

The Inherent Dignity of Mankind and the Contest for Labels in the Land Issue

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Introduction

Conspicuous in the SADC's land issue is the contestation among stakeholders for the status of "ultimate victim". This is not unique to this particular problem. Whenever disputes arise, stakeholders almost always immediately begin campaigning for the status of "ultimate victim". Those that clinch that status always appear to gain public pity. More importantly, they gain moral, economic, emotional and other forms of desirable support from significant others. Contests are by their nature resource-intensive and energy depleting. A State whose citizens' finite energy and resources are arrested in social conflict significantly reduces its opportunity to engage in other welfare-enhancing projects. It is unfortunate that developing countries that most need to utilise their overall finite human, economic and political resources to better their lot find themselves locked up in fierce civil strife. Even more unfortunate is the appearance of lethargy among their leaders about how best to arrest and efficiently and constructively resolve the disputes. Profound outcomes are left to chance as legal standards are either simply abandoned or ignored. Vagrancy is either sanctioned or acquiesced with by government, superseding the law and other strategies long recognised by civilised society as the preferred means of curing social injustices. Consequently, chaos and fear take over as the predominant architects of land policy in what are essentially agrarian economies. Because of what appears to be an absence in most of these disputes of a deliberate constructive governmental engagement with the dynamics of the problem, the outcome, and to varying degrees, is often that everyone is weakened by the conflict. In the end, few could claim to have benefited from these conflicts. For instance, following on directly from the trigger of the land crisis, the average Zimbabwean now faces hyper-inflation resulting in a spiralling cost of living; shortages of essential basic commodities like paraffin and medicines; transport disruptions due to fuel shortages which are also crippling businesses at all levels; interference with basic human rights such as the freedom of speech, the right to strike, and freedom of association; an absence of effective law enforcement; a chronic lack of foreign currency attributable to economic mismanagement; destruction of personal property; the daily fear of violence, intimidation and actual death.¹ Zimbabwe's economy has topped the world's fastest shrinking economy for some time now and is now said to be in freefall.² Although the government puts inflation at 140 per cent, the International Monetary Fund (IMF) forecasts that it is set to reach 500 per cent in 2003. Although the official exchange rate is 55 Zimbabwe dollars to the US dollar, the unofficial rate is 30 times that, around 1700. The Confederation of Zimbabwe Industry says the country needs 2 million metric tonnes of maize per year, but this year has produced just one quarter of that, 500,000 tons. This is a dramatic, even drastic change in fortunes for a country that once enjoyed the prestigious title of "bread

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See "What the Average Zimbabwean Faces: The Land Issue in Zimbabwe, May 2000", <http://www.scholars.nus.edu.sg/landow/post/zimbabwe/politics/tumpkin/4.html> (visited 20/11/02)

² See "Zimbabwe Economy in Freefall", at <http://www.channel4.com/news/home/z/stories/20021120/zim.html> (visited 21/11/02)

basket of Africa” and exported food products of the highest quality to the European Union, amongst other international markets.

Criminology has developed a whole new area of study that focuses on victims’ concerns and rights – victimology. Radical victimology³ concerns itself with victims of police force action, war, the correctional system, State violence and oppression of any kind. It asks what the victim represents and symbolises in the criminal justice system. It is a useful tool in the evaluation of the risk and effect of crime on citizens. Therefore, the land distribution based crises unfolding in affected SADC States are of significant interest to radical victimology not least because both President Mugabe of Zimbabwe and President Nujoma of Namibia regard the land issue as a matter of war against colonial vestiges in their respective countries. Inaugurating his new cabinet in August 2002 after an unexpected earlier dissolution, President Mugabe referred to it as a “war council” designed to resolve the country’s political and economic problems. He also described the cabinet as a political war cabinet, which would take into account actions being done by Britain and its allies against Zimbabwe.⁴ On 10 October, President Nujoma not only sacked his Prime Minister of 12 years, but also threatened “arrogant white farmers” with stringent land reform proposals.⁵ About 4,000, mostly white, commercial farmers own just under half the arable land. Speaking at the opening of the final three-day session of the World Summit on Sustainable Development, the Namibian President accused the British Prime Minister Tony Blair of creating the land crisis in Zimbabwe⁶ - a dark omen for the future of Namibia’s agricultural industry. In South Africa, those agitating for equitable land redistribution place the landlessness of peasants whose livelihood is dependent directly upon ownership of land on the doorstep of racism and an indifferent post apartheid government.⁷

Positivist victimology specializes in interpersonal crimes of violence. In particular, it is concerned with identification of factors that contribute to a non-random pattern of victimisation and to identification of victims that may have contributed to their own victimization. Affected States of the SADC States have victims that are of interest to positivist victimology because there is a sense in which stakeholders in the land issue are agents to their own victimhood. Therefore, both the positivist and radical perspectives of victimology could inform on the effort juridically to understand the contest among stakeholders for the status of ‘ultimate victim’. Labels intended to justify, sympathise with and to condemn others are evident in the struggle for the coveted label of ‘ultimate victim’. These include *squatter, settler, donor, corrupt, crony, immoral, illegal* and *dictator*.

This article examines the motivations and dynamics of this contest and its probable impact on the resolution of the land issue. More importantly, it seeks to determine the value of this contest to any strategy that consciously may be adopted in the effort juridically to resolve the land issue in affected SADC States. It argues that conceptions of victimology that do not incorporate in their analyses the mischief sought to be cured in the land issue are not particularly helpful in the effort to discover efficient models for the resolution of such conflicts. The view that constructive use of disputes occurs best when those originally and

³ See Rock, P. (1994) *Victimology*, Dartmouth, Aldershot; Mawby, R.I and Walklate, S. (1994) *Critical Victimology*, Sage Publications, London; Lamb, S. (1999) *New Versions of Victims: Feminists struggle with the concept*, New York University Press; Haag, P. (1999) *Consent: Sexual Rights and the Transformation of American Liberalism*, Cornell University Press; McShane, M.D. and Williams, F.P. III (1992) “Radical Victimology: A Critique of the Concept of Victim in Traditional Victimology, *Crime & Delinquency*, vol. 38 No.2 pp.258-51; Friedrichs, D. (1983) “Victimology: A Consideration of the radical Critique”, *Crime & Delinquency*, vol. 29 pp.283-94; Elias, R. (1986) *The Politics of Victimisation*, Oxford University Press.

⁴ See “Mugabe swears in war cabinet”, http://www.news24.com/News24/Zimbabwe/0,1113,2-259_1247732,00.html (visited 20/11/2002)

⁵ See “What Mugabe Does, Nujoma Can Do Better”, *The Financial Gazette* (Harare) at <http://allafrica.com/stories/200210110464.html> (visited 20/11/02)

⁶ See “Nujoma broadsides Blair”, http://www.news24.com/News24/WorldSummit/0,5733,2-1381_1251257,00.html (visited 20/11/02)

⁷ See “Brutal clampdown on fundamental freedoms of Landless People on the eve of the WSSD!” at <http://www.nlc.co.za/wssd/press0222augbrutal.htm> (visited 21/11/02)

directly involved in the conflict actively participate in the discovery of the solution is examined. The SADC land issue has great potential to inform discourse on the form and content of strategies that could be applied gainfully to resolve social disputes that are rooted in injustices connected to colonial experience of the affected State. Because all disputes reflect notions of aggressor and victim, victimology's approach to conflict resolution is crucial to this analysis. Failure to take account of victims' perceived injustices against them may serve only to perpetuate the mischief at the core of the land issue. Therefore, determination of the full range of victims appears critical to a resolution of the land issue because those that are ascribed with victim status also appropriate whatever value attaches to that status while those denied it are left morally bankrupt. This is important not least because in all societies, a good name is better than wealth. And where wealth is at issue, the victim then becomes entitled to some of it or at the very least, to compensation for loss of it.

To the extent that they inform on the form and content of the strategies that eventually may be deployed to advance social understanding and handling of property related social conflict, conceptions of victimology that target preservation of the inherent dignity of all stakeholders in land disputes should be applied. Failure to account for that universal inherent dignity may serve only to perpetuate the mischief at the core of the land issue in that those labelled as "victims" will appropriate all the value associated with that label while those denied it are exposed to social condemnation and even rejection. This calls also for an understanding of the victim's assigned role in the legal systems of affected SADC States; the use and abuse of victims by the politico-economic system; the criminal justice system, politicians; and the media.

Disputes as Property

Criminologists have long argued that professionals steal disputes from the parties directly involved.⁸ Christies⁹ singles out lawyers for this criticism and argues that because they are trained to prevent and solve disputes and to agree among themselves on what is relevant in a case, they have a trained incapacity to let the parties decide what they think is relevant. One consequence of this is that political debates are almost impossible to stage in Courts. Thus, the case of the small thief and the big house-owner never fully tackles the issue of blameworthiness.

The "theft" of disputes by lawyers alleged above is interesting for several reasons. To the extent that it can be proved, it raises the question whether the law merits the priority that it currently enjoys as the primary tool for settling serious disputes in most societies particularly because of its alleged sponsorship and protection of "theft". Secondly, if disputes are regarded as property, then the very fact that officers of the Courts are stealing suggests that they have in some cases a more serious case to answer than their clients. Property, any property for that matter has a measure of value. The property owner's subjective value of his/her property is more important than any objective measure that may be applied to it. This so especially where the property owner is unwilling to exchange for anything, his/her particular property. Therefore, "... conflict itself that represents the most interesting property taken away, not the goods originally taken away from the victim, or given back to him. In our types of society, disputes are scarcer than property. And they are immensely valuable".¹⁰ However, this appears inevitable given that societies appear to have established professionally managed systems for the specific purpose of resolving disputes. The weaknesses complained about social ordering processes run by established professionals that appear to some to dominate those directly involved in the conflict are perhaps outweighed by the outright benefit that they bestow, i.e. prevention of resort to blood feuds – primitive man's common way of resolving disputes. Therefore, the value of the conflict itself is expressed in the disputants' ability to

⁸ See Christie, Nils, (1977) "Conflict as Property", *The British Journal of Criminology*, vol.17 No.1 pp.1-15.

⁹ *Ibid.* p.8.

¹⁰ *Ibid.* p.7.

mobilise legal and moral opinion in their favour. However, victimologists insist that disputants are concerned more with ensuring that resolution process is not monopolised by professionals. They appear to ignore the fact that just as the physician is probably the person most suited to cut open the breast plate of a man whose heart is in need of a triple by-pass operation whilst the patient himself is completely disabled under general anaesthetic, so too must disputants sometimes passively defer to legal professionals. The argument that participation is also a scarce commodity exploited by professional insiders to create monopolies against outsiders¹¹ does not easily square up to the purpose test according to which the intention and objects behind adoption of a resolution strategy must be given effect whenever resort is had to that strategy. This is such a strict test so that even where a statutory instrument confers a wide discretion on an authority, it may not adopt policies or practices that are not authorised by that Statute. In *Padfield v Minister of Agriculture*¹² the Minister of Agriculture refused to direct a complaint to the committee of investigation, claiming that he had unfettered statutory discretion in determining whether or not to refer such complaints. The Agricultural Marketing Act 1958 provided for a milk marketing scheme which included a complaints procedure by which a committee of investigation examined any complaint made about the operation of the scheme 'if the Minister in any case so directs'. It was held by the House of Lords that:

- 1) the Minister would be directed to deal with the complaint according to law;
- 2) the reasons given by the Minister for his refusal were not good reasons in law and showed that he had not exercised his discretion in a manner that promoted the intention and objects of the specific Act
- 3) the policy and objects of the Act must be determined by construing the Act as a whole, and construction is always a matter of law for the Court to determine.

If judicial practice of resolving disputes assumes that trained professionals will apply a particular science, and clients or users of that dispute resolution strategy will use legal representatives trained in the operation of that science in order to make their cases, to then label as 'thieves' of disputes that belong to others the lawyers that are operating as envisaged by the judicial process is to oppose the intention and object of judicial courts. Governments habitually invest huge resources into the training of professionals and experts that run and service our judicial systems. Further, States habitually incur huge costs in the running and maintenance of buildings and other resources used by these professionals and experts only because society has selected judicial resolution of disputes ahead of its rival strategies. Arguments for substituting Barotse Law type judicial approaches for the professionally managed ones because of the perceived advantage that the former approach confers on those directly involved in the dispute, i.e. opportunity to participate fully in the effort to discover a solution, are problematic for three reasons.

First, the greater participation of those directly involved in the conflict is said to obtain from the procedural possibility of the parties to refer to a chain of old complaints and arguments each time they present their case. However, that is a mere possibility and not a guarantee. There is no means of telling or even ensuring that parties to a dispute necessarily exploit that possibility to equal advantage. If inequity in direct participation by those directly involved in the conflict is the mischief that was sought to be cured, there is no means of telling what tangible benefits it actually confers to the resolution process.

Secondly, the Barotse approach appears unworkable for the highly mechanised and very litigious modern societies. Gluckman¹³ writes that Lozi trials were premised on the view that because almost all of a person's relationships exist in his positions in the political and kinship systems, "... a litigant in many cases arising from these multiplex relationships comes

¹¹ Ibid. p.15.

¹² [1968]AC 997

¹³ See Gluckman, M. (2nd edn. 1967) *The Judicial Process Among the Barotse of Northern Rhodesia* (Zambia), Manchester University Press, Manchester, p.23.

to Court not as a right-and-duty bearing *persona*, but in terms of his total social personality”. Thus, in most disputes,

... a person is not involved merely as buyer, seller, lessor, lessee, landowner, the injured party and the wrongdoer – briefly, the plaintiff and the defendant, the complainant and the accused – but he is involved as an individual in specific relationships with a whole set of other people. In administering the law the judges consider these total relationships, not only the relations between right-and-duty bearing units. But concepts of these units exist as nuclei for the substantive law.

While the Barotse approach to dispute settlement may have sufficed for the small communities of 1600 to 1800 Barotseland¹⁴ or Northern Rhodesia (now named Zambia) it would most probably be prohibitively lengthy, expensive and inefficient in modern day Zambia. The backlog of cases would make the justice system an unattractive candidate for dispute resolution.

Thirdly, it simply is not correct to say that professionals steal disputes. Law reports and even newspaper reports always identify the cases that they report by the names of the participants and never by the names of their representatives. In criminal cases, it is always *The State* (in England - Regina) v *Y* (the alleged offender). In civil law cases, it is always the names of the parties directly involved that identify the case being reported. Hiring of professionals that assist parties navigate the judicial examination of their case through the supposedly objective standards of legal science is itself an intelligent acknowledgment by the parties that while they wish to press on with the merits of their case, they individually lack knowledge of the legal science at work required to either prosecute or defend their case. That they employ legal professionals to act on their behalf is strategic intelligence, and not hopeless surrender to some masquerading bunch of criminals. Therefore, to suggest that this decision of the parties to engage professionals amounts to a dispossession of their conflict is to lose focus of the real power dynamic at issue in disputes, i.e. the competition by those directly involved in disputes for labels that may be immediately or eventually conferred by the public, media, law courts. In the UK at least, newspapers that have hurriedly and recklessly awarded the label of victim to a party directly involved in a dispute while judicial proceedings were in progress have incurred the wrath of the Courts which imposed hefty fines for contempt of court, and jurors dismissed, trial proceedings halted and the case either thrown out or fresh proceedings commenced where that was still possible. The jury in the case of two Leeds United footballers accused of attacking a student was discharged following the publication of a prejudicial newspaper article by the Sunday Mirror. The newspaper itself was then ordered to pay £175,000 in fines and costs for publishing the story that resulted in the collapse of the first trial in 2001 of Leeds United Football stars Jonathan Woodgate and Lee Bowyer. In the Queen’s Bench Division of the High Court, Lord Justice Kennedy, sitting with Mrs Justice Rafferty, stated that the timing and content of the article had been “such as to imperil a lengthy, expensive, high-profile and difficult trial at a difficult time”.¹⁵ By presenting to its readership the view that one particular party to the dispute was a “victim” the Sunday Mirror appeared not only to have usurped the Court’s prerogative to determine the guilt or innocence of the accused, but also empowered one party to the conflict, i.e. the “victim”, and morally bankrupted the other, i.e. the accused. This, without applying the legal science that the British society has elected as its principal means for determining the guilt or innocence of parties to disputes. In 1947, the Evening Standard was fined £40,000 plus £50,000 legal costs for revealing that three of the six men on trial for an escape from

¹⁴ See *ibid.*, pp.1-34.

¹⁵ *HM Attorney General v MGN Ltd.* [2002] EWHC 907 (Admin) “Newspaper fined for contempt”, <http://news.bbc.co.uk/1/hi/uk/1938765.stm> (visited 05/11/02). In this connection see also *Attorney General v. Punch Ltd and Another* [2001] Q.B. 1028 [2001] EWCA Civ 403 CA; *Ashworth Hospital Authority v. MGN Ltd* [2002] E.M.L.R. 36 [2002] UKHL 29 HL; *R. v. Ex parte Telegraph Group Plc* [2002] E.M.L.R. 10 CA (Crim Div).

Whitemoor Prison were convicted IRA terrorists.¹⁶ The newspaper appeared to have profaned the rule under British law that a jury decides the case on the relevant facts and not on the history of the accused. By disclosing the unhelpful record of the accused, the newspaper had morally bankrupted the accused and strengthened the prosecutor's case.

This underlines the danger of attaching labels on those directly involved in disputes ahead of the resolution of their disputes. Yet participants are reluctant to wait until the dispute is resolved to label themselves one way or the other. In fact they are eager from the outset to gain recognition as victims. This is curious. McShane and Williams¹⁷ cite criminal justice systems' indifference to victims as the main cause. Prior to the moment of law, victims and their relatives determined the essence of the harm done to them and controlled both the extent of retribution and the extent of their satisfaction with the sanction suffered by the offending party. But from the moment of law, the role of the victim began to diminish. Introduction of concepts such as the "King's Peace", "Public nuisance", "Public disorder", etc. reinforced central authority and enthroned the State as the victim of offences against the individual. While individual victims still showed up to testify at trials, they were no longer the accusers and prosecutors that brought the offender to justice. Instead they served merely to provide emotional credibility to the prosecution's case. This modification of the victim's role from that of arbiter to a mere evidentiary object in the State's mission against the person accused of breaching State law(s) often leaves the victim's sense of harm untouched and unjustified. Victims' sense of neglect by the justice system may even compound their sense of harm. Acknowledgment of their sense of harm that is free from the impersonal and distant justice system is hoped to give a better sense of victim satisfaction.

Those to whom the pleas for recognition as victims are directed are only too ready to make their minds up about whom the real victims are. But this has the effect also of predisposing the concept of victim as the revelatory voice of experience. Herbele¹⁸ writes that such a conception of victim naturalises and individualises the experience of violence rather than politicise it as an effect of power and cultural norms. Evident in the land disputes unfolding in the SADC is the collective position being adopted by parties to the conflict and not individual ones. Cases that have been brought before the High Court of Zimbabwe since the outbreak of land related disputes demonstrate this.¹⁹ Abroad, appeals for financial assistance by both the government of Zimbabwe and the Commercial Farmers Union tended to emphasise the group rather than the individual nature of the parties. The collective positions adopted by those directly involved in the land conflict seek to justify the conflict and its ends – whoever prevails, rather than escape from the conflict and collectively deconstruct it with a view to discovering a constructive and coherent humanitarian approach that recognises that all those directly involved in the conflict have legitimate interests that violence and wanton destruction occurring in Zimbabwe for instance do not serve. The biggest issue in any conflict is not the spoils to be gotten. That view reduces human beings to prize-seekers. Rather it is recognition as "ultimate victim" by those whose opinion matters to the parties. Much of human activity has nothing to do with ultimate prizes. Self-actualised²⁰ persons like Ghandi, Abraham Lincoln and Martin Luther King Jr. are characterised more by their altruistic service to all of humanity than by any individual prizes they clinched purely for material gain. Therefore, the importance to an examination of the land issue in affected SADC States of the corresponding battle for the status of "ultimate victim" among those directly involved in the dispute is critical to any attempt to appraise and evaluate the problem. The importance of labels to discourse on conflict resolution challenges criminology's apparent recklessness in labelling as "thieves" of disputes professionals that assist those

¹⁶ See BBC News (2001) "Q & A: Journalist in contempt", <http://news.bbc.co.uk/1/hi/uk/1268966.stm> (visited 06/11/02).

¹⁷ McShane, M.D. and Williams, F.P. III (1992) "Radical Victimology: A Critique of the Concept of Victim in Traditional Victimology, *Crime & Delinquency*, vol. 38 No.2 pp.258 at 260.

¹⁸ Heberle, R. (2002) "Victimisation and Consent" *Hypatia* vol. 17 No.3 pp.257-64 at 258.

¹⁹ See note 28.

²⁰ A concept discussed in Maslow's theory of motivation. See Atkinson et al. (10th edn. 1999) *Introduction to Psychology*, pp.524-6.

directly involved in a conflict in working out feasible solutions to their problems. Moreover, in most common law jurisdictions, the crime of theft involves appropriation by x of property belonging to y with the intention permanently to deprive him of that property.²¹ Legal representatives do not as matter of course appropriate disputes permanently to the exclusion of their clients. Their only role is to advise their clients who retain responsibility for both the conduct and outcome of their dispute.

Agency and Passivity in the construction of labels

The dualism of victim/agent which liberal legalism and culture appears to privilege over all else in its examination of issues of sexuality and sexual experience of women is sometimes accused of oppressive conduct towards women particularly because it affords them only two options through which to express themselves as public figures. The first is as innocent sexual victims. The second is as rational and therefore probably guilty sexual agents. But this abstract liberal dualism of victim/agent obviously misrepresents issues of sexuality and sexual experience and inhibits progress toward achieving sexual freedom.²² The question is whether similar dualism might colour the liberal press and the liberal world's view of whom among those jockeying for the status of "ultimate victim" in the land issue in affected SADC States actually is a victim and who is not?

The public arena provides the theatre in which disputes are fought out. Logically, it is the place where pursuit of the coveted label of "ultimate victim" is evidenced. Technological gains of the last century have removed national monopoly on public issues of an international character and extended their reach to an international audience that is ever ready to engage in one way or another those directly involved or affected in disputes. Across a whole range of activities, the Internet is arguably the world's most common meeting place today. It has become a potent tool for those keen to mobilise local and international shame against whatever is opposed. Throughout Zimbabwe's land crisis the Commercial Farmers Union of Zimbabwe has used its website even to publicise judicial decisions of Zimbabwean Courts in which it was a party. This had the positive effect of alerting the world about the plight of Zimbabwe's commercial farming community and apparent human rights abuse of the Zimbabwe government. More importantly, it had the effect of persuading both the local and international liberals that Zimbabwe's commercial farmers were the indisputable victims of an autocratic and racist regime. The commercial farmers appeared as victims that had no government to enforce their legally recognised rights even as reaffirmed by their own national courts.²³ The National Land Committee (NLC),²⁴ a South Africa based organisation utilises its website to mobilise shame against the landlessness of the majority of land-starved peasants against the backdrop of an abundance of unused land confined in the hands of a few commercial farmers. Well-researched papers, interviews, reports and stinging posters are placed on this website. Together, they appear to portray the landless black peasant community as the ultimate victim of South Africa's entrenched policies of segregation in that they have not got similar opportunities as their white counterparts to own prime farmland. The commercial farmer is portrayed not as a reluctant powerful beneficiary of the status quo, but as a co-conspirator with the government of the day to maintain apartheid's former oppression of the peasant. The NLC is a fierce campaigner for the case of the landless in South Africa.

With immense power to shrink world events onto our television screens as they unfold, and to engrave positions on our minds through the printed word of newspapers, and to whisper into our ears through radio broadcasts events that they select as news items, those in control of the liberal international media are very much involved in how we arrive at the

²¹ Discussing the elements of the crime of theft see Smith J.C. and Hogan, B (6th edn 1990) *Criminal Law*, Butterworths, London, pp.490-530.

²² Heberle, R, (2002) "Victimisation and Consent" *Hypatia* vol. 17 No.3 pp.257-64.

²³ See for example *The Commercial Farmers Union v. Comrade Border Gezi and others*, Case No. H.C. 3544/2000 <http://www.samara.co.zw/cfu/courtorder.htm> (visited 10/11/02).

²⁴ See <http://www.nlc.co.za/> (visited 10/11/02)

determination of victim/aggressor or agent/victim in every situation that is of interest to us individually and collectively. McShane and Williams²⁵ write that the images that are passed on of the victim are composed largely of middle-class symbolism.

These images of the victim partake of an understanding of crime, and the criminal process, from a distance. They cannot appreciate crime as a major contributor to an underground economy, a relief from the frustrations of living without means in a property-oriented society, ... For the middle class, the victim and offender are part of a strict dichotomy, a mutually exclusive set of categories. The offender cannot be viewed as a victim, nor can the victim be viewed as offender.

They write that the media interpretation of the victim requires a significant counteracting strategy on the part of the consumer because it is often an emotional presentation to which most citizens are vulnerable. "First stories show victims to be like you and me. Then the victimising event is described in sufficient detail to allow consumers to feel some small part of what the victim endured. This, in turn, creates an identity through shared experience, bonding the consumer with the victim. The victim-story usually ends with how the victim's life has been changed forever."²⁶

But the majority of those involved in the contest for the status of "ultimate victim" in the SADC land issue are mere peasants. Articulation of their concerns might be beyond or beneath the machine of middle-class symbolism and the liberal press' interests. Therefore, the contest is a layered one. The concerns of the parties must match those of the liberal press that presents particularly to the universal public, the "issues underlying the conflict" and what is at stake. The party whose interests are ill-suited to the liberal press' agenda risks being ignored. This appears to have given initial advantage to commercial farmers' arguments in the contest for the status of "ultimate victim" because of their proximity in class to the masters and purveyors of the liberal press. Zimbabwe's land issue was often reported as a dangerous experiment with food security in the region, suggesting that access to land should remain the way it was because it ensured food security in both the country and the region. This ignored the power dynamic associated with land ownership and the previous and continuing humiliation of the native population which was alienated from their land and turned into squatters during colonial rule. Therefore, parties must be creative enough to convince the liberal press that they share similar values - a complicated if not near impossible task for uneducated peasants whose interests are at stake in all of this. This begs the question whether articulating this complex and multi-layered quality of the contest for the status of "ultimate victim" in the land issue is at all possible. Nonetheless, those that volunteer to tell us about the nature of the victim in land disputes perhaps inadvertently declare themselves to be knowledgeable about this complexity, and about crime and the criminal process. Whether we escape their presumptive approaches to the subject depends on how skilful we are at processing others' subjective conceptions of victimology. Media coverage of the land conflict in the SADC is no exception. Therefore, the question must be asked to what extent each of the stakeholders jockeying for the status of "ultimate victim" is justified in so doing. Could they merely be creatively seeking to manipulate both the local and international public concern for the situation, in the service of anything but resolution of the land issue? If they are, then the role of a media that is sympathetic to their cause - whatever that may be, or alternatively, that of a hostile media, assumes prominence in the discourse and requires an analysis that goes beyond the victim/agency analysis particularly because of the limitations complained about that approach.

²⁵ McShane, M.D. and Williams, F.P. III (1992) "Radical Victimology: A Critique of the Concept of Victim in Traditional Victimology, *Crime & Delinquency*, vol. 38 No.2 pp.258-51 at p.261.

²⁶ *Ibid.* p.267.

Beyond the victim/agency analysis, Challenging Stakeholder claims of “ultimate victim” status

A major weakness in the victim/agency dynamic is that it sustains the mirror images of liberal legalism which views victims as hapless and in need of protection, or as rational agents that deserve what they get. *Caveat emptor*, estoppel, consent, and capacity are only some of the legal principles commonly used to countenance the mirror image approach to dispute resolution. If these principles were to be applied to the land issue in affected SADC states, the disputes would revert to purely contractual matters. The contract law principle of *caveat emptor* obliges the buyer to beware of the legal sanctity of the title that he acquires in any transaction involving property. International law has developed standards for determining the sanctity of legal claims. Except in situations where the colonial authority clearly passed legislation that unambiguously extinguished all prior forms of titles to land and established completely new forms of land ownership and not a hybrid of the past and the new, native people’s claims to land now under private title of commercial farms subsists.²⁷ The approach taken by colonial authorities in the SADC evidence the enduring existence of native claims to title to land because both the communal and private titles were recognised in German South West Africa, and Tanzania, and in Portuguese Mozambique and Angola where the policy of *assimilado* was employed both to maintain the line between primitive communal existence and to transfer native people’s status from “inferior native” to a form of equality with their colonial master if it could be shown that the native applicant’s style, taste and aspirations had changed from “primitive native” to “advanced western” ones. The British approach to the land question in South Africa, Southern Rhodesia, Northern Rhodesia, Nyasaland and its protectorates in the region of established new private titles to land and also sustained the old communal titles. It favours the view that native claims to land that later became established as commercial farms persist to this day. This flexibility of international law to recognise that which appeared to have been superseded by another era over a considerably long period of time is inconsistent with its rigidity in rejecting under the doctrine of *uti possidetis* that, State boundaries arbitrarily drawn up by the empire nations in 1884 could be redrawn after independence in order to take account of kinship ties that had been violated earlier. Nevertheless, taken in this context the construction of the victim as hapless appears to be the mirror image of the construction of the victim as the manipulative agent who gets what he deserves. Had he thoroughly investigated the sanctity of the title to land that he is now being forced off, he would not have to suffer his current loss. He took the risk, and the benefits of it while it flourished, he must be bold enough to take the downside of that risk too, and not now cry foul. But that approach is contrary to the inherent dignity principle in that it is contingent upon what happened at about the time of colonisation only. Only the person violated then deserves retribution. In human affairs, every moment is as significant as any other. Failure to realise that encourages the exchange of severe thunderbolts among those directly involved in disputes because the sum of the whole is perceived to be greater than the whole. This fallacy potentially can sleepwalk nations into disasters that are sometimes irreparable.

There is not one, but a series of victims in the land issue affecting the SADC. To stop the camera at a particular moment in time and decide that that was the critical moment on which resolution of the land issue should be based appears unreasonable because if it could be proved that commercial farmers that hold nearly all the land most suitable for agricultural production had incontestable claims, then it might also be said that landless peasants would then be condemned to landlessness, a position taken by the High Court of Zimbabwe in *The Commercial Farmers Union v. Comrade Border Gezi and others*.²⁸ This would not enhance their inherent dignity as human beings precisely because they would be reduced to mere squatters that depended on the charity if any, of the commercial farmers who have already shown that they do not wish to have much if anything at all, to do with people that they call

²⁷ See Chigara, B. (2001) “From Oral to Recorded Governance: Reconstructing title to Real Property in 21st Century Zimbabwe”, *Common Law World Review*, vol. 30 No.1 pp.36-65.

²⁸ Case No. H.C. 3544/2000 HE. See <http://www.samara.co.zw/cfu/courtorder.htm>

“squatters”. Besides the conception of crime as “self-help” advocated by some criminologists prefers the moving picture analysis of the offender/victim relationship. By regarding this relationship as an ongoing dynamic, it is possible to realise that one of the actors may be taking retribution on the other actor for an earlier victimisation. “At that particular point, the earlier victim becomes the present offender and the earlier offender the present victim. If the interaction continues, the positions may again be exchanged.”²⁹ This conception of the victim/offender dynamic is typical of the dynamic among those directly involved in the land conflict in affected SADC States. At colonisation, whites drove off native people from land that they had lived off from time immemorial, designated it private commercial farmland and condemned blacks to a life of misery in semi-desert land. In the current disputes, the reverse is taking place. Therefore, the simplistic middle-class framework of pure, innocent victims and unjustified, irrational offenders is inapplicable. But according to McShane and Williams, “middle-class citizens may have difficulty in conceiving of a system where offenders and victims trade places as they act, react, and retaliate in an emergent drama of the sort commonly played in lower-class communities”.³⁰ They conclude therefore that the stereotypical victim/offender dichotomy is simply not capable of incorporating the true complexity of crime even if such versions are dominant among the public and the media.³¹ That dichotomy fails to account in disputes such as the land issue in the SADC for present and continuing social injustices that are rooted in colonial experience of affected States. It fails also to protect the inherent dignity of all those directly involved in the conflict because it enables shame and humiliation to be used as a tool of the conflict. All human rights instruments call for the “respect” and not “humiliation” of human dignity.

Access to land as the basis of human dignity in agrarian economies where the majority of the population live off the land itself

Cecil John Rhodes’ colonisation of Southern Rhodesia, later Rhodesia, and now Zimbabwe was inspired by the need to replicate the diamond and gold success at Kimberly further northwards. Rightly or wrongly, prospectors had reported that “... the whole country between Khama’s dominions, the Zambezi in the north and Gazaland in the East, was enormously fertile. Mashonaland moreover contained ‘some of the richest deposits of alluvial gold in the world’ – utter nonsense in fact, but credible enough in the light of explorers’ reports which were reaching the Administrator”.³² The pioneers soon found that the territory’s diverse mineral resources though not to be compared with its southern neighbour were no match to its fine climate, fertile soils and good rainfall. Thus, Southern Rhodesia’s agricultural potential became an immediate issue, and remains so to this day. Throughout its history, land has remained the most important political and economic issue in Zimbabwe. Successive colonial legislation served to expropriate the most fertile territories with the most agricultural potential from native blacks that had lived off them from time immemorial and confine them in the hands of white commercial farmers. Table 1 shows the approximate apportionment of land in Southern Rhodesia on the eve of World War I in 1914. This table shows that even in this early period, only 3% of the population (whites) controlled 75% of the economically productive land while 97% (black peasants) were confined to 23% of the land scattered into a number of reserves.³³ Zimbabwe’s total land area is an estimated 39 million hectares. Approximately 33.3 million hectares are suitable for agricultural purposes. About 6 million hectares have been reserved for National parks as well as Wildlife and Urban settlements. At independence in 1980, agricultural land was divided along racial lines as follows: 6,000 white large-scale

²⁹ See McShane, M.D. and Williams, F.P. III (1992) “Radical Victimology: A Critique of the Concept of Victim in Traditional Victimology, Crime & Delinquency, vol. 38 No.2 pp.258-51 at p.261.

³⁰ Ibid. p.262.

³¹ Ibid.

³² Gann, L.G. (1965) A History of Southern Rhodesia: Early days to 1934, Chatto & Windus, London, p.68

³³ See <http://www.gta.gov.zw/Land%20Issues/factsheet.htm> (visited 15/11/02)

commercial farmers controlled about 15.5 million hectares almost half the total agricultural land in the country. 840,000 communal area farmers controlled about 16.4 million hectares³⁴ situated in the less fertile, low rainfall, semi-desert areas of the country.

Category	Land held
Africans	24,000,000 acres
The BSAC ³⁵	48,000,000 acres
Individual white settlers	13,000,000 acres
Other Private Companies	9,000,000 acres
During this period, the country's population size was:	
African Population	836,000
Whites	28,000

Table 1: Approximate allocation of land in Southern Rhodesia at the eve of World War I

(i) Mugabe, victim or villain

In the Opening Speech to the Lancaster House talks on the future constitution of Rhodesia, the Patriotic Front listed the land question among its nine major issues for negotiation. The Lancaster House Conference nearly broke-down over the land question. The Patriotic Front wanted the British government to provide money to pay compensation. In his contribution of 11 October 1979 to the debate on the land issue, Lord Carrington,³⁶ stated that:

1. We recognise that the future of Zimbabwe, whatever its political complexion, will wish to extend land ownership. The Government can of course purchase land for agricultural settlement, as we have all seen. The Independence constitution will make it possible to acquire under-utilised land compulsorily provided that adequate compensation is paid.
2. Any resettlement scheme would clearly have to be carefully prepared and implemented to avoid adverse effects on production.
3. The Zimbabwe Government might well wish to draw in outside donors such as the World Bank in preparing and implementing a full-scale agricultural development plan.
4. The British Government recognises the importance of this issue to a future Zimbabwe and will be prepared, within the limits imposed by our financial resources to help. We should for instance be ready to provide technical assistance for settlement schemes and capital aid for agricultural development projects and infrastructure. If an agricultural development bank or some equivalent were set up to promote agricultural development including land settlement schemes, we would be prepared to contribute to the initial capital.
5. The costs would be very substantial indeed, well beyond that capacity, in our judgement, of any individual donor country, and the British Government cannot commit itself at this stage to a specific share in them. We should however be ready to support the efforts of the Government of Independent Zimbabwe to obtain international assistance for these purposes.

³⁴ See <http://www.eisa.org.za/WEP/zimbg2.htm> (visited 15/11/02)

³⁵ British South Africa Company

³⁶ See http://www.gta.gov.zw/Constitutional/Lancaster/lord_carrington.htm (visited 15/11/02)

Nonetheless, an agreement was reached and the Patriotic Front announced it as follows:

We have now obtained assurances that ... Britain, the United States of America and other countries will participate in a multinational donor effort to assist in land, agricultural and economic development programmes. These assurances go a long way in allaying the great concern we have over the whole land question arising from the great need our people have for land and our commitment to satisfy that need when in government.³⁷

Those sympathetic to President Mugabe's land grab policy often cite three reasons why the resettlement programme did not perform as envisaged under the Lancaster House Agreement of 1979. First, under the willing seller/willing buyer principle, land was not offered in sufficient bulk to the government. Secondly, that which was offered to government was the poorer quality land in regions of low rainfall patterns and poor ecological soils. Thirdly, because of the 'fair market price' clause, the government was greatly constrained and there have not been sufficient funds forthcoming to buy the land. But probably the reason lies elsewhere.³⁸

In 1980 President Mugabe's government hosted the Conference on Reconstruction and Development (ZIMCORD) in a bid to mobilise international support for inter alia, finance for resettlement. With hindsight, this began President Mugabe's post-independence campaign for victim status in Zimbabwe's land saga. The impression given then was of a man determined to cure the land mischief in Zimbabwe without upsetting property rights of beneficiaries of the land alienation project begun at the colonisation of Zimbabwe and sustained by successive colonial governments until 1980. Britain, West Germany, the United States of America and others participated. The aid promised at both Lancaster and ZIMCORD trickled in but not with enough strength to knock out the hunger for land that has lasted for over a century now among the native Zimbabweans. Thus, after the first seven years of independence only 40,000 families of the original 162,000 families targeted for resettlement had actually been resettled. In fact, apart from the British Government, which provided £44 million, no other donors have funded land acquisition. In 1990, British aid to Zimbabwe for this purpose was suspended.³⁹ The British government's promise to the Patriotic Front alliance of Robert Mugabe's ZANU and Joshua Nkomo's ZAPU at Lancaster House in 1979 to provide the wherewithal to purchase from commercial farmers land for resettlement of landless native peasants had saved the negotiations from collapse. President Mugabe insists that but for the donors' unilateral repudiation of the agreement to fund resettlement of landless peasants in Zimbabwe, the murders, torture and forcible repossession of formerly commercial farms would not have occurred – a victim status claim. The British government's claims that but for President Mugabe's government's abuse of the money it provided for resettlement of landless peasants, it would have stuck to its Lancaster House Agreement pledge to fund land redistribution in Zimbabwe – another victim status claim. Its claim for victim status originates in the idea of public accountability. Ultimately, public office bearers in Western democracies are accountable to the electorate and taxpayers. The Public Accounts Committee is one of many British Parliamentary committees that police administrative action to ensure transparency that fights corruption in public office. The degree of transparency achieved determines the level of governmental accountability. President Mugabe's requirement that the British government surrenders huge sums of money to his own government and at the same time relinquishes all interest in ensuring that the object and purpose of that exchange is followed through illustrates the falsity inherent in cooperative agreements between developed and developing States that, because cooperation is desired in

³⁷ See <http://www.gta.gov.zw/Land%20Issues/factsheet.htm> (visited 15/11/02)

³⁸ Absence of a joint UK/Zimbabwe supervisory organ to oversee implementation of the compensation/resettlement mechanism as demonstration of the parties' mutual commitment to the agreement in 179 to maintain private property rights in the independent Zimbabwe. Discussed in detail infra.

³⁹ See "How Mugabe abused backing from Britain", *The Times*, 19th April, 2000, p.5.

order to achieve a particular outcome, it will be achieved as a matter of course once an agreement has been reached. It is not just their economies that distinguish them as developed and developing countries, but also their governmental, social and cultural practices. This fact should be acknowledged in all cooperative agreements between Northern and Southern countries by creation of accountability mechanisms that will ensure that Western participation is not sapped by practices that are not acceptable to their own practices and culture of accountability.

Nonetheless, failure of the compensation for resettlement mechanism agreed at Lancaster House undermines a fundamental principle of international law – *pacta sunt servanda*. It manifests also difficulties that two member States of the Commonwealth States⁴⁰ have been experiencing for some time now in the effort to repair their faith in each other. It demonstrates that transient necessity is never a good basis on which to premise cardinal decisions of a constitutional nature. Agreement about the land resettlement mechanism appears to have served two very different purposes. The immediate and perhaps more pressing one was the sustenance of the conference. That was important for everyone involved though the British government might have wanted it more than anyone else because as many have argued, it was they more than anyone else that were responsible for the situation in Rhodesia. Those same voices still insist that having authored the land crisis in Zimbabwe through its colonial adventures, Britain must now fund land redistribution every inch of the way.

The distant and perhaps more remote one but whose moment is at hand was the actual implementation of the agreement. There is a case for saying that these purposes did not carry similar weight for the Patriotic Front Alliance of Mugabe and Nkomo on the one hand and the British government on the other. Although the British government proceeded to actually implement that agreement, there is no doubt it was always the former purpose of the agreement that mattered because of all those that initially promised to fund that agreement, only Britain stood equal to its promise. This suggests that Western emphasis might have been on achieving a result at Lancaster rather than not. Therefore, the compensation/resettlement mechanism was a tactical necessity to keep the talks on track. It could be kicked into touch once the overall purpose had been satisfied. However, for the Patriotic Front Alliance of Mugabe and Nkomo it was implementation of the mechanism that mattered rather than sustenance of negotiations for a settlement. For them, this was a matter of constitutional magnitude.

Had the parties perceived the mechanism as contingent necessity based upon a futuristic goal of mutual importance, then they both might have fought harder to ensure success of its implementation because of the mutual disadvantage failure would inflict on them both. In their contest for the status of ultimate victim, neither the British government nor President Mugabe's ZANU (PF) government thinks that they have lost anything in the consequent crisis. It is not exactly clear what the British government's loss is in the collapse of the mechanism. However, President Mugabe's loss is quite apparent. The argument can be made that without the donor's aid President Mugabe is a cornered man. Starring right into his face is the objective of the liberation struggle, which was to regain land taken away from the native population - it is said. President Mugabe as leader of a post-colonial government has a duty it seems to fulfil the promise for which so many young lives were lost. That is difficult to contest. Also starring into his face is the reality of landless peasants on whose backs the struggle for political independence was waged. These hardened veterans cannot wait any longer for a share of what they believe to be rightfully theirs, and for which they waged a guerrilla war to recover. President Mugabe knows that for far too long now, his government has fed them on the tranquillising pill of gradualism. However, they now appear to have worn off its effects and simultaneously developed immunity to it. Now, even President Mugabe knows that they can wait no longer. Figure 1 below illustrates the problem.

⁴⁰ A coalition of States of the former British Empire.

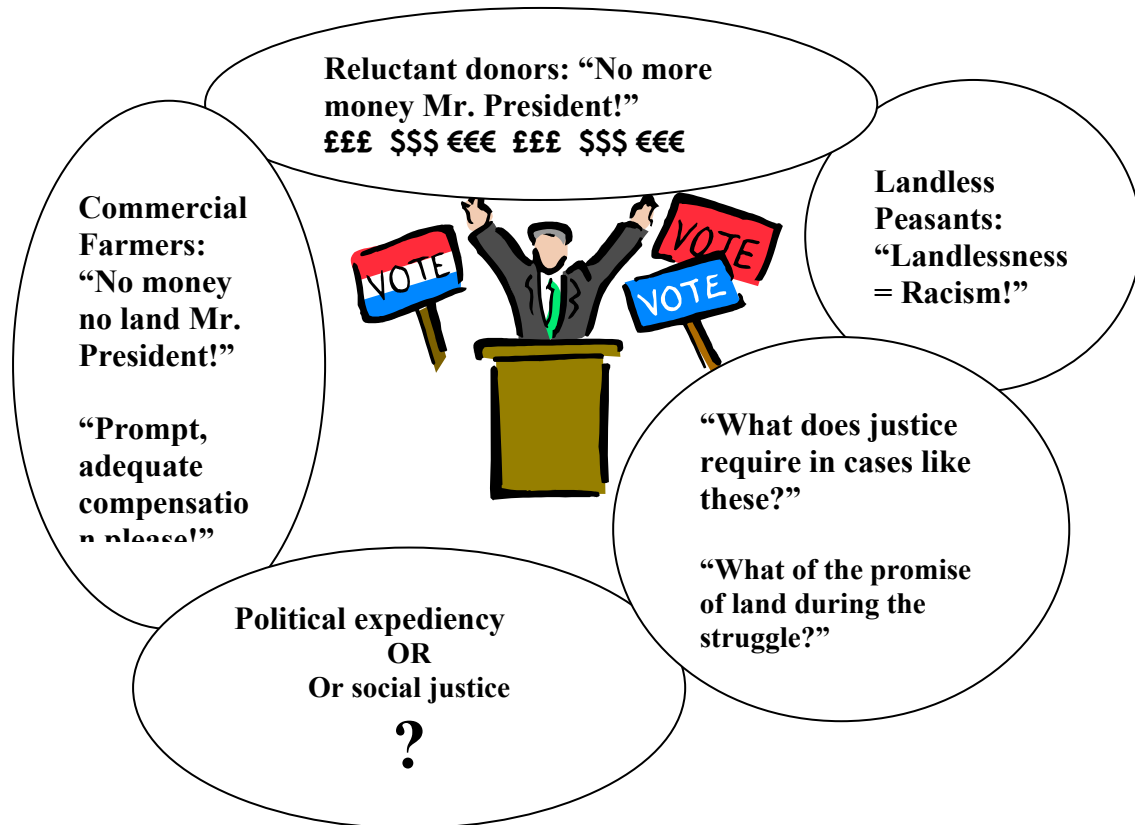


Figure 1: When balancing interests requires more than good will.

In this sense the agreement to proceed on a willing seller/willing buyer basis becomes procedurally cumbersome and practically unnecessary because of the attendant problems. If the unilateral decision by the United Kingdom government to withdraw support for Zimbabwe's land redistribution passes for breach of a contractual agreement, then, there might have been a case for saying that President Mugabe's government could regard the whole compensation for resettlement regime as at an end. The farm invasions suggest that. Breach of fundamental terms of a contract by one party can in certain circumstances entitle the innocent party to regard the contract as at an end.⁴¹ This is the view taken by President Mugabe in his speech of 17 September 1993 to the ZANU (PF) Central Committee.⁴² However, this raises the issue of which between the parties is innocent and entitled to withdraw from the previous agreement. The Vienna Convention on the law of treaties (1969) has similar provisions where the agreement constitutes a treaty, which is what the Lancaster House agreement can be regarded as, notwithstanding the Patriotic Front status as an insurgent group and not itself a State.

(ii) *Britain, victim or agent?*

The United Kingdom government has always insisted that the Zimbabwe government provoked breach and suspension of the contract/agreement by using the compensation/resettlement regime to transfer ownership of private commercial farms from white commercial farmers to a few "friends" of ZANU (PF's), with only cosmetic resettlement of

⁴¹ See *Photo Production Ltd v Securicor Transport Ltd* [1980] AC 827. For commentary on consequences of breach of contract see McKendrick, E. (4th edn. 2000) *Contract Law*, Macmillan, London, pp.383-93.

⁴² See President Robert Mugabe's address to the ZANU-PF Central Committee meeting held Friday September 17, 1993 <http://www.scholars.nus.edu.sg/landow/post/zimbabwe/politics/mugabe.html> (viewed 20/11/02)

landless peasants that genuinely need land to live off. Therefore, argues the British government:

- 1) the Zimbabwe government is not a victim of Britain's breach of the agreement that established the compensation/resettlement mechanism, but a responsible activist and creator of its own "victimisation";
- 2) its good faith in the implementation of the mechanism is evidenced in the more than £40 million pounds that it has already provided President Mugabe's government for compensation of commercial farmers and resettlement of peasants in need of land to live off.

Because it is accountable to the British taxpayer, and because it did not agree to a scheme of transferring land ownership from a few white commercial farmers into the hands of a few friends of President Mugabe's government, but to the landless peasants, the British government could not continue to fund what it had not previously agreed to, and what it had not advised its taxpayers about. In this sense, the British government is the victim of an initial breach of the agreement by President Mugabe's government. It would be naïve to end discussion of the matter here. The British government is as much an agent as it is a victim in a radical victimology sense. Even if the abuse that it alleges against the Zimbabwe government could be proved, the British government would still remain an agent of the fraud it complains about and which it seeks to rely upon to shake off its responsibilities under the Lancaster House Agreement (1979). The UK is no new comer to such agreements, or their implementation. Before it had released even one penny to President Mugabe's government, the British government could and should have established together with the Zimbabwean government, a joint implementation committee to oversee the mechanism's work. Since implementation of the mechanism was going to cost a lot of money, the British government had every opportunity to ensure that the same standards of transparency that it would review its decision whether or not to continue with the agreement were applied. Moreover, it was dealing here with a government of very inexperienced public administrators who had just come out of a sixteen-year civil war. To surrender over £40 million pounds to a new and inexperienced government with the expectation that everything would work out as planned is at best ambitious. The problem of implementing policy is as real one for all States and more so for transitional States. Even after more than twenty years in power, President Mugabe's government is still dismally inept at implementing its own policies. Civil servants are reported to be stifling latest attempts to redistribute land by stealing land confiscated from commercial farmers. In December 2000, Zimbabwe's Local Government and Housing Minister Ignatius Chombo told about 7 000 delegates during a closed session of the ZANU(PF) special congress in Harare that the thefts which were so serious were being carried out by senior officials and threatened to derail President Robert Mugabe's land resettlement programme.⁴³ Therefore, where agreements are concluded that set up mechanisms for land redistribution, parties ought also to establish joint supervisory organs that supervise implementation of those mechanisms, very much the same way as States habitually establish organs that supervise States compliance with human rights instruments that they have agreed to be bound by.⁴⁴ This is because these mechanisms are joint and not individual enterprises requiring for their setting up, and therefore their implementation, the joint effort of sovereign independent States. It is presence of supervisory organs in such enterprises that signifies the benefactor's commitment to the agreement.

Commercial farmers: victims or agents

⁴³ See "New twist as Bob's fat cats grab land", <http://www.sundaytimes.co.za/2000/12/17/news/news02.htm> (viewed 20/112002)

⁴⁴ Discussing these human rights supervisory organs see Chigara, B. (2002) *Amnesty in International Law: Legality under international Law of National Amnesty Laws*, Longman, 127-62.

In his address of 17 September 1993 to the ZANU (PF) Central Committee, President Mugabe rehearsed the historical, moral legal and constitutional position of the commercial farmers regarding the land issue as follows:

The issue of land has become a matter of great dispute between ZANU(PF), on the one hand, and the colonial settler farmers on the other. What is really at stake and is being disputed by the settler farmers who are taking the matter to court, is not the issue of compensation, but the very right of Zimbabwe's Government to acquire land from them and re-allocate it to impoverished landless communal people. They argue that the land belongs to them and is, therefore, beyond the Land Acquisition Act, for it is in fact this Act that they are challenging, not so much from the point of view of the mode of its implementation as from that of its constitutionality. They hope that through court action, they can freeze our land resettlement programme, if not completely kill it.

It is land they have, and on that reckoning, held illegally all along and not under any title from our ancestors. If it is argued that the fact of conquest and defeat can transfer title, and actually did transfer such title, in 1893 and 1897 and thereafter, then it can similarly be argued that the fact of their defeat by us in 1980 has the equivalent effect of re-transferring the land title to the Blacks. Perhaps this is how we should have argued our case and acted. We have been far too decent. If White settlers just took the land from us without paying for it, we can, in a similar way, just take it from them without paying for it, or entertaining any ideas of legality and constitutionality. Perhaps our weakness has been that we have tried to act morally and legally, when they acted immorally and illegally.⁴⁵

Central Committee statements are a good source of the ruling party's directions to government. It is from them that governmental policy derives. The exhaustion of President Mugabe's patience with an obstinate and incorrigible section of his population that refuses to participate in common nation-building endeavours is clear from his speech. So is his determination to ensure respect, promotion and protection of the dignity of the landless peasants whose livelihood depends on ownership of sufficient quality land. There is no dignity in being landless if one's only means of survival is working the land. In his 2002 Heroes' day address, President Mugabe re-stated that those commercial farmers that wanted to pursue their farming careers in Zimbabwe had nothing to fear so long as they subscribed to, and practiced *humwe*.⁴⁶ *Humwe* has been described as the philosophy of commonality, which required the sharing with your needy neighbour/countrymen of that which was in your custody but not in use in order to preserve the dignity of both the recipient's and the sharer. *Humwe's* distributive effect is most needful to undo social injustices rooted in colonial experience of SADC States.

The reluctance of commercial farmers to release land held by them in excess, while others go without is difficult to justify particularly because of the history of land acquisition, ownership and distribution in affected SADC States. Resort to judicial challenges of the constitutionality of applying *humwe* is morally reprehensible in situations where international law clearly suggests that the legal titles of those in current possession of the land that must be redistributed are equivocal. If this is right, then commercial farmers' claims to the status of "ultimate victim" are hollow and difficult to justify. Commercial farmers' claim to be victims of President Mugabe's land grab policy after the suspension of the compensation/resettlement mechanism is compromised generally by the practice of some among their number of:

⁴⁵ See extract from President Robert Mugabe's address to the ZANU-PF Central Committee meeting held Friday September 17, 1993

<http://www.scholars.nus.edu.sg/landow/post/zimbabwe/politics/mugabe.html> (viewed 20/11/02)

⁴⁶ See "Address by his Excellency the President Cde. R.G. Mugabe, on the occasion of the Heroes burial of Dr. B.T.G. Chidzero and Heros day Commemoration, National Heroes Acre, Harare, 12 August 2002 at <http://www.zanupfpub.co.zw/campaign2002.html> (visited 20/11/02)

- 1) Concealing and exporting their grain produce under cover of darkness to neighbouring Zambian and South African markets, only for the products to be imported back into Zimbabwe at a higher price.⁴⁷ Transfer pricing⁴⁸ sabotages economic growth. It does not suggest commitment of those involved to the interests of Zimbabwe. The government responded to this practice with legislation, which listed as controlled products that had to be sold or delivered by commercial farmers to the country's Grain Marketing Board all those crops that had been involved. Section 33 of Chapter 18:14 of the Grain Marketing Act (1996)⁴⁹ makes it an offence to "sell or otherwise dispose of any controlled product within the prescribed area except to the Grain Marketing Board except in a few cases authorised under subsection 8(35). Section 33 of the act states in paragraph 2 that "Any controlled product which is required to be sold to the Grain Marketing Board in terms of this section shall be delivered to the Grain Marketing Board at such time, at such place and in such quantities as the Board may direct and under such terms and conditions as the Grain Marketing Board may provide in any rules made in terms of paragraph 2 of the Schedule."

- 2) Sabotaging food supply by deliberately switching *en mass* from growing staple food products to red chillies, roses and other exotic crops for export is hardly consistent with humanitarian morals. The ICJ stated in the Corfu Channel case that there is a duty to warn others of any danger that they might expose themselves to if they relied upon safety that was always assured but can now not be. This amounts to a humanitarian duty to do unto one's neighbour what one would wish others to do if the roles were reversed. Although this related to duties among States, an analogous reasoning is that commercial farmers have known always of their duty to meet the food requirements of their nations unless nature failed them. English law incorporated this principle even where parties were not in a contractual relationship. In *Donoghue v Stevenson*,⁵⁰ Lord Atkin stated: "The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, who is my neighbour? Receives a restricted reply. You must take reasonable care to avoid acts or omissions, which you can reasonably foresee, would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question". The choice by the commercial farming community to switch from producing essential food crops to exotic crop farming was deliberate, and at a time when their government was amending land rights and access to land in order to ensure equity in the distribution of land among all its peoples. They very well knew, or must have known the effect on the general population of their decision to substitute these exotic crops for maize production, just as they must have known the effect on the whole nation of concealing their grain produce in haulage trucks that then transported it to Zambian and South African black markets under cover of darkness.

- 3) Pursuing racial segregation through establishment of exclusive clubs for the provision of social, recreational, health, education and other amenities in a country that is seeking to heal social injustices of an apartheid era could not be said to be consistent

⁴⁷ See "Zimbabwe government sharply increases crop prices"
<http://www.reliefweb.int/w/rwb.nsf/0/b2fec572410d2851c1256cf6003d932d?OpenDocument> (visited 15/06/03)

⁴⁸ See generally, UNCTAD (1999) Transfer Pricing.

⁴⁹ See [http://www.jutastat.com/CGI-](http://www.jutastat.com/CGI-BIN/om_isapi.dll?clientID=1700010&advquery=Grain%20Marketing%20Act&infobase=stzi&record={125}&softpage=Doc_Frame_Pg42&x=19&y=17&zzz=)

[BIN/om_isapi.dll?clientID=1700010&advquery=Grain%20Marketing%20Act&infobase=stzi&record={125}&softpage=Doc_Frame_Pg42&x=19&y=17&zzz=](http://www.jutastat.com/CGI-BIN/om_isapi.dll?clientID=1700010&advquery=Grain%20Marketing%20Act&infobase=stzi&record={125}&softpage=Doc_Frame_Pg42&x=19&y=17&zzz=) (visited 20/11/02)

⁵⁰ [1932] AC 562 at 580.

with needs of the State.⁵¹ My interview of an insurance clerk who wished to enhance his earnings by changing employment revealed a shocking and enduring trait of racial supremacy among the commercial farming community that is acknowledged by other white employers. At the end of his interview X was told that he could have the job on one condition, i.e. that he understood that at this firm, “the customer is king!” When he appeared immediately to accept that principle, the interviewing officer told him that “X did not quite understand what he meant”. But X insisted he did, and he was happy to work on that principle. The officer then told him what he meant by ‘the customer is king!’. “Our clientele comprises mostly of the farming community. You will be their first point of contact in your role as claims clerk. They will walk past you, shouting things a like ‘What is that monkey doing behind a computer! There are no branches to swing on there are there? When that happens, simply refer them onto us.” X asked what compensation the company had in mind for that sort of trouble. None, he was told. “Take it or leave it!” X rejected the offer.⁵²

Similar resistance to embrace the new national aspirations in post-apartheid SADC States is evident also among sections of the South African commercial farming community. For instance, the right-wing Transvaal Agricultural Union (TAU) challenged in the Land Claims Court in Randburg, Johannesburg the State’s right to expropriate land for its land reform project. The TAU applied to the court for an order which if granted would severely restrict the State’s right to expropriate land for resettlement of landless peasants. The Minister of Agriculture and Land Affairs Thoko Didiza opposed the TAU application. The NLC launched a separate application as a friend of the court in support of Didiza’s bid to oppose the TAU application. The State’s right to expropriate land in the public interest, including redressing the legacy of apartheid land dispossession, is a fundamental right guaranteed under the Constitutional Property Rights clause (Section 25). In another case, the SANDF applied to prevent the return of land now occupied by the Lohatla Battle School to the Gatlhose, Maremane and Khosis communities. The Gatlhose and Maremane communities were forcibly removed from the land in 1977.⁵³ Mugabe⁵⁴ justifiably argues that this nerve of the commercial farming community that benefited directly from the injustices of apartheid to try and employ the legal system to defend the morally indefensible points to the bankruptcy of moralising with them. And if the law should be used to that service, then it too would lose its legitimacy. Therefore, in a radical and positivist victimology sense, very often, when the commercial farmers appeal for the status of victim, the finding is likely to be that their alleged victimiser is actually their former victim who is now stiffening up his back to ensure that the commercial farmer does not continue to abuse them. It can be argued that those commercial farmers that blindly reject pursuit of *humwe* philosophy in post-apartheid SADC States, particularly in relation to access to land - itself a injustice of the legacy of colonialism and apartheid, are victims of a curse that the International Human Rights Movement is totally opposed to, i.e. racism. They refuse to work with others, including their government to create a society where everyone has equal opportunity for self-actualisation regardless of their background. They refuse to learn that “Like life, racial understanding is not something that

⁵¹ Mugabe writes that: “Because of their attitudes, we in Zimbabwe are a sad tale of two cities, the non-racial one we espouse and the racial one they espouse. Observe the situation in the commercial farming sector and you will see (them) running exclusive clubs, playing exclusive games, striving all the time to maintain their own exclusive schools and other amenities.” See “Address by his Excellency the President Cde. R.G. Mugabe, on the occasion of the Heroes burial of Dr. B.T.G. Chidzero and Heros day Commemoration, National Heroes Acre, Harare, 12 August 2002 at <http://www.zanupfpub.co.zw/campaign2002.html> (visited 20/11/02)

⁵² Interview with Tim Mutamiri, formerly Administrative Assistant, Phoenix Prudential Assurance (Zimbabwe). Account of his experience with Farming and Industrial Brokers (Zimbabwe), formerly known as AGI.

⁵³ See “Post-apartheid land reform hangs in the balance” at <http://www.nlc.co.za/pubs/pressstatement0218jun.htm> (visited 21/11/02)

⁵⁴ Supra.

we find but something that we must create. [Therefore] the ability of blacks and whites to work together, to understand each other, will not be found readymade; it must be created by the fact of contact".⁵⁵ The International Human Rights Movement seeks to provide that 'fact of contact' necessary for the human race to face its biggest foe: racism. Slavery, colonialism, apartheid, the First World War, the Second World War and other human catastrophes have all been sponsored by racism.

Conclusion

Whenever disputes arise, stakeholders appear to invest as much energy in fighting their case in the forum where they hope it will be resolved, as in trying to win support or approval of significant others for their position. The prize of the latter campaign is the badge or seal of "ultimate victim". Pursuit of that badge has enormous potential to influence the dynamics observed in the effort to resolve the original problem. This article examined the basis and dynamics of the contest for the status of "ultimate victim" in the SADC's land issue. The SADC's land issue is an example of past and continuing social injustices that are rooted in colonial experience of States. It applied both radical and positivist victimology theory to analyse both the practical and theoretical issues that arise. It showed that almost all the stakeholders in the SADC's land issue are victims as much as they are agents of their victimhood primarily because of the weaknesses inherent in the assumptions on which they base their claims for victim status. Analysis of those assumptions reveals a dynamic that opposes rather than facilitates realisation of the common advantage required to resolve issues of social injustice. Therefore, their claims to the status of "ultimate victim" are unsustainable.

Pursuit of the status of "ultimate victim" is important to stakeholders because it confers on the one who clinches it, a bargaining chip against the one that misses it. The loser or "aggressor" loses moral legitimacy and normally feels compelled to concede more ground than he was initially prepared to. Therefore, it is vital currency for those involved in any dispute. Nonetheless, pursuit of the "victim status" may divert attention of stakeholders from the real issue. It may inflame the negotiating atmosphere, particularly where the significant others whose sympathies are sought are renowned "big" players. In such cases, positions may harden and focus lost of the primary issue. Stakeholders may lose track and control of events that depict the primary issue, allowing for corruption of the main problem to the extent that more effort, time and resources will be needed than before, to resolve the whole problem. This may confuse the issues between the parties, placing farther behind, the possibility of resolving the problem. Therefore, parties to disputes engage in the pursuit of the status of ultimate victim at the real expense of finding a solution to their initial problem.

This article showed that "the inherent dignity" of all concerned was the ultimate victim" and that only it deserved protection. *Humwe's* candidature for the task of placating the mischief at the heart of the SADC land issue was strengthened by its potential to resolve the problem while at the same time upholding the inherent dignity of all stakeholders. Its human rights and social justice pedigree appeared to oppose the commercial farming community's claims of the status of "ultimate victim". However, *humwe's* distributive and human rights qualities alone are not enough constructively to dispense with the land issue in the SADC. Its application will need to be complemented by measures that will restore fully, the peasant/communal farmer to a position that enables each of them to enjoy similar opportunities with regard to distribution and exploitation of their nation's primary resource - land.

⁵⁵King, C.S. (ed. 1983) *The Words of Martin Luther King*, Fount, London, p.33.