

A RESEARCH PAPER

Number 76
October 1982

AGRICULTURAL LAND TENURE IN ZAMBIA:
PERSPECTIVES, PROBLEMS AND OPPORTUNITIES

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ON SOCIAL STRUCTURE, RURAL INSTITUTIONS,
RESOURCE USE AND DEVELOPMENT

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TABLE OF CONTENTS

INTRODUCTION	1
LAND TENURE ISSUES IN PERSPECTIVE	2
THE EVOLUTION OF ZAMBIA'S DUAL SYSTEM OF LAND TENURE	5
TENURE AND RELATED ISSUES: THE STATE LANDS	16
Administration of the State Land Resource	16
The Problem of "Land Without Value"	20
Other Problems and Opportunities	23
TENURE AND RELATED ISSUES: THE TRUST AND RESERVE LANDS	25
Reserve and Trust Land Administration	25
Pressure on Trust and Reserve Lands	28
Security of Tenure in Improved Holdings	29
Customary Land Tenure and Agricultural Credit	33
Inheritance of Land and Farm Development	35
Alternative Paths for the Future	39
SUMMARY AND CONCLUSIONS	44
State Lands	45
Trust and Reserve Lands	46
ANNEX: EXPLANATION OF TABLES I-III	48

INTRODUCTION

This paper is based upon a consultancy undertaken for the Royal Tropical Institute of the Netherlands as part of a food strategy study for the Planning Unit of the Zambian Ministry of Agriculture and Water Development. The authors spent two man-months in Zambia in connection with the study, in August/September, 1981, and visited Central, Southern, Eastern and Western Provinces. As will become clear, we do not consider Zambia's land tenure problems to be the primary constraints upon increased food production in the short term. There are indeed land tenure measures which would help to promote food production over the next several years, and these should be pursued without delay. But such measures will have little effect unless accompanied by more critical changes which fell outside our terms of reference, such as the revision of food pricing policies to provide greater incentives to producers; the more effective and timely delivery of critical inputs to farmers by government agencies; and adoption of a style of planning which protects the public interest through more limited and clearly defined state interventions in the economy, leaving the market to regulate other areas.

While land tenure is not the area to concentrate upon for a "quick fix" as regards food production, its longer term impact on the development of agriculture cannot be overemphasized. It will effect not only productivity but also distribution of the rewards of production, and thus the ultimate shape of Zambian society.

In a first section, we seek to clarify some fundamental relationships, such as those among land tenure, equity and productivity, and those among physical features, land use and land tenure. A second section sets out the historical background to the enduring dualism introduced into Zambian land tenure during the colonial period. In the third and fourth sections, we examine tenure issues posed with respect to State Lands, and Reserve and Trust Lands, respectively. A final section summarizes conclusions and recommendations.

LAND TENURE ISSUES IN PERSPECTIVE

Land Tenure, Equity and Productivity

Land tenure arrangements define people's access to resources and income earning opportunities. They are directly associated with income distribution in rural areas. In the traditional systems of land tenure in Zambia, emphasis was placed on equality of opportunity, i.e., access to land for all on which to grow food for oneself and close family relations. This feature of access to subsistence opportunities on the land is a major positive feature and should not be lightly discarded.

The problem has been (not only in Zambia but in other countries as well) that with increased population, growing urbanization and continuing high population growth rates, these systems have not responded well to the needs of increased output, productivity and efficiency. Equity is important; but so is production. People must be fed. Consequently many countries with increasing population have become net importers of food. Some of these traditional land tenure systems may emphasize equity and equality at the expense of incentives needed to meet modern objectives of increased total production and enhanced productivity of resources.

Land tenure institutions play a role (sometimes a critical one) in providing (or not providing) the security and incentives for increased output, and in the arrangements (or lack of them) for sharing equitably in the fruits of economic growth by the large majority of the population concerned. But it is exceedingly difficult to show quantitatively the net effect of land tenure arrangements on productivity. We do know from research that security of tenure is a very important element in the shift from subsistence and/or semi-commercial farming to high productivity commercial farming. A number of studies have shown that the degree of security people have with respect to their land is an important factor associated with increased output.¹

On the other hand, one should not expect large spurts in output and productivity from tenure changes if other restraints that may exist are not removed. In every case where a major redistributive land reform has been followed by sharp increases in farm output, other measures were simultaneously taken to provide additional incentives and possibilities for such increased output: reasonably stable prices for farm produce, high enough to cover all costs and provide a reasonable return to labor and investments; access to modern farm production inputs; research to make available new and more productive techniques; a well-motivated and well-informed extension service; efficient systems of credit, marketing, transport and storage; etc. The same will be true of tenure reforms which are not primarily concerned with redistribution, but with the framing of new sets of rights in land for cultivators. Obviously everything cannot be done at once. Unless these systems are already largely in place, it requires much time and investment to develop an agricultural system that is both productive and equitable. There are no quick fixes; no short-cuts.²

¹ Peter Dorner and Bonnie Saliba "Interventions in Land Markets to Benefit the Rural Poor," Research Paper No. 74, Land Tenure Center, University of Wisconsin, September, 1981.

² Christie and Scott, "Zambia: An Agricultural Development Strategy for the Next 25 Years," Economic Development Institute, The World Bank, March, 1977.

The key is to identify those measures that will, over time, move in a consistent direction towards an agricultural system that provides for both equity and efficiency.

A highly efficient system of agricultural production is a laudable goal and a significant achievement if and when it is reached. But it can hardly be acceptable if it leaves half the population behind in abject poverty. Likewise, an equitable system of access to resources is a laudable goal and a significant achievement if and when it is reached. But it can hardly be acceptable if output stagnates and the equity of the system is only the right to share in its poverty. The provision for both equity and productivity must be basic elements in any development policy. Land tenure arrangements can play a key role in making an equitable system possible and in providing specific incentives for the increased productivity which is vital to an equitable system providing opportunities for all people to develop their human capacities.

The above remarks concern the relationships among the various objectives to be sought in planning the evolution of Zambia's land tenure system. But what are the relationships which exist between Zambia's land tenure situation on the one hand, and its natural resource base and present land use systems, on the other? The best study giving details on physical features and land use is Jürgen Schultz's Land Use in Zambia.³ Land tenure is treated in an indirect way by showing separate breakdowns (in most cases) for State and other lands. The degree of commercialization is shown along with the great variety of cultivation systems in the more traditional land use areas. The data generally apply to the early 1970s.

As noted by Schultz, the choice of crops in various parts of the country is related to a number of variables. One of these is certainly the yields which can be obtained per area unit or - generally more important - per unit of labor. Choice of crop depends on climate, soil, crop variety, system of cultivation, level of management, etc., and a key factor in livestock raising is the absence of the tsetse fly. This choice is, of course, also influenced in a major way by the relative economies of production, especially in the areas where there are surpluses for sale. The level of government subsidies, local demand, the general transport and market situation - all these in combination with the physical features (as well as custom and tradition) influence land use patterns.

The highest degree of commercialization is found on State Land. One of the dominant forms of tenure on these lands before the Conversion of Titles Act of 1975 was freehold. However, it would be erroneous to conclude that the form of tenure is the sole factor responsible for this high degree of commercialization. Except for State Land in Eastern Province, most of the developed State Lands follows the line of rail. Thus the relatively well developed road system plus the railway gave farmers access to marketing and transport facilities for both inputs and produce. The line of rail was naturally run through some of the better soil areas of the country, and areas which are generally free of the tsetse fly. Developed State Land in Eastern Province benefited from the road connections with Zimbabwe, then Southern Rhodesia.

³ Jürgen Schultz, Land Use in Zambia, Munich: Westforum Verlag, 1976.

As an indicator that land tenure is less relevant to commercialization than infrastructure, Schultz' map on the commercialization of agriculture⁴ shows very clearly that the largest areas of semi-commercial and commercial farming adjacent to State Lands, are on lands operated largely under customary tenure. There are, of course, commercial farmers in relatively small numbers spread throughout other areas of the country. But many of the so-called emergent farmers are adjacent to these areas of semi-commercial farms near the State Lands.

In the more remote and outlying areas, the beginnings of commercial farming activities are carried out by a still relatively small number of emergent farmers (farmers selling over 50% of what they produce and farming 20 acres or more, according to one definition). Schultz concludes that all emergent farmers are rather uniform in their characteristic features, irrespective of their location. The earlier regional dependence of land use on ecology and tribal distribution has declined. It remains most pronounced in areas where agricultural utilization has undergone least change. In such cases, natural environment, tribal affiliation and agricultural usage still coincide to a large extent. In contrast, the advanced forms of usage do not show a pronounced spatial differentiation corresponding to that of ecology and tribe.

⁴ Figure 24, page 154.

THE EVOLUTION OF ZAMBIA'S DUAL SYSTEM OF LAND TENURE

The use of all land in pre-colonial Zambia was governed by a variety of customary systems of land tenure, and these systems still regulate the use of the vast majority of the land of Zambia today. However, the colonial period introduced a major dualism into Zambian land tenure: the distinction between Trust and Reserve Lands, worked by Africans under customary land tenure, and Crown Land, for alienation to white settlers under English land law. It is useful to trace the development of this distinction, which has endured into the present day, and the shifting allocations of Zambia's land resource among these categories.

The development of the distinction began during the period of British South Africa Company administration of Northern Rhodesia, as Zambia was then known. In 1900 and 1909 the Company entered into agreements with the Chief of the Barotse which guaranteed rights of the tribe to large areas of tribal land in return for mineral prospecting concessions. A 1911 Northern Rhodesia Order in Council instructed the Company to assign to the African population of Northern Rhodesia land sufficient for their use and occupation and specifically endorsed the Barotse agreements. In 1924, the Company was divested of its control of Northern Rhodesia, which was vested in a Governor appointed by the British Sovereign. And in 1928, a Northern Rhodesia Order in Council instituted the division of Northern Rhodesia into what were then known as Native Reserves and Crown Lands.

This exercise was to provide the spatial plan for the development of Northern Rhodesia as a settler colony, and was modeled on the plan already in operation in the settler colony of Southern Rhodesia. It called for the setting aside of the minimum area of land required for the African population as tribal Reserves with the remainder held by the Crown for future white settlement. Since the first years of the 1900s, white settlers had been entering the country from the south. The British South African Company has established three freehold areas, and some land has been alienated to settlers by both the Company and later by the Crown. This had been done in a fairly haphazard manner, but now the process was systematized. Native Reserve Commissions sitting in 1926-1928 for selected localities of significant white settlement classified land as Crown Land or Native Reserve Land, and required evacuation of Crown Land by African residents, who were then crowded into the Reserves. Much land was left unclassified, but those lands designated as Crown Land were drastically in excess of the needs of the existing settler population. The unoccupied Crown Land, set aside for an anticipated influx of white settlers, came to be known as the "silent lands." All the Reserves set up during this period did not equal in extent the Barotseland Reserve based on the British South African Company agreements. Figures are available for 1937 and show, in millions of acres:⁵

⁵ Robin Palmer, "Land in Zambia," Zambian Land and Labour Studies, Vol. 1, Occasional Paper No. 2, National Archives, Lusaka, p. 64.

Reserve Land:	Barotseland	37
	Other Reserves	34
Crown Land		9
Forest and Game Land		5
Unassigned		<u>94</u>

179

The anticipated influx of white settlers never materialized. A post-war influx of ex-soldiers in 1919 had brought the number of white farms along the line of rail to about 250, but this figure stayed virtually static into the 1940s. Population pressure upon the Reserves became intense in some areas, while the "silent lands" formerly occupied by the Africans remained idle. In 1938 the Pimm Commission stated unequivocally that the Reserves policy had been a disaster. In 1947 the Northern Rhodesia (Native Trust Land) Order in Council provided for a fundamental reversal in policy. Rather than defining potential settler lands as the remainder after limited areas - sufficient or insufficient - for African occupation had been set aside as Reserves, Crown Land was to be defined as that limited amount likely to be required for lagging white settlement, with the remainder reserved for African use. The land thus shifted from anticipated settler to anticipated African use was some 100 million acres of formerly unassigned land, forest and game land, and unutilized Crown Land. This land did not, however, become a part of the Reserves. Instead, a new category of Trust Land was created. As a result, by 1950 the following pattern existed, in millions of acres:⁶

African Land:	Reserve Land	71
	Trust Land	100
Crown Land:	European Land	4.6
	Forest & Game Land	1
	Unalienated Crown Land	<u>4.7</u>
		<u>181.3</u>

This general division prevailed into the post-independence period. Figures for 1973 given below reflect a number of important developments, however. First, there was a wave of white settlement after World War II, with over a thousand white farms established by the 1960s. This resulted in a substantial reduction in the amount of unalienated Crown Land. Second, beginning in the 1930s, settlers were often given Crown Land in long-term leasehold at nominal rents rather than in freehold; by 1944, only leaseholds were being given. The 1973 figures indicate that the bulk of alienated Crown Land was held by settlers on leasehold rather than freehold. With Independence, Crown Land became State Land. This new designation is reflected in the 1973 figures, with land areas given in hectares:⁷

⁶ Palmer, *op.cit.* supra, 64. The discrepancy as between the total for 1937 and that for 1950, both in the Palmer article, is carried over from the official sources.

⁷ International Rural Development Division, Swedish University of Agriculture, Forestry and Veterinary Medicine (Uppsala, April, 1976), Mimeo, Zambia Sector Study, Preliminary Report, para. 3.1.1.

State Land	
Alienated in Freehold	1,015,791
Alienated in Leasehold	1,284,788
State Land under Tribal Occupation	509,396
Unalienated State Land	125,102
Inundated by Water	216,250
Forest Reserves	546,570
Protected Forest Areas	<u>382,750</u>
	4,080,547
Reserves (including 689,691 ha. Protected Forest Areas)	27,314,000
Trust Land (including 4,250,889 ha. Protected Forest Areas and 29,153 ha. Forest Reserves)	38,977,530
National Parks, etc.	5,826,300
	<u>76,198,377</u>

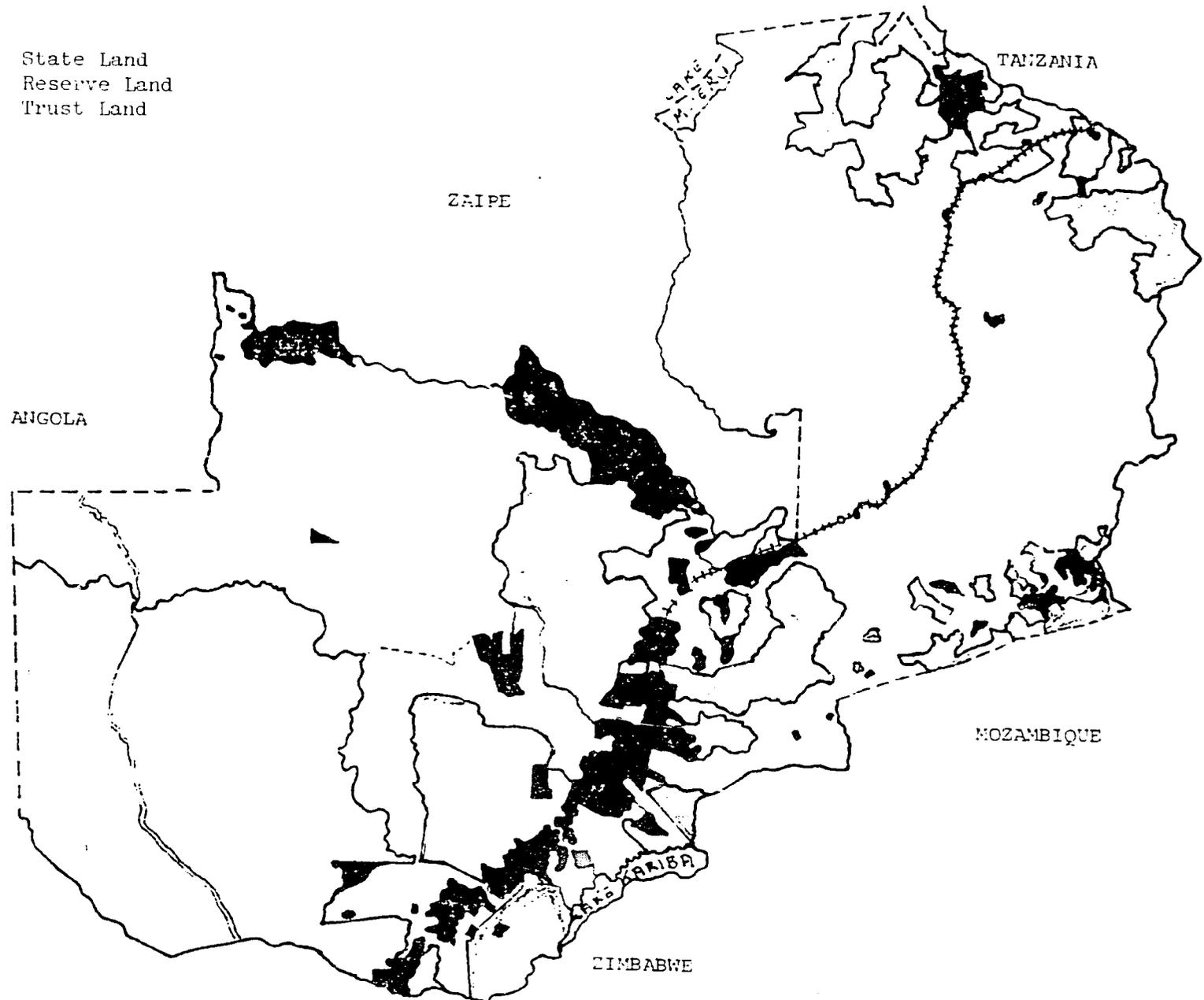
The spatial distribution of the critical categories of Land are given in the map on the following page.⁸

So far as the legal constitution of these categories is concerned, the major change of the post-independence period was worked by the Land (Conversion of Titles) Act, 1975. This Act converted all freehold titles in Zambia to statutory leaseholds with a term of 100 years from July 1, 1975. All "alienated" State Land was thus consolidated into a single leasehold category.

There have also been significant changes within certain categories. As regards State Land, there have been major changes in the proprietors who farm this land. Historically, State Land was the geographical focus of the development of commercial farming in Zambia, instituted by white settlers. The importance of this State Land commercial farming sector, in spite of its very limited geographic scale, cannot be overstated. Zambia has one of the highest rates of urbanization in Africa, with over 40 percent of the population now resident in urban areas, and it has been the commercial farming sector which has produced the surplus to feed Zambia's towns and cities. In the 1960s, however, large numbers of expatriate farmers emigrated from Zambia. Some left because they did not wish to live in an independent, majority-ruled Zambia, while others complained that post-independence pricing and marketing policies had seriously reduced their economic prospects. Many were discouraged by the stringent regulation of expatriation of profits; the legal regime governing repatriation of profits was later liberalized, but not soon enough to prevent a hemorrhaging of valuable farming expertise. The fact that white minority governments to the south were offering major land incentives for white immigration was also a factor.

MAP OF REPUBLIC OF ZAMBIA LAND TENURE

Black areas: State Land
Grey areas: Reserve Land
White areas: Trust Land



In any case, sales of freehold farms and assignments of leaseholds increased in the years immediately preceding independence and continued throughout the 1960s and, to a lesser extent, into the 1970s. In addition, there were cases of abandonment of farms and the sale of moveable capital assets required for continuing commercial operation. In 1961, there were 1,185 European farms with a total area of 3.79 million acres of which 2.1 million acres were under cultivation. By 1963, the amount under cultivation had fallen to 165,640 acres.⁹ By the 1970-71 Agricultural Census the commercial farming sector consisted of 1,076 working proprietors, of whom 643 were African and 433 were non-African. By 1981, the figure generally given for the number of non-African farmers was about 300.

These figures are misleading, however, in that they focus upon only private farming, and upon cultivation, excluding livestock production. The process involved was not simply one by which African private cultivators replaced non-African private cultivators. There was no major cadre of Africans trained for or experienced in large-scale commercial cultivation, nor did many have the capital required to step into the shoes of the departing white farmers. The Zambian Government, in order to keep this vital sector in commercial production, stepped in with a variety of programs. In some cases parastatals took over land under leases for direct state farming operations. In others, settlement schemes were established which subdivided large commercial operations (and in some cases failed parastatal operations) into smaller units of widely varying size. Scheme managements provided a variety of services, including a first plowing by tractor and facilitation of access to credit and commercial farmings inputs. By 1981, almost one-third of the productive State Land was reported to be under the direct management of the State.

Where Zambians did take over as private commercial farmers, changes in production patterns sometimes followed. They tended, for instance, due to limited capital and expertise in commercial crop production, to move into less capital intensive production which appeared to offer equal profits on investments, such as cattle ranching. Nor did all these new farmers ultimately succeed. The 1970s saw significant turn-overs in private farmers, and even now there occur abandonments of farms and occasional terminations of leaseholds for failure to meet development conditions stated in the leases. These dislocations in commercial farming on State Land in the 1960s and 1970s, though difficult to quantify accurately, must have created major interruptions of production. The commercial farming section has in spite of this remained productive and critical to food supply. For example, figures for 1968 indicate that 800 commercial farmers supplied 80 percent of all marketed

10

⁹ John A. Hellen, Rural Economic Development in Zambia 1890-1964, Afrika Studien No. 32, Muchich, Westforum Verlag, 1968, p. 80.

¹⁰ Carolyn Baylies, "The Emergence of Indigenous Capitalist Agriculture: The Case of Southern Province, Zambia," Rural Africana, Nos. 4-5, Spring-Fall 1979, p. 67.

Keeping land in commercial production has been achieved, however, at great cost to the State in terms of deficit operations of the parastatals, settlement program costs, fertilizer and transport subsidies for selected crops (the benefits of which have accrued largely to the commercial farmers who have had more ready access, and research programs focused on cash crops). Commercial operations have had more ready access to credit, and research programs have focused on cash crops. These investments have been justified, in that the short-term prospects for food surpluses clearly lie with intensification of production in the existing commercial sector. This would still appear to be the case today, and yet it is important that the extent of government subsidization of this sector be recognized.

Insofar as there exist tenurial disincentives to increased production in this sector, they should be treated with particular urgency. As will be indicated, the authors do not believe that the key constraints on production in the sector are tenurial, though there is a very pressing need for an enhanced capability in the Ministry of Lands and Natural Resources to efficiently administer the State Land resource, where so much commercial production is located.

From cadastral strip information supplied by the Land Use Planning Bureau of the Ministry of Agriculture, showing leased farms, it has been possible to derive figures which indicate roughly the distribution of "alienated" State Land today. This is State Land which is under lease, and the data are given in three tables below, which indicate: 1) leases of State Land by type of lessee; 2) leases of State Land by type of lessee, by cadastral strip; and 3) leases of State Land by private lessees, by cadastral strip. Explanations of the categories utilized are given in an annex to this paper.

TABLE I
LEASES OF STATE LAND BY TYPE OF LESSEE

Type of Lessee	No. of leases	Total Area leased, by type (ha.)	Area leased, by type, as % of total leased area	Average size of leasehold (ha.)
Private	1,674	1,232,987	60.5	737
Governmental	502	541,902	26.5	1,079
Settlement schemes	61	62,241	3.10	1,020
Cooperatives	10	6,580	-	658
Religious/Educational	69	45,677	2.3	662
Vacant	74	44,387	2.3	608
Nonagricultural	<u>228</u>	<u>107,500</u>	<u>5.4</u>	<u>471</u>
All types	2,618	2,041,274	100.0	780

Private lessees (both individual and corporate) were found to constitute the largest category, accounting for 64 percent of all leases and leasing over 60 percent of the State Land under leasehold. Government lessees (ministries, parastatals, etc.) also have very substantial holdings, 26.5 percent of the total leased land, with a significantly larger average size than private leases (1,079 ha., as compared to 737 ha.). In fact, the overall average size of leaseholds (780 ha.) is quite large. Private and governmental holdings plus land leased to settlement schemes (3 percent of leased land) together compose 90 percent of leased State Land. The remainder is held by cooperatives (less than 1 percent) or religious and educational establishments (2.3 percent), or is vacant (2.3 percent) or now in nonagricultural use (5.4 percent).

12

TABLE II
NUMBER OF LEASES AND TYPE OF LESSEE, HOLDINGS IN HECTARES, BY CADASTRAL STRIP

Cadastral Strip	Private		Governmental		Settlement Schemes		Cooperatives		Religious/Educational		Vacant		Non-Agricultural		TOTALS	
	No.	Ha.	No.	Ha.	No.	Ha.	No.	Ha.	No.	Ha.	No.	Ha.	No.	Ha.	No.	Ha.
Chisamba	129	137,470	13	12,807	1	1,641	1	1,886	4	3,455	9	6,975	9	3,654	166	167,883
Lusaka East and North	124	111,667	44	29,642	-	-	-	-	2	1,744	-	-	13	6,410	183	149,456
Mkushi	114	108,839	27	34,982	-	-	-	-	-	-	4	2,381	4	3,473	149	149,675
Chonga/Chililabombwe	26	13,902	1	10	-	-	1	134	-	-	4	4,910	15	16,649	47	35,605
Mufulira	27	2,575	-	-	-	-	-	-	-	-	-	-	2	167	29	2,742
Ndola/Kitwe/Lusanshya	100	41,978	4	515	-	-	1	67	3	907	5	1,501	34	9,357	147	54,325
Kabwe	133	99,809	18	13,609	4	4,791	-	-	-	-	1	40	81	42,910	237	161,159
Lusaka West and South	284	143,050	39	34,378	-	-	-	-	2	1,138	1	470	28	7,739	354	186,775
Mazabuka	142	129,005	44	61,331	34	40,621	3	3,272	-	-	1	1,296	12	5,555	236	241,080
Monze	57	50,335	13	13,933	-	-	-	-	4	6,824	3	52	5	116	82	72,260
Choma	112	148,176	55	50,810	-	-	-	-	2	1,368	1	668	10	4,556	180	205,578
Kalomo	90	117,593	72	105,498	-	-	-	-	5	4,158	3	163	1	114	171	227,526
Livingstone	112	44,076	4	2,005	-	-	3	777	3	603	18	12,522	10	5,645	150	65,628
Moala	53	21,990	40	67,912	-	-	-	-	17	12,775	4	3,408	1	184	115	106,269
Chipata	171	62,529	128	113,470	22	15,188	1	444	27	12,705	20	10,001	3	971	372	215,308

While private, governmental, and most other types of lessees were spread through most of the cadastral strips, there were some notable concentrations. Most of the land leased to settlement schemes was located in the Mazabuka and Chipata cadastral strips, and almost half the land leased to religious and educational establishments was located in the Mbala and Chipata strips. Over half the vacant farms are found in the Livingstone and Chipata strips, and current nonagricultural use of these formerly farm leaseholds appears to be considerably greater in the Kabwe strip than in other areas. These figures invite further inquiry to establish a better understanding of the situations which generate them.

TABLE III

LEASES OF STATE LAND BY PRIVATE LESSEES, BY CADASTRAL STRIP

Cadastral Strip	No. of Lessees	% of Total Private Lessees	No. of Leases 1-300 ha.	No. of Leases 1-300 ha. as % of Total	No. of Leases 301-999 ha.	No. of Leases 301-999 ha. as % of Total	No. of Leases 1,000 ha. and Above	No. of Leases 1,000 ha. and above as % of Total
Chisamba	135	7.7	22	16.3	38	28.1	75	55.6
Lusaka East and North	124	7.1	39	31.5	42	33.9	43	34.7
Mkushi	122	7.0	7	5.7	80	65.6	35	28.7
Chonga/ Chililabombwe	33	1.9	14	42.4	4	12.1	15	45.5
Mufulira	48	2.7	26	54.2	2	4.2	20	41.7
Ndola/Kitwe/ Lusanshya	124	7.1	88	71.0	10	8.1	26	21.0
Kabwe	135	7.7	53	39.3	35	25.9	47	34.8
Lusaka West and South	287	16.4	141	49.1	94	32.8	52	18.1
Mazabuka	142	8.1	19	13.4	73	51.4	50	35.2
Monze	57	3.2	18	31.6	13	22.8	26	45.6
Choma	112	6.4	18	16.1	28	25.0	66	58.9
Kalomo	90	5.1	19	21.1	13	14.4	58	64.4
Livingstone	113	6.4	78	69.0	16	14.2	19	16.8
Moala	59	3.4	37	62.7	12	20.3	10	16.9
Chipata	174	9.9	94	54.0	63	36.2	17	9.8
TOTAL	1,755	100.0	673	38.3	523	29.8	559	31.9

The number of private leases is, as might be expected, unevenly distributed among strips, with a larger number of leases with smaller areas in the peri-urban strips and a smaller number of larger leaseholds in the more rural areas. Still, the sizes of leaseholds are quite large, and in six of the strip areas (Chisamba, Chonga/Chililabombwe, Mufulira, Monze, Choma, and Kalomo) over 40 percent of the leaseholds are over 1,000 ha. in size. It is impossible to judge whether this is an efficient distribution of State Land without more information on land use (some of the larger farms will be ranching operations), but the fact that so many leaseholds are larger than the necessary for profitable and efficient commercial farming operation suggests lines for further inquiry. Are these holdings fully utilized, and, if not, could the creation of a larger number of commercially viable units of somewhat smaller size promote an intensification of production without seriously interfering with existing farm operations?

As regards the Reserve and Trust Lands, there have also been important developments in the post-independence years. These years have seen a major increase in the number of semi-commercial producers and "emergent farmers" on the Reserve and Trust Lands. While these increasingly productive farmers exist to some extent throughout the country, they are clustered like the commercial farmers in proximity to the line of rail and other main transport arteries, a consequence of better access to credit, new inputs and output markets. There have been certain legal initiatives with respect to rights in this land, but these have for the most part remained unimplemented or have been retracted.

Here there remain unresolved tenure issues of broad national importance: the need for security in improved holdings; tenurial aspects of the need for credit for improvements; the impact of various systems of inheritance upon long-term farm development; and the issue of centralized or decentralized administration of this very extensive land resource. This sector will need greater attention and investment than in the past if it is to contribute significantly to marketable surpluses of food, or even to provide adequately for its own inhabitants. While major investments and considerable time will be required for the potential of this sector to be realized, it is in these areas that the long-term prospects for agricultural surpluses lie. The State Lands commercial farming sector may offer through intensification the best opportunities of generating a surplus over the next five to ten years, but its geographical extent places severe constraints upon what can be accomplished there in the long run. Time bought with intensification of production upon State Land must be used to eliminate constraints on increased production for the market on Reserve and Trust Lands.

TENURE AND RELATED ISSUES: STATE LANDThe Administration of State Land Resource

As noted above, State Land is allocated for commercial farming through a system of long-term, renewable leases. The framework for administration of the leasehold system is provided by the Agricultural Lands Act, 1960. This Act was originally framed to deal with both leaseholds and fee simple titles in State Land. The Lands (Conversion of Titles) Act, 1975, converted the fee simple titles to 100 year leaseholds, and today the Act regulates the making, transfer and other dealings with leaseholds of State Lands which are listed in the Schedule to the Act ("scheduled farms").

The Act creates an Agricultural Land Board appointed by the Minister of Lands and Natural Resources. New leases of scheduled State Lands must be approved by this Board, which is to consider general policy directions from the Minister, the age of the applicant, the character of the applicant, the applicant's willingness to personally occupy and develop the holding, as well as his or capital resources and qualifications to develop an agricultural holding. The Board is to give preference to applicants who do not already hold State Land. Once an allotment is made and a rent level set by the Board, the lease is executed by the President, in whom title to State Land is vested; this authority has been delegated to the Commissioner for Lands.

Lessees are required to take up effective personal residence on the leasehold within six months, and are required to practice good husbandry and properly maintain improvements. Before expiration of a period of three years, a lessee must also meet any requirements laid down by the Board in the lease regarding extent of cultivation, maintenance of stock levels, and capital improvements. In case of failure to comply with the provisions of the Act or the conditions in the lease, the Board, after giving written notice of the failure and providing an opportunity for remedial action, may terminate the lease. On the termination of a lease by expiry of the term or for other reasons, the Minister, on the recommendation of the Board, authorizes compensation for unexhausted improvements. However, the Act envisages the renewal of most expiring leases by the President upon the advice of the Board, which renewal may not be unreasonably withheld.

In addition to new leases of scheduled State Land, the Board's consent must be obtained for any dealing with such leaseholds: assignments, subleases, mortgages, charges or other dealings, including entry into a partnership for working the holding. The Act also requires Board approval of tenant farmer settlement schemes on State Land.

These pre-independence arrangements were importantly varied and supplemented by the Land (Conversion of Titles) Act, 1975. This is an act "for the vesting of all land in Zambia in the President, for the conversion of titles to land, for the imposition of restrictions on the extent of agricultural land holdings, for the abolition of sale, transfer or other alienation of land for value...." All land was vested absolutely in the President in perpetuity on behalf of the people of Zambia. All fee simple titles were converted to statutory 100-year leases, on such terms and conditions as were to be prescribed. (Rent under State Land leases has been set at a nominal 8 ngwee/hectare, approximately \$.10/hectare) These leases are subject to renewal for a further term of 100 years unless there has been a breach of the lease terms by the tenant which would render the lease subject to forfeiture.

This Act requires Presidential consent to assignments, subleases, mortgages and charges in respect of any State Land and empowers the President to set maximum amounts to be recovered or secured in such transactions. Here is the most striking departure of the Act from previous practice: in setting such maximum amounts, "no regard shall be had to the value of the land apart from unexhausted improvements thereon." The benefits of investments in land accrue to the leaseholder, but not the value of the land created by location or provision by the State of infrastructure, facilities and services. Consistent with this principle, compensation upon termination or expiry of leaseholds is only to be for the unexhausted value of improvements. It is worth noting that the authority extends beyond the "scheduled farms" under the Agricultural Lands Act, to all State Lands. The Act also empowers the President to set maximum sizes for agricultural holdings, with different maxima for different locations; this power, which requires very complex judgements, has understandably not been exercised to date.

Under these two Acts, there are in effect two systems of review and control of leases and leasehold transactions. The first concerns State Land "scheduled" under the Agricultural Lands Act; the second, other State Land. In the first case, any leasing of or other dealing in such land must first be approved by the Agricultural Lands Board, then referred to the Commissioner of Lands, to whom the President's authority under both Acts has been delegated. The Commissioner considers the recommendation of the Board and may then give final approval for the lease or dealing with a lease and, in the case of a new lease, execute the lease on behalf of the President.

As regards State Lands not scheduled under the Agricultural Lands Act, the Agricultural Lands Board has no role. Here it is the Commissioner of Lands, acting under delegated authority of the President under the Lands (Conversion of Titles) Act, who approves or refuses applications for leases and dealings with leaseholds. There would appear to be no logical basis for this distinction between "scheduled" and "unscheduled" State Land, and consolidation into a single category with a single administrative regime is clearly advisable.

In either circumstance, improvements on the leasehold must be valued to ensure compliance with the legal requirement that consideration or compensation is to be paid only for unexhausted improvements and not for the land itself. Since the Ministry of Lands does not have a valuation department, this task is passed on to the Valuation Department of the Ministry of Local Government and Housing. This is a cumbersome and time-consuming procedure.

Once the above formalities are completed, the proprietor of a State Land leasehold must still deal with the requirements of the Lands and Deeds Registry Act. Every lease for a period of more than one year must be registered, as must any assignment of or mortgage or charge upon such a lease. If they are not so registered, they are null and void. The new proprietor of any lease of fourteen years or more must first apply for a Provisional Certificate of Title, which will be granted after an examination of the applicant's title, by the Registrar of Lands. After six years, the proprietor of the lease may apply to the Registrar for a Final Certificate of Title. (Shorter term leases may be registered without obtaining a Certificate of Title.) In the case of an original State Land lease (as opposed to an assignment of such a lease) a final Certificate of Title is ordered issued by the Commissioner without going through the Provisional Certificate step.

Before any Title Certificate (provisional or final) may be issued, the applicant must submit a survey diagram which complies with the requirements of the Land Survey Act, 1960. The Land Survey Act imposes high and rigorous standards of ground survey and the Land Survey Division of the Ministry of Lands, with severely limited staff for meeting these standards, is badly behind in survey work. To avoid long delays in the issuance of title certificates for these leases and their registration, the Survey Division and the Registry have adopted a policy of accepting for registration leases of up to fourteen years if accompanied by an adequate sketch plan. Such plans are often prepared with the assistance of field staff of the Ministry of Agriculture's Land Use Planning Branch. The fourteen-year period was selected on the ground that a shorter period would not permit proprietors to obtain credit on security of their leases, and because it was considered that only a provisional Certificate of Title should be given in such circumstances. Once a Land Survey Act survey is conducted, the fourteen-year lease is surrendered, a 99-year lease granted, covered by a Final Certificate of Title. This arrangement is very common, and is the mechanism used for grants of land in settlement schemes. Its legality, it is recognized by all concerned, is an open question with respect to the lower survey standard which is being required for the Provisional Certificate of Title, for which there appears to be no legal basis.

These procedures, involving as they do six different sections in three different Ministries (the Agricultural Lands Board, the Commissioner of Lands, the Land Registry Section and the Land Survey Section, all in the Ministry of Lands and Natural Resources, the Land Use Planning Branch at the Ministry of Agriculture and Water Development, and the Valuation Section of the Ministry of Local Government and Housing), are far more complex than can be justified. This complexity, coupled with severe understaffing of the relevant sections, results in extended delays in leasehold transactions, generating uncertainty and interruptions of cultivation.

Turning away from these administrative problems, the expanding cadre of settlers moving into commercial production on State Land should be of major significance in expanding production, and some of their problems and opportunities deserve particular mention. "Settlement scheme" suggests an image of farms of more or less standard size, with some obvious variations based on soil quality and topography. In fact settlement scheme farms range in size from ten to over five hundred hectares, not just as between schemes but within a single scheme. This is in part due to some holdings being exclusively for crop production while others are for mixed farming, including a substantial animal husbandry component. But it also reflects the critical role that has been played by settlement schemes in keeping State Land in commercial production in the wake of abandonments of farms by white settlers and parastatal failures. In those circumstances, settlers were sometimes given land in relation to their ability to cultivate, as determined by their assets. Today, as settlement schemes are increasingly viewed as a means of relieving land pressure in the crowded Reserve areas, the tendency is understandably towards more uniform sizes of settler holdings. The tenure arrangements on the schemes generally involve a probationary period of 3-5 years, followed by a fourteen-year lease convertible to a 99-year lease when a precise survey has been obtained.

Settlers are drawn largely from three categories: 1) farmers from the Reserve and Trust Lands who are attracted to the schemes by their good land, the assistance available in land preparation, extension arrangements, and secure tenure facilitating access to credit; 2) recent graduates of agricultural training programs; and 3) retiring or resigning employees from the wage-employment sector, including former government employees. Increasingly critical scrutiny should be given to applicants from the third category. While some members of this category may bring with them valuable knowledge and skills, as with a retiring extensionist, settlement scheme managers cite this as the least satisfactory category of settler. Some managers cited deficiencies in capital and family labor, but there also appears to be a lack of serious interest in farming in many cases. It would be useful to have a comparative study of the relative failure rates among categories of settlers. Indeed there are many variations in settlement scheme approaches in Zambia which deserve comparative study to determine relative efficiencies. There are schemes run by a variety of State organizations and by private and church groups, such as Family Farms, with some government participation. Informative comparisons could be made as regards different patterns of settler selection, services provided, costs of settlement, titling, mixed vs. specialized farming, and management.

The settlement schemes are directed at meeting important needs of Zambian agriculture and the rural population. Because of shortages of better land along main transport arteries, it seems that current and future settlement efforts should introduce additional criteria, and attempt to get land to as many qualified farmer-applicants as possible. The State (and non-State) capacity to service such settlements will grow and some of the human and capital services on the older schemes shifted to new settlements (settlers once established would be "graduated" from the schemes, i.e., treated like other commercial farmers and serviced through existing State and private agencies).

It might be well to consider establishing more of these schemes in relatively remote areas of the various provinces. This could help to promote commercialization of agriculture in those areas generally. This would be a superior use of the land currently earmarked for eighteen very large prospective State Farms, two in each province, which have been planned as a part of Operation Food Production. It would certainly require fewer of the scarce State administration and managerial personnel and less foreign exchange. Farming methods introduced would be more readily adaptable to the needs of surrounding farmers in the traditional sector, and settlement schemes would enhance the spread of entrepreneurial abilities among the general population -- abilities which are vital to the spread of commercial farming.

The Problem of "Land Without Value"

There is a fundamental issue concerning State Land which deserves continuing thought and evaluation, and which can be characterized as the problem of "land without value" in a mixed economy. With the Land (Conversion of Titles) Act of 1975, all freehold land was converted to leasehold. When leaseholds change hands, improvements are valued and sold, but the land itself is transferred from one leaseholder to another without any compensation. Thus, one is frequently reminded that in Zambia land has no value, only improvements have value. Land is not sold, only improvements.

The adoption of leasehold rather than freehold as the basic private tenure derives from the philosophy of Humanism, as does the concept of valueless land. The underlying assumption is that individuals should not reap benefits from values in land which may be created by population growth, government investments, locational advantages, soil quality differences, etc. These values belong to society as a whole since they were not created by any action of the landholder but are instead created by nature or by action taken by government on behalf of all the people. Thus, those people fortunate enough to be located near a government constructed road or railroad should not as individuals reap the increased values acquired by their property as a result of fortuitous location. This is a value that should be captured by society as a whole. Likewise some people will have land of inherently superior soil quality or with better access to water, but these are not advantages that are to be attributed to any action undertaken by the individual; these are gifts of nature. Again, such benefits should accrue to all the people of the society.

The economist Henry George advocated many years ago that values of natural resources that are not man-made, but are the result of inherent quality differences (gifts of nature) or that are affixed to natural resources as a result of investments made by the State should not be allowed to accrue to the benefit of individuals, but should rather accrue to the benefit of all the people in a society. His suggested means of implementing such a policy was to vary the rate and the level of taxation so that those on the better lands and with the most favorable location would pay taxes equivalent to the difference in resource values created by natural forces or by State action. Whether or not land is actually sold and held in freehold, or whether it is held as State property and assigned to individuals in leasehold, would not appear to be the significant element. The key requirement is to provide a system of differential taxation or differential rent on land.

The fact that land is not sold (i.e., it is given in leasehold and only improvements are evaluated and sold) doesn't mean that land has no value. Far from it! When State Land along the line of rail becomes available and is advertised, such a piece of land may have a hundred or more people applying for the leasehold. People are attracted to this land from far and wide because of its location, the infrastructure to which it has access, the greater State services available, the reliability of such services (relative to those in the more remote areas), the better soils in many cases, and the relative certainty of leasehold tenure. Thus, there is evidently a scarcity of that kind of land and anything that is scarce in relation to human demands has value. Value does not appear or disappear as a result of legislation converting freehold to leasehold or declaring that land has no value. The value attributed to this "desirable" land could be diminished by legislation to tax it or to increase the rent on it. In an active and functioning land

market, such a tax (or rent) would reduce the value (the price to be paid) for such land. The tax would in effect raise the cost of holding such land and also the cost of production of whatever products are to be produced. By increasing the tax the market would discount and lower the value of such land. Such a tax would also encourage more intensive use of the land or its transfer to another owner who would use the land more intensively.

Whenever there is a resource (or economic good in general) that is more highly valued by individuals than the price at which it is made available, there is a need for some system of rationing. In any rationing situation the setting exists for a possible dual market in the good in question. Such a dual market (the publicized and the unpublicized one) could not exist without the participation of government officials who, in this instance, control the power to ration and allocate that land to one among many who seek it. This is certainly not to say that this occurs with respect to land transactions in Zambia. It is well to be aware of the fact, however, that the setting does exist where this can occur. And it is hardly necessary to suggest the several points in the transaction process where such dual market behavior could occur, to the detriment of clean and honest government. The issues posed by State Land "without value" are, in our judgement, the most important State Lands tenure issues.

The concept of land as a free good might conceivably create little problem in a purely subsistence economy. Neither would it, in our judgement, create problems in a system where all land was owned by the State and operated under collective management or a State farm system. In these latter systems incentives for meeting the food needs of the country are provided by the central planning authorities through a variety of non-market mechanisms, while individuals are rewarded by a standardized system of payments for efficient tasks performed, etc. But it is much more difficult to conceive of land as a free good and without value in a system such as that of Zambia, relying on private entrepreneurs operating in a mixed economy and presumably motivated mainly by the prospect of earning a living from the production on their individual leasehold and their owned improvements.

The reason for this difficulty is that one of the major resource inputs, land, has no cost to the individual while all other inputs do. It is not correct to say that land has no cost at all. There is a uniform 8 ngwee (\$.10) per hectare rental fee charged on all leaseholds. This is hardly a significant amount. If land were all of equal quality and equally desirable location, there might be no problem. This is of course not the case. If on the other hand, land were truly free, then people would have the incentive to use it lavishly and as extensively as possible. Producers would attempt to maximize output per unit of scarce and costly capital and labor, rather than per unit of land. But, of course, no one can get all the land of the quality desired and in the most desired location. Land does indeed have a scarcity value.

The railroads and the highways in the south and central part of the country represent a very valuable resource. This resource was created by public investments taken from the general wealth of the entire country. Thus all people, not just those fortunate enough to be located along the line of rail, should derive the benefits from it. Of course, the general population does benefit from the fact that the railroads and highways permit goods of all kinds (including exports and imports) to move more efficiently. Yet the

population near these key arteries derive disproportionate benefits from their location. If there were a functioning land market, land prices would reflect that greater value. This in conjunction with higher taxes would help equalize and share these benefits with people across the entire nation. It would also provide the incentive for intensifying production on these lands, giving a further benefit to society. A differential rent on current leaseholds could achieve the same results.

On the matter of intensifying production, government could attempt to require farmers to utilize lands in accordance with some criteria of "best use" through a form of rural land use zoning. But this would be extremely difficult to enforce. It would seem to be much simpler to devise a system of differential rents which would reflect such general differences in soil quality and potential land use (standard land use classifications used widely throughout the world) as well as locational factors. Such a differential rental payment, of a sufficient magnitude to affect production decisions, would not only reflect the cost of the land input to the producer and thus encourage more rational and efficient land use, it would also generate public revenue for further investments in projects that would benefit people throughout the country. It is a measure that appears to be consistent with both equity and efficiency (productivity) requirements of development. The privilege of access to the valuable State Land resource by a few citizens without cost, we would emphasize, is not equitable, nor is it developmentally sound.

An additional factor that would tend to strengthen both the equity and productivity consequences would be to have such a differential rental based not only on the factors of quality and location already mentioned, but progressive with size of unit as well. This would tend to ensure that large holdings were used as intensively as small ones, and would diminish the advantage of those with leaseholds of a size much larger than the average. Thus the rental rate might increase with every 50 hectare increase in size. To be sure, this would make the system considerably more complex.

Zambia's guiding philosophy of Humanism seeks a more equitable society. What seems to be happening, however, is that in order to offset undue current benefits for some groups (or to provide special advantages, incentives and benefits to specific other groups) a complex system of subsidies of various kinds is introduced. Certain subsidies are necessary in any society. However, they also have a tendency to grow more costly over time, to develop a life of their own, to be offset with additional subsidies rather than eliminated when no longer called for, and to result in an ever-growing bureaucracy to enforce them. This has at times occurred in both market and planned economies. It is, however, important to evaluate these tendencies so that the limited capacity of government is not overwhelmed with the administration of a system of ever-increasing and ever more complicated offsetting subsidies. Careful thought will have to be given to whether the policy trend should be toward increasing and counter-balancing subsidies, or toward giving a greater role to the market and utilizing the valuable but limited capacities of government control and enforcement in those areas where the market cannot function to meet both equity and productivity requirements.

The imposition of a differential rent on State Lands is not incompatible with, is indeed required by, equity considerations, and would encourage efficient land use. Since rent (however nominal) is charged for State Land but taxes are not levied, it seems that a policy to encourage more efficient use of State Lands could best be implemented by the introduction of differential rents rather than taxation. Careful study will be required prior to the setting of rent levels.

Other Problems and Opportunities

We believe that the development of State Land by private initiative under leasehold tenure is a sound policy. While we have urged that differential rentals be introduced to encourage more intensive land use, this need not affect the principle that no value in land itself be recognized for transactional purposes. We do, however, feel that much could be done to improve the administration of the State Land resource. The need to create a common regime for all State Land in agriculture, whether scheduled or unscheduled, has already been noted. Some other improvements are necessary as well:

Fourteen-Year Leases: The origins and rationale for the fourteen-year lease have been described earlier. This period may be too short. Seasonal loans will be available to farmers whatever the land title held, but the fourteen-year lease was developed to permit farmers to obtain long-term credit for major improvements and investments such as land clearing, borehole drilling, irrigation facility construction, fencing and tractor or oxen purchases. The cost of such investments has increased drastically in recent years, and to develop virgin lands and bring them into commercial operation may take a generation. We suggest that the period of lease permitted where only sketch maps are available be increased from fourteen to twenty-five years. This may be especially important for the development of Reserve and Trust Land away from the commercial belt along the line of rail, since it will take longer to develop commercial operations in these areas.

The Substantive Law of Leaseholds: The law currently applicable to statutory leaseholds, in the absence of legislative provision to the contrary, is the law of leaseholds as it existed in England in 1911. That law was simplified in England in the 1920s but no corresponding reform was carried out in Zambia. It is hardly arguable that the law of leaseholds as it now exists is appropriate for conditions in today's Zambia. The Law Development Commission should undertake a review of this law and develop proposals for its reform and codification, with an eye both to simplification and correspondence to present land policy.

Land Survey: Problems of great delay in obtaining surveys under the Land Survey Act and their consequences have already been noted. These result in part from a shortage of technically qualified staff, but this is itself due to some extent to the very high level of technical competence required to meet the rigorous requirements of the Land Survey Act. A recent report (Swedsurvey, Cadastral Surveys in Zambia) argues cogently for a number of reforms which we strongly endorse: in particular, the proposal for adoption of a general boundaries approach for agricultural lands. This approach, by marking boundaries on corrected aerial photomaps, achieves a degree of accuracy which is entirely acceptable for agricultural lands. This approach has proved itself workable in other countries in Africa and holds out the prospect of clearing the serious backlog of survey work. More modest technical qualifications are required for field survey work under this approach, and existing staff could be fully utilized.

Land Registration: An adequate system of land registration is quite as vital to effective operation of the leasehold system as it is in a freehold system. While the present Land and Deeds Registry Act appears to be functioning fairly well, it is an unnecessarily complex piece of legislation and dated in many respects. There are in force in many African countries registration acts developed in recent years with dramatically simplified procedures. The Law Development Commission should be invited to review this legislation with a view to a new title registration act for Zambia. It is also clear that the Land Registry, now centralized in Lusaka, must before very long be decentralized, with Registry offices opened in several provinces having significant amounts of State Land, priority being given to those more distant from Lusaka.

Leasehold Transactions: As noted earlier, all transactions concerning leaseholds must be reviewed and approved centrally in a process involving a bewildering array of Government agencies. This leads to serious delays in leasehold transactions. Reform of land survey standards and decentralization of the Land Registry would facilitate the process, but other measures are urgently needed. In particular, the Agricultural Lands Board should meet more frequently and the Office of the Commissioner should receive funding to develop its own Valuation Section, rather than utilizing the Valuation Section of the Ministry of Local Government and Housing.

Land Use Planning for State Lands: The Estates Section of the Office of the Commissioner for Lands exists only on paper. This is the section which should be the link with the Land Use Planning Branch of the Ministry of Agriculture, and be responsible for implementing recommendations of that Branch. No adequate linkage now exists. The Estates Section should be developed in the context of a donor-funded review of State Land use conducted in cooperation with the Land Use Planning Branch. Such a review, evaluating the relative efficiency of categories of proprietors (e.g., settlement schemes vs. parastatal management vs. private commercial farming) and examining optimum land use strategies, would be timely.

Staffing and Training of Land Administration Personnel: There is serious understaffing of virtually all sections of the Government dealing with land administration. This understaffing makes decentralization of land administration, which is badly needed, difficult to envisage in the near future. There is also an acute lack of staff possessing the training required for their jobs. While donor agencies cannot and probably should not become involved with supplementing operating budgets of these agencies to provide for higher staffing levels, an urgent need for training remains largely unmet.

TENURE AND RELATED ISSUES: THE RESERVE AND TRUST LANDSReserve and Trust Land Administration

As noted earlier, the Reserve Land concept originated early in Zambia's colonial history as a strategy for limiting African land occupation with an eye to anticipated white settlement. Because the settlement did not materialize to the extent anticipated, vast areas earmarked as available for settlement were later placed in a new category denominated Trust Land, land held in trust for the African population as a whole. This land category differed from Reserve Land in that the Reserves were tribal, named for the particular tribes which occupied them, while Trust Land units were often occupied by a variety of tribes and identified simply by numbers. Today, Reserve and Trust Lands have areas of 27.3 and 39 million hectares respectively, a total area of 66.3 million hectares or over 85 percent of the area of Zambia.

To date, the administration of these lands continues to be regulated by pre-Independence Orders-in-Council, supplemented by more recent and not entirely consistent enactments. These cannot be said to add up to a land policy, and the single most salient fact about administration of this land -- that its allocation and use is governed by customary law administered by traditional authorities -- is nowhere specifically provided for in the Orders-in-Council. Reserve and Trust Lands were vested in the President at Independence, having been previously vested in the Secretary of State. The Land (Conversion of Titles) Act, 1975, confirms this vesting and on its face would appear to apply equally to State Land and Reserve and Trust Land. But its provisions clearly have to do with State Land, and since the Orders-in-Council were not repealed, the 1975 Act must be construed in their light. The President's powers with respect to Reserve and Trust Lands are specified in those orders. Reserve Land and Trust Lands appear to be subject to slightly different legal regimes.

The administration of Reserve Land is governed by the Zambia (State Land and Reserves) Orders, 1928-1964. The President may make grants and dispositions of Reserve Land under these orders, but in the case of non-natives, these must be for limited periods--not over 99 years even for public purposes, not over 33 years for missions and charitable bodies, and not over five years in any other case. The President must in all cases consult the District Council. From the Reserve Grant Regulations, it is clear that grants to natives were expected to be made in fee simple but these are, as a matter of policy, now read to permit only leasing, consistent with the more recent Land (Conversion of Titles) Act. One would suppose that the limitations placed by these regulations on the fee simple titles would apply to leaseholds of Reserve Land. These provide that a grant cannot be transferred without the consent of the President to a non-African, nor to anyone for five years after the grant; that it cannot be disposed of by will, except if a law permits (and there is now no such law); that its disposal by intestacy shall be governed by a law passed by Parliament (again, there is now no such law); and that the land granted cannot be subdivided without the consent of the President unless a law permits (again, there is no such law). The law repeatedly referred to appears to be the Reserves and Trust Land (Adjudication of Titles) Act, 1962, which was repealed by the Land (Conversion of Titles) Act. This repealed act is discussed further below.

The administration of Trust Land is governed by the Zambia (Trust Land) Orders, 1947-1964, and regulations under those orders. The President may make grants and dispositions to natives, non-natives and district councils. Grants in fee simple and rights of occupancy with rent are mentioned, but the President now makes such grants in leasehold consistent with the Land (Conversion of Titles) Act. No transfer of Trust Land to anyone for more than five years is valid without the consent of the President. As with Reserve Land, regulations place conditions on grants of Trust Land which restrict transfer, disposal by will and subdivision.

There was no general reworking of the orders and regulations for Trust and Reserve Lands at the time of the 1975 Land (Conversion of Titles) Act, as might have been appropriate. The only significant initiative concerning the status of these lands in the past twenty years was the Reserves and Trust Land (Adjudication of Titles) Act, 1962, which was never implemented and was repealed by the 1975 Act. The 1962 Act was presumably repealed because its intent was to work a conversion to fee simple, but its procedures might have been as easily applied to bring land onto the register as leasehold or on any other tenure. Its provisions deserve a second look, and will be very briefly examined here.

The 1962 Act provided for a rural council to take the initiative by recommending to the Minister that a certain area be declared an adjudication area. Once such a declaration was made, the President would appoint an adjudication committee from among the nominees of the rural council. Landholders would apply to the committee for registration of their titles. Titles were to be established under customary law, but the title registered was to be a grant by the President under the Reserve and Trust Land Orders, made on recommendation of the committee. Customary law was thereafter to cease to have effect with respect to the land. Land so registered came under special provisions as to transmission on death, permitting bequeathal by will and providing against subdivision in the case of intestacy under customary law. The repeal of this Act in 1975, without its replacement, has left a hiatus in policy as regards Reserve and Trust Lands.

Where does all this leave the Commissioner for Lands, to whom the President has delegated his authority to administer Reserve and Trust Lands? In practice, there appears to be continued vitality in the policy of gradually shifting from customary tenure forms to tenure forms utilized on State Land, i.e., leasehold. The Commissioner does make leases on Reserve and Trust Lands. This is done in response to a request from a particular applicant for a particular piece of land and results in many scattered leaseholds rather than any systematic conversion of tenure in an area.

The applicant is usually an aspiring commercial farmer. He must first identify the land he desires and obtain the chief's consent to the leasehold. The chief's consent does not appear to be anywhere required in law but the Commissioner of Lands as a matter of policy requires the consent before he will grant a lease. After the chief's consent is obtained, the consent of the District Council must be obtained and finally that of the Commissioner of Lands, who then executes the lease. The applicant cannot in the vast majority of cases afford -- or obtain within any reasonable time span -- a survey which meets the rigorous standards of the Land Survey Act and permits registration.

So, as in the case of those leaseholds of State Land for which a Survey Act survey cannot be obtained promptly, the lease is given for an initial period of fourteen years on the basis of a sketch plan, the plan being commonly prepared with the assistance of the field staff of the Ministry of Agriculture's Land Use Planning Branch. As in the case of State Lands under fourteen-year leases, this lease can be surrendered and replaced by a 99-year lease once a Survey Act survey has been carried out. Since the first of the fourteen-year leases are only now nearing expiration, and few Survey Act surveys have been carried out on Reserve and Trust Land, conversions to 99-year leases have been unusual.

Even among Ministry officials, there are differing appreciations of the consequences of issuance of a fourteen-year lease. On one hand, it is commonly suggested that the lease has the effect of converting the land concerned to State Land, and removing it from under the control of traditional authorities permanently. When a fourteen-year lease of Reserve and Trust Land is registered, it is the State which is shown as the lessor and by implication as the proprietor on the register. But there does not appear to be any clear legal basis for this. Legal opinion in the Ministry tends to the contrary position, partly because the orders governing Reserve and Trust Lands specifically prohibit the Government materially reducing or affecting the size of the Reserve and Trust Land areas. Certainly chiefs who approve such leases do not imagine that the land thereby moves permanently out of tribal control.

There are no statistics available concerning number, size, or distribution for these fourteen-year leases. However, the volume would appear to be considerable. The Commissioner of Lands' Office estimated that it dealt with a half dozen application for leases of Reserve and Trust Lands every week. A conservative estimate would be that there are at least a thousand such leases of Reserve and Trust Lands subsisting, most of them located in Southern, Central and Eastern Provinces.

Having reviewed the usual administrative patterns, an important regional exception must be noted, that of the former Barotseland Protectorate. Unlike the former protectorates of Swaziland and Basutoland (Lesotho) within South Africa, Barotseland lay within a colony preparing for independence in the early 1960s. It was slated for absorption into independent Zambia and independence negotiations dealt with the degree of autonomy to be retained by the Litunga of the Lozi, the dominant tribe in this area. The provisions of the Northern Rhodesia Order-in-Council of 1924 had followed provisions of old British South Africa Company agreements with the Litunga and provided a separate regime of land administration in Barotseland. It was repealed by the Northern Rhodesia (Constitution) Order-in-Council, 1962, but both the 1962 and 1963 constitutions required the consent of the Litunga to any alienation of land from the Litunga and his people. These provisions were succeeded by the Barotseland Agreement of 1964, which provided in part:

The Litunga and the National Council of Barotseland have always worked in close cooperation with the Central Government over land matters in the past, have agreed that the Central Government should use land required for public purposes, and have adopted the same procedures as apply to leases and rights of occupancy in the Reserve and Trust areas, where applicable. At the same time, the administration of land rights in Barotseland has been under the control of the Litunga and the National Council in much the same way as customary land rights are dealt with in the Reserves and Trust Land areas.

In these circumstances, it is agreed that the Litunga should continue to have the greatest measure of responsibility for administering land matters in Barotseland. It is however, necessary to examine the position of land in Barotseland against the background of the Northern Rhodesia Government's overall responsibility for the territory.

The agreement is obviously a political document and its ambiguities can only be clarified by practice. In fact, the Government has acted with circumspection in land matters in Barotseland, invariably consulting the Litunga and the Council, as where land is required for public purposes.

Returning to land policy and administration for Reserve and Trust Lands as a whole, those Government departments whose activities touch and concern land administration are stretched to the limit of their staff and operating funds in dealing with the relatively small amount of State Land. They have little time to give thought to the tenurial future of the Reserve and Trust Lands. In fact, proper planning for this land resource requires better data than now exists. Data on land use is fairly current, but data available on land use potential leaves much to be desired. We have heard very optimistic estimates of the potential of this land, but skepticism is advisable. In most developing countries where thorough land use potential studies have been conducted, almost invariably the arable land that is economic to bring into production in the near future is far more limited than had been imagined. Knowledge of the potential for expansion of cultivation on the Reserve and Trust Lands is important in planning the tenurial future of those areas already under cultivation, and funding should be sought for land potential studies in selected Reserve and Trust Lands areas. Such exercises are costly, but produce vital data of long-term significance and durability.

Pressure on Trust and Reserve Lands

In spite of the inadequate state of knowledge of the potential of much of this land, there is little doubt that there is serious pressure on the land resource in certain areas. A Commission is presently considering land problems in Southern Province, where demands by residents on Reserve and Trust Lands for greater access to State Land testifies to this pressure. Even more convincing testimony is provided by serious land degradation and erosion through overuse in some areas.

The origins of this pressure on land in Southern Province are two-fold. First, there are historical considerations: a significant part of the best land was taken as State Land, and Africans resident in these areas were crowded into the Reserves. The situation has been worsened by natural population increase and, to some extent, by the creation of larger farms. While this situation is not as evident in Eastern Province as in Southern, the potential for serious pressure on the land resource in the not too distant future clearly exists.

But, it is argued, there is a great deal of land in nearby Trust Land areas which is free for the clearing, and some of this is of as good quality as that in the more densely populated and overused areas. This misses the point. Revolutions fueled by land hunger have occurred in many countries with extensive untapped land resources. Ethiopia is a recent African case in point. Populations are not so mobile as planners would like, and usually for perfectly sound economic and social reasons. Take as an example the

"emergent" farmer on Reserve Land in Southern Province, near State Land. He lives where he enjoys relatively good access to credit, marketing, new inputs and technologies, as well as to the transport network and amenities such as schools and clinics. Even though he finds his prospects worsening as his area of residence becomes increasingly crowded and degraded by overuse, the decision to move deeper into the bush to cultivate is not an easy one. Access to more extensive land there may well be outweighed by the costs of clearing and bringing new land under production, increased delays in obtaining new inputs, difficulty of access to credit and marketing facilities and other costs, some of them social. There is ample evidence that such a move will not be made until it becomes absolutely necessary, and that this point is often not reached until land pressure is great and land degradation very serious indeed. And when the point is reached, the response will often instead be migration to urban areas in search of wage labor. These are, it should be emphasized, the result of rational preferences by individual decision-makers.

A move towards State Land along the line of rail is a very different matter. It brings better, not worse access to services and facilities. It is again rational behavior, not simply the result of envy of the commercial cultivators there. This does not mean that such a move should be countenanced. Were there serious maldistribution of land, then of course redistribution would provide an acceptable livelihood for more persons on the State Land. But the skewing of distribution, in national terms, is relatively minor, and the extent of the State Lands very limited. At the moment the State Land commercial farms are feeding the urban population of Zambia and any disruption of their production should be contemplated with the greatest reluctance. Moreover, to focus on the maldistribution issue is to seek a short-term palliative while bypassing the critical problems: how to ensure better husbandry of land already farmed in the Reserve and Trust areas and how to create incentives for expansion of cultivation into more remote areas. Tenure issues which arise in this context, such as security in improved holdings, tenure/credit relationships, and farm inheritance patterns, are discussed below.

Security of Tenure in Improved Holdings

A farmer will not invest in enhancing the productivity of his existing holding or in bringing new land under cultivation unless he is secure in his expectation of reaping the benefits of his investment. Customary land tenure systems in Africa are commonly judged inadequate in meeting this need for security, with lesser or greater justification depending upon the rules of the particular tenure system concerned and the stage of development in the area concerned. One encounters widely differing views on the key issue: do traditional tenure systems create insecurity which obstructs commercialization of agriculture? Some divergence of opinion obviously stemmed from the particular experiences of individuals. Those whose experience concerns areas where the many other preconditions for commercialization such as credit, new inputs and markets are not available, quite rightly deny that insecurity generated by land tenure is a constraint. Others, including some farmers interviewed in Eastern, Central and Southern Provinces, where those preconditions are being met, assert that it is indeed a constraint.

Here an historical perspective is helpful. There seems little question that the traditional systems of granting the use of land to individuals provided adequate security in land in the past. It is instructive to examine the situation among a number of groups, taking as examples the Plateau Tonga, the Ngoni and the Lozi.

Among the Tonga of Southern Province, a limited social control was exercised by village headmen over the acquisition and use of land. Land rights were acquired in the first instance by an individual clearing land for cultivation, which was undertaken only after consultation with the village headman to insure that there were no inconsistent rights surviving in the land. (Later, under the Native Administration, attempts were made to give chiefs with broader geographical authority a role in approving new cultivation.) Once land was cultivated, the cultivator had absolute rights in the land so long as he continued to farm it. In the days when land was more plentiful, these rights apparently persisted until the death of the cultivator -- even if the land had lain fallow for many years or if the cultivator left the area for some years, so long as he did not express an intention to abandon the land. In the last generation, as good land has become scarce, customary law has tended towards a more rigorous view: land unused for a long period may be taken over by another with the consent of the headman or chief. But this is unusual, because a proprietor who does not wish to cultivate his land himself will generally give it to a relative or friend. His right to do so is firmly established in customary law. Indeed, land may, in effect, be sold. In the traditional society such transactions were construed more in the nature of sales of the improvements on the land between community members. Today the consideration paid makes it clear in some cases that the land itself is a commodity of value. The headman or chief will be consulted before a sale and, at least in the case of a transfer to an outsider, his consent is necessary.

In the last generation, there have been many changes in Tonga agriculture, and these have had an impact on land tenure. Under the old regime of shifting cultivation and hoe-farming, the sizes of holdings were drastically limited by the technologies available. Size of holding varied only in proportion to the family labour available. The introduction of oxen-plowing and later tractors has made capital as well as family labor a determinant of size of cultivated holding. Initially, expansion of cultivation could be accomplished by bringing resting land of the cultivator into cultivation, an intensification of land use permitted by increased manuring, use of chemical fertilizers and crop rotation. But new land could also be easily acquired by clearing it. Nothing in Tonga customary law prevented the growth of a new class of larger farmers. In recent years, there was also the possibility of obtaining a leasehold (a state lease for fourteen years, convertible after precise survey into a 99-year lease). While fragmentary figures on holding sizes are available for different periods, these do not permit confident comparison. What is clear is that in the past fifty years there have developed greater disparities in the sizes of holdings than previously existed. And while there may be good, uncultivated land in the more remote areas, there has developed a very real pressure on good land which is near to centers of services and marketing. This land pressure is probably not primarily due to the emergence of some larger farmers, but to factors such as population increase and the increasing attraction of service and market centers.

Among the Ngoni of Eastern Province, in spite of significant differences from the Tonga in social organization, the traditional situation was not very different. Land was obtained initially by clearing, as among the Tonga. The headman's consent was necessary, and more strongly emphasized than among the Tonga, but his role was still essentially permissive, aimed at excluding the possibility of conflicts with other possible right-holders. Site selection was by the applicant-cultivator. Land cultivated was secure in the cultivator, though once out of cultivation for an extended period it might be taken up by another cultivator with the permission of the headman. Chiefs and headmen of the Ngoni, with a stronger traditional hierarchical structure, have exercised greater authority to cut off rights in unutilized land than among the Tonga. Sale of land is rare, and leases and sales are more resolutely resisted by Ngoni chiefs than among the Tonga.

The Ngoni, like the Tonga, are experiencing a concurrent expansion and intensification of cultivation, increasing divergence in sizes of holdings, and increasing pressure on preferred land. In such a situation a hierarchically organized society might be expected to develop relatively quickly tighter rules and better mechanisms for control of access to land. While there has been increasing assertion of the right of chiefs and headmen to take unused land for new cultivators, it is not clear that the traditional leadership retains the authority and legitimacy to deal with the changing circumstances of land use. The cooptation of the traditional leaders during the colonial period under indirect rule has certainly diluted their authority very substantially.

The rules of Lozi land tenure in Western Province stand in contrast to both those of the Tonga and Ngoni. The land tenure patterns distinctive to the Lozi developed around the homestead mounds and gardens on the flood plain of the Zambezi River. These gardens, intensively cultivated, average only a quarter acre per homestead, though the entire holding including pasture may be more than an acre. The creation and maintenance of mounds, raised gardens and canals represent major investments of labor, which give these improvements and the land their value, and in turn has given rise to well-defined land tenure rules. The paramount chief of the Lozi, the Litunga, is in tradition viewed as the "owner" of all land. Titles to land have originated in grants made by Litungas over the years. In addition to family holdings, there are holdings belonging to the Litunga, members of the royal family, and sub-chiefs. These land titles attach to the offices concerned and provided the economic basis for the traditional hierarchy. The entire plain is said to be subject to such private rights. "Family land" (or "inheritance land" as it is sometimes called) is held absolutely once granted and is heritable. The spirit of tenure in such land approaches that of absolute ownership more closely than that of other traditional tenure systems in Zambia. This is true even though to accommodate a Lozi who does not have land on the plain, the Litunga may ask a holder of family land for a portion of his holding for the newcomer, and such a request will invariably be granted.

Strikingly, agriculture on the plain has remained largely a matter of subsistence production in spite of the land's fertility and sound husbandry. It is in fact in a state of stagnation, and does not appear to be expanding significantly. The Lozi's traditional economy virtually collapsed under colonial rule, and has never recovered. The hut tax and other impositions in the first decade of this century created a need for money, a need which in the absence of a cash market for agricultural produce could be satisfied only by

wage labor in the mines and cities. At the same time, tributary labor was abolished, spelling the doom of a system of agriculture which was dependent upon exceptionally high levels of labor investment. Today, new mounds are not constructed, nor are canals created or even well-maintained. Almost half the male population is said to spend extended periods away from Loziland, and Western Province has become a perennial food deficit area.

In spite of the fact that much land on the plain is not cultivated (it could support a much larger population), the center of gravity in Lozi agriculture and Lozi society in general is gradually shifting towards the uplands, beyond the verge of the flood plain. Here the Lozi have long grown maize and cassava in time of rain, and more and more Lozi are establishing permanent residence in the uplands. This tendency is promoted by the Government's reluctance to place centers of services such as schools and clinics on the plain, or even to maintain existing centers. It is in the uplands, where larger holdings are available, that one finds the beginnings of commercial agriculture in Western Province, with an associated desire on the part of commercial farmers for State leases. Commercial production is unknown to the plain, except for a few small-scale vegetable and rice farmers, and so there the traditional tenure system remains largely intact. It is in the uplands that pressure for land tenure change will be generated.

While under these three traditional tenure systems considerable security in holdings existed in traditional agriculture, the traditional rules functioned effectively to provide such security in a particular context: a subsistence agriculture in which land was relatively plentiful and particular pieces of land did not have drastically different values conferred upon them by investment and advantageous location. The question is whether one can rely upon the consistent enforcement of these rules when particular pieces of land come to have widely different values, as is the case when an area moves from subsistence to commercial agriculture. While traditional institutions may have the capacity to enforce security in holdings in the first situation, it is very possible that they will fail to do so in the second situation. In those circumstances either enforcement of the traditional rules must be strengthened or they must be replaced by the State with alternative tenure arrangements which provide security.

In conversations with emergent and commercial farmers on Reserve and Trust Lands, one finds evidence of felt insecurity in a number of cases. In Southern, Central and Eastern Provinces, these farmers had a variety of concerns. First, there was a concern over their inability to develop a farm of adequate size, to gain secure title to a large enough area and develop it gradually. Customarily, rights were conferred by cultivation, and when neighbors perceive that profitable commercial cultivation is feasible in an area, they place the lands around the developed holding under cultivation and prevent expansion. The chief or headman himself may do so, even reducing the area which he originally approved for eventual cultivation. We heard only a very few assertions that there was a danger that developed land would be taken, but it should be noted that this becomes an acute danger when the cultivator is not from the tribal area concerned and so is viewed by custom as cultivating on sufferance.

In Western Province, among the Lozi, concern over insecurity was expressed differently. While there was emphatic confirmation that rights in the family land would be respected, there is also no doubt that the Litunga may ask for, and will receive, land for a newcomer from an existing holding. The holding of family land is complicated by intensive sibling rivalry and frequent accusations of the practice of witchcraft by one brother against another, motivated by jealousy over land and engendering a different sort of insecurity.

There is a further aspect to insecurity of tenure, and it must be considered as it affects each of the systems of traditional tenure discussed here. Insecurity is an objective fact, a probability of disturbance of a holding which can be determined by research, but it is also a state of mind. It is not so much insecurity, but consciousness of insecurity, which affects investment decisions. Consciousness of insecurity may be heightened and made more determinative of behavior by factors external to the individual's situation. This appears to be happening due to the widespread knowledge of leasehold tenure as an alternative. It is an alternative which appears to offer an escape from tenure which is enmeshed in a complex of customary and personalized relationships with traditional authority, relatives and neighbors, into tenure based on a relatively impersonal and businesslike relationship with Government. The very awareness of the possibility of leasehold tenure thus contributes to the consciousness of insecurity under traditional tenure rules.

Insecurity of tenure does exist to some extent in limited areas of Zambia, and the situation is likely to become more serious and widespread with the passage of time. There are a variety of ways in which such a concern may be addressed, and they are discussed later in this paper. It needs to be stressed, however, that this is not a single constraint situation. Tenure change is only one among several changes which may be necessary, and unless it is accompanied by a wide range of supporting measures it may well have no impact whatever. In the areas presently under traditional tenure arrangements, the expansion and intensification of agriculture will depend upon the creation of new centers of services and marketing along an ever-expanding network of feeder roads, quite as much as upon provision of a more adequate tenurial regime.

Customary Land Tenure and Agricultural Credit

Discussions of the adequacy of customary land tenure frequently focus upon a kind of security quite different from security of tenure—the pledging or mortgaging of land as security for a loan. This issue only arises where substantial loans for commercial farmers are at issue, as credit for traditional farmers can readily be handled as seasonal loans against crops. But where the need for secured credit does arise, it is important to understand the relationship between the two types of "security." As regards security of tenure, discussed above, a banker will not loan to a farmer who is not secure in his holding in the sense of having a secure expectation of continuing in possession to reap the returns on investments in the land, because if the farmer does not reap those returns the bank is unlikely to have its loan repaid. This security of tenure is, however, only one of the necessary conditions for land to be used as security for a loan. Land offered by a borrower as security for a loan will be taken by the lender to satisfy the debt if the debt is not repaid as agreed. But banks do not wish to become farmers and so there is a further requirement related to land tenure which must be satisfied: the land must be readily transferable to someone who does want to farm it, for a consideration which will satisfy the debt.

What is the impact of customary tenure rules in this regard? Land at customary law may or may not be readily transferable. Zambian customary tenure systems generally appear to have sanctioned gifts of land but traditionally sales of land were unknown, for a fairly obvious reason: land did not have a scarcity value, and so customary law usually made no provision for its transfer for a consideration. This appears to have been the case in the customary law of the Tonga and Ngoni. Land first acquires value associated strictly with the improvements upon it, such as a building, and the consideration for a transfer does not really reflect the value of the land, but that of the improvement. Later, as land assumes value by virtue of productive improvements upon it, and has value conferred upon it by location near developing centers of services and facilities, the consideration begins to reflect the value of the land itself. In such a situation customary law, which is usually quite flexible, comes to recognize sales of land. This is at least the progression where some land acquires value in a developing market economy which has not experienced land shortage. Once sales are recognized, recognition is extended quite easily to mortgages of land.

It is not clear that this is the natural progression, however, when land acquires scarcity value in a traditional economy. When land is scarce and valuable in a subsistence economy, where the only means of livelihood is provided by access to land, sales may be prohibited. In these circumstances a traditional society, motivated by a strong sense of family and kin obligation to provide minimum subsistence opportunities, tends to develop rules which prohibit or at least significantly discourage sales of land and thus the use of land as security for loans. This is a legitimate reaction, in the interest of securing a livelihood for the progeny of the proprietors, in societies which provide few other subsistence opportunities. Sales, if not illegal, are socially unacceptable. The attitude of the Lozi towards sales of family land - long a scarce resource - reflects this tendency. Such sentiments, reflected in customary rules prohibiting sales of land, may be expected to dissipate with the breakdown of traditional values under the pressure from the developing market economy at a later date. Only once sales are recognized does land become adequate security for loans.

Traditional land tenure systems in Africa accept land transferability for a consideration, and thus mortgaging, gradually and with varying degrees of reluctance. Legislation may be called for if this acceptance is to be facilitated for those emergent farmers who desire it. On the other hand, demands for tenure changes to facilitate land security for credit are commonly premature. It was said earlier that a precondition for the use of land as security for loans was that the land be readily transferable for a consideration which will satisfy the debt secured. This requires not only ready transferability and mortgagability of land at law, but the existence of a market. Legislative initiative in advance of the development of such a market will have little effect and only disappoint expectations. There is little evidence that a significant market for land, even under a more commercially acceptable tenure such as leasehold, exists in the Reserve and Trust Lands beyond restricted areas of Lusaka, Central, and Southern Provinces.

Nonetheless, one hears from farmers in much less developed regions that they would prefer leasehold tenure so that they can obtain a loan. How does one explain their perception? Are banks, or government agencies acting like banks, following a reflex bankers' preference for a familiar tenure, even though the land does not really constitute good security due to lack of a market? There is an alternative explanation. Lenders incline to grant loans to leaseholders not because they are under the illusion that the lease provides realizable security on default, but because the leasehold reassures the bank, uncomfortable with traditional tenure arrangements, about the other kind of security, security of tenure. The lease reassures the bank that the borrower has a secure expectation that he will continue in possession of the land for long enough to recover the cost of his investment, and the bank its loan. If it accepts the leasehold as security for the loan, it does so under few illusions; something is better than nothing. The lender looks at the leasehold as an indicator of the likelihood of the success of the enterprise for which credit is sought, an indicator of credit worthiness rather than as security for the loan in the strict sense. Indeed the fact that the farmer has been able to negotiate the administrative steps required to obtain a lease may be considered an important recommendation. (It is difficult to establish possession of a leasehold as a critical variable in obtaining credit, because the leaseholder is invariably exceptional in several ways.)

Could not much the same result be achieved with a written statement of the chief that he would not interfere with the borrower's use and development of the land for a specified period? Logically, it should, but in practice it probably would not. Banks loan against very shaky security if they must, because in their nature they must loan money; but if they have limited funds for lending and there are opportunities for lending against security in land under a familiar tenure, such as leasehold, they incline to disdain other, less familiar tenures.

In conclusion, tenurial obstacles to the use of land as security for agricultural credit are only a significant constraint on agricultural development in very limited areas of the Reserve and Trust Lands. But coupled with the insecurity felt by some holders of land under traditional tenure, these factors suggest a gradual extension of the leasehold tenure into the Reserve and Trust Lands.

Inheritance of Land and Farm Development

The Law Development Commission is presently preparing recommendations on a reform of the laws of inheritance in Zambia. The topic deserves priority consideration. Some of the problems become evident if a few examples are examined, again drawing upon the situation of the Plateau Tonga, the Ngoni and the Lozi.

Under shifting cultivation as it was practiced by the Tonga in pre-colonial times, rules of inheritance of land were of little importance. Land of a deceased proprietor reverted to the common pool of village land. There was plentiful land for allocation to any willing cultivator. But as cultivation has stabilized, the matrilineal rules of inheritance applied to roles and personal property have come to be applied to land. Land now reverts on the death of a cultivator to his matrikin, who corporately decide who will take up cultivation of the land. Only very rarely is a holding subdivided. Those from whom the matrikin may select an heir are, in very general order of

preference, mother's brothers, maternal nephews, maternal grandchildren and sons. But the matrikin will commonly disregard this order of preference to give the holding to a good farmer, openhanded with his relatives and generally mindful of his social obligations. Need does not appear to be a critical factor. If there are no male children, a female of exceptional reputation may be chosen. It should be noted that the sons of the deceased proprietor are eligible, and there have long been a limited number of cases of father-son inheritance. As permanent improvements upon holdings have become more common, there is reported to have been an increasing tendency in this direction. A father may affect the outcome in this respect by giving his son land during his lifetime, though this is not conclusive. While wills of land are now occasionally attempted, they appear to contravene customary law and their enforceability is not yet established.

The inheritance process is complicated by the rights of the widow or widows of the deceased. Traditionally, a husband's holding was divided into a family garden and gardens for each of his wives. Beyond the work of clearing and plowing, most agricultural labor is done by women. The Tonga practice levirate, and in some cases the widow is inherited with the land. But if she remains independent, residing in the village of her marriage, she will generally retain rights in her garden until her death. If she has dependent children, she may also retain control of a part or all of the family garden. Upon her death the land reverts to the husband's matrikin, but in practice the widow may have given land to her children or other relatives and the matrikin may hesitate to disturb these arrangements.

In contrast to the Tonga, the patrilineal Ngoni have a clear order of preference for inheritance of land. The eldest son inherits where all sons are born of the same mother; if there are sons from different wives, the eldest son of the first wife inherits. Failing sons, the eldest daughter inherits, and failing daughters, succession passes to eldest brothers, eldest sisters and fathers and mothers, in that order. The clearer rules of inheritance under Ngoni law deprive the lineage of the degree of discretion in selection of an heir enjoyed by the Tonga matrikin. Again, the rights of a widow complicate the succession process. In practice, it is common for a widow to continue to hold for her lifetime her gardens from her husband, particularly if there are dependent children. She is not an heir but because the land will eventually descend to her children, her retention of her husband's land after his death is less of an anomaly than in Tonga matrilineal society.

The Ilozi system of inheritance is cognatic (bilateral), but with greater emphasis on the patrilineal side. A homestead will consist of a half dozen huts on a mound, inhabited by families of both patrilineal and matrilineal relatives of the headman of the homestead. The headman is both the head of this extended family and the owner of the largest holding in the family land. The headman assigns land to relatives taking up residence in the homestead and must approve residence itself, which gives him great authority. Once land has been so assigned, however, it cannot be taken away so long as the assignee remains in residence. When a landowner dies, all resident children, male and female, are considered to be entitled to unspecified shares in the holding, and the distribution among heirs is the responsibility of an heir-in-chief.

The preferred heir-in-chief is the eldest son of the deceased, but succession to this role is not automatic. The members of the patrilineage, led by the headman, will sit in consideration of the matter. They may select another heir-in-chief if the preference for the eldest son is overridden by considerations of "good character."

A widow is not an heir of her husband, and will often return to her homestead of birth, where she has a legal claim upon her relatives for land. But she may also remain at her husband's homestead as custodian of minor children or, if the children are grown, as their dependent. While a woman does inherit land rights from her parents, she will usually reside at her husband's homestead after marriage and land rights in the female line tend to atrophy. The sons of a daughter of a homestead may approach their mother's relatives with a request to reside there and share their land, but such a request will only be granted grudgingly and such holding, while technically legal, is attended by considerable insecurity.

As will be clear from the above discussion, the customary legal systems of Zambia do not recognize freedom of testation (the right to dispose of one's land by will) and gifts of land to children during a parent's lifetime are not conclusive. These systems rely instead upon customary rules which set out what will happen to the land when its holder dies. It is not land alone which is thus disposed of, but leadership, other roles and personal property as well. In some systems, the rules designate a particular heir and has a clear order of preference if that heir is not available. This is commonly associated with patrilineal inheritance systems, and the Ngoni provide an example. In other systems, the rules confer discretion on a group in selection of the heir, though they may state an order of preference among heirs which is regarded as natural, if not binding. In the matrilineal system of the Tonga, the group in which this discretion is vested is the matrikin. The matrikin choose an heir from among themselves and the order of preference viewed as natural is easily departed from in order to designate an heir of "good character." Among the patrilineal Ngoni, there is much more limited discretion in departing from a more clearly prescribed preference in favor of the eldest son. Among the bilateral Lozi, the lineage's discretion in choosing an heir-in-chief is similarly limited by a strong preference for the eldest son.

Based on this review of traditional inheritance systems, several apparent difficulties may be cited. First, a system of inheritance which confers considerable discretion on a kin group to choose an heir creates uncertainty as to who will ultimately inherit a farm. This uncertainty exists on the part of the landholder, who does not know who his heirs will be, and also on the part of his potential heirs. Such uncertainty appears to exist among the matrilineal Tonga to a larger extent, among the patrilineal Ngoni and bilateral Lozi to a lesser extent. This may have been a matter of relatively minor importance when the peoples concerned practiced subsistence agriculture, when land was readily available, and when two pieces of land of similar fertility had about the same value. But when major investments are made in land, a landholder tends to develop much stronger preferences as to who should take over the farm after his death. From the remarks of commercial and emergent farmers this would appear to be the trend in those areas of Zambia being affected by commercialization of agriculture. A trend toward father-son inheritance has been noted in the literature, and the authors' inquiries confirmed this.¹¹

¹¹ Mphanza P. Mvunga, "Law and Social Change: A Case Study in the Customary Law of the Inheritance in Zambia." African Social Research, Vol. 28, 1979, p. 643-654.

It is arguable that such uncertainty is deleterious to the long-term development of farms. A good farm is the work of 20 to 30 years, a generation, particularly for emergent farmers without much capital. What this farmer invests in his land is labor and such limited capital as his labor produces. That labor is largely the labor of his nuclear family: himself, his wife or wives and their children. The development of the family farm is furthered if his children's labor remains available as both they and the farmer grow older. But will they do this, if there is uncertainty as to the heir? The uncertainty would appear to reduce the likelihood of trans-generational, stable development of farms.

More than uncertainty is involved; under some systems, like that of the matrilineal Tonga, it is probable that the heir will not come from the nuclear family -- the matrikin will normally choose an heir from among themselves. Here there is a discontinuity. Membership in the nuclear family, the labor unit which develops the farm, is incompatible with membership in the matrikin whose heirs will someday benefit from the development of the farm. This discontinuity must affect the commitment of a farmer and his family towards the farm's development. At least among the Zambian societies surveyed, the matrikin are commonly widely dispersed, and do not constitute either a traditional or potential group for production or investment purposes. Among the patrilineal Ngoni there is little problem. Among the bilateral Lozi, although some uncertainty exists, there is at least the prospect that the heir-in-chief will eventually be chosen from among the deceased's sons and all resident children of the deceased have a right to share in his land. The pool of inheritors of the farm corresponds to those whose labor must be called upon to develop the farm.

Some Tonga farmers complain of the matrilineal system but it should be appreciated that attitudes change gradually. One also encounters commercial farmers operating under systems which create uncertainty as to the identity of the heir, who argue that the discretion exercised by the group with respect to the heir is a good thing. It ensures, such a farmer explains, that a good farmer would be chosen to develop his farm after his death.

In dealing with these complex issues of farm inheritance, the Law Development Commission can follow one of two approaches, or some combination of the two. They can emphasize freedom of testation, permitting a holder of land under customary tenure to make a binding will, or restate the law governing intestacy (or combine the two measures in some fashion). Freedom of testation is only permissive, and it could be argued that it will bring change only gradually. On the other hand, there are relatively few Zambians - many more in the towns than in the agricultural sector - who feel a need for this right to make a will. Complete freedom of testation is subject to abuse, and can be used to deprive the testator's dependents of their only livelihood, the land. Restating the law of intestacy, on the other hand, would attempt to force change in this respect on many persons in the traditional sector who have no need for it. This would be difficult to enforce, and since most traditional inheritances do not come before a court or other officer of the law, practice would conform to the new rules only very gradually. It would probably achieve change at a rate little or no faster than the introduction of freedom of testation. Perhaps the best approach would be to introduce freedom of testation but limit that freedom by providing for minimum shares in the estate of the deceased for the traditional heirs.

In this context of inheritance law reform, the temptation may arise to attempt to prohibit excessive subdivision of parcels. Subdivision does not appear to be a serious problem in most of Zambia, and in any case, attempts to legislate limits upon subdivision have had a markedly unsuccessful history in Africa. If subdivision is increasing, it will usually be due primarily to the fact that there are few employment opportunities outside of agriculture. In those circumstances, the effective limitation of subdivision simply converts underemployment in the rural sector to unemployment in the urban areas. And compliance with such limitations is very difficult to obtain. In the Sudan and Kenya, attempts to limit subdivision by refusal to register successions which result in excessive subdivision have gone badly awry. The heirs simply do not register the succession, and as a result the accuracy of the registration system itself is progressively undermined. A registrar's power to compel registration is ineffective in the face of the widespread non-compliance which these attempts at limitation engender. The only real solution to the problem of subdivision is the economic solution: provision of more job opportunities outside the agricultural sector. The temptation to legislate against subdivision should be resisted unless there is clear evidence of an inheritance system creating a very high degree of subdivision, which will usually appear as extensive fragmentation of holdings. That fragmentation should be examined carefully to determine whether it has a rational basis, such as giving each heir land in each ecological zone in which the deceased held land. If the fragmentation is irrational, then the rules of inheritance themselves should be changed, rather than attempting to impose a quantitative limit on subdivision, as was attempted in the Sudan and Kenya.

There is a special problem concerning inheritance of leases of State Land. As native Zambians have become the leaseholders under these leases, the question has arisen whether such land should pass according to the leaseholder's tribal law of inheritance, or whether rules of English origin should control the transmission of a common-law legal institution such as a lease. This is an urgent problem and there is some confusion created by court decisions to date.¹² It would appear preferable to deal with this issue in the context of general inheritance law reform, rather than by creating special rules for the inheritance of leaseholds on State Land which re-enforce and maintain the duality of tenure systems which exists today.

Alternative Paths for the Future

Given that changes in Zambia's traditional land tenure systems must be considered, what paths for future development lie open? Africa has witnessed in recent years a wide variety of experimentation in land tenure. Kenya has pursued the conversion of traditional tenures to freehold on a wide scale. Tanzania has followed a plan of villagization with creation of communal holdings for communal production, seeking to exploit traditional attitudes toward land but at the same time diverging from traditional practices in many respects. Ethiopia is pursuing a similar objective by more Draconian methods. Botswana has introduced an innovative system for the better management of land under customary law, coupled with a limited introduction of the common law leasehold for specific land uses. These few cases illustrate the diversity of approaches. Unfortunately, most of these programs are too new to permit conclusive evaluation. All have experienced difficulties but their initiators remain convinced of their ultimate feasibility.

¹² A.M. Susman, "State Land and Customary Law: The Application of Customary Laws of Succession to Land Held under "English" tenure", Zambia Law Journal, 5, 1973, p. 127 - 137.

Hopes for these programs as generators of agricultural development have been high, perhaps too high. It cannot be emphasized too strongly that tenure reform is not a panacea, any more than any other single measure. It is very unlikely that there is any situation in which an inadequate tenure system is the sole constraint on agricultural development. This is true of development problems generally. They are unfortunately not single-constraint situations. They do not require simply the manipulation of one key variable in order to set the machine of development running, but the constant manipulation of dozens of variables, in coordination with one another. Land tenure reform, however well conceived and implemented, will have little impact unless it is carefully coordinated with consistent initiatives in pricing policy, marketing, credit, extension, taxation and other areas. It is quite possible to pursue apparently valuable initiatives in any one of these areas and yet have little impact, because the initiative does not "mesh" with programs, policies and institutions in the other areas.

Basic government policies and approaches to agricultural development reflect deeply held convictions about the nature of the good society. Realistic recommendations must be made within these parameters, and it is valuable to try to state some assumptions before proceeding further:

- Agriculture in Zambia, due in part to limited State resources, will continue to be developed not only by direct State action but by private individuals utilizing their labor and capital. It is therefore necessary to provide a system of private rights in land which provides the incentives for investment.
- The philosophy of Humanism as enunciated by the Government of Zambia forecloses certain tenurial options. An obvious example is freehold, while leasehold appears to be acceptable.
- As suggested by the analysis in this paper, customary land tenure is not providing, under the changing conditions of agriculture in some parts of Zambia, a tenurial regime which meets the need for security in land and facilitates the extension of credit required for commercialization of agriculture.
- Because this process of commercialization is in very different stages in the various parts of Zambia, any policy of tenure reform should be sufficiently flexible to meet the needs of those various stages. It should be implemented at a pace and through mechanisms which are affordable by the Government of Zambia.
- In spite of the need for flexibility noted above, tenure reform policy should aim in the long run at a uniform system of land tenure for Zambia rather than the indefinite continuation of the present dualism.
- In terms of the implementation and phasing of any reform, as well as administration of lands in the aftermath of the reform, a relatively inexpensive decentralized system of administration will be necessary.

Perhaps the most fundamental choice involved in framing a program of tenure reform within the above parameters is whether the statutory leasehold should replace customary land tenure in the Trust and Reserve areas or whether, instead, an attempt should be made to reform the rules of existing customary tenure system.

The latter option has its considerable attractions. Customary land tenure served Zambians well in their traditional societies, providing broad if not strictly equal access to subsistence opportunities. It deserves to be asked whether, with some modification, it cannot provide equally broad access to development opportunities. The option of no modification does not exist: customary tenure systems will themselves either adjust to or disintegrate under the force of market pressures. The choice is rather between planned and unplanned change.

The issue of whether or not a customary tenure system can be successfully adjusted to the needs of developing agriculture is often obscured by a certain romanticism, with traditional practices honored more or less for their own sake since they have served people for so long. There is a general resistance to departing from these practices and substituting other property forms which may - rightly or wrongly - be associated with foreign economic systems. And yet it is important to examine customary tenure systems and land administration mechanisms carefully. There will be situations in which continued utilization of some of their elements can produce real economies and avoid unnecessary and unsettling social dislocations.

What does such an examination yield in this case? One can imagine situations - for example, where traditional land tenure systems had developed more sophisticated rules and mechanisms for dealing with valuable land and its uses - in which one would readily recommend modification of a traditional system. However, most customary land tenure systems in Zambia appear to have only begun to respond to the new problems raised by commercialization of agriculture, perhaps because most commercial development has been confined to the State Lands. In contrast to some other common law jurisdictions in Africa, customary land law has received almost no development by judicial decision. There are other problems with an evolutionary approach. Zambia's customary tenure systems differ very considerably from one another. Change directed towards a common reformed tenure system would be complex for this reason, and tend to produce an end result which no one would recognize as indigenous. In these circumstances we are inclined towards a policy of the gradual replacement of customary tenure by leasehold. While we can conceive of customary tenure reforms which would achieve the necessary objectives, the end result would look very much like a leasehold, by whatever name it was called. Leasehold, if its term is long enough - and 99 years is certainly long enough - offers adequate security to encourage investment and is acceptable security for loans. It is a tenure already familiar to many rural Zambians, and its acceptability under the tenets of Humanism is clearly established.

If such a policy of gradual conversion to leasehold tenure were to be adopted, how could this best be accomplished? At the moment, leasehold is being introduced into the Reserve and Trust Lands areas through the fourteen-year lease process described earlier. Applicants themselves select the land they desire on lease, obtain the necessary approvals, and then the lease is granted. It has already been noted that the fourteen-year period does not seem long enough, and that a more reasonable term would be 25 years, as a minimum. But there are other unsatisfactory aspects of this mode of conversion to leasehold as well.

First, it does not appear to be compatible with sound planning; leaseholds come into creation scattered about at the discretion of applicants, and in the long run this could pose an overall obstacle to layout of a community's farms. It perhaps does not constitute much of an obstacle as yet, but it will do so in time. Second, the present process is unsystematic and thus costly in the long run: each lease must be visited separately by surveyors and sometimes by those whose consents are required for the lease. Finally, in areas where pressure on land is increasing, the necessary consents from chiefs may not be so readily forthcoming as in the past. A predictable development, and a danger whenever a valuable good is distributed free of charge subject to administrative discretion, would be the bribery of chiefs to obtain their consent.

If Zambia is to pursue a policy of conversion to leasehold, a more systematic conversion process would appear preferable. The Reserve and Trust Land (Adjudication of Titles) Act, 1962, might provide a model for this process. It was repealed in 1975, presumably because it was framed to provide for conversions to freehold. It could with relatively minor adjustments be reframed for conversions to leasehold. It has several attractive features which should be incorporated in any such systematic conversion. First, it provides for gradual implementation of the change, district by district, as the need arises. (The need arises when a class of emergent commercial farmers is discernible and the Government is in a position to provide those other programs and facilities which would permit a tenure change to have an impact.) Second, the Act provided for the conversion to take place only upon the request of the District Council, in response to felt needs and demands from the District.

A similar process can be observed in Kenya, with the important difference that conversion there is to freehold, not leasehold as is here proposed. The process begins by designation of part of a district as a conversion area. An Adjudication Team consisting of an adjudication officer and cadastral survey officers moves through the area systematically, adjudicating rights in land and surveying holdings. Rights to a particular piece of land must be established under customary law, and traditional land administrators play a major role in this process, assisting the adjudication officer. Survey methods used are those relatively inexpensive methods recommended in the Swedsurvey Report, utilizing aerial photography. The product of the process is the initial Register and Registry Map. The expense of this exercise is dramatically affected by whether appropriate aerial photography already exists, or must be flown specifically for this purpose. In some areas of Kenya adjudication and survey are accompanied by consolidation of holdings; it is unclear whether this would be necessary or desirable in parts of Zambia, but the possibility should be recognized.

Having mentioned the Kenyan case, it is necessary to emphasize that Zambia should not pursue conversion of tenure at anything like the same rate as Kenya. There the program is massive, expensive and has been carried out in many areas where no real need yet existed. What is suggested here is a fairly small staff and a process carried out only as a clear need arises. No time limit should be set for completion of the process nationally. The suggested procedures should first be attempted on a pilot project basis. This will be necessary to determine optimum methods of operation and costs and should be done prior to enactment of a law and regulations. This has been done in other countries and if the pilot plan works well, the work done under it can be deemed to have been conducted under the legislation later enacted.

Once such a system of leaseholds is in place in a district, the system will need to be administered. There are two aspects to this. First, since the leases are registered (they must be registered to be valid, and so must transfers or mortgages of them) there will be a need for registration facilities. It is difficult to anticipate in advance the demand for registry services. Only experience would show whether, as might be hoped, a registry office at Provincial level would suffice.

Second, the same controls now exercised over assignments of leases on State Land would presumably be applicable to these new leaseholds, to ensure that the provisions of the Land (Conversion of Titles) Act are observed. There is already a need for decentralization of the functions of the Office of the Commissioner of Lands, even as regards State Lands. Decentralization to the Provincial level is now underway, but is being impeded by a lack of housing for staff in the Provincial centers. It is important that the decisions concerning transfers of leaseholds and the making of new leaseholds in areas not yet under cultivation be localized. Local residents will best be able to evaluate the requests received, and a recognition of the very legitimate local interest in development of the land resource would do much to give vitality to this system. The approval process should be decentralized to the District level, as an integral part of the existing program of decentralization of powers to the Districts. Revenues from the quite modest fees for various procedures and the nominal rents which would be appropriate under these leases could be paid into the District Treasuries to help finance the system. The same might be done with Registry fees at Provincial level. Use of locally generated funds in the locality where they are generated can act as a major encouragement of fiscal responsibility in local government.

Even under the suggested system of gradual tenure conversion, decentralization to the District level could become expensive. Consideration should be given to decentralizing authority in this regard to a system of District Land Boards.

A model which should be considered in this regard is the Botswana Tribal Lands Act, enacted in 1968. Only some of its elements would be relevant, but the Land Board system is one such element. The Act had as its primary objective the better administration of Tribal Lands under customary law, which is relatively uniform in Botswana. It did not involve a conversion of tenure, although it did introduce the common law lease as a tenure form for specific purposes (e.g., the holding of land for trading purposes). It aimed to replace chiefs as the sole administrators of land under customary law with a more adequate institution, the Land Board. Chiefs were to be members of Land Boards, but generally did not chair them. The members of the Boards included elected local residents, chiefs, and local officials of the Ministry of Agriculture and the Ministry of Local Government and Lands. The President was given discretion as to whom from among these categories he appointed to the Boards. The Boards took over decision-making in the administration of tribal lands in the district, but were bound by policy directives from the President. Their decisions could be appealed to the Commissioner for Lands. Monthly meetings appear to have sufficed for the Boards to deal with their workload.

The system has experienced some difficulties. The chiefs, because of what they felt to be too drastic a reduction of their authority, did not give whole-hearted cooperation. Some dropped out of the process entirely. This was damaging because the institutional memory of land allocations existed only in the minds of the chiefs and their ward leaders. This would not be a problem under the system here proposed because Land Boards would have access to Land Registry Records and the Registry Map. But in light of the Botswana experience and to take advantage of the legitimacy of chiefs in the area of land administration, Zambia should seriously consider means for ensuring participation by traditional leaders in the work of land administration.

A second difficulty experienced by the Boards concerned availability of trained staff. There was an appreciation from the beginning that each Board would require an Administrative Secretary, but no adequate training was provided for this cadre. Land Boards in Zambia would also require such an Administrative Secretary, but it should be emphasized that a secondary school graduate, after a six-month training program and with adequate directives from the Ministry of Lands, could perform this function. Such training could be arranged locally and should include training in valuation of improvements. If it were thought necessary to provide Registry services at District level, these Administrative Secretaries could also be trained in registry procedures and serve as District Registrars.

The Land Board model with necessary modifications would provide an effective and relatively inexpensive means for decentralization of land administration to the district level. It would not, however, be appropriate for administration of existing State Lands, for which decentralization to regular Ministry officials at Provincial level should suffice.

SUMMARY AND CONCLUSIONS

Perhaps the most striking aspect of land tenure in Zambia today is the persistence of the dualism created by colonialism between the State Lands on the one hand and the Trust and Reserve Lands on the other. Western property forms still prevail on the State Lands, though the conversion of freehold to leasehold has changed those forms. On the Trust and Reserve Lands, customary land tenure patterns still predominate, with only very limited introduction of property forms such as the leasehold. The State Lands continue to be the strong focus of production for the market, while the Trust and Reserve Lands are largely devoted to subsistence agriculture, though there are important beginnings of market-oriented production, usually near the State Lands.

The persistence of these patterns almost two decades after Independence would appear not to be due primarily to a causal relationship between tenure and development of commercial production, though a limited causal relationship may exist. Instead, it is explained best by the persistence of an infrastructure with associated access to new inputs, credit and markets, an infrastructure planned by the colonial administration to serve the settlers who once farmed the areas which are now the State Lands.

A unification of land tenure forms must come in time, but it is important to recognize that it will constitute only one element in a much larger task, the integration of the nation's two agricultural economies through the extension of infrastructure and associated facilities into the hinterlands.

State Lands

For some years to come, however, State Land will continue to play the major role in production for the market and in feeding the towns and cities of Zambia, one of the most urbanized states in Africa. Zambia has avoided some of the more serious pitfalls in administration of this land resource. The conversion to long-term leasehold tenure was useful in that it provided an effective means of social control of this exceedingly valuable resource, while still giving private cultivators adequate security and incentives to invest in the land. The control provided has been used to significantly retard a major rush by speculators among the new national elite to secure this land. While such controls are never completely effective, the situation in Zambia compares very favorably with that in some other African countries, such as Kenya.

There is however much room for improvement in the administration of this vital land resource. The concept of "land without value," in particular, needs to be thought through more carefully. It is vital to the Government's policy against land speculation that land values not be recognized in transactions. However, this land does in fact have a scarcity value, conferred upon it by its superior quality and advantageous location. This value exists even if for reasons of public policy it is not recognized in transactions. That is why such land is ardently sought when a lease becomes available. The concern expressed in this paper is whether this value should not be recognized, not for transactional purposes, but for other purposes. In particular, the fact that holders of State Land leases obtain their leaseholds for little or no cost (the rent is nominal) would appear to be encouraging unintensive land use (e.g., ranching operations at the edge of Lusaka). This is a rational response by a farmer to a situation of cost-free land, but it is certainly not in the national interest. Serious consideration should be given to a recognition of the value of this land through imposition of a cost upon its use, through rents which recognize differences in value created by differences in quality and location. This would not contravene the equitable principles of Humanism. Indeed it is difficult to see how these principles have been served by allowing a relatively few farmers cost-free access to the limited and valuable State Land resource.

There is also a clear need at this point in time, following some years of widely varied modes of land holding and production on the State Lands (leasing to private farmers, cooperatives, parastatals, projects, and settlements schemes of various types), for careful evaluative study of the relative efficiencies. These varied approaches have reflected government's attempts to keep the State Lands in commercial production; this objective having been largely accomplished, it is timely to consider whether rationalizations are required. A considerable body of experience has been accumulated, from which lessons should now be derived. In addition, methods should be developed for the creation and automatic updating of data on State Lands utilizing the data flow through the Lands and Deeds Registry. The considerable potential of the Registry records system for producing data for planning purposes is not being systematically utilized. These are essential steps in planning for the effective use of the State Land resource.

Finally, there are a number of improvements in the day-to-day administration of State Lands which should be considered:

- The substantive law of leaseholds requires reform and codification. Leasehold is now the key modern sector property institution in Zambia, but it is regulated by English law as it stood in 1911. As increasing numbers of legally unsophisticated farmers hold land on leasehold, the legal regime for leaseholds should be codified and drastically simplified. Likewise, consideration should be given to the drafting and enactment of a new Title Registration Act. The current Lands and Deeds Registry Act is unnecessarily complicated by contrast to more recent models of such legislation in Africa.
- Less rigorous survey standards and simpler, more economical survey methods should be introduced for agricultural lands, and the required qualifications for surveyors using the new methods should be adjusted accordingly. This is necessary to clear a very serious backlog of survey applications and facilitate transactions concerning State Land leaseholds.
- The term of State Land leasehold not supported by a Survey Act survey should be increased from fourteen to a minimum of years. The present fourteen-year period, at the current increased costs of permanent improvements and investments in capital items, does not appear to be long enough to permit the leasehold to be used as loan security.
- Estates and Valuation Sections should be established within the Office of the Commissioner for Lands. An Estates Section would provide the necessary link now lacking between the Commissioner's Office and the Land Use Planning Division of the Ministry of Agriculture and thus facilitate land use planning. A Valuation Section would reduce the serious delays currently experienced in the review of leasehold transactions by the Commissioner's Office, which are caused in part by dependence on another Ministry's Valuation Section.
- A common regime should be established for the review of all transactions concerning agricultural lands, with all such lands scheduled and placed under the authority of the Agricultural Lands Board.

Trust and Reserve Lands

If the State Lands still constitute a strong focus of production for the market, the long-term future of Zambian agriculture lies in the far more extensive Trust and Reserve Lands, where most rural Zambians live and farm. Here the most fundamental of tenure issues await resolution, and such resolution must go hand in hand with the major public investments required for the extension to these areas of infrastructure and associated facilities, providing ready access to new inputs and technologies, credit and markets.

While in the vast bulk of the Trust and Reserve Lands there is no serious pressure upon the land resource, in limited areas such pressure has now emerged. These areas are usually in Reserves, on the edge of the State Lands, and the pressure has been generated by historical factors: the exclusion under colonial rule of native Zambians from what are today the State Lands, and the attraction of the superior infrastructure and associated facilities which exist for the State Lands. An intensification of land use under largely traditional land use practices is producing land degradation which can only be described as alarming. This pressure has begun to express itself as increasing demands for greater access to the State Lands and for subdivision of larger farms there. These demands cannot realistically be granted until the government has clearly established that there are modes of smallholder production on the State Lands which are equally or more efficient than the present large-scale operations.

In any case, a reallocation of the State Lands would be only a temporary expedient. The real challenge lies in planning for the effective development of the Reserve and Trust Lands. It must be said that there has been very little land use planning for these areas, and certainly no integrated development planning. Critical areas, consisting of a population pressure area and its hinterland, should be identified and become the focus of a series of planning studies to provide the basis for integrated rural development projects to open up the hinterland and relieve pressure on already crowded areas. Such studies should include land use potential studies, examination of existing land use patterns, identification of appropriate inputs, management practices, tenure patterns, and careful attention to demographic flows and their determinants, including infrastructure, services and facilities.

The development of the Trust and Reserve Lands will bring with it a need for tenure change. Land tenure reform should be viewed as one key element in the process of development of these lands. There is presently a degree of insecurity being experienced by commercial and semi-commercial farmers on Trust and Reserve Lands, and the obtaining of long-term credit would be facilitated if the land could be used as loan security. Serious consideration should be given to converting customary tenures to leasehold in the limited areas where a clear need exists. The process of conversion could be gradually extended as the need arose, utilizing the model provided by the Reserve and Trust Land (Adjudication of Titles) Act, 1962 (repealed). If such a program of gradual conversion from customary land tenure to leasehold were adopted, this should be closely tied to decentralization of land administration to the District level. A program of decentralized administration might be achieved relatively inexpensively and effectively through a system of locally representative land boards. These should have the key role in the decision to adopt leasehold tenure, the conversion process itself, and in administration of the leaseholds after the conversion.

One important aspect of customary land tenure which has already attracted government attention is the customary law of inheritance. It would appear that long-term farm development is hindered by uncertainties caused by the failure of some customary systems to clearly designate heirs and, in other cases, to devolve land on matrilineal kin groups rather than members of the labor group which develops a farm, the nuclear family. Perhaps the most effective approach would be the introduction of limited freedom of testation, rather than an across-the-board reform of intestacy rules.

ANNEX: EXPLANATION OF TABLES I-III

The three tables on pages 11, 12, and 14 of this paper analyze data derived from fourteen cadastral strips provided by the Land Use Planning Bureau of the Ministry of Agriculture. Conclusions are presented in the text, but some comments are in order concerning the sources of the data and the categories into which the data has been divided for analytical purposes.

The fourteen cadastral strips would appear to provide a fairly full coverage of "alienated" State Land, though there are obviously some holdings of such land outside the areas covered by the strips. This land is State Land which has been alienated on lease to various users, which include both private users and government agencies, parastatals and projects. The total alienated State Land arrived at by combining figures from the various strips is 2,041,274 hectares, not very much less than the global figures for alienated State Land given by a variety of sources. The precise figure varies, but the figures are generally in the vicinity of 2,300,000 hectares. The coverage appears to be full enough so as not to be misleading, and is of course full coverage with respect to the areas covered by the strips.

As regards the currency of the data on the strips, most of the strips were prepared over the past several years; the oldest are from the mid-1970s, the most recent from 1981. They have been annotated and corrected in an attempt to keep them up-to-date. The annotation and correction process does not appear to have been sufficiently systematic to guarantee completely current information, but the strips are the best data available, and should represent fairly accurately the situation toward the end of the 1970s.

The strips themselves give four pieces of data: a parcel identifier (a "farm number" relating the entry to a parcel shown on an accompanying map), the size of the parcel in acres, the size of the parcel in hectares, and the name of the lessee. The tables in this annex have been framed in hectares. As a preliminary step in the analysis, each lease was placed in one of several categories according to the nature of the lessee. In most cases the nature of the lessee was obvious enough, but cases of ambiguity were resolved by discussion of the proper categorization with persons familiar with the leaseholders. The several categories adopted for these purposes were as follows:

- 1) Private: This category includes all private lessees, both individual and corporate. The identifications given did not seem to discriminate clearly enough between these to permit a reasonably reliable breakdown (e.g., it seemed possible that many of the leaseholders listed by an individual's name might nonetheless hold the lease as a corporate entity).
- 2) Governmental: In this category have been included leases held by Government ministries, parastatals and projects.
- 3) Settlement Schemes: While these also constitute governmental operations, they are a significant category by themselves and unique insofar as they are farmed by individual landholders, falling between the governmental and private categories. The strips gave total area for each settlement scheme, rather than listing individual holdings.

- 4) Cooperatives: While these are a type of private leaseholder, they were clearly identified as cooperatives on the strips and it appeared useful to list them separately.
- 5) Religious/Educational: A significant number of leaseholds, some quite large, are held by a wide variety of religious, educational and charitable institutions, including a number of missions. These are consolidated in this category. They appear to have retained an agricultural character, at least as regards most of the land under each lease.
- 6) Vacant: Two situations from the strips have been consolidated here: cases in which the leasehold was clearly labeled as vacant, and cases in which the space for the leaseholder was blank. Our interviews suggested that we would not thereby overstate vacancies.
- 7) Non-agricultural: All the leases are identified on the strips as "farms," but some are not now in agricultural use, nor were all in agricultural use when these lists were compiled. Since present purposes concern food production, it appeared useful to attempt to segregate from the other categories land which was not in agricultural use. These leases include land which has been subdivided for suburban residential development, land in military camps, railway rights of way, and land under a variety of other uses which could be fairly reliably identified as non-agricultural.

The figures given in the tables should be read in the light of the above indications.