

A Guest of Convenience?: What happened to the Rule of Law in Zimbabwe?

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“This country’s planted thick with laws from coast to coast...and if you cut them down ... d’you really think you could stand upright in the winds that would blow then?”¹

No single word can possibly do justice to the gamut of emotions and memories wrapped up in a year of volunteer service abroad. Without romanticising, the millennium year remains caught between uplifting and depressing, enlightening and destroying - so very wonderfully terrible. At 21, a friend and I had decided to take a year of absence between the third and fourth years of a law degree at the university of Newcastle, to work as volunteer teachers in Zimbabwe, Africa. I was to teach English, Commerce and Economics to grades seven, nine and eleven respectively.

On 1 January 2000 I took off into the wide blue yonder, completely unaware that by taking a year away from my law degree, I would be confronted by the tangibility and necessity of the fundamental legal principles which govern Australia, and a majority of other developed countries. More specifically, I was to be confronted by the unpalatable outcomes resulting from the disregard for a single concept, many of us had only yawned our way through at Law School.

The Hon Murray Gleeson, A.C in his book, *The Rule of Law and the Constitution*: stated that “many Australians are so accustomed to living in a community governed by... (legal) principles, that they fail to make the connection when they see... violence and disorder, in societies where the rule of law either does not exist, or cannot be taken for granted.”² CJ

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¹ As was said by the Central character Thomas More, in Robert Bolt’s *Play, A Man for all Seasons*.. As cited in the production of a Boyer Lecture, The Hon M Gleeson, AC, *The Rule of Law and the Constitution* (ABC Books, Sydney, 2000), p 1.

² Ibid at 5.

Gleeson's comments struck a significant chord with the writer, in that, until my Zimbabwean experience I, too, had failed to conceive the import of the Rule of Law. In contrast, the average Zimbabwean with a high school education (white or black), can discuss the concept comfortably. This familiarity stems from its demise under the present regime led by President Robert Mugabe. The consequence of Comrade Mugabe's disregard for the rule is a country that is politically, socially and economically unstable.

After arriving in Zimbabwe, we found that being the only "whites" or "honkies" (as we were affectionately known at the High School), was a huge cultural shock. A majority of the students and teachers had never come into social contact with white people, and were often surprised to see we were just 'normal'. Overcoming initial prejudices, from a people who still see each other as warring parties from a black-white civil "independence struggle" twenty years ago, was probably the biggest difficulty we encountered.

High School hours were generally from 7.45am to 1pm. This afternoon freedom led us to seek some other activity to fill our day. Our search led us to the largest law firm in the district, which had been established in 1914. A cold start interview and some fast-talking got us positions as law clerks and an introduction to Roman-Dutch law. Three afternoons a week we found ourselves whilst quite inexperienced, working on files for important clients. With the emigration, or "brain drain" of so many Zimbabwean solicitors to avoid politically induced difficulties, the number of experienced legal practitioners in the country has been substantially reduced in the past ten years. In view of this situation, our less than optimal legal experience was considered adequate for the position of law clerk.

It was the research component of this employment which was perhaps of most interest. The firm was responsible for many actions arising out of the land invasion and occupation of white owned farms by "Supposed War Veterans"³ of the aforementioned "Independence Struggle". The senior partner had us undertake research into the Rule of Law and surrounding issues arising from the land invasions, such as the validity of the *Land Acquisition Act 1992*.

The 1959 report of the International Commission of Jurists, identified two ideals which underlie the conception of the Rule of Law. "Firstly, it implies without regard to the content of the law, that all power in the

³ "Supposed" is used by the writer in this context to indicate a general observation within both the black and white communities that many invaders being classified as "war veterans" were too young to have possibly fought in the Liberation Struggle. According to a report: 'Showdown pits Mugabe against the Rule of Law', *The Guardian* 20 March 2000, p.3 [HOTBOT]: Only 15% of the invaders were actual veterans of the Rhodesian war, the remainder being supporters of Mr. Mugabe's Zanu PF party and unemployed youths. It was their suggestion that many were being paid Z\$50 (While this is only approximately \$1.75AUS, it is nevertheless a common daily salary for a full day of work) to occupy the farms and that food and supplies were being delivered to the squatters by government vehicles.

State should be derived from and exercised in accordance with the law. Secondly, it assumes that the law itself is based on respect for the supreme value of human personality"⁴. It is submitted that both these principles have experienced significant breach in Zimbabwe.

In early 13th century England, the Jurist Bracton came to the conclusion that the King was *sub Deo et lege* and that "law is the bridle of all power."⁵ In the famous case *Prohibitions Del Roy*⁶, the judges of England put an end to the attempts of James I, as head of the executive government, to exercise judicial power. The answer given by the Judges was: "The King in his own person cannot adjudicate any case, either criminal or betwixt party and party...but it ought to be determined and adjudged in some Court of Justice."⁷ In ignoring the decisions of the Courts, President Mugabe impliedly rejects the fundamental *sub Deo et lege* principle. Relying on Bracton, it can be argued that the bridle has been removed from a very volatile animal. For the benefit of Zimbabwe, the situation requires immediate reform.

Historical Background

The land question has long been the central and most controversial issue in Zimbabwe. Despite the repeal of the *Land Tenure Act* 1969, a colonial legislative instrument that reserved fifty percent of the land (including the most fertile arable land) for a white minority, thirty percent of land is still owned by 4000 white farmers. It has been suggested that as a consequence "the present overwhelming black majority has insufficient land to feed themselves or their families"⁸.

Since 1980 the Zimbabwean government has acquired some 3.5 million hectares of commercial farmland for resettlement purposes.⁹ This process has been facilitated by considerable financial support from the British Government. There has been a common acceptance by both the white and black communities that land reform was required to compensate for an unequal distribution of land between a white minority and a black majority. A report by the predominately white Commercial Farmers'

⁴ International Commission of Jurists, *The Rule of Law in a Free Society – Report of the International Congress of Jurists, New Dehli 1959*, (Geneva, 1959), cited by T Blackshield and G Williams, *Australian Constitutional Law & Theory, Commentary & Materials* (3rd ed, The Federation Press, Sydney, 1998), p 99.

⁵ Bracton, *On the Laws and Customs of England* (horne trans) (1968) Vol II, p.305.

⁶ (1607) 12 Co Rep 63:1as cited in Toohey J "A Government of Laws not of Men?" (1993) 4 *Public Law Review* 158 at 159

⁷ *Ibid*, at 63-64.

⁸ 'Zimbabwe: Mugabe government abandons the Rule of Law.' *World Socialist Web Site*, 26 February 1999, p.2

⁹ For a general discussion on the land issue in Zimbabwe see B Hlatshwayo, 'The Land & the Constitution' *Legal Forum* (1988) 10, no 2, p.46. Mr. Hlatshwayo is a Senior Lecturer at the Department of Public Law, University of Zimbabwe.

Union (CFU) in April 2000 stated the following:¹⁰

“...all agree that there is a need to redistribute land to redress the issue of skewed ownership and the Commercial Farmers’ Union has long recognised this need and committed itself to working closely with government to rectify it.”

In February 2000, a draft Constitution was put to the people by way of general referendum. The draft Constitution was to replace the English influenced 1979 Constitution which had been developed at Lancaster house, at the institution of the first post-colonial government.¹¹ The new draft Constitution, was nevertheless rejected by voters; city dwellers and educated areas voting solidly against it.

The proposed Constitution would have given government authorities power *inter alia* to seize white owned farms, without compensation. A general popular concern, which was reflected in the “no” vote, was that land would be passed onto members of the governing elite, rather than being parcelled out to peasants and those most in need. This was a real fear, in light of the corruption and mismanagement associated with earlier distributions of land facilitated by the financial assistance of the British government. One isolated example of this was the situation of a thirty year old indigenous airforce pilot (the recipient of an extremely comfortable salary by Zimbabwean standards), who had received free land in previous land allocations. It is further noted that 200 of the 400 members of the Constitutional Commission who drafted the 2000 Constitutional document, were handpicked from Mugabe’s political party.¹²

According to Vice-President Joseph Msika, with the rejection of the new Constitution, “the government was forced to fast-track the program of land reform, because the patience of the people was running out, resulting in farm invasions.”¹³ After failing to secure popular support for the new Constitution, the government pursued its land agenda via legislative means, in particular in amendments to the *Land Acquisition Act* and associated regulations. The amendments gave power to the government to acquire “white” owned properties compulsorily without any financial compensation, regardless of constitutional restraints. The actions have caused a great deal of controversy and questions concerning the validity of the amendments.

¹⁰ Commercial Farmers’ Union (CFU), *Annual Report*, ‘Facts on Land & the Present Situation’, 1999 – 2000 (Harare, April 2000), p 1.

¹¹ Zimbabwe, Land Reform Commission, *Brief for Negotiations on the Land Reform and Resettlement Programme between the Zimbabwe and British Governments*, Working Brief to London (2001). This report gives historic background as to the Lancaster House Conference.

¹² B Wazir, ‘A Shot Away from Anarchy’ *The Observer*, 20 March 2000. [Hotbot]

¹³ ‘Resettlement process slow, says Msika’, *The Chronicle*, 18 August 2000, p11.

Discussion of the Constitutional Validity of Acquisition¹⁴

The essence of *The Land Acquisition Act*, which was passed in 1992 centred on a general duty to pay fair compensation to the owners of land compulsorily acquired.¹⁵ This consonant with section 16 of the 1979 Constitution of Zimbabwe which provided that no property of any description should be compulsorily acquired except under the authority of a law that provided, *inter alia*, for the prompt payment of “adequate compensation for the acquisition.” Under sub-section (1)(e) of the Constitution, any claimant for compensation was entitled to apply to the High Court, or some other court for the determination of any question relating to compensation with the right to appeal to the Supreme Court.¹⁶

In 1993 and 1996, however, the Constitution was amended in respect of land “used wholly or mainly for agricultural purposes”. Under these amendments a law that provided for the compulsory acquisition of such land, instead of providing for adequate compensation, could stipulate the principles on which compensation could be determined. It was further provided that, no such law could be questioned by any court, on the ground that the compensation provided by that law was inadequate.

In 2000 an even more drastic amendment was made to section 16 of the Constitution, namely, the repealing of sub-sections (2) and (2)(a) relating to compensation. Further the whole of section 16 was to be subject to a new section 16A. The new section after a preamble describing the colonial domination of the people of Zimbabwe, stated:

- “i) [T]he former colonial power has an obligation to pay compensation for agricultural land compulsorily acquired for re-settlement, through an adequate fund established for the purpose; and
- “ii) If the former colonial power fails to pay compensation through such fund, the Government of Zimbabwe has no obligation to pay compensation for agricultural land compulsorily acquired for resettlement.”

During the same year, there was a further important statutory provision enacted. On 23 May 2000 *Presidential Powers (Temporary Measures) (Land Acquisition) Regulations*, 2000 were promulgated in a statutory instrument. Relying on the power conferred by the *Presidential Powers*

¹⁴ The following arguments and historical background rely to some extent, on the opinions of Mr. A.P de Bourbon SC in the matter of *David Lilford & 14 others* and Sir Sydney Kentridge QC in the matter of *Ex Parte Debshan (Private) limited*¹⁴. It is these arguments that have generally formed the basis for litigation refuting the compulsory acquisition of farms and resettlement.

¹⁵ S 16 *Land Acquisition Act* 1992.

¹⁶ The Supreme Court in Zimbabwe is vested with the highest jurisdiction. The High Court sits below the Supreme Court in the hierarchy.

(*Temporary Measures*) Act 1986, President Mugabe amended or purported to amend the *Land Acquisition Act*. It is said purported, in that while the President has the power to make regulations, there are certain conditions that need to be met prior to his doing so. Section 2(1) of the act reads as follows:

“When it appears to the President that –

- (a) a situation has arisen, or is likely to arise which needs to be dealt with urgently in the interest of ... public interest; and
- (b) this situation cannot be adequately dealt with in terms of any other law.

The situation that led to the enactment of the Regulations on 23 May 2000 was arguably not urgent. The fact that since February 2000 persons posing as war veterans had been occupying commercial farms did not necessarily mean that an urgent situation had arisen regarding the acquisition of land. The attempts to amend the legislation through the (*Temporary Measures*) Regulations cannot be said to be one that had to be dealt with in May 2000 on such an urgent basis that the President could not await the institution of the new parliament.

Moreover, it is commonly believed within the Zimbabwean legal community that acquisition of land could be dealt with adequately under existing law. According to AP de Bourbon SC¹⁷: “A political expedient can never be translated into a situation that has to be dealt with in terms of the presidential powers.” Therefore it has been submitted that the whole *Presidential Powers (Temporary Measures) (Land Acquisition) Regulations* 2000 were not valid in terms of the *Presidential Powers (Temporary Measures) Act* 1986. A more conservative approach as set out by Sir Sydney Kentridge QC, enunciated that “the court would only invalidate the President’s determination if it could be said that no reasonable person applying his or her mind honestly to the facts could have formed that opinion”.¹⁸

The May 2000 amendments to the (*Temporary Measures*) Regulations, included a new section 16. This section provided that an acquiring authority should pay “fair compensation” to the owner of any agricultural land required for resettlement purposes, subject to the provisions of Part V A of the *Land Acquisition Act*. However, a proviso to sub-section (1) of section 29C as introduced by the Regulations, states that compensation shall be payable for the land, “where an adequate fund for that purpose is established in accordance with sub-section (1) of section 16 of the Constitution.” The legislative change creates an horrific predicament for white

¹⁷ Opinion, *Ex parte David Lilford & 14 others v State*, p. 2.

¹⁸ Opinion *Ex Parte Debshan (Private) limited v State*, p. 7.

farmers. In the event that their land were compulsorily acquired, there would be no legal redress for financial compensation in the absence of a fund established by the former colonial power. Realistically, such a fund is unlikely ever to be established by the British government.

The proposed section 7(4)(a) of the *Land Acquisition Act*, inserted by the 2000 amendments, deems that land which is stated to be required for resettlement for agricultural purposes is in fact suitable for such purposes. Such an irrebuttable presumption takes away the rights given by section 16(1)(a) of the Constitution that requires land be reasonably necessary for resettlement purposes. The requirement of reasonable necessity, it is argued, is a factual situation that ought to be established by the acquiring authority. The President, or indeed parliament, cannot introduce a presumption that negates the right to challenge the acquisition of land. As such, the insertion of section 7(4)(a) by the regulations was unconstitutional.

Another point of contention with regard to validity of laws passed under the Mugabe regime in terms of land reform, is the validity of the *Presidential Powers (Temporary Measures) Act 1986*. This was an ordinary act of the Zimbabwean Parliament that did not attempt to conform to the necessary affirmative votes of two-thirds majority of parliamentarians necessary for constitutional amendment. There is ample precedent to suggest that the delegation of legislative powers by Parliament to the President is itself unconstitutional. This is not of small import, as its breach constitutes an infringement of the greater doctrine of separation of powers, which is itself inextricably linked to the rule of law.

While there is no Zimbabwean authority which specifically deals with this issue, the South African Constitutional Court decision in *Executive Council of the Western Cape Legislature and Ors v President of the RSA and Ors*¹⁹ per Chasklason P addresses the issue directly at 1312:

“There is nothing in the Constitution which prohibits parliament from delegating subordinate regulatory authority to other bodies. The power to do so is necessary for effective law making. It is implicit in the power to make laws for the country and I have no doubt that under our Constitution Parliament can pass legislation delegating such legislative functions to other bodies. There is however, a difference between delegating authority to make subordinate legislation within the framework of a statute under which the delegation is made, and *the assigning plenary power to amend the Act under which the assignment is made.*” (emphasis added)

Chaskalon P went on to hold, with the concurrence of the other members of the Court, that the attempt to delegate legislative power to the executive was unconstitutional.

A final argument against the validity of the land acquisition

¹⁹ [1995] (10) BCLR 1289. South African authority is regularly utilised and extremely persuasive in Zimbabwean courts, both countries adhering to a Roman-Dutch system.

amendment flows from the provisions in section 23 of the Constitution that prohibits discrimination based on colour, race, place of origin or political creed. It is the avowed policy of President Mugabe to take white owned farms. The criterion of selection of land for acquisition is the race of the owner. This is contrary to the prohibition contained in section 23. The President, (over the course of 2000) on the State controlled television station (ZBC) made numerous explicit references to this very objective. Indeed farms are actively 'delisted' from acquisition if it is found that they are owned by Indigenous Zimbabweans.²⁰

A central problem remaining in the wake of this analysis and that is the disregard for the rule of law by the Mugabe government and the President himself. The unfortunate reality in Zimbabwe is that regardless of the actions in the courts, it seems you cannot fight a disregard for the rule of law, with the law. To the disbelief of a majority of the Zimbabwean people, President Mugabe and his comrades in the Zanu PF ruling party have chosen to ignore judicial decisions that are not in keeping with their party's agenda.²¹

The Challenge to the Rule

The Constitution of Zimbabwe states that: "It shall be the duty of the President to uphold this Constitution and ensure that the provisions of this constitution and all other laws in force in Zimbabwe are faithfully executed."²² The breach of the President's duty is an impeachable offence. Sections 29(3)(a)(c) of the Constitution read:

A President shall cease to hold office if he:²³

(a) "Has acted in willful violation of this Constitution."

(c) Engages in "gross misconduct"

²⁰ Zimbabwe, Land Reform Commission, *Brief for Negotiations on the Land Reform and Resettlement Programme between the Zimbabwe and British Governments*, Working Brief to London (2001), p5. This is an official government report.

²¹ Public statements from Dr Made, Zimbabwe's Agricultural Minister and other prominent members of parliament have openly criticised Commercial farmers for "frustrating his ministry's plans for resettlement...by challenging acquisition orders through the courts, while the Commercial Farmer's Union is doing the same thing through the Supreme Court". 'Fast Track to Nowhere', *The Farmer* 31 October – 6 November 2000 p.1.

²² Section 31 (H)(2) *Constitution of Zimbabwe*. On 31 March 2000, the Law Society of Zimbabwe issued a statement that the recent conduct of the President and the government amounted to a blatant violation of the Constitution of Zimbabwe. For other actions of the Zimbabwean Law Society see: 'What is the law Society doing about recent developments in the Country?', Editorial, 'Whether Law, democracy and development in Zimbabwe' (2000) 5 *Rule of Law: The Law Society of Zimbabwe*, p.5. In the circumstances, it appears deeply ironical that the organ of the Law Society of Zimbabwe bears the title, "The Rule of Law"

²³ Section 29 (3)(a) *Constitution of Zimbabwe*.

The most substantive evidence of the breach of this section has been the President's unabashed support for the land invasions. This support was evidenced by the blatant disregard and defiance of an order by Justice Paddington Garwe of the High Court of Zimbabwe on 17 March 2000, compelling the responsible executive authorities to evict the invaders. The order was completely ignored, notwithstanding the fact that the original order had been obtained by consent and with the concurrence of the then Attorney-General.

In an editorial in the magazine of the Law Society of Zimbabwe,²⁴ Edson Musabayana states; "the state has virtually abdicated its obligations to the law...in keeping with their belief that the rule of law is merely a guest of convenience, institutions of state that exist to enforce the law appear to be now at liberty to either make their own law or pick and choose which law to enforce." This comment goes to the heart of the issue of efficacy and the rule of law, President Mugabe and his government appear content to reject Bracton's principle which has survived since the 13th century. However, the fact remains that there is no certain principle offered by the government to fill the vacuum.

The High Court instructed the police to move the squatters from the 635 affected farms within 72 hours of the decision, to charge anybody who continued to trespass and to ignore any instructions to the contrary from the President. The police however were ordered by the executive to disregard the directive and ignored the High Court command. It is this that Mr. Musabayana is referring to when he goes on to say; "key functionaries of the State have openly taken the position that might is right and public resources must be committed to assist the politically powerful... The ruling oligarchy is of course fortified in the knowledge that at the end of the day, the courts do not wield coercive formal or informal power, in the form of soldiers and militiamen."²⁵ While the court lambasted Police Commissioner, Augustine Chihuri, for "going astray" by refusing to enforce the various court orders allowing land invasions, no response was forthcoming.

In spite of countless court orders barring the seizing of white-owned farms, to date the government has declared that it will continue with the compulsory acquisition of land. Mugabe's words demonstrate this intention; "No judicial decision is going to stop the political decision we have made to take land."²⁶ In the light of the President's actions and words, it would appear that the pre-conditions for impeachment proceedings have been met. However, the machinery for successful implementation of impeachment has not been fulfilled, as s 29(3) of the Constitution requires:

²⁴ Editorial, 'Whether Law, democracy and development in Zimbabwe' (2000) 5 *Rule of Law: The Law Society of Zimbabwe*, p.1.

²⁵ Editorial, 'Whether Law, democracy and development in Zimbabwe' (2000) 5 *Rule of Law: The Law Society of Zimbabwe*, p.1.

²⁶ 'Mugabe Trying to Divide Judges', *The Zimbabwe Standard*, 24 December 2000. [Hotbot]

"...a report to be prepared by a committee of Parliament, appointed by the Speaker upon the request of not fewer than one-third of the members of parliament, has recommended the removal of the President."²⁷

This difficulty was faced by the opposition party, (Movement for Democratic Change, MDC), when it unsuccessfully put forward a motion in October 2000, attempting to impeach President Mugabe for violating the Constitution and for gross misconduct. The opposition was successful in presenting the documents to the speaker of Parliament, Emmerson Mnangagwa. Mr. Mnangagwa stated that while he may not agree with the impeachment notice, it was not his choice, but an available constitutional right.²⁸ However, the majority Zanu PF composition of parliament ensured that the one-third support for impeachment was unobtainable.

Interestingly the President's response to the MDC's attempt to impeach him, was to threaten to enact retrospective legislation and put on trial those who fought on the side of former Rhodesian Prime Minister Ian Smith, he stated; " In Europe they are still charging people for the Nazi war crimes, what can stop us doing the same here."²⁹ This action illustrated graphically the lengths to which the President is prepared to go in defiance of the rule of law and the well-established presumption against retroactive criminal laws.

The human face of a disregard for the rule of law.

Perhaps the greatest impact of the President's allowing 'war veterans' to ignore judicial orders, is on white farmers, their families and their employees. There are thousands of farm workers in Zimbabwe enduring brutal senseless violence at the hands of Mugabe's supporters. "Right now there are farmers being forced to attend *pungwes* (all night sessions) where they must chant political slogans and denounce ...the opposition party."³⁰ This reflects my own experience in October 2000.

An older gentleman who I had been visiting, (who had a significant proportion of his property occupied by 'war veterans'), received a phone call at 9pm on his mobile telephone, which was to last the next ten hours. 'War Veterans' had called to tell him that they had a knife to his (black) foreman's throat and should he hang up, the foreman would be killed. In the following hours he was to be subjected to a twenty strong tag-team proffering death threats to him, extremely offensive slander and language, political rhetoric and the oft used, "Go back to England" (irrespective of the fact the gentleman was a fourth generation white Zimbabwean),

²⁷ Section 29 (3) *Constitution of Zimbabwe*.

²⁸ T Munaka, "All set for Mugabe Impeachment" *The Daily News*, October 2000. p1.

²⁹ 'Mugabe goes White Bashing', *The Farmer* 31 October – 6 November 2000 p.5.

³⁰ 'Who does he think he is fooling', *The Farmer* 20-23 May 2000, p.1.

continually under the premise that if he should stop responding, stop listening or hang up, his foreman would be killed. While the objective of that night's activity was clearly psychological intimidation, it was extremely effective in encouraging whites to 'cut their losses', leave their farms and emigrate. More effective still is the violence, rape and killing of farm workers and farmers. "The nation's white minority – sensing the coming crisis – are beginning to leave. The British High Commission...lodging...a record number of applications for passports."³¹

There are other, more general effects on the population arising from disregard for the rule of law in respect of land acquisition. The 635 properties invaded in Zimbabwe represent around 15% of the country's large-scale commercial holdings. White farms have traditionally been key food producers and the sources of tobacco, the country's most crucial export crop. An unfortunate outcome of the invasions is that farmers, in protest, (as well as in questioning the viability of the exercise, when they could be evicted from their homes at any time), have not replanted crops for the new season, have left crops to rot and some have gone so far as to burn crops, rather than wait to see them "stolen".³² Consequently, no exports means no foreign currency and as any student of economics would anticipate, no foreign currency means products requiring importation cannot be purchased. A small indication of the impact of these policies upon the country's imports include:

- i. Fuel.* To obtain fuel, (if possible at all), involves all day queuing at petrol stations. Fuel queues would often extend two kilometers from the actual point of distribution. The effect of this on travel, and any business/industry, which requires fuel of any description requires little explanation. For example, private and public transport could often be seen stranded by the roadside mid-journey. There were numerous occasions when day scholars at our school were unable to attend, because the school bus had no fuel to pick them up.
- ii. Books.* While perhaps a less obvious outcome, the difficulty in acquiring textbooks (substantially imported goods), placed and continues to place teachers and students in a dire predicament. The lack of resources often resulted in photocopying of entire texts in schools (in clear infringement of copyright law). This problem was further compounded by the unavailability of white imported A4 paper for photocopying.
- iii. Dry-Cleaning.* While the inclusion of this category may appear trivial, this example has been utilised to demonstrate the pervasive nature of problems arising from a lack of foreign currency resulting from a disregard for the rule of law. Chemicals required in the dry-cleaning

³¹ B Wazir, 'A Shot Away from Anarchy' *The Observer*, 20 March 2000. [Hotbot]

³² For a discussion on the expected reduction of crop outputs in 2001, see, 'Decline in maize production forecast' *The Farmer* 7 –13 November 2000, p.8.

process are imported and therefore generally unavailable, as a result clothes requiring dry cleaning can wait months before they can be attended to.

Another significant earner of foreign currency that has been severely affected by the breakdown of the rule is the tourism industry. Potential visitors to the country have shied away due to the unstable political situation. This has had a devastating effect on employment, specifically tourism-related business and the indigenous makers and sellers of curios. Lack of tourist dollars has further compounded the problems relating to importation alluded to earlier.

Another consequence of a land reform program that has been poorly executed, without respect for the rule of law, is that property which has been transferred to the rural poor has become in the most part unproductive. This has furthered economic and other difficulties for the people:

“Former productive commercial farmland, allocated to resettlement, frequently provides little more than subsistence for those resettled. In some cases, in adverse seasons, food aid has to be supplied by Government to sustain families resettled... To date, services to resettled farmers are minimal and no infrastructure has been put in place to raise either the standard of living or productive capacity.”³³

Moreover, while it is not within the scope of this article to discuss Zimbabwe’s significant economic difficulties, the withdrawal of foreign aid in response to Mugabe’s land policies, has further exacerbated the aforementioned problems, resulting from the breach of the rule. A visit from the International Monetary Fund (IMF) in January 2001 to Zimbabwe resulted in the following admonition:

“The government must implement an orderly land reform program that is designed to garner domestic and international support. A speedy return to the rule of law is important in rebuilding the confidence of domestic, regional and international investors and international donor support.”³⁴

It is only when the above factors are examined and their impact on the lives of Zimbabweans, that we can properly appreciate the outcomes accruing when the Rule of Law is disregarded, the rule loses its academic aridity and is transformed into a living pillar upholding democracy. In light of these facts, it is submitted that one must question the underlying rationale for the fast track land redistribution as truly being about aiding indigenous Zimbabweans, as the ruling party would claim.

³³ Commercial Farmers’ Union (CFU), *Annual Report*, ‘Facts on Land & the Present Situation’, 1999 – 2000 (Harare, April 2000), p 5.

³⁴ As cited in ‘Zimbabwe blackmails IMF’, *The Zimbabwe Standard*, 21 January 2001 [Hotbot].

Conclusion

The future for Zimbabwe however is not all grim. A recent poll published by South Africa's Helen Suzman Foundation and conducted by Probe Market Research, indicated that Mugabe's land invasion tactics have been far from popular. The report stated that 64% of people believed that land invasions had nothing to do with land reform and 70% of Zimbabweans believed "War Veterans" should be prosecuted for their crimes committed on farms³⁵. If power is truly in the people, then it may not be too long until the rule of law and all her trappings find a safe haven in Zimbabwe once more.

While in countries like Australia, the Rule of Law may seem invisible, it is submitted that it is indeed an unsung hero. Currently there is a hurricane in Zimbabwe, winds are blowing through a void where laws previously stood, and people are suffering as a result. Aristotle said "The rule of law is preferable to that of any individual."³⁶ Whether it is President Mugabe in Zimbabwe, Mobutu Sese Seko in Zaire, or Nigeria's General Sani Abacha, when individuals prefer their own agenda to the rule of law, there cannot be success³⁷. Zimbabwe needs land reform, but land reform predicated on an adherence to the rule of law.

³⁵ Probe is an affiliate of Gallop international, 'Zimbabweans see through Mugabe's Land Hoax', *The Farmer*: October 31 2000, p. 9.

³⁶ *Politics III* (Jowett trans, Davis ed) (1905), p. 16

³⁷ For a discussion on the breach of the rule of law in the aforementioned countries, by the named rulers, see, C McGreal, "Turning back the clock", *Guardian Unlimited*, 17 April 2000 [Hotbot]