Security of tenure, development victims, and the limits of environmental impact assessment in Zimbabwe's communal lands

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Introduction

In 1997 (Mbiba 1997), I argued that communal lands do not offer secure tenure for the people living on them, and that while this insecurity prevails, the inhabitants of communal areas in Zimbabwe will largely remain development victims rather than development agents. Following field visits in Zimbabwe in early 1998, I engaged with professionals and various institutions involved in land matters and was challenged to elaborate on the theme of development victims, and if possible to illustrate my position with detailed examples.

This paper thus draws on the example of the Mutoko District black granite extraction activity to highlight the insecurity faced by communal households in order to show that usufruct rights without ownership of land at the local level do not empower rural communities to *negotiate* development, especially aspects related to compensation for direct and indirect losses occasioned by 'development'. This case further highlights the need to *rein in* the Mines and Mineral Act and amend it in such a way that its provisions are negotiated at the local level, which presently they are not. Implicitly, the paper further argues that, while positive, the upsurge of Environmental Impact Assessment (EIA) as a component of development projects in Zimbabwe offers limited benefits to communal land households in the context of existing legal, administrative and institutional frameworks concerning land. At best, an EIA can help *mitigate* impacts rather than being able to restructure the status quo in any fundamental way. The case also illustrates 'the current threat' to people's lands in low-income communities that are experiencing the impact of globalisation and economic liberalisation and the unfolding 'crisis' as governments are either complicit in the process or too weak to protect local people (Palmer 1996).

Development victims and the Land Tenure Commission 1993–1994

In the earlier article, one of the two points argued in relation to the Land Tenure Commission (LTC) 1993–1994 concerned *development victims* as an issue that did not appear in the inquiry process but was centrally related to investment, compensation, and the security of tenure principle emphasised by the commission.[1] There is no denying that no tenure is secure in itself but that its security is determined within specific socio-political and socio-economic contexts. While freehold tenure in Zimbabwe's commercial farming sector may not be very secure in the current context of 'land designation', it is nevertheless more secure than is communal land. It still affords the owner a basis for negotiation and for compensation while in communal lands, only usufruct rights operate and ownership rests with the president and the state.

The LTC (1993–1994) identified the need for enhanced security of tenure in the communal lands and recommended that:

> *... communal tenure has to be maintained and strengthened through a series of measures that would improve security of tenure and improve the legal and administrative mechanisms necessary for long term evolution of the system to meet changing needs. Traditional freehold tenure for arable residential areas is* secure and this security should improve if the state relinquishes the de jure ownership of Communal Lands and passes on full

> rights to village communities ... *It is the view of the commission that by strengthening village land institutions, the management of grazing and other communally owned natural resources should improve considerably* ...[2]

In response, the Cabinet accepted that the existing communal area tenure be maintained and strengthened.[3] It did not, however, accept the recommendation that the state should relinquish *de jure* ownership of communal land. On the contrary, it believed that the state should retain ownership of communal lands and give only usufruct rights to village communities.

This view represents the status quo position that I had attacked in the 1997 article. As will be illustrated below, this does not offer security nor does it empower communities and households to negotiate fully on development projects. The state owns the communal lands (70 per cent of Zimbabwe's land) giving it a very powerful political position. There are costs to such a position and what is called for here is for ownership of land to be in the hands of communal people, with the state retaining powers to acquire any land needed for the public interest. This is the norm elsewhere in Zimbabwe and in the rest of the world.

Outside government, it also appears that there is consensus on the urgent need to increase security of tenure in communal lands. The question that remains is that of how it should be done. Without title deeds for communal lands, nor control or ownership at the local level, how would such security be enhanced? In rejecting both options, the cabinet opted for the status quo and offered no alternatives. If the Mutoko case is indicative of its view of the way forward, then poor communal households are headed for tougher times ahead.

The Mutoko case: the setting

Mutoko is one of the 57 rural districts in Zimbabwe. Located in the extreme north east of the country, it had a 1992 population of 124,013, and an average of 4.9 persons per household (CSO 1992). The area falls under agro-ecological zones III and IV where rainfall is erratic (700 mm per year), and the soils are poor and not very suitable for intensive arable agriculture. Geologically, the dolerite intrusions are a dominant feature. With erosion, these are now exposed as boulders and *inselbergs*. Despite the low rainfall, ground water and springs are common and associated with the hilly terrain.

Over the years, local communities have adapted their lives to conditions in the area. In addition to livestock raising and subsistence agriculture, they have diversified into cotton production and market gardening. Indeed, before the advent of black granite extraction, Mutoko District was well known in economic terms for its fruit and vegetable produce (mango, guava, tomatoes, cabbages, rape, etc.) which are marketed both in the district and delivered daily to the capital city. The springs and water from the mountains have been central to the economic survival of communal people in the area. In addition, the land, especially the mountains, provides crucial cultural domains where the dead are buried, and where wildlife and livestock graze. Hills form repositories of cultural artefacts; caves, for example, are burial places for people such as chiefs.

Black granite extraction: the local institutions in charge

Between 1980 and 1990, extraction of black granite rose steadily. When polished, the stone is used in building and sold on the domestic and international market. Locally, it is also used as tombstones. Its extraction is by open cast quarry mining involving:

- removal of overburden through blasting and use of front end loaders to clear sites;
- drilling and blasting of rock and boulders;

- cutting, grading, polishing, and transporting rock blocks to markets outside the district.

These activities require large machinery and plant, manual labourers, and heavy vehicles to carry the blocks. In the process, large parts of land are cleared not only at extraction sites but for access roads, offices, and shelter for labourers.

The impact of all this is that grazing lands and wildlife habitats are lost as hills disappear. Arable land and homesteads are decimated both by the extraction and as bulldozers clear access roads. Noise (by day and night) characterises the quarrying activities. Excavated sites are quickly abandoned as operators leap-frog to more virgin sites leaving behind debris and open quarries which are dangerous to both humans and livestock. Over the years, the quantities of granite extracted have increased with the arrival of ever more companies. How have communities and local institutions negotiated compensation for loss of their land and for a share of the economic benefits from such projects?

Prior to 1991, the granite rock was mined just as a resource and not a mineral. Control of the activity rested with the local authority; the Mutoko Rural District Council (RDC). This was responsible for allocating extraction licences and collecting mining levies, and provided a framework for negotiations between local communities and institutions on the one hand and quarry operators on the other. Obviously, the very nature of quarry activity in the area leads to loss of land and incomes on the part of local households, along with their cultural and environmental heritage.

Before 1991, when local land negotiations were still possible, royalties collected by the council were used to upgrade projects and services in the district—for example Mutoko High School and Takabudirira Training Centre. Most of the labourers were residents of the district, which meant some income accrued to local households. Although benefits 'trickling down' to the local communities were very low relative to the profits made by the companies, it appears that people in the area feel these were much more than they are getting now.

Development victims: the post-1991 period

By 1990 it had become clear that black granite was a significant economic activity at national level. Revenue increased from Z$32 million in 1991 to Z$105 million in 1995.[4] Employment increased in tandem with output (see Table 1). Probably because of its significance as a national revenue earner, the government decided to increase its control of revenue from granite extraction by listing black granite as a mineral under the Mines and Minerals Act (1990),

Table 1: Black granite mining in Zimbabwe

Year	Production Labour	Value (m tons)	(Z$)
1991	Not available	79,907	30,260,116
1992	721	90,694	42,782,636
1993	968	40,032	25,870,476
1994	561	106,605	59,442,732
1995	930	121,685	105,906,397

Source: Table 4, EIA (1997).

and so vesting the rights to minerals in the president. Thus, according to the provisions of the Act, black granite control shifted from Mutoko Rural District Council to the Ministry of Mines (Mining Commissioner). The commissioner operating from Harare is in control of all mining permit allocations, and responsible for levies and or negotiating extraction activities. He or she, and not the RDC, is the local authority when it comes to mineral extraction.

The RDC, which before 1991 collected for local uses levies to the value of over Z$500,000 per year now collects as little as one-tenth of that amount. The fee for mining at the local level is now like that for any other ordinary activity such as operating a general dealer and so on. The consequences of this change in control have meant that local communities, the RDC (as local authority), and traditional leaders (chiefs and spirit mediums) have no control over activities of the quarry operators. These operators are now only accountable to the 'land owner'—the Mining Commissioner. The operators are not legally or administratively obliged to compensate communities for their loss of land, livestock, cultural heritage, peace, or incomes lost.

This is the setting within which *The Sunday Mail*, for example, presented the plight of 400 families (approximately 2,000 people) faced with eviction by mining activities. The callousness of this and other activities arising from insecure tenure of communal lands is captured by a plea from one villager who lamented:

> *... There are orchards that have been in existence for more than 50 years and for the villagers to be removed and to plant new orchards is something else.... No amount of money was promised as compensation but they promised to come back before end of next month with figures as to how much each homestead will get and where we will be resettled.*[5]

As reported in *The Sunday Mail*, villagers were promised compensation for their orchards, fields, and houses. They would be compensated for brick houses and not huts or any other losses. Obviously, the magnitude of losses outlined in the 1997 EIA Report far exceeds what is promised as compensation. What is also very clear from this report—confirming some observations of the EIA (1997)—is that local authorities, chiefs, and inhabitants have no power to negotiate mining activities or the level and nature of compensation. The Mining Act overrides all other provisions and interests.

What form of land tenure in communal areas?

As apparent from the various Land Commissions and policy initiatives instituted in Southern Africa over the past ten years (from Tanzania down to Namibia and South Africa), the phenomenon of development victims is highly intertwined with the question of appropriate land tenure. What form of land tenure in communal areas would ensure both security of tenure as well as enable communities (as collectives) to negotiate with the state? The Tanzanian Commission as well as that of Zimbabwe suggested that vesting control in village assemblies (*dare* or *inkhundhla*) instead of the state would provide security without individualising land tenure.[6]

This paper agrees with these commissions in terms of the urgent need to reduce state control at the micro level, but differs in that the routes to village assemblies or any local 'collective institutions' should be based solidly on comprehensive individual tenure. The following reflections are an attempt to elaborate this view.

As highlighted by Cheater (1990:201–202) through the Communal Land Act (1982) and other related regulations, the government of independent Zimbabwe has entrenched the settler colonial process of centralising land administration under state

control. This has subordinated customary control—what little of it still existed—and stifled individual initiative generally. The case of Mutoko granite can be used to emphasise how state control fails to compensate development victims and how such an experience acts as a disincentive towards investment in the land at the local level. Hence the need to institute land reforms that transfer micro-level land control away from the state towards the grassroots.

The view here is that such a system starts from below with individual tenure and accountability for all arable, residential, and grazing land; a mechanism that allows first and foremost a community member to assert his/her land rights in his/her own standing. This should remove state control from micro-level details of land management to concentrate on policy issues while retaining the option to transfer land resources from the individual to the public domain wherever and whenever a public need has been identified and justified. Adequate compensation for the individuals affected would be negotiated in such cases.

This is not to advocate a 'blatant' market-driven land economy, as some may presume. Rather, it responds to evidence from the people. History has it that freehold land tenure was attempted for the communal areas (then native reserves) in the 1950s when implementing provisions of the Land Husbandry Act (1951) during settler colonial days. Africans are said to have rejected this quite vigorously (Rukuni 1994:26; LTC 1994 Vol. 2:377). Yet evidence also shows that the Africans who were recipients of these 'freehold land' allocations never (I repeat, never) repudiated those pieces of land. What the Africans in the then Rhodesia were rejecting (and still reject) is not freehold or individual tenure to land, but the 'injustices' and racially inequitable basis upon which it was (and is) premised and the heavy-handed manner of its enforcement.

In fact, in present-day Zimbabwe, the communal land-allocation processes and dispute resolution at the local level continue to adhere to structures set under the Land Husbandry Act (1951). Villagers in the government's internal land re-organisation programme in the 1980s in areas such as Mwenezi District (in the south west of Zimbabwe) used these as the organising reference point. Where attempts were made to ignore them, the programmes stalled. The point is that there is no popular land tenure alternative to that based on individual tenure in Zimbabwe's communal areas. Even in the prohibitive framework of Zimbabwe's laws, reports show that not only is land individually owned and utilised, but that rampant market exchange in land is also taking place (Cheater 1990; Moyo 1995).

Therefore, rather than start from the top (state control), tenure reform and land policies should give control to the individual from where we can build family then community control—and not the reverse. As suggested by Professor Ncube (1996:21) in reference to practices and calls for village committees, this call for village assemblies is a traditional utopia based on reviving 'a badly misunderstood and long dead past of social and community solidarity and harmony'. The land commissions on which land reform policies are largely based are 'fudged' and designed to maintain the status quo of state control (Mbiba 1997) and of the 'male-chief' (ZWRCN 1996).

They marginalise the majority of peasants and exclude any radical submissions from the affected people, as became clear in the handling of gender issues by Zimbabwe's LTC (1993–1994). Women comprehensively called for gender equity in land resource use through allocation of land to 'women in their own standing'. Yet in the commission's three-volume report, evidence from women on this score was ignored in preference to maintenance of the male-chief status quo (ZWRCN 1996:6–8). Hence Moyo's recent call that for sustainable land reform to emerge we need independent, publicly accountable land commissions (Moyo 1998:46).

Conclusion: empower communities and amend the Mines and Minerals Act (1990)

The EIA for black granite in Mutoko is very elaborate in presenting the conflict and losses to the community occasioned by increased quarry-mining activities. This is happening in a new framework where neither the communities nor their local-level institutions are legally and administratively empowered to *negotiate* such development activities. Within the existing framework, the EIA can at best *mitigate* impacts but cannot dismantle the major inherent structural injustices in existing tenure and legal provisions for communal lands.

It has to be emphasised that mining activities have been one of the fastest growing economic sectors in Zimbabwe in the 1990s (together with tourism). Mining is second only to agriculture as the key economic sectors and employers in the country. (Quarterly Economic and Statistical Review 1997). The point we must underline is that by calling for security of tenure and amendments to the Mines and Minerals Act (1990) the objective is *not* to stop mining activities but rather to empower *communities* at the local level so that they can negotiate how such activities can proceed. Rather than be told what compensation they will get and for what items, they should be empowered to negotiate such compensation, its form, timing, and targeting. At present, rural communal communities are treated no differently from what was meted out by settler colonialists between 1900 and 1980. Even under the same Mines and Mineral Act, communal households fair badly compared with colleagues on freehold land.

Consequently, unless the issue of development victims is addressed more seriously there can be neither sustainable development nor security of tenure in the communal lands. In view of this, it becomes difficult to reject freehold tenure in favour of the status quo.

Notes

1 LTC refers to *The Report of the Commission of Inquiry into Appropriate Agricultural Land Tenure Systems; Under the Chairmanship of Professor M. Rukuni, 1993/94* (report made public 1995), Harare: Government Printer.

2 Recommendation 185, LTC 1994, Vol. 1:49.

3 The government's response to the report has never been published although 'snippets' have been given on various occasions by officials from the Ministry of Lands and Agriculture, mainly at workshops.

4 EIA 1997:47. In 1981 one Zimbabwe dollar was worth US$1.4. The exchange rate fell over following years: 1995 Z$1 = US$0.6; 1990 Z$1 = US$0.4; 1994 Z$1 = US$0.1; 1997 Z$1 = US$0.06.

5 '400 families face eviction', *The Sunday Mail*, Harare 1 March 1998:1.

6 *Dare* and *Inkhundhla* are, respectively, the *Shona* and *Ndebele* language equivalents of village assembly.

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Hurricane Mitch and human rights

Grahame Russell

> *We are very fragile in many areas. That's what 'poor' means.* (Arturo Corroles, Government of Honduras)

In late October and early November 1998, Hurricane Mitch moved through Central America, dumping as much as six feet of rain on some regions. Its harshest impact was on Honduras and Nicaragua, affecting to lesser extents Guatemala, El Salvador, Belize, Costa Rica, and the southern Mexican state of Chiapas. More than 22,000 people were killed or are missing and an estimated three million homeless or otherwise affected. According to Tito Sequeira of the Government of Nicaragua, 'We will never know the real death toll, since many people were buried by mud. Entire families died in distant villages where there is no one to report their disappearance.'

Most direct and indirect victims of Mitch already lived in impoverished and precarious conditions. Of the homes destroyed in Tegucigalpa, the Honduran capital, 'many were one-room hovels that blanketed the steep hills surrounding the city, poor areas long since denuded of trees by residents needing firewood. The soil had poor drainage and the waters from Mitch's downpours had nowhere to go, so thousands of homes were simply swept away in flash floods and mudslides' (*Washington Post* 14 November 1998). According to the UN, over 70 per cent of Nicaragua's population were already living in conditions of poverty that