

**THE HUMAN RIGHT TO LAND IN ZIMBABWE: The Legal and Extra-legal
Resettlement Processes**

**Submitted in Partial Fulfillment for the Requirements of the Degree of LLM:
Human rights and Democratisation in Africa**

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DECLARATION

I, **Manfred Garikai Chinamasa** hereby declare that this dissertation is my own academic presentation. It has never been submitted to this or any other university for the award of a degree.

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DEDICATION

This dissertation is dedicated to my family, especially my father and mother who have tirelessly sacrificed so much of their lives to give the family a respectable education.

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ABBREVIATIONS

ZANU-PF	Zimbabwe African National Union (Patriotic Front)
ZAPU-PF	Zimbabwe African Peoples' Union (Patriotic Front)
LAA (1985)	Land Acquisition Act (1985)
LAA (1992)	Land Acquisition Act (1992)
WLSA	Women and Law in Southern Africa
USAID	United States Agency for International Development
DRC	Democratic Republic of Congo
TSU	Technical Support Unit
LRRP II	Land Reform and Resettlement Programme Phase II
BSAC	British South Africa Company
NRs	Native Reserves
LAA (1931)	Land Apportionment Act (1931)
TTLs	Tribal Trust Lands
NPAs	Native Purchase Areas
NRA	Natural resources Act
NLHA	Native Land Husbandry Act
RF	Rhodesian front
LTA (No.55)	Land Tenure Act (No.55)
TTLA	Tribal Trust Land Act
TLAs	Tribal Law Authorities
Cas	Communal areas
RSF	Rhodesian Security Forces
BSAP	British South Africa Police
LSCF	Large Scale Commercial Farmers

LHA (1979)	Lancaster House Agreement
AFC	Agricultural Finance Corporation
CFU	Commercial Farmers Union
ZIPRA	Zimbabwe African Peoples' Revolutionary Army
ZANLA	Zimbabwe African Peoples' Liberation Army
ZNA	Zimbabwe National Army
ZWVA	Zimbabwe War Veterans Association
MDC	Movement for democratic Change
GDP	Gross Domestic Product
SADC	Southern African development Community
UN	United Nations
OAU	Organization of African Unity
UDHR	Universal declaration of Human Rights
CERD	International convention on the elimination of All Forms of Racial Discrimination
ILO	International Labour Organization
ACHPR	African Charter on Human and Peoples' Rights
CEDAW	Convention on the Elimination of All Forms of discrimination Against Women

LEGISLATION

The Order-in-Council of 1899

Land Apportionment Act of 1931

Natural Resources Act of 1942

Government Notice No.612 of 29/11/1944

Native Land Husbandry Act of 1951

The Tribal Trust Land Act of 1965

The Land Tenure Act (No.55) of 1969

The Zimbabwe Constitution Order of 1979 (S.1 1979/1600 of the United Kingdom)

The Lancaster House Agreement of 1979

The Land Acquisition Act of 1985

The Land Acquisition Act of 1992

The War Veterans Act of 1992

The War Victims compensation Act of 1993

The Constitution of Zimbabwe Act of 1996

CHAPTER ONE

INTRODUCTION

BACKGROUND TO THE RESEARCH PROBLEM

Land tenure relations have continued to be a highly contested economic, social and political issue in Zimbabwe since the early 1800s. Land remains a potent tool of political manipulation. It has been used at strategic intervals by the leadership both during and after colonization. The political leadership successfully manipulates the issue to raise the emotions of the landless because, as in many African countries, land underpins the whole notion of human dignity itself – land being the basic economic resource. For a country such as Zimbabwe, which does not depend on technology but on land for survival, the continuation of human society itself depends on access to land. Without land, human rights are not possible to enjoy and so is dignity itself.

Many factors have led to the prevailing land crisis in Zimbabwe. Chief among these is the colonial legacy of an unequal land distribution policy that saw black people being forcibly and often violently moved off their ancestral lands.¹ The traditional concept of land tenure, whereby land is owned by the whole community and administered by the community chief was being destroyed. For many indigenous black Zimbabweans this meant loss of their most sacred possession – land; it meant a loss of their livelihoods. The termination of the willing-seller/willing-buyer provision in the Lancaster House Agreement (LHA) of 1979,² increased pressure and environmental degradation in the communal areas, and increased poverty amongst the black indigenous population. Many of the impoverished black people are demobilized war veterans who have failed in various agrarian business ventures, and ordinary black people who were victims of the introduction of the Economic Structural Adjustment Programme (ESAP) in 1990. Although initially harsh medicine, ESAP was meant to ultimately benefit the economy and lead to increased International Monetary Fund (IMF) and World Bank assistance, however, its implementation clashed with the drought of 1990 to 1993. This resulted in increased unemployment, inflation and high prices,³ aggravating rural problems and increased black impoverishment. These needs for equitable land redistribution in Zimbabwe have also

¹<<http://www.news.bbc.co.uk/hi/English/world/Africa/newsid>>. [Accessed 30-07-01]

² The Agreement was concluded in 1979 in Britain and ended the ‘Chimurenga’ war setting the conditions for the 1980 first democratic black majority government of Robert Mugabe. Present at the signing of the Agreement were leaders of the African Nationalist parties, Robert Mugabe (ZANU-PF), Joshua Nkomo (PF-ZAPU), Prime Minister of the then Zimbabwe-Rhodesia Bishop Abel Muzorewa and representatives of the white minority population.

³ Chitiyo TK ‘Land violence and compensation,’ @ <http://www.ccrweb.ccr.uct.ac.za/two/9_1/zimbabwe.html>. [Accessed 20-08-2001].

armed the incumbent government with a formidable tool to try and recapture lost political appeal in the face of a powerful opposition, making the land issue of paramount importance in Zimbabwe.

Government manipulation of the land issues however, should not in any way be used to invalidate an otherwise genuine land programme intended and built to benefit the people at large. The land question was a major cause of the first (1896 – 1897) and second (1966 – 1979) ‘Chimurenga’ wars, which led to Zimbabwe’s independence in 1980.⁴ But still little has changed in terms of the distribution of land in the past twenty-one years.

Immediately after independence, the government embarked on an ambitious programme to resettle 162000 landless families. The intention was to acquire about 3 million hectares for that purpose. Land acquisition reached a high point in the first few years of independence when about 430 ha of land was acquired per family annually. Land acquisition slowed down considerably in the next ten years when only about 74 ha were acquired per family per year. Thereafter, the acquisition improved to about double that figure during the period 1992-1995. Apparently this was attributable to the Land Acquisition Act (LAA) of 1992.⁵ The resettlement programme was meant to reduce civil conflict by transferring land from whites to blacks; provide opportunities for war victims and the landless; relieve population pressure in the communal areas; expand production and raise welfare nation-wide without impacting land productivity and aggregate agricultural production.⁶

The Lancaster House drawn Constitution presented major constraints to land redistribution in the ten years after independence. The document provided that land was to be acquired on a willing seller/ willing buyer basis in terms of ‘Article 16’⁷ of the Agreement, thereby guaranteeing the rights and interests of the white people for ten years. Despite its Marxist orientation, the new government was keen to assuage the worries of international and local investors,⁸ who were worried that should the white owned large-scale commercial farms be taken and subdivided for redistribution it would lead to the unproductive use of the land and negatively affect the agro-based economy. The government also wanted to retain the expertise of its white population.

⁴ As above.

⁵ Masiwa M (2000) 3.

⁶ Masiwa M (n 5 above) 4

⁷ Article 16 of the Lancaster House Agreement stated, ‘No property of any description or interest or right therein shall be compulsorily acquired...’.

⁸ Spierenburg (1988).

Millions of indigenous black Zimbabweans felt that the struggle for their human right to access to land, equality and hence dignity was again not forthcoming. They felt doomed to perennial guarantee of poverty, and this posed an incipient threat to black and white relations. They viewed this as against the very essence of what they had been fighting for-the racially motivated mal-administration of land. This problem was and had been at the very center of all of Zimbabwe's political discontent and threatened the new democracy's political and socio-economic stability.

In 1985 the Land Acquisition Act was promulgated. The Act provided that all land for sale was to be offered to the government first. Simultaneously, all land that was either under-utilized or derelict would be identified for possible involuntary appropriation. These measures were meant to speed up the acquisition of land for possible redistribution. The Act came into force in 1990. At this stage, the Lancaster House Agreement no longer bound the government. The Act empowered it to designate land for redistribution to the indigenous landless black people. This piece of legislation presented legal problems. Jurisprudentially (utility and purpose), it can be said without compunction that in as far as the Act sought to redress the imbalances and injustices perpetrated on the majority black people of Zimbabwe for over a century, the Act serves a purpose and guarantees a return of the most fundamental singular aspect of human survival. It is reasonable to argue that the right of access to land (which means for the landless their survival and preservation) is an equitable right and indeed a human right. In this respect it is important for society to protect this right and by doing so change the status quo on moral grounds. This would eliminate the perpetuation to poverty and inequality of a majority of the population who live on marginalized land, while a minority live in affluence with extensive access to resources.⁹

The task of balancing competing rights where the right of access to land is involved has proved a difficult exercise the world over. It is legally problematic to secure or defend the right to land. The question arises as to whether the exercise is aimed at dispossessing the minority for the benefit of the majority thus allowing the interests of the majority to trample over the rights and interests of the minority with impunity?¹⁰ Clearly, this would not be justifiable in a civilized society that respects the rule of law, justice and human rights. In Zimbabwe the issue is further complicated by the fact that the government showed lack of political will and did little soon after independence to redistribute land. Only after its political fortunes were declining did the government seize upon the unequal tenure relations, leaving critics to question the motives behind the whole process.

⁹ *Maposa I* (1995) 49.

¹⁰ As above.

It is submitted here that, though it is imperative that concerted efforts be made to change the land tenure imbalances and evils of the past in Zimbabwe, it is equally of prime importance that it is done within legal redistribution processes that uphold the rights and dignity of all parties involved regardless of their skin colour, race, creed or political affiliation.

Other questions that arise are whether it is right for the government to meddle in matters essentially viewed as being within the category of private law such as property rights? Women and Law in Southern Africa (WLSA)¹¹ submit that the process of reconceptualization of rights is an integral part of human development and will continue as long as humanity exists. WLSA further do submit that ‘the term “rights” in the context of the law has a multiplicity of meanings...at a day to day level, within “local jurisprudence”...it involves the juxtaposition of different interests and the attendant strategies that arise in utilizing and accessing resources through the medium of the law. Increasingly, the access to fundamental resources for the proper sustenance of human life is being reconceptualized as transcending the technical domestic legal debate of particular disciplines within the law, such as property law, contract, labour law, family law, succession law, etc and moving into the realm of the more generalized enabling framework of a rights agenda.’¹²

WLSA point out that there is a realization that ‘civil legal remedies, horizontally claimable rights, that may have been the legal expression of a laissez-faire approach to economic and property rights are not suitable vehicles for the delivery of rights of access and rights to enjoyment of resources for the bulk of humanity.’ WLSA further states that ‘the hypothesis is that there is an increasing trend to treat previously private rights, such as rights to use and enjoy immovable property as ones that have to be considered within a broader spectrum of rights of access, use and enjoyment for the population at large. There are increasing encroachments taking place into the previously private realms to bring them into the public or quasi-public realms and subject to changing norms of control and access. Thus horizontal rights exercised between individuals are being perceived as rights that have to be addressed as vertical rights requiring state intervention.’¹³

¹¹ Stewart JE *et al* (2000) 6.

¹² Stewart JE (n 11 above) 7.

¹³ As above.

Mr. Swire Thompson,¹⁴ quoted in Maposa, points out that any government must have the ability to acquire land in the national interest. This is worldwide. Mr. Baisley,¹⁵ also quoted by Maposa, submits that the government will always need the power to acquire land in certain cases and he states that he does not believe anyone could dispute that, but the power must be used in a transparent manner to retain credibility.

Therefore, intervention in land relations by the government in Zimbabwe must be viewed as aimed at finding ways and means by which to correct the existing land tenure relations and exclusions that have characterized land relations in Zimbabwe since colonization by the British settlers. It is a restoration of a human right in accordance with international law.¹⁶ This intervention is imperative specifically because where market value is established there are issues of the financial incapacity of the majority landless black Zimbabweans to afford the cost of purchase and exchange. Hence equitable access to land for all Zimbabweans must be regarded as a key concern at state level. The state's right to acquire land is derived from the principle of 'eminent domain', i.e. the right to designate and acquire land in the national interest.¹⁷

In 1998, a donors' conference was held in Harare. The government presented a draft policy entitled "Land Reform and Resettlement Programme Phase II" (LRRP).¹⁸ At the end of this conference some of the donors pledged to assist the Government of Zimbabwe in its quest to implement the land reform programme. But some of them, namely, the United States Agency for International Development (USAID), Norway, Sweden and the Netherlands governments, opted to link Zimbabwe's land crisis to its macro-economic policies including its involvement in the Democratic Republic of Congo (DRC) war, the parliamentary pre and post electoral disturbances earlier that year and the ZANU-PF leadership. They then decided to withdraw their support for the Technical Support Unit (TSU) in the Office of the President and Cabinet.¹⁹ This created a problem for the government where it saw itself increasingly under pressure from the landless black people to transform the policy announcements into actual implementation lest the landless lost faith in it. The landless were becoming more and more restless and impatient after having waited for almost twenty years for an equitable land tenure system. They regarded the position taken by the donors as racist and not sensitive to their landlessness and increasing poverty.

¹⁴ Former Chairperson of the Commercial Farmers' Union (CFU) 112.

¹⁵ Branch chairperson, Mashonaland East, CFU 113.

¹⁶ Article 16(3) Convention (No.169) concerning Indigenous and Tribal Peoples in Independent countries.

¹⁷ Maposa I (n 9 above) 76-77, 113, 116.

¹⁸ Spierenburg (n 8 above) 9.

¹⁹ <<http://www.zanupfpub.co.zw/resettlement/html>>. [Accessed on 11-07-2001].

The second phase of the LRPR was launched in 1999. The same year, the Constitutional Commission was formed to gather views on the draft constitution. In February 2000 a constitutional referendum was held and the national majority rejected the draft constitution.²⁰ In legal terms, attempts by the government to bring section 57 into the current constitution with a view to allow the state to acquire land without paying compensation was a departure from international practice that seeks to recognize freedom of ownership of property and the protection of rights thereto. Such an amendment was viewed by the majority of Zimbabweans who rejected the Draft Constitution as serious inroads into the rights of other citizens and a violation of certain Zimbabwe's constitutional provisions.²¹ The rejection of the draft constitution was immediately followed by violent land invasions by 'war veterans' who viewed the rejection of the Draft Constitution as the work of the white people and the British government aimed at maintaining the racial land imbalances. In April 2000, the constitution was amended to make it possible for the government to acquire commercial farms without an obligation to pay for the soil. Farm owners would only be compensated for farm improvements. This amendment meant a violation of many of the rights of the farmers, chief among them, violation of their constitutionally guaranteed right to property and equal protection of the law. These rights are also to be found in all major international human rights instruments.

Meanwhile the international community continued with efforts to engage the Zimbabwean government in an attempt to reach a transparent, just and sustainable solution to the land crisis within the ambit of the rule of law, respect for human rights and democracy. This led to the Commonwealth meeting in Abuja, Nigeria aimed at ending 'all illegal occupations of white-owned farmland and return the country to the rule of law, in return for financial assistance.'²²

STATEMENT OF THE RESEARCH PROBLEM

In Zimbabwe, state-recognition of the right to land as a defensible human right, paradoxically characterized by resettlement processes that are widely seen as ad-hoc, irrational and outside of the rule of law,²³ seems to be spurred by deep-rooted factors other than the apparent inequitable land relations in which the majority black indigenous people have remained disenfranchised well after independence.

²⁰ n 4 above.

²¹ Section 11 (Fundamental rights and freedoms of the individual); s12 (Protection of the right to life); s13 (Protection of the right to personal liberty); s14 (Protection from slavery and forced labour); s15 (Protection from inhuman treatment), and s18 (Provisions to secure protection of law).

²² <http://news.bbc.co.uk/1/hi/english/world/africa/newsid_1530000_1530132.stm>. [Accessed 07/09/01].

²³ Rule of Law: action by everyone and state within the confines of established rules that have a status of law. Opposed to a state of anarchy with no certain system or grand norm governing actions of the people and state.

RESEARCH QUESTIONS

If the nature of disenfranchisement in land tenure relations in Zimbabwe is such as should be construed as a deprivation of a human right warranting state intervention to correct the imbalances and enable the deprived masses to resume their human right to land,

- a) What are the political and socio-economic factors that held back the post-colonial state from effecting legal and extra-legal measures for the resumption of the indigenous peoples' right to land?
- b) What then are the compelling political and socio-economic factors that have led the post-colonial state in Zimbabwe to champion and indulge in land resettlement processes at the time when it did (1997)?
- c) What are the legal and extra-legal mechanisms the state in Zimbabwe has adopted in the resettlement processes?
- d) What are the limitations of the resettlement processes that render/would render the processes ineffectual?
- e) What are the factors that have influenced the resettlement processes to take the nature they have taken?
- f) What are the exhibited and the potential impacts of the resettlement processes in place?
- g) What are the viable legal and extra-legal policy options that should be adopted to enable the disfranchised indigenous masses to resume their human right to land?

RESEARCH HYPOTHESES

- a) Claims to political power and its consolidation coexist with claims to landed property rights and their concentration among a minority social group in state power;
- b) The limited bases of the political power structures in civil society compel the state to align with and enable preferred sections of the population to gain easy access to land ownership rights as a political reward to state functionaries by which political loyalties are secured among social groups for the consolidation of state power and its perpetuation;
- c) The historical and recurrent social and political events in a socio-economic formation are causally linkable with the nature and timing of state action, or the choices and form of the instruments for its intervention in land tenure relations.

OVERALL OBJECTIVES

The overall objective of this study is to illustrate that the inequitable land tenure relations in Zimbabwe are both a function of the colonial and post-colonial state, and that the state resettlement interventions, while justifiable, fall below international human rights standards.

SPECIFIC OBJECTIVES

- a) To explore the political, and socio-economic factors that prevented the post-colonial state in Zimbabwe in the period 1980-1997 from effecting legal and extra-legal measures to restore the indigenous black people's human right to land;
- b) To explore and examine the compelling political and socio-economic factors that have led the post-colonial state in Zimbabwe to champion and indulge in land resettlement processes at the time when it did (1997);
- c) To describe and examine the legal and extra-legal measures the state in Zimbabwe has adopted in its bid to effect resettlement processes;
- d) To examine and analyze the limitations of the resettlement processes;
- e) To examine the demonstrated, and determine the potential effects of the resettlement processes in place;
- f) To establish other viable legal and extra-legal policy options that the state in Zimbabwe should adopt to enable the landless majority indigenous black people to resume their enjoyment of the human right to land.

SIGNIFICANCE

The significance of this study lies in its attempt to analyze the political and socio-economic factors that have both earlier stopped the post-colonial state in Zimbabwe from, and recently (1997) forced it to enter into the normally private law sphere of land tenure relations. The study demystifies the otherwise mystified imperatives for state intervention in the tenure relations, and also illustrates the foundational forces accounting for the apparently irregular intervention processes. It is ultimately significant in that it attempts

to give a broad framework of recommendations by which the state in Zimbabwe can invoke viable legal and extra-legal mechanisms devoid of negative consequences to carry out the land resettlement processes.

LITERATURE REVIEW

Given that the subject deals with a current and ongoing land resettlement crisis, the literature review essentially relates to work that addresses the historical, social and political events that have affected the entrenchment of the inequitable land tenure relations in Zimbabwe.

Contemporary literature on the ongoing crisis has been gleaned from news reports and commentaries and Internet web sites relevant and limited to the resettlement processes in Zimbabwe and their political and socio-economic effects. Other relevant literature on land tenure relations in Zimbabwe only contributes to an understanding of the roots of the colonially created inequitable land crisis. As will be seen below, many of these writers have attempted to shed light on the land tenure imbalances but, apart from Maposa and Hansungule, have not gone as far as highlighting the land tenure imbalances as a deprivation of the indigenous black people's right to land as provided for under international human rights instruments.

Isaac Maposa (1995)²⁴ gives a thorough knowledge of the background to the land crisis in Zimbabwe. He starts by tracing Zimbabwe's land resource base including a brief outline of the historical development on land from 1894 to 1994. He thoroughly analyzes the Land Acquisition Act as to whether it is a just law and the constitutional development on the land question from 1980. The discussion of the LAA is of particular significance to the study as it offers a background to the discussion of adhering to human rights standards in dealing with the land question in Zimbabwe. However Maposa does not focus on the racially skewed land tenure relations as a deprivation of the human right to land of the majority black Zimbabweans.

Masiwa (1998) like Maposa in his discussion gives an overview of the land problem, the problems faced and gives an insight into the views of various stakeholders, war veterans, commercial farmers, Zimbabwe Farmers Union and civil society ending with a way forward. His discussion however, does not delve into the majority black people's human right to land which this study intends to focus on.

Spierenburg's article (2000) similarly provides a historical background to the land problem, the constraints caused by the Lancaster House Agreement and Post-Independence Land Policies in the Communal Areas

²⁴ n 9 above.

and the Introduction of a New Local Government Structure. However, the article does not address the issue of inequitable land distribution as a denial of the majority black Zimbabweans' right to land.

Joseph Mtakwese Made (1995) describes the Land Acquisition Act of 1992' as an instrument aimed at correcting, "many of the problems which have thwarted land redistribution in Zimbabwe".²⁵ Made traces the history of agrarian land reform and distribution, the future of land reform, the need for financial resources and the appropriateness of planned resettlement models and the importance of land in order to boost the livelihood of the peasant majority through increased agricultural production. In relation to the above other studies Made's article adds a new dimension relating the livelihood of the peasantry to land. Although that is the point of this study, that is, to bring out the fact that without land the peasantry in Zimbabwe cannot enjoy human rights like dignity and equality, Made falls short of stating the timing of the state's recognition of the right to land as a human right provided for under international law, and the nature of its resettlement processes.

Hansungule M's article²⁶ (2000) is the closest contribution that touches on some of the most important issues that this study aims to address. It discusses the nature of the land problem in Zimbabwe and examines the international human rights instruments that are significant in addressing the current land crisis. However, the article briefly touches on the fact of the state's timing of its recognition of the right to land as a human right, and the nature of its resettlement processes and differs from the focus of this study which will address the legal and extra-legal resettlement processes that have cemented inequitable land tenure relations in Zimbabwe, their political and socio-economic effects and explore viable policy options.

Kigula J (2000) in his concept paper on the state and land relations brings out an important aspect of the role of the state as a 'welfare maximizer'. He further discusses and points out the nature of state intervention in land relations, which Kigula sees as '*pervasive, inefficient and irrational*';²⁷ this is of vital significance when focusing on human rights as a way of dealing with the land crisis in Zimbabwe. The article further clarifies the duty of the state as regards its citizens and at the same time, the article clearly brings out the manner in which land is used by those in power as a political tool to '*appease, co-opt and enfranchise*'²⁸ those considered to be loyal supporters. This article is of great importance in showing the need for seeking a lasting solution to the land question in Zimbabwe.

²⁵ Made JM (2000) 191.

²⁶ Hansungule M (2000) (Unpublished).

²⁷ Kigula J (2000) 2.

²⁸ Kigula J (n 28 above) 3.

Chitiyo TK (2000)'s article in which he explores the legal history of land dispossession gives a thorough chronological examination of the events leading to the present day land crisis in Zimbabwe. However, Chitiyo's contribution falls short in relating this history of the systematic deprivation of land of the indigenous black people of Zimbabwe as a violation of their fundamental human right to land.

THEORETICAL FRAMEWORK

A social majority disfranchised in land relations collectively defines the right to land as a human right, and is spurred to self-determination to demand and realize the right at a time of state political insecurity and crises, to exploit the insecurity and crises in its favour. On the other hand political power insecurity and crises, coupled with the popular social demands for resumption of the human right to land, lead to the ideological state-recognition of the right to land as a human right. At the same time the nature and time of the political power insecurity and crises have an influence on the nature and timing of state indulgence in championing the cause for the human right to land.

RESEARCH METHODOLOGY

As this is intended to be a legal, human rights and political and socio-economic study of the land tenure relations in Zimbabwe, we have used the legal research methods that is, legislation/ constitutional inquiry. Library research has been made and secondary materials have been read and referred to. Given the nature of the subject, we have extensively used information from the Internet concerning the ongoing land crisis in Zimbabwe. The analysis is essentially qualitative. Consequently, the basis of the study will center on: statutory/constitutional inquiry, examination of reports on land and relevant issues, historical sources with bearings on land tenure in Zimbabwe and examination of the likely exhibited/ demonstrated political and socio-economic effects of the land resettlement processes.

LIMITS TO THE STUDY

This work has been written away from Zimbabwe and I have relied on secondary information and the Internet, therefore, no physical interviews were conducted. This notwithstanding my own personal experience of the events in Zimbabwe makes up for the shortcoming.

SCOPE

This dissertation will explore the socio-economic and political factors that have prevented the resumption of the human right to land by black Zimbabweans both during the colonial white minority rule and in independent Zimbabwe. It will also point out the international human rights instruments that justify government intervention in land tenure relations in Zimbabwe and conclude with recommendations.

CHAPTERISATION

Chapter one is the introduction. It outlines the background of the research problem, the problem itself, research questions, hypotheses, objectives and purpose of the research. It also outlines the theoretical framework, significance and the methodology. Chapter two is about the colonial land tenure relations in Zimbabwe. It discusses the foundations of the inequitable land tenure relations in Zimbabwe, together with the legal and extra-legal responses thereto during the colonial period.

Chapter three is about legal responses in post-colonial Zimbabwe to land tenure imbalances. It examines legal responses Zimbabwe embarked upon after independence in 1980, the Lancaster Agreement and its Article 16 and the Land Acquisition Act from 1985-1992. Chapter four deals with the extra-legal resettlement processes in Zimbabwe and focuses on the non-legal resettlement processes including the squatter/war veterans' phenomenon. Chapter five looks at the available international human rights instruments relevant to Zimbabwe's resettlement processes. Chapter six sums up the key issues and illustrations raised in the research in relation to the objectives and hypotheses. It also offers recommendations towards viable policy options available to Zimbabwe.

CHAPTER TWO

THE COLONIAL LAND TENURE RELATIONS IN ZIMBABWE

The colonial and post-colonial land tenure relations in Zimbabwe can be looked at in the context of a sustained and continuous deprivation of the majority indigenous black people's right to land. The colonial policies of land dispossession have continued to de-bar black people from resuming their human right to land in Zimbabwe. The post-colonial state's legal and extra-legal efforts to effect land redistribution have failed, due to a number of reasons, to address the problem of land alienation of the millions of the indigenous black population. The settler white farmers have tenaciously defended their private property rights thereby foiling government efforts to redistribute land to the landless indigenous black population.

Against this background, this chapter will discuss the foundations of the inequitable land tenure relations, the state form's legal and extra-legal responses to this scenario during the colonial period, coupled with the era of white minority rule in Zimbabwe. It is also submitted that the minority white leadership in post independent Zimbabwe dependent on, and was limited by, the white commercial farmers for a political base and legitimacy. This prompted them to align themselves with and enable the white farmers to gain easy access and land ownership rights as a political reward and to maintain their political loyalty. Hence the current recurrent land crises in Zimbabwe are causally linked with the nature and timing of government action.

2.1 Foundations of the Inequitable Land Tenure Relations

The history of white settler colonization of Zimbabwe began with the coming the British and Boers in 1890. The indigenous black population at the time was predominantly Ndebeles and Shonas.²⁹ The new arrivals were looking for minerals and sought to take complete control and the ownership of the country's land. However, after discovering that the country did not possess as much mineral wealth as its South African neighbor, they quickly decided use the country's vast productive soils for agricultural purposes.

The settlers then embarked developing the country's agricultural potential. They began with forcible seizure of the most productive land from the indigenous people and shared it amongst themselves giving some to the settler state.

²⁹ Chitiyo T.K (n 3 above) 2.

By 1893 the BSAC was already settling pioneers on 1 284 hectares “farms”. The pioneer farmers were followed by the BSAC (police), then the civilians, who were given grants of 2 500 hectares under the Victorian Agreement.³⁰ Fraudulent treaties were signed which constituted the formal annexation of Zimbabwe to Britain, with Mzilikhazi and his son Lobengula.³¹

The manner in which these treaties were signed can be considered extra-judicial in that the white settler led by Cecil John Rhodes and his BSAC³² took advantage of the illiteracy of the African King and made him enter into agreements that he could not comprehend. It was the beginning of the violation of the principles of natural justice. Through such extra-judicial means, vast tracts of valuable land were signed over to the white settlers and their company.

Where the white settlers met with resistance or could not ‘freely’ or through agreement obtain concessions, with the traditional Kings and chiefs, they resorted to the use of force. This led to two brutal wars in which the Matebele and on another occasion the Shona rebelled against the white invaders (1896 – 1897), but both rebellions were crushed within 18 months. The Matebele and the Shona uprisings of this time were the first peoples’ struggles towards self-determination³³ and to re-assert their human right to their land. The white settlers thereafter created a colonial state. In the process, they institutionalized the land problem.³⁴

Increasingly, the white settlers embarked on racially biased state-imposed land allocation and/or utilization policies, which were one other source of conflict. In 1898, the BSAC officially sanctioned the use of force in establishing a racial solution to land tenure through the 1899 Order in Council. The Order directed that ‘natives’ be assigned ‘...land sufficient for their occupation...’ This meant the start of the colonial policy of forcibly resettling the defeated indigenous populations in the native reserves. By 1905, under this new land allocation policy, there were about 60 Native Reserves (NRs), occupying about 22% of the country. Nearly half of the indigenous black population of 700 000 now lived in reserves. They had by then lost

³⁰ n 25 above.

³¹ Mzilikazi was the King of the Matebele people, who were an offshoot of the Shaka Zulu kingdom in South Africa. They crossed into Zimbabwe during the time of the *Mfecane* (a time of killing) of Shaka. After conquering the Shona people the Matebele made them their subjects and exercised sovereignty over them and the lands they (the shona) inhabited forcing their chiefs to pay tribute. This is how the land treaties came to be concluded between the Matebele King and the white settlers.

³² Cecil John Rhodes was a British millionaire who had made his fortune mining gold and diamonds in South Africa. He led the way towards the colonization of Zimbabwe and Zambia to the north of Zimbabwe through his British South Africa Company (BSAC).

³³ Hansungule M (n 27 above) 308.

³⁴ Chitiyo (n 3 above) 3.

approximately 16 million hectares to the white settlers. By 1920, the native reserves constituted an area of 8,7 million hectares, while the number of white settler farms (Company/freehold) reached 2 500, encompassing an acreage of approximately 15 million hectares.³⁵

The dispossessed indigenous black populations were settled on marginalized unproductive drought prone agro-climatic zones of the country. The settler government directed huge resources, that is, inputs, education, extension and markets towards white settler farmers.³⁶ This also heralded the beginning of segregation and inequality as land management became governed by ‘a dual property regime’.³⁷ The LAA of 1931 partitioned Zimbabwe into separate white settler areas and separate indigenous black people areas called Tribal Trust Lands (TTLs). It was this piece of legislation that entrenched and institutionalized land alienation, as we know it today. Land in the white areas was held under private property tenure. Land in the tribal trust lands was held under customary or communal forms of tenure. Effectively however, the state still had ownership of the land in TTLs. They introduced a ‘decentralized’ and institutionalized system of local authorities from chiefs to headmen to kraal heads who were to manage the land on behalf of the population in the TTLs.³⁸

2.1.1 Dual Legal System in Land Tenure Relations

The underlying principles, concepts and techniques of the colonial legal systems differ in fundamental respects from the indigenous systems that they displaced and colonized. The British colonial authorities assumed full rights of jurisdiction over all land in every dependency as far as land matters were concerned. The received law subordinated all existing customary land laws and so all existing rights in land were at the mercy of the incoming power. Full ownership of all the land, in the European sense, vested in the Crown which then proceeded to make grants (freehold and leasehold) to settlers and companies, and to ‘reserve’ areas not seen as prime land for occupation by the indigenous people, under a reconstructed and subordinated version of customary law.³⁹

³⁵ As above.

³⁶ Masiwa I (n 5 above) 3.

³⁷ Spierenburg (n 8 above) 3.

³⁸ Maposa I (n 9 above) 16.

³⁹ Walker C (2001) 11.

2.1.1.1 Private Land Tenure

Private land tenure involved the conversion of the customary rights to access into private individual tenure, which meant the conferring of exclusive property rights over a certain portion of land to individual white settler farmers and certain corporate bodies. These farmers and corporate bodies would then impose on that land, the English tenure system of land management. This resulted in the importation of the entire British law on land and land tenure relations.

In Zimbabwe, the English system of land relations was forced on that land which had been designated European land meaning such land would become subject to the practice of English law. Accordingly, 90% of the land in Zimbabwe became out of bounds to the indigenous black Zimbabweans.

2.1.1.2 Customary Land Tenure

Fundamentally, customary land tenure ownership entails the idea that land is owned by the whole community and is at the disposal of the individuals of that community. In other words, people held land according to custom and usage. The Kings, chiefs and the headmen were regarded as the custodians of the land, traditions and customs, that no individual can assume private ownership of communal or group land. The group may be an extended family, a clan, a village, a community, or a tribe. Through the African principle of *ubuntu*, or *unbu*, or *obuntu*,⁴⁰ or group solidarity of the members, tradition forbade the group to deny any of its members' access to land. The right of access was more than just an aspect of human dignity, but a fundamental human right. A person who had been denied land could enforce this right against the community and indigenous jurisprudence is replete with complaints of this nature.

The title deed⁴¹ was not a requirement. Although the African land tenure theory does not subscribe to written evidence it does not mean that the concept is devoid of a register, custodians of customs and traditions and other elders keep account of all transactions in their *memory registers*. Whenever it is required to prove a claim to land held under customary law, elders and traditional authorities will be summoned to recall the details of the transactions.

⁴⁰ A Zulu (Xhosa), Shona or Luganda concept, that stands for group solidarity and humanness respectively.

⁴¹ A document that could either be a leasehold title or freehold title, to hold as evidence of ownership of the land.

Related to the above, questions have been raised whether individuals rather than communities can assert their right to land or interests in land held under customary tenure. This was the gist of the question faced by the English Privy Council in the case of *Re: Southern Rhodesia*.⁴² In which case the British tried to set aside the fraudulent Cecil Rhodes/Lobengula contract⁴³ on the grounds that there was no provision in Matebele customary law for an individual, even a Chief, to sell land. Land, under African customary law, they argued, cannot be subject to sale. In any case, it was argued, no one person has a right to dispose of what the community as a whole is entitled to. For its part, the Company argued that the Council should uphold the contract since there was no evidence that it was made under duress. Bargains of men, they pointed out, freely entered with their eyes open, should be upheld. The Privy Council decided that the agreement was illegal. It held that African land subject to customary tenure could not be alienated as under English tenure. There was no concept of individual tenure under African customary law that would entitle an individual to make a valid disposition of land, since it belonged to all. This paved the way for the British to assert their sovereignty over Zimbabwe, save for the compensation due to the BSAC.⁴⁴

An African Chief in Nigeria when asked who owned land summarized the above principles saying: ‘I conceive of land as owned by the deceased, the living and the unborn’.⁴⁵ It is submitted that these principles are the founding pillars of African land tenure relations. Evidence above shows that no chief is in a position to fulfill a contract he signs concerning land even if he purports to act on behalf of the group⁴⁶ meaning that a Chief’s grant is bad law. The principle is not uniquely African, it can also be found in the Latin maxim ‘*nemo dat quod non habet*’.

Additionally, certain dominant indigenous African concepts common to most customary tenure systems exist. Some of these are:

- a) Tenure is family based.
- b) Individual and group membership of the social unit of production or political community have guaranteed rights of access to land or other natural resources.
- c) Rights of control are vested in the political authority of the unit or community.

⁴² *Re: Southern Rhodesia* (1919) AC 221. See also *Secretary, Southern State of Nigeria v. The King* (1921) K.B. 301, where the English High Court held that the African concept of land ownership did not entertain individual ownership in the English sense and held that the African concept was *communal* meaning it entertained no individual right.

⁴³ Chitiyo T.K (n 3 above).

⁴⁴ As above.

⁴⁵ Commission of Inquiry into Land Ownership in Nigeria, 1924.

⁴⁶ *Cox v. African Lakes Limited* (1930) AC 24.

Regulation depends upon traditional authority, which, in many places, has been eroded by the imposition of the modern state and the process of land tenure reform.⁴⁷

The 1950s saw a temporary break with the ideology of customary tenure and indirect rule through chiefs and kraal heads. To avoid a total collapse of agriculture due to overcrowding in the TTLs Rhodesian government introduced the Native Land Husbandry Act (1951) by which government sought to confer individual tenure rights on specific parcels of grazing/ arable land presuming that individual tenure would lead to more efficient land use. Due to a great deal of opposition and resentment among the population of the TTLs the implementation of the Act failed.⁴⁸

When the Unilateral Declaration of Independence of 1965 was invoked by Ian Smith's regime, there was a return to the ideology of communal land tenure in the TTLs.⁴⁹ The underlying motive for this reversal was an attempt to replace African nationalism with "tribal government" which would be more controllable and act as a buffer against grass-roots opposition.⁵⁰

2.2 Legal Fortification of the Inequitable Land Tenure Relations During the Colonial Period

When Cecil John Rhodes decided to send emissaries to Lobengula in 1888, he had three motives: business – to exploit the rich mineral resources; extension of the British Empire; and self-aggrandizement. When he entered into an 'agreement'⁵¹ with Lobengula, he effectively assumed control of all metal and mineral rights in Matebeland over an area covering more than 75,000 square miles for a token payment of: 1000 pounds per month, a thousand rifles, ammunition and a promise of a gunboat on the Zambezi.⁵²

This 'agreement' was taken to the Privy Council in England for interpretation as the entire agreement completely dispossessed Africans of their human right to land. Not only were the Matebele people themselves outraged, the entire world community, in spite of imperialism was shocked. Even natural imperialists found this agreement shocking in 'that the whole country could be purchased at such a ludicrously low price.' Many people in England were outraged at what was a blatantly unfair transaction. Consequently, Queen Victoria decided to write Lobengula in the following terms: 'It is not wise to put too

⁴⁷ Leach A (n 52 above) 9.

⁴⁸ Spierenburg (n 8 above) 4.

⁴⁹ Spierenburg (n 8 above) 3.

⁵⁰ n 53 above.

⁵¹ n 42 above.

⁵² Hansungule M (n 27 above) 326.

much power into the hands of men who come first, and to exclude other deserving men. A King gives a stranger an ox, not his whole herd of cattle, otherwise what would other strangers have to eat?’⁵³

However, as earlier stated the case did not lead to the cancellation of the agreement as this would have run counter to the principles of liberal theory. The Privy⁵⁴ nonetheless denounced the agreement.⁵⁵ It is submitted that the ruling though seemingly pro-African, did not actually return the land to the African owners. Rather, it vested land in the Crown, with the African still dispossessed. Since that time, the denial of the human right to land to the black Zimbabweans has not been redressed.

The Rhodesian government faced with open hostility over the inequitable land tenure relations from the blacks employed various means aimed at resolving the issue. Some of these included the setting up of the Morris Carter Land Commission (1925) mandated to examine the possible ways of resolving the growing land problem. The Commission presented its Report in 1925 recommending slight increases in land allocation for both the white settlers and the indigenous black Zimbabweans. The Report laid the foundation for the LAA (1931), which codified the racial division of land in Rhodesia, which was openly racist, and segregationist in nature.⁵⁶ The Act was also designed to safeguard the white settler agricultural system and protect their privilege at the expense of the blacks, exacerbating the racial divide. From the mid 1920s these white settler farmers began to emerge as the single most powerful grouping in the country.⁵⁷

It is submitted that this racial system of land allocation did not take into account the population demographics of the country, soil quality and climate. Its major contribution lay in its institutionalization of the racial division of all land in the country. The Act excluded Africans from ownership of land, despite the fact that they constituted over 95% of the population.⁵⁸ Further, it was used to consolidate the political support base of the minority white regime, which was predominantly white farmers by rewarding white farmers for their continued support by preferentially enabling them to easily access land ownership in a manner that would marry the Zimbabwe land issue with claims to access its political office.

In 1951 the LAA (1931) was amended and the Native Land Husbandry Act (NLHA) of 1951 passed and provided for the control of the utilization and allocation of the land occupied by the ‘natives’ to ensure its

⁵³ Hansungule M (n 27 above) 327.

⁵⁴ The Privy Council was the body charged with receiving final appeals from the English colonies.

⁵⁵ Maposa I (n 9 above) 16.

⁵⁶ White area comprised 50% of land, native reserve area comprised 22,4% of land and the Native Purchase Areas (NPA) comprised 7,7% of land.

⁵⁷ Chitiyo TK (n 3 above) 4.

efficient use for agricultural producers. Africans were only allowed five head of cattle and eight acres of land.⁵⁹ The colonial administration was resentful of the land utilization methods of the indigenous black people in the reserves. Centralization became the interventionist solution leading to the Natural Resources Act (NRA) of 1942 and the NLHA which were a product of the McIlwaine Commission of Enquiry Report (1939). The Report was unequivocal about blaming the indigenous black people for the looming catastrophe: “the result of the deliberate laying waste of large areas of land by wasteful and destructive methods of cultivation has been a cry by natives for more land”. The tacit agenda was to show that the indigenous black population’s agro-economic behavior was inherently destructive, unsuitable and thoughtless.⁶⁰

The colonial state however, argued that these two Acts were designed to save the country from agro-economic and environmental catastrophe, the means used – protectionism, compulsion and force, raised doubts about the real objectives. It would seem therefore that the real agenda of the regime lay in its attempt to forge ahead with their dispossession campaign through legislative means in order that they minority white settlers benefit in easily accessing land. At the same time the regime would also count on their political support.

The Report was also conveniently used to justify destocking of Africans’ cattle who in spite of the rinderpest of 1896 which devastated thousands of the nation’s herds of cattle leaving only 25 000, already owned two million head by 1930. The Herskowitz “cattle complex” theory (1926) was put forward and it expressed the view that reluctance by Africans to sell or kill cattle and their apparent indifference to overgrazing, stemmed from their cultures and traditions. Africans, it was argued, held on to their animals for reasons of “prestige and status”, regardless of the agro-economic environmental development. The destocking exercise was then implemented, sometimes forcefully through Government Notice No. 612 of 1944. From 1946 – 1979, a total of 1 126 366 herd of cattle were disposed of. In other cases, police confiscated “excess cattle” from the villagers without paying compensation.⁶¹

The colonial regime after having branded and proved the indigenous population as a destructive and irrational force to land and not the colonial laws, embarked on a combination of persuasion and force to ensure compliance with its policies. These measures were designed to create room for settler white-owned

⁵⁸ <http://www.sardc.net/sd/elections2000/zimbabwe/zim_saga.html>. [Accessed 21-09-2001].

⁵⁹ Chitiyo TK (n 3 above) 2.

⁶⁰ Chitiyo TK (n 3 above) 5.

⁶¹ Chitiyo TK (n 3 above) 6.

farms on state woodlands. Notably, this Government Notice was based on erroneous research which led to it being arbitrary, excessive and discriminatory in character. It did not provide for any form of compensation and the measures amounted to spoliation.

After the takeover by the hard-line conservative party of the white settlers whose support base came from the white settler farmers, the Rhodesian Front (RF) in 1963, there was an introduction of the Land Tenure Act (LTA) (No. 55) 1969. The RF's mandate was to pull Rhodesia out of the Federation, cut links with Britain, and entrench white minority rule. The main objective of the LTA of 1969 was to update the LAA (1931) by providing even more inflexible regulations. The main new feature was the redivision of Rhodesia into roughly equal African and white settler areas. The NPAs and Unreserved categories were now formally abolished. The settler area was also protected by a number of new constitutional safeguards, instituted to prevent the legal abolition of land segregation.⁶²

It is submitted that the regime's mandate was inherently aimed at building a strong white minority political base and consolidate white minority easy access to land ownership rights. These would also guarantee the RF regime secure political insurance. Other legislative measures in the same category and with the same agenda-to permanently dispossess blacks of land followed. These will however not be discussed here. It will suffice to point out that the black people also continued to protest against discriminatory and exclusionary state laws as evidenced by the period 1961 to 1968 which saw an upsurge in land disputes brought before chiefs for mediation, as well as an increase in fights between individuals and families over land. This conflict would soon become endemic.⁶³

2.3 Extra-Legal Fortification of the Inequitable Land Tenure Relations During the Colonial Period

The legal means of fortifying the inequitable land tenure relations during the colonial period were attended by more direct forceful means of depriving the black population of land. These direct means outside of the still inequitable laws were often perpetrated after unrest and resistance by the disfranchised black people. They include: first resistance: the Anglo-Ndebele war 1893; second resistance: first 'Chimurenga' 1896-7; resistance to the BSAC take over, 1914 – 1924; third resistance – second 'Chimurenga': 1966 – 1979.

⁶² As above.

⁶³ Chitiyo TK (n 3 above) 7.

It is submitted that the nature and form of the above colonial legislative instruments show the manner by which the indigenous black people of Zimbabwe were deliberately stripped of their means of livelihood, their dignity and deprived of their human right to their ancestral land, through carefully orchestrated and meticulously executed legislative procedures. This was aimed as a reward to the minority white state functionaries. The result of these repressive procedures led to the Second Chimurenga, which led to black majority rule in Zimbabwe in 1980 via the Lancaster House Agreement of 1979.

It is further submitted that these legal provisions in large measure were aimed at securing the political support of the minority white settlers. They were a means of consolidating the political bases of the minority leadership by enabling the minority white population to easily gain access to land ownership rights thereby securing their political loyalty.

CHAPTER THREE

LEGAL RESPONSES IN POST-COLONIAL ZIMBABWE TO LAND TENURE IMBALANCES

Historical evidence outlined above shows that colonial land policy since 1894 was characterized by racial inequalities, which have continued to haunt the present post-colonial state form in Zimbabwe. These policies, aimed at progressing the interests of the white commercial farmers were biased by the following provisions: free or purchased large tracts of land; easy access to financial resources (i.e. credit); provision of basic agricultural research programmes and infrastructure development; and regulated agriculture sector, controlled prices and subsidies.⁶⁴

The provision of a favorable agricultural policy for large-scale commercial farmers (LSCF) developed over a period of 90 years into an established institution with an apparent political voice and clout. The LSCF drew on this strength to lobby and negotiate for protected land and property rights under the LHA (1979).

3.1 The LHA (1979) and its Restrictive Clause 16

The LHA (1979) was signed shortly before the independence of Zimbabwe in 1979 and served to influence the agrarian land reform and effectively stop the new black majority government from acquiring privately owned farmland for the first 10 years. The LHA (1979) contained two important provisions; on one hand the parties agreed that the new constitution would remain inviolable for at least ten years, on the other, Clause 16 guaranteed protection for the property rights of the white commercial farmers.⁶⁵ Implementation of the necessary balance in land tenure relations by the black majority government was left to the will of the white settler farmers, so was the resumption by the indigenous black people of their human right to land.

Though the LHA (1979) heralded the socio-political formation of a new independent state, Article 16 clearly cemented the historical inequitable land tenure relations. Its nature, form, timing and implementation were directly aimed at firstly, maintaining the economic stability of the new state and

⁶⁴ Made J.M (n 26 above) 35.

⁶⁵ Chitiyo TK (n 3 above) 9.

secondly and most significantly, preserving the colonial privileges of the minority white population. The new state also sought to win the white minority support.

3.1.1 The Article 16 Dilemma

This Article is seen by the Zimbabwean government as a *'flawed'* document *'that tied the hands'* of the *'government to prevent it from undertaking the necessary land reform over the first 10 years of independence through entrenched constitutional provisions that protected whites only.'*⁶⁶ The government further conceives Lancaster Constitution as the single most important obstacle to social justice in Zimbabwe. In effect, Article 16 entrenched the sins of colonialism and racism by stating that: 'No property of any description or interest or right therein shall be compulsorily acquired...'⁶⁷ In particular, it states that compulsory acquisition may take place only 'under the authority of the law, etc.'⁶⁸ The most important requirement posited by the article was that a law must precede the acquisition.

On a *prima facie* basis the clause was just like any other property provision. It is submitted however, that the clause had the effect of restricting the sovereign powers of the newly independent government of Zimbabwe. It was forced to respect private property in spite of how it may have been acquired, provided that the acquisition was lawful at the time. It is this that has led to the present crisis.⁶⁹ It is further submitted that the LHA (1979) must be construed as having been invalid *ab initio* due to its excessive restrictions on an independent sovereign country. International law would not be able to justify such restrictions as purported in the Agreement. Furthermore, where the public interests require to be addressed, the LHA (1979) would not legally prevent this from happening. Therefore, had the Zimbabwean government had enough political will, it would have gone ahead and instituted land reform.

Instead, faced with Clause 16, the Zimbabwean government had to balance two concerns: on the one hand it had to meet people's expectations for immediate and tangible benefits in form of land ownership. On the other hand the government had to secure the confidence of white farmers to forestall a mass emigration of skills necessary to operate modern technology and to keep exports markets. As a result of this dilemma, the government could not take a quick and bold decision to transfer land to the landless blacks.⁷⁰ It is also

⁶⁶ <<http://www.zanupfpub.co.zw/resettlement.html>> [Accessed 17-10-2001].

⁶⁷ Hansungule M (n 27 above) 335.

⁶⁸ As above.

⁶⁹ As above.

⁷⁰ Masiwa M (n 5 above) 5.

believed that the state's economic dependence on exports produced by white commercial farmers hampered government's efforts to undertake land reform.⁷¹ This further verifies hypothesis (c) above.

It is important however, to note that the rate of resettlement was comparatively high during the first five years of independence as opposed to the following years. This can be attributed to the government's ability to claim ownership of farmland abandoned at the height of the war and from the white people who due to their fears and insecurities about the new black majority led government liquidated their assets.

3.2 The 5-Year Period 1980 – 1985

From 1980 a tri-partite tenure system evolved in Zimbabwe involving: communal tenure on the 42% allocated to the communal areas; resettlement tenure in redistribution projects; and freehold tenure on the 41% allocated to commercial farming.

The focus of land reform has been on redistribution and the deracialization of the freehold tenure areas. Since early 2000, there has been a process of land invasions of white-owned farms, which has provoked a serious crisis⁷² as shall be discussed later. For these purposes of resettlement, government managed to acquire a total of 2,17,855 hectares at an average of 429,571 hectares a year during this period. In 1982 the rural population stood at 3,9 million, and the average population density was 27 people per kilometer, even 80 people per kilometer in some (Manicaland and Masvingo).⁷³ The government targeted 162 000 families for resettlement on 10 million hectares but managed to resettle only about 60 000 indigenous black families. This failure was directly attributable to the constraints posited within the LHA (1979).⁷⁴

3.3 The Land Acquisition Act (1985)

In 1985 the Zimbabwean government frustrated by the inability to obtain sufficient land for resettlement under the LHA (1979) promulgated the LAA (1985). This Act stated that all land for sale should be offered to the government first. The same Act provided that under-utilized and derelict land would be identified for possible involuntary appropriation.

⁷¹ Gordon AA (1996) 53.

⁷² Walker C (n 44 above) 31.

⁷³ Zimbabwe Government Population Census, 1983.

⁷⁴ <http://www.sardc.net/sd/elections2000/zimbabwe/zim_saga.html>. [Accessed on 28-08-2001].

These measures in the Act were designed to speed up the government's land acquisition process from the white commercial farmers. However, the final version of the Act (1985) dropped proposals that would have permitted the designation of large blocks of contiguous land for mass resettlement. In practice, the Act (1985) was never enforced for the acquisition of land. By 1990 no land had been forcibly seized.⁷⁵

3.4 Period 1986 – 1987

In 1996 the Zimbabwean government decided to carry out forcible purchases of land for redistribution. A total of 250 farms covering a total of one million acres were bought resulting in the resettlement of 10 000 indigenous black families.

It can be concluded that the 10-year period 1980 to 1990 achieved very little in terms of equalizing the land tenure relations in Zimbabwe. It was a period characterized by rapid population growth in the CAs. Numbers of cattle had fluctuated because of drought and other factors, but by 1988, the cattle in the CAs had increased to nearly 2 million, with increased pressure on the land as a result. By early 1990s, the Zimbabwean government was faced with a crisis concerning land use (both agricultural and environmental), as well as land allocation. Deforestation, siltation, overgrazing, stream-bank cultivation, gullying and general loss of bio-diversity had reached serious proportions. White commercial farmers revived the traditional stereotype of destructive peasant farmers and attributed the problems to them.⁷⁶ It is submitted however, that though some of the land practices in the CAs were destructive, the fundamental problem is poverty within the indigenous population that preceded destructive land use methods. Among these problems is over-population and overcrowding on relatively good land.

3.5 Period 1990 - 1992: LAA (1992)

The Zimbabwean government formulated a national land policy, which resulted in the promulgation of the LAA (1992) under which the Zimbabwean government was no longer mandated to respect the restrictions within the LHA (1979) thereby terminating the willing seller/ willing buyer principles. The LAA (1992) empowered the government to designate land⁷⁷ for purposes of resettlement to the thousands of landless indigenous blacks. By designation the government meant the process of identifying specific pieces of land in which it had an interest followed by the actual acquisition. The main aim of this policy was to bolster

⁷⁵ Maposa I (n 9 above) 20.

⁷⁶ Chitiyo TK (n 3 above) 10.

⁷⁷ Masiiwa M (n 5 above) 4.

government's intention on the land redistribution issue. Accordingly, the following objectives were outlined: reduce the imbalances in land distribution; ensure that following resettlement, the resultant land distribution pattern leads to the effective use of all land in Zimbabwe; population control measures; and promotion of agro-industries and irrigation schemes.

It must be noted that this government policy was in line with the government's realization of the severity of the communal land problems, land pressure resulting from severe overcrowding with regards to both human and livestock populations. Also the realization that concentration of privately owned land in white ownership in Zimbabwe was very high: 85% of commercial farmers were of European descent.⁷⁸

It has been argued by other writers, as shall be further discussed, that the Zimbabwean government did not need the LAA (1992) and that neither was it fettered or constrained by the LHA (1979). Government could have utilized the existing colonial legislation itself to make all the changes necessary for a meaningful land distribution programme. Apart from this, Government could also have utilized the powers of Eminent Domain allowing them to acquire land for public utility.⁷⁹

It is further argued that the Zimbabwean government could also have created and employed a land tax per unit area on commercial farmland. This tax would operate as a disincentive to retain underutilized land, as a cost would attach to it. This situation would have acted as an incentive to the selling of excess land.⁸⁰

Initially, many white farmers opposed the 1992 Act itself. Conflicting political statements aggravated the land crisis, leading to a diplomatic rift between the Zimbabwean and British Governments. The British Government insists that it is not opposed to land redistribution per se, provided that it is done in a transparent manner with the intention to alleviate rural poverty. The British accuse the Zimbabwean Government of failing to satisfactorily explain modalities of land redistribution/designation, as well as failure to establish the necessary infrastructure to make it sustainable and achievable goal. Further, the British state that they have pledged a total of 44 million pounds over the course of 15 years from 1980.⁸¹ The Zimbabwean Government has retaliated by stating that the real agenda of the British is to protect the neo-colonialist agenda of expatriate agro-business.⁸²

⁷⁸ Walker C (n 44 above) 9.

⁷⁹ Made J.M (n 26 above) 22.

⁸⁰ As above.

⁸¹ Westfall LR 'A History of Robert Mugabe's political Game,' @ <<http://www.laurawestfall.com/mugabe.html>>. [Accessed on 20-10-2001].

⁸² <http://www.bbc.co.uk/hi/english/world/africa/newsid_594000/594522.stm>. [Accessed on 21-07-2001].

It is submitted that though the inequitable land tenure relations in Zimbabwe remain a pressing and unresolved issue, the political leadership is using it as a tool to eliminate growing political opposition and boost its support bases among the peasantry in Zimbabwe, the traditional support base of the ruling party. It is true that the LHA (1979) imposed some constraints to land reform, but these could not have been enough for a sovereign government to fail to grasp the opportunities to implement the necessary land reform measures. This is evidenced by the fact that, even after the beginning of the ‘fast track resettlement’ processes, various foreign Governments and donor organizations such as the United Nations tried to intervene by offering to draft an internationally supported and funded land reform process but the Zimbabwean government rejected these offers opting for its current process.

3.5.1 An Analysis of the LAA (1992)

Within the context of the Zimbabwean land crisis, as in many other jurisdictions worldwide more so on the African continent, it is a common principle that the state considered a ‘welfare maximizer’, assumes the role of major player in social dynamics, and is the overarching source of legal, political and economic resources and other policy making. With respect to the basic economic resource – land – the state intervenes by means of policy, law, ideology and direct intervention outside of all these instruments, to legitimize and mediate land tenure relations.⁸³ It is also a common principle that out of the principle of necessity, the state has power to acquire land in the name of national or public interest. The centrality of the land resource to the lives, well being, and dignity of all human beings makes it mandatory for the state to have power and authority to effectively manage, distribute and designate the rights to and utilization of land and other natural resources. To achieve these necessary goals, the powers of expropriation, referred to as Eminent Domain have throughout time been inherently embodied in the right of government to appropriate private property for the national or public interest.

However, it must be noted that, though the employment of the principle of Eminent Domain to redress the colonial racial imbalances and inequalities in land tenure relations has become fundamental in Zimbabwe, it can be problematic. Even before the LAA (1992) had been passed, many white commercial farmers had already begun to oppose it. On being passed the Act became the focus of intense political and legal debate about its legality. The group representing the interests of the white commercial farmers the Commercial Farmers’ Union (CFU), regarded the new form of compulsory acquisition of the farms, which

⁸³ Kigula (n 28 above) 1

no longer granted any individual right of appeal⁸⁴ to expropriated parties as an infringement of the protection of the property rights incorporated in the Constitution.⁸⁵ It is also submitted that this is a recognized right under international human rights instruments.⁸⁶

Other provisions of the Act which presented problems were sections 13, which gave the Minister-the acquiring authority wide discretionary powers in a manner that transformed the executive arm of the government into the maker, interpreter and enforcer of the law. This amounted to usurping the powers of the judiciary and in contradiction with the internationally recognized doctrine of the separation of powers. This exposes a victim to abuse as evidently shown in the Churu farm case where the governments' decision to acquire the farm on the grounds of substantiated health hazards, revealed that the violation of health regulations was a convenient means to execute a political end.⁸⁷

Section 12(2) provides for the designation of any rural land by the Minister. Prima facie, the provision presupposes the existence of simple procedural regulations to be followed in a land acquisition exercise. Practically the act of land designation can and has caused a lot of suffering for landowners whose land has been designated. In terms of section 14, land so designated cannot be sold except with the permission or authority of the Minister acquiring it. To the extent that this provision is intended to guarantee the rights of the state of first refusal or option to buy is concerned and also in fulfilling the provisions of section 3 of the Act that such land is needed for public utility, this prohibition on selling of the land so designated is fair. It becomes unfair on the affected landowner, when considering that most of the farmers are heavily dependent on the Agricultural Finance Corporation (A.F.C.) and other financial institutions for loans, using the land as security. Section 14 as it stands renders redundant for collateral use all land designated for acquisition and the landowner can suffer further prejudice for a period of up to 10 years before the designating authority is finally obliged to acquire the land or to set the designation aside. This can result in bankruptcy for a farmer whose land have been designated and makes the meaningful development of that land a useless venture. The affected landowners may also plunder the land for what it is worth before the subsequent resettlement takes place.⁸⁸

⁸⁴ Section 23(4) LAA (1992).

⁸⁵ Section 16, Zimbabwe Constitution of 1996.

⁸⁶ Articles 14 African Charter on Human and Peoples' Rights (ACHPR); 17 Universal declaration of Human Rights (UDHR), among others.

⁸⁷ Maposa I (n 9 above) 78.

⁸⁸ Maposa I (n 9 above) 80.

In mid-1994 the Zimbabwean High Court was required to rule on the issue of the constitutionality of the LAA (1992) when dealing with an action brought by three white commercial farmers. A judgment was reached on the action in November 1994. The ruling stated that the designation and nationalization of land under the LAA (1992) was constitutional and also consistent with the general interpretation of the applicable Roman Dutch Law. The essence of the legal case was the plaintiffs' position that even before the expropriation itself the designation of a farm for nationalization constituted a curtailment of property rights for which the LAA (1992) (part IV) did not allow any entitlement to additional compensation. The Act only provided for compensation to be paid in respect of the expropriation itself. According to the plaintiffs' this was an infringement of the constitutional guarantee of compensation associated with compulsory acquisition.⁸⁹ The High court however, did not consider the designation of farms for expropriation pursuant to Part IV of the LAA (1992) to be unconstitutional, or that compensation should have to be paid against the impact of that designation. According to the court the designation of a farm did not have adverse effects on the owners' use thereof.

The High court concluded that the implementation of the Resettlement Programme was an activity in the public interest in terms of the Constitution; this was the basis from which the legitimacy and also the legality of the expropriation process under the LAA (1992) were derived.⁹⁰

It is submitted that the High Court decision above is indeed in line with the principles Eminent Domain alluded to earlier. It is further submitted that the LAA (1992) provisions were far-reaching and sufficient to provided the government with necessary scope to proceed with the land resettlement programme.

3.6 Other Legal Responses: 1997 – 2001

In November 1997, the Zimbabwean government published a list of 1,471 farmlands it intended to compulsorily acquire for distribution purposes. This action was part of the government's efforts to implement the Act of 1992. The list came as a result of a nationwide land identification exercise undertaken throughout the year. Landowners were given 30 days to submit their written objections.⁹¹

⁸⁹ Section 16 (1) (c) Zimbabwe Constitution 1996.

⁹⁰ Blume A 'Land tenure in rural Zimbabwe' @ <http://www.gtz.de/orboden/blume/blu2_3_3.htm>. [Accessed 22-10-2001].

⁹¹ <http://dSPACE.dial.pipex.com/town/terrace/IF41/na/june00/legal_history.htm>. [Accessed on 22-10-2001].

In June 1998 the government published its “policy framework” on the LRRP II that envisaged the compulsory purchase over five years of 5 million hectares from the 11.2 million hectares owned by commercial farmers. This meant that during the five year period between 1998 and 2003, government would acquire a million hectares a year for resettlement. In September the same year, a donor’s conference was held in Zimbabwe on LRRP II; 48 countries and international organizations attended. The objective was to inform and involve the donor community in the programme. The donors unanimously endorsed the land programme, saying it was essential for poverty reduction, political stability and economic growth. They particularly appreciated the political imperative and urgency of the land reform, and agreed that the “inception phase” covering 24 months should start immediately.⁹² The donors then pledged to assist the land reform programme.

In 1999 the second phase of the LRRP II was launched. The same year, the Constitutional Commission was formed to gather views on the Draft Constitution, which was then drafted in the same year. This draft constitution contained a clause to compulsorily acquire land for redistribution without paying compensation.

In February 2000 a Constitutional Referendum was held and the national majority rejected the Draft Constitution.⁹³ After the rejection of the Draft Constitution, commercial farm invasions started the same month. In March the white farmers through their union, the Commercial Farmers Union (CFU) went to court and won an injunction calling on the police to evict the land invaders. The Zimbabwean police commissioner refused to execute the court’s judgment sighting lack of manpower to implement the court’s order. He appealed against the ruling and lost. Thereafter in April, the Zimbabwean government amended the Constitution to enable it to acquire commercial farms without an obligation to for the soil, but only to pay for the farm improvements.

On Friday November 11, 2001, President Mugabe issued a decree amending the LAA (1992) so that white commercial farmers can be forced off their farms without recourse to the law. According to this amendment, the government can resettle people on the farms before waiting for appeals from the affected farmer.⁹⁴

⁹² As above.

⁹³ See n 21 above.

⁹⁴ Reuters ‘Zimbabwe amends law to allow instant farm seizures’ < http://www.enn.com/news/wire-stories/2001/11/11132001/reu_45561.asp > [Accessed 14-11-2001].

It is submitted that the above measures were another attempt by the Zimbabwean government to reduce the pressure being exerted on it by its rural constituency and an attempt to maintain their political support. Clearly the land invasions coupled with the decree of November 11, 2001 go against constitutional and international human rights guarantees mentioned earlier.

CHAPTER FOUR

THE EXTRA-LEGAL RESETTLEMENT PROCESSES IN ZIMBABWE

Illegal land occupations began in the mid-1980s. Landless blacks began to occupy and use land belonging to politicians and black elites in response to the failure of the resettlement exercise. These communities were termed ‘squatters’⁹⁵ by the media, and in some areas, police and army units were deployed to forcibly remove them. Numerous arrests were made and bulldozers and trucks were used to raze their dwellings and remove their property, reminiscent of the forced evictions 40 years earlier by the colonial state.

It can be stated that this government action was aimed at fulfilling the leadership’s call for national reconciliation soon after gaining independence. It was also aimed at allaying fears of the white people on property rights and revenge land grab, and also to reduce brain drain as the whites possessed the skills the country needed for its various economic development programmes.

4.1 Matebeleland ‘Squatters’

In Matebeland, this exercise was carried out with an exceptional degree of violence. Crops were burnt; villagers were openly murdered or simply disappeared. The Fifth Brigade in the ‘dissident’ war that took place between 1981 and 1987 committed atrocities against the ‘squatters’. The genuine land grievances of Matebeleland black people were subsumed by a wider and brutal struggle against the local insurgency of ex-ZIPRA⁹⁶ combatants.

These atrocious measures can be seen as government’s efforts to subdue the political power base of its main rival opposition party of that time-ZAPU-PF. ZAPU drew its major support from the Ndebele ethnic people of Zimbabwe and the government sought to destroy that opposition and its support base in a manner that violated many of the people’s fundamental rights.

⁹⁵ The authorities described those landless people who had illegally occupied private and government land as squatters. The war veterans are also termed squatters by the white landowners; there is however no fundamental difference between these terms in Zimbabwe.

⁹⁶ ZIPRA was the armed wing of the Zimbabwe African People’s Union (ZAPU), it fought mainly in the South and Western areas of the country during the Second Chimurenga.

4.2 1990s 'Squatters'

During the 1990s, the 'squatters' began to occupy white-owned farms. In 1998, soon after the Donor Conference, hundreds of indigenous black Zimbabweans moved on to farms in the Marondera 'Svosve' area of Zimbabwe. These svosve villagers triggered a series of copycat 'invasions' in other areas. There were claims that the farm invasions were a political ploy to force white farmers off the land. Many farmers vowed to fight the squatters; others vowed to uproot squatter crops. However, defiant squatters threatened to set alight any tractor that entered 'their' land. Others began to cut down trees on the commercial farms. The situation deteriorated with a series of murders, robberies, and assaults on the commercial farms.⁹⁷

4.3 The War Veterans

Despite the fact that many ex-combatants were successfully re-integrated into urban or rural life after 1980, many declined into destitution and social ostracism. In 1980, there were approximately 65 000 ZANLA and ZIPRA guerrillas. About 20 000 of these became part of the new Zimbabwe National Army (ZNA). The rest were demobilized after being awarded a monthly pension of Z\$185 until 1983 and encouraged to form self-help co-operatives and /or receive skills training. Beyond this, there was no attempt to assist their socio-economic re-integration.

With time, many of these ex-combatants became victims of the twin scourges of poverty and AIDS. In April 1989, the Zimbabwe War Veterans Association (ZWVA) was formed led by the late Chenjerai 'Hitler' Hunzvi, comprising ex-combatants from ZANLA and ZIPRA. It was observed that the formation the ZWVA was a reactive initiative taken by ex-combatants when it had become clear that the government had failed to assist them. By 1991, the government after initially ignoring them began negotiations regarding the War Veterans Administration Bill (1991), the War Veterans Act (1992) and War Victims Compensation Act (1993). In 1997, President Mugabe gave in to the veterans demands and announced a package for the veterans that would pay each genuine war veteran a lump sum of Z\$50 000 and a gratuity for life of Z\$5 000 per month.

⁹⁷ Chitiyo TK (n 3 above) 12. To date 39 farm workers and 9 white farmers have lost their lives since the invasions in February 2000 see 'Mugabe issues decree evicting whites' @ <<http://www.bday.co.za/bday/content/direct/1,3523,966332-6078-0,00.html>>. [Accessed 11-11-2001].

The administering of the compensation for war victims was followed by gross inefficiency and corruption. Theoretically, all proven ex-combatants who had been injured during the liberation war were entitled to financial compensation on a scale proportional to the severity of their injuries. Practically, however, the system became increasingly chaotic between 1993 and 1996. Controversy over differing official grassroots definitions of war veterans, interventions by the ZANU-PF party hierarchy, falsified injury claims and a general lack of accountability saw the government paying out nearly Z\$80 million. The government's failure to financially compensate grassroots ex-combatants, especially those who had genuine war credentials and who had genuinely suffered, precipitated a national political and financial crisis in 1997. The cost to the country was estimated at Z\$4 billion, and precipitated the on-going national financial crisis.⁹⁸

Today, the war veterans are championing the land invasions, a situation that has reduced the government's land policy to a chaotic exercise lacking in transparency and which is outside the rule of law. The human right to land of the both the white-farmers and the landless black Zimbabweans are being violated with impunity thus justifying hypothesis (b) above which states that the limited bases of the political power structures in civil society compel the state to align with and enable preferred sections of the population to gain easy access to land ownership rights as a political reward to state functionaries by which political loyalties are secured among social groups for the consolidation of state power and its perpetuation.

Under the leadership of Chenjerai 'Hitler' Hunzvi⁹⁹ the war veterans had effectively become the 'military wing' of ZANU-PF in the 'war against white commercial farmers' and the opposition party Movement for democratic Change (MDC) of Morgan Tsvangirai. Land was one of the 'war veterans' main grievances. They were joined by civilians united in their displeasure with the government land policy, who also accused the country's leadership of taking prime land and doing very little to assist the rural poor. Initially, both 'war veterans' and the civilians pressed the government for an improvement in land utilization methods and not necessarily better land allocation. The latter demand became the strongest issue as the landless indigenous Zimbabweans pressed government for action. Land disputes between veterans and ordinary civilians became common. In the early 1990s, the government agreed that 20% of all the land for resettlement would be reserved for 'war veterans', with the rest going to the landless civilians. But allocation and prioritization disputes over land resettlement have led some civilians to complain that the 'war veterans' who had already received financial compensation, were also receiving preferential treatment in land allocation at their expense.¹⁰⁰

⁹⁸ As above.

⁹⁹ The late chairperson of the ZWVA.

¹⁰⁰ Chitiyo TK (n 3 above) 13.

Further complicating the issue of land in Zimbabwe is the government's involvement in the conflict in the DRC where it committed its forces in 1988. This operation has an indirect link with the land issue. Representatives of 'squatters', owners of designated farms, some opposition parties and international organizations have claimed that the funds that the Zimbabwean government is spending in DRC money that was originally meant for poverty alleviation and resolving the land problem. 'War veterans' have supported the government on the DRC issue having received hefty payouts and many are also serving as retired members of the ZNA.

In early 2000, the 'war veterans' began the illegal occupation of white-owned farms, starting in the province of Mashonaland. Unlike the 'walk-on' civilian farm invasions of 1997, which were ended with relative ease after negotiations between the invaders, farm owners and the police, the 'war veterans' invasions have proved much more harder to ameliorate, violent and widespread. As of February 2001 a total of over 2 706 farms have been gazetted in terms of the fast track programme, for 51 000 families.¹⁰¹

Evidence points to government sponsorship and fueling of the war veterans' violent campaign for reasons already alluded above. Other critics have also correctly pointed out that government sponsorship of the war veterans was also a form of protest against the rejection of the Draft constitution.¹⁰²

4.4 Limitations Of The Measures

Critics and scholars correctly attribute the reasons behind the fast track land resettlement processes by the Zimbabwean government as being a convenient political game to regain lost ground with the black masses. They say that Mugabe adopted the processes at a time when his early association with the elite and the white commercial white farmers was falling through, and yet, he was fast losing the support of the black majority Zimbabweans, to whom his unkept promises of land reform were causing agitation and discontent. The black people have been waiting to see the transformation of the theme for land resettlement into actual resettlement on the acquired land. People want to see policy pronouncements being matched with policy implementation.

¹⁰¹ Walker C (n 44 above) 33.

¹⁰² Masiwa M (n 5 above) 14.

President Mugabe's encouragement of sections of his own people to engage in illegal acts, in a move aimed at consolidating and maintaining his political power base. It is a political gimmick aimed at securing black votes in the 2002 Presidential election.

4.4.1 Socio-Economic Dilemmas

The land issue coupled with the political violence has resulted in physical, psychological and economic damage for individuals and the country respectively. ZANU (PF) supporters have engaged in torture, which includes the beatings, burning, electric shocks and mock drowning of ordinary Zimbabweans.

This form of violence has disrupted social services. Community services such as legal aid have either been closed down or disrupted. These acts of violence together with the mismanagement of the economy and large-scale corruption have negatively impacted on the Zimbabwean economy. Zimbabwe is now faced with a rising unemployment rate of over 60%, inflation is set to reach 100% by the end of the year (2001), some 70% of the country's GDP is required to service its foreign debt, and the government has defaulted on foreign debt repayments, the economy is forecast to shrink by 10% in 2002, foreign investment has plummeted and what were once growth industries, such as tourism, have been devastated, tourists have stopped visiting the country because of the violence and the instability.¹⁰³ Several foreign Governments have cut, reduced or suspended aid to Zimbabwe to register their disapproval of the lawlessness that has characterized the country, and middleclass professionals are leaving the country in large numbers causing a serious brain drain. The small white population has also shrunk considerably.

The resettlement processes, being implemented without planning or support, have not only displaced thousands of farm workers and their families,¹⁰⁴ it has also drastically deflated export and food production. Foreign currency shortages have continued to haunt the country and food shortages have begun to be felt. The Zimbabwean government has already begun requesting the United Nations for millions of pounds worth of emergency food aid. According to Zimbabwe's National Early Warning Unit, 700 000 people already needed food aid, and that the government's stocks of maize, the national staple, were likely to start

¹⁰³ According to statistics issued in January 2001 by the investment promotion agency, the Zimbabwe Investment center, foreign investment dropped by 89% in 2000 compared with 1999. Instability and refusal to uphold the rule of law in relation to property rights scared off investors. Pana News Agency report 24 January 2001.

¹⁰⁴ The Commercial Farmers Union (CFU) estimated in a survey of the farms during the month of September that about 75 000 people, including workers and their families, had been forced off the farms. The Farm Community Trust of Zimbabwe, which promotes workers' rights, estimates the number of displaced at 300 000, based on the government's own data on resettlement.

running out by the month of November 2001. The Zimbabwean government needed 'immediately' to import 200 000 tonnes of maize to avert starvation.¹⁰⁵

Formal sector unemployment has fallen by 90 000 (7%) to its lowest level since the early 1990s, a large percentage of Zimbabweans suffer from poverty and the situation is deteriorating rapidly,¹⁰⁶ and the cost of staple items is set to escalate further following the increases in the price of fuel which in June was over 70%.

The actions being undertaken by the ZANU (PF) supporters above prove hypothesis (c) above as the Zimbabwean government decided to engage in land tenure relations only after its political popularity was declining and the country facing harsh economic fortunes.

4.4.2 The Political Implications

Zimbabwe's political scene has become a victim of the government's lawlessness. Anyone who opposes government policy is in danger of being attacked by the militant ZANU-PF war veterans and supporters. The rule of law has been virtually abandoned in an effort by the government to fight off political opposition and secure the loyalty of a select few and hence consolidate and perpetuate its political power-hypothesis (b) above.

Zimbabwe has increasingly become politically isolated both regionally and internationally. On September 10, 2001 President Mugabe was forced to sit through unprecedented criticism of policies by neighbouring heads of state at the opening of the regional summit in Harare. The Southern African Development Community (SADC) chairman, President Bakili Muluzi of Malawi stated that the leaders were concerned about the worsening economy, the decline in the rule of law, and the spread of violence and political instability in Zimbabwe.¹⁰⁷ President Festus Mogae of Botswana has also added his voice of criticism to President Mugabe's 'for using incorrect methods to redistribute white-owned land to the black majority.'¹⁰⁸

¹⁰⁵ Raath J 'Zimbabwe asks UN to provide food aid' @ <<http://www.thetimes.co.uk/article/0,,3-2001381153.00.html>>. [Accessed 02-11-2001].

¹⁰⁶ According to 1998 Central Statistical Office figures, 63.3% of Zimbabweans were poor and 47% were very poor, whereas in 1991 40.4% were poor and 16.7% were very poor. In October 1998 the Minister of Finance stated that 75% of Zimbabweans were poor and 47% were very poor. Since then poverty has become far more acute.

¹⁰⁷ Meldrum A 'African leaders criticize Mugabe' @ <<http://www.guardian.co.uk/zimbabwe/article/0,2763,549820,00.html>>. [Accessed 11-09-2001].

¹⁰⁸ <http://www.bbc.co.uk/hi/english/world/africa/newsid_1650000/1650147.stm>. [Accessed 11-11-2001].

These criticisms leveled against the Zimbabwean leadership by other regional leaders points to the growing political isolation of the Zimbabwean leadership and marks the increased regional pressure on President Mugabe to restore the rule of law, democracy and to reign in the war veterans. South Africa's relations with Zimbabwe have become increasingly strained over President Mugabe's reluctance to reign in militia leaders.

On an international level, France and the European Parliament on September 6, 2001 calling on the Commonwealth to put pressure on Zimbabwe, while in Sydney, Australia, the government had hinted that Zimbabwe might be suspended from the Commonwealth if there were no changes on its archaic land policies and the flouting of the rule of law in the country.¹⁰⁹ The American government has already debated similar moves against Zimbabwe by passing the Zimbabwe Democracy and Economic Recovery Bill on August 3, 2001.¹¹⁰ The Bill seeks to impose sanctions against Zimbabwe for the same reasons as those of the Europeans. What the above means for Zimbabwe is clear, that without a coherent land reform plan supported by the region and the international community, Zimbabwe's haphazard and violent land resettlement processes will not succeed.

The above evidence depicted by the government's awarding land to its 'cronies' shows that claims to political power and its consolidation coexist with claims to landed property rights and their concentration among a minority social group in state power-hypothesis (a) above. Further that government's sponsorship and alignment with the war veterans is an attempt to consolidate and perpetuate its political power-hypothesis (b) above. The issue of land in Zimbabwe is a continuously recurrent socio-economic and political problem and the nature, form and timing of government intervention is directly linkable with the nature of the instruments for its intervention-hypothesis (c) above.

¹⁰⁹ Olatunde Agoi J and Awonyi O 'Mugabe promises no more farm invasions' <<http://www.mg.co.za/mg/za/news.html>>. [Accessed 07-09-2001].

¹¹⁰ <<http://www.africast.com/article.cfm?newsID=21038>>. [Accessed 06-08-2001].

CHAPTER FIVE

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS RELEVANT TO ZIMBABWE'S RESETTLEMENT PROCESSES

Through the United Nations (UN) and over 50 years of enactments, international law today embodies a large body of human rights doctrine. The concept human rights is complex and presents definitional difficulties, but put simply human rights are those rights that human beings have simply because they are human beings and independent of their varying social circumstances and degrees of merit.¹¹¹

The natural rights theory found new birth after World War II. This could be attributed to the revulsion against 'the horrors that could emanate from a positivist system in which the individual counted for nothing'. From this, the new rights philosophers adopted what may be called a qualified natural law approach in that they try to identify the values that have an eternal and universal aspect.¹¹² One such modern philosopher is John Rawls' *A Theory of Justice*.¹¹³ Rawls says, "*Justice is the first virtue of social institutions,*" and according to his second principle dealing with distributive justice, he holds "Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity."¹¹⁴ The core principle to be derived from these being that unless there is distribution that makes groups better off, an equal distribution is to be preferred.

This means that the higher expectations of those better situated are just only if they are part of a scheme that improves the expectations of the least advantaged.

Thus Rawls' principle provides the best jurisprudential theoretical basis for equitable land redistribution in Zimbabwe. Though not explored, it is submitted that Rawls' structure of social justice is reflected in the consensus on human rights found in the international human rights covenants. Justice is defined by Professor Edmund Cahn as meaning '...the active process of remedying or preventing what would arouse the sense of injustice'.¹¹⁵

¹¹¹ Shestack J.J (1998) 20 *HUMAN RIGHTS QUARTERLY* 201 203.

¹¹² Shestack J.J (n 123 above) 215.

¹¹³ Rawls (1971) 1-4,11-17,20-30,33-35,39-40.

¹¹⁴ Shestack J.J (n 123 above) 219.

It is significant therefore, that the ordinary black people of Zimbabwe in their fight for social justice and demands for equality, decided to take the law into their own hands in order to secure their human right to land, though clearly a violation of the law, it is not unprecedented. International law has not lacked solutions to the problems of social justice. Frequently, whenever there has been a clash between individual and the greater interests of the public, the former has been pushed aside to allow for reform. And whenever there is social reform, it has been determined that the cost of private property differs from the market conditions. Many countries including developed ones have gone through social reform in which the interests of individuals had to be weighed against those of the wider public, and as long as this is the case, only minimum compensation is due to private individuals. It is therefore difficult to understand why Zimbabwe would not apply the international principles above to undertake reforms.

International law also provides other options that Zimbabweans both white, and black could have used to ameliorate their situations. There are various international instruments introduced by the UN and the Organization of African Unity (OAU) on the protection of basic rights and freedoms. Some of these instruments have standards that are directly concerned with the kind of problems currently confronting Zimbabwe. These instruments will now be dealt with below.

5.1 Universal Declaration of Human Rights (UDHR) 1948

Paragraph three of the Preamble of the UDHR provides:

‘Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human beings should be protected by the rule of law’.

This is an implicit approval of the resettlement actions that the war veterans and the ordinary landless Zimbabweans decided to embark on in the face of non-action by the government and the international community. It was an action aimed at the defence of their lives and an exercise of their right to speak for themselves expressed in the form of the invasion of farms. The farm invasions must also be regarded in the context of a people attempting to re-assert their self-determination, which did not happen at the time of independence. The uprising against the white farmers epitomizes the continuation of the struggle towards

¹¹⁵ Shestack J.J (n 123 above) 224.

genuine freedom, human rights and access to the country's resources by the landless poor indigenous black people of Zimbabwe.

5.2 International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (UN, 1965)

This instrument specifically in its preamble prohibits racial discrimination, whether by the State against the dispossessed black people or by the State against the unprotected white farmers. Zimbabwe has already violated the provisions in this instrument by its continued failure to protect its white farmer population from death, destruction of their property, violence, threats of violence and a host of other crimes¹¹⁶ at the hands of the militant war veterans and government supporters.

The instrument also provides mechanisms for the enforcement of standards, including the provisions of affirmative action¹¹⁷ to 'upgrade' those who have been historically disadvantaged.

5.3 International Labour Organization Convention No. 169 of 1989

The International Labour Organization (ILO) introduced the above Convention in 1989 on the rights of Indigenous and Tribal Peoples. The Convention provides an important framework for addressing the indignities of colonization in countries such as Zimbabwe, including rights to land and natural resources.

The Convention lays down important procedures for the inclusion and participation of the affected 'peoples' in all matters that concern them.¹¹⁸ There is no doubt that land in Zimbabwe affect all people and hence the government in implementing land reform must include all stakeholders. In PART II dealing with land, the Convention clearly states that traditional rights in land shall be recognized,¹¹⁹ and people whenever possible shall have the right to return to their traditional lands.¹²⁰ Where it is not possible the Convention lays down that peoples shall be provided with alternative quality land or compensation should they so wish.¹²¹

¹¹⁶ In violation of Article 5.

¹¹⁷ Article 1(4).

¹¹⁸ Articles 6 and 7.

¹¹⁹ Article 14.

¹²⁰ Article 16(3).

¹²¹ Article 16(4).

Doubtlessly, the Convention provides an important framework for addressing the indignities of colonization including rights to land and natural resources in Zimbabwe.

5.4 African Charter on Human and Peoples' Rights (ACHPR) (1986)

This is an African human rights convention that seeks to protect not the individual but groups. Article 14 of the African Charter protects property, but subordinates this right to the interests of the public or community. This means that property in Africa is not absolutely protected but must submit to the wider interests of the community. In this manner, the African property clause gives adequate room for the introduction of social reforms in which individuals with titles to property would be expected to stand aside.

Article 19 ensures that no group of people should be ethnically targeted for discrimination or domination. The African system guarantees both individual and group equality bearing in mind the characteristics of African society.

Article 21 guarantees the right to economic self-determination. Under this clause people considered as a country or as small groups can seek self-determination. They can decide on how best they want to use their property without interference from outside forces.

5.5.1 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Zimbabwe is a signatory to CEDAW and introduced several measures in recent years to enhance the legal status of women, including legislation which: empowers the Court to equitably divide and relocate property, including land, in the case of divorce; makes it possible for a widow to claim a share of the estate of her husband on the basis of her contribution to its acquisition, and to continue to enjoy the use of crops and animals; and, makes it possible for married women to acquire immovable property, including land, without having to obtain consent from their husbands.

However, women still do not have equal access to land in the communal areas where the majority reside. Married women have only secondary land use rights through their husbands, and divorced women are required to vacate the land and acquire a new land in their natal homes. According to a sample survey, the

mean arable landholding for male-headed households is 2.73 ha, while that for female-headed households is 1.86 ha.¹²²

CEDAW specifically sets the international standards and parameters for addressing issues of equality, equity and non-discrimination.¹²³ CEDAW including the Beijing Declaration and Platform for Action, which Zimbabwe also adopted, are further instruments to both analyzing and actioning the broad rights which women have and particularly issues around the 12 critical areas of concern which include among others, the central issues of poverty, and human rights. Proper implementation of this Convention can lead to the resumption and enhancement of women's land rights in Zimbabwe.

¹²² <<http://www.fao.org/docrep/V9101e04.htm>>. [Accessed 17-10-2001].

¹²³ Article 14.

CHAPTER SIX

CONCLUSIONS AND RECOMMENTATIONS

6.1 Conclusions

Some critics say that since independence Zimbabwe has experienced major capacity and administrative problems and weaknesses, which have hampered effective and relatively speedy delivery of land in general, as well as the provision of infrastructure and follow-up services and support.¹²⁴ Others attribute failure to carry out resettlement processes in Zimbabwe, to Article 16 of the LHA (1979) during the first ten years after independence, government inaction to its inability to undertake land reform because of the economy's dependence on exports produced by the white commercial farmers.

Evidently though, as the economic situation in the country worsened poverty reaching unprecedented levels among the black population, and the government's political support base shrunk due to unfilled promises of land, the government seized upon the racial allocation policies of the early colonial and white minority governments to champion and indulge in land resettlement processes. This justifies hypothesis (b) and (c) above. The eruption of the land war veterans crises is therefore in no way a coincidence, both stem from the need to redress the land deprivations of the black people and at once to eliminate support for the opposition and land allocations to boost political support for the ruling party by allocating land to loyal supporters and government cronies,¹²⁵ making the redistribution process vulnerable to being 'hijacked' by black elite, which could lead to unjust enrichment at the expense of the black landless majority.¹²⁶ Further, though economic empowerment of the blacks is also an important issue in land redistribution, farm invasions have hampered agriculture's contribution to the national economy, have resulted in large-scale food shortages and Zimbabwe is experiencing economic and political ruin. Already Zimbabwe faces shortages in foreign currency, massive unemployment and a worsening balance of payment position.

Failure by the Zimbabwean government to ensure the resumption by blacks of their human right to land should not be used to disregard the whole process of land resettlement currently underway in Zimbabwe. Fast tracking the resettlement programme is consistent with international law. During a fast track, provided the state can prove that the programme is for the interests of the public as a whole, the individual must

¹²⁴ Walker C (n 44 above) 11.

¹²⁵ Maposa I (n 9 above) v.

¹²⁶ Maposa I (n 9 above) 177.

give way. That is, the state is liable to the individual only in the most limited sense because the group interests justify the programme for all. It is also submitted that a fast track programme is valid if it is based on a land reform programme intended and built to benefit the people at large. If it is therefore intended for the elite and party supporters, then it is not a reform by definition.

Evidence does not show that the regime intended the redistribution process to benefit the leadership and its 'cronies' and indeed deserving people have been resettled.¹²⁷ Therefore, it is futile to reject the whole resettlement programme in Zimbabwe given the volatile situation prevailing and the high levels of poverty and landlessness among the black people. It is submitted that what is condemnable is the irregular processes that the government has embarked upon which have already begun to exhibit corrupt practices where land meant for resettlement has been leased to government officials and black elites as opposed to resettlement for the landless and land hungry peasant farmers as originally intended.¹²⁸ This directly lends evidence as some of the already and/or potential impacts of the resettlement processes in currently place-research question (f) above.

The grossly skewed land distribution between whites and blacks has been the dominant, highly politicized issue in land reform within redistribution strategies. Racial disparities have tended to shift the focus from poverty *per se* to race as the primary problem to be addressed; they have certainly overshadowed gender disparities. Land redistribution has also focused on household heads, 'therefore perpetuating married women's lack of access to land in their own right'. Tenure issues in 'communal areas', where the majority of the rural population reside, where poverty rests most heavily on women, have tended to be overshadowed or overlooked.

There is no doubt as the study has clearly shown that the Zimbabwean regime is using the land crisis to mask a violent campaign to suppress the opposition and to deflect attention from its mismanagement of the economy.

¹²⁷ *Maposa I* (n 9 above) 108.

¹²⁸ *Maposa I* (n 9 above) v.

6.2 Recommendations

The question to be answered now is how can disaster be averted in Zimbabwe? A return to democracy and the rule of law can ensure distributive justice does not lead to the erosion of the protection of the law, principles of natural justice and fairness. Although minority rights should not hold majority rights at ransom on a fundamental issue such as land redistribution, it should not be an excuse for the state in Zimbabwe to engage in land resettlement processes that are unplanned, illegal and violate civil liberties. The state must seek to achieve a lawful and just balance between the rights of its landed citizens and the limits of its own power. This is a principle aptly observed by the Roman Dutch writer Van Bynkersoek in 1737: “The right of Eminent Domain must be exercised with prudence and not be harshly abused, and it is an abuse of the right to use compulsion under it without adequate grounds or to take more than public necessity or utility absolutely requires but if the ruler appropriates upon payment of the price from the common treasury. He who convenes himself that he can act differently is a bandit rather than a prince”.¹²⁹

Zimbabwe must accept international human rights instruments especially the mechanisms set out in them. As mentioned, CERD and ILO Convention No.169 remain *de lege ferenda*, depriving people affected by dispossession of remedies that could otherwise be available to them. Zimbabwe has also not fully accepted the International Bill of Human Rights. Victims of human rights violations cannot seek individual recourse in view of Zimbabwe’s refusal thus far to accept the Optional Protocol to the ICCPR.

It is true that the international mechanisms may be weak to deal with the kind of problems confronting Zimbabwe, but they show the normative development of human rights standards on the international plane relevant to the issues at hand.

Even before these treaties, international law recognized the right of states to expropriate private property of aliens. The concern of the international community with regard to alien property was to ensure that the rules of civilized nations were respected. In other words, such property would be expropriated if it was in the public interest and the expropriation was done on the basis of the principle of non-discrimination. Even then, the expropriating state had a duty to pay prompt, effective and adequate compensation to the property owner. Provided these conditions were met, the deprivation was lawful. Therefore, it is not contrary to international law that property may be encroached upon by the state.

¹²⁹ Maposa I (n 9 above) 76.

These rules did not apply to property owned by nationals however, because such was regarded as internal. Usually, there would be no basis in international law to stop the expropriation of private property owned by nationals unless complaints through treaties affording international remedies were available. In this context, the white farmers in Zimbabwe stand on the same footing as any other Zimbabwean who loses property on the instigation of the state. The white farmers are not in the category of aliens in Zimbabwe in order for the international community to intervene. Even if some of them were to fit into the concept of foreign nationals, it would be difficult to find a basis for a right in international law to restrain the state from carrying out a deprivation done in the context of a social reform. Obviously, there could be claims of mistreatment in the way such a reform is carried out. It is practically difficult to avoid any mistreatment. In Latin America, scholars even invented the Calvo Clause as a safety valve enabling the state to subject foreign nationals to the same treatment as their nationals in relation to property claims. Although the West cried foul and the concept did not gain international prominence, the fact is that international law in this respect is fluid and far from certain.

In devising land redistribution and tenure reform programmes, Zimbabwe must also target marginalized groups such as women, or ensure that the principle of gender equity informs the terms of membership and participation within the project.¹³⁰ The government must ensure that women have individual rights to land irrespective of their marital status, or joint title if married, that women participate in decision making processes on land, establish a fund for accessing land for women, skills development and provide them with information.

To avoid the 'hijacking' of the programme, it is further submitted that the principles of the resettlement programme should be worked out in parliament so that the principles of democracy can be met before the executive implements it in order to address the issue of corruption and unjust enrichment. Government must seize its selective policy in allocating land to Zimbabweans. The government must grasp the opportunity to implement land resettlement that is both donor and internationally supported.

¹³⁰ Walker C (n 44 above) 11.

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