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INTRODUCTION

The Government places a higher priority on rapid agricultural development. Especially important is the fact that so high a proportion of the population will continue to depend on agriculture for their livelihood. Likewise, because agriculture is such an important component of the economy, rapid development of the agricultural sector has a major role to play in contributing to the growth of the whole economy."

Kiprop D.M. MALAKWEN

(Ministry of Economic Planning and Development
DEVELOPMENT PLAN 1970/74, Chapter 3 Page 1

The message implicit in the above excerpt is that agriculture plays a significant role in Kenya's economic development and a substantial proportion of Kenya's economic attention has been focused here. To realise the economic policy of self-reliance in food crops for national needs, the Government embarked on the land reform process geared at making land utilisation a reliable economic entity. Generally the major purposes of land reform were first, to make land available to the landless and secondly, to individualise land ownership and impose a form of land tenure secure enough to guarantee easy access to agricultural credit. The land reform process is aimed at ensuring sound land use and planning, facilitation, distribution and regulation of credit and provision of a proper machinery for marketing of agricultural produce.

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II

This paper seeks to investigate the impact of changes on land tenure on land use. It seeks to relate the economic objectives of the theoretical framework of land reform (absolute proprietorship) to the production system characteristic of the Sugar Belt Co-operative Zone in an attempt to evaluate the part played by the land reform process in Sugar-Cane production. To achieve this evaluation, this paper seeks to show that:

- (i) In a properly organized production system, title to land ceases to be the only means of securing agricultural credit;
- (ii) The credit regulation and marketing machinery in the Co-operative Zone is not effective in ensuring timely marketing of agricultural produce and that thereby it aggravates, rather than eradicate, rural indebtedness;
- (iii) Heavy dependence on a single cash crop coupled with credit obligations incidental to such cash crop's production greatly upsets land use planning;
- (iv) Where in a production system there exists several agricultural credit agencies with diverse terms and conditions, there is bound to be an accumulation of sources of agricultural credit by some farmers which situation leads to a near-disregard of the loan repayment obligations to these agencies

without stringent and punitive measures to defaulters.

In this situation the Co-operative Credit system has tended to supplement the farmers' repayment obligations to other agencies to its own detriment.

The Chapters in this paper have been arranged in a manner deemed necessary to illustrate an issue subordinate to the major theme. In the form of a historical analysis, Chapter 1 seeks to investigate the progress of tenure reform in the area under study and whether in fact the tenure system so created is conducive to sound land use and planning in the sphere of Sugar Cane production in the area under study. Chapter 2 seeks to reveal that Sugar Cane is the distinct cash crop in the area under study and with that in mind this chapter seeks to investigate how the Co-operative production system is organised to cater for Sugar Cane production. This Chapter will be particularly concerned with the credit-worthiness of Sugar-cane production and how the legal organisation of Sugar-cane production and marketing in the Sugar-Belt Co-operative Zone caters for the distribution, regulation and recovery of agricultural credit. Chapter 3 seeks to show the degree of credit accessibility to agricultural credit by farmers within the Co-operative Zone under study. It sets out to investigate the extent to which absolute proprietorship and the Co-operative Organisation have been instrumental in the facilitation and regulation of agricultural credit. The Chapter will also contrast the terms and condition

of the various financial institutions operating in the Sugar Belt in a bid to ascertain the degree of credit

accessibility for farmers in this area. The extent to

which farmer credit obligations have been spread over the various financial institutions will also be clarified here. Chapter 4 will be mainly concerned with observations and conclusions to be drawn from the facts contained in the preceding chapters. The role of land reform and the Co-operative organisation in Sugar Cane production and specifically in the perview of agricultural credit shall be critically examined. This will help clarify the major issues sought to be enuniciated.

Chapter 5 will indicate the actual land reform process in the subject area and the economic merits of land registration.

The Colonial Land Tenure Policy

Geographically the area under study is situated in the Southern part of Mandi District in the Rift Valley Province. The Chemase and Kibisem Co-operative Societies both have a population of less than 5,000 all of which are virtually Sugar-Cane farmers or dependent on the Sugar Industry. The bulk of our historical discussion here shall be centred mainly on the Chemase Co-operative Zone which was part of the then Nandi Reserve where the tenets of colonial land policy and later those of the independent Government land reform policy were felt. The Kibisem Co-operative

CHAPTER ONE

THE PROGRESS OF TENURE REFORM

As this paper is concerned with the individualization of land tenure as a condition precedent to better land use and planning this chapter will seek to phase out the stages of tenural evolution the area under study has undergone from colonialism to the present day. Precisely the chapter will trace the land use rules inherent in customary land tenure, the colonial land policy in regard to Reserves during the colonial period and how that colonial land policy led to a need for complete land tenure reform. Later this chapter will indicate the actual land reform process in the subject area and the economic merits of land registration.

The Colonial Land Tenure Policy

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Zone was part of Government Lands and until 1966 when it was declared a Settlement Scheme for the landless, it was under the jurisdiction of the then Ministry of Agriculture and Animal Husbandry as a Veterinary farm for beef cattle. Before discussing the Colonial land policy as regards the Reserves it is necessary to understand the concept of traditional land tenure policy before it was transformed during colonialism. It is therefore necessary to ask ourselves here what the traditional concept of land tenure in Nandi was before Colonialism i.e. what was the nature and structure of land tenure? What were the traditional rules regarding access to land and control of land use in the area under study?

The term land tenure connotes conditions of holding and using land. It defines a network of obligations which various members of society owe to one another. At times this term has been used to connote conditions upon which land is owned and that is how the concept of access to land and control of use of land come about. Up to the time of the Nandi War of Resistance ended in 1906 signalling the beginning of effective British administration in Nandi, all land held by members of the Nandi Community were held subject to traditional Nandi Customary law. All land was communally owned and control of its use was vested in the Community through the village elders:

"By Nandi Custom land control was vested in the Kokwet (village) elders. They had power to determine the place where a man should cultivate, the size of his shamba and the site of his hut. This control also existed over the grazing and forest lands of the Nandi Reserve."¹

So the question of who owned land in Nandi had to be determined by the Community and not an individual. The Community alone had the right to determine who owns what interest in what piece of land. Individual rights in land were only usufructory. There were two sorts of land - grazing and cultivated. Grazing rights were entirely communal and served the pastoral needs of grass for the Community's livestock, acted as an insurance against loss by epidemic sicknesses and acted as a frontier land for defence purposes. It was in the cultivated land where individual rights could be traced but, as already pointed out, such rights subsisted only so long as the allotment was in use. Tenure in cultivated land was in the form of occupancy rights only, vested in the head of the family or his widows, the land reverting to the community once it had been abandoned. As land was a communal asset it was not therefore a subject of inheritance. The only rights in land capable of inheritance were occupancy rights provided there was no lapse in cultivation. Where such a kind of inheritance existed it usually fell to a man's widow, or, in the event of her decease, to her eldest son should he

require it, or to a younger son had one been maintaining her. The necessity for leasing out land never arose as there was plentiful supply of arable land in Nandi at that time.² So the tenural position in Nandi at the advent of colonialism was a traditional one where access to land was open to everybody on account of membership of a lineage or some wider segment of society (i.e. the area under study was, and in some places is, occupied by the Kaptalam and Kamelilo pororioSiek (political units) and control of land use vested in the political authority of that unit. In this kind of tenure access to land varied in nature and content with kind of land use activity in which the community or the wider social collectivity was involved - cultivation was controlled and allocated at the extended family level but grazing rights was a matter of concern for the higher echelons of society leadership. Outright disposal of land rights in indigene~~z~~ous tenure was unknown because control by the community was deemed to be in the best interests of that community's future generations.

After the 1885 Berlin Conference each colonial power embarked on a policy of exploiting the economic resources of their African dependencies. The demands which the establishment of a colonial economy placed upon African Society were to prove an important element in the dislocation of tenure arrangements and the deterioration of land use in the African areas of Kenya.³ No sooner had the

partitioning of East Africa been fulfilled than the British Government, under whose jurisdiction Kenya fell, deployed her legal power to acquire land for the needs of the colonial economy. The first direct contact Nandi had with British Colonial legislation was in the later part of the 19th Century and the early part of the 20th Century. The Indian Land Acquisition Act 1894 was used in the East African Protectorate in 1896 to acquire land compulsorily for the railway construction. It was the railway construction which led to the ten year Nandi War of Resistance the end of which resulted in the alienation of Nandi land for settler occupation. By 1907 after the end of the 1906 Punitive Expeditions the Nandi were already grouped in a reserve which had its boundaries sanctioned provisionally by an Official Notice by the then Governor of the East Africa Protectorate, J.H. Sadler.⁴ The District was in 1910 declared a closed district and the Reserve boundaries confirmed by a Proclamation signed by the Acting Governor of the East Africa Protectorate.⁵ The application of the Discharged Soldiers' Settlement Ordinance 1919, under which a large portion of land in the Nandi Reserve was excised out to make provision for the settlement of discharged soldiers did affect the area under study in that the Tinderet and Songhor areas which were excised for soldier settlement were occupied by the same pororiosiek

which occupy Chemase i.e. the Kamelilo and Kaptalam. This move to alienate the Songhor and Tinderet areas reduced the habitation area of the Pororiosiek who had to squeeze each other in the Nandi Reserve where their kith and kin were. But the effect of the Soldier Scheme shall be discussed later in the chapter.

Having traced the nature of colonial land policy upto the creation of the Nandi Reserve it is now necessary to discuss the legal position of land occupation in the reserve so created. From the point of view of the colonial judiciary all lands reserved for the use of "the natives" was vested in the Crown and the occupants thereof were just tenants at will of the Crown⁶. This meant that Africans had no title to the land in their actual occupation and the term "native reserve" was for all agronomic purposes a hollow statement notwithstanding the fact that it was a statutory creature⁷. The 1930 Native Lands Trust Ordinance, for example, declared that the African reserves were to be set aside forever for the benefit of the Africans yet an amendment to it in 1932 facilitated alienation of land in the reserves for the purposes of extracting minerals. The final boundaries of the Nandi Reserve were fixed in the First Schedule to the Native Lands Trust Ordinance 1938. According to the Kenya (Native Areas) Order in Council, 1939, all native areas as their boundaries had been fixed by the 1938 Ordinance were vested in the Trust Board whose

purpose was to protect the interests of the "natives" of the Colony in the Reserves and advise the Governor on anything relating to the administration, development and control of land in the Reserves in the best interests of the occupants. At this point it is necessary to observe that what was "in the interests" of an African in the Reserve so created was nothing short of his contribution as a potential labourer in this potential reservoir of labour for the settler economy in the White Highlands. The Nandi Reserve provided the bulk of labourers for the Songhor, Tinderet and Kipkaren White farms. Beyond the creation of Native Reserves, the Colonial Government paid little or no attention at all to African agriculture⁸. As Dr. H.W.O. Okoth-Ogendo put it, the general attitude of the Colonial Government towards the Reserves was one of "official neglect, indifference and sometimes hostility to the development of agricultural production and the organisation of the produce market within the African sector."⁹ So the situation of land in the Nandi Reserve was pathetic: the tenure was not secure enough to act as security for acquisition of agricultural credit for development in land. Worse still, there were no agencies specifically created to cater for credit needs of African agriculture in the Reserves. Upto the end of World War II it was held that the development of African areas was inconsistent with the demands of European agriculture: it could have defeated the colonial policy of agricultural

and economic exploitation if the Africans and the colonists were to attain equal degrees of monetary liquidity. But after World War II the Colonial policy changed because the settler economy alone could not sustain the country's economic needs¹⁰. As such it was necessary for the African Sector to assist by producing enough and to facilitate this the tenure structures in the Reserves had to be transformed.

Like in most Reserves throughout Kenya, the transformation in land tenure was mainly through two processes: population pressure and direct state intervention through adjudication, consolidation and registration. Population pressure caused transformation in land tenure in that as a result of the creation of Reserves which restricted occupation of it only to an ethnic group, the expansion of ethnic territory had to cease. Movement out of the Reserves was restricted by the Native Passes Ordinance. The Nandi Passes Rules, 1943, made pursuant to the Native Passes Ordinance stipulated in its R.3 that:

"No Nandi, other than a Nandi in the employment of the Government of the Colony, shall -

- (a) proceed out of the native area;
- (b) if resident in any district of the Colony outside the native area, cross the boundary of such district into any other district, unless he is in the possession of a pass issued to him under these rules by a District Officer, or by a Police Officer duly authorised in writing by a District Commissioner to issue such passes."

An officer charged with the responsibility of issuing such passes could refuse to issue them without assigning any reason thereof or issue it subject to conditions which he deemed necessary to restrict movements into or outside the reserve. Contravention of these pass rules made one liable to a fine not exceeding £15 or to two months imprisonment or to both such fine and such imprisonment. According to the report of the Carter Commission 1932, the Nandi Reserve with an area of 757 Sq. miles had a population of 42,933 in 1932. The same year the Reserve had 160,000 sheep and 150,000 head of cattle. By 1948 the Reserve had 78,693 people¹¹. Cattle population also continued to rise. This population pressure greatly upset the land-man rations. The outmigration by Pororiosiek to land occupied by their kin in the Tinderet and Songhor areas had ceased since that land had been ceded to White Settlers. With the population pressure, the Kaptalam and Kamelilo Pororiosiek tended to lead a settled form of life since there was nowhere to emigrate to. With settled habitation came in some form of cultivation which was greatly controlled by the families concerned as the only means of subsistence. This family control was somehow analogous to individual ownership. This meant that control by the communal elders was now greatly reduced although access to land was still a matter to be decided by the Community's elders. With this now emerged a form of succession to land based on house principle:

factor which led to parcelation and fragmentation of land in the Reserve. Increase in the livestock population led to deterioration of land through soil erosion. But to this point we have noted that population pressure in the Nandi Reserve led to the emergence of some form of individual ownership of land.

Land tenure was also transformed through direct state intervention. The Carter Commission had recommended a growth towards individual tenure, that is a form of tenure which vests all attributes of ownership i.e. alienation, control and use in individuals free of any lineage, clan or family claims. But there was no concerted state intervention in this sphere until 1944 when the enclosure system was started in Nandi¹². This enclosure method was given impetus in 1945 from the example of paddocking and rotational grazing provided by the Betterment Scheme at Ndalat in North Nandi. Such schemes had to be set up under the supervision of the Nandi Local Native Council which had its legal powers derived from the Native Lands Trust Ordinance 1930. As this enclosure method interfered with traditional land use like grazing and water resources enclosures could only be allowed by the Nandi Local Native Council if the fencer is doing so with a view to improving generally his farming methods¹³. By 1951, however, the need for clarifying the legal position of holders of individual estates, the average

The publication in 1954 of Swynnerton's Plan to intensify

size of which was between thirty and forty acres; of according to them security of tenure; complementarily, of providing more adequate safeguards for the requirements and communal rights of the remainder of the tribe, and of forestalling uneconomic sub-division and fragmentation, led the District Commissioner to appoint a Committee to enquire into the problems. The Committee, reporting in 1952, considered that any proposals for regulating land tenure in Nandi must give adequate place to rights and needs of both those who acquire individual holding and those who elect to continue in the traditional mode of farming.¹⁴ The Committee to this end also considered that claims to title and rights of disposition must be quickly defined and systematised and some security of tenure provided; that there must be a maximum and minimum holding acreage; that as far as possible Nandi Customary law should continue to guide the usage of communal land¹⁵. The Committee also made some legislative recommendations geared at granting special titles to owners of registered holdings to confer rights of exclusive occupation and usage for a renewable period of twenty years from the date of registration. The Special title could also confer upon the holder a security upon which loans from authorised sources for agricultural purposes could be obtained¹⁶. The need for individualization of land tenure attained official magnitudes with the publication in 1954 of Swynnerton's Plan to Intensify

the Development of African Agriculture and the report of the East African Royal Commission in 1955 as both recommended that African agriculture could only be improved in Kenya through the individualization of land ownership and the introduction of African cash-cropping. The only trace left of the Swynnerton Plan in Chemase is the piped water system built in the late 1950s and the sisal fencing system which was regarded both as a division of land ownership and a step towards individual land ownership and also as a soil conservation measure (Sisal could act as ^{brakes}~~breaks~~ to water erosion).

Administrative and legislative actions culminated in the passing of the 1959 Native Lands Registration Ordinance under which titles granted pursuant to its provisions were deemed as absolute i.e. they were rights in the nature of the English fee simple absolute (absolute proprietorship). Upon registration of land all sorts of customary rights of whatever nature were extinguished unless they were shown on the register. Through this process State intervention abolished indigeneous tenure arrangements and supplanted it with individual ownership but it should be noted that the 1959 legislation did not lead to a massive registration exercise in the subject area and the whole country in general. This means, therefore, that at independence in 1963 Kenya had intricate rules and legislations which created a dual system of agricultural planning and development: the English

type consisting of freehold and leasehold and customary systems of tenure without any rational system of agricultural planning¹⁷. That was the tenure position at independence in Chemase but Kibisem was still part of Government Lands and never felt any of these legislative and administrative actions. It is with this background in mind that we proceed to examine how the area finally progressed towards absolute proprietorship as the sole form of land tenure.

Towards Absolute Proprietorship: Adjudication,
Consolidation and Registration in the Subject Area

As already pointed out above, independent Kenya inherited a dual system of land law. There was need for a system of land law which would provide "for the practical needs of the landowners of Kenya with respect to (a) facility and proof of title and (b) facility for creating and transferring interests in land".¹⁸ This "need" led to the enactment in 1963 of the Registered Land Act which was meant to be the substantive land law in Kenya. But in the process towards absolute proprietorship in any given area the Registered Land Act had to be assisted by such legislations as the Land Adjudication Act and the Land Consolidation Act.

At independence the former Reserves became Trust Lands and by virtue of the provisions of the Constitution of independent Kenya such lands now became vested in the County Councils operating in the specific Trust Land. This meant

that if registration had to be carried out in any Trust Land, the consent of the local County Council had to be sought and in fact in most cases the County Council itself had to request for a registration exercise¹⁹. But the requirement to have local authorities request adjudication has never really been complied with, since it soon became accepted as a matter of national policy that tenure reform is good for the country whatever the tenure position or the views of a local authority in any particular area might be²⁰. Notwithstanding this fact the whole of Nandi District was officially declared an adjudication area in 1965 "at the request of the Sirikwa County Council"²¹. An Adjudication Officer was appointed to carry out the adjudication process with the help of adjudication personnel appointed by him and assisted by an adjudication Committee ~~composed~~^{composed} of residents of the area. Briefly the manning of the adjudication process was as follows: The Adjudication Officer was responsible for the conduct of personnel in the area and was the overall boss; Demarcation Officers were mainly responsible for deciding on boundaries between parcels and adjusting any irregularities in boundaries; Recording Officers were responsible for adjudication of individual claims and preparation of the Adjudication Register; Survey Officers were in charge of mapping out the parcels of land in the area; the Adjudication Committee was to decide on who owns what piece of land and under what law; and the Arbitration Committee was to decide on any questions referred to it by the

Adjudication Committee regarding ownership of parcels in the adjudication area. After the adjudication process had been followed systematically and the Committees and Boards had dealt with all cases pending before them and Adjudication Register or record of existing rights was prepared and certified as complete. On 12/3/1968 the Adjudication Register for the Chemase Adjudication Area in Nandi District was certified as complete upon the lapse of 60 days within which any objections to it could have been launched²². Altogether 759 parcels were adjudicated in Chemase (Ref. No. for last parcel is Nandi/Chemase/759).

The next process after adjudication is consolidation i.e. merging together fragmented holdings of the same person into single holdings. According to the Land Adjudication Regulations (LN 639/1963) made under the Land Consolidation Act (Cap. 283) this had to be done on payment of a fee of Shs.4 per acre upto 20 acres with a minimum fee of Shs.4, thereafter Shs.2 per acre upto a maximum fee of Shs.200 in Nandi District, As is reflected in the Land Register at Kapsabet, consolidation was not done in Nandi District and the fragments of land were registered where they were²³.

The next process of tenure reform is the entry of the rights shown in the Adjudication Register into a Land Register and the issue of title deeds under the provisions of the Registered Land Act(Cap. 300). As per S.10(2) of

the Registered Land Act each register contains a property^t section describing the land or lease, the proprietorship section containing particulars of proprietor and the encumbrances section, containing a note of every encumbrance and every right adversely affecting the land or lease. The owner of the registered land then pays a fee of KShs.25 (Second Schedule to Rule 3 of the Registered Land Rules LN 605/1963) to secure his/her land certificate. Not all the 759 adjudicated parcels in Chemase have undergone this finality and owners only secure title deeds when in need of agricultural credit or any other forms of credit chargeable upon land.

The Kibisem residents only hold temporary occupation licences on the parcels of land they were allocated (two acres for residential purposes and five acres for agricultural purposes) and it is ^{still} ~~trial~~ governed by the provisions of the Government Lands Act. However at the time of writing, adjudication was being started in the Kibisem area but it is still far from complete. The process is synonymous to ^{that} ~~those~~ in Chemase which was formerly a trust land.

Having traced the tenure reform process to its grand finale i.e. the issuing of title deeds we shall now look at the nature of rights conferred to owners by land registration and how far these rights are conducive to rapid agricultural development.

From observation it could be said that registered land

The Concept of Absolute Proprietorship in
Agricultural Development

The role of the concept of absolute proprietorship in agricultural development is best grasped by examining the effects of registration on a given piece of land. Registration vests on the proprietor of land absolute ownership of that land and the right to use and abuse the land. The registered owner of a piece of land is also free to dispose of it by sale or voluntary transfer (Sections 27 to 29 of R.L.A. all inclusive). But S. 30 of the R.L.A. stipulates that all registered land, unless the contrary is shown in the register, is subject to such overriding interests as rights of way, water, air, light, compulsory acquisition etc. Owner of a registered land can also charge his land in order to secure agricultural credit. Registered land, unless it is land spared for town or ~~county~~^{country} planning, is also subject to the provisions of the Agriculture Act under which if a land registered is agricultural land within the meaning of S.2(1) of the Agriculture Act (Cap. 318) the owner is expected to use it in accordance with accepted practices of good land management. S.2(1) of the Agriculture Act defines agricultural land to include land held in leasehold of the Government under the Government Lands Act a fact which makes the land in Kibisem also subject to the provisions of the Agriculture Act. But from the above observation it could be said that registered land

in Chemase Co-operative Zone are held under the provisions of the R.L.A. and Agriculture Act and other statutes pertaining to land.

The tenure situation at Kibisem is different from that one in Chemase in that at the time of writing the adjudication process was still going on. Until registration is carried out, the Conditions upon which land was given to the landless shall continue to determine the tenure structure at Kibisem. As the land was formerly Government lands, the settlers were only given rights in the nature of a temporary occupation licences on the following terms:-

- (a) the licensee must reside on the farm and may not sublet it without the prior consent of the area D.C.;
- (b) the licensee must use the land for agricultural purposes only and in that connection be required to join and ^{comply} copy with all rules and by-laws of a Sugar Co-operative Society to be organised in the area;
- (c) the licensee must comply with any written instructions to be issued from time to time by the D.C with regard to planting, weeding, cutting and general maintenance of Sugar-Cane (N.B. this responsibility has now been delegated to the District Agricultural Officer);
- (d) the licensee must comply with any other conditions the Commissioner for Lands might from time to time impose.

Breach of these conditions leads to eviction from the settlement area from nine months after breach of any of these conditons. In contrast, therefore, the system of tenure in Kibisem is insecure leasehold while Chemase is

secure freehold, the basis of occupancy in Kibisem is by Government leasehold grant as a means of settling the landless while in Chemase the basis of occupancy is generally inheritance, purchase and acquisition by first registration. This means therefore that absolute proprietorship can only play a significant role in Chemase. Kibisem has got to rely on the organisational structure of the production system. We now assess the impact of absolute proprietorship on agricultural production. It was hoped that the tenure process already brought by land reform could lead to the Africans in the former Trust Lands dealing in land as an economic entity and thereby contributing to the nation's agricultural development. The Kenya Development Plan (Revised 1966-70 Edition) states that:-

"It has been proved that in the past for a significant number of farmers, registration and where appropriate consolidation of their holdings stimulates increases in efficiency and output far out of proportion to the cost of the process"²⁴

The increase in production and efficiency of the farmer has a direct relationship with the access to credit facilities facilitated by his acquired security of tenure in his land:

"It has been clearly established that productivity in the peasant farming sector will respond to economic incentives with the help of agricultural credit."²⁵

Processes collateral to absolute proprietorship like

consolidation, by gathering scattered fragments into one economic holding, could pave way to rapid agricultural development by facilitating more efficient management of farming operations. It is more efficient and easy to manage one piece of land rather than several widely separated fragments.²⁶ The quality of extension advice could be more effective with consolidation since extension officials could be able to see what was going on if the holding was all in one place. It was also hoped from the time of Swynnerton that individualization of tenure could improve the quality of agricultural planning in the peasant sector in that agricultural planners could devise more suitable plans, more realistic targets and a better implementation machinery.²⁷

This chapter has traced the process of tenure reform in the subject area and the economic implications of that reform. The land reform process could then be said to have laid the legal ground work on which sound land use can be achieved by land owners. In the next chapter an attempt will be made to evaluate the extent to which the Co-operative production system in the Sugar belt takes cognisance of this legal groundwork i.e. how far does the Co-operative movement enhance sound land use by its members?

Secondly it will determine the extent to which this undertaking has made easy access to agricultural credit for sugar-cane production. The second part of our survey

CHAPTER TWOLAND USE PLANNING IN THE CHEMASE/KIBISEM CO-OPERATIVE ZONE

Our previous survey on the progress of tenure reform in the Chemase/Kibisem Co-operative Zone has revealed the nature of the legal position of land-ownership in this Co-operative Zone. This has been relevant because of the fact that the Co-operative system here is basically agricultural and an understanding of the agricultural base (land and its ownership) is an indispensable analytical tool. In this Chapter we shall survey the connection between the Co-operative production system and land tenure in the subject area which survey will be essential because of the intimate connection production Co-operatives have with the ownership and the use of the land. As our survey has revealed in Chapter I land occupation in this area is in keeping with traditional notions of land ownership and use. The first phase of our survey will be concerned with the economic base of land use i.e. how economic is Sugar-Cane farming? This will be necessary in the sense that firstly, the extent to which sugar-cane farming is economic will determine the extent to, and speed ^{at,} ~~to~~ which farmers will respond to sugar-cane cash-cropping; secondly it will determine the viability of this undertaking and hence easy access to agricultural credit for sugar-cane production. The second phase of our survey

will be concerned with the role of the Co-operative movement in Sugar Cane production in the light of the extent to which the progress of tenure reform in the area has made the land conducive to sound use and planning. This issue will be talked under three heads: Firstly, since the Co-operative movement here is agriculture-oriented i.e. for the production of Sugar Cane, how far does the Co-operative movement take cognisance of land ownership in its membership? Here we will survey the membership structure in the Co-operatives at Chemase and Kibisem; Secondly, how far does the principles of better land use (one of the very backbones of land reform) permeate the Co-operative movement? Here we will be more concerned with the production structure of the Chemase and Kibisem Societies within the SBCU sphere; thirdly, how far does the entire organisation structure in the Sugar Belt make the Co-operative movement a suitable lending agency to its members? Here we will focus our attention on the marketing structure of the Co-operatives.

Economic Role of Sugar Cane in Area Under Study

The economic role of Sugar Cane in the Chemase and Kibisem Co-operatives zone cannot be looked at only in confinement to that particular area - it has to be looked at in the context of the role of the Sugar Industry in Kenya as a whole. The only way it can be looked at only in terms of its economic role in the area under study is when it is studied in the context of cash-crop diversity

in the area. Perhaps it should be pointed out here that Sugar-cane is the only cash crop in the Chemase and Kibisem Co-operatives Zone and all commercial land use is geared towards Sugar Cane production. We therefore have to look at how the role of Sugar production ^{in the national economy stimulates Sugar Products} in the Sugar Belt.

Historically Kenya has not been self-reliant in the production of White Sugar hence since independence Kenya's economic policy has been geared at realizing self-sufficiency in Sugar production. The 1966/70 Development Plan indicated that demand for sugar would increase from an annual tonnage of 100,000 in 1963 to 171,000 in 1970. By 1970 out of Kenya's demand of 132,500 tons per year 81,500 tons (62%) was produced locally and because Sugar consumption in Kenya increased at 6% annually it was contemplated that increase in Sugar production will find a ready internal market²⁸.

This was when the Government embarked on a plan to intensify small-holder sugar-cane production in the Sugar-Belt, Mumias and South Nyanza. Sugar Cane can also be a raw material in the production of industrial alcohol and the giant power alcohol plant now under construction at Kisumu will go a step further in providing a ready market for Sugar-Cane within the Sugar Belt. Therefore, Sugar Cane as an industrial crop will have a high growth rate because it faces rapidly growing internal markets and has a high employment content in production, processing and marketing²⁹. The other stimulating economic factor to sugar cane production is its

* As from 1st April 1973 the Kenya Sugar Authority is merely regulatory and advisory

pricing which is strictly controlled by the Minister for Agriculture pursuant to powers conferred on him by the Agriculture Act (Cap. 318). As at the time of writing, the price of Sugar-Cane was as per the schedule of LN 73/1977 Agriculture (Scheduled Crops) (Sugar Cane) (Prices) Order 1977 which declared that Sugar-Cane delivered to Ramisi, Chemelil, Miwani, Muhoroni and Mumias Factories shall be worth Shs.133 per 1000 kg (i.e. one metric ton)*. Appendix III shows the monetary expectation of a Sugar-cane farmer depending on the quantity and quality of his investment.

But the need for economic reliance on Sugar Cane has not been without a legal background. Part VIII of the Agriculture Act deals with "Ensured Production of a Sufficiency of food crops for the requirements of Kenya" and ~~under~~ S. 100(1) of the Agriculture Act contains a list of scheduled crops among which is Sugar-Cane for the production of white sugar. By The Agriculture (Declaration of Special Crop) (Sugar) Order, 1973, Sugar Cane for the production of white sugar was declared a Special Crop³⁰. To promote and foster the effective and efficient development of Sugar Cane for the production of white sugar, the Kenya Sugar Authority was established by LN 32/1973 through S. 191 of the Agriculture Act which empowers the Minister for Agriculture to establish such an authority for the development of a Special Crop. But the functioning of the Kenya Sugar Authority is merely regulatory and advisory

and has no direct link with the Sugar-Cane farmer.

This far we have traced the economic role of Sugar Cane in the country and the area under study. The remaining part of this chapter will be concerned with how sugar cane production in this Co-operative Zone is legally organised.

The Legal Organisation of Sugar Cane Production and Marketing in the Sugar Belt Co-operative Zone

As pointed out earlier in the Chapter, this phase of our survey is concerned with the role of the Co-operative movement in Sugar-Cane production in the light of the extent of tenure reform in the area. First, we will investigate the nature of membership in the Co-operative Societies under study in a bid to elaborate the role played by land ownership in the Co-operative production system. Second, we will investigate the legal nature of the Co-operative production system in order to clarify the fact as to whether that production system is in keeping with the principles of good land use and planning. Third, we will investigate the potential of the Co-operative movement as a credit lending agency by investigating the Co-operative Marketing Structure in the area.

Membership in the Sugar Belt Co-operative Zone can best be understood through an assessment of the Co-operative structure in the Zone. Membership here is restricted to two areas: the Co-operative Societies and the Sugar Belt Co-operative Union. According to S.2 of the Co-operative Societies Act (Cap 490) a "primary Society" means a registered Society the membership of which is restricted to

Primary Societies. This means that the Sugar-Cane farmers in Chemase and Kibisem can only be members of their relevant Primary Societies and the benefits of being members of the Sugar Belt Co-operative Union can only be enjoyed by farmers through their being members of their Primary Societies. The Chemase and Kibisem Primary Co-operative Societies are among the several primary societies affiliated to the Sugar Belt Co-operative Union. The Chemase Co-operative Society was formed in 1962 and now has a membership of 675. The neighbouring Kibisem Co-operative Society was formed in 1966 with an original membership of 250 but due to the alteration of marketing zones some people in Chemase fell under the Kibisem zone and the membership is now at 387. The Co-operative Societies Act, under which all these Societies were registered, prescribes the conditions for membership of a registered Co-operative Society. S.14 of that Act provides:-

"A person other than a registered society shall not be qualified for membership of a registered Society unless:

- (a) he has attained the age of 18 years; and
- (b) he is resident within, or occupies land within, the society's area of operation as described in the relevant by-law."

The by-laws of Chemase and Kibisem Co-operative Societies which are similar in content, wording and numbering (due to similarity in objects) give conditions for membership to the two Societies. Rule 4 of these by-laws stipulates

that for one to qualify for membership he must ordinarily reside, own or hold tenancy in land, and be a bona fide grower of Sugar Cane in each individual Society's area of operation. In addition a prospective member ~~must~~^{must} pay an entrance fee of Shs.2 and buy one share of Shs.20 from the Society before he becomes a member of the Society³¹. It is clear from the above observation that membership to these Primary Co-operative Societies like Chemase and Kibisem is determined by ownership of, or tenancies in, land. Both societies are for the development of Sugar-cane production and implicit in membership to them is the undertaking to grow Sugar-cane and only owners of land, whether absolute proprietors (as in Chemase) or leasehold owners in Kibisem, can grow sugar cane. In fact as regards Kibisem it is made mandatory by the temporary occupation licences that holders of land in Kibisem "must use the land for agricultural purposes only and in that connection be required to join and comply with all rules and by-laws of a Sugar Co-operative Society to be organised in the area." Co-operative membership in this zone is therefore related to land tenure in that land ownership is one of the conditions precedent to membership of a co-operative society. Structure of tenure reveals other conditions.

The Chemase and Kibisem Co-operative Societies are essentially agricultural Co-operatives and as such are so intimately connected with land tenure that some discussion of tenure and how it affects Co-operative membership

is necessary. Such a discussion in fact reveals that land ownership in the form of absolute proprietorship is not the only condition precedent to membership of a Co-operative Society for, as we shall see below, ownership of an interest which does not amount to absolute proprietorship in land nonetheless entitles such an owner to membership of the Co-operative Society operating in the area where his interest is situated. Generally Co-operative Societies ensure easy access by farmers who are members of them to advice on principles of good land use and planning and credit facilities to supplement the farmers' efforts. It is with this background in mind that one can clearly analyse the role of land tenure in Co-operative membership. In the area under Chemase Co-operative Society's operation, any Sugar Cane farmer whether the land on which the Sugar Cane is grown is secured through inheritance from an absolute proprietor (i.e. a father) or by outright sale or by lease for a definite period (normally a period of about three years enough for lessor to harvest cane twice) must register as a member of the Co-operative Society in order to secure the services rendered by the Co-operative Society, especially marketing facilities. The only farmers exempt from this condition are ^{in the} category of Progressive Small Scale farmers better known as "Large Scale farmers" who are less than ten in number. In Kibisem where membership to the Co-operative Society is mandatory under the temporary

occupation licences, the limited leases allowed by these licences mean that such a lessor must register as a member of the Kibisem Co-operative Society as his lease of land here is for Sugar Cane growing.

An investigation on whether the Co-operative production system is in keeping with the principles of good land use and planning is clearly understood through an analysis of the objects of these Co-operative Societies as provided in their by-laws. As we have already pointed out, the by-laws of Kibisem and Chemase Co-operative Societies are similar in all respects but their names. Rule 3 of these by-laws contains the objects of these Co-operative Societies which is:-

"To promote the economic interests of its members and particular:

- (a) to arrange for the Co-operative marketing, processing, grading, packing, transporting and all operations as may be necessary for the most profitable disposal of the Sugar Cane and the produce of the members;
- (b) to promote good farming practices in accordance with the advice of the Government departments and more particularly to arrange the layout of Sugar Cane plots in the best way possible with the advice of the Agricultural Department and to that end to own and operate agricultural and other machinery for the benefit of members."

It is evident from Rule 3(b) of the above-quoted by-laws that in principle the Co-operative movement in the production system under study conforms to the principles of sound land

use and planning. We now have to endeavour to see how this principle is put into practice within the Sugar Belt Co-operative Zone. The Sugar Belt Co-operative Union (SBCU) Ltd. to which Chemase and Kibisem Societies are affiliated was set up to provide, organise and supervise efficient centralised services for marketing, supplies, accounting, banking, transport and such other services as may be necessary for its members. Among such "services necessary for the members" is the need for technical advice on Sugar-Cane production. In the SBCU hierarchy, there is below the General Manager an Agricultural Manager whose responsibility it is to co-ordinate all agricultural practices within the Co-operative Societies affiliated to the SBCU. In liaison with the Ministry of Agriculture's Agricultural Assistant Officers, the SBCU Agricultural Manager is supposed to impart the principles of sound sugar-cane growing to the members of the Co-operative Societies affiliated to the SBCU. The Co-operative production system in the Sugar Belt could therefore be said to be in conformity with the principles of sound land use and planning for each individual farmer is made accessible to advice from the SBCU's Agricultural Manager. The farmer in fact pays for this service in that from every ton of Sugar Cane delivered to the millers, the SBCU deducts Shs.3.

We now have to consider the third question i.e. whether the marketing structure of the Co-operative make Co-operatives potential agricultural credit lending agencies.

Co-operatives are generally regarded as being peculiarly suitable to act as lending agencies to peasant farmers; they are close to the farmer and know his needs better than any other organisation, they have facilities for administering the loan and can obtain repayment via compulsory marketing contracts³². Before we critically analyse the marketing structure in this area the wide legal structure of Sugar Cane marketing has to be understood. S. 186 B of the Agriculture Act gives the Minister for Agriculture the power to zone land for delivery of crop for processing. The Agriculture (Sugar-Cane Marketing) (Amendment) Rules (LN 227/1977) promulgated pursuant to S.186 B of the Agriculture Act provided that all sugar Cane in Chemase shall be delivered to Chemelil Sugar Company while the cane in Kibisem shall be delivered to Miwani Sugar Mills. The detailed marketing structure remains within the Societies' by-laws which bind members as if they were signed by each one of them.^{33a} Under S. 30 of the Co-operative Societies Act a society can contract with members to dispose of produce through the society. Within the by-laws of the Chemase and Kibisem Co-operative Societies is BINDING RULE NO.43 which states that:

"No member shall sell, or otherwise dispose of any of his cane to any Company, society or person other than the Society".

The Binding Rule further specifies that any member who breaches the provision of this Rule shall be liable to

pay to the Reserve Fund of the Society 50% of the value of the disposed cane. By making it mandatory for members to sell his produce only through the society, the Co-operative marketing system has made it easier for credit to be recovered smoothly from the Society without undue costs and inconvenience. Co-operative Societies by being close to the farmer knows the farmers' needs better and can assist in the realization of those needs, financial or otherwise. After identifying the farmers' monetary needs and the magnitude of such needs, the Co-operative Society can then channel any available financial credit to that farmer and the society can in fact regulate the utilization of that credit and recover that credit through the marketing restrictions. Much on how this is done shall be dealt with in the next chapter but for now it is necessary to observe that the Co-operative Societies at Kibisem and Chemase have the potential of credit distributing agencies through their marketing system.

In this Chapter we have seen that the Co-operative production system is in keeping with land tenure concepts identified with the land reform process. In the next Chapter we shall see the role played by land tenure in this Co-operative Zone in the sphere of agricultural credit - an essential ingredient to agricultural development.

CHAPTER THREETHE ROLE OF AGRICULTURAL CREDIT IN SUGAR-CANE PRODUCTION

A writer on land tenure has argued that:

"neither individual tenure nor Co-operatives
..... necessarily make crops grow better.
Agriculturally they are not ends in them-
selves. They are only the social means app-
ropriate to a particular environment, a means
which may disappoint and fail if the practical
objective, the agricultural basis, has not
previously been laid"33b

What R.W. James is trying to point out is that technical conditions determine, from the land usage point of view, the virtue of individual tenure. It is after a farmer has understood the technical conditions necessary for the proper realization of his commercial objectives in land that he can use his secure form of land tenure to aid this objective. A secure land tenure system gives farmers incentive to development. In chapter two we examined the economic role of Sugar Cane in the area under study in the light of the nation's Sugar policy. In the same chapter we saw the extent of a Sugar Cane farmer's monetary needs per acre and the monetary rewards of such an investment (Appendix II). All these observations lead to a conclusion that the land reform process in the area under study has a sound agro-economic base of operation. The economic role of Sugar Cane in the Sugar Belt Zone impose on land owners an expectation to change to cash

operating in this area can be divided into two categories: cropping where individual participation include such activities like ploughing, planting, weeding and harvest^sing which because of its mechanized nature carries a high financial investment. This fact therefore strengthens the relationship between the generation of credit needs and land tenure: the viability of Sugar Cane growing stimulates peasant creditworthiness. In this Chapter we assess the role of credit in Sugar Cane production.

It has been argued that land reform, by guaranteeing secure individual land ownership, makes land owners accessible to sources of agricultural credit to supplement the farmers' own efforts. In Chapter One we saw the extent to which absolute land proprietorship has been attained in Chemase and that here the tenure is secure. But in the same Chapter we observed that the form of tenure in Kibisem is very insecure in that the land reform process and the road towards absolute proprietorship is far from complete. In contrast, therefore, the farmer in Chemase Co-operative Society is more accessible to various sources of agricultural credit than his Kibisem counterpart who, as shown in Appendix III B, has only got to rely on the Co-operative credit sources for his agricultural monetary needs. In seeking to evaluate the role of agricultural credit in Sugar-cane production in the subject area, this Chapter will discuss the various agricultural credit agencies operating in this area, their terms and conditions and how such agencies regulate their credit. The credit agencies

operating in this area can be divided into two categories: Co-operative Credit Agencies on one hand and public and private sources of agricultural credit on the other. As we shall see, it is the Co-operative credit agency which has contributed a lot of loans to peasant farmers in Kibisem and Chemase Co-operative Societies (as at 1978 the Co-operative Bank had advanced Shs.1,517,721.20 and Shs.1,527,260.00 to Kibisem and Chemase Co-operative Societies respectively as loans for Sugar development) and we shall discuss the lending machinery of the Co-operative movement first before we discuss the private and public lending agencies in the last part of this Chapter. In the last part of this Chapter we shall also analyse the loan repayment situation in order that we may contrast the efficiency of the repayment mechanism of the various credit agencies operating here. This observation is necessary because the extent to which farmers honour their credit obligations has a direct reflection on the extent of agricultural development in the area.

Co-operative Credit Agencies

The sole Co-operative Credit Agency in the Sugar Belt is the Co-operative Bank Limited which was registered in 1965 as a Co-operative Society under the Co-operative Societies Act³⁴. This need to establish a Co-operative Bank was felt

because previously many Co-operative Societies and Unions had accumulated large sums of money in the Commercial banks which had loan arrangements not favourable to small land-holder

members of Co-operative Societies. In 1968 the Co-operative

Bank was registered as a Commercial bank under the Banking Act. As a Commercial bank the Co-operative Bank was empowered to accept deposits, to issue cheques and to re-lend money at interest. R.3 of the By-laws of the Co-operative Bank of Kenya Ltd.³⁵ stipulates that:

"(a) The objects of the Bank are primarily concerned with the promotion of the prosperity of the members of the Bank and to this end to carry on the business of banking in all its branches and departments with members and non-members subject to the provisions of such Co-operatives Societies Legislation and Banking Legislation as may be in force in Kenya from time to time and more particularly to provide the undermentioned services

(i) Borrowing, raising or taking up money"

There are other services the Bank can undertake for the benefit of its members but for our purposes we had better confine our attention to the role of the Bank as a lending agency of the small holder farmer and member of a Co-operative Society. From our observation of the provisions of Rule 3 of the Bank's By-laws we find that generally the Bank's financial assistance shall be made to those who are members of the Bank. In the next paragraph we shall see how one qualifies to be a member of the Co-operative Bank and how this condition is met by the mass of Co-operative Societies' members.

Rule 4 of the By-laws of the Co-operative Bank prescribes the conditions for membership of the Bank. It clearly states that membership of the Co-operative Bank is open to

the same purpose when its membership was at about 500.

"all registered Co-operative Societies including Co-operative Unions and country-wide Organisations in Kenya which have, through the Co-operative Unions of which they are members or directly where they are not members of a union, fulfilled the following requirements:-

- (a) accepted by these by-laws and undertaken to purchase not less than the appropriate number of qualifying shares which shall be as follows:-

For Co-operative Societies - the total arrived at by calculating KShs.5.00 per individual member rounded off to the nearest KShs.100.00

For Co-operative Union - forty shares of KShs.100.00 each

For Country-wide Co-operative Organizations - One hundred shares of KShs.100.00 each"³⁶

Section 6 of the same By-laws clearly rules that no share shall be sold to any-body which is not a member and according to Rule 10 such a share is only transferable if the society holding it is in the process of being cancelled or has been cancelled and in this case the Bank can re-purchase such a share. With that in mind we now proceed to answer the question as to whether Chemase and Kibisem Societies and the Sugar Belt Co-operative Union have taken the steps necessary to make them members of the Co-operative Bank. According to the Society records at the two Co-operative Societies, Kibisem paid KShs. ^{1,200.00 /-} ~~120,000~~/- being its membership fee to the Co-operative Bank at the time when the Society had a membership of 250; Chemase paid KShs. ^{2,500.00 /-} 250000/- for the same purpose when its membership was at about 500.

The Sugar Belt Co-operative Union bought its forty shares at Shs.100/= each i.e. paid KShs.4,000/= for membership of the Co-operative Bank. So it can be seen that the Chemase, Kibisem Co-operative Societies and the S.B.C.U are all members of the Co-operative Bank and can therefore secure loans from the Bank.

But even after answering the question as to whether the Co-operative movement in the area is a member of the Co-operative Bank, we still have to answer yet another question: Do these Co-operative Societies have the legal power to solicit loans for its members? To answer this question resort has to be made to the Co-operative Societies Act and the by-laws of the Co-operative Societies in question. Section 28 of the Co-operative Societies Act provides that a registered Society shall be a body corporate with perpetual succession i.e. it acquires power to enter into contracts and can sue or be sued upon them. A registered Society can therefore enter into financial contracts on behalf of its members and according to the Societies' by-laws the Society's Committee has got the sole power to grant such loans to the members. Rule 55(b) of the two Societies' by-laws states that loans shall be granted for agricultural purposes only and shall not be granted for purposes of trade. Rule 55(c) provides that no loan shall be granted except for a definite purpose and at a definite rate of interest. Co-operative Societies in the Sugar Belt, therefore, have the legal power to solicit loans for its

members. But the nature of Co-operative Organisation in the Sugar Belt shows that as far as the Co-operative Bank is concerned, there exists only a contractual relationship between it and the SBCU. Appendix IV is a sample of a financial agreement between the Co-operative Bank and the SBCU. The SBCU then acts as an agent of the Co-operative Bank in bringing the Co-operative Societies and the Bank into contractual relationship. The SBCU therefore channels the money to the Societies' members through the Co-operative Societies who will then have to regulate its utilization and recovery. Through this machinery the Co-operative Bank has channelled KShs.15,367,718.00 to 6077 farmers in the entire Sugar Belt Zone during the period ending September, 1978. We now have to ascertain the terms and conditions upon which such loans were issued before we finally assess the regulatory mechanism of the Co-operative movement.

The bulk (in fact all) of the loans granted to farmers by the Co-operative Bank in the Sugar Belt are short term by nature - the bulk of the credit is granted for 18 to 36 months. This mainly takes into account the fact that Sugar Cane takes upto 16 months to mature. As shown in Appendix IV the Security for grant of these loans is hypothecation of stocks which in essence is a floating charge over the members' movable property like goods and agricultural produce. Because all accounting is done at SBCU offices, the farmer cannot easily evade loan recovery. For a farmer

to provide enough security for loans acquired, he must have been channelling his produce through the Society of which he claims to be a member for the last three years. The interest rate at the time the Co-operative Bank channelled loans to farmers at Kibisem and Chemase was 8% calculable from date of first disbursement (N.B. the interest rate now is the Central Bank controlled one of 11% for all financial institutions. But this is the maximum and ^a ~~the~~ financial institution is free to lower the rate³⁷). All Co-operative loans in Kibisem and Chemase are provided through the CPCS (Co-operative Production Credit Scheme) under which programme funds are channelled to the farmers from the Bank through their Unions and Societies and in the same way, the repayments from the farmers find their way to the Bank through their Societies and Unions. There is a branch of the Co-operative Bank within the SBCU's Banking Section at Chemelil which handles all loan matters.

The role of regulating agricultural credit secured from the Co-operative Bank is left to the individual Co-operative Societies. The Society's field officers know the agricultural situation of every piece of land under its jurisdiction and therefore knows the extent of the owner's financial needs. Each Co-operative Society has got a procedure in its by-laws to be followed in the application for loans. Rule 56 of the by-laws of Chemase and Kibisem Societies provide that whenever a Loans Scheme is

started, the members must have notice of it. Later the applicant for loans appears personally before the Committee to explain the need for loan and if he qualifies the money will not be given to him until the time when he needs it and until he is ready to use it. That means then that loans will not be granted in a lump but in several advances according to the agricultural activities going on in the land. Rule 58 of the by-laws makes it mandatory for the Committee to see that the loan is used for purposes for which it was given. The same by-law also provides that at every Committee meeting the item "Loans" shall ^{appear} ~~appear~~ on the agenda and the officer controlling the loan accounts shall report:

- (i) all loans due for repayment within the next four months
- (ii) all loans fully repaid since the last meeting
- (iii) all loans overdue for repayment

Any loan more than one month overdue are referred to the Commissioner for Co-operatives as a dispute. All this goes to reflect that in principle the Co-operative Societies have an efficient machinery for regulating agricultural credit. Whether this is the case in practice shall be discussed in the next chapter when loan recovery will be considered.

Having analysed the functioning of the Co-operative Bank as a Co-operative credit agency we now have to focus

our attention to other agencies operating in the Sugar Belt - both private and public sources of agricultural credit. But it has to be pointed out that all the discussions under these heads shall only be concentrated on the Chemase part of the subject area where the land tenure situation is secure enough to act as security for agricultural credit.

Public Sources of Agricultural Credit

The only public source of agricultural credit operating in the Sugar Belt is the Agricultural Finance Corporation (AFC). The AFC was created by the Agricultural Finance Corporation Act (Cap.323) to "assist in the development of agriculture and agricultural industries by making loans to farmers, Co-operative Societies, incorporated group representatives, private companies, public bodies, local authorities and other persons engaging in agriculture or agricultural industries."³⁸ But the extent of AFC's participation in the area under study is minimal and only restricted to the Chemase part where absolute proprietorship of land has been attained. The direct beneficiaries of AFC credit facilities are mainly the progressive Sugar-Cane ^{farmers} otherwise the majority peasantry is nearly totally inaccessible to AFC services. This has mainly been due to two main constraints: one is the administrative nature of AFC's lending machinery and the other is the terms and conditions on which AFC credit facilities are secured. Administratively, if credit were to

be made available to the majority of small-scale farmers, an administration to administer that credit could have to be created and inevitably it could be larger than the existing one. The administration costs associated with issuing such short-term loans to a very large number of farmers are very large in relation to the value of credit supplied. For this reason the AFC cannot practically embark on a major short-term credit programme for small-holder farmers³⁹. We now assess the terms and conditions on which AFC loans are issued.

All the loans issued to Sugar-Cane farmers in Chemase are medium term (i.e. range from 2 to 5 years in repayment period) and this is granted on the basis of agricultural intensity on the farm not the size of the farm (Appendix IIIIC). The term of between two and five years is ideal for Sugar-Cane farmers in that the gestation period of Sugar-Cane is over 14 months. For a farmer to qualify for AFC loans he must show:

1. that he has the facilities for implementing the project for which the loan was sought i.e. accessibility to agricultural machinery;
2. that he at least have some farm managerial skills displayed by agricultural activities currently going on in his farm;
3. that he has already started the project for which the loan is sought on his own;
4. his credit-worthiness i.e. his financial standing in terms of his investments on farm enterprises;
5. the viability of the project.

Upon the applicant farmer meeting the above conditions, an AFC Field Officer with rudiments of agriculture can move in to the farm to assess the farm's financial needs. Loan forms are then filed by the resident Loans Officer upon satisfaction of the fact that there is need for farm agricultural improvement. The amount of money deemed to be necessary for the applicant is then recommended. The farmer's land title deed is then charged in favour of the AFC and a cheque of amount borrowed is send ^{the} to farmer. Interest charged by the AFC on Sugar Cane loans is at 10% p.a. calculable from date of disbursement. These loans are payable in annual instalments and can be paid even when the instalment is not due⁴⁰. In event of default in payment an AFC Loans Officer checks the farm and if he finds that the loan was misused then the farm can be fore-closed. But Section 80 of the Registered Land Act stipulate that fore-closure, and taking possession are remedies to which a chargee is no longer entitled. The AFC, therefore, can exercise the power of sale in event of default pursuant to the provisions of Section 77 of the Registered Land Act. But if default is found to be as a result of factors beyond the farmer's control, the AFC can furnish the respective farmer with a repayment proposal form and decide what to do with the farmer.⁴¹

The AFC conditions are therefore much more unfavourable to small-scale farmers the majority of whom are beginners in

sugar cane growing. This accounts for the lesser peasant participation in AFC's Credit facilities in the Sugar Belt area. The sample produced in Appendix IIIIC consists only of "progressive" Sugar-Cane farmers and the bulk of farmers in the Sugar Belt have got to rely on the credit arrangements of the Co-operative movement. The repayment situation is not clear because if a farmer meets his repayment obligations satisfactorily he can apply for more advances on the same security i.e. in the Land Registry at Kapsabet all charged titles show as one of the conditions of the charge the right of a chargee to tack and consolidate further advances⁴². But the AFC's acceptance of farmer's applications for further advances indicate that they have been honoring the financial obligations and this also indicates that loans are properly utilised in Sugar Cane production.

Private Sources of Agricultural Credit

By private sources of agricultural credit, we refer to credit facilities offered by the Commercial banks in the subject area under study. This is the smallest contributor of agricultural credit in the Sugar Belt in terms of the number of farmers benefiting from it and, as shown in Appendix IIIIC, the only banks lending agricultural credit in this area are the National Bank of Kenya Ltd and the Kenya Commercial Bank Ltd. Among the two banks, the Kenya Commercial Bank is the least contributor in that in Kibisem and Chemase, only

one farmer has benefited from its credit facilities. Like the AFC, Commercial banks' credit facilities are only confined to the "progressive" farmer. Let us now look at the terms and conditions of each Commercial bank.

National Bank of Kenya Limited

This bank was formed as a Commercial bank in 1967 and the Kenya Government owns 100% of its shares. Its agricultural loans are on short-term basis i.e. payable in monthly instalments over 36 months, ^{that} ~~this~~, not exceeding three years. An applicant who needs credit facilities after three years has got to make a fresh application. Normally an applicant for a loan in this bank submits to the bank an itemized list of expenditure which will clarify the farmer's need for credit. The farmer has also got to show the viability of the project for which agricultural credit is sought.

The security for loans advanced by the National Bank of Kenya is creation of a charge over land title deeds if the purpose for which the credit is sought is agricultural. In the event of default in repayment the bank shall give the defaulter three notices within six months and if the situation is not altered, the bank will try and auction the property to realize the loan due. As has already been pointed out loan repayments are made to this bank on a monthly basis spread over 36 months with an interest rate of 11% p.a. Calculated from the first date of disbursement. But the bank can be lenient to farmers if it is established that default

in repayment was due to a genuine accident.⁴³

From the above observation we can submit that due to the repayment conditions which stipulate that loans must be repaid on monthly basis (farmer and bank can agree on length of grace period) National Bank, Credit facilities are not accessible to small-scale sugar cane farmers, whether or not such farmers possess title deeds to their land. In Chemase all the farmers who have benefited from this bank's credit facilities are those who are both farmers and agricultural machinery owners who meet the monthly repayment obligations with the proceeds from their machinery i.e. ploughing and transporting tractors before the cane planted is due for harvesting.

Kenya Commercial Bank Limited

This bank is the least accessible to virtually all the classes of farmers in the area under study. It is only one farmer (Kipketter arap Tai) who has benefited from the credit facilities of the Kenya Commercial Bank, Kisumu. This stems from the fact that this farmer is perhaps the leading single sugar-cane transporter in the entire Sugar Belt Zone and because of the resourcefulness of his investment he can meet the conditions and terms of the bank.

All loans offered by this bank are short-term and are given only in the form of overdraft facilities with a repayment period of one year. This means that the loan cannot be

invested in Sugar Cane production because Sugar-cane gestation period is longer than one year. An applicant for a loan in this bank must fulfil one essential condition: he must have been maintaining an account with the particular branch of Kenya Commercial Bank for a minimum period of six months. The applicant must also show the bank the viability of the undertaking for which credit is sought and the extent of his (the farmer's) financial contribution to it i.e. the bank cannot offer credit for uninitiated projects. The security for the loan is usually any tangible property i.e. land with permanent improvements in it. Title deed has to be deposited with the bank. At times share certificates and fixed deposits can act as security. The interest rate is 11% and deduction is on monthly basis after one month grace period on daily balances subject to negotiation to reschedule repayments depending on the merits of the case.⁴⁴ In event of default and after notices have been issued to defaulter subject to the provisions of S. 74 of the Registered Land Act the most appropriate move for the bank to realise the charge is to sell the property specified in the charge as security at a public auction.

The bank has an efficient credit regulatory mechanism in that they have a bank broker whose duty it is to visit clients and assess the utilisation of the credit offered. This broker is the one who could easily dismiss a loan application in the grounds that the applicant is uncredit-worthy.

OBSERVATIONS AND CONCLUSIONS

Field assessment helps the bank ascertain whether a properly kept and financially impressive bank account is reflected in farmer's agricultural undertakings at home.

Observations shall revolve on the relationship between land tenure reform and the production system characteristic of the sugar belt co-operatives zone.

Firstly, as the land reform process in the country was mainly aimed at changing the pre-colonial tenural pattern in the country, it is worthwhile observing the tenural situation at the Chemase/Kibisem area after the land reform process. From the Chemase Co-operative area where the land reform process is complete it can be observed that the step toward individualization of tenure is complete. Here it can be found the following tenural characteristics:

- (a) complete emphasis on the concept of exclusive individual ownership of defined portions of land,
- (b) regard of land as a negotiable asset i.e. any owner of land in Chemase has a right to either lease it out for a definite period or dispose of it through outright sale,
- (c) there is great concern for continuity of ownership of registered holdings through inheritance,
- (d) title to land has brought in the operation of various systems of agricultural credit.

The tenure characteristics at Kibisem is as follows:

- (a) the concept of exclusive individual ownership of land does not exist because land holding is at the pleasure of the state which made the original granting of land. Portions of land occupied at

CHAPTER FOUROBSERVATIONS AND CONCLUSIONS

With the background already given in the preceding chapters we can now make the following observations on the role of land reform as a vehicle for agricultural development in the Chemase/Kibisem Co-operatives Zone of Nandi District. Observations shall revolve on the relationship between land tenure reform and the production system characteristic of the sugar belt Co-operatives Zone.

Firstly, as the land reform process in the country was mainly aimed at changing the pre-colonial tenural patterns in the country, it is worthwhile observing the tenural situation at the Chemase/Kibisem area after the land reform process. From the Chemase Co-operative area where the land reform process is complete it can be observed that the step towards individualization of tenure is complete. Here it can be found the following tenural characteristics:

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- (c) there is great concern for continuity of ownership of registered holdings through inheritance.
- (d) title to land has brought in the operation of various systems of agricultural credit.

The tenure characteristics at Kibisem is as follows:

- (a) the concept of exclusive individual ownership of land does not exist because land holding is at the pleasure of the state which made the original granting of land. Portions of land occupied at

Kibisem are defined but conditions upon which the land is held is not vested in the holder but in the state.

- (b) land is regarded as a negotiable asset in that leases of land are allowed subject to the approval of the local administration but outright disposal in the form of sale of land is prohibited.
- (c) land holding is not yet absolute and so inheritance is only restricted to usufructory rights in land.
- (d) titles to land have not been granted and so land has not played the role of providing security for acquisition of agricultural credit. All the credit secured for agricultural purposes in this zone is from the Co-operative Bank which does not place any emphasis on land title deeds as security for agricultural credit.

It can therefore be concluded that there are two forms of tenural characteristics in the area under study: the secure form of land tenure evidenced by title deeds in Chemase and the insecure form of land tenure evidenced by temporary occupational licences in Kibisem. Due to the fact that land tenure is secure, land holders in Chemase are exposed to a variety of agricultural credit while their counterparts in Kibisem are only restricted to the credit facilities provided by the Co-operative Bank.

Secondly, it can ^{be} discerned ^{-that a} link ^{exists} between Co-operative membership and land ownership in the area under study. A qualification for membership of either the Kibisem or Chemase Co-operative Societies is that an applicant must own or reside in land within the Societies' sphere of operation and pay the

membership fee as prescribed by the Societies' By-laws. Upon registration of titles being completed in Chemase, communal land ownership ceased to apply (except co-ownership of only upto five people) and individual ownership came into existence. This is the form of tenure upon which membership to the Chemase Co-operative Society is based. The membership to Kibisem Co-operative Society is based on the possession of temporary occupation licences to land under this Society's jurisdiction. It can therefore be concluded that the Co-operative movement here is in keeping with modern legal concept of land ownership.

Thirdly, in the discussion of credit agencies operating in the Sugar Belt it was found that agricultural Co-operatives in Chemase and Kibisem have most of the administrative machinery necessary for implementing a credit scheme and thus can administer small loans without incurring unreasonably high expenses. It also became clear that Co-operatives can automatically collect repayments through making deductions from the value of Sugar Cane produce sold through them. It is with this organisational infrastructure of the Co-operatives that the Co-operative Bank in acting as a credit agency for the Co-operative movement only requires an "anchor" cash crop form of security for loans given to ^{its} ~~the~~ members. Therefore it can safely be submitted that in a properly organised production system like the one in the Sugar Belt, the requirement of a land title deed as a condition for a loan has been waived.

Fourthly, it can also be observed that the marketing structure of the Co-operative movement, legally organised through provisions of the Agriculture Act and the Co-operatives Act and By-laws made pursuant to its provisions, compels a member to channel his produce only through the Co-operative Society but does not compel the Sugar Cane buyers like Miwani Sugar Mills and Chemelil Sugar Company to buy small-holder cane in ample time when due for harvesting. The lenders of the money, the SBCU acting on behalf of the Co-operative Bank Limited, cannot also compel the Cane millers to buy small-holder cane in time. This leads to a substantial backlog of over-mature unharvested Cane which means that it takes longer to produce a crop of lower value because the Sugar content of Cane declines the more mature it becomes. For a farmer who has planted his cane through CPCS financial assistance, the longer the Cane takes to be harvested the higher the debt gets since interest is calculated on annual basis whether overdue Cane is harvested or not. So although the Co-operative movement has a good regulatory machinery in providing agricultural credit, it has not been instrumental in securing prompt marketing of the farmers produce which in fact is their security for the loans granted. It is with this realization that a submission can be made to the effect that, as revealed in Appendix IIIA & IIIB, the credit regulation and marketing machinery of the Co-operative Zone has aggravated, rather than eradicate, rural indebtedness.

Fifthly, it was seen in Chapter Two that Sugar Cane is the single cash crop of the area under discussion. This means that all economic activities in the area under study have a total bias on Sugar Cane cultivation. Socio-Economically, sugar cane production supplements the farmer's means of subsistence in that food crops had rather be bought with the proceeds from sugar cane sales than grow them and reduce the land under Sugar Cane. This emphasis on Sugar Cane cultivation hampers land use planning in that farmers cannot be compelled to postpone Sugar-cane cultivation until an appropriate date for efficient marketing taking into account the buyer factories' crushing capacity. This has led to over-production of Cane at Chemase and Kibisem which mature at the same time when the factories cannot buy it at a reasonable time. Coupled with credit obligations for production of such Cane which a farmer feels should be utilised as soon as possible, heavy dependence on the Sugar Cane production has greatly upset land use planning in the Chemase/Kibisem Co-operative Zone.

Sixthly, it can be observed that in the Sugar Belt area there exist several agricultural credit agencies with diverse terms and conditions. This has led to an accumulation of sources of agricultural credit by some farmers (Appendix III IIB & IIIC show farmers who have acquired loans from virtually every available source of agricultural credit). The Co-operative Bank has the least stringent and punitive measures to defaulter

and this loophole has led some farmers into paying off their debts in such agencies like AFC and Commercial Banks using funds from the Co-operative movement. There is a category of farmers who are termed "small-scale farmers" who do not channel their produce through the Societies yet by virtue of their being members of the Co-operative Societies they are accessible to loans from the Co-operative movement. This means repayment to the Co-operatives is difficult. Most of the farmers shown in Appendix IIIA & IIIB are in that category. Some farmers who are not even "small-scale" have been using this group to sell their produce and therefore avoid repayments and it is appalling in the sense that even members of Society's Management Committees are leading defaulters in loan repayments. In this situation the Co-operative credit system has tended to supplement the farmers' repayment obligations to other agencies to its own detriment.

It is true, therefore, that the land reform process has altered the tenural patterns in the area under study and created a system of land tenure conducive to good land use planning and development. The economic role of Sugar Cane in the country has made Sugar cultivation a very viable project. The Government Ministries, Co-operative and private agencies provided the farmer with the technological knowhow and financial wherewithal in Sugar Cane production. But without a proper marketing machinery, agricultural development

FOOTNOTES

in the form of Sugar-Cane production shall remain a burden on farmers as Cane shall continue rotting in the farms and the farmers drift deeper into financial indebtedness. If the present Co-operative marketing trends in the Sugar Belt are not checked with a view to their being re-structured, it might develop in itself conditions for a decrease in agricultural production of Sugar Cane.

Ag. Economic Assessment (Nairobi Oxford University Press, 1976) p. 174.

4. East African Protectorate Ordinances and Regulations 1907 Vol. 9 p. 76. Sadler contended that the boundaries were "accepted by the Nandi chiefs at the close of the punitive operations of 1905."
5. The revised boundaries were gazetted by a Proclamation made pursuant to the Outlying Districts Ordinance of 1902 in Vol. 12 1910 East African Protectorate Ordinances and Regulations p. 278.
6. The judgement of Parth C.J. in Wainaina V. Meriso (1923) (9)(2) KLR 102.
7. The Carter Commission by Recommendation 1649 at page 420 said "Call it Native Land so that natives can feel secure but rights of the Crown to control and dispose must be adequately safeguarded."

FOOTNOTES

1. Minute of the Nandi Local Native Council dated 4th May, 1944 quoted in G.S. Snell, Nandi Customary Law (London Macmillan and Co. Ltd., 1954 p. 109.
2. G.S. Snell, Nandi Customary Law (London Macmillan and Co. Ltd., 1954) pp. 42-48.
3. H.W.O. Okoth-Ogendo, African Land Tenure Reform in Judith Heyer (Ed.) Agricultural Development in Kenya: An Economic Assessment (Nairobi Oxford University Press, 1976) p. 154.
4. East African Protectorate Ordinances and Regulations 1907 Vol. 9 p. 76. Sadler contented that the boundaries were "accepted by the Nandi chiefs at the close of the punitive operations of 1906."
5. The revised boundaries were gazetted by a Proclamation made pursuant to the Outlying Districts Ordinance of 1902 in Vol. 12 1910 East African Protectorate Ordinances and Regulations p. 278.
6. The judgement of Barth C.J. in Wainaina V. Murito (1923) (9)(2) KLR 102.
7. The Carter Commission by Recommendation 1649 at page 420 said "Call it Native Land so that natives can feel secure but rights of the Crown to control and dispose must be adequately safeguarded."

- of the African Affairs Committee and reported in Land
8. H.W.O. Okoth-Ogendo Land Tenure and Agricultural Development in Kenya and Tanzania in Journal of the Denning Law Society Vol.2 No.2, 1969 at p. 35. As early as 1909 Percy Girouard then Commissioner of the Protectorate, had boasted that Africans should be left alone in the Reserves and that the Government did not want to force Africans to take forced marches to levels "which we ourselves have taken a millennium to reach."
 9. H.W.O. Okoth-Ogendo in Heyer op cit p. 158.
 10. Ibid p. 159.
 11. African Population of Kenya Colony and Protectorate produced by the East African statistical Department, Nairobi, September, 1950. (Appendix IIIC).
 12. Snell op cit p. 109.
 13. Minute No. 1 of 1949 of the Nandi Local Native Council (1966) p. 126 paragraph 8. quoted in Snell op cit p. 110.
 14. Recommendation 19 of the Report of the Nandi District Land Tenure Committee 1952. The full Report is reproduced in Appendix of Snell op cit.
 15. Ibid.
 16. Legislative Recommendation 25(XVIII) of the Report of the Nandi District Land Tenure Committee 1952. The issuing of a special title to landholders in African lands was recommended in A report by a Sub-Committee

- of the African Affairs Committee and reported in Land Titles in Native Land Units (1950) J.A.A. 19
17. H.W.O. Okoth-Ogendo in Journal of Denning Law Society op cit p. 38.
18. S. Rowton Simpson, Land Law and Registration (Cambridge University Press 1976) p.446.
19. The Constitution of Kenya 1969 Edition, S.116(1).
20. H.W.O. Okoth-Ogendo in Heyer op cit p. 167.
21. LN 166/1965. Exceptions were Songhor and Nandi Hills administrative areas of Nandi District.
22. Note on the Register at Kapsabet Land Registry.
23. This point is clarified in the list of charged titles from the area under study (Appendix IIIC).
24. The Development Plan 1966/70 (Ministry of Economic Planning and Development, Government Printer, Nairobi, 1966) p. 126 paragraph 8.
25. Ibid p. 126 paragraph 7.
26. M.P.K. Sorrenson Land Reform in the Kikuyu Country (Nairobi Oxford University Press, 1967) p. 230.
27. H.W.O. Okoth-Ogendo in Heyer op city p. 173
28. Development Plan 1970/74 paragraph 8.138 at p. 196.
29. Development Plan 1979/83 paragraph 6.173 at p. 263.
30. Order made under S. 190 of the Agriculture Act (Cap. 318 Laws of Kenya).
31. Ammended so that a prospective member must pay a total of Shs.24/= 20,000 Shillings.

32. J.P.W.B. McAuslan Co-operatives and the Law in East Africa in Carl Costa Widstrand (Ed) Co-operatives and Rural Development in East Africa (The Scandinavian Institute of African studies, Uppsala, Africana Publishing Corporation, New York 1970) p. 111.
- 33a. S.29 of the Co-operative Societies Act (Cap. 490 Laws of Kenya).
- 33b. R.W. James and G.M. Fimbo Customary Land Law of Tanzania (Nairobi, East African Literature Bureau 1973) p. 98.
34. The Co-operative Bank of Kenya Ltd. (a booklet of the Co-operative Bank of Kenya Ltd. printed by Afropress Ltd. Nairobi) Page 6.
35. The By-Laws are stated as at 10th March, 1970.
36. As at 1979 according to page 19 of the Co-operative Bank's booklet already quoted above, the minimum share contributions had changed as follows:-

For Primary Societies:

The contribution is calculated at a rate of 20 Kenya Shillings per individual member. The amount is rounded off to the next hundred Kenya Shillings as the shares are in units of 100/=.

For Co-operative Unions:

Two hundred shares of 100 Kenya Shillings each, worth 20,000 shillings.

For Countrywide Co-operative Organisations:

Two hundred shares of 100 Kenya Shillings each, worth 20,000 Shillings.

37. Mr. Resha, Loans Officer, Co-operative Bank of Kenya Headquarters, Nairobi. Interview on 16/2/1981.
38. S.3(2) of Agricultural Finance Corporation Act (Cap. 323 Laws of Kenya).
39. Development Plan 1970/74 paragraph 8.78 pp. 216-217.
40. Mr. William Njoroge, Head of Small Scale Loans at AFC Headquarters, Nairobi. Interview on 23/2/1981.
41. Ibid.
42. S.82(1) of Registered Land Act (Cap. 300 Laws of Kenya).
43. Mr. Chavda, Assistant Manager, National Bank of Kenya Ltd. Interview at Bank's Headquarters, Nairobi, on 16/2/1981.
44. Mr. Gachucha, Credit Manager, Kenya Commercial Bank Ltd. Interview at Bank's Headquarters, KenCom House, Nairobi, on 16/2/1981.

(f) SIMPSON S.H.;

Land Law and Registration (Cambridge University Press, 1975)

(g) SNELL G.S.;

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(h) SORRENSEN M.V.K.;

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- (a) A Report by a Sub-Committee of the African Affairs Committee reported in Land Titles in Native Land Units (1950) JAA 19

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- (f) SIMPSON S.R.; Land Law and Registration (Cambridge University Press, 1976)
- (g) SNELL G.S; Nandi Customary Law (London MacMillan and Co. Ltd., 1954)
- (h) SORRENSON M.P.K; Land Reform in the Kikuyu Country
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(b) Report of the Kenya Land Commission otherwise known as the Carter Commission 1932 (British Colonial Office 1932)

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(a) The Development Plan 1970/74 (Ministry of Economic Planning and Development, Government Printer 1974)

(b) The Development Plan 1979/83 (Ministry of Economic Planning and Development, Government Printer 1979)

4. STATUTES REFERRED

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(b) Agricultural Finance Corporation Act (Cap.323 Laws of Kenya)

(c) Constitution of Kenya 1969 Edn.

(d) Co-operative Societies Act (Cap.490 Laws of Kenya)

(e) Crown Lands Ordinance, 1902 and 1915

(f) Discharged Soldiers' Settlement Ordinance 1919

(g) Kenya (Native Areas) Order in Council 1939

(h) Land Acquisition Act of India, 1894

(i) Land Adjudication Act (Cap.284 Laws of Kenya)

(j) Land Consolidation Act (Cap.283 Laws of Kenya)

(k) Native Lands Trust Ordinance, 1930 and 1938

(l) Native Passes Ordinance (Cap.138 Laws of the Colony of Kenya)

(m) Outlying Districts Ordinance, 1902

(n) Registered Land Act (Cap.300 Laws of Kenya)

5. LEGAL NOTICES REFERRED

(a) Agriculture (Declaration of Special Crop)(Sugar) Order 1973 (LN 14/1973)

(b) Agriculture (Scheduled Crops)(Sugar Cane) (Prices) Order 1977 and 1981 (LN 73/1977 and LN 81/1981 respectively)

- (c) Agriculture (Sugar Cane Marketing) (Ammendment) Rules 1977 (LN 227/1977)
- (d) Land Adjudication (Application to Nandi District) Order 1965 (LN 166/1965)
- (e) Land Adjudication Regulations 1963 (LN 639/1963)
- (f) Nandi Passes Rules 1943 (Government Notice No. 853/1943)

6. CO-OPERATIVE BY-LAWS REFERRED

- (a) By-Laws of the Co-operative Bank of Kenya Ltd. 1970
- (b) By-Laws of the Chemase Cane Growers Co-operative Society Ltd. 1962
- (c) By-Laws of the Kibisem Cane Co-operative Society Ltd. 1966

7. CASES REFERRED

- (a) Wainaina V. Murito (1923) (9)(2) KLR 102

8. ABBREVIATIONS

- (a) CPCS - Co-operative Production Credit Scheme
- (b) RLA - Registered Land Act
- (c) SBCU - Sugar Belt Co-operative Union

APPENDIX IIIA

SAMPLE OF CPCS LOANS TO CHEMASE CO-OPERATIVE SOCIETY 1977 - 80

NAME OF LOANEE	AMOUNT	BALANCE UPON REPAYMENT (IF ANY)	STATUS OF LOANEE IN CO-OPERATIVE STRUCTURE
1. KUTO TOO	8,400/=	11,150.35	Peasant - Ordinary farmer
2. KIPKORIR NGETICH	12,600/=	14,892.75	Ordinary farmer
3. KIPROTICH TANUI	27,300/=	15,268.30	Treasurer to Society
4. SIMEON LAGAT	4,200/=	5,453.30	Ordinary farmer
5. HARON KOGO	4,200/=	Discharged	Ordinary farmer
6. NDEGE KESIO	12,600/=	Discharged	Ordinary farmer
7. SIMEON SANGA	-	31,576.65	Assistant Chief
8. KIPSANG MOSONIK	4,200/=	7,450.35	Ordinary farmer and transporter
9. B.K. TAI	27,300/=	37,726.40	Large Scale farmer and transporter. His produce not marketed through Co-operative Society.
10. DAVID SAINAH	14,700/=	52,846.00	Assistant Chief and transporter. Produce not marketed through Co-operative Society.
11. CHARLES TANUI	27,300/=	37,726.40	Councillor and transporter. Also a large-scale farmer. Produce not marketed through Co-operative Society.
12. JOSEPH SAMBU	12,600/=	27,779.85	Formerly Manager of SBCU.
13. KEREWA TANUI	21,000/=	29,786.95	Chairman of Society

SOURCE: CREDIT MANAGER
SBCU LTD.

TOTAL CPCS LOANS TO SOCIETY AS AT 30/6/80
=KShs. 1,527,260.00

SOURCE: CREDIT MANAGER
SBCU LTD.

LOAN REPAYMENT AS AT 30/6/80
=KShs. 403,971.95

LOAN REPAYMENT AS AT 30/6/80
= KShs. 119,249.30

A SAMPLE OF LOAN SITUATION AT CHEMASE DURING 1974 - 80

SAMPLE OF CPCS LOANS TO KIBISEM CO-OPERATIVE SOCIETY - 1977/80		AMOUNT OF LOAN	REMARKS
NAME OF LOANEE	AMOUNT	BALANCE UPON REPAYMENT (IF ANY)	STATUS OF LOANEE IN IN CO-OPERATIVE STRUCTURE
1. KIPSONGOL KEMBOI	-	10,322.50	Chairman to Co-operative Society
2. SHEM RUGUT	10,130.00	2,723.25	Ordinary Farmer
3. JOSEPH KOSKEI	52,290.00	64,060.50	Formerly Councillor and Secretary to Co-operative Society.
4. DAVID SAINAH	16,660.00	16,415.70	Assistant Chief and a transporter. His produce never marketted through Society.
5. MICHAEL RUGUT	4,000.00	4,710.50	Society Committee Member
6. GEORGE KEREW A	21,075.00	25,426.10	Formerly Secretary to Society. Now member of the Committee.
7. JULIUS KOGO	58,275.00	73,657.45	A Manager in some Tea Estate. Quite influential in the Society's Management.
8. JOSEAH LETTING	42,790.00	51,491.20	The Society's Treasurer
9. FRANCIS BUSIENEI	16,080.00	20,140.65	Member of Society's Committee.
10. KEREW A TANUI	12,950.00	15,879.15	Member of Society's Committee and Chairman of the neighbouring Chemase Co-operative Society.

SOURCE: CREDIT MANAGER
SBCU LTD.

TOTAL CPCS LOANS TO SOCIETY AS AT
30/6/80

= KShs.1,517,721.20

LOAN REPAYMENT AS AT 30/6/80

= KShs. 119,249.80

APPENDIX IIIC

A SAMPLE OF LOAN SITUATION AT CHEMASE DURING 1974 - 80

NAME OF CHARGOR	SECURITY	IF LAND, ACREAGE	CHARGE	AMOUNT OF LOAN	REMARKS
1. CHARLES TANUI	LAND TITLE NANDI/ CHEMASE/627	7.28 ha	NATIONAL BANK LTD. KISUMU	140,000.00	Charge not fully discharged
"	LAND TITLE NANDI/ CHEMASE/615	8.30 ha	"	8,000.00	
"	LAND TITLE NANDI/ CHEMASE/663	1.2 acres	"	48,000.00	
"	LAND TITLE NANDI/ CHEMASE/472	19.5 ha	"	50,000.00	
2. D.K. SAINAH	NANDI/CHEMASE/719	1.6 ha	NATIONAL BANK LTD. KISUMU	22,000.00	Charges not fully discharged
"	NANDI/CHEMASE/669	2.5 acres	"	90,000.00	
"	NANDI/CHEMASE/549	4.5 acres	AFC	6,000.00	
3. S.K. TUWEI	NANDI/CHEMASE/697	2.88 ha	NATIONAL BANK LTD. KISUMU	60,000.00	Not fully discharged
4. KIPKOSKEI TIONY	NANDI/CHEMASE/665	5.0 acres	NATIONAL BANK LTD. KISUMU	25,000.00	Not fully discharged
5. KIPSANG MOSONIK	NANDI/CHEMASE/645	4.8 ha	NATIONAL BANK LTD. KISUMU	80,000.00	Not fully discharged

...../CONTINUED NEXT PAGE

APPENDIX IIIC

A SAMPLE OF LOAN SITUATION AT CHEMASE DURING 1974 - 80

NAME OF CHARGOR	SECURITY	IF LAND, ACREAGE	CHARGEES	AMOUNT OF LOAN	REMARKS
6. KIPKETER TAI	LAND TITLE NANDI/ CHEMASE/639	12.1 ha	KENYA COMMERCIAL BANK KISUMU	100,000.00	Charges not fully dis- charged
"	NANDI/CHEMASE/451	2.63 ha	"	20,000.00	
"	NANDI/CHEMASE/452	10.0 acres	"	140,000.00	
7. KERAWA TANUI	NANDI/CHEMASE/546	0.97 ha	AFC	7,500.00	Charges not fully dis- charged
"	NANDI/CHEMASE/516	48 acres	NATIONAL BANK LTD. KISUMU	145,000.00	
8. SAWE ARAP NGENY	NANDI/CHEMASE/632	14.5 ha	AFC	52,000.00	Charge discharged
9. TABARNO KIRWA	NANDI/CHEMASE/574	4.7 ha	AFC	6,000.00	Charge discharged
10. CHERUIYOT MUGE	NANDI/CHEMASE/514	9.71 ha	AFC	4,200.00	Charge discharged

THE CO-OPERATIVE BANK OF KENYA LIMITED

LOAN AGREEMENT

THIS AGREEMENT is made the 11th day of March

One Thousand Nine Hundred and seventy three BETWEEN THE CO-OPERATIVE BANK

OF KENYA LIMITED a body corporate duly incorporated under the Co-operative Societies Act (Chapter 490 Laws of Kenya) having its registered office at Nairobi in the Republic of Kenya (hereinafter called "the Bank" which expression shall where the context so admits include its successors and assigns) of the one part and Sugar Belt Co-operative Bank Ltd

LIMITED

a body corporate duly incorporated under the said Act and having its registered office at Chumali in the said republic of Kenya (hereinafter called "the Borrower" which expression shall where the context so admits include its successors and assigns) of the other part

WITNESSETH as follows:-

1. The Bank has at the request of the Borrower agreed to advance to the Borrower by way of loan the sum of Kenya Shillings Four million nine hundred and thirty six thousand seven hundred and eighty three (K.Shs: A, 4,936,783) (hereinafter called "the Loan ") and such loan shall be made available to the Borrower on completion to the satisfaction of the Bank of all the legal formalities appertaining to security for repayment as hereinafter described.

2. The loan shall be expended for the following purposes:-

C. P. C. S

3. The Borrower shall pay interest on the amount of the Loan from time to time outstanding at such rate or rates as the Bank shall in its sole discretion from time to time decide subject to a minimum of 8% per cent per annum and a maximum of _____ per cent per annum and such interest shall start to accrue on the first draw on the loan.

4. The loan and interest shall be payable by the Borrower to the Bank on demand but without prejudice to the aforesaid the Borrower may repay the loan

the first such instalment to become due and payable on the

day of

One

Thousand Nine Hundred and

and subsequent instalments

to be made on

until repayment in full and may pay interest every month / quarter provided

the first payment shall be made on

5. The security for the repayment of the loan plus interest shall

consist of:

Hypothecation of Stocks

6. The Bank shall have the right at all times, to stop payment of any amount of the Loan remaining undrawn and to demand payment of any amount of the Loan already paid to the Borrower if it shall come to its notice that the Loan is being expended for purposes other than those set out in this Agreement.

IN WITNESS whereof the parties hereto have hereunto through their respective representatives set their hands the day and year first herein written.

SIGNED by

for and on behalf of the Bank

in the presence of:

} *Chairman*
} *Secretary*

SIGNED by

} *[Signature]*