

ZIMBABWE HUMAN RIGHTS NGO FORUM



Zimbabwe
HUMAN RIGHTS
N G O Forum

**LAND REFORM AND PROPERTY
RIGHTS IN ZIMBABWE**

APRIL 2010



Foreword

Foreword by Ben Freeth from SADC Tribunal Rights Watch

As one of the hundreds of thousands of direct victims of a land reform programme that has resulted in a net de-settlement of people from the land and has involved gross human rights violations, I feel it is very important to document what has happened. This document is an important contribution to the process.

For a long time it has been glaringly evident that the so-called land reform programme is more an exercise in the political subjugation of the people on the commercial farms than in land reform. Alongside the controlling nature of the programme, the handing out of the farms has been done on a patronage system that simply rewards loyal supporters of the President. The evidence of the patronage system has already been established in the Campbell Case where a “chef list” was produced in court showing the extent of the patronage system in the dishing out of the farms.

The programme has failed to create jobs and productivity so abysmally for the simple reason that it has not been carried out according to the rule of law. Only a small percentage of the severe criminal offences that have been committed in the land reform process have been prosecuted. None but a handful of the hundreds of thousands of people that have lost homes and livelihoods through violent evictions, were given eviction orders from a court or received any sort of compensation. As a result, the “new farmers” can not be given good title or any real property rights. No lending institution will help farmers who can not produce collateral. The cornerstone of agricultural productivity in Zimbabwe has therefore been kicked out from the foundations and the billions of dollars of capital in titled land in Zimbabwe has essentially died now that it has been vested in the President.

It is the human tragedy of the so-called land reform programme that is the most distressing aspect to it. There has been much focus on what has happened to the white people in the exercise, but there has been precious little regarding the farm workers who have suffered such immense abuse. This report goes some way in redressing this grave omission and showing the true scale of the human tragedy that has resulted from this chaotic programme. Much more still needs to be done in this regard.

The advent of the Global Political Agreement has done nothing to alleviate or slow down the continued making of this human tragedy. The break down of the rule of law in rural Zimbabwe seems to be something that nobody in power is prepared to grapple with or even admit, let alone try to restore. The stage is being set for much more severe violence in the future. The land mark Campbell SADC Tribunal Judgment in my father-in-law's favour in November 2008, continues to be an issue that none of the Party leaders wish to even debate in the corridors of power or in parliament. I predict that until this Judgment is recognized in Zimbabwe and the rule of law is re-established, the human tragedy on the former commercial farms, where nearly a quarter of the Zimbabwean people live, will remain depressingly acute and the people of Zimbabwe will remain abused and dependant on food aid from the western countries for many more years to come.

I believe that as human rights abuses continue it is now up to us all in civil society to take forward human rights cases to the Tribunal where we fail in our own courts, and build a strong and united coalition of people who are determined not to allow Zimbabwe's culture of impunity to persist on into the next generation.

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Introduction

The forceful eviction of commercial white farmers during the fast track land reform process was arguably one of the primary drivers of Zimbabwe's sudden economic downfall. Prior to the land seizures and only a decade ago agriculture was the cornerstone of the economy. According to Eric Bloch, (an independent economist in Zimbabwe), agriculture used to provide employment for over 300,000 farm workers and a livelihood for nearly two million people but since the 2000 land reform programme, agriculture has plummeted, foreign exchange inflows have petered out and there has been a breakdown of the rule of law. Eddie Cross (another Zimbabwean independent economist), asserts that in 2000, the total output of the agriculture industry in Zimbabwe was 4.3 million tonnes of agricultural products worth at today's prices US\$3.347billion. In 2009 it declined to 1.348 million tonnes of products worth US\$1 billion, a decline of 69% in volume and a decline of 70% in value.¹

For many years Zimbabwe was known as the "bread basket" of Africa endowed with productive farmland, rich in raw materials and it grew enough food to feed its people and export the rest. However following the agrarian reform it is now dependant upon food aid programmes to feed its population. Craig Richardson asserts that, Zimbabwe provides a compelling case study of the perils of ignoring the rule of law and property rights when implementing land reforms. Protected property rights are crucial for economic growth and once those rights are taken away an economy is prone to collapse.² No one knows when the farm invasions will come to an end. The Government of Zimbabwe (GoZ) has condoned these invasions by its failure to protect and uphold the rights of the affected farmers to end the violence and to bring the perpetrators to justice. Thus these acts and omissions constitute violations of the Constitution of Zimbabwe and internationally recognized legal instruments that protect human rights.

There have been arguments suggesting that the land reform process has been beneficial. The most contentious support came from respected African scholar, Mahmoud Mamdani,³ who argued that the land reform process was a final closure in the de-colonization project. Another scholar, Scoones⁴ proposed that there were signs that land reform was having beneficial effects especially on smallholder farmers⁵, which submission was disputed by other scholars.

¹ The Cost of the Farm Invasions, Zimeye.org 27 April 2009.

² Graig Richardson, "How the Loss of Property Rights Caused Zimbabwe's Collapse", Economic Development Bulletin, No 4, November 2005

³ Mamdani M is the Herbert Lehman Professor of Government. He specializes in the study of African History and Politics

⁴ Professor Ian Scoones is a research fellow in Agricultural Ecology, Institute of Development Studies, University of Sussex, UK.

⁵ Mamdani. M (2008), Lessons from Zimbabwe. 4 December 2008, London Review of Books.

Methodology

The Land Reform and Property Rights in Zimbabwe of 2010 is a sequel report to the 2007, *Adding Insult to Injury, a preliminary report on human rights violations on commercial farms 2000-2005*. Whereas the previous report was a quantitative enquiry, this report is qualitative research oriented based on a review of secondary data. Secondary research, also known as desk research, involves the collation and synthesis of existing research. The aim of secondary research is to determine what is known already and what new data is required. Several documented reports have concentrated on violent land invasions from 2000-2005 and very little has been reported on violent land invasions after 2007. Therefore this report tries to fill that gap by focusing on violations on farmers and farm workers' right to property, which have continued unabated.

In compiling this report, information was obtained mostly from the following reports:

- *Destruction of Zimbabwe's Backbone Industry in Pursuit of Political Power. A qualitative report on events in Zimbabwe's commercial farming sector since the year 2000*. Report prepared by the Justice for Agriculture Trust [JAG] & the General Agricultural and Plantation Workers Union of Zimbabwe [GAPWUZ], April 2008, Harare.
- *Land, Retribution, and Elections. Post election violence on Zimbabwe's remaining farms 2008*. Report prepared by the Justice for Agriculture Trust [JAG] & the Research and Advocacy Unit (RAU), May 2008, Harare:
- *Reckless Tragedy: Irreversible? A survey of human rights violations and losses suffered by commercial farmers and farm workers from 2000 to 2008*. Report prepared by RAU, December 2008, Harare.
If something is Wrong. The invisible suffering of commercial farm workers and their families due to land reform. Report produced for GAPWUZ by RAU and JAG, 2008, Harare.

This report also relied on statistics provided by the Commercial Farmers Union (CFU), case law reports and international instruments on property rights.

Background

The unprecedented social, political and economic crisis facing Zimbabwe was largely precipitated by the Government of Zimbabwe's (GoZ) seizure of commercial farms in 2000 under the guise of land reform. Land reforms refer to the transfer of land ownership from a relatively small number of wealthy owners to landless peasants. Such transfers may be with or without consent or compensation. Land reform policies are generally implemented as an effort to eradicate food insecurity, promote wider equity and efficiency gains from land redistribution, create political stability and an acceptable property rights regime often with utilitarian motive, that is, the greatest good for the greatest number.⁶ Though the underlining assumptions are justifiable, they conflict with the prevailing notions of property rights contained in Chapter 3 of the Bill of Rights.⁷ Property rights define 'who has exclusive rights over property'. In Zimbabwe property rights have been at the centre stage of the contentious land reform programme.

Whilst every Zimbabwean agrees that land reform is not only desirable but also a vital necessity to redress the stark imbalances and inequalities of the land holding system, they differ on the way the process has been conducted since the 2000 Fast Track Land Reform Programme. The process has been characterized by gross human rights violations and disregard of the rule of law. These abuses are well documented in the report, *Adding Insult to Injury: A preliminary report on human rights violations on commercial farms 2000-2005*, by the Zimbabwe Human Rights NGO Forum. The main focus will thus be on property rights violations from 2007 to the present.

The land redistribution process has passed through three distinct phases. The first phase was from 1980 to 1990. During this phase, land redistribution was guided by the Lancaster House Constitution, which provided for a sustainable mechanism of dealing with this issue via the "willing buyer willing seller" formula. This approach provided for the protection of property rights of landowners thus effectively putting a seal on compulsory land acquisition for 10 years. In order to enhance a peaceful redistribution of land, the GoZ enacted laws within the limits of this constitution (such as the Communal Land Act Number 21 of 1985, and the Land Acquisition Act Number 21 of 1985) aimed at facilitating a peaceful land redistribution process.

The second phase was a shift from the Lancaster House Constitution and it stretched from 1990 to 1997. During this phase, the GOZ adopted a more radical approach on land redistribution. Various amendments were made to the Constitution. In 1990, the Constitution was amended to give the government the right to purchase land at government set prices without the right of appeal thus effectively removing the willing buyer willing seller clause. The Land Acquisition Act Number 3 of 1992 followed this. The Act strengthened powers of the government to acquire land for resettlement including powers to limit the size of farms and also the introduction of land tax⁸ (though land tax was never collected). This meant that the compulsory acquisition of land for redistribution and resettlement became possible.

As President Mugabe adopted a more radical approach in the land redistribution process, Britain withdrew financial aid on the basis that the acquired land was not being allocated to the intended beneficiaries. President Mugabe was livid and responded by accusing the British government of reneging on its promises. Since then, there has been a bruising verbal war between the two countries. The brewing tension was worsened by the NO vote to the government-sponsored constitutional referendum in 2000. The government interpreted the NO vote as a British sponsored campaign against President Mugabe led by the newly formed opposition political party the Movement for Democratic Change (MDC). The rejected draft constitution had expanded executive powers and also made Britain responsible for funding the land reform failure, through which Zimbabwe would merely take the land. In a fit of revenge, the "war veterans" led a violent land invasion campaign of white-owned farms. Farmers and their farm workers were beaten, tortured and some were killed. These acts of violence are well documented in previous reports.

⁶ www.wikipedia.org/wiki/land_reform.

⁷ See Chapter 3 of the Constitution of Zimbabwe

⁸ See the Land Acquisition Act 1992, Government publications.

In July 2000, President Mugabe officially launched what he termed the “fast track land reform” where the National Land Identification Committee would identify tracks of land for redistribution. The fast track land reform process has been characterized by blatant disregard by land invaders of the laws of the country, coupled with an apparent reluctance by the government to implement those same laws. The police refused to implement orders from the High Court to restore order on the commercial farms arguing that the invasions were a political issue. In April 2000, the government pushed through Parliament an amendment taken from the rejected draft constitution relating to land acquisition, adding a new section 16B to the existing constitution. The Constitution now reads:

“Agricultural land acquired for resettlement in regard to the compulsory acquisition of agricultural land for the resettlement of people in accordance with a programme of land reform; the following factors shall be regarded as of ultimate and overriding importance –

A- under colonial domination the people of Zimbabwe were unjustifiably dispossessed of their land and other resources without compensation:

B- the people consequently took up arms in order to regain their land and political sovereignty, and this ultimately resulted in the Independence of Zimbabwe in 1980:

C- the people of Zimbabwe must be enabled to reassert their rights and regain ownership of their land and accordingly—

I- the former colonial power has an obligation to pay compensation for

agricultural land compulsorily acquired for resettlement, through an adequate fund established for the purpose; and

*11 - if the former colonial power fails to pay compensation through such a fund, the Government of Zimbabwe has no obligation to pay compensation for agricultural land compulsorily acquired for resettlement”.*⁹

The amendment significantly extended the grounds upon which land could be compulsorily acquired and absolved the government from providing compensation, except for improvements; and provided that the “former colonial power” should provide any compensation”. The Land Acquisition Act Number 21 of 1985, was further amended in May 2000, using the power given to the President to enact six-month temporary legislation under the Presidential Powers (Temporary Measures) Act Number 1 of 1986; and again in November, through Parliament. The stated aim was to prescribe new compensation rules in accordance with the Constitution. Since then there has been systematic violence on commercial farms. According to the 2007 report, a total of 53 022 people - farm workers, farmers and their families experienced at least one form of violation.¹⁰

The trend in Zimbabwe has been that land invasions are more pronounced during election periods. For example, after the March 2008 harmonized elections in which ZANU-PF lost control of Parliament for the first time in its 28 years of rule, there was an escalation of violent land invasions by war veterans and the youth militia. The surge in land invasions was precipitated by President Mugabe’s speech in an address before the trade fair on April 25, when he said:

“The land reform programme under which thousands of Zimbabweans were allocated land taken from the white minority is the final solution to the land question and will never be reversed . . .” Following this speech a fresh round of invasions intensified. According to the Commercial Farmers Union (CFU), there were between 3 800 to 4 500 white commercial farmers in 1999, but in 2009 less than 300 remained in control of the land (less than 1% of Zimbabwe’s land). The majority continues to farm on reduced hectareage while some are leasing land

⁹Constitutional Amendment

¹⁰Adding Insult to Injury- a preliminary report on human rights violations on commercial farms 2000-2005.Zimbabwe Human Rights Forum special report 2007.

the war veterans and ZANU-PF have justified the chaotic invasions as the Third Chimurenga (liberation struggle). In the absence of the rule of law, it has been difficult to stop these invasions and uphold property rights.

Since 2000 ZANU-PF has capitalized on the land reform for political mileage. In the 2000 parliamentary elections, ZANU-PF campaigned with the slogan "Land is the Economy and the Economy is Land." In the 2008 elections the ZANU-PF manifesto was '100% Total Empowerment and Independence', thus using the land issue to achieve their political agenda.

A number of pieces of legislation continued to be enacted. The Citizenship Amendment Act Number 12 of 2001 introduced a prohibition on dual citizenship so that people with dual citizenship would automatically lose their Zimbabwean citizenship unless they renounced their foreign citizenship. This affected 30% of farm workers who originated mainly from Malawi and Mozambique and disenfranchised most white Zimbabweans, the majority of whom held foreign passports. In addition, under current law almost all farmland is now regarded as state property. This was enabled by the September 2005 constitutional amendment.¹¹ This amendment nationalized Zimbabwe's farmlands and deprived farm owners of the right to challenge the government's decision to expropriate these lands. Moreover a notice published in the Government Gazette identifying any piece of land is sufficient to transfer ownership of that land to the state. Once a farm is allocated to a new occupier, an offer letter is given. The former owner has no recourse to the courts and no right to compensation. This seems to suggest that the laws of Zimbabwe are not capable of delivering a credible land reform programme to those in need of land, nor to guarantee property rights and physical security for the land owners.¹²

However, legal instruments such as the Constitution, regional and international instruments could have been used as a basis for an effective land reform programme, and for the protection of basic human rights. The problem is the unwillingness of the state to implement its own laws and abide by international obligations. The Universal Declaration of Human Rights, 1948 (Article 17) states that "*everyone has the right to own property alone as well as in association with others*", and that "*no one shall be arbitrarily deprived of his property*."¹³ Article 14 of the African Charter on Human and Peoples Rights provides that "*the right to property shall be guaranteed. It may only be encroached upon in the interest of the public need or in the general interest of the community and in accordance with the provisions of appropriate laws*".¹⁴ In Zimbabwe's land redistribution process, public interest was subdued for political expedience.

Rather than permitting the full operation of the rule of law in the implementation of land reform, ZANU-PF has continued to exploit the land issue for its political mileage.¹⁵ In the process, equity, fairness, reason and rationality have been sacrificed for political expediencies. State resources and instruments, which ought to protect farmers, farm workers and their families, vulnerable to or affected by farm invasions, were mobilized to defeat the rule of law and the guaranteed basic human rights.

Despite the formation of the Government of National Unity (GNU), the violent seizure of white commercial farms has continued. GAPWUZ asserts that since February 2009 almost 225 farms have been invaded. The Geneva based, Internal Displacement Monitoring Centre, points out that, since 2000 about 1 million farm workers and over 3,000 white commercial farmers have been evicted. The government has also continued to disregard court rulings on land rights. In November 2008, the SADC Tribunal ruled that the land redistribution programme was discriminatory on the basis of race and therefore contravened human rights. President Mugabe and ZANU-PF have taken the ruling as of no consequence and more so, the courts have refused to register the ruling. However, the ruling has been registered in a South African court.

¹¹Constitutional Amendment Number 17 2005

¹²Land Housing and Property Rights in Zimbabwe COHRE Africa Programme Mission Report September 2001.

¹³Universal Declaration of Human Rights 1948

¹⁴African Charter on Human and People's Rights

¹⁵See Phimister, I., & Raftopoulos, B. (2004), Mugabe, Mbeki and the Politics of Anti-Imperialism, Review of African Political Economy, 101, 127-141; Hammar, A., Raftopoulos, B., & Jensen, S. (2003), Zimbabwe's Unfinished Business: Rethinking, Weaver Press, Harare.

Conceptual Framework

Land reform

Land reform is the deliberate change in the way agricultural land is held or owned. The most common objective of land reform is to abolish feudal or colonial forms of land ownership, often taking away from large landowners and redistributing it to landless peasants. Land reform is also meant to improve the social status of poor people and coordinate agricultural production with industrialization programmes. A programme of land reform must be properly planned and executed so that it benefits those in need of land and ensures that resettled farmers are given proper support systems to enable them to farm the land productively. It generally denotes government measures designed for a relatively equitable redistribution of agricultural land but actual reform measures can reflect a range of ideological positions.

Land reform may consist of government-initiated, or government-backed, real estate property redistribution. The process of land reform must be carried out within a legal framework and without the use of violence. There must be a transparent and accountable process of genuine land reform in the interests of those who need land. It is an often-controversial alteration in the societal arrangements whereby government administers possession and use of land. Land reform policies are generally advocated as an effort to eradicate food insecurity and rural poverty, often with a utilitarian philosophy. However, many of the arguments for land reform conflict with prevailing notions of property rights in most societies, as mentioned earlier. In most cases, the rights of the individuals for whose good the reform is supposed to work, violate the property rights of the landowners. Land reform is concerned with rights in land and their character, strength and distribution. The reform programme must ensure that women benefit fairly and directly from land resettlement, along with other marginalized individuals and families. Displacement of farm labourers must be avoided and their future assured.

Land redistribution

Land redistribution is the transfer of land from some individuals to others. In most cases, it refers to *progressive* redistribution, from the rich to the poor, although it may also refer to *regressive* redistribution, from the poor to the rich. Initially land redistribution was done to eradicate rural poverty but after the farm invasions led by the war veterans, it became a political issue. It is this political gimmick that disrupted the economy and violated property rights of the landowners. President Mugabe justified the exercise saying,

"It is perfectly justifiable to use necessary force to overcome resistance to the transformation of the economy in favour of the black majority to achieve economic justice."¹⁶

The redistribution exercise in Zimbabwe was justified on the grounds of having been undertaken to achieve distributive justice since the majority had no farmland but the end result did not point to distributive justice. Most of the acquired land was given to politically correct people and not to the landless majority as per the publicly expressed justification.

¹⁶Justice for Agriculture Trust JAG and the General Agricultural and Plantation Workers' Union of Zimbabwe GAPWUZ report, Destruction of Zimbabwe's backbone industry in pursuit of political power: A qualitative report on events in Zimbabwe's Commercial farming sector since year 2000, April 2008.

Land tenure

Land tenure is the name given to the legal regime in which an individual owns land. Tenure refers to the rules, relationships and institutions that define rights of ownership in and access to landed property. Land tenure is an institution with rules that define how property rights to land are to be allocated within societies. The rules of tenure define how access is granted to rights of use, control and transfer of land, as well as associated responsibilities and obligations. Land tenure systems determine who can use what resources, for how long, and under what circumstances. Tenure is an important part of the social, political and economic structures.

It is multi-dimensional, bringing into play social, technical, economic, institutional, legal and political aspects that are often ignored but must be taken into account. Land tenure relationships may be well defined and enforceable in a formal court of law or through customary structures in a community. Security of tenure is the certainty that a person's rights to land will be recognized by others and protected in cases of specific challenges. People with insecure tenure face the risk that their rights to land will be threatened by competing claims and even lost as a result of eviction.

Land Restitution

Land restitution is the act of restoring to the rightful owner something that has been taken away, lost, or surrendered. It is the act of making good or compensating for loss, damage or injury. It is indemnification. It implies a return to or restoration of a previous state or position, whereby something is given to make up for loss or damage. It is giving something back to the rightful owner or returning something to its original value or condition. The law of restitution is the law of gains-based recovery. It is to be contrasted with the law of compensation that is the law of loss-based recovery. It stems from unjust enrichment or gain or benefit. A person deemed by law to have been unjustly enriched at the expense of another is required to make restitution to the other.

Since the Lancaster House Agreement, restitution has been a requirement for land acquisition but this was changed in the 1992 Land Acquisition Act, which blatantly violated the general land restitution rules. In Zimbabwe, the cash-strapped government has failed to compensate commercial farmers whose land was taken by force since 2000. In 2009, the Minister of Lands and Resettlement, Hebert Murerwa, acknowledged government's obligation to pay restitution for improvements on acquired land but accused Britain of going back on its colonial obligation to pay for land constitutionally acquired for resettlement.

Property Rights

Property rights can be defined as "*the exclusive right of possessing something*" or "*rules governing the use of resources.*"¹⁷ In its most basic form, a "property right" is visualized as "*a defensible claim to a particular place or thing.*"¹⁸ Defining and enforcing these rights and obligations is up to the community. Property can only be protected by a regime of laws, norms and rules known as property rights. Laws must aim at limiting official discretion to alter property rights in unpredictable ways and at promoting stable and secure rights, thus limiting governmental interference with the most productive uses of property. Property rights include *real rights* and *personal rights*. A real right is an exclusive interest or benefit enjoyed by a person in a thing. It is said to be absolute as it entitles the holder to enforce it against other people. The holder of a real right can bring an action against any person who interferes with this right. Whereas personal rights are concerned with people in general, a personal right is relative. It is a right from a person by a person claiming something or restraining someone from doing something. In Zimbabwe there exists a mix of real and personal rights.

¹⁷ Ensminger J. (1992) *Making a Market: The Institutional Transformation of an African Society*. Cambridge: Cambridge University Press

¹⁸ Rugadya MR (2009) *Natural Resource Rights and Biodiversity Protection: Guidelines for Policy and Strategies to strengthen Local Governance Systems* paper presented at Best Practices for Land Tenure and Natural Resource Governance in Africa March 1-7, 2009, Nairobi, Kenya, located at <http://www.afdresearch.org/files/LandResearch/001.pdf>, p1, accessed on 22 January 2010.

However, universally accepted property rights are those that guarantee optimality, including security, of property rights under a formalized (i.e. documented) and private property regime. Property rights should therefore be defined by the community (or the state), accepted and understood by all and able to be enforced. In that context, not only statutory law but also customary and religious law and even unwritten local norms, may all address the rights and responsibilities related to property such as land. Secure property rights come with many advantages without which the economy simply collapses¹⁹ and there will be 'anarchy over the land'.

Van den Brink puts it clearly when he writes:

*"---If a property right is insecure, investment will fall. This is why there is consensus that property rights need to be secure."*²⁰

Some argue that secure property rights also make political mobilization safe.²¹ Where property rights are respected, people with profound political differences settle their disputes peacefully in the ballot box and return to their homes unafraid of reprisals or recrimination should their party lose.

Domestic Instruments

The Lancaster House Constitution in 1979 resulted in a cease-fire in Zimbabwe but the Declaration of Rights (Chapter III, Section 16 read in full) of the Constitution prohibited the new government from acquiring land for resettlement purposes except on a willing buyer-willing seller basis.²² Property rights therefore stood among other rights as having equal protection before the law in Zimbabwe. For ten years of Zimbabwe's self rule, there was respect for the private property that the white commercial farmers enjoyed, which the Constitution guaranteed and the courts protected through judicial review. It is this section of the law that was severely affected by the amendments made at the expiry of the willing buyer-willing seller clause in 1990. So, in principle, property rights lost their guarantees from 1990 as the government introduced a wave of amendments in the constitution, which sought to bring about acquisition and redistribution of land to the landless people.

Thus from 1990 onwards the government was free to amend the Constitution and pass laws that could give it the required powers to implement a radical land reform programme, based on the following:

- the Constitution of Zimbabwe Amendment (No.11) Act 30 of 1990
- the Land Acquisition Act (Chapter 20:10) of 1992
- the Constitution of Zimbabwe (No. 12) Act 4 of 1993
- the Constitution of Zimbabwe (No 14) of 1994

These laws provided the state with significant powers to implement accelerated land reform, including a number of sanctions through which landowners could be convinced or forced to co-operate. In 1997, the government published a list of 1,471 farms it intended to compulsorily acquire for redistribution. Through this policy, landowners were given 30 days to submit written objections. In addition, Amendment No. 17 of 2005 nationalized Zimbabwe farmlands and deprived farm owners of the right to challenge government's decision to expropriate land.

These amendments put the hitherto guaranteed rights into reverse. Prior to these amendments, compensation for land expropriated (or acquired compulsorily) by the state for resettlement purposes had to be effected promptly and adequately and in a foreign currency of the landowners' choice. As a result, compulsory acquisition was extremely costly to the state. These constitutional amendments were aimed at moving away from prompt and adequate compensation to fair compensation paid within a reasonable time.

¹⁹Richardson CR (2005) How the Loss of Property Rights Caused Zimbabwe's Collapse, Cato Institute, Economic and Development Bulletin, No. 4, November 14, 2005

²⁰Van den Brink R Land Policy and Land Reform in Sub-Saharan Africa: Consensus, Confusion and Controversy

²¹Goetsche L. Property Rights, Conflicts and Peace located at, http://www.swisshumanrightsbook.com/SHRB/shrb_01_files/255_12%20goetschel.pdf

²²Van Horn A. (1994) Redefining "Property": The Constitutional Battle over Land Redistribution in Zimbabwe Journal of African Law, Vol. 38, No. 2 1994, pp. 144-172

International Instruments

There are a number of International Instruments that provide for the right to property which the Zimbabwean government could have relied on in the land reform process Article 26 of the International Convention on Civil and Political Rights (ICCPR) provides that:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".²³

The United Nations Human Rights Committee, which interprets states' obligations under the ICCPR, has made it clear that Article 26 provides for protection against discrimination in the enjoyment of all rights, including rights not mentioned in the ICCPR, such as the right to property.²⁴ These provisions make it clear that a programme of land reform that discriminates in law or fact, on the grounds of political belief or other grounds, is not in accordance with international human rights law.

Land reform is generally advocated in Zimbabwe as urgently necessary to address the stark inequalities in land distribution and wealth. However, as stated in the African Charter and reinforced by the provisions of the ICCPR and other binding international treaties, the rules providing for compulsory purchase should be clearly set out in law and those affected should have the right to voice opposition to the acquisition and to challenge it before a competent and impartial court. In addition, the security forces and criminal justice system must provide equal protection to all those who are victims of violence and the law should take its course without interference from political authorities.

The African Charter provides, in article 21(2), that: *"In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation."*²⁵ This has not happened in Zimbabwe because acquisition of land by the state took a partisan rather than a national stand. These, and many other violations cited by the CFU, attacked the Universal Declaration of Human Rights, 1948 (Article 17) which states that *"everyone has the right to own property alone as well as in association with others,"* and that *"no one shall be arbitrarily deprived of his property."* Article 14 of the African Charter on Human and Peoples' Rights, however, provides that: *"The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."*²⁶ The Convention on the Elimination of All Forms of Racial Discrimination sets forth in Article 5 the right of everyone to equality before the law without distinction as to race, colour, or national or ethnic origin, including the enjoyment of *"the right to own property alone as well as in association with others."* The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) establishes the same rights for both spouses with respect to ownership, acquisition, management, administration, enjoyment and disposition of property (Article 16).

Property Rights Violations

Property rights violations entail planned or unplanned assault on the right to tenure or entitlement whether law or traditional norms protect this. There were wide spread property rights violations motivated by the lawlessness nature of the fast track land reform programme in Zimbabwe. This process of violation still continues on the remaining few commercial farms in Zimbabwe. Property rights violations entail planned or unplanned assaults on the right to tenure or entitlement. The Commercial Farmers Union of Zimbabwe (CFU) has documented more than eighty-nine methods used in Zimbabwe to violate rights to property, which include unsolicited visits by high ranking politicians on one's property, cruelty to animals, torture, pegging-off land by settlers, damage to property, theft of equipment, trashing and looting of homes, burning of crops, barricading of homes, stock thefts, police searches and occupations without proper offer letters.²⁷

²³ ICCPR, Art. 26

²⁴ [www.UNHCR.org/human rights](http://www.UNHCR.org/human%20rights)

²⁵ African Charter on Human and People's Rights, Article. 21. (2)

²⁶ African Charter on Human and Peoples' Rights, Article 14

²⁷ Commercial Farmers' Union of Zimbabwe Report on Farm Disruptions, Vol. XXVII, December 2009

Violations Against Farmers

War veterans and ZANU-PF militia occupying commercial farms intimidated, assaulted and in some cases, killed white farm owners. These assaults and killings were widely reported. The implementation of the fast track land reform programme resulted in lawlessness and the breakdown of the rule of law in that the perpetrators were not prosecuted and the victims were denied protection of the law as required by the Constitution of Zimbabwe.²⁸ According to human rights groups and the CFU, at least seven farmers were killed in political violence since the beginning of 2000.²⁹ The victims were mainly white commercial farmers and perceived MDC supporters. Police and the army, for example, occupied the farm of Roy Bennett the Deputy Minister of Agriculture elect. Farm owners continue to be assaulted and threatened and their farms occupied whether or not they have actually been listed for acquisition by the government.

The murders of two farmers killed in April 2000 were the first cases to be recorded. David Stevens was shot dead on his Macheke farm. A few days later, more than one hundred ZANU-PF militia, led by war veterans, invaded the farm of Martin Olds, in Nyamandlovu, near Bulawayo. According to a spokesperson for ZANU-PF, Olds opened fire, hitting five of the invaders with shotgun pellets, who then fired back and killed him. Cases where white farmers assaulted settlers were also reported. In Odzi a commercial farmer Bezuidenhout ran over one Mapenzauswa, a settler and killed him.³⁰ The farmer was arrested for murder but the case has not yet been brought before the court. Evidence of state complicity in violation of rights of individual farmers and their property is high.

According to GAPWUZ the highest perpetrators of violations are War Veterans, the Youth Militia, ZANU PF members, traditional leaders and uniformed police.³¹ The list of perpetrators also includes the military police, riot squad, Zimbabwe National Army (ZNA), farm workers, District Administrators, Criminal Investigation Department (CID), Police Intelligence Services Inspectorate (PISI), President's Office, Governors, Provincial Administrators, and National Parks officials.

Violations Against Farm Workers

In June 2000, the National Employment Council (NEC) for the Agricultural Industry (a tripartite body of government, employers, and unions) published a report noting that, as a result of the farm occupations, at least 3,000 farm workers were displaced from their homes, twenty-six killed, 1,600 assaulted, and eleven raped. The majority (47.2%) were supporters of the MDC; nearly as many as (43.6%) had no political affiliation; a few (4.7%) were ZANU PF supporters.³² In 2009, the CFU reported that more than 250 000 farm workers lost their means of livelihoods because of the violent land reform programme,³³ while JAG points out that, in actual fact, 1.3 million farm workers and their families were affected in the eight years of violence.³⁴ This has been corroborated by many researches carried out on the land reform programme.³⁵

The farm occupiers waged a violent campaign against the commercial farmers and the farm workers to drive them off the land assaulting and killing many. Like their employers, the farm workers fell victim to war veterans, youth militia, ZANU (PF) members, traditional leaders and uniformed police who viewed them as belonging to the same constituency as the farmer. They were held hostage, their children witnessed the beatings, were forced to intimidate others, to attend political meetings and to join ZANU- PF.³⁶ There were also reports of farm workers waging violent campaigns against the farm occupiers.³⁷

²⁸ S18 thereof; see CFU v Minister of Lands and others SC-132-2000

²⁹ CFU, 2009 Report

³⁰ The Zimbabwe Daily News July 20, 2001,

³¹ GAPUZ 'If something is wrong...the invisible suffering of commercial farm workers and their families due to "Land Reform"'. Report produced for General Agricultural and Plantation Workers Union of Zimbabwe by the Research and Advocacy Unit and Justice for Agriculture Trust (JAG) located at http://www.kubatana.net/docs/agric/gapwuz_suffering_farm_workers_091111.pdf

³² Human Rights Watch, 2002.

³³ CFU, 2009 Report.

³⁴ Justice for Agriculture (JAG) and the General Agriculture and Plantation Workers Union of Zimbabwe (GAPWUZ)? Reckless Tragedy: Irreversible? A survey of human rights violations and

³⁵ GAPWUZ at http://www.kubatana.net/html/archive/arch_start.asp

³⁶ GAPWUZ 'If Something is wrong... The invisible suffering of commercial farm workers and their families due to "Land Reform"', Report produced for General Agricultural and Plantation Workers Union of Zimbabwe by the Research and Advocacy Unit and Justice for Agriculture Trust (JAG)

³⁷ For instance, The Herald, 15 September 2001, reported that farm workers at Bita Farm in Hwedza allegedly attacked resettled farmers and ZANU (PF) supporters, Fanuel Madzvimba and Alexio Nyamadzawo. Both men were assaulted and subsequently killed with axes, steel chains, spears, asterisks, knobkerries and stones. Resettled farmers and war veteran militants burnt the 60 huts of unnamed farm workers. The arson attack was in retaliation to the killing of two resettled farmers by farm workers.

Farm workers have continued to be the victims of violence during farm occupations. Violence against farm workers is linked to the support given to the MDC by commercial farmers and by perceived implication, by their workers too. In many areas, it seems that farm workers have been targeted for violence both so that the assailants could take over their homes and in order to deprive the white farm owner of numerous potential allies who have a stake in keeping their jobs and might therefore support the farm owner in resisting government policy. Weaknesses in the organizational representation of farm workers have also made them vulnerable to assault and intimidation.³⁸

Perpetrators of Property Rights Violations

Major perpetrators of violence include the war veterans, the army, police, senior civil servants (in their individual capacities or as agents of the state), ZANU PF militia, traditional leaders, and, in some cases, common criminals. The common thread among all these peoples' actions was that crimes were committed in the name of the revolution, the "Third Chimurenga" and in the majority of cases, violence was committed with impunity. By the end of 2009, many actors were responsible for property violation, from ordinary peasants to high-ranking politicians, the 'junta'³⁹ and government ministers and even included ministers of religion. Some did it overtly while others chose to carry out violence secretly. All in all this violence, which disrupted the once vibrant agricultural economy, had long-term effects materially and psychologically.

Judicial decisions on cases brought to court in Zimbabwe including the role of the Commissioner of Police and right of everyone to protection of the law

Farm invasions were illegal and are often riotous. It is incumbent upon the police to protect the farmers and their workers and further to investigate and arrest perpetrators of crimes on the farms. Under international law the right to access justice and enjoyment of effective remedies on infringement of property rights is recognized. Section 18 of the Constitution of Zimbabwe stipulates that everyone is entitled to the protection of the law - in apparent conformity with international law. But has everyone and in particular the commercial farmer and the farm worker enjoyed the protection of the law? The role of the police was succinctly described in *Chavhunduka and Anor v Commissioner of Police and Anor*.⁴⁰ The entitlement of every person to the protection of the law which is proclaimed in S18 (1) of the Constitution embraces the right to require the police to perform their public duty in respect of law enforcement. This includes the investigation of a crime, the arrest of the perpetrator provided the arrest so warrants and bringing him or her for trial before a court of competent jurisdiction. As underscored in *Commissioner of Police v Rensford and Another*,⁴¹ a member of the police may not refuse to perform a duty imposed on them by the law of the land. The protection of the law and the police duty in that regard, under S18 (c), extends to protection in respect of a person's civil rights.

When the farm invasions started, the Commissioner of Police washed his hands of the matter, stating that the hands of the police were tied and they could not act since the matter was political. The CFU won three High Court orders in 2000 forcing the police to remove the illegal farm occupiers and restore law and order. On 17 March 2000, in *CFU v the Minister of Agriculture Land and Resettlement*⁴² Justice Paddington Garwe declared that the invasions were illegal and ordered the Commissioner of Police to evict the unlawful occupiers from the land within twenty-four hours. The Commissioner appealed against the order stating that the state had no resources to carry out the evictions. Justice Chinhengo dismissed the appeal and upheld Justice Garwe's order stating that the Commissioner of Police had a clear duty to enforce the consent order, and to afford commercial farmers the protection of the law enshrined in the Constitution. Despite these two judgements, the leaders of the war veterans publicly proclaimed that they would not be bound by the court order, but instead would intensify the farm occupations.

³⁸ Human Rights Watch, 2001

³⁹ In Zimbabwe, when the army became political and got involved in the political processes, it was sarcastically called 'junta'. The term does not mean that there was a praetorian government in Zimbabwe at one given time.

⁴⁰ 2000(1) ZLR 418(S)

losses suffered by commercial farm workers in Zimbabwe between 2000 and 2008. Report prepared by the Research and Advocacy Unit (RAU)? December 12, 2008

⁴¹ 1984 (1) ZLR 202(S) At 202 H

⁴² See *CFU vs. Minister of Agriculture Land and Resettlement* (HC3985/2000)



The police also made no attempt to comply with the order claiming that the issue was a political one and that it would be impossible and counterproductive to act. By refusing to enforce court orders calling upon him to evict illegal land occupiers, the Commissioner of Police denied the farmers and the farm workers their right to the protection of the law as enshrined in the Constitution of Zimbabwe and a number of International Instruments to which Zimbabwe is a signatory.

Realizing the intensity of the farm invasions, the ensuing violence and the disregard of court orders, the CFU took the matter to the Supreme Court of Zimbabwe. In *CFU v Minister of Agriculture Land and Resettlement*,⁴³ the full bench of the Supreme Court delivered its judgment on 21 December 2000. The court declared that the rule of law had been persistently violated in commercial farming areas of Zimbabwe since February 2000 and it was imperative that the situation be rectified forthwith; that persons in commercial farming areas had been denied the protection of the law in contravention of Section 18 of the Constitution; had suffered discrimination on the grounds of political opinions and place of origin in contravention of Section 23 of the Constitution; had their rights of assembly and association infringed in contravention of Section 21 of the Constitution; and that there was not in existence at the present time a programme of land reform as that phrase is used in Section 16A of the Constitution.

The court ordered all Ministers involved, the Commissioner of Police and the President of the Republic of Zimbabwe to comply immediately with the Consent Order of 10 November 2000 in *CFU v Minister of Agriculture, Land and Resettlement*.⁴⁴ This essentially required removal again of all unlawful invaders from commercial farms, the prevention of further invasions, the production of a workable programme of land reform and the restoration of the rule of law in commercial farming areas by no later than 1 July 2001. This did not happen and instead the invasions continued and became more violent.

In *George Quinnell v the Ministry of Agriculture*,⁴⁵ Quinnell appealed to have his eviction order overturned and amendments to the country's land laws to be declared unconstitutional. Though the case took two years to come to court, the eviction order was overturned. In passing the judgement, it was noted that the Land Acquisition Amendment Act No 6 of 2002 was not lawfully enacted and thus of no force and effect. Although, in almost all cases, the courts ruled that the land reform process was illegal and violated property rights, the government and the law enforcement agencies were not willing to carry out a sustainable land reform programme as displayed by their disrespect of the judicial decisions.

In response to these legal challenges, the government proceeded by introducing Constitutional Amendment No. 17 of 2005, which confirmed all acquisitions. This meant that resettled people could no longer be evicted. About 4,000 court applications by commercial farmers challenging the seizure of their properties which were pending in the country's courts were removed from the court's roll. Amendment 17 successfully eroded the rule of law and ousted the jurisdiction of the courts over all cases of acquisition rendering impotent national and international obligations for the right to protection of the law. The amendment effectively extinguished any judicial authority over land. Thus the GoZ used the landless people to attack what it should have defended; that is property rights, the rule of law and its own citizens.

In May 2006, Mike Campbell Private Limited⁴⁶ applied to the Supreme Court, challenging the constitutional validity of Amendment 17 and sought relief from the continued invasions and intimidations on his farm. Campbell argued that Amendment Number 17 infringed the principles of human rights, democracy and the law. The Supreme Court unreasonably delayed in giving judgement, forcing Campbell to launch proceedings with the SADC Tribunal in October 2007 and was joined by 78 former commercial farmers in the case. However, in January 2008, the Supreme Court dismissed Campbell's challenge. The court ordered that race was not an issue in the case, that the GoZ had an inherent right to compulsorily acquire property and that the legislature has full powers to amend the Constitution. Thus, the Amendment effectively extinguished any judicial recourse or remedy for farmers who wished to object to the acquisition of their farms.

⁴³CFU vs. Minister of Agriculture Land and Resettlement (SC132/2000)

⁴⁴CFU vs. Minister of Agriculture, Land and Resettlement (SC 314/2000)

⁴⁵George Quinnell vs. the Ministry of Agriculture (SC47/O4)

⁴⁶See Mike Campbell Pvt Ltd another v the Zimbabwe Republic Police SC49/07.

Conclusion and Recommendations

The main objective of this report was to describe how property rights were violated during the land reform programme in Zimbabwe. In the course of the land reform programme, landless people, state agents, war veterans, and ZANU PF militia violently displaced white commercial farmers. Domestic, regional, and international instruments on property rights were blatantly sacrificed for personal and political mileage and as a result, agricultural productivity dwindled and this had negative spill over effects on the agro-based economy. Property rights were taken away from the previous landowners but were not extended to the new land occupiers. The land reform programme has failed to fulfill its stated objective of empowering the landless.

In light of the arguments raised, this report makes the following recommendations:

- i. Restoration of the rule of law. The restoration of the rule of law will enable the government to come up with a credible land reform programme that will address the historical imbalances and the injustices of the 2000 fast track land reform process.
- ii. Constitution making process. Article 6 of the GPA gives a clear timeline on the constitution making process. The new constitution should provide for a justiciable and non-discriminatory Bill of Rights that protects the economic, social, cultural, civil and political rights of every citizen.
- iii. Institutional reforms to protect private property. The security forces have been used as instruments of violating instead of protecting human rights. The government should demilitarize state institutions so as to enhance professionalism in their operations. In Article XIII of the GPA, the parties agreed that the curriculum for the uniformed forces should include the subject of human rights so that they gain greater understanding of their roles and duties.
- iv. Land audit should be done urgently. Article 5.9 of the GPA on the Land Question states that, "The Parties hereby agree to conduct a comprehensive, transparent and non-partisan land audit, during the tenure of the Seventh Parliament of Zimbabwe, for the purpose of establishing accountability and eliminating multiple farm ownerships and to work together for the restoration of full productivity on all agricultural farms." A year after the consummation of the inclusive government, the land audit is still pending while fresh farm invasions persist.
- v. Stop the continuing land invasions. All parties to the GPA should publicly denounce the continued land invasions as this undermines the determination shown by the parties to reform the human rights culture. The continued violation of property rights has negative impact on economic recovery. The government should recognize that agriculture plays an important role in the country's economy.

The Zimbabwe Human Rights NGO Forum (also known as the “Human Rights Forum”) is a coalition comprising 19 member organizations. It has been in existence since January 1998 when non-Governmental organizations working in the field of human rights joined together to provide legal and psychosocial assistance to the victims of the Food Riots of January 1998.

The Human Rights Forum has now expanded its objectives to assist victims of organized violence, using the following definition:

“Organized violence,” means the inter-human infliction of significant avoidable pain and suffering by an organized group according to a declared or implied strategy and/or system of ideas and attitudes. It comprises any violent action, which is unacceptable by general human standards, and relates to the victims’ mental and physical well-being.”

The Human Rights Forum operates a Research and Documentation Unit and offers legal services to assist victims of organized violence and torture claim compensation from perpetrators through its Public Interest Unit.

Member organizations of the Human Rights Forum are:

- Amnesty International (Zimbabwe) (AI)
- Catholic Commission for Justice and Peace (CCJP)
- Gays and Lesbians of Zimbabwe (GALZ)
- Legal Resources Foundation (LRF)
- Media Institute of Southern Africa (MISA)
- Media Monitoring Project Zimbabwe (MMPZ)
- Nonviolent Action and Strategies for Social Change (NOVASC)
- Transparency International (Zimbabwe) (TI (Z))
- Women of Zimbabwe Arise (WOZA)
- Zimbabwe Association for Crime Prevention and the Rehabilitation of the Offender (ZACRO)
- Zimbabwe Association of Doctors for Human Rights (ZADHR)
- Zimbabwe Civic Education Trust (ZIMCET)
- Zimbabwe Human Rights Association (ZimRights)
- Zimbabwe Lawyers for Human Rights (ZLHR)
- Zimbabwe Peace Project (ZPP)
- Zimbabwe Women Lawyers Association (ZWLA)
- Zimbabwe Civic Education Trust (ZIMCET)
- Zimbabwe Human Rights Association (ZimRights)
- Justice for Children Trust (JCT)
- Research and Advocacy Unit (RAU)
- Students Solidarity Trust (SST)
- Zimbabwe Association of Doctors for Human Rights (ZADHR)

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