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"The Commons in an age of Globalisation"

" COMMUNITY BASED NATURAL RESOURCE MANAGEMENT AND COMMUNITY BASED PROPERTY RIGHTS IN LAND REFORM LAW: ZIMBABWE' CASE"

Submitted by

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Community Based Natural Resource Management and Community Base Property Rights in Land Reform Law: Zimbabwe's case.

> ***"It is overwhelmingly obvious that the farm invasions are, have been, and continue to be, unlawful. Each Provincial Governor, each Minister in charge of a relevant Ministry, even the Commissioner of Police, has admitted it. They could do nothing else. Wicked things have been done, and continue to be done. They must be stopped. Common law crimes have been, and are being, committed with impunity. Laws made by Parliament have been flouted by the Government. The activities of the past nine months must be condemned. But that does not mean that we can ignore the imperative of land reform. We cannot punish what is wrong by stopping what is right. The reality is that the Government is unwilling to carry out a sustainable programme of land reform in terms of its own law. The first thing to be done is to return to lawfulness. A huge problem has been created. Thousands of people have been permitted and encouraged to invade properties unlawfully. They have no right to be there. That situation will not be easy to resolve, but it must be resolved. Either their presence must be legalised, or they must be removed."***
>
> ***per Zimbabwe Supreme Court Full Constitutional Bench***
> in **Commercial Farmers Union v Minister of Lands, Agriculture and Resettlement and Others SC 132/2000**

1. INTRODUCTION

In the 17th century and just before colonialism, land was not a resource in high demand and if there were any conflicts over land itself as a resource they were minimal. Then indigenous knowledge systems were still undisturbed and the institutions then existing were well geared towards equitable distribution of land to the people of each particular community according to the people's customary laws and norms. That's the problem of entitlements and disentitlements did not arise except in few tribal war situations. Within this orthodox set up environmental problems and degradation were minimal.[1] However with the onset of imperialism and colonialism and between 1888 and 1980 there was systematic dispossession of landed resources from the majority black community by the minority white community. The process started with sporadic fights, which degenerated, into full-blown war and conquest in 1891. This was forceful dispossession and no

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1. Gore C, Katerere Y and Moyo S et al, The Case for Sustainable Development in Zimbabwe: Conceptual Problems, Conflicts and Contradictions. A Report prepared for the United Nations Conference on Environment and Development (UNCED). ENDA Zimbabwe and ZERO 1992 at pp5.

compensation was paid to the blacks. Since Zimbabwean economy was and is still largely agro-based the dispossession meant that the colonialists had taken over the means of production and consequently they put themselves in control and ownership of the economy. The dispossession was consolidated by colonial land laws, such as the Land Apportionment Act and the Land Husbandry Act which facilitated the process of dispossession and marginalisation of blacks to hot, dry and low rainfall areas, then called reserves. A particular tenure system was then established and the existing one was superseded with grave consequences for traditional resource management systems. The colonial administration centralised the management of resources a situation which independent governments are trying to remove and promote devolution. This is the brief history of what happened to Zimbabwean land so much at the centre of dispute now a century ago. The concern of this paper however is not about whether the allegedly historically unjust acquisitions should be reversed, because the government has already decided on that quite correctly. It is undisputed that land should be equitably redistributed in Zimbabwe and even the white commercial farmers agree on this fact. What has caused furore and international outcry is the methodology of righting this historical injustice. The legalities of the land redistribution program are also not in issue in this paper. This paper is an attempt to analyse and critic land reform legislation, which was heralded by the second phase of the land redistribution program, dubbed the fast track programme. In particular this research seeks to find out if environmental concerns have been adequately taken into account and whether the possibility of community based management of land as a resource has been considered as an option and whether land legislation can be used to protect indigenous knowledge systems relating to management and conservation of land as common property. Tenure systems are the determinants of whether one can categorise land as common property, thus some tracks of land are common property while others are not even within the context of the fast track land reform programme. It should not be expected therefore that this paper would analyse the adequacy of Zimbabwean environmental laws generally. There has been extensive research into this and other general aspects relating to land tenure and environmental laws and environmental management. [2] A reference here and there to these aspects will be made.

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2. Ibid. See also Rukuni M, " Report of the Commission of Inquiry into Appropriate agricultural Land Tenure Systems" Volume I:

It became apparent that environmental problems were unavoidable from as early as the 1920s and 1930s and one begins to see a move towards environmental legislation from the 1930s to curb environmental degradation. Researchers to date have reached common positions or conclusions, that any environmental legislation that was enacted by the colonial government were aimed at regulating use and exploitation of land resources. Negligible attempts were made to put in place conservation oriented legislation. It is common knowledge that the legislation was and is still fragmented, sectoral in approach and weak in terms of content, standards and institutional set up. Any efforts at sustainable environmental management were fruitless especially within the entitlements system established under colonialism.[3] In a country where 75% of the land was owned by just about 1% of the population and 25% used and not owned by about 99% of the population, it would be inconceivable for anyone to run away from the conclusion that massive pressure on land was inevitable in the reserves now the communal areas. Thus therefore the general common position has also been reached that the major environmental problems in Zimbabwe is environmental degradation and consequent poverty in the communal areas.[4] Independence in 1980 brought high hopes that land and resources thereon were going to be abundant since land had been the war cry. However the established colonial entitlements proved difficult to dislodge as resistance was likely to be faced from the white community, hence the constitutional entrenchment of private

Main Report, Government Printers, Harare, 1994 and Volume II: Technical Report, 1994. See also Moyo S, Ncube W, Gunby D and Shivji I, " National Land Policy Framework Paper" Government Printers, Ministry of Lands and Agriculture, Harare, 1998. See also Moyo S, The Land Question in Zimbabwe, SAPES Books, Harare, 1995. "The Political Economy of Land Acquisition and Redistribution in Zimbabwe" Journal of Southern African Studies, Vol. 26(1) pp5- 28, "Land Reform and Changing Social Relations for Farm Workers in Zimbabwe" Review of African Political Economy No: 84, 2000, pp181- 202; Moyo S and Katerere Y et al, Zimbabwe's Environmental Dilemma: Balancing Resource Inequities" ZERO, Harare, 1991. "Environmental Sustainability and Agrarian Reform in Zimbabwe, ZERO, Harare, 1992 Mandaza I Ed, Zimbabwe: The Political Economy of Transition, DAKAR CODESRIA 1986. Maposa I, Land Reform in Zimbabwe: An Inquiry into the Land Acquisition Act (1992) combined with a case study analysis of the resettlement programme. CCJP, Harare, 1995. Kinsey B, "Land Reform, Growth and Equity: Emerging Evidence From Zimbabwe's Resettlement Programme" Journal of African Studies, vol. 25 (2), pp 173- 196. Bruce J, " Legal Issues in Land Use and Resettlement" Report for the World Bank at the request of the Government of Zimbabwe, 1990. Rukuni M and Eicher C, Zimbabwe's Agricultural Revolution, University of Zimbabwe Publications, Harare 1994.

3 Gore and Katerere op cit. at pp 8.

4 Ibid. pp3

property rights and the moratorium on land.[5] It was impossible for the government to embark on a meaningful land redistribution programme for the ten years after independence due to the Lancaster House Constitution, which had entrenched provisions protecting private property from acquisition for ten years from independence. There were more pressing issues anyway and resources to undertake a large-scale redistribution programme have at no time been adequate.

2. THE FACTUAL FRAMEWORK

Consequently colonial tenure systems were carried forward together wit the legal framework. It was only in after 1990 that new land legislation was put in place to facilitate acquisitions and redistribution.[6] The government then put in place as well a land reform policy or programme. The particularly relevant and apposite to this research are the avowed objectives of the 1992 national land policy were basically

- To ensure equitable and socially just access to land resources.
- To democratise land tenure systems and ensure security of tenure for all forms of land holdings.
- To provide for participatory processes of management in the use and planning of land and
- To provide sustainable and efficient use and management of land.[7]

And the relevant objectives of the Land Reform Resettlement Programme and Implementation Plan Phase 2 of February 2001 were:

- To acquire not less than 8.3 million hectares from large-scale commercial sector for redistribution.
- To reduce the extent and intensity of poverty among rural families and farm workers by providing them with adequate land for agricultural use and to
- To promote environmentally sustainable utilisation of land through agriculture and eco-tourism.[8]

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5 Section 16 of the Lancaster House Constitution

6 Land Acquisition Act (Chapter 20:10) and amendments to section 16 of the Constitution

7 Land Reform Resettlement Programme and Implementation Plan, Phase II, Ministry of Lands, Agriculture and Rural Settlement, Harare, 2001 pp2.

8 Ibid.

As far as community based management of land and landed resources was concerned the idea was the and someone thought about it when this policy was drafted .The essence of this research is precisely therefore to find out if legislation passed subsequent to the land reform resettlement programme which was meant to give a legal framework to the land redistribution process, was accompanied or complemented by legislation to give a legal framework to the issues of participatory processes of management in the use and planning of land.

Undoubtedly, the predominate ideology behind the initial land resettlement policy was equitable redistribution of land resources and development. Although theoretically an environmental flavour was on the agenda this was not taken any further or concretised by the resultant legislative reforms. Indeed several pieces of legislation were put in place the Land Acquisition Act (Chapter 20:10) and amendments thereto, amendment number 16 to section 16 of the Constitution, Rural Land Occupiers (Protection from Eviction) Act (Chapter 20:26) and court judgements based on these and other land statutes.[9] Like the colonial counterpart the effect of these legislative instruments is to facilitate repossession of land without the need to pay compensation now whether the owner is willing or unwilling to sell.[10] Now the fortunes are overturned against the former colonists or their offspring! In part the effect of the land reform legislation was to repeal colonial legislation which had been responsible for the pressure resources and the consequent environmental problems in the communal areas. What is apparently missing though from this legislative reform process is a reform of colonial environmental laws or enactment of new environmental laws to give legal effect to the environmental objectives of the land reform resettlement programme. It can be argued that the penchant for development redistribution of wealth still override environmental concerns in government's land policy. Can it seriously be said therefore that the resettlement program is going to lead to environmental sustainability, sustainable development and poverty reduction? This is one of the questions to be answered by this research.

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[9] Court judgements set precedents which can be used in subsequent cases of similar application, for e.g in 1984 it was possible to evict invaders then called squatters see **Commissioner of Police v Rensford and Another** 1984 (1) ZLR 202 (SC) whose ratio has been changed by statute the Rural Land Occupiers (Protection from Eviction) Act, see the several cases decided after the passing of this statute.

[10] Before these legislative amendments under the Lancaster House Constitution acquisition was on a willing buyer willing seller basis and comepnsation was set by the upon petition see Davies and Others v Minister of Lands, Agriculture and Water Development 1996 (1) ZLR 681 (SC)

Previous research has established that to achieve sustainable development the country needs equitable redistribution of land resources. It is submitted that however for the goal of sustainable development to be achieved the land reform and resettlement programme has to be intertwined with a prudent environmental legal framework or at least policy instruments. This environmental legal framework must of necessity codify known customary practices and indigenous knowledge systems, which sustained management of land before colonialism. It has to reform the now intrinsically corrupt system provided under the Communal Lands Act (Chapter 20:04) The system provided under the Communal Lands Act has been corrupted because of unscrupulous traditional leaders who have now de facto commercialised communal land and are spearheading trade in communal land. In this respect it becomes relevant to consider the legal implications of the Traditional Leaders Act (Chapter 29:17) as far as the implications of Model A1 resettlement schemes are concerned and the Agricultural Land Settlement Act (Chapter 20:01) as far as settlement under the Model A2 is concerned. It is important to note that the tenure system and the extent of personal rights of ownership and or usufruct under these resettlement models have the greatest impact on building an environmental ethic within the conscience of the landholders. The land resettlement programme must avoid the "tragedy of the commons" which is a sequel of communal resettlement and communal use of land resources.[11] It must provide for security of tenure to create

11 Ownership generally determines the commitment of the owner towards sustainable use of land resources. Thus lack of secure title may and often times leads to neglect, overuse and or misuse of resources. However commons may and often provide opportunities for effective and sustainable use and management of natural resources, this largely varying from place to place and the nature of the resource concerned. In Zimbabwe this may partly be the reason why communal resources and in particular communal lands have more environmental problems than commercial farms, one can clearly say this is a manifestation of the "tragedy of the commons", an adage coined by Garret Hardin in 1968 in the following epithet, "the rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd, and another and another… But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein lies the tragedy. Each man is locked into a system that compels him to increase his herd without limit…in a world that is limited…. Freedom of the commons brings ruin to all" pp1244. One needs to caution though that common property resources must not be confused with "open access", the former is property managed by a group of people and the latter is virtually unmanaged property to which everyone has access and communal areas in Zimbabwe are to some extent managed by the local community and they cannot be defined as open access regimes. For the meaning of common property and open access, see Willy L.A " Democratising The Commonage: The changing Legal Framework for Natural Resource Management in Eastern and Southern Africa with particular reference to forests" pp2.

incentives for conservation and good environmental practice. However this remains wishful to the extent that the land reform and resettlement programme provides mainly for communal title and under the Model A2 lease hold title to land. It is argued that what was really necessary to be done was for an environmental audit to be done before encouraging people to stay put in the invaded farms and proceeding to fast track their resettlement. An impact assessment had to be done to see suitability of land for purposes of resettlement and see which models was suitable for which areas. One tool which would have been very handy in this regard is the Environmental Impact Assessment Policy of 1994, but the unfortunate thing is that this has remained a policy statement which is not legally enforceable and monitoring and enforcement are its legions of doom.[12] This makes it apposite to consider the forthcoming Environmental Management Bill which h has remained a Bill for now an unnecessarily long time. This bill would provide for a holistic approach to environmental management and incorporate many of the environmental principles, which have been lacking in the current bedevilled environmental legislation.

2.2 THE HYPOTHESIS of this research is therefore the following:

- The dream of a successful land redistribution programme that will lead to sustainable development will not come true if the environmental factor is not incorporated and given legal effect.
- Environmentally sustainable utilisation and management of land resources is not going to be achieved because the legal framework of the resettlement programme has not taken on board the possibilities of constituting common property regimes and promote community based management of land resources.
- The land redistribution program as currently formulated is not environmentally sustainable although politically, as long as there is political will and justification, it seems sustainable. However without environmental sustainability a politically sustainable programme may not succeed. In this regard it is argued that the wealth

12 The Environmental Impact Assessment Policy of 1994 is a policy document meant for guidance of the government and has no legal force. For a criticism of this policy instrument see Chinamhora W, "Zimbabwe's Environmental Impact Assessment Policy 1994: Can it achieve sound environmental management", Zambezia 1995 Vol. XXII (ii) pp 153- 163.

gap is going to widen and due to open access regimes[13] the poverty situation is going to be worsened. The resettled communities know little or nothing about their responsibility to sustainable and communally manage their natural resources, they need extension services which are scarce.

- It is further hypothesised that five years from now the problems bedevilling communal areas would have been translocated to the resettlement areas.
- As long as Zimbabwe does not have the proper framework environmental legislation which makes it legally binding for the environmental factor to be considered at all levels of planning, development and management of resources, to ensure participatory processes there is not going to be sustainable utilisation of the country's land resources.

It seems as if the colonial disease of viewing natural resources as enemies and conservation as a tool of oppression has also infected the regulatory authorities.[14] The lackadaisical approach to legislating for environmental protection is a symptom of this. Whilst it takes less than a month to fast track land reform legislation, why should it take it years to enact environmental legislation and to incorporate recommendations made by environmental researchers into law. The environmental ethic is not there in our legislators and without it the Zimbabwean environment is in for serious degradation at the expense of development projects and more particularly the edge to redress historical imbalances and as well as peripheral political expedience.

The land is treated as a common property in this research to the extent that in the aftermath of the land resettlement programme over 50% of Zimbabwean land will be state land held under lease or communal title under the Model A1 and A2 resettlement.. The guiding ideologies or theories underpinning this research are the concepts of sustainable development and community based natural resource management.

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13 In addition to the authorities in note 11 above, see also Rice M, " What Is Community Based Natural Resource Management. (An Introduction to CBNRM)" Africa Resources Trust, 17-20 October 2001

14 Op cit. note 1 at pp111

2. 3 CONCEPTUAL BACKGROUND

SUSTAINABLE DEVELOPMENT.

The concept of sustainable development has been defined by many researchers and has received extensive attention all over the world. In short sustainable development is development which satisfies the needs of the current generation without compromising the capacity of future generations to meet their needs. [15] In the context of the Phase 2 resettlement programme the programme must satisfy the need of the current generation and generations to come. It must meet the needs of genuine communal communities in need of land, the farm workers and anyone who is not only genuinely landless but also should be in need of the land. It can be argued that there is no intragenerational equity in the land reform programme and also because of failure to incorporate the environmental factor intergenerational equity may not be achieved. Can it be said with certainty that four seasons to come the resettled people will be able to finance their own farming inputs can and will they be self sufficient and not dependent on the state for everything? Has the land reform and resettlement programme satisfied the needs of these beneficiaries and if so with what success?

With meagre resources at its disposal one wonders whether the government alone without the support of the international community can sustain the fast track resettlement program, which begs the question why is the international community interested in the program? The major assumption is made that if the government stops financing inputs and expects the resettled farmers to be self-sustaining then there will be an extension of the environmental problems in the colonial communal areas to these new resettlements. This is so especially if one notes that of the estimated 7,5 million hectares over 2,6 million hectares to be resettled under the Model A1 and 3tier systems fall in natural agro-ecological regions 4 and 5 which are dry and have low rainfall.

One further important indicator is the fact that under the national land policy prioritisation, land use and planning which is the only factor nearing the environmental

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15 The term sustainable development has been defined and redefined. The United Nations Environment Program in its Training Manual defined it as, " development that meets the needs of the present without compromising the ability of future generations to meet their own needs" virtually adopting the

factor, is tenth and in the global budget for the programme there is no express allocation for environmental conservation, incentives or towards research and extension services and institutional support. In any case land use planning without the support of the necessary environmental legal framework will not yield the perceived result of environmentally sustainable use of land through agriculture.[16] It is important to further underscore that there are no environmental criteria in the identification of land for acquisition. The second phase of the resettlement programme is guided by among other factors, whether the land is derelict, whether it is under multiple ownership, whether it is foreign owned and whether it is near a communal area.[17] The government will also consider de-listing of plantation farms, agro-industrial properties involved in the integrated production, processing and /or marketing of poultry, beef and diary products and seed-multiplication, properties with Export processing Zone and Zimbabwe Investment Centre permits, farms belonging to churches and foreign nationals protected by bilateral investment agreements.[18] Conspicuous by their absence from this listed categories are wildlife conservancies, protected forests which are some of the areas with the last pockets of ecologically balanced ecosystems. The concern for the environment is evidently lacking.

COMMUNITY BASED NATURAL RESOURCE MANAGEMENT

It has been argued, however not without challenge, that in most African states where there are impoverished rural communities without secure tenure to land in the form of private title over use of resources is inevitable especially as the customary institutional structures have been either destroyed or have simply been corrupted.[19] Rice has rightly pointed out that:

> recently there has been a paradigm shift in thinking about the most appropriate way to manage natural resources and the relationship between government and communities. It is now generally accepted that resource management in the past has often been inequitable to traditional communities, that the state is unable to manage all the resources for which it is responsible, and that local solutions must

definition from the Brundtland Commission, for which see Our Common Future, Oxford, 1987 at pp87.see also IUCN, UNEP and WWF in Caring for the Earth, 1991 where sustainable development is defined as, " improving the quality of human life while living within the carrying capacity of supporting ecosystems"

16 See the Land Reform Resettlement Programme and Implementation Plan Phase II supra at pp21 and pp23.

17 Ibid

18 see fnote 16 pp8.

19 Rice, M op cit, pp1.

> be found for problems involving the environment and development. Thus devolution improves the management of complex situations.[20]

Some scholars perceive the problems as arising largely from pressure on land resources and other related causes other than title itself. Simply defined therefore community based natural resource management denotes management of resources, in the context of this research, land, by the community for its own benefit. Such management would be in terms of rules and principles customarily evolved from the community's traditional norms optimally given a legal framework by the state but without fortifying state ownership or nationalisation of sorts. The concept of common property has been confused with open access and this confusion is largely attributable to the failure of state land laws to define communal tenure and group ownership of definable tracks of land, which may accrue under communal tenure systems.[21]

The Zimbabwean land tenure systems that are established under the resettlement programme are no exception, as they do not at all recognise the utility and role of community based land ownership. This will prove to be a disincentive for the resettled people. So far from June 2000 to February 2001 over 2706 farms covering over six million hectares were gazetted for compulsory acquisition, surpassing by far the set target.

Whether the resettlement under the Model A1 scheme would not lead to an extension of the environmental problems bedevilling the colonial communal areas, it becomes relevant to consider government efforts complimented by the efforts of many non-governmental and humanitarian organisations like the Africa 200 Network and the Land Development Trust at equipping the resettled communities with the necessary tools to combat environmental degradation. As argued earlier on, there must be provision for research, training and agricultural extension services so that these people may be empowered to

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20 Ibid.

21 See note 11 supra; see also Lynch O.J, "Promoting Legal Recognition of Community Based Property Rights, Including the Commons: Some theoretical considerations" pp2; and as regards problems associated with the different tenure systems in Southern Africa, see Roth M, " Integration of Issues From day One and Day Two: National Land Tenure Conference: Finding Solutions, Securing Rights", Land Tenure Centre, University of Wisconsin-Madison, United States of America 21/12/2001 at pp4.see also Chilima G, Nkhoma B et al, "Community Based Management Approach in The Management of Water Resources by Different Organisations in The Lake Chilwa Basin, Malawi" at pp 2

practice good environmental stewardship. Provision of infrastructure is very important, as this is also a determinant of the rate and extent of environmental degradation. However under the fast track programme there will be provision only for limited basic infrastructure and farmer support services.[22] It is also envisaged that secondary infrastructure like schools, clinics and rural service centres will be provided as soon as resources become available, [23] which resources may never be available particularly with the food security concerns raised by the approaching drought and withdrawal of investment and donor support as well as the possibility of smart sanctions being imposed on Zimbabwe.

A persistent question, which presents itself within the context of this research, is the implication of the land reform program on the globalisation efforts of Zimbabwe.[24] It is submitted that this may going to affect globalisation and liberalisation moves initiated under ESAP which latter has since been abandoned in favour of state controlled economy. Zimbabwe has since clearly come out against unmitigated globalisation, which does not seem to have benefited the country but in fact is one of the policies which culminated in the economic situation in which Zimbabwe finds herself.

It should be noted that the advancement of the protection of community based natural resource management and environmental protection generally globalisation is necessary as long as it is kept in mind that the environmental priorities of the North and the South do not always coincide. It must be noted furthermore that economic globalisation impinges on national policies particularly in this case the land reform program. Apparently due to the unfortunate drought Zimbabwe is likely to have little or no exports of agricultural produce particularly tobacco and beef. In this regard it cannot be said with conviction that decongesting the communal areas will be successful rather it is submitted that there is likely to be further environmental degradation, poverty and sustainable

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22 See note 16 above at pp7

23 Ibid.

24 For the meaning of globalisation in this context see, UNDP/UNCTAD, Draft Country Assessment Report: "Zimbabwe: Globalisation, Liberalisation and Sustainable Human Development" 2001 pp6 and pp32 et seq.; see also Kydd J, Dorward A and Poulton C, "“Globalisation and Its Implications for the Natural Resources Sector: A closer look at the role of agriculture in the global economy" An issue paper for the Department For International

utilisation of land will remain a dream far fetched. Doubtlessly, a measure of structural success will be made to guarantee equitable entitlement to land but this would not ultimately lead to sustainable development.

3. BRIEF ANALYSIS OF THE RELEVANT LAND REFORM LEGISLATION.

The major legal instrument in terms of which the land reform exercise is being carried out is the Land Acquisition Act and amendments thereto and any regulations promulgated under the Act. Model A1 will obviously be regulated and governed by the Communal Lands Act, the Traditional Leaders Act and the Rural District Councils Act (Chapter 29:13). Conservation will be governed by existing environmental legislation, which does not fall for analysis under this paper but has extensively been critiqued elsewhere.[25] The Model A2 is within the framework of the Agricultural Land Settlement Act (Chapter 20:01). Within the context of the fast track program it is appropriate to analyse the 16th amendment to the constitution and the Rural Land Occupiers (Protection from Eviction) Act (Chapter 20:26). The objective behind the following analysis is to assess whether these recent legal instruments have any provisions ensuring environmental compliance and sustainability of the resettlement program and if not the likely effect of that position on the advancement of community based management of land resources. It shall not be necessary to delve deeply into the analysis of pre-colonial environmental legislation like the Natural Resources Act (Chapter 20:13) since there is already a plethora of research findings which have since proved the need to reform these statutes.[26] Particularly relevant to this research are the legal instruments put in place after 2000 on which little has been written.

Constitutional Amendment Number 16 inserts a new section 16A into the Constitution of Zimbabwe whose provisions are essentially to acknowledge that the people of Zimbabwe were forcibly dispossessed of their land, that they had to fight a war to regain

Development, Rural Livelihoods and Environment, Department Of Natural Resources Advisers' Conference, Winchester , United Kingdom, 10 July 2000 at pp3 et seq

25 See note 2 above.

26 Ibid.

independence and repossess the land.[27] The amendment seeks to place a legal obligation to the extent that this will be binding, on the British Government to pay compensation for agricultural land compulsorily acquired. In the event of the British failing to meet that obligation, which they have done anyway, the government of the Republic of Zimbabwe divests itself of any duty to pay compensation. This amounts to saying that the government of Zimbabwe will acquire agricultural land for resettlement without the need to pay compensation therefor.[28]

The amendments to the Land Acquisition Act had the effect of overturning the judgement in **Commercial Farmers Union v The Minister of Lands and Others SC 132/00** [29]. This trend is now customary and routine of the Zimbabwean Parliament. The amendment provides that a preliminary notice for acquisition is now no longer "open ended" but that it remains in force for two years unless withdrawn. The lapsing of the notice or withdrawal thereof is deemed not to preclude the issuance of another fresh notice.[30]

The Rural Land Occupiers (Protection from Eviction) Act was hastily enacted to protect the then illegal settlers most of whom were not really the land hungry peasants who had invaded commercial farms by the 1st of March 2001 from eviction. These invasion were called peaceful demonstrations by the government and the war veterans and invaders were encouraged to stay put on the invaded land and resettlement was to follow later.[31]
In addition to protecting the land invaders this Act proceeded to override any statute and the common law criminalising trespass or unauthorised entry. [32] This literally left the registered owners of the invaded farms remediless regardless of whether their farms were designated or not, whether it would be environmentally sustainable to resettle people on the invaded farms was also irrelevant. The result is that even nature reserves and

27 Section 16A added by the Constitutional Amendment Act (No16); see also Murombedzi J.C, " The Evolving Context of Community Based Natural Resource Management in Sub-Saharan Africa in Historical Perspective" Plenary presentation, International CBNRM Workshop, Washington D.C, United States of America, 10-14 May 1998 at pp2.

28 See section 16A (ii) (c) introduced by the Constitutional Amendment No 16.2001

29 In this case the court had ruled that section 5 (4) of the Land Acquisition Act was invalid as it did not specify the period of validity of an acquisition notice and left the rights of the person subject to such notice uncertain and undetermined.

30 Section 5(4) Land Acquisition Act

31 Section 2 and 3 of the Rural Land Occupiers (Protection From Eviction) Act (Chapter 20:26) or Act No.13/2001.

32 Ibid. section 3(4).

conservancies were invaded.[33] The environmental ramifications of this cannot be overemphasised. It is argued that people really need land and that land redistribution was long overdue but this alone cannot justify the environmentally detrimental activities of the land invaders thus the call for lawful and orderly resettlement.

Although the current environmental law legislation has good provision for the protection of natural resources, they do not seem to be applied in the invaded areas. This is supported by the fact that deforestation is still rampant in the occupied farms, sometimes deforestation is done for its own sake. It can be argued that poor catchment management practices and siltation will spread in sympathy with spread of people who contributed to these problems in the now shunned communal areas. Whilst especial cognisance is taken of the fact that the communal areas are prone to environmental degradation if land resources are overused human activity also played a part in the degradation process. The life expectancy of farm dams which in 1992 was estimated to be from 10 to 15 years [34] will drastically be reduced to even less than a year with grave consequences.

Since there are no incentives for the resettled people and under the Model A1 no one will care for the environment, due to creation of a common property regime which is not properly recognised by the land laws each person will increase their herds with the hope that the other will reduce theirs. Moyo et al rightly noted that:

> More equitable access to land would not, however automatically lead to resource use optimisation…..the effect might be to extend environmental degradation.[35]

They further point out that:

> Sustainable development can only be achieved if access to and distribution of resources are equitably managed. "Management" in this case does not just imply simple land redistribution.[36]

It is submitted that environmental management includes also community based and indigenous systems of managing land resources.

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33 The Gourlay Conservancy in Sanyati was invaded and the Blac Rhino on the conservancy is currently facing threats due to the possibility of poaching and due to fighting as their space is now limited.

34 See note 1

35 Ibid. pp83

36 Op Cit. Pp106.

A proper environmental management legal framework which advances community based management methods and an environmental impact assessment policy enacted into law may be the only possible solution to Zimbabwe's environmental woes, for without legally binding and integrated statutory framework environmentally sustainable development remains an objective out of reach, more so as regards management of land resources. On another level the current global environmental problems have rightly been described "as a crisis of ethics or values- an individualistic philosophy of the world, where humans are

> viewed as superior to nature and some humans superior to others [which has] subsumed notions of community, responsibility to others and a recognition of the interconnectedness of all to each other in a short-sighted dash for material possessions.[37]

This warped perception has resulted in the wrong understanding of the inter-twinement of development and environment issues, with people viewing these two aspects as unease bedfellows and irreconcilable.

The call for an environmental ethic is very important because the human factor in development determines the relevance or otherwise of community based natural resource management. This ethic has to initiated from top to bottom from the leaders to grass roots level and it has to transform into prudent legislation and a proper understanding of indigenous knowledge systems from whence derive community based approaches to management of resources. Laws can shape social attitudes and control behaviour and this is so particularly where it derives from the customary norms of its subjects. Despite its recognition of the need to maintain the socio-cultural fabric of the resettled communities the legislation consequent upon the national land policy has largely ignored giving a legal framework to this aspect. Reference will be made to some legislation, which is not directly relevant but is indirectly relevant to the issues to be researched on.

4. SIGNIFICANCE OF THE RESEARCH.

The novelty of this research is that existing environmental principles should be used to put in place prudent and integrated environmental legislation, which should ultimately be the basis together with land legislation, of a sustainable land redistribution program. Further such environmental legislation should give due weight to indigenous knowledge

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37 See note 15 UNEP Training Manual, at pp 6

systems and provide a framework for community based management of land resources. It is submitted that this research is about a new phenomenon in legal scholarship that is legal recognition of community based management of land resources.

5. METHODOLOGY.

The submissions and arguments made above are a result of analytic legal research into the theoretical legal framework of the phase two resettlement program. It involved an analysis of land and environmental legislation and reference to existing knowledge, which the researcher has highlighted throughout. The idea was to give a jurisprudential basis for the research and to come up with the hypothesis. The researcher conducted interviews with officials from the Ministry of Lands and Agriculture, Ministry of Environment and Tourism, the department of AGRITEX, the Department of Natural Resources at national and provincial level.

To attempt to confirm and let the research prove or disprove the research hypothesis, the researcher undertook field research by way of home stay, which involved identifying a particular resettled community-the case study- staying with the people and together with them try to identify the environmental problems encountered by them, identify the stumbling blocks to community based management methods, any incentives and disincentives, and the recognition of indigenous knowledge systems. It is hoped that this participatory approach is the most appropriate in a research of this nature. Together with the people the researcher now the researchers, as the community become part of the research team, identified and mapped out solutions to the identified problems and difficulties and possibly tabulated possibilities towards reform and recommendations. Thereafter the principle researcher collated the collected data and did a write up which most importantly. The field research was undertaken in the resettlement areas in rural Masvingo Province, Bikita both Model A1 and A2 in this area.

TIME FRAME

This research was undertaken in a period of about nine weeks broken down as follows: the first week will be used to finalise theoretical research on the relevant legal issues, the next three weeks were dedicated to the field research and collection of data, the next

three weeks were used to compile documentation of the field research and reviewing the report of the “homestay”. Thereafter the remaining two weeks were used to compile the final report of the research. The whole project was completed within a total of nine weeks.

6. DELIMITATION

In a particularly tense political situation it proved difficult to start the filed research more so particularly as this research is based on a field research undertaken in the resettlement areas where mistrust of researchers was and is still high and potential harm to life could not be ruled out . In the areas of the field research the researcher managed to get audience of the settlers although it was difficult to collect the data required as one could not openly make inquiries. Furthermore, since the research was in fact meant to provide fruitful findings on the relevance of community based natural resource management and common property rights in land reform some of the people readily understood its merits and participated in the research very well.

7. EXPECTED RESULTS:

- To bring out the necessity of sustainable environmental land use policy codified into law to protect and prolong the life of land resources and forests as common property. To emphasise the utility of community based property rights and indigenous knowledge systems in the new settlements, particularly how the land law can be used to advance and nurture these community based rights in common property.
- To highlight the need to integrate environmental planning at all levels into the land reform and redistribution exercise.
- To show the need for a nation wide environmental education on community based property rights and common property. In the same vein to show the need to educate the settlers on good and sustainable farming practices or methods and general capacity building so that they will be able to sustain themselves in future without government support.

8. LITERATURE REVIEW .

So much has been written about environmental conservation, environmental law generally, community based natural resource management particularly with reference to the CAMPFIRE Project. There is also a plethora of research work on land reform and redistribution national and internationally. The general point has already been made that the whole body of this research has led to patently common conclusions as to the defects in the Zimbabwean environmental law and policy and the possible solutions. There is a particular thread running through most of the researches on environmental degradation in communal areas, that is grazing behaviour and poor farming and land husbandry practices are largely responsible for the state of the communal environment.

Though alluded to in most of the researches a point, which has not been clearly brought out in some of the old researches, is the conflict over communal resources and the pressure on land resources. This aspect has received attention in contemporary researches. This research particularly aimed at taking this aspect further in the wake of land redistribution and the movement towards community based property rights. Another important aspect, which has received cursory attention, is the general decay in traditional institutional structures, which have patently been affected by the individualistic notions associated with wealth building afflicting urban administrative structures.

Traditional leaders have of late not shown prudent stewardship yet these indigenous traditional structures are highly relevant to community based land resource management. The researcher has undoubtedly benefited from the wealth of previous research, but an issue which remain to be tackled by this research is the role of law in promoting community based land resource management in the resettlement areas, and how at planning level an environmental criteria can be useful in ensuring environmental sustainability of the land reform programme.

9. RESERCAH FINDINGS.

9.1 THE FIELD RESEARCH.

The field research was conducted from the 23rd of May 2002 to the 10th of April 2002 in an area covering two farms covering different forms of resettlement. The researcher stayed at the **KEPURE Farm**, the research covered the **CHICK Farm**. The researcher had the opportunity also to use his experiences from his own communal areas in Bikita where he has lived for over twenty five years, where he also witnessed the environment crumble under land pressure, poor environmental practices and lack of community based approaches to natural resource utilisation. Kepure Farm is a large farm , and it has eighty-five families settled under the A2 Model resettlement scheme. They have plots whose sizes range from thirty acres to fifty acres. Prior the farm was being used for cattle ranching. The farm has a good river system but some of the streams are seasonal, there are also marsh areas and a few hilly areas. A few of the resettled farmers had a maize crop which was fair in comparison to other areas of the province, however almost all the farmers had gone for maize production. A few indicated their willingness to engage in wheat and rice production in the marshy areas. In order to clear land for cultivation there was extensive deforestation on the farm, but most of the farmers cleared only those portions, which they actually needed for that purposes. There are some though who simple had grandiose projects in mind and cleared vast section of their plots.

The adjacent Chick Farms was not designated but there are several families strewn all over the farm in something looking like a villagised Model A1 resettlement but even a Model A1 resettlement would be better in terms of density.

9.2 THE RESETTLEMENT MODELS AND OPPORTUNITIES FOR CONSTITUTING COMMONS IN ZIMBABWEAN LAND TENURE.

There are two broad models being implemented under the Fast Track Resettlement Programme in Zimbabwe. Firstly there is the Model A1 which is basically means that the people will be resettle like in communal areas, each unit holder will have about 12 acres of arable land to build his homestead and cultivate. For all the other resources the unit holder has to share with the other people of his resettlement community. That is grazing, pasturing, water resources, forests and woodlands in the area will be communal for the

use of all the people resettled in that area. Under the Model A1 there is a further sub-model of resettlement termed Model A1 (self-contained) under which the unit holders are allocated self contained plots and no resources are shared, this approximates the Model A2 but the difference is in the form of title as well as the size of the land allocated. There are obvious advantages and disadvantages accompanying each of these resettlement models. The mode of settlement determines the ability of the government to provide infrastructure and social services. For instance it is easy and convenient for the government to sink a common borehole or construct a clinic where the mode of settlement is the Model A1 but this would be difficult under the Model A1 self-contained and the Model A2, as questions of access and ownership would arise and disputes are inevitable. The Model A2 resettlement is where the unit holders are allocated large plots ranging from 50hectares to 250 hectares or more depending on the agro-ecological region and the nature of the farming activities which the plot will be put to, thus for instance a plot for cattle ranching would need to be bigger than a plot for crop production, or horticulture.

It became apparent from the field research and secondary research that the resettlement programme will provide the government of Zimbabwe with a chance to create and legally constitute common property regimes. This is particularly so as far as resettlement under the Model A1 is concerned. This presents an opportunity for the government to leave the resettled people with the responsibility to manage shared resources like water, river systems, grazing areas, forests and other natural resources residing in their jurisdiction. Under the Model A1 the poor peasant framers stand to gain a lot from sustainably using the natural resources in their common pool of resources. They can obtain from the commons so created fuel wood, wild fruits, live stock grazing, thatching grass, fish, etc. at no cost.

However it is submitted that to be able to constitute the commons the government must meet certain standards and criteria in resettling people, for instance there is need to have clearly defined boundaries and define the user group or communities, the relationship with other local communities of the group, the technology of delimiting the boundaries, the dispute resolution institutions, e.g. the traditional leaders or some institution defined

by the local community without interference form the government and adequate monitoring instruments to ensure accountability for the use and or destruction of the natural resources in the community. It would be necessary to define the legal parameters of the role of the local authorities, the traditional leaders to be appointed in these areas, the village heads and the ordinary persons. It is in this regard that some local government legislation like the Traditional Leaders Act and the Communal Land Act as well as the Communal Land Forest Produce Act will be useful, as long as the legislation is fully enforced. It is argued though that had the Environmental Management Bill been enacted this would have been an opportunity where a holistic approach to integrated legislative regulation of natural resources and conservation would have been in order. The Traditional Leaders Act provides opportunities for local traditional institutions to play a leadership role, and provide a framework for management of common property resources. Under this Act Chiefs and their Village Heads have among other duties, the duty of ,

> "(g) ensuring that Communal Land is allocated in accordance with Part III of the Communal Land Act [*Chapter 20:04*] and ensure that the requirements of any enactment in force for the use and occupation of communal or resettlement land are observed; and
> (*h*)preventing any unauthorized settlement or use of any land; and
> (i) notifying the rural district council of any intended disposal of a homestead and the permanent departure of any inhabitant from his area, and, acting on the advice of the headman, to approve the settlement of any new settler in his area; and
> ***(l) ensuring that the land and its natural resources are used and exploited in terms of the law and, in particular, controlling-***
> ***(i) over-cultivation; and***
> ***(ii)over-grazing; and***
> ***(iii) the indiscriminate destruction of flora and fauna; and***
> ***(iv) illegal settlements;***
> ***and generally preventing the degradation, abuse or misuse of land and natural resources in his area; and*** **(my emphasis)**
> (*m*) ensuring that no public property, including roads and bridges, telephone and electricity lines, diptanks and animal health centres, clinics, churches, cattle-sale pens, schools and related establishments, is damaged, destroyed or misused by the inhabitants or their livestock;"[38]

[38] Section 5 Traditional Leaders Act .Under Part III of the Communal Lands Act regard must be head to the customs of the people of a local communal area before a person from other areas can be allocated land, but this practice has been more honoured in the breach than in the observance with people paying

What was equally apparently clear was the fact that under the Model A2 resettlement it will be difficult for the government to promote the recognition of common property regimes, as under this mode unit holders are given self-contained and sizeable plots with a more secure title than the unit holders under both mode of the Model A1, under the Model A2 the unit holders hold the land on lease under the Agricultural Land Settlement Act which leases are invariably for period of 99 years. There is provision however that if a plot holder does not fully and sustainably use his land the plot will be reallocated to some one else. This raises problems however more so as the current until holder would contest such moves, for example if there is a drought or there is lack of inputs to fully implement the use plan for the farmer.

Although most of the farmers in the KEPURE indicated their desire to constitute common resources this will not be possible due to legislative barriers. To give an illustration it will not be possible for them to create common water sources due to the requirements of the Water Act. They would have to each build her own dam and obtain a permit for it, and neither can they commonly manage their water resources nor can they commonly manage their forest resources. It is submitted therefore that the best approach would be to resettle people under the A1 Model as it creates opportunities for constituting common property regimes and community based natural resources management. The CAMPFIRE Project was launched in communal areas where local communities jointly with the local government authorities manage wildlife resources for their benefit. This is possible where the local communities live in communal settlements and not in self-contained plots whether small scale or large scale.

9.3 COMMUNITY BASED PROPERTY RIGHTS AT PLANNING LEVEL.

It was very interesting to note that at the planning level so much effort is taken in trying to put the interests of local communities at the forefront and at all levels of planning. From the interviews held with officials from the Provincial Department of Natural Resources and the national office and the documentation prepared as part of the fast track

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Headman to get land . Some of these people would have been chased from their areas of origin by their Chiefs due to breach of customary laws.

land resettlement program, it seems that the community environmental concern has been taken into account on the drawing board. However one very important factor which was common cause was that the implementation of these otherwise prudent policies and strategies is hamstrung by firstly lack of finance, secondly lack of human resources and the consequently poor enforcement and monitoring. It is submitted and argued that empowering the local communities in the resettlements can in a way avert the problem of lack of monitoring and enforcement.[39] This calls for training in community based natural resource management and the conservation of common property. Apparently when the fast track land resettlement program took off the ministry responsible for environment and natural resources did not get extra finance to cater for this incidental expenditure. The result is that departments under this ministry who are under the land reform implementation plan required to play a crucial role, have to use their recurrent expenditure funds. These funds are by far inadequate to ensure swift implementation of their integrated environmental conservation plan, which is expected to run concomitant to the fast track program. This plan seem to have been put in place as an after thought, because if it was properly and timeously conceived it should have been possible for it to be implemented together with the Fast Track Land Resettlement Programme. Their policy was made in 2001 but to date they are at the initial stages of implementation.

In Masvingo the environment officials had to sit down and further develop the national integrated conservation plan to make it more suitable to the needs of that particular area simply because a single plan could not have covered the environmental and conservation needs of all the five agro-ecological regions. For instance the environmental problems that may be faced in Matebeleland are different from those that can be met in Manicaland for these are two areas with largely different environmental features. Under the policy the committee of seven formed under the land resettlement policy on each farm for administrative purposes should be used also to deal with environmental and conservation issues. These committees are composed of some of the leaders of the resettled farmers. At district level there are District Land Committees headed by a District Officer in each

[39] If the rural communities and those being resettled are concientised through skills sharing programs the would be no need to put in place other institutions or committees to monitor the use of natural resources which are common or communal property.

district. These local structures should carry out farm inspections and environmental audits and make periodical assessments of the state of the environment on each farm and changes thereto for monitoring purposes.

In the Chidzikwe area the provincial environmental officers have in fact managed to train some local leaders as commanders to spearhead the fast track environmental inspection, assessments and monitoring. These inspections are based on a well-defined methodology as apparent from the report, which is supposed to be compiled by the officers from the Department of Natural Resources. Under this report the inspection must focus on several items among others the date of resettlement; number of resettled people; whether the farm is planned and if so whether such a plan is already implemented. It should also deals with existing land use systems and the impacts of same on the environment; recommended land use systems and their likely impact; the state of the environment i.e. forest areas, arable areas, stream banks and water bodies, grazing areas, magnitude of environmental damage; information on environmental management on the particular farm; any environmental legislation violations; actions and recommended solutions to any identified problems. These reports are part of a large strategy as planned under the national policy whose details are given below. Indeed the ministry does realise the potential threat to the environment of the resettlement program. There has been extensive deforestation for agricultural land and this in a chain reaction, threaten wildlife and foreshadows desertification and biodiversity disequillibrium. It submitted that the ideals behind the Integrated Conservation Plan are not only noble but also prudent, but the major snag is that this plan come lately after environmental damage had been done and it will be more of a curative plan. Common property resources in the invaded farms are the first to face the wrath of unsustainable exploitation as the settlers try to expropriate as much as they can.

It was furthermore apparent from the field research that, the many thousands of settlers who have been resettled in some areas were urban dwellers not so much land less in the sense of needing agricultural land but in that they urgently need land for accommodation in the urban and peri-urban areas hence the invasion of most farms in the out skirts of large cities.

Under the Integrated Conservation Plan for Fast Track Land Resettlement the main objectives of the Ministry of Environment and Tourism are given as, to create environmental awareness and develop a culture of prudent resource management in resettled areas. This will be achieved through among others holding training workshops with settled people; distribute literature; show films; run television programmes with the expected result being to empower the resettled communities to sustainably manage their natural resources. The second aim is capacity building to ensure sustainable environmental management by the local communities. This objective will be achieved through the formation of Natural Resource Management Committees composed of the local resettled people, training of the resettle people to build technical skills to manage natural resources. Thirdly the ministry through the Department of Natural Resources aims monitor environmental changes in all resettled areas through the establishment of baseline inventories for monitoring purposes. The fourth objective is to enforce environmental laws of Zimbabwe through the monitoring process and policing the environment through regular farm inspections. The fifth objective is more important as it ultimately impinges on the other aspects of the policy. This involves facilitating the production of land use plans based on sound environmental management. Prudently this will need integrated approach together with the Department of Agricultural and Technical Extension Services, as the Department of Natural Resource would put their contribution to the plans developed by AGRITEX. In Masvingo the Department of Natural Resource had to lobby to ensure that some farms lying in the catchment area of the Mutirikwi river system would not put under an unsuitable resettlement scheme. There are some farms, which they lobbied to be set aside for conservancies to be run by any interested local communities. This shows how some of the objectives are being put into effect. The other objectives are to promote enterprise and lastly to manage and conserve wildlife.

At a theoretical level this is a well thought out environmental management strategy which was earmarked to be implemented together with fast track resettlement program. However this has not been done and the objectives remain largely paper objectives As far as the department of AGRITEX is concerned its role is limited to the carrying out of resettlement suitability assessments before a farm is acquired; developing resettlement

technical plans i.e. what mode is suitable and what number of families can be resettled doing what activities and the plans and recommendations are sent to the Ministry of Lands, Agriculture and Rural Settlement which is responsible for resettling people.

Thereafter the department will return after people have been resettled to provide agricultural extension services to the settlers. One fact, which could not be hidden, was that the environmental conservation plan's implementation was lagging far behind schedule and this would affect its successful implementation. Undoubtedly the input from the department of AGRITEX is invaluable and its recommendations should be respected if environmental sustainability is to be achieved. The plans developed by AGRITEX are based on scientific and technical assessments, which are prudent and sound. It was also with the effort of this department that some farms were set aside for conservancies.

It was apparent though that the source of environmental degradation was poor implementation of resettlement plans. For instance a farm which would have been invaded by two hundred families may only have a recommended carrying capacity of eighty families on the A2 Model or one hundred under the A1 Model. The government has since claimed that it is not able to evict the excess number of families for reasons, which are not quite clear.[40] This policy position has since been codified and legalised in terms of the Rural Land Occupiers (Protection from Eviction) Act. This will lead to AGRITEX plans being overridden, haphazard resettlement, poor environmental management and consequent degradation. In this event the problem does not lie with the planning institutions or the developed environmental conservation policies but with the policing aspect of government itself. Instead the issue has become political and not environmental, in an apparent lack of commitment to the environmental cause. This discloses the need to develop and instil an environment ethic from above down to local communities.

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[40] See the cases of **Commercial Farmers Union v Commissioner of Police and Others** HH 3544/2000 and **Commercial Farmers Union v Minister of Lands Agriculture and Resettlement and Others** SC132/2000.

9.4 COMMUNITY BASED PROPERTY RIGHTS IN PRACTICE.

A sequel to the field research which the research brought out was generally that community based property rights have not received quite effective recognition in practice. There is an indication of the existence of knowledge about community based property rights and community based natural resource management at the planning level, that is when government departments formulate policies. There is though an apparent lack of such knowledge or maybe it's an indication that such concepts are not a priority to our legislators and the legislature itself. Conservation policies formulated by the Ministry of Environment and Tourism and the Department of Natural Resources, though they may legally be termed regulations made in terms of empowering legislation, they do not reflect a people conscious of the utility of community based approaches to natural resource management and planning. This could well be an explanation as to why the Environment Management Bill has not seen its way through parliament for now over three years and apparently it seems a very long pipe line through which this very important Bill has to go.[41]

The fact that there under the Integrated Conservation Plan there is a concept of Natural Resource Management Committees at grass roots level just shows how the environment ministry is struggling to graft concepts, which are not clearly supported by parent legislation. It is submitted that community based approaches to natural resources management would have been easier and or better achieved if our environmental legislation and in this context our land reform legislation had concrete provisions incorporating these environmental concepts. For instance if the Land Acquisition Act and the regulations and policies and or programmes made under this Act contained an environmental criteria when land is being acquired and when institutions are being created from village to provincial level, then that would make sure that efforts at community based natural resource management would fairly find some legal protection and enforcement.

[41] Recently the Zimbabwe Broadcasting Corporation on Newsnet publicised that when Parliament resumes sitting the Environment Management Bill is one of the bills to be tabled before Parliament. Parliament is scheduled to resume sitting around 7 May 2002.

One may not wonder in the ultimate analysis why the Land Reform and Resettlement Implementation Plan contains sustainable management of landed resources as one of its objectives but the situation on the ground is that the environment conservation programme is well behind the fast track resettlement programme. Perhaps what was need was a fast track environment conservation strategy which had to be fast tracked as well, because the environment programme should optimally be implemented before or concurrent with the land resettlement program. It would be good for the Fast Track Inspection and Monitoring Reports to be completed before a farm is occupied and thereafter regular inspection would be easier to make and it is easy to develop objectively verifiable indicators for monitoring purposes in such a scenario. What happens on the ground now is that initial inspection and monitoring is done on a farm which has been occupied some years before and, it is argued, it will not be possible to obtain the original environmental situation or the state of the environment and resources thereon at such a farm.

The research also betrayed the fact that the District Committees are purely administrative institutions preoccupied with administering the resettlement programme. Using these committees for the implementation of the integrated conservation plan may be ineffective for very obvious reasons: members of these committees though community grown do not have the necessary environmental skills and knowledge, they need first to be trained by environment officers which requires time, their objectives as administrators may not be reconcilable to the environmental objectives of the integrated conservation plan. The latter simply confirms that the traditional development or resource exploitation and conservation dilemma still confuses many administrators. Many of the resettled farmers in the area covered by this research disclosed an element of unconscious self-aggrandisement of resources like water. However a few of the farmers were very clear on the aspect of communality of such spatially fronitierless resources. They indicated a willingness to share and communally manage water and other resources even though they have self contained plots. With sustained training and the rendering of extension service and environmental education there is a real possibility that these farmers may develop unequalled community based resource management skills and as well as good farming

practices. Further if the Integrated Conservation Plan for the Fast Track Resettlement Program is well funded and properly implemented it may be possible to remedy any environmental damage that has been incurred from the start of the fast track program. The crux of the matter is how to finance the implementation of this plan and what role environmental practitioners, non-governmental organisation and international environmental organisations can play.

The field research confirmed that the resettlement program is being done quite seriously and it is shear wastage of time to keep researching on the propriety or otherwise of the land resettlement program. Most of the farmers suggested that perhaps the focus for researcher was to be on how to save the environment now, and how to impart and share environmental skills to and with the farmers to avert continued and future damage. They did understand the concepts of community based property rights and community based natural resource management, but they further suggested that these have to be grafted from the institutional level for their efforts to be effective. For instance when we were discussing communal management of water resources the researcher observed that most of them were not quite conversant with the legal implications of the Water Act, on their proposals. It became apparent that such legislation may well hamper community-based approaches to water resources management.

10. RECOMMENDATIONS .

Undoubtedly extensive damage has been done to Zimbabwe's natural resources especially the forests, wildlife and the land itself by the land invaders. It is undeniable that the imbalances in land rights must be redressed but what has been controversial are the methods of redressing this imbalance. However the primary concern of the environmentalist at this stage is to try and find ways of saving the environment. The land reform programme cannot be reversed, but we can only lobby for the programme to be done transparently and through an orderly process and to lobby for the inclusion of an environmental criteria to be enshrined into the land laws to safeguard the environment and promote community based property approaches to the programme. It is never too late to advocate for the reconstitution of a common property and lobby to ensure that to

ensure that at the end of the program government's land policies will recognise and promote sustainable community based management of landed resources.

- It is submitted that for the Fast Track Resettlement Program to be environmentally sustainable, a legal environmental framework must be put in place as a matter of urgency. The existence of a conservation plan is per se not enough; in fact the plan is merely an elixir which ultimately has no future if it is not backed by effective environmental laws. Even before agitating for possibilities of constituting common property clinches and the recognition of community based natural resource management of land resources, there should be an integrated legal framework, within whose context these concepts can be advanced. It would be inconceivable for environmentalist to recommend the legal recognition and protection of CBPRs and CBNRM when there is no definitive framework within which these may be constituted and rights emanating therefrom can be enforced.
- It is further recommended that the people who have been resettled under the villagised Model A1, under existing chieftainships or newly created chieftainships if any, must be empowered to make use of the Communal Lands Act and the Traditional Leaders Act as well as the Rural District Councils Act to ensure recognition of their communal rights and protection thereof from commercialisation and usurpation. This recommendation is made in view of the fact that traditional local level leadership has been all too frequently susceptible to exploitation. In the existing communal areas it is quite clear that people from other places are just being allocated land, even from communal pasturelands, without following the criteria in the Communal Lands Act. Village Heads and their Headmen have been known to haphazardly allocate land for cash or some such benefits. The rural people would not lodge any complaints or use the grievance procedures in the aforesaid Acts for fear of victimisation or being chased away from the village. This has also largely accounted for the congestion of some communal areas and gradual environmental degradation. Thus for instance overgrazing may be not so much a result of over stocking but a result of reduction in the size of communal pasturelands. This is not to discount the effects of over stocking though. There should be plans to ensure that these problems

do not spread to the newly constituted villages and to the traditional leadership of those villages.

Opportunities for promoting prudent management of the commons and CBNRM will be lost if the local systems of natural resources management are undermined by the resettlement of heterogeneous communities together, which may not appreciate each others' customs and practices. There should be effective enforcement of the abovementined Acts, not so much to punish traditional leaders, but to protect the rural communities from selling their rights. This would prevent the translocation of environmental problems from existing communal areas to the resettlement areas.

- The most surprising thing is that one of the fundamental objectives of the Fast Track Resettlement Program and its predecessor policies is to decongest the communal areas. Can it be argued with any certainty that these communal areas have been decongested? It is argued that most of the people being resettled are not from the communal areas but are urban dwellers and self-proclaimed war veterans who know the modalities of applying for land and have been thronging the Ministry of Lands offices to secure a unit. In this regard there is need for the Ministry of Land and Agriculture to give preference to rural people in allocating land. These are the people who have been marginalised since colonialism, they are poverty stricken, but they are capable farmers, who lack the land resources and inputs. The rural communities are also the people who have learnt to live communally and can best be able to manage common property resources created under the villagised Model A1.
- Communities resettled under the self contained Model A1 and the Model A2 must make robust efforts supported by the government and relevant ministries to sustainably manage and use natural resources in their plots. CBPRs theories are relevant to the management and use of resources like watercourses and river systems, which transcend boundaries.

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