L. 411. OBLIGATORY ESSAY.

TOPIC: THE LAND TENURE SYSTEM IN ZAMBIA: ITS IMPLICATIONS ON AGRICULTURAL INVESTMENT AND DEVELOPMENT.

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TO ALL MY KIN

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INTRODUCTION.

This paper is mainly concerned with land tenure under customary law, though the title seems to be inclined more towards the general land tenure system. This emphasis will be laid on the customary law relating to land tenure and its effect on agricultural development.

The developing nations today are striving to make themselves self-sufficient especially in agricultural production. They need to produce enough agricultural commodities for their consumption as well as for export and thus earn the much sought-after foreign exchange. Developing nations, however, find themselves losing even the little foreign exchange that they earn from other sources, e.g. in the case of Zambia from the export of copper, through importing agricultural commodities which they can produce in their own countries. When these agricultural products are imported, much of the foreign exchange is not only lost on paying for their purchase, but expenses to have these commodities transported as well. Such a disadvantagous flow of foreign exchange could be mitigated if Zambia produced most of the agricultural commodities herself.

Less dependence on importation of agricultural products would also mean less dependence on foreign capital. However, to achieve this, developing nations need to undergo certain radical changes in some aspects of their legal systems and structures. Zambia in this regard needs a change in the law pertaining to land tenure.

In this paper it is hoped that the implications of the land tenure system on agricultural development will be satisfactorily brought to light so as to suggest a change in the system. In achieving this, the problems encountered by various interest groups in the traditional sector of agriculture will be highlighted.

This paper consists of four chapters. Chapter I is intended to be an historical account of Zambia's land tenure system. In this chapter the country's land tenure system is set out both in its historical and contemporary contexts. This account is necessary in order to appreciate defects in the system which have a retarding effect on agricultural development. The second chapter dwells on the law relating to land use and development in general. The third chapter examines related legal problems encountered by land developers in the traditional sector of

2/.....

agriculture. In this chapter, inadequacies and anomalies in the law relating to customary land tenure are highlighted. The fourth chapter is the conclusion in which various suggestions for reform are made and advocated.

In the ultimate, the main objective of this paper is to apply the contention "economic development involves nothing less than the transformation of society and its economy,"[1] to the land tenure system in Zambia. The problem that Zambia is facing at the moment is that of converting a "traditional" society predominantly based on subsistence or near subsistence agriculture. To attain this goal, many changes, such as that involving political stability, better government administration to provide an institutional framework for planning innovations are required. But for purposes of this paper, a further radical change is in the legal institutional framework to lessen non-economic risks and provide maximum opportunities for advancement. With reference to agricultural development, these changes as prescribed above may be found to be necessary. This may even put Zambia's agricultural production at par with manufacturing industry in some of the developed countries, as a major source of capital.

The change in law and policy for development has been advocated for in international forums. Raul Prebisch, Secretary General to the United Nations Conference on Trade and Development (UNCTAD) also emphasized that "the tremendous effort which the developing countries must make to assimilate modern technology cannot be achieved effectively unless these countries in turn introduce basic reforms"[2] The basic reforms of course include the laws, which must be adapted to suit development needs.

Zambia is also at the moment awakening to the reality that without the pragmatic an unrelenting agricultural policies aimed at boosting production, a large spectrum of its agriculture as a lever for national development will go into a stall, and thus raising the question, with different systems of tenure affecting different areas, is an agricultural policy bound to be effective? Does this not in turn call for bringing up to date the laws appertaining to development in Zambia?

3/.....

CHAPTER I.

THE HISTORY OF ZAMBIA'S LAND TENURE SYSTEM.

"Land tenure systems are not static, they respond to changes in society. They are modified, redefined or restructured in response to many factors such as population growth and density, conflicts of interests or changes in the political economic organisation of society. The fact that human livelihood depends on land necessitates having a defined land tenure system which regulates rights and interest in land."[1] Much of Zambia's present land tenure system is of colonial orientation.

The quotation above, from professor Mvunga, brings to light an observation that land tenure systems are dynamic in every dynamic society and that they change according to the needs of the society in which they are designed to serve. Zambia's land tenure system was designed in the late 19th century and early 20th century to suit the needs of the time. However, there does not seem to be much change in the system between then and now. Zambia's land tenure system still carries with it aspects or incidents of the colonial legacy.

This part of Africa now Zambia came under British influence from as early as 1890 when the scramble for Africa was at its peak. It was around this time that the British South Africa Company (B.S.A. Co.), in a bid to expand their trade to most of Africa and also to "protect" the area on request from Lewanika, that on 27th June, 1890, the Barotse concession was signed.[2] This meant that the B.S.A. Co. in administering the territory, had to do so under the powers conferred upon it by its charter of incorporation and the 1899 North-western and 1899 North-Eastern Rhodesia Orders-in-Council.

The 1899 North-Eastern and North-Western Rhodesia Orders-in-Council were promulgated to help in the administration of land in Northern Rhodesia. In this aspect, the B.S.A. Co. divided the land into two, North-western Rhodesia and North-Eastern Rhodesia. In the administration of this land, the company was "enjoined to assign sufficient land to the natives 'suitable for their agricultural and pastoral requirements, including in all cases a fair and equitable

4/....

portion of springs permanent water.' At the same time, Africans were allowed to acquire and sell land on the same conditions as Europeans, though land sales were not recognised unless sanctioned by a magistrate who had to satisfy himself that the native understood the nature of the transaction and got a fair price for his land."[3] This aspect of the Order-in-Council as can be seen, was in the most for the protection of the African from greedy settlers who were at the particular time out to get more land as cheaply as possible. Also under the 1899 North-Western and North-Eastern Rhodesia Orders-in-Council, Africans could get land on the same conditions as Europeans, and chiefs had powers to administer customary law. It could thus be implied that in the back-ground lay two sources of law - the customs of the people through the chiefs, and the company's administration, through its administrators who operated within the domain of the common law. The law in relation to land tenure would similarly operate.

The earlier Orders-in-Council were revoked by the Northern Rhodesia Order-in-Council, 1911. This Order-in-Council made the territory of Northern Rhodesia into one political unit. The territory continued to be administered by the B.S.A. Co. under powers conferred on it by its charter of incorporation as augmented by the 1911 Order-in-Council. Under this Order-in-Council the company was required to assign the Africans inhabiting in Northern Rhodesia sufficient land for their occupation, "whether as tribes or portions of tribes, and suitable for their agricultural and pastoral requirements."[4] The Order-in-Council also provided expressly that it should not be lawful for any purpose to alienate from the chief and people of the Barotse the territory reserved from prospecting by virtue of concessions signed between the company and Lewanika in 1900 and 1909 respectively (the "Lewanika" concession of 1900 was signed between Lewanika and L.A. Wallace representing the B.S.A. Co.). However, the Order-in-Council did not confer upon the B.S.A. Co. any express power to make grants of land to individuals, though it did provide that natives could acquire, hold, encumber and dispose of land on the same conditions as Europeans. The Order-in-Council also provided that no African could be removed from any land assigned to him for occupation without the order of the administrator and approval of the Commissioner of the British Central Africa protectorate, who was also the over-seer of the Northern Rhodesia protectorate.

5/....

The effect of the 1911 Northern Rhodesia Order-in-Council was the division of land already mentioned. In land that was not within Barotseland, i.e., North-Eastern Rhodesia, Africans were protected in their occupation of land in that they could not be removed except after inquiry and by order of the administrator, which had to be approved by the High Commissioner.[5] In Barotseland, the chief of the Barotse - the Litunga, retained his authority. Barotseland it could thus be seen, was given special status in matters of land. Lozi customary law applied to tenure of land. This status continued through successive constitutional developments till after the independence of the territory[6] of Northern Rhodesia. The concessions signed by Lewanika, and the position of Barotseland were recognised in all orders-in-Council that affected the constitutional development of Northern Rhodesia[7]. For example, even when Northern Rhodesia became a constittuent member of the Central African Federation, the rights of the Litunga in Barotseland were reaffirmed.

The Federal constitution provided: "..... and all rights reserved to or for the benefit of the natives of the said concessions approved by the Secretary of State shall continue to have full force and effect."[8]

There was no provision in the Order-in-Council that vested land in the B.S.A. Co., but the company claimed ownership of land in North-Eastern Rhodesia by virtue of the concessions approved by certificate of claim issued by Sir H.H. Johnson in 1893.[9] The company, while it was responsible for the administration of the country, in exercise of its powers of administration, made grants and dispositions to non-African settlers.

A year before the 1911 Order-in-Council was revoked, in 1923, by an agreement between the B.S.A. Co. and the British Government, called the Devonshire agreement, the company's powers of management and control of the land in the whole of Northern Rhodesia, except Barotseland, were transferred to the crown. In 1924, company rule came to an end, a legislative council was instituted and Northern Rhodesia came directly under the imperial government.[10] This was by virtue of the Northern Rhodesia Order-in-Council 1924. Under it the territory was entrusted to a governor appointed by the British sovereign. By this Order-in-Council, the 1911 Order-in-Council was revoked. The new Order, however, continued the division of land for purposes of administration into land within the Barotseland (North-western Rhodesia) and other land (North-Eastern Rhodesia). The Governor of Northern Rhodesia was expressly

6/.....

empowered under the Order-in-Council to make grants and dispositions of land within the territory, but he did not have any authority over Barotseland. Also, though the Order-in-Council did not have any provision for the assignment of land for the occupation of Africans, their protection against removal from land assigned to them was continued. Africans could also still acquire and hold land on the same conditions as non-Africans.

The 1924 Order-in-Council, however, did not contain any provision vesting land in the British sovereign or the governor, though the governor could make grants of land to non-Africans under the express powers given to him by the Order.

As far back as 1903, a commission had been appointed to look into the establishment of Native Reserves. The reasons for the establishment of the Reserves were, amongst other things, to provide for the European settlers, land suitable for their settlement. Africans were to be removed from those areas which were deemed fit for European settlement and placed in Reserves. This task was also carried out by the B.S.A. Co., when it administered the territory. This was provided for under Clause 40 of the 1911 Order-in-Council.[11]

Except as regards the three freehold areas in the Tanganyika district, of which the B.S.A. Co. claimed to be owner, it was the practice under the 1911 and 1924 Orders-in-Council, to grant land to settlers subject to the rights enjoyed by Africans who were in occupation at the time of the making of the grants. This was, however, seen as a hindrance to the economic development of land by the settlers, thus a machinery for extinguishing land rights of the Africans in the areas suitable for European settlement was required. It was in this view that the Native Reserves were sought to be created and various commissions appointed to look into the establishment of the same. There were several such commissions, e.g. the Native Reserves Commission, 1924 - 25, which was appointed to inquire into what land should be set aside for African occupation in the Fort Jameson (now Chipata) and Petauke districts. There were other commissions dealing with other parts of the country, such as the 1926 Native Reserves Commission under the chairmanship of Mcdonnel, C.J. which dealt with land in Barotse Province. The policy, however that was behind the formulation of Reserves is different as it was then, and their continued existence now.

7/....

By the Northern Rhodesia (crown lands and Native Reserves) Order-in-Council, 1928, the recommendations of the commissions were accepted. By the same Order-in-Council, land, except that which was in Barotseland, the three freehold areas vested in the B.S.A. Co. and land alienated by the company before 1st April, 1924 or held in perpetuity by the governor between 1st April, 1924 and 22nd March, 1928, was divided into Crown lands and Native Reserves.

In the Crown lands, all rights of the British sovereign in or in relation to crown lands were vested in and exercised by the governor who was empowered, subject to any law and any directions given to him by the secretary of state, to make grants and dispositions of land in these areas. Native Reserves were, however, vested in the secretary of state, and were set aside for the exclusive use of the Natives of Northern Rhodesia. The Governor could assign land to "natives" within the area of Reserves "as tribes or portions of tribes." Africans in the Reserves could also hold land individually.

The 1928 Order-in-Council was supplemented by the Northern Rhodesia Crown lands and Native Reserves (Tanganyika District) Orders-in-Council 1929, which set aside additional areas as Native Reserves. These Orders-in-Council were also amended in detail from time to time and ultimately consolidated by the Northern Rhodesia (Crown lands and Native Reserves) Orders-in-Council, 1963, which Orders-in-Council are still operational.[12]

The effect of this slicing up of land could not of course be divorced from the fact that what had been established since the coming of the settler to this part of Africa, was a plural society. The Black and White societies had to live independent of each other. Idealy even their laws to an extent had to be seperated when it came to the use of land. In 1930, for example, the government policy in relation to land administration was stated to be that of "providing for the natives sufficient land to enable them to develope a full native life in their own areas, sufficient land to meet the inevitable expansion of the population settled thereon and sufficient to enable government with a quiet conscience to release for European settlement other areas suitable for the purpose."[13] Thus crown lands were to be for European settlement and Africans were not able to enjoy customary land rights over them. Africans were removed from crown lands and taken into Native Reserves, where customary rights were recognised. English statute law was operative in the areas delineated as crown land.

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In dividing up land in this manner, it is evident that the colonial administrators did not envisage any form of agricultural development and production beyond a subsistence level. Greater development was, on the other hand, expected from the European settlers, who were given land considered as the best farming areas in the territory.

The creation of crown land and Reserves was followed by the creation of yet another category of land, by virtue of the Northern Rhodesia (Native Trustland) Order-in-Council, 1947. This category of land was vested in the secretary of state to be administered by the governor of Northern Rhodesia for the use or common benefit, direct or indirect, of the natives of Northern Rhodesia. In these lands, provision was made for alienation, for specific periods, to individual Africans or to non-Africans where such alienation could be shown to be for the benefit of the Africans and that the land was not required for direct occupation by Africans.

In the land being divided up thus, Professor Mvunga, M.P. in his work on the colonial foundations of Zambia's land tenure system, says that the effect was that "some kind of apartheid" had been created in the land tenure system.

The 1924 Order-in-Council was revoked in 1962 by the Northern Rhodesia (Constitution) Order-in-Council. This meant that the effect of the concessions signed between Lewanika and the B.S.A. Co. was left in balance. The question was were these concessions as to Lewanika's control over Barotseland still effective? It was thus found necessary to make new provision for this. The 1962 constitution provided, amongst other things, that no law or instrument made by the governor and the legislative council after the commencement of the constitution that was inconsistent with the provisions relating to land of certain concessions and agreements made with the Litunga or his predecessors should come into operation unless the Litunga had consented to the law applying in Barotseland. Also, no part of the Barotseland could be alienated except with the consent of the Litunga and the secretary of state.[14]

By the Northern Rhodesia (constitution) Order-in-Council, 1963, the 1962 Constitution was replaced by the 1963 Constitution which contained similar provisions as regards to land in Barotseland.

9/.....

The provisions of this constitution were, with regard to the Litunga's rights in Barotseland, the Litunga's rights were not to be recognised by virtue of concessions signed between himself and the B.S.A. Co., but an agreement which had to be signed with the Northern Rhodesia Government. Thus on 18th May, 1964, an agreement was signed to this effect.[15] When Zambia became independent on 24th October, 1964, the concessions and other agreements ceased to have effect.

The Northern Rhodesia (Crown lands and Native Reserves) Orders-in-Council 1928 to 1963, the Northern Rhodesia (Native Trust land) Orders-in Council 1947 to 1963 and a supplementary Orders-in-Council that was passed to meet the problems arising from the construction of the Kariba Dam and the inundation of portions of Reserves and Native Trust Land, the Northern Rhodesia (Gwembe District) Order-in-Council, 1959 - which was made applicable to the Gwembe District - were not revoked on Northern Rhodesia ceasing to be a protectorate and becoming the independent Republic of Zambia.

The Zambia Independence Order 1964, provided that the orders in Council mentioned above, should be construed with such modifications, adaptions, qualifications and exceptions as might be necessary to bring them into conformity with that Order. These Orders are still applicable and have been renamed the Zambia (state lands and Reserves) Orders 1928 to 1964, Zambia (Trustland) Orders 1947 to 1964 and the Zambia (Gwembe District) Orders 1959 to 1964.

CLASSIFICATION OF LAND IN ZAMBIA

As a result of the several Orders-in-Council, land in Zambia can be classified into three categories:-

1. Western Province (formerly Barotseland):
   Signifies land to which the Barotse Agreement 1964 still applies. This land is under the Litunga and council, whose consent must be sought in respect of dealings in this land. Individual Africans can occupy and use this land in accordance with Lozi customary law, though for purposes of legislation as under the Lands and Deeds Registry Act, land survey Act and other legislation relating to land, they are not "owners."

10/.....

2. Reserves:

This is land set aside for the sole and exclusive use of the natives of Zambia. Though this land is vested in the President, it is held under customary tenure, and the President's title is thus qualified by customary rights. Individual natives are also entitled to the sole and exclusive right to occupy land in accordance with customary law, though here again, as in land in the Western Province, they are not owners for the purpose legislation.

3. State land:

This is land held under statutory tenure and it has all the benefits and control that apertains thereto.

By virtue of the land (conversion of titles) Act No. 20, 1975, all land in Zambia was vested in the President. Though the policy behind the passing of the Act is beyond the scope of this paper, it can, however be mentioned that the passing of the Act had the effect of abolishing the freehold estate and maintaining a leasehold estate, on all land held under statute.[16] This affected land held by the B.S.A. Co. which ranked together with state land under statutory tenure (as private land).

The result of carving out land into Reserves, Trust land and Crown lands created two kinds of interests in land. Land under African occupation was invariably governed by African customary law. Land under European occupation or intendended European occupation, was governed by English Law (this is the land now known as State Lands!) Similarly interests and rights in such land were those known to English law. On attainment of independence, this colonial legacy in the land tenure system was adopted, and it is what constitutes the land tenure system now.

Bearing in mind Zambia's need to develope her agricultural sector fully, has not land under customary tenure been denied the facilities on account of it being without much legislation to support it, i.e., in terms of proof of title? Also in any case, though not necessarily relevant to the present discussion, is it not about time that there was absolute uniformity in the land tenure system so that facilities of development could be distributed equally on all land?

11/.....

CHAPTER II

THE LAW RELATING TO LAND USE AND DEVELOPMENT IN GENERAL.

In this chapter we shall look at what factors in the land tenure system an investor in the agricultural sector is likely to look at before risking his investment. Some of the very obvious aspects one is apt to look at are the laws relating to the tenure of land, its use and its development. We shall therefore focus on those aspects of the law having a bearing on land tenure, use and agricultural development. The objective of this chapter is to look at how far these various pieces of legislation enhance the development of agriculture in land held under customary law.

(a) The Town and Country Planning Act [17]

This Act has the primary task of controlling or regulating the use and development of land in both urban and rural areas. However, this Act has very limited application to agricultural use of land. The only time that the Act applies is when sub-division of land is involved, as under S.22(3) of the Act. This, however, in terms of control is not adequate, as it deals with land that falls mostly within its ambit. Most of the land under customary tenure does not fall within that area. At present, the Town and Country Planning Act applies only to controlled development to this category of land.

(b) Agricultural lands Act [19]

Further control of the development of agricultural land is effected through the Agricultural lands Act. This Act is concerned mostly with the beneficial use and occupation of agricultural holdings. The efficacy of this Act, however, is not felt in lands under customary tenure. This is evidenced, for example, by the fact that when the government intends to establish agricultural holdings for small scale peasant farmers, they have to be moved from an area which comes under customary law, to one which can be controlled by statute, such as the Natural Resources Conservation Act which ensures the proper use of soil and prevension of soil erosion.

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(c) Lands and Deeds Registry Act.[20]

This Act provides for the registration of title to land. However, this Act only has effect with regard to land in state land, which land carries statutory title. Title to land under customary law cannot be said to be non-existent, only that possession is the only proof that one can adduce to his interest. The purpose of registration is two-fold: to give certainty to and facilitate proof of title to land and to render the dealings in land as cheap as possible, and even to simplify them. This enables land to be placed on the register as a unit of property so that it can be used in transactions. An owner of land that is capable of such a facility will make an effort to have it developed and increase its value for transactions. However, land under customary law is not thus provided this facility offered by the lands and Deeds Registry Act. In terms of development thus, an investor or land owner would not look at such land as a viable interest in contrast to land within the state lands.

(d) Land Survey Act.[21]

This Act provides for the surveillance of land which is intended for registration under the Lands and Deeds Registry Act. It is important in its aspect because the subject matters of a system of registration of title to land is identifiable units of land. It is in respect of individual parcels of land that the register shows what interests have been created therein and who owns such interests or has interests over the land.

Under the Lands and Deeds Registry Act, land is required to be described by a diagram, as defined by the land survey Act. However, for land under customary law, in the first place the facility of registration is denied to the land by the Lands and Deeds Registry Act, a long process has to be undergone before the land can be released from the shackles of customary law, which in the end impedes its development, as an investor may not wait the long years it may take before he is allowed to have the land registered.

13/.....

(e) Lands (Conversion of Titles) Act [22]

This Act declares that all land in Zambia is vested in the President and that he holds it in perpetuity for and on behalf of the people of Zambia. This Act abolishes freehold estates and creates lease-holds instead. In its effect, it was passed to contain the situation that prevailed before its enactiment, in which bare land was being sold, without any improvements on it, at very exhorbitant prices. The land being thus sold was in the most, in urban areas, which is state land.

Though all land in Zambia is vested in the President by virtue of this Act, the title to land by the President is qualified by customary interests, and these are established by virtue of the Zambia (state lands and Reserves) Orders 1928 to 1964 and the Zambia (Trustland) Orders 1947 to 1964. This in effect shows that land under customary tenure will be difficult to administer by statute or otherwise, for purposes of development, and thus various facilities will be denied these areas.

The above mentioned legislation ought to be looked at in relation to the need to develope Zambia, agricultural production, and see whether they are adequate for use in land that falls under customary tenure. As already observed in the brief outline of the legislation, the law finds itself ousted in areas predominatly under customary law. An investor looking for an area to develope in terms of agriculture would thus look at these pieces of legislation, and see if they really mitigate risk of investment.

CHAPTER III.

PROBLEMS OF INVESTMENT IN AGRICULTURAL LAND UNDER CUSTOMARY TENURE.

Having traced the history of Zambia's land tenure system to date, and having highlighted the various legislation which are relevant to the discussion, it may be considered opportune to review the problems encountered both in the application of the various pieces of legislation and in the use and development of agricultural land as a result of the current system of land tenure.

14/.....

The Land Use Branch of the Department of Agriculture, a unit within the Ministry of Agriculture and Water Development has the task of mapping out ways in which agricultural land is used; it examines ways in which agricultural land is used, and thus, for instance, where it is found that a farmer has contravened protective measures against soil erosion, he could be penalised under the provisi of the Natural Resources conservation Act,[23] with a possibility of terminating his tenure. However, this law does not seem to have any effect over land under customary tenure. How then would a peasant farmer holding land under customary law, be compelled to carry out these protective measures?

The Land Use Branch in the Annual Report[24] reiterated the importance of soil conservation for agricultural development's sake, and the provision of an effective means of effecting the same. The same report indicates that as a result of lack of such machinery as to effect soil conservation measures over all lands, these measures are only carried out at the request of farmers, which means that in most areas that are occupied by peasant farmers, soil is not properly conserved.

The Natural Resources Board in 1973 [25] exerted some pressure on farmers to construct essential soil conservation works, but this the board had to do only in the areas that are affected in application by the Natural Resources Conservation Act of 1970 so as to secure compliance with the measures. The Board did this in realisation of the different laws affecting tenure under the present system. The are in which customary law prevailed proved rather difficult to control because it was difficult to secure compliance.

The Land Use Branch in its 1973 Report even expresses reluctance in carrying out some measures, and submits that "it still remains to be seen whether or not the legislation (Natural Resources Conservation Act) will be effective in preventing the misuse of land and controllin erosion."

What the Report meant by implication was to the effect that their jurisdiction is ousted in some areas by virtue of relevant legislation not being applicable in certain areas.

15/.....

Land over which there could be no proper control as to use is not a viable aspect of investiment, for both the farmer who may turn out to be reckless in the way he treats the soil and the financier who may end up losing his money by financing this farmer. Investors will also look towards the land use Branch for information as to whether certain areas are suitable for investment, and where the advice turns out to be discouraging the investor, he will definitely not look that way again. This in the end leaves certain areas undevel ed whilst others are being developed.

Apart from just planning and controlling the use of land, the Land Use Branch also looks at the establishment of tenant schemes, whose basic aim is to increase production in agriculture and improve the standard of living of the people involved in the schemes. The Land Use Branch reiterated in the 1973 Report, however, that these schemes have inevitably been sited on state land, and the Report further submits that an important aspect of these schemes as they are carried out on state land is that "the emergent village farmer gains title to land and is freed from the restrictions which traditional land holding systems impose in the Reserves and Trust land."[27] This in the end tends to create disparities in the development of agriculture in the country as are being abandoned in the Reserves for areas in state land where these tenant schemes are established.

A farmer in the settlement scheme would be given the facilities denied to one that holds land under customary law, for example he could obtain a loan on his land as security for it from a willing source and develope his land and increase his output. The reason is not difficult to see - land under customary tenure does not provide the important statutory title.

Tenant or settlement schemes have been in existence in Zambia since the 1940s and 50s, and even at these times the Department of Agriculture reported, e.g. on a survey Mazabuka District and recommended that the settlements should take place on Crown land (now state land) which did not have the problems ecountered on traditionally occupied land in the Reserves. This was still the recommendation adopted between 1964 - 1971.[28] The farmers involved in the scheme were reallocated land individually as opposed to the Communal land whose title they had to share in the Reserves. On state land, each farmer has his own boundary marked and he can develope his area and

16/.....

the way he uses it easily controlled by the state.

However, in the end, a shortage of state land is to be envisaged, especially for the purposes of settlement schemes. Thus in 1973 the land Use Branch indicated signs of the same, stating "in 1973, many difficulties were met, stemming from relectance of neighbouring farmers to allow any more of their land to be used for settlement."[29]

It was discovered during investigations on land tenure by the land commission before production of its annual Report of 1967 that there is a belief shared by agricultural officers that land under customary tenure poses problems to improving land use, methods of husbandry and hence agricultural development. In the report, this belief was brushed aside and considered to be merely an illusion.[30] However, members of the Department of Agriculture submitted before the commission that a statutory title being attached to customary tenure was necessary to provide incentive for agricultural investment and hence development. However, to some extent the commission admitted the existence of problems of tenure under customary law in relation to agricultural development; "where an area has been planned in accordance with a land use plan which has been determined, the appropriate uses to which various types of land within the area should be put, it will obviously be essential to bring to an end there the customary method of acquisition since its continued practice could defeat the use of the land use plan."[31]

It is not only agriculturalists that would cite almost instantaneously customary tenure as a defect in that it would prevent a land holder from any serious and viable investment and from using it as a means of securing credit from financial sources on its security. The financiers themselves have this notion.

In the past, the Agricultural Finance Company (A.F.C.) a subsidiary of Rural Development Corporation (R.D.C.) used to issue loans to various categories of farmers, regardless of the tenure of land occupied by the farmer. In order to enable the company to recover the loan, the farmer was required to sign a stop-order (over his produce where he could not pledge his land as security), authorising a marketing organisation such as the National Agricultural Marketing Board (Namboard) to deduct from the proceeds of his crop and pay the A.F.C. what he owes. Thic could

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only work out, however, where the farmer carries out his planned programme and achieves his estimated production. Where the farmer fails to achieve this, he finds difficulties in repaying the loan. Sometimes the failure may be due to lack of know-how coupled with laziness. In the event of unexplained failure to repay, the company takes adequate measures to enforce repayment, which process takes a long time and in most cases is not achieved, resulting in the company having to write off the loans. This factor could be mitigated where the farmer would have to rely on, say, his land as security instead of the unpredictable produce from his land. Land under customay tenure cannot be pledged for such purposes as securing a loan from a financing company. In the ultimate also, the A.F.C. has resorted to requiring proof of a statutory title over land so that a farmer can take out a mortgage with the company. This in the end also, however, works out to the disadvantage of the peasant farmer occupying land under customary law, which does not carry any statutory title with it.

The reduction in the number of loans given out to farmers as a result of these stringent measures taken by the A.F.C. are adequate proof of the above contention. Prior to the 1971/1972 season of agriculture, 9277 loan applications were approved as against 10165 for the previous season.[32] The decline in the number of loans approved to the more stringent measures adopted by the company, which included the prior condition of proof of title to land. The majority of those left out were farmers holding land on customary tenure which did not carry with it statutory title.[33]

The Zambia State Insurance Corporation (Z.S.I.C.) apart from issuing insurance policies is also an institution that has of late turned to financing agricultural projects. It has set up a scheme under its Agricultural Investment Branch in which it provides farmers with agricultural loans. The scheme was started in 1977, and by 1978 the corporation had lent out over K316,000[34] to farmers. However, it was disappointed by the recovery which turned out to be way below the instalments that had become due for payment. In some cases it found out that it had given out loans without security. Thus in 1979, the corporation changed its lending policy. It was only to invest money where the operation concerned was viable proposition. Thus while the

18/.....

corporation realises the importance of agricultural development to the national economy, and is convinced that it is to the best interest of the nation to support agricultural ventures, it will not support those ventures involving great risks. Most of the agricultural ventures that the corporation supports are thus found to be those run by farmers holding land with statutory title, and those that are on land held under customary tenure may not be given the opportunity of the Corporation's financial support, unless they adduce other means of security which may be equivalent to taking out a mortgage. Such other means may even be non existent.

The preference of statutory title over customary title is prevalent in most of the institutions too numerous to be enumerated singly. The principle, however, is the same throughout. It is in this respect that peasant farmers also feel left out in facilities available for agricultural development. Customary chiefs have also come to the realisation that if their areas are to participate fully in the development of agriculture in the nation in accordance with government policy, then the government ought to give title deeds to peasant farmers also, so as to enable them to participate in the facilities offered where statutory title is available. Thus chief Singani of Choma, for example, reiterated that statutory title to land even land under customary tenure is important. The chief also charged that institutions like the Agricultural Finance Company (A.F.C.) were presently only catering for a few privileged commercial farmers, who had security by virtue of statutory titles attached to their land. The result of the policy of having customary tenure without statutory title is that the assistance which financial institutions would like to render, is going to commercial farmers only.[35] This means in the end that agricultural development in customary lands is stagnated as investment is very minimal as compared to other lands. This is the same complaint by other parties willing to invest in land held under customary tenure and after developing the land to an extent, they would like to invest more into it by securing a loan from a financial source but have failed by virtue of the tenure of their land.[36]

19/.....

CHAPTER IV

CONCLUSION AND SUGGESTIONS FOR REFORM.

In conclusion thus, it is imperative that the policies behind the establishment of the Orders-in-Council and that of the present day Zambia are briefly contrasted. In the first instance, it should be borne in mind that the Orders-in-Council were framed to meet a situation in which the African population was not represented in government. To protect their interests in land, the Governor of Northern Rhodesia was required to consult or away recommendations of Native authorities. These recommendations however turned out to be that the African should be given land in the Reserve and Trust land areas, where customary law would be administered in dealings in land. In the Barotse province, the Governor had no power to administer the land. At independence the President acquired those powers and restrictions.

When land was being set aside in the Reserves, it was set aside for the sole and exclusive use of Africans, and the land in the Trust land areas was administered for the use and common benefit of the Africans. This of course would seem to be beneficial to the Africans, but what should not be forgotten was the policy behind the whole situation. In their submission of evidence, it was clear that Europeans demanded complete seperation from African lands. They wanted to develope on their own without the interference of the African. Africans also were against the idea of being moved away from their lands.

The Orders-in-Council dividing up land into the present categories were justified so as to"....enable the government with a quiet conscience to release for European settlement other areas suitable for the purpose."[37]

It is thus evident that the policy in having this division of land was seperate development for seperate peoples. This is not in line with the policy of the law as it stands today, which is geared for development of the whole country without any distinctions. But it is found that the provisions of the Orders-in Council in relation to the land tenure system are still applicable today.

The various legislation in relation to the use and development of land are also as seen in Chapter II limited in application to land under

20/.....

customary law. This in turn slows down the development of the nation in line with modern requirements, in an era in which Zambia has borrowed enormous sums of money from international sources and the only other means of repaying those loans is through agricultural export, but the agriculture which even since after independence has not been developed to an extent as will enable the nation to honour its international debts. These laws should thus be made applicable to land under customary tenure so that development is controlled in a uniform manner, and thus enabling the government to make proper estimates as to how much it is going to derive from its land in its bid to enhance the standard of living.

One of the ways thus, in which development using agriculture may be enhanced is the extension of statutory title even to land under customary tenure. The chairman of the land commission that was appointed on 24th November, 1964, to look into the question of land made a comment to the effect that the granting of titles to individuals directly from the state was likely to be conducive to better and productive use of land, and, that the various commissions have actually recommended to the government to make statutory title to land under customary tenure in the Reserves and Trust land areas.[38]

It is therefore in the author's opinion that customary tenure of land does not afford the security of title and let alone the facilities which a modern economic society needs for effective functioning. Customary tenure may satisfy the needs of a subsistence economy, but Zambia will not survive without participation in world economy. To do this she needs foreign exchange, which she could adequately earn through the export of surplus agricultural products. To achieve this a larger spectrum of the farming community ought to participate in the development of agriculture, but as the law relating to land tenure stands divided, production is even less than half of what may be attained. It is easy to notice that most of the commercial farmers are found along the line of rail where most of the land is state land and there is statutory title attached to it. These areas are well developed in terms of agriculture. However, the most sparsely developed areas are those in the Reserves and Trust land areas, occupied mostly by peasant farmers. Thus in, conclusion, it would be a good suggestion

21/....

that statutory title be attached to land under customary tenure as well, and the various legislation made applicable to it so that development in terms of agriculture may be enhanced in these areas as well. The Zambia (state lands and Reserves) Orders 1928 to 1964, the Zambia (Trust land Orders) 1947 to 1964 should be revoked and replaced with legislation that is geared more towards uniform development of the land and in conformity with Zambia's development needs. The ~~policy~~ situation as it stands is that policy has been dynamic but the law has remained static. The two ought to be balanced so that law and policy march together. A stagnant law puts an anchor to development, and thus it is necessary that the law be brought up to date and in harmony, with development policy.

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23/.....

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