



BRILL

Who Owns Land in Zimbabwe? In Africa?

Author(s): MICHELO HANSUNGULE

Source: *International Journal on Minority and Group Rights*, 2000, Vol. 7, No. 4 (2000), pp. 305-340

Published by: Brill

Stable URL: <https://www.jstor.org/stable/24675076>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



JSTOR

Brill is collaborating with JSTOR to digitize, preserve and extend access to *International Journal on Minority and Group Rights*

Who Owns Land in Zimbabwe? In Africa?

MICHELO HANSUNGULE*

Centre for Human Rights, Faculty of Law, University of Pretoria, South Africa

Introduction

The land conflict in Zimbabwe underlines the every day challenges that haunt people in poor African countries, especially Sub-Saharan countries, which are characterised by extreme and growing levels of poverty. In the case of Zimbabwe, however, the conflict has a racial characteristic. It is a struggle for access to resources between the 'autochthonous' (indigenous people) on one hand and the late 19th century 'conquerors' (white settlers and successors) on the other. Otherwise, the situation has more or less the same features as in other countries.

The main reason behind the growing levels of social deterioration in Africa and therefore the acute poverty being experienced by Africans continent-wide is no doubt lack of access to basic resources, especially land. In poor developing countries such as in Africa, land remains the basic means of production. The Sub-Saharan African economies are still basically land-oriented. Land to the ordinary African is equivalent to the market share to a Western company. It also plays an important social function. The entire life-circle of an average African revolves around land. Basically, life is possible due to land. Yet, there is a widespread lack of access to land. Due to bad governance practices, land policy and land tenure systems in Africa have always been pitted against the poor. The post-colonial history of Africa right through to the independence phase depicts a grim picture of determined failure on the part of governments to fairly redistribute land among the poor and historically disadvantaged populations.

Since colonialism, Africans have systematically been deprived of their land and therefore their dignity. The essence of colonialism was to alienate the Africans from their resources in order to make them vulnerable to external rule.

* Visiting Professor, Centre for Human Rights, Faculty of Law, University of Pretoria, South Africa. The author was Visiting Professor of Human Rights at the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, University of Lund, Sweden from 1996 to 2000. Formerly he taught law and human rights in the School of Law, University of Zambia. The views expressed in this paper are solely those of the author.

Throughout this period, Africans were made to believe they had no self-worth and basically that they were not human so that in the end, they stood stark naked, so to speak – without any property and therefore, without dignity.

De-colonisation in the sixties and early seventies was a total let down. With the ‘wind of change’ in the midst, most Africans looked towards de-colonisation with great hope. However, de-colonisation failed to emancipate the African. She remained where she was – poor, landless and without dignity. Political independence did not lead to the restoration of dignity. Rather than bring substantial change to the quality of life that Africans were yearning for, it was a mere changing of the guard, from white oppressors to indigenous black oppressors, and virtually under the same system. The new native regimes that took over political power from European colonisers in fact perpetuated the alienation and dispossession started by the colonial state machinery. Consequently, the freedom that came with independence was *false* freedom.

Land Dispossession

The story of land dispossession in Africa defies belief. First and foremost, colonial rule entailed the forcible seizures of land from indigenous people to give it to settlers and the settler-state. At that time, it was fashionable for Europeans to openly ‘steal’ the land of Africans. Before the advent of Europeans on the African continent, the whole of Africa belonged to Africans – these being the Bantu or the ‘ntu’ people, the Nilotic people in the horn of Africa and others. The north of Africa was inhabited by people of Arabic blood, who have a long history in Africa.

Africans were migratory people. Up until colonisation, there were several human movements within Africa. Clans, ethnic groups and communities as well as individuals, in search of land, fleeing from war or for other reasons such as the dictates of tradition, compelled people to be on the move from one area to another. For example, the Bemba people of northern Zambia are known, for a long time, to have been practising the ‘*Chitemene system*’ (literary ‘tree stamping’ and in the next season or so, moving on to another site). The *Chitemene* required the Bemba group to be on the move from one area to another as often as possible. In other words, tribes have often had to move from one area to another due to insecurity, overpopulation or other causes.

These migrations continued right up to colonialism when they were stopped by white rule. Upon seizing the land, white conquerors proceeded to demarcate the land by boundaries, which they forced on the Africans. Authorities are generally agreed that the oldest tribe to inhabit the land in Eastern and Southern Africa were the Bushmen. At that time, there were no boundaries. Later, the Bushmen were joined by the Bantu, who migrated from the north of the continent. This was many years before the arrival of the white colonists and missionaries.

The Bushmen did not easily give way to Bantu invasions, even though both of them belonged to the black race. They tried to defend their right to their country by use of various means such as by invading the Bantu herds, for which they had a natural advantage given their superior hunting skills, against Stone Age people. However, their numerical inferiority soon betrayed them to the marauding hordes of Bantus. Even though depicted as a war-like and dangerous people, the Bushmen invaded mainly herds of cattle of the Bantus and later of the Boers. They did not carry out killings of their invaders, be they Bantus or Boers, even though both had forced themselves on their land. Yet the Boers carried out mass extermination of the Bushmen, bringing them to near extinction. The Boers periodically mounted military expeditions among the Bushmen in which men on horse-back wantonly killed hundreds of thousands of hapless members of the indigenous race to 'revenge' the raids the latter periodically made into their herds. This is one of the earliest genocide of a people.

From about the 16th century onwards, European colonialism came to Africa, led by explorers and missionaries. Later, direct agents of European powers made contact with African chiefs to 'conclude agreements' that would transfer land to Europeans. Hundreds of 'treaties' were forced on unsuspecting African chiefs and other authorities. In 1883-86, European powers called an international conference specifically to settle their disputes to their land claims in Africa, which resulted in the partition of Africa. The Conference, held in the German town of Berlin, constructed the present map of Africa. Of course, no African attended the Berlin Conference.

Colonialism in Zimbabwe followed the pattern in other African countries.¹ The British and the Boers led the colonisation of Zimbabwe. This entailed the taking of complete control and ownership of the land in that country. Due to a mistaken belief that the Zimbabwean soil contained gold and diamonds, we show below how scores of Europeans invaded the country seeking to get a slice of its land to settle, to carry out mining or later to farm. Several unholy treaties were concluded with African chiefs. As elsewhere, they were between the company and sovereign agents on one hand and chiefs on the other. Mzilikazi, the undisputed king of the war-like Amandebele people, and his son, Lobengula, signed most of the treaties that constituted the formal annexation of Zimbabwe to Europe. The Amandebeles or Matebele people were an off-shoot of the Shaka Zulu Kingdom in South Africa. They had escaped from internal conflict there orchestrated by Shaka Zulu, to settle in Zimbabwe. After having conquered the Mashona tribes whom they turned into their subjects and over whom they exercised sovereignty,

¹ Only two African countries were spared from European colonisation: Ethiopia and Liberia. Liberia escaped colonial rule as it was a creature of American movements trying to find a home for freed slaves. Ethiopia has been an independent nation for over 2000 years although it was briefly occupied by the Italians.

they (the Amandebele) were able to claim the right to their land. They also laid claim to the land inhabited by the Mashonas, and forced their chiefs to pay tribute. This is how most of the colonial treaties came to be concluded between the Matebele authorities and the Europeans. The British South Africa Company (BSA) established by a British magnet, Cecil Rhodes, led the way towards the colonisation of Zimbabwe and its neighbour Zambia to the north.

Where concessions, as the treaties were often called, could not be obtained 'freely' or through agreement with traditional rulers, then force was used to obtain the same. In the case of Zimbabwe, this led to two brutal wars in which the Matebele and on another occasion the Shona rose up against the white invaders. The Matebele and Shona uprisings of the late 1800s were the first peoples struggles towards self-determination. They constitute the seeds of the liberation struggle, locally known as the Chimurenga, that led to the independence of Zimbabwe in 1980. Robert Mugabe, Joshua Nkomo and others took up arms to liberate Zimbabwe when peace could not come through peaceful means. In all this, the primary objective was to free their land from the European intruders. During the recent and previous chimurengas, hundreds of thousands of Africans lost their lives, the price they had to pay to liberate their land and restore their dignity, which was expunged through white domination.

African Concepts of Land Ownership

Prior to colonialism, Africans lived their lives on the basis of their civilisation. They accessed land, owned rights in it and utilised it according to universal concepts prevailing in their communities. For example, when the Mashona people say the 'owner of land', they do not mean it in the Western or European sense of an individual being able to exclude others from the piece of land or to alienate it in line with personal wishes. To the Mashona, as to many Africans, the 'owner of land' or *varidzi vepasi* in local tongue is not a dry concept. It has spiritual in addition to legal, cultural and political significance. In the Mashona conception, an 'owner of land' basically refers either to people possessing an autochthonous right – the first people ever to have lived there or the conquerors of earlier owners.

Within these parameters, a complicated land tenure system, which basically ignores individuals in favour of groups, has developed. In Africa, a single piece of land can be the subject of several claims of the previous, present and future generations. It is common to find pieces of land in Africa referred to as 'my grandfather's field', long after the old man departed from the living. As a West African Chief said: land in Africa is owned by the dead, the living and the unborn. There is a lot of religion and mythology surrounding the African conception of land so that it is strange for any individual to dream of parting with that piece of land to another person not of the same grouping, for money or other value.

The ancestors, as well as spirit mediums, form a significant part of the concept of land ownership in African theory. Among the Mashona, the autochthonous and the conquerors are those who have power to make rain, which automatically excludes white people since they are beyond such rituals. An owner of land is not just one who has a title deed to a piece of land, which can be upheld in a court of law in the event of a dispute. In fact, the title-deed is not known in the African conception of land ownership. Memory evidence based on genealogies as well as evidence of continuous use rather than paper-based proof, is the main means of proving African title. Only in European minds does the title-deed make sense.

Whereas in Western systems mythology plays no part in the ownership of land, the African land concept has a spiritual as well as a historical context. We will see in the article how the Mashona people of Zimbabwe find it difficult to entertain Western notions of ownership when it comes to land in which the individual is the central and final focus. African land does not reside in the hands of one particular individual. Land belongs to the community, defined through either of the two theses above, while the individual can only enjoy rights of use. It is inconceivable to an African that an individual can exclude other members of the community from the use of that same piece of land when he/she is not using it, let alone to alienate it in the sense of selling the whole title to the land to a total stranger outside the grouping. Land ownership is interwoven with several cultural values so that its transfer also entails the transfer of those values, which is generally impermissible. Today, due to the advent of the Western economy and new values, people are beginning to sell traditional rights in land not so much because the traditional concept allows it but mainly due to the influences of the market. The market is forcing on the Africans values that are totally alien in their cultures. The land market has never been an African concept.

Under the Western concept, land is treated as any other property that is not subject to any mythological interpretation. An individual can acquire land on the market just as she can buy a car or a shirt. On the other hand, the sovereign can obtain land either through conquest or by the consent of the previous owners. None of these concepts existed in African theory. Consequently, the Western legal system that was imposed on Zimbabwe and other parts of Africa was essentially protective of the individual's right of access to land. There is nothing in it for Africans who did not have access to land in the first place. Consequently, many Africans in Zimbabwe – so called 'war veterans' – can not understand why the state must protect the rights to land of individuals whose root of ownership they can not recognise. They can not understand why under the foreign law forced on Zimbabwe at colonialism, they are known as squatters who are liable to be evicted and not to be listened to by courts when they try to assert their rights. As the true autochthonous, Africans regard themselves as the owners of land rather than the settlers and those who bought it from them. Since it was not vested in them through autochthonous rights or by way of inter-

African conquests in which the conqueror assimilates in the community of the conquered, people find it difficult to accept the lawfulness of their titles. African conquerors are usually accepted by the defeated communities and their claims to land treated validly largely because they are Bantu and they accept the others as Bantu or Africans with equal rights to the same land. On the other hand, European conquerors live separate lives from Africans and never attempt to live with them in accordance with their values and customs.

It is true that in the present crisis in Zimbabwe, various forces have been trying to exploit the situation. There are internal and external forces at play in Zimbabwe further exacerbating the volatile situation. Britain, the former colonial power, bears full responsibility for what is happening there. It was through colonisation that the unjust distribution of land was instituted and when it was time to pack their backs and go, the British did not bother to correct their wrongs. Africans were left in the 'tribal homelands' that they had been driven into at the time of the primitive expropriations of their land by European settlers. State succession at the time of independence in 1980 did not deal with this situation. Rather, the injustice was validated by the British-tailored 1979 Anglo-Saxon constitution. This constitution entrenched the inequitable and racist land relations inherited from colonialism, which favoured ownership of land by a tiny white minority against millions of dispossessed Africans. Similarly, the colonial legal system that gives advantage to any title holder was perpetuated and entrenched; this in effect amounts to declaring Africans landless and compelling them to respect the rights of settlers and their successors. This is the gist of the problem in Zimbabwe. The political angle to it just shows that the problem exists; otherwise it would not have been possible for any one to manipulate it.

Below, an attempt is made to answer the urgent questions: who are the true owners of land in Zimbabwe? In Africa? It is an attempt to explain the difficult situation in Zimbabwe in the context of human rights, especially the group rights of indigenous peoples.

Background

President Robert Gabriel Mugabe of Zimbabwe has a big problem on his hands. He has carelessly burnt his fingers while trying to play a foolish political game. Even though he has been in politics for over three decades, beginning as a robust, no-nonsense nationalist politician, Mugabe seems to have suddenly lost the 'ropes of the game', leading to the dangerous situation the country now finds itself in.

In the current turmoil, Mugabe will be very lucky to finish his full political term at the helm of Zimbabwe's highest office. Chances are that he will be evicted from office before his time expires. Politicians and even academics in Western countries simply cannot stand him. Robert Rotberg summarises this

hatred.² Throughout his article, Rotberg presents Mugabe as the main problem in Zimbabwe. In an uncharacteristically strong tone given the fact that the author describes himself in the article as one of the experts on African issues, Rotberg heaps the blame for all the problems Zimbabweans are facing on Mugabe: he is responsible for the 'declining GDP levels, food scarcities, rising infant mortality rates, soaring budget deficits, human rights abuses, breaches of the rule of law and prolonged serfdom for millions'.³

President Mugabe has been made to bear responsibility for everything negative that is going on in Zimbabwe. This kind of thinking is destructive. Readers are not enabled to understand the real problem behind the land seizures. There is no attempt to describe the problem so as to enable people to form independent opinions. It is difficult to understand why everything has been blamed on Mugabe. No wonder the West has a distorted view of Africa. Frequently, people in Western countries do not get the whole story of Africa, and certainly not the accurate story.

The truth is that Zimbabwe is not the only African or third world country with rising infant mortality rates, soaring budget deficits, human rights abuses, etc. Many other states do have these problems. Therefore, it would be wrong to see these features as being characteristically Zimbabwean. In virtually all African countries, populations suffer these wrongs. Even in developed countries, some of these factors still constitute serious concerns.

Similarly, the last electoral process in Zimbabwe has been described as a 'complete subversion of the democratic process.'⁴ It may have been. Indeed, some election monitors from Western countries had to abruptly discontinue their mission in the middle of the elections in protest against alleged election irregularities. Election rigging and election malpractice is a familiar story in Africa. But the so-called 'too close to call' results in Florida which prompted a recount

² Robert I. Rotberg, 'Africa's Mess, Mugabe's Mayhem' *Foreign Affairs*, Volume 79, No. 5. One interesting revelation Rotberg makes about his interviews in Zimbabwe is that he talked to the minister responsible for the privatisation exercise in the country to find out why the exercise was slow. He says the minister responded by saying 'you needn't persuade me. I am in agreement with you. It is the boss.' This is unconvincing. Why would Rotberg rely on a minister instead of asking President Mugabe himself? If he encountered difficulties in securing an interview with the latter, why does he not say so? Besides, while on this issue, is the privatisation of the copper mines and other assets in Zambia really the model for what should happen in Zimbabwe? What has become of Zambia after the privatisation exercise which has been one of the most efficient ones in Sub-Saharan Africa? Ask the Zambians.

³ Rotberg accuses Mugabe of everything. He holds him responsible for the rapidly escalating levels of HI/AIDS in the country, falling short of accusing him of introducing it. This is not fair. Similarly, it is not fair to blame Mugabe for rising infant mortality rates when all African countries face the same scourge. Mugabe is not president of Malawi or Zambia where more children die in infancy. He is not president of South Africa, which is now experiencing widespread cholera outbreaks in Kwazulu Natal. Neither is he president of Uganda, which has one of the highest rate of HIV/AIDS infection.

⁴ Robert Rotberg, *ibid*.

of the votes in a number of counties have shown that elections in the world's remaining super power cannot be said to have been fair. Still, Africa's soothsayers will continue directing their criticisms to the conduct of elections in Africa and other third world countries, such as Zimbabwe.

Zimbabwe, it must be emphasised, has never been a developed country at any time in its history. Its African population is extremely poor. That the majority of African people in Zimbabwe are extremely poor is certainly not only due to Robert Mugabe. They were poor before Robert Mugabe came to power. It is colonialism which did not acknowledge their dignity and that condemned them to a life of misery. However vulgar this might sound, it must be said. If the rising rate of infant mortality is due to Robert Mugabe, where would this leave Ian Smith? Can we say that Ian Smith worked for the people of Zimbabwe to ensure that their children did not die while in their infancy?

During the war of liberation (*Chimurenga*) which Zimbabweans endured for many years, hundreds of thousands of innocent women and children were killed. Whole villages were uprooted and burnt down by Ian Smith's racist Selous Scouts. Thousands of Zimbabweans fled to neighbouring and other countries. Up to now, hundreds of families that fled the racist onslaughts at the height of the liberation struggle are still stuck in Zambia – in Chongwe, Mumbwa, Mandevu and Chazanga Compounds in Lusaka, etc.. The racist regime destroyed families, villages, communities and innocent lives with the sole aim of preventing black people from taking power. I remember, early one morning in 1979, the Lusaka skies suddenly covered with foreign fighter planes to the amazement of Zambian people who were not used to war. Deafening sounds of bombings were soon heard. It later transpired that Ian Smith's dreaded Selous Scouts had been bombing Chikumbi Refugee Camp on the outskirts of Lusaka. Chikumbi was home to several thousand children and women from Zimbabwe who had escaped the barbaric annihilation of a people by the racist machine in that country. The University Teaching Hospital (UTH) in Lusaka was full of hundreds of bodies who were victims of this dastardly act.

In spite of all this, Ian Smith now attracts audiences at his press conferences! It is a sign of how things have changed. The comments of Ian Smith, who at one time predicated that he would not see Africans in power in Zimbabwe for another thousand years, are carried by the world's leading newspapers, just as if in a dream. It is perplexing how people who had been subjected to so much suffering can turn round and heap praise on a serpent like Ian Smith.

Ironically, though scholars do not acknowledge this, Africans have a larger heart – larger than any other people in the world. Indeed, what is good governance if former President Nelson Mandela's exemplary display of forgiveness is not the clearest example of it? Anyone who has been to Robben Island, where Mandela and thousands of other political prisoners were held for many years by the apartheid regime in South Africa, should agree with the view that *good governance* is native to Africa. Where else in the world would a government of the

oppressed – people who suffered every indignity in the book such as those endured by the black people of South Africa – protect the oppressors once in power?

What happened to Nicolae Ceausescu, the former President of Romania? Western countries did not move in to protect him in order for him to get a trial. In South Africa, the Mandela government did not execute, let alone harass, the former members of the apartheid government in spite of the fact that what they had done for years was a recognised crime in international law. He even went to the extent of inviting his jailors to his swearing-in-ceremony! Mandela is different. He would never have stood by while troops were busy executing Ceausescu and his wife Elena, even if they had been the ones to imprison him. It is significant that, on his being released from prison, Mandela did not lay charges against the former apartheid leaders.

Former South African President F.W. de Klerk publicly criticised Nelson Mandela's style of presidency when de Klerk served as one of the two vice presidents. He obviously knows what he means. Well, this is the price that a good person pays for being good. If he did not practice good governance, Mandela would have imprisoned the two apartheid leaders. After all, what would be wrong with arresting, trying and imprisoning the apartheid leaders?

Rather, it is Samora Machel of Mozambique, Robert Mugabe of Zimbabwe and Nelson Mandela who, upon their assumption of power, preached love and reconciliation. Samora Machel told Mozambicans that one thing they should never do is to repeat the mistakes the colonialists made against them. Robert Mugabe was the first post-colonial African leader to preach reconciliation and to actually practice it, which now seems a mistake. Those who benefited from it did not appreciate it. He did not arrest Ian Smith and his generals in spite of the massive evidence at his disposal of the crimes against humanity they had perpetrated against the black people during the long years of racist oppression. Smith was allowed to live his normal life and was even given a pension! When the Mugabe regime tried to take away the ill-gotten pension, Smith successfully challenged the action in court, a court appointed by Mugabe. The court ruled in favour of Smith keeping the pension even though his so-called government was blatantly illegitimate and illegal. When President Mugabe resentfully says 'I'm no Idi Amin',⁵ it is an allusion that must be heeded. Would Idi Amin have tolerated Ian Smith and his white settlers the way Mugabe has? It is important to look at these matters seriously.

President Mandela's government, against all odds, chose the path of reconciliation. A Truth and Reconciliation Commission was established in post-apartheid South Africa, headed by Nobel Peace Laureate Archbishop Desmond

⁵ Robert Rotberg, *supra*. P. 51. Quoting Mugabe from an interview with London's Sunday Times, June 2000.

Tutu.⁶ The Commission called on all ‘criminals’ to come forward and tell the ‘truth’ about their role in turn for forgiveness. Chilling tales of how the apartheid state machinery eliminated freedom fighters from 1960 towards the end of apartheid in 1990 came to the surface. In fact, it is the freedom fighters and not the agents of apartheid who became ‘criminals’ in that they had to prove the political motives of their actions during the liberation struggle to avoid being prosecuted. Consequently, some of the Pan-Africanist Congress (PAC) fighters are still locked up in prison together with ordinary criminals while the real perpetrators of apartheid crimes are walking the streets unmolested. The people who would certainly have been executed, or tried if in the West, are free upon recounting the details of their nefarious involvement in apartheid crimes. All the new South African regime prayed for was to have the courage to forgive – something they have successfully been doing.

In a twist of ironies, it is the white people in post-apartheid South Africa who have difficulties forgiving the blacks. To most black people in the so-called free South Africa, freedom has brought no solace. Whites are still abusing the blacks just as they did in apartheid South Africa. The South African Agricultural Plantation Workers Union (Saapawu) has, for example, documented numerous cases of barbarism committed by white farmers in South Africa against the black farm workers during the time of Desmond Tutu’s reconciliation process. When the South African Minister of Safety and Security, Steve Tshwete, expressed worry about the murders of white farmers and called for more protection for them because, in his words, ‘they feed the nation’, the Saapawu asked him (Tshwete), to acknowledge that white farmers were responsible for ‘gross human and labour rights violations’. Saapawu pointed out that while there was no evidence linking black farm workers to attacks on white farmers, it was known that some farmers had forced their workers to eat excrement as punishment, share accommodation with pigs, painted farm workers with silver or white paint and brutally beaten and killed workers. White farmers pay poverty wages and illegally evict workers on dismissal. Farm workers and their families in South Africa are still being subjected to systematic and collective terror by white farmers, for nothing.

⁶ The former Archbishop of Cape Town reveals his work and views on reconciliation in his book: *No Future Without Forgiveness* (1999). In an interesting chapter, entitled ‘Nuremberg or national amnesia? A third way’, he writes ‘There were those who wanted to follow the Nuremberg trial paradigm, by bringing to book all perpetrators of gross violations of human rights and letting them run the gauntlet of normal judicial process. It turned out that this was not really a viable option at all, perhaps mercifully for us.’ The archbishop’s main criticism of what he called ‘victor’s justice’ is that the accused had really no say whatsoever in the matter and that some of those who sat in judgement like the Russians were even themselves guilty of gross violations of the same rights by which they judged the Germans.

Indeed, white farmers in rural areas have set up vigilante groups which are being used to terrorise farm workers, their families and rural communities. Eicker Henning tied his farm employee, Ndelwa Kepisi Mgaga, around his neck and dragged him behind his pick-up truck for 500 meters along a gravel road. This was after he had whipped him, kicked and severely beaten him for stealing equipment on the farm. The farmer was imprisoned in November 2000 for 25 years. Only recently, six police officers in the South African Police Service (SAPS) have been arrested for setting police training dogs on illegal Mozambican immigrants as bait in a shocking display that was broadcast on South African Broadcasting Services (SABS) television. While the victims were shown crying in pain and pleading with the white police officers to stop abusing them, the officers were laughing and making fun of their barbarism.

It is difficult to understand just what is going on in South Africa. While black people are mistreated, the law is on the side of white people since whites have money. Anyone who kills gets bail immediately. For example, in the case of the 'dog cops' above, the six police officers have been granted bail almost in a routine fashion, prompting black demonstrators outside the court rooms to chant 'one settler one bullet'. Blacks in South Africa feel insecure.

In Zimbabwe, most whites still have not accepted the blacks. They have not changed fundamentally. At heart, they remain what they have always been – natural colonialists. Their hope of Rhodesia is not yet lost. Twenty years after independence, blacks are still called 'kaffirs' and 'monkeys' by whites. They even still call Zimbabwe by its colonial name 'Rhodesia', refusing to acknowledge the changes that have taken place in the country. Only a handful of white people have genuinely changed. In Zimbabwe newspapers, there are still letters from whites questioning just what blacks want from them since they have given them political power. 'Do they want to get our daughters as well?' one correspondent asked. This is the kind of mentality that most white people in Africa have towards blacks. To them blacks are not humans worth living.

Once more, it must be stressed that there is no match in the West for the likes of Samora Machel, Robert Mugabe and Nelson Mandela. It should be remembered that Vice-President Richard Cheney actually voted in the US Congress against a call for Mandela's release from prison. Similarly, Margaret Thatcher, former British Prime Minister, objected to Mandela's release calling him a '*terrorist*', as well as to the unbanning of the African National Congress (ANC) and to the granting of amnesty to ANC and PAC soldiers. Large Western countries supported Mandela's imprisonment in 1963 and labelled him, together with his Rivonian trialists, communist terrorists. Similarly, some of these countries supported Robert Sobukwe's excruciating six year imprisonment in isolation on Robben Island, for being leader of the PAC. Quite clearly, the West has no moral basis for questioning the African record given the fact that it condoned and even actively abused the human rights of Africans who were just fighting for their birthrights.

Just recently, former President Bill Clinton stunned the world when he disclosed that it was Mandela who helped him in his darkest hour when he faced impeachment due to the Monica Lewinsky scandal. In a candid interview published in *The Times* in November 2000, Clinton publicly acknowledged that during his darkest hours, when it appeared as if the Lewinsky affair would result in impeachment, Mandela counselled him not to allow his enemies to take his mind and spirit.⁷ Mandela personally travelled to the White House where he attacked what Clinton's opponents were doing to him. The same Mandela had offered to walk P.W. Botha to the Truth and Reconciliation Commission (TRC) where he had been summoned to explain his role during his tenure as President of apartheid South Africa. Botha had dismissed the summons from Desmond Tutu's Commission as coming from a Kangaroo Court, stating that he was not going to demean himself by appearing before such illegitimate bodies.

How many Western politicians would do for an African politician what Mandela did for Clinton? Can we imagine, even in our wildest dreams, Western politicians flying to Mandela's prison during his long years of incarceration in apartheid jails to counsel him and urge him to go on? This is probably why the West does not respect Africans. Africans in general are too forgiving, and others exploit this as a weakness. It is just possible that African humility will be misunderstood, especially in the West, as it has indeed been over the years. Why did the West come all the way to Africa to enslave Africans, leaving the Native Americans within their midst? The First Nations could not be enslaved. Booker T. Washington has alluded to how difficult the 'Red Indians' were, unlike Africans.⁸

What is the difference between Mandela, Mugabe and Samora Machel, people would ask? There is really no difference. These are individuals who offered their lives to liberate their people. They put their lives on the line in order for the people to have their dignity. Still, Mandela has a different approach to Mugabe and to the late Samora Machel. While Mandela is stately in approaching issues to the extent that some people would think of him as being weak, Mugabe has no diplomacy when it comes to what he believes in. Once at a meeting in London, he shouted 'What can white people teach me about democracy?'⁹ Mandela would be more careful although even he could not help but say 'go to hell', in reference to criticisms about his close relations with the Libyan strong-

⁷ Mail & Guardian, November 17 to 23, 2000.

⁸ Booker T. Washington, *Up From Slavery*, 1956.

⁹ During the spontaneous demonstrations against the 'dog cops' outside the Pretoria Regional Court on 22 November 2000, crowds of South Africans held posters which read 'one settler one bullet' and posters which showed Robert Mugabe with the words 'Future President of the United States of Africa'. In the compounds in South Africa, there is growing disillusionment about the African National Congress government.

man Muammar Qadhafi. In the end, it was Mandela who contributed to making possible the Lockarbie air disaster trial involving two Libyan suspects.

Still Mugabe has committed grave crimes during his tenure at the helm of Zimbabwe's political leadership. Mugabe's main crime was to massacre his own people, the Matebele people.¹⁰ This was as unacceptable as it was inhuman. It is something that Mugabe will have to pay for. The Matebele people, whom Mugabe suspected of siding with his erstwhile political foe, Joshua Nkomo, were a defenceless minority who simply wanted to be left to go on with their lives. The historical rivalry between the Matebele, descendants of King Lobengula, an offshoot of the Zulu people of South Africa, was blamed in the early 1980s for Mugabe's less than tenacious grip on power. He tried to banish Nkomo, well known for founding the nationalist movement in Zimbabwe, to Britain. Nkomo fled for his life when it became clear that Mugabe had issued a directive for his elimination. Later, the two men were persuaded to reconcile and a truce was announced which saw Nkomo being appointed to the prestigious but powerless office of second Vice President. However, the die had already been cast. The Matebele genocide is something that will linger on and on. Mugabe will eventually be made to account for it.

Another of Mugabe's ill-fated decisions was to send his army to the Democratic Republic of the Congo (DRC). According to Mugabe, he was responding to a plea from his friend Laurent Kabila of the DRC who was engaged in a fight against his 'brothers and sisters' from Uganda and Rwanda who had in the first place installed him in power. Zimbabwe's involvement in the DRC, as well as that of Namibia, surprised most people. Even though it is a member state of the Southern African Development Community (SADC), the DRC has not been a very close ally of either Namibia or Zimbabwe. Rather, it has closely allied itself to Rwanda and especially Uganda during President Laurent Kabila's closing days on the late Mobutu. Mugabe used the security pact in the SADC which enjoins a SADC member to come to the aid of another SADC member facing insecurity. This is quite clearly a gross mistake by Mugabe. It is a mistake to commit his meagre resources to a war that the ordinary people of Zimbabwe would hardly appreciate.

¹⁰ The most comprehensive study on the Matebele massacres perpetrated by the Mugabe regime is by the Zimbabwe Catholic Commission for Peace and Justice (ZCJP). The Report reveals glaring and blatant violations of human rights, including mass killings by the government of unarmed and defenceless members of the Matebele ethnic grouping. It is interesting that in its State Report to the African Commission on Human and Peoples' Rights under the African Charter, the government took the unusual step of admitting that gross human rights violations in Matebeleland took place in the 1980s and expressed its regret. For this, the government was praised by the Commission which is used to States denying responsibility for what takes place within their borders. For the ZCJP Report, see <www.mg.co.za/img/zim/zimreport.la.html>

The Nature of the Problem

Land is a sensitive issue. This is even more the case in Africa where land is what technology is to the West. For centuries now, humanity has fought over land. What is at the core of the Israeli-Palestinian conflict which has claimed hundreds of thousands of lives? In 1862, a German Jew, Moses Hess, an advocate of Jewish return to Palestine, wrote in the book *Rome and Jerusalem* of how his 'nationality' was inseparably connected with the Holy Land and the Eternal City. Hess added, 'Without a soil a man sinks to the status of a parasite, feeding on others.'¹¹

This is exactly the problem Zimbabweans face. The majority of Zimbabweans have no access to the abundant soils in their country. Their land was taken away at colonisation and made white land, which is off bounds to them. They are crowded into densely populated communal unproductive land from whence they eke out their living. The problem is compounded by the fact that land does not grow in correspondence with growth in population or need. Consequently, over the years, even communal land has become scarce. Yet, the outside world expects Africans to continue tolerating an obviously intolerable situation. No one among those who have spoken against white farm invasions by blacks would live the conditions of the blacks in Zimbabwe's communal lands. No one. It is easy to talk from outside. Another thing is to actually live the conditions faced by the Zimbabwean blacks.

In Zimbabwe the ordinary blacks, who happen to be the indigenous people, have been forced to live a parasitic life, as predicated by Hess, not due to themselves. The black population as a whole is indigenous in the sense that they occupied what is now Zimbabwe before other populations groups arrived. They are disadvantaged, landless and poor. Yet, when they cry out for help, the international development process does not want to help them. Rather, the international community would like the *status quo* in Zimbabwe to be preserved. It does not want blacks to be self-sufficient by giving them land on which to grow their food but rather wants them to rely on the tobacco earnings of white farms so that they remain perpetual parasites in their own country.

It has even been suggested that blacks cannot farm; they are not as productive as whites. Gert Ehlers, President of the Transvaal Agricultural Union of South Africa, has written about what he called a 'highly productive Mpumalanga Pig Farm' which, after being sold to an African Chief and his tribe three years ago under South Africa's Land Restitution Programme, collapsed to the extent the pigs had to be sold to avoid them dying.¹² This kind of stereotyping of the African race is common even among Africans themselves. Yet, who

¹¹ See Martin Gilbert, *Israel: A Short History*, 1998.

¹² *The Citizen*, Tuesday 14 November 2000, p. 12.

actually runs the successful white farms in South Africa or Zimbabwe? Isn't it the black farm workers without whom any farming would be impossible? White farm owners are supervisors and unless it can be argued that supervisors and managers are the real force behind the production figures, the argument is grossly untenable. Most farms run without any supervision. But when it comes to suggesting that blacks who are already running the farms should be given the land, the issue of their 'inability' and 'incompetence' arises.

Earlier, we alluded to the fact that the majority of Zimbabweans are poor. Many of those who have written on the current land crisis simply have no idea of the actual situation on the ground. People only know what has been fed them by the world networks like CNN, who apparently have no interest in bringing out the real characteristics of the problem. Zimbabwe is one of the poorest countries in the world. The recent Healthy Life Expectancy Rankings by the World Health Organisation (WHO)¹³ list Zimbabwe at No. 184 out of 191 WHO countries. Women in Zimbabwe have a life expectancy of 32.4 against 33.4 for men, shockingly disturbing figures.

Zimbabwe has been independent for only twenty years. It gained independence from Britain in April 1980 after a protracted war of liberation. During colonialism, the African people were excluded from all socio-economic development as a deliberate policy of the colonial state. Access to socio-economic opportunity was a preserve of white people. It is therefore difficult to appreciate what writers like Robert Rotberg mean in saying 'Zimbabwe has always been comparatively wealthy'.¹⁴ There is no evidence to support claims that the Zimbabwean economy was booming in the days before independence. If at all, then this would refer only to the 'white economy' but certainly not the economy of the black people.

As we shall see below, the main means by which colonialism was entrenched in Zimbabwe and Africa as a whole was through the acquisition of land by force. The seizure of land by Europeans in Africa is something that is so widely acknowledged that few people can deny it.¹⁵ Europeans came to Africa in search of land to settle and to carry out their mining activities. The arable land which was fertile and most suitable for growing different crops was seized from Africans who were also removed from land found to contain such minerals as gold, diamonds, silver, etc.. Floods of white people invaded Africa as missionaries, settlers, explorers, or in Angola, prisoners. Through a variety of methods,

¹³ Healthy Life Expectancy Rankings, World Health Organisation (WHO), <<http://www-nt.who.int/whosis/statist.../dale.cfm>>

¹⁴ Robert I. Rotberg, *supra* note 2, p. 50.

¹⁵ *Ibid.*, p. 54. Rotberg describes the European conquest of the African population merely as '... Africans were heartlessly pushed off the best lands in Zimbabwe by the more powerful whites'. Even he acknowledges however that Africans were 'relegated to the less well watered, stonier, and less loamy lands of the nation'.

including blatant tricks played on uneducated chiefs and Kings, duress, fraud, and use of force, Europeans obtained the land of Africans and drove them to poor soils. Suddenly, Africans were dispossessed and became squatters in their own country.

This state of affairs remained throughout the colonial period. While whites had the best land, Africans had no access. When independence came, things changed but not land relations. Yet, to most people, independence simply meant they would get back their land from the oppressors. Since the seizure of land by colonialists was the main instrument used to dispossess Africans, people could be excused for entertaining the notion that at independence, when colonialism was destroyed, their lost lands would be restored. And yet this did not happen. Independence did not return the 'lost land' and neither did it lead to a change in the socio-economic conditions of the majority of the local population. Instead, it aggravated the situation: with the fall of the legal boundaries between whites and blacks, which had earlier prevented Africans from seeing exactly what was going on in white country, the social divisions became clearer and the need to dismantle them obvious.

Typically, the British came up with yet another device intended to protect white minority interests. The 1979 Constitution, developed by the British, effectively confirmed the validity of the existing social inequities. It guaranteed the right to property, which at that time meant that the white farm owners in Zimbabwe would not be subjected to the land seizures similar to what their ancestors had perpetrated against Africans. Since there were few Africans with access to land, it can be said that the primary objective of the 1979 Agreement, which found its way into the independence Constitution, was simply to protect the white people against fears that blacks would take revenge on them and take away their land.

Once again, the British have cheated the Africans. The first time was during the advent of colonial rule and now at independence. To the majority of Africans, independence meant nothing without the return of their land. But it looks as though the nationalist leaders, including Mugabe, paid heed to the earlier teachings of Africa's founding fathers such as Kwame Nkrumah of Ghana who preached 'seek ye the political kingdom first!' It was hoped the rest would come in handy. In other words, they were eager to obtain independence to such an extent that they overlooked the need to settle the issue of land and property with the colonialists as they obtained their political freedom.

What therefore happened was that Zimbabwe went into independence without land. While the blacks got political freedom, the whites remained with land in their hands and through it the country's economy. Rather, land was going to change hands on a so-called 'willing buyer, willing seller' basis. This means that blacks were 'free' to buy land from the white people on terms acceptable to the latter, being the owners of the land, and only if they wished to sell. The government could also buy land from whites on the basis of the same principle apply-

ing to private purchases and then redistribute the land to the landless. In the event the land owners were simply not willing to sell and the government needed the land, the latter could use the law to compulsorily acquire the land in a fashion consistent with the law. The law stipulated payment of a 'fair market price' or other form of redress for any government seizure of land. In other words, government compulsory acquisitions are legally permissible in international and local law provided they comply with the minimum standards. These stipulate that there must be a compelling public need and that the acquisition should be on the basis of a fair purchase price in order not to result in the owner incurring a loss of property. The rule of the thumb is that no land can be taken away without compensation.

But this is the bone of contention in this case. Blacks have argued that they cannot accept this principle since it did not apply to whites at the time of settlement. White settlers therefore have no moral basis for insisting on being paid for the land before surrendering it to Africans or the government since they themselves did not pay for it. It may be that the current and even previous owners actually paid for it, but the history of land title ownership must be traced further back. Besides, there is a great deal of politics and religion as well as culture surrounding land. This makes title to land a less than forthright affair.

After waiting for authorities to resolve the land issue for twenty years, blacks (self-styled 'war veterans') decided to take matters into their own hands. Others have argued that it was actually Robert Mugabe himself who incited the war veterans to invade the white farms. The point is that, if the blacks had had land, not even Mugabe could have managed to incite them to occupy other people's land. The fact that blacks can be incited to invade land is an indication of the fact that they are hungry for land. This, not the incitement, is the real problem. Blacks are not empowered with land, which is why they can very easily be incited. Those who genuinely want to help resolve the problem should deal with its roots and not its manifestations.

No doubt the land issue has been exploited for different ends. President Robert Mugabe has obviously been playing to the game. For a long time now, he has had virtually no political opponents, and Zimbabwe has been run as a virtual one-party state even though the Constitution has always provided for political freedom. There is no clause in the Constitution prohibiting other political parties besides the Zimbabwe African National Union – Patriotic Front (ZANU-PF). After the merger with veteran politician Joshua Nkomo's Zimbabwe African Peoples Union – Patriotic Front (ZAPU-PF), Zimbabwe was denied any real opposition outside government. ZAPU, which roughly equals the 14% Ndebele ethnic minority group, has presented the real challenge to Mugabe's firm hold on power. However, having 'bought' ZAPU into government, he bought his political safety.

The advent of a robust trade union movement has created headaches for Mugabe. Morgan Tsvangirai's Zimbabwe Congress of Trade Union (ZCTU)

filled the vacuum created by the political naivety of the pre-independence politicians who fell out of favour with Mugabe. Mugabe himself did not have much respect for Ndabaningi Sithole, Bishop Jushua Muzorewa, James Chikerema and other independent politicians that tried to challenge him. Similarly, he did not regard the whites as being any serious challenge to his rule, relying on peoples' previous experience with centuries of white rule. Therefore, his main concern was Nkomo and his Amandebele ethnic group.

The Shona ruling majority group has always been opposed to the Amandebele, even before colonialism, which is why when democracy came it was easy for parties to grow on the basis of these groupings. The restive Ndebele region has been very difficult to integrate into the Mashona strategy. The Ndebeles feared they would lose their identity in the Mashona dominated alliance and so opposed it. Besides, as a group, the Ndebeles fought very hard for the independence of Zimbabwe even though, when it came to the sharing of spoils, they were not given an equal share. However, being a minority, they could not sway the votes in the 1980 elections, which allowed the Mashona and allied groups to capture the state. This paved the way for the Ndebele uprisings of the 1980s, with massive loss of life. Mugabe used the occasion to bring the Ndebele into the fold through high-handed military action while courting political settlement. Later, after thousands of lives had been lost, a pact between Mugabe and Nkomo was signed ensuring Nkomo and his associates a political role. This pact changed the political equation in Zimbabwe. Its main achievement though was to enable Mugabe to consolidate his grip on power.

However, as in most African countries, ordinary people did not benefit from the political equation. Only politicians did. In other words, not even the Mugabe/Nkomo alliance led towards the resolution of the social injustice perpetrated by colonialism on the ordinary people of Zimbabwe. It was just a settlement of a long standing dispute between two men, Mugabe and Nkomo, who had worked together for the liberation of Zimbabwe before going their different paths. Nkomo was Mugabe's senior in the early days of the struggle but later came to serve the latter as his Vice President.

Land was not focused on in the political agreement between the two men. In the 1979 Constitution, as we have already pointed out, the liberal clause, which promoted property over and above the human rights of blacks, made it impossible for blacks to access the land. Since black people had no money to buy the white farms when they were put on sale and in view of the fact that the government itself did not have the money to purchase the land either on a willing seller-willing buyer basis or on compulsory terms, there was a stalemate. In February 2000, Mugabe made a significant move towards facilitating government acquisition of white farms. He put forward a radical proposal in a draft constitution in which he suggested that he be given powers to compulsorily acquire white farms without compensation, save for improvements. Some people saw this as a political gimmick, especially in view of the forthcoming par-

liamentary elections which for the first time would be contested by the urbanite Morgan Tsvangirai's newly formed political party, the Movement for Democratic Change (MDC).

Surprisingly, Mugabe lost the referendum. People did not believe in the reality of his promise. Besides, by then, ordinary Zimbabweans were preoccupied with severe economic problems such as lack of fuel, the high cost of living and soaring unemployment. These are the same kind of problems that Africans in other African countries faced. Consequently, when the referendum came, people decided to use it to send a message to Mugabe that they were tired of his bad economic policies and therefore would not vote for him. This is why, in spite of some good points in the draft constitution, it was rejected. Some of the points include a new clause on the death penalty in which it would no longer be mandatory for judges to convict capital offenders to death. Also, the compulsory land acquisition clause itself was essentially meant to benefit the very people who by rejected the draft constitution. The rejection of this clause perhaps made it absolutely clear that the voters had other issues on their minds. It is difficult to imagine that they were rendering approval to the right of the white people to monopolise land ownership at the expense of the blacks, which is what rejecting the draft constitution amounted to. It could be said to amount to self-violation of their human right to land.

It is following this that land invasions started or intensified. Government facilitation of the invasions was also reflected in the determination to ignore the due process of the law. High Court Orders¹⁶ against farm invaders and squatters were ignored. A High Court judge can only issue orders but can not enforce them. It is not possible for a judge to take off his robes and go down to the farm to make sure that his or her decision is respected. The executive does that. In the case of the executive in Zimbabwe, it did not carry out the eviction orders even after being cited for contempt by the white farmers. This was taken as endorsement by the government of the invasions perpetrated by so-called 'war veterans'.

The farm invasions have attracted world-wide attention. Kofi Annan, UN Secretary General, is among those who called on Mugabe to restore the rule of law in Zimbabwe, by removing the squatters on white farms. Of course regimes in Western countries spoke out strongly against the seizures in general and Robert Mugabe in particular. They called on the international community to isolate Mugabe and his regime. Britain, the former colonial ruler, was outspoken in

¹⁶ The first Court Order was granted by Judge Moses Chinhengo on the basis of an application by the Commercial Farmers Union against the Attorney General as First Defendant and Dr. Huve, President of the Self-Styled War Veterans Association of Zimbabwe, as Second Defendant. This was not enforced by the government. In a subsequent application to try and enforce the Order, Attorney General Patrick Chinamasa told the Court that to remove 60,000 war veterans occupying 1000 farms could trigger a civil war and that in any case, police did not have the necessary manpower.

her criticism of Mugabe, typical of a former colonial power. The British government stated that it could not fund the land reform programme while violence and intimidation on the white farms continued. However, it has recently been announced that both the United Nations Development Programme (UNDP) and some Western countries, notably the Scandinavian countries and Saudi Arabia, have agreed to fund the land resettlement and reform programme. In other words, some money has been found to fund the purchases and help in the resettlements in the next few years.

It must be pointed out that, had there been no invasions in the first place, there would most certainly have been no reaction from the international community. Experience shows that the United Nations and other organisations like to take things 'casually'. On the other hand, Western countries are usually indifferent to African problems even though they may have contributed or are even solely responsible for them. Consequently, it was significant that the people decided to take the law in their hands in order to secure their rights. Even though a violation of the law, this is not totally unprecedented. Preambular paragraph 3 of the Universal Declaration implicitly approves such conduct when it states:

'Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and *oppression*, (emphasis supplied) that human rights should be protected by the rule of law'.

When all the instruments are read together, there is no doubt that the war veterans or black people of Zimbabwe have a right to take the action they did to defend their lives. Since no one spoke for the black dispossessed people of Zimbabwe, including the UN, dispossessed people have a right to speak for themselves and invading farms is a form of speech. Besides, the farm occupations should be regarded in the context of the people who are defending their country. It is self-determination, which did not happen at the time of independence. The black revolt against white farmers epitomises the continuation of the liberation struggle towards genuine freedom. Joshua Nkomo once said: 'A nation can win freedom without its people being free'.

The History of the Land Question in Zimbabwe

Zimbabwe was promulgated a republic on 18th April 1980. It succeeded the colony of Southern Rhodesia, the name it was previously known under until independence. Zimbabwe shares borders with Zambia to the north, Mozambique to the north-east, Botswana to the south-west and South Africa to the south. It is one of the few landlocked countries in the world and lies between 900 and 1,550 meters above sea level in height, dropping sharply to below 500m in the valleys and rising to 2,592m at the highest point of the highlands. It has a

total landmass of 390,759 km with an estimated population of 11,163,160 as at July 1999.

Earlier, we pointed out that, like most African countries, Zimbabwe is a poor country facing enormous economic problems. It is estimated that its rate of unemployment in 1994 was at least 45%. In 1998, Zimbabwe was burdened with an inflation rate of 32%. The country's gross domestic product (GDP) in 1998 was estimated at \$26.2 billion translating into an estimated per capita GDP of \$2,400. Its real GDP growth in 1998 was estimated 1.5%.

During colonialism, there were two Rhodesias, Southern and Northern. While Zimbabwe was Southern Rhodesia, Zambia was Northern Rhodesia. The name Rhodesia comes from Cecil Rhodes, the empire builder who came from England to Africa at the height of colonialism to found a new life and enjoy the tropical African sun after doctors in London had given him not more than six months to live. He was discovered to have a terminal illness. Cecil Rhodes donated his name to the two countries, probably the only person in the world to have had two countries named after himself. The fiery Latin American nationalist and politician, Bolivar, is the other person who lent a name to the country known as Bolivia.

Cecil John Rhodes was born in 1853 from a family of 12 children.¹⁷ His father was a vicar. He emigrated to Natal in 1870, aged seventeen. He had poor health, suffering from tuberculosis and related complaints. He started digging diamonds with one of his brothers in 1872 at Kimberly. Though he was based in South Africa, he 'commuted' between South Africa and Oxford. In 1873, his doctor told him that he only had six months to live, which proved false. He was a millionaire by 1880, and founded the De Beers Mining Company, which grew into one of the greatest mining properties ever known, De Beers Consolidated Mines, Ltd. In 1881, Rhodes decided to venture into politics to add to his fortunes. He became a member of the Cape Colony legislature. Later, he ventured into gold and did the same thing he had done in diamonds. He set up a cartel under his control called Consolidated Gold Fields in 1886. In 1889, he set up the British South Africa Company (BSA) for development of the north – Bechuanaland (Botswana) and the two Rhodesias (Zambia and Zimbabwe). The BSA Company held a Charter from the British government. In 1890, at the age of thirty-seven, he became Prime Minister of the Cape Colony.

Rhodes believed that the English people were the master race of the world and that the British Empire was the supreme achievement of history. He entertained the view that the world should, if possible, submit to the rule of the British crown. In one of his many wills, Rhodes left his fortune in trust to the British

¹⁷ See John Guinther, *Inside Africa*, 1955, pp. 329-352. There are many accounts of the history of European colonialism in Africa. See, for example, Trudie Bloem, *The Woman from Robben Island*, 1999.

Colonial Secretary and his successors for the 'establishment, promotion and development of a Secret Society', the first aim of which was to be the extension of British rule throughout the world.

Rhodes had many dreams. One of his famous dreams which did not materialise was to build a pan-African railline stretching from 'Cape to Cairo'. At another time, he offered to pay personally the cost of building a telegraphic line between Salisbury, the capital of Southern Rhodesia, and Uganda. Even at that time, Rhodes dreamed of e-commerce being possible in the African bush. His private life was a mystery. When he visited England in 1901, he was invited to dinner by Queen Victoria. The Queen asked him whether it was true that he was a woman-hater. He replied 'how can I hate a sex to which Your Majesty belongs?' She asked him, 'What are you engaged in at present, Mr. Rhodes?' He replied, 'I am doing my best to enlarge Your Majesty's dominions.'¹⁸

Zimbabwe became 'Rhodesia' in 1895. Before this, it was nearly named 'Cecilia' in honour of Lord Salisbury who was Prime Minister of Britain at the time and whose family name was Cecil. However, it was decided to name it after Rhodes, which made him immensely proud. Close to his death, he wondered whether the two Rhodesias would remain so after his demise.

The colonisation of Zimbabwe was basically due to Rhodes's actions. An insatiable desire for gold and diamonds led him to advance northwards from South Africa, into Zimbabwe and later Zambia. In 1884, Rhodes was Deputy Commissioner in Bechuanaland (Botswana). This resulted in Botswana being proclaimed a British protectorate in 1885. In 1886, he sent emissaries to negotiate with Lobengula, son of a Bantu King by name Moselekatse, who had occupied most of what is now known as Zimbabwe since about the early 1800s. His tribe, the Matabele or Amandebele, was a branch of the Zulus who had been pushed out of South Africa by the Boers. Lobengula became King in 1870, which gave him a right to rule a vast land from his kraal in what is now known as Bulawayo. Lobengula had sixty-eight wives with several hundreds of children. He was a fat man who, as a rule, wore only a skirt of blue monkey skins. His name 'Lobengula' means 'He that drives like the winds'.

When Rhodes decided to send emissaries to Lobengula in 1888, he had at least three motives: 1) business – to exploit the rich mineral resources; 2) extension of the British Empire; and 3) self-agrandisement. During the negotiations, Lobengula was bullied, tricked and swindled like a child in a gambling game.¹⁹ In October 1888, the parties 'reached' an 'agreement' in which Lobengula gave up all metal and mineral rights in Matabeleland over an area covering more than 75,000 square miles, exclusively to the Rhodes group, for a token payment of: £1000 per month, a thousand rifles, ammunition, and a promise of a gunboat on the Zambesi (which he never got).

¹⁸ See Sarah Gertrude Millin, *Rhodes*, pp. 138-39

¹⁹ John Guinther, *supra*, p. 598.

This marked the beginning of the problems Zimbabwe currently faces. This fraudulent agreement later became the subject of a long drawn court case that went up to the Privy Council in England for interpretation. It dispossessed Africans of the right to their ancestral land. The agreement was a scandal that outraged not only the Matabele people but the entire world community, in spite of the fact that this was a period of imperialism. It shocked even natural imperialists that the whole country could be 'purchased' at such a ludicrously low price. Another occasion in history when a country was 'bought' so cheaply was when Manhattan island was 'bought' by North American settlers from the First Nations. 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 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?'²⁰

However, this upbraiding did nothing to cancel the agreement. It was just advice for the future. The Crown could not terminate agreements entered into between willing men with their eyes open, as the English will say. It would be contrary to liberal theory. Nonetheless in the case of *Re Southern Rhodesia* the Privy Council, where final appeals from English colonies rested, denounced the agreement²¹ although the land was returned not to the Africans, but to British control.

This is the gist of the present crisis in Zimbabwe. The colonial dispossession of ancestral land from Africans is something that has remained without redress since that time. Instead, the BSA Company organised by Rhodes to develop the territories north of South Africa received its Charter from the British government in 1889. The company was hungry for more land. It equipped and managed a group of pioneers who went on to occupy the area to the north of Matabeleland called Mashonaland. On September 13, 1890, the pioneers on behalf of the BSA company and led by a celebrated professional hunter, Frederick Courteney Selous, hoisted the Union Jack at what is now Harare, then Salisbury.

African resistance to the European expedition and occupations of their land was promptly crushed with the use of superior weapons. Before this, Africans lived mostly peacefully with one another. There were of course border incidents to do with cattle rustling between Matabele and the Shona but these were minor. The real war was between the settlers and the Africans. In 1893, the so-called Matabele war broke out. The Matabele tried to resist occupations and the advent of settlers. Predictably, they were crushed and Lobengula retreated into the wild mountainous bush beyond Bulawayo where he died of smallpox in 1894. His last recorded statement was: 'Matabele! The White men will never cease following us while we have gold in our possession, for gold is what the white men prize

²⁰ John Guinther, *supra*.

²¹ *Re Southern Rhodesia* (1919) AC 211. See further discussion on the case below.

above all things. Collect now all my gold....and carry it to the white men. Tell them they have beaten my regiments, killed my people, burnt my kraals, captured my cattle, and that I want peace.'

In 1896, both the Matabele and the Mashona rose again and once again were crushed. This time, Rhodes himself joined the war against the Africans. In the end, he decided that to have lasting peace, he would have to conclude a peace deal with the African chiefs, which he did in negotiations held at a secret location in the Matopo Hills near Bulawayo. The Africans agreed to lay down their arms on August 21, 1896.

From 1889 to 1914, the two Rhodesias were governed by the BSA Company. The two countries were owned by a private company under a Charter which only imposed an obligation on the company to consult the British High Commissioner based at Cape Town. Later, the Charter was extended for another ten years. In 1923, Southern Rhodesia was annexed to the British Crown while Northern Rhodesia was annexed in 1924. Earlier, King Lewanika of the Lozi people signed an agreement more or less similar to the one with King Lobengula, with agents of Rhodes's BSA Company. This brought Northern Rhodesia under the control of the BSA Company and in 1924, the British Crown. At one time, both Northern Rhodesia and Southern Rhodesia were to be merged with the Union of South Africa. However, this project was defeated at a referendum by the white electorate in these two territories.

British Policy in Colonies

It has been argued that in spite of its immorality, the British colonial policy was better than that of the other colonial powers. The main reason behind this argument is that despite everything else, the British had committed themselves to prepare Africans to eventual self-rule, at least in protectorates.²² On the other hand the French had no intention of letting go of the French colonies, which were considered integral parts of French territory. The African people in those territories had been assimilated into French society and most French believed in the possibility of turning Africans into Frenchmen, in spite of the elementary fact that this was biologically impossible. Pursuant to this belief, some crumbs of power were extended to native Africans and other colonised peoples in other parts of the French Empire, allowing them to have 'elections' to choose their representatives to sit in the French parliament in Paris. This was not the case in English Africa or other parts of the British Empire.

²² One of those who vehemently disagrees with this view is Kwame Opoku, *The Law of Marriage in Ghana. A study in Legal Pluralism*, 1976.

In Portuguese Africa, on the other hand, another concept was introduced called *Assimilado* or *Civilizado*. According to this concept, Africans who wanted to become Portuguese could take an 'examination' before a three-member panel chaired by a Portuguese national and assisted by two Africans who had previously assimilated. At this 'examination', a candidate had to answer the following questions: whether he had abandoned native customs, e.g. the practice of polygamy; whether he had become Christian and therefore abandoned African beliefs; whether he was literate in Portuguese; and whether he had a certain amount of money or property.

A candidate who passed this 'examination' would become an *assimilado* or a *civilizado*, which meant that he, in theory, had become a Portuguese equivalent to any other Portuguese citizen in Lisbon. He was entitled to a passport and in theory could get a job or apartment in Lisbon or elsewhere. He would also suffer the same duties and responsibilities as other citizens. President Joaquim Chissano of Mozambique has alluded to this when he said that he and his peers were surprised as students in Portugal that people there respected and even admired them while back home they were treated without humanity.

One of the outstanding features of the integrationist policies of the Portuguese and the French was that they attempted to promote free mixing of races, even though in practice it may have been difficult. The colour bar, which was very widespread in British-ruled Africa, was basically non-existent in some Portuguese territories. In Angola, for example, people of different colours married freely, lived together and attended the same social functions. In British Africa, this was inconceivable. Race and colour were the determining factor in a person's dignity and access to his or her human rights and freedoms. Even though there are big land owners in Mozambique, it is difficult to imagine that what has happened in Zimbabwe regarding the farm occupations could happen in, say, Angola or Mozambique. Save for denying the Africans their independence, Portuguese or French rule was deliberately integrative. Consequently, even today, alienation in these countries takes the form of rich and poor and not necessarily black and white.

Primacy of African Interests

One of the most innovative features of British colonial policy was 'indirect rule'. It emerged early in the history of British colonial rule and was intended to put the interests of Africans in colonies and protectorates, it was claimed, over and above those of the settler communities. This was explained in 1923 by the Duke of Devonshire, a Tory and Secretary of Colonies when, in connection with Kenya and by extension all colonial possessions, he said:

'Primarily, Kenya is an African country, and His Majesty's Government think it necessary definitely to record their considered opinion that the

interests of African natives must be paramount and that if and when those interests and the interests of immigrant races (i.e. the British and Indian) should conflict, the former (i.e. African) should prevail... In the administration of Kenya His Majesty's Government regard themselves as exercising a trust on behalf of the African population...the object of which may be defined as the protection and advancement of the Native races.'

These words sent shock waves beyond the Empire. They were later reiterated by Lord Passfield, the Colonial Secretary in a Labour Government, in which he said the ultimate objective for Kenya was Dominion Status – that is to say, full self-government within the Commonwealth, with the right to secede – but only once the native community was more 'advanced'.

The British pursued this policy, though without vigour. The policy allowed the British to let go of Egypt, Sudan and other territories shortly before the continent-wide de-colonisation started. The policy was not vigorously pursued because the British made it subject to African advancement. Until the Africans were advanced, they would rightly be put under colonial tutelage. The problem was how to determine that Africans were now advanced enough to allow them to exercise the right to govern themselves. The criteria for determining when Africans had become 'civilised enough' was for the British alone to decide. Many Africans found the British policy unacceptable and an insult to their intelligence. Even though ostensibly made for Africans, the principle of making the African interests paramount in relation to those of settlers was nonetheless strongly resisted by nationalists in many African countries as well as by the settlers. The latter suspected that the British government was out to sell them to Africans, and in Zimbabwe, for example, the minority government of Ian Smith decided to break away completely from British rule through the Unilateral Declaration of Independence (UDI) in 1965. The UDI signalled the break-up of the ties between Rhodesia and her colonial power, and it was not until 1980 that Britain once again reasserted her sovereignty over the territory only in order to hand it over to the nationalist government of Prime Minister Robert Mugabe.

Indirect Rule

Lord Lugard invented the device of indirect rule. It meant that as far as possible, Africans must govern themselves through the mechanism of their chiefs. In other words, custom and usage in Africa under British rule was not to be interfered with unless it conflicted with English law, natural justice, equity and good conscience, through the doctrine of repugnance. It was a clever device whereby the government would rid itself of the tedious task of dealing with mundane issues like tax collection from Africans as well as the administration of land under the jurisdiction of Africans. Chiefs would do this for the government as well as ensuring law and order in African communities.

In British Africa, Africans were forced off their land to live in reserves where they were indirectly governed by their customs and traditions through the medium of their chiefs. The most fertile land would invariably be declared Crown Land and made off bounds to Africans. Reserves were created out of infertile, waterless and fly infested land that millions of Africans were forced to crowd into. In the reserves, Africans could practice their African tenure, apply their personal law in marriages and divorces, and so on. For minor cases which did not involve violation of colonial law, Africans were allowed to apply their own concept of justice. In short, to the extent that it did not conflict with colonial law and the colonial sense of what was right and wrong, African law and justice would apply. Many Africans in Zimbabwe were driven from their loamy soils and made to crowd unto barren and waterless reserves or communal settlements where most of them still eke a living from tired soils.

Differences between Colony and Protectorate

The British policy of colonialism invented these terms for use in their possessions. A colony was a British territory under the Crown. On the other hand, a protectorate is a more backward area which only enjoys Crown protection and over which the Crown exercises authority. However, the protectorate is not formally annexed to the Empire as is the case with the colony. Consequently, the colony had a higher status than the protectorate.

Sometimes, though, these terms were confusing, especially in the way they were applied on the ground. For example, Kenya was both a colony and a protectorate. The coastal strip which constituted Zanzibar and at the time a part of Kenya was a protectorate while the rest was a colony. In the same vein, Malawi and Zambia in the Central African Federation were protectorates while Zimbabwe was a colony and therefore British.

Residents of colonies were British nationals in spite of their colour. On the other hand, residents of protectorates were merely 'British Protected Persons'. However, the reality was basically the same, and the differences essentially psychological. These differences did not impact on Africans as human beings in a manner that would have improved their situation or the contrary. It was basically the same, whether one lived in a protectorate or a colony. The indignities and humiliations suffered were the same and Africans were subjected to the same laws and institutions. One of these is the land tenure system.

Colonial Tenure System

As we pointed out above, the thirst for land and resources was behind Africa's colonisation. In some countries, for example Zimbabwe, this was achieved through military conquest of the local populations. In others, such as Botswana

and Zambia, literature claims that local chiefs voluntarily offered to be colonised in order to obtain Crown protection.

In colonised Africa, at least two types of tenure prevailed. Of course, the English tenure was forced onto the African land from which millions of Africans had been evicted. In doing so, the British colonialists imported their entire law on land and land relations. In Kenya, Zambia, Zimbabwe and other former colonies and protectorates, English tenure was slapped on land that was designated European. The only visible difference is that in protectorates, very little land was turned into European land for European settlement only, whereas most land in colonies was taken away from Africans and made European land subject to the practice of English law. Consequently, 90% of land in Zimbabwe became out of bounds to Africans whereas only 6% in Zambia became Crown land.

In Crown land, a holder of land would obtain a title-deed, which may be a leasehold title or freehold title, to hold as evidence of ownership of the land. This is the main difference between the two types of tenure. In African land, whether designated as a reserve or as communal land, the title deed was not a requirement. People held land according to custom and usage. In practice, the land would be obtained by an individual member of the community from traditional rulers entrusted to act as custodians of traditions and cultures. Its use had to conform to recognised practices and traditions, otherwise the community would assert their right over that of the individual member of the group. The group may be an extended family, a clan, a village, a community, or a tribe. Through the principle of *ubuntu* or *group solidarity of the members*, tradition forbade the group to deny any of its members access to land. The right of access was a fundamental human right. No one would be denied land. The right to land was not just an aspect of human dignity, but a 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.

This land or rights to it are not registered in any state record. To those who are familiar with land registers, it will come as a complete surprise that land or a person's interests in it would not be registered. Registration of land in a land register and registration of interests in deeds are signs of a developed system of tenure. Apart from vindicating the title to the land, it helps resolve conflicts that may arise.

However, African land tenure theory does not subscribe to written evidence to prove title. This does not mean however that the African concept is devoid of a register. For centuries, Africans have been practising and administering registers of land and interests in land, albeit in different forms. In Africa, custodians of customs and traditions and other elders keep account of all transactions in their *memory registers*. All land belonging to the group and the interests held by individual members are duly *recorded in the memory*. These *records* are passed on from generation to generation. Whenever it is required to prove a claim to land held under customary law, elders and traditional authorities will be sum-

moned to recall the details of the transactions and reinvent the *family tree* from as far back as they can remember. This is how it is still possible for Zimbabweans whose ancestors were dispossessed of their land at the dawn of colonialism to recount their footsteps back to the first muntu, Mundebele, Mushona, or their ancestors.

The question has 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*.²³ We have noted above that Lobengula was deceived into signing away thousands of acres of land constituting today's State of Zimbabwe. Cecil Rhodes' emissaries tricked the unsuspecting Lobengula into this agreement. The British tried to set aside the contract on the grounds that there was no provision in Matabele 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 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 which 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 BSA Company.

In 1921, more or less the same ruling was delivered again by English courts. In *Secretary, Southern State of Nigeria*,²⁴ the English High Court made it clear, when faced with the question of whether an African can grant a valid title to African land in the same sense as the English, that the two concepts were different and should be construed differently. The Court held that the African concept of land ownership did not entertain individual ownership in the English sense. It held that the African concept was *communal* which meant that it entertained no individual right. No member of the African tenure system could alienate an interest in land nor exclude another member from the land subject to African custom and usage.

To sum up, an African Chief in Nigeria, when asked who owned land said: '*I conceive of land as owned by the deceased, the living and the unborn*'.²⁵ The spiritual aspect in these rich remarks introduces an interesting dimension, all to

²³ Re Southern Rhodesia (1919) AC 211.

²⁴ Secretary, *Southern Nigeria v. The King* (1921) K.B. 301.

²⁵ Commission of Inquiry into Land Ownership in Nigeria, 1924.

often forgotten when discussing African land problems. Land in Africa is associated with the departed. It is common to find fields named after the dead, e.g. grandfather's field, mother's field, etc. This mystique associated with land explains why Africans find it hard to part away with 'their' land, because in accord with their concept, it does not belong to them alone but also to the *dead and the unborn*. This makes it difficult for them to forget their rights and the rights of their ancestors hundreds of years later.

Land and Africans is an intimate subject. Even when land has been legally acquired, say on colonisation, in the minds of Africans it remains theirs. No matter what you do, to them title does not pass. The only way Africans can abandon a title to land construed customarily is by their own laws and customs. A sale cannot dispossess the Africans of their land, particularly because this concept is alien to indigenous law. However powerful a chief or other authority may be, he or she does not own land. A chief is merely a custodian holding land for the departed, the present and future generations. This is the gist of ancient law. No chief is in a position to fulfil a contract he signs concerning land even if he purports to act on behalf of the group. This was made plain made by the English High Court in the East African case of *Cox v. African Lakes Limited*.²⁶ Chiefs have equal rights to their subjects to ancestral land, meaning that a Chief's grant is bad in law. The principle is not uniquely African. It is also found in the Latin maxim '*nemo dat quod non habet*' (you can not give what you do not have). Chiefs have no more power than their people to execute a contract involving alienation of ancestral land.

The Domestic Setting: the Article 16 Dilemma

It is quite clear that the domestic setting in Zimbabwe, as far as land is concerned, is deeply polarised. Whites and blacks cannot see eye to eye over land, and this has led to the current breakdown of law and order. Government response, at first ambiguous, is now clear: to come to the side of the blacks whatever the cost. This means ignoring the law on property rights even if it emanates from the country's highest court so as to foster a situation in which it will be of political benefit.

According to the Zimbabwean government, from a legal point of view, the single most important obstacle to social justice in that country is the 1979 Lancaster House Constitution.²⁷ Article 16 of this Constitution baptises the sins of colonialism and racism by protecting the rights and interests to land of those

²⁶ *Cox v. African Lakes Limited* (1930) AC 24.

²⁷ The Constitution of Zimbabwe was published as a Schedule to the Zimbabwe Order 1979 (S. 1 1070) 1600 of the United Kingdom.

who in the first place 'stole' it from blacks at the dawn of colonisation, stating 'No property of any description or interest or right therein shall be compulsorily acquired ...'.

This is followed by a long list of factors, when as an exception to the rule, compulsory acquisition may nevertheless take place. This list has steadily grown over the years as government consistently added new factors to accommodate new situations. In particular, it states that compulsory acquisition may take place only 'under the authority of a law' and that in the case of land the acquisition is reasonably necessary for the utilisation of that or any other land, for settlement of agricultural or other purposes, for purposes of reorganisation, forestry, environmental conservation or the utilisation of wildlife or other natural resources, for the relocation of persons dispossessed in consequence of the utilisation of land as above, and for the interests of defence, public security, public order, public morality, public health, town and country planning, etc.'

A cardinal requirement in this article is that a law must precede the acquisition. The Constitution, being a *lex generalis*, has authorised acquisitions whose mode would be defined in the *lex specialis* to be enacted later. This is intended to allow for democracy to prevail because it is assumed that parliament will give the opportunity for members of parliament to raise concerns as representatives. The idea is that parliament, when called upon, would be able to correct any tendency towards arbitrariness. But instead, Mugabe, as if oblivious of the requirement, has skirted round this clause in preference to temporary presidential powers, just as in a state of emergency. He fears going to parliament to ask for the law prescribed in article 16 because he most certainly would not obtain it in view of his diminished numbers in parliament. He has instituted what he calls the 'fast track land resettlement programme' which is one way of avoiding legal niceties so as to ensure immediate delivery on the grounds that before the rains set in 2000, every landless person must have land.

What is the background to the property clause in ex-British colonies? Even though it has brought so much trouble, there is nothing peculiar about this clause. In fact, before inserting it in the Zimbabwe constitutional package in 1979, the British had used it in virtually all constitutions in those ex-colonies that had attained independence earlier. The very first time it showed its ugly face in Africa was when it was inserted in the Nigerian independence constitution of 1963 and thereafter it reappeared in all other independent constitutions in Africa and other ex-British colonies. One of the most recent is the constitution of Belize, which was granted independence from the British in 1988. On the face of it, the clause is just like any other provision on property. But in essence, it has the effect of restricting the activity of government in property relations and therefore in economic development. The hands of the government in a situation such as this are tied. It must 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.

In subsequent amendments introduced from 1990, government was required to give reasonable notice, to the person who would be affected by the acquisition, of any intention to carry out a compulsory acquisition. It was also decided that government would pay 'fair compensation' before or within a reasonable period after acquiring the property. In the case of land, the compensation was not subject to court appeal, as the law ousted the jurisdiction of courts on the same. In other words, a person whose land may have been seized would have to make do with what he or she was offered in settlement by government and could not go to a judge to complain, for example, that the amount offered by the government was 'unfair'. What is available to him is the right to contest the acquisition in court. The right to contest the acquisition in the High Court was introduced so that if the Court did not confirm the decision, and following an unsuccessful appeal to the Supreme Court, government was bound to promptly return the property to the owner.

The main problem has been lack of resources to buy the land in accordance with the constitutional stipulations. Second, some farm owners have been resisting parting with their land even if they do not use all of it. It must be understood that land values appreciate over time, and in a capitalist system of tenure, it is not irresponsible to leave land unutilised even for long periods, simply in order for it to acquire value. Absentee landlords are a familiar figure in market economies. But people, especially people in third world countries, would regard this as greed. It is greedy to leave land untilled when thousands of people are starving due to lack of food. Also, to avoid forced sale, some white farmers have demanded astronomical prices which the government could not raise. This has side-tracked the programme.

To be fair, the government has tried within its means to steer the land resettlement programme. In 1980, soon after coming to power, President Mugabe unveiled plans to resettle 600,000 families in five years. However, by the time of the outbreak of the current invasions this year, only 65,000 families had been resettled and those resettlements were far from being successful. Frustrated by the slow pace of the redistribution programme, the government decided in 1996 to carry out forcible purchases of land involving 250 farms covering a total of one million acres. However, instead of using them for the resettlements of poor people, the Mugabe government repeated the earlier mistake of the colonial government of allocating land to government officials and party supporters rather than the needy. Just like Ian Smith, who, though not a farmer, nonetheless gave himself a farm, the Mugabe regime found it fit to engage in self-aggrandisement rather than take care of the interests of the poor.

In an effort to stem criticism against his government's handling of such policies and to diffuse attention in the light of the forthcoming elections, the government decided to propose drastic reforms in the draft constitution. It proposed to 'seize farmland without paying compensation'. Consequently, a new clause on property was proposed in place of the Lancaster House clause. It stated:

'(1) Everyone's right to property and to use and enjoy their property must be protected, although this may be subordinated in the public interest.

(2) The State or an authority authorised by an Act of Parliament may acquire property compulsorily for public purposes or in the public interest...

- (1) In the assessment of any compensation that may be payable when agricultural land is compulsorily acquired for the resettlement of people in accordance with a programme of land reform, the following factors must be regarded as of ultimate and overriding importance...
 - (a) before independence, the people of Zimbabwe were unjustifiably dispossessed of their land and other resources without compensation;
 - (b) the people subsequently took up arms in order to regain their land and political sovereignty, and this ultimately resulted into independence of Zimbabwe in 1980;
 - (c) the former colonial power has effectively repudiated Zimbabwe's just claims for reparations;
 - (d) the people of Zimbabwe must therefore be enabled to reassert their rights and regain ownership of their land.

- (2) In view of the overriding considerations set out in subsection (1), where agricultural land is acquired compulsorily for the resettlement of people in accordance with a programme of land reform, any compensation payable must reflect an equitable balance between the public interest and the interests of those from whom land is acquired.

- (3) In the assessment of compensation for the compulsory acquisition of agricultural land, regard must be had to the following factors...
 - (a) the history of the ownership, use and occupation of the land;
 - (b) the *price paid for the land when it was first acquired*;
 - (c) the current use to which land is put;
 - (d)
 - (e) the resources available to the acquiring authority in implementing the programme of land reform;
 - (f) any financial constraints that necessitate the payment of compensation in instalment over a period of time; etc (emphasis added).'

Clearly, Mugabe was incensed with the attitude of the white farmers in keeping all the land to themselves. In response to the anger displayed by his people about their lack of access to land, he introduced this radical proposal. He proposed to do away with the Lancaster House Constitution and instead use the state to get any land he wished for the resettlement programme and made it clear that he would not respect

international law on compensation in the event he did not have the money. Needless to say, the proposal was rejected. The electorate were not fooled. They saw in the referendum more than just land. The President wanted at the same to have his term of office extended and to acquire more extensive powers. The draft constitution lamentably failed to win Mugabe more powers and another political life.

Concluding Remarks

There is no doubt that the Zimbabwe land crisis has presented difficult challenges not only to Zimbabwe but to Africa as a whole. Zimbabwe and Africa together with the international community will have to find a lasting solution to the question of social injustice in Africa. There is no way that this problem will forever be avoided. Sooner rather than later, it must be confronted and the best way to do so is to confront it head on.

International law has not lacked solutions to the problems of social injustice. Frequently, whenever there has been a clash between the individual and the greater interests of the public, the former has been told to stand aside to allow for reform. And whenever there is social reform, it has been determined that the cost of private property differs from free market conditions. Many countries, including developed countries, 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 minimal compensation is due to private individuals. I do not understand just why Zimbabwe would not undertake a reform in an obvious case such as this.

International law has also come up with other options which Zimbabweans, both white and black, could have used to ameliorate their situations. There is an array of international instruments introduced by the United Nations (UN) and the Organisation 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 Zimbabweans are facing. For example, the International Convention on the Elimination of Racial Discrimination of 1965 categorically prohibits racial discrimination, whether by the state against the dispossessed blacks or by the state against the unprotected whites. There are mechanisms in this instrument for enforcing the standards, including provisions on affirmative action to 'upgrade' those who have been historically disadvantaged. Similarly, the International Labour Organisation (ILO) has introduced an important Convention, ILO Convention No. 169 of 1989, on the rights of Indigenous and Tribal Peoples. This Convention provides an important framework for addressing the indignities of colonisation in countries such as Zimbabwe, including rights to land and natural resources.

Africa has come up with the African Charter on Human and Peoples Rights, an African human rights convention, which seeks to protect not the individual

but groups. Article 14 of the African Charter, which protects property, 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. Therefore, 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. Finally, 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 how best to use their property without interference from outside forces.

Even though the international mechanism may be weak to deal with the kind of problem Zimbabwe is facing, it shows the normative development of human rights standards on the international plane relevant to the issues at hand. What is interesting, is that, apart from the African Charter, Zimbabwe has been slow to accept the international instruments and especially the mechanisms set out in those instruments. For example, the CERD and ILO Convention No. 169 remain *de lege ferenda*, thus depriving victims in that country with remedies they could have used. Even the international bill of rights has not completely been accepted, since victims of human rights violations can not seek individual recourse in view of Zimbabwe's refusal thus far to accept the Optional Protocol to the International Covenant on Civil and Political Rights. Acceptance of the Optional Protocol would have helped victims a great deal.

Even before these treaties, international law had long recognised 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 civilised 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.

These rules, however, did not apply to property owned by nationals 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 at 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 internation-

al law to restrain the state from carrying out a deprivation done in the context of a social reform. There could obviously be claims of mistreatment in the way such a reform is carried out. It is difficult in practice 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 own 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.

Finally, the Western attitude towards the situation in Zimbabwe and the rest of Sub-Saharan Africa has not helped the situation. Morally, it is clear that the West as a whole and the former colonial masters in particular bear the main responsibility for the despicable social situation prevailing in Africa. As a result of the Zimbabwe situation, there is an urgent need for them now to 'come back and correct the wrongs of their ancestors'. It is unbelievable that even when the country is burning, the West is putting conditions on their assistance programmes yet, had it not been for colonisation, the problem would probably not exist.

As for the regime, it is time to own up and say it has failed the people. Why did the recent attempts in the draft constitution become necessary only now when the government has been in power for more than twenty years? It is difficult not to see it in any other light than that they are simply trying to buy time through hard talk on colonialism and racism. Their behaviour shows lack of interest to gear themselves up, to advance the interests and rights of the people. As demonstrated from the poor record of the ratification of international instruments and mechanisms of redress, the government is simply hard on rhetoric and empty on reality. Africa must not be cheated. What is needed in the case of Zimbabwe is more than a mere change of government or the removal of President Robert Mugabe from power. This has been tried in other countries, but the conditions of the people have not always changed as a result of the change of persons at the political helm. True, political change could stimulate widespread opportunities, but in the end, whoever comes to power will have to address the issue on the ground, and the issue is big.

Additional Literature References

1. David Lan, *Guns & Rain: Guerrillas and Spirit Mediums in Zimbabwe*, 1985.
2. David Martin and Phyllis Johnson, *The Struggle for Zimbabwe: The Chimurenga War*, 1981.
3. William Rayner, *The Tribe and Its Successors: An Account of African Traditional Life and of European Settlement in Southern Rhodesia*, 1962.