

LAND POLICY IN ZIMBABWE

A FRAMEWORK FOR DISCUSSION PAPERS

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EXECUTIVE SUMMARY

This article sets the tone and lays out a framework for the presentation of a series of discussion papers on land policy in Zimbabwe. It begins with the premise that land policy, especially the 'Fast Track' land reform programme, was made possible by the accretion and concentration of executive power in the Presidency. In particular, it argues that wide Presidential powers of appointment – the power to hire and fire virtually all top government officials – has its corollary in land policy. By nationalising most commercial farms, land could be acquired to penalise perceived opponents and reallocated to reward known supporters. To legitimise this transfer of wealth, a national narrative of the lost lands and sovereignty was developed to justify the seizure of others' property with impunity and without compensation.

From this premise, three main themes are developed. The first is that state control over land undermines political rights, locks up the collateral value of land, and violates the principles underlying economic efficiency. The second theme is the change that took place over three decades from a social developmental state to a predatory state based on crony capitalism. Land policy changed from supporting the poor to privileging the rich, from focusing on reducing poverty in the communal areas to rewarding supporters with land in resettlement areas, and from enjoying secure property rights after independence to seizures of property by force after 2000. The third theme is the need find our way back to a path of development and a land policy that is based on democracy, human rights, the rule of law, and secure property rights.

The last part of the paper outlines those topics to be discussed in the series of articles. The articles are divided into two parts. The first series of articles will look back to evaluate and learn lessons from past land policy failures, while the second part looks forward to policies that promote secure property rights, the commercialisation of smallholder agriculture, and

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the growth in agricultural productivity that is necessary for the structural transformation of the economy.

“Stay with us. Please remain in this country and constitute a nation based on national unity. We will not seize land from anyone who has a use for it.”

Robert Mugabe appealing to white farmers at a rally in Highfield, 27 January 1980 (BBC News)

Imagine someone coming up to you, handing over a piece of paper, and saying, ‘What’s yours is now mine.’ Not just your home and land, but your equipment, produce, and your very livelihood. Imagine that you appeal to the High Court for an order to protect your property, but the order is simply ignored. Imagine that you then ask the police to enforce the court order, but you are told that they cannot intervene in a political matter. Eventually, a rowdy crowd throws you out of your home by force while the police watch, doing nothing to protect you, your family, or your property. Imagine you are an old man or woman who has lost everything you have worked for.

EXECUTIVE POWER

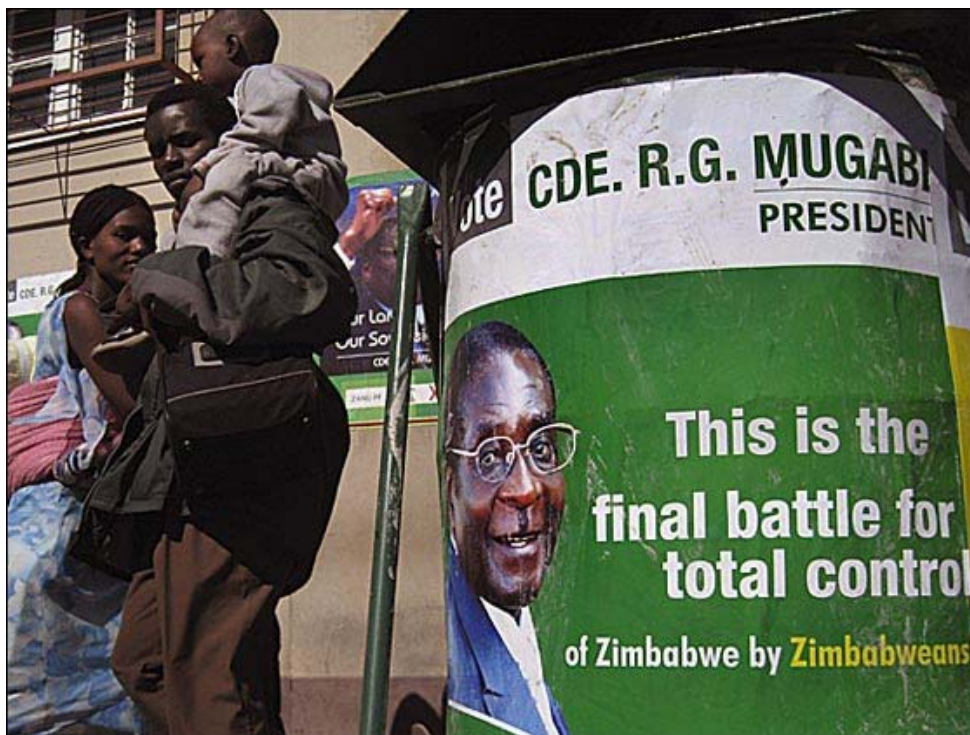


Figure 1: A campaign poster for Robert Mugabe - 2008

Understanding the context of how such raw power is exercised lies in the rise to power of Robert Mugabe, Zimbabwe’s long-serving President. His resolve to carry through his controversial land reform programme after 2000 had its genesis in his socialist ideology and the consolidation of his executive powers in the 1980s. It is easy to forget that in the heady days after the liberation struggle, Zimbabwe’s charismatic and articulate new leader was

determined to drive the socialist transformation of Zimbabwean society and establish a one-party state in which 'unity' meant ensuring the loyalty of citizens, not just to the state, but to his party, ZANU(PF).

When Edgar Tekere, ZANU(PF)'s First Secretary, voiced his opposition to the one-party state in 1987, Mugabe moved swiftly to oust him by combining the two most powerful posts enshrined in the party's constitution. As party leader, Mugabe consolidated his grip over the party by becoming both its President and First Secretary. That year he also fused the executive powers of the Prime Minister with the non-executive powers of appointments of the President to establish his own unassailable powers as the Executive President.² By the end of the year he had crushed his erstwhile ally Joshua Nkomo and his opposition party, ZAPU, during a brutal campaign, Operation Gukurahundi, that ended with the creation of a *de facto* one-party state. Today, after three decades in power, President Mugabe is grandiloquently referred to as His Excellency, Head of State and Government and Commander-in-Chief of the Zimbabwe Defence Force; or less formally as Cde Robert Mugabe.

At the core of Mugabe's presidential powers is his ability to appoint virtually all senior positions in the party, the government, the armed services, the judiciary, parastatal organisations and commissions. He directly appoints members of his party's Politburo, members of his Cabinet, Provincial Governors, the Commanders of the Armed Forces, the Commissioner-General of Police, and Supreme Court judges. Although he is now constitutionally obliged to make many of these appointments in agreement with the Prime Minister,³ he continues to exercise his undiminished autocratic powers to make appointments unilaterally.

Put differently, the President *allocates* all the most important government positions. He has the power to bestow a top job on a chosen person, with all the status, benefits, as well as the delegated authority to exercise power in their own right. He may also remove them. To keep the perks of a job, the incumbent's best strategy is to follow orders and remain loyal. But as many citizens do not work for government, they are not beholden to state officials and bureaucrats. How then to bring such independently-minded citizens under the party's political hegemony? It is by bringing their privately owned assets, on which they depend for their livelihoods, under state and party control. Legislation that enables the state to acquire land from the 'undeserving' and *allocate* it to the 'deserving' becomes a powerful tool of political control and patronage, especially when the President has the discretion to decide who is who.

² Constitutional Amendment No. 7 (Act 23 of 1987)

³ Derek Matyszak, A Note on the Re-Appointment of the Service Chiefs (February, 2012)

The only question remaining is how to justify and legitimise a process of taking something belonging to one citizen and giving it to another; and, if possible, to do so without compensation. It is to constantly repeat a story based on a rich mixture of ideology, culture and history that I call the 'nationalist narrative of the lost lands'. It consists largely of an account of victimhood and entitlement and of dividing people between an authentic, patriotic, legitimate and deserving 'us', who belong in the party, and the usurpers, puppets and foreigners defined as the undeserving 'them', who are outside it. The same story is retold, renewed and embellished with heroic accounts, the selective use of history, the invention of tradition, mythologizing the past and demonising detractors. It is based on a highly selective truth, which is used as propaganda. Above all, it is sustained by the power to provide individual incentives that make people believe that however morally dubious their actions, their cause is just. The end, in other words, justifies the means.

THE MAIN THEMES

It is from this narrative that I intend to begin a series of 12 articles that explores the premises and principles of Zimbabwe's land policies. These articles cover three broad themes.

The first theme is to examine the political and economic impacts of the state's power to acquire, control, and allocate communal, resettlement and commercial farmland in Zimbabwe. Four arguments are advanced. One is that the gradual eroding of citizens' land rights also undermines their political rights and economic freedom. The second is that bureaucratic top-down modes of programme implementation, especially for resource-constrained developing economies, are notoriously inefficient. A third argument is that state ownership locks in the economic collateral value of land for farm investments, severely constraining financial markets needed for farm investments that are crucial to boost productivity and rural incomes. The last argument is that land allocation by officials is inefficient because it violates the principles underlying the optimum allocation of factors of production. The cumulative affect of these constraints is that agricultural production and growth are well below their potential. Inevitably, poverty persists.

The second theme is the perverse evolution of Zimbabwe – from a social developmental state in the 1980s to a predatory crony-capitalist state after 2000. Whereas the communal areas were the primary focus for poverty reduction in the 1980s, they were abandoned in the 1990, and only resettlement, based on literally seizing land, remained on the government empowerment agenda after 2000. Whereas the priority for land allocation in the 1980s was the resettlement of landless and war-stricken families, after 2000 seized farmland was redistributed to senior politicians, officers and other party loyalists. Whereas the state accepted strong property rights based on freehold tenure in the 1980s, the gradual erosion of property rights in the 1990 ended with the nationalisation of most commercial farms in 2005 without compensation. Today, the common good of the nation has been

sacrificed by a predatory state that condones corrupt, rent-seeking behaviour for the enrichment of the politically privileged few.

The third theme is the long road to redemption and transformation. First and foremost it is to restore Zimbabwe to the community of nations that respects both the letter and spirit of international laws, conventions and treaties. Zimbabwe must return to a developmental path based on democracy, human rights and the rule of law. It is a journey where the notion of sovereignty means empowering citizens by restoring and enlarging their political and economic rights, including strong, secure and tradable property rights. It means granting citizens the right to invest in their own livelihoods and own their means of production, the freedom to manage their own affairs, and to benefit from their own enterprise. The watchwords for this vision are captured in the title of Amartya Sen's book, *Development as Freedom*. It envisages a state that actively participates in developing a policy, legal and institutional framework that nurtures the capabilities of its citizens and provides them with incentives to lead productive and fulfilling lives for themselves, their families, their communities and the nation.

DISCUSSION PAPERS

The discussion papers will be divided into two parts. The first part will dwell mainly on the first two themes. It will examine how the national narrative on land maintained policies and programmes that were inimical to the economic and social imperatives of poverty reduction, equity and economic growth. The second series of six articles will provide economic analysis to formulate an alternative policy, legal and institutional framework in order to achieve equity, agricultural commercialisation, economic growth and the structural transformation of the economy.

The next paper in Part I (Paper 2), entitled the *Nationalist Narrative and the Demise of the Resettlement Programme*, will show how certain traditional precepts on land, when combined with socialist ideology, resulted in a resettlement programme that was designed with an inherent and unsustainable financial flaw. To continue the programme and balance its books, the government began passing legislation that initially short-changed farmers for their land and eventually nationalised it. The government also became increasingly strident in demanding funds 'promised' by Britain, even passing a constitutional amendment making Britain responsible for paying compensation to dispossessed white farmers.

The third paper entitled *The Economics of Communal Land Tenure* begins by exploring the ambiguity of the communal lands. Were they a colonial creation to force an impoverished peasantry to work for low wages in the white capitalist sector, or were they the embodiment of socialist communal ideals? The paper then explores how a tenure system based on the chiefly allocation of land creates market failure in land and other factors.

markets;⁴ how the system lacks a mechanism to realise economies of scale; and how this market failure leads to insatiable demands for land which result in environmental degradation, rural poverty, and dependence on government subsidies and donor assistance.

Paper 4, *Changing the Rules of the Resettlement Game*, looks back at how the original ideals of helping the poorest citizens after Independence slowly became corrupted. As the ruling party's popularity began to slide, it became more prepared to use land to reward its supporters. During the 1990s we find that the well-resourced, experience and qualified become eligible for resettlement. After 2000, the criterion for resettlement had been reduced to any black Zimbabwean who was prepared to settle on commercial farms seized from their former white owners.

A Law unto Themselves, the title of Paper 5, traces the legal changes that took place after the expiry of clauses that protected property rights in the Lancaster House Constitution. This paper is a brief legal history of land legislation and policy, from the controversial changes in compensation in the early 1990s to the nationalisation of the land in 2005. More than this, it shows how legislation granted wide discretionary powers to the executive, how the independence of the judiciary was compromised, and how, with every legal power at its disposal, the rule of law was eventually flouted with equanimity.

The last of the papers in Part I, *Promises, Lies and Resettlement Funds*, examines the veracity of claims and counter-claims, especially within the context of the nationalist narrative, of Britain's responsibility to pay compensation for land. It goes on to show how the President mercilessly cleansed large swathes of agricultural land of whites – called settlers, not Zimbabweans – in retribution for British intransigence.

The first paper of Part II critically examines the land audit as set out in the GPA, which is to be carried out under the auspices of Zimbabwe's Inclusive government. If, as the parties agree, the land reform programme is considered 'irreversible', then the merits of the exercise may be limited. The paper will argue that a land audit should not be held hostage, like the constitutional making process, by those responsible for chaos, lawlessness and violence, which were endemic to the land reform programme.

Broadly, the papers that follow will make a series of proposals for land policy reform across communal, resettlement and commercial farming areas. The fundamental argument is that property rights must evolve, continually giving registered owners of land stronger rights and more secure and tradable forms of tenure. Only then will it be possible to seriously discuss the commercialisation of smallholder farming operation, rapid pro-poor growth in the agricultural sector, and the structural transformation of the economy.

⁴ Factor markets are the markets for inputs for production, classically land, labour and capital.