide security since traditional institutions will fail to enforce security in holdings.

It seems that the chances of borrowing money for the development of land are diminished by the absence of documentary title to the land. Lending institutions regard it as being risky to lend money

to a person whose title to land has no evidentiary proof in the form of a document.

Bruce and Dorner argue that farmers feel insecure for a number of reasons. They contend that:

"It is not so much insecurity, but consciousness of insecurity which affects investment decisions. Consciousness of insecurity may be heightened and made more determinative of behaviour by factors external to the individual's situation. This appears to be happening due to the widespread knowledge of leasehold tenure as an alternative.... The very awareness of the possibility of leasehold tenure thus contributes to the consciousness of insecurity under traditional tenure rules."

A banker, therefore, will not loan to a farmer who is not secure in his holding in the sense of having a secure expectation of continuing in possession to reap the returns on investment in the land.

Another reason for the reluctance to lend money to farmers in these lands is that the land (unexhausted improvements) is unmarketable. Land offered as a security for a loan will be taken by the lender to satisfy an unpaid debt. Since banks have no interest in becoming farmers, the land must

be readily transferable for consideration which will satisfy the debt. However sales of traditional land are rare. This is because the land, being located far from the necessary infrasturctures, markests, transport facilities and Government services it has no scarcity value and hence it is unmarketable. Moreover, in traditional societies where the only means of livelihood is provided by access to land, sales of land may be prohibited or discouraged.

A solution suggested to alleviate the problem of borrowing money from lending institutions is the adoption of a land registration scheme of some sort which will ensure the determination of the extent of the existing interests in land and henceforth the clarity of title.<sup>9</sup>

## 2. ALIENABILITY OF LAND

Another feature of customary land tenure that is said to inhibit both commercial and industrial development is the lack of freedom of alienability. Since the allodial ownership of the land is vested in the community as a whole or in the lineage and family, an individual farmer's power to alienate the

land is limited. Although such alienability may be sufficient to provide land for commercial purposes, "alienability by the user is also a necessity for the development of investment in land."<sup>10</sup> An individual will be reluctant to invest in land where he may not realise his investment if he must move.

White,<sup>11</sup> however, contends that in most tribal societies in Zambia, there are no restrictions on the transfer or assignment of land by one individual to another. Land may be assigned by loan or gift without reference to any land authority. It is only in societies where lineages are the land-holding units that there is need to consult other members of the lineage. This form of alienation, however, is confined to the unexhausted improvements on the land which can be sold as opposed to the land itself.

In certain tribal communities, there is another form of alienation of land by individuals. For instance, among the Tonga people of Southern Province a man might mark an area larger than he could personally clear and then allot a portion to a dependant who then proceeds to cultivate the plot. This is not a total alienation of land as

such in that the original claimant could recover if if he quarreled with the holder or if he needs the field for his own use.

Nevertheless this form of alienation still bears the restrictions that ensure that in the final result there has been no actual transfer of the ownership of the land at all. The restrictions on dealings in land inhibit the creation of a market for land which would ensure that land is more productively used.<sup>12</sup>

Additionally, whilst restrictions on alienability are sufficient for shifting agriculture, the transition to intensive farming in the private sector is made easier if the norms on alienability are less restrictive. Thus it is axiomatic that alienability of land is important if land use is to be maximised in the private sector. Nevertheless total alienability of customary land may only be achieved if the individual farmers are able to acquired title deeds to the lands they occupy.

### 3. FRAGMENTATION AND PARCELLATION

As the land becomes scarce due to an increase in the population, the method of cultivation changes

from shifting cultivation which becomes less and less feasible. When this happens holdings become excessively subdivided and fragmented. The source of parcellation is usually in customary rules governing devolution of property on death of the landholder among the inheritors. Another explanation could be the fact that every member has a right to a share of tribal land and thus despite the size of the land to be shared, each individual has got to have a piece.

The problem that arises as a result of this feature of customary land tenure has been stated to be that small pieces of land may be created which cannot sustain even a single family. The problem with fragmentation, on the other hand, is that the farmer's time may be wasted in travelling to check on and cultivate his pieces of land. Fragmentation in this context is the ownership of several scattered portions of land.

Nevertheless, it has rightly been pointed out that since the causes of fragmentation are basically agronomical factors and not land tenure per se, there is no need for change in customary landholding. A farmer may be compelled to travel

from one piece of land to another by such factors as soil fertility, the type of crops grown and climatic conditions.

As regards the rules governing systems of inheritance these are difficult to change because they have religious sanctions and are related to the societal care for widows and children. They can only be changed if alternative devices for social security are devised and when employment opportunities for the disinherited are created by the Government.<sup>14</sup>

It is evident from the foregoing that lack of documentary title, absence of security of tenure and the inalienability of the land are the prominent features of customary land tenure inhibiting the development of agriculture in these areas. The apparent solution may be the introduction of a form of registration to ensure that individual persons acquire title deeds and hence clarity of title.

In this regard the development policy of the Government should be one aimed at creating conditions conducive to the private sector. In Kenya, for instance, the Government, prompted by the

fragmentation which was rife, instituted a policy of consolidating pieces of land held under customary law. In Uganda, laws were passed that encourage individual landholding as the most appropriate path to agricultural development.<sup>15</sup> In Tanzania, on the other hand, although no freehold exists, land regulations determine the rights of occupancy granted for agricultural purposes.

It is, therefore, submitted in this regard that Zambia needs to formulate a policy regarding the direction of change in customary land tenure. At present much of the traditional agriculture is in a deplorable state and leaving it as it is amounts to discouragement of agricultural development in these lands.

Apart from having access to loan facilities because of security of tenure, the other advantage of acquiring title deeds to land is that property will be retained when a spouse dies where the property is jointly owned. Land in reserve and trust lands cannot be disposed of by will, except if a law permits and there is no such law in existence at present.

Another suggested solution could be the introduction of co-operatives and state farms. Co-operative efforts have frequently been observed occurring indigenously and thus the transition from the existing forms of Customary Land tenure to one which is co-operative oriented would be easy. However the effectiveness of such a transition requires the introduction of the Socialist ideology and the education of the masses on the accruing benefits from such an ideology. If, on the other hand, the direction of development is towards state farms the emphasis must be on assurances that the Government has adequate powers of eminent domain, not on changes in customary land tenure per se.

#### LEASES AND LICENCES IN RESERVES AND TRUST- LANDS

The Orders that create Reserve and Trustlands make provisions for the holding of non-customary interests in these lands.<sup>16</sup> The President is empowered to grant these interests to either Zambians or non-Zambians.

The grants to native Zambians and to non-natives differed in certain aspects. The duration of a grant in a Trustland to a non-native or a

council is for a term not exceeding 99 years or for 33 years if made to a missionary society. This is conditional upon the production of survey diagrams as required by the Lands and Deeds Registry Act;<sup>17</sup> in the absence of which the duration of the interest is for 14 years only pending its preparation. However, a sketch plan is required even if it is for 14 years only. A grant of a lease in a Reserve to a non native could not exceed five years.

Africans, on the other hand, were entitled to grants of leases and licences in the Reserves and Trustlands respectively which conferred fee simple estates. However, these have been reduced to terms not exceeding a hundred years under the Land (Conversion of Titles) Act, 1975.<sup>18</sup>

The Trustland Order empowers the President to acquire land for public purposes and once it is so acquired, such land ceases to be held under customary law.<sup>19</sup> It has been argued that the repeated exercise of this power by the President has the unfortunate effect of diminishing the size of reserve and trustlands.<sup>20</sup> Such an exercise, therefore, undermines the intention of the Government to prevent the diminution in size of the traditional lands.

A grant to a non-Zambian is only made under a special permission given under the regulations issued by the President. This is because no land can be alienated to a person who is not a Zambian.<sup>21</sup> For a non-Zambian to be granted a piece of land, his application for land must have been approved in writing by the President.<sup>22</sup> Usually the application is first submitted to the council concerned for scrutiny. Thereafter on recommendation from the council, the Commissioner of Lands will approve.

As regards the procedure on acquiring a grant of a lease or a licence, the President has to consult the Rural Council and the Chief in the area in which the land to be acquired is situated. This is to ensure that boundaries are verified and to protect the interests of villagers. The Council has to make a physical inspection of the land which is restricted to 250 hectares and to consult the chief. Consulting the chief is necessary because he knows what interests exist in the particular piece of land and also the customary rules existent therein.

The consents of the chief and the Council form the basis for any approval of applications for land. To ensure that the chief and the council have

been consulted, the Commissioner of Lands will insist that each recommendation be accompanied by written consent of the chief and extracts of minutes of the council and of the committee of the council responsible for land matters.

It has been stated that compliance with the process of obtaining extracts of minutes and the inspection of land cause a delay in this procedure.<sup>23</sup> Further, the restriction of the size of the land to 250 hectares and the recognition of interests already existing are impracticable. This is so because most land in the Reserves and Trustlands is either utilised by individuals or by the whole community as grazing land, river or right of way to another village. Thus it is virtually impossible to have 250 hectares of land that has no community interest. The regulations<sup>24</sup> have tried to resolve this problem by providing for the recognition of existing interests and their protection until the President gives consent for their removal. Nevertheless the problem still remains that the lessee or licensee will incur difficulties in using the land as security for a loan since the existing interests will be incumbrances on his title.

It is suggested that the solution would be the provision that only unoccupied land be considered for a grant. Such a grant has to be made only after an inquiry as to existing rights has been made. Further, the applicant should be obliged to pay compensation to the displaced persons.

There had been reluctance in obtaining grants in Reserves and Trustlands and this was attributed to a number of factors. Firstly, land in Reserves and Trustlands is in an unsurveyed state and thus a person or company who wants to develop the land will face lots of delays and problems in obtaining immediate title for loan purposes. The result is that he would prefer to obtain title deeds to Stateland which is already surveyed.<sup>25</sup>

Secondly, the requirement of obtaining consent from the chief and the Rural Council may discourage persons without ethnic ties with the area in question. Only those born within such areas may be favoured in these circumstances.

All this points to the fact that land in these areas is unmarketable. As aptly put by Mvunga:

"Rural land is thus virtually unmarketable. It is practically not feasible to find purchasers for rural land mainly because the land in question is either unsurveyed or there are no title documents which can pass from vendor to purchaser."26

Thirdly, the maximum period for a reserve lease to a company is only five years. This may discourage a company from undertaking a long term investment in the land. However, the current practice is one of having titles to land registered in the names of the shareholders. Moreover, the period of five years is only applicable to reserve leases since the duration of a right of occupancy in trustland for a company is ninety-nine years just like for an individual.

Fourthly, the local chiefs were against their subjects obtaining documentary titles to their pieces of land. The reason advanced was that the chiefs feared that once title deeds to land were acquired, the title holders would stop respecting their chiefs. Thus as a way of maintaining control over their subjects, they discouraged them from applying for title deeds for their pieces of land.

Nevertheless, although previously the local people were not responding favourably to obtaining title deeds to their land, the position has changed now. This is

attributed to seminars conducted by the Lands Department to educate local chiefs and council officials on the need to obtain title deeds for land. The chiefs and officials have in turn urged the local people to apply for title deeds and hence the current overwhelming response from the people. At present the Lands Registry is being expanded to accommodate the ever rising number of applicants for title deeds.

It would seem, however, that most of the applicants are individuals who already hold pieces of land under customary law and all they are doing is obtaining title deeds for their land. New settlers are few and this may be because they are discouraged by the various factors mentioned above, from acquiring land in these areas. Another explanation could be that persons are discouraged from settling in these areas due to their lack of access to credit, marketing, new inputs and technologies as well as to the transport network and amenities such as schools and clinics.

One feature of the leases in Reserves and Trust-lands worth mentioning is that the Commissioner of Land only makes leases and licences in these lands in response to a request from a particular applicant for a particular piece of land. The result of this is that there are many scattered leaseholds rather than a systematic conversion of tenure in an area.

CONDITIONS ATTACHED TO THE GRANTS

A number of covenants and conditions accompany the acquisition of grants in the Reserves and Trust-lands. These conditions are basically intended to control land and promote agricultural development.

Certain disabilities are imposed on the lessee depending on whether one is an african or not. If a non-african acquires a grant, he is restricted from dealing in the land within the first five years of the grant, except with the consent of the President.<sup>27</sup> This implies that he may do so thereafter.

If a grant is to an african, on the other hand, the land can only be disposed of in accordance with the law enacted by parliament. Hence sub-division of the land can only be done within the written law and thus customary rules regarding land allotment are prohibited. The objective of the prohibition was to protect africans from disposing of their land merely for monetary gain. The relevance of the restriction is, however, questionable at the present time when most holders of title deeds in these lands are literate. Moreover, no law has been passed to-date which permits africans to sub-divide their pieces of land.

However, even africans may sell, after five years, to other africans. Thus an african only has to wait for that period to lapse before he can freely deal with his land. This has been restricted however, by a covenant in the lease that forbids assigning, sub-letting or parting with possession except with the consent of the President. Thus any form of dealing in the land is forbidden save with the President's consent whether it is within the first five years or thereafter.

Other conditions meant to promote agricultural development include the requirement that the lessee must personally reside on the land or engage a competent manager who should be qualified and/or experienced.<sup>28</sup> This discourages individuals in employment in urban areas from acquiring such land because it would mean they have to bear the additional expenses of employing a qualified manager to manage the estate before they retire and settle on the land.

The lessee is barred from abandoning the land or permitting it to remain idle for over three years except with the consent of the President.<sup>29</sup> This requirement discouraged the traditional methods of cultivation, for instance, the system of Chitemene

among the Bemba where land used for some time is "abandoned" and the farmer shifts to another piece of land. It would seem, therefore, that the rule was partly intended to change the system of agriculture among the africans, although without providing them with an alternative method. However, with current developments and the new methods of cultivation, shifting cultivation is slowly fading and the requirement may effectively and rightly be implemented.

Another requirement is that within twenty-four months of the grant of title, substantial buildings at a determined value must be erected to the satisfaction of the President. The value is determined by the President at the time of the grant.<sup>30</sup> This clause can be contrasted to conditions that bind statutory lessees where the period during which buildings must be erected is limited to three years and there is no requirement for determining the value of the buildings.<sup>31</sup>

The drawback of the requirement, however, is in its non-implementation since no inspection takes place to ensure that buildings have been erected as per specification. Some farmers<sup>32</sup> confessed that since they acquired title deeds to their pieces of land, no inspectors have visited their farms to implement the condition. They also stated that, in practice,

necessity compels them to erect reliable and strong buildings. Thus it seems that despite the non-implementation of the condition, most farmers would still erect substantial buildings for safe custody of their produce and machines and for residence. Further, the relevance of determining the value of buildings at the time of the grant is questionable.

Another condition to be complied with is that the lessor must cultivate a reasonable size of arable land within twenty four months from the date of acquiring title deeds to the land.<sup>33</sup> The condition does not take into account the fertility of the soil and the modes of cultivation. Certain pieces of land can only be cultivated at particular times of the year depending on the changes in the climatic conditions. A contrast can be made to statutory leases where there is no similar condition and to scheduled lands<sup>34</sup> where there is a requirement to comply with the orders of the Agricultural Lands Board which fixes the proportion of land to be cultivated annually.<sup>35</sup>

Further, the lessee must comply with the practice and accepted methods of good husbandry,<sup>36</sup> and he must not keep more stock than the reasonable carrying capacity of the land.<sup>37</sup> Whether the

lessees will comply with the accepted methods of good husbandry will depend on whether or not they are informed of what amounts to "accepted methods of good husbandry." It has been discovered<sup>38</sup> that the farmers are, in practice, not educated on the accepted methods of cultivation when obtaining title deeds. Usually they have to use their own initiative and learn modern methods of cultivation, thus even without the covenant, it seems farmers would voluntarily learn about husbandry. ^

As to the covenant that the lessee should not keep more stock than the reasonable capacity of the land, this hinders farmers who rely on stock keeping. Nevertheless, the covenant, if it was effectively implemented, would compel farmers to keep relatively reasonable numbers of animals which they could adequately maintain. Moreover over-grazing would be somehow minimised.

The most serious problem with the effectiveness of the covenants is their implementation. Although the President is empowered to enter Reserves and Trustlands and examine the compliance with the covenants, this is rarely done. This is more so especially in the rural areas and the cause

for this could be due to insufficient manpower and transport problems. A suggested solution could be the inclusion of a provision that empowers the Rural Councils to take over the responsibility of implementing compliance with the covenants. Alternatively, the establishment of a new body specifically for enforcing conditions in all categories of land could be a solution.

The policy itself of having customary landholders and title holders as neighbours is viewed with mixed feelings by both parties. Some holders of title deeds interviewed expressed their indignation at having customary landholders as their neighbours. They argued that most peasant farmers started bush fires which sometimes affected their pieces of land and also caused soil erosion. On the other hand, customary landholders justified their actions by arguing that they started fires to catch mice, a source of food, and to clear the land before they can start cultivating. In the absence of machinery, which they could hardly obtain, only fire could be used to clear the land.

Holders of title deeds also stated that they are forced, in most cases, to fence their piece of land to prevent animals, especially cattle, belonging to

peasant farmers from straying into their lands and destroying the crops grown in that season although not necessarily maize. Further, in the absence of fences, disputes as to boundaries are bound to occur.

Customary landholders, on the other hand, stated that the communal use of certain parcels of land was limited or restricted by having a title deed holder as a neighbour. Firstly, there is a limitation to the grazing land for their animals in that holders of title deeds often erect wires and fences to demarcate their pieces of land which usually cover large areas. The fencing also results in limiting their freedom to pick wild fruits in forests. In this regard, an example was given<sup>39</sup> of a case in which an eleven year old boy was shot and wounded by a farmer (holder of title deeds) when he and other children had trespassed on to his farm to pick wild fruits (Masuku). The farmer's justification was that he had mistakenly taken the children to be cattle rustlers, a crime which is prevalent in the area.

Another complaint from customary landholders was that they felt their rights as riparian owners were usually disregarded by holders of title deeds.

There is, for instance, a case in which a commercial farmer has constructed a dam on a stream which sometimes results in either causing flooding or a complete drought depending on whether it is in the rainy season or not.<sup>40</sup> The stream happens to be an important source of water to most villagers in the area, but during the dry season the water is diverted to the farmer's estate.

Most villagers also felt that whenever traditional land was allocated to individuals by the Land Commissioner, it was usually in the areas with rich soils. The reason for this could be that an individual would not purchase land with poor soils if he intends to develop it for agricultural purposes.

These complaints from both holders of titles deeds and those who hold land under customary law are as a result of the fact that the rules governing their types of lands are basically different. Thus to avoid the inevitable conflict between the two sets of rules, it is submitted that a long term solution could be the provision of some form of registration to holders of customary lands. Apart from ensuring that uniform rules govern all land in the Reserves and Trustlands, this would also indicate with clarity who holds what interest in what land. Thus the Lands Department's

current practice of conducting seminars to enlighten the people on the need to acquire title deeds is a step in the right direction and should be encouraged.

As regards the tenure in the land held under customary law, it is obvious from the foregoing that, such tenure has features not conducive to the promotion of agricultural development especially in the modern times. The introduction of some form of registration would consolidate the existing security of tenure and also clarify titles to the pieces of land. This in turn, would make it easier for the landholders to have access to loan facilities. Further, the Government should clarify its policy regarding such land.

An introduction of some form of registration in these lands unaccompanied by any incentives will not guarantee that new farmers will settle in these areas. To attract new settlers wishing to develop the land, the Lands Department should conduct surveys on these lands. Moreover, there should be provision of certain services and amenities by the Government, for instance, an improvement in the transport and marketing system and provision of other social services like schools and clinics. Only then would these lands be utilised effectively and be developed.

FOOTNOTES

1. White, C.M.N., A Survey of African Land Tenure in Northern Rhodesia, J.A.A., Vol. 11, No. 4 (1959), p. 169.
2. Order 6 of the Reserve Orders
3. Mulimbwa, A.C., The System of Grants Land in Reserves and Trustland and Agricultural Development in Zambia. Ph.D Thesis, University of London, 1987.
4. Richards, P., Land Labour and Diet in Northern Rhodesia cited in Gluckman, M., The Ideas in Barotse Jurisprudence, (Yale University Press, New Haven & London) 1965, p. 80.
5. Mvunga, M.P., Land Law and Policy in Zambia, (University of Zambia, Institute of African Studies, Mambo Press Gweru) 1982, p. 28
6. Report of the Land Tenure Committee, 1943, paragraph 1.
7. Mvunga, M.P., Op. Cit., p. 30
8. Bruce, J.W. & Dorner, P.P., Agricultural Land Tenure in Zambia; perspectives, problems and opportunities. (Land Tenure Centre, University of Wisconsin - Madison), Research paper No. 76. October 1982, p. 33
9. Siedman, R.B, Law and Economic Development in English speaking Sub-saharan African in Hutchinson T.W. (ed.) Africa and the Law (University of Wisconsin Press, Madison) 1968
10. Ibid, p. 51
11. White, C.N.M., A Survey of African Land Tenure in Northern Rhodesia, J.A.A., Vol. 12, No. 1 p. 10
12. Mulimbwa, A.C., Op. Cit. p. 15
13. Ibid, p. 21
14. Siedman, R.B., Op. Cit.

15. The Public Lands Ordinance was passed in Uganda to encourage private individual landholding.
16. See: Order 6 A (1) Reserve Orders; Order 5 (1)(6) Trustland Orders.
17. S. 12(1) Lands and Deeds Registry Act, Cap 289.
18. S. 4 Land (Conversion of Titles) Act No. 20 of 1975, Cap 297
19. S. 5(7) Reserves and Trustlands Order in Council 1947.
20. Mulimbwa, A.C., Op. Cit p. 33
21. The Land (Conversion of Titles) (Amendment) (No. 2) Act of 1985 prohibits the alienation of Land to a non-Zambian unless the application has been approved in writing by the President.
22. Ibid
23. Mulimbwa, A.C., Passim.
24. Clause 2(12) of Trustland Grants Regulations.
25. Mvunga, M.P., Op. Cit. p. 69
26. Ibid at p. 71
27. Reg 4(1) Reserve Grants Regs; Reg 4(1) Trustland Grants Regs.
28. Reg. 9
29. Reg. 14
30. Reg 4
31. Reg. 6 Land (Conversion of Titles) Regs, 1975
32. Titleholders of Farms 315 A and 317 A talked to in the Soli Wa Manyinka Reserve - South East of Lusaka.
33. Reg. 4
34. These are Lands falling under the Agricultural Lands Act Cap 292 as defined by S.3.

35. S. 21(2)(b)(1) of Cap 292
36. Reg. 6.
37. Reg. 8
38. Some farmers I talked to stated they learnt of new methods of agriculture after attending seminars and inviting experts to visit their farms and seek advice from them.
39. Many incidents do occur apart from this. Members of the local villagers especially children still sneak in the farm for wild fruits despite the shooting incident. The farmer and his guards do patrol the land armed with guns and may shoot anyone who trespasses.
40. The farm is situated about 50 miles East of Lusaka and the Chongwe River passes through it.

## CHAPTER FOUR

### THE DEVELOPMENT OF AGRICULTURE UNDER THE AGRICULTURAL LANDS ACT CAP.292 OF THE LAWS OF ZAMBIA.

#### INTRODUCTION - HISTORICAL BACKGROUND

Prior to 1938, only two categories of land existed in Northern Rhodesia, namely, Reserves and Crownlands. The formulation of a new land policy in 1938 witnessed the addition of the third category of land, namely, Trustland. The question that remained, however, was as to what tenure was favourable in crownlands.

The Land Tenure Committee was appointed in 1943 to report on the various land tenures in the territory. In its report on non-native tenure which was adopted in 1946, the Committee recommended that crownlands be alienated on leasehold tenures only. Hence all future grants were to be for nine hundred and ninety-nine years (999) for farms and ninety-nine years for small holdings.

From 1943 until May, 1946, however, no alienation of agricultural land was permitted and this was in order to afford opportunity to returning ex-servicemen who wished to settle on the land.<sup>1</sup> As soon as the ban was lifted, there were a number of applications for all types of land. Hence in 1946 the Land

Board was established<sup>2</sup> to consider land valuation and applications for agricultural land. The prime purpose for its creation was to encourage new settlement and to promote the interests of new settlers.

The Board, in considering applications for agricultural land was guided by various factors. Firstly, since the Board was created primarily to promote new settlement, it formulated a rule by mid-1947 which ensured that those already possessed of land did not accumulate land at the expense of new settlers. Hence terms were formulated upon which applications from land holders would be entertained.<sup>3</sup>

Secondly, in a bid to ensure that the land alienated to applicants was productively utilised for agricultural purposes, the Board made it a matter of principle to interview all applicants for agricultural land. The object of the interview was to ensure that non-resident applicants indicate their intention to come and farm in Northern Rhodesia. On the other hand, applicants who were residents had to indicate their intention to engage in agriculture personally or through a satisfactory manager.<sup>4</sup>

Apart from ensuring that only those applicants genuinely interested in farming were granted land, the

Board also required to be satisfied, before granting a lease, that the applicant had sufficient capital, knowledge and experience needed for the beneficial occupation of the land. The initial capital needed to start farming was three thousand pounds although a suitable applicant in possession of one and half thousand pounds could be considered.<sup>5</sup> The sum was later on increased to four thousand pounds after recommendations of the Board to the Government which were necessitated by the rise in the cost of bringing virgin land into production.<sup>6</sup>

The applicant was also required to submit detailed information regarding his farming plans and the Land Alienation Committee of the Land Board would then assess the minimum capital he would require on that basis.

New settlers were advanced a loan equal to the minimum capital. This was, however, on condition that would-be purchasers of freehold only be helped if they were prepared to convert their interest from freehold to leasehold tenure. This was to ensure that the Government's policy of granting land on leasehold title was upheld.<sup>7</sup>

In 1950, a motion was introduced in the Legislative Council proposing that it was the right time to revert to freehold tenure. A select committee was set up to

consider the advisability of such a conversion.

In its report, the Committee recommended that leases of agricultural land be convertible into freehold after ten years subject to development conditions having been carried out. In favouring the freehold tenure system the Committee stated that;

The main argument for the grant of land in freehold and the one from which flow almost all, if not all, the other advantages put forward for freehold land, is the traditional desire by the occupant and in particular the farmer, to own in freehold his own land."<sup>8</sup>

It was further stated that the nine hundred and ninety-nine year agricultural lease did not give security of tenure because of the covenants in the lease. Out of the insecurity of tenure arose some disadvantages like inhibition of development and non-conduciveness to permanent settlement. In addition loans were difficult to raise and heirs were not given the certainty of undisturbed possession.

The Legislative Council referred the report and the whole question of crownland to a Commission of Inquiry<sup>9</sup> which submitted its recommendations in 1954.

The Commission recommended that although the system of a nine hundred and ninety-nine years leasehold tenure for agricultural holdings be continued, the

lease should only be terminated if there is evidence of bad husbandry and after compensation for improvements on the land has been paid by the lessor. In order to give the lessee freedom of action and confidence in his security of tenure, it was recommended that the clauses related to minimum improvements, idle land and abandonment be removed and instead the clause relating to good husbandry be expanded. Apart from the inclusion of a provision to ensure to a lessee, on the termination of his occupancy, that compensation for improvements he has effected has been paid, the landlord should also be compensated for any deterioration of the holding.

Lastly, it was also recommended that consideration be given to the enactment of legislation to codify these recommendations made. Hence in 1956, the Legislative Council passed the Agricultural Lands Ordinance to bring into effect some of the recommendations accepted by the Government.

#### THE AGRICULTURAL LANDS ORDINANCE - 1956

It must be stated here that although this legislation applies to scheduled land only, that is to land prescribed in the schedule to the Ordinance, it is of utmost importance for self-sufficiency in agricultural production. This is because the land

has great agricultural potential and better transport and marketing infrastructure. Hence it becomes important to appraise how the tenure in these lands affects agricultural development.

The objectives of the ordinance were twofold: firstly, it was aimed at providing a system under which leaseholds could be converted into freeholds. As put by a Mr. Roberts<sup>10</sup> when introducing the bill in the Legislative Council:

"There is no doubt whatsoever that the reaction of land owners in this country towards the leasehold policy which has been in existence for the past ten years has not been one of happy existence. They have hankered after freehold ever since the introduction of the leasehold policy; a freehold title with its wider - sounding title and greater freedom of negotiability. By far the great majority of the leasehold agricultural landholders have aimed at obtaining freehold for their land and this piece of legislation will give effect to that ambition."<sup>11</sup>

The members of the Legislative Council were unanimously agreed that the reversion from leasehold to freehold tenure would accelerate agricultural development. As one member put it:

"This legislation would go far to end the period of stagnation (in agricultural development) which without doubt has beset Northern Rhodesia ever since freehold<sup>12</sup> was so stupidly converted to leasehold."

The other objective sought to be achieved through the ordinance was to ensure that agricultural land was developed by imposing certain development conditions. Land would be controlled through the fulfillment of these conditions, and to achieve this, the Land Board was abolished and in its place the Agricultural Lands Board was established.

The Agricultural Lands Board as established under the Ordinance of 1956 was not given sufficient powers of decision and this led to the ordinance being repealed and replaced by the Agricultural Lands Ordinance of 1960. The whole objective of passing the Ordinance was to give more powers to the Board and also to simplify the provisions relating to the administration of tenant farming schemes. Apart from the provisions relating to administration, that is regarding the Board's powers, the majority of the provisions in the two pieces of legislation were substantially the same.

At independence, the ordinance of 1960 became the Agricultural Lands Act, Cap 292, and no major changes or amendments to the provisions were made.

#### CONTROL OF LAND UNDER THE ACT

The Act provides for the control of land in three important ways; first, through the alienation of land

by the Agricultural Lands Board which has to be satisfied that the applicant satisfies certain requirements before a grant of a lease can be given; secondly, by the imposition of conditions attached to the lease and thirdly, by the enforcement of these conditions.

1. THE AGRICULTURAL LANDS BOARD AND ALIENATION OF LAND  
(a) THE BOARD

The Agricultural Lands Board (hereinafter referred to simply as the Board) was established under the ordinance of 1956 as a body that was entrusted with dealing with matters pertaining to alienation of land. Although it was delegated with some of the powers vested in the minister, it merely had advisory powers since it could only make recommendations with the final decision remaining with the minister. This was however, remedied by the ordinance of 1960 that replaced the ordinance of 1956.

Under the Act, powers of decision making in matters affecting individual applicants for land and tenants of the State are vested directly in the Board. The Board is an independent body with government officials in the minority; and the Chairman of the Board although appointed by the President should not be a public officer.<sup>13</sup> The rationale for having more non-public

officers in the Board was to put scheduled land under the control of private farmers who were basically Europeans during the colonial days. The rationale of this requirement in the current setting, where encouragement is being given to indigenous Zambians to invest in farming, is questionable. Nevertheless, it has been submitted that to avoid accusations of bias and inevitable conflicts if control of land was vested in an individual Government officer, the requirement should be retained.<sup>14</sup>

The other members of the Board include three public officers appointed by the President; two persons representing the Farmers' Union and some other persons not exceeding two, appointed by the President in his discretion. Members of the National Assembly are disqualified from belonging to the Board.

Regarding the powers of the Board these are stipulated in the Act and include keeping under review the use that is being made by the state of statelands in rural areas, and to carry out any other duties relating to the alienation of Stateland in rural areas as recommended by the President.<sup>15</sup> Prior to the ordinance of 1960, the Board had no right or duties in relation to other Stateland apart from gazetted agricultural land. The Ordinance of 1960 broadened the Board's powers in

this context by the inclusion of powers of review of all Statelands outside urban and peri-urban areas. Further, it was felt that owing to the variety of uses and purposes to which land may be put, the Board should be conferred with the general duties of dealing with any question of alienating land.<sup>16</sup>

Section 9 of the Act provides that:

- (1) Subject to the provisions of this section the decision of the Board shall be final in respect of any matter on which the Board is by or under this Act empowered to decide.
- (2) Any person aggrieved by a decision of the Board may at any time, but not later than twenty-eight days after the service upon him of formal notice thereof, appeal to the Minister against the decision on any of the following grounds but not otherwise:
  - (a) that the decision is contrary to the provisions of this Act;
  - (b) that the decision is contrary to public policy or to the public interest;
  - (c) that the decision is an improper exercise of a discretion entrusted to the Board;
  - (d) that the decision is against the weight of the evidence submitted to the Board.

- (3) The Minister may, upon an appeal, under sub-section (2) or ~~of~~ his own instance review any decision of the Board on any of the grounds set out in sub-section (2), or on the ground that such decision is contrary to any directions of policy given by the Minister to the Board.

It is apparent from the above provisions that the Board has exclusive power to make decisions on certain matters whereas in others it can only make recommendations. Decisions of the Board are final in matters relating to applications for land<sup>17</sup> and the grant ~~of~~ consent to assignments or dealings in land.<sup>18</sup> In any other matters an appeal against the decision of the Board may be made to the Minister on the grounds that such a decision is either contrary to the Act, to public policy or public interest or the decision is an improper exercise of the Board's discretion.<sup>19</sup> The appeal must be made within twenty-eight days after service of the notice.

Some cases have been cited,<sup>20</sup> however, when the Minister has intervened in the Board's exercise of its powers. In these instances the Board's powers have been relegated to an advisory one contrary to the Act. The explanation for this could be that the Act does not specifically state the matters in which the Board's

decisions are final and when the Minister may intervene. It has been suggested by Mulimbwa that apart from clarifying the issue of who is the final authority and in what matters, the Board should be asked by the Minister to explain its decisions whenever he is hearing an appeal against or reviewing the Board's decision.

(b) ALIENATION OF LAND

A mode used to control land under the Ordinance was through the selection of the tenant. The Governor had powers to declare land, by a notice in the Gazette as falling under the ordinance.<sup>21</sup> Once so declared, the Board would prepare allotment plans showing boundaries of economic unit which would then be available for allocation. Every holding had to be planned as an economic unit fully surveyed before alienation.

When examining applications for land, the Board required the applicants to give full details about themselves so that the Board would have at its disposal the history of the applicant, his resources both financial and material and his potential ability to become a future settler and farmer in the country. The Board also had regard to any direction of general policy given to tit

by the Minister, although there is no evidence of any directions of policy from the Minister.

It is interesting to note that even prior to the ordinance, this same criteria was being used by the Land Board in scrutinising applicants for land. The only difference is that whereas prior to the ordinance, a landholder could engage a competent manager if he does not personally occupy the holding,<sup>22</sup> under the ordinance only a company could do so.<sup>23</sup>

The Agricultural Lands Acts prescribes the criteria which the Board has to consider before alienating land to applicants.<sup>24</sup> The rationale is to ensure that only individuals who have some experience in farming and those who are able to develop the land are allotted scheduled farms. Apart from taking into account any general policy directive by the Minister, the Board will consider the age and the character of the applicant. The separate existence of age and character as criteria is important to ensure that the land is in the hands of a mature person who has no previous criminal record and one who is not prone to abandon the land after a short time.

The Board will take into account the applicant's willingness to personally occupy the holding. This requirement is a colonial legacy in that its rationale

was to ensure that more immigrant settlers arrive in the territory to personally occupy the holdings. Since independence, however, the requirement has not been strictly applied by the Board.

If the applicant is a company, it must undertake to occupy the farm through a competent manager who will be resident on the farm. In practice, however, even individuals have been allowed to engage the services of more qualified and experienced managers, contrary to the Act. The application of the criteria has been made difficult by factors like the demand for farms and the poor economic situation in the country and hence the Board has sometimes vacillated.

The Board also considers whether the applicant possesses the necessary capital to beneficially occupy the land. During the colonial times a specific sum of the capital or equipment required was prescribed.<sup>25</sup> After independence, however, the trend of placing a specific figure of capital was abandoned and the position to-day is that capital includes either funds, promissory notes from financial institutions or assets such as stock which may be converted into cash. In some cases, possession of the necessary experience in farming will suffice in the absence of capital.

As regards the qualifications necessary, there are no specific rules to guide the Board. Qualifications may mean either a diploma from a farming institution or experience in farming as a commercial farmer or as a farmer on traditional land in the reserves and trustlands. Nevertheless even an inexperienced applicant may still be allotted land if he is able to secure the services of a competent manager to run the farm for him.

The Board, in allocating land, is supposed to give preference to an applicant who does not hold any agricultural land. This practice was in existence even before the enactment of the ordinance of 1956<sup>26</sup> and the rationale then was to ensure that more new settlers were attracted to the territory. Under the Act section 18(2) states that:

"...In allocating any holding the Board shall, all other things being equal, give preference to an applicant who is not already the owner of agricultural land."

Although this provision is aimed at ensuring that land does not fall in the hands of a few rich individuals, it does not, nevertheless go far enough. It can only be applied where there are two or more applicants contesting for a farm and these persons are of equal standing. Due to the weakness of the provision, namely, that it is rare that two persons may be of equal financial standing, there are cited instances<sup>27</sup> when the Board has

adopted a flexible approach regarding land accumulation.

It may be rightly stated here that the strict application of the rule against land accumulation may cause a restraint on companies wishing to invest in farming. A company, despite the number of its shareholders, will be prevented from owning as many farms as it would, even though it is capable of developing them to the required standard.

2. CONDITIONS ATTACHED TO THE LEASE.

A method embarked on of effecting development and full utilisation of agricultural land is the imposition of conditions on every agricultural lease. Every lessee undertakes, on being granted a lease by the Board, to comply with the conditions, failure of which may result in forfeiture of the lease.

The most important one of these conditions is that the lessee shall take up effective personal residence within six months of the lease and shall beneficially occupy the land. Beneficial occupation is defined by section 21(2) which states:

"(2) Beneficial occupation in respect of any holding shall mean -

- (a) From the date of taking up effective personal residence as required by sub-section (1) of this section -
  - (i) in the case of an individual lessee personal residence on the holding, and in the case of a company, personal residence on the holding by a manager who is in charge of farming operations and who is approved for that purpose by the Board;
  - (ii) the practice of sound methods of good husbandry;
  - (iii) the proper care and maintenance of all improvements effected on the holding;
- (b) Before the expiration of a period of three years after the date of the lessee taking up effective personal residence as required by sub-section (1) of this section
  - (i) the annual cultivation of such proportion of the area of the holding as may be laid down by the Board;
  - (ii) the maintenance of stock as laid down by the Board;
  - (iii) the provision for the numbers of stock maintained under the provisions of sub-paragraph (ii) of this paragraph of dipping or stock spraying facilities, paddock fencing or ring fencing

and water supplies in each case considered adequate by the Board.

- (iv) the provision of a habitable house and such farm buildings as may be reasonably necessary of this section or not, valued by the Board at not less than such sum as may have been laid down by the Board."

These conditions existed in the ordinance of 1960 and have not been amended at Independence. There were, however, some changes made to the ordinance of 1956 as regards the conditions. Firstly, regarding the condition that the lessee undertakes to employ the practice of sound methods of good husbandry, the words describing what amounts to methods of good husbandry as they appeared in the ordinance of 1956 were deleted in the ordinance of 1960. The reason for the deletion was that it was felt the prescription of sound methods of good husbandry raised difficulties greater than to leave the matter to general principles.<sup>28</sup>

Secondly, the sub-paragraph in the ordinance of 1956 which called for the provision of farm buildings and a house of the total value of not less than two thousand pounds was re-drafted in the ordinance of 1960. Instead the lessee was merely required to

provide a satisfactory house and farm buildings appropriate to the type of farming being undertaken. It was found undesirable to require the lessee to spend not less than a particular sum of money on buildings and hence the relaxation of the requirement.

A clause which was added in the ordinance of 1960 is one that requires the lessee to use his holding primarily for agricultural and ancillary purposes. The rationale for this requirement was to ensure that agricultural land is used for agricultural purposes and is kept in production and occupation so that it is always of benefit to the community generally. Use of the land for non-agricultural purposes may be condoned in exceptional circumstances, however, so long as the prior consent of the President has been obtained. What amounts to non-agricultural purpose in this context was defined<sup>29</sup> to mean any purpose which would render the land or the remaining extent of it non-agricultural.

The lessee is required before the expiration of three years from the date effective personal residence is taken up to cultivate annually a proportion of the holding as laid down by the Board and to maintain stock therein. This requirement may be contrasted to a similar condition applying to land in reserves and trustland held by title-holders where the requirement is cultivation of a reasonable

size of land within twenty-four months from the date of acquiring title. It is submitted that the requirement applying to agricultural land is more reasonable than the one applying to land in reserves in that obviously after three years it would be possible for a landholder to cultivate a large proportion of the land.

The lessee enjoys certain rights on his land and one such right is the lessee's right to cut down and use trees on his holding as required for farming and domestic purposes.<sup>30</sup> He is not entitled, however, to sell or remove any timber without the consent of the President. The rationale for the prohibition is for conservation of the soil and protection from soil erosion that may inevitably result from the wanton cutting down of trees. However, the only difficulty lies in the implementation of the condition as is evidenced by the rate at which timber is being felled for charcoal.

The Act contains provisions that prohibit the lessee from doing certain acts. Firstly the lessee is prohibited from assigning, subletting or parting with possession of the holding or any part of it without the consent of the President.<sup>31</sup> Consent of the President in writing must be sought prior to any dealings in the land, failure to which

the Board has the power to serve a notice setting a period during which the lessee must remedy the breach.<sup>32</sup> Further failure to comply with the notice will result in the State determining the lease. The restraint on alienation was intended to ensure that the land was not transferred to persons who could not beneficially occupy it and hence the necessity of obtaining consent before any alienation.

The lessee is also prohibited from abandoning the land. The Act lays down circumstances when land is deemed abandoned.<sup>33</sup> Land will be deemed to have been abandoned if the owner fails for over three years to maintain occupation of the land in person, through a tenant or a manager. It will also be deemed to have been abandoned if or over three years the owner fails to maintain on land a reasonable standard of agricultural production having regard to the character, extent and situation of land and the general level of agricultural production being maintained at the time on agricultural holdings of similar character in the neighbourhood. The rationale for insisting on this requirement not to abandon the land is, as put by a member of the Legislative Council:

"It gives the Government on behalf of the community the right to ensure that land is not permitted to become subject, through abandonment, to the ravages of wind, rain and squatters."<sup>34</sup>

To ensure that the land is not abandoned, the Government has the right to compulsorily acquire the land for non-compliance with the requirement. If the land is abandoned, the Board may serve notice on the owner requiring him within a specified period of not less than twelve months from the notice to re-occupy or arrange for re-occupation. The steps required to be taken in order to comply are stated in detail by the Board. The land will be compulsorily acquired if there is failure to comply with the order on two or more separate occasions within one period of three years.

The period of three years during which land may be abandoned before it could be re-possessed was found to be justifiable in that it covered circumstances where a person through a genuine excuse like illness or domestic troubles has to leave the country and during that time he is unable, for some reason, to employ a manager or a lessee to run the holding while he is away.<sup>35</sup>

Whilst this justification for the three years period was reasonable during the colonial days when the policy was the encouragement of settlers in the territory and when most holders were Europeans, there is need for review at present when agricultural land is in the hands of indigenous Zambians. The period of three years is just too long and it is wrong in principle to allow a farm to remain idle and completely

unproductive for a period of three years plus another one to two years when notices will be served before final compulsory acquisition of the land.

An offer of compensation is usually made by the Board six months before the expiry of the notice to comply with the requirement not to abandon the land. Any disagreements as to the amount of compensation is settled by the High Court just like any other disputes under the Lands Acquisition Act, Cap. 296. Payment of compensation is, however, discretionary on the Minister who may pay the lessee for the improvements on the land provided the lessee has not failed to comply with the provisions of the Act.<sup>36</sup> Where the lease has been determined by effluxion of time no compensation is payable in respect of buildings or improvements effected on the holding.

The Minister may only compensate the lessee on recommendations of the Board and the amount payable reflects the difference between the sum received from the disposal of the holding and the administrative cost. The State, however, is under no duty to dispose of the holding and hence the lessee is not assured as to compensation. Although the lessee can opt to remove all the improvements to the land made at his own expense instead of accepting compensation, it seems the government concentrated on persons who intended to purchase and obtain

state grants.

### IMPLEMENTATION OF THE CONDITIONS

The Agricultural Lands Board is vested with wide powers of decision making as regards the tenant's occupation of the land and satisfaction of required development standards and also the monitoring of the use being made of agricultural land. The Board is also vested with the function of enforcing development requirements. However, enforcement is left to the normal machinery, namely, the office of the Commissioner of Lands which acts on behalf of the President.

The office of the Commissioner of Lands in its capacity as the enforcement machinery is supposed to be mobile to carry out farm inspections to ensure that the development requirements are being complied with. However, this has not been possible due to the acute transport shortage the department is faced with.<sup>37</sup> The problem of transport coupled with the shortage of staff especially in rural areas has led to the farms not being inspected. This, in turn has resulted in the abandonment and non-utilisation of farms. The Board has continuously complained against the inactivity by the office of the Commissioner of Lands in making farm inspections to enforce the development conditions.<sup>38</sup>

The solution which the Lands Department has resorted to is one of requesting local authorities to co-operate

with the department by monitoring the progress of farms within their respective districts. At present, therefore, inspections are usually being carried out by officers from councils who have been appointed as agents for the Commissioner of Lands.<sup>39</sup> Nevertheless the response from the local authorities has not been encouraging and the explanation for this could be that councils have lots of other administrative duties than land matters. Moreover even councils themselves are faced with problems of transport for effective inspection of farms in their districts.<sup>40</sup>

A better solution could be the establishment of an independent body, which would together with the Commissioner of Lands, would be specifically responsible for monitoring the use to which land is put and to enforce the conditions. Alternatively, the Commissioner of Lands should be decentralised so that it will have officers stationed in all districts especially in rural areas.

In conclusion it may be stated here that the provisions of the Act, were drafted in such a way as to enhance the prime objective of the legislation which was to convert leaseholds into freeholds and in the process to attract new settlement. The Government intended to control agricultural land by ensuring that such land was in the hands of a few rich individuals who were basically the white settlers. These settlers had enough capital and

experience to develop the land to the required specified standards. Thus the policy of the colonial government sought to be effected through the passing of the ordinance was agricultural development through a small elite of commercial farmers.

At independence, however, the government policy changed from agricultural production by an elite of farmers to production by the masses. Hence provisions of the Act previously intended to promote production by a small elite of farmers are completely inappropriate and should be modified accordingly. It is because of the obsolete nature of the provisions of the Act that the Board has been compelled to relax some of the provisions regarding financial standing and qualifications to enable Zambians to acquire scheduled land. Moreover, the Board has permitted individuals to employ managers to run their farms when the Act only allows companies to do so. It is submitted that instead of letting the Board act contrary to provisions of the Act and in the process create inconsistencies in the application of the Act, some of the provisions of the Act should be amended or modified to suit the current policy of the government of promoting agricultural production by the masses.

In addition, the Land (Conversion of Titles) Act No. 20 of 1975, by abolishing freehold tenure system in

the country, has made provisions of the Act, sought to convert leaseholds into freeholds, obsolete. Hence the provisions of the Act have to be reviewed in light of the new development in the land tenure system.

As regards the implementation of the covenants and conditions, the enforcement agencies are faced with a number of problems that affect their duties. The most prominent one are shortage of staff and acute transport problems. Besides, even councils which have been asked to assist the Lands Department are reluctant to do so and also face transport problems. The ultimate solution, could be the decentralisation of the Lands Department to all the districts for effective enforcement of the development conditions. In this regard therefore, the announcement by the President on Labour Day that the office of the Commissioner of Lands was being decentralised to provincial and district levels is most welcome.<sup>41</sup>

FOOTNOTES

1. Department of Lands and Surveys, Annual Report for the year 1946 (Government Printers, Lusaka, 1947) p.1.
2. Government Notice No. 147 of 1946.
3. Government Notice No. 138 of 1948.
4. Annual Report of the Land Board for the year 1950 (Government Printers, Lusaka, 1951), 1954) p.3
5. Report of a Commission of Inquiry into the Future of the European Farming Industry in Northern Rhodesia (Government Printers, Lusaka, 1954) p.8
6. Annual Report of the Land Board for the year 1952 (Government Printers, Lusaka, 1953) p.4
7. Annual Report of the Land Board for the year 1950 (Government Printers, Lusaka, 1951) p.4
8. Report of the Commission of Inquiry into the Future of the European Farming Industry of Northern Rhodesia (Government Printers, Lusaka, 1954) p.6.
9. The Commission of Inquiry was set up in 1953 and submitted its report in 1954.
10. He was the Minister of Lands and Local Government in 1956.
11. Northern Rhodesia, Hansard No. 89 dated 1956. Column 11
12. This was a statement made by a Mr. Watmore a member of the Legislative Council, quoted from Northern Rhodesia, Hansard No. 89 1956 column 23.
13. Section 4 of the Act.
14. Mulimbwa, A.C., Land Control, Agricultural Development and the Agricultural Lands Act. Ph.D. Thesis, University of London, 1987 (unpublished).
15. S. 8(1) of the Act.
16. Northern Rhodesia, Hansard No. 101 J. 1960 Column 433.
17. S. 17 of the Act.
18. S. 2<sup>h</sup>
19. S. 9(2)

20. Mulimbwa, A.C., Op. Cit.
21. S. 10 of the 1960 Ordinance empowered the Minister to declare Land as Scheduled Land.
22. Annual Report of the Land Board for the year 1950. (Government Printers, Lusaka, 1951) p.4.
23. S. 17 of the Agricultural Lands Ordinance 1956.
24. S. 17 (2) of the Act.
25. The initial capital required was four thousand pounds.
26. Annual Report of the Land Board for the year 1948. (Government Printers, Lusaka, 1949) p.2
27. Mulimbwa, A.C., Op. Cit.
28. Per Mr. Carlisle, the then Minister of Lands and Natural Resources, cited in Northern Rhodesia, Hansard No. 101 J 1960 Column 436.
29. As per Mr. Roberts in the Legislative Council Northern Rhodesia, Hansard No. 89 1956 Column 35.
30. S. 23 of the Act.
31. S. 24
32. S. 31(2)
33. S. 36
34. As per Mr. Roberts, the then Minister of Lands and Local Government quoted from Northern Rhodesia, Hansard No. 89 1956 Column 22.
35. Northern Rhodesia, Hansard No. 89 1956 Column 35.
36. S. 22 (1) Proviso.
37. Interview with the Chief Lands Officer, 25th April, 1989, Mulungushi House, Lusaka.
38. Interview with the Legal Counsel for the Lands Department, 21st April, 1989, Mulungushi House, Lusaka.
39. Interview with the District Executive Secretary, 4th May, 1989 Kasama District Council.
40. Ibid.
41. Reported in the Times of Zambia newspaper Issue No. 7 310, for Wednesday 3rd May, 1989.

## CHAPTER FIVE

### LAND REFORMS UNDER THE LAND (CONVERSION OF TITLES) ACT NO. 20 OF 1975.

#### INTRODUCTION

Before the passing of the Agricultural Lands Ordinance of 1960, which became an Act at independence, the tenure in crownlands was basically leasehold. The enactment of the Ordinance sought to effect the objective of converting leaseholds into freeholds as per recommendations of the Commission of Inquiry into the future of the European farming industry in Northern Rhodesia. However this legislation applies to scheduled lands only, that is to land specified in the Act as falling under it.

The land termed "Stateland" covered both scheduled land and non-scheduled land depending on whether the Agricultural Lands Act applied to it or not. Whereas the tenure in scheduled land

was leasehold with certain pieces of land therein being held in freehold, the tenure in non-scheduled stateland was mainly freehold. The non-scheduled stateland also included land within reserves and trustland to which persons had non-customary interests in the form of ~~reserve~~ leases and rights of occupancy respectively.

In 1970, however, the Government announced its decision regarding the conversion of title from freehold to leasehold and a sub-committee was appointed to implement the new policy. Although nothing was done immediately to effect the policy, the one-party constitution of 1973 included a provision to the effect that any law that converted title from freehold to leasehold would not be inconsistent with private property interests.<sup>1</sup> No such law was, however, immediately enacted.

The new Government land policy was, nevertheless, effected by the Land Reforms of 1975 announced by the President in his famous 'watershed speech' when he stated that:

"Land, obviously, must remain the property of the state to-day. This in no way departs from heritage. Land was never bought. It came to belong to individuals through usage and the passing of time. Even then the Chief and the elders had overall control although this was done on behalf of all the people.....

With effect from one second past midnight of 1st July, 1975, all freehold titles to land are abolished and all land held by commercial farmers under freehold title is converted effective from that date to leasehold by present titleholders for a period of 100 years. Not 99 years. Since the policy of the Party is that all land must be fully and effectively productive, unutilised tracts of farm land will with immediate effect be taken over by the State. We cannot afford to have large tracts of land lying idle.....

However, let me sound <sup>a</sup> note of warning. No individual or group of individuals will be free to occupy any piece of land without the authority of the state or its lawful agency.

With immediate effect no more land in urban areas will be sold by anyone. Freehold titles to land are also converted to leasehold for 100 years effective from 1st July, 1975. Developments on the land may be sold."2

The above speech by the President is quoted in detail because it marked a new era in the land policies of the Government. These proposals as announced by the President were ratified by the Government ruling party's National Council and measures to be taken to ensure the implementation of the policy were announced. The Council resolved that:

1. All land will continue to be vested in the President of the Republic on behalf of the State;
2. All existing freehold titles to any land will be replaced by leasehold titles for terms of 100 years;
3. Leasehold titles will be subject to such terms and conditions as may be prescribed to ensure proper utilisation and exploitation of land in the national interests, good husbandry and estate management. In this connection further freehold grants of land will be stopped immediately....."3

It was in pursuance of these "resolutions" that parliament enacted the Land (conversion of Titles) Act of 1975 to implement the Party and Government's reforms.

THE LAND (CONVERSION OF TITLES) ACT NO.20 OF 1975.

The Act sought to achieve four main objectives. First, it was passed in order to vest all land in the President to hold the land on behalf of the State. This was basically

land that had been subject to private ownership, and the Act was not to concern itself with land already vested in the President as for instance the land in reserves and trustland.<sup>4</sup>

The second object was to provide for the conversion of titles from freehold to a renewable leasehold of a hundred years subject to such terms, covenants and conditions as would be laid down by the Minister in a statutory instrument. Subject to obtaining the necessary permission, persons who have owned land in the past were to continue occupying such land although the period of occupation was to be 100 years.

The third object was to prevent profiteering and exploitation that was rampant. This was to be achieved by abolishing the sale, transfer or other alienation of land for value. Any transfer of land would not be for value since the only value on land was for unexhausted improvements which are defined separately from land.

Lastly, the Act sought to put restrictions and conditions on agricultural holding to ensure that people hold only such land as they are capable of utilising.

It remains to be seen, however, whether the enforcement of the Act will promote agricultural development.

1. VESTING OF LAND IN THE PRESIDENT.

Section 4 of the Act vests all land in the President to be held by him in perpetuity for and on behalf of the Zambian people. The rationale advanced by the President and his party for the vesting of land in the President is that this would be consistent with Zambia's traditional heritage where land held under customary law is vested in the Chief who holds it on behalf of his subjects. Thus by analogy, the chief is to be regarded as at par with the modern State as far as land ownership is concerned since individuals could only have rights in land less than ownership.

This argument has, however, been criticised by some writers who have contended that the perception of land in traditional societies as belonging to the community and the individual as having rights only to the use of the land and no other right is questionable.

This is questionable because the perception of a right of user in land as not equivalent to ownership overlooks the fact that one owns land who owns or has an exercisable right over such land. As per Mvunga:

"The quantity of rights<sup>in</sup> land is only of relevance in determining in whom the greatest right vests."<sup>5</sup>

The justification for vesting land in the President on the ground of consistency with heritage is, nevertheless, a sound one bearing in mind that in most African land tenures, there is a superior-subordinate land relationship vesting the allodium in the land in the community, the individual's right being derivative from and subordinate to that community.

In Zambian societies, however, the customary land tenure has never been such as would justify the contention that individual land rights are in all instances derivative from the community. Nevertheless in most traditional societies, Zambia inclusive, land has never been a commodity for sale and hence, despite the effects of a cash economy, the prohibition of land sales is justifiable in Zambia.

It has been stated that the Act is not concerned with the land already vested in the President as for instance the land in reserves and trustland.<sup>6</sup>

A strict scrutiny of the provisions of Act would, however, reveal that even land in reserve and trust lands is covered by the Act. Section 3 of the Act defines land to include "Land of any tenure", which therefore includes even land held under customary law. If this is the correct interpretation, as it seems to be, then the Act has a serious effect on the role of Chiefs in traditional lands.

Land in traditional land tenures was held by the chief on behalf of the whole people. The administrative rights the chiefs enjoyed, for instance, the right to advise new-comers as to the land available, symbolised their status in the society. Hence with the change of titles to land, the chiefs will no longer play a significant role in the granting of land. Similar sentiments were voiced by members of Parliament when discussing the Bill in the House.'

Since the passing of the Act, nevertheless, chiefs have continued to control land in reserves under customary law. Moreover, before holders of non-customary interests in these lands can be granted titles, the local authorities in the area in question who are basically the local chiefs have to

be consulted.<sup>8</sup> Hence chiefs have maintained their role as regards the allocation of land to that extent despite the enactment of the Land (Conversion of Titles) Act, 1975.

2. CONVERSION OF FREEHOLDS INTO LEASEHOLD.

The Act makes provision for the conversion of freeholds into leaseholds. All land previously held in freehold and the land held as leasehold under a lease from the President for a term exceeding a hundred years have been converted to statutory leaseholds. The implication of the conversion is that all land holders are lessees to the President who has become the lessor.

The statutory leases are held on such terms and conditions as may be prescribed,<sup>9</sup> and they are renewable for a further term of 100 years on condition that the terms and conditions prescribed by the Minister have been observed.<sup>10</sup> Where a statutory leaseholder exercises his option of not renewing the lease, compensation will be paid for all the unexhausted improvements on the land.<sup>11</sup>

The lessee may surrender the land to the President at any time by giving not less than

six months' notice in writing. This is subject to the condition that the lease has not become liable for forfeiture by reason of non-compliance with the terms and conditions of the lease.<sup>12</sup> Upon surrender of the lease, the lessee will be entitled to compensation for the unexhausted improvements on the land.

INTERESTS AFFECTED BY THE ACT.

The conversion of titles to land from freeholds to leasehold has affected various interests of those who held land prior to the passing of the Act. First, it had an adverse effect on subsisting leases. Section 8 of the Act converts every lease of land, other than one granted by the President, to a sublease held from the statutory leaseholder on the same subsisting terms and conditions so long they are consistent with prescribed terms. Subleases and underleases, on the other hand, are converted to underleases of the derivative class.

As regards subleases held from statutory leaseholders previously for a duration of over a hundred years, these have been reduced to subleases

for only a hundred years less one day. This is by virtue of the proviso to section 8 which provides that such leases will now "expire one day before the expiry of one hundred years". The implication of this is that a grantor holding a fee simple interest has only a reversionary interest of one day since the grantee now becomes the statutory leaseholder. This is obviously unfair on the grantor. Moreover, the original lessor cannot enforce any right as the Act provides that no compensation is payable in respect of the conversion or in respect of the extinguishment or abridgement of any rights or interest over land as a result of the Act.<sup>13</sup>

A solution suggested by Mvunga<sup>14</sup> is one of granting the statutory tenant a longer residue at the expense of a diminution in the sublessee's interest.

Money lenders and financial institutions also have had their interest affected by the Act without any consideration. A mortgage, charge or trust subsisting prior to the Act now operates only on to the unexhausted improvements on the land. The implication is that as regards

part of the land, apart from unexhausted improvements, the mortgage or charge will be deemed extinguished. The effect of this arrangement is that the security of money lent is diminished in the event of default. This is because the money was lent at the time of the mortgage on the security of land for the value it had which included both the land and unexhausted improvements.

The Act, however, permits the sale or transfer of land together with the unexhausted improvements to secure the diminished sum.<sup>15</sup>

Acknowledging the devaluation of the security in mortgages, the then Minister of Lands, Natural Resources and Tourism said that:

"Concern has been expressed over the mortgages that their security had been reduced, and, therefore, they might not be fully recovered... Whilst it is true that the security has been devalued in that it now does not apply to land, we think that the mortgage and the money itself which had been loaned are still safe. The security do not extend over the hundred per cent of the money required but at least cover only that portion of the money that has been borrowed. With the right to sell unexhausted improvements we feel that the mortgages are fully honoured and covered".<sup>16</sup>

Nevertheless, as contended by Mvunga, the assurance of selling or transferring the unexhausted

improvements to secure the money lent is limited since only a limited sum of the money lent will be realised.

THE PROCEDURE ON APPLICATION FOR LAND.

Stateland is allocated for farming through a system of long term renewable leases. However, the procedure involved before title to land can finally be granted to an applicant is lengthy and cumbersome.

In non-scheduled Stateland, the commissioner of lands is empowered to approve or refuse applications for leases and dealings in leaseholds. Land required for agricultural use is notified to the Commissioner of lands so that its status and availability can be determined.

In case of virgin land, once the Commissioner of Lands is satisfied that the land in question is available, the Department of Agriculture in consultation with the District Council is requested to plan the area into suitable agricultural units. The layout plans duly approved by both the Department of Agriculture and the District Council concerned is then submitted to the Commissioner of lands for survey and numbering.

*If it is non-virgin land, on the other*  
hand, the improvements on the leaseholds must be valued to ensure compliance with the requirement that compensation is to be paid only for the unexhausted improvements and not for land itself. Since the Ministry of Lands does not have a valuation department, valuation is usually done by the valuation Department of the Ministry of Decentralisation.

Once all these formalities are completed, the requirements of the Lands and Deeds Registry Act, cap. 387 must be satisfied. Section 4 of this Act provides that every lease for a period of more than one year, any assignment of or a mortgage or charge upon any lease must be registered. If they are not registered, they are null and void and hence unenforceable.

To obtain a certificate of Title, the applicant is obliged to submit a survey diagram which complies with the requirements of the Land Survey Act cap 293. However, an adequate sketch plan may suffice for an applicant to have a lease of up to fourteen years period accepted for registration.

It is axiomatic from the above that the procedures involved are not only cumbersome but time-consuming as well. As rightly stated by Bruce and Dorner:

"These procedures, involving as they do five different sections in three different ministries, namely, the Commissioner of Lands, the Land Registry section and the Land Survey Section (all in the Ministry of Land and Natural Resources), the Land Use Planning Branch at the Ministry of Agriculture and Water Development, and the valuation section of the Ministry of Local Government and Housing, are far more complex than can be justified. This complexity, coupled with severe understaffing of the relevant sections, results in extended delays in leasehold transactions, generating uncertainty and interruptions of cultivation".<sup>17</sup>

A number of recommendations have been made by the Development Commission in a bid to alleviate the delays in processing applications under the Act. First, as regards the requirement of survey diagrams, it has been recommended that posts of valuation surveyors be created in the Department of Lands and more posts be added in the valuation department of the Ministry of Decentralisation to alleviate administrative delays. These surveyors should be provided with adequate transport.

As a long term solution, more surveyors should be trained in the country to reduce the understaffing; and as a short term measure, private valuer's reports be accepted by the Commissioner of Lands on the same basis as reports from the valuation Department. In addition, it is submitted that a general boundaries approach for agricultural lands be adopted on land survey.

The Commission further suggested that the requirement of consent should be limited to transactions which, under section 4 of the Lands and Deeds Registry Act must be registered. Additionally, to avoid a situation of double consent being created where a covenant requires consent of the lessor on an assignment, it was suggested that all head leases should be surrendered to the state.

Regarding the fourteen year leases, it has been suggested<sup>18</sup> that the period of lease permitted where only sketch maps are available be increased from fourteen to twenty-five years. This may be important for the development of reserves and trustlands away from the commercial belt along the line of rail since it takes longer to develop commercial operations in these areas.

The delays in the processing of applications would be greatly alleviated if these suggestions and recommendations of the Law Development Commission were accepted and implemented by the Government.

RESTRICTIONS IMPOSED ON AGRICULTURAL  
LANDHOLDING.

The Act sought to attach restrictions and conditions on agricultural landholding to ensure that only such land as can be utilised is held by and individual and the remainder is utilised by others. Section 17 (1) of the Act states that:

"The Minister may, by regulations prescribe the maximum area of agricultural holding (whether or not it has unexhausted improvements) which may be held by any person at any one time for any specified purpose; and different maxima may be so prescribed for different areas, districts or provinces."

It is obvious that the above section does not state categorically what amount of land an individual is allowed to own. It would seem, therefore, that the Minister has a discretion to determine how much land an individual can be allowed to hold at one time. The power of the Minister to set the maximum land allocation has

rarely been used in the past years. Hence unlimited portions of land have been allocated to an individual or to a company's at one time.

The Minister, however, may have regard to factors like the nature of intended development and utilisation, soil fertility and suitability of land for a particular venture; irrigation potential, and financial and technical resources of the lessee.<sup>19</sup> These factors are, however, not provided for in the Act or in any rules by the Minister and hence they are merely directory and not obligatory.

Another defect of the Act is that, unlike in scheduled Stateland, a person may own more than one portion of land at one time. No restrictions are provided by the Act for holding more than one piece of land. Some members of parliament<sup>20</sup> were of the opinion that a specific limitation on the number of hectares an individual could own should included in the Act.

It is submitted here that since all freehold titles have been abolished, an individual should not be entitled to two portions of land. This would ultimately abolish certain likely malpractices such as the distribution of land to

speculators.

Such a prohibition would, however, inhibit the development of agriculture in that large acreages of land would remain vacant. This is so because the number of qualified applicants would be minimal.

Nevertheless, a reasonable restraint should be introduced to ensure that holding of two portions of land is only allowed in exceptional cases, for instance where the intending lessee guarantees that he will effectively utilise both pieces of land. The current trend where one person can possess as many pieces of land in various parts of the country as he likes so long as approval has been granted should be checked to uphold the Government policy of not creating a landless class of citizens.

The Act prohibits the alienation or transfer of land to non-Zambians except under exceptional circumstances.<sup>21</sup> These circumstances include, for instance, where the transfer is to a person who has been approved as an investor<sup>22</sup> or if it is to a non-profit making charitable or religious organisation. The prohibition does not, however, affect interests acquired before April, 1985.

The application for land by a non-Zambian, apart from falling within the prescribed exceptions, has to be approved in writing by the President. To obtain the approval, the applicant has to submit his application to the District Council concerned for scrutiny. The Council, before recommending the application to the Commissioner of Lands, will solicit information about the intended development from the applicant.<sup>23</sup>

APPRAISAL OF PROVISIONS OF THE ACT.

Section 13 of the Act that restricts any dealing in land states that:

- "(1) No person shall subdivide, sell, transfer, assign, sublet, mortgage, charge or part with possession of his land or any interest therein without prior consent in writing of the President.
- (2) The President may in granting his consent impose terms and conditions binding on all persons ....."

In essence this section restricts any dealing in land for value without the prior consent of the President. The concept of land being regarded as valueless is derived from the philosophy of Humanism whose basic tenet is that individuals should not benefit from values in land

created by factors like Government investments, location advantages and soil quality differences. These values, since they are created by nature or by Government action on behalf of all the people, and not by individual landholders, belong to the society as whole.

Nevertheless as rightly put by Bruce and Dorner:

"The fact that land is not sold (i.e. it is given in leasehold and only improvements are evaluated and sold) does not mean that land has no value. Far from it!....value does not appear or disappear as a result of legislation converting freehold to leasehold or declaring that land has no value".<sup>24</sup>

The land has, meanwhile, what may be termed scarcity value. This is as a result of people being attracted to the land, especially that along the line of rail, by factors like its location, the infrastructure to which it has access, and the better soils in most cases. It is thus scarce and it is this scarcity that creates value for the land.

A likely danger that may result from the consideration of land, which is highly valued by

individuals, as valueless and malpractices that can occur in the inevitable rationing of land. Complaints have been voiced in parliament over the manner in which land is currently being allocated to certain individuals and companies.<sup>25</sup>

A solution suggested by Mulimbwa for ensuring that the humanistic principle of regarding land as valueless is upheld, whilst at the same time encouraging the intensive use of the land, is the introduction of tax or rent to be imposed on undeveloped land. The tax would reduce the value or price of the land since the market would discount its value.

Since it is a policy of the Government to establish an equitable society, it has been submitted<sup>26</sup> that the introduction of differential rents would encourage more efficient use of statelands than taxation. This is because taxes are not levied, whilst, on the other hand, a nominal rent of eight ngwee per hectare is charged for stateland. The differential rents should reflect the differences in soil quality and potential land use as well as locational factors.

It has been argued,<sup>27</sup> however, that an introduction of such rents would make the continued possession of undeveloped land burdensome since such land would not contribute in anyway towards the payment of rent. Moreover, the mechanics of implementation of the rents would be another problem. Nevertheless, it has also been acknowledged<sup>28</sup> that, such an introduction would be the preferable course. This is because, not only would it encourage those with more land than they have the capacity to develop to surrender the undeveloped portions to the Government, but it would force landholders to produce more to enable them to pay the rent.

Dealings in land for value, however, is permitted so long as the consent of the President in writing has been obtained. In granting his consent, the President may impose terms and conditions and he may fix the maximum price allowable. However, there are no regulations under the Act to provide rules and procedures in determining prices for land transactions.

The Law Development Commission in its report<sup>29</sup> observed that the lack of such regulations

prescribing a measure for determining prices for land has created chances of malpractices and corruption. For instance, it was observed by the Law Development Commission that during the period 1975 to 1976, prices fixed by the Commissioner of Lands have been altered by the Minister. Further, prices of useless fixtures could be inflated where the price for moveables and immoveables are in one lump-sum, such that the real price for unexhausted improvements is difficult to determine. All these could be avoided if there are regulations governing the determination of prices of developed land under the Act. Such regulations should allow consultation between private and Government valuers.

As regards the incident where the price for movables and immovables are in one lump sum, the charging of exorbitant prices by vendors who take advantage of the lumpsum mechanism may be avoided if the price for movables and immovables is indicated separately.

The requirement for presidential consent under section 13 has been so widely construed that

it covers virtually any kind of dealing in land. In interpreting the provision the Supreme Court extended it to include even subletting of a flat (as requiring prior consent of the President) in the case of Bridget Mutwale V. Professional Services Limited.<sup>30</sup> In extending the provision to cover even sub-leases Gardner, J.S., argued that:

"Whatever the ultimate object of the section may be, it is clear that it is intended that, after the passing of the Act, the State shall have control of transactions relating to land. If it were possible for a first lessee to obtain consent to sublet property to a limited company controlled by himself or indeed to any third party, and thereafter for such company or third party to be at liberty to sublet the property to whomsoever and at whatsoever rental they desired without obtaining Presidential consent, the provision, that the original subletting required consent would be pointless"<sup>31</sup>.

The implication of this decision by the court is that Presidential consent is required whenever there is any type of dealing in land. In practice, however, it is rare that consent of the President is obtained before houses or flats are sublet. A number of landlords and tenants do let and sublet their houses respectively without obtaining prior consent,<sup>32</sup> which in itself is a contravention of the Act.

Following the Supreme Court decision in the Mutwale case, the High Court was compelled to hold that the section applies even to land held under customary law in the case of D. Siulapwa V. Failless Namuska.<sup>33</sup> In this case, a transaction involving the sale of a village house was held to be void ab initio for lack of Presidential consent.

The decision of the court in the Siulapwa case has been criticised by some who have argued that not only is it impractical to require peasants to apply to the Commissioner of Lands for consent each time they have dealings in land, but that conveyancing is too expensive for the villagers to afford and most land in reserves is unsurveyed.<sup>34</sup> Besides, the Act, it is argued, was not intended to apply to land held under customary law as is evidenced by the policy behind the enactment of the Act.

Nevertheless, the inclusion of the words "land of any tenure" in the definition of land implies that even land held under customary law is covered by the Act. It has been submitted that, as a practical measure and to prevent the law falling into disrepute, there is need to amend the sub-section in such a way as to

confine it to transactions that require registration under the Lands and Deeds Registry Act.<sup>35</sup> Further, it has been suggested that land held under customary law should be explicitly excluded.<sup>36</sup> The ultimate solution would, however, be to urge and encourage those holding land under customary law to obtain deeds so that the Act would rightly apply to them.

#### PROVISION FOR COMPENSATION.

Section 16 provides for compensation and states that:

"On the determination of a lease by effluxion of time, whether such lease is a statutory lease or not, just and fair compensation shall be payable to the person beneficially entitled to the land at the time of such determination, in respect of all unexhausted improvements on the land.

Provided that there shall be deducted from such compensation;

- a) the amount of any rent due in respect of the land,
- b) any amount due in respect of the land to the Government or anybody or organisation financed by the Government".

It is obvious from the above provisions that compensation is only payable on the unexhausted

improvements on the land which are defined separately from land. By defining land separately from unexhausted improvements the Act sought to ensure that no price is charged for land only and also to facilitate the assessment of price or compensation.

It may be argued that by offering compensation for all unexhausted improvements on land on either the determination of the lease by effluxion of time or on the surrender of the lease, the Act motivates the lessee to develop the land knowing that as long as he abides by the conditions and terms, he is entitled to compensation when he vacates the land.

The definitions attributed to land and to unexhausted improvements are, nevertheless, misleading in the sense that it seems unexhausted improvements are included in the definition of land. Section 3 states that:

"Land", unless a contrary intention appears, includes land of any tenure, and tenements and hereditaments, corporeal or incorporeal, and houses and other buildings, also an undivided share in land, but does not include any mining rights as defined in the Mines and Minerals Act or in respect of any land."

The same section defines unexhausted improvements as:

"....anything resulting from the expenditure of capital or labour and includes carrying out of any building, engineering or other operations in, on over or under land or the making of any material change in the use of any building or land."

It is apparent from the two definitions that houses and other buildings are included in both definitions. In some cases it would be difficult to reconcile the two definitions, for instance, when granting consent to the transfer of land, the President is empowered to fix the amount that would be recovered and when fixing this amount, no regard shall be had to the value of the land apart from unexhausted improvements thereon.<sup>37</sup> But then in the definition of land, houses and other buildings are included.

Further, as regards the definition of "unexhausted improvements," the exclusion of service charges would in practice act unfairly on a vendor who subdivides land. A vendor who paid surveyor's fees, constructed roads and generally serviced his plot cannot in practice recover these costs by sale. This is because the land is regarded as undeveloped although it has

been so improved. To bring land to the point of development by the provision of roads, sewers, electricity supply and the necessary survey work is a costly exercise and the Act makes no provision for the recovery of those costs. As a result most land owners are unwilling to release or develop land whilst a minority charge high prices for plots to those prepared to pay.

Although, a literal meaning of the definition of unexhausted improvements may cover even service charges, it is submitted that service charges be expressly included in the definition.

Another issue raised by the provisions relating to compensation is as regards fixtures. Whereas at common law, the land lord was entitled to articles which had by annexation become fixtures and thus remained on the premises, the English Agricultural Holdings Act, of 1908, which applies to Zambia, permits tenants to remove agricultural fixtures which would otherwise pass on to the landlord. The Land

(Conversion of Titles) Act, although it provides for compensation to be paid to a statutory lessee in respect of unexhausted improvements whose definition seems to include fixtures, does not provide for the right of the lessee to remove agricultural fixtures.

CONDITIONS ATTACHED TO STATUTORY LEASES AND  
THEIR IMPLEMENTATION.

The Act empowers the minister to make regulations by statutory instrument, for the proper carrying into effect of provisions of the Act. These regulations may specify the terms and conditions of statutory leases.<sup>38</sup>

Acting under these powers conferred on him by the Act, the Minister passed the Land (Conversion of Titles) Regulations of 1975.<sup>39</sup> Most of the conditions provided for by these regulations are similar to those imposed by the Agricultural Lands Act on scheduled land although with some slight but significant differences.

Although no period is prescribed for taking effective personal residence, like in scheduled land where this must be done within six months of

the lease,<sup>40</sup> the lessee for non-scheduled land must occupy the land personally or through a manager.<sup>41</sup> The manager need not be approved in contrast to scheduled land where the manager has to be approved by the Agricultural Lands Board. It is submitted that the absence of any approval of the manager may result in a situation where the holder of title to land may use an unqualified person as a manager.

Similar to a condition applying to scheduled land, is the condition that the lessee of non-scheduled land must cultivate and develop the land in accordance with principles of good husbandry.<sup>42</sup> It must, however, be noted that the requirements applying to scheduled land are laid down by the Agricultural Lands Board prior to the grant of the lease. However, whilst the Board deals with scheduled lands, the Commissioner of Lands is responsible for non-scheduled lands and the Act does not state whether or not the requirements have to be laid down on the grant of the lease.

Another condition prohibits allowing land to remain idle for over three years without the consent of the lessor.<sup>43</sup> This condition may be likened to

the one applying to scheduled land which provides that land not occupied for over three years will be deemed to have been abandoned and thus likely to be forfeited after due notice has been given and there has been no compliance.<sup>44</sup>

It is submitted here that the duration in which land may remain vacant, namely, for up to three years, is so long that it contributes to the problem of squatting which is prohibited by the Act.<sup>45</sup> This is very likely especially given the fact that arable land is scarce. A shorter period would be desirable, of course bearing in mind that a new occupant needs time to develop the land especially if it is virgin land. A period of one and half years to two years would be much more conducive as this would ensure that land is developed faster and the problem of squatting is avoided. In this regard, a difference in periods of time depending on whether the land to be occupied is virgin or not is preferable.

Unlike in scheduled land, the President has the right, in non-scheduled land, take and use a strip of strip of land of uniform width of sixty metres for

the purpose of constructing a road.<sup>46</sup> Compensation is payable only for the damage to unexhausted improvements existing thereon at the time.

Apart from these slight differences, the conditions applying to scheduled and non-scheduled statelands are almost similar. Hence, there seems to be no logical rational for the distinction between "scheduled" and "non-scheduled stateland. It is thus suggested that consolidation into a single category with a single administrative body is preferable to avoid any inconsistencies that may inevitably arise.

As regards the implementation of the conditions, the machinery for enforcement is the office of the Commissioner of Lands acting together with local authorities to whom such powers have been delegated. However, the councils have been reluctant to render their assistance.

Local authorities, nevertheless, are nowadays showing signs of active involvement in the enforcement of the conditions. This is evidenced by the warnings of eviction being issued to landholders who have not developed their pieces of land.<sup>47</sup>

The lessor is empowered to re-enter the land and forfeit the lease where there has been no compliance within six months of a notice to remedy the breach.<sup>48</sup> In such circumstances, no compensation is payable. Non-compliance with the conditions may also result in non-payment of compensation for the unexhausted improvements where the lease is determined by effluxion of time<sup>49</sup> and where the lessee does not renew the lease<sup>50</sup>.

It seems that forfeiture of the lease and non-payment of compensation are what may amount to penalties provided for by the Act, for non-compliance with the conditions. On the other hand, no penalties are specified for non-compliance with the provisions of the Act. Hence persons selling or attempting to sell undeveloped or bare land and others involved in under-cover transactions, breach provisions of the Act but cannot be penalised because the Act makes no prescription in this regard.<sup>51</sup> To enforce the Act and at the same time deter offending parties, it is submitted that a provision for penalties for non-compliance should be included in the Act.

### CONCLUSION

The policy of the Government of converting freehold tenure into leasehold tenure to ensure the development of Stateland is a sound policy. There is need, however, for modifications to the Land (Conversion of Titles) Act which is the machinery intended to implement the policy.

The Act was intended to apply only to Stateland but the provisions of the Act have been framed in such a way that even land held under customary law is covered. Hence the court's decision to the effect that any dealings in traditional land also require the consent of the President. It is thus submitted that the Act should be reviewed so as to state specifically to which type of tenure it applies.

Alternatively, to ensure that the Act rightly covers even land held under customary law, some form of registration should be introduced in these areas. This would, at the same time, consolidate the security of tenure in these areas which would enhance the chances of borrowing money from lending institutions. To this effect, the procedure on alienation of land should be simplified so that landholders can easily acquire title deeds to the pieces of land.

The Act should also ~~be~~ reviewed to provide for the limit of number of plots of land an individual or a company is allowed to hold at one time. Restrictions should be imposed to ensure that a person does not hold more than one piece of land unless there is an assurance that such land will be fully utilised and developed. This would put a stop to the current malpractices where one person can acquire more than one piece of land for speculative purposes.

Merely providing that land should not be sold for value does not mean that land has no value. To ensure that the policy of prohibiting any land transactions for value is upheld a system of differential rents reflecting factors like land locations, different soil qualities and access to services ~~be~~ should<sup>be</sup> introduced by the Act. Not only would this reduce the value of land, but it would result in the maximum utilisation of land.

As regards the conditions attached to agricultural land, the period of three years during which land may remain idle before any forfeiture could take place should be reduced to a lesser period. Such a period should depend on whether or not the land to be occupied is virgin.

Since the conditions attaching to both scheduled and non-scheduled lands are almost similar, it is submitted that the two types of Stateland should be consolidated into one category of land under a single administrative body. This is advisable especially considering the fact that the Agricultural Lands Act, under which scheduled land falls, is a colonial legislation passed basically to convert leaseholds into freeholds.

An independent body to implement the conditions should be established. Such a body should have branches all over the country. Alternatively, the office of the Commission of land should be decentralised in rural areas.

Finally, in so far as land can now only be held in leaseholds, the law applicable to statutory leaseholds, in the absence of legislative provisions to the contrary, is the law of leaseholds as it existed in England in 1911. Although that law was simplified in England in the 1920s, no corresponding reform was carried out in Zambia. It is beyond doubt that the current law of leaseholds is inappropriate for the present conditions in Zambia. It is time, therefore, that a review of this law is undertaken so that it is

both simplified and made to correspond to the present land policy.

FOOTNOTES

1. Article 18 (2) of the 1973 constitution of Zambia.
2. The President of Zambia's speech delivered on 30th June, 1975 at the 6th meeting of U.N.I.P. National Council in the Mulungushi Hall, Lusaka.
3. United National Independence Party's National Policies for the Decade 1974-1984, Freedom House, Lusaka, 1973 p. 36
4. Land in Reserves and Trustland is already vested in the President by virtue of section 6 of Reserve Orders.
5. Mvunga, M.P., Land Law and Policy in Zambia, (University of Zambia, Institute of African Studies, Mambo Press, Gweru), 1982, p. 87.
6. Republic of Zambia, Parliamentary Debates, No. 39 of August 1975, Government Printers, Lusaka, column 503 per the then Minister of State for Legal Affairs and Solicitor General, Miss Chibesakunda.
7. Ibid, Column 443; the fears expressed by Mr. Kayope, the then Member of Parliament for Bahati constituency regarding the creation of strife in rural areas due to non-observance of tradition.
8. Republic of Zambia, Ministry of Lands and Natural Resources, Procedure on Land Alienation, Land circular No. 1 of 1985.
9. Section 6 of the Act.
10. Section 7 (1)
11. Section 7 (2)
12. Section 14 (1)
13. Section 18 of the Act.
14. Mvunga, M.P., op.cit, at p. 93.
15. Section 10 (2)

16. Republic of Zambia, Parliamentary Debates, No. 39 August 1975 Government Printers, Lusaka. Column 510.
17. Bruce, J.W., & Dorner, P.D., Agricultural Land Tenure in Zambia; perspectives, problems and opportunities, (Land Tenure Centre, University of Wisconsin-Madison), Research paper No. 76, October, 1982, p. 17.
18. Ibid at p. 23.
19. U.N.I.P. National Policies, op.cit, at pp. 36
20. See for instance contributions of Pemba member of parliament and Kazimuli member of parliament on columns 434 and 3436 respectively-Parliamentary Debates No. 39 op.cit.
21. The exceptional circumstances are laid down in section 13 A of the Land (Conversion of Titles) (Amendment) Act No. 2 of 1985.
22. He must be approved as an investor in accordance with the Industrial Development Act. It has been contended that since this Act deals with industrial development which in a narrow sense excludes the agricultural industry, the expression "investor" needs some clarification.  
  
See: Mulimbwa, A.C., Land Reform and Agricultural Development in Zambia, Ph.D. Thesis, University of London, (unpublished).
23. Republic of Zambia, Ministry of Lands and Natural Resources, Procedure on Land Alienation, Land circular No. 1 of 1985.
24. Bruce, J.W., and Dorner, P.P., op.cit, at pp.20.
25. Republic of Zambia, Daily Parliamentary Debates dated 20th February, 1982, Government Printers, Lusaka. Columns 1849-1859.

26. Mulimbwa A.C. op.cit.
27. Ibid
28. Ibid
29. Report of the Law Development Commission on the Land (Conversion of Titles) Act No. 20 of 1975, 1981, Lusaka.
30. [4984] Z.R. 72
31. Ibid at p. 75
32. Whilst most people are ignorant of the requirement, others are aware of it but feel it would not be expedient to obtain consent before subletting their properties.
33. 1984/H.N/C.A./16 (unreported)
34. Chanda, A.W., The effect of lack of presidential consent under section 13 of land (conversion of Titles) Act, 1975; Bridget Mutwale V. Professional Services Ltd. Found in Zambia Law Journal, Vol. 16, 1984 p. 79 at pp. 82.
35. martin, E. A memorandum by the conveyancing committee of the Law Association of Zambia on the Land (Conversion of Titles) Act found the Report of the Law development Commission op.cit. at p.81.
36. Chanda, A.W., op.cit, at p. 83
37. Section 13 (2) of the Act.
38. Section 21.
39. Statutory Instrument No. 187 of 1975
40. Section 21 of the Agricultural Lands Act, cap. 292.
41. Regulation 7
42. Reg. 5
43. Reg. 6

44. Section 36 of the Agricultural Lands Act.
45. Section 20 prohibits the occupation of vacant land without lawful authority.
46. Reg. 14
47. Recently the Ndola Urban District Council issued a warning of eviction to landholders who have not developed their land-see the Sunday Times Newspaper of 14th May, 1989.
48. Reg. 8
49. Section 16
50. Section 7
51. See - Report of the Law Development Commission, op.cit.

## CHAPTER SIX

### CONCLUSIONARY REMARKS.

In any developing country, the development of the agricultural sector is of vital importance to ensure the eradication of handicaps like hunger, malnutrition, poverty and to reduce the high mortality rate. This is more so for a country like Zambia which has since the colonial times relied heavily on the mining industry for its economy.

Agricultural development, however, may be realised where the land tenure system is conducive to the promotion of agricultural development. Hence, as a long term measure, the land tenure of any society should be moulded in such a way as to promote agricultural development.

Zambia had a dual land tenure system, a feature introduced during the colonial times. Due to the fact that a large number of white settlers was anticipated in the territory, the land tenure was such that land rights were in the interests of the settlers. To ensure that the indigenous inhabitants, the natives, were secluded, land divisions were introduced in the territory. Hence reserves were created for the native and they held land in these areas under customary law. The

It has been suggested, therefore, that to achieve agricultural development in these lands, some form of registration should be introduced which would ensure that title deeds are acquired for the land.

The Orders-in-council creating the reserves and trustland provide for the acquisition of reserve leases and rights of occupancy in the reserves and trustland respectively. However, it has been shown in this dissertation that both holders of land under customary law and the lessees and licencees disapprove of being neighbours to each other. This could also be avoided if all landholders in these traditional lands had title deeds to their pieces of land.

Obtaining of title deeds to these lands is, however, cumbersome and lengthy since the land is virtually unsurveyed. It is, therefore, imperative that the procedure on alienation of land be simplified to speed up the process.

As regards Stateland, on the other hand, these were meant for European settlement during the colonial times when they were called crownlands. It was the policy of the colonial Government to attract as many settlers as possible to the territory. This was done through the creation of a conducive tenure system in

these lands and hence different land policies were introduced to ensure their development.

Before the territory became a British Protectorate in 1924, the land tenure in crownlands, which mostly lay along the line of rail, was only freehold. This was, however, dropped in 1931 when a new system was introduced whereby land could be held in fee simple after a five year lease during which certain conditions had to be fulfilled. This applied only to farms along the line of rail since the land off the line of rail, could only be alienated under leasehold title for 99 years.

This system of land tenure was again changed when the trustland policy was introduced in the 1940s. On the recommendations of the Land Tenure Committee of 1943, the alienation of land on freehold was abolished and all crownland was alienated on leasehold tenure only. The reason advanced for the abolition was that under freehold tenure, the Government had no control over the use of land and as a result land was either lying idle or was overutilised and thus destroyed. The leases introduced were for a period of 999 years for long-term leases and 99 years for small holdings and these were accompanied by development and occupational

### Conditions.

In the 1950s, however, the system of holding land under leasehold title was abolished. This was necessitated by the intention of the colonial Government to attract would-be settlers to the territory. The main argument for the reversion of leasehold to freehold was that under freehold there was sufficient security of tenure which would eventually attract new settlement. Thus in 1956, the Agricultural Lands Ordinance was enacted which was intended to implement the new Government policy.

This legislation, however, applied to scheduled land only, that is land specifically mentioned in the schedule to the ordinance as falling under it. This meant that the non-scheduled land could be held either in freehold or in leasehold.

At independence, the ordinance became the Agricultural Lands Act with only minor amendments to it. Although the land falling under the Act covers only very few areas, it is of importance to the development of the agricultural sector. This is because not only does it cover the most fertile soils but it has access to the necessary services and infrastructures vital for agricultural development.

The colonial Government policy envisaged under the Act was agricultural development through a few rich persons who were, in the majority, the white settlers.

Hence the inclusion of conditions which only the well-to-do settlers could meet. Since independence no modifications to the Act have been made despite the change in policy from agricultural production by a few individuals to production by the masses. As a result, therefore, there have been inconsistencies in the way the Act has been applied by the Agricultural Lands Board. The Board has not strictly applied the Act and has vacillated in its decisions. For instance, the requirements of financial standing and of personal residence in the holding have been relaxed by the Board. This is a deliberate move aimed at ensuring that those Zambians who are unable to meet the requirements under the Act have the chance to acquire the land.

It has, therefore, been suggested that instead of allowing the Board to act contrary to the provisions of the Act, the legislation should be reviewed to reflect the current land policy of the Government, which is agricultural production by the masses. Alternatively, the distinction between scheduled and non-scheduled land should be abolished altogether so that only a single category of stateland remains.

The tenure in non-scheduled lands, on the other hand, remained undetermined. Individuals and companies purchased land on freehold and then later on resold it

at exorbitant prices. Moreover large acreages of land is either undeveloped or over-utilised and destroyed. The Government, prompted by these malpractices which were rampant, embarked on land reforms in 1975. Under the reforms, all land was vested in the President to hold on behalf of the State and all freehold tenure was reverted to leasehold tenure.

To implement the new land policy, the Land (Conversion of Titles) Act No. 20 of 1975 was passed by parliament. The Act abolished the holding of land under freehold tenure and the sale of land for value was prohibited. However, as a result of the way the provisions of the Act have been framed, courts have held that the restrictions imposed by the Act do apply even to land held under customary law which is practically impossible.

In addition, since no limitations are provided for by the Act as regards the scope of transactions which require the consent of the President, the courts have held that any sort of transaction involving land requires the consent of the President for it to be valid and enforceable. Hence even the renting of a room requires Presidential consent. Suggestions have been made in this regard to review the Act so that it not only expressly excludes land held under customary law from the application of the Act, but that it also

provides that consent be required only for transactions which are required to be registered under the Lands and Deeds Registry Act.

The procedure involved in acquiring consent should be simplified so that many people can easily acquire title deeds to land. At present, the procedure is so lengthy and cumbersome that most people do not bother to apply for consent which would take at least over a year to obtain.

The Act, although intended to restrict the amount of land which a person may be granted at a time, has failed to achieve this objective. The reason is because it does not specifically limit the number of portions of land which may be granted to one individual. Although the Minister is empowered to provide restrictions on the amount of land, this power has not been used and as a result individuals or companies have been granted large acreages of land which they have failed to utilise.

Further, since the Act does not prohibit the holding of more than one piece of land at a time, the trend of acquiring many pieces of land in different places, by one individual for speculative purposes, has not really been eradicated by the Act.

The holding of land for speculative purposes and the fact that the Act does not provide for the procedures

and rules to govern the fixing of prices for land (un-exhausted improvements) has resulted in rampant corruption and other malpractices. The Act, therefore, should be reviewed to rectify these defects.

As regards the conditions on agricultural land-holding in the non-scheduled lands, these are almost similar to those for scheduled land. It is, therefore, advisable that the two types of Stateland be merged under one category and under a single administrative body. This would get rid of the inconsistencies which are currently in practice in the allocation and management of land.

These suggestions for improvement on the land tenure system in Zambia are, however, long-term measures aimed at prompting increased food production. Certainly other changes have to accompany these measures if agricultural production is to be boosted. For instance, there is need to revise the pricing policies of food so as to provide incentives to producers. This is because, however conducive the land tenure system may be to agricultural production a farmer will not be motivated to produce more unless the price for his produce is such that he will realise a reasonable income. Hence it is important that the State should only have limited intervention aimed at protecting public interests

leaving the regulation of the pricing policy of agricultural products to the market.

Another aspect which has to be considered is the effective and timely delivery of inputs to farmers by Government agencies. Additionally, although farmers may be producing more, the nation may still fail to be self-sufficient in food supply if the transport and marketing systems are erratic. The current practice has shown that bags of maize, which is the staple food crop in Zambia, have been soaked by rains and thus spoilt due to non-delivery for safe storage by Government agencies responsible.

These measures are, however, short-term solutions to the policy of ensuring self-sufficiency in food production. Nevertheless, even as a long-term solution, these measures have to accompany any radical changes in the land tenure system which, as we have seen earlier, has a longer impact on the development of agriculture.

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