INHERITANCE AND SOCIAL CHANGE AMONG THE TONGA OF
SOUTHERN PROVINCE OF ZAMBIA, 1900 - 1989.

By FLEXON MOONO MIZINGA

A dissertation submitted to the University of Zambia in partial fulfilment of the requirements of the degree of Master of Arts in History.

The University of Zambia
Lusaka
1990.
This dissertation represents my own work, and it has not previously been submitted for a degree at this or another University.  

Signature: ..........................  

Date: .................. 6/7/90 ..........
COPYRIGHT DECLARATION

All rights reserved. No part of this dissertation may be reproduced, stored or submitted in any form or by any means, mimeograph, electronic, mechanical, photocopy, recording or otherwise, without written permission from the author.
This dissertation of Flexon Mizinga is approved as fulfilling part of the requirements for the award of the degree of Master of Arts in History by the University of Zambia.

Signature of Examiners                                Date

1. ..................................                         .........................

2. ..................................                         .........................

3. ..................................                         .........................

4. ..................................                         .........................
ABSTRACT

This study is an enquiry into the matrilineal inheritance of the Tonga of Zambia between 1900 and 1989. We argue that before the penetration of capitalism the Tonga Society provided for the social security of all the members of society. We also argue that inheritance did not precipitate controversy since wealth accumulation was minimal because of constant raids from the more powerful ethnic groups like Lozi and Ndebele. Technology employed by the Tonga in production was limited as most of their tools were made from locally produced materials. The death of an individual did not bring about inheritance quarrels as he left little durable property worth inheriting.

The penetration of capitalism brought new changes in the Tonga Society. Capitalism brought with it state machinery which protected the life and property of an individual. This, coupled with improved technology facilitated wealth accumulation. The Tonga sold their agricultural produce and livestock on the markets provided by the mines and urban centres.

The household became the basic unit of production in the Tonga Society. Ownership of household property remained in the man who was the head of the household. This brought about strain in the Tonga inheritance system since customary law dictated that after a man's death the property he owned should circulate within his matrikin leaving his immediate members of the family (wife and children) without despite their contribution to the accumulation of the estate just because they belonged to a different lineage from which they inherited.

We argue that after 1945 gender struggles became evident as women started fighting for a law of inheritance which would enable them to inherit the wealth they generated within the household. We also argue that there emerged a class of Tonga, who no longer saw relevance of the customary law
of inheritance which tended to disperse the wealth of the deceased throughout his matrilineal group. The new class wanted a law that would enable them leave their estates in the hands of immediate members of their families.

The indigenous capitalist class consolidated itself after the end of colonialism in 1964. This class fought side by side with the women for a new law which would reform Tonga customary law of inheritance.

This research also reveals that the impact of the capitalist forces was more evident in the emerging urban sector than in the rural sector of the Tonga society. This uneven impact of capitalist forces tore apart the Tonga society as the new class with new ideological inclinations and values began to question the viability and relevance of the old social order. This class used its access to the state apparatus to bring about new property relations to suit its interests. This trend manifested itself in the participation of this classs in the inheritance debate until the Intestate Succession Act of 1989 was passed.
Throughout their history, the Tonga have endeavoured to acquire property either for their survival or for their comfort. As productive forces improved it became necessary for them to preserve their property—particularly the property that they could not readily obtain or manufacture within their environment. Sometimes they entered into exchange transactions to acquire more and better instruments of labour. Except for land, wealth was usually identified with specific individuals. In other words there was individual (personal) ownership of wealth. When the owners of property died, their property was preserved and passed on to those they left behind, thus giving rise to the concept of inheritance.

In pre-colonial Tonga society people belonged to specific clans, and in each clan there could be many lineages. Members of one lineage traced their ancestry through their female ancestor (matrilineality); hence the Tonga were described as a matrilineal society.

This study is concerned with the transmission of wealth of the deceased in a matrilineal society. The practice of tracing one's ancestry (lineage) determined the transmission of property left behind after one's death. This was usually interwoven with the ideology of the society. The Tonga belief in the existence and power of spirits influenced their matrilineal inheritance system.

Another prominent feature in the Tonga society was that people were bound by the ideology of corporate responsibility; that is, a wealthier or privileged member of one lineage was obliged to assist the less privileged ones whenever need arose. Therefore the property relations were in harmony with the ideology of corporate responsibility as each member of one's lineage had a right of assistance from the other.
In this study we argue that with the advent of capitalism at the beginning of the 20th century, contradictions in relations of production and property relations began to emerge as forces accompanying capitalism impinged on the existing institutions of the Tonga society. The period between 1900 and 1945 was a period of consolidating capitalist forces. After 1945 strain in the Tonga matrilineal inheritance system began to come to the fore. Relations of production within the household were such that the women and children assumed the role of direct commodity producers. The end result was multiplication of household property for which the household head assumed ownership. The practical implication of this was that when he died, the household property was passed on to his matrikin to the exclusion of his wife and children who belonged to a different inheritance group. This strained the Tonga inheritance system as wives and children in the household, by virtue of their participation in household property accumulation, considered themselves as the rightful beneficiaries of the property when the household head died intestate.

We also argue that the impact of capitalist forces was more intensive in urban areas where the Tonga who were fully integrated in the capitalist system lived. This uneven impact of capitalism on urban and rural areas tore apart the Tonga society as most rural Tonga still adhered to the pre-capitalist social order.

The demise of the colonial state in 1964 accelerated the rise of an indigenous capitalist class. Working in collaboration with educated womenfolk, this class which consolidated itself in the 1970's began to agitate for a new inheritance law which would foster its own interests. This eventually led to the enactment of the Intestate Succession Act of May, 1989.
This dissertation is a result of library and field research done between December, 1987 and April, 1989. It is a product of the co-operation and assistance I received from many people and institutions. I would like to express my sincere thanks to the following:- firstly, I wish to thank the staff of the University of Zambia Main Library for assisting me to get both primary and secondary sources. Secondly, I wish to thank the History Department of the University of Zambia for the encouragement and constructive comments as I was writing up. Thirdly, I wish to thank the staff of the National Archives of Zambia and Livingstone Record Centre for assisting me with archival sources. Fourthly, my thanks go to all the court clerks and accessors in the courts I visited for giving me access to some of their court records which helped me understand the dynamics of the Tonga customary inheritance system. The field work was made possible through funding from the Directorate of Manpower Development and Training. The supplementary funds came from the Livingstone Museum. I therefore wish to thank the two institutions for funding this project.

Sometimes, typing a manuscript can be frustrating but Mrs. M. M. S. Mubyana painstakingly typed this dissertation. I convey my sincere thanks to her.

Lastly, but not least, I wish to thank my Supervisor, Professor Martin, H. Y. Kaniki whose patience and encouragement helped me to complete this work. I am deeply indebted to him for all his assistance and invaluable guidance.
ABBREVIATIONS

BSAC - British South Africa Company
CIS - Cattle Improved Scheme
IFS - Improved Farming Scheme
LRC - Livingstone Record Centre
NAZ - National Archives of Zambia
SDA - Seventy Day Adventist Church

GLOSSARY

Basimukowa - one's matrilineal lineage
Basyaanausyi - one's patrilineal lineage
Ceelo (Cizwa) - evil spirit
Cibinde - mental illness resulting from one not being cleansed.
Ciko - final bridewealth
Cikombo (ciinga, Inzubo) - lineage
Kucuta - one method of cleansing
Kukona - inheritance
Kulyazina - succession
Kusalazya - cleansing/purifying
Lubono - wealth
Mizimo - shades/spirits
Mukowa - clan/lineage
Mweesyo - beer brewed to mark end of mourning period.
<table>
<thead>
<tr>
<th>Contents</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abstract</td>
<td>i</td>
</tr>
<tr>
<td>Preface</td>
<td>ii</td>
</tr>
<tr>
<td>Abbreviation and Glossary</td>
<td>iii</td>
</tr>
<tr>
<td>Chapter one: Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Chapter two: Tonga Inheritance on the Eve of Colonialism</td>
<td>11</td>
</tr>
<tr>
<td>Chapter three: Impact of Early Capitalist</td>
<td></td>
</tr>
<tr>
<td>Penetration, 1900 - 1945</td>
<td>30</td>
</tr>
<tr>
<td>Chapter four: Matrilineal Inheritance Under Strain, 1945 - 1964</td>
<td>54</td>
</tr>
<tr>
<td>Chapter five: Efforts to Reform Matrilineal Inheritance, 1964 - 1989</td>
<td>75</td>
</tr>
<tr>
<td>Chapter six: Conclusion</td>
<td>98</td>
</tr>
<tr>
<td>Bibliography</td>
<td>101</td>
</tr>
</tbody>
</table>
CHAPTER ONE: INTRODUCTION

STATEMENT OF THE PROBLEM

This study is a contribution to the on-going debate in Zambia about matrilineal inheritance. The big question is who should inherit the property left behind when an individual dies particularly if he dies intestate. In order to understand the complexity of matrilineal inheritance and grasp the forces of social change which have brought about new property relations over a period of time, an historical inquiry was necessary.

Some people have argued that 'greedy women' or 'hungry and ruthless wives' are pressing for a law which will enable them and their orphans to inherit property that their husbands leave when they die intestate. In this study, we argue that the women's demand for such a law should not be seen as arising out of greed, as taking such a view would be an over simplification of the problem. Instead we should see it in its historical perspective and legal implications over a period of time. This helps us to grasp the forces of change impinging on one given social formation subsequently giving rise to new property relations which are now challenging the old ones.

We also investigated the impact of international capital on the existing institutions of the Tonga social formation whose dominant mode of production was non-capitalist at the time of its penetration. This mode of production was characterised by simple production relationship to satisfy basic requirements of the family in order to perpetuate reproduction. The production relations correspond to the level of productive forces comprising basically simple tools like hoes, axes and simple weaponry like spears, bow and arrow. The Tonga, like other peoples of Central Africa, were engaged in non-mechanized farming and rearing of domestic animals. At this level, their productive forces only enabled them to produce use value commodities. By implication, this meant that their inheritance system would not precipitate great controversy as the accumulation of property worth inheriting was minimal. Heritable property consisted mainly of 'goods of daily use and everyone had some of their own [sic] which was why the disposal of such chattels of the de cujus [deceased] never gave rise to quarrels or litigation.'
We also carried out an inquiry to establish to what extent capitalism affected the non-capitalist Tonga society in which property relations were based on corporate responsibility. It is noteworthy that although there had been individual ownership of property, members of one lineage enjoyed the right to assistance from one who owned property. Therefore providing for the needs of the members of the lineage, like bridewealth for male members, fines, compensation for damage caused or crime committed by one member of the lineage were a joint responsibility.

Although land was the most important means of production, it was not regarded as a heritable asset because it was abundant. Writing in the 1940's Allan observed 'According to most of our old informants land was rarely, if ever, inherited in the past, it simply reverted to the common pool.' But after the establishment of the capitalist system it became a heritable immovable property. In this study we investigated land tenure to establish what had brought about this change.

In a nutshell, this study is an attempt to investigate the extent to which matrilineal inheritance system among the Tonga was affected by social change brought about by the penetration of the capitalist system with all the influences that accompanied it from the beginning of this century. There are a number of influences that came under the umbrella of colonialism. Firstly, there was the British legal system designed to ensure the safety of individual life and security of private property. Secondly, there was Christianity with its deep involvement in the propagation of western education, evangelization mission and farming. The third factor was the introduction of technology which gave rise to commercial agriculture in the subsequent years. Then there was the penetration of industrial and settler capital which gave rise to labour migration and the emergence of urban centres which became inter-tribal and inter-racial interaction points. Finally, there was cash economy with new currency in different units which facilitated business in exchange-value commodities and also storage of wealth.

The study covers the period between 1900 and 1989. The date 1900 has been chosen as our starting point because that was roughly the time when the capitalist system began to penetrate the Tonga society. The study goes beyond 1984, the date which marked the demise of colonialism so that we can examine the measures taken by the post-colonial government in its attempt to tackle problems facing women particularly the problem of matrilineal inheritance.
DEFINITIONS OF 'INHERITANCE' AND 'SOCIAL CHANGE'

INHERITANCE

Inheritance is a concept closely related to 'succession'. In fact in some legal disciplines 'inheritance' is synonymous with 'succession'. David Parry, for example, says 'The law of succession on death is the law governing the transmission of property vested in a person at his death to some other person or persons.' A.R.W. Harrison uses the concept 'succession' in the same manner.

Mvunga draws the distinction between the two concepts in the following terms:

Succession to status occurs when one succeeds to the office of chief [or] headman or when one replaces the deceased husband by marrying the surviving widow. The term inheritance is preferred to succession to maintain the distinction between acquisition of property and succession to a specific status.

Lisimba draws the distinction as follows:

The essential difference between the two things [sic] is that succession may take effect during or after the life time of the person to be succeeded and is by one person only, whereas inheritance only takes effect on the death of the person to be inherited from and may be conferred on more than one person.

He adds 'however, succession and inheritance may be conferred on one person concurrently.' We argue that it is not always true that succession to status 'is by one person only' as Lisimba wants us to believe because it can happen that 'several positions of one deceased are distributed to different persons.'

Gluckmann warns of the confusion that can arise in using the two concepts interchangeably. Succession refers to the 'replacement of one person by another [or others] in name, title, and/or status on account of the former person's death, ill health, old age or other incapacity.' The Tonga equivalent to succession is Kulyazina or Kuulika. The concept we are particularly concerned with in this study is 'inheritance'. For the purpose of this study we shall use this concept to refer to the transmission of the deceased's movable and immovable property to another person or other persons. The Tonga equivalent of inheritance is kukona.
SOCIAL CHANGE

There is no one generally accepted definition of 'social change'. Basically there are two schools of thought that have attempted to define it. One is the structural-functionalism theory which defines it as changes that take place in a given social structure. This theory presupposes that changes in one sector of the social structure necessitate adjutice changes in other sectors in order to maintain its viability.12

The other school is the Marxist one which sees social change as emanating from contradictions inherent in any one given social formation where relations of production no longer correspond with the level of productive forces.13 For the purpose of this study 'social change' will be used to denote the changes that have taken place over a period of time as political, economic, ideological, cultural and religious forces impinged on the existing social institutions of the Tonga social formation.

LITERATURE REVIEW

Until now historians had not taken interest in investigating matrilineal inheritance. The few scholars who have written on the topic are either social anthropologists or lawyers.14 Anthropologists were trying to understand African way of life as this would help the colonial officials and industrial capital to integrate Africans into the capitalist system. Writing in 1930 to the Secretary of Native Affairs, a Livingstone District Officer said the studying of Tonga customs and codifying Tonga customary law could only 'be carried out by a properly equipped and trained anthropological officer. This territory has no such officer and is unlikely to have one at present.'15 In 1938 the Rhodes-Livingstone Institute was created for the purpose of studying the African way of life.

Elizabeth Colson was assigned to study the Tonga of Southern Province. In her undertaking, she wrote extensively on the Tonga,16 but she scantily discussed Tonga inheritance system. There are some problems with anthropological works. Firstly, anthropologists tend to view society as static. They tend to describe social institutions of a given social system without understanding them in their historical context. Secondly, most colonial writers adopted an empiricist approach whereby they thought their task was to accumulate more and more data, assuming that the multiplication of the data would finally produce a pattern of social organisation of the society they were investigating. Thirdly, some of them use structural functionalist approach which they used to study social institutions in isolation and these were not seen as the result of historical process but rather as discoverable through accumulation of data. Depelchin criticised this tendency rather harshly, 'Anthropologists claimed that it was possible to describe village life, social customs, religious rituals as if they had been undisturbed by the arrival of the colonizers.'18
This study is a departure from this approach. It discusses inheritance in the context of the capitalist mode of production. The mode of production approach enables us to examine the internal dynamics of Tonga social formation after the penetration of capitalism. It helps us to see how people related to each other in the production process and the appropriation of surplus value. We can examine class and gender struggles.

Colson discusses the Tonga inheritance system at a superficial level by focusing on such aspects of inheritance as inheriting mizimo (shades) and people eligible to inherit those shades; how to detect anger of shades through divination.\(^{19}\) This approach does not help us to understand the inheritance system in the context of the changing pattern of property relations in the capitalist mode of production in which people are organized to produce commodities.

Lawyers have also written on this subject because of its legal connotations. Many writers have for a long time regarded law as a technical specialization that can effectively be handled by professionals. But we strongly believe that Chanock has a point when he says:

Law, like war and generals, is too important to be left to lawyers, because lawyers, particularly in the common law tradition, have an approach to legal history which is angled towards the search for authority for rules within an unchanging system, purposively ignoring the study of the changes in the system itself.\(^{20}\)

This work, therefore, is different in approach from other works by lawyers whose main concern is law per se. Lawyers, like anthropologists, see inheritance as it existed at a particular point in time. In most of these works, they have identified the inadequacy of the existing customary laws governing inheritance in the light of social change and the need to adjust them to suit the prevailing conditions, but they do not give us the historical analysis of the underlying forces of change which have necessitated this change.\(^{21}\) Historians, unlike lawyers and anthropologists, view society with all its institutions as dynamic and therefore, customs and beliefs of people are influenced by social change.

Although Lisimba's work is on the Tonga, apart from its lack of historical perspective, it is inadequate in content.\(^{22}\) In his 1978 article, Mungu discusses inheritance in general and we cannot tell how much research he conducted as he does not give us his sources.\(^{23}\) Coissoro also has a chapter on the Tonga matrilineal inheritance law but the flaw in this work is that he depended mainly on secondary sources.\(^{24}\) The authenticity of his work is disputable.
Although these works have all these demerits, they are important in that they give us information about the type of property that people wanted to inherit at different periods. Through these works, for example, we come to learn that land which was not inherited before the advent of colonialism, had become a heritable asset by a certain date. Smith and Dale, writing in the first decade of this century, tell us that land was not considered as property worth inheriting.²⁵ By 1950 land had joined the category of heritable property. Colson says quarrels over the inheritance of land are "beginning to come to the fore."²⁶ Today there is sufficient evidence that there are many cases in court.²⁷ In this study we attempt to analyze the forces which have brought about this change.

AREA OF STUDY AND HISTORICAL BACKGROUND

The Tonga have been chosen because they are one example of matrilineal societies. The majority of the Tonga speaking people are found in Southern Province of Zambia, an area of approximately 85,283 square kilometres.²⁸ The Province as it exists today comprises seven districts, namely, Mazabuka, Monze, Gwembe, Namwala, Kalomo and Livingstone (see map 1).

The area often referred to as Butonga includes the area occupied by the Lenje and Sala of Kabwe rural of Central Province, the Soli of Lusaka rural and the Tonga group, sometimes called Bananzwa of Wankie in Zimbabwe. The latter had close links with the Tonga of Zambia until the advent of colonialism. They shared similar language, customs and sometimes intermarried. This went on up to 1950's.²⁹ According to Coissoro:

TONGA is a homonymic designation shared by a variety of people inhabiting the South-Western part of Northern Rhodesia from the Kafue river to the Zambezi and the Wankie district of Southern Rhodesia [now Zimbabwe].³¹

Within Southern Province itself there are Tonga associated groups such as the Ila of Nam district, Toka-Leya of Kalomo and Livingstone districts and the Goba of the Northern part of Gwembe district. They speak dialects of the Tonga language and share similar customs.

This study was, however, conducted in the districts of Mazabuka, Monze and Choma but references will be made to these other groups particularly the Toka-Leya and Ila. The Tonga seem to have been living in this area since the tenth century. According to Fagan 'one cannot rule out the possibility that Tonga are a direct descendants of the Kalomo or Kangila people³² who have been living in this area since A.D. 900.³³ They practised mixed economy, that is, they tilled the land and kept domestic animals such as cattle, goats and sheep. They cultivated sorghum, finger millet and later maize. They supplemented their diets by hunting and gathering.³⁴ Today the vast majority of them are engaged in commercial agriculture.
METHODOLOGY

This research was done in three stages. The first phase was done in the University of Zambia main library. We consulted both published and unpublished secondary sources such as books, reports, articles, newspapers, periodicals, dissertations and theses. This gave us a general view of the subject of matrilineal inheritance. The second part was devoted to collecting unpublished archival materials from the National Archives of Zambia in Lusaka and Livingstone Records Centre in Livingstone. This material gave us views of colonial officials, missionaries and others on the subject. Archival sources are invaluable in examining the effects of colonial state policies and missionary attitudes towards African customs in general and Tonga matrilineal inheritance in particular.

The last phase of the research involved travelling to five districts of Southern Province, namely, Mazabuka, Monze, Choma, Kalomo and Livingstone. In these districts over two hundred people of different ages, religious backgrounds, occupations were interviewed. We visited eleven local courts and two magistrate courts. We concentrated on local courts since these handle inheritance and other civil cases under the customary law. Sometimes we attended court sessions to get first hand information.

In Mazabuka, we visited Mazabuka local court and Mazabuka Magistrate Court. In Monze district we visited Monze local court, Monze Magistrate Court, Choongo local court, and Ofwenuka local court. In Choma we visited Choma local court, Moyo local court, Hamaundu local court, Chilalantambo local court and Macha local court. In Kalomo we visited Kalomo local court and in Livingstone we visited Livingstone local court and the Provinvial local courts office. We visited six chieftainances namely, Mwanachingwala, Choongo, Ofwenuka, Hamaundu, Moyo, Mapanza and Macha (see map 2). Both urban and rural people were interviewed.

One of the problems we faced was that it was not easy to collect information in the courts we visited because some of the staff were unco-operative while others would not let us have access to court records because, they urged, court cases were classified documents and therefore not open to researchers. Mwunga had a similar experience. He is certainly right when he says, 'Methods of investigating customary law have always proved burdensome to a number of researchers who attempted this venture.'

However, in spite of these problems we still managed to get sufficient information. Court records were absolutely necessary to help us guard against the danger of simply recording what people said as distinct from practice. Sometimes people state customary law as it has been and yet in practice they do something else as cases cited in the last chapter show. Finally, the data collected was analyzed and cross-checked against each other to minimize biases, distortions and exaggerations.
NOTES


2 'Women Pushing for Inheritance,' 6.


4 W Allan, 'Land Holding and Land Usage Among the Plateau Tonga, a Reconnaissance Survey,' Rhodes-Livingstone Papers 14, (1945), 100


7 Mphanza P Mvungu, 'Land Law and Policy in Zambia,' Zambian Papers, 17, (1982), 47

8 M V Lisimba, 'Succession and Inheritance Among the Plateau Tonga of Southern Province of Zambia,' School of Law, University of Zambia, Final Year Obligatory Essay, (1972/73), 1.


11 Lisimba, 'Succession and Inheritance,' 1.


14 See Elizabeth Colson, *Social Organization of the Gwembe Valley Tonga.* (Manchester University Press, 1960); Elizabeth Colson, *Marriage and the Family Among the Plateau Tonga of Northern Rhodesia.* (Manchester: Manchester University Press, 1958); Elizabeth Colson, *The Plateau Tonga of the Northern Rhodesia: Social and Religious Studies.* (Manchester: Manchester University Press, 1962); Elizabeth Colson, 'Possible Repercussions of the Right to make wills upon the Plateau Tonga of Northern Rhodesia,' *Journal of African Administration, 2,* 1, (1950), 24-34; Elizabeth Colson, ' Converts and Tradition: The impact of Christianity and Valley Tonga a Religion,' *South-western Journal of Anthropology, 28,* 2, (1970), 143-56.


16 National Archives of Zambia, KDB 1/5/7 Memorandum: Native Marriages, 1930.

17 See note 14 above

18 Jacques Depelchin, 'Toward a Reconstruction of Pre-colonial Central African History,' *Ufahamu,* 9, 1, (1979), 145.

19 See Colson, *Social Organisation.* P 133.


21 See Mungu, 'Law and Social Change,' 649-54; Lisimba, 'Succession and Inheritance,' 1, Nkhata, 'The Rights of Widows,' 1, Banda, 'The Plight of the Widow.'
See Lisimba, 'Succession and Inheritance,'
See Mvunga, 'A call for Reform,'
Coissoro, Customary Laws of Succession.
See Edwin W Smith and Andrew M Dale, Ila-speaking peoples of Northern Rhodesia.
  (London: Macmillan and Company Ltd, 1920), P 390
Colson, 'Possible Repercussions,' 28
Almost every court we visited during our research tours, we found there were cases
of people quarreling over land. Some of these cases are not recorded
because such cases are usually under the jurisdiction of the chief and
his headmen and are dealt by the traditional court.

Samuel N. Chipungu, The State, Technology and Peasant Differentiation in Zambia:
  A case study of the Southern Province, 1930-1986. (Lusaka: Historical

For the history of these people see Maud S Muntenba, 'The Evolution of Political
  Systems in South-Central Zambia: 1894-1953' M.A. Dissertation,
  University of Zambia, (1973).

See A K H Weinrich, The People of Southern Shore of Lake Kariba. (Salisbury:
  Mambo Press, 1977) P 7

Coissoro, Customary Laws of Succession, P 41

Brian Fagan, 'The Iron Age Sequence in the Southern Province of Northern Rhodesia,'
  Journal of African History, 4, 2, (1963), P 74

Fagan, 'Iron Age Sequence,' 160


Mvunga, 'Law and Social Change,' 643
CHAPTER TWO:

TONGA INHERITANCE ON THE EVE OF COLONIALISM

One cannot say with certainty at what stage of human development inheritance started. It would, however, appear that as soon as man learnt to use tools manufactured by himself to enable him extract means of livelihood from nature inheritance also unfolded itself. At his death, his personal property had to be disposed of by either burying them with the deceased's body or preserving them for inheritance by those left behind. This means the emergence of private property, as opposed to communal property, saw the emergence of inheritance. Property which was not easily obtained was preserved as scarcity adds value to property. In most pre-capitalist societies, personal property was mainly limited to rudimentary weapons, tools, clothing and ornaments. Some of these were buried with the owner while others were kept because 'Good weapons are good to keep, especially if the deceased has during his lifetime made glorious use of them.'

Inheritance was not a crucial issue with regard to communal ownership of property as death of one individual did not precipitate a dispute over property collectively owned. What might have been crucial was succession to status especially if the deceased enjoyed high status and was important in the preservation and security of the communal property. In Pre-capitalist societies it was usually land which was collectively owned. Discussing such societies Marx and Engels made the following observation:

The earth is the great laboratory, the arsenal which provides both the means and the materials of labour, and also the location, the basis of the community. Men's relation to it is naive: they regard it as the property of the community, the community which produces and reproduces itself by living labour. Only in so far as the individual is a member of this community, does he regard himself as an owner or possessor.

One Nigerian Chief pointed out to the West African Lands Committee in 1912 'I conceive that land belongs to a vast family of which many are dead, few are living, and countless members are unborn,' What was heritable was the deceased's movable property which was personal because it was either manufactured or bought by him.

Inheritance in any one social formation has through time adapted itself to suit the existing conditions. It modifies itself to suit the existing production relations and property relations. In matrilineal societies the trend has been to shift from matrilineal inheritance to patrilineal inheritance. After studying Engels' work Leacock had this to say: 'Matrilineality was prior to Patrilineality in the history of mankind.' He went on to say that 'it is clear
that matrilineal systems give way to patrilineal systems with the development of exploitative class relations. Looking at the Tonga inheritance system today, this seems to be the trend as we shall show in Chapter five.

MAIN FEATURES OF TONGA INHERITANCE

(a) Matrilineal Inheritance

Any Tonga person had (and still has) a mukowa. This term as used by the Tonga is ambiguous. It refers to both clan and lineage. In Tonga society there were twelve clans (though Colson wrongly lists fourteen) namely: Bantanga, Bayinde, Beetwa, Baloongo, Bansaka, Bacindu, Badenda, Bakonka, Bansanje, Bazyamba, Baleya and Bayuni. These names differ from region to region.

At birth every Tonga belonged to two of these clans, the mother's and the father's. The more important of the two was the mother's. These, however, did not determine which way inheritance would go. It was the lineage which was important and lineage refers to the tracing of one's ancestry through the mother's line. The Tonga equivalent would be cikombo, ciinga, luzubo. An individual called the members of his matrilineal lineage basimukowa and those of his father's matrilineal lineage as basyaanausyi. A clan was broader than a lineage. In one clan, say Bantanga, there would be many lineages (or zikombo, ziinga or nzubo).

The members of one lineage (basimukowa) automatically qualified to inherit the personal property of one member if one of them died. The father (or his representative) to the deceased was entitled to a small share of the estate. Inheritance was conducted along sex line. The practical implication of this was that if a married man died only uterine and classificatory brothers, his mother's brothers, his sister's sons could inherit his property. The widow and the orphans were not among the beneficiaries as these belonged to a different lineage to which they were eligible for inheritance.

Similarly, if a married woman died, the widower was not classified as one of the beneficiaries of her estate. This was a characteristic of matrilineal societies. Engels who also made a study of such societies had this to say:

For as regards inheritance, the position was as follows:
At first, according to mother right (matrilineality)- so long therefore, as descent was reckoned only in the female line- and according to the original custom of inheritance within gens, the gentile relatives inherited from a deceased fellow member of their gens. His property had to remain within the gens. His effects being insignificant, they probably always passed in practice to his nearest gentile relations- that is, to his blood relations on the mother's side. The children of the dead man, however, did not belong to his gens, but to that of their mother; it was from her that they inherited, at first conjointly with her other blood relations, later perhaps with rights of priority; they could not inherit from their father because they did not belong to his gens within which his property had to remain. When the owner of the herds died, therefore, his herds would go first to his brothers and sisters and to his sister's children, or to the issue of his mother's sister's children, or to the issue of his mother's sisters. But his own children were disinherited.8

(b) **Inheritance of Widow and Orphans**

Most of our old informants said that the Tonga did not take marriages lightly. A marriage did not only concern the man and his wife, but concerned all the relations of the two sides, that is the man's and the woman's. The man's relatives collectively paid bridewealth for a young man of their lineage. Before this, his parents and other relatives chose a suitable girl for him from one of the clans their own clan usually married from. As Muntanga explained:

Those days people did not marry anyhow. One clan had specific clans from which they married. If a young man reached marriageable age, he would play either a Kalumbu [instrument of chordophone class] or a Kankobela [hand piano] throughout the night while singing love songs only. Then the parents would know that he was asking for a wife. The father, in consultation with his wife's maternal relatives, would start making marriage arrangements for him.9
Once the marriage was established, the man pledged to look after the bride and the children of that marriage. In return the wife was obliged to maintain him by diligently executing her gender roles. Here we see Engels' natural division of labour according to sex within the family where:

It was the man's part to obtain food and the instruments of labour necessary for the purpose. He therefore also owned the instruments of labour and in the event of husband and wife separating, he took them with him, just as she retained her household goods.\textsuperscript{10}

The last thing parents and other relatives would want to see happen was the breakdown of the marriage which they had spent so much time organizing. The wife's side would also try to ensure the stability of the marriage as its breakdown either by divorce or death of wife entailed returning the bridewealth which the man's relatives had paid for him.

It is within this background that the death of one of the spouses brought about concern from both the man's relatives and the woman's. Just as both sides were actively involved at the inception of the marriage, they were once again involved when the marriage broke down due to death. The relatives of the deceased had an obligation to provide social security to the individuals who were dependent on the deceased. If it was the man who died, they had to find ways of preventing destitution of the deceased's children and widow. They almost always found a man to succeed the deceased. This implies that the widow and the orphans were subject to inheritance just like the rest of the estate.

The appointment of a man to inherit the widow and the children was made by what Jaspan has termed as funerary council comprising mainly the elderly members of both sides.\textsuperscript{11} It is difficult to say whether or not this temporal council always reached a consensus in their appointment as there is little evidence. But it would seem that sometimes, the matter went to the chief for final decision. When the Assistant Magistrate for Namwala, S. C. Heath, interviewed Chief Muchila on 22 May 1929, the Chief said 'A man dies - his name is taken by another man. If there is a dispute as to who shall inherit it is I who decides who shall inherit. A man of good character, a man capable of keeping the widow and her children and also keeping the estate of the deceased was chosen. The widow and the orphans had no say in the appointment. If the deceased was keeping other people's property, the owners had a choice between taking it away or leaving it with the new administrator of the estate. A widow who was advanced in age was only cleansed
but not inherited. Instead she was kept by one of her children or one of her matrikin. Similarly, an old man was not given a new wife but was cleansed.

The administrator of the estate assumed new status as he became the new head of that family also assuming the family responsibilities such as arranging marriages of the deceased's children (who were now his children); refunding brideweight if one of the daughters divorced; paying debts if the deceased left any, making sacrifices to appease shades or mizimo and many other functions the deceased might have performed. Soon after his appointment by the funerary council at the end of the funeral, his immediate task was to distribute the property left by the deceased to all the eligible members of the lineage. Although, he himself was entitled to a share, he had no right to monopolise the estate.

If it was the wife who died, her relatives were expected to find a replacement to marry the widower so that the family would continue with as minimum disruption as possible. It was usually the sister to the deceased who was preferred so that she would help him look after her late sister's children. When Chief Kaingu of Namwala was interviewed about inheritance by the Native Commissioner in 1921, he explained that if a man, say Longone, lost his wife Jane, Longone would ask for a successor and he was given a sister, Maria to take the deceased's place. If the relatives of the deceased failed to find a substitute, Longone would demand the refund of his brideweight, unless Jane left a child. If he demanded his brideweight, in spite of Jane having left a child (or children), he would lose his rights over the child. The implication of this was that if Jane left a child, it was assumed that the husband had been fairly rewarded. Nyombolo Habanji, now aged about ninety years, still recalls that his grandmother, Bina Kadena, was a replacement to her elder sister who died at child birth. The practice had, however, since been abandoned.

Almost always a maternal nephew, that is a sister's son, to the deceased was appointed to inherit the widow and her children. In the absence of an acceptable nephew, a brother, uterine or classificatory, was appointed. If the deceased did not have either nephews or brothers, a maternal uncle was considered. Whoever was chosen, character was the main criterion. If it was a woman who died, her daughter's daughter took first priority. Next to her was her sister and then her daughter since inheritance was by sex. If the daughter got the shade, the widower would not get a replacement.
When one asks the Tonga why they always gave a nephew (sister's son) first priority in the appointment to inherit the deceased's estate they all give the same historical justification. Simon Michelo put it more precisely than the rest when he said:

Those days sister's children were regarded as your property. If there was a case which required a person to be paid as compensation, one could easily go to one's sister to ask for a child. People did not have as much wealth as they do now. A married man had an obligation to feed his wife and his children as pledged at marriage. To secure food, he used his sister's children as payment. He could not use his children because these did not belong to his lineage. His children had their own maternal uncles, who would use them. Therefore, when their maternal uncle died, they had an upper hand in claiming his estate.¹⁵

Chidwaya also explains that long ago when famine was rife, people used to buy fellow human beings. He further points out that cases like spitting at somebody who was not a relative, addressing somebody by a wrong name, urinating on the bed while sleeping with one's wife warranted payment of a person and this person was not the offender's child but the offender's sister's child.¹⁶

In this regard, one can say that a sister's daughter theoretically qualified to inherit her maternal uncle's estate but she was disqualified on grounds of sex. She, however, had a say in the estate of her uncle. If the deceased was keeping her property, she would probably influence the funerary council to transfer her property to her son by appointing him administrator of the estate. The sisters to the deceased might have same influence.

The other reason for the appointment of a maternal nephew as administrator of the estate of his uncle had to do with matrilineality. Although some informants mentioned this point jokingly, it is a point worth considering. The preference of a sister's son to the deceased's son could have been somehow related to the nineteenth century debate initiated by Bachofen in his work Matterechert (or mother right) in which he advanced propositions that if people lived in a state of sexual promiscuity 'such prosmiscuity excludes any certainty of paternity' and 'descent could therefore be reckoned only in the female line,
according to mother right.' 17 Women's parentage could not be questioned. Although this debate centred mainly on a society characterized by polygamy and polyandry, that is, where a man could have more than one wife and a woman could have more than one husband respectively, 18 it is relevant to the Tonga society which practised polygamy. As headman Nalishiwa put it 'Only a sister's son could inherit his maternal uncle's property. Sons were disinheritcd because how could one be sure that the children one had were genuinely his. But as for the sister's children, such doubt could not arise.' 19 It should, however, be noted that if a married woman had an affair with another man, it constituted a very serious offence, adultery, which could result into a heavy compensation from the offending man's family and mutilation of the culprit himself by the offended side. That is not to say this punishment inflicted on such offenders was a guarantee that there would be no children with doubtful paternities.

(c) Inheritance of Shades

The Tonga, like many other peoples of Africa, strongly believed in the existence and power of spirits. These spirits manifested themselves in many different forms and the Tonga gave them specific names depending on the situations in which Tonga manifested themselves. What concerns us here are spirits that were associated with the death of a person. The Tonga believed that when an individual died, he left two spirits, one which was harmful and they called it ceelo or cizwa. The other spirit which they called muzimo had protective powers needed by those who were still living. In this study, we shall use 'shade' to refer to this spirit. Because of the protective powers, when an individual died his shade was re-integrated in the lineage by giving it to one member of the lineage, usually the sister's son to the deceased, or a daughter's daughter in the case of a woman. This prevented it from wandering which, if allowed to happen, would rouse anger of the spirit causing illness in the lineage. The relatives of the deceased prevented this by giving the shade to one of them, whom they thought suitable.

Whoever was given the shade, was also given part of the deceased's estate. The person who got the shade, that is, one who succeeded him by name, was given the deceased's favourite property, say, a spear, or a walking stick or a stool or an axe. If the deceased was rich, the shade successor was also given a beast be it a cow or a goat. Nzala explained 'Whenever a man died his sister's son who inherited his shade was given a spear and if the deceased was rich, he received a beast. The rest of the estate was transferred to him later.' 20
If the deceased had inherited shades from other people, the funerary council decided to either keep all the shades on one person or give other shades to other people but only the new shade was inherited along with the property associated with it. Just like cleansing (or purifying) of the surviving spouse, the father (or his representative) of the person appointed to inherit the shade, had to be consulted before his son could be given the shade. He also received something from the estate for allowing his son to inherit the shade.

It was believed that if the shade was not happy with the funerary council's choice, it manifested its anger in the form of illness to one member of the lineage. This anger was detected through divination. This fear of rousing the shade's anger forced them to choose one person who would be acceptable to them all or one appointed by the deceased just before his death, if he left an oral will. This was important since such a person would thereafter be their earthly link between the lineage members and the line of spiritual ancestors. That made it necessary for the funerary council to choose one person who was fit and capable of carrying out spiritual observations. Most elderly informants pointed out that a married man or woman was preferred to a bachelor or spinster who was more likely to have sexual contact outside marriage, as this would annoy the shade.

If an infant died, its shade was not inherited as it was considered harmless. Its parents, however, were required to bathe in water containing herbs for a specified period. Nobody gave a satisfactory reason for not inheriting the shade and yet the parents bathed in herbs which in our view was recognition and fear of the shade. One can only assume that the shade was not inherited because an infant did not own anything and therefore there was no property to inherit.

(d) Cleansing the Surviving Spouse

The Tonga believed that when two spouses lived together and shared a lot of things as a couple, intimacy developed between them. They shared one lifestyle. It was believed that this intimacy would not automatically cease at the death of one of them. The harmful spirit of the deceased would come to haunt the surviving spouse. Some of the people we interviewed said that when one spouse died, say, the husband, the elders would get a piece of cloth from his clothes to cover the widow's genitals and get a piece from the widow's clothing to cover the genitals of the corpse before burial.
This, was done to keep away the spirit of the deceased from going to the body of the surviving spouse before proper cleansing (or Kusalazya or Koolola) was done at the end of the funeral. The end of the funeral was marked by brewing beer called mweesyo, which came three weeks or even more than a month after the deceased's death. The cleansing of the surviving spouse preceded the inheritance of shade and the estate. The distribution of the estate was done last and it usually came one day after the cleansing and inheriting the shade.

The relatives of the deceased were obliged to appoint someone of the opposite sex to cleanse the surviving spouse. Before this act, regardless of who had died, if the husband had not yet fully paid bridewealth or chiko, it had to be paid in full. The case was more serious if, it was the woman who had died because her relatives would refuse to appoint a woman to cleanse the widower until chiko was paid. In normal circumstances the relatives of the deceased would cleanse the surviving spouse without much difficulty. Only if the surviving spouse was implicated in the circumstances leading to the death of the partner would the relatives of the deceased refuse to cleanse him or her.

The belief behind cleansing was that if the surviving spouse was not cleansed, he or she would lose his or her sanity and this illness was incurable. They called this type of madness cibinde or caando. Even today there are still many Tonga, just like the Bemba, who believe in the seriousness of cleansing. It would appear that this custom was more strictly enforced on women. Before a widow was cleansed she was confined to a hut as she was not allowed to cook for anybody except herself. Failure to observe these restrictions would result into her being heavily fined. Although a man was also required to observe some of these restrictions, he was not confined to the hut as was the case with widows.

More often than not, the person appointed to do the cleansing also inherited the shade and a bigger portion of the estate of the deceased. In other words after cleansing he or she became the administrator of the estate.

There were three methods of cleansing the surviving spouse. Firstly, cleansing by having sexual intercourse was universally accepted as the most effective. If a married woman died, her relatives found the widower another woman, usually one who was going to succeed the deceased, to cleanse him sexually. If they could not give him the sister (uterine or classificatory) they gave him any woman within marriageable age but not married, to cleanse him. Similarly, if it was the husband who died, the man to inherit the shade and the estate regardless of whether or not he was married, cleansed the widow with a view to marrying her after the act. The father of the
cleanser was usually consulted to allow his son to cleanse. The one to cleanse was not necessarily informed beforehand. He was just told to do it and if he lived far away, they waited for him. After the act both his father and himself were entitled to a share of the estate. He shared the rest of the estate to his matrilineal group. This unified the lineage.

The act itself was done in a hut, usually the deceased's, the night before the inheritance of the property left by the deceased. A senior member of the lineage, or the head of the funerary council assembled the relatives of the deceased (basimukowa) to discuss cleansing and inheritance of the shade. After they had arrived at a decision as to who would cleanse, the one to be cleansed and the cleanser, were put in a hut while the rest waited outside. Soon after the act, the woman mourned to signal that the act was over.

Secondly, if for one reason or another, the first method could not be used, usually due to advanced age of the one to be cleansed, another method which they called kacuta or koolola was used. The person being cleansed and the cleanser were put in a hut where both undressed. The one being cleansed sat on the floor with legs stretched on the floor and the cleanser came to glide buttocks on the thighs of the one being cleansed. If they chose a married woman to cleanse the widower, they consulted her husband. After approval was given, the couple was asked to have sexual intercourse in a secluded hut and soon after the act, the woman went to cleanse the widower by kucuta as explained above. After the whole process both the woman who had cleansed and her husband received a portion of the estate.

The third method was where a cow or an ox depending on the sex of the person being cleansed, was tied and made to lie on the door step of the hut in which the person being cleansed was kept. He or she was made to jump over that beast so that the spirit of the deceased remained on the beast. The person being cleansed was given that beast. He or she was supposed to bathe in water containing herbs.

If a man had more than one wife and one of them died, he would not meet the other wife sexually until he was cleansed. We should point out that the last two methods were rarely used and only became popular during the colonial period because of the adoption of Western values and the spreading of sexually transmitted diseases such as gonorrhea, syphilis and many others. The first method was widely accepted, especially in the areas of Southern Province east of the railway line, because, according to most informants, the person being cleansed was a participant in the sexual act. It ruled out cheating which they said was prevalent in kucuta.
where a couple was requested to have sex so that one of them could cleanse the surviving spouse. If the cleanser did not like the cleansed, the couple assigned to cleanse the surviving spouse cheated.

(e) Property

Acquisition of property in pre-capitalist societies was limited. One would acquire it in one of the following ways:-

First, manufacturing from local raw materials. Some women were good in basketry and pottery; second, trading with outsiders using barter system. Locally made products were exchanged for those that were not locally made like hoes from Bunduwe, mpande shells from the Zambezi Valley brought in by outsiders using the Zambezi river. The third way was inheritance; fourth, gifts from richer relatives. Fifth, fines and compensation and finally, sharing bridewealth of the daughters and other maternal relatives. But in life time one would acquire few animals like cattle, goats, sheep, dogs and poultry and personal chattels of daily use like spears, hoes, axes, clay pots, baskets, wooden plates, mpande shells, bungles, clothing and the like.

These different forms of property were either used in the production and preparation of food or they were in themselves a source of food and clothing. From the cattle, the Tonga obtained meat, milk and hides for clothing. They were sometimes used in religious functions as sacrificial gifts and social functions like initiation and marriage ceremonies.

In the absence of banks, cattle were regarded as an important form of stored value because they would be used whenever it was advantageous or when necessity dictated so. Miracle gives another advantage of keeping cattle. He says 'With no wheeled transport available, cattle were an attractive means of conserving one's output because they were mobile.'\(^25\) The same can be said about goats and sheep. According to most elderly informants, very few people owned cattle. This can probably be explained in terms of the lack of security situation in those days. The Tonga were periodically subjected to Ndebele, Kololo and Chikunda raids.\(^26\) This did not allow them to accumulate many possessions as they would be a burden when raiders attacked them. During his explorations of Central Africa, David Livingstone visited Chief Monze of the Tonga on 11 December 1855 and recorded in his diary 'A few goats alone remain (sic) after the plundering of both Matibele [Matebele] and Makololo.'\(^27\)
Perhaps more importantly, they had limited resources and means to enable them accumulate wealth. They barely accumulated sufficient instruments of labour to enable them reproduce on daily and generational basis. They basically used hoes, axes and spears to secure food. It would seem that initially these tools were made of wood since they did not have iron ore deposits. John Syamayuwa Ngandu, Chief Mweenba, said 'Many Tonga people used [wooden] hoes made from mufula maamba.'

The Tonga say the first iron hoes came from Bunduwe in the Nkoya area of present day Western Province of Zambia. They took slaves, goats, grain cattle and salt to exchange for these much needed hoes from which local black smiths could make spear heads, axes and knives.

The institution of marriage became an important medium of circulation of valuable property. Since cattle were still few, goats were used in paying bridewealth. Habanji recalled that he gave six hoes plus one steer which his father gave him as his contribution to his marriage. All the six hoes came from his maternal side. Malala also still remembers that when she got married, her husband paid a string of beads called lukolwe (today this is called mumya worth a beast) to the mother to wear around the waist to symbolize birth pangs a mother goes through during childbirth and a big spear with six claws called sumo lyacileza (spear for the chin since babies are fond of playing with their fathers' beards) which the wife handed to her father symbolizing the role a father plays in a child's upbringing. The six claws symbolized her parents' wish that she might have many children in her marriage. In addition to these, her parents received four hoes and two goats. However, in areas where cattle were more, they used them in marriage as bridewealth much earlier.

A man's daughter's bridewealth was shared between his maternal side and his wife's. Mudenda stressed this point by saying that sharing the bridewealth or chiko was very important because it served as a unifying factor within the mukowa (lineage). Everybody felt part of the marriage because of the portion of bridewealth he was given. If the marriage broke down, they were expected to return the shares they had received. This demonstrates that marriage was a source and medium of circulation of property among the Tonga. Almost all over informants argued that giving bridewealth was neither buying nor paying for a bride, but that it was merely giving something to the parents of the bride as a gesture of appreciation for her parents' role in her upbringing to marriageable age. They argued that there were no similar gifts (dowry) to the bridegroom's parents because Tonga marriage was virilocal, that is, a man took his wife to his own village which deprived her family of her services.
Let us now look at ownership of property. Some writers have argued that ownership of property in pre-capitalist societies was communal. For example, in her discussion of crime and property, Chipala asserts that in what she calls traditional society 'there was communal ownership of property and therefore the community was the kind that was strong, tightly knit and homogeneous.'\textsuperscript{34} We would like to refute this assertion that pre-colonial societies were homogeneous because there were people who appropriated the surplus others produced. Some people were slaves, others were commoners and even landlords. This certainly was not homogeneity.\textsuperscript{35}

Perhaps the part of the assertion that concerns us here is communal ownership of property. We argue that there had been no communal ownership of property among the Tonga. In fact in every society there was personal property which 'men acquire for the purpose of realising social existence through satisfying personal needs and discharging inter-personal obligations.'\textsuperscript{36} When an individual died, his or her personal property was either preserved for those who remained and was transmitted as inheritance or was buried with the owner in conformity with the 'belief that the dead person would require these chattels in the next state of existence in the world beyond the grave' and if this was not done 'the dead man might find his personality incomplete in the next life and might use that as an excuse for his ghost to worry and harass his living relations....'\textsuperscript{37} It is worthy of note that at different stages of economic development this belief declined as the surviving relatives preserved most of this property for their own use.

The most important property among the Tonga was cattle. In any one household one would find beasts owned by a number of individuals, but under the custody of one person. Different members of one lineage would give their beasts to one senior and reliable member for safe-keeping. In other words he only enjoyed \textit{de jure} ownership of these beasts since \textit{de facto} ownership belonged to members of his lineage who entrusted him with their cattle.\textsuperscript{38} If he wanted to get rid of one of the beasts for one reason or another, he would only do so after making consultations with its \textit{de facto} owner. If one beast was jointly acquired through, say, inheritance or sharing bridewealth, its joint ownership was temporal because as soon as it reproduced, each person would be an absolute owner of his share.
We should, however, be quick to point out that property relations were based on corporate responsibility where each member of the lineage enjoyed the right to assistance from one member who owned property. Colson was right when she stated that the Tonga formulation was:

I own cattle. I belong to a kinship group. Therefore my kinsmen have the right to demand my assistance. My rights over my cattle are subject to the obligation which I have to assist my kinsmen. 39

This meant that there was distinction between rights of ownership which applied to particular beasts and rights of assistance which applied to the manner in which individuals related to each other. For instance, a young man who wanted assistance from his mother's brother would not say, 'That cow belongs to my mother's brother and therefore it belongs to me.' Instead he might say 'That cow belongs to my mother's brother. My mother's brother should assist me and therefore I have the right to go to him and ask him to give me his cow if I need it.' In essence this meant that regardless of how one acquired his property one was subjected to the demands of his lineage members. An individual was merged in his lineage group so that his group was collectively responsible for his offences against anybody outside his lineage. Elias explains this as follows:

The group pays all compensations for his private wrongs and answers for all his public offences. Such is the principle of group solidarity, according to this view that crime committed by one member of the group against another is no concern of anyone else but the group. 41

This also implies that if one member offended another member of the same lineage, he would go scot free. This is when the Tonga adage applied. Walumwa mubwa ngokalivubila (You have been bitten by your own dog).

The aspect of corporate responsibility is crucial in our understanding of matrilineal inheritance in general and Tonga inheritance in particular as new forces of change came to impinge on this social system. If the person they considered an outsider made a claim to property which belonged to one of them, they would unequivocally resist the move since their custom required that property should circulate within the mukowa (lineage). Court cases cited in the last chapter depict this. The maternal nephews were the logical inheritors of such property. This resistance became evident when the locus of conflict over inheritance of property shifted from within the lineage over who should get what share of the estate to the
household (which according to matrilineal society comprised two lineages - husband's and wife's) versus lineage of deceased head of the family.

The custody of women's property by male members is another point worth mentioning. If a woman acquired wealth through her share of bridewealth or through sale of products in pottery and basketry, that wealth was usually kept by her male relative, usually brother or maternal uncle, because firstly, she feared that she would lose it to her husband's relatives in the event of his death; and secondly, she feared that her husband might misuse it if it remained within the household. The male relative also accepted this because firstly, it gave him new status since status was measured by the amount of wealth one kept; secondly, it gave him the feeling that he was trusted by his relatives; thirdly, perhaps the most important reason was that he could use this wealth. If the wealth was in the form of cattle, he could get milk, and even meat and hide if one of them died so long as the owner was informed.

A man's son who had not yet established his own home would opt to keep his property with a senior member of his lineage for the same reasons. This kind of system of keeping woman's and children's property strained the inheritance system and pertuated women's economic subordination when conditions changed.

(f) Land Tenure

Land was the most important means of production even before capitalism set in. But since it was abundant and the instruments of labour were still rudimentary, its ownership was not the main issue, but the control of labour was the crucial issue. Anybody could acquire as much land as he wanted so long the headman or chief of the area was consulted. In Tongaland, those who possessed and controlled land were called Basitutongo (plural, singular sikatongo). The land which was not in use was communally used for grazing and hunting purposes. In such land death of one person did not affect its ownership.

Since people did not use both organic and inorganic manure to sustain the productivity of the soil, shifting cultivation was widely used in order to realize a high yield. Their crops (beans, sorghum, millet, sweet potatoes, maize) were gross feeders which exhausted soil nutrients very quickly. Since land was abundant, they continuously opened new plots. According to Sichiwena, a person who first occupied a piece of land was the possessor. If he belonged to, say Badenda clan, that land would be referred to as Katongo ka Badenda (land for the Badenda clan). He allocated plots to members of his lineage. If an outsider came
to settle he would pay the **Sikatongo** (owner of the land) ngwale (string of beads) and this gift was called **cilapanulilo**. Once this was paid, the 'stranger' would be allowed to settle in a virgin land. Over-time he in turn became a **Sikatongo** of that land which would be called by his clan name. ⁴²

This is how land came to be divided according to clans. But once the land became exhausted, it was abandoned in search of virgin land. This is the point Elias was making when he wrote:

> Of course, the use of the land can be transferred temporarily or permanently, as when immigrant settlers are allowed to settle on family land, at first conditionally upon proving in course of time to be satisfactory components of the host community, and later absolutely upon virtual absorption by and complete assimilation with the land owning group. ⁴³
NOTES


5. Engels, Origin of the Family, Private Property and the State. P 35


7. See Elizabeth Colson, Marriage and the Family Among the Tonga of Northern Rhodesia. (Manchester: Manchester University Press 1958), PP 15-23;

Narana Coisorno, The Customary Laws of Succession in Central Africa. (Lisbon: Technical University of Lisbon, 1966), P 47

8. Engels, Origin of the Family, Private Property and the State. P 119


11. See M A Jaspan, The Ila-Tonga Peoples of North-Western Rhodesia. (London: International African Institute, 1953), P 34

12. National Archives of Zambia (NAZ), KSF 1/1/1 Ila Customary Law: Marriages and Inheritance, 1921-28

13. NAZ, KSF 1/1/1 Ila Customary Law: Marriages and Inheritance.


17. Engels, Origin of the Family, Private Property and the State. P103-110

18. Engels, Origin of the Family, Private Property and the State. P 125

Interview, Margaret Bina Mpile Nzala, Village Nabilo, Chief Monze, Chisikesi, January 16, 1999.

For more discussion of Shades see Elizabeth Colson, Social Organization of the Gwerbe Valley Tonga. (Manchester: Manchester University Press, 1960), pp 122-61.

My word of caution is that Colson was writing in the context of capitalist system and therefore her discussion highlighted existing conditions which were different from the Pre-capitalist period, which is the period of my concern in this chapter.

Interview, Damiah N Handiili, Village Habilo, Chief Monze, Chisikesi, January 17, 1990.


Epstein cited a Bemba Court case on the Copperbelt where relatives of the widow sued the relatives of the deceased for refusing to cleanse the widow because they suspected she had a sexually transmitted disease. The urban court ordered that the brother (19 years old) to the deceased should cleanse the widow and the process was to be supervised by the court messenger. Soon afterwards, the cleanser sued her sister-in-law when he discovered he had contracted the disease from the sister-in-law he had cleansed. See A L Epstein, Urbanization and Kinship: The Domestic Domain on the Copperbelt of Zambia, 1950-1956. (London: Academic Press, 1981) P 91.

Marvin P Miracle, 'Plateau Tonga Entrepreneurs in historical Inter-Regional Trade' Rhodes-Livingstone Journal, 26, (1959) 38. Miracle in this article exaggerates Tonga Trade. It was not a net work as he tries to portray on page 41.

To get a picture of the security situation in pre-colonial days see Kalomo Secondary School Historical Association: Interviews with Old People (1970) PP 5-7. See also Joseph Hamusonde, Naakoyo Waamba Caano Cakwe. (London: Oxford Press, 1965). In this work old Naakoyo recounts her personal experiences in the raids by outsiders and how she was mistreated in captivity.


Kalomo Secondary School Historical Association. P 3

30 Interview, Habanji, February 11, 1989
Today mumya and sumo iyacitezu are each equivalent to one beast.
32 Interview, Elijah H K Mudenda, Member of Central Committee and Chairman of Party Control Commission, Lusaka, April 25, 1989.
33 This debate is not new. See also Edwin W Smith and Andrew M Dale, Ila speaking people of Northern Rhodesia. (London: Macmillan and Company, 1920) P 49
34 Judith Chipala, 'The Impact of Social Change on Offences Relating to Property in Zambia', School of Law, University of Zambia, Final Year Obligatory Essay, (1981/82), 9
36 Elias, Nature of African Customary Law. P 168
37 Elias, Nature of African Customary Law. P 170
38 De facto owners of cattle are those people who own cattle and have the right to dispose of them at will. De jure owners are those who own but have no right of disposal, usually children and women. See also N Mukulu, "Villagers" Why They Do Not Sell Cattle, 'Farming in Zambia', 10, 4, (1976), 17
39 Colson, Plateau Tonga. P 125
40 Colson, Plateau Tonga. P 125
42 Interview, John Siachiwena, Presiding Court Justice, Macha Local Court, Chief Macha, March 2, 1989.
43 Elias, Nature of African Customary Law. P 162
CHAPTER THREE

IMPACT OF EARLY CAPITALIST PENETRATION, 1900 - 1945

Brief Background to the Introduction of Capitalism

At the beginning of the twentieth century, capitalism began to have an impact on African societies. In Southern Africa capitalism was introduced by the British South Africa Company (BSAC), a commercial company which colonized the region with the hope of finding mineral resources and other raw materials. However, during the two decades of its rule, it did not discover viable mineral deposits on Northern Rhodesia (now Zambia). Therefore, Northern Rhodesia was seen as a source of labour for white settler farms and mines in the south. Most of the companies and individuals who started commercial ventures in the region were undercapitalized. To ensure that these ventures succeeded, it was necessary for the colonial state to reduce the autonomy of African societies by either signing concessions with the African Kings or by military conquest. This was closely followed by the introduction of policies such as land alienation and taxation which disrupted their pre-capitalist social order so that they would provide their labour. These measures made African labour cheap and readily available in areas where it was needed.

Of great interest to this study is the fact that the introduction of capitalism in the Tonga Society was accompanied by influences such as commercial agriculture, cash economy, western education, christianity, English common law and urbanization. All these factors greatly influenced the Tonga social system. Let us now examine these factors one by one.

Rise of Commercial Agriculture

Since when we talk of inheritance we are actually talking about transmission of property, it is logical that we discuss how this property has been generated. Most Tonga peasants accumulated their property through participation in commercial agriculture. The British South Africa Company which was more interested in mining than in agriculture missed the Copperbelt during its mineral exploration expeditions. The company officials only made minor copper discoveries at Bwana Mkubwa, Kansanshi, in 1899. Lead and zinc
deposits at Broken Hill (now Kabwe) were discovered by G T Davey in 1902. The opening up of these mines after 1910 plus those of Katanga in the Belgian Congo had a direct bearing on the emergence of commercial agriculture as they provided markets for agricultural produce. This was further facilitated by the construction of the railway line between 1904 and 1909 across what are today Southern, Lusaka, Central and Copperbelt Provinces of Zambia.

Agricultural produce was, therefore, transported on this railway to the centres of production where mining and industrial capital needed it for the sustenance of its African labour force. The market before 1930 was still too small to purchase all the produce from both white settlers and African producers. It is for this reason that the colonial state in this period tended to protect settler agriculture from African competition. It was not until after the discovery of more viable copper deposits on the Copperbelt that the market expanded. The outbreak of the Second World War further facilitated the expansion of the African peasantry as we shall show in the next chapter.

The emergence of commercial agriculture among the Tonga originated from the early missionaries. Although their primary aim was to spread Christianity, they endeavoured to teach new farming methods and also introduced schools in order to attract Africans, and ultimately change the African social setting so that they could win them to their side. Peadon summarized their aim as follows:

The purpose of missions in obtaining large farms is well known.
It was to create model Christian communities on them. The
The traditional culture of the people was held to be so alien
to Christianity that it would be difficult to make converts
where people were living in their natural setting.

This approach helped them to win the confidence of the Africans since preaching alone did not appeal to them. David Livingstone observed after his five-year stay among the Tswana and related peoples that they did not have 'the smallest love to the gospel of Jesus, they hate and fear it as a revolutionary spirit is disliked by the old Tories.' They feared that if Christianity was not carefully guarded against it would 'reduce them and overrun their much loved "domestic institutions".'
When he visited Chief Monze of the Tonga on 10 December 1855, he talked more of protection of Tonga against Ndebele and Kololo raids rather than gospel teaching because 'None desirechristian instruction, for of it they have no idea,' but he was convinced that conversion could be achieved since 'The gradual restoration of their former prosperity in cattle, simultaneously with instruction, would operate beneficially upon their minds.'

With some degree of exaggeration, he also talked of good climate and soil for the production of maize in order to attract missionaries and other settlers to the area. He noted that there was 'abundance of maize and groundnuts' which showed 'that more rain falls than in the Bechuana country. He added 'The pasturage is very fine for both cattle and sheep.' It is no wonder that the very early missionaries to settle among the Tonga, namely, FathersJean Moreau and Prestage of the Catholic Church and Pastor Anderson of the Seventh Day Adventist Church (S D A), went to Chief Monze in 1903 to ask for land on which to settle. Monze gave Anderson a 'land grant of a total of 5,275 acres at sixteen cents an acre, and his church was allowed ten years in which to pay with no interest charge....' He settled in Chief Ofwenuka's area at Rusangu. Jesuit Fathers Moreau and Prestage were given a total of 10,000 acres. The British South Africa Company administrator for North-Western Rhodesia, Robert Coryndon approved these allocations on condition that 'missionaries would use it [land] to teach the natives agriculture.'

To attract both adults and children, the missionaries combined farming demonstration and western education with their evangelization mission. They also engaged in farming in order to produce food for themselves. In September 1905, Moreau established his farm in headman Syantunbu's area which later became popularly known as Chikuni where St Canisius Secondary School now stands. He secured an oliver plough and a scotch cart which he used to demonstrate to the people in the neighbourhood. According to Cowdrey 'when rains came in December, the people were even more amazed when headmen Ofwenuka and Syantunbu and others came to watch Moreau demonstrate the superiority of the ox-plough over the traditional hoe.'

The introduction of the plough had far reaching implications to the economy. Firstly, much intensive use of land could be made. Each household which secured a plough could increase its area open to cultivation, thus making the production of cash crops a feasible and viable enterprise. A variety of crops could be grown in one planting season. Secondly, cattle which had hitherto been a bank, a source of milk and meat, now assumed a new economic value. Oxen became means of production. Cowdrey reports, 'By using oxen to plough, Moreau astonished the Tonga, for they had never dreamed of engaging their cattle in this way.'Apart from this function, cattle could now be sold for money.
Thirdly, the replacement of the hoe, a tool predominantly used by women in pre-capitalist Tonga Society, adjusted the sexual division of labour because men were now actively involved in handling oxen and maintaining the plough. This does not mean that women were excluded from agricultural production. It simply means that men, especially male children who could handle oxen, became more active in land tillage.

The response to the introduction of new technology was positive. Soon after carrying out ploughing demonstrations, we are informed that 'many local people sent oxen to Moreau for training.'\(^{11}\) Agness Bukuoko recalled that men used to go to the mission to be taught how to harness oxen and to handle a plough.\(^{12}\) Women were taught how to sow. Those who did not have cattle, purchased donkeys from the Gwembe Valley and took them to the mission for training.

The Tonga switched from growing traditional crops of sorghum and varieties of millet to growing maize on a large scale. Although maize had come to this continent as early as the sixteenth century, and probably reached Central Africa around 1600 A.D.\(^{13}\) its popularity in most places remained low before the penetration of capitalism. The Tonga country is one area where maize gained popularity relatively early. The climatic conditions and soils of the region were suitable for growing the crop. Even with limited instruments of labour David Livingstone reported in 1855 that 'Good numbers of them [Batonga] came from all the surrounding villages, with presents of maize and masuka [probably masuku]...'.\(^{14}\)

There is, however, sufficient evidence to show that famine was widespread before the advent of colonialism. With the introduction of the ox-drawn plough production of maize increased considerably. The advantage the crop had over other crops was that it became the staple food crop not only for the Tonga but for most peoples of Northern Rhodesia as well. It therefore became marketable on the mines and other urban centres which emerged during the course of colonialism. So it was grown by the Tonga both as food and as a cash crop.

The introduction of taxation in 1904 by the British South Africa Company on the Tonga population acted as a force in the acquisition of implements which would enable them grow cash crops so that they would raise money for tax. Failing to pay tax was regarded as a very serious offence. Simaambo recalled that messengers who accompanied the tax collectors were brutal.\(^{15}\) The tax defaulters had their hands tied behind and made to
walk long distances to the boma at Mazabuka which has since been turned into Mazabuka Primary School (formerly, Jeans Primary School). Once at the boma they were flogged before being assigned to do hard labour for a period ranging from two to six months. Fear of such punishment and embarrassment forced people to find money for the tax, and for most people farming was the answer to the problem since it gave them both food and money to meet their financial obligations. Some people migrated to Southern Rhodesia and South Africa, while others worked on local settler farms to raise money for tax as well as for purchasing cattle and farm implements.

The colonial government introduced tax to raise revenue for the administration which the British government expected to be self-supporting as well as to force the indigenous able bodied men to provide wage labour which mining and settler capital so much desired. The ultimate result was that it propelled the Tonga to produce along commercial lines and to accumulate valuable and heritable property.

The development of commercial agriculture necessitated new transport systems. Transport became important in ferrying agricultural produce from the fields to safe storage and to marketing centres. Between 1900 and 1940 the sledge (or sleigh) drawn by oxen came into use. Some people managed to purchase scotch carts. These developments gave additional economic value to cattle. The Tonga used any means available to acquire as many cattle as possible. Some left their families to go and work for cattle. For instance, in 1916 one man who had left his wife for four years told the court 'The reason I left my wife so long a time is that I wished to make money to buy cattle.' Others took advantage of the Tonga custom of bridewealth. Vickery says 'By 1916 two beasts were commonly included as part of the bridewealth and the number rose to four, five and more in the rest of the colonial period.' Inheritance was another way of acquiring cattle and other forms of property, especially that which enabled them to participate effectively in the capitalist economy.

In 1932, one touring official reported with some exaggeration 'In the old days the Tonga had no cattle but on the plateau they are now accumulating large herds, as many as 2,000 herds being counted in one village.' They were able to increase their herds because with the exception of the Gwembe Valley and some parts of Kalomo, the region was free from tsetse fly infestation. The climatic conditions allowed for the growth of good grass for animals. It is, therefore, hardly surprising that cattle sales increased with prices ranging from K4.00 (£3.10 shillings) to K10.00 (£10). It was, reported in 1931 that 'The greater part of the cattle breeding the territory is conducted by native agriculturalists. The proportion of marketable cattle offered for sale by them is said to be over one half of
the total. In addition of the remainder sold by European farmers, a considerable number are native bred animals.\textsuperscript{19} The ultimate result of this development was that more and more people were able to buy more and more property worth inheriting when the owners died. Since most of them invested in instruments of labour, they were able to generate more wealth. Dixon-Fyle, for example, reports:

By the early 1920s a few large scale African farmers who employed wage labour had begun to emerge. One of these, Theodore Kachesa, by 1924 employed twenty-one workers, each receiving a monthly wage. On his farm, which he ran in partnership with a friend, he had two cultivators, three ploughs, a modern weighing machine and a mealie planter, at a time when most African farmers could boast no more than a plough.\textsuperscript{20}

By 1930 Kachesa's wealth and maize sales had made him a force to reckon with. He was reported to own a brick house, 'up to date American tools and a large motorising machine. His maize output rose from 200 bags in 1923 to about 800 bags in 1930.'\textsuperscript{21}

The people who could employ wage labour in their farming enterprises were a tiny minority; the vast majority of the Tonga depended on household labour of a man, his wife (or wives) and children. These were the sole producers of the household wealth. His success in farming depended on the amount of free labour he commanded. Fathers now became more concerned about the custody of their children. In the pre-colonial days a man's children could go and live with their matrikin. Now the custody of children could give rise to litigations in court especially after the introduction of English law. For example, in 1914, Chila died intestate leaving behind a wife, Maninga, and two sons, Matuwa and Monga. Chila was succeeded by his brother Chiambela who inherited the widow and the orphans. But another maternal relative, Munkunka 'had obtained custody of the children in an illegal manner and was holding them as security for payment to him of part of the proceeds of the estate of their late father in which he claimed he was entitled to a share in accordance with a recognized Chila [Ilala] custom.' The Assistant Magistrate, C E Earee, ordered that 'Munkunka be imprisoned with hard labour for three calendar months.'\textsuperscript{22}

The matrikin might help a man to establish his own home by providing him with oxen and other tools which he used to generate more property of his own.\textsuperscript{23} The point worth of note from the onset is that whatever property was generated in the household belonged to him, and not his family, and when he died customary law still dictated that it should circulate within his matrilineal group. The seed of controversy over matrilineal inheritance had
been sown since the new role of wives and children in wealth accumulation gave them the right to claim the estates left behind by their husbands/fathers. This became manifest in subsequent years when more and more people accumulated more valuable property.

Closely associated to the rise of commercial agriculture is the land issue. The penetration of the capitalist system brought new forces on the land. The introduction of new technology led to the increase on the hectarage per household and more land was needed for one family to produce for subsistence as well as surplus for sale in order to raise money for various requirements and to increase household property. Worse still, the colonial state invited more white settlers, most of whom were poor and under capitalized. Such settlers used their access to the state machinery, especially the Legislative Council, to influence the state to protect them from competition by African peasantry. The undercapitalized settlers were settled as close as possible to the railway line and the main road which apparently was the most fertile part of Tongaland.

The situation deteriorated when the Colonial Office took over from the British South Africa Company in 1924. In 1928, the Northern Rhodesia Crown Lands and Native Reserves Order in Council was passed and stipulated that 'all Native Reserves in the Territory are vested in the Secretary of State, and set apart in perpetuity for the sale and exclusive use and occupation of the natives of Northern Rhodesia.' Some of the land was sold to individuals, a phenomenon hitherto unknown to this region. In 1929, Governor Maxwell sent a confidential letter to the Secretary of State for Colonies explaining that African reserves had been set aside for the present and future occupation of Africans. He went further to say that in the railway districts with the total acreage of 48,556,000 about 24,874,000 acres had been set aside for 268,000 Africans to occupy giving an average of 92.8 acres per head or a density of 6.89 persons per square mile if the whole population were moved into reserves. He added that a 'large part of the acreage remaining outside the native reserves is regarded as suitable for European settlement and present and future settlers are entitled to reasonable share of security.'

Although so much land was reserved for white settlers, most of it was not put to proper use. Vickery noted, 'The estates on which they settled were vast - 3,000 to 20,000 acres-though no more than 200-300 acres of this was likely to be cultivated at anyone time. Considerable herds of cattle, often several hundred head, grazed on the rest; they were almost never fed grain.'
The land reservation policy adopted by the colonial state, compounded by increased hectarage due to the adoption of new technology, and ever increasing human and livestock populations exerted a lot of pressure on the land. As African and settler agriculture developed, the shortage of land began to manifest itself resulting into land held under customary law being circulated within one's matrikin when the owner died. In other words, land was beginning to be a heritable immovable property.

Succumbing to pressure exerted by settler capital, the state introduced land reservation, land alienation, discriminatory marketing arrangements, non-provision of infrastructure to the markets and many others. It was also hoped that by introducing these measures, the African peasantry would be forced to sell labour power to settler and mining capital. Contrary to this expectation, however, very few Tonga went to work permanently on settler farms or mines. The few who went did so when their own agricultural work was over and returned during planting season. In 1930 one colonial official lamented:

Although work is plentiful, it does not appeal to the local native.... He finds it suits him better to sell his surplus cattle and grain and thus fulfill the small obligations he has rather than to hire out his labour. The following year a similar complaint had been sounded: Labourers, both temporary and permanent, as a rule are not obtainable from the neighbouring villages where the people are themselves engaged in their own agricultural pursuits.

In 1936, the Maize Control Board was established but it did not achieve its objectives. Instead of checking the expansion of African agriculture, it enabled it to grow and consequently 'hundreds of thousands of bags' were sold through the board. Although it offered low prices for African produce, it in reality 'guaranteed stable domestic price for maize and provided export facilities for any surplus.'

So far we have attempted to demonstrate that with the introduction of new technology the Tonga responded positively to market forces despite state measures to keep African agriculture down. By 1940 a substantial number of the Tonga had started accumulating property worth inheriting and the way for further property accumulation had been paved.
Introduction of Money

Money, like agriculture, is a factor closely connected with property accumulation. Money serves as a measure of value, storage of wealth and medium of exchange. It is universally accepted. It therefore had an advantage over the barter system which consisted largely of exchange of surplus commodities which operated on what we may term the principle of willing buyer willing seller, that is, if the buyer was not interested in the commodity one was selling, no exchange took place. The other disadvantage of the barter system was that its operations were limited because there was no currency in conveniently small units which could be used in exchange ventures to ascertain the real value of the commodities being exchanged. The other disadvantage was that it was difficult to accumulate wealth if one was dealing in perishable commodities like grain, game meat or fish as these could not be stored for a long time to be exchanged at the more advantageous time. These limitations were removed by the introduction of cash economy with new currency in different standardized units which facilitated exchange. The Tonga went as far as Southern Rhodesia and South Africa to work for money which they brought home to buy cattle invaluable in their agricultural ventures. As John Hambote observed:

In those days a man would save money more than working, just waiting to take back home with him. When he decided to go home, he would buy a few clothes then bring the rest back to buy cattle. People didn't go there to 'eat bread' but to come back and be rich. 33

This made it possible for people to acquire durable and valuable movable and immovable property which could circulate after the owners were dead. Engels described money as the 'commodity of commodities hidden in itself, the magic power which can change at will into everything desirable and desired.' 34

Introduction of Western Education

Generally speaking 'education' refers to the transmission of knowledge and skills needed in any one given society in order for it to reproduce itself. By implication, each society has its own education which reflects the organization of its economic base. 35 In the Pre-capitalist Tonga Society, young men were equipped with hunting, trapping and fishing skills since game meat constituted part of their diet. 36
They were also taught how to erect huts, granaries and the art of blacksmithing and other related skills. Women were taught skills like pottery, basketry and cookery and knowledge considered necessary for a woman. Practical education was emphasized.

With the advent of the capitalist system, a new form of education was necessary and therefore the traditional education was no longer absolutely relevant. The new conditions in the capitalist system dictated that Africans be integrated into the capitalist economy. Some aspects of traditional education were abandoned in due course. Western education had its own emphasis and ideological connotations and those who acquired it either completely abandoned the indigenous ideological inclinations or found themselves dangling between the two camps. As Mwanakatwe points out 'Today much of what was good and useful in African traditional life has disappeared, and consequently many African people have been thrown into a state of semi-confusion. They live, as it were, in two different worlds at the same time.'

It is also worth of note that western education was introduced into Tonga society mainly by Christian missionaries, who had their own ideological inclinations which differed significantly from those cherished by the Tonga. The ultimate result was that those Africans who received this type of education later challenged the Tonga jurisprudence as it was no longer suitable in the new social order.

Missionaries introduced western education in Butonga as a tool in their evangelization mission. This education, ridden with western values and concepts, was seen as a reforming agent which would help them to transform the society in which people were regarded as 'truly wild and savage... a dirty nation of liars.' They preached a message of salvation, spiritual reform and also physical change by encouraging converts to wear clothes in western fashion. This is significant in that in the long run Africans started questioning some of the existing values and practices like cleansing a widow or widower. They also started developing western values and attitudes. This trend is the gist of this study.

To attract the Africans to church, the Jesuits, for instance, adopted various strategies such as farming demonstrations, giving clothes, giving sweets and inviting them to listen to the radio. But their strategies were not adequate. So a definite programme of establishing schools of educating boys mainly was embarked on. In 1909, one Jesuit missionary summarized why the school was importat:
...Why does he [the missionary] not confine himself to teaching the doctrines and practices of Christianity? Why does he establish schools at all? The answer is, because without the one the other would be impossible. The older pagans are beyond the missionary's reach. They are polygamists to a man and have not the slightest intention of changing their lines and embracing Christianity... the majority of the young men and women are like wise past conversion .... It is .... the children upon whom the missionary places his chief hope; but even these he cannot gain without some sort of school. Only by being gathered day by day; by frequent personal contact, instruction and exhortations can he be brought to see the wretchedness of the past state.... without a school a missionary can do very little, so school he must have. The native school is a means to the end.42

We should emphasize that female education lagged behind compared to male education because the missionaries put more emphasis on the latter. There are several reasons for this, the major ones being; firstly, missionaries came from Europe and America where preaching was regarded as a man's job. Secondly, they came from societies which provided better education for boys and they followed the same pattern in Africa. Thirdly, even if girls were educated, they would not get formal employment as this was for men. It was believed that women's job was in the kitchen. Fourthly, the Tonga, like other ethnic groups, responded negatively to female education opportunities as they saw no point in educating them. Their parents wanted them to marry as early as possible to get bridewealth. Fifthly, the girls helped their mothers attending to domestic chores.43

The result of all this was that very few women were educated during the colonial period. This implies that since western education was designed to integrate Africans into the capitalist economy, women were not given equal opportunity to participate in this economy. Women, therefore, remained subordinate and economically dependent on men as they were not given the same opportunities to improve their lot and to sell their labour power like their male counterparts. In essence, women could not accumulate as much wealth as men did to allow them live independently in case they lost their husbands or guardian in the case of unmarried women. Marriage became the source of their social security; its dissolution entailed leaving the woman vulnerable.
Missionary and Colonial State Influence

We have already pointed out that missionaries started settling in Butonga as early as 1903. Jesuit fathers settled at Chikuni, Seventh Day Adventist settled at Rusangu, the Anglicans at Mapanza, the Pilgrim holiness at Sikalonga and Jenbo; the Brethren in Christ at Macha and many other places (see map 3). Their attitude towards Africans was similar to Chapman's who described the Ila as 'a people whose national business is polygamy; their national past time beer drinking and their national sport fornication'. Missionaries saw their new role as reforming the African way of life by discouraging practices like cleansing and polygamy which they dubbed as fornication or adultery and violation of morality. Selecting a spouse for a young man or girl (arranged marriage) was seen as repugnant to natural justice or simply forced marriage. Beer brewing to appease mizimbo (spirits) was heathenism and inheritance of widow was seen as against natural justice and morality.

In 1924 Father Moreau of Chikuni complained to the Resident Magistrate in Gwembe that 'a good many girls are given to husbands whom they never liked...'. He cited an example of a woman called Mweene of Chinungwe who had been given to Kombo of Chiyobola and they had two children out that marriage. She complained to Moreau that her husband had accused her of giving 'affections to other persons and gave her a severe flogging the other day... Now what can the law do for her? ...If she comes to you will you grant her divorce?'. The colonial state could not suddenly make laws which would change African customs to conform to missionary outcry although they agreed with them because the British South Africa Company was guided by clause fourteen in its charter which stipulated that:

In the Administration of justice to the said peoples careful regard shall always be had to customs and laws of the class or tribe or nation to which the parties respectively belong, especially with respect to marriage and divorce...

Furthermore:

The Legislative authority, the High Commissioner is bound by section 18 of the Order in Council of 4 May 1911 to respect custom except in so far as the same may be incompatible with the due exercise of His Majesty's power and jurisdiction.

Sections thirty-five and thirty-six of the same order in council 'specifically recognizes polygamy and safeguards the rights of parties to a polygamous union.' This did not, however, discourage missionaries from preaching against what they considered repugnant to natural justice and morality.
Guided by these legal stipulations, the Resident Magistrate for Gwembe replied to Moreau's letter:

I am afraid that little can be done as regards the so-called forced marriage that are in existence, except in cases where sufficient cause is given by either of the parties to allow of divorce(sic). Such marriages, although not in accordance with our ideas, are customary amongst the natives and could probably be traced back to the old time custom of marriage by capture. 47

The custom of inheriting the widows was also condemned by both the state and missionaries. The Native Commissioner stated that if a man's wife died he 'will ask the deceased's woman's parents to find him a substitute and is forbidden by custom from cohabiting with any other women till such substitute shall be found.' Similarly, 'if a man dies, his wife must marry the man chosen by the elders to inherit his estate.' He concluded:

According to our lights, the obligation to inherit or to be inherited ... is contrary to natural justice. The people of this sub-district [Livingstone] however regard this custom very seriously and not as a hardship at all. In their eyes the rule is both just and moral. 48

On cleansing of surviving spouse, one District Commissioner had this to say:

The question of cleansing widows and widowers from a death and inheriting of wives... both are contrary to our ideas of morality whatever they may be in the sight of natives. 49

The result of all this was that some women started refusing to comply with these customs. As one official observed:

In the case of inheritance widows are now allowed to marry whom they please if they do not agree to marry their husbands successor (sic). The successor is however, entitled to their (sic) marriage dowry [bridewealth] when they [widows] remarry. 50

Those who refused to conform to the existing practices did so because they had been converted to christianity and enjoyed missionary support.
The colonial state and missionaries did not like arranged marriages which they saw as forced marriages. To ensure the disappearance of such marriages the state issued 'an instruction to all officials to make known to all headmen, as one of the duties of the latter, the obligation to report any cases of attempted enforcement of a contract to which the woman objects.' Missionaries wanted African marriages to be conducted in a western and Christian way as a condition for their baptism and as a condition for sanctioning a Christian marriage. Rev. J. R. Fell said missionaries wanted a couple to:

declare before God that they have not followed the unclean, repugnant lascivious and adulterous practices common among their people in the usual marriage procedure. They are not regardless of the laws of their tribe but they hold their first allegiance to the law of God in these things. They now agree to live together according to this law as man and wife and forsaking all others to love and support each other whilst life shall last.

For a person to be accepted as a Christian (symbolized by baptism) he/she had to adopt new western values. Conversion meant that one had accepted not only Jesus Christ as a personal saviour, but western values and hypocrisy as well. This came out clearly when missionaries declared:

The Christian man can only have one wife; and she is his wife for always. He cannot send her away and have another woman instead.... If they do these things they are cast out from the people of God.

The children were expected to look to their parents, especially fathers, for support. The Bible was quite emphatic on this point. This reversed the existing Tonga practice where children saw their matrilineal group as their base for support.

Since people's beliefs are subject to existing material conditions, some of the Africans who accepted Christianity and received western education started accepting the teaching of the missionaries and questioned the Tonga social order. It is hardly surprising that by the 1950s some Africans became vocal about Tonga system of inheritance and the practices that accompanied it.
Christianity did not strengthen the economic position of women. At the time capitalism penetrated this region some Europeans still held on to the Victorian image of women. The bible stated in many parts that women were created to be at the service of men and whenever they committed an offence they were punished more harshly than men. It tended to confine them to subjugation so that they remained dependent on men economically. The role of Christianity is important in understanding the subjugation of women since 'it has been one of the dominating forces in shaping western civilization. It has permeated our institutions, given us the moral basis for our laws, formed our ideals, and until recently the church itself controlled our education.'

**Introduction of English Law**

Capitalism is a system that thrives in a social system where private ownership of property is prevalent. Individuals who own property need protection of their lives and their property from those who do not own anything (class struggle). An individual is given a set of ideals that ensures protection of fundamental rights and freedoms of the individual; these include such rights as right of life; right of personal liberty; protection from slavery and forced labour; from inhuman treatment; from deprivation of property; of conscience; of expression; of assembly and association; of movement and protection from discrimination. Therefore law in a capitalist social formation reflects the relations of production and property relations. It is designed to reflect the ideals of that society and the interests of property owners. We shall pursue this point when we discuss the new law of inheritance in the last chapter.

The point to stress here is that the introduction of western law ensured security of an individual and his property and preserved public order and peace. This helped individuals to accumulate personal property over time. Anybody who violated the law could be arrested by the law enforcing agency, the police. To ensure that justice was done to offenders and society, at large, the police passed offenders to the court where they would be tried and sentenced to imprisonment if proved guilty.

The insertion of criminal law was a departure from the customary law which tended to impose punishment not on individuals but on the members of the offender's lineage. It was now possible for one member of a lineage to take another member of the same lineage to court if he used his property without his consent. The court would charge him with theft which was defined as 'taking and carrying away a thing, capable of being stolen, with the intention of permanently to deprive the owner thereof.'
Since the new law also ensured the freedom of an individual, it had tremendous impact on the organization of Tonga marriage and inheritance of widows. Arranged marriages, inheritance of widows or replacement of dead wife were seen repugnant to natural justice. Women were encouraged to refuse to marry men they did not like. In 1921 after a discussion with Chief Hamusonde and his people, the Assistant Native Commissioner reported that the chief and his people had 'agreed with me that with the advent of the white man's justice, the forcing of the woman to marry against her will was wrong' and women were encouraged to 'go to the Boma if they thought they were unjustly treated...'. Women could now seek divorce in the court of law. For example, in 1923, a woman named Mutinta sought to divorce her husband Poma who was given to her into marriage 'when I was a small girl. When I grew up I did not like him.'

Some women refused to be inherited. But chiefs as custodians of customary law still forced them to observe the practice. For example, Chief Hamusonde turned away women who did not want to be inherited because 'he did not wish women to be divorced in his country' but he was sternly warned by the state that 'he must not force any woman to marry against her wishes and that if he continued to do this he would be likely to get into trouble.'

These cases reveal the contradictory nature of British rule. Europeans wanted to integrate Africans into the capitalist system by changing their social systems while at the same time encouraging them to preserve their customs. For instance, when the Attorney-General was asked if the government could modify the African law of inheritance he replied:

I must admit that I am nervous of introducing such things as 'wills'. Native custom provides for the inheritance of property in accordance with the needs of Native Society. Natives have definite obligations towards the community and would deprecate them being allowed to evade them by making wills. This matter which must be controlled entirely by the Native Authority.

The Northern Rhodesia Order-in-Council, 1924-1960, allowed customary law to apply to civil court cases involving Africans. Section thirty-six of the same stated
that:

In cases, between natives every court shall be guided by native law and custom so far as it is applicable and not repugnant to natural justice or morality or inconsistent with an Order in Council, Ordinance or Proclamation or Rule, made under any Order in Council, Ordinance or Proclamation.63

What the missionaries and colonial officials saw as being repugnant to natural justice and morality was not regarded as being so by the custodians of customary law, namely, chiefs and their traditional courts. Since chiefs tried most of the civil cases involving Africans during the course of colonialism, it meant that social change was slowed down. Only those Africans who had almost wholly accepted western values and ideals resented African customs. Africans could now use western law or customary law depending on which one operated to their advantage. The introduction of indirect rule in 1930 also contributed to this state of affairs. Indirect rule was introduced to cut down government administrative costs by letting chiefs rule their own people and also to ensure a reliable tax collection mechanism by allowing chiefs to collect tax since they knew better where their people lived. Indirect rule slowed down social change as it promoted the preservation of customary law. It was stated that the:

aim of the system of local self-government is to preserve everything that is valuable in native tribal organization and in native custom so that the advancement of natives can be undertaken on lines with which they are familiar.64

This clearly shows how self-contradictory colonial policies were.

Establishment of Urban Centres

As labour and capital interacted at centres of capitalist production, towns began to emerge. These towns became points of interaction by people of different races and ethnic groups. Africans began to learn about each other's customs. This process was particularly dynamic on the copperbelt where mining capital wanted to keep a contented workforce. A conscious effort was made to allow this kind of inter-tribal mingling by providing beerhalls and sports facilities.

Consequently, it became necessary to have courts which could handle cases involving people of different ethnic backgrounds. This led to the formation of Urban courts.
Inter-tribal marriages began to appear. One Provincial Commissioner reported in 1939 that:

In Urban Areas and Labour Centres there are numbers of Native men who have become more or less detribalised— that is they do not return habitually to their native villages and have become detached from their Family and Tribal Authority. There are also women in the same condition.... They intermarry. It is these urban marriages between the alien woman that cause trouble. 65

This situation became more common after 1945 when capital stabilized labour. Such people were likely to discard their customs, more so the off-spring of such marriages. Social organisation in towns started to change from households to nucleus families; that is, a man lived with his wife and his own children only. This weakened bonds of kinship.
NOTES


7. Mac Dixon-Fyle, 'The Seventh Day Adventist (S D A) in the Protest Politics of the Tonga Plateau, Northern Rhodesia', African Social research, 26 (1978), 455


9. Carmody, 'Nature and Consequences of Conversion,' 57

On the superiorty of the plough over the hoe, this is what Moreau had to say 'Well is it not true that a furrow one foot broad and 200 yards long turned over as quickly as a man can walk it, and if you repeat that 36 times you have 4,860 square yards or one acre, of ground nicely turned over- do that in one day without much fatigue. That day the Batonga hand hoe got its death warrant and it was high time. Do many people imagine what work to turn over 4,860 yards of ground, even at the shallow depth of 4 inches-
It meant 174,960 strokes of the hoe, reckoning four strokes to the square foot.' Cited, Kenneth P Vickery, 'Saving Settlers: Maize control in Northern Rhodesia' Journal of Southern African Studies, 11, 2 (1985), 219

10 Camody, 'Nature and Consequences of Conversion,' 56
11 Camody, 'Nature and Consequences of Conversion,' 57
12 Interview, Agness Bukoko, Village Sikapande, Chief Ofwenuka, Monze, February 5, 1989.
14 Livingstone, Missionary Travels P 551. See also note 6 above.
16 National Archives of Zambia (NAZ), KTC 2/1/2/1, Magoye Native Commissioners Court, 1914-1916
17 Vickery, Black and White P 43
18 C J W Fleming, Tour Report, March 31 to April 27, 1932, NAZ, SEC2/1053, Mazabuka Tour Reports, 1932.
19 S Milligan, Report on the present position of the Agricultural Industry and the necessity or otherwise of encouraging further European Settlement in Agricultural Areas, NAZ, SEC3/276, Land, Unalienated Crown European Settlement, General Policy, 1931.
21 Dixon-Fyle, 'Agricultural Improvement,' 581
22 Mulomo Vs Munkunka, November 20, 1915, NAZ, ZA1/9/2/3 Native Custom, 1915
23 According to our Tonga informants, a man who today starts accumulating household wealth using capital from his matrikin, leaves inheritance problems when he dies intestate. His wife and his children would consider themselves rightful beneficiaries of the property generated within the household. The deceased's matrikin would consider themselves rightful claimants of the estate since most of it was generated by the household using their initial capital without which the household could probably not have taken off. They, therefore, see the wealth produced by the deceased and his family as "interest" from their capital. Such cases end up in court just like some of the court cases cited in the last chapter.
In 1913 Lusaka District Officer described the calibre of some of the early white settlers thus:

Their main food seems to consist of meal and pumpkins or other vegetables... their dwelling (mud huts) are unsatisfactory and essentially unsuitable to climate conditions.... in the wet season practically everyone suffers from malaria and a number from black water fever... Cited in Norman C Rothman, 'African Urban Development in the Colonial Period: A study of Lusaka, 1905-1964' Ph.D. Thesis, North-Western University, (1972), 9

W Allan et. al. 'Land Holding and Land Usage among the Plateau Tonga of Mazabuka District: A Reconnaissance Survey,' Rhodes-Livingstone Papers, 14 (1945), 89.

James C Maxwell, Governor to Colonial Secretary, April 18, 1929, NAZ, SEC3/278, Land, Unalienated Crown, Land Sales and Leases, 1928-1934

Vickery, 'Saving Settlers,' 213

The Tonga are divided on the question of land inheritance. Some informants like Mwiinga, Chitakuka, Nyanga strongly argued that land was usually inherited by sons of the deceased. Others like Malombo, Kanene, Michelo, Masenke argued that it was usually inherited by the deceased's matrikin. Interviews, Bruno Mwiinga, Principal, Charles Lwanga Teacher Training College, February 6, 1989; Cosmas M Nyanga, Headmaster, St Canisius Secondary School, February 6, 1989; A W Chitakuka, Village Milembo, Chief Ofwenuka, February 7, 1989; Essaia Kanene, Headman Hamaundu, Chief Hamaundu, February 21, 1989; Simon Munamweema Michelo, Presiding Court Justice, Moyo Local Court, Choma, February 19, 1989; J M Masenke, Headmaster, Kanchonba Basic School, February 21, 1989; Benard Malombo, Headman, Habukone Chief Chikanta, February 11, 1989.

NAZ, KDB6/7/3 Mazabuka District Quarterly Report, September 30, 1930.

See NAZ, KDB6/7/4 Tax Collection Tour Report, October 24, 1936.

Dixon-Fyle, 'Agricultural Improvement,' 583

Hambote cited in Vickery, 'Saving Settlers,' 218


Our informants mentioned a popular game called kuyasa ntinde whereby a big soft root of intinde was carved in a wheel which they rolled down the slope and men or boys armed with spear-like sticks stood on either side of the slope and stabbed the ntinde as it rolled downwards. The basic aim was to teach young men to ambush and stab skillfully fast moving animals. Group interview, Daniel Sikapondela, Millius Chikwanu, Tailess Hamwamwa, Anna Muleya, Rabecca Muzyamba, Village Nalishuwa, Chief Mapanza, Choma, February 29, 1989.

Mwanakatwe, Growth of Education in Zambia P 5

Missionaries were responding to the teaching of the New Testament which said, 'Go ye therefore, and teach all nations, baptizing them in the name of the Father, and of the Son and of the Holy Ghost. Teach them to observe all things whatsoever I have commanded you: and I am with you always even unto the end of the World. Amen.' Gospel according to St Matthew 28: 19-20. For detailed discussion of mission schools in Southern Province see Snelson, Educational Development PP 85-89. See also the map attached to Snelson's book.


Rotberg, Christian Missionaries P40

Interview, Bukoko, February 5, 1989.

Cited in Camody 'Nature and Consequences of Conversion' 55-56.

Chapman cited in Rotberg, Christian Missionaries P 40

J Moreau to Resident Magistrate, Quimbi [Gwembe], November 23, 1924; NAZ, KSB/7/1, Native Affairs, November 1924-1928. It is interesting to note that Christian teaching emphasized marriage for life but a priest was now recommending divorce, the very practice, priests preached against.


Gwembe Resident Magistrate to Fr Moreau, November 29, 1924, NAZ, KSB 1/7/1, Native Affairs, November 1924-1928.

Native Commissioner, Livingstone to Secretary for Native Affairs, October 17, 1921, NAZ, ZA1/9/2/4, Native Customs and Marriages: Native Marriages, 1919-1926.

Acting District Commissioner to Secretary for Native Affairs, Livingstone, October 28, 1922, NAZ, ZA 1/9/2/4 Native Marriages.

Native Commissioner, Gwembe to Headquarters, Livingstone, January 29, 1917, NAZ, KSB 1/7/1 Native Affairs, November 1924-1928.

District Commissioner, Batoka District to Secretary for Native Affairs, Livingstone, March 7, 1918, NAZ, ZA 1/9/2/4, Native Marriages.

Dispatch from Magistrate, Broken Hill to Secretary for Native Affairs, April 16, 1918, NAZ, ZA1/9/2/4 Native Marriages.

Address at the Solemnization of Christian Marriage, February, 1922, NAZ, ZA1/9/2/4 Native Marriages. Missionaries justified Christian marriages by quoting the Gospel according to St Matthew 19:5-6 which reads 'For this reason a man will leave his father and mother and unite with his wife, and the two will become one. So they are no longer two, but one. Man must not separate them what God has joined together.

Before one could be baptized, one had to know Moses's ten commandments. One of them reads 'Respect your father and your mother, so that you may live a long time in the land that I am giving you.' Exodus 20: 12

According to the bible a woman was created for man. Corinthians 11: 8-9; a woman caused man to sin. See Genesis 3:16; Genesis 30: 1-4, Judges 16: 4-20, II Samuel 11: 2-27; 1 Kings 16: 31-33; 11 Kings 9:7, 10, 23, 30, 36-37. If a woman committed adultery the penalty was death but if a man committed the same offence he went scotfree. In fact he was allowed to have a concubine. See Leviticus 20:10; Judges 8:30, A woman was to be submissive to her husband, See Ruth 1:16:17; Proverbs 31:10-31.

Although the new testament did not criticize women, it did not change their economic position because they were still confined to their traditional role in the household; in the family and in the church. See I Peter 3:1-7, 1 Timothy 2:2, 1 Corinthians 14:34-36; 1 Timothy 2: 11-12; Colossians 3: 18-19, 1 Peter 3:1.

Bullough, Subordinate Sex P 97


Report of Assistant Native Commissioner, Herbert Brooks, Magoye Sub district, October 11, 1921, NAZ, ZA 1/9/2/4, Native Customs and Marriages: Native Marriages, 1919-1926.

Mutinta Vs Poma, Kalomo District, October 25, 1923, NAZ, KSP 2/1/2/1, Kalomo Civil Cases, 1923-1928. There are several cases of this nature in this file.

C J W Fleming, Tour Report, March 31 - April 27, 1932, NAZ, SEC2/1053, Mazabuka Tour Reports, 1932.


Notes on Native Administration in Northern Rhodesia, August 1933, NAZ, ZA1/9, Indirect Rule.

NAZ, KDB1/5/7 C F Molymeux, Provincial Commissioner, Memorandum: Native Marriage in Urban Areas, August 29, 1930.
CHAPTER FOUR

MATRILINEAL INHERITANCE UNDER STRAIN, 1945-1964

The central argument in this chapter is that in the post World War II period, matrilineal inheritance was strained as it no longer corresponded with the emerging capitalist relations of production and property relations. The conditions were now conducive to accumulation of property to such an extent that the embryo of a property owning class which strove to bring about an alternative legal system governing inheritance began to emerge. This class no longer saw customary law of inheritance as relevant, because it tended to scatter rather than concentrate property in fewer hands.

The introduction of technology and the resultant commercialization of agriculture increased the workload of the household, particularly women and children. Consequently, women and their children were overtime divorced from the means of production so that their labour could be at the disposal of the head of the household who not only controlled and owned the means of production but in most cases also appropriated the surplus realized from their labour. Moreover, when the household head died intestate, they did not continue to enjoy the use of the property they had generated, as customary law dictated that such property should remain within his matrilineal lineage. This means contradictions between property accumulation and customary law of inheritance had become apparent. Women and children had assumed the role of direct producers of the household property, thus making them eligible beneficiaries of that property when the household head died intestate.

We shall also argue that those few women who were able to acquire their own property did not enjoy its use, as it was usually under the custody of their male matrikin, for fear of losing it if it remained in their household. This further weakened women's economic position, and marriage remained their only source of social security. Dissolution of marriage left women exposed to hardships.

Wealth Accumulation

Let us now examine the forces at play leading to the intensification of African agriculture, subsequently leading to more property accumulation among the Tonga. In the last chapter we demonstrated that the capitalist system had started entrenching itself, distorting the existing Tonga social order thereby facilitating capitalist production. We also showed that African agriculture was not supported by the colonial state which tended to protect settler agriculture. But in the post World War II period, the colonial state was forced to make a round-about turn because the existing conditions dictated so.
The discovery of copper deposits on what came to be known as Northern Rhodesia copperbelt in the late 1920's provided a reliable market for locally produced maize and locally bred livestock. The mines employed a big labour force. L. W. G. Eccles, Commissioner for Lands reported in 1934:

Constructional work was proceeding simultaneously on five large copper mines providing employment in September for 3,500 Europeans and nearly 32,000 natives. It was confidentially predicted.... that these numbers would increase and a permanent labour force of some 60,000 natives would be employed.1

The outbreak of the Second World War increased the demand for agricultural produce. The period was a copper boom period as the demand for copper increased because of its properties. Copper can easily be fashioned as it is soft and resistant to corrosion. It was therefore useful in manufacturing firearms, industrial cylinders and cumbustion engines. Furthermore, it has high electrical conductivity. It, therefore, became a key mineral both for the war effort and industrial development.

The demand for copper rose around 1937 during the armament period and after the outbreak of the war. It continued rising even after the war, firstly, to re-build the war-torn industries of Europe, secondly, to build sophisticated weaponry during the cold war between Eastern and Western blocs. Thirdly, the outbreak of the Korean War in the early 1950's further increased the demand for copper. Finally, copper was vital in the manufacturing of television sets, radios and automobiles. This demand for the mineral explains why 'the copper industry had become the largest employer of labour and the most important tax payer in the country.'2

To satisfy this world demand for copper, not only did mining capital need a large workforce, but a stabilized labour force as opposed to seasonal migratory labour force. The implication of this was that a proletarianized work force whose generational reproduction was dependent on the sale of its labour power, was emerging. To meet the food requirement of the efficient labour force, a reliable local supply of agricultural produce was absolutely necessary.

European industries also needed raw materials such as cotton, coffee, sugar and many others. The demand for copper and other agricultural raw materials forced the colonial state to change its pre-world war II stance vis-a-vis African agriculture. It took deliberate measures to boost African agriculture, the task that fell mainly on households, since very few Africans were able to hire labour.
We argued in the previous chapter that the state alienated big tracts of land in close proximity to the railway line. Africans were put into reserves where the land was poor and inadequate for crop production and pasturage since the Tonga were cattle-keeping people. The over-crowding that resulted, as people strove to increase their agriculture, caused soil erosion. In fact by 1936 this problem had already become noticeable and the state had started talking of redressing the situation. After the war the government took definite measures to arrest and improve the situation. In 1947 the Improved Farming Scheme (I.F.S.) was adopted. The scheme encouraged the use of manure (composite or cattle dung) thereby giving more value to cattle, as they now provided manure. Other steps included seasonal rotation of crops of different varieties; building and maintaining contour ridges or grass straps to check soil erosion caused by running water; and other measures against soil erosion. Cattle keeping was encouraged to provide beef to the labour force on the mines and other urban centres which were emerging. In 1956, the Cattle Improved Scheme (C.I.S.) was introduced to boost cattle industry which was another source of wealth for the Tonga. Those who joined the scheme were encouraged to dip their cattle regularly and to follow recommended inoculation programmes.

Those peasants who joined the Improved Farming Scheme were given bonus for each bag of maize sold. The bonus stood at four shillings in 1946, but from 1948 any improved maize grower who produced more than six bags was awarded nine shillings for each bag.³ The response among the Tonga was good. For example, in 1947 there were 95 registered improved peasants. This figure rose to 303 in 1948 but dropped to 262 in 1949.⁴

Mr Aaron Kataso Nsalamuka, who had worked in Southern Rhodesia, South Africa and Lesotho before establishing his farm, recalled that when he returned home, he used the money he had earned to buy the basic productive forces. He and his friend, Samuel Hakaluba, joined the Improved Farming Scheme in 1949 and were given $3 each for observing soil conservation regulations. In 1958 he bought a second-hand tractor and a pick up three years later.⁵

The Kanchomba Farm Institute, which was opened in the 1930s, started training African cash crop growers new farming methods in the 1940s. It also trained commodity demonstrators, that is, the staff whose job was mainly to run cotton growing trials. Peasants were invited to the institute for three months to learn methods of growing cotton and maize. After training the peasants, demonstrators made follow up visits to see how their trainees applied their new knowledge.⁶
The colonial state encouraged schools to combine western education, agriculture and other practical skills. As one colonial official touring Kalomo District reported in 1953, 'Improved methods of agriculture including rotation of crops are being encouraged in all school gardens as it is felt that this aspect of education is of the greatest importance.' A similar report had been given in 1951 by the Jesuit Fathers in charge of Sianzala Primary School;

The school garden contains only maize, but after a late start, they have a fair crop. It is hoped that the Agricultural Supervisor will be able to instruct the teachers in improved methods of farming this year.

This explains at least partly, why most farmers and some rich peasants in the 1950's had basic formal education. In fact some were former teachers of Rusangu S D A mission who settled in Keemba Hill area, west of present day Monze town. T L Parker, the Agricultural Supervisor reported that by 1942:

there were more than a dozen individual plot holders in the area known as Keemba Hill, all with same background - ex teachers of Rusangu. Two individual farmers took advantage of an offer and joined the European pool of the Maize Control Board.

The following year those who were left out joined the two and became members of the European pool. Parker added:

The Keemba Hill district is probably the best maize growing area in the Southern Province in spite of the fact that no rotation of cropping is followed by any except one of the cultivators, maize continues to yield quite well.

Increased cash crop production necessitated better and more reliable modes of transport to ferry crops from the fields to safe storage and also to ferry produce to the markets, most of which were located near feeder roads or along the line or rail. A campaign was embarked upon by the state to phase out sleighs (or sledges locally called zilyal) which had dominated peasant transport system before 1940. Sleighs were to be phased out, it was argued, because they caused soil erosion. Peasants now looked to wheeled transport as the answer to the problem. Scotch carts and wagons were purchased in this period. The farmers purchased tractors, lorries and pick-ups. The result of these developments was that individuals were increasingly accumulating property which was transmitted to the survivors when the owners died intestate.
It should be emphasized that the peasantry in Southern Province was not homogenous. Some became so wealthy that it would be erroneous to refer to them as peasants. They qualified to be categorized as farmers. Chipungu and Momba have demonstrated that the Tonga peasantry was differentiated. Chipungu argues that the peasantry was so differentiated that contradictions within itself as well as against the state became manifest.¹²

Wealth accumulation by Africans in Mazabuka District alone was as follows:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>CATTLE</th>
<th>SHEEP</th>
<th>GOATS</th>
<th>PIGS</th>
<th>PLOUGHS</th>
<th>OTHER FARM MACHINERY</th>
</tr>
</thead>
<tbody>
<tr>
<td>1948</td>
<td>210,204</td>
<td>148</td>
<td>14,702</td>
<td>2,746</td>
<td>12,802</td>
<td>1,409</td>
</tr>
<tr>
<td>1949</td>
<td>198,299</td>
<td>98</td>
<td>18,843</td>
<td>3,124</td>
<td>13,048</td>
<td>1,763</td>
</tr>
<tr>
<td>1950</td>
<td>237,354</td>
<td>56</td>
<td>19,789</td>
<td>2,453</td>
<td>14,039</td>
<td>1,841</td>
</tr>
<tr>
<td>1951</td>
<td>244,734</td>
<td>118</td>
<td>14,658</td>
<td>2,644</td>
<td>14,139</td>
<td>1,875</td>
</tr>
</tbody>
</table>


Taking the province as a whole, the approximate amount of wealth owned by Africans in 1950 was as follows:

<table>
<thead>
<tr>
<th>District</th>
<th>CATTLE</th>
<th>AGRICULTURAL MACHINERY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>Livingstone-</td>
<td>22264</td>
<td>31128</td>
</tr>
<tr>
<td>Kalomo</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mazabuka</td>
<td>105188</td>
<td>132166</td>
</tr>
<tr>
<td>Namwala</td>
<td>24044</td>
<td>36518</td>
</tr>
<tr>
<td>Gwembe</td>
<td>6655</td>
<td>10624</td>
</tr>
<tr>
<td></td>
<td>158151</td>
<td>210436</td>
</tr>
</tbody>
</table>


In 1953 the position was as follows:

<table>
<thead>
<tr>
<th>District</th>
<th>Cattle</th>
<th>Sheep</th>
<th>Goats</th>
<th>Ploughs</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Livingstone</td>
<td>175</td>
<td>35560</td>
<td>79921</td>
<td>3330</td>
<td>1</td>
</tr>
<tr>
<td>Kalomo</td>
<td>35560</td>
<td>79921</td>
<td></td>
<td>1150</td>
<td>1450</td>
</tr>
<tr>
<td>Choma</td>
<td>699611</td>
<td>18450</td>
<td>3274</td>
<td>2827</td>
<td>330</td>
</tr>
<tr>
<td>Namwala</td>
<td>169767</td>
<td></td>
<td>6397</td>
<td>1353</td>
<td></td>
</tr>
<tr>
<td>Gwembe</td>
<td>53220</td>
<td>11050</td>
<td>155</td>
<td>36</td>
<td></td>
</tr>
<tr>
<td>Mazabuka</td>
<td>21622</td>
<td></td>
<td>28031</td>
<td>3552</td>
<td></td>
</tr>
</tbody>
</table>

For motorized forms of transport in Mazabuka alone the situation was like this:

<table>
<thead>
<tr>
<th>Type of Vehicle</th>
<th>1955</th>
<th>1956</th>
<th>1957</th>
<th>1958</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cars</td>
<td>6</td>
<td>1</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Lorries</td>
<td>11</td>
<td>8</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>Motor cycles</td>
<td>16</td>
<td>16</td>
<td>20</td>
<td>13</td>
</tr>
<tr>
<td>Tractors</td>
<td>13</td>
<td>39</td>
<td>39</td>
<td>N/A</td>
</tr>
<tr>
<td>Trailers</td>
<td>4</td>
<td>6</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>Vanettes</td>
<td>19</td>
<td>25</td>
<td>31</td>
<td>40</td>
</tr>
</tbody>
</table>

N/A = Not available


In 1959 the District Officer, Mazabuka, J.H.F. Bown, reported that in Chief Hanusonde's area alone there were 1,228 ploughs, 334 harrows, 380 scotch carts and 354 handmills while Chief Monze's area had 3,199 ploughs, 621 harrows, 695 scotch carts and 627 hand mills in the same year.

It would, of course, be wrong to assume that all Tonga accumulated their property through agriculture alone. There were some who were involved in retail trading and others who combined the two. Trading licences issued to Africans in Kalomo and Livingstone in 1950 were as follows:

<table>
<thead>
<tr>
<th></th>
<th>Kalomo</th>
<th>Livingstone</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hawkers</td>
<td>14</td>
<td>59</td>
<td>73</td>
</tr>
<tr>
<td>General Dealers</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Village shops</td>
<td>4</td>
<td>13</td>
<td>37</td>
</tr>
<tr>
<td>Bakeries and tea rooms</td>
<td>7</td>
<td>4</td>
<td>11</td>
</tr>
</tbody>
</table>


Taking the Province as a whole, in 1946 there were 149 African village shop licence holders. The number rose to 178 in 1947, 180 in 1948 and 332 in 1950. Simon Dimba, a man who became extremely wealthy in the 1960's in Gwembe District was reported in 1953 to run 'a good store in Chaanga area.' The income from these traders' village shops varied from £2 to £200 monthly. Other people were working for wages in towns where they bought property not necessarily for agricultural purposes. They bought things like radios, refrigerators, sewing machines and many other modern equipment worth inheriting when the owner died.
As wealth accumulation was increasing, inheritance court cases became more frequent. It is difficult to give detailed accounts of these cases, and to locate precisely the source of conflict because the colonial state did not leave proper records.\(^\text{18}\) The available data shows that inheritance cases did appear in courts. For instance, in 1950, 46 court cases were reported to Livingstone African courts, 35 were heard in Mazabuka District, one in Gwembe and 41 in Namwala.\(^\text{19}\) The distribution was quite uneven, out of the 35 cases reported in Mazabuka, 17 were from Chief Moyo, 3 from Simuyobe, 1 from Mapanza, 1 from Singani, 1 from Monze, 1 from Hamaundu, 6 from Mwanachingwala, 2 from Muenda, 2 from Plateau Tonga Native Court and 1 appeal case.\(^\text{20}\) The 41 cases reported in Namwala, 2 came from Chief Muchila, 3 from Mukobela, 14 from Munjaila, 1 from Shaloba, 2 from Shikafwe, 4 from Chidyabufa, 1 from Kaingu, 2 from Musulwe, 2 from Nalubamba, 2 from Shambizyi, 4 from Mweswes, 4 from the Tribal Court.\(^\text{21}\) In 1951, 90 cases were reported to the local courts in the Province, 23 of which were from Mazabuka, one from Kalomo, 64 from Namwala and two from Gwembe.\(^\text{22}\)

There could have possibly been three sources of litigation. Firstly, members of the deceased's matrilineal group quarrelled among themselves over the shares of the estate; secondly, children supported by their mothers challenged the Tonga customary law of inheritance since they assumed the new role of direct producers of their late father's estate as we shall argue in the next section. Thirdly, the matrilineal relatives challenged the deceased's oral will since written wills were not effected until 1956. In any case even after Choma and Gwembe districts had started to effect written wills, a negligible number of Tonga left written wills because this provision was given minimal, if any, publicity. Even after the country attained political independence very few people left written wills.

The Changing Role of Women and Children in the Household

In this section we shall argue that the adoption of new technology increased the workload of women and children in the household. To borrow Chipungu's definition, by technology we refer to:

- both mechanical implements (hoes, axes, tractors, ploughs, harrows, etc)
- and biochemical inputs (fertilizers, hybrid seeds, pesticides, herbicides, etc) on the one hand and techniques of production (i.e. how best to use mechanical devices, biochemical technology and how best to control the land, crops and livestock) on the other.\(^\text{23}\)

As we noted in Chapter two, in the pre-capitalist Tonga society, women's efforts were mainly directed towards the production of food for daily consumption. Surplus was minimal. But with the advent of colonialism, labour was directed towards commodity production. Household labour was mobilised to achieve this goal.
The introduction of new technology made it possible for households to put more land under cultivation. The bigger the acreage a family cultivated, the more time they spent on agricultural chores and the more labour was needed to carry out agricultural work. Crop production required that land had to be prepared before planting, that is, clearing bushes and burning dry stalks of the previous crop. When rains came, planting was done as quickly as possible before the planting season was over. The next stage was weeding which was followed by harvesting. New technology was accompanied by new tasks such as application of manure (composite or cattle dung) or chemical fertilizers, application of pesticides to crops like cotton, shelling and winnowing grain, bagging, transporting the produce to the market centres which were usually located near feeder roads or railway line and weighing the bags before sale. All these tasks were mostly performed by women and children. In addition to all this work, women were still expected to perform domestic chores such as preparing food; collecting firewood (which was the main source of fuel among peasants), drawing water for domestic use, usually covering long distances, and cleaning the inside and outside of the house. The boys were expected to participate in farm work as well as tending to cattle, another important aspect of peasant production. They also milked cows. Girls assisted their mothers in their routine chores. As one woman lamented, 'There is not much difference whether my husband is around or away, but there is a big difference when my children are away during school days for I have to do all the work single-handed.'

The new role of children forced men who were actively engaged in farming to become more concerned about the custody of their children if marriage was dissolved for one reason or another. Apart from this some people began to favour nuclear families. A court case which came up in Chief Macha's Court in 1951 demonstrates this. A man who had joined the improved scheme resisted a 'decision of court demanding that his four children by a deceased wife be handed over to the wife's parents.' For disobeying customary law he was deprived of his land. This did not please the colonial state which favoured the nuclear family. The District Commissioner for Mazabuka reacted as follows:

The case of the Improved Farmer is particularly unhappy. The younger Batonga generations, especially those under the influence of Christianity, are challenging custom which decrees that on the death of a mother, the children go to their maternal grandmother or great maternal aunt or the great maternal uncle. If there are no surviving maternal great aunts and uncles, the children would
be cared for by the maternal aunt or maternal uncle; the point is that the widowed father of a child loses all control or influence .... In my view and from a purely christian view point the customary law concerning custody of children is repugnant to justice; but the issue cannot be squarely forced until the majority are of the same view.27

The success of a man did not only depend on the type of instruments of labour he used, but also on the amount of labour he commanded. We argue here that Tonga peasants perpetuated polygamy because it assured men of sufficient free labour since the majority of the middle and poor peasants could not hire labour. The more wives one had the more children one was likely to have and the more labour one controlled. It comes as no surprise that missionaries failed to eradicate polygamy which they condemned right from the advent of colonialism. The British policy of indirect rule was in a way a blessing in disguise to Tonga peasantry since it allowed customary law to operate alongside common law. Many Tonga men who wanted to be successful in farming married under customary law which allowed polygamy. Very few married under common law because according to British law, polygamy constituted a criminal offence, bigamy.

Colson observed in the 1950's that women occupied a central role in the peasant wealth accumulation. She cited a case where an S.D.A. missionary suggested at a camp meeting that women should be freed from some of their agricultural tasks to allow them to learn new things and look after their children. After the missionary had left, people continued discussing his speech with men arguing that men would die of overwork if they did women's work and wondered what women would be doing. In response 'women rubbed their backs, sore from long hours of digging groundnuts, stamping meal, drawing water and bending over the cooking pots and shouted back, "And if we keep on working the way we do we will die!"'28

In addition to providing labour to the household, a woman provided children who also provided labour and in the case of girls provided bridewealth when they married. But the wealth generated jointly in the household was controlled by the head of the household and when he died the wife and her children were not among the beneficiaries since according to Tonga customary law of inheritance they looked to their own matrilineal, lineage for inheritance. That meant that they only had access to that wealth when the head of the family was still alive.

Even wives of men in formal wage employment indirectly contributed to the accumulation of household property such as furniture, cars, refrigerators, bicycles, television sets and many others. The wife looked after him, washed for him and
cooked for him to make sure he executed his duties effectively. Mrs Beatrice Moba saw women's contributions to the acquisition of household property in this way:

Working men don't usually buy many household goods until they have settled down by marrying. Once the wife is in his house, she encourages, sometimes persuades him, to buy things necessary for the home. This is in addition to her household duties of cooking for him, washing for him so that he is always able to work effectively everyday.29

Chauncey made a similar observation in his discussion of the contribution of women on the Copperbelt:

'Social reproduction..... involves not only the generational reproduction of the working class as a whole, but also the daily reproduction of labour power, that is, the daily maintenance of the workers.'30

Women and children felt the roles they played in the accumulation of household property gave them the right to claim property when heads of the families died intestate. They especially the children, started challenging the customary law of inheritance which still excluded them from the list of beneficiaries when heads of families died intestate. Conflict between their husbands' matrikin and theirs began to emerge in this period. This was an indication that customary law was gradually outliving its usefulness and relevance.

Vulnerability of Women and Children

It should be noted that women were divorced from the means of production, particularly land, as men controlled their labour. Customary law no longer provided social security it used to in the pre-capitalist period. Household heads came to assume de facto ownership of the means of production and appropriated the surplus by investing most of it in capital goods which their wives and children were not entitled to inherit. So women remained depended on men through marriage.

In the pre-capitalist period, women controlled grain which was not considered as wealth in the Tonga view of wealth (lubono)31 while men's pre-occupation was pursuing wealth, a concept which 'applied only to such property as could be inherited.'32 A woman controlled a portion of land on which she grew her own grain to supplement her husband's since land was still abundant. This continued into the 1930's. But by 1945, there was a noticeable decline in the married women's control of land.
The plots were getting smaller and smaller while women's workload increased. Allan and others reported in 1945 that previously it was customary for each wife to cultivate a separate garden but the practice was becoming less common. Wright observed in the 1980's that 'Among the wealthier commercial farmers, virtually no woman had a separate garden...'. This gradual loss of control over land among the married Tonga women was a development which made them more economically dependent on their husbands, thus making them more vulnerable. The few who retained some land grew groundnuts which were usually consumed by the family since groundnuts served as a necessary ingredient in vegetable relish. Very few women realised saleable surplus. Children under marriageable age did not control land, nor did they own any means of production. So, they, like their mothers, were dependent on their fathers.

Although the colonial state introduced agricultural institutions like Kanchomba Farm Institute to equip Africans with technical know how, very few, if any, women benefitted from such institutions. Men were taught how to grow new varieties of crops, how to use organic and inorganic fertilizers, how to conserve soil etc. As a result men were in a better position as they controlled new agricultural technology, technical knowledge and the income. Women who acquired some wealth tended to keep it with their maternal relatives, usually their uncles or brothers because they feared that their husbands might misuse it. Those who had married sons entrusted their wealth with them. The major reason for keeping their property under the custody of their maternal male relatives was to avoid the possibility of the husband's relatives grabbing it along with the husband's estate case the latter died. Agness Bukoko pointed out that if a kind husband gave cattle to his wife, she was advised to keep them with her maternal uncle. If she left them in her husband's kraal his relatives would take them as they believed that it was not likely for a woman to generate property of her own. She added, 'Even if a woman acquired cattle through the sale of clay pots and baskets and were branded, they would accuse the deceased of having connived with his wife. They would still grab the animals.'

Sarah Katulo cited a case where her grandmother, Sinyoolwi Singaanga, who had acquired some property through bridewealth sharing, sale of baskets (zisumo) and clay pots (zibiya) almost lost all her 21 cattle, a plough, a three legged metal pot and some goats when her husband, Habulungu died in 1953. Singaanga was not remarried as she was too old. Habulungu was quite wealthy; he had over 100 head of cattle, 4 ploughs, 2 cultivators, 1 scotch cart and a few other implements, most of which were shared by the deceased's maternal nephew since his untimely death did not allow him to leave a verbal will. They also grabbed all Singaanga's property despite her
protests. It was not retrieved until her sister's son (as she had no sons of her own), Manchisi Hamuguna with the assistance of traditional court, run by headmen, convinced the deceased's relatives that the property was really Singaanga's. Since that time Hamuguna became the custodian of the cattle and the plough until she died eight years later. The pot was inherited by Sinyoolwi's sister. When Singaanga died Sarah Katulo was not given a beast, as was usually the case, although she inherited Singaanga's shade. Instead she was given a bucket and chicken. Hamuguna retained most of the cattle and the plough because, he argued, he fought single-handedly to retrieve them from Habulungu's relatives. 37

The colonial state was aware of the practice of grabbing the widow's property from the very beginning of colonial rule, especially if the widow refused to re-marry in the deceased's lineage. One colonial official commented as early as 1910:

When a man dies his people will come and demand his property. If the widow has property of her own and people to back her up she will be able to preserve it. If not, her husband's people will claim and take everything in the house. 38

This brings us to the point we raised in Chapter two about property ownership among the Tonga. In general, property, particularly cattle, was owned individually, but other matrilineal members had the right to assistance. But this ownership was in two forms. In the first case people owned property and were at liberty to dispose of it when necessary. In the second case people owned property but had little say in the management and disposal of it. Women and children fell in the second category. Mukulu pointed out:

In most parts of Zambia the system of cattle ownership implies the differentiation between de jure and de facto ownership. De jure owners are persons who own cattle but do not have ultimate rights of disposal, usually wives, children and caretakers. 39

He defines de facto owners as those 'who, as a rule are heads of families, are the only ones who are concerned with disposal decisions.' 40 This kind of ownership that women and children were entitled to, put them in a weaker position economically. They could not use their own property at will for their own economic advancement. For example a woman could not sell her own beast to raise money for her own needs without consulting a male relative who could oppose the move if he so wished. A man on the other hand, could sell and use his sister's beast, let alone his own, at will and only consulted
her as a matter of formality. Rarely did women oppose the male's decisions. This compounded with women's fear of keeping their property within the household forced women, like their children, to remain economically dependent on their husbands. In essence this meant that only marriage gave women social security. Once the marriage was broken due to either death or divorce, women and their children remained vulnerable.

Children worked for their father to improve his economic status so long as marriage between their father and mother lasted. Yet when their father died they got little or nothing from his estate. This was discouraging and detrimental to economic production. This partly explains why children who grew big and got married moved out of their father's homestead to establish their own homes and start their own economic enterprises, independent of their father's control. Mention should be made of the fact that women were often disinheritcd by their own matrikin because as far as relatives were concerned, a married woman did not need her own means of production as she was under the guardianship of her husband who was expected to meet her personal needs.

Change of Attitude Towards Matrilineal Inheritance

As the number of farmers and rich peasants increased in the 1950's, they started articulating their class interests. They wanted to break away from the customary law of inheritance which justified and recognized equitable distribution of the deceased's estate. They wanted to see their property remain in the hands of one heir. They also wanted land to remain intact rather than divided and re-divided when the owner died. Unfortunately, their struggle was not well documented by touring officials and anthropologists of the time. But this class seemed to have been quite vocal. As Edith Colson reported in 1950:

The big growers and traders who represent a small but highly vocal portion of the population are desirous of changing the inheritance system. 42

The colonial state which also favoured the idea of modifying the customary law of inheritance discussed this with this emerging class. Cadet Holderness, touring Chief Monze's area in 1955 reported that he discussed the 'question of increased security of land tenure for Africans' with Philip Majata, Education Councillor, Mugodi, Councillor and two court assessors who agreed with him that there was need for greater measure of security of land tenure when the owner died. Majata, who
was an improved cash crop grower, informed Holderness that the matter was already on
the agenda for their next Native Authority Executive Committee Meeting. Holderness
further reported:

Majata suggested that the owner of a garden should be entitled
to make a will and leave his land to his sons, if he so wishes....
The two assessors agreed with Majata and amongst the reasons
they put forward were, that in many families a son helps his
father in his garden from childhood, but never receives
any property when his father dies. Instead his garden goes
to a nephew who perhaps lives far away and for whom the father
has no affection and has seldom seen. 44

This shows that there were contradictions in the Tonga society. While some
members of the property owning class wanted their property to remain concentrated within
the immediate members of the family, the poor peasants still adhered to and defended the
old system of inheritance because, as Colson put it:

Many stand to gain, more through the chance they now have to share
in a number of inheritances within their group than they could
hope to obtain through any right their fathers might obtain to
dispose of property by will. 45

Dixon-Fyle also commented on these contradictions. He observed that some rich Tonga
moved 'out of the orbit of matrilineal kin' and this was 'relief from the traditional
obligations one has towards such people.' 46 Because of their new attitude towards matrilineal
inheritance and their resistance to 'this social pressure, they were to find themselves
very unpopular within their kin groups with some relatives accusing them of being self-centred.
This emerging proprietied class pressurized the state and the Plateau Tonga Native Authority
(P.T.N.A.) to make a law that would enable them leave written wills. On 31 July, 1956,
an adhoc committee of the Plateau Tonga Council convened a meeting at Monze, the headquarters
of the P.T.N.A., attended by all chiefs from Mazabuka and Choma districts (Choma became a
district in 1953) and Mr A H Mwenya, a representative from Native Courts Advisor's Office.
During the deliberations the committee learnt that:

according to the Tonga custom, no wills as practised by Europeans ever
existed among the Batonga. There was, however, a custom where the
word of the deceased giving certain of his property to a particular
member of his family was respected and executed. 48
Capitalism as a social order thrives in a social formation in which wealth is concentrated in fewer hands. The law and values in that social formation correspond with the aspirations of the dominant class in it. As we saw in Chapter Three British law was designed to save the social order with which it came. Similarly, christianity was instrumental in the changing of the existing customary law of inheritance. Ever since missionaries arrived in Northern Rhodesia, they vigorously campaigned against matrilineal inheritance and advocated for the introduction of written wills as practised in Britain. To cite one example, Reverend J L Myers of Macha Mission wrote in 1926 to the Assistant Magistrate, Kalomo, after witnessing an incident where even blankets of the widow were taken from her leaving her with completely nothing:

In the last year or so I have had a number of deaths among the christian native families here around Macha and in the case of death of the husband the wife being a christian will not go to the one who inherits her according to native custom, especially if he is a polygamist. I have spoken to some husbands and they wish to make some provisions for their wives and family in case of their death, now I would like to ask; is it lawful for a native to make a will? Say under two or more witnesses properly signed? (sic)

This emerging property owning class comprised people who had received western education and christianity. They were:

- the more inclined to break with their past because of their allegiance to missions which have no particular admiration of native customs and which actively combat the ancestral cult which acts as a sanction to conservation.

As a result of the pressure from missionaries and the emerging propertied class, Choma and Gwembe districts introduced wills ordinance in the late 1950's. The Choma Native Authority Rule formulated rules under section 17 of the Native Authorities Ordinance (cap 157) stated:

If a person belonging to a village in the Choma-Tonga Area, has made a will with the requisite signatures of witnesses and deposited and registered it in accordance with sub rule (iv) of this rule and has directed therein that any of his property be deposed of on his death in some manner other than by native custom, then such directions shall be carried out except in respect of the following:
Property acquired by the testator by virtue of his tribal or clan affinities and not by his own efforts.\textsuperscript{52}

The Gwembe Tonga Native Authority Rule had similar provisions except that a testator would only make a will if his estate was worth at least £20.\textsuperscript{53}

This was a compromise law in the sense that it adopted the format of the British type of testation but at the same time recognizing some aspects of Tonga customary law of inheritance. For instance, an individual would not dispose of the property acquired through sharing bridewealth, inheritance or a gift from another member of his matrikin. The property acquired, through these ways was to remain in circulation among the members of the deceased's matrilineal group.\textsuperscript{54} Testation would only be made with regard to the property acquired through the efforts of his own or his household. A custodian of the property of the matrikin could not leave a will on this property even if his children had worked hard to safeguard it to ensure its multiplication. It was, however, a step towards providing social security of those who depended on the deceased.

The weakness of testation was that a person could entrust his estate to anybody he chose including members of his matrikin, at the expense of the immediate members of his household. For example, in 1956, a wealthy Tonga-Ila, Mucwayi, left a written will that his grand nephew Amos Malambo should inherit his estate.\textsuperscript{55} Mucwayi's will was witnessed by Chief Hanusonde but none of his matrilineal relatives witnessed it. So Mucwayi's maternal cousin, Siachinda supported by basimukowa (maternal relatives) contended that it was against the customary practice. Siachinda and his supporters took the case to Bweengwa court against Malambo. The court respected the wish of the deceased and ruled that the will was valid since 'it was legally made in accordance with an order made by the Plateau Tonga Native Authority allowing any person who wished to make a will to do so.'\textsuperscript{56} They appealed to the Plateau Tonga Appeal Court which ruled that Siachinda was the legitimate heir to the estate. The court said the will was not valid because it was made without the knowledge of the deceased's matrikin. It was decided that Malambo was to receive a share of the estate just like any other maternal relative.

It is no wonder that the wills law failed in the districts in which it was implemented, namely Choma and Gwembe. Written wills, as opposed to verbal wills which were common in Africa long before colonialism, were part of British legal system. As such they were supposed to be executed by courts organized in accordance with British common law. But on the contrary, wills law was entrusted to African traditional courts dominated by chiefs and headmen who were neither educated nor trained to execute it along western lines.
The point to be emphasized here is that the effort to reform the law of inheritance failed partly because those who favoured written wills were still too few to bring about meaningful impact on the rest of the Tonga society and partly because it was not given much publicity. Our research revealed that only a tiny portion of the Tonga population knew something about written wills. In fact there was no national law governing wills until 1968 when the post-colonial state made it clear that 'an adult African was capable of disposing of his estate by means of a will executed and attested in accordance with the requirements of the [British] Wills Act, 1837.' 57
NOTES

1 L W G Eccles, Commissioner for Lands to Acting Chief Secretary, April 16, 1934, NAZ, SEC 3/276 Land-European Settlement General Policy, Volume II.


4 Dixon-Fyle, 'Agricultural Improvement,' 586.

5 Interview, Aaron Kataso Nsalamuka, Malimba Farm, Chief Moyo, Choma, February 12, 1989. Today Nsalamuka boasts of a big orchard, a seven-roomed house, a farm, over 200 cattle, a tractor, a pick up, several farming implements and a water well.

6 Interview, Julius Munengo, Vice Principal and Redson Sialwiindi, Lecturer, Kanchomba Farm Institute, Penza, February 21, 1989.


9 Mazabuka Tour Report No 4, 1953, NAZ, SEC 2/1060 Mazabuka Tour Reports, 1953.

10 Mazabuka Tour Report No. 4

Chipungu also observed that most successful peasants had some basic formal education. See S N Chipungu, The state, Technology and Peasant Differentiation in Zambia: A case of Southern Province, 1930-1986. (Lusaka: Historical Association of Zambia, 1988) p 95.


13 Mazabuka Tour Report No 4, April 22, 1959, NAZ, SEC 2/1068, Mazabuka Tour Reports Volume 1, 1959.


17 Gwembe District Annual Report.
Detailed Court records for the period 1930-1964 are hard to come by because, according to the Chief Local Courts Officer, the colonial government did not leave proper court records. Interview, I B Masupelo, Chief Local Courts Officer, High Court of Zambia, Lusaka, April 12, 1989.


Chipungu, State, Technology and Peasant Differentiation, p 6

For an interesting study of women's agricultural and domestic activities after the introduction of new technology see Harriet Ntalasha, 'The impact of Agricultural Modernization on Women's Activities,' M.A. Dissertation, University of Zambia, (1986).

Cited in Ntalasha, 'Impact of Agricultural Modernization,' 65-66


Mazabuka Tour Report No 2.


Colson, 'Trade and wealth,' 613


36 Interview, Agness Bukoko, Village Sikapande, Chief Ofwenuka, Chisekesi, February 5, 1989.


38 NAZ, ZA 4/1 Reports on Tribal Laws and Customs: 1907-1910.


40 Mukulu, "'Villagers' Why They Do Not Sell Cattle' 17.

41 For similar discussion see Margret J Hay, 'Women as Owners, Occupants and Managers of Property in Colonial Western Kenya,' M Wright and M J Hay (eds) African Women and the Law: Historical Perspectives. (Boston: Boston University, 1982), 115

42 Elizabeth, Colson, 'Possible Repercussion of the Right to make Wills upon the Plateau Tonga of Northern Rhodesia,' Journal of African Administration, 2, 1, (1950), 26.


44 Tour Report No 5 of 1955

45 Colson, 'Possible Repercussions,' 31


47 Dixon-Fyle, 'Seventh Day Adventist,' 458

48 A short note on the custom of the Plateau Tonga Relating to the Practice of making Wills, 1956, NAZ, KSB 3/1 Mazabuka District Notebooks Volume II. According to most of our informants, verbal wills were not always respected especially in instances where the deceased left a lot of wealth.
For more information see NAZ, ZA 1/9/25 Native Customs: Wills and Inheritance (not dated).

Rev J L Myers, Macha Mission to Mr Griffin, Assistant Magistrate, Kalomo, August 10, 1926, NAZ, ZA 1/9/2/25 Native Customs: Wills and Inheritance. The state's reply to Myers' letter was that Africans were not ready to make wills yet. We should not forget that the state wanted to preserve customary law as much as possible, under the policy of indirect rule. They were only prepared to change it where it threatened their interests.

Colson, 'Possible Repercussions,' 26


Coissoro, Customary Laws of Succession P 101

Sometimes property acquired through bridewealth and inheritance kept on changing ownership for many years within one matrilineal group. See Allan, 'Land Holding and Land Usage,' 146-47.

Siachiinda and Basimukowa [matrikin] Vs Amos Malambo, Appeal Case No 35, 1956, NAZ, KSB 3/1 Mazabuka District Notebook, Volume II.

Siachiinda and Basimukowa Vs Amos Malambo

M V Lisimba, 'Succession and Inheritance Among the Plateau Tonga of Southern Province of Zambia,' School of Law, University of Zambia, Final Year Student Obligatory Essay (1972/73), 9.
CHAPTER FIVE

EFFORTS TO REFORM MATRILINEAL INHERITANCE, 1964-1988

In this chapter, we argue that the post-colonial state recognized the problem of women's week economic position in general and matrilineal inheritance in particular and made efforts to change the situation to suit new conditions. The women who were victims of customary matrilineal inheritance exerted a lot of pressure on the state to enact laws which would protect them. In addition to this, a property-owning class emerged between 1964 and 1980 and consolidated itself in the 1970's wanted a law which would keep its property intact after the owner's death. This class did not have strong kinship affiliations, a phenomenon which characterized matrilineal inheritance. Instead, it wanted to leave its property concentrated in the hands of the immediate family members, mainly the wife and children.

There was opposition to the state efforts, mainly from those who saw inheritance as a source of wealth and those who kept other people's property. Our research revealed that some of the Tonga, especially those living in rural areas, still practised matrilineal inheritance either because they founded their own homes using inherited property or they were custodians of other relatives's property. Despite this opposition there is sufficient evidence to show that the Tonga were moving towards partlineal inheritance.

Colonial Legacy

When the post-colonial state attained political independence, it inherited many colonial policies which perpetuated women's economic subordination. In chapter three we argued that the colonial state introduced British law while at the same time allowing customary law to operate alongside it. All cases involving Africans except those that the colonial state classified as criminal offences, were under the jurisdiction of customary law. Since law can either slow down or speed up social change, customary law slowed down social change. As Mutambirwa rightly points out, law can be creative, protective and prohibitive. It is a tool of social engineering. In this case British law operated to suit the capitalist system, but customary law was backward looking as it aimed at preserving the pre-capitalist social order. Many times the Tonga used both legal systems depending on which one was to their advantage at any one particular time. There were cases whereby if one had a chance to gain from a relative's death, one would opt for matrilineal inheritance system. If one saw that one's personal property was threatened, one would turn to British law, thus discarding customary ideology of obligation to assistance. This dual legal system was inherited by the post-colonial state and is still operational to date. This dual legal system affected women's rights and obligations particularly following marriage termination by either divorce or death of the husband. There was no law to ensure that spouses shared the property jointly generated when divorce occurred and to ensure that the surviving spouse and orphans inherited what the
deceased spouse left.

Even the Wills Act was not re-interpreted until 1968 when the state made it clear that one could make a will using the British Act of 1837. But due to lack of publicity and illiteracy, few people made wills. Almost all the cases we found in the courts, the deceased left no wills. Local courts, dealing with domestic disputes, tended to encourage reconciliation even if a wife insisted on her divorcing the husband.2

During research we observed that almost all divorce cases were brought to courts by women. This is hardly surprising since in the Tonga society, like many other societies that practise polygamy, it was the woman who needed a divorce certificate before she could remarry. A man could have one or more wives and could marry without necessarily getting the consent of the first wife, so long as he married under customary law, which most agricultural Tonga men opted for. Some writers have accused the post-colonial state of perpetuating colonial policy by failing to enact a law which would not discriminate against women on grounds of sex.3

The Zambian constitution is, silent on discrimination against women on grounds of sex. Muna Ndulo had this to say on this point, "In Zambia we have often boasted about the equality that exists between sexes yet beneath the speeches there is discrimination against women which is buttressed by article 25 of the Republic Constitution."4

In the last two chapters we saw that it was the heads of households who became the owners of new technology which they purchased through 'commodity production as well as from petty trading in manufactured goods, selling of livestock and livestock products... and even casual employment during off-peak periods of the agricultural cycle.5 This male ownership is explained in terms of the manner this technology was acquired after the Second World War. The colonial state gave out loans to boost African agriculture and the 'responsibility for repayment of the loans rested in the hands of the males, such individuals came to believe that they, rather than their wives or children owned the new technological devices.'6 When these males died, the means of production were subjected to matrilineal inheritance, leaving wives and children without any means of production unless the mother agreed to enter into levirate union with one of the deceased's male relatives even if this was against her will. The post-colonial state did not immediately take steps to redress the situation.

We have also stated, in our earlier chapter that female education was lagging behind. Those few who succeeded in getting regular employment were subjected to discriminatory policies like being forced to resign during breast feeding and re-applying after weaning the child. This practice which started during the colonial period continued in the early
phase of post-colonial era. According to the regulations of the Unified African Teaching Service, polygamy, adultery, illigimate pregnancy were offences. Members of this service were expected to live according to christian principles. Men who committed offences listed in this teaching service had their salaries reduced for a specified period, usually six months. But women who got pregnant were forced to resign.  

Due to lack of equality of opportunity, although the post-colonial state professed so, women were forced to depend on men for their economic survival.

**Women's Counter Strategies**

Women adopted a number of strategies to fight against subordination in general and ills arising from matrilineal inheritance specifically. The inherent problem in the composition of a Tonga household which comprised two (or more in a polygamous household) different inheritance groups was clearly seen in these counter strategies. Since each wife and her children belonged to one inheritance group, she would draw up a strategy supported by her children, to hamper production. To cite one example, Emam Mawili, who was married to an improved peasant, in Banakaila area, now a widow, recalled that she and her co-wife would refuse to go to the fields, or if they did, they did very little work. Sometimes they incited their sons not to bring home the oxen so that they would not go to the fields the following morning. They did this because their husband did not give them a fair share of the income from the sale of produce. She said they resented seeing her husband giving money and other forms of property to his relatives while she and her co-wife and their children received little, sometimes nothing from him. Colson also observed in the 1950's that women resented Tonga System of inheritance, forcing them to adopt counter strategies. Women and their children only enjoyed the product of their labour during his life time. Knowing very well that she would not benefit from her husband's estate she:

tries while she can to divert as much of her husband's wealth into the hands of her children as possible or she encourages them to break away from their father so that their labour does not go into his estate. She may encourage them to act in such a fashion that demand for fines and damages is a continual drain on her husband's estate.

Colson quoted one woman who told her children "involve yourselves in paternity and adultery suits. What does it matter? At least in this way we can use the wealth we have produced for your father." The task of herding cattle was for boys. But sons resented herding cattle for their father since they knew they would not inherit. Some went out to work in mining areas, settler farms or government service for individual advancement.
The other strategy herdboys adopted was killing cattle and making their parents believe the killing was accidental. Sometimes they just abandoned the cattle so that they would wander and graze in other people's crop fields. The indignant owners of the fields would demand compensation from the owners of the cattle.  

This trend continued in the post-colonial period. Since our research was conducted during the rainy season when people were busy in their fields, we physically witnessed the fields of one household where a man was married to ten wives who decided to boycott his fields because he did not share with them the proceeds after selling his 1,000 bags of maize during the 1987/88 season. They just grew sufficient for their own consumption. When we asked his wives why they had taken that collective action, they said they saw no point in working so hard since they were not given their share while he was still alive. They said they did not expect much from his estate after his death since they were many. It was common to find court cases where the wife kept on returning to her natal village during busy farming season.

The cases we have cited here were individual actions taken by rural women in their effort to resolve their problems. The Women's League of UNIP had done very little in rural areas where the vast majority of women were illiterate. It had tended to concentrate on educated urban women who were articulate in English. As a result most rural women were not aware of the advances their urban counterparts had made in pressurizing the state to make a law that would protect them. The Women's League Chairmen we interviewed agreed with us.

We have already pointed out that female education was not adequate enough to integrate a good percentage of women into the capitalist production. It is in the light of this context that educated women also adopted various counter strategies in their effort to minimize their dependence on men. They organised conferences, seminars and other fora where they discussed their problems and exposed them to the public through the mass media. One problem that was discussed was the plight of widows, particularly property grabbing by the relatives, including female relatives, of the deceased. Sarah H Longwe presented a paper at the 27th Congress of the International Alliance of Women in 1986 which discussed the plight of Enelesi Mulenga who worked tirelessly to accumulate household property. During the course of their marriage, Enelesi's husband, Flywell, became extravagant and left the farm. She had to take charge of the farm. The farm did so well that she was able to pay back a loan of K5,000.00 from Integrated Rural Development Programme (IRDP). When Flywell died, his father and sisters 'swept the house clean of furniture, pots and pans and the radio. Everything went, the house was literary left bare. They took the poultry, the pigs and even the farm tools.'
To protect the farm, Enelesi was advised by the deceased's uncle, Mutesa, to 'take Flywell's eldest nephew Paswell as her new husband. Enelesi could not face it, and refused.'

Other widows wrote to the press. One widow complained that after the death of her husband, his relatives met to "decide" what property they were entitled to in the house. Needless to say, they came to the conclusion that they were entitled to everything except my clothes and the children's clothes. They shared imported musical instruments, fans, refrigerator and other items. Since there was no electricity in the village, the deceased's father presented the 'refrigerator to one of his daughters who thanked him dearly.' Academic papers have been written to expose the plight of widows. This strategy was designed to exert pressure on the state to make a law that would provide them with security and protection of the property they were entitled to.

Despite the problems women faced in their households, marriage gave women better security. Both urban and rural women adopted strategies to safeguard their economic security within their marital relationships. One strategy was the use of medicine which they believed could ensure that their marriages would remain intact. Others used medicine to give them luck in their petty businesses such as street vending and marketeering, Keller has made a detailed study of this strategy in Mazabuka township.

In rural areas there were court cases where husbands sued their wives for using medicine on them. One such case came up in the Chiyobola Local Court in Chief Ofwenuka's area in 1985. The husband as plaintiff told the court that he regarded his wife as beautiful, well-behaved, clean and kind but he was surprised to find medicine in the house. When he asked her where she got it from, she told him she had been instructed by her friend Loveness, who had done the same to her own husband, to mix millipede with a herb called mulebelebe. On cross-examination, the wife told the court that she put some of the medicine in the husband's food and smeared some of it on the wall. She went further to explain that she put the medicine 'in the food for my husband to eat so that my husband could not divorce me'. She said Loveness's husband did not quarrel with his wife and was as humble as a millipede. She was fined two heads of cattle. All these strategies show women's struggles in their effort to improve their lot.

State Response to Gender Struggles

It is clear from what we have demonstrated in this study that women's role in the production of wealth was structured by both class and gender. After World War II, women were increasingly divorced from the means of production as their labour was mobilised towards commodity production. The income realised was mainly appropriated by men.
They were also denied the means by which they could improve their economic status by participating on an equal basis with men. The post-colonial state took measures not only to strengthen the social security and economic position of women but to protect the interests of the property-owning capitalist class by proposing and implementing the new law governing inheritance and written wills. Let us now examine these measures one by one.

Female Education

Although female education was still lagging behind male education, the post-colonial state made an effort to increase the number of schools catering for female education. Many schools were opened not only in Southern Province but in other provinces as well. As Nyeko pointed out, 'The independent government, aware of the scarcity of facilities for girls, opened secondary schools', and most of those who attained that education were employed in professional, political and administrative posts.23 This slightly improved the economic position of women. Today working women are not as vulnerable as those who are not working. Here we can cite a case of one widow, Ella Muleya, a teacher who lost her husband in 1986. When her husband, who worked for the Water Affairs Department, died intestate, his relatives shared everything in the house, and the house the deceased had built was inherited by his brother. Ella told us 'I personally came out with absolutely nothing, not even a safety pin which I think is the smallest thing.'24

When we asked her why she did not go into levirate marriage, she, like most educated christian women said:

I refused to be inherited because I loved my husband and I was convinced the man who wanted to succeed him would not look after me and the children in the same way as he did. So I thought it would be sheer waste of time. In fact those women who accept this practice are those who feel they are not economically strong enough to look after themselves and the orphans on their own. They want assistance from men.25

Ella, who had been keeping and educating her four children single-handedly ever since the death of her husband, refused to be cleansed sexually because, she argued, as a baptized christian in Brethren in Christ, it was immoral and dangerous with the prevalence of dangerous sexually transmitted diseases. She said she only accepted kucuta (another method of cleansing where the cleanser glides his/her buttocks on the thighs of the cleansed) after being pressurized by her relatives who still strongly believed in cibinde (madness believed to affect surviving spouses who are not cleansed).

At independence the state inherited a legal system which discriminated against women. A number of changes were made. Women could now go on paid maternity leave for three months, and those who contributed to the National Provident Fund could claim maternity allowance.

Apart from eliminating some of the discriminatory laws, the state provided schemes like National Provident Fund, Workmen's Compensation Fund and Civil Service Pensions where if a married man died intestate, his relatives could not withdraw his money unless the widow accompanied them.26

If an individual died intestate leaving a bank savings book, the money could only be withdrawn by an individual appointed by a local court in accordance with the provisions of the Local Courts Act.27 For instance, a woman, Easter Ngoma, died on 3 March 1965 leaving a bank account from which the relatives could not withdraw until 1974 when relatives selected her young sister, Erma Hanyinde, to be appointed by the court. She told the court 'The money at the Bank is amounting to K720.74. When I went to obtain it I was told to get a letter of appointment from the court. I want the court to appoint me as an administrator of my late sister Easter Ngoma.'28

The other statutory measure to ensure the security of the surviving spouses was to encourage people to marry under the Marriage Act because marriages contracted under this act were not affected by any incapacity imposed by customary law. During the colonial period this act applied predominantly to whites. The advantages of this act were that marriage dissolution could only be done in accordance with statutory provisions by the High Court and the surviving spouse was automatically entitled to the deceased's estate.29 But as we argued in chapter four, many Tonga men did not usually marry under this act because they were either ignorant of it or they deliberately avoided it because customary law gave them the advantage of marrying more than one wife to provide labour.

Despite these statutory provisions to reduce the plight of the surviving spouse, many lawyers have argued that more remained to be done. Ndulo has argued that Zambia had done less than Zimbabwe and Tanzania as far as the laws of succession were concerned.30 Banda has argued that Malawi had done more than Zambia by enacting the Wills and Inheritance Act, Cap 10.02 which provided that the state did not just appoint an administrator but distributed the estate as well.31 One weakness of these provisions is that they mainly favoured the urban woman; rural women, most of whom were illiterate, remained vulnerable to customary law of inheritance.
in-charge of women's programmes under the auspices of SIDA at Kanchomba Farm Institute, the programme started in 1984 and each year twenty women were given loans. Each member, regardless of marital status, received one Lima which was periodically inspected by the Officer-in-Charge. After four years, they graduated to join the Southern Province Co-operative Union and each was then given a hectare.\textsuperscript{37}

In 1989, there were thirteen similar SIDA clubs in Macha, which like the Kanchomba ones, traced their origins from Home Economics Clubs started in 1975. According to Paul Jalata, the response from women was good because the sponsors gave credit and technical know-how to members, inspected their plots regularly, organized field days and each of the best producers got a bonus of two bags of fertilizers (basal and top dressing) and a bag of seed maize at the end of the season. Some husbands accepted these programmes because of the facilities their wives received. Unlike Co-operative Unions, SIDA paid its members promptly.\textsuperscript{38}

Chilivumbo and Kanyangwa have, however, criticized SIDA programmes in the following terms:

The concept of making women self-reliant is a good one but it should be realized that it has western colouration. It assumes that women in the traditional setting are economically dependent on their husbands .... Therefore the idea of making women economically independent of the household did not please some men. It was felt that this challenged the smooth running and management of the household in the rural setting.\textsuperscript{39}

In their view, "the programme should stress on making women good producers rather than making them feel that they are participating in the programme to make them independent of their husband's financial support."\textsuperscript{40} It is not actually a mere assumption that Tonga women were dependent on men as Chilivumbo and Kanyangwa assert here. Women's dependency became clearly manifested when the male (husband or guardian) who had been looking after them died as they had to desperately look for another male to take care of them. They are, however, right when they argue that some men saw SIDA programmes as a challenge to household heads and to the smooth running and management of households. Most men wanted women to remain dependent on them so that they could use their labour cheaply. Agricultural Officers complained that in some cases women failed to turn up for training at farm institutes because the husbands forbade them. In some cases a wife would secure a loan either from SIDA or a Co-operative, but the husband would either plough her plot late or would refuse completely so that she was forced to hire another person to plough for her.
Sometimes she failed to use the loan because she had no support.41

Despite these problems women programmes were gradually picking up. The government changed its earlier policy that if a husband got a loan from, say, a co-operative union, his wife could not. Now anybody above eighteen, regardless of sex or marital status, could secure a loan. This should also be understood in terms of the government's emphasis on agricultural development.

We must caution against the assumption that any married woman who secured a loan got an income of her own considering it has recently been noted that peasants had adopted a new strategy of evading re-payment of loans. It was not uncommon to find a married man who failed to repay his loan for the previous season sending his wife or wives to secure loans for him. On paper it was a woman who secured the loan when in reality it was the husband. Sometimes children eligible for loans were used.

Matrilineal Inheritance and Social Change

It was observed during our field work that the Tonga society was divided on the subject of who should inherit what the deceased left when he or she died intestate. Some were still in favour of matrilineal inheritance, especially in rural areas, while others preferred patrilineal inheritance. However, even those who still favoured the matrilineal accepted that children of the deceased should be considered in the estate of their deceased father. Few accepted that the widow should be a beneficiary of her deceased husband's estate in recognition of her contribution to that estate.

We have attempted earlier to show how different forces associated with the penetration of capitalism impinged on the Tonga society, causing dislocation of its basic principles. Contradictions arising from the social changes that have taken place over the years have manifested themselves in different forms. We cite a few examples below.

In chapter two we demonstrated that the only people eligible for inheritance of the property left by an individual were those who belonged to the deceased's lineage. The widow and orphans were taken care of by the successor. During the course of colonial rule this began to change because women and their children came to occupy a key role in the accumulation of household property. This gave a right to claim the estate because of their contribution. As capitalism entrenched itself, people began to acquire scarce but more advanced forces of production. Since most of them were not locally manufactured, the demand for them was very high, thus heritable. These included such tools as ploughs, cultivators, scotch carts, tractors, grinding mills and hand mills.

The right for the widow and orphans to claim what the head of the household had left by virtue of their contribution to the accumulation of household property precipitated conflict between the deceased's immediate family (his wife and children) on the one hand
and his matrikin on the other. In other words, new property relations were in conflict with the old ones. Sometimes the practice of widow inheritance was rejected by widows because of the new values they had adopted. Similarly, some Tonga men received western education alongside Christianity resulting in them perceiving the world in the western perspective and adopting western values. They no longer adhered to the old Tonga social order and questioned its jurisprudence including matrilineal inheritance. One case came up in the Mwanza Local Court in 1975. One rich peasant died intestate leaving a lot of farm machinery: four ploughs, three harrows, a brick house roofed with culgated iron sheets, a water well and many cattle. The father to the deceased was given a plough and five cattle. The rest were shared among his nephews and brothers, with Hatwaana, the administrator to the estate, receiving the biggest share. The children complained that they had worked with their father to accumulate this wealth they had shared. The case was taken to court where the court ruled in favour of the children. The defendant, Hatwaana was ordered to give one quarter of the estate to the children in recognition of their contribution to the estate.

A similar case came up in Choongo Local Court in Monze in 1982. A man who owned a lot of farm equipment and over two hundred head of cattle died without leaving a will. His young brother promised to look after the widows and children of the deceased. The relatives selected him to go to court to receive an appointment order as required by Section 36 sub section (1) Cap 54 of the Laws of Zambia. But the administrator did not fulfill his promise of looking after the dependants of the deceased. He even started selling some of the cattle and the tools. The sons of the deceased went back to court to have the appointment order revoked as per section 36 sub section 2 (b) Cap 54 of the Laws of Zambia. The court revoked the appointment and the new administrator was asked to give the complainants a share of their father's estate.

In some cases sons took over their father's estate on the grounds that since they were the people responsible for generation and looking after that wealth; something that was unheard of in the pre-colonial times. For example, when William Matengu Likuuka died on 29 November 1976 in Siachitema's area, Choma, his eldest son, James Matengu was selected to be in charge of their father's estate despite protests from the deceased's matrikin. The sons argued that their paternal uncles did not help the deceased to acquire some property. Likuuka struggled with his children to acquire the estate, through agricultural venture and also charging fees to clients as he was a herbalist. According to our informant, R M Mantengu, the estate has remained intact to date.
Another recent case which shows conflict between matrilineal group of the deceased and his children and widows happened when a prominent and very rich commercial farmer and member of Parliament, Landson Hantuba, died intestate on 4 January 1988. When he died he was in the process of forming a company to be called Dinde Natoba Farms Limited, in which he and his sons were to be on the board of directors. He left an estate which, according to his eldest son, was valued at about K12 million, comprising among other things, ten vehicles, a big house, two boreholes, an orchard and over seven hundred head of cattle. He was survived by two wives and 14 children whose ages ranged from 3 to 26 years. 46

Since there was no written will at the time of his death, his brother (his name was withheld) supported by relatives, was appointed administrator of the estate under the Tonga Customary law of inheritance. 47 The estate was not shared, it was still intact at the time of our research. The eldest son, M Hantuba, as an interested party in the estate, did not want the estate to be inherited in a customary way. He also said, although he worked so hard on this farm to see it grow, he was not given anything after the death of the father. He approached the Administrator-General to write to Hamaundu Local Court to ask the court to revoke the appointment. The Administrator General obliged. The Court Clerk wrote back to him that the court had no power to revoke the appointment unless maternal relatives of the deceased went back to the court to revoke the appointment as stipulated under section 38 sub section (1) (b) Cap 54 of the Laws of Zambia. The Administrator General's Act, Cap 220 of the Laws of Zambia in Section 32 sub section (1) says it does not deal with estates in which Section 36 Cap 54 of the Laws of Zambia applies. The Administrator General probably wrote to Hamaundu Local Court using his discretion since in section 32 sub section (2) says he can write to the court concerned to revoke the appointment so that "the estate of the deceased person should not be administered in terms of African Customary Law." The case is still pending to date.

In some cases the children and the matrikin of the deceased shared the estate. For example when Mason Habulemba died in October 1987 he left no written will as he kept on withdrawing the wills he had made. He left a big estate of a big shop, farm machinery, farm house and over two hundred head of cattle. These were shared. The eldest son was given part of the shop in recognition of the children's contribution in their father's estate. The one who inherited the shade inherited the buildings. The remainder of the shop and the farm were given to his nephew, Mathias Mumba, to administer on behalf of the maternal relatives. He was made manager of the shop called Macheba Trading in Monze. According to him, the deceased got help from his matrikin to establish both the farm and the shop and they were still doing so, so that both of them could continue growing. 48
We could not get the views of the son because he did not want to discuss the estate of his father as what had happened was still vivid in his mind.

Many Tonga interviewed, especially elderly ones, stated that only members of the deceased's lineage were entitled to inherit the property left behind. But this was not matched with practice. For example, Cephas Munyati of Chief Choongo was selected to administer his father's estate when he died in 1986.\textsuperscript{49} Another case occurred in Chief Moyo's area in 1987. Andrew Hampongo Chilala was appointed administrator in the estate of his son, Amos Munsanje who died on 12 January 1987. Chilala said he would support and educate the deceased's six orphans and would also support the widow. He was supported by the deceased's brother Raymond Moono, who, according to customary law, should have been the rightful heir. Moono told the court that Chilala had the support of the other relatives who were not in court at the time.\textsuperscript{50}

There is evidence to show that a woman could now inherit a man's estate and vice-versa. In 1975, a woman, Twaambo Chinoyena of Chief Munyumbwe was appointed in Mazabuka Local Court to inherit her late brother's estate which comprised his furniture (radio, refrigerator, chairs and tables, beds) and cattle which were at his home village. The deceased, Amos Siamutete, left three children whom Chinoyena kept. In court Chinoyena was supported by a niece to the deceased, Agness Muyasani. Chinoyena also promised to pay back debts Siamutete left behind.\textsuperscript{51}

This case was similar to a case which appeared in Monze Local Court in 1989 in which a woman, Everet Mwiinde Hatontola, of Chief Siachitema in Choma, inherited the estate of her brother who worked as Manager at the Development Bank in Lusaka. She said she would use the money he left to educate the orphans. She was supported by her father who argued that the money should be used for the benefit of the orphans since the whereabouts of their mother (the widow) was unknown. She had disappeared while they were still at the funeral.\textsuperscript{52} In 1974 a father claimed the estate of his daughter and was allowed by the court after being supported by the deceased's matrilineal group.\textsuperscript{53}

There were also a few cases where widows were allowed to administer the estate of their deceased husbands. One of these cases was that of Grace Silimela of Chief Mukuni in Kalomo district who was allowed by the Livingstone Court to inherit the estate of her husband who had been working for Public Works Department in Livingstone. The court ruled in her favour taking into account that the deceased left six children.\textsuperscript{54}

All these cases show the dynamism of society: customary law no longer operated as efficiently as it used to in the pre-colonial period. Pre-capitalist property relations were changing to suit new conditions. It would be erroneous to assert that customary
law had wholly changed because there were some cases in rural areas which showed that it was still being applied. However, those who still favoured customary law were not as rigid as they were in pre-colonial period. At the time of this research, the person to be chosen to cleanse the widow was consulted. Relatives of the deceased wrote names of the possible cleansers if the widow still believed in cleansing. The widow ticked the name of the man to cleanse her and later marry her. Sometimes the list was passed to the children for approval. This was reflected in a case that appeared in Mazabuka court in 1983 when Judah Gwamina of Village Sinadambwe in Gwembe District wanted to be appointed administrator of his maternal uncle, Makala, who died on 26 May, 1982 in Choma Hospital. In supporting Gwamina the first widow said she wanted him to succeed the deceased because he cleansed her and inherited her in accordance with the Tonga custom. He was keeping the 18 children. The second widow had no objection in him being appointed administrator because he cleansed her. The first born daughter told the court on 30 December 1983:

I have no objection to plaintiff's claims at all.
Plaintiff is my cousin. But traditionally he is now my father being the man who cleansed ....
my mother when my father died. 55

Sometimes even when inheritance was done along matrilineal lines, widows, especially those who had children with the deceased, were given part of the estate. Many widows interviewed acknowledged this. It was reflected in a case where the magistrate was trying to establish how cattle of the deceased were shared. He discovered that all the three widows were given a beast each. Other beasts went to the nephews and brothers including the defendant and plaintiff. 56 Sometimes members of one matrilineal group quarrelled over the shares of the deceased's estate. In 1965, Bbailu Sibbulu sued his maternal nephew J Syakangala who grabbed four cattle, two of which were alleged to belong to the plaintiff but had been under the custody of the deceased. After hearing the evidence, the court ordered the defendant to handover the two animals to the plaintiff because they were proved to be his. 57 A similar case came up in the same court in 1969 when Maxwell Syanengeta sued Sautu Syampongo for inheriting seven head of cattle which were not due to him. The plaintiff, Syanengeta, argued that he was the rightful person to inherit them. When the court adjourned, the two decided to settle the case out of court. 58

Sometimes conflict arose because some individuals knew that once they were chosen as administrators of the deceased's estate it became their property. So they would appear good to the relatives to win nomination and court approval. Then they would use
the estate the way they liked. This can be demonstrated by the case of Godfrey Chibomba who was appointed by Livingstone court to administer the estate of the Late Benson Cheelo who had worked for Zambia Railways. He squandered the money and household goods and refused to share with his relatives and the immediate relatives of the deceased. The relatives took the case to Macha Court where the appointment order was revoked and Vincent Sinkamba was appointed in his place. 59

If funeral rites were not performed properly, a serious conflict could erupt among the deceased's matrikin. In 1987 a case appeared in Monze Local Court in which Solomon Maambo sued his maternal uncle Besten Hachilala over the cattle left by his late maternal uncle, Hapongo Maambo who died intestate in 1986. The grounds for suing Hachilala were that Maambo had been chosen to cleanse and inherit the widow (the deceased had divorced the other two wives prior to his death). Since Maambo lived far away, relatives chose Hachilala, brother to the deceased, to inherit the shade, violating the customary law which was that whoever cleansed the widow also inherited the shade of the deceased. When Maambo approached Hachilala to get some of the cattle, the latter told him he had no share. Knowing that as cleanser of the widow he was entitled to some beasts, he decided to sue Hachilala but Monze Local Court ruled in favour of Hachilala. Maambo was not satisfied; he appealed to the Magistrate's Court. After hearing the evidence from all the parties concerned, including Isaac Matimba, son to the deceased, the magistrate established that after many people were given their shares of the estate, only 16 cattle remained. He accordingly ruled that Plaintiff, Maambo, should take the 16 cattle since he cleansed and married the widow and would later take care of the orphans. He concluded 'This being so I accept the Tonga custom that requires the person who purifies and marries the widow to look after the animals of the estate of the deceased on behalf of the members of the family.' 60

In our research we found out that the Tonga in Chieftaincies to the west of present day Monze, the Ilia of Namwala and Toka-Leya of Kalomo and Livingstone Districts usually tended to favour patrilineal inheritance. Sons could inherit their fathers' shades and estates. 61 In Chief Choongo we were told that there were cases where a son would cleanse his late father's wives except his own mother and later marry them. This began to appear in the 1950's 62 The Tonga in other chieftaincies thought this was incest. 63

Some people attributed the shift from matrilineal inheritance to patrilineal among the Ilia and Toka-Leya communities to Lozi influence in these areas. Many people in Kaingu Chieftaincy of Namwala were originally Lozi. In 1921 Chief Kaingu told the Native Commissioner that his father was a Lozi who had settled in that area. 64 Most Toka-Leya bear names similar to Lozi.
New Law of Inheritance

Since 1973 there has been a debate on matrilineal inheritance which has been strained by new forces of change. The penetration of capitalism initiated a number of changes. Most Tonga began to abandon their ideology of obligation to assist one's matrikin and collective responsibility. This was gradually being replaced by the western values of exclusive rights of an individual, and the law was designed to foster this ideal. Private ownership of property was one such right. The Tonga consolidated individual ownership invested in male heads of households. This in turn marginalized the rights of women which had hitherto been guaranteed under the matrilineal system. Women's loss of control of means of production worsened their position. Western education which was the major pre-requisite to integration and active participation in capitalist production ventures was man oriented. These factors exposed women and children to all sorts of hardships which became evident at the death of the household head. As a result some women were forced to enter into levirate marriages with the deceased's male relatives as this ensured them a claim of support from their husband's estate and the successor would be responsible for their maintenance.

Since beliefs also change in changing material conditions, some women started questioning the belief in the power of spirits which some men used as their ideological weapon to justify and enforce their inheritance claims.65

Although women had cried for a law to safeguard their right to inheritance, they had not been united. It had been common to see women grabbing property from fellow women, not taking into account that some day they themselves might be widows.66

The opposition to the inheritance bill came mainly from men. They wanted to continue taking advantage of Zambia's dual legal system, especially customary law which was not codified and could be interpreted in so many ways depending on the court assessor's understanding and knowledge of local customs. Inheritance was seen by many as a source of property. Those who knew that they had better chances of acquiring property through matrilineal system tended to support it.

The custodians of their maternal relatives property also tended to support customary law because of the benefits accrued from such property. Among the Tonga cattle, ploughs, scotch carts, and other means of production were seen as important sources of wealth. Some kept other people's cattle so that they could engage them into agricultural ventures. When such a custodian died, his children and wife were likely to remain destitute because the real owners would withdraw that property and give it to somebody else, if they themselves could not keep it for one reason or another. If the de facto owner of that property died, the custodian would have better chances of claiming it.
Keeping other people's property sometimes precipitated serious complications when the custodian died. Many informants told us it was a common practice in rural areas for some female members of one's matrilinage to give a male relative some cattle, usually from their daughters' bridewealth. That man would use those cattle in his agricultural enterprises and after some years those cattle would multiply. The man might expand the herd by buying more through his individual effort, especially from the sale of agricultural produce. The cattle and some equipment bought through the efforts of the household was seen by the children as their father's, but the matrilinage group saw them as theirs since the initial capital came from them. When that man died, his sons would claim the property bought through their efforts while the matrilinage group of the deceased used customary law. Sometimes the children would give up after being threatened with witchcraft which many people still believed in. The new law was likely to encounter the difficulty of ascertaining which property the deceased had de facto ownership. If it assumed de facto ownership in all the property in the deceased's household, there would be more litigation in court.

Most of the Tonga men with more than one wife opposed the law because, they argued, it would be difficult to choose one son or daughter to administer the estate of the deceased on behalf of all orphans because he or she might concentrate on his or her brothers and sisters, ignoring the step brothers and sisters. They saw a maternal nephew or brother to the deceased as a neutral person.

Despite this opposition to the new law, the majority acknowledged the need for a revision of the existing legislation to enable wives and children, especially the latter, to inherit household property. The absence of such a law forced those men who believed in nuclear family to practise what Norman Long has termed "anticipatory inheritance". This simply means that a father transferred some of his equipment and cattle to his son or sons so that should he die intestate, his children would not remain destitute. Sometimes men who made anticipatory inheritance to their children did it without the knowledge of their matrikin who might want to retrieve the property from them after he was dead. One peasant in Chief Ofwenuka, who decided to remain anonymous, said he gave a big portion of his head of cattle and some implements to his sons who went to settle away from his farm.

Although the debate started in the 1970's, it was not until the 1980's that important steps were taken towards enactment of the law. We argue that the process of making a law has been hastened by the consolidation of a property-owning class which began to appear in the 1970's. The 1968 economic reforms reinforced by the land reforms of 1975 facilitated
the formation of the capitalist class in Zambia by replacing the economic dominance of foreign capital by indigenous capital. Although the political leadership introduced the leadership code to regulate property acquisition by those designated as leaders it had weaknesses and was opposed by some leaders. Africans purchased land formerly owned by Europeans.

Baylies and Szeftel recorded that 'one of the first of these [Africans] purchased a 3,000 acre farm, near Monze in 1963; by 1970 he had added two adjoining farms to bring his holding to about 8,000 acres.' The leadership code did not include land which was under customary tenure. So it was possible to acquire a vast amount of land. According to Baylies and Szeftel at national level there were approximately 356 individual Africans who held land under freehold or leasehold title covering 430,000 acres. Some 263 of these had holdings of over 50 acres, the average of this group being 1,630 acres but reaching 3,100 acres in Kalomo District and 3,500 acres in Choma District.

By the 1980's there was a distinct capitalist class with capitalist conception of ownership of property, that is the owner of property had absolute right and power to use and dispose of it as he wished. This class sought to get rid of customary inheritance which was wasteful as it was characterised by the dispersal of the deceased's estate in conformity to the principles of extended family system. This class would rather see the estate passed to another administrator intact so that economic ventures of the deceased could continue operating with minimum disruption. State intervention became inevitable since one of the functions of the state is to protect the interests of the dominant class. In fact the state is the reflection of the dominant class. Mutambirwa had a point when she stated:

The point to be noted is that law is enacted and made by a certain class in society. This class usually comprises the most affluent members of society; the individuals with most political influence and in some societies the individuals with the most religious influence.

In Zambia, the Parliament has been dominated by property owning class. According to the new law, effected on 19 May 1989, anybody who did not leave a will as provided by the Wills and Administration of Testate Estates Act, 1989 his estate would be shared in accordance with the provisions of the Intestate Succession Act, 1989 Section 5 which stipulates that 20 per cent of the estate would go to the widow or widows, 50 per cent to the children, 20 per cent to the parents of the deceased and 10 per cent to the dependants in equal shares. The essence of the law is to make adequate financial and other provisions for the surviving spouses, children, dependants and other relatives.
NOTES

1 See Priscilla Mutambirwa, 'Women and the Law: The Law Discriminates Against Women Directly and Indirectly,' University of Zambia, School of Law, Obligatory Essay for Final Year Student, (1981/82)

2 There are a lot of court cases in which courts ordered the couple to reconcile despite the wife's protest.

3 Republic of Zambia Constitution, Part III Article 25 Sub section (3) defines discrimination as "affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are not subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description."


6 Chipungu, State, Technology and Peasant Differentiation. p 116.

7 For detailed cases in the period 1960 to 1967 see Livingstone Record Centre (LRC) CON/31/D African Education, 25/5/60-14/2/67.

8 Interview, Emma Mawili, Village Hikulya, Chief Choongo, January 24, 1989.

9 Elizabeth Colson, Marriage and the Family Among the Plateau Tonga of Northern Rhodesia. (Manchester: Manchester University Press, 1958) PP 118.

10 Colson, Marriage and the Family. P 118


12 Colson, 'Role of Cattle,' 41

13 Group interview, Raphael Simonga, Andrew Simonga, Maria Simonga, Selina Simonga, Martha Simonga, Village Mpande, Chief Moyo, Choma, February 11, 1989.

14 Interview, Sarah Mudenda Moono, District Women's League Chairman, Monze, January 18, 1989; Martha Mudenda, District Women's League Chairman, Choma, February 3, 1989.

15 See 'The Double Agony of Being Widowed in Zambia,' Women's Exclusive, 2, (1987), 15
16. 'Double Agony of Being Widowed in Zambia', 21
17. 'Double Agony of Being Widowed in Zambia', 21
19. 'Human Vultures Swooped on Late Hubby's Goods,' 4
22. Sinchu Chamwali Vs Naumie Sileu, Case No 402 of 1985, Chiyobola Local Court, Monze
24. Interview, Ella Muleya, Mbabala Primary School, Choma, February 27, 1989.
25. Interview, Muleya, Mbabala Primary School.
26. Mwila G Banda discusses these in great detail. See Banda, 'The Plight of the Widow in Urban Zambia,' 14-16, See also M V Lisimba, 'Succession and Inheritance Among the Plateau Tonga of Southern Province of Zambia,' School of Law, University of Zambia, Final Year Obligatory Essay, (1972/73), 14-19.
27. See article 36, Cap 54 of the Laws of Zambia.
28. Ermah Hanyinde, Case No 64 of 1974, Monze Urban Court, Monze. Almost all the cases of appointment of administrator of estates that were taken to courts involved estates left by people who were in wage employment and had left money in banks or National Provident Fund or Civil Service Pension. There were a lot of such cases in courts.
29. See the Marriage Act, Cap 211 of the Laws of Zambia.
30. See Ndulo, 'Inheritance Laws Lopsided,' 4
33. 'The Double Agony of Being Widowed,' 21
34. Muntemba, 'Women and Agricultural Change,' 21
Interview, Cephas Munyati, Village Munyati, Chief Choingo, Monze, January 24, 1989.
Andrew Hampongo Chilala, Case No 36 of 1987, Moyo Local Court, Chief Moyo, Choma.
Twaambo Chinyama, Case No 1139 of 1975, Mazabuka Local Court, Mazabuka.
Everet Mwinde Hatontola, Case No CR 048 of 1989, Monze Local Court, Monze.
R Namamba, Case No 256 of 1974, Monze Local Court, Monze.
Grace Silimela, Case No 609 of 1974, Livingstone Local Court, Livingstone.
Judah Gwamina, Case No 1259 of 1983, Mazabuka Local Court, Mazabuka.
Solomon Maambo (Appellant) Vs Besten Hachilala (Respondent), LCA/35/1987, Monze Subordinate Court Class I; Monze.
Bbailu Sibbulu Vs J Syakangala, Case No 22 of 1965, Chipepo Local Court, Chief Chipepo, Gwembe.
Maxwell Syanengeta Vs Sautu Syampongo, Case No 36 of 1969, Chipepo Local Court, Chief Chipepo, Gwembe.
Vincent Milimo Sikamba, Case No 54 of 1988, Macha Local Court, Chief Macha, Choma.
Solomon Maambo Vs Besten Hachilala
See 'A short note on the custom of the Plateau Tonga Relating to the Practice of Making Wills,' NAZ, KSB/31 Mazabuka District Notebook, Volume II; Edith Colson, 'Possible Repercussions of the Right to make Wills Upon the Plateau Tonga of Northern Rhodesia,' Journal of African Administration, 2, 1, (1950), 26; Robin Fielder, 'Economic Spheres in Pre-colonial Ila Society,' African Social Research, 28, (1979), 621.
During group interview with Chief Macha and Headman Macha, we were told that in an effort to find a permanent solution to matrilineal inheritance whereby orphans and widows were left destitute, Chiefs in Choma and Namwala met at Chief Macha's palace. During that meeting chiefs in Choma rejected the proposal from Namwala Chiefs that sons should inherit their father's estates, including cleansing widows and inheriting shades. To Choma chiefs, this was totally unacceptable because, they argued, sons should regard their father's wives as their mothers. In Chief Moyo's area, Choma, when we brought up this subject one informant quickly quoted the bible; Leviticus Chapter 18 which prohibits sexual intercourse between close relatives.
See NAZ, KSF 1/1/1 Ila Customary Law: Marriages and Inheritance, 1921-1928. Bruno Mwiinga who has also done research among the Tonga for his vernacular books thinks the Ila have greatly been influenced by the Lozi. Interview, Bruno Mwiinga, Principal, Charles Lwanga Teacher Training College, February 6.
Solomon Maambo vs Besten Hachilala

Human Vultures Swooped on Late Hubby's Goods,' 4


See Norman Long, Social Change and the Individual: A Study of the Social and Religious
responses to Innovation in a Zambian Rural Community. (Manchester: Manchester

For detailed discussion of Capitalist class formation in Zambia See Carolyn L Baylies
and Morris Szeftel, 'The Rise of a Zambian Capitalist Class in the 1970's,'
of land reforms see Mphanza P Mvunga, 'Land Law and Policy in Zambia,'
Zambian Papers, 17, (1982), 85.

Mvunga, 'Land Law and Policy,' 83-86.

For opposition of leadership code see Baylies and Szeftel, 'Rise of a Zambian Capitalist
Class,' 203-04.

Baylies and Szeftel, 'Rise of Zambian Capitalist Class,' 190

See Mvunga, 'Land, Law and Policy,' 85-91

Baylies and Szeftel, 'Rise of a Zambian Capitalist Class,' 191

See Frederick Engels, The Origin of the Family, Private Property and the State.
(London: Lawrence and Wishart, 1972) pp 229, 235. See also V I Lenin
'The State: A Lecture Delivered at Sverdlov University, July 11, 1919,'
V I Lenin, Collected Works, March-August, 1919, Volume 29. (Moscow:

Mutambinwa, 'Women and the Law,' (No page) For further debate on the role of the state
on the protection of class interests see Baylies and Szeftel, 'Rise of a
Zambian Capitalist Class,' 187.

Baylies and Szeftel, 'Rise of Zambian Capitalist Class,' 201-02.
CHAPTER SIX

CONCLUSION

In this study we have attempted to demonstrate that on the eve of colonialism, the Tonga matrilineal inheritance system was based on the basic principles of corporate responsibility. The Tonga social formation was organized in such a way that it provided for social security to individuals in time of need and distress. The formation of the family or the dissolution of it due to death was the concern of all the members of the lineage since the household was the basic unit of the larger community. If one of the spouses died, the large community intervened by making a substitution to prevent destitution by those dependent on the deceased. In this way the continuity and social security of the family was guaranteed. Although the widow and orphans were not entitled to inherit the estate of the deceased head of the family on account that they belonged to different lineages, they continued to enjoy the use of the bigger portion of the estate through the successor to the deceased. It should be noted here that matrilineal inheritance has an advantage over patrilineal inheritance especially today when divorce rate is so high and there are numerous cases of illegitimate children. In matrilineal inheritance system regardless of one's paternity (legitimate or otherwise) one had an undeniable right to inherit from one's matrilineal group since parentage through the mother is undisputable.

The Tonga belief in the power of spirits (mizimo) was (and still is among some Tonga) used as an ideological weapon to justify and enforce inheritance claims. This is manifested through cleansing and inheriting the shades of the deceased.

The penetration of the capitalist system at the beginning of this century brought new forces which disrupted the existing social order. The forces which accompanied the capitalist system such as British legal system, western education, urbanization and christianity weakened the bonds of kinship and customs, one of which was matrilineal inheritance of property left by individuals who died intestate. The capitalist system tore apart the Tonga society into two groups, the urban areas and rural areas. The impact of capitalism was not as intensive in rural areas as in urban areas where most of those with western education lived. The development of this was facilitated by the indirect rule which tended to preserve traditional institutions and customs. This type of administration brought about co-existence of older forces and new ones throughout the colonial period. Since there were no drastic changes to redress the situation, this trend continued in the post-colonial era. Contradictions emanating from the two social orders manifested themselves in different forms but in this study we are mainly interested in the new demands by some sections of the Tonga society to reform the inheritance system both in colonial and post-colonial period. Those people
who were fully integrated into the capitalist system called for a system of inheritance which suited new conditions while those who were either partially integrated or stood a chance to benefit from the old system opposed any move to change it.

We have also argued in this study that in the period preceding capitalist penetration, property accumulation was limited because of insecurity caused by periodic raids on the one hand and low level of productive forces on the other. Most of the instruments of labour employed in the production process were made from local resources to which most members of society had access. Very few tools were monopolised by few and these were usually not locally manufactured. Land, though important, was not subjected to inheritance mainly because of its abundance. The penetration of capitalism as an economic order was accompanied by a type of state machinery which created conducive conditions for the Tonga to accumulate wealth through such economic ventures as commercial agriculture and wage employment.

The opening up of copper mines on Zambia's copperbelt and the emerging of towns provided markets for African agricultural produce and livestock. This enabled many Tonga to acquire property which was locally manufactured such as ploughs, harrows, scotch carts, furniture, radio, etc. This type of property was scarce and therefore heritable.

As the financial demands on Africans and the need to participate in the cash economy increased, more Africans were integrated into the capitalist production creating new forces on the land. More strain on the land set in as the colonial state invited in more white settlers. The scarcity of land and the increased economic value of it made it a heritable immovable property as those who owned it passed it to their matrikin at their death.

Most of the production was on household basis since very few Tonga could employ wage labour. Consequently, women and children in the household assumed the new role of direct commodity producers. During the colonial period, particularly after World War II, the situation was such that technology was acquired by men. They usually secured loans from the state and colonial government policy was that men were given the responsibility of repaying the loan. So in the household, the re-payment of the loan was the responsibility of the head of the household. This explains why household heads came to regard wealth acquired through household labour as their own and not their wives' and children's. When the household head died, the widow and the orphans lost what they considered to be their property as it was inherited by the deceased's matrikin. Those property owners who were no longer affiliated to kinship bonds sought
a new system of inheritance which would provide social security to the members of the
family by not only concentrating the wealth within the immediate members of the family
(wife and children) but also stop the wasteful system which dispersed the estate
throughout the members of the deceased's lineage.

The women folk were also in the forefront in calling for a law that would make
them secure after the death of the husband since they and their children were the
most vulnerable to the matrilineal inheritance system.

After the demise of colonialism, the post-colonial state did not immediately
reform the inheritance system although programmes aimed at strengthening women's
economic position were embarked on. It was not until the 1980's that the new Zambian
capitalist class in collaboration with educated womenfolk sought a law which would
ensure that what they leave behind remains within the household. This law was at long
last passed in May, 1989. It remains to be seen if the law will be followed by the
rural Tonga who still feel that they are still bound by kinship obligations. Widows
and orphans might fear to enforce their new legal rights in court as they are likely
to fear that they would be threatened with witchcraft which is still feared by many
Tonga.
SELECT BIBLIOGRAPHY

BOOKS


Colson, Elizabeth, Marriage and Family Among the Plateau Tonga of Northern Rhodesia. Manchester: Manchester University Press, 1968.


PUBLISHED ARTICLES


Colson, Elizabeth, 'Possible Repercussions of the Right to make Wills Upon the Plateau Tonga of Northern Rhodesia,' Journal of African Administration, 2, 1, 1950, 24-34.


Colson, Elizabeth, 'The Role of Cattle Among the Plateau Tonga of Mazabuka District,' Rhodes-Livingstone Journal, 11, 1951, 10-46.


Depelchin, Jacques, 'Toward a Reconstruction of Pre-colonial Central African History,' Ufahamu, 9, 1, 1979, 138-68.


Mukulu, N, '"Villagers' Why They Do Not Sell Cattle,' Farming in Zambia, 10, 4, 1976, 16-18.


UNPUBLISHED ARTICLES


Chilivumbo, Alifeyo and Kanyangwa, Joyce, 'Women's Participation in Rural Development Programmes: The Case of SIDA-LIMA Programme,' Rural Development Studies Bureau, University of Zambia (not dated).

Chipala, Judith, 'The Impact of Social Change on Offences Relating to Property in Zambia,' School of Law, University of Zambia, Final Year Student Obligatory Essay, 1981/82.


Lisimba, M V, 'Succession and Inheritance Among the Plateau Tonga of Southern Province of Zambia,' School of Law, University of Zambia, Final Year Student, Obligatory Essay, 1972/73.


Mutambinwa, Priscilla, 'Women and the Law: The Law Discriminates Against Women Directly and Indirectly,' School of Law, University of Zambia, Final Year Student, Obligatory Essay, 1981/82.


Nkhata, Daisy N, 'The Rights of Widows in Urban Area,' School of Law, University of Zambia, Final Year Student, Obligatory Essay, 1974/75.
Dissertations/theses


Magazines/Newspapers

Manela, 1, 1988

Sunday Times of Zambia

Times of Zambia

Women's Exclusive, 2, 1987

Zambia Daily Mail

Archival Sources


National Archives of Zambia (NAZ), KDB 6/7/3, Mazabuka Quarterly Report, 1930.

NAZ, KDB 1/5/7, Memorandum: Native Marriages, 1930

NAZ, KDB 6/7/4, Tax Collection Tour Report, 1936.

NAZ, KSB 3/1, Mazabuka District Notebook.

NAZ, KSB 1/7/1, Native Affairs, 1924-1928.

NAZ, KSF 1/1/1, Ila Customary Law: Marriages and Inheritance, 1921-1928.

NAZ, KSP 2/1/2/1, Kalomo Civil Cases, 1923-1928.

NAZ/ KTC 2/1/2/1, Magoye Native Commissioner's Court, 1914-1916.

NAZ, SEC 3/276, Land-European Settlement General Policy.


NAZ, SEC 2/1053, Mazabuka Tour Reports, 1932-1959.

NAZ, SEC 2/1060, Mazabuka Tour Reports, 1951-1953.


NAZ, SEC 2/1068, Mazabuka Tour Reports, 1959.
NAZ, SEC 1/443, Minutes of a meeting held between the Colonial Office, Commission on
Education of Women and Girls in Northern Rhodesia and Standing Committee
of Advisory Board, August 27, 1947.

NAZ, SEC 2/250, Native Wills, 1929-1947.
NAZ, SEC 1/443, Report of a Sub committee on the education and welfare of women and
Girls in Africa.

NAZ, SEC 2/139, Southern Province Annual Reports, 1951-53.
NAZ, ZA 1/9/2/4, Marriages of Native Christians, Correspondence to January 31, 1918.
NAZ, ZA 1/9/2/4, Native Customs and Marriages: Native Marriages, 1919-1926.
NAZ, ZA 1/9/2/25, Native Customs: Wills and Inheritance.

COURT CASES

Chimwali, Sichu Vs Sileu, Naumi, Case No 402 of 1985, Chiyobola Local Court, Monze.
Chinyama, Twambo, Case No 1139 of 1975, Mazabuka Local Court, Mazabuka.
Gwamina, Juddah, Case No 1259 of 1983, Mazabuka Local Court, Mazabuka.
Hampongo, Chilala Andrew, Case No 36 of 1987, Moyo Local Court, Choma.
Hanyinde, Emma, Case No 64 of 1974, Monze Local Court, Monze.
Hatontola, Everett, Case No C/R 048 of 1989, Monze Local Court, Monze.
Maambo, Solomon Vs Hachilala, Besten, LCA/35/1987, Monze Subordinate Court, Class I, Monze.
Mainza, Lwando Vs Hatwaana, Kanene, Case No 64 of 1975, Mwanza Local Court, Mazabuka.
Munsaka, Dorothy Vs Habasila, Wilson, Case No 134 of 1986, Moyo Local Court, Choma.
Mazandu, Savia Vs Hachapa, Samiso, Case No 121 of 1986, Moyo Local Court, Choma.
Namamba, R, Case No 256 of 1974, Livingstone Local Court, Livingstone
Sibbulu, Bailu Vs Syakangala, J Case No 22 of 1965, Chiwepo Local Court, Gwembe.
Sikamba, Milimo Vincent, Case No 54 of 1988, Macha Local Court, Choma.
Silimela, Grace, Case No 609 of 1974, Livingstone Local Court, Livingstone.
Syanenge, Maxwell Vs Syampongo, Sautu, Case No 36 of 1969, Chiwepo Local Court, Gwembe
ORAL INTERVIEWS

INDIVIDUAL INTERVIEWS

Halumana, S, Mbalala Primary School, Choma, February 26, 1989.
Hamasolo, Abel, Village Hikulya, Chief Choongo, Monze, January 24, 1989.
Hikaiali, Amos, Village Munachuulu, Chief Choongo, Monze, January 24, 1989.
Kasongo, Emanuel, Clerk-in-Charge, Monze local court, Monze, January 17, 1989.
Liabwa, R.S., Clerk-in-Charge, Hamaundu Local Court, Pemba, February 21, 1989.
Matengu, R.M., Clerk-in-Charge, Chilalantambo Local Court, Chief Mapanza, Choma, February 28, 1989.
Michelo, Simon Munamweema, Presiding Court Justice, Moyo Local Court, Choma, February 19, 1989.
Mooba, Mathias, Macheba Trading, Monze, April 14, 1989.
Moono, Sarah Mudenda, UNIP Women's League Chairman, Monze District, January 18, 1989.
Mudenda, Elijah H.H., UNIP Member of Central Committee and Chairman of Party Control Commission, Lusaka, April 25, 1989.
Mukuka, Violet, Dean of Students' Affairs Office, University of Zambia, Lusaka, April 27, 1989.
Munamukumi, Boniface, Village Kala, Chief Choongo, Monze, January 22, 1989.
Munengo, Julius, Vice-Principal, Kanchomba Farm Institute, Pemba, February 21, 1989.
Munkomba, Mackson, Court Assessor, Macha Local Court, Choma, March 1, 1989.
Muntanga, Christopher, Vice Principal, Choma Trades Institute, Choma, February 23, 1989.
Munyenywa, C. Clerk of Court, Mazabuka Magistrate Court, Mazabuka, January 10, 1989.
Mwenezi, Grace, Monze Primary School, Monze, January 18, 1989.
Mwianga, Bruno, Principal, Charles Lwanga Teachers Training College, Chisekesi, February 6, 1989.
Mwiya, Andrew Beene, Presiding Court Justice, Monze Local Court, January 18, 1989.
Nambale, Rester, Kanchomba Farm Instute, Pemba, February 21, 1989.
Nsalamuka, Aaron Katasu, Malimba Farm, Chief Moyo, Choma, February 12, 1989.
Onyisor, Franca Sr., Holy Rosary Sisters, Mazabuka, January 14, 1989.
Siachiwena, John, Presiding Court Justice, Macha Local Court, Choma, March 2, 1989.
Sialwindi, Redson, Kanchomba Farm Institute, Pemba, February 21, 1989.

GROUP INTERVIEWS

Chiswike, M.V.
Ntambwe, Jonathan M

Mbabala Primary School, Choma, February 24, 1989.

Chikwani, Milus
Hamwamwila, Jailless
Mabulongo, Jonah
Muuka, Palicha
Sikapondela Daniel


Choongo, Reuben, Presiding Court Justice Malulika J., Clerk-in-Charge
Ofwenuka Local Court, Chisekese, February 7, 1989.

Habebenu, Rose
Muleya, Elijah

Mbabala Primary School, Choma, February 28, 1989.

Hakantu, Watson
Meleki, Seeta


Hamwaambwa, R.M.
Khaundula, Rose S.
Munyama, Clotilda H.

Kanchomba Basic School, Pemba, February 21, 1989.

Kalangu, Jim, Presiding Court Justice
Mungula, Wilson, Court Assessor
Silaze, Oscar, Clerk-in-charge

Kalomo Local Court, Kalomo, March 6, 1989.

Kalima, J.M.
Mazuba A. Sr.

Adastra Primary School, Choma, February 23, 1989.

Malala, Cecilia
Malala, Martie
Muloongo, Rhoda


Malambo, Collins
Phiri, Kanjilia
Sakala, J.N.
Shinambe, Fabias, K


Moono, Malia
Muchimba, Monica
Muleya, Annah
Muuka, Melita
Muyambo, Rebecca


Mumba, Victoria
N'gandu, C N

Muntanga, S  
Muuma, J.  
Shingandwe, L.  
Uli, E.  
Zgambo, Z.L.

Tagore Primary School, Monze, January 19, 1989.

Simoonga, Andrew  
Simoonga, Maria  
Simoonga, Martha  
Simoonga, Raphael  
Simonga, Selina