LAND, PROPERTY RIGHTS AND THE NEW CONSTITUTITON

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Chapter 3

A PROPOSED LAND REFORM PROGRAMME FOR ZIMBABWE

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This article was written in 1983, and describes three bills then proposed as the basis of a land reform programme (in the event, none were ever enacted)

IN May 1980, the new Zimbabwean leadership took office, having been elected after a long, populist struggle. The war of independence was sparked in the main part by land issues. In Zimbabwe about 6000 white farmers owned the better half of the land, and some 600 000 peasant farmers, the sandy, arid remaining half. The rural institutions inherited from the Ian Smith regime created and bolstered these remarkable differences. These included land tenures, agricultural extension law, land acquisition acts and so forth.

The new regime took power under the Lancaster House Constitution which was made resistant to change by the new regime. The question arose whether the new Government would change the received institutions or whether the new institutions change the governors?

The institutions that govern relationships with respect to land and their reform lay at the very heart of that problem. What laws would bring about the transformations that Zimbabwe's new rulers professed to want? This paper explores that problem. Following a problem-solving methodology, it argues first, that Zimbabwe's land problem in a large part arose out of the received legal order, both in terms of Roman-Dutch law, legislation and the law relation to land in what Zimbabwe now called the communal areas.
Second, it discusses the Lancaster House Constitution and the serious, but not insurmountable constraints on land reform, the Constitution imposed. The paper then discusses three Acts that embodied the core of a possible land reform legislative programme.

A *Land Acquisition Act* to make possible easier acquisition of commercial farm land for resettlement purposes; a *Land Tenure (Development) Act*, to fix the terms of tenure of the new settlers, and a *Producer Co-operatives Act*. This essay discusses the possible content of these Acts and assesses their probable impact.

Description of a Methodology for Assessing Proposed Legislation[1]

In Lord Coke's words, legislation always aims at solving a 'mischief', that is a perceived social problem.[2] Its authors analyse the difficulty and purport to explain it - that is, to state its causes. Resting upon that explanation, the legislation seeks to solve the difficulty by attacking its cause.

A variety of questions can be posed about proposed legislation: Does it attack a real difficulty or problem? *Whose* difficulty or problem is it? How valid does the explanation seem upon which the proposed legislation rests? What consequences will likely follow from the proposed legislation? In a broad social as well as narrow monetary sense, what costs and benefits will likely attach to it?

Zimbabwe's land problem had three dimensions. First, many Zimbabwean peasants had no land or too little land for survival. Second, 6 000 commercial farmers brutally exploited their 330 000 commercial farm employees[3] who, paradoxically starved while producing food surpluses. (75 per cent of farm workers' children suffered from kwashiorkor - malignant malnutrition.)[4] Third, the communal areas (in other countries these are called Reserves) had tiny plots on poor land with low productivity and land degraded or deteriorating from erosion and over-use.

An adequate programme of legislative reform must aim at these three central difficulties.
Unless legislation aims at causes, however, it can only poultice symptoms. What explains these three central problems of Zimbabwe's rural areas?

Why Zimbabwe's Land Reform?

These three problems result from the repetitive patterns of behaviour of the relevant actors. What is the cause of their behaviour?

The world interconnects and any event has multiple causes. To understand the world, however, each of us looks to that cause over which we believe we have expertise. The legal order contributes to behaviour patterns by structuring the constraints and resources within which people act.

A land tenure law that gives a farmer a long-term stable tenure provides a different environment with respect to his making investment decisions - than one that puts his tenure at the whim of an official. A producer co-operatives law that requires representation of women on the Executive Committee may lead to different behaviour than a law without that requirement.

This does not mean that the behaviour will in practise conform to the law. It merely means that legislation almost always changes the environment within which actors choose what to do and therefore in one way or another leads to different behaviour.

Legislation aims at changing behaviour. It, therefore, constitutes a proposal for a solution of a social problem. It is important that the solution aims at the cause of the behaviour at issue. Legislation by definition aims at changing the legal surround of the actor. It must therefore rest upon an explanation that identifies the existing legal surround as the problem's manipulable variable, or its 'cause'[5]. The task becomes to identify the legal surround that presently channels the behaviour of Zimbabwe's farmers and the peasants in undesirable ways.

At the heart of all three Zimbabwe's land problems lies the institution of property ownership and the laws that structure it. A discussion of the laws that define ownership of the commercial farm areas and the laws that define ownership in the communal areas, follows.

A. Roman-Dutch Law and Zimbabwe's Land Legislation

Zimbabwe's remarkable stratification of land ownership that ended by cleaving class along racial lines, did not happen accidentally. It resulted from the deliberate policy of the white, racist, capitalist regime that ruled Zimbabwe after its 1891 conquest[6]. Before and after the enactment of the *Land Apportionment Act* of 1930[7], the Government distributed farm land in huge blocks to white settlers, systematically using the legal order - the laws and the State's armed might - to drive blacks off the land and into reserves. There they starved, a reserve of cheap labour for the white-owned farms and mines. By independence, practically no land remained for the State to distribute.

The commercial farm land was owned under Roman-Dutch (ie Common) law, which differed only in form from its capitalist counterparts elsewhere. It made the owner the commander of his property - the owner decided who may work on the farm and on what terms, wages and conditions The farmer also decided what crops to plant, what technology to use and at what prices to sell the produce.

Under the law, the owner also owned the surpluses made by the farm - disregarding that the farm labourers produced it, not the farmer alone. The owner decided how to use the surpluses - whether to reinvest them, to spend them in high living or to squirrel them away in his mattress. The farmer decided whether to use the land at all, or let it lie fallow and unused. Further, he decided whether and when to sell, lease to whom and at what price.

In 1978 the Smith regime repealed the *Land Apportionment Act*[8] as it had become irrelevant. With all the land in the commercial sector now in private hands, its owners took refuge behind the bulwarks of Roman-Dutch property law. Without the owners consent, nobody could take their land. Precious few Africans had money to purchase land, and if they did, it made little difference to farm workers or peasants that the colour of the farm-owner's face changed.

Roman-Dutch property law thus guaranteed Zimbabwe's land stratification. Behind that law lay the armed might of the State. If peasants squatted on

commercial farmer's land, he had the right to call upon a court to order them off and sheriff and police to carry out the order by force of arms.
Since independence, Zimbabwe has seen the seeming anomaly of a government elected on a programme of land reform protecting commercial farmers in their ownership by bulldozing squatters' hovel.

Additional laws contributed to the power of the owners. The *Industrial Conciliation Act*[9], for example, made strikes virtually illegal. It did not prevent an employer from sacking employees for union activity. At independence, no union existed among Zimbabwe's farm workers. Their desperately low wages reflected their low organisational level. Commercial farmers had the ear of Government. Bounteous subsidies made their lives easier[10]. All these additional laws, however, rested upon their ownership of land. The *Land Acquisition Act* proposed by the Minister looks to change ownership patterns in the commercial farming sector.

B. Land and Law in the Communal Areas

The difficulties of the communal areas also arose from the systems of property ownership of the land. Indirectly, the landlessness of Zimbabwe's peasants, the resulting over-crowded conditions in the communal areas and the low arability of their land derived from the same laws that originally gave white commercial farmers good land and protected their ownership.

Within the communal areas, peasants held rights to use land by a peculiar amalgam of customary law operating within the constraints of government-imposed rules[11]. By right of his membership in the local community, a resident of a communal area has a variety of what was called 'rights of avail' - to cultivate land, to graze livestock on land not planted with crops, to take timber and firewood from the common lands, to use water in common with others, to use sand, stones and other minerals and to a site on which to build a house.

Formerly the village headman or chief, both administrative officers appointed by the Government, allocated land for cultivation. After 1982, the local District Council did took over the task[12]. Since 1982, however, precious little land remained for allocation - the new power seemed more ceremonial than real.

In practise, custom and population pressures came to restrict a peasant's rights to arable land to what he required to feed himself and his family in most communal areas - three to five acres. He had the exclusive, non-alienable right to use the allocated land for growing crops, although when it lay fallow it became effectively part of the common pasturage. His heirs might inherit the land, but he could sell or mortgage it.

This system of land ownership in conditions of flaw-enforced over-crowding caused the various difficulties that afflicted the communal areas. It produced plots too small to take advantage of economies of scale. Given over-crowding, it led to the degradation of the common land and the over-use of arable land - a striking example of the infamous 'tragedy of the commons'.

Given the low technological basis of farming on such small plots and the degradation of their lands, it is hardly surprising that in 1978 African peasants in the communal areas had a per capita income of $28 per year. Small wonder that Zimbabwe's peasant farmer had no capital save their beasts, and the unprecedented drought of 1981 -1983 reduced the national peasant herd by a frightening number.

At the core of Zimbabwe's land problems lay the systems of land ownership. These dictated who had power over resources in the agricultural sector and what they might do with them. The Ministry's three proposed Acts provided a framework for a revolution.

The proposed *Land Acquisition Act* made possible the taking of commercial land for land reform purposes. The proposed *Land Tenure (Development) Act* would change the systems of ownership of commercial farm land turned over to settlers or to farm workers and make possible producer co-operatives in the communal areas. The proposed *Producer Co-operatives Act* made possible a form of socialist ownership. Each proposed Act will be discussed below to assess their potential for solving problems and at what cost.

No government ever writes on a clean legal slate. It acts within the range of constraints and resources imposed and opportunities offered by the Constitution and the existing legal order. A brief sketch of the history of Zimbabwe's law of land reform through the Lancaster House Constitution follows.

Land Reform and the Lancaster House Constitution

The lengthy war ended in a compromise expressed in the Lancaster House Constitution, with section 16 embodying a settlement of the land issue, notable for its vagueness. The Constitution sets parameters for legitimate land reform. The land reform provisions of the 1978 Muzorewa Constitution are described below, followed by a clarification of the Lancaster House compromise.

A. The Integrated Land Reform Plan of 1978

As the tide of war turned against the Smith regime, it sought devices with which to win the allegiance of its African population. To pre-empt the freedom forces on the land issue, in 1978 the Smith Government put forward what it called an integrated plan for rural development[13]. It took as a basic principle a proposition that potentially undercut some of the property rights of the capitalist farmers in their land. It stated what became the policy of all subsequent compromises on the land issue:

> the underlying objective being to meet African aspirations for a greater number of landholdings, while ensuring that continued growth in production from the commercial sector of agriculture as a whole[14].

This did not constitute a proposal to change the power structure in the rural areas. Capitalist governments frequently make proposals that would undercut the power of one fraction of the ruling class in order to benefit another fraction.

At the time of UDI, for example, the agricultural sector of the ruling class wanted UDI, but the transnational elements of the ruling class did not. In this case the farmers won.

Capitalist governments frequently institute a minimum wage against the wishes of some fractions of capital, because other fractions see the advantages to themselves of increasing the size of the domestic market and reducing trade union appeal to unorganised workers. The Smith regime's programme undercut the property rights of farmers who owned under-utilised land in the interests of keeping in power the white ruling class as a whole.

The 1978 land settlement programme, however, amounted to no more than tokenism. It defined 'under-utilised land' so vaguely that only land completely abandoned by a farmer fell under the definition[15]. In the end it called for resettling only some 5 000 Africans. It did anticipate taking about 25 per cent of the commercial farm lands to that end.

B. The Muzorewa Constitution and the 1979 Land Acquisition Act

The land programme received a constitutional dimension in the Muzorewa Constitution of 1979, according to which the Government had to pay 'adequate compensation' for land that it acquired compulsorily[16]. The notion was defined as the highest price a willing buyer would have paid a willing seller for the land in the past five years[17]. The Government could acquire land compulsorily for resettlement only if its owner had not used it for agricultural purposes during the preceding five years - again excluding from the calculation the years of public disorder[18]. This ensured that the new black government that Smith had so carefully ushered into power could use State power to acquire white-owned land only where its owner had abandoned it, or held it for speculation.

Simultaneously with the Muzorewa Constitution, Parliament enacted a new *Land Acquisition Act*[19], which remains in force. In some ways the Lancaster House Constitution significantly enlarged the Government's power to take land for resettlement. Until enacted into legislation, however, the new constitutional powers remained only potential. Even though it won important new powers at Lancaster House, the Government remained bound by the land reform provision of the Muzorewa Constitution.

C. The Lancaster House Constitution

The Smith regime failed to seduce Africans from the liberation forces. The pain of the front-line states, however, led them to pressure the liberation forces to compromise. Negotiated in Lancaster House, the compromise took the effective form of the Independence Constitution, and as an agreement to determine by election who would rule the new Zimbabwe. The present ZANU(PF) Government emerged from the first elections, its powers legally

subject to the Lancaster House (Independence) Constitution.

At Lancaster House, the land issue emerged as central. The liberation forces expressed a socialist ideology and wanted complete freedom to take over the commercial farm areas and distribute them to those who worked on them and, where under-utilised land existed, to the landless. The British and the Smith regime resisted. An outline of the compromise follows.

First, for whatever land the Government took for its land programme, it had to pay 'adequate compensation'[20]. Legally, the term had not clear meaning, except to ensure no expropriation took place without compensation, with a level of at least book value and, arguably, market value. Zimbabwe's white settlers originally bought their land for a pittance and the difference between book and market value frequently becomes large.

Second, the Constitution did not undertake to reduce any rights that the Government may have as the result of a contractual relationship with the owners of land[21], which became crucial to the new *Land Acquisition Act*. The compromise aimed only at limiting the Government's *compulsory* power of acquisition - the power of expropriation.

Third, the Constitution imposed substantial limits upon the Government's power to take land by *compulsory acquisition*. It might take without compensation *derelict land*[22] - a term that was undefined. For land not left derelict, it might use its power of compulsory acquisition for "a purpose beneficial to the public generally or to any section thereof"[23]. It might take land for "the settlement of land for agricultural purposes", however, only if "under-utilised"[24]. The Constitution defined none of these terms.

The parameters of the compromise on land can be drawn using the above clauses. As long as the Government took land pursuant to existing rights or by agreement, the Constitution imposed no limits. If it took by compulsory acquisition it had to pay an undefined sum. It could not take over an operating farm and distribute it. It had to pay in hard currency[25] for resettlement purposes - it could only take over "under-utilised land" for that purpose. It could, however, take "derelict" land without paying for it.

The compromise thus aimed only at the Government's power of expropriation, not its power to take land by consequent agreement. It prevented the Government from expropriating "under-utilised" land for that purpose. The Constitution aimed at permitting the use of expropriation to end the speculative market in the rural real estate. For resettlement purposes the State could take land not in production, lying abandoned or held for speculation, but not land already in production. The Constitution does not define "the settlement of land for agricultural purposes".

The Constitution in Zimbabwe has no self-executing clauses. In order to make the Constitution functional, the Government needed to translate it into legislation. The proposed *Land Acquisition Act* represents the Ministry's notion of how to make concrete the vague compromise embodied in the Constitution.

II The Proposed Land Acquisition Act of 1983

The Ministry first had to acquire land for its resettlement programme. Roman-Dutch law barred that acquisition save on a willing buyer-willing seller basis. The 1979 *Land Acquisition Act* made only the faintest inroads into this Roman-Dutch law and did so by actually raising the potential market price.

The proposed *Land Acquisition Act* makes deep inroads into the property rights of commercial farmers. It constitutionally capsizes the Lancaster House compromise on land, decisively altering the legal framework in the Government's favour. To understand the Act, it is necessary to trace Zimbabwe's history of compulsory acquisition law; second, the provisions of the Act dealing with compulsory acquisition; and third, the provisions dealing with taking by deeds clause.

A. The History of Land Acquisition in Zimbabwe

Until 1971, the Government acquired commercial farm land in Zimbabwe pursuant to deeds clauses included in the title deeds conveying land to their first European owners. Apparently all these deeds contained a clause giving the Government a right to claim the land at a price that arbitrators would determine. The clauses varied slightly. A typical

recapture clause reads as follows:

> The President shall have the right to resume ownership of and to retake possession of the said farm or any portion thereof for public purposes on payment to the proprietor of such compensation as may be mutually agreed upon, or, failing such mutual agreement, as may be determined by arbitration [in terms of the *Arbitration Act*].

In some early deeds, said to cover about five per cent of Zimbabwe's commercial land area, the price was set for recapture at five pounds sterling per morgan[26]. These clauses permitted recapture for any 'public purpose' and at whatever price an arbitrator may set.

Until 1971, the Government took land only pursuant to these clauses. It did so in accordance with a statute *received* from the Cape Colony on the 10 June 1891 (the *Lands and Arbitration Clauses Act*[27] and the *Arbitration Act*[28] Under these Acts the parties appointed their own arbitrator - if they could not agree, either party could apply to the High Court which would appoint an impartial arbitrator. Following the usual rules concerning arbitration, a court may not over-rule a decision by a arbitrator on any ground, except fraud, corruption or bias. In particular, it cannot upset an arbitral secession for mistake of law or fact[29].

In 1971, the Government introduced a new *Land Acquisitions Act*[30]. It made three major innovations. First, it cut off the Government's power to proceed under the title deeds reservation[31]. Under the new law, to acquire land the Government could take land for 'any purpose'[32], which is a broader standard than that included in the title deeds clauses ('any public purpose'). Thus to expand the Government's powers constituted a principal reason for a new Act[33]. The 1971 Act *enlarged* the Government's power to take land.

The new Act significantly changed the standard of compensation. Instead of the deeds clauses which mainly stated no standard compensation or all, the new Act required the payment of 'fair market value' as compensation, which was defined as:

> ... the amount which the land would have realised if sold in the open market by a willing seller to a willing buyer, regard being had, where appropriate, to the nature of the land, its location and quality and any other fact which may in the circumstances have relevance[34].

Procedurally, in lieu of arbitration, the 1971 Act created a new Compensation Court to decide issues arising on compulsory acquisition[35].

In 1979, the Muzorewa Constitution required the Government to amend the *Land Acquisition Act* of 1971[36]. The 1979 Act changed the 1971 version in two significant ways. First, it cut down purposes for taking that marked the 1971 Act ('any purpose') and replaced it by a clause that tracked the narrow purpose set forth in the Muzorewa Constitution[37].

The new Act permitted expropriation either for "the utilisation of that ... property for a purpose beneficial to the public generally or any section thereof" or, if, for the purposes of the "settlement of land for agricultural purposes", only if the "piece of land in question has not been substantially put to use for those purposes for a continuous period of at least five years immediately prior to the date of application of the order ...".

It continued in force the 1971 Act's prohibition against the Government's use of the deeds clauses[38]. The 1979 Act, therefore, reduced the Government's power below what it had under the deeds clauses.

Second, the new Act changed the 1971 Act by amending the compensation provisions. The Muzorewa Constitution defined it as 'adequate compensation', meaning the highest willing buyer-willing seller amount that the land would have realised during the preceding five years[39]. The 1979 Act emulated the language of the previous act, omitting, however, the phrase 'adequate compensation[40]. Since Independence, the Government has not used the 1979 *Land Acquisition Act* for its resettlement programme.

The 1978 Integrated Plan for Rural Development estimated that the commercial farm areas contained four million hectares of 'under-utilised'[41]. The plan estimated the cost of the land as $78.1 million or about $20 per hectare average[42]. Between September 1980 and April 1983, the Government acquired almost three million hectares of commercial farm

land on a willing buyer-willing-seller basis[43]. It is said that the cost has not exceeded historic prices[44]. However, to resettle 162 000 families, 11 million hectares are needed at a total cost of about $210 million[45], assuming the price per hectare remains constant. The estimated price seems optimistic, however, taking the massive inflation figure[46] into consideration.

After identification of the land, "Government valuation officers, assisted by private estate agents negotiate the purchase prices with land owners"[47], who mainly use competitive prices. Government has been almost the only buyer of land and it, therefore, finds itself in an anomalous position of having its purchases (none of which has had a price set on a competitive basis) used as the sole measure of comparable price. Government in effect finds itself bidding up the price against itself.

The commercial farmers know that the Government has a political imperative to acquire land. They know that if the Government acts through the existing *Land Acquisitions Act*, it will have to pay the highest market value of the past five years, in hard currency. The existing law structures the market (as law always helps to structure every market). The Government finds itself maintaining the high market prices for land precisely because it has not yet amended the *Land Acquisition Act*.

Against this brief background, a description of the changes made by the proposed Act follows. The changes have an overall purpose of giving the Government the maximum powers it has under the Constitution. When a statute of Constitution expresses itself vaguely or ambiguously, a court may properly give either of at least two alternative readings of the words at issue. Here, the task of the drafter became to write a statute that rested upon that construction of the constitutional words, which gave the Government the broadest permissible powers to take land.

The Lancaster House compromise had, it will be recalled, two aspects. One aspect concerned the Government's power to take land by compulsory acquisition for purposes of agricultural resettlement. The second concerned the Government's power to take land using powers existing in deeds clauses or by agreement. The following is a discussion of how the proposed Act deals with the above aspects.

B Taking Land by Compulsory Acquisition[48]

The proposed Act contains a variety of provisions dealing with the taking and utilisation of under-utilised land. The following issues will be discussed:

1. Derelict lands;
2. The taking of under-utilised land;
3. Compensation provisions;
4. The "use it-lose it" provisions; and
5. The meaning of the phrase "for the purposes of agricultural resettlement".

1. Derelict lands

The legislation on 'derelict lands' consists of the *Title Registration and Derelict Lands Act*[49]. The Act does not provide for State appropriation of 'derelict lands'. It only provides a device by which a claimant with rights in land could enforce them if he could enforce them if he could find no owner to sue. It permits a governmental body to whom an owner owes rates for five years or more to foreclose upon the land, sell it at public auction and realises the rates out of proceeds. The court must place any surplus in the Guardian's Account for a possible future claimant.

The Lancaster House Constitution, however, (as the Muzorewa Constitution also provided) that an acquisition did not fall under the strictures of compulsory acquisition if it concerned 'derelict land'[50], which remains undefined. The notion has only a vague meaning in Roman-Dutch common law. Its principal use appears in the *Titles Registration and Derelict Lands Act*. This act refers to 'derelict property'. In effect it defines that as property with five years unpaid rates and "such property is abandoned, deserted and left derelict, and the owner thereof cannot be found"[51].

The proposed Act takes advantage of the constitutional provision. If on an ordinary compulsory acquisition of land, (a) at least sixty days after advertising the proposed acquisition, nobody with an interest in the land appears to contest the application, and (b) the acquiring authority made a diligent search for the owner of record without success, and the rates for the land remain unpaid for three years,

the acquiring authority may take the land as derelict, without compensation. (Subsequent sections provide relief for a person who had not abandoned the land, but had a reasonable excuse for not paying the rates of responding to the original advertisement).

Ministry officials have estimated that perhaps as many as five hundred large farms fall into the category of derelict land. Under the proposed Act, the Government will have the capacity to acquire these without cost.

2. The taking of under-utilised land

In the defining Presidential power to take land by compulsory acquisition, the proposed Act copies the constitutional language. The Constitution laid down a variety of procedural requirements for a law permitting compulsory acquisition[52], carried over unchanged from the Muzorewa Constitution[53]. The proposed Act, thus ensuring that the proposed Act complies with the procedural requirements of the Constitution. Procedurally, the power of compulsory acquisition, however, depends upon the content of the Under-utilised Land Regulations.

3. The meaning of "under-utilised land" and the Land Acquisition (Under-utilised Land) Regulations

The proposed Act empowers the Minister to define the concept under-utilised land. In Zimbabwe, the concept has a surprisingly long history. The first Government, after the introduction of 'responsible government' to the then Rhodesia in 1924, ran on a programme of imposing a tax on 'unoccupied land'. The Treasurer said, in his budget speech in 1925 to Parliament that the "proposed tax did not serve mainly as revenue measure, but a means by which pressure can be bought on owners of unoccupied land who are not putting it to beneficial use"[54].

A member who served on the Executive Committee of the Rhodesia Agricultural Union said in debate that "the almost unanimous opinion of the farmers (ie the white farmers) in this country is that the unoccupied land should be taxed"[55]. The tax never emerged, although Parliament did place on the books the *Alienated Land (Information) Act*[56], which has remained quiescent on the books for the past 47 years, and no Minister promulgated regulations under it.

In 1983, the Government finally made regulations under the 1926 Act[57]. It proposed to use them to require farmers to disclose the land capability of their farms and what use they make of it, which will serve as the necessary information base to determine whether the farmer under-utilised his land.

In recent years, the central theme of land compromise that evolved insisted on denying the Government compulsory acquisition powers over land for agricultural resettlement. The definition of that concept, however, varied widely in terms of both the word 'land' and the word 'under-utilised'.

(a) 'Land'

The 1978 Integrated Plan for Rural Development identified five categories of under-utilised land[58]. In categories 1 and 2, the relevant area consisted of an intensive conservation area, ie. "geographical and social units within the commercial farming sector".

In the categories 3 to 5, the relevant area consisted of the individual farm. The Muzorewa Constitution restricted a compulsory taking of land for resettlement purposes to a 'piece of land', defined in the Constitution as "a piece of land registered as a separate entity in the Deeds Registry"[59]. Under the Constitution, therefore, the Government could not expropriate part of it, even if he actually used only a relatively small portion of the land to produce agricultural products.

The Lancaster House Constitution changed the operative words from 'piece of land' to 'land'[60]. Now, the Government had the constitutional power to take 'land' if its owner under-utilised it. Even if the farmer used the rest of his land appropriately that gave the Government power to take particular under-utilised fields. In this regard, the proposed Act follows the Constitutional language.

(b) 'Under-utilised'

The 1978 Integrated Plan had five categories of under-utilised land[61]. A farmer in an intensive conservation are normally used for active cropping under-utilised his land if, in 1973/74 he produced less than $20 output per hectare. In a similar area for ranching, he had to have had an off-take of at least 30 livestock per year per 1 000 hectares. Category 3 consisted of "very large externally controlled ranches

or those held for speculative purposes". Categories 4 and 5 consisted of "abandonment and unused units falling outside the above areas".

The Muzorewa Constitution looked to the 'substantial use' of the farm[62]. Only if at no time in the preceding five years had the owner put the farm to substantial use for agricultural purposes could Government acquire it through compulsory acquisition. In practise the owner has to have virtually abandoned the land or held it purely for speculation.

The Lancaster House Constitution left undefined the word 'under-utilised'. It could not mean only abandoned or derelict land, for another section of the Constitution[63] gives the Government power to take that. As a practical matter, one cannot measure the profitability of a particular field on a farm and the Government has the power to take a particular 'under-utilised' field[64]. The measure of under-utilisation had to refer to land whose actual production fell short of its capability.

Since 1964, the Government agriculturists have classified land in Zimbabwe into eight land capability, ranging from Class I (the best) to Class VIII (solid rock)[65]. They have developed sophisticated criteria for defining these classes, including such variables as slope, size of soil fractions and there relative frequency in the topsoil, wetness, permeability of the upper topsoil, erosion, surface characteristics and ecological zone (mainly a matter of average rainfall).

From these, the Ministry proposed to develop regulations that will define utilisation of land in terms of the highest utilisation for a particular land capability class. For example, if a farmer has a field in one of the three highest land capability classifications, he will under-utilised his land unless he has ploughed and seeded it once during the preceding 36 months (that is, allowing a three-year rotation). While the regulations pose difficult problems of definition, they seem not incapable of solution.
The proposed Act, therefore, will permit Government to acquire for purposes of agricultural settlement a field that a farmer does not use to its highest potential use as defined by the land capability classifications.

4 'Agricultural resettlement'

The Constitution restricted the Government's power to compulsorily acquire land for 'agricultural resettlement'[66]. It permitted the taking of any land "for a purpose beneficial to the public generally, or to any section thereof". The Constitution , therefore plainly implied that 'agricultural resettlement' did not constitute a purpose beneficial "to the public generally, or to any section thereof".

The drafters of the section aimed at resettlement by individual small-holders, in which the State uses its power to take land from one private individual (the original landowner) and turn it over to other private individuals (the settlers in the resettlement scheme).

Producer co-operatives and State farms, however, serve other purposes in the development of the socialist society. Small-holder tenures constitute a form of capitalist ownership and producer co-operatives and State farms constitute a form of socialist ownership. The development of a State farm or a producer co-operative surely constitutes " a purpose beneficial to the public generally".

The Government could use its power of compulsory acquisition to acquire land for a Government owned cement factory, for example. With respect to its public purposes, plausible distinction marks off a Government-owned cement factory from a Government-owned farm. Ownership by a producer co-operative falls into the same category as State ownership.

The proposed Act, therefore, provides specifically that "for the avoidance of doubt,...the utilisation of property for a purpose beneficial to the public generally or to any section thereof includes the utilisation of property for a State farm or a producer co-operative".

5. 'Adequate compensation'

The Constitution required the Government to pay 'adequate compensation' for land taken by compulsory acquisition, no more than 'under-utilised land' did those words have a clear definition.

Three conceivable standards of compensation exist. The words 'adequate compensation' clearly excluded expropriation without compensation. That excluded, two conceivable standards remained. One would reimburse the investor for his unrecovered investment, not to exceed current market value.
The phrase 'adequate compensation' was originally derived from international law. Whatever its original meaning, it has come to mean "at least book value of the assets and arguably their going concern value..."[67] The makers of the Lancaster House Constitution seem to have been intentionally vague in order to make possible the compromise that ended the war. The evidence, however, argued strongly that the words must have meant book value, not exceeding market value.

First, the Muzorewa Constitution defined 'adequate compensation' to mean market value, but defined it in a peculiar way[68]. In the Lancaster House Constitution, whatever 'adequate compensation' meant, it could no longer have meant what it meant in the Muzorewa Constitution - that is market value.

Second, the compromise reached on land reform had as its central thrust a denial of the speculative market in land. To permit a land-owner to receive a fair market value for under-utilised land would deny that basic compromise, for it would leave the speculator with an incentive to speculate.

The Act seeks to construe the Constitution to stretch the Government's power of acquisition so far as the Constitution will permit. It seeks also to use the threat of compulsory acquisition without compensation to force land-owners to utilise their land or sell it to someone who will, a programme that the Ministry dubbed the 'use it-or-lose it' programme.

6. 'Use it - or lose it'

Zimbabwe has a long history of imposing developmental conditions upon the owner of land. Almost all the deeds from the BSA Company to settlers required them to develop their land. The *Land Occupation Conditions Act* of 1900[69] standardised these, requiring for each 1 300 hectares of land, $500 worth of buildings, depasturing 20 head of horned beasts, four hectares in arable, or planting 500 fruit for 1 000 timber trees. The *Mine and Minerals Act*[70] imposed appropriate development conditions on the holders of prospecting rights and mining leases.

The vague compromise reached at Lancaster House had at its core an agreement that the owner of the land must use it. The Constitution specifically gave the State power to take under-utilised land for purposes of agricultural resettlement - the only land it could take for that purpose. It also provided that if the State took land by way of forfeiture for the breach of a law, or for punishment for contempt of court, it need not comply with section 16(1) - specifically, it need not pay compensation for it[71].

Today many countries impose positive duties upon the owner of land to use it. During and after World War II, Britain required a farmer to use his land to the standard of a reasonably efficient husbandry, or the land was turned over to another farmer[72]. Kenya has such a law to this day[73]. The new *Land Acquisition Act* builds an analogous obligation into Zimbabwe's law.

The proposed Act imposes an obligation upon an owner to utilise has land at least to a standard defined by the Minister in the (proposed) Under-utilised Land Regulations. If the Minister believes that an owner does not do so, he may require the owner to show cause why the Minister should not find that owner under-utilises his land. If, after a hearing, the Minister so finds, he may issue an order requiring the owner to bring the land to the level specified in the Regulations within one year.

The Minister may move the High Court to enter that order as an interdict (in English common law, an injunction) of the High Court. On hearing of the motion, in effect, the Court reviews the Minister's order for arbitrariness. If, after a year, the owner has not complied with the order, on motion the court will order his land forfeited for breach of the law and for contempt.

Summary

The compromise reached at the Lancaster House had two branches. The first limited Government's power to take land compulsorily for the purposes of agricultural resettlement to 'under-utilised land' and required the Government to pay 'adequate compensation'. The proposed Act will permit Government to confiscate derelict lands, defining that

land whose owner has not paid rates for three years, who cannot be found after diligent search and, who, without excuse, does not appear to contest the acquisition after 60 day's notice. It permits the taking of under-utilised land, even less than an entire farm.

The Regulations proposed under the Act defined under-utilised land not in terms of profitability, but whether the owner uses the land to the highest level of its land capability classification. It defines 'agricultural resettlement', thus permitting the Government to take any land for purposes of socialist farming, such as producer co-operative or a State farm.

It defines adequate compensation as the lower of market or book value. Finally, under the 'use it-or-lose it' programme, it gives the Government a powerful weapon to ensure that owners use their land, or permit its use by someone who will do so, on pain of expropriation without compensation. The most powerful aspect of the new Act, however, does not concern compulsory acquisition, but the second limb of the Lancaster House compromise, that permitted the Government to retain whatever power it presently has to take land without using compulsory acquisition.

C. Taking under Title Deed Clauses

From the Government's perspective, taking land by compulsory acquisition had three disadvantages. First, for purposes of agriculture settlement, the Lancaster House Constitution limited expropriation to 'under-utilised' land. Since most farmers use their best land, that phrase condemned African settlers to second rate land and added a new chorus to Zimbabwe's long history of discrimination in landholding.

Second, the Constitution required the Government to pay 'adequate compensation' for the land. In many cases, where the owner inherited the land, the book value may approximate market value. Finally the Constitution required the Government to pay for land compulsorily acquired in hard currency.

All these constraints disappear, however, if the Government can recapture land otherwise that by compulsory acquisition. Section 16(7)(d) of the Constitution gave the Government the right to exercise any right it may have by title deed to land "fixed at the time of the grant or transfer thereof". This language plainly excepted the title deed clauses. The new *Land Acquisition Act* therefore provides that the President may acquire land "pursuant to a provision in a title deed giving his the power to acquire the land described in the deed".

Practically every deed in Zimbabwe contains a clause of this sort, therefore the proposed Act will give the Government power to take whatever land it needs for its land reform programme, however broadly it chooses to frame it. The Lancaster House Constitution, so frequently sited as an obstacle to the Government's programme, will no longer stand in the way. Under the title deeds clauses, the Government can take any land for any public purpose, for whatever price an arbitrator fixes, and without paying for it in hard currency.

Summary

Between the interpretation that the proposed Act places upon the constitutional limits on compulsory land acquisition and that the use of the title deeds clauses, the proposed *Land Acquisition Act* significantly enlarges the Government's powers over the existing 1979 Act.

By reducing the cost of land acquisition to what the owner (or, if he received land as a gift or through inheritance, his predecessors title) paid for it, it will reduce the capital cost of taking land to a fraction of the willing buyer-willing seller price.

By use of the title deeds clause, it permits the Government to acquire land without paying hard currency for it. In short, it effectively avoids all the restrictions and constraints the Roman-Dutch law, the Muzorewa Constitution and the existing 1979 *Land Acquisition Act* imposed on the Government. The proposed Act makes possible the acquisition of land for resettlement purposes. The proposed *Land Tenure (Development) Act* defines the tenures of its new occupants.

III The Proposed Land Tenure (Development) Act of 1983

Land reform does not necessarily imply socialism.

The Roman-Dutch property law embodied a lend tenure regime that enshrined capitalism, under which a private owner became the commander of the land. This constituted the explanation in terms of the legal order for the difficulty that excited the new legislation.

To turn over to new settlers or to existing farmworkers land acquired under the proposed Land Acquisition Act under terms of existing law will quickly replicate existing difficulties. Given Zimbabwe's political and economic orientation, the new settlers must receive land under a tenure regime that will move towards socialist relations of production in the countryside.

To solve the problems of low productivity and land degradation, the new land tenure regime must also make possible transformations in the communal areas.

The explanation for those difficulties lay in the existing system of land tenures in communal areas. To move towards individual ownership and capitalist form of land tenures (for example, as in Kenya's Swinnerton plan of the 1950s) would lead only to a landless rural proletariat and a class of yeoman farmers exploiting it - that is, it would likely replicate many of the difficulties now plaguing the communal areas. As in the case of land obtained from commercial farmers, a new form of land tenure seemed necessary, that would move towards socialism in the countryside.

Socialism consists of more than equitable distribution of productive assets or income. It requires the development of socialist relations of production that prevent the exploitation of human by human. This requires socialist forms of ownership - that is ownership by the State (State farms) and by producer co-operatives. In neither does a private owner take surplus value produced by his workers and expropriate it to his private profit.

For Zimbabwe immediate transition to socialism is unlikely for two reasons. First, the existing highly exploitative agricultural system manages to feed the nation at a level to which it has become accustomed. By putting under-utilised land to use and producing for use and not for profit, in the long term socialist agriculture has the potential of outproducing capitalist agriculture. Suddenly changing the entire agricultural system to a socialist mode of production in the short run must, however, upset production to some unknown degree. How to keep the machine running while at the same time changing it, constitutes the short-term problem.

Second, Zimbabwe's peasants all came of age in a capitalist environment. Only some had their consciousness radicalised during the war years. Most do not yet see the advantages of socialist forms of production and land-ownership - that is, producer co-operatives or State farms. Their present level of consciousness constraints the Government's choices.

For many, perhaps a majority of Zimbabwe's settlers, at the time the workers' and peasants' government took power, as in most of the socialist states, the level of peasant political awareness requires that the Government resettle them in small-holdings. Changing their political awareness and then converting their tenures to socialist forms constitutes the long term problem.

The Act expressly does not look to reform the entire land tenure system of Zimbabwe. Other African countries (Zambia and Tanzania) have by law nationalised all real property and then returned the land to the existing owners on a long term (usually 99-year) leases.

In Zimbabwe this seemed undesirable for three reasons.

First, if the long term leases appreciably diminish the owner's rights in the property the law might well become a form of compulsory acquisition raising serious problems and probably insurmountable constitutional obstacles.

Second, the transition to socialism almost certainly requires that a private sector live by side with a growing socialist sector for some time. In general, good policy suggests not to make radical changes in the law unless required. From the perspective of existing peasant and commercial farmers, no defined difficulty in the law that governs their tenures has emerged.

Third, while a change to a nationalised system of land tenures with long term leases instead of existing ownership patterns would, for the constitutional reasons mentioned above, produce no more than a

cosmetic change, it would surely upset many commercial farmers and peasants. While many exaggerate the extent to which white commercial farmers hold the key to agricultural productivity in Zimbabwe, there seems little reason for cosmetic reasons alone to create difficult image and propaganda problems for the regime. Therefore, overall rewriting of land tenure rules seemed unwise. The proposed Act will apply only to the land obtained by the Government as part of the land tenure programme. To prevent a sudden breakdown of Zimbabwe's food security, the Government's basic strategy calls first for concentration on acquisition of under-utilised land, which will alleviate the peasantry's land hunger without disrupting existing productive agriculture. The proposed Act must, therefore, address a complicated inter-related set of questions. First, settlers now receive permits to use a remarkable degree of bureaucratic, authoritarian and arbitrary control over the settlers.

Second, most peasants will not today readily join producer co-operatives, although at some later date perhaps they will desire to do so.

Third, a minority of peasants even today accept more advanced forms of land tenure - producer co-operatives and State farms.

Fourth, in Zimbabwe land will remain a scarce resource even after exhausting presently under-utilised land. How to ensure that as far as possible, land tenure provisions conduce towards high productivity in the units taken under the new Act?

Finally, Zimbabwe has an express policy of equality between sexes and the problem is to make this policy a reality with respect to land tenures. A general description of the proposed land tenure system follows, with the Act's response to each of the problems it raises. Two other sets of conditions prohibiting new acquisitions of farm land by non-citizens or foreign-owned corporations and increased concentrated commercial ownership, are described in a footnote [75].

A. A New Tenure System

The Act empowers the President to acquire land, which then becomes State land vesting in the President, who may lease State land to either smallholders, producer co-operatives or State farm enterprises. For each of these he may lease land only after the Minister approves a plan for its development.

The plan must include a wide range of land use and economic information - for example, location and boundaries of house plots, arable plots and communal areas for smallholder schemes, house plots and private gardens in co-operative schemes, agricultural development plans, locations of stores, churches, offices, schools, water supply and draining plans and financial projections.

The Minister may select the members of a scheme pursuant to regulations he prescribes, detailing criteria and procedures for selection. In the selection, he may not discriminate on grounds of sex, creed, tribal or political affiliation. In each case the settler receives a rent-free First Lease for a term suited to the sort of agriculture that the smallholder, co-operative or State farm will practise.

At the end of their lease the Minister will make a Final Year Visitation. If he believes that the tenant will practise productive agriculture he will then give the tenant a 99-year, non-alienable lease, subject to an annual rent.

Regarding respect to smallholders, a special provision governs inheritance. On death or incapacity, if a co-tenant spouse survives, s/he may carry on the lease. Otherwise the Government pays to the estate of a bankrupt or descendent a sum equal to the value of the permanent fixed improvements to the farm made by the member and the lease terminates. An appeal on valuation lies to a community court. In reletting the property, as far as possible the Minister shall favour a spouse or child of the former tenant. (The Ministry has under consideration proposals to substitute a system of inheritance by the right to surviving children).

B. Giving Settlers Control over their Lives

Following colonial tendencies in dealing with Africans the permit system placed settlers under the ministerial thumb. The proposed Act seeks to liberate them from that control while at the same time ensuring that they produce or permit somebody else to farm the land. A discussion of the permit system and

the proposed solutions to it follows.

1. The permit system

Shortly after independence, the old-line senior civil servants in the Ministry of Lands, Resettlement and Rural Development produced a pamphlet setting forth resettlement policies[75]. Regarding land tenures the Ministry to this day follows the prescriptions that pamphlet contained. It put forward three 'models' for resettlement.

Model A consisted of smallholdings, Model B producer co-operatives and Model C a strange invention of the officials, with individual landholdings, but a core estate farm to which the settlers would contribute their labour free of charge in return for services from the core estate (ploughing, marketing, tree seedling etc.). 99 000 hectares have gone to Model B (co-operative) schemes and 1 250 000 hectares to Model A (smallholder) schemes.

In both smallholder and co-operative schemes, the settlers did not receive a land tenure previously known to Roman-Dutch law, but a 'permit' invented by the Ministry officials. The pamphlet stated that the "Government has not yet reached a decision on what form of tenure should in the longer term apply to holdings in the resettlement areas".

In default of that decision, smallholders received four separate permits: for a residential plot, for about five hectares of arable land, to graze a stated number of cattle units on the common village pasture, and to till the half acre of arable land that the Ministry ploughed for each settler at the start-up of the scheme. A producer co-operative also received a permit to use the land allocated to it.

In the best colonial style these permits embodied total bureaucratic control over the settlers. To enter a resettlement scheme, the settler had to sign an application that contained in capital letters the statement, "I understand that if I am allocated a land holding in a settlement scheme... that will be required to give up all rights to land in the tribal trust land". In return, he held his new land at the Ministry's whim - and for "Minister" read the bureaucrats in the Ministry.

At any time without notice the Minister could replace the permit with another form of agreement on whatever terms the Minister thought fit and he could revoke the permit if, "in his sole discretion" the Minister decided that the holder failed to comply with a condition of his permit.

These conditions too, varied with the Minister's discretion. The permit-holder had to comply with all the instructions the Minister might issue with respect to preventing damage to water courses, the control of animal pests and diseases, the control and eradication of plants harmful to livestock, the maintenance of live-stock carrying capacity through grazing and livestock management and erosion control. The holder should not engage in any other employment or occupation. On the expiration of revocation of the permit, the permit-holder forfeited all improvements on the land except what he could take with him.

The conditions of the permit for a producer co-operative had even more open discretionary conditions. The Minister could revoke the permit if the co-operative "failed to make proper beneficial use of the holding", the meaning of which is unclear.

The co-operative had "actively and continuously to carry on agricultural activities ... to the satisfaction of the Minister" and "carry out any ... measure that may be determined to be reasonably necessary" to accomplish that end. Without the Minister's approval the co-operative could not erect a building or structure, nor carry on any industrial or commercial activity, or even "cut any indigenous trees down, or remove any indigenous timber or grass from the holding".

2. The proposed legislation

The new legislation puts an end to the colonialist authoritarian patterns by providing security of tenure and local self-government

a) Security of tenure

The settlers receive initial leases of a length appropriate to the sort of agricultural involved. For smallholders and consumer co-operatives the lease will require the lessee to pursue reasonably efficient farming operation during the term of the lease (for State farm the lease requires 'highly efficient' farming

operation). The meaning 'reasonably efficient farming operations' has yet to be spelled out in regulations.

The Act states that regulations which the Minister promulgates "shall assure that a lessee who conforms to the provisions of his lease will have security of tenure for the term of the lease". At the end the initial lease period, the Minister will make a Final Year Visitation.

If he is satisfied that the member will not likely work the farm to a reasonable level of efficiency he can recommend that he does not receive a further lease. The tenant can appeal that decision to the Resettlement Board with further appeals to court.

The Minister must promulgate regulations "defining with reasonable precision the criteria he and the Resettlement Boards will use" in determining whether a person will likely work the farm at least on a minimal level of efficiency (high level of efficiency on State farms). Thus the legislation contains provisions limiting and checking ministerial powers over settlers. The Minister will no longer have power to issue day-to-day instructions concerning settler farming, although annually the Minister must visit each farm and discuss with the settler or his/her problems.

Security of tenure under fixed rules implies control over their lives by settlers. The Act also provides for local self-government.

b) Local self-government under the Act

In the case of producer co-operatives, the producer co-operative will have the power to govern the area involved in the co-operative. The smallholder schemes each smallholder must become a member of a Village Co-operative Society which will serve both as a marketing and consumer co-operative for its members and as a vehicle for local self-government. For example, it holds title to the village common land. The employees of a State farm, all of whom will have individual garden plots, will form a similar Village Co-operative Society.

C. Transition to Socialism

The Act provides two socialist forms of land ownership - producer co-operatives and State farms. It also provides a mechanism for transition from individual smallholdings to producer co-operatives as the principal device to ensure that in the long run as peasants become more politicised and see the advantages of socialist ownership, they will voluntarily move towards these forms.

The Act contemplates two sorts of smallholder tenures. First, individual peasants in the communal areas today hold their land under customary law. Second, the smallholders now holding under permits and a new smallholder settlers will, in the first instance, receive smallholder tenures under the act. The Act does not affect smallholder tenures in the communal areas, except as their members volunteer to form producer co-operatives. It does, however, contain a provision tending to prevent the development of exploitative, capitalist relations in smallholder schemes, by prohibiting the alienation of leases granted under the proposed Act.

The act provides a device by which smallholders may come together to form producer co-operatives. If these petition the Minister and he agrees he may cancel their tenures (whether under customary law in the communal areas or under smallholder leases granted under the Act). In exchange he will give them tenures under the new Act.

Thus, gradually, particular areas of commercial farm land and communal areas will come under co-operative or State farm ownership sometimes on original grant from the President, at others when smallholders in the resettlement areas or communal areas some together to form producer co-operatives.

An examination of provisions ensuring productivity on new farms follows.

D. Productivity

Low productivity is not 'socialist as socialism aims at improving productivity. Land reform in Zimbabwe will fail unless accompanied by better standards of living for Zimbabwe's population - and in the long run that calls for high agricultural productivity. The proposed *Land Tenure (Development) Act* seeks to lead settlers into highly productive agriculture, by its provisions concerning pre-planning, selection of members, security of tenure, the Final Year Visitation provisions and the requirement for Ministerial

provisions of officials to help the settlers.

Pre-planning

No settlement scheme may go forward unless the Ministry had planned its physical and financial features.

Settler selection

The Minister has the power to promulgate regulations concerning the selection of members for smallholders and producer co-operative schemes. Presumably, the regulations will seek to ensure settler selection related to farming skills.

Security and term of tenure

For two centuries conventional wisdom has held that with short term or at-will tenancies, farmers will mine the soil and not make the capital investments in the building, dip-tanks, boreholes, irrigation systems and till fields required for productive farming. The proposed bill provides for a first lease whose form will suffice ordinarily to establish the farm as a going enterprise - its length will depend upon the kind of farming involved (it takes longer to establish a herd for ranching, for example, than to establish a maize crop). After that a settler who is approved after the Final Year Visitation, will receive a 99-year lease. The security of tenure involved in the leases has been discussed above - these protect the tenant against arbitrary removal, whether at the time of the Final Year Visitation or otherwise.

Final Year Visitation

The Final Year Visitation includes an examination of the settler's efficiency of farming practises and the financing of farming operations. If satisfied that the settler will continue reasonably efficiently, the Minister then advises the President to grant the settler a 99-year, non-transferable lease.

Ministerial support for settlers

The Ministry must provide two officers for every 500 settlers, whatever the model of the settlement. These are a Co-operative Village Development Worker and an Agricultural Development Officer. The former will work with the settlers in the co-operative efforts and in the case of smallholdings moving towards co-operative systems. The latter will assist the work of the resettlement areas.

E. The Position of Women in Resettlement

Internationally, experience demonstrates that unless land reform legislation makes special provisions, the existing stratification and discrimination easily replicate themselves in the social formations created by land reform, especially regarding women. The proposed Act seeks to avoid this in two ways: by making the senior wife co-tenant with a smallholder and requires women's representation on all governing committees connected with the scheme.

Summary

The proposed *Land Tenure (Development) Act* defines the land tenures for the settlers in the land acquired by the Government pursuant to the land reform programme and with respect to the transformation from customary law tenancies to producer co-operatives in the communal area.

The Act seeks to give the new settlers control over their lives, to make possible the transition to socialism, to ensure productivity and to protect the position of women.

Much of the proposed *Land Tenure (Development) Act*'s efforts to move towards a socialist form of productive enterprise in the country depends upon promoting producer co-operatives, though a third proposed bill in the Ministry's legislative package specifically aims at that.

VII The Proposed Producer Co-operative Societies Act

A fundamental concept of capitalist relations of production is the exploitation of human by human. The ownership of a factory by a capitalist differs from the ownership of his tools by a craftsman. The capitalist employs others to work in his factory and these produce the output, which the owner sells, returning less than the total selling price to the

workers. The difference between the wages and his costs and the total amount received is what the employer pockets as profit.

Socialist relationships of production

Modern technology makes possible mass production by breaking down complex tasks into a series of relatively simple ones, which were previously completed by one craftsman.

Capitalist relationships of production permit the owner of the machines to cream off the surpluses above wages and costs produced by the machine-tenders and other workers.

Socialist relationships of production require that the profits are returned to the workers, either as higher individual wages or as social services (school, health services, social security, etc.) Socialist relations of the production, therefore, require either that the workers in the enterprise won the plant and appropriate to themselves most of the surpluses received, or that the State does and returns the surpluses to the workers in the form of social services.

For a variety of reasons, producer co-operative farms frequently seem more desirable and feasible than State farms. The proposed *Producer Co-operative Societies Act* purports to provide a framework for structuring producer co-operatives at all cost, although in the near future most producer co-operatives will likely occur in agriculture.

An eight-point discussion on issues involving co-operatives follows.

A. The Special Problems of Producer Co-operative Legislation

It is possible to distinguish two types of co-operatives. In Zimbabwe and elsewhere in the capitalist world, the word 'co-operative' has come to mean an entity district from its members, just as a corporation has a separate existence from its shareholders. For example, the typical agricultural co-operative serves as a marketing agent for its members. The members create a separate organisation - under the Co-operative Societies it actually has a corporate existence. The members do not work for the co-operative, but hire a manager and staff. The marketing co-operative is formed because the members cannot or do not wish to engage in marketing themselves. To this end the members employ a middleman or the co-operative society of which they become shareholders.

In a corporation of this type, the members or shareholders delegate to others the management of the enterprise as marketing co-operatives need an entity other than the producer to do the marketing. The Committee or Board of Directors, become central to marketing and consumer co-operative organisation.

In marketing or consumer co-operatives, each member/shareholder has his own place at which he lives and works. The co-operative exists separately from the lives of the members/shareholders both in law and physically. Members do not work for the co-operative or live on its land. Problems of housing secession to property, payment for work and division of work time between co-operative projects and oneself do not arise.

A producer co-operative has different characteristics. The members do the work of the co-operative and, in the case of a farming producer co-operative, the members typically live on the farm. Members do not delegate management in order for these to devote themselves to their own profit-making activities. In contrast, the co-operatives consist of its members.

Unlike marketing co-operatives, producer co-operatives make no distinction between the individual member as a production unit and the co-operative. A marketing or consumer co-operative Act should create a new legal entity, whose owners do not participate in the breadwork of the enterprise. A producer co-operative Act, however, must make provision for the organisation of an enterprise in which the owners do the breadwork.

This implies a different approach to management. Where the members/shareholders of a marketing or consumer co-operative would like to meet no more than once a year at an Annual Meeting, the members/workers of a producer co-operative must meet frequently to plan the work of the enterprise. Instead of a committee that legally has the responsibility and the powers to make practically all management decisions, a producer co-operative needs only an executive to make minor administrative

decisions in day to day operations.

A producer co-operative raises a host of problems that arise precisely because the members are not members/shareholders but members/workers: housing, payment for work done, allocation of time between work on the co-operative enterprise and on one's private plot, devolution of property on death and so forth.

Typically, non-producer co-operatives exist in capitalist societies, but only rarely do capitalist societies encourage producer co-operatives. A marketing co-operative typically has as its members/shareholders individual farmers.

In many countries, as here, even a privately owned corporate farm can become a member of a marketing co-operative. The difference between a co-operative of this type and an ordinary corporation lies in this - in a marketing co-operative the shareholders create the new entity in order to service their own economic needs, rather than having it done by a middleman at a price. Nothing in the organisation of a co-operative of this type does violence to capitalist organisation or ideology.

In contrast, a producer co-operative has as its central purpose organising the people who do the breadwork, the workers, to run their own enterprise, This violates basic notion of capitalist ideology, for it destroys the institutional basis for exploitation. As a result, producer co-operatives find in socialist countries (or at least countries with a strong welfare state ideology) their most hospitable host environment.

Two sorts of co-operative exists: consumer co-operatives and producer co-operatives. The author argues that Zimbabwe's existing legislation does not cater for producer co-operatives and shows this by examining the existing legislation.

B. Zimbabwe's Present Legislation Concerning Co-operatives

In the past, Zimbabwe has had three separate Acts dealing with co-operatives: The *Co-operative Agriculture Society Act*, 1909 (CASA), the *Co-operative Agricultural Companies Act*, 1925 (CCCA), and the *Co-operative Society Act*, 1956 (CSA). Of these CASA died in 1958, CCA nominally died in 1977, but lived on as part of the *Companies Act*, only CSA survived as separate legislation. Nevertheless, to understand the present position, it is necessary to discuss the history of these Acts.

In 1907 the BSA Company directors toured Zimbabwe. They decided that while it could never be another Witwatersrand, they might recoup their investment in agricultural enterprise. They instituted many measures designed to stimulate white farming.

In 1909, introducing the CASA, the Attorney-General justified the Act on the ground that the one existing local marketing co-operative had no legal existence. Local partnership laws did not admit of its becoming a partnership for it had too many members. It did not become a corporation he said because world-wide experience taught that co-operatives so organised fared ill. In the event, it petitioned government for the Act. A similar Act had done very well in the Transvaal. He spoke without fear of contradiction when he said that the co-operative system was becoming the basis of almost every form of life and business in civilised countries.

The *Co-operative Agricultural Society Act*, 1909, seemingly played only a minuscule part in agricultural development. In 1958 the Minister stated that since 1909 only one company had in fact registered under the Act, and that had removed itself in 1919. (Intriguingly, the Act nevertheless went through three minor amendments -- in 1911, 1917 and 1919. One wonders what triggered them if only one society had registered.)

Despite the Attorney-General's notion in 1909 that this form did not work, most co-operative societies actually incorporated themselves (one supposes mainly to obtain limited liability). They did find the *Companies Act* less than felicitous, however, and required an Act more suitable for their special problems.

To meet that requirement, Parliament enacted the *Co-operative Companies Act*, 1925. Modelled on the law of many jurisdictions (even Texas) that Act made it possible for a co-operative to become a limited liability company. In 1977, with only minor changes, that Act became part of the *Companies Act*, and itself disappeared from the statute books.

The Minister of Justice stated in his Second Reading

speech that now that co-operative companies have become 'much more sophisticated, the rather more paternalistic supervision of the Registrar of Co-operative Companies ... has become outdated.'

The new amendment to the *Companies Act* expressly could not serve a producer co-operative. The amendment defined a co-operative company as a company other than a private company whose memorandum states that its main object is one or the other of the following: 'the provision for its members of a service facilitating the production of marketing of agricultural produce or livestock', or 'the sale of goods to its members'. Plainly, a producer co-operative cannot fit under that definition.

The *Co-operative Society Act*, 1956, tracked almost verbatim the standard *Co-operative Societies Act* introduced about that time all over Africa. It formed part of a deliberate Imperial scheme that had its origins in 1946 and the rhetoric of colonial development.

Following the 1946 Labour party victory in Britain, a select Parliamentary Committee in England reported that 'a large-scale advance in agricultural (amongst 'the colonial peoples') means reaching into every village, forming farmers' holdings, promoting co-operation and providing fertilisers, improved tools and cattle ...' Underlying this purpose lay another, rather more sinister one.

Local government, community development and the co-operatives' movement became a device to siphon off the political energies of the newly educated Africans whom the British - rightly - so greatly feared. Many years before, Lugard had urged the introduction of co-operatives in Africa in order to extend control over the African peasant. The post-1946 emphasis on co-operatives for Africans at bottom had the same purpose.

In Zimbabwe its purposes did not change. Introducing the *Co-operative Societies Act* in 1956, the Minister of Native Affairs stated that the bill had been designated 'primary for the registration and control of Native Co-operative Societies'. He went on: 'the only difference that arise in designing legislation to apply primarily to an emerging race such as our Native population, which is a backward race, is that additional provisions are made to enable the Registrar to use his discretion in a number of ways.' The Bill had gestated for a long time.

In 1946 an advisor of the Secretary of State for Colonies had advised that Zimbabwe encourage co-operatives amongst Africans. Later, a member of the Native Affairs staff had visited a number of other African countries.
The *Co-operative Societies Act*, however, had a second purpose. The Minister said that some Native Councils had carried out functions

> that could more properly be undertaken by private enterprise in the form of co-operative societies. An instance of that is grain milling. A number of Native Councils run central mills to grind grain of various kinds for people in their areas. State enterprise of that kind is not really in keeping with the economic policy of this country and it does come in for very severe criticism from Natives engaged in the milling business ...

An examination of the specific provisions of the present Co-operative Societies Act follows, to demonstrate its inadequacies for producer co-operatives.

CASA has three principle difficulties as applied to producer co-operatives. First, it gives the Registrar and, ultimately the Minister, unlimited, unconfined discretion over what co-operatives to approve. No standards of criteria advise either Registrar or Minister how to exercise that discretionary power. Thus the Registrar can determine the entire thrust of the co-operative movement in this country.

The Act also gives the Minister almost unlimited power with respect of regulations. For example, the Companies Act and the old CASA detailed the processes and institutions for the management of a company and a co-operative agricultural society respectively. Not so CSA. Concerning management, it merely defines the word 'committee' as 'the governing body thereof ... to whom the management of that society is entrusted'. The Act only mentions that word 'committee' in section 52(f) which empowers the Minister to make regulations providing for the appointment, suspension and removal of the committee members, its procedures and its powers.

Government expects the members of producer co-operatives to make major investment of property and

especially of labour - 'sweet equity'. People will not make those sorts of investments if their investment stability depends upon governmental whim. The CSA did not have as its purpose creating long-term, viable producer units with major capital investment. It had as its purpose to create marketing co-operatives to control African peasants and co-opt educated Africans. Of course it gave unlimited discretion to officials - authoritarian governments always operate through broad official discretion.

Zimbabwe's producer co-operative programme requires assurances of stability. The law does that by providing that grant not more discretionary privileges but enforcing rights.

Secondly, as we have seen, a marketing co-operative needs a board of directors (in the CSA called a 'committee) to manage it, for the same reason that the shareholders in a corporation need a board of directors. Members of a marketing or housing co-operative or a credit bank do not propose to work for the co-operative. They create an entity to perform a service for them - a committee for management. A producer co-operative needs other forms of governance. By requiring a committee the CSA makes governance of a producer co-operative difficult.

Finally, a producer co-operative has a variety of problems that do not concern a marketing co-operative - labour accounts and housing, for example. An adequate producer co-operative statute must of course lay down guidelines for resolving these issues; the CSA does not. For all these reasons - its grant to Registrar and Minister of all but unlimited discretion, its provisions with respect of management, and its failure to deal with matters central to a producer co-operative - the CSA in its present form will not serve.

Technically a drafter could make relatively minor amendments to the CSA and leave everything to Ministerial regulation and Registrar's discretion and hope that Minister regulation and Registrar will have the ideologies and knowledge required to ensure the accomplishment of the Act's purposes. Ministers and Registrars, however come and go. Legislation remains fairly permanent. Whatever the commitment and competence of today's office-holders, who can guarantee the competence of the office-holders five years from now? Granting discretion to a Minister in effect legislate the entire co-operatives programme by fiat, embodies authoritarian government.

Second, many marketing and some consumer co-operatives already exist. The Government does not want to disturb them. Their legal basis and organisation flow from the existing CSA and the Regulations. It makes no sense to change radically the Act and Regulations upon which they operate. A maxim of legislative drafting teaches not to change a rule that supports institutions that policy-makers want continued. (The corollary also holds: without changing the underlying rules of law and regulations, the institutions will not likely change).

So long as CSA adequately serves the marketing and consumer co-operatives now operating under it, why change it?

C. Government Control for Producer Co-operatives

The proposed Act teeters between two perceived difficulties. The power over co-operatives expressed by the Registrar's unlimited discretion embodies one of the difficulties that excited the proposed legislation. In contrast, the proposed Act will extend a variety of benefits to co-operatives.

A benefit from the Government to a co-operative amounts to a subsidy - no benefit comes without a price tag. The Government must assure itself that it extends those benefits only to co-operatives that produce and abide by the Act.

In Zambia, for example, the Government offered a substantial stumping fee to co-operatives who cleared land for agriculture. The Government, of course had no interest in clearing land for its own sake. It wanted to see the cleared land put into agricultural production. Peasants, however, formed co-operatives that stumped land for the fee and then left the land to the bush never putting it to the plough. How to prevent that sort of mindless subsidy, unless the Government has some control over co-operatives?

The purpose bill steers between the Scylla of authoritarian control and the Charybdis of uselessly paying subsidies by six devices.

1. Control over creation

Without registration, none of the Act's provisions or

benefits apply. Ten or more individuals may apply to the Minister for a *Certificate of No Objection* to registration as a producer co-operative. The Minister may grant or withhold that certificate depending upon the co-operative's viability. In making that determination, the Minister will take into account the co-operative's physical capital, its members' skills and its financial arrangements. He must give the applicants opportunity to be heard, but no appeal lies from his decision. The Registrar must register the co-operative if it has the Minister/s Certificate, and if its constitution and bylaws conform to the proposed Act.

2. Ensuring socialist ownership
Government proposes to support producer co-operatives because they embody a set of relations to production compatible with socialism - that is they purport to prevent the exploitation of human by human. In Kenya, the government also gave various sorts of benefits to co-operatives. Emerging members of Kenya's bureaucratic bourgeoisie seized upon the co-operative form to create what amounted to partnerships. The so-called co-operators worked full-time at the senior civil service or political jobs, bought a farm, hired a manager and workers and creamed off their profits.

To prevent this, the proposed Zimbabwe statute includes provisions requiring members to work full time for the co-operative - in any case of an agricultural producer co-operative requiring a full or provisional member to sleep at least 300 nights out of a calendar year on the co-operative premises. The co-operative may not employ a non-member for more than 250 hours in a twelve month period. A person may not become or remain a member if he regularly employs another person in producing goods and services.

3. Accounts
The Minister may provide bookkeeping and accounting services for co-operatives. In the annual visitation he will inspect books and records.

4. Annual visitation
Not less than annually, the Minister must visit a co-operative and examine it in all respects including its' books and records, its methods of agriculture, its financial arrangements, its sate of governance, its housing arrangements, the amenities it supplies for members and its credit arrangements.'

5. Fifth Year Visitation
During the fifth year after registration, the Minister will make a Fifth Year Visitation. The Minister must promulgate rules that define with reasonable precision the criteria he will use in his Fifth Year Visitation. After that visitation, the Minister has wide powers to order the co-operative dissolved, or to amalgamate with another, to change its membership or mode of operation, or officers or to approve its continuance. The co-operative may appeal from the Minister's determination.

By controlling the creation of producer co-operatives, ensuring that they do not become a guise for exploitation, annual inspections of accounts and visitations, and the controls embodied in the Fifth Year Visitation, the Government ought to have adequate control over producer co-operatives to ensure that they carry out the purposes of the Act. The Act contains additional built assurances of productivity.

D. Ensuring Productivity

The proposed Act seeks to provide a framework to ensure productivity, in a variety of ways. Some have already been described, for example, by using the registration device to ensure that new producer co-operative freedom from arbitrary official interference, and the annual and Fifth Year Visitation programmes.

Probably the most important device to ensure productivity, however, consists of the provision of the proposed Act seeking to ensure Government support for producer co-operatives.

White commercial agriculture did not reach its present prosperous state as the result of the Government's benign indifference. From the beginning, commercial agriculture enjoyed massive government support - in credit, in land allocations, in labour policy, marketing, subsidies, extension services, research and development, transport and communications policy.

The proposed Act cannot deal with each of these, but it does lay down a broad policy. It permits the Minister to provide a wide range of services for producer co-operatives: bookkeeping and accounting services, legal services, advice concerning the

operation of co-operative enterprises, agricultural advice, financial advice and services, marketing advice, and education in co-operative principles and techniques. The Act further requires every government ministry, department and corporation to exercise their discretion in favour of producer co-operatives and with respect to farming co-operatives in the allocation of resources to give them a priority before all other forms of agricultural enterprise.

E. Protecting Women's Rights

The proposed Act protects women's rights in two ways. First, a co-operative may not discriminate against women. Second, women must hold office in the executive committees in the same proportions as they are in the membership at large.

F Labour Accounts

The world around, producer co-operatives experience difficulties in deciding how its members should share in the proceeds. Active workers resent sharing equally with lazy workers. Skilled workers resent doing so with unskilled workers. Until socialism creates a 'new man' willing completely to merge his personal material interests in the collective good, these conflicts will plague Zimbabwe's proposed producer co-operatives.

The proposed Act makes a start at solving the problem. A producer co-operative must keep labour accounts, that is, an account of the number of labour units each member 'earns' during a year. 'Labour unit' means the amount of work an unskilled labourer can perform in one-fifth of an hour. The co-operative must, from time to time, list all the tasks in the co-operative and assign an appropriate number of labour units to them, preferably in terms of the task done, not the time consumed in doing the task. The share out of income will follow the labour units earned by the members in the year.

G. Reserves and the Distribution of Profits

A producer co-operative faces a variety of problems for which it will require financing. Enterprises ordinarily meet these requirements either by setting up reserves (thus in effect paying the cost of resolving the problems in advance) or by having a line of credit (thus in effect paying the cost after it makes the expenditure, as it pays off the loan.)

The proposed Act requires a producer co-operative to provide financing for capital plant, machinery and stock expansion, amenities, contingencies, depreciation, and seed. In order to ensure that the co-operative invests a portion of its surpluses, the proposed Act provides that it must set aside 25 per cent of its profits for investment. It ought to pay for amenities only out of profits earned, so the proposed Act requires an amenities reserve. Concerning contingencies, depreciation and seed a co-operative may either arrange a line of credit or it must set up reserves for them. If the co-operative uses reserves, the proposed Act provides minimum proportions of profits that the co-operative must allocate to each of them.

After allocation of profits to reserves, the co-operative may pay out the remainder of its members. It may do so both in proportion to their labour accounts and to the value of the property the individual members contributed to the co-operative. If by bylaw it so elects, however, it may distribute profits in proportion of labour accounts alone. Payments on account of contributed capital may not exceed fifteen per cent of the profits left after allocation to reserves.

E. Individual Property and Property Rights

Everywhere that producer co-operative exists, a tension arises between the co-operative's interest in their members' labour time and his personal interest in working for himself. Usually, in agricultural producer co-operatives this tension finds its resolution in assigning to the individual member a garden plot of his own.

Paradoxically, in many socialist countries, the level of production of these individual plots exceeds that on the co-operative land, (probably because the co-operative grows crops not as susceptible of high financial returns like maize or wheat as the crops grown on individual plots, like vegetables or tobacco). In some socialist countries, the market in vegetables consists entirely of produce grown on individual private plots and sold in a more or less 'free' market.

The proposed Act attempts to deal with this tension.

It requires that an agricultural co-operative provides a garden plot to exceed one acre to each member. To work on that plot he may not employ person not in his immediate family. The member must work full-time for the co-operative - he must work his own plot in his spare time.

CONCLUSION

Zimbabwe's central difficulties in the post-war period revolved around the land question that had to a great degree excited the independence war. Proposals for the Ministry's legislative package included a draft *Land Acquisition Act*, *Land Tenure (Development) Act* and a *Producer Co-operative Act*.

The first aimed at widespread acquisition of commercial farm land for resettlement purposes and ultimately for purposes of taking not only 'under utilised' land but also land presently the subject of widespread exploitation of human by human. It aimed at directing land to proper use. It aimed to all this a very low cost to the state.

Land Tenure(Development) Act aimed at providing a new land tenure regime for settlers and over time for communal areas as well.

Recognising that at present many of Zimbabwe's peasants will resist entry into producer co-operatives or state farms, it provides for forms of individual smallholder tenure that will not in time come to stand in the way of co-operative or state form organisation of the countryside.

The *Producer Co-operative Act* aims at providing a framework for what will likely become the most common sort of socialist enterprise, the producer co-operative.

These proposed Acts, of course, will not enact nor implement themselves. They require further discussion within the Ministry. Whether Cabinet will propose bills more or less like these to Parliament, thus whether Parliament will enact them and if enacted, whether anybody will implement them, depends upon the relative strength of class relationships in Zimbabwe.

Whether peasants and the rural proletariat and generally the working class can mobilise enough pressure upon the Government to ensure enactment and implementation, depends upon the level of their consciousness and organisation and the sensitivity of the Government to their needs. Consciousness and organisation among Zimbabwe's masses will not happen by accident. Their level depends upon the vigour and effectiveness of those already committed to the transition to socialism. These proposed Acts provide a programme for Zimbabwe's socialist activists, with and without government. Will they meet the challenge?

NOTES

1. See Seidman, R.B., *Research Priorities: The State, Law and Development*, Contemporary Crises, forthcoming.
2. Heydon's Case, 3 Co. Rep. 7b (1584).
3. At Independence, the minimum wage (and close to average income) of farmworkers was $220 per month.
4. Rosenfield, M., unpublished research, University of Zimbabwe, Faculty of Medicine.
5. See Seidman, R.B., *State Law and Development*, Croom Helm, London, 1978, p.69 ff.
6. Seidman, R.B. and Gagne, M., *The State, Law and Development in Zimbabwe*, as cited in *The Journal of Southern African Affairs*, Vol.5, No.149, 1980.
7. No. 30 of 1930.
8. The Smith regime had re-enacted the *Land Apportionment Act* as the *Land Tenure Act*, 1069, Chapter 148, Act 55 of 1969. Act 5 of 1979 repealed the *Land Tenure Act*.
9. Chapter 267.
10. It has been estimated that at Independence the average commercial farmer received about $3 000 per annum indirect or concealed subsidies.
11. The World Bank, Eastern African Department, Southern Agricultural Division, *Zimbabwe: Agricultural Sector Study*, 1983, p.9.
12. Ibid. See Communal Lands Act, No.2 of 1982, Sec.9.
13. Integrated Plan for Rural Development, published as an annexure to *Proposals for a Five-Year Programme of Development in the*

Public Sector, prepared by the Ministry of Finance, Salisbury, Rhodesia, 1979.
14. Ibid., at 20.
15. Ibid., at 20-21.
16. Sec. 124(1)(d)(ii).
17. Sec. 124(3).
18. Sec. 124(2).
19. No. 15 of 1979.
20. Sec. 16(1)(c).
21. Sec. 16(7)(d).
22. Sec. 16(7)(g).
23. Sec. 16(1)(b).
24. Sec. 16(1)(b).
25. Sec. 16(5).
26. The Registrar of Deeds so stated in a seminar at the University of Zimbabwe, 3 September 1983.
27. Rev. 1962, Chapter 14.
28. Chapter 12.
29. Arbitration Act, sec. 12.
30. No. 80 of 1971.
31. Sec. 17.
32. Sec. 16.
33. Minister's Second Reading speech, *Hansard*, 29 November 1971, Col. 1048.
34. Sec. 26(2).
35. Sec. 3.
36. The *Land Acquisition Act*, No. 15 of 1979 repealed and replaced the 1971 Act.
37. *Land Acquisition Act*, 1979, secs. 16, 21(4) and 21(5).
38. Sec. 17.
39. Sec. 124(3).
40. Sec. 2(2)(a).
41. See note 13.
42. Ibid.
43. The Ministry of Lands, Resettlement and Rural Development, Progress Report on the Intensified and Accelerated Resettlement Programme, September 1980 to April 1983, p.iii.
44. Kinsey, B.H., *Forever Gained: Resettlement and Land Policy in the Context of National Development in Zimbabwe*, 52 Africa 92, 97, 1982.
45. Ibid., at 104.
46. In the first six months of 1983, Zimbabwe's Consumer Price Index rose by 26 percent.
47. See note 43, at p.7.
48. The Constitution uses *compulsory acquisition* as identical with what some other countries call *eminent domain*.
49. Chapter 158.
50. Sec. 16(7)(g).
51. Sec. 16(1).
52. Sec. 16(1).
53. Sec. 124(1).
54. 3 *Hansard*, cols. 150-159, 1925.
55. Ibid., at col. 134.
56. Chapter 138.
57.
58.
59. Sec. 124(2).
60. Sec. 16(1).
61. See text at note 58.
62. Sec. 124(2).
63. Sec. 16(7)(g).
64. See text at note 60.
65. Ivy, P., *A Guide to Soil Coding and Land Capability Classification for Land Use Planners*, Government Printer, Salisbury, 1981.
66. Sec. 16(1)(b).
67. Lapres, R., *Principles of Compensation for Nationalized Property*, 26 T.C.L.O., 97, 98.
68. See text at note 16.
69. Chapter 145.
70. Chapter 165.
71. Sec. 16(7)(b).
72. *Agricultural Act*, 1947 (10 & 11 Geo. 6, c. 48), sec. 10.
73. Agricultural Ordinance, 1955, Cap. 218, No. 8 of 1955.
74. See text at notes 11 and 12.
75. The proposed Bill prohibits new acquisitions of commercial farmland by non-citizens or by a person who owns one or more commercial farms.
76. Ministry of Lands, Resettlement and Rural Development, Intensive Resettlement Policies and Procedures (Government of Zimbabwe, n.d.).
77. Ibid., at 16.
78. Chapter 193, sec. 9.
79. No. 7 of 1909.
80. No. 34 of 1925.
81. No. 13 of 1956.
82. No. 30 of 1958, sec. 2.
83. No. 41 of 1977.
84. Chapter 190, sec. 31A, No. 41 of 1977.
85. Debate in the Legislative Council, Fourth Council, First Session (n.d. or pub.) 14, 18

May 1909.

86. 41 *Hansard*, col. 604, 29 July 1958.

87. 3 Legislative Debates 1242, 8 June 1925.

88. 97 *Hansard*, col 1725, 25 October 1977.

89. Sec. 31A.

90. Creech-Jones, A. (Secretary of State for the Colonies), Opening Address, in Colonial Office, Summer Conference on African Administration, Second Session, 1948: The Encouragement of Initiative in African Society, (African, No. 1128, not for publication),p.14.