

## 2003 Commonwealth Law Student Moot Melbourne, Australia

*The President of Uzania, Geoffrey Landima, has for the last two years been intent on ridding Uzania of 'those colonial white farmers who arrogantly think they still have a right to live here'. International as well as local opposition media has reported that President Landima, through his political party (UZ), has since June 2001 endorsed and sponsored the terrorization of the remaining white farmers. Amnesty International has conducted an independent investigation which has confirmed that the ruling party has mobilised a mass of largely landless individuals within Uzania to 'take action' against the whites. The investigation shows that in the last year, beginning in January 2002, the ruling party has encouraged and supported occupation of white farms in the Ipopo district of Uzania, the district in which the majority of white farms are situated. The report further confirms that there is rising evidence that state-sponsored torture, rape, violence and intimidation is taking place on a large scale, not only against white farmers in the Ipopo district, but also against anyone or any party which opposes the government's policy on the 'land issue'.*

*A South African Farmer, Mr Ceres, has significant property interests in Uzania. Mr Ceres lived his whole life in Uzania but left in early 2001 after being forced off his farm in Ipopo by a crowd of UZ individuals who promised to kill him if he didn't leave. Mr Ceres and his family left Uzania without being compensated for the taking of his farm, and came to South Africa where they have now taken up citizenship. Mr Ceres now farms in the Western Cape, but not without some bitterness that his farm in Uzania is lying fallow with very little prospect of him and his family being able to return. In July 2002 Mr Ceres approaches Commissioner Hunter of the South African Police to inquire if anything can be done to arrest President Landima. Commissioner Hunter, convinced that President Landima is indeed guilty of gross human rights violations, appreciates that President Landima cannot be arrested by the SAPS if he is not within South African territory. Hunter notices, however, that there is an international conference on African Development which is being hosted in Durban in December 2002. He hurriedly liaises with the Department of Foreign Affairs to send a special invite to President Landima to attend the conference as guest of honour.*

*President Landima, honoured by the invitation, arrives in South Africa to attend the conference. Two days before the conference is due to begin, while enjoying a quiet dinner in the Hilton Hotel, President Landima is arrested by the South African Police on an arrest warrant issued with the consent of the National Director of Public Prosecutions. The warrant was issued on the strength of the Rome Statute of the International Criminal Court which has been incorporated into South African law by the Implementation of the Rome Statute of the International Criminal Court Act, 27 of 2002. The warrant charges President Landima under the Rome Statute with crimes against humanity.*

*At his appearance before the High Court designated to hear the matter, President Landima insists that he had been unlawfully tricked into coming into South Africa and that the actions of the South African police are an affront to his dignity and the dignity of Uzania, violated procedural fairness guarantees, and disregarded the good relations that exist between South Africa and Uzania. In addition, Landima argues that he, like any other serving head of state, has diplomatic immunity from arrest and prosecution in South Africa, and that the High Court has no jurisdiction over him, as the crimes alleged against him were not committed on South African soil.*

*The High Court agrees with President Landima and refuses to exercise jurisdiction over him. It points out that South Africa and Uzania, both members of the Commonwealth, have an interest in respecting each other's sovereignty. In particular, it asserts that Landima was tricked into coming to South Africa, and that the recent decision of the International Court of Justice in the Yerodia (Arrest Warrant Case) between Congo and Belgium (Case Concerning the Arrest Warrant of] April 2000 (Democratic Republic of the Congo v Belgium), 14 February 2002) makes it clear that a serving minister or head of state is entitled to immunity. The matter now comes on urgent appeal to the Commonwealth Moot Court. As in the court below, the factual accuracy of the Amnesty International Report is accepted, although the legal consequences thereof remain open to argument.*

List of cases and statutes

*S v Ebrahim 1991 (2) SA 553, (South African Court of Appeal)*

*R v Horseferry Road Magistrates Court, ex parte Bennett [1994] 1 AC 42 (House of Lords)*

*Attorney General of the Government of Israel v Eichmann (1961) 36 ILR 5*

*Regina v Bartle and the Commissioner of Police for the Metropolis and Others ex parte Pinochet, 38 ILM 581, 602 (1999) (House of Lords)*

*Yerodia Case (Case Concerning the Arrest Warrant of April 2000 (Democratic Republic of the Congo v Belgium), 14 February 2002), (International Court of Justice)*

*The Rome Statute of the International Criminal Court, 1998 (available at <http://www.un.org>)*

*The Implementation of the Rome Statute of the International Criminal Court Act, No. 27 of 2002, South African Act of Parliament (available at [www.gov.za/acts/2002/a27-02/a27-02a.pdf](http://www.gov.za/acts/2002/a27-02/a27-02a.pdf))*