

2012

## Fast Track to Collapse: How Zimbabwe's Fast-Track Land Reform Program Violates International Human Rights Protections to Property, Due Process, and Compensation

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### Recommended Citation

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# **FAST TRACK TO COLLAPSE: HOW ZIMBABWE’S FAST-TRACK LAND REFORM PROGRAM VIOLATES INTERNATIONAL HUMAN RIGHTS PROTECTIONS TO PROPERTY, DUE PROCESS, AND COMPENSATION**

CAITLIN SHAY\*

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## INTRODUCTION

Since 2000, Zimbabwe has embarked upon a controversial fast-track land reform program to redistribute large commercial farms mostly owned by white farmers to landless black Zimbabweans who were dispossessed during colonialism.<sup>1</sup> Today, the program

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1. See Blair Rutherford, *The Rough Contours of Land Reform in Zimbabwe*, 29 FLETCHER F. WORLD AFF. 103-05 (2005) (reporting that in the first five years of the land reform program, Zimbabwe acquired 5,890 commercial farms and slated them for resettlement for landless beneficiaries); cf. Hasani Claxton, *Land and Liberation: Lessons for the Creation of Effective Land Reform Policy in South*

continues to spark controversy and violence against white landowners.<sup>2</sup> On October 26, 2010, Kobus Jobert became another victim of the chaotic land reform program, when his wife was assaulted and he was murdered in his home by a gang, after his home was identified for redistribution.<sup>3</sup> In spite of the violence resulting from the land reform program, individual blacks own no more land today than they did during the colonial period.<sup>4</sup>

This comment explores the reasons why Amendments 16A and 16B of the Zimbabwean Constitution, which authorize fast-track land reform, violate minimum international standards regarding the right to property and due process.<sup>5</sup> Part I will explain how Zimbabwe's colonial history has led to its current drastic land reform policy.<sup>6</sup> It

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*Africa*, 8 MICH. J. RACE & L. 529, 544 (2003) (stressing that land reform, implemented fairly, may be one of the most effective ways to ease economic disparities and racial tensions for future generations).

2. See Leah Hyslop, *White Farmers in Zimbabwe Struggle against Increasing Violence*, THE TELEGRAPH (June 11, 2010), <http://www.telegraph.co.uk/expat/expatnews/7818110/White-farmers-in-Zimbabwe-struggle-against-increasing-violence.html> (reporting an increase in arrests and land seizures by local government activists in mid-2010). But see Andrew Hartnack, *Transcending Global and National (Mis)representations Through Local Responses to Displacement: The Case of Zimbabwean (Ex-)Farm Workers*, 22 J. REFUGEE STUD. 351, 363-64 (2009) (revealing that more blacks who work on white-owned commercial farms have been killed and beaten than white farmers, but their plight has been far less publicized).

3. See Tererai Karimakwenda, *White Commercial Farmer Shot and Killed in Chegutu*, SW RADIO AFRICA (Oct. 27, 2010), <http://www.swradioafrica.com/news271010/whitecom271010.htm> (elaborating that the 67-year-old white farmer was shot in the head, and US\$10,000 was stolen from his home); see also Lebo Nkato, *Two Held over Farmer's Murder*, NEW ZIMBABWE.COM (Nov. 24, 2010), <http://www.newzimbabwe.com/news/printVersion.aspx?newsID=3884> (explaining that the Commercial Farmers Union is hesitating to claim a political motivation behind Jobert's murder).

4. See Thomas W. Mitchell, *The Land Crisis in Zimbabwe: Getting Beyond the Myopic Focus upon Black & White*, 11 IND. INT'L & COMP. L. REV. 587, 593 (2001) (arguing that despite efforts to reverse the effects of colonial laws that barred blacks from buying land, the government has resisted distributing any ownership rights, and has instead issued non-freehold tenure and leases).

5. See discussion *infra* Parts III-IV (arguing the numerous international law standards that Amendments 16A and 16B contradict, including the prohibition on racial discrimination, arbitrary deprivation of property, denial of fair compensation, and inability to access courts).

6. See discussion *infra* Part I.A (explaining that Zimbabwe has taken extreme measures to reach its land reform goals, which has, in turn, caused violence, economic instability, and human rights violations).

will further define the rights enshrined in the Universal Declaration of Human Rights (UDHR) and the African Charter on Human and Peoples' Rights (Banjul Charter) which guarantee the right to property and due process of the law.<sup>7</sup>

Part II will argue that although land reform is needed in Zimbabwe, its current law is arbitrary, racially discriminatory, disregards due process, and denies compensation for property takings.<sup>8</sup> It will further argue that the Southern African Development Community (SADC) Tribunal's decision that Zimbabwe's land reform is discriminatory and denies access to the courts conforms to international standards, and that Zimbabwe is required to follow it.<sup>9</sup>

Part III recommends that Zimbabwe recognize the SADC Tribunal's decision and implement its judgment domestically.<sup>10</sup> This section also encourages Zimbabwe to amend its constitution to meet international standards.<sup>11</sup> Lastly, the Comment concludes that Zimbabwe is currently heading down a dangerous path, which isolates it and decreases its legitimacy within the international community.<sup>12</sup> Thus, if Zimbabwe changes its law to respect human rights standards, it can begin to rectify these errors.<sup>13</sup>

## I. BACKGROUND

When President Mugabe became the first president of the independent Zimbabwe in 1980, he pledged to undo the devastating

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7. See discussion *infra* Part I.C (stating the minimum international standards to which all states must comply).

8. Cf. discussion *infra* Part II (referring to Articles 15 of the UDHR and 14 of the Banjul Charter on the right to property, and Articles 8 of the UDHR and 7(1)(a) of the Banjul Charter on the right to due process).

9. See discussion *infra* Part II (noting that Zimbabwe's Supreme Court has stated that, under most circumstances, as long as public policy is not contradicted, it should adhere to SADC Tribunal decisions).

10. See discussion *infra* Part III.A, C (suggesting that in the absence of this development, potential plaintiffs should continue to make use of foreign and regional courts).

11. See discussion *infra* Part III.B (suggesting that Zimbabwe could meet international standards by moving towards negotiated land reform instead of compulsory acquisitions).

12. See discussion *infra* CONCLUSION (observing that nations that have previously supported Zimbabwe have distanced themselves since Zimbabwe began its fast-track land reform program).

13. See *id.* (encouraging Zimbabwe to take tangible steps to reform its laws).

effects of colonialism and improve the plight of oppressed Africans in Zimbabwe.<sup>14</sup> Since land reform efforts have begun, Mugabe has not met this promise, as black Zimbabweans who have received land in redistribution often have limited resources or insufficient funds to productively use the land they are given.<sup>15</sup> Remaining white landowners have insecure tenure and are victimized by those carrying out violent evictions.<sup>16</sup> Investors are hesitant to invest money in Zimbabwe because there is insecure tenure and no promise of fair compensation for redistributed property.<sup>17</sup> Over 500,000 ex-farm workers have become internally displaced after their employers were evicted from land.<sup>18</sup> Today, these tensions pervade public policy, economics, and legal discourse.<sup>19</sup>

#### A. ZIMBABWE'S POST-INDEPENDENCE LAND REFORM EFFORTS

When Zimbabwe gained independence from Great Britain in 1980, it agreed to restrict compulsory land expropriations for ten years.<sup>20</sup>

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14. *But cf.* Nick Dancaescu, *Land Reform in Zimbabwe*, 15 FLA. J. INT'L L. 615, 618 (2003) (recounting that at independence, Zimbabwe was considered a shining example of an African nation that was able to cast off the burdens of colonialism).

15. *See* Heather Boyle, Note, *The Land Problem: What does the Future Hold for South Africa's Land Reform Program?*, 11 IND. INT'L & COMP. L. REV. 665, 696 (2001) (claiming that redistribution of land in Zimbabwe is ineffective because the people receiving land do not have the knowledge or tools to make it productive); *see also* Ngoni Chanakira, *White farmer takes farm back*, NEW ZIMBABWE.COM (Jan. 4, 2011), <http://www.newzimbabwe.com/news/printVersion.aspx?newsID=4197> (revealing that some of the land reform program's beneficiaries have actually re-leased the land they were given to its former owner, because the new beneficiary lacks the resources to effectively use the land).

16. *See* Karimkwenda, *supra* note 3 (recounting deaths and assaults on white farmers from violent land invasions and evictions).

17. Bureau of Afr. Affairs, *Background Note: Zimbabwe*, U.S. DEP'T ST. (Nov. 3, 2010), <http://www.state.gov/r/pa/ei/bgn/5479.htm#econ> (stating that investor confidence remains low in Zimbabwe because of tenure insecurity and the land reform laws).

18. *See* Hartnack, *supra* note 2, at 351 (recounting the obstacles and stigma that ex-farm workers face, including exclusion from redistribution allotments, if they support the interests of their "white bosses").

19. *See, e.g.*, Rutherford, *supra* note 1, at 103 (contrasting Zimbabwe's polarized image either as a "land sinking into quagmire and poverty or as a land at the forefront of the battle against racist Western imperialism"); *see also* Bureau of Afr. Affairs, *supra* note 17 (revealing that Zimbabwe's economy has contracted forty percent since 1999 and large scale commercial farming has mostly collapsed due to aggressive land reform laws).

20. *See* Agreements Concluded at Lancaster House Conference, U.K.-Zim.

During these years, Zimbabwe used a “willing buyer, willing seller” method to redistribute land.<sup>21</sup> This voluntary land redistribution method allowed individuals to purchase land from private landowners with government loans.<sup>22</sup> While this program did redistribute some land, critics complained that the process moved too slowly.<sup>23</sup>

In 1992, Zimbabwe passed the Land Acquisition Act to allow the government to acquire land compulsorily from owners, accompanied by fair compensation for the property.<sup>24</sup> Seven years into the

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Rhodesia, Annex C, pt. C, § V(1), pt. E, para. 30, Nov. 22, 1979, 19 I.L.M. 387 (1980) [hereinafter Lancaster Agreement] (allowing any property the government acquires to be contested in court and entitling the former owner to adequate and prompt compensation, and limiting changes of this provision for the first ten years after its passage by requiring a unanimous vote in the House Assembly and two-thirds vote in the Senate to repeal it); *see also* Jonathan Shirley, Note, *The Role of International Human Rights and the Law of Diplomatic Protection in Resolving Zimbabwe's Land Crisis*, 27 B.C. INT'L & COMP. L. REV. 161, 162 (2004) (conveying that Great Britain put limitations on property acquisition to protect white farmers in majority-ruled Zimbabwe).

21. *See* David Shriver, Note, *Rectifying Land Ownership Disparities Through Expropriation: Why Recent Land Reform Measures in Namibia are Unconstitutional and Unnecessary*, 15 TRANSNAT'L L. & CONTEMP. PROBS. 419, 433 (2005) (defining the “willing buyer, willing seller” method as a system used to voluntarily transfer land from colonial landowners to previously disenfranchised stakeholders). At the time, Great Britain also agreed to contribute funding to allow the Zimbabwean government to purchase land. *Id.*; *cf.* Claxton, *supra* note 1, at 541 (comparing this agreement to Kenya's, in which the government agreed not to compulsorily expropriate land in exchange for foreign funding).

22. *Cf.* Hans P. Binswanger-Mkhize et al., *Introduction and Summary*, in AGRICULTURAL LAND REDISTRIBUTION: TOWARDS GREATER CONSENSUS 3, 21 (Hans P. Binswanger-Mkhize et al. eds., 2009) (differentiating Zimbabwe's program from Namibia's, in which all private landowners were required to offer their land to be purchased by the government before attempting to sell it on the market, giving the government a “right of first refusal” for all property).

23. *See* Shriver, *supra* note 21, at 447 (quoting Namibia's Prime Minister who found that the willing-buyer, willing-seller approach was overly cumbersome to reach the land reform programs' ultimate goals); *see also* Claxton, *supra* note 1, at 544 (arguing that market-based land reform tactics are not sufficient in nations that engage in widespread restructuring of land distribution). *But see* Bill H. Kinsey, *Land Reform, Growth and Equity: Emerging Evidence from Zimbabwe's Resettlement Programme*, 25 J. S. AFR. STUD. 173, 177-78 (1999) (emphasizing that despite criticisms, Zimbabwe's voluntary land reform program, to date, has significantly outpaced all other such programs in sub-Saharan Africa).

24. *See* Land Acquisition Act (Act No. 3/1992), as amended, c. 20:10, § 29C(1) (Zim.) (requiring just compensation for all land acquired for redistribution

program, by 1999, 71,000 black families had been resettled.<sup>25</sup> In 2000, Zimbabwean voters rejected a constitutional referendum that would have allowed the government to further implement its fast-track land reform program based primarily on compulsory land acquisitions.<sup>26</sup> Instead of accepting defeat, President Mugabe and Parliament passed constitutional Amendments 16A and 16B, which allow the government to acquire land without safeguards to prevent arbitrary application, guarantees to due process, or compensation.<sup>27</sup>

Amendment 16A requires Great Britain, instead of Zimbabwe, to pay landowners for their expropriated property.<sup>28</sup> It justifies this by claiming that Great Britain has the responsibility to pay because it colonized Zimbabwe and dispossessed legitimate owners by

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or any other purpose); *see also* BRIAN MACGARRY, *LAND FOR WHICH PEOPLE?: SOME UNANSWERED QUESTIONS* 17 (1994) (explaining that the Lancaster Agreement made it much easier for Zimbabwe to do large-scale land acquisitions only after 1990).

25. *See, e.g.*, Shirley, *supra* note 20, at 163 (emphasizing that these 71,000 families were resettled through government purchases of 3.8 million hectares of land, using fair compensation as the payment standard). *But see* Boyle, *supra* note 15, at 693 (referring to evidence that Zimbabwe has redistributed land corruptly, and that some recipients of redistributed land are not those most in need, but President Mugabe's political cronies).

26. *See Zimbabwe says no*, GUARDIAN.CO.UK (Feb. 16, 2000), <http://www.guardian.co.uk/world/2000/feb/16/zimbabwe.guardianleaders> (reporting that Mugabe severely miscalculated his political strength, leading to the rejection of his referendum); *see also* Rutherford, *supra* note 1, at 104 (naming this defeat as a landmark moment for Zimbabwe because it was the first time the ruling party faced real opposition to its policies).

27. *See* CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), art. 16A(2) (listing factors that may affect assessments for compensation for improvements, but not mentioning factors that should be used to determine which land to target) (preventing landowners from applying to courts to challenge acquisitions) (prohibiting compensation for land acquired for redistribution, except for improvements); *see also* Anne Hellum & Bill Derman, *Land Reform and Human Rights in Contemporary Zimbabwe: Balancing Individual and Social Justice Through an Integrated Human Rights Framework*, 32 *WORLD DEV.* 1785, 1792 (2004) (recounting that after the referendum was rejected, Mugabe introduced the exact same words into an April 2000 amendment, which was then adopted by Parliament).

28. *See* CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), art. 16A(1)(c) ("The former colonial power has an obligation to pay compensation for agricultural land compulsorily acquired for resettlement, . . . and if the former colonial power fails to pay compensation through such a fund, the Government of Zimbabwe has no obligation to pay compensation for agricultural land compulsorily acquired for resettlement.")



promulgating and enforcing racist laws.<sup>29</sup> Amendment 16B eliminates notice requirements for land redistribution and prevents landowners from challenging government acquisitions in an independent court.<sup>30</sup> After these changes were made, violent land seizures gripped Zimbabwe, with so-called “war veterans” invading large commercial farms and violently forcing out the owners.<sup>31</sup>

#### B. THE RIGHT TO PROPERTY UNDER THE UDHR AND THE BANJUL CHARTER

International law is somewhat ambiguous on the minimum standard for an individual’s right to property, and when a violation of that right occurs.<sup>32</sup> International courts have been hesitant to protect

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29. See *id.* art. 16A(1)(a)-(c) (naming the most important factors related to land redistribution: 1) that the people in Zimbabwe were unjustifiably dispossessed of their land during colonial domination; 2) that Zimbabwe regained independence by taking up arms against the colonizers; and 3) that to reassert their rights and regain ownership to their land, Zimbabwe should be able to compulsorily acquire land from current owners without paying them). *But see* Shriver, *supra* note 21, at 451 (questioning the legality of the Zimbabwean government’s controversial decision to not provide compensation to owners, and concluding that such a decision violates international standards).

30. See CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), art. 16B(3)(a), (4) (“A person having any right or interest in the land shall not apply to a court to challenge the acquisition of the land by the State, and no court shall entertain any such challenge . . . . As soon as practicable . . . the person responsible under any law providing for the registration of title over land shall, without further notice, effect the necessary endorsements upon any title deed . . . for the purpose of formally cancelling the title deed and registering in the State title over the land.”); see also ISAAC MAPOSA, CATHOLIC COMM’N FOR JUSTICE & PEACE IN ZIM., LAND REFORM IN ZIMBABWE 73-74 (1995) (interpreting the Land Acquisition Act, the implementing legislation for Amendments 16A and 16B, to also deny individuals access to the court to contest land designation, acquisition, or fairness of the amount of compensation for improvements).

31. See Alex Bell, *Zimbabwe: Farmers Slam Fresh Onslaught of Land-Grab Violence*, ALLAFRICA.COM (Oct. 28, 2010), <http://allafrica.com/stories/201010290064.html> (reporting that landowners have been assaulted, severely beaten, killed, and forced to leave their homes by gangs, without any prior notice). Many of the so-called “war veterans” involved in these land invasions were likely thugs hired by or implicitly supported by the government. Peter Godwin, *Ulterior Motives: Mugabe prizes political dominance over peace and prosperity*, TIME (World), May 1, 2000, <http://www.time.com/time/world/article/0,8599,2050432,00.html>.

32. See Organization of African Unity, African Charter on Human and Peoples’ Rights art. 14, June 27, 1981, O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) [hereinafter Banjul Charter] (protecting property, but allowing acquisitions

private property interests as robustly as other human rights, such as the prohibition against torture or arbitrary detentions.<sup>33</sup> The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, two major human rights treaties, do not even explicitly refer to property rights.<sup>34</sup> Because property rights involve a delicate balance between individual rights and national welfare, international law shies away from absolute property rights and instead balances the need to protect individual rights with national interests.<sup>35</sup>

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in the public interest that conform to domestic laws); *see also* Organization of American States, American Convention on Human Rights art. 21, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention] (including a provision that requires just compensation, but allowing states to subordinate property rights with domestic legislation); Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol I, art. 1, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter ECHR, Protocol I] (granting the right to property, limited by domestic laws that are in accordance with general principles of international law); Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 17(1), U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR] (failing to require compensation for compulsory property acquisitions); *see also* Pedro Nikken, *Balancing of Human Rights and Investment Law in the Inter-American System of Human Rights*, in *HUMAN RIGHTS IN INTERNATIONAL INVESTMENT LAW AND ARBITRATION* 246, 247 (Pierre-Marie Dupuy et al. eds., 2009) (assessing that the development of human rights law as a result of gruesome and repressive government regimes has made protection of property rights seem less imperative).

33. *See* Margaroli v. Argentina, Case 11.400, Inter-Am. Comm'n H.R., Report No. 5/09, ¶ 87 (2009), [http://www.cidh.org/annualrep/2009eng/argentina11400eng.htm#\\_ftn1](http://www.cidh.org/annualrep/2009eng/argentina11400eng.htm#_ftn1) (absolving itself of responsibility to decide if a domestic court's compensation has been just); *cf.* John McClung Nading, Comment, *Property Under Siege: The Legality of Land Reform in Zimbabwe*, 16 EMORY INT'L L. REV. 737, 786 (2002) (citing scholars who claim that private property ownership is a second-tier human right when compared to rights to life, liberty, or security). *See generally* Afr. Inst. for Human Rights & Dev. v. Guinea, 2004 Afr. Hum. Rts. L. Rep. 57 (Afr. Comm'n on Human and Peoples' Rights 2004) (finding a violation of the right to property only when in conjunction with facts involving torture, assault, rape, and physical property destruction).

34. *See* International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR] (failing to mention individual property rights); International Covenant on Civil and Political Rights, Dec. 16, 1966, 99 U.N.T.S. 171 [hereinafter ICCPR] (declining to protect the right to property). *But cf.* Bronwen Manby, *Fast Track Land Reform in Zimbabwe*, 14 HUM. RTS. WATCH, no. 1, 2002 at 37 (stating that interpretations of the ICCPR clarify that the Convention's anti-discrimination clause does protect the right to property, even though it is not explicitly stated).

35. *See* Nading, *supra* note 33, at 776-78 (finding that developing nations often

The UDHR and the Banjul Charter, both of which Zimbabwe has signed,<sup>36</sup> specifically address property rights in Articles 17 and 14, respectively.<sup>37</sup> Both of these documents are important because they inform States of minimum international human rights standards to which they are obliged to adhere to domestically.<sup>38</sup>

Article 17 of the UDHR guarantees individuals the right to own property and not to have it arbitrarily deprived.<sup>39</sup> Article 8 of the UDHR further guarantees that when fundamental rights are violated, individuals have a right to an effective remedy by a court or tribunal.<sup>40</sup> Article 14 of the Banjul Charter also guarantees the right to property, although it allows the government to take property for the public good in conformity with appropriate laws.<sup>41</sup> Like the UDHR, Article 17 of the *Banjul Charter* also gives all individuals the right to due process and to have claims heard before an independent court.<sup>42</sup> Together, these provisions provide the basis for property protection for landowners in Zimbabwe.

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lean towards expropriations to improve the national welfare, while developed countries value individual rights more strongly).

36. See Hellum & Derman, *supra* note 27, at 1787 (listing relevant treaties Zimbabwe has signed that affect Zimbabwe's obligations in its land reform laws).

37. See UDHR, *supra* note 32, art. 17(1)-(2) (protecting the right to property and prohibiting arbitrary takings); see also Banjul Charter, *supra* note 32, art. 14 (protecting property, limited by takings in the public interest).

38. Cf. Edward D. Re, *Judicial Enforcement of International Human Rights*, 27 AKRON L. REV. 281, 283-84 (1994) (claiming that no responsible world leader would disclaim that the UDHR guarantees minimum protections that are binding on all nations).

39. See UDHR, *supra* note 32, art. 17(1)-(2) ("1) Everyone has the right to own property alone as well as in association with others. 2) No one shall be arbitrarily deprived of his property."); see also Sean Romero, Note, *Mass Forced Evictions and the Human Right to Adequate Housing in Zimbabwe*, 5 NW. U. J. INT'L HUM. RTS. 275, 291 (2007) (arguing that the UDHR's prohibition on arbitrary takings has a jus cogens character in international law).

40. See UDHR, *supra* note 32, art. 8 ("Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.").

41. See Banjul Charter, *supra* note 32, art. 14 ("The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.").

42. See *id.* art. 7(1) ("Every individual shall have the right to have his cause heard.").

C. TENSION BETWEEN THE ZIMBABWEAN JUDICIARY AND THE  
SADC TRIBUNAL REGARDING THE LEGALITY OF AMENDMENTS  
16A AND 16B

In 2007, the Zimbabwean Supreme Court issued its decision on the constitutionality of Amendments 16A and 16B in *Campbell v. Minister of National Security Responsible for Land, Land Reform, and Resettlement*.<sup>43</sup> It held that land reform is a non-justiciable political question, and that the Constitution could legally deny a right to access courts to challenge land acquisitions.<sup>44</sup> Contrastingly, while the decision in the Supreme Court was still pending, the SADC Tribunal held, in *Campbell v. Republic of Zimbabwe*, that Amendments 16A and 16B violate international law because they are discriminatory and deny individuals the fundamental right to access courts and have their grievance heard.<sup>45</sup>

Under its founding treaty, the SADC Tribunal has jurisdiction to hear cases involving individual human rights and the rule of law.<sup>46</sup> The Supreme Court of Zimbabwe has accepted the SADC Tribunal's validity and has accepted that it should adhere to the Tribunal's decisions, except in matters where the decision would contradict public policy.<sup>47</sup> The SADC Tribunal began operating in 2007, and *Campbell* was its first case.<sup>48</sup> Because the Tribunal is so new, the

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43. See *Campbell Ltd. v. Minister of Nat'l Sec.*, [2008] SC 49/07, 28 (Zim.) (deciding that Campbell's rights had not been violated by the promulgation of Amendments 16A and 16B, and that he had no right to a remedy).

44. See *id.* (arguing that the protections a person receives under the Constitution for their private property has a political and legislative character, which is beyond the scope of the Supreme Court's jurisdiction).

45. See *Campbell Ltd. v. Zimbabwe*, Case No. 2/2007 (S. Afr. Dev. Cmty. Trib. 2008) (holding that all applicants have been denied access to Zimbabwean courts and subjected to racial discrimination).

46. See Treaty of the Southern African Development Community art. 4, Aug. 17, 1992, 32 I.L.M. 116, 126 [hereinafter SADC Treaty] ("SADC and its Member States shall act in accordance with the following principles . . . human rights, democracy, and the rule of law.").

47. See David Hemel & Andrew Schalkwyk, *Tyranny on Trial: Regional Courts Crack Down on Mugabe's Land "Reform"*, 35 YALE J. INT'L L. 517, 518 (2010) (remarking that Zimbabwe has indicated that it would be against public policy to register a regional court decision that would contradict a domestic decision).

48. See *id.* at 517 (noting that in deciding *Campbell Ltd. v. Zim.*, Case No. 2/2007 (S. Afr. Dev. Cmty. Trib. 2008), the Tribunal established itself as a forum to provide relief for human rights violations).

scope and impact it will have on Southern Africa is still unclear.<sup>49</sup> However, if it continues to issue strong human rights decisions as it did in *Campbell*, the Tribunal's breadth may be wider than originally envisioned.<sup>50</sup>

The Zimbabwe High Court considered the SADC Tribunal's decision in *Gramara v. Republic of Zimbabwe*.<sup>51</sup> The Court accepted that a state cannot invoke its own domestic deficiencies to evade international obligations and that it must make a good faith effort to conform to treaty obligations.<sup>52</sup> It also recognized that Zimbabweans and the international community have a legitimate expectation that Zimbabwe will adhere to SADC Tribunal decisions and enforce its judgments.<sup>53</sup> However, when balancing these concerns against Zimbabwe's public policy on land reform and Zimbabweans' legitimate expectations that Zimbabwe would follow its own Constitution, *Gramara* held that the SADC Tribunal decision was contrary to public policy and unenforceable domestically.<sup>54</sup>

## II. ANALYSIS

Failure to conform land reform laws to minimum international obligations has stark and often tragic consequences on landless black Zimbabweans, landowners, and other stakeholders who suffer most

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49. See *id.* at 521 (hypothesizing that the Tribunal's growing docket indicates that it could become a major factor in enforcing human rights in Southern Africa, although realizing that practical difficulties enforcing the judgments cast some doubts on how effective it can be).

50. See *id.* at 517 (noting that while the SADC was rather stagnant for the first decade of its operation, the Tribunal, operational since 2007, has been incredibly proactive especially in respect to human rights).

51. See *Gramara Ltd. v. Zimbabwe*, [2010] HC 33/09, ¶ 5 (High Ct. Zim.) (analyzing the effect of the SADC Tribunal's decision in Zimbabwe's domestic courts).

52. See *id.* (noting that the international law tenant is obligated to perform all treaties in good faith, regardless of any domesticating legislation).

53. See *id.* at 13 (agreeing that by signing the Treaty and submitting to the SADC Tribunal's jurisdiction, Zimbabwe has created an enforceable expectation that it will follow the SADC Tribunal's decisions).

54. See *id.* at 16 (arguing that far more Zimbabweans have a legitimate expectation that Zimbabwe will follow its own laws and Constitution than those that expect it to adhere to SADC Tribunal decisions). Since the SADC Tribunal decision made it impossible to meet both of these expectations, the Court declined to register the judgment. *Id.*

directly.<sup>55</sup> Not only is fast-track land reform harmful, it fails to meet the standards in Articles 8 and 17(2) of the UDHR and Articles 7(1) and 14 of the *Banjul Charter* because it is arbitrary, violates due process of law, and denies compensation to landowners.<sup>56</sup> By refusing to repeal Amendments 16A and 16B, and by not adhering to the SADC Tribunal decision in *Campbell*, Zimbabwe is in breach of its obligations under international law.<sup>57</sup>

A. AMENDMENTS 16A AND 16B VIOLATE THE RIGHT TO PROPERTY AND THE PROHIBITION ON ARBITRARY TAKINGS.

Zimbabwe's current law provides governmental agencies with broad discretion to take land, leading to arbitrary takings based on racial criteria.<sup>58</sup> By allowing arbitrary takings, Zimbabwe violates the right to property guaranteed in Article 14 of the *Banjul Charter* and

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55. See, e.g., Nading, *supra* note 35, at 751-53 (tracking the economic decline of Zimbabwe under the fast-track land reform program, from one of the most prosperous nations in Africa to a nation facing an economic and social crisis where half the population is threatened with starvation); see also MICHAEL LIPTON, LAND REFORM IN DEVELOPING COUNTRIES: PROPERTY RIGHTS AND PROPERTY WRONGS 55 (2009) (claiming that fast-track reform has not reduced beneficiaries' reliance on food purchases and has caused laborers to lose their jobs, livelihood, and access to social services).

56. See UDHR, *supra* note 32, arts. 8, 17; *Banjul Charter*, *supra* note 32, arts. 7(1), 14 (protecting the right to property, preventing arbitrary deprivations, and requiring due process for individuals); see also Christopher C. Joyner, *Redressing Impunity for Human Rights Violations: The Universal Declaration and the Search for Accountability*, 26 DENV. J. INT'L L. & POL'Y 591, 592 (1998) (asserting that all individuals should be protected under the law and have the right to justice if their human rights have been violated).

57. E.g., Hellum & Derman, *supra* note 27, at 1786 (concluding that "the fast-track resettlement program is illegal, unconstitutional, and a violation of human rights standard[s] . . ."); see also CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), arts. 16A-16B (not including proper safeguards against arbitrary takings); *Campbell Ltd. v. Zimbabwe*, Case No. 2/2007, 57 (S. Afr. Dev. Cmty. Trib. 2008) (finding that Amendments 16A and 16B have led to arbitrary racial discrimination).

58. See MAPOSA, *supra* note 30, at 74, 76 (criticizing the Act for the discretion it leaves for implementing authorities and raising the issue that it does not prohibit officials from targeting land for racial or other impermissible reasons); see also MACGARRY, *supra* note 24, at 18 (pointing to instances where land was acquired to punish political opposition or as an alternative to prosecution in court). See generally Land Acquisition Act, *supra* note 24 (failing to provide clear, measurable criterion to government officials acquiring land to prevent takings based on unlawful motivations).

the prohibition on non-arbitrary takings in Article 17(2) of the UDHR.<sup>59</sup> The Zimbabwean Supreme Court has disregarded its domestic laws and international law by not striking down Amendment 16A and 16B.<sup>60</sup>

*1. Amendments 16A and 16B violate Article 17(2) of the UDHR and Article 14 of the Banjul Charter because they are arbitrary.*

Zimbabwe's fast-track land reform gives an impermissible amount of discretion to the government to expropriate property, which has led to racially-based land reform, in violation of Article 17 of the UDHR and Article 14 of the *Banjul Charter*.<sup>61</sup>

The UDHR specifically guarantees that property must not be taken arbitrarily.<sup>62</sup> Although the UDHR does not define the term arbitrary, it is often measured by the amount of procedural safeguards the law provides, or by how the law impacts certain classes when it is applied.<sup>63</sup>

Unlike the UDHR, the *Banjul Charter* does not specifically refer

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59. Compare Banjul Charter, *supra* note 32, art. 14, and UDHR, *supra* note 32, art. 17(1)-(2) (guaranteeing property rights to individuals, with a prohibition on arbitrary takings), with CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), art. 16B (refusing to adopt criteria that would prevent racial applications of its land expropriation authorization).

60. See Campbell Ltd. Minister of Nat'l Sec., [2008] SC 49/07, 13 (Zim.) (declining to decide whether the law is racially discriminatory); cf. Andy Mielnik, Comment, *Hugo Chavez: Venezuela's New Bandito or Zorro?*, 14 L. & BUS. REV. AM. 591, 603 (2008) (finding that Zimbabwe's current land reform program is far from meeting international or domestic standards and can be considered a "tyrannical land reform regime").

61. See CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), art. 16B (allowing expropriations without naming specific guidelines to target property); Banjul Charter, *supra* note 32, art. 14; UDHR, *supra* note 32, art. 17(2). This protection is also considered incorporated into customary international law. See Re, *supra* note 38, at 284 (noting that the UDHR standards contain the minimum, not maximum, protections that a state must guarantee individuals).

62. UDHR, *supra* note 32, art. 17(2).

63. See, e.g., ELETTRONICA SICULA S.P.A. (U.S. v. IT.), JUDGMENT, 1989 I.C.J. 15, 76 (July 20) (defining arbitrariness as contrary to the rule of law to the level of shocking a sense of judicial propriety); Shriver, *supra* note 21, at 438-47 (arguing that Namibia's land law that allows expropriations in the public interest is too expansive to prevent arbitrary application because it allows the government to single out white farm owners who have fired black workers).

to arbitrary takings in its clause on property protections.<sup>64</sup> It also qualifies its protection of private property by allowing takings in the “general interest of the community” according to “appropriate laws.”<sup>65</sup> The broadness of this clause has led some to believe that the *Banjul Charter* gives states practically unbridled discretion to take property as long as it is supported by any law, presumably including Amendments 16A and 16B.<sup>66</sup> This argument is problematic because while land redistribution is certainly in Zimbabwe’s “general interest,”<sup>67</sup> an arbitrary law is not an “appropriate law” within the meaning of the *Banjul Charter*, especially when applying basic treaty interpretation principles.<sup>68</sup> Because the African Commission has not considered a case similar to the facts of this case, the only means to analyze Article 14 of the *Banjul Charter* is through a treaty

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64. See *Banjul Charter*, *supra* note 32, art. 14 (guaranteeing the right to property, but qualified by public interest takings).

65. *Id.* But cf. EVELYN A. ANKUMAH, *THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS: PRACTICE AND PROCEDURES* 142 (1996) (admitting that although the *Banjul Charter* is supposed to bind signatory African nations, there is evidence that some seize property without due process).

66. See Shirley, *supra* note 20, at 168 (criticizing the *Banjul Charter* for the discretion it gives states to acquire land, undermining its force as a human rights document); see also Romero, *supra* note 39, at 288 (wondering whether the *Banjul Charter* adequately protects property since it does not define the term property or prohibit forced evictions and gives states discretion in implementing national laws). But see Christof Heyns, *The African Regional Human Rights System: The African Charter*, 108 PENN ST. L. REV. 679, 688-89 (2004) (clarifying that while those unfamiliar with the African Commission may believe the *Banjul Charter* subordinates its principles to domestic laws, the Commission has stipulated that national laws may only limit rights if those limitations are in accordance with international human rights principles).

67. *Banjul Charter*, *supra* note 32, art. 14. Especially for post-colonial states with highly unequal land distribution, land reform is an important and worthy goal, as long as it is accomplished without violating others’ human rights. Cf. Rahman Ford, Comment, *Law, History, and the Colonial Discourse: Davies v. Commissioner and Zimbabwe as a Colonialist Case Study*, 45 HOW. L. J. 213, 244 (2001) (reviewing the suffering of black Zimbabweans under colonialism and their right to have access to land ownership).

68. See Vincent O. Nmehielle, *Development of the African Human Rights System in the Last Decade*, 11 HUM. RTS. BRIEF, no. 1, 2008 at 6-7 (explaining that despite the existence of “claw-back” provisions in the ACPHR that seem to subordinate its guarantees to domestic law, the African Commission has interpreted the *Banjul Charter* to provide individuals with robust protection). The Commission has confirmed that international human rights laws are overarching principles that may not be limited by domestic interference. See *id.* (reiterating that the *Banjul Charter* does not have a derogation clause).



interpretation.<sup>69</sup>

The Vienna Convention requires all treaties to be interpreted in good faith, according to their ordinary meaning, while also considering their object and purpose.<sup>70</sup> The Convention also presumes that states negotiate treaties within the context of their international obligations; therefore, a good faith interpretation requires the interpreter to assume that the treaty was written with the intent that states would apply it in accordance with internationally accepted principles.<sup>71</sup>

Applying the Vienna Convention's dictates on treaty interpretation to Article 14 of the *Banjul Charter*, it is clear that the Charter is not meant to provide states with flexibility to arbitrarily take land. As a human rights treaty, it is unreasonable to interpret the *Banjul Charter* in a way that legitimizes arbitrary takings or refuses to protect property owners who are targeted based on their race.<sup>72</sup> In addition, using the Vienna Convention's requirement to consider the ordinary meaning of the treaty language, Article 14 of the *Banjul Charter* only allows taking in the "general interest of the community."<sup>73</sup> It is not in

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69. See VINCENT O. NMEHIELLE, *THE AFRICAN HUMAN RIGHTS SYSTEM: ITS LAWS, PRACTICE, AND INSTITUTIONS* 120 (2001) [hereinafter NMEHIELLE, *HUMAN RIGHTS SYSTEM*] (admitting that there is little case law published by the African Commission to accurately determine the scope that Article 14 is intended to cover).

70. See Vienna Convention on the Law of Treaties art. 31(1), May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention] ("A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the treaty in their context and in the light of its object and purpose.").

71. See, e.g., Evan Criddle, *The Vienna Convention on the Law of Treaties in U.S. Treaty Interpretation*, 44 VA. J. INT'L L. 431, 448 (2004) (reviewing human rights bodies to conclude that international tribunals refuse to accept subjective or unusual treaty interpretations, avoid treaty interpretations that derogate from internationally accepted standards, and only look to sources beyond the treaty text when it is particularly ambiguous or confusing).

72. See Nsongurua J. Udombana, *Between Promise and Performance: Revisiting States' Obligations under the African Human Rights Charter*, 40 STAN. J. INT'L L. 105, 110 (2004) (describing the purpose of the Banjul Charter as an assertion of universal human rights principles designed to be binding on all African nations, particularly principles of freedom, dignity, justice, and non-discrimination).

73. See Vienna Convention, *supra* note 70, art. 31(1); Banjul Charter, *supra* note 32, art. 14; see also Criddle, *supra* note 71, at 446-47 (explaining that ordinary meaning refers to a strict textual interpretation whenever possible).

any state or any community's interest to violate its citizens' basic human rights, as Amendments 16A and 16B do by allowing arbitrary application and racial discrimination.<sup>74</sup> Although President Mugabe has argued that these takings are a rational method to redress unlawful colonial dispossessions, post-colonial practice requires states to respect owners who have current titles to land in order to protect the rule of law.<sup>75</sup> As Zimbabwe has proven, fast-track land reform degrades the rule of law and breeds violence, contrary to the general interest of its citizens.

Additionally, it is incorrect to assume the *Banjul Charter* is meant to encompass any law within "appropriate law;" instead, appropriate laws are only those which conform to internationally accepted principles of non-arbitrariness and non-discrimination.<sup>76</sup> This interpretation also aligns with the Vienna Convention on the Law of Treaties' direction that interpreters should assume that treaties intend to follow international precepts, which include prohibitions on arbitrary laws and racial discrimination.<sup>77</sup> While the African Commission has not satisfactorily interpreted Article 14, in other instances it has relied on outside treaties and international documents, particularly the UDHR, to inform its own analysis.<sup>78</sup> In

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74. See UDHR, *supra* note 32, art. 8 (requiring states to provide a remedy to victims of any human rights violations perpetrated by the state); see also Joyner, *supra* note 56, at 592 (noting that when a state allows human rights violations, it becomes obligated to provide a remedy).

75. See THEO R. G. VAN BANNING, *THE HUMAN RIGHT TO PROPERTY* 283 (2002) (explaining that with the possible rare exception of a party that was directly responsible for acquiring the land unjustifiably, the state must follow due process principles and execute land takings through a fair process using an independent tribunal).

76. UDHR, *supra* note 32, art. 17(2); see International Convention on the Elimination of All Forms of Racial Discrimination, Jan. 4, 1969, 660 U.N.T.S. 195 [hereinafter ICERD] (declaring that all human beings are equal before the law and are entitled to equal treatment, and condemning all forms of racial discrimination).

77. UDHR, *supra* note 32, art. 17(2); ICERD, *supra* note 76; see also Criddle, *supra* note 71, at 448 (finding that according to the Vienna Convention, states should interpret treaties in a manner that recognizes the preeminence of international law).

78. See *Banjul Charter*, *supra* note 32, arts. 60-61 (indicating that it is appropriate to use outside treaties and general principles of law as a subsidiary means to determine a state's human rights obligations, and specifically mentioning the UDHR as a document that the Commission should consider when applying the *Banjul Charter's* mandates); see also NMEHIELLE, *HUMAN RIGHTS SYSTEM*, *supra*

these instances, the Commission has found that supposed “claw-back” provisions, that seem to subordinate international law to domestic provisions, may not be utilized to allow a state to derogate from internationally-accepted principles.<sup>79</sup> Instead, it has interpreted the *Banjul Charter* in ways that closely align with other human rights documents and has given states very little discretion to limit rights under their domestic laws.<sup>80</sup> Therefore, an analysis of the ordinary meaning of the Charter and a consideration of the liberal manner in which the Commission has interpreted provisions that limit rights to domestic laws reveal that the Charter’s protection of property does encompass internationally accepted principles that prohibit arbitrary or racially-based property deprivation.<sup>81</sup>

Zimbabwe’s land reform law is arbitrary under Article 17 of the UDHR and not appropriate under Article 14 of the *Banjul Charter* because it does not provide any objective criteria to guide land expropriations, which allows it to be easily abused and racially discriminatory.<sup>82</sup> In addition to not providing any criteria to guide expropriations, it does not define basic terms to provide guidance to implementing authorities to even know which land should be acquired and who is eligible for redistribution.<sup>83</sup> In implementing

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note 69, at 159 (considering that Articles 60 to 61 of the *Banjul Charter* may give the Commission expansive power to extend the reach of the Charter to encompass the same protections as other regional and universal human rights documents).

79. See Heyns, *supra* note 66, at 689 (praising the Commission for prohibiting states from departing from internationally-accepted standards, even in respect to provisions in the *Banjul Charter* that contain clauses that seemingly subordinate their protection to domestic law).

80. See *id.* at 689-90 (looking to decisions of the Commission to confirm it does not provide States with discretion to limit the rights articulated in the *Banjul Charter*, regardless of whether there is a limiting clause).

81. See Vienna Convention, *supra* note 70, at 31(1) (stating that a treaty should be interpreted according to its ordinary meaning). *But cf.* *Banjul Charter*, *supra* note 32, art. 14 (allowing arbitrary takings as long as it is in the interest of the public under the ordinary language of Article 14).

82. UDHR, *supra* note 32, art. 17(2); *Banjul Charter*, *supra* note 32, art. 14; see ALLAHYAR MOURI, THE INTERNATIONAL LAW OF EXPROPRIATION AS REFLECTED IN THE WORK OF THE IRAN-U.S. CLAIMS TRIBUNAL 329 (1994) (noting that various international tribunals have held that discriminatory expropriations are always illegal).

83. See Hellum & Derman, *supra* note 27, at 1794 (noting that the law targets underutilized farms without defining underutilized farm and names the landless as beneficiaries without providing guidelines to determine which people are landless).

Amendments 16A and 16B to redistribute land, Zimbabwe has discriminated against white landowners by targeting only white-owned land for redistribution and attempting to eradicate white-owned farms in Zimbabwe.<sup>84</sup> Additionally, Zimbabwe has not adopted any fair criteria, such as proper use of land, Zimbabwean citizenship, or other relevant factors to decide which lands to expropriate.<sup>85</sup> Refusing to adopt fair measuring criteria invites abuse and *de facto* racial discrimination.<sup>86</sup>

Not only does fast-track land reform discriminate against white farmers based on disproportionate impact, it also intentionally targets white farmers.<sup>87</sup> Ample evidence demonstrates that Amendments 16A and 16B were passed because of hostility towards white farmers and to ease the government's ability to redistribute land on racial terms.<sup>88</sup> Before introducing Amendments 16A and 16B, President

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84. See, e.g., Amy Ochoa Carson, Note, *East Timor's Land Tenure Problems: A Consideration of Land Reform Programs in Zimbabwe and South Africa*, 17 IND. INT'L & COMP. L. REV. 395, 421 (2007) (asserting that Zimbabwe's program may have been conducted to "punish whites"); see also Paul Mysliwiec, Comment, *Accomplice to Genocide Liability: The Case for a Purpose Mens Rea Standard*, 10 CHI. J. INT'L L. 389, 398-99 (2009) (suggesting that Mugabe garnered support for land redistribution by vilifying whites).

85. See *Campbell Ltd. v. Zimbabwe*, Case No. 2/2007, 53 (S. Afr. Dev. Cmty. Trib. 2008) (noting that criteria for redistribution are "not reasonable and objective but arbitrary and based primarily on considerations of race"); see also MAPOSA, *supra* note 30, at 73 (considering it particularly concerning that while many land reform programs only compulsorily acquire underutilized land, Zimbabwe's law allows even economically productive land to be targeted for redistribution).

86. See *Campbell Ltd.*, Case No. 2/2007 at 52 (explaining that when a law affects only white farmers, it is indirectly, or *de facto* discriminatory).

87. See ICERD, *supra* note 76, art. 1 (outlawing distinctions that "ha[ve] the purpose or effect" of discriminating against persons based on race); see also U.N. Human Rights Instruments, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, 198, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (May 27, 2008) [hereinafter HRC Comment] (defining discrimination as laws that have the "purpose or effect" of putting persons of certain races on an unequal footing as others in General Comment No. 18).

88. See Hellum & Derman, *supra* note 27, at 1794 (stating that Zanu-PF, Zimbabwe's ruling party, labels all whites as unsupportive of Zanu-PF's rule and believes that human rights regarding land should not apply to them); see also BRIAN RAFTOPOULOS, *THE POLITICS OF THE MOVEMENT FOR DEMOCRATIC CHANGE*, New Zimbabwe (Nov. 12, 2009), <http://www.newzimbabwe.com/pages/opinion140.14149.html> (reviewing an ad before a referendum to amend the land reform law that pictured an elderly white couple, and the caption "Are you going to allow them to continue to tell you what to do?").

Mugabe even called white farmers “enemies of the state.”<sup>89</sup> This attitude towards white farmers shows a racially discriminatory intent, while the lack of clear guidance towards applying the law allows it to be applied to disproportionately affect white landowners.<sup>90</sup> Together, these deficiencies constitute violations of the UDHR and the *Banjul Charter*’s protection of property and prohibition on arbitrary takings, which includes racially-based takings.<sup>91</sup>

*2. The Zimbabwe Supreme Court erred by not following its Declaration of Rights, the SADC Tribunal decision, or South African persuasive precedent in Campbell.*

When the Zimbabwe Supreme Court considered *Campbell*, it had the opportunity to enjoin land redistribution until objective criteria were formed, invalidate Amendments 16A and 16B completely, or provide damages to the white farm owners who claimed their land was targeted because of their race.<sup>92</sup> Instead, it ignored the possibility that fast-track land reform could be implicitly discriminatory, and instead decided, *ipse dixit*, that because the Amendments did not reference race explicitly, they were not racially discriminatory.<sup>93</sup>

This decision was incorrect as a matter of Zimbabwe’s domestic law and international law.<sup>94</sup> Zimbabwe’s Declaration of Rights

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89. Boyle, *supra* note 15, at 684. *See id.* at 685 (relating that Mugabe argued that war veterans have attacked white farmers because of their frustrations at white farmers for behaving as enemies of Zimbabwe, and that following these inflammatory speeches, thirty-one people were killed in farm invasions in an one-month period).

90. *See* Mysliwiec, *supra* note 84, at 398 (providing evidence that almost all white-owned farms were seized under “fast-track” land reform); *see also* VAN BANNING, *supra* note 75, at 333 (asserting that the only criteria the government used when applying the land reform law was race-based criteria).

91. UDHR, *supra* note 32, art. 17(2); Banjul Charter, *supra* note 32, art. 14.

92. *See* *Campbell Ltd. v. Minister of Nat’l Sec.*, [2008] SC 49/07, 1-2 (reviewing the claims made by the Petitioners); *see also* Hemel & Schalkwyk, *supra* note 47, at 519 (noting that the Supreme Court passed on its opportunity to invalidate Amendments 16A and 16B based on the idea that Zimbabwe’s Constitution has core features that cannot be overridden by constitutional amendments).

93. *See* *Campbell Ltd.*, [2008] SC 49/07 at 13 (failing to analyze Zimbabwe’s non-discrimination clause and ignoring the portion of the non-discrimination clause that denounces racial discrimination).

94. *See* CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), arts. 16(1)(a), 23 (restricting expropriations to those that can be shown to be reasonably

ensures that property may only be acquired under authority of law and that individuals have a right not to be treated in a racially discriminatory manner.<sup>95</sup> The Zimbabwean Supreme Court incorrectly found that a law that does not reference race cannot trigger the anti-discrimination clause in section 23 of its Constitution.<sup>96</sup> In making this decision, the Court ignored the portion of the anti-discrimination clause that expressly prohibits discriminatory treatment in effect.<sup>97</sup> Amendments 16A and 16B are intended to, and have led to different treatment based on race, making them racially discriminatory and in violation of Zimbabwe's anti-discrimination clause.<sup>98</sup>

In addition to ignoring domestic legal tenants, the Supreme Court ignored its obligations in the international realm by not adhering to the SADC Tribunal's decision in *Campbell*.<sup>99</sup> Upon consideration of

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necessary by the government and prohibiting discrimination on racial grounds); *see also* SADC Treaty, *supra* note 46, art. 4 (obligating states' parties to adhere the protection of to individuals' human rights).

95. *See* CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), arts. 16(1)(a), 23 (restricting expropriations to those that can be shown to be reasonably necessary by the government and prohibiting discrimination on racial grounds); *see also* Nading, *supra* note 35, at 772-74 (noting that the protection of property is mentioned twice in the Declaration of Rights, and that Amendment 16A is in direct contradiction of these protections of property from arbitrary deprivation).

96. *See* CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), art. 23 (invalidating laws that are discriminatory on their face or in effect); *see also* *Campbell Ltd.*, [2008] SC 49/07, at 13 (finding that although the Declaration of Rights prohibits discrimination in fact or in effect that Amendments 16A and 16B are not racially discriminatory because they do not explicitly mention race).

97. *See* CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), art. 23 (specifying that a law can still be discriminatory if it does not mention race but is discriminatory in effect).

98. *See id.* (providing protection from race-based discrimination); *cf.* Gabriel Shumba, *International Standards and the 2002 Presidential Election in Zimbabwe*, 10 ILSA J. INT'L & COMP. L. 95, 115 (2003) (claiming that when Zimbabwe's government failed to pass a constitutional overhaul through a referendum that included land reform measures, it launched a racist campaign against white farmers). *But cf.* Boyle, *supra* note 15, at 684 (recounting a speech in which President Mugabe blamed white farmers for the land crisis in Zimbabwe and justified violent attacks on their land).

99. *See* *Gramara Ltd. v. Zimbabwe*, [2010] HC 33/09, 16 (High Ct. Zim.) (refusing to adhere to the SADC Tribunal decision domestically); *cf.* Hemel & Schalkwyk, *supra* note 47, at 521 (finding that despite any obligation to register the judgment, it is difficult to enforce judgments domestically when the political will is absent).

the same facts as the Supreme Court, the SADC Tribunal applied international principles to find that Amendments 16A and 16B arbitrarily targeted land in a racially discriminatory way.<sup>100</sup> It noted that if a law is either passed with a discriminatory intent or if it disproportionately impacts one race, the law violates anti-discrimination standards.<sup>101</sup> The SADC Tribunal accepted Campbell's argument that the Zimbabwean government planned to eradicate white land ownership in Zimbabwe, and passed Amendments 16A and 16B to accomplish this goal more quickly and with fewer obstacles from courts.<sup>102</sup> As such, the Tribunal correctly concluded that Amendments 16A and 16B constitute indirect discrimination.<sup>103</sup> By refusing to adopt the SADC Tribunal's reasoning, the Supreme Court of Zimbabwe is in violation of its international obligations.<sup>104</sup>

Lastly, while South African law is not controlling, Zimbabwe courts regularly look to South African courts for guidance.<sup>105</sup> South

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100. *See* Campbell Ltd.v. Zimbabwe, Case No. 2/2007, 52 (S. Afr. Dev. Cmty. Trib. 2008) (refusing to accept an argument that a law is not discriminatory because it does not mention race on its face).

101. *See id.* at 45 (asserting that discrimination in any form or nature is prohibited in international law, and corroborating its claim by citing to general comments from the Human Rights Committee and the Committee on Economic, Social, and Cultural Rights (citation omitted)); *see also* MAPOSA, *supra* note 30, at 89 (calling it "quite disturbing" for the government to have so much discretion in implementing land reform, a politically-charged issue where independent oversight is particularly important to prevent racially discriminatory practices).

102. *See Campbell Ltd.*, Case No. 2/2007 at 42 (citing the Petitioner's brief which accused the Government of Zimbabwe of using Amendments 16A and 16B to systematically expropriate white-owned farms).

103. *See id.* at 50 (quoting the Committee on Economic, Social, and Cultural Rights (citation omitted) who defined indirect discrimination as "a law . . . [that] does not appear to be discriminatory but has a discriminatory effect when implemented").

104. *See* SADC Treaty, *supra* note 46, art. 16(5) (granting the Tribunal with the power to make binding decisions); *see also* SOUTHERN AFRICAN DEVELOPMENT COMMUNITY, PROTOCOL ON TRIBUNAL AND THE RULES OF PROCEDURE THEREOF pt. III, art. 32(3) (2000), *available at* <http://www.sadc.int/index/browse/page/163> [hereinafter SADC PROTOCOL ON THE TRIBUNAL] (determining that all Tribunal decisions are to be enforced in the State implicated by the SADC Tribunal's decision).

105. *Cf.* Gramara Ltd. v. Zimbabwe, [2010] HC 33/09, 6 (High Ct. Zim.) (referring to English and South African law to add to the persuasiveness of its analysis and establish common practice among States); Romero, *supra* note 39, at 292 (stating that particularly for the Declaration of Rights, which encompasses

African precedent is especially persuasive on land reform issues, as the colonial history that led to unequal distribution of land in South Africa is quite similar to that of Zimbabwe.<sup>106</sup> Unlike Zimbabwe's Supreme Court, the South African court has held that arbitrary takings based on race, or without objective criteria, are illegal, and as such, it has registered the SADC Tribunal's decision in *Campbell*.<sup>107</sup> This persuasive analysis, in addition to Zimbabwe's obligation to adhere to its Declaration of Rights and the SADC Tribunal, reveal that the Zimbabwean Supreme Court wrongly decided *Campbell* under domestic and international law.<sup>108</sup>

B. AMENDMENTS 16A AND 16B VIOLATE DUE PROCESS  
STANDARDS.

In addition to arbitrarily targeting white landowners, Amendments 16A and 16B deny landowners proper notice and a judicial forum to challenge land seizures, in violation of Article 8 of the UDHR and Article 7(1)(a) of the *Banjul Charter*.<sup>109</sup> In *Campbell*, the

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Amendments 16A and 16B, Zimbabwe's Supreme Court often refers to other Commonwealth courts, including South Africa's courts).

106. See, e.g., Boyle, *supra* note 15, at 694 (comparing the similar obstacles that South Africa and Zimbabwe face such as overcoming unequal land distribution, poverty, and insecurity caused by colonial dispossession); see also Michael Garcia Bochenek, *Compensation for Human Rights Abuses in Zimbabwe*, 26 COLUM. HUM. RTS. L. REV. 483, 496 (1995) (recounting that Zimbabwe's common law system is based on South Africa's, and that it relies heavily on South African law and other Commonwealth courts for persuasive analysis).

107. See *Fick v. Zim.*, Case No. 01/2010, 2, 4 (S. Afr. Dev. Cmty. Trib. 2010), available at <http://www.saflii.org/sa/cases/SADCT/2010/8.pdf> (recognizing that Zimbabwe is in violation of the SADC Tribunal and taking steps to enforce the judgment in South Africa); see also Hemel & Schalkwyk, *supra* note 47, at 521 (referring to the single paragraph judgment in which the Court calculated approximately US\$15,5000 in damages for the plaintiffs in *Campbell* (citation omitted)). The High Court also attached Zimbabwean government assets in South Africa to pay the damages. *Id.* at 521.

108. See CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), art. 16(1) (protecting an individual's right to property, with which the Legislature must comply when creating laws); see also *Fick v. Zim.*, Case No. 01/2010, 4 (S. Afr. Dev. Cmty. Trib. 2010) (noting that Zimbabwe has taken no steps to comply with the SADC Tribunal's judgment).

109. See CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), art. 16B(3)(a) (denying landowners the ability to challenge acquisitions in court); see also UDHR, *supra* note 32, art. 8 (guaranteeing the right to an effective remedy in a tribunal for violations of individual rights); *Banjul Charter*, *supra* note 32, art.



Zimbabwean Supreme Court incorrectly applied domestic law and has refused to register the SADC Tribunal judgment that found that Amendments 16A and 16B do not provide due process.<sup>110</sup>

*1. Amendments 16A and 16B violate the due process guarantees in Article 8 of the UDHR and Article 7(1) of the Banjul Charter.*

Under Amendments 16A and 16B, landowners are able to judicially challenge the amount of compensation for a taking, but may not challenge the acquisition itself.<sup>111</sup> This restriction violates the rights enshrined in Article 8 of the UDHR and 7(1) of the *Banjul Charter* that protect an individual's right to have an impartial hearing by an independent tribunal to have his or her grievance heard.<sup>112</sup> The right to have a fair hearing for grievances is a well-accepted right across jurisdictions, nations, and cultures.<sup>113</sup> Unlike the prohibition on arbitrary property takings, the right to due process in the UDHR and the *Banjul Charter* is not qualified by any other concerns and is protected under all circumstances.<sup>114</sup>

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7(1)(a) (giving individuals the right to have their cause heard, and to appeal violations of their fundamental rights in a court); MANBY, *supra* note 34, at 40 (arguing that Zimbabwe is in violation of fundamental human rights laws by implementing a policy that is not transparent and denies individuals the right to appeal decisions).

110. See *Campbell Ltd. v. Minister of Nat'l Sec.*, [2008] SC 49/07, 21 (Zim.) (limiting its analysis to whether the Legislature complied with procedural requirements in enacting art. 16B, instead of whether the law denies mandatory due process rights); see also *Gramara Ltd. v. Zimbabwe*, [2010] HC 33/09, 16 (High Ct. Zim.) (finding that it would be contrary to public policy to register the SADC Tribunal's judgment).

111. See CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), art. 16B(3)(a) (denying a judicial remedy for the government's decision to acquire land); see also *Hellum & Derman*, *supra* note 27, at 1792 (finding that even the ability to appeal compensation is limited to instances where the court finds that the Compensation Committee did not act in accordance with lawful principles).

112. See UDHR, *supra* note 32, art. 8; *Banjul Charter*, *supra* note 32, art. 7(1)(a) (establishing that every individual has a right to be heard by a competent tribunal); see also *Hellum & Derman*, *supra* note 27, at 1790 (observing that The Land Acquisition Act, the implementing law for Amendments 16A and 16B, only allows appeals on compensation and not on the designation of the land for acquisition, which falls short of legal due process standards).

113. See, e.g., *Shriver*, *supra* note 21, at 445 (asserting that the proposition that due process is mandatory has broad global support).

114. See *Banjul Charter*, *supra* note 32, art. 7(1) (protecting the right of an individual to have his or her cause heard under all circumstances); see also UDHR,

Since there is no tribunal that directly interprets the UDHR, its requirements are best understood through other human rights tribunals that have looked to the UDHR for analysis.<sup>115</sup> The European Convention on Human Rights (ECHR) has a provision similar to the UDHR guaranteeing access to court.<sup>116</sup> When interpreting Article 6(1), the European Court has referred to the UDHR to enlighten its analysis, and has found that every individual has a fundamental right to access the court in civil matters before an independent tribunal, and that a state has breached its obligations when it fails to provide this access.<sup>117</sup> This interpretation is consistent with the argument that Campbell's right to access the court under the UDHR was violated by Zimbabwe because Amendment 16B took away his ability to challenge the taking of his property in a court.<sup>118</sup>

The African Commission can issue recommendations and resolve disputes arising under the *Banjul Charter*.<sup>119</sup> The Commission has interpreted Article 7(1) on numerous occasions and has held that any law that takes away the jurisdiction of the court in certain instances is invalid.<sup>120</sup> The Commission has recommended that laws that remove

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*supra* note 32, art. 8 (granting every person the right to a remedy for a violation of that person's rights).

115. *Cf.* Joyner, *supra* note 56, at 591 (emphasizing that the UDHR was not created to be a document that is directly enforceable, but its contents are still binding on all nations).

116. *See* ECHR, Protocol I, *supra* note 32, art. 6(1) (stating that "[E]veryone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.").

117. *See* Golder v. United Kingdom, 1 Eur. Ct. H.R. 524, ¶¶ 34-36 (1975) (relying on the UDHR and Vienna Convention to interpret the ECHR to find that the right to access the court to bring a civil action is included in Article 6(1)).

118. *See* CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), art. 16B(3)(a); UDHR, *supra* note 32, art. 8.

119. *See* Banjul Charter, *supra* note 32, art. 45(1)(b), 3 (granting the Commission the authority to create principles and legal rules and to interpret the provisions of the Charter to determine violations).

120. *See, e.g.,* Purohit v. Gam., Commc'n No. 241/2001, ¶¶ 8, 70-72 (Afr. Comm'n on Human and Peoples' Rights 2003) (deciding that the Lunatics Detention Act, which prohibits those detained for mental health reasons from obtaining legal resources or suing for damages for violations of their rights, is illegal under Article 7(1)); Organisation Mondiale Contre La Torture v. Rwanda, Commc'n Nos. 27/89, 46/91, 49/91, 99/93, ¶ 34 (Afr. Comm'n on Human and Peoples' Rights 1996) (holding that expelling refugees from Rwanda, without providing them the opportunity to be heard, violates Article 7(1)); Civil Liberties Org. v. Nigeria, Commc'n No. 129/94, ¶¶ 1, 18 (Afr. Comm'n on Human and

judicial involvement for certain government actions should be struck down as contrary to Article 7(1).<sup>121</sup> Amendment 16B is similar to laws that the Commission has found to violate Article 7(1) because it expressly removes judicial access to dispute the legality of government takings.<sup>122</sup>

Campbell's situation exemplifies the manner in which Amendment 16B strips away landowners' rights.<sup>123</sup> Before Amendment 16B was passed, Campbell successfully challenged the government's designation of his land on two separate occasions.<sup>124</sup> After it was passed, he no longer had a cause of action to challenge the acquisition in court, and after 90 days, his land automatically reverted to the state.<sup>125</sup> Not only does Amendment 16B explicitly

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Peoples' Rights 1995) (agreeing that a law which ousts the jurisdiction of the courts to interpret laws passed after December 1983 violates Article 7(1) and that a State is not able to justify the violation of the Charter by claiming that it is following domestic laws); *Civil Liberties Org. v. Nigeria*, Comm'n No. 101/93, ¶ 1,3, 13 (Afr. Comm'n on Human and Peoples' Rights 1993) (finding that a law that prohibits individuals from litigating any issue related to the Nigerian Bar Association is a violation of Article 7(1)).

121. See, e.g., *Purohit*, Comm'c No. 241/2001 at ¶¶ 70-72 (asserting that individuals have a right to access the courts to challenge laws that violate their rights, in civil and criminal cases); accord *Civil Liberties Org.*, Comm'c No. 129/94 at ¶ 14 (holding that a Nigerian law that prohibits access to the court to challenge actions taken by the national bar association is contrary to the principles of the Banjul Charter); see also NMEHIELLE, HUMAN RIGHTS SYSTEM, *supra* note 69, at 96 (revealing that the Commission's decisions support an interpretation of the Charter that include a right to judicial access in the first instance, and on appeal).

122. See CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), art. 16B(3)(a) (prohibiting landowners from suing before a court to challenge a government taking); see also Heyns, *supra* note 66, at 690 (relating that the Commission has consistently held that laws that oust the jurisdiction of the courts are invalid under Article 7(1)).

123. See *Campbell Ltd. v. Minister of Nat'l Sec.*, [2008] SC 49/07, 9-13 (Zim.) (reviewing the facts of Campbell's case during the years he challenged the government to prevent his land from being acquired, and then how he was prevented from future challenges by Amendment 16B).

124. See *Campbell Ltd.*, [2008] SC 49/07 at 9-10. When Campbell's land was designated in 1997, he made a written objection in the administrative body and his land was unlisted. *Id.* at 10. In 2001, his land was designated again, and he protested again. *Id.* This time, he took his claim to the High Court, which declared the government's action invalid. *Id.*

125. See *Campbell Ltd.*, [2008] SC 49/07 at 13 (noting that in accordance with Amendments 16A and 16B, Mount Carmel became state property on the day Campbell received a preliminary notice that it was to be acquired, which gave him

forbid access to the courts, the disparity of outcomes under the same facts and circumstances further illuminates that Amendment 16B thwarts landowners from pursuing a cause of action that was previously available.<sup>126</sup> In doing so, it allows land to be acquired by the State that an independent court would otherwise find was impermissible.<sup>127</sup>

When Campbell was denied the opportunity to approach the Court to challenge his eviction, Zimbabwe violated his right under Article 8 of the UDHR and 7(1) of the *Banjul Charter*.<sup>128</sup> In light of the interpretations of the UDHR and *Banjul Charter* by tribunals, it is clear that Campbell's action was intended to be part of the UDHR and *Banjul Charter*'s protection, and that it would be appropriate to strike down Amendment 16B for its due process violations.

*2. Zimbabwe's Supreme Court is not in compliance with its Declaration of Rights or the due process standards articulated by the SADC Tribunal.*

In *Campbell*, the Zimbabwe Supreme Court disregarded its Declaration of Rights that protects due process.<sup>129</sup> The Declaration of

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no opportunity to contest the taking in court).

126. CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), art. 16B(3)(a); see Heyns, *supra* note 66, at 690 (relating that laws that take away the jurisdiction of the court violate international human rights standards).

127. See *Campbell Ltd.*, [2008] SC 49/07 at 9-13 (noting that the only change that occurred between the time a High Court ruled that the taking of Campbell's land was invalid in 2001, and when the government acquired his land in 2005, was the passage of Amendments 16A and 16B); see also Bernadette Atuahene, *Property Rights & the Demands of Transformation*, 31 MICH. J. INT'L L. 765, 775-76 (2010) (arguing that fast-track land reform was a hastily conceived program and its due process violations have caused immeasurable harm to the economy, Zimbabwe's international image, and individual stakeholders).

128. UDHR, *supra* note 32, art. 8; *Banjul Charter*, *supra* note 32, art. 7(1)(a).

129. See CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), art. 16(1)(a)-(e) (stating that "No property . . . shall be compulsorily acquired except under authority of law that . . . requires the acquiring authority to give reasonable notice . . . requires the acquiring authority to, if the acquisition is contested, to apply to the High Court . . . enables any person whose property has been acquired to apply to the High Court or some other court for the prompt return of property if the court does not confirm the acquisition"); see also *Campbell Ltd.*, [2008] SC 49/07, at 15 (asserting that fundamental rights are not immutable and that the Declaration of Rights does not protect its citizens from its own Constitution when amendments are passed according to strict procedural requirements).

Rights requires that landowners receive notice when their land is targeted for acquisitions, and it gives landowners the opportunity to challenge land acquisitions based on an argument that the taking was not “reasonably necessary” to achieve a public purpose.<sup>130</sup> Amendment 16B is an impermissible exception to Zimbabwe’s Declaration of Rights that allows the government to flout usual due process guarantees for agricultural land redistribution.<sup>131</sup> In takings for land redistribution only, the government does not have to show the taking was reasonably necessary and does not have to provide personal notice to landowners.<sup>132</sup> No matter the public importance of land redistribution, it undermines the rule of law to eliminate due process whenever the public purpose is particularly compelling.<sup>133</sup>

Instead of recognizing these principles, the Supreme Court agreed that Amendment 16B ousts judicial review for land acquisitions, but found that it was legal because it was passed with proper legislative approval according to prescribed procedures.<sup>134</sup> The Court avoided actually deciding whether Amendment 16B impermissibly interferes with core due process values by claiming that property acquisitions are a non-judicial political question, and that when the legislature makes an unambiguous law regarding this matter, it is beyond the

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130. See CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), art. 16(1)(a)-(c) (requiring that acquisitions are reasonably necessary to achieve the state’s goals, that the landowner get reasonable notice of the government’s intent to acquire the land, and that the landowner have opportunity to challenge acquisitions in the High Court of Zimbabwe).

131. Compare *id.* art. 16B(3)(a), (4) (allowing land to be taken for agricultural distribution without providing the landowner individual notice or an opportunity to appeal), with *id.* art. 16(1) (granting the right for landowners to have notice and a right to appeal land expropriation on a showing that the expropriation was not reasonably necessary).

132. *Id.* art. 16B (specifying that the due process protections of 16(1) do not apply to the compulsory land acquisitions referred to in 16(2)(a)).

133. See VAN BANNING, *supra* note 75, at 179 (explaining that Zimbabwe may justifiably try to correct land inequalities, but that taking land on a large scale in violation of human rights standards undermines basic property protection rights that all individuals should be able to rely upon).

134. See *Campbell Ltd. v. Minister of Nat’l Sec.*, [2008] SC 49/07, 15 (Zim.) (reciting that the text of the amendments were published in the Zimbabwean national *Gazette* thirty days before the amendments were introduced to Parliament, and that at the final reading in Parliament, the amendments received a two-thirds vote).

scope of the court to interfere.<sup>135</sup>

Not only does this decision contravene the Declaration of Rights, it contradicts the Supreme Court's own precedent in *Commercial Farmers' Union v. Minister of Lands* in which it held that taking private property without notice or a right to challenge the taking violated due process.<sup>136</sup> Strangely, the Supreme Court did not even refer to this decision, or its mandatory precedential value, in its *Campbell* decision.<sup>137</sup> By disregarding its own precedent and refusing to invalidate a law that flouts due process requirements on its face, the Supreme Court wrongly decided *Campbell*.<sup>138</sup>

In addition to these domestic violations, the Supreme Court also improperly refused to register the SADC Tribunal's decision in *Gramara*.<sup>139</sup> The SADC Tribunal correctly applied international principles and concluded that even if Amendment 16B was passed legally, it is still subject to judicial review and that individuals must be allowed to challenge takings in court.<sup>140</sup> In *Gramara*, the High

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135. See *id.* at 28 (commenting that while a general principle is that Constitutional provisions should not be construed to take away court jurisdiction, property acquisitions are not judicial questions). It further found that the unambiguous nature of Amendment 16B leaves no place for judicial interpretation. *Id.*

136. See Jeremy Gauntlett, The Lie of the Land: Law and Land Seizure in Zimbabwe: 1890-2010, Ninth Mofokeng Lecture (Oct. 15, 2010), available at [http://www.cfuzim.org/index.php?view=article&catid=49%3Aland-facts&id=1016%3Aland-and-land-seizure-in-zimbabwe-1890-2010&format=pdf&option=com\\_content&Itemid=89](http://www.cfuzim.org/index.php?view=article&catid=49%3Aland-facts&id=1016%3Aland-and-land-seizure-in-zimbabwe-1890-2010&format=pdf&option=com_content&Itemid=89) (quoting the decision in *Commercial Farmers' Union v. Minister of Lands* (citation omitted) that held that fast-track land redistribution flouted notice and appeal requirements in an obviously unlawful manner).

137. See generally *Campbell Ltd.*, [2008] SC 49/07 (departing from its precedent in *Commercial Farmers' Union* (citation omitted) without ever referring to the decision). One explanation for the Court's silence is that it has lost its political independence. See Dancaescu, *supra* note 14, at 622, 624 (asserting that after all but one of the Supreme Court Justices resigned in 2000 because they feared for their safety, the Court's independence is in doubt).

138. See Romero, *supra* note 39, at 294 (finding that although the Zimbabwean Declaration of Rights expressly protects citizens from deprivation of property, the government has disregarded this protection in order to carry out its policy goals). See generally *Campbell Ltd.*, Case No. 2/2007.

139. See *Gramara Ltd. v. Zimbabwe*, [2010] HC 33/09, 16 (High Ct. Zim.) (declaring that it would be against public policy to register the SADC Tribunal's decision).

140. Compare *Campbell Ltd.*, Case No. 2/2007 at 40-41 (holding that since the

Court declined to recognize the SADC Tribunal's judgment as a matter of public policy.<sup>141</sup> This was incorrect because, as the SADC Tribunal held, no public policy or justification excuses denying landowners basic due process guarantees.<sup>142</sup> By refusing to register this decision, Zimbabwe is in violation of its obligations under the SADC Tribunal Protocol on the Tribunal that states that all Tribunal decisions are binding and must be applied domestically in the State implicated by the judgment.<sup>143</sup>

*C. Amendments 16A and 16B illegally deny landowners compensation for land that is acquired for redistribution.*

Zimbabwe is in violation of the SADC Tribunal's decision in *Campbell* because it has refused to pay adequate compensation to landowners for acquired land.<sup>144</sup> Although Zimbabwe has conceded that international precepts demand fair compensation to owners, it has impermissibly denied responsibility to pay landowners whose land is taken for redistribution.<sup>145</sup> When compensation is not

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Applicants were expressly denied the opportunity to go to court and seek redress, their due process rights were violated under the SADC Treaty), *with Campbell Ltd.*, [2008] SC 49/07 at 28 (claiming that the protection an individual receives in the use and enjoyment of private property is not a question for the courts, even if the Legislature essentially gives the individual no due process protection at all).

141. *See* Gramara Ltd. v. Zimbabwe, [2010] HC 33/09, 16 (High Ct. Zim.) (finding that it is against public policy to register a decision that would require it to overrule a prior decision by the Supreme Court and invalidate the executive's fast-track land reform policy).

142. *See Campbell Ltd.*, Case No. 2/2007 at 56 (reciting the proposition that national law or policy cannot be relied upon to avoid international law obligations); *see also* Shriver, *supra* note 21, at 445 (asserting that customary international law requires due process in all circumstances).

143. *See* SADC Protocol on Tribunal, *supra* note 104, pt. III, art. 32(3) ("Decisions of the Tribunal shall be binding upon the parties to the dispute in respect of that particular case and enforceable within the territories of the States concerned.").

144. *See Campbell Ltd.*, Case No. 2/2007 at 56 (claiming that it is impermissible for Zimbabwe to rely on Amendment 16A to avoid its international law obligation to pay compensation); *cf.* Dancaescu, *supra* note 14, at 641 (arguing that when a government takes private property without compensation, such action indicates that the government is dangerous, anti-democratic, and corrupt).

145. *See* CONST. OF ZIM. of 1979 (as amended by Act No. 5 of 2005), art. 16A(1)(c)(ii) (asserting that even if Great Britain refuses to pay landowners, Zimbabwe still has no right to pay compensation); *see also Campbell Ltd.*, Case No. 2/2007 at 54-55 (focusing on the fact that in Zimbabwe's arguments before the

guaranteed, it undermines the entire land redistribution program by breeding anger about unfair deprivation and uncertainty about legitimate ownership.<sup>146</sup>

While the SADC Tribunal has not had the opportunity to develop jurisprudence on this issue, its decision aligns with other human rights documents and secondary sources. The American Convention on Human Rights explicitly requires just compensation to accompany expropriations.<sup>147</sup> The American Restatement on Foreign Relations also demands “adequate, effective, and prompt” payment for land expropriated by a government.<sup>148</sup> Applying these principles and Zimbabwe’s own concession that international precepts demand compensation, the SADC Tribunal appropriately found that Amendment 16A violates this right to compensation.<sup>149</sup>

After determining that compensation is required, the Tribunal was not convinced that Amendment 16A’s compensation clause is an effective or meaningful way to provide compensation. By deflecting responsibility to Great Britain, which has not agreed to pay landowners for taken property, no compensation is provided at all.<sup>150</sup>

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Tribunal, it never disputed that Applicants are entitled to compensation, but rather, who should pay it); RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 712(1)(c) (1987) (calling it a violation of international law when a taking is not accompanied by just compensation).

146. See *MAPOSA*, *supra* note 30, at 88 (determining that non-compensation both undermines the rule of law and produces doubt in the people that its government is committed to justice).

147. See American Convention, *supra* note 32, art. 21(2) (“No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.”); see also *Shriver* *supra* note 21, at 450-51 (arguing that adequate compensation near market value is required under international law, and while the United Nations and Restatement of Foreign Relations may introduce the idea of less than market value, tribunals have ignored this approach in practice).

148. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW, *supra* note 145, § 712(1)(c) (stating that “A state is responsible under international law for injury resulting from a taking by the state . . . that . . . is not accompanied by provision for just compensation.”); see also *Hellum & Derman*, *supra* note 27 (claiming that compensation for expropriation is an established international law principle).

149. See *Campbell Ltd.*, Case No. 2/2007 at 54-55 (emphasizing that in Zimbabwe’s arguments before the Tribunal, it never denied that Applicants are entitled to compensation).

150. See *id.* at 56 (noting that Zimbabwe is using Amendment 16A to avoid paying the petitioners, even though they have a clear legal title, thus preventing the petitioners from receiving any meaningful compensation); accord *Shriver*, *supra*



Because Amendment 16A effectively denies compensation, the SADC Tribunal appropriately directed Zimbabwe to pay landowners who had been denied compensation.<sup>151</sup> Zimbabwe is in breach of its SADC obligations by continuing to refuse to pay fair compensation to any landowners whose land has been taken.<sup>152</sup>

### III. RECOMMENDATIONS

To account for the human rights violations to property and due process, Zimbabwe must make major changes to its laws and provide redress for the victims who have already suffered.<sup>153</sup> If it fails to do so, the international community must step in as best as it can to legally protect victims of Zimbabwe's fast-track land reform program.<sup>154</sup>

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note 21, at 450 (asserting that Zimbabwe may be able to pay less than fair market value for land, but not paying for the land at all is not justified).

151. See *Campbell Ltd.*, Case No. 2/2007 at 58 (directing Zimbabwe to pay fair compensation, before June 2009, to the petitioners whose land had already been taken).

152. See *Fick v. Zimbabwe*, Case No. 01/2010, 2 (S. Afr. Dev. Cmty. Trib. 2010) (noting that instead of compensating landowners as the SADC Tribunal ordered, Zimbabwe has endangered the lives and property of those who its decision was meant to protect); cf. SADC Protocol on Tribunal, *supra* note 104, pt. III, art. 32(3) (mandating the SADC Tribunal make binding decisions that are to be enforced within the territory of the State concerned).

153. See Nading, *supra* note 35, at 798-800 (advising Zimbabwe to stop appropriating white-owned farms, and stop antagonizing the commercial farmers who still form a crucial part of the economy).

154. See Boyle, *supra* note 15, at 693 (detailing the United States, Great Britain, and International Monetary Fund's decision to terminate aid to Zimbabwe because of perceived violence related to resettlement). In addition to political and diplomatic efforts like ending aid or imposing sanctions, international, regional, and foreign courts should continue to provide a forum for farmers whose land has been expropriated. These courts include, but are not limited to, the SADC Tribunal, South African Courts, and United States courts. See *Campbell Ltd.*, Case No. 2/2007 at 24-25 (granting jurisdiction to hear individual claims based on human rights violations and denial of due process, and to develop jurisprudence using applicable treaties and general principles of international law); Hemel & Schalkwyk, *supra* note 47, at 521 (reviewing South African courts' willingness to register judgments against Zimbabwe); Luke Peterson, *Tribunal orders Zimbabwe to Pay £7.3 Million to Dutch Farmers*, NEW ZIMBABWE (Apr. 28, 2009), <http://www.newzimbabwe.com/pages/farm91.19740.html> (reviewing a decision by the World Bank's International Center for Settlement of Investment Disputes which found that Zimbabwe's land evictions violated treaty obligations); Peter Matambanadzo, *Dutch Farmers Seek Compensation*, ALLAFRICA.COM (Oct. 21,

A. THE ZIMBABWE SUPREME COURT CAN CONFORM TO ITS SADC OBLIGATIONS BY REGISTERING THE SADC TRIBUNAL'S JUDGMENT DOMESTICALLY.

Zimbabwe's Supreme Court should register the SADC Tribunal's decision.<sup>155</sup> Although the court in *Gramara* held that Zimbabwe would not register the decision, *Gramara* was decided by Zimbabwe's High Court.<sup>156</sup> If a challenge is brought before the Supreme Court of Zimbabwe, the Supreme Court should decline to follow *Gramara's* faulty reasoning and recognize the validity of the SADC Tribunal's judgment.<sup>157</sup> Since such a decision would likely contradict the Zimbabwean Supreme Court's *Campbell* decision, the likelihood of this is remote.<sup>158</sup> Application of the SADC Tribunal's *Campbell* decision is, however, required in order for Zimbabwe to conform to its international legal obligations.<sup>159</sup>

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2010), <http://allafrica.com/stories/201010210293.html> (reporting that farmers have approached the U.S. District Court of New York to attach Zimbabwean assets in the United States to compensate farmers for expropriated land).

155. See *Fick v. Republic of Zim.*, Case No. 01/2010, 2, 4 (S. Afr. Dev. Cmty. Trib. 2010) (reminding Zimbabwe that the SADC Tribunal's decision in *Campbell Ltd.* (citation omitted) is binding and enforceable in Zimbabwe territory and admonishing Zimbabwe for not complying with the decision, and referring the matter to the SADC for appropriate action).

156. See *Gramara Ltd. v. Zimbabwe*, [2010] HC 33/09, 16 (High Ct. Zim.) (deciding not to register the SADC's Tribunal judgment).

157. Practically, this seems unlikely, particularly considering the composition of the court. See Dancaescu, *supra* note 14, at 638 (questioning the independence of Zimbabwe's judiciary).

158. The SADC Tribunal has now released two decisions noting that Zimbabwe has failed to comply with the Tribunal's judgment in *Campbell Ltd.* (citation omitted) and meet its obligations under international law. See *Fick v. Zimbabwe*, Case No. 01/2010, 4 (S. Afr. Dev. Cmty. Trib. 2010) (reviewing its 2009 decision that Zimbabwe had not complied with its judgment in *Campbell Ltd.* (citation omitted), and finding that non-compliance was continuing). Zimbabwe's failure to comply with the SADC Tribunal signals that it will continue to ignore its obligation to register the judgment.

159. See discussion, *supra* Part II (arguing that Zimbabwe is in violation of international law for failure to protect the rights of landowners to hold property free from arbitrary takings, to have their due process rights upheld, and to receive compensation when such property is seized).

B. ZIMBABWE SHOULD REPEAL AMENDMENTS 16A AND 16B AND  
ADOPT A NEW LAND REFORM LAW THROUGH A CONSTITUTIONAL  
REFERENDUM.

In a more likely scenario, the Supreme Court will not register the SADC Tribunal judgment or even consider another challenge.<sup>160</sup> However, Zimbabwe is currently undergoing a constitutional reform process, and land reform continues to be a pressing concern.<sup>161</sup> The major opposition party, Movement for Democratic Change, is urging changes to the land reform law and has complained that fast-track land reform is exploitive, unfair, and illegal.<sup>162</sup> The Commercial Farmers' Union also advocates for major constitutional reform.<sup>163</sup> The constitutional reform process should be a stakeholder-driven process that receives input from the potential beneficiaries of land and those whose land may be affected.<sup>164</sup> It should focus on providing more transparency and protection for current owners while respecting the right of landless Zimbabweans to have access to property.<sup>165</sup>

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160. This assessment is based on Zimbabwe's failure to address the issue in the Supreme Court since the SADC Tribunal originally decided *Campbell Ltd.* in 2007.

161. See Lloyd Msipa, *Land and the New Zimbabwe Constitution*, LLOYD MSIPA: POLITICS & LAW (May 27, 2010) <http://msipa.blogspot.com/2010/05/land-and-new-constitution-lloyd-msipa.html> (proposing replacement provisions for Amendment 16B that are less controversial while still addressing the necessity of redistribution).

162. See *Land and Agriculture*, MOVEMENT FOR DEMOCRATIC CHANGE, (Nov. 22, 2009), [http://www.mdc.co.zw/index.php?option=com\\_content&view=article&id=133&Itemid=124](http://www.mdc.co.zw/index.php?option=com_content&view=article&id=133&Itemid=124) (promising that if elected, the Movement for Democratic Change (MDC) party would ensure that land reform would stop benefiting government officials and cronies, that it would conduct an audit of current land redistribution, and that it would form a Commission to investigate corrupt practices); see also Rutherford, *supra* note 1, at 111 (noting that the MDC considers fast-track resettlement a violation of property rights).

163. See INTRODUCTION TO THE AGRICULTURAL RECOVERY PROPOSAL, ARAC, (2010), <http://www.cfuzim.org/images/arpintro.pdf> (last visited Sep. 25, 2011) (demanding that constitutional change is necessary for agricultural recovery, as is a Land Commission to investigate the land reform program).

164. See Rutherford, *supra* note 1, at 111 (observing that such a process would be in the interests of civil society, opposition groups, and government technocrats).

165. See MANBY, *supra* note 34, at 43 (asserting that change must occur to protect poor Zimbabweans who are suffering the most under fast-track land reform and who have the fewest options to obtain recourse).

Because of the devastating social and economic impact that the fast-track law has had on Zimbabwe, Amendments 16A and 16B should be repealed.<sup>166</sup> A new law should call for an immediate end to expropriations and establish a commission to resolve and investigate potential human rights abuses since 2000 or earlier.<sup>167</sup> Under a new law, land redistribution must continue.<sup>168</sup> Land redistribution, legally implemented, is essential to post-colonial nations and to economic recovery in Zimbabwe, but it must be done in a way that will diffuse tensions and ensure compliance with international law.<sup>169</sup>

A new law should be based on a willing buyer, willing seller method with the right of first refusal to the government.<sup>170</sup> Admittedly, this type of negotiated land reform is slower than land expropriations, particularly the fast-track expropriations that are currently being done.<sup>171</sup> However, a somewhat slower process will strike a fair balance between meeting Zimbabwe's land reform goals in a timely manner and avoiding violations of basic human rights.<sup>172</sup>

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166. See *id.* (advocating for the immediate cessation of fast-track land reform).

167. Cf. Romero, *supra* note 39, at 296 (proposing the creation of a truth and justice commission to investigate human rights abuses related to property deprivation).

168. See Todd Moss, *Zimbabwe's Meltdown*, 31 FLETCHER F. WORLD AFF. 133, 141 (2007) (asserting that despite the controversies surrounding Zimbabwe's tactics, no one denies how important it is for a fair land distribution process to be completed); see also Kevin E. Colby, *Brazil and the MST: Land Reform and Human Rights*, 15 N.Y. INT'L L. REV. 1, 18 (2003) (asserting that the lack of a land reform program could also be a human rights violation).

169. See Atuahene, *supra* note 127, at 778-79 (explaining that redistribution gives land to people who were unjustifiably dispossessed under racist colonial practices, which makes land reform an essential ingredient to recovery).

170. See Shriver, *supra* note 21, at 429 (explaining that the right of first refusal requires anyone who wishes to sell their land to offer it first to the government, which can either buy the land or allow it to be placed on the private market).

171. But see Rutherford, *supra* note 1, at 105 (revealing that although proponents claim that fast-track reform is the most efficient way to conduct land reform, the results do not match the rhetoric). Five years into fast-track reform, almost 6,000 farms were acquired by the government in an expeditious manner, but eighty-six percent of those farms had yet to be confirmed or actually given to beneficiaries. *Id.* Cf. VAN BANNING, *supra* note 75, at 333 (arguing that quick radical approaches to land reform are bound to fail and likely to lead to human rights violations).

172. Cf. Shriver, *supra* note 21, at 454-55 (comparing Zimbabwe's land reform issues to Namibia, remarking that while Namibia's slow land reform process may present frustrations, more hasty land reform measures would potentially result in human rights violations similar to those in Zimbabwe).

1. *South Africa should be used as a model for land reform legislation.*

South Africa has approached land reform from a few different angles.<sup>173</sup> This includes the willing buyer, willing seller market-based approach to redistribution, land restitution, and strengthening tenure security.<sup>174</sup> South Africa's land reform law has met some of the same frustrations as Zimbabwe in terms of slow progression.<sup>175</sup> However, its government has accepted that slowness is a price that must be paid to ensure rule of law.<sup>176</sup> South Africa is an appropriate model for Zimbabwe because the two states are regionally proximate, have similar colonial histories, and traditionally rely on one another for judicial guidance.<sup>177</sup> While Zimbabwe should focus on negotiated land reform through the willing buyer, willing seller, it would also be useful to consider measures to strengthen tenure security for land occupants that do not have proper titles.<sup>178</sup>

If expropriation continues in Zimbabwe, it must actually distribute land to the landless.<sup>179</sup> By some estimates, more people have been

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173. See Atuahene, *supra* note 127, at 784-95 (exploring South Africa's land restitution, eminent domain, tenure security, and negotiated land reform strategies).

174. See Boyle, *supra* note 15, at 678-80 (separating South Africa's land reform into three prongs that consist of restitution, redistribution, and land tenure). *But see* Claxton, *supra* note 1, at 549 (opining that a market-based model limits the scale of land redistribution and prevents true reform).

175. See Carson, *supra* note 84, at 414-15 (complaining that negotiated land reform can slow reform efforts by inflating prices and leaving the buyer with fewer resources post-purchase). In some cases, this concern can be resolved by grants or loans given by the government or international community. *See also* BINSWANGER-MKHIZE, *supra* note 22, at 21 (comparing programs where the government was the buyer to programs where individuals were able to buy land directly from the owner).

176. See Boyle, *supra* note 15, at 695 (referring to the South African Government's assertion that it would never tolerate the same type of violence and uncertainty that has occurred in Zimbabwe).

177. See Sarah E. Hager, *Zimbabwe: Why the United Nations, State, and Non-State Actors Failed to Effectively Regulate Mugabe's Policy of Internal Displacement*, 37 CAL. W. INT'L L.J. 221, 253-54 (2007) (reviewing the extensive similarities between Zimbabwe and South Africa, from their colonial histories, to their economic and trading ties).

178. See BINSWANGER-MKHIZE, *supra* note 22, at 398 (assessing the benefits of tenure security to increase investor confidence, reduce conflict, and provide a transparent legal framework to assess ownership).

179. See, e.g., Kinsey, *supra* note 23, at 178 (providing evidence that much of the acquired land has been given to high-ranking government officials).

displaced by Zimbabwe's fast-track program than have been resettled.<sup>180</sup> Because the fast-track program has been effective in expropriating land, but less so in fair redistribution to the landless, a new law that allows expropriation should be crafted to require more oversight for land authorities and stricter penalties for fraud or misuse of position.<sup>181</sup>

Additionally, if expropriations do continue in Zimbabwe, South Africa should be the model.<sup>182</sup> While South Africa has not avoided all the problems of Zimbabwe, it has engaged in thoughtful land redistribution that addresses the valid needs of its dispossessed citizens while complying with international law.<sup>183</sup> This includes fair notice, compensation, and access to challenge acquisitions in court.<sup>184</sup> These three components are crucial elements to any expropriation law and are necessary to meet UDHR and *Banjul Charter* standards.<sup>185</sup>

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180. See Hellum & Derman, *supra* note 27, at 1800 (considering the vast numbers of farm workers who have lost their jobs and been displaced because of land reform measures); see also Romero, *supra* note 39, at 275 (commenting that Operation Murambatsvina, which was a program designed to clean-up the cities in Zimbabwe, has displaced over 700,000 people who lived in informal housing). Many of these people were in informal housing after being collaterally displaced during land reform efforts. *Id.* at 279.

181. See MANBY, *supra* note 34, at 30 (criticizing the fast-track program for not providing proper oversight or a transparent process); cf. Claxton, *supra* note 1, at 550 (suggesting that one way to lesson conflict in expropriations is to target absentee owners who have fewer stakes in the land).

182. See S. AFR. CONST., 1996, art. 25(2)-(3) (subjecting property expropriations to procedural limitations that include non-arbitrariness, just and equitable compensation, and access to courts to confirm the fairness of compensation); cf. Dancaescu, *supra* note 14, at 641 (recommending that South Africa be influential in resolving Zimbabwe's land reform crisis).

183. See Boyle, *supra* note 15, at 696 (complimenting the cautious approach that South Africa has taken to land reform which has allowed it to avoid politically-motivated violence or a disregard for the rule of law).

184. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW, *supra* note 145, at § 712(1)-(3) (asserting that international law demands that States pay compensation for acquisitions, provide a forum to challenge acquisitions, and not take land in a discriminatory or arbitrary manner).

185. See Mielnik, *supra* note 60, at 617-18 (explaining that the three basic elements for expropriation to be considered fair are public purpose, non-discriminatory implementation, and compensation).

C. INDIVIDUALS SHOULD CONTINUE TO SEEK LEGAL REDRESS FOR ZIMBABWE'S VIOLATIONS OF THEIR HUMAN RIGHTS BY APPROACHING FOREIGN, REGIONAL, AND INTERNATIONAL COURTS.

In the alternative, in which Zimbabwe does not reform its law, the SADC Tribunal should continue to be used by commercial farmers to vindicate their rights.<sup>186</sup> As South Africa has demonstrated by registering the SADC Tribunal's decision domestically, States other than Zimbabwe may take steps to provide damages to landowners.<sup>187</sup> Plaintiffs may also approach other courts besides the SADC Tribunal and South African courts.<sup>188</sup> In fact, some victims of Zimbabwe's land reform have already attempted to approach U.S. courts to obtain judgments against Zimbabwe.<sup>189</sup> Creative use of different fora is not an ideal way to provide redress for victims, but until Zimbabwe adopts measures to reform its law, it may be the most practical remedy for landowners.<sup>190</sup>

## CONCLUSION

Amendments 16A and 16B fall short of the basic human rights standards articulated in the UDHR and Banjul Charter that

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186. See Hemel & Schalkwyk, *supra* note 47, at 518 (praising the activeness of the tribunal in enforcing human rights standards and its usefulness for future litigation).

187. See Steve Hofstatter, *SADC's Zimbabwe Property Ruling Enforced in SA*, BUSINESS DAY (Feb. 26, 2010, 7:10 AM), <http://www.businessday.co.za/articles/Content.aspx?id=94802> (reporting that the South African judiciary determined that the SADC Tribunal's ruling against Zimbabwe is enforceable in South Africa).

188. See Matambanadzo, *supra* note 154 (reporting that even in the United States, commercial farmers whose land was confiscated in Zimbabwe are approaching the courts to recover some damages for their lost property). While these farmers are relying on the U.S. Foreign Sovereign Immunities Act, the SADC Tribunal's decision may be used as a reference to prove the propriety of awarding a judgment in favor of the farmers. *Cf. id.* (stating that the farmers want the judgment to be made in accordance with the U.S. Foreign Sovereign Immunities Act).

189. See *id.* (reporting on thirteen Dutch nationals who have filed an application in District Court in New York for compensation for their confiscated farms).

190. See Hemel & Schalkwyk, *supra* note 47, at 522 (praising the SADC Tribunal and South African courts for taking measures to attach Zimbabwe's assets to enforce awards).

Zimbabwe is obligated to follow.<sup>191</sup> In addition, Zimbabwe is in violation of its obligations to the SADC Tribunal's decision by refusing to register the Tribunal's judgment that Amendments 16A and 16B are arbitrary, do not provide due process, and do not provide compensation to owners.<sup>192</sup>

In addition to the legal violations, Amendments 16A and 16B are a detriment to Zimbabwe and its people.<sup>193</sup> Its economic collapse and flagrant human rights violations have led many to label Zimbabwe as a state in crisis.<sup>194</sup> While much of the harm stemming from this fast-track land reform has done irreparable damage, a change in policy and the cessation of fast-track land reform would be notable and would encourage steps towards returning the rule of law to Zimbabwe.<sup>195</sup> In the meantime, it is up to international tribunals like the SADC Tribunal and foreign states to condemn fast-track land reform and provide a forum for victims to access legal remedies.<sup>196</sup>

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191. See discussion, *supra* Part II (discussing Zimbabwe's violations of the protection to property, the prohibition against arbitrary deprivation, and the right to due process of law).

192. See discussion, *supra* Part II (arguing that Zimbabwe must comply with the decision of the SADC Tribunal, in accordance with its obligations under the SADC Treaty, which it has ratified).

193. See VAN BANNING, *supra* note 75, at 179 (observing that Zimbabwe's land reform has undermined its social fabric, isolated it in the international community, and discouraged investment into the economy).

194. See, e.g., Mitchell, *supra* note 4, at 590 (providing readers with an overview of the political and economic crisis in Zimbabwe stemming from land reform).

195. See, e.g., MANBY, *supra* note 34, at 43 (referring to a conference in which civil society groups agreed that fast-track land reform must end to bring the rule of law back to Zimbabwe).

196. See Hemel & Schalkwyk, *supra* note 47, at 523 (encouraging the use of the SADC Tribunal, with the cooperation of national courts, to tackle human rights abuses in Zimbabwe).