THE LAND PROBLEM: WHAT DOES THE FUTURE HOLD FOR SOUTH AFRICA'S LAND REFORM PROGRAM?

A COMPARATIVE ANALYSIS WITH ZIMBABWE'S LAND REFORM PROGRAM: A LESSON ON WHAT NOT TO DO.

Our land is a precious resource. We build our homes on it; it feeds us; it sustains animal and plant life and stores our water. It contains our mineral wealth and is an essential resource for investment in our country's economy. Land not only forms the basis of our wealth, but also our security, pride and history.[1]

PART I: INTRODUCTION

Land reform is an international issue that frequently sparks revolutions and divides nations.[2] Several factors have put land reform on international and political agendas including awareness,[3] urbanization,[4] demand for human rights,[5] and the creation of social contracts and coalitions.[6] At the heart of all land issues lies one central question: Who owns the land?

The resurgence of land reform in Africa over the last century follows the retreat of colonial rule over many African nations. During European rule,

---

1. H. HAVENGA & J. ERASMUS, SETTING THE FOUNDATIONS FOR BUILDING CAPACITIES, NETWORKING & RESEARCH ON LAND REFORMS IN SOUTHERN AFRICA 50 (N. Marongwe & J. Z. Z. Matowanyika eds., 1998).

2. *See* ROY PROSTERMAN ET AL., AGRARIAN REFORM AND GRASSROOTS DEVELOPMENT 311 (Roy L. Prosterman et al. eds., 1990). Other countries that have dealt with land reform include Mexico, the Soviet Union, Japan, China, South Vietnam, Ethiopia, parts of India, Nicaragua and El Salvador. *See id.*

3. *See* Jim Riddell, *Contemporary Thinking on Land Reform, available at* http:www.caledonia.org.uk/land/fao.htm (last visited March 24, 2000). The rural populations of many developing countries are more informed today than they were ten years ago. The movement of people across borders, the opening of the stream of commerce, and the creation of information systems, like television and the Internet, have empowered the rural populations to assert their need for land reform. *See id.*

4. *See id.* Because land distribution prior to land reform implementation did not create viable livelihoods for most of the rural populations, many people were forced to move to the cities to find work. Rural households' dependence on off-farm employment has, in part, led to the failure of some land reform programs. *See id. See also* Lauren G. Robinson, *Rationales for Rural Land Redistribution in South Africa,* 23 BROOK. J. INT'L L. 465, 480 (1997) (Africans were forced into a migrant labor system for subsistence wages.).

5. *See* Riddell, *supra* note 3. Today, the rural populations of the developing countries associate certain rights with regard to citizenship, "includ[ing] the right to have rights: to land and to other rural resources, to free movement, to information, to the means to have adequate diet and to a sustainable environment." *Id.*

6. *See id.* Partnerships between key groups of individuals and the government, in the form of Non-Governmental Organizations (NGO's), are more effective when they are able to combine their efforts in pursuing land reform. *See id.* The creation of such organizations "underscore[s] the importance of civil society and growing institutional support for land reform as a confirmation of civil rights and social justice." *Id.*

native Africans were dispossessed of the land on which they lived.[7] Land reform in South Africa has become a controversial international and political topic due to recent reports of violence and intimidation. Additionally, as a developing nation, land reform is crucial to South Africa's economic survival.[8] Such concerns are not unique to South Africa. In neighboring Zimbabwe, widespread violence, rampant theft, and farm invasions plague Zimbabwe's land reform program.[9] Zimbabwe's land reform policies and President Robert Mugabe's "endorsement" of such violence have increased international attention toward the implementation of its land reform programs.[10]

In a recent interview, a white South African farmer acknowledged both the impending land crisis and the fear about the future of South Africa's land reform program. The farmer, who watched as his son was murdered in an ambush on the family farm, said he was "under a murderous siege and that land [was] being grabbed just surely as commercial farms were seized by aggressive war veterans in neighboring Zimbabwe."[11] The farmer described the current events in South Africa as "a slow, grinding, insidious process to drive the whites off the land."[12] He continued by stating that "[t]he only difference with Zimbabwe is that [in Zimbabwe the invasions were] overt and blatant and covered by the press."[13]

Other reports give further support as to South Africa's impending land crisis and the fear about the future of its land reform program. In another region of South Africa, it was reported that 5000 people were illegally occupying white-owned farms.[14] In another small farming area, seventy percent of the white-owned farms were invaded.[15] Overall, in 1999, 813 attacks and 144 murders on white-owned farms were reported, which, statistically speaking, makes farming one of the most dangerous professions in South Africa.[16] A spokesperson for the Federal Alliance stated that "if the illegal occupations were not government policy then [President] Mbeki . . .

---

7. *See* HAVENGA & ERASMUS, *supra* note 1, at 52. Other countries that are dealing with colonial or racial dispossession include Australia, New Zealand, the Untied States, Canada, and Germany. *See id.*

8. *See id.*

9. *See* Joseph Winter, *Zimbabwe's Shattered Dream*, BBC NEWS, *at* http://news2.thls.bbc.co.uk/hi/english/world/africa/newsid_701000/701275.stm (last visited April 11, 2000).

10. *See id.*

11. Allan Seccombe, *South African Farmers Say Being Driven Off Land, available at* http://uk.news.yahoo.com/000906/1/aic7v.html (last visited Sept. 6, 2000).

12. *Id.* The farmer also stated that he received death threats and constantly contended with arson attacks and rampant theft. *See id.*

13. *Id.*

14. *See 20 Northern KZN Farms Illegally Occupied*, SOUTH AFRICAN PRESS ASSOCIATION, July 7, 2000, *available at* 2000 WL 24053220.

15. *See id.*

16. *See id.*

should act decisively to end the occupations as lack of action would result in a repeat of the Zimbabwe experience."[17]

In addition, reports stated that protesters picketed outside the office of South Africa's Minister of Lands, Thoko Didiza, and threatened land invasions if she failed to meet with them.[18] Another report stated that a group known as The Restitution Forum of the South Cape and Karoo sent a letter to the President of South Africa, Thabo Mbeki, stating that "[c]ommunities in our region are considering mass action and we want to avoid at all costs the same situation as currently in Zimbabwe."[19]

South Africans hope to avoid the situation that currently exists in Zimbabwe.[20] The land crisis in Zimbabwe grew out of frustrations over Zimbabwe's land reform program and has resulted in white-owned farms being seized.[21] Further, white farmers are being murdered, intimidated, and forced from their farms.[22] To add to the growing hostilities, President Mugabe has drawn international attention to Zimbabwe's land crisis by failing to react to the widespread violence, or as some interpret his actions, by endorsing such attacks.[23] Moreover, Mugabe's land reform policies take land from white farmers without compensation and redistribute it to landless blacks. The massive "land-grab" and the eight month campaign of violence and invasions of nearly 1700 farms has caused "massive damage to [Zimbabwe's] international image and is the chief cause of the collapse of [its] once robust

---

17. *20 Northern KZN Farms Illegally Occupied*, *supra* note 14.

18. *See* Integrated Regional Information Network, UN Office for the Coordination of Humanitarian Affairs, *South Africa: IRIN Focus on Land Reform*, *available at* http://www.reliefweb.int/IR...ountrystories/southafrica/20000419.phtml (last visited April 19, 2000) [hereinafter *Focus on Land Reform*]. Minister Didiza stated that "[w]e want to move away from the perception that only white farmers in this country can make it commercially and that subsistence farming is only for Africans." *Id.* Since Minister Didiza was appointed, the rate at which restitution claims are finalized has increased. *See id.*

19. *Id.* Other demonstrations have occurred as recently as June 2000. *See No Zimbabwe-Style Land Invasions in SA*, SOUTH AFRICAN PRESS ASSOCIATION, June 8, 2000, *available at* 2000 WL 21218731.

20. North West Premier Popo Molefe stated, "We will invoke the full might of the law to protect peace and stability on our farms." *No Zimbabwe-Style Land Invasions in SA*, *supra* note 19.

21. Lewis Machipisa, *Zimbabwe: Land Acquisition Bill Passed*, *available at* http://www.igc.org/igc/pn/h1/1000411275/h1.html (last updated April 7, 2000).

22. *See id.* In addition to allegations that President Mugabe encourages the war veterans to invade whit-owned farms, President Mugabe and the Zimbabwe government have been accused of corruption. *See* Tendai Madinah, *The Land Act's Losers*, *available at* http://landow.stg.brown.edu/post/zimbabwe/politics/losers.html (last updated Sept. 1993). It has been alleged that at least two million hectares of land acquired for redistribution were in fact redistributed – to the cronies and relatives of President Mugabe. In at least one instance, it is alleged that one minister now owns seventeen farms. *See id.*

23. *See* discussion *infra* Part IV-6.

economy."[24] The international community has reacted with much criticism and concern.[25]

The land problem that exists in South Africa is very similar to Zimbabwe's situation.[26] Problems for both countries emanate from the historical colonial nature of land dispossession and distribution.[27] The similarity of South Africa and Zimbabwe's land problems, the nature of land reform in general, and recent events in South Africa raise the question: What is the future of South Africa's land reform program? Despite the recent reports of violence, threats of mass invasions, and the outcome of Zimbabwe's land reform program, South African police assure that there is "no proof that ongoing attacks on farms countrywide [are] politically motivated."[28] The police assert that such attacks are "motivated by pure criminality."[29] When asked if the developing land situation in South Africa would culminate in violence and intimidation, the Chief Land Claims Commissioner's office stated: "It is very unlikely. Land reform in South Africa is both a constitutional and legislative issue as provided by the Constitution and the Land Restitution Act of 1994."[30]

Although South African leaders remain positive, it remains necessary to analyze South Africa's land problem to avoid recreating a hostile situation like the one that exists in Zimbabwe. South Africa must closely scrutinize Zimbabwe's land reform programs to discover the strong points and shortcomings so that it does not repeat Zimbabwe's mistakes.

This Note addresses South Africa's history, the development of South Africa's land problem, and the implementation of South Africa's land reform program. Ultimately, this Note concludes that, even in the context of Zimbabwe's similar land crisis, South Africa's land reform program will prove to be successful in the years to come. Specifically, Part Two addresses the principles and policies underlying land reform and the implications that flow from implementation of various types of programs. Part Three addresses the policies underlying South Africa's land reform program, the methods employed for bringing about such reform, and the overall effect of

---

24. *150 More Zimbabwe Farms Listed for Seizure*, DEUTSCHE PRESSE-AGENTUR, Sept. 8, 2000, *available at* Westlaw, AFRNEWS.

25. *See* Machipisa, *supra* note 21.

26. North West Premier Popo Molefe acknowledged that "South Africa's land problems are similar if not more serious [than Zimbabwe's]." *No Zimbabwe-Style Land Invasions in SA*, *supra* note 19.

27. *See id.*

28. *Still No Proof that Farm Attacks Are Politically Motivated*, SOUTH AFRICAN PRESS ASSOCIATION, August 10, 2000, *available at* 2000 WL 24055258.

29. *Id.* A statement by the police indicated that there was no information to substantiate claims that the recent attacks on farmers were politically motivated. However, the chairman of the Free State Agriculture's safety committee said that he had received information that a militant group had begun launching attacks on farms to demonstrate its dissatisfaction with the pace of South Africa's land reform program. *See id.*

30. *Id.*

implementation of such programs. The development of the land crisis in Zimbabwe is discussed in Part Four. In Part Five, South Africa's land reform program is compared with Zimbabwe's, and any lessons that can be learned from the Zimbabwe experience are identified. Finally, Part Six concludes that although the emerging situation in South Africa is almost identical to Zimbabwe's experience, South Africa's constitutional and legislative commitment to make land reform work should ensure a positive future for South Africa's land reform program.

PART II: LAND REFORM, GENERALLY

Types of Land Reform[31]

Generally, land reform is "[t]he redistribution of property or rights in land for the benefit of the landless, tenants and farm labourers [sic]."[32] The first type of land reform is land redistribution. In a redistributive scheme, "the land is taken from large holders and given to landless and poor farmers."[33] A system of land redistribution expropriates land from absentee landlords, farms that are excessive in size, or land that is underutilized or owned by foreigners.[34]

A second type of land reform is restitution. Land restitution is useful where an individual's property rights, unjustly taken under colonial rule, can be restored to their status at some pre-determined date.[35] When an individual's property rights cannot be restored, restitution provides financial compensation for the individual.[36]

A third type of land reform, known as land tenure reform, is a concept that signifies "'a bundle of rights' and obligations conferred to the land users."[37] Land tenure pervades all types of land reform, but as independently referred to, it "focus[es] on the social, political, and economic support needed

---

31. This note does not discuss other land reform measures such as, negotiated tenure reform, land leases, and market-led reform. *See* Riddell, *supra* note 3. For a discussion of other institutions that help strengthen property relations with land, such as the cadastre, a land registry, leasing, and land use contracts, *see generally* Riddell, *supra* note 3.

32. Martin Adams, Overseas Development Institute, *Land Reform: New Seeds on Old Ground?*, *available at* http://www.oneworld.org/odi/nrp/nrp6.html (last updated Oct. 1995) [hereinafter Adams, *New Seeds*].

33. Riddell, *supra*, note 3. Countries that have implemented redistributive land reform programs include Japan, Republic of Korea, Taiwan, Bolivia, Chile, Colombia, Cuba, El Salvador, Honduras, Nicaragua and Peru. *See id.*

34. *See id.*

35. *See id.*

36. *See id.* Restitution is hard to implement because it seeks "to do justice to the dispossessed *and* to the present [l]and holders, through a fair procedure and in a manner which is consistent with national goals and social needs." HAVENGA & ERASMUS, *supra* note 1, at 52. (emphasis added).

37. ISAAC MAPOSA, LAND REFORM IN ZIMBABWE 10 (1995).

for institutionalized transactions in rights in property."[38] Land tenure reform affects the terms and conditions on which land is held, used, and transacted by giving "unambiguous property rights in land" to individuals living and working on land of which they have no rights.[39] Land tenure reform is accomplished through a variety of methods including legal reform, land registration, and targeted legislation.[40] Most important to the success of a land tenure program is public consultation.[41]

There are several components to an effective land reform program. The program should include accessible land information systems, effective methods for dissemination of public information, long-term funding, land use planning, land legislation, and established dispute resolution forums.[42] First, and most critical to the success of any land reform program, a government must establish an effective support and information system.[43] Those who assert title to land secure title through the registration system.[44] Once an individual's claim is legally recognized, such individuals are encouraged and motivated to invest time and effort into the land.[45] This investment leads to economic development and political stability.[46] Land use planning is also important because land is the sustaining force of many individual's livelihood. Land use planning also limits the effects of land degradation,[47] which results from improper land use practices,[48] increasing populations,[49] and weak tenure

---

38. Riddell, *supra* note 3.

39. *See id.; see also* Martin Adams, et al., Overseas Development Institute, *Land Tenure Reform and Rural Livelihoods in Southern Africa, available at* http://www.oneworld.org/odi/nrp/39.html. (last updated Feb. 1999) [hereinafter Adams, *Land Tenure Reform*].

40. *See* Riddell, *supra* note 3. Simply distributing property to the landless is not enough to carry out land tenure reform. For land tenure reform, as well as other land reform programs, to be successful, individual property rights must establish a relationship between the property and the beneficiaries. Generally, land rights include the right to occupy a homestead, to use land for crops, to make permanent improvements; rights to transact, give, mortgage, lease, rent and bequeath areas of exclusive use; rights to exclude others; and rights to enforcement of legal and administrative provisions in order to protect the rights of the holder. *See id. See also* Adams, *Land Tenure Reform, supra* note 39.

41. *See* Adams, *Land Tenure Reform, supra* note 39.

42. *See id. See also* HAVENGA & ERASMUIS, *supra* note 1, at 1.

43. *See* Riddell, *supra* note 3.

44. *See id.*

45. *See id.*

46. *See id.*

47. *See* KHALISO MATSEPE, SETTING THE FOUNDATIONS 4 (N. Marongwe & J. Z. Z. Matowanyika eds., 1998). Land degradation is a major concern when trying to implement a land reform program that will sustain the livelihoods of much of southern Africa's population. Continuous removal of topsoil, deterioration of rangelands, slumping along river stream banks, siltation of rivers and other bodies of water, declining productivity in crops and livestock products, and changes in land uses contribute to land degradation. *See id.*

48. *See id.* Humans contribute to land degradation through improper land uses such as cultivation of marginal lands and overgrazing, clearing of vegetation, and increasing land populations. Further, weak communal land tenure systems have contributed to land degradation. *See id.*

49. *See id.*

systems.[50] Finally, legislation is necessary to establish the purposes of land reform and for legally establishing individual rights to land.[51]

1. The Purpose of Land Reform:

Generally, land reform programs are created to achieve certain goals, like increasing agricultural productivity, increasing overall economic activity, reducing political instability, minimizing environmental impact, and addressing social equity by improving the status and dignity of the landless population.[52] Land reform is most crucial in developing countries where land constitute[s] the principal source of livelihood, security, and status.[53] The need for land reform can be seen in countries where land is under-utilized or where land distribution is grossly unequal. Countries need land reform when individuals have insecure tenure rights, and have no legal claim to the land on which they live.[54] It is such disproportionate distribution of land and weak tenure systems that creates widespread poverty in many rural areas.[55]

Individuals that work and live on land they do not own are referred to as "landless."[56] The mounting frustrations of the "landless" can create social and political instability and economic distress.[57] The effects of landlessness are best understood by understanding that individuals, who are poorly compensated and poorly motivated to invest "sweat equity" into the farms on which they work, are less productive.[58] These individuals have little incentive

---

50. *See id. See also* NELSON MARONGWE, CIVIL SOCIETY'S PERSPECTIVE ON LAND REFORM IN ZIMBABWE 14 (1999). "Zimbabwe's resettlement areas have experienced serious problems of environmental degradation such as deforestation, soil erosion and veldt fires." *Id.* at 14.

51. *See* MATSEPE, *supra* note 47, at 5.

52. *See* DANIEL WEINER, AGRARIAN REFORM AND GRASSROOTS DEVELOPMENT 311, 312-14 (Roy L. Prosterman et al. eds, 1990).

53. *See id.*

54. *See id.*

55. *See* Robinson, *supra* note 4, at 481. "As a result of landlessness and overcrowding, it has been estimated that eighty percent of the residents of the homelands live in poverty." *Id. See also* Riddell, *supra* note 3. It has been argued that poverty is the result of unequal access to human capital and resources (including land) and excessive transaction costs. *See id.* The establishment of secure property rights is crucial to achieving the economic and social goals of eradicating poverty. *See id.*

56. *See* CHARLES E. CURRY, AGRARIAN REFORM AND GRASSROOTS DEVELOPMENT ix (Roy L. Prosterman et al. eds, 1990). Approximately 100 million "landless" families make what little they can by farming land that they do not own. *See id.*

57. *See* PROSTERMAN, *supra* note 2, at 1-2. "Where landless families form a significant part of the population, their low productivity and lack of purchasing power in turn become a drag on the entire process of economic development." *Id.* It is further argued that landlessness leads to excessive urbanization and adverse environmental degradation, including deforestation and erosion. *See id.* at 2. Further, it has been noted that "landless [black] farmers lack the dignity, status, and economic stake in their society that accompanies land ownership, limiting the prospects for the development of democratic institutions." *Id.*

58. *See id.* at 1-2.

to make the long-term investments that are necessary for increasing agricultural productivity and economic growth.[59] In such situations, land reform can redistribute land to the landless,[60] secure tenure rights in landless individuals, or restore rights in land that were forcibly taken during colonial rule. In South Africa and Zimbabwe, eradicating the effects of landlessness is a main concern in developing an effective land reform program.

Land reform and a solid property institution are crucial to a country's economic, social, and political success.[61] Three reasons are often cited as justifying the implementation of land reform programs.[62] First, many believe that the redistribution of land to the poor is important for the country as a whole.[63] Second, redistributing land to the landless increases productivity.[64] Finally, many believe that redistribution of land to the landless wins the political support of those that receive land.[65]

Inadequate funding, integrated development, and weak infrastructures, are a few of the constraints inherent in any land reform program. These constraints make it difficult to achieve the stated goals underlying land reform.[66] The enormous sum of money needed to fund a land reform program frustrates the implementation of any type of land reform.[67] In determining the amount of funding necessary to implement a land reform program, transaction costs for transferring land and the costs associated with setting up an appropriate infrastructure, which together usually exceed the value of the land, must be considered.[68] As a result, implementers of such reform must solicit long-term budgetary commitments from governments and donors.[69] This

---

59. *See id.* at 1. "Where the mass of the population is unproductive, poor, and hungry, and has little income with which to purchase basic goods and services, the village economy stagnates." *Id.*

60. *See* Adams, New Seeds, *supra* note 32.

61. *See* Riddell, *supra* note 3.

62. *See* RURAL LAND REFORM 24 (David Fig & Catherine Kell eds., 1992).

63. *See id.*

64. *See id.*

65. *See id.* at 25. Along with the notion of political support lies another benefit of land reform in that "many rural people feel that, for the first time, the State is on their side. This empowers them; it allows them to believe that they can change their conditions and improve their lives." *Id.*

66. *See* HAVENGA & ERASMUS, *supra* note 1, at 58. "Integrated development" is a cooperation among the different levels of government, especially in developing a support system for implementation of a comprehensive land reform program. *See id.* For instance, it is not enough to redistribute land to the landless. A rural infrastructure, which provides water supplies, drainage, power supplies, and roads, is necessary for the landless to make productive use of the land that has been redistributed to them. *See id.*

67. *See id.* at 59.

68. *See* Riddell, *supra* note 3. For example, it is estimated that the redistribution program in South Africa would cost approximately R1.1 billion and transaction costs alone would be about R110 million. *See Land Reform in SA Will Not Follow Zim's Example*, SOUTH AFRICAN PRESS ASSOCIATION, May 23, 2000, *available at* 2000 WL 21217425 [hereinafter *Land Reform in SA*].

69. *See* Adams, *Land Tenure Reform*, *supra* note 39.

comes at a price in that "[e]xternal support is likely to be conditional upon appropriate constitutional and legal frameworks."[70] Other obstacles to land reform may include parliamentary opposition,[71] legal opposition,[72] and bureaucratic opposition.[73]

2. *International Perspective on Land Reform:*

International dimensions of land reform circumscribe two predominant ideologies about land ownership; either land is viewed as personal property or as a public good.[74] From an international perspective, intervention by industrialized nations is necessary to establish basic human rights, insure equality, encourage democracy, provide order and stability, and promote economic development.[75] However, even with international assistance, many developing countries lack the institutional structure and information system needed to carry out land reform.[76] These shortcomings have resulted in ineffective international assistance.[77]

The principles that shape land reform policies seem logical and easy to implement on paper. In reality, land reform is a formidable task.[78] Land reform is multidimensional and, to effectively implement such a program, several dynamic factors must be considered.[79] South Africa and Zimbabwe have undertaken land reform with varying degrees of success. After twenty years, the results of Zimbabwe's land reform program have proven disappointing. South Africa should take heed and use the situation in Zimbabwe as a lesson on what not to do.

---

70. *Id.*

71. *See* RURAL LAND REFORM, *supra* note 62, at 50-51. Examples of the effects of parliamentary opposition can be seen with the implementation of land reform legislation in Chile and the Indian State of Rajasthan. *See id.*

72. *See id.* at 51-52. Legal opposition occurs when landowners delay land reform measures by appealing to the courts and the government. In Chile, because of the abuse of the courts by the landowners, special courts were established to deal solely with land issues. *See id.*

73. *See id.* at 52-54. Bureaucratic opposition can be seen when civil servants delay or prevent land reform measures because they are opposed to such policies. *See id.*

74. *See* JOHN D. MONTGOMERY, INTERNATIONAL DIMENSIONS OF LAND REFORM (John D. Montgomery ed. 1984). "Most Atlantic countries regard land as a form of personal property; most of Eastern Europe considers it a collective good." *Id.* at 1. Historically, countries subscribing to either ideology have tried to influence other countries "by force or conquest, colonial rule, foreign aid, international conferences, or friendly advice." *Id.*

75. *See* JOSEPH S. NYE, JR., INTERNATIONAL DIMENSIONS OF LAND REFORM 7, 12-16 (John D. Montgomery ed. 1984). Further, international involvement in land reform programs raises several ethical issues. Generally, there are three approaches for addressing ethical dimensions of international involvement in land reform. *See id.* at 8-12.

76. *See* MARONGWE, *supra* note 50, at 15.

77. *See id.*

78. *See id.* at 14.

79. *See* MONTGOMERY, *supra* note 74, at 7.

PART III: THE SOUTH AFRICAN EXPERIENCE

> "Land is the pillar of grand apartheid. Apartheid legislation forbids black ownership of land in white areas and perpetuates mass poverty . . . ."[80]
>
> "Our vision is of a land policy and land reform programme [sic] that contributes to reconciliation, stability, growth and development in an equitable and sustainable way."[81]

1. A Brief History of the Development of the Land Issue in South Africa[82]

The crux of apartheid lies in the fact that the White minority controls eighty-seven percent of the land in South Africa.[83] Given such, South Africa has one of the most inequitable distributions of land - approximately 60,000 white farms cover nearly eighty-six percent of rural land, while fourteen million black South Africans living in communal areas, and occupy about one-sixth of that used by white farmers.[84]

South Africa's land problem began hundreds of years ago. Beginning as early as the 1600's, European settlers dispossessed South Africans of their land.[85] During the 1700s and 1800s, Africans and British colonists fought over land as the Europeans moved further inland.[86] By the twentieth century, Europeans had dispossessed the Africans of most of their land.[87] Moving into

---

80. WEINER, *supra* note 52, at 293.

81. DEPARTMENT OF LAND AFFAIRS, OUR LAND: GREEN PAPER ON SOUTH AFRICAN LAND POLICY [hereinafter GREEN PAPER] 1 (1996). The Green Paper is the outcome of an extensive process of public consultation on land policy issues. Over 50 organizations, various government departments, and over 1000 South Africans were on hand to provide input into the formulation of South Africa's land reform policy. The formulation of the Green Paper took into account the views and concerns of the delegates, individuals, and stakeholders in the land reform process. *See id.*

82. For a more extensive overview of South Africa's history and the development of its land problem *see* Robinson, *supra* note 4, at 465-84; HENRY BERNSTEIN, *South Africa's Agrarian Question: Extreme and Exceptional?, in* THE AGRARIAN QUESTION IN SOUTH AFRICA 2-19 (Henry Bernstein ed., Frank Cass 1996).

83. *See id.* at 475.

84. BERNSTEIN, *supra* note 82, at 27. More than 90% of gross farm income and 97% of agricultural export commodities are produced by white-farmers and agricultural corporations and more than 80% of white-owned farmland is used for livestock grazing. *See* WEINER, *supra* note 52, at 294. In comparison, in the bantustans, only one-fourth of the food consumed is produced internally. It is estimated that 30,000-50,000 people die each year in the bantustans of hunger or hunger-related disease. *Id.*

85. *See* Robinson, *supra* note 4, at 468.

86. *See id.*

87. *See id.*

the twentieth century, the Europeans enacted apartheid legislation, which segregated land ownership by race.[88]

As a result of apartheid legislation, namely the 1913 Native Land Act[89] and the 1936 Native Trust and Land Act,[90] black South Africans were rendered landless and relegated to overcrowded communal areas, known as "bantustans."[91] Under the Acts, black South Africans were prohibited from buying land and the land that was reserved for blacks was not sufficient to sustain viable rural communities.[92] Because of landlessness, overcrowding, and the lack of viable economic activities in the communal lands, [93] nearly eighty percent of those that live in the bantustans live in poverty.[94] Such conditions deteriorated when, between 1960 and 1983, at the high point of apartheid, "an estimated 3.5 million Africans were forcibly removed from non-

---

88. *See id.*

89. The Native Land Act was "a program of separate development based upon racial distinctions." Catherine M. Coles, *Land Reform for Post-Apartheid South Africa*, 20 B.C. ENVTL. AFF. L. REV. 699, 711 (1993). The Native Land Act of 1913 was also labeled as legislation of "segregation" in that it definitively drew a line between white and black ownership of land. *See* BERNSTEIN, *supra* note 82, at 5. The 1913 Native Land Act did not permit blacks to have fee simple or leasehold rights and also prohibited land transactions between whites and blacks. *See* Robinson, *supra* note 4, at 472-73. The statute also provided that 7% of the land would be reserved for blacks only, who at the time accounted for 75% of the population. Such lands were known as the reserves. *See id.*

90. The thrust of the 1936 Native Trust and Land Act was to increase the amount of land reserved for the Africans from 8 to 13%. *See* Robinson, *supra*, note 4, at 475. The Native Trust and Land Act of 1936 also prohibited black people from purchasing land outside the reserves. *See id.* The Act also created the South African Development Trust, a government body, which was charged with the responsibility buying land and subsequently releasing it to the black population. This system furthered land insecurity among the black population because it still did not provide for direct ownership of land. *See id.*

91. *See id.* Bantustans, also referred to as "homelands" or "reserves," were commonly viewed as "apartheid labor reserves and dumping grounds for Blacks." DANIEL WEINER ET AL., NO MORE TEARS 46 (Richard Levin & Daniel Weiner eds., 1997). One popular image of the bantustans is that:

> . . . poor rural dwellers live for the most part in poverty stricken retirement and refuge settlements, where income is primarily dependent on migrant remittances and pensions, households are largely headed by socially and economically weakened women, family members are deployed on both urban and rural fronts to ensure survival, and tenure is formally insecure. Youth are poorly educated and under-employed, services and infrastructure are poor to non-existent, land is degraded, and governance is illegitimate and ineffectual...jobs and services are the most widely expressed needs.

Id. at 47. Moreover, people viewed black agriculture as "underdeveloped" and the black people, themselves, as "agriculturally de-skilled." *See id.* at 46. In general, residents of bantustan are often described as "landless indigenous people without access to capital and with a minimum of skills." *Id. See also* Robinson, *supra* note 4.

92. *See* Robinson, *supra* note 4, at 472.

93. Many South Africans were forced into a migrant labor system for subsistence wages. *See id.* at 480.

94. *See id.* at 481. Landlessness and overcrowding has increased as the population in the homelands tripled from 1910-1990. *See id.* at 480-81.

Native areas by the government and White farm owners" and relegated to the communal areas. [95]

While the land problem has existed for several hundred years, it was after the dismantling of apartheid in 1994 when the government created South Africa's Reconstruction and Development Program.[96] One purpose of the Reconstruction and Development Program, of which land reform is but one aspect, is to make the transition from apartheid to a democratic nation.[97]

2. *South Africa's Land Reform Policy*

> Our vision is of a land policy and land reform programme that contributes to reconciliation, stability, growth and development in an equitable and sustainable way. It presumes an active land market supported by an effective and accessible institutional framework. In an urban context our vision is one where the poor have access to well located land for the provision of shelter. The land reform programme's poverty focus is aimed at achieving a better quality of life for the most disadvantaged.[98]

The overall goals of South Africa's land reform program include undoing injustices of the past, facilitating national reconciliation and stability, and promoting economic expansion. South Africa's land reform policy was developed in full recognition of the fact that "current land ownership and land development patterns strongly reflect the political and economic conditions of the apartheid era."[99] To overcome the effects of such racially based land policies of apartheid, South Africa's land policy aims to redress the injustices of apartheid, foster national reconciliation and stability, underpin economic growth, and improve household welfare and alleviate poverty by addressing several factors in both rural and urban areas. [100]

To develop an effective land reform policy, the South African government identified several factors that South Africa's land reform program must address.[101] In addition, the government wants to insure that its land

---

95. *Id.* at 477. Some look to South Africa's history and determine that land reform is justified in that 1) land is appropriate compensation to Africans because it is their country and their land, or 2) because one believes that Africans should be compensated with land because their dispossession is the source of their oppression, or 3) because compensation in the form of land represents wealth, equity and a source of control and power, especially for African farmers who can achieve a higher degree of political power as property owners with common interests. *See id.* 484-85.

96. *See* GREEN PAPER, *supra* note 81, at 2-3. *See also* Coles, *supra* note 89, at 703-12.

97. *See* RICHARD LEVIN & DANIEL WEINER, *The Politics of Land Reform in South Africa after Apartheid: Perspectives, Problems, Prospects, in* THE AGRARIAN QUESTION IN SOUTH AFRICA, *supra* note 84, at 96-97.

98. GREEN PAPER , *supra* note 81, at 1.

99. *Id.* at i.

100. *See id.* at 5.

101. The land policy needs to consider injustices of racially-based land dispossession, inequitable distribution of land ownership, and the need for security of tenure, sustainable use

reform policy conforms to basic principles of democracy, social justice, flexibility, participation, accountability, and gender equality.[102] Further, to provide a disincentive for individuals to take land reform matters into their own hands, South Africa has an express policy that individuals or groups that participate in land invasions, violence, or intimidation will not be given priority within the land reform programs.[103]

3. *Implementation of the Land Reform Program*

To address issues of social justice, inequality, poverty, and landlessness, and to further the purpose of South Africa's Reconstruction and Development Program, the government recognized that a comprehensive land reform program was necessary.[104] The basic structure requires the national government to maintain a policy of equal land distribution, while the provincial governments provide developmental support.[105] The Department of Land Affairs (DLA) was created to design, implement, and monitor South Africa's land reform program.[106]

The DLA consists of three branches: Land Reform Policy, Land Reform Implementation, and Survey and Deeds.[107] The DLA, with the support of the Chief Directorates of Corporate and Financial Management, began to implement the land reform program through land redistribution, restitution, and tenure reform.[108] The DLA plays several roles in the land reform process. First, as respondent on behalf of the Republic of South Africa, the DLA helps prepare claims before they are subject to review by a court; and second, the

---

of land, rapid release of land for development, effective recording and registration systems for land rights, and effective administration of public lands. *See id.* at 1

102. *See id.* at 5. Other land reform principles include economic viability, environmental sustainability, focus on poverty and expressed need, and the role of the government as a facilitator. *See id.*

103. *See id.* at iii.

104. *See id.* at i. Under the RDP, 30% of the agricultural land was to be transferred within five years of the 1994 elections. *See Land NGO's Warn Government of Need for Shake-Up of Land Reform*, SOUTH AFRICAN PRESS ASSOCIATION, June 2, 2000, *available at* 2000 WL 21218326. However, by the year 2000, six years after the election, only two percent of the land had been redistributed to dispossessed individuals and communities. *See id.*

105. *See* GREEN PAPER, *supra* note 81, at 71.

106. *See id.* The Minister of Land Affairs for the Republic of South Africa, Derek Hanekom, stated that

> [t]he mandate of the Department of Land Affairs has been to contribute to the Reconstruction and Development Programme (RDP) by developing a comprehensive and far-reaching land reform programme. The goal of the programme is to address the legacy of apartheid in relation to land distribution and to create security of tenure and certainty in relation to rights in land for all South Africans.

Id. at foreword.

107. *See* HAVENGA & ERASMUS, *supra* note 1, at 51.

108. *See id.* at 51-52.

DLA is involved in negotiations "to secure and transfer the necessary land or to resolve the question of financial compensation."[109]

In addition to the DLA, the Commission on the Restitution of Land Rights (CRLR) and the Land Claims Court (LCC) are involved in the implementation of the restitution process.[110] The CRLR is responsible for handling restitution claims until the Court reviews them.[111] The role of the LCC is to provide South Africa's citizens with a remedy for interference with their property rights. The LCC adjudicates claims by first determining if the claim is legitimate and then by assessing whether the compensation is "just and equitable."[112] Because more than 60,000 restitution claims have been filed, the Court's main challenge is to administratively handle such claims given that the adjudication of such claims must be completed within five years and the settlement must be completed within ten years.[113]

4. *Legislative Framework*

South Africa has adopted three types of land reform in creating the framework of its land reform program. The first prong of the program provides for restitution. The Restitution of Land Rights Act, Act 22 of 1994 [the Land Rights Act], is the foundation of South Africa's land reform program.[114] Generally, there are four parts to the Land Rights Act: qualification criteria,[115] forms of restitution,[116] compensation,[117] and urban

---

109. *See id.* at 56.

110. *See id.*

111. *See id.* The role of the CRLR is growing given the fact that its 1999 budget was increased by 50% over its 1996/1997 budget. *See id.* at 52.

112. *See id.* at 56.

113. *See id.* By June of 1998, 27,000 restitution claims had been filed and only 18 had been finalized by the court. *See id.* Several reasons are often given to explain the slow pace of land reform. *See id.* First, the administrative capacity of the Court and the Commission is limited in the number of people and resources. A second reason is low morale within the system. A third reason is that the information-sharing and systems of communication are ineffective. *See id.*

114. *See* GREEN PAPER, *supra* note 81, at 36.

115. To qualify for investigation by the Commission, the claimant must have been dispossessed of a right in land after June 19, 1913 under a racially discriminatory law and was not paid just and equitable compensation. *See* GREEN PAPER, *supra* note 81, at 36.

116. Forms of restitution include return of the land from which the claimants were dispossessed, distribution of alternative land, payment as compensation, a combination of the above, or priority access to government housing and land development programs. *See id.* at 38.

117. The Green Paper provides a formula for just and equitable compensation as restitution for individuals who have been dispossessed of land, either under racially discriminatory laws or for purposes of restoring land to successful claimants. *See id.* at iv. Further, South Africa's Constitution provides in relevant part that

> The compensation . . . shall be . . . *just and equitable* taking into account the circumstances which prevailed at the time of the dispossession and all other factors as may be prescribed by the (Restitution of Land Rights Act, 1994 [such as factors listed in Section 34]), including any compensation that was paid upon

claims.[118] The Act also sets forth time periods in which to implement the restitution program.[119]

Section 25 of South Africa's Constitution[120] confirms an individual's right to restitution "if they were dispossessed of a right in land after 19 June 1913 under or for the purpose of furthering a racially discriminatory law or practice,"[121] and gives credence to the Land Rights Act. The Land Rights Act established a time period, January 1, 1995 to December 31, 1998, in which victims of forced dispossession under apartheid could lodge claims for restitution.[122] A survey by the South African Institute of Race Relations showed that between May 1995 and May 1998, 63,455 claims were filed with the Land Claims Commission.[123] By June 2000, only 4900 land restitution claims for 9100 beneficiaries were settled. Pursuant to the Land Rights Act, restitution is to be finalized by 2005. [124]

---

such dispossession.

Id. at 39 (emphasis added). *See also* S. AFR. CONST. ch. 1, § 123(4)(a).

> In determining what compensation is "just and equitable," as is required by South Africa's Constitution, a number of factors must be considered. *Id.* Specifically, Section 25 of the Constitution provides that a Court of Law shall take into account all relevant factors, including but not limited to, in the case of the determination of compensation, the use to which the property is being put, the history of its acquisition, its market value, the value of the investments in it by those affected and the interests of those affected.

S. AFR. CONST. ch. 1, § 25.

118. Claimants are encouraged to form groups to negotiate and settle their claims and to participate in shaping the areas that are to be developed. *See* GREEN PAPER, *supra* note 81, at 40.

119. *See id.* at 34. The restitution strategy provided for a three-year period for filing claims, and five-year period for the Commission and the Courts to finalize all claims, and a ten-year period for the implementation of all court orders. *See id.*

120. Section 25 provides "(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress." S. AFR. CONST. ch. 1, §25.

121. *See* HAVENGA & ERASMUS, *supra* note 1, at 56. Moreover, "[a]ll restitution claims are made against the State." *Id.*

122. *See Focus on Land Reform, supra* note 18.

123. *See id.* Approximately 80% of these claims are for urban areas and restitution is likely to be in the form of financial compensation. *See id.*

124. *See id.* Funding is an obstacle that may hamper the government's goal of finalizing restitution claims by the year 2005. Wallace Mgoqi, South Africa's Chief Land Commissioner stated that "the projected costs for the settlement of land rights cases this year alone exceeded its budget by more than five times." *SA Land Reform Also in Crisis: Mgoqi*, SOUTH AFRICAN PRESS ASSOCIATION, May 24, 2000, *available at* 2000 WL 21217375.

The second prong of the land reform program is redistribution.[125] The Land Reform Pilot Programme created at the end of 1994 marked the beginning of the redistribution prong of South Africa's land reform program.[126] In the context of South Africa's history, redistribution aims to provide the poor with access to land for residential and productive use, in order to secure their tenure and improve their livelihoods.[127] A second legislative enactment, the Development Facilitation Act, was enacted to increase the speed at which land was released for development projects.[128] To support the redistribution legislation, the Presidential Commission of Inquiry into the Provision of Rural Financial Services was created.[129] The creation of a dispute resolution system and the establishment of regional offices further support the redistribution program.[130]

The third prong of South Africa's land reform program is reform of land tenure.[131] The apartheid regime created insecurity in land tenure by not

---

125. *See id.* When viewing land reform from the perspective of agricultural land reform, redistribution aspect of the land reform program would necessarily affect the 50,000 large-scale commercial farms, covering 87% South Africa's arable land. BILL KINSEY & HANS BINSWANGER, AGRICULTURAL LAND REFORM IN SOUTH AFRICA 105 (J. Van Zyl, et al. eds., 1996). This commercial farming sector is highly mechanized, and as such, does not require many workers. *See id.* The argument against such redistribution is as follows:

> Redistributing the farms to these workers alone will create holdings that have too few family workers to operate efficiently, or to maintain the current high degree of mechanization, without hiring casual workers. The beneficiaries, however, are unlikely to be sufficiently wealthy or to have access to subsidized credit to enable them to hire the necessary workers or buy the required machines. In order to maintain or increase the productivity of the distributed farms, therefore, additional beneficiary families will have to be resettled onto them.

Id.

126. *See generally* GREEN PAPER, *supra* note 81, at 25-33.

127. *See id.* at 25. The typical redistribution project goes through five phases: (1) Making an Application, (2) Planning for Settlement, (3) Approval and Land Transfer, (4) Detailed Planning and Implementation, and Development and Support. *See* HAVENGA & ERASMUS, *supra,* note 1, at 54-55. Redistribution of land will be ranked in priority in accordance with established criteria. *See* GREEN PAPER, *supra* note 81, at 28. First, "the most critical and desperate needs will command [the] government's most urgent attention." *Id.* Priority will also be given to the marginalised and to women. *See id.* The next in line with respect to priority are projects "where the institutional capacity exists to implement quickly and effectively." *Id.* The third set of priority criteria concerns the viability and sustainability of the projects. *See id.* Finally, the government will give priority in order to ensure a diversity of land redistribution projects. *See id.*

128. *See* GREEN PAPER, *supra* note 81, at 4.

129. *See id.* The Presidential Commission of Inquiry into the Provision of Rural Financial Services, also known as the "Strauss Commission," was used in establishing loan financing for rural development. *See id.*

130. *See id.* It is estimated that land for redistribution would cost over 1.1 billion Rands. *See Land Reform in SA Will Not Follow Zim's Example,* SOUTH AFRICAN PRESS ASSOCIATION, May 23, 2000, *available at* 2000 WL 21217425. In addition, transaction costs would amount to nearly 110 million Rands. *See id.*

131. For a more detailed look at land tenure reform in the Bantustans, *see* Lungisile Ntsebeza, *South Africa's Land Tenure Reform Programme in the Former Bantustans: The*

allowing blacks to establish independent land rights. In many cases, individuals lived on land they did not own and only did so with permission of the landowner.[132] Individuals with such informal land rights had no incentive to invest in their homes because they were vulnerable to eviction.[133] To address these land tenure issues, the government passed several legislative acts including the Land Reform (Labour Tenants) Act,[134] the Extension of Security of Tenure Act,[135] the Interim Protection of Informal Land Rights Bill,[136] and the Communal Property Associations Act, 28 of 1996.[137]

Aside from the types of land reform programs implemented in South Africa, the key to the overall land reform program lies in the system established for surveying and mapping and registration of deeds.[138] The system for the registration of deeds is the start of a complex information system that will document the rights of individuals to certain tracks of land.[139]

Another legislative enactment, the Provision of Certain Land for Settlement Act, also facilitates the overall land reform program by allowing the government "to provide financial assistance and settlement support" to those who desire to purchase land.[140] The Settlement Act goes further by

---

Example of the Eastern Cape Province, available at http://www.cali.co.uk/hif/lsa2.htm (last visited Sept. 7, 2000).

132. *See Land Reform in South Africa, available at* http://land.pwv.gov.za/briefin2.htm. (last visited Sept. 7, 2000).

133. *See id.*

134. The Act provides security of tenure and facilitation for the acquisition of land. *See* GREEN PAPER, *supra* note 81, at 4.

135. The Extension of Security of Tenure Act protects over six million people from eviction by securing their legal right to live on the land for which in the past they had to have permission. The Act further provides security by protecting those occupying the land from arbitrary evictions. However, the Act does permit legal evictions if certain circumstances were met. *See id.*

136. The Interim Protection of Informal Land Rights Bill protected informal rights to land until an investigation could be completed. *See id.*

137. The Communal Property Associations Act "enables communities . . . to form legal entities, known as Communal Property Associations (CPAs), in order to acquire, hold and manage property on a basis agreed to by members in terms of a written constitution." HAVENGA & ERASMUS, *supra* note 1, at 53.

138. *See id.* at 53. The deed registration system works so well because South Africa has accurate maps that show hills, rivers, roads and railways, towns and cities, etc. *See id.*

139. *See id.* The registration system "provides security of tenure to individuals and communities and forms a vital part of the economy of the country as financial institutions rely on the security which the title deed provides for the purpose of lending money." *Id.* Land administration reform is also important to making the land reform program work. *See id.* The Land Administration Act, (Act No. 2 of 1995) "provides for the delegation of powers and the assignment of the administration of laws regarding land matters to the provinces and to provide for the creation of uniform legislation." GREEN PAPER, *supra* note 81, at 4. *See also* F.G.T. Radloff, *Land Registration and Land Reform in South Africa*, 29 J. MARSHALL L. REV. 809 (1996).

140. *See* HAVENGA & ERASMUS, *supra* note 1, at 54.

extending the subsidy beyond the purchase of the land[141] and by redefining who may be eligible for such subsidy.[142] Additionally, three financial programs have been established to support the land reform program, namely, the Settlement/Land Acquisition Grant,[143] the Settlement Planning Grant,[144] and the District Planning grant.[145]

5. *Constitutional Issues Concerning Land Reform:*

Because land redistribution involves the taking of property from individuals for redistribution to others, certain provisions of South Africa's Constitution are implicated.

Beginning with South Africa's independence in 1994, a person's right to acquire, hold, and dispose of rights in property, has always been regarded as a set of fundamental rights that should be entrenched in South Africa's Constitution.[146] There are several constitutional issues to be addressed. First, because land reform must be implemented from a national and local level, the allocation of powers and responsibilities of the national and provincial governments must be clarified.[147] A second issue to be addressed is the coordination of functions performed by the national and provincial governments.[148] Third, there is a need for a consistent interpretation of the property clause[149] and a need to insure that the "equality clause," Section 9 of

---

141. *See id.* By extending the subsidy beyond the purchase of the land, individuals could make the necessary improvements.

142. *See id.* The amended act permits the government to grant subsidies to individuals who want to acquire more land, those who do not qualify for restitution because of the 1913 cut-off date, those who want a tenure upgrade, and those who want to buy shares in agricultural enterprises. *See id.*

143. The Settlement/Land Acquisition Grant will give households up to a maximum of R15,000 to buy land, establish tenure rights, and make home improvements. GREEN PAPER, *supra* note 81, at 51. For further discussion of the objectives of this grant program, eligibility and disbursement requirements see pp. 51-57.

144. The Settlement Planning Grant provides money to communities for consulting professionals in preparing their settlement programs. *See id.*

145. The District Planning grant provides monetary support for establishing "an integrated framework for decision-making for the allocation of resources for land reform and settlement on a district level." *Id.*

146. *See* BIRTH OF A CONSTITUTION 97 (BERTUS DE VILLIERS ED., 1994).

147. *See* GREEN PAPER, *supra* note 81, at 9.

148. *See id.* at 10-11.

149. The Property Clause, Section 25 of South Africa's constitution provides:

1. No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
2. Property may be expropriated only in terms of law of general application –
3. for a public purpose or in the public interest; and
4. subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
5. The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest

South Africa's Constitution, is upheld by the various types of land reform programs.[150]

The Property Clause, Section 25 of South Africa's constitution, provides the government with an option to expropriate land when it is deemed for "a public purpose" or "in the public interest."[151] Moreover, the Constitution also provides that commitment to land reform is in the public interest.[152]

6. *Results of South Africa's Land Reform Program:*

Notwithstanding the extensive legislation and the government's commitment to land reform, South Africa's land reform program has been described as "flawed."[153] The main criticism is that the process is too slow because it requires that each claim be handled on a case-by-case method.[154] A second criticism is that the parties involved do not fully understand the redistribution or restitution programs, which is the cause for delay in finalizing

---

and the interests of those affected, having regard to all relevant circumstances, ...

6. For the purposes of this section –
7. the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; . . . .

S. AFR. CONST. ch. 1, § 25.

150. The Equality Clause, Section 9 of South Africa's Constitution provides:

1. Everyone is equal before the law and has the right to equal protection and benefit of the law.
2. Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
3. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
4. . . . National legislation must be enacted to prevent or prohibit unfair discrimination. . . . .

S. AFR. CONST. ch.1, § 9.

151. *Id.*

152. *See id.* In accordance with South Africa's constitution, Director of Land Affairs, Dr. Gilingwe Mayende, announced in July that he was considering expropriating land as a "short term solution to stop the illegal eviction of farmworkers." *DP Calls for Mayende to be Censured*, SOUTH AFRICAN PRESS ASSOCIATION, July 5, 2000, *available at* 2000 WL 24053117. Dr. Mayende further stated that the government's motivation behind such actions would be to stop farmers who "were trying to exploit the process by asking exhorbitant prices for their land." *Id.* Other leaders criticized Mayende for making such threats saying that they were "counterproductive" given the "growing restlessness amongst South African farmers and the white community, due to a lack of decisive action by the government on land seizures in Zimbabwe." *Id.*

153. *See Focus on Land Reform, supra* note 18.

154. *See id.*

many of the claims.[155] Five years after the commencement of South Africa's land reform program, only 745,015 hectares have been redistributed.[156] As of March 31, 1999, the Department of Land Affairs had 427 redistribution projects, involving 295,451 people and 480,400 hectares of land.[157] Of 63,000 claims for restitution, only 6500 have been settled.[158] Government officials blame limited funding , and in some instances, the white farmers, for the slow pace the land reform program.[159] a

However, as an indication that the speed of the land reform program may be increasing, the amount of land redistributed in 1997 was more than the previous three years together.[160] As of early 1998, nearly 250,000 people had received land through the redistribution program.[161] Additionally, over 200 redistribution projects were in progress and some 400 claims were recorded.[162]

Recent events in South Africa have called the validity of the land reform program into question. In the context of the crisis in Zimbabwe, many speculate that South Africa will soon experience the violence and societal upheaval that occurred in Zimbabwe.

PART IV: THE ZIMBABWE EXPERIENCE

"As Zimbabwe celebrated 20 years of independence this week, celebrations were marred by the ongoing political crisis and farm violence that has gripped the country in recent weeks."[163] In his independence anniversary speech, President Mugabe described white-farmers as "enemies" of the state when he stated that "[o]ur present state of mind is that you are now our enemies because you have really behaved as enemies of Zimbabwe. . . We are full of anger. Our entire community is angry and this is why you have the war veterans now, . . . seizing land."[164] Violence against white farmers has heightened in recent months. In April a body of a farm worker was found on

---

155. *See id.*

156. *See id.*

157. *Land Reform in South Africa, supra* note 132.

158. *See* Seccombe, *supra* note 11.

159. *See Land NGO's Warn Government of Need for Shake-Up of Land Reform, supra* note 104. The National Land Committee (NLC), created by a network of land NGO's has urged the government to speed up land reform by limiting compensation to the minimum allowed by the Constitution. *See id.* An NLC member stated that "[t]he government has to pay less than the market value for there to be fundamental land reform." *Id.*

160. *See* HAVENGA & ERASMUS, *supra* note 1, at 57.

161. *See id.* at 53.

162. *See id.* Of the identified projects, nearly three million hectares of land would be transferred. *See id.*

163. Integrated Regional Information Networks, UN Office for the Coordination of Humanitarian Affairs, *ZIMBABWE:International Reaction to the Crisis, available at* wysiwyg://50/http://www.reliefweb.int/IRIN/sa/weekly/2000421.phtml (last updated April 15-21, 2000) [hereinafter *ZIMBABWE*].

164. Lewis Machipisa, *No Jail Time for Leader of Occupations,* Inter Press Service, April 19, 2000, *available at* Westlaw, AFRNEWS.

the same farm where a white farmer had previously been killed.[165] In May, a policeman was killed in the violent attack on another white-owned farm.[166] In June, just before the national election, farm invasions left thirty-one dead.[167] The invasions of the white-owned farms have plunged Zimbabwe into an economic and political crisis.[168]

While the goal of Zimbabwe's land reform program was to benefit the landless, such has not been the case. In 1990, approximately seventy percent of Zimbabwe's population made their livelihood from the land. The first individuals to benefit from land redistribution did not really "benefit" because they lacked the experience necessary for running a farm.[169]

1. A Brief History of the Development of the Land Issue in Zimbabwe

Following a war that erupted, in part, because of mounting frustration and anger experienced by landless black Zimbabweans, Zimbabwe gained its legal independence from Great Britain on April 18, 1980 with the signing of the Lancaster House Agreement.[170] Since 1980, President Robert Mugabe, with his policy of Reconciliation, has led the charge to address the historical imbalance of land ownership and the numerous problems created by settler colonization and dispossession.[171] The objectives of President Mugabe's Reconciliation policy were "(1) to reduce civil conflict by transferring land

---

165. *See ZIMBABWE, supra* note 163.

166. *See* Machipisa, *supra* note 21.

167. Buchizya Mseteka, *African Leaders Back Zimbabwe's Land Policies, available at* http:/dailynews.yahoo.com/h/nm/20000808/w1/africa_sadc_dc_z.html (last updated April 8, 2000).

168. *See id.*

169. *See* RURAL LAND REFORM, *supra* note 62, at 41. "In 1990, the first parliamentary report on resettlement said land had been allocated to people with no idea of how to farm, and the schemes were overrun by squatters." Jan Raath, *In Zimbabwe, The Dream of Land Has Turned, available at* http://www.sn.apc.org/wmail/issues/971128/NEWS14.html. (last updated Nov. 28, 1997).

170. *See* BBC Online Network, *Zimbabwe's History: Key Dates, available at* http://news.bbc.co.uk/hi/english/special.../12/98/zimbabwe/newsid_226000/226542.stm (last updated Dec. 2, 1998).

171. *See* Adams, *New Seeds, supra* note 32. The imbalance of land ownership was created when millions of Zimbabweans were relocated into what are known as communal lands. *See id.* Communal lands were barren and overcrowded and served primarily as "reservoirs for cheap migratory labor." *Id.* Overlapping land rights, which lead to insecure tenure, plague communal areas. *See id.* However, land tenure reform in communal areas has taken second place behind acquiring land for restitution and redistribution. *See id.* Ironically, some feel that Mugabe's 1980 Reconciliation policy, which sought to diffuse the land issue before violence erupted, has "perpetuated the economic and social inequities" that President Mugabe was trying to address. *See* MAPOSA, *supra* note 37, at 18-19. In fact, in 14 years following independence, the Zimbabwean government has retreated from its goal of addressing the land issue. *See id.* For example, in 1983 the Minister of Land's budget was cut by 53%. *See id.* at 20. By 1986, the Ministry of Lands was abolished and the Ministry of Agriculture took over after experiencing a 33% cut in its budget. *See id.*

from whites to blacks, (2) to provide opportunities for war victims and the landless, (3) to relieve population pressure in the communal lands, (4) to expand production and raise welfare nationwide, and (5) to achieve all of the above without impairing agricultural productivity or aggregate production."[172] President Mugabe called for the creation of a comprehensive land reform program to meet the objectives.[173] Initial figures regarding land reform were optimistic in that they called for the resettlement of more than 162,000 rural families on nine million hectares of land.[174]

The development of Zimbabwe's land issues evolved around two themes: inequality and racism.[175] Indeed, the land tenure system that exists today is a "relic" of the system that existed in colonial times. It was the colonial tenure system that created the inequalities and racial overtones that the government seeks to overcome today through land reform. Colonial legislation such as the 1913 Natives Land Act, the Land Apportionment Act of 1930,[176] the Native Land Husbandry Act of 1951,[177] the Land Tenure Act of 1969,[178] and the colonial tenure system "relegated black Africans to infertile, marginalized and disease ridden reserves" known as communal lands.[179] As a result of such policies, the land distribution in Zimbabwe is highly skewed in that one percent of the white-farmers own over half of the available agricultural area and over seventy percent of all fertile lands.[180] The fundamental purpose behind Zimbabwe's land reform program is to eradicate such inequalities and regulations within the existing tenure system that deny the majority of the population access to fertile lands by implementing meaningful reforms aimed at social, economic, and political growth.[181]

Most recently, President Mugabe launched a new initiative calling for compulsory acquisition by the state of white-owned farms. In September 2000, another 150 commercial farms were formally listed for seizure by the

---

172. MICHAEL BRATTON, AGRARIAN REFORM AND GRASSROOTS DEVELOPMENT 274 (Roy L. Prosterman, et al. eds, 1990).

173. *See id.*

174. *See* VIMBAI VUDZIJENA, *Land Reform and Community Based Natural Resource Management in Zimbabwe, in* ENHANCING LAND REFORMS IN SOUTHERN AFRICA 78 (F. Mutefpa, et al. eds., 1998). Zimbabwe has 39 million hectares of land, 33.3 million of which are devoted to agricultural purposes. *See also* MAPOSA, *supra* note 37, at 9.

175. *See* MAPOSA, *supra* note 37, at 14. *See also* VUDZIJENA, *supra* note 174, at 77. Colonial land policies and legislation were designed to deprive black Zimbabweans of land and natural resource property rights for the benefit of the white farmers. *See id.*

176. The Land Apportionment Act of 1930 separated all of the land into "European and African reserves." *See* VUDZIJENA, *supra* note 174, at 77.

177. The Native Land Husbandry Act imposed and enforced conservation practices on land owned by those living in the African reserves. *See id.*

178. The Land Tenure Act of 1969 "confined the majority of the black population to infertile and arid areas." *Id.*

179. *See id.*

180. *See* Adams, *Land Tenure Reform*, *supra* note 39. *See also* Mseteka, *supra* note 167.

181. *See* GREEN PAPER, *supra* note 81, at 1.

Zimbabwean government, bringing the total of farms on the list to 2102.[182] President Mugabe's initiative calls seizure of at least 3000 farms. It is estimated that such seizures would force nearly three million workers and their families off of the farms and into unemployment and poverty.[183]

2. *The Mandate of the Lancaster House Agreement of 1980*

The Lancaster House Agreement reached between Great Britain and Zimbabwe was a "negotiated settlement."[184] For the British, protecting existing property rights was crucial.[185] For Zimbabwe, resettlement was the key issue in the transfer of power to an independent Zimbabwean regime.[186] To foster the interests of both sides, President Mugabe, under the Lancaster House Agreement of 1980, could not forcibly procure privately-owned farm land for a period of ten years.[187] In return, Britain agreed to share the cost of buying land sold voluntarily to the government for redistribution.[188]

Although commonly cited as a constraint on Zimbabwe's land reform program, the Lancaster House Agreement did not totally restrict Zimbabwe's ability to acquire land for redistribution in that it did not trump a provision in Zimbabwe's new Constitution that provided for land acquisition.[189] Specifically, Article Sixteen of Zimbabwe's new Constitution permitted the government to expropriate under-utilized land or exercise powers of eminent domain for public utility if the landowners were compensated fully in foreign currency.[190] Notwithstanding the prohibition of the Lancaster Agreement, the Zimbabwean government could have moved forward with its land reform program by expropriating land for the public good, which is the justification

---

182. *See 150 More Zimbabwe Farms Listed for Seizure, supra* note 24. Farmers are entitled to object to the listing of their land. Moreover, the government must prove to the court that it is carrying out such acquisitions legally and according to a viable program. *See id.* Many fear the results of such compulsory acquisitions. At a meeting of the Commercial Farmer's Union in September 2000, it was stated that the planned seizure of 3000 farms, nearly 63% of all white-owned rural land would "make the great depression of the 1930's seem like a picnic." *Id.*

183. *See id.*

184. *See* RURAL LAND REFORM, *supra* note 62, at 34.

185. *See id.* at 34-35.

186. *See id.*

187. *See* Chris McGreal, *Blair's Worse than the Tories, Says Mugabe*, ELECTRONIC MAIL & GUARDIAN, December 22, 1997, *available at* http://www.mg.co.za/mg/news/97dec2/22dec-mcgreal2.html. *See also* RURAL LAND REFORM, *supra* note 62, at 35; *The Case for Redistributing Zimbabwe's Land*, ELECTRONIC MAIL & GUARDIAN, Dec. 8, 1997, *available at* http://www.mg.co.za/mg/news/97dec1/8dec-zim_land.html.

Some view Britain's insistence on certain constitutional provisions as a way to "prevent the black majority from redressing the imbalances created by nearly a century of white domination and subjugation." *Id.*

188. *See The Case for Redistributing Zimbabwe's Land, supra* note 187.

189. *See id.*

190. *See* RURAL LAND REFORM, *supra* note 62, at 35.

given today by President Mugabe for his controversial land acquisition program.[191]

3. *Legislative Framework*

Following its independence, the Zimbabwean government talked in terms of a land reform program that included redistribution, restitution, and tenure reform, but the government has focused primarily on land redistribution.[192] Attempts at tenure reform have failed because of competing and ineffective attempts by both the government and NGO's, weak local administration and disingenuous central government interventions.[193] Further, tenure reform is hampered by the lack of constitutional and legal principles governing land and the acquisition thereof.[194]

The Zimbabwean government promulgated the Land Acquisition Act of 1985, which was never really used for its intended purpose of acquiring and redistributing land.[195] Because of the failure of the Land Acquisition Act of 1985 and to rally support for the government in upcoming elections, the Zimbabwean government, once again, tried to establish a national land policy by passing the Land Acquisition Act of 1992.[196] The Land Acquisition Act of

---

191. *See id.*

192. *See* VUDZIJENA, *supra* note 174, at 77. For a different view of land redistribution *see* George P. Landow, *The Land Issue, available at* http://landow.stg.brown.edu/post/zimbabwe/politics/land1.html. (Oct. 26, 2000). Is land distribution what the people want? As stated by one respondent, "[m]ost of us young black people have had little if any contact or experience with agriculture or land and we do not see the need to possess any land other than that which we live on. I would rather see the government develop the economy...." *Id. See also* Raath, *supra* note 169. "It's official. The people don't want land. They want jobs in a market economy, and an opportunity to work for a decent living." *Id.* In a survey of 18,000 rural and urban households conducted by the Zimbabwean Ministry of Social Welfare, only one percent felt that poverty was a result of shortage of land and only two percent believed that poverty could be controlled with land redistribution. *See id.* There is also a general concern regarding land redistribution and the threat it poses to Zimbabwe's aggregate agricultural output. *See* BRATTON, *supra* note 172, at 272. It is suggested that Zimbabwe's aggregate agricultural output may be adversely affected because of the inexperience of individuals receiving land. *See id.* Further, in Zimbabwe, peasant farmers have lower crop yields than do the commercial farmers presently occupying the land. *See id.*

193. *See* Adams, *Land Tenure Reform*, *supra* note 39.

194. *See id.*

195. *See* MAPOSA, *supra* note 37, at 20. The Land Acquisition Act (1985) provided that the government, within a specified time, had the right of first refusal, thus farmers who were selling their lands had to first offer such lands to the government. *See id.* The Act also provided that the government could "involuntarily" appropriate lands that were under-utilized or classified as derelict. *See id.* The Act however was never enforced. *See id.* "By 1990 no land had been forcibly seized, and in some cases public officials did not act swiftly enough to secure available land before the period of the State's right of first refusal expired." *Id.*

196. *See id.* at 21. It is argued that the Land Acquisition Act was unnecessary to implement land reform in Zimbabwe because the Government could either use existing colonial laws to bring about meaningful reform or exercise its powers of eminent domain, pursuant to Article Sixteen of the Constitution, for acquiring land for public utility. *See id.* at 22. Further,

1992 provided two methods of designating land for appropriation by the government and subsequent redistribution: administrative redistribution and resettlement of lands and judicial redistribution and resettlement.[197] Under this new framework, the government and donors were required to provide forty percent of the funding for the resettlement scheme, while the private and civil sectors were to make up the remaining sixty percent.[198]

On April 6, 2000, Parliament took drastic measures and passed the Land Acquisition Bill, which allows the Zimbabwean government to acquire land for the resettlement of landless blacks without compensating those who previously owned the land.[199] The Bill is fast track program to acquire land for redistribution. The Bill required Great Britain to pay compensation for agricultural land that the Zimbabwean government compulsorily acquired.[200] If Great Britain failed to do so, the Act provided that the Zimbabwean government was under no obligation to make such compensation.[201]

---

the Government could have created incentives for farmers to sell under-utilized land by creating a land tax per commercial unit of land. *See id.* at 23. Specifically, the 1992 Act, in conjunction with the Eleventh Amendment to the Constitution, provided that 1) payment for land acquired had to be in local currency; 2) the government could now compulsorily acquire land which was being fully utilized; 3) the government could now pay a "fair price" within a "reasonable period"; 4) compensation would assessed by a committee of six people; 5) parties can appeal to the administrative court for arbitration if compensation is disputed; and finally, 6) the willing-buyer-willing-seller principle is no longer applicable. *See id.* at 73. The Land Acquisition Act, in its current form, does not permit individuals to seek judicial review of designation, acquisition, or compensation of land. One commentator asserted that such restrictions on judicial review render the Act illegal. *See id.* at 73-74.

197. *See id.* at 71.

198. *See id.* at 74.

199. *See* Machipisa, *supra* note 21. The Bill passed by all 100 members present out of a parliament of 150 members. *Id.* In October, a poll, based on a sample of 2000 Zimbabwean adults in both urban and rural areas, found that 78% of the voters opposed Mugabe's pland to take over white farms. *See* Justin Arenstein, *Support for Mugabe, Land Grab Collapses,* ZA*NOW DAILY MAIL & GUARDIAN, Oct. 26, 2000, *available at* wysiwyg://103/http://www.mg.co.za/mg/za/news.html. Moreover, the poll showed that only six percent of Zimbabweans found land reform to be an important issue. *See id.*

Economist John Robertson has expressed concerns over Zimbabwe's fast track program. *See A Terrifying Analysis of the Fast Track Land Programme, available at* http://allafrica.com/stories/ 200009110452.html (last visited Sept. 10, 2000).

Robertson criticizes the government's program because it "leaves out of the equation the massive contribution to the economy that arises directly from commercial farming." *Id.* Moreover, Robertson predicts that the lack of respect for property rights will decrease investment throughout the country. *See id.* "Without individual property rights, individuals lack not only the inclination to invest, they also lack the means to invest because the areas without property rights are out of the reach of the banks." *Id.* Robertson predicts that the country's population will "experience deeper poverty, a sharp fall in earnings, a steep fall in government tax revenues, the complete failure of most government services and the country's inevitable isolation from vital developments in the regional and world markets." *Id.*

200. *See id.*

201. *See id.* Zimbabwe accuses Britain of failing to live up to the promise it made under the Lancaster House Agreement when it promised to provide funding for land redistribution and poverty alleviation. *See id.* In response, Britain stated that "it is willing to help fund a

In Zimbabwe 4500 white, commercial farmers own nearly eleven million hectares of prime, arable land, whereas six million Zimbabweans "are crowded onto barren communal areas, reinforcing rural poverty and reflecting an unchanged colonial legacy."[202] Today, it is estimated that two-thirds of the population lives below the poverty line.[203] Such facts demonstrate the past failings and future need for land reform.

4. Zimbabwe's Constitutional Framework as it Relates to Land Reform:

Pursuant to Article Sixteen of Zimbabwe's Constitution, the government does not have the right to compulsorily acquire private lands unless certain requirements are satisfied.[204] Even though the government could not compulsorily acquire such private lands, if an owner decided to sell his farm, the farmer must make the first offer to the government.[205] This approach to expropriating land, known as the "willing-buyer-willing-seller" scheme, requires that the government and the farmer must both be willing to enter into a buy-sell arrangement.[206] A major problem with the "willing-buyer-willing-seller" scheme was that the government, though willing to purchase land, was

---

programme [sic] of land reform if the programme [sic] tackles real poverty and is within the rule of law." *Id.*

202. Integrated Regional Information Network, UN Office for the Coordination of Humanitarian Affairs, *ZIMBABWE: Pace of Land Reform Criticized, available at* http://www.reliefweb.int/IRIN/sa/countrystories/zimbabwe/20000106.htm. (last updated Jan. 6, 2000).

203. *See* Winter, *supra* note 9.

204. Article Sixteen of the Zimbabwean Constitution provides:

1. No property of any description or interest or right therein shall be compulsorily acquired except under the authority of a law that –
2. requires the acquiring authority to give reasonable notice of the intention to acquire the property, interest or right to any person owning the property or having any other interest or right therein that would be affected by such acquisition;
3. requires that the acquisition is reasonably necessary in the interests of defence, public order, public morality; public health, town and country planning, the utilization of that or any other property for a purpose beneficial to the public generally or to any section thereof or, in the case of land that is under-utilized, the settlement of land for agricultural purposes;
4. requires the acquiring authority to pay promptly adequate compensation for the acquisition;
5. requires the acquiring authorities, if the acquisition is contested, to apply to the General Division or some other court before, or not later than thirty days after the acquisition for an order confirming the acquisition; and
6. enables any claimant for compensation to apply to the General Division or some other court for the prompt return of the property if the court does not confirm the acquisition and for determination of any question relating to compensation, and to appeal to the Appellate Division.

ZIMB. CONST. art 16, § 1.

205. *See* RURAL LAND REFORM, *supra* note 62, at 35.

206. *See id.*

foreclosed from doing so unless the farmer, too, was willing to sell.[207] An additional problem arises because those farmers who are willing to sell, will only sell their least productive land, effectively, defeating the purpose of resettlement of the landless.[208]

5. *The Role of the Courts in Implementing Zimbabwe's Land Reform Program*

After announcing that he intended to acquire nearly 1500 farms, in December 1997, President Mugabe stated that he would not allow the courts to review his decisions to reclaim white-owned farms.[209] He rationalized that his decision was "a 'political issue' and not a matter for the courts."[210] In March of 2000, a High Court declared that the invasions of white-owned farms were illegal and ordered thousands of squatters to leave within twenty-four hours.[211] The ruling has not curtailed the invasions, however, because the ultimate enforcer of the law is President Mugabe, and he supports such measures.[212] Further, Police have also resisted the court's order to remove the squatters from white-owned farms, fearing that such action against the squatters would end in violence.[213] In September 2000, the High Court intervened again to stop the first one-hundred evictions under President Mugabe's fast track plan to acquire land without paying compensation.[214] The court stated that only it could issue eviction orders.[215]

---

207. *See id.* at 35.

208. *See id.* at 35-36.

209. *See Mugabe Warns Courts Over Land*, Za*Now Daily Mail & Guardian, *available at* http://www.mg.co.za/mg/za/archive/97dec/08dec-news.html. (last updated Dec. 8, 1997). *See also CFU to Meet with Mugabe Tomorrow over Lawlessness Crisis*, SOUTH AFRICAN PRESS ASSOCIATION, July 30, 2000, *available at* 2000 WL 24054361. President Mugabe told veterans and police to ignore court orders. *See id.*

210. *Id.*

211. *See Zimbabwe's White Farmers Win Court Battle Over Invasions*, AGENCE FRANCE-PRESSE, March 17, 2000, *available at* 2000 WL 2755238. Ironically, the judge that handed down the decision was black. *See id.* Hostilities toward the court's intervention were demonstrated by picketing war veterans carrying placards directing three judges to "step down or we'll (make) [you] bow down through physical force today." *Id.* Another poster stated that the "country was born through a barrel of the gun" and encouraged problem solving through revolutionary means, not "repressive law courts." *Id.* A third placard warned the white farmers that brought the court action – "Don't play with fire. Now we will grab the whole land." *Id.*

212. *See id.*

213. *See* Ravi Nessman, ASSOCIATION PRESS NEWSWIRES, *Police Mount Security Operation in Harare, Resist Evicting Squatters*, April 15, 2000.

214. *See Zimbabwe Court Halts Impending Eviction of 100 White Farmers*, DEUTSCHE PRESSE-AGENTUR, Sept. 22, 2000, *available at* Westlaw, AFRNEWS. *See also Zimbabwe Court Grants Temporary Reprieve on Farm Evictions*, DOW JONES INTERNATIONAL NEWS, Sept. 22, 2000, *available at* Westlaw, AFRNEWS.

215. *See id.*

In September 2000, the Commercial Farmers Union[216] decided to resume their legal battle challenging Zimbabwe's land reform policies by filing an application with the Supreme Court of Zimbabwe.[217] This most recent challenge opposes the government's "fast-track" program to acquire nearly 2000 farms without paying compensation, which clearly violates Article Sixteen of Zimbabwe's Constitution.[218]

6. *International Response to the Crisis in Zimbabwe*

Today, the Zimbabwean government has become the target of international condemnation for its failure to stop "[the] campaign of political violence in the countryside."[219] In April 2000, the British Prime Minister, Tony Blair, told Parliament "the recent attacks on white farmers were 'barbaric' and the situation in Zimbabwe was 'totally and utterly unacceptable."[220] In response to the violence and President Mugabe's endorsement of the farm invasions, Great Britain has ceased providing funds to Zimbabwe's land reform program.[221]

Hoping to reopen talks with Great Britain, the Southern African Development Community (SADC) appointed Presidents Thabo Mbeki of South Africa and Bakili Muluzi of Malawi to make representations on its behalf to Great Britain for London to finance Zimbabwe's land reform program.[222] Great Britain responded by establishing conditions that must be met before it will reconsider its position on Zimbabwe's land reform.[223] First, the occupation of farms by squatters must end, and secondly, there must be free and fair parliamentary elections.[224] Great Britain has stated that it would provide fifty-seven million dollars over the next two years for land

---

216. *See Zimbabwe's White Farmers Win Court Battle Over Invasions, supra* note 211. The Commercial Farmers Union represents almost 4000 white farmers. *See Annan Gives Mugabe Guarded Support, Urges Dialogue,* Reuters, *available at* http://uk/news.yahoo.com/000906/1/aic19.html (last visited Sept. 6, 2000).

217. *See id.*

218. *See Zimbabwe Farmers Resume Legal Battle,* BBC NEWS, *available at* http://uk.news.yahoo.com/000906/79/aif4x.html. (last visited Sept. 6, 2000). "Since June [of this year] President Mugabe has served notice to acquire 1,952 of nearly 3,000 white-owned farms he has earmarked to resettle black people." *Id.*

219. *ZIMBABWE, supra* note 163.

220. *See id.*

221. *See id.*

222. *See* Mseteka, *supra* note 167. The South African Development Community has 14 member nations: Angola, Botswana, Namibia, Lesotho, Tanzania, the Congo, Mozambique, Mauritius, Seychelles, Swaziland, South Africa, Zambia, and Zimbabwe.

223. *See* Chris Chambers, *Britain and Zimbabwe Discuss Land Issue,* Radio Netherlands, *available at* http://www.rnw.nl/hotspots/html/zimbabwe000427.html. (last updated April 27, 2000).

224. *See id.*

redistribution,[225] on top of thirty-five million dollars unconditionally promised to help alleviate poverty, if the Zimbabwe government complied with its conditions.[226]

Because of concerns about corruption within the Zimbabwean government, Great Britian has mandated that the funds it may provide cannot go through the Zimbabwean government, but rather will only be made available through Non-Governmental Organizations (NGO's).[227] As evidence of corruption, Great Britian points to reports that the Zimbabwean government terminated white-farmers' leases on state-owned farms and subsequently leased such farms to officials of the Zimbabwe African National Union ("ZANU") party.[228] More recently, Great Britian asserts that President Mugabe's Vice-President, Joseph Msika, while acting as President when Mugabe was in Cuba, ordered an end to the land invasions. President Mugabe quickly responded by condemning Msika's actions.[229]

United Nations Secretary-General Kofi Annan has stated "the United Nations deplores the violence in Zimbabwe" and has called for a "peaceful and constitutional" settlement.[230] In April 2000, the United States suspended assistance to Zimbabwe's land reform program because of "the government's inaction against the farm invasions."[231] Additionally, the International Monetary Fund (IMF) suspended key to aid Zimbabwe mainly over land reform and is encouraging other supporters to do the same.[232]

---

225. *See id.* Britain has also unconditionally promised another thirty-five million dollars to help alleviate poverty. *See id.*

226. *See id.*

227. *See id.* In addition to allegations that President Mugabe encourages the war veterans to invade whit-owned farms, President Mugabe and the Zimbabwe government have been accused of corruption. *See* Madinah, *supra* note 22. It has been alleged that at least two million hectares of land acquired for redistribution were in fact redistributed – to the cronies and relatives of President Mugabe. In at least one instance, it is alleged that one minister now owns 17 farms. *See id.*

228. *See* Raath, *supra* note 169. *See also* BIRTH OF A CONSTITUTION, *supra* note 146, at 316; Machipisa, *supra* note 21. A list of government officials that benefited from land reform ahead of deserving landless people was recently circulated by opposition leader, Margret Dongo. *See id.*

229. *See* Machipisa, *supra* note 21. *See also Zimbabwe's Vice President Calls for End to Occupation of Farms,* THE NEWS & OBSERVER, April 14, 2000, *available at* Westlaw, AFRNEWS.

230. *See ZIMJBABWE, supra* note 163.

231. *See* Machipisa, *supra* note 21. The United States has already committed over $1 million dollars for land reform. *See id.* The United States Embassy called on the Zimbabwean authorities to enforce the nations laws and uphold the Constitution. *See id.* The Embassy also stated that "[t]he important issue of land reform can only be resolved through a peaceful, orderly and transparent process." *Id.*

232. *See* Buchizya Mseteka, *Annan Gives Mugabe Guarded Support,* URGES DIALOGUE, *available at* http://uk.news.yahoo.com/000906/1/aic19.html (last visited Sept. 6, 2000).

PART V: COMPARATIVE ANALYSIS

South Africa and Zimbabwe have similar land problems created by years of colonial dispossession and unequal land distribution.[233] Racially based land policies in both countries caused insecurity, landlessness, and poverty among the majority black populations. Some have stated that the current events in Zimbabwe, where the landless majority black population have invaded vast tracts of commercial farmland, foreshadows what lies ahead for South Africa's land reform program. "Zimbabwe's land invasions were a wake-up call that necessitated a proactive land acquisition plan in South Africa to avoid the potential for political misuse of the land issue later."[234]

The main criticism of both Zimbabwe and South Africa's land reform programs is that they implement land reform too slowly.[235] People have waited for as many as twenty years in Zimbabwe for the government to reform its land policies.[236] In Zimbabwe, as frustrations mounted people took land reform into their own hands.[237] South Africa gained its independence six years ago and is in a much different situation.[238] While it may be argued that six years is enough time for frustrations to rise to the level in Zimbabwe, the South African government has taken monumental steps in developing a land reform program that addresses the inequities that resulted from apartheid.[239] South Africa has developed a land reform program that includes land redistribution, land restitution, and tenure reform, while Zimbabwe has only attempted to make progress with land redistribution. South Africa has considered potential problems and provided for them through the creation of a court to deal exclusively with restitution claims, while President Mugabe has divested the courts of all powers with respect to land issues.[240] South Africa is also developing the necessary infrastructure by creating a land deeds registration system.[241] South Africa has just begun its quest for land reform, but it has a long way to go. Once the South African government develops its

---

233. *See Mbeki Speech in Excerpts,* BBC NEWS, *available at* http://news2.thls.bbc.co.uk/hi/english/w...g/media_reports/newsid_738000/738280.stm (last updated May 5, 2000).

234. *Land NGO's Warn Government of Need for Shake-Up of Land Reform, supra* note 104.

235. *See* Integrated Regional Information Networks, UN Office for the Coordination of Humanitarian Affairs, *SOUTH AFRICA: Land Reform, available at* wysiwyg://50/http://www.reliefweb.int/IRIN/sa/weekly/2000421.phtml (last updated April 15-21, 2000); *SA Land Reform also in Crisis: Mgoqi, supra* note 124; *ZIMBABWE: Pace of Land Reform Criticised, supra* note 202.

236. The Zimbabwe government initiated its land redistribution program in 1980, just after it gained its independence from Great Britain. *See* VUDZIJENA, *supra* note 174, at 76.

237. *See supra* Part IV.

238. *See supra* Part III.

239. *See id.*

240. *See supra* Part III-3; *supra* Part IV-5.

241. *See supra* notes 107, 138-39 and accompanying text.

administrative capacity through education and training, the settlement of land claims will proceed more fairly and efficiently.

A recurring issue with many land reform programs is the government's commitment to making such programs work. "An essential, . . . ingredient for land reform is genuine political commitment of the country's leadership."[242] Such political support marks another fundamental difference between Zimbabwe and South Africa's land reform programs. In South Africa, the government is committed to fulfilling its promise through legal reforms that are consistent with basic constitutional principles.[243] The South African government has been proactive by asserting that it will not tolerate land invasions, intimidation, or violence.[244] The government also has a stated policy that it will not give priority to individuals who have participated in such acts.[245] On the other hand, Zimbabwe's government is plagued by uncertainty and corruption and its courts have been divested of legal authority needed to maintain order. President Mugabe's "support" of the farm invasions is intolerable, especially considering there are no legal checks on his executive actions. A recent poll showed that support for President Mugabe has plummeted to thirteen percent.[246] Moreover, half of those interviewed feel that Mugabe should be impeached, while 51 % believed that Mugabe should be put on trial for his crimes.[247]

An effective land reform program needs to be flexible and sensitive to local conditions and demands. Zimbabwe approached land reform as a national policy and had a weak local administration system. In most cases, people are just confused about the nature of their rights. South Africa, on the other hand, has considered decentralization and community empowerment. Increasing citizen participation in land reform programs, including formulating policy, makes land reform more effective and easier to implement. In Zimbabwe, land reform has been a "government" problem. In South Africa, the government has taken the concerns of its citizens seriously, as evidenced by its efforts in developing the Green Paper policy and the involvement of various NGO's.[248]

Another common issue that plagues most land reform programs is the lack of administrative capacity. Effective administration requires adequate land valuation procedures and a system for compiling public land tenure records. In addition to an administrative system, an economic infrastructure, at the local and national levels, needs to be developed to assist the new farmers

---

242. *See* Adams, *New Seeds, supra* note 32.

243. *See supra* note 103 and accompanying text; *see also* Green Paper, *supra* note 81 at iii.

244. *See id.*

245. *See id.*

246. *See* Arenstein, *Support for Mugabe, supra* note 199.

247. *See id.*

248. *See* GREEN PAPER, *supra* note 81.

that receive land under one of the land reform programs. As previously stated, in Zimbabwe, redistribution of land proved ineffective because those who received the land were without the knowledge and tools to work the land.

If it appears that South Africa's land reform program is headed down the same path of violence, a "short-sharp-shock" treatment, whereby the government would expropriate land in accordance with constitutional provisions, may be necessary for a redistributive program to be successful. After 20 years, Zimbabwe leaders have only recently exercised a similar provision in its constitution. If things get out of hand in South Africa, the Democratic Party has stated that the government should consider expropriating land as a short-term solution to stop the illegal invasions. Such is consistent with South Africa's Constitution.[249]

PART VI: CONCLUSION

South Africa cannot afford to look at the current expression of anger by Zimbabweans in an uninterested manner. Inadequate administrative capacity is the main shortcoming of South Africa's land reform program, but such does not compare to the many shortcomings and pitfalls of Zimbabwe's land reform program. Indeed, many have criticized the implementation of the program as being too slow and clogged with bureaucratic red tape, but I would characterize the program as "cautious." While there have been a few isolated incidents of violence reported in South Africa, such incidents have not been linked to political issues. Genuine political commitment by the leaders of South Africa and its administrative capacity to implement and process the land reform program should ensure that South Africa does not follow the same path of destruction and violence that Zimbabwe has experienced. To avoid a repeat of the Zimbabwean experience with regard to land reform, President Mbeki and other officials must act decisively.

Heather Boyle[*]

249. *See DP Calls for Mayende to be Censured, supra* note 152.

* J.D. Candidate, 2001, Indiana University School of Law—Indianapolis; B.S., 1996, Indiana State University. I would like to thank Jeffrey Boyle for his constant encouragement during the drafting of this note. I would also like to thank my family for their unconditional love and support throughout law school.