APPENDIX: RULE OF LAW, JOURNALISTS AND JOURNALISM

ISSA SHIVJI

[This was written for a student conference sometime around the occurrence of the events discussed here.]

Demolition and the Rule of Law

A couple of months ago 500 people were rendered without shelter. Their houses built in Ubungo and Kimara were razed to ground by government caterpillars. The government wants to construct a modern highway to Morogoro for development. "These" people, to use the rather crude language of some of our journalists, had built illegally. They were not supposed to build there. Their application to the court, as the press would have it, failed.

Appeals to leaders to give some grace period so that people might make alternative arrangements to have a roof over their heads fell on deaf ears. The law must take its course, the leaders said. We are a country governed by 'rule of law' and no stone will be left unturned to ensure that law rules, (even if it leaves rubble in its wake!), other decision-makers asserted. We must develop, the leaders-in-the-making chimed in. 'Demolish to develop', that seems to be the slogan of the day, our new vision.

Many questions arise. First, issues of facts, as lawyers would say. How many families were involved? When did they build and on what basis? Did they have any permission whatsoever, whether explicit or implied? If they were building illegally, and continued occupying land illegally for some ten to fifteen years, what did the government -the law enforcers - do to enforce the 'rule of law'? After losing their shelters, where did the families go? What was the ultimate fate of some five hundred or so human beings whose shelters had been destroyed? Or did they simply become another statistic - the 71st per cent of the so-called 70 per cent "squatters" that inhabit Dar es Salaam.

All these questions should have been raised, and discussed and answered in the public media. But how much of investigative journalism did our press do to supply us with 'facts' to conduct such a discussion? Investigative journalism itself needs to be investigated.

But even more intriguing are the issues of (rule of) law? First, there is the question of one of the basic needs of a human being involved here; the need to shelter to withstand the vagaries of nature. In the language of human rights, this translates into the right to shelter. The day when rule of law meant strict application of rules and nothing more are long gone. Today when we talk of rule of law we talk of fairness and even-handedness. We talk of equality. Even beyond equality, we talk of equity and justice. That is the kernel, the core, if you like, of rule of law. Rule of law without justice does not deserve any popular respect and, therefore, has no legitimacy. The South African apartheid regime applied rules of law and was known to be very legalistic. Yet, there was an outcry against it. So was Hitler's fascist regime - very rule-oriented. There the rules ruled but that did not endear it to any right-minded, justice-thinking people! Deservedly, it had no respect.

So, first, we must distinguish between rule of law and rule of justice. And, second, we must recognise that there can be rule of law without rule of justice. And, thirdly, our leaders must understand that there is no inherent virtue in rule of law *per se* if law does not do justice or is not seen to be doing justice. Therefore, the next time they justify their actions by appealing to rule of law, they must first ask themselves whether their action or omission is not only in accordance with rules but whether it corresponds to justice.

In our case, there are many question marks as to whether the demolition was in accordance with rule of law, let alone justice. The big, but lazy and thoughtless, argument in this case was that the people concerned had built illegally and, therefore, they had no rights - not even the right to shelter! Who doesn't know that the government has failed miserably to provide shelter to its people? Who doesn't know that the government officers have "permitted" all kinds of "illegal" buildings, including changing master plans to suit the plans of money-bags and power-wielders?

People have to find ways and means of sheltering themselves. They do so. And fifteen years later the government which has failed to provide shelter, which has failed to apply rules consistently, which has failed to do justice thousand times over, and which slept over its law-enforcing functions for all that period, razes the shelters to ground under the banner of 'rule of law'. Does it have a right and justification to do so? In the language of new rights jurisprudence and law, it can be argued that by not enforcing law during all that time, the government created or indirectly encouraged legitimate expectations on the part of the people that they would not be disturbed. Whatever the fate of such a legal argument in our courts, the larger question still remains - the issue of the right to shelter. What is the government's - direct or indirect - responsibility in sheltering its people?

Ironically, around the same time, there was another demolition somewhere in the city centre. A "developer" armed with a demolition order and "protected" by a private security company razed a building to ground at 4.00 p.m. in the morning while the occupants were still indoors. Again "investigative journalism" failed us. Sensational reporting (which also has its place if done in moderation) dominated. To whom did the plot belong? NHC? Government? Was the building, according to expert reports, really uninhabitable? Was there an open hearing and were all sides heard before the demolition order was issued? For how much did the developer get the plot for? Was his the highest bid? Couldn't the building have been totally renovated instead of being demolished? And what about the rights of the long-term occupying tenants in the new building? If they don't have any rights, what kind of development and justice it is to render your twenty families shelter-less and put up a high-rise office-block or a super-market or a casino? Whom are you developing and who is being underdeveloped in this process? But, then, in human affairs and relationships you cannot avoid the fundamental underlying question: Who is being demolished and who is being developed?

Even more interesting, and in contrast to the Ubungo demolition, was the play of rule of law. This time around, the building was demolished against a court order of injunction. In breach of rule of law, you may rightly say. But, aha!, the rule of law was

vindicated with a court conviction for contempt - thirty days imprisonment, certainly novel and refreshing in our conditions. (Although it does give rise to other questions - weren't there any government officers involved in this contempt?) The victory of the rule of law was ephemeral though, an exception; its violation permanent, the rule. If reports of some obscure papers are to be believed, the prison term wasn't spent at all in the prison. Were was it "served"? At home? In hospital? On the beach? Well, how can we know? Once again, our media simply lost interest.
What happened to the shelterless people hounded out of the building by bulldozers? Nothing of the building remains. Who completed the demolition, in what circumstances and under what legal authority and under whose responsibility? Because, demolition, as we know, is potentially a dangerous undertaking. Who would be held responsible for an accident, for example? (Or was there one while our investigative journalism was wallowing in other sensational stories?)

The issue of rule of law versus rule of justice is extremely important to tease out because there seems to be a perception that the rule of law is virtuous by itself. Maybe , when these coincide you have legitimacy and stability but what happens when there is a fundamental hiatus between the two? What should be our yardstick of condemnation or commendation of the government of the day - rule of law or rule of justice? And, even more serious, can there be justice in law when there is no justice in society? Additionally, are issues of justice, legal and social, part of current debates and concerns by lawyers - including you students - and non-lawyers alike? It will be a sad day indeed if the law students of this University - which has prided itself for its interdisciplinary approach to teaching law and creating society-conscious lawyers - become dizzy with black-letter law conceptions of rule of law and ignore, whether consciously and by default, their social responsibilities.

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