

Legal or Legitimate: Reflections on Politics Surrounding the Land Reform Programme in Zimbabwe

Torque Mude
International Relations, Midlands State University, P. Bag 9055,
Senga Road, Gweru, Zimbabwe

Abstract: Zimbabwe embarked on the fast-track land reform programme in the year 2000. The programme attracted widespread criticism from both legal and political circles. This study seeks to argue that despite condemnation and criticism, the land reform programme in Zimbabwe was both legal and legitimate. Data were collected using books, journal articles, government reports and the internet. The conclusion drawn from the findings, are that the land reform programme in Zimbabwe was legal in accordance with rules and principles of international law. And the legitimacy of the programme is justified by the fact that land is politically important in the country such that failure to address land imbalances could have had disastrous consequences for the government due to pressure from marginalized Zimbabweans and the war veterans.

Key words: Journal articles, books, rules, law, Zimbabwe

INTRODUCTION

In a bid to correct colonial economic imbalances and empower the black majority, Zimbabwe embarked on the fast-track land reform programme in 2000. Redistribution of land was the purpose of the programme. The initiative came after a long struggle of negotiations and tensions with the British government. In accordance with the Lancaster House Agreement, the British government was to act as the guarantor of land redistribution in Zimbabwe. When the Labor Party came to power in 1997, they denied responsibility to fund land redistribution in Zimbabwe. In retaliation, Zimbabwe opted for fast-track redistribution. Various arguments were raised pertaining to the legality and political legitimacy of the fast-track programme. Methodologically, data was gathered from secondary sources, such as text books, published research article and reports as well as the internet. However, the researcher refrained from using Wikipedia as a source of information.

BACKGROUND TO LAND REFORM IN ZIMBABWE

The land question has always been and remains at the core of Zimbabwe's political, economic and social development. Indeed now as in the past, it remains the root of the political tension within the country and with the former colonial power, Britain. The advent of European settler occupation of Zimbabwe in September, 1890 is the genesis of the dispossession of blacks of

their land. The 1893 invasion of the Ndebele Kingdom leading to the creation of the Gwaai and Shangani reserves: The 1896-97 Shona and Ndebele first Chimurenga/Imfazwe (war of liberation); the nationalist struggle in the period before and after the 2nd world war; the 2nd Chimurenga/Imfazwe which gave birth to the independent Zimbabwe in 1980; the contentious Lancaster House Constitutional negotiations and the Agreement in 1979 (Ranger, 1985) and as already stated the current internal political developments, all bear testimony to the centrality of the land issue in the country's history.

The land reform programme in Zimbabwe officially began in 1979 with the conclusion of the Lancaster House Agreement. Ideally, this agreement was an effort to more equitably and fairly distribute land between the historically marginalized and exploited blacks and the minority whites who ruled Zimbabwe from 1890-1979. The government's land distribution move was perhaps one of the most crucial and the most bitterly contested politico-economic issue surrounding Zimbabwe in the 21st century. It can be divided into 2 epochs. From 1979-2000 a principle of willing buyer, willing seller was applied with economic help from Great Britain. Starting in 2000, the government embarked on the fast-track land reform program.

CONTENDING ISSUES

Though controversial, the land reform in Zimbabwe was geared towards empowering the previously

disenfranchised black majority in the country. Extremists and leftists undermined the program using every tool in their possession to discredit all the goodies associated with the incredible program. Consequently, there is now a tendency of downplaying the political legitimacy, legal validity and necessity of the land reform program in Zimbabwe.

War veterans and other political figures in Zimbabwe would contend that the land reform program was a continuation of the liberation struggle. Among these is Chings, a war veteran and political activist. In local language, they called it *hondo yeminda* meaning struggle for land. Others also referred to the program as the 3rd Chimurenga. In other words, it was a continuation of the struggle for 100% political and economic independence. It is generally argued that in 1980 Zimbabwe attained political independence without economic independence. The reason is that land was still in the hands of the white minority. Efforts were made but to no avail, to redistribute land in accordance with the Lancaster agreement. But, the British government was adamant to honour and respect what was agreed upon on the basis of good faith, *pacta sunt servada* (Dugard, 2006). International law, the law that regulates relations between states and other non-state actors, requires states to adhere to agreements because they form the basis of rules and principles of international law.

Britain's refusal of its responsibility regarding land redistribution left Zimbabwe in a quagmire position. Diplomatic efforts were made to remind and convince the British government to live up to its colonial responsibility but to no avail. As a matter of fact, the Zimbabwean government tried to be patient and accommodating in, as far as promises from the British government that it would fund land distribution. But, the new Labor Party government in Britain turned the promises down.

Consequently, the struggle for economic independence in Zimbabwe was far from over. In simple terms, one may safely argue that the land reform programme was a continuation of the liberation of Zimbabwe, economically. Misguided and misconceived arguments that the programme was illegal and illegitimate should be thrown into the dustbin.

Evidence suggests the undeniable fact that Britain is the culprit in the land reform saga. This is a rational argument, not a biased one. To reiterate, on the 5th of November, 1997 the then Britain's secretary of state for international development, Clare Short, wrote a letter to Zimbabwe's then minister of agriculture and land, Kumbirai Kanga, repudiating Britain's colonial responsibility for land reform in Zimbabwe (<http://www.theguardian.com/politics/foi/images/0,9069,1015120,00.html>). In the letter she stated:

I should make it clear that we do not accept that Britain has a special responsibility to meet the costs of land purchase in Zimbabwe. We are a new government from diverse backgrounds without links to former colonial interests. My own origins are Irish and as you know, we were colonized, not colonizers

This was aptly stated. After digesting Short's words, every sane being would notice the hypocrisy of the British government. The approach taken by Zimbabwe thereafter is therefore justified.

The fast track land reform programme was carried out in a military style, skeptics claimed (United Nations, 2002). The international community claimed that the approach Zimbabwe used in carrying out land distribution amounts to violation of human rights law. Justification given is that the operation involved violence and torture perpetrated by the army and militia. Systematic intimidation and torture of white commercial farmers could be linked to violation of international human rights law.

Some argued that the campaign was motivated by hatred of the white population which is racism per se. Racism is prohibited under human rights law in terms of the International Convention on the Elimination of All Forms of Racial Discrimination. Racial discrimination is defined in article 1 (1) of the convention as any distinction, exclusion, restriction or preference based on race, color, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of political life (Dugard, 2006).

The mentioned earlier arguments are biased and far-fetched. They do not factor in the realities of what actually happened from the onset. For instance, the question of how the British acquired the same land that Zimbabwe had to redistribute. This is fundamentally important.

History witnessed the systematic dispossession realized largely through violence, war and legislative enactments by successive colonial Governments which led to the racially skewed land distribution and ownership pattern that until recently was characteristic of Zimbabwe. Having regard to the political and related problems arising from the Boer controlled Witwatersrand gold fields in the Transvaal, Cecil John Rhodes, the Prime Minister of the Cape and through his British South Africa Company (BSAC) became fixated with the idea of developing a 2nd Witwatersrand (2nd Rand) to the North of the Limpopo River (Ranger, 1985). September, 1890 marked the

genesis of the dispossession of blacks of their land. The 1893 invasion of the Ndebele Kingdom, the 1896-97 Shona and Ndebele 1st Chimurenga and other events are indications of the brutal manner which the British employed in dispossessing the locals of their land.

Worrisome enough was the noise, especially by Britain and her colonial sympathizers, regarding violence associated with the fast track land reform programme. Violence was a necessary instrument, if at all the government employed it, for the programme, as it were in the 1890s when land was taken from the locals. In any case violence has its benefits. According to Gandhi, where there is a choice between cowardice and violence, I would advise violence. In line with Gandhi's argument, Zimbabwe resorted to violence not because policy makers celebrate bloodshed but because they favored engagement and pragmatism. Moreover, Zimbabwean politics at home and abroad is informed by the realist worldview. As a political theory, realism holds that states should refrain from idealistic principles, such as negotiation and morality among others (Strauss, 1958). Realism prescribes engagements, *realpolitik*. As such, Zimbabwe has little respect for passivity.

Furthermore, reprisal actions are legal under international law. Reprisal action implies doing something bad to someone in return for something bad he has done to one (OUP, 2009). Zimbabwe had been injured by Britain through colonialism. Productive and fertile land was seized by the settlers when they colonized present day Zimbabwe in the 19th century. When Zimbabwe attained political independence in 1980 the new government committed itself to negotiate with the former colonial power for a win-win settlement on the land issue. Zimbabwe had tried to negotiate on the basis of good faith. But, the British government was adamant and reluctant to fulfill its promises. In retaliation, the approach Zimbabwe resorted to was in realization of the right to use reprisal action.

More so, under Article 51 of the United Nations Charter states are permitted to use force in realizing the right to self-determination (Dugard, 2006). Skeptics hold that the land reform was carried out largely through force. It is said that war veteran, militias and ZANU PF supporters began to invade white owned commercial farms, announcing that they were taking land back to black Zimbabweans. Whether or not land was taken forcibly is not important, of significant importance is the fact that that was geared towards economic self-determination of the historically marginalized black Zimbabweans. Self-determination is one of the golden principles of modern international law (Dugard, 2006). However, states should not utilize Article 51 of the United Nations

Charter to pursue ulterior political motives under the cover of self-determination and economic independence. Politicians often utilize international law unilaterally to pursue their national interests; international law is often seen as an acceptable instrument for achieving political ends.

In the case of Zimbabwe, international law was not used as an instrument for achieving political ends. Although controversial, the country acted in the best interest of economic freedom and independence of its own people who had been deprived the right to self-determination. Given the negligence on the part of Britain to take her colonial responsibilities and respect Zimbabwe's need for economic independence and self-determination, the simplest resolution for Zimbabwe was forced victory. The redistribution of land was long overdue in year 2000.

It became talk of the millennium that the land reform programme in Zimbabwe was an election campaign gimmick. It was said to be a ZANU PF vote buying propaganda. This suggests that the programme was meant to gain political mileage by an ailing ZANU PF party. Such claims hold that the former ruling party was using the land reform as a smoke screen to buy votes for the impending 2002 elections. This could be true because politicians are political animals capable of doing anything. However, lost in this rhetoric is the fact that the issue of land distribution had not been dealt with in earnest in 20 years. Thus, accusing the former ruling party of wanting to buy votes is mere political statement. Taking the earlier arguments into cognizance, such utterances do not hold water.

Mentioned earlier all, the land redistribution exercise proved Zimbabwe's commitment to respect and uphold human rights. Human rights are inherent entitlements every human being has as a consequence of being human (Wallace, 2005). Article 1 of the International Covenant on Economic, Social and Cultural Rights aptly states; all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development (Dugard, 2006).

Zimbabwe ratified this human rights instrument on 13 May, 1991, as such the country is a state party to its provisions. The covenant is very clear on the right of economic self-determination. Zimbabweans are not an exception. It is clear, therefore that the programme was in realization of the economic rights of the people of Zimbabwe. These economic rights empower Zimbabweans to determine and pursue their economic development. By and large, the land reform exercise was consistent with rules and principles of international law. The exercise was legal and legitimate.

On the contrary, Western media, such as the British broadcasting corporation and others argued that the manner in which the land reform was done violated the human rights of the white commercial farmers. The land reform exercise amounted to racism, they say. Racism is discrimination on the ground of race. It is prohibited by Article 26 of the International Covenant on Civil and Political Rights. Guided by the above definition, the land reform occurred in violation of human rights of the former white commercial farmers (Anonymous, 2002). One might then be tempted to embrace the rhetoric that the exercise amounts to violation of human rights law.

Be that as it may, if the land reform exercise was motivated by racism which undermines human rights law, on an equal note, the way the same land was seized by the whites, through excessive violence, from the blacks in present day Zimbabwe amounts to racism as deprivation of economic rights (<http://www.swradioafrica.com/Documents/Racial%20Discrimination%20in%20Zim.pdf>). In other words, the white population is also responsible for gross human rights abuses and the prohibited use of force associated with the way they seized land from the black majority (Shaw, 2003). Above all, since reprisal action is permitted under international law, the land reform programme can be justified as reprisal action and does not amount to violation of international human rights law. As a result, the land reform exercise was part of Zimbabwe's adherence and respect for human rights of Zimbabweans in particular and international law in general.

Britain's refusal to fund the land reform and the resort to the fast track land reform programme by Zimbabwe is evidence of the countries utilization of the doctrine of *rebus sic stantibus* (Wallace, 2005). This is Latin legal terminology referring to fundamental change of circumstances. Under international law, treaties can be terminated whenever they are fundamental change of circumstances. At Lancaster Zimbabwe and Britain had agreed on the willing buyer willing seller in resolving the land question. Part of the agreement provided that Britain was to fund the willing buyer willing seller exercise. When Britain refused to fulfill her funding responsibility, Zimbabwe decided to go the fast track way. Circumstances changed, as a result the situation was a win-win. Both sides did what they thought was best for them.

A group of some commercial white farmers, Mike Campbell and others who got affected by the land reform exercise referred the matter to the Southern Africa Development Community Tribunal (SADC Tribunal). The SADC tribunal is a tribunal for the sub-region, Southern

Africa (SADC, 2008). The tribunal applies rules and principles of international law. When Mike Campbell and others referred the matter to the tribunal the case became known as Campbell and others v the government of Zimbabwe. A series of rulings were given by the tribunal. Zimbabwe was ordered to put an end to grabbing land belonging to the commercial farmers. The basis for that ruling was that the country had violated the farmers' property rights (Mike Campbell (Pvt) Ltd. and others vs the Republic of Zimbabwe, Case SADC (T) No.02/2008). However, lost in that ruling is the fact that the same land belonged to the black majority who were deprived of their property rights by the settlers.

CONCLUSION

Conclusively, the fast track land reform programme in Zimbabwe was both legal and legitimate. The exercise was consistent with rules and principles of international law as well as the dictate of reason. All things being fair allegations of defiance, unbecoming behavior and human rights abuses leveled against Zimbabwe regarding the land reform should be discarded completely. The country wanted to achieve economic self determination. Former commercial white farmers were deprived of their right to property among others, yes but basing on the dictate of reason Zimbabwe did the right thing.

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