

An Analysis of Zimbabwe's Performance in Upholding International Human Rights Law in the 21st Century

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Abstract: Zimbabwe over the last decade has received widespread condemnation on human rights abuses, particularly by the West. As a member of the international community of states, Zimbabwe has a duty to meet obligations *erga omnes* (rules of state responsibility) to protect and promote human rights. Zimbabwe has seemingly failed to adhere to this international rule umpteen times as indicated by systematic political violence and impunity, intimidation, torture, selective application of the law and destruction of property which characterized Zimbabwe's politics in the 21st century. The law that governs the protection and promotion of human rights, international human rights law has therefore been violated in Zimbabwe. Data for this research paper was gathered through the use of interviews, direct observation, document analysis and desktop research. The essence of this study is to assess the extent to which Zimbabwe has upheld international human rights law in the 21st century. More importantly, the assessment is informed by the centrality of politics in relation to state practice. In other words, the extent to which Zimbabwe has upheld international human rights law is approached from the viewpoint of a politician rather than that of a lawyer. Those instances when Zimbabwe has been seen acting in compliance or non-compliance with rules of international human rights law can therefore be best explained in political rather than legal terms.

Key words: International human rights law, Zimbabwe, 21st century, violence, data

INTRODUCTION

Over the last few years Zimbabwe has been accused, mainly by the West of violating human rights. This study therefore assesses the extent to which Zimbabwe has upheld international human rights in the period from 2000-2010. Events and instances which reflect Zimbabwe acting in accordance or contrary to rules and principles of international human rights law will be critically assessed and analyzed. As a member of the international community of states, Zimbabwe is supposed to meet obligations *erga omnes*, rules of state responsibility in as far as protecting citizens is concerned. Against this background, the main thrust of this study is to find out whether or not Zimbabwe has been meeting her obligations and responsibility to protect citizens. Over and above, state practice often disapproves issues of lower politics in this case upholding international human rights law. Realists regard the respect for and protection of human rights lower politics and state survival as higher politics. Thus, respect for human rights is often constrained by the importance and centrality of politics in internal and international relations. The study will take into consideration the centrality of politics in examining the extent to which Zimbabwe has upheld international human rights law in the 21st century.

CONCEPTUAL BACKGROUND

International human rights law is a branch of international law concerned with the promotion and protection of inherent entitlements individuals have by virtue of being human (Dugard, 2007). It is primarily made up of treaties, agreements between states intended to have binding legal effect between the parties that have agreed to them and customary law. In addition, rules of law derived from the consistent conduct of states acting out of the belief that the law required them to act that way comprise international human rights law (Shaw, 2003).

It must be noted that acting in accordance with rules and principles of international human rights law is not mandatory (Wallace, 2005). Observing these rules is voluntary. That is the distinct feature of the international legal system as a whole. Some say it's the inherent weakness of the international legal system which is not true. It is rather the distinct feature of the international legal system. Therefore when Zimbabwe is seen violating these rules, justification can be given on the basis of the right to comply or not which is the major characteristic of the international legal system. However, certain rules that form the corpus of international human rights law are non-derogable for instance, the right to life. In other words certain human rights have the status of *jus cogens*.

It is therefore the purpose of this research to assess the extent to which Zimbabwe has observed these rules in relation to her right in certain circumstances to derogate from complying with these rules.

Like other political science concepts, human rights have escaped a universally acceptable definition and meaning, presenting difficulties to both international and national regulation (Wallace, 2005). Consequently, they have reflected the distinction between two theoretical approaches namely universalism and cultural relativism.

Universalism is inclined to a position endorsed by the United Nations Conference on Human Rights that human rights are universal. They contend that human rights are universal not culture specific. More importantly, the emphasis in universalism is on the individual. They maintain that states should perform their duty to promote and protect the rights of individuals. Majority of countries are inclined to the universalist theory in their approach to human rights, no doubt.

The relativist theory maintains that human rights differ from state to state determined by a state's value, cultural and religious traditions. Unlike universalists, relativists place the emphasis on the state rather than the individual. Relativists accept the rights pertaining to individuals but emphasize that individuals are defined in terms of their relations with others and as part of a society. At its strictest, cultural relativists maintain human rights are inapplicable to non-western societies.

Adherents to the relativist theory frequently criticize international human rights instruments as simply enforcing western concepts and values in the guise of universalists.

Having said all the above this research is based on universalism. Zimbabwe's approach to human rights indicates a position endorsed by the United Nations World Conference on Human Rights in June 1993. The 1993 Vienna Conference concluded that while the significance of national and regional particularities and historical, cultural and religious backgrounds must be borne in mind, states should assume their responsibility to promote and protect human rights. In other words, cultural diversity is not denied and universalism and relativism are not mutually exclusive.

Theories have also been propounded to explain the intercourse of states in the international system. Such theories are political realism, idealism, game theory, interdependence theory and many others. Of these theories, only political realism and idealism are relevant to this research. These theories can also be used to explain internal relations of a state that is relations between governments and their citizens. This is because the

interaction of states at the international level is almost equivalent to the relations between governments and their citizens at the domestic level.

Idealist theory which is sometimes called utopianism advocates a peaceful and just world where states should observe rules and principles in good faith. Morality is the basis of the idealist theory. Idealists do not subscribe to the view that politics and power are central in international relations. Moral imperatives such as the respect for human rights should take first priority in international relations.

There is also political realism or realist theory which is sometimes called power theory. The theory was propounded by Morgenthau. The major tenet of this theory is that the world is a brutal arena where states always look for opportunities to take advantage of each other (Morgenthau, 1960). According to the realist theory, state survival in the international system takes centre stage. Prominent to state survival is acquiring as much military power as possible and wielding the acquired power, realists contend (Morgenthau, 1960). Moral imperatives such as the respect for human rights are regarded as useless and play second fiddle in international and internal relations.

Zimbabwe's international and internal relations are more based on political realism. It is therefore, the purpose of this research to determine the importance of power and politics of survival in Zimbabwe. The extent to which Zimbabwe has upheld international human rights law is determined by politics. In other words, politics is central in Zimbabwe's practice just like with all other members of the international community. However, to some extent Zimbabwe prioritizes moral issues such as human rights. That makes the country idealist, albeit to a limited extent. By and large, some instances which Zimbabwe is allegedly accused of violating international human rights law occurred in realization of the importance of respecting human rights. A case in point is Operation Restore Order.

The operation is subject to different interpretations but may safely argue that the campaign occurred in realization of human rights in reference to public health.

CONTENDING ISSUES

The study provides a comprehensive and ground breaking assessment of the extent to which the Government of Zimbabwe has upheld international human rights law since year 2000. Research findings will also be outlined in this chapter. Specifically, the chapter will assess instances and events where Zimbabwe has been seen acting in accordance with or contrary to protective

rules and principles of international human rights law. To this end, whether Zimbabwe, since 2000 has been meeting obligations *erga omnes*, state responsibility in adhering to international human rights law is the main thrust of this chapter. Challenges facing Zimbabwe in upholding these laws will also be discussed. More importantly, the nexus between respect for human rights and the centrality of politics will not be ignored.

Zimbabwe has a historical legacy of organized political violence and impunity which began during the Gukurahundi era. Since then violence, intimidation and destruction of property has characterized Zimbabwe's politics. State institutions have primarily been directly and indirectly responsible for political violence and shameful treatment of citizens pervasively violating their rights (Mupinda, 2005).

From 2000 onwards, there have been increasing levels of violence resulting in pervasive human rights abuses in Zimbabwe. All available evidence indicates that the government has engaged in widespread, systematic and planned campaigns of organised violence and torture to suppress normal democratic activities and to unlawfully influence the electoral process (Reeler, 2001). But in some cases the government is justified to some extent for such action as they were intended to preserve the state. The government has also passed draconian laws and the law enforcement agencies have vigorously applied highly repressive legislation. These measures were directed at ensuring that the government retained power rather than overcoming resistance to achieving equitable land redistribution and correcting historical iniquities.

Before venturing into what happens in practice in the Zimbabwean context, mention, albeit brief must be made to the fact that rules of international law in general, international human rights law in particular are not imposed on states. Compliance with rules and principles of this 'youthful' legal system is not mandatory (Shaw, 2003). It is based on the consent of states and all states are equal in legal theory due to the concept of sovereignty (Guzman, 2001). It is imperative, therefore, to note that rules of international human rights law are not imposed on Zimbabwe. Thus, for Zimbabwe just like all other members of the international community, acting in compliance with this branch of international law or not is voluntary. This is because of the centrality of politics and power in international relations. Those who point to this as an inherent weakness of the international legal system are guilty of approaching it from the prejudice of a lawyer.

International law should be approached from the prejudice of a politician. Reason being it is intended for the coexistence of states in a community in which power and politics for survival, take precedence over norms and laws.

Against the above background, allegations of human rights abuses leveled against Zimbabwe by especially the West, particularly the USA and Britain are indications of the utilization of international law in pursuing power politics. In other words, human rights abuses in Zimbabwe cannot be separated from the politics of survival in an anarchic international system. Surprisingly, nothing is said when it comes to human rights abuses by countries aligned with the US and Britain. Russia and China used their veto powers in the United Nations Security Council to block humanitarian intervention in Zimbabwe in 2008 and South Africa was seen supporting Zimbabwe when other countries condemned the country's humanitarian situation. This would display their double standards, hypocrisy and dogmatic tendencies associated with invoking international human rights law.

However, human rights have assumed the status of *jus cogens* such that they are non-derogable but this is difficult to achieve because of the supremacy of politics of survival.

In the latter part of 1999, the Movement for Democratic Change (MDC) was founded and earlier the National Constitutional Association had been formed in 1997 out of civil society's desire to reform the constitution. The MDC was in part an outgrowth of the National Constitutional Assembly (NCA) and both groups constituted the first significant opposition to the virtual hegemony of political power that had been held by ZANU PF since 1980 (Feltoe, 2000). During 1999, there was escalating conflict between the government and civil society over the direction of the constitutional process.

Another most crucial event of this epoch was the Fast Track Land Reform Program which skeptics associate with human rights abuses.

The 21st century has witnessed a rapid decline of the human rights situation in Zimbabwe. As mentioned before, the formation of the Movement for Democratic Change in 2000 and the first major defeat in a national referendum to change the constitution, pushed ZANU PF to use its supporters and state agents to pursue a campaign of repression, aimed at eliminating opposition and silencing dissent voices (Reeler, 2000). Since then, state-sponsored intimidation, arbitrary arrest, torture and attacks on supporters of the political opposition, human rights defenders and the independent media have escalated at an alarming rate. It is true that Zimbabwe has drifted away from her responsibility to respect and promote human rights law during this period but the extent of the abuses should not be over exaggerated.

Biased media reports, both local and international, have always tried to convince people to believe that ZANU PF alone was responsible for electoral violence

and human rights abuses. The Movement for Democratic Change (MDC) supporters has also been involved in violent attacks on supporters of ZANU PF which amounts to violation of human rights law (Amani Trust, 2002a-d). In 2002, the leader of MDC-T who is now the Prime Minister of Zimbabwe appeared on ZTV saying if they fail to peacefully remove Mugabe from power they will do it violently. One does not need a laboratory protocol to conclude that MDC was also responsible for egregious human rights abuses in Zimbabwe. Essentially, albeit to a limited extent, the blame should be shared. But if the blame is to be weighed on a scale, ZANU PF would incur much of the responsibility because according to Marxist thinkers, the state is the greatest terrorist as it possesses the monopoly over power, violence and cohesion without discretion. There is a considerable measure of truth in this argument; states have been seen in many instances unleashing terror upon people they are supposed to protect.

Roots of political violence and human rights abuses: The constitutional referendum and the fast track land reform programme: The 1990s and the preceding period saw the emergence of a large number of civil society organizations, among others the Zimbabwe Congress of Trade Unions (ZCTU), to oppose the hegemonic and disputable rule of ZANU PF, challenging rampant corruption, wanton human rights violations and very poor governance. By the time the Government tabled a draft constitution for a popular referendum in 2000 which among other things, proposed to strengthen presidential powers and to allow the government to expropriate white commercial farmland without compensation, a segment of civil society organizations were successfully mobilized to vote against the constitutional draft.

The proposed constitution that was put forward by the Zimbabwean government for endorsement in a referendum was ultimately rejected by 54% of the electorate. This constitution included a so called controversial land clause that made the British government liable for payment for land resettlement but was nonetheless rejected by the Zimbabwe electorate. President Mugabe came up with a rhetoric claiming that the electorate was sponsored by the West to vote against the proposed new constitution. This could be true given the fact that the West was against the idea of land redistribution in Zimbabwe.

The 2000 referendum marked the first political defeat for the leadership of ZANU PF and became a watershed year in Zimbabwe's political history. As ZANU PF was fighting for its political life, the campaign period provided the perfect opportunity for the war veterans to

consolidate their interests in order to augment their political power (ZHRNGOF, 2001). It was in this charged political context that land reform became a tool for economic redistribution and political mobilization. The 'fast-track land reform programme' became an integral part of the campaign process (Amani Trust, 2002a-d). Many people including the MDC were supportive of the land acquisition and redistribution exercise. It was however, expected that the government would ensure an orderly and fair process, free of corruption. Yet, as a pay-off for their electioneering role, the war veterans were promised ownership of 20% of the land taken over by the state in the period 2000-2002. The war veterans had become an important interest group and became key players in this campaign, mobilized by ZANU PF as 'political shock troops' on a large scale. The systematic use of intimidation and violence against opposition candidates and supporters became the modus operandi, particularly in commercial farming and communal areas, effectively sealing those areas off from opposition access.

The report from the Zimbabwe Election Support Network (ZESN) on the 2000 Parliamentary Elections concluded that the pre-election period was characterized by violence, intimidation and torture of opposition supporters. There were "nogo" areas in the country created by the violence and the occupation of the farms by war veteran militias. Mass fear created by the violence prevented people from exercising free choice at the ballot box. During the election period the right to life, freedoms of opinion, expression, association, assembly and movement were all substantially restricted. More so, the scale of violence and intimidation in the run-up to the campaign and during the election period marred the final result. The government failed to uphold the rule of law and compromised law enforcement agencies. Resorting to coercive devices such as violence, intimidation and torture points to non-observance of international humanitarian law contained in common article 3 and Additional Protocol 2 of the Geneva Conventions (Dugard, 2007). Additional Protocol 2 provides for the protection of victims of non-international conflicts accorded for in article 3 common to the four Geneva Conventions of 1949. Zimbabwe is a state party to the 1949 Geneva Conventions since 1983. Intentional or non-intentional failure to comply with the conventions meant that she failed to uphold international human rights law.

Reports claimed that it was the government responsible for sponsoring political violence in 2000. This could be true because as Marxists would allude, the state, through the government in power and its agencies is the greatest perpetrator of violence as it has the monopoly

over violence, power and coercive capabilities. However, it is not fair to level all the blame entirely against ZANU PF. About 90% of the respondents in Mashambazhou District in Zhombe subscribe to the view that both parties were involved in political violence. They alluded to the horrors they witnessed at the hands of both MDC and ZANU PF supporters. According to these respondents, the youth would be forced to participate in violent activities and at times youths from the two political parties would clash and fight horrendously. One villager testified that his son was beaten to death by MDC supporters.

Another villager could not hide his anguish when she testified how her daughter was raped and killed by ZANU PF supporters.

Opposition supporters were also responsible for unleashing terror on ZANU PF supporters. Whether ZANU PF or MDC was responsible for political violence is of little importance. Of significant importance is the fact that human rights were violated wantonly and it is the responsibility of the state to make sure that perpetrators were brought to book. Not enough was done to punish those responsible for acts of terror; hence, the government is guilty of failing to uphold international human rights law.

Egregious Human Rights Violations in 2000: The Zimbabwe Human Rights NGO Forum reports indicated that ZANU PF youth were the major perpetrators of gross human rights violations that is why not enough if at all action was taken was done to curd political violence or at least punish the perpetrators. The Zanu (PF) supporters who committed these crimes were often young men, unemployed, travelling in groups witnesses referred to them in testimony as 'Zanu (PF) youths'. Zanu (PF) most often provided these youths with money and food to meet their daily needs. Testimonial evidence from the NGO Forum reports exists to substantiate the claims that ZANU PF was the chief culprit responsible for wanton human rights abuses.

Testimonial evidence of torture and political violence that took place during the 2000 Parliamentary elections was gathered from the court cases that were observed. The crimes that were perpetrated on the citizens of Zimbabwe were categorized as the following:

- Torture
- Murder
- Rape
- Threats and intimidation
- Theft
- Destruction of property

All the above crimes are prohibited under international human rights law. Torture is prohibited under the 1987 United Nations Convention against Torture (Shaw, 2003). Although, Zimbabwe is not a state party to the 1987 convention it is bound to protect Zimbabwean citizens from torture in accordance with article 7 of the International Covenant on Civil and Political Rights to which she is a state party. This article prohibits torture, cruel, inhuman or degrading treatment.

Zimbabwe signed and ratified the covenant. As a consequence of ratifying the covenant, Zimbabwe is obliged to make torture punishable under its domestic law and to take measures to establish jurisdiction over an act of torture committed within its territory when the offender or victim is a national (Shaw, 2003). In 2000, Zimbabwe failed to meet her obligation *erga omnes*, instead government officials were among the chief perpetrators of human rights violations. Under customary international law, torture is classed as a form of crime against humanity in terms of the Rome Statute of the International Criminal Court.

Methods and types of torture used: Various torture techniques were employed. Assaults and beatings of victims were carried out with various dangerous weapons such as knobkerries, sjamboks, wire, wood planks, iron bars, bicycle chains and sometimes guns. A particular method of torture called *falanga* which has the potential for long-term health effects was the most popular. *Falanga* which is the beating of the soles of the feet is excruciatingly painful, reduces the ability of the victim to walk temporarily and in some cases causes permanent disability. Victims were also beaten on the buttocks which rendered the victim unable to sit and caused severe injuries.

Beatings and torture were sometimes carried out indiscriminately, often at the so-called "pungwes" where Zanu (PF) supporters would torture those persons identified as MDC supporters.

They also occurred during attacks on people's homes. They were sometimes prompted by challenging the victim about his or her political affiliation. In some cases the victim would be told to surrender their MDC t-shirt or membership card; in still other cases if the victim could not prove that they were a Zanu (PF) supporter by producing a Zanu (PF) membership card, they were also severely beaten. The 80% of respondents from Kasawe, Zhombe in the Midlands Province testified that they were not allowed to wear MDC t-shirts and those who were adamant would be beaten and their t-shirts would be burnt.

Testimonial evidence of tortured persons: According to a respondent from Zimbabwe lawyers for human rights from the data gathered through interviews, family members of MDC supporters were often not spared from violence, apart from being frequent witnesses to torture. Below are testimonies of people tortured according to the respondent.

A report by the Human Rights Watch indicate witnesses in the Buhera North case testifying that a CIO agent approached a man after he attended an MDC meeting and was beaten. A woman was beaten by a CIO agent because she was chanting MDC slogans. Zanu (PF) supporters beat a man who was wearing an MDC t-shirt. A witness escaped when Zanu (PF) supporters approached an MDC meeting and began to beat people in attendance.

After testifying about her husband's death, Mavis Tapera told the court in the Mberengwa West case about her own assault and subsequent torture on 4 July, 2000. Assailants led by 'Biggie' Chitoro, a prominent member of Zanu (PF), ordered her out of her house at night and used a knife to cut off her petticoat. At this point she was clad in only her pants. They began to assault her with logs, concentrating on the buttocks. She testified that one of the assailants asked her if MDC President Morgan Tsvangirai bought her the pants she was wearing. Her attackers then forced an iron rod into her genitals and ordered her to imitate sexual positions. Breaking down numerous times on the witness stand, Tapera testified that the ordeal was extremely painful but she was forced to continue. She was then taken to Texas Farm with her husband but was returned the same night. When her assailants returned her to her homestead, they urinated into a cup and forced her to drink from it. She told the court that one of the assailants threatened to force her to eat his stool if she refused.

A witness in Buhera North was identified as an MDC supporter as he was passing by Zanu (PF) rally. According to testimony, a Zanu (PF) supporter pointed an assault rifle at him and made him take off his MDC shirt which the assailant then burned.

A witness testified that he was approached by Zanu (PF) supporters who made him relinquish his MDC card and t-shirts. He was then assaulted with bicycle chains, sticks, fan belts and fists. Later that day, he was kicked and made to sing Zanu (PF) songs. He lost sight in his right eye due to his injuries.

Shaigy Ali stated that he was stopped at a roadblock in Zvishavane manned by Zanu (PF) youth. He was asked for a Zanu (PF) card which he did not produce. The youth then took his national identity card and proceeded to beat him. He also witnessed numerous other assaults at the roadblock.

Livingstone Muswati, an MDC branch chairman in Makoni West, testified that he could not execute his duties because Zanu (PF) supporters would prevent him and other MDC members from holding meetings. Zanu (PF) youths chased people from their communal homes and threaten them. They arrived at a school where Muswati was organizing a meeting and informed him he was not allowed to hold a meeting there. On another occasion, Zanu (PF) youths chased villagers who had gathered for a meeting at a shopping centre. Again, villagers were also forced to flee from their homes.

Percy Mavheneka testified in the Chiredzi North case that Zanu (PF) supporters, Mrambi and his friends, attacked him on 15 June, 2000. Before he and his wife had fallen asleep that night, he heard that his windows had been struck and broken. After having proceeded to the dining room to investigate, the front door to the house was broken down and Mrambi and other Zanu (PF) members entered. Of two that had burst into the house, one had a beard and was carrying a whip and a knobkerrie and the second was holding a pistol. Mavheneka was assaulted while trying to run into the kitchen while his wife was attacked in the corridor. All his four children, ages 2, 4, 7 and 10 were also attacked. The assailants chanted 'MDC' as they beat up the family. Mavheneka managed to get up and escape through the front door but was struck on the back of his head with a stick and consequently fell back to the ground and was then assaulted by those of his assailants who had remained outside. Again, Mavheneka tried to escape but was tripped, assaulted again and told to hand over all MDC t-shirts. Mavheneka's hands were held and he was told to lie down but finally managed to get up when his assailants were distracted and hide in nearby sugarcane fields. Mavheneka was taken to hospital and admitted for 2 weeks. His wife made a report to the police that he had gone missing.

Torture using the falanga method: According to a respondent from Human Rights NGO Forum, in one particularly brutal case in Makoni West, witness Farai Dhliwayo told the court of his experience involving torture including falanga performed on him by a prominent Zanu (PF) supporter, Nathaniel 'Punish' Mhiripiri.

Ferai Dhliwayo, an MDC youth chairman, testified that he was brutally tortured on 28 April. He returned home from an MDC meeting at about 8 p.m. and found Zanu (PF) youth waiting for him. They held his arms and dragged him to a local school. He was stripped of his MDC t-shirt that he was wearing and was beaten. His shoes were removed and he was taken to a classroom where he was instructed to sit with his legs stretched out.

An assailant produced a gun and began beating him with it. He was told to stand, lift his hands and say MDC slogans. He was beaten on both arms and his back and he then fell down.

Other assailants began stamping and kicking him while instructing him to stand. He was beaten with a knobkerrie on the soles of his feet, knees, back and other parts of his body as he sat with his legs stretched out.

Punish Mhiripiri, a Zanu PF, supporter who has been featured as a perpetrator in other witnesses' testimony entered the classroom and said, "You were proud of Chiminya. We planned for him and killed him. We are here to kill you, to break your back so you won't sire any children." Machonai Bumhura entered and Mhiripiri began hitting walls with benches and smashing the benches to the ground. The other assailants panicked and ran outside. Mhiripiri fell to the ground and convulsed. He lifted a metal chair and struck Bumhura and Dhliwayo with it several times and then began punching Bumhura. Some women were brought into the classroom and told to "join the line of people being assaulted." They were then beaten in turn from the front of the line to the back and then the beating was repeated in the same manner. The Zanu (PF) youth began to sing, "You've swallowed a fresh chili pepper." More youths arrived at the school and began singing and then joined the assault with Mhiripiri. Mhiripiri sat down and after hurling various insults at Dhliwayo, produced a gun. He pointed it at Dhliwayo his hand shaking. An assailant said to Mhiripiri, "Don't do that" and walked outside with him.

After a short while, Mhiripiri returned and sat down again, talking until morning. He said to Dhliwayo, "I phoned the President to ask permission to solve problems in this area. I phoned Mahachi, my nephew and was given permission to do as I please in this area in a bid to reform the country." He went on to say, "Even if you make a lot of noise and cry out if the police come, we will burn it down. Forget that the police will come." For the rest of the night, Dhliwayo and other nine people were beaten. When it reached morning, Mhiripiri said, "It is now the king's Sabbath so I will not assault you because it is also my Sabbath." He said to Dhliwayo, "Fera! you were preaching; now you speak about political issues." Another Zanu (PF) supporter said to him, "Fera! we belong to the same church, how could you have taken up for the white cause?"

Dhliwayo was told to stand up and jump around, although his legs were swollen. All of the victims were told to kneel down facing the east. One of the Zanu (PF) supporters said a prayer, thanking God for giving them the opportunity to beat their enemies. Mhiripiri said the next prayer. "Lord, I have sinned. I beat up these people. Forgive me. Please make the wounds I have caused heal fast." The victims were told to go home but if Zanu (PF)

supporters caught up to anyone, they would be killed. Dhliwayo tried to walk but could not, so his parents came and carried him in a scotch-cart. He was taken to Harare where a doctor referred him to Harare hospital because of his extensive injuries.

Dhliwayo sought refuge in Harare until August because he was afraid of returning to his village. His sister told him that he was believed dead and that she had heard over the radio that he died and was being buried. There were rumors that he would be killed if he returned. He did travel to Makoni West to vote and stayed with Makuwaza. He was advised by MDC members not to notify the police of his torture right away because he might be discovered and followed by Zanu (PF) supporters. After a while he finally made a report to the police, he and other witnesses were given a court date in September. Dhliwayo and other victims were told on their hearing day that Mhiripiri didn't have a defense lawyer, so they were ordered home. Mhiripiri approached him and the other victims in court. He said he'd give them money so they wouldn't "trouble themselves to return to court."

They did not accept the money. When he and the other victims returned on the new court date, they were told that the President had pardoned the assailants.

Dhliwayo's medical assessment revealed the extent of his injuries. The victim suffers long-term effects of having chronic pain and difficulty walking. Dhliwayo continued to experience backache, headaches and experiences weakness throughout his body, especially in his legs. He often experiences chronic pain from his injuries. As a result, he is unable to work.

All the above testimonies have the principal features of genocide. Genocide is a serious crime against humanity. Justification to this is the innovative international criminal law jurisprudence produced by the Rwanda and Yugoslav tribunals that crimes against humanity could be committed in peacetime (Dugard, 2007). More so, genocide as a crime against humanity is committed when a specific form of intent, *dolus specialis*, is present. In the Zimbabwean case, as figured out in the testimonies, *dolus specialis* was present and the intention was there and the intention was to destroy opposition supporters. Moreover, to class the above crimes committed in Zimbabwe in 2000 as constituting genocide one should analyze the definition and features of genocide entrenched in the 1948 Genocide Convention. The convention defined genocide as any act committed with the intent to destroy in whole or in part a national, ethnical, racial or religious group.

In conjunction with above, article 6 of the Rome Statute, following article 5 of the Genocide Convention defines the various actions that constitute the crime of genocide and these are (Wallace, 2005):

- Killing members of a national, ethnic, racial or religious group. This means their murder occurring intentionally. This was the case in Zimbabwe in 2000 as given in testimonial evidence
- Causing serious permanent or remediable bodily or mental harm to members of the group. The use of the falanga method of torture against Dhlwayo as given in the testimonies is concrete evidence to this
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction including subjecting that particular group to systematic expulsion from homes and the reduction of essential medical services below minimum requirements

Since, the definition of the crime of genocide in the Rome Statute provides that genocide constitutes any of the enumerated acts committed with the intent to destroy, what happened in Zimbabwe in 2000 amounts to genocide. One Zimbabwe NGO Forum employee maintains that the government committed the crime of genocide in 2000. Given such a background, persons responsible for such serious violations of international humanitarian law should be prosecuted.

Extra-judicial killings or summary executions:

According to a respondent from the Zimbabwe lawyers for human rights, most reports about the period preceding the election period placed the number of deaths at about forty people. The respondent affirmed that there were also deaths reported about which little information is known; these deaths are still included as unnamed or unidentified people. Many of these deaths were carried out brutally, some as a result of torture performed on the victim, some as a result farm invasions and others were summary executions. Some were the result of missing persons, most likely dead and buried or dumped in an undisclosed location. In majority of cases, no one was brought to trial. Even in the high profile case of the murders of Tichaona Chiminya and Talent Mabika, the direct order of a High Court Judge to the Attorney General failed to yield a trial date or even an arrest. This suggests judicial masturbation.

Tichaona Chiminya was a well-known and well-liked MDC leader. He had been chosen by Remius Makuwaza, the MDC candidate for Makoni West, to head Makuwaza's campaign and to set up MDC structures in the constituency. Chiminya was very effective as a campaigner that MDC leadership in Harare asked him to campaign for the MDC in Buhera North as well. Throughout April, Chiminya and his other colleagues campaigned throughout Buhera North and Makoni West.

Sanderson Makombe testified that he witnessed the 15 April, 2000 attack and petrol bombing of MDC supporters Chiminya and Mabika. He alleges that Zanu (PF) supporters were responsible and said that CIO agent Joseph Mwale was present and participated. Despite numerous witnesses implicating Mwale in the murders he was not detained. Makombe alleged that he was in the twin cab when a Zanu (PF) labeled vehicle stopped them and began to beat them while he and his colleagues were still in the car. He escaped out of the back of the vehicle while the others tried to hide in the front seat. He then heard Mabika screaming and also heard someone call for petrol bombs to be brought from the Zanu (PF) vehicle. Petrol was poured on Chiminya and Mabika and then poured under the hood of the vehicle. A bomb was thrown and the vehicle caught fire. Makombe fought back tears to continue. He alleged that he ran back to the vehicle to pull his two colleagues out. When he did, their skin was flaking off from their burns and their clothes were still alight. Chiminya was pronounced dead at the scene and Mabika died after being taken to the hospital. Makombe testified that ever since that incident he has had numerous sleepless nights and could not look at meat for some months. He stated that although he resumed campaigning soon after the incident, he was horribly troubled.

Systematic murders as mentioned above occurred in violation of Section 12 of the Zimbabwean Constitution which provides for the protection of the right to life (Constitution of Zimbabwe). The government, through the militia, war veterans and the CIO was preying on its own subjects instead of protecting them. Murder is one of the most serious crimes against humanity which is a violation of international humanitarian law. Customary international law prohibits crimes against humanity whether they committed in times of war or peace (Schabas, 2004). Crimes against humanity are prohibited under article 7 of the Rome Statute of the International Criminal Court. The term 'crimes against humanity' under the statute cover actions that have amongst other features, those commonly associated with egregious abuses of human rights and include murder, extermination involving mass or large-scale killing. The murder of Chiminya and Mabika fits within the definition of crimes against humanity because formed part of government policy directly or indirectly or at least they were condoned by the government. They were condoned because the perpetrators were travelling in a ZANU PF labeled vehicle. In conjunction with the above, although, Zimbabwe is not a state party to the Rome Statute that defines crimes against humanity, she has an obligation to respect other instruments and conventions of international

humanitarian law that prohibits murder and other egregious crimes. These are the International Covenant on Civil and Political Rights, Universal Declaration of Human Rights and above all Section 12 of the Zimbabwean constitution which calls for the protection of the right to life.

Wanton human rights abuses in the period preceding the 2000 parliamentary election: Almost immediately after the referendum, widespread land invasions took place. War veteran, militias and ZANU PF supporters began to invade white owned commercial farms, announcing that they were taking land back for black Zimbabweans which is true. However, lost in this rhetoric was the issue that land distribution had not been dealt with in earnest in 20 years. As a matter of fact, the Zimbabwean Government tried to be patient and accommodating in as far as promises from the British government that it would fund land distribution. But the new Labor Party government in Britain turned the promises down. President Mugabe, claiming that he had been betrayed by the black electorate sponsored by whites, allowed farm invasions to continue and violence against opposition party members proliferated.

The Fast Track Land Reform Programme was carried out in a military style, skeptics claim (UN, 2002). The international community claimed that the approach Zimbabwe used in carrying out land distribution amounts to violation of human rights law. Justification given is that the operation involved violence and torture by perpetrated the army and militia. Systematic intimidation and torture of white commercial farmers could be linked to violation of international human rights law.

Some argued that the campaign was motivated by hatred of the white population which is racism per se. Racism is prohibited under human rights law in terms of the International Convention on the Elimination of All Forms of Racial Discrimination. Racial discrimination is defined in article 1 (1) of the convention as 'any distinction, exclusion, restriction or preference based on race, color, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of political life' (Dugard, 2007).

Guided by the above definition, the land reform exercise deprived the white population of their fundamental economic freedom. The 75% of respondents of the non-academic category alluded to the idea that the land reform occurred in violation of human rights. The rest have mixed interpretations as to whether or not the

exercise occurred in violation of human rights. One might then be tempted to embrace the rhetoric that the exercise amounts to violation of human rights law. Be that as it may if the land reform exercise was motivated by racism which undermines human rights law, on an equal note, the way the same land was seized by the whites, through excessive violence from the blacks in present day Zimbabwe amounts to racism as deprivation of economic rights. In other words, the white population is also responsible for gross human rights abuses and the prohibited use of force associated with the way they seized land from the black majority (Shaw, 2003). Above all, since reprisal action is permitted under international law, the Land Reform Programme can be justified as reprisal action and does not amount to violation of international human rights law. As a result, the land reform exercise was part of Zimbabwe's adherence and respect for human rights of Zimbabweans in particular and international law in general.

Systematic intimidation and torture of especially white commercial farmers could be linked to violation of international human rights law. Torture is prohibited by the 1987 Convention against Torture (Dugard, 2007). For the purposes of this convention, torture is defined as any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected to have committed or intimidating or coercing him'. Just like with other international law instruments, ratifying the Torture Convention is voluntary. Zimbabwe is not a party to the anti-torture convention. Therefore, there is no way one can safely claim that the torture of white commercial farmers amounts to violation of international human rights law. Zimbabwe does not recognize prohibition against torture as constituting international humanitarian and human rights law. This simply means that Zimbabwe is not bound by international human rights law contained in the convention.

Contrary to the above, arguments, though solid to a lesser extent could have been raised on the basis of Zimbabwe's failure to respect the protection from inhuman treatment contained in Chapter 3 Section 15 of the Zimbabwean Constitution (Constitution of Zimbabwe). Protection from inhuman treatment is part of international human rights law to which Zimbabwe is a state party, contained in article 7 of the International Convention on Civil and Political Rights which prohibits torture, cruel, inhuman or degrading treatment (Wallace, 2005). By virtue of incorporating this rule into the constitution, Zimbabwe accepted the special

responsibility to respect this as a principle of international human rights law. The torture of white commercial farmers as part of the Fast Track Land Reform Programme therefore amounts to Zimbabwe's failure to uphold international human rights law.

However, Section 111B of the Constitution of Zimbabwe states that any convention, treaty or agreement acceded to, concluded or executed by or under the authority of the president with foreign states or organizations is subject to approval by parliament and shall not form part of our law unless it has been incorporated into the law by or under an act of parliament (Constitution of Zimbabwe). Since, the domestic legal system in Zimbabwe is dualistic, no act of parliament was adopted to incorporate torture into the domestic legal system. Consequently, Zimbabwe is permitted to derogate from norms of international human rights law in this regard. Furthermore, Chapter 3 states that the provisions of this chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations on that protection as are contained herein, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the public interest or the rights and freedoms of other persons. The above derogation and limitations to international human rights law suggests that the government refuses to be bound by international laws, protocols, conventions or treaties as they do not form part of laws of Zimbabwe.

The public order and security act (infringement of the freedom of expression, assembly and association): The Public Order and Security Act (POSA) passed in January 2002 have had far reaching provisions limiting free speech and regular political activities. According to a respondent from the Zimbabwe Doctors for Human Rights, the Public Order and Security Act has been used to obstruct regular political activities involving the opposition. The respondent further said that, meetings were interrupted, party representatives were taken in for questioning during deployment to their polling stations, party offices were raided and opposition officials and supporters were detained on spurious charges. POSA has had negative implications on fundamental human rights contained in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (Wallace, 2005). Zimbabwe is a state party to these human rights instruments. Examples of POSA regulations include prohibition of giving any statement with or without intention which one does not have reasonable grounds for believing is true and which promotes public disorder or adversely affects economic interests of Zimbabwe,

prohibition of making abusive, indecent, obscene or false statement about the President, whether his person or office, prohibition of organizing public meetings without 4 days prior written notice to regulating authorities, the police. The police may then give directions about the conduct of the meeting which may seem reasonable to prevent public disorder. The power of the police to regulate public meetings was used to a large extent during election campaigns. It is used as a cover up for perpetrating systematic torture and intimidation of opposition supporters.

The existence of POSA is a clear indication of the extent to which Zimbabwe has worked overtime to undermine the human rights of Zimbabweans. The 95% of respondents from all walks of life aptly pointed to the fact that POSA infringes their rights. But some respondents could not specify the category of rights that this law undermined. Freedoms of expression, assembly and association have and are infringed by this draconian law. These inseparable freedoms are provided for in Section 20 and 21 of the Constitution of Zimbabwe. In accordance with specified procedures, the freedoms can be legally restricted (Constitution of Zimbabwe). However, the Government of Zimbabwe often uses the limitations to restrict enjoyment of freedom of expression, assembly and association in ways that are contrary to the constitution and international standards.

The right to freedom of expression, assembly and association is protected under regional and international standards. The African Charter on Human and People's Rights provides for the right to freedom of expression, assembly and association in Articles 9, 10 and 11 (Dugard, 2007). The Charter also provides that the enjoyment these rights is subject to restrictions provided for by the law in particular those enacted in the interest of national security, safety, health, ethics and rights and freedoms of others.

The African Commission on Human and People's Rights being the institution created by the Charter reaffirmed the importance of freedom of expression in Africa at its 32nd ordinary session in 2002. At the session, the Declaration of Principles on Freedom of Expression was adopted. The declaration states that freedom of expression "...is a fundamental and inalienable human right and an indispensable component of democracy" (Ortega, 2005). The Government of Zimbabwe has failed to fulfill the obligations to respect these rights.

The pre-election political violence in 2002: The run-up to the 2002 Presidential elections was marred by patterns of intimidation and violence. Even though incidents were reported from both sides, the evidence shows clearly that

in the vast majority of cases the ruling party was to blame. Numerous reports of harassment and assault of opposition officials, members and supporters and their homes were documented. Opposition offices were also attacked in several places. The campaign period was characterized by high levels of fear and intimidation, a pattern of serious political violence and heavy restrictions on opposition campaigning. In some of the incidents reported MDC supporters were at fault.

However, as an overall assessment there is no doubt that the majority of cases were directed against the opposition party. Indeed, reports from observer teams deployed in all ten provinces of the country are so consistent as to suggest a deliberate campaign of violence and intimidation against the opposition and its known or suspected supporters, condoned or even sponsored by state organs. Several reports of harassment and assault of MDC officials, members and supporters and their homes were documented. Some of these cases involved extreme and indeed shocking levels of violence. MDC offices also came under attack in several places. The net result of this systematic violence and intimidation was that certain areas of the country, in particular Mashonaland East and Mashonaland Central as well as parts of other provinces, effectively became nogo areas for opposition campaigning. In some rural districts of Masvingo and Manicaland, the level of intimidation was such that MDC supporters were forced to flee, seeking refuge in urban areas. Observers also noted a pattern of harassment and intimidation of certain sectors of the electorate, in particular teachers and farm workers in the commercial farming areas.

According to another respondent from the Human Rights NGO Forum, there is convincing evidence that the establishment of ZANU PF youth bases in many areas were instrumental in restricting political freedom, limiting freedom of movement, and spreading fear among the electorate. In a number of confirmed cases, ZANU PF youth bases were located at or near known polling stations, suggesting a deliberate strategy to intimidate voters. Allegations of torture against known or suspected opposition supporters at such bases were verified by observers in Mashonaland Central, Mashonaland East and Matabeleland South.

Instead of meeting their obligation and perform their duties on the basis of good faith, the police were involved in perpetrating violence and torture of opposition supporters through arbitrary arrest. Those arrested could be detained without trial. Instead of performing their duties in the upholding of international human rights law, they were among the perpetrators of gross human rights abuses in Zimbabwe.

The respondent further said that observers noted with concern numerous incidents in which members of the security forces in particular the police were acting in a partisan manner. A pattern was observed where the police regularly failed to respond to or investigate reported violence against opposition supporters while reacting swiftly and with disproportionate force against real or alleged opposition offences. In some cases, relations between violent supporters of the ruling party and police and Central Intelligence Organization operatives appeared so close as to suggest collaboration toward a common goal. The adopted Public Order and Security Act gave the police far-reaching powers to restrict key civil and political rights such as the freedom of speech, movement, association and assembly.

Both in the pre-election period on polling days and in the immediate aftermath of the election, police used these powers to control, intimidate and harass the opposition. Numerous cases of police using the act to restrict opposition campaigning were documented. MDC offices and MDC officials' homes were searched by police in the run-up to the election in some cases in the presence of observers. The application of the Public Order and Security Act was such as to place wholly unreasonable limitations on the freedom of assembly with civil society coalitions, domestic election observers and some NGOs apparently being targeted.

Accredited local journalists also faced police harassment. There were many disturbing reports of detentions of opposition members, polling agents and supporters under the Public Order and Security Act or other legislation. In many cases, observers found it difficult not to conclude that the detentions were politically motivated. There were also worrying reports of detainees being denied fundamental civil rights such as access to legal counsel and medical attention.

Harassment of polling agents: Norwegian observers remained in their areas of deployment for several days after the official announcement of results (United Nations, 2002). During this immediate aftermath of the poll, a number of highly disturbing and devastating developments were noted. It quickly emerged that ZANU PF supporters around the country had embarked on systematic reprisals against opposition members or supporters. In particular, opposition polling and election agents were targeted by violent youths and war veterans reportedly using the list of polling agents published in national newspapers before the election. Numerous cases of assault, beating, torture, looting, arson and at least one killing of a suspected MDC supporter were reported to observers in the first few days after the poll

(Amnesty International, 2003). There were also reports of violent attacks on commercial farmers and farm workers. Given the time constraints, only a few of the reported incidents could be independently verified before the observers' departure but both the consistency of the reports and the threatening rhetoric used by ZANU PF officials during the party's pre-election house to house campaign lend credibility to the claims by the opposition, the independent media and civil society groups of systematic reprisals. Police action in the immediate wake of the poll also gave cause for alarm. While in a few cases action appears to have been taken against perpetrators of post-election violence, in the majority of reported incidents those carrying out the reprisals were able to operate with impunity.

Displacement of people as a result of political violence:

Political violence in Zimbabwe was widespread in the period before and after the 2002 presidential elections. The perpetrators, especially the youth militias, established bases throughout the country (PHR 21 May, 2002). There were no opposition held areas in Zimbabwe out of reach of the militias, so the only option for the victims of the violence was to keep a low profile and seek shelter in secret locations alone or together with their families. This displacement patterns makes it difficult to quantify the number of people displaced. However, available information gives some indication of the gravity of the situation. For example it was reported in May 2002 that 1,000 displaced were given shelter in 'safe houses' run by the NGO Amani Trust. About 20 new victims were assisted per day before these shelter facilities were closed down.

It is estimated that about 3500 individual internally displaced persons was caused by violence alone during the first half of 2002. As many of the displaced were provided shelter by relatives and church groups, the real number is likely to be substantially higher. As of May 2002 an estimate of between 20,000 and 50,000 people displaced by the violence was talked about within the NGO and human rights community. By end 2001 Human Rights Watch estimated that 50,000 people were internally displaced due to political violence and the land-reform. Other observers claimed that the combination of political violence and land occupations caused the displacement of >300,000 since the year 2000 (HRW, 2008). With regard to the number of people forced to leave the commercial farms it is possible to estimate the number of people who left but it remains difficult to assess to the extent to which these people subsequently ended up in a situation of internal displacement. One reality is that the existing farm workers were only to a limited extent being

offered employment by the new owners or offered farm land when larger farm units were divided into small plot farms. Government figures revealed that as of October 2001 former farm workers represented only 1.7% of the beneficiaries of re-distributed land. It was reported that ZANU PF supporters were being given preference in the land allocation (HRW, 2008).

The displacement of people as evidenced above undermines the fundamental human right to shelter. The right to shelter is a universal right entrenched in the Universal Declaration for Human Rights and Zimbabwe has an obligation to honor this human rights instrument which she failed to do in 2002.

A major concern was the fact that the perpetrators of the political violence operated with impunity vis a vis the state law and order enforcement institutions. The militias, in particular, appeared to operate above the law. According to Amnesty International, "By ignoring the violation of human rights law, the state of Zimbabwe compounded it... Moreover, this failure by the state gave a green light to the perpetrators to continue (Amnesty International, 2003)." Even more disturbing were reports documenting how police and army staff were indirectly and directly involved in the violence for example by assisting the militias with transport and other resources during the farm occupations (HRW, 2008). This situation raised serious concerns regarding the protection of displaced people. International law and the UN Guiding principles on internal displacement clearly assign national authorities the duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction. Thus, in this regard Zimbabwe failed to uphold international human rights law.

According to NGO Forum Reports NGOs and the opposition parties tried to offer displaced victims of violence shelter and protection in "safe houses". It is however, difficult to estimate how many of the displaced people benefit from this but it is clear that the situation added serious constraints to the opportunity to maintain such shelters without the interference of the militias. There were reports of direct attacks on "safe houses" and abduction of those who had been in hiding (HRW, 2008).

Effects on subsistence needs (Health, Nutrition and Shelter): According to, UNDP Report, serious drought combined with land acquisition resulted in a 75% decreased crop production in nearly two-third of Zimbabwe's districts during the 2002 agricultural season. While the national maize requirements are almost 2 million MT, only 0.5 MT was harvested at the end of the 2002 season. Inflation, high unemployment and a major

HIV/AIDS problem further compounded this situation. A total of 5.6 million Zimbabweans were said to be food insecure during the April 2002 to March 2003 consumption year and it was reported in June 2002 that people in 40 of Zimbabwe's 57 districts were facing a situation of "extreme food insecurity". These were the same districts where most of the communal areas of return for many of the displaced farm workers were located. Second generation rights were infringed as a result of political violence in 2002. These are rights to good health and shelter contained in the International Covenant on Economic, Social and Cultural Rights.

Operation Murambatsvina-Wanton human rights abuses:

On 19 May, 2005 with little or no warning, the Government of Zimbabwe embarked on an operation to "clean-up" its cities. It was a "crash" operation code named "Operation Murambatsvina", referred to in many cases as Operation Restore Order. It started in Harare and rapidly evolved into a nationwide demolition and eviction campaign brutally carried out by the police and the army. Popularly referred to as "Operation Tsunami" because of its speed and ferocity it resulted in the destruction of homes, business premises and vending sites. It is estimated that some 700,000 people in cities across the country lost their homes, their source of livelihood or both. Indirectly, a further 2.4 million people were affected in varying degrees. Hundreds of thousands of women, men and children were made homeless without access to food, water and sanitation or health care. Education for thousands of school age children was disrupted. Many of the sick including those with HIV and AIDS could no longer have access to care. The vast majority of those directly and indirectly affected were the poor and disadvantaged segments of the population. Some are today, deeper in poverty, deprivation and destitution and vulnerable.

Some commentators noted with concern the alarming similarity between the name of this operation and the Gukurahundi campaign conducted against the Matabele civilians in the early 1980s. The Gukurahundi campaign ultimately resulted in the demise of Joshua Nkomo's Zimbabwe African People's Union (ZAPU) when it merged with Robert Mugabe's party in 1987. There was speculation that the government was aiming to create a situation where the MDC would be left with no choice but to merge with the ruling party. Commentators also argued that by forcing urban voters out into the rural areas the cities will be de-populated of MDC supporters thus enabling the government to re-populate the shanty town areas with ZANU PF supporters. Further, MDC supporters would be forced to return to live in areas traditionally viewed as ZANU PF strongholds, they claimed.

This is mere speculation of less importance to this study. Of paramount importance is to assess if the Government of Zimbabwe considered and respected principles international human rights law during the operation.

The most devastating and immediate effect of this operation was the fact that hundreds of thousands of people were rendered homeless and left without any viable form of livelihood. People were told to return to their rural origins but many simply did not have a rural home to go back to. Civil society and humanitarian agencies tried to reach people who had been affected to protect and assist them (United Nations, 2005). They were denied full access by the police. The operation unleashed a humanitarian crisis by destroying homes, assets and means of livelihood for hundreds of thousands of women, men and children people at a time when the economy was already on its knees.

The operation had major economic, social, political and institutional impact on Zimbabwean society. The effects are still felt many years after the campaign, across all four dimensions. In social terms, the operation rendered people homeless and destitute and created humanitarian and developmental needs that require significant investment and assistance over several years. Economically, substantial housing stock was destroyed and the informal sector virtually wiped out rendering individuals and households destitute. Local municipalities that used to collect taxes from informal traders lost this source of income. In political terms, the operation exacerbated an already tense and polarized climate characterized by mistrust and fear. It resulted in a virtual breakdown in dialogue between Government and civil society. Institutionally, the operation was conducted by central government authorities including the military, in an area that legally falls under the purview of local government.

According to, a respondent from the Human Rights Watch, the combination of overcrowding for evicted persons living with friends and relatives and hardship for those sleeping out in the open had direct consequence in terms of other communicable diseases such as pneumonia and tuberculosis. Anecdotal evidence suggested that this trend was already emerging with reported deaths among displaced children due to respiratory infections. The respondent claimed that most affected group were chronically ill and people living with HIV/AIDS while pregnant women as well as young children were also be at high risk. Furthermore, several cases of women giving birth in the open after being cut off from reproductive health services were reported in the areas visited by the organization. In Caledonia Farm, the organization

observed that some of the people were infected with scabies. Some people also suffered physical injuries during the demolitions. According to the second respondent from the Human Rights Watch there was a case of a man who sustained fatal head injuries on 19 June, 2005 when a wall he was breaking down collapsed on him, leaving his family and relatives in mourning.

The situation in Zimbabwe was both a humanitarian and a human rights issue. A legal analysis of the operation is necessary. The legal analysis of the operation is intended to inform the assessment from a humanitarian and human rights perspective and to provide a full appreciation of the responsibilities of both the government and the international community to provide assistance to the affected people.

The human rights discourse in Zimbabwe is fraught with tension. The government accuses those who raised human rights issues of applying double standards when it comes to African countries and Zimbabwe in particular. Several officials cited alleged violations in Togo and Ethiopia during their respective elections and the fact that the outcry regarding those cases was nothing compared to what Zimbabwe was experiencing.

The legal context should be seen against a background of a general deterioration of the rule of law in Zimbabwe. Disregard for laws and court orders during the Fast Track Land Reform Programme set a dangerous precedent. It also sent a signal that the rule of law could be subjected to selective interpretation. The legal context is mixed and seems to reflect a set of conflicting legislation. On the one hand, there is the Regional, Town and Country Planning Act and attendant municipal bylaws emanating from the colonial era meant to keep Africans out of the cities by setting very high housing and development standards beyond the reach of the majority of the people. On the other hand, there are the international commitments and obligations requiring governments to provide adequate shelter to all its citizens. The national laws seemed to have been subject to inconsistent policy statements that led them to be mostly ignored after independence, leading to the rapid formation of backyard extensions now dubbed illegal. The sudden application of the laws governing towns and cities under operation restore order exposed the clear conflict of these laws with human rights provisions under both national and international law. The general view in Zimbabwe was that the debate around the operation went beyond legality and borders on morality. This debate notwithstanding, operation restore order raised several legal issues under international and regional human rights frameworks as well as national legal frameworks.

The fundamental right to human dignity, shelter, employment, education and health care are all entrenched in a variety of international and regional human rights instruments, majority of which Zimbabwe is signatory to. The Government of Zimbabwe has a duty to protect and enforce the economic and social rights of its citizens as guaranteed by the Constitution of Zimbabwe and the African Charter on Human and Peoples' Rights and international instruments. The Government of Zimbabwe also has a duty to fulfill its obligations under the International Covenant on Economic, Social and Cultural Rights which Zimbabwe ratified on 13th May, 1991. General Comment Numbers 4 of 13 December 1991 and Number 7 of 20 May, 1997 of the United Nations Committee on Economic, Social and Cultural Rights stated that "forced evictions are prima facie incompatible with the provisions of the Covenant and can only be carried out under specific circumstances". As a member of the United Nations Commission on Human Rights, Zimbabwe committed itself to advocating for the respect and implementation of key Resolutions on Forced Evictions passed in 1993 (Resolution 1993/77), 1998 (Resolution 1998/9 and 2004 (Resolution 2004/28).

The foremost statement of international human rights law relating to housing rights is found in the International Covenant on Economic, Social and Cultural Rights which states in Article 11(1) that: "The state parties to the present covenant recognise the right of every one to an adequate standard of living for himself/herself and his/her family including adequate food, clothing and housing and to the continuous improvement of living conditions (Dugard, 2007). Zimbabwe as a state party was supposed take appropriate steps to ensure the realization of this right, "recognising to this effect the essential importance to international cooperation based on free consent" (Wallace, 2005). The compliance with international law is treated as part of Section 6.4.

There are three main pieces of legislation in Zimbabwe relevant to the legal analysis of operation restore order. These are the Regional Town and Country Planning Act 1976 Chapter 29:12, the Housing Standards Control Act 1972: Chapter 29:08, the Urban Councils Act: Chapter 29:15/ 1995 and several other municipal bylaws (Constitution of Zimbabwe). Although, there were several legal instruments regulating use of buildings, structures and business activity including in some cases clear procedures concerning violations that could have been used by the government to justify the operation, the Planning Act seems, however, to be the only one invoked through an enforcement order as the basis for the demolitions. In instances where it is alleged that people have built structures without the prerequisite consent of

the relevant authority it is necessary for due process of the law to be followed. In terms of Section 32 of the Planning Act it is necessary for the authorities to issue a prohibition order giving 30 days notice (Constitution of Zimbabwe). The authority can also issue a prohibition order in terms of Section 34 of the Planning Act. If the order is not complied with the authority has to take the requisite legal steps to destroy the offending structure. The person who has erected the unlawful structure has an opportunity to make presentations and also has time to take steps to either regularise their position or find an alternative place to reside in or operate from. Similar provisions are provided by the Housing Standard Control Act 1972: Chapter 29: 08 and the Urban Councils Act: Chapter 29:15/ 1997 and other bylaws.

Under both relevant international law and Zimbabwe's national legislation forced evictions can be justified under certain circumstances. The Committee of Economic Social and Cultural General Comment 4, paragraph 18, states that instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified under the most exceptional circumstances (UN Fact-Finding Mission). These exceptional circumstances include persistent anti-social behavior which threatens, harasses or intimidates neighbours, persistent behavior which threatens public health or is manifestly criminal behavior as defined by law which threatens others and illegal occupation of property without compensation. Illegal structures and activities especially in major cities before Murambatsvina were obviously a threat to public health. But this does not mean that human rights abuses associated with the operation are justified.

Operation restore order and violations of international human rights: Although, the Zimbabwe Constitution provides protection under Chapter III, Declaration of Rights, Operation Restore Order infringed upon many of these rights. The forced evictions and resultant displacements rendered thousands of people homeless and thus vulnerable to the violations of a number of other rights. In addition to the violation of the right to adequate housing, other key rights including the right to life, property and freedom of movement were also been violated.

Right to life and property: According to a respondent from Zimbabwe lawyers for human rights, several allegations were made of deaths in connection with Operation Restore Order by organisations such as Amnesty International, Human Rights Watch and Zimbabwe Peace Project. Of the six deaths alleged to have

occurred as a result of demolitions, three involve a child hit by a truck and another child and sick woman hit by falling debris alleged to have occurred at Porta Farm in Harare. In all of these death claims, the government never issued a certificate of confirmation or negation. Death allegations were coming from so many quarters that they warrant an independent inquest since the police carried out the operation. There was also wanton destruction of properties. In some cases properties could be seized and even auctioned off with no accounting for the goods or the proceeds. Arbitrary takeover was one major characteristic of the operation against a backdrop of rhetoric of maintaining law and order.

Far less drastic measures could have been taken by the police implementing the enforcement order. It is a general principle of administrative law that when public authorities are exercising powers, they should do so in a manner that will seek to minimize loss. It appears this principle was not adhered to during the, paving the way for holding those entrusted with implementing orders to be held accountable, including for criminal negligence charges were deemed appropriate by the government. Death allegations came from so many quarters that they warrant an independent inquest since the police carried out the operation. There also was wanton destruction of properties. In some cases properties were seized and even auctioned off with no accounting for the goods or the proceeds. Arbitrary takeover of assets took place against a backdrop of rhetoric of maintaining law and order. Far less drastic measures could have been taken by the police implementing the enforcement order.

Right to freedom of movement: The fact that a large number of people were evicted and their homes destroyed without any alternative accommodation is in itself, unlawful it's a violation of the fundamental right to movement. The movement of evictees was restrained in that those who were in camps could only go to the rural areas or other destinations of the government's choice and were not allowed to move freely. Furthermore, the government's policy stating that all Zimbabweans have a rural home and that all the evictees should return to their rural homes, implied a lack of freedom to choose one's own residence. This had particularly serious implications for those Zimbabweans of foreign origin with no rural home. Caledonia Camp was set up by the government. Residents were waiting to be transported back to villages. They were not being allowed to leave the camp but children were allowed to go to school in the city. The proportion of people in the camps compared to the total number of evictees was however limited and this had implications for human rights under the Rome Statute in upholding international humanitarian law.

Operation restore order and the principle of “responsibility to protect”: The responsibility to protect published in December 2001 by the International Commission on Intervention and State Sovereignty, outlines the core principles of how the United Nations and the wider international community should react when nations are degenerating into chaos. The principles were derived in direct response to the world’s failure to intervene in Rwanda and the controversial interventions in Somalia, Bosnia and Kosovo. The basic principles the Commission arrived at are:

- State sovereignty implies responsibility and the primary responsibility for the protection of its peoples lies with the state itself
- Where a population is suffering serious harm as a result of internal war, insurgency, repression or state failure and the state in question is unwilling or unable to halt or avert it the principle of non-intervention yields to the international responsibility to protect (Shaw, 2003). The substance of the responsibility to protect is the provision of life-supporting protection and assistance to population at risk. According to the UN Report this responsibility has three integral and essential components: responsibility to react; responsibility to prevent and the responsibility to rebuild after the event

With an estimated 700,000 people directly affected through loss of shelter and livelihoods, one would be forced to seek to establish both the willingness and ability of the Government to protect its citizens, having clearly caused them to suffer in large numbers through the destruction of shelter and livelihoods. The government, in apparent response to the crisis it had created, launched Operation Garikai (Reconstruction and Rebuilding). In this regard, government’s response to the crisis illustrated to a large extent, recognition of its responsibility to protect its citizens. The issue remaining for the UN, however was whether the Government of Zimbabwe was able to offer effective assistance to its people in practical terms. It was the view of the Special Envoy that the scale of the problem was too large and exceeded the ability of the Government to address the basic needs of those affected by Operation Restore Order (UN Fact-Finding Mission). Therefore, the international community had a responsibility to protect those affected.

Operation restore order and the rome statute: The actions of the Government of Zimbabwe in forcibly uprooting hundreds of thousands of its citizens from their homes, meets the criteria of a “crime against humanity” as

defined by Article 7 of the Rome Statute of the International Criminal Court (Dugard, 2007). It is important to note that this issue was not covered by the Special Envoy’s mandate. Zimbabwe is not a state party to the Rome Statute therefore any referral would need a Security Council Resolution. Nevertheless given several arguments invoking the Rome Statute including parliamentarians, church leaders and a broad spectrum of political figures, academics and civil society actors and their expectations that this issue would be discussed are fruitless.

Within the context of Operation Restore Order, the relevant acts listed by Article 7 as constituting a “crime against humanity” when committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack are: “deportation or forcible transfer of population” (Ortega, 2005). The treaty defines deportation or forcible transfer of population as “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international humanitarian law” and “other inhumane acts of similar character intentionally causing great suffering or serious injury to body or to mental or physical health” (Dugard, 2007).

The outcome of the legal analysis was complex and difficult to comprehend. But to conclude with available evidence it would be difficult to sustain that crimes against humanity were committed in Zimbabwe during Operation Restore Order. Four reasons could be advanced as below.

Firstly, with the exception of a few cases, there is general agreement that the building of shacks and extensions without approval and hawking in streets without licenses were not lawful. Therefore, arguably these evictees were not lawfully present in the areas under current Zimbabwean laws. As already discussed above, the strong legal case lies in the argument that it was the procedure of the exercise that did not provide adequate notices as required by law and not in the lawfulness of the occupation.

The second issue is related to forced expulsions of people from their homes. According to the legal opinion obtained, this would be countered by the fact that for many people, police threats were imagined rather than real. This would be evidenced by the fact that some people demolished their own structures out of fear, the threat of hefty fines or to salvage building materials even before the arrival of the police. Meanwhile, there were others who after demolitions, chose to remain on their demolished property, making it difficult to make a case for systematic forced expulsion. Apart from their relatively

small numbers, even evictees sent to camps could be said to have voluntarily opted to do so as the other alternative was to remain out in the open and many had chosen or were seen to be using this option. After all, not everyone went to the camps it would be argued.

The third issue is general principles of international law which permit states to derogate from the exercise of rights and international law provides exceptional grounds under which forced evictions are permitted. The Government of Zimbabwe attempted to argue along some of these grounds in the rhetoric that dominated the operation it claimed that it was fighting criminality; public health was at stake; public morality citing mostly prostitution also linked to the spread of HIV/AIDS was consistently invoked and the rights of others for instance registered shop owners in the central business district were having their rights infringed by hawkers blocking their shop entrances.

The fourth and final issue relates to whether there was *mens rea*, criminal intent, to cause harm and suffering. In a report to ECOSOC in 1996, the Government of Zimbabwe had brought to the attention of the international community that it was faced with housing crisis problems that the country was also experiencing economic hardships due to ESAP and that it would not be able to meet its obligations without international support which it did not get. In international criminal law this means that this presents a defence of the absence of *mens rea*. In other words, there had been a housing crisis that the government had brought to the attention of the world ten years ago. In any case only a court can determine and decide the issue of criminal intent.

While the government clearly violated its own national laws and the constitutional rights of its people and that those responsible must be brought to account it was the view of the UN Special Envoy that in view of preliminary legal opinion, an international debate on whether the Statute of Rome could be successfully invoked was bound to be acrimonious and protracted (UN, 2002). It would have served only to distract the attention of the international community from focusing on the humanitarian crisis facing the displaced that needed immediate assistance.

Nevertheless, it remains, to date; the strong recommendation of the Special Envoy that the culprits who caused this man-made disaster are best handled and brought to book under Zimbabwean national laws. The international community would then continue to be engaged with the dismal human rights record in Zimbabwe in consensus building political forums such as the UN High Commission for Human Rights or its successor, the African Union Peer Review Mechanism and the Southern African Development Community (SADC).

The legal context for Operation Restore Order should be seen against a background of a general deterioration of the rule of law in Zimbabwe. The origins of which could be found in the year 2000. Disregard for laws and court orders during the Fast Track Land Reform programme set a bad precedent. It also sent a signal that the rule of law could be subject to selective interpretation, paving way for the excesses now committed under the clean-up operation, including destruction of legal businesses and homes paying taxes to local authorities.

Under both relevant international law and national legislation forced evictions can be justified under certain circumstances, criminality, public health, public morality and the rights of others. The Government of Zimbabwe appeared to have been relying on some of the above to justify its actions under international law. However, there is no indication that any of the procedural requirements were complied with consultations were not undertaken, notices were not given in time if at all, information was not given on the proposed evictions, government officials or their representatives were not present during the demolitions conducted brutally as a national police and military exercise, the evictions took place during harsh weather, legal remedies were not available and evictions resulted in thousands of people being rendered homeless without being provided viable alternatives.

There is general concern over the failure of the High Court to safeguard the right of the victims of the Operation and that there was a regrettable failure by members of the Bench to remain independent from the national and local politics of the day. With an estimated 700,000 people directly affected through loss of shelter and livelihoods it has been established that while willing, the ability of the government's response to the crisis was limited.

Therefore, there are indications that operation restore order occurred in a manner that undermined both international human rights law. The government failed to uphold these two bodies of international law it is safe to conclude. However, one should not brush aside the fact that the operation was illegal yet legitimate. It was legitimate because illegal structures were a threat to public health and the environment at large.

Operation Chikorokoza Chapera (“no illegal panning”)- human rights abuses: Many former farm workers who had been deprived of their livelihoods by the fast-track land reform programme turned to informal gold panning in various areas in Zimbabwe as their only alternative source of income (United Nations, 2005). They were later joined by small traders who had been deprived of their market stalls by Operation Murambatsvina in 2005. In November

2006, the Government of Zimbabwe unleashed yet another brutal operation code named Operation Chikorokoza Chapera (“No Illegal Panning”) in the course of which the homes of thousands of informal miners were destroyed (United Nations, 2005). Just like all other operations it was carried out by the police and army in a brutal fashion that infringes human rights.

The Government of Zimbabwe argued that informal gold panners were fuelling inflation by selling the gold on the black market. It also voiced concerns about environmental damage caused by illegal mining practices. As with Operation Murambatsvina, independent observers were skeptical about the government’s official reasons and put forward alternative explanations for their actions. These focused mostly on the fact that all legally-mined gold had to be sold to Zimbabwe’s Reserve Bank, at a price well below the world market price. The Reserve Bank then sold the gold on the world market. After the collapse of the commercial farming sector as a result of the fast-track land reform programme this had become the government’s most important source of much-needed foreign currency. Since, informally mined gold did not pass through these official channels, the government was deprived of a substantial part of its foreign currency earnings.

Operation Chikorokoza Chapera attracted less international attention than Operation Murambatsvina, in part because what happened in the mining areas in rural areas was less visible than what happened in the cities. Nevertheless, Operation Chikorokoza Chapera affected tens of thousands of gold panners and led to the arrest of >25,000 people (AI UPR). The government destroyed the homes of thousands of informal miners, in many cases forcing the men to destroy their own homes while forcing the women to watch and sing songs of praise for the government.

The above points to human rights abuse during the operation. Destroying people’s homes undermines the fundamental human right to shelter. Torture was used to force illegal gold panners to surrender all the gold in their possession. Others were imprisoned. Imprisonment or other severe deprivation of physical liberty is a violation of fundamental rules of international human rights law.

March 2008 elections-crimes against humanity, genocide and war crimes: The pre election period was peaceful than ever before. Voting began at 7 am on 29 March and voting was reported to be calm and peaceful, although the home of a ZANU PF parliamentary candidate in Bulawayo was bombed. Mugabe, voting in Harare, said: “We are not in the habit of cheating. We don’t rig elections.” According to Mugabe, his

conscience would not let him sleep at night if he tried to rig the election. Tsvangirai also voted in Harare, saying that he was certain of victory “in spite of the regime’s attempt to subvert the will of the people”; he also claimed that the election could not be considered free and fair even if the MDC won. For his part, Makoni predicted that he would win with a score even higher than the 72% he had previously predicted. Violence, excessive violence started when ZANU PF realised it had lost the elections. For them, the only available option was coercion. The degree of violence they unleashed could not just go unlabeled. It warrants to be classed as crimes against humanity, genocide or war crimes or both.

These are very serious charge to level against a government, perhaps the most serious charges that can be brought. They are however not new charges against the Zimbabwe government and have been brought in the past by both Zimbabwean NGOs and other international bodies concerned with human rights issues.

According to the definition contained in the Rome Statute of the International Criminal Court, crimes against humanity are inferred when any of the following acts are carried out in peacetime:

- Murder
- Extermination
- Enslavement
- Deportation or forcible transfer of population
- Imprisonment or other severe deprivation of physical liberty in violation of fundamental rule of international law
- Torture
- Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity
- Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law
- Enforced disappearance of persons
- Other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health (Wallace, 2005)

Such crimes are called war crimes when committed during armed conflicts or hostilities. Crimes against humanity, war crimes and genocide are regarded as the most serious human rights violations and should always evoke the “responsibility to protect”. The question arises as to whether the post electoral violence in Zimbabwe in

2008 should be considered to be merely political violence, violence between competing political parties as alleged by the Zimbabwe government or is altogether more serious and conforms to the definition of crimes against humanity, genocide and war crimes as it represented the widespread and systematic persecution of an identifiable group the MDC mainly by the Government of Zimbabwe.

Respondents from the grassroots category could not tell if the 2008 violence conforms to the definition of international crimes mentioned above. Those from the academic category argued that since there was no war, Zimbabwe committed no international crime and the non-academic category argued in favor of the idea that Zimbabwe committed international crimes because her conduct is governed by international law. This could make sense but there are problems pertaining to accusing Zimbabwe of committing international crimes and these will be discussed.

Unlike the preceding period, the period leading up to harmonized presidential, senatorial, national assembly and council elections on 29 March, 2008 was generally perceived to have been relatively peacefully. Nevertheless, there were some incidents of politically motivated violence which resulted in the murder and displacement of activists of the opposition Movement for Democratic Change (MDC). For example, on 25 February, 2008 the homes of several MDC activists were burnt down in Muzarabani, allegedly by ZANU PF youth militias and the war veterans.

According to the Human Rights Watch Report, one Mr. X, provided testimonial evidence of pre-election intimidation and torture. The testimony goes; before the March 29 election, on the 16th of March 2008, a soldier, name not provided and council candidate for ZANU PF, name not provided, came to my house and gave me a strong warning to stop campaigning for MDC. They took me to Muzarabani Community Hall and beat me up with metal bars under the feet and on the lower leg. I sustained serious wounds and was treated at St. Alberts. They detained me for 2 days and released me. They would give me water no food. The leg is still painful. I did not stop my campaigns and was a polling agent during the elections. Then, the second time, ZANU PF youths came to my house together with senator and MP, they were so many. I sneaked out of the house and disappeared without them noticing. They knocked on my door and my wife came out. I heard her screaming and being beaten. I could see from a distance. They told my wife that they are looking for me and want to kill me this time. I did not have money to leave home as the money was burnt in the house. I went to Muzarabani to look for money and assistance so I could leave as I feared for my life. There I saw council candidate, a ZANU PF who told the youths that X is here.

The youths came and apprehended me and then took me to their base. There, I and 8 other MDC supporters were detained and beaten. I was also detained and beaten under feet, on the buttocks and in the palms of our hands. During the periods anybody, ZANU PF youths would call us and beat us. In the morning, everyday around 3 am, most of the youths would go and wait for buses coming from further taking any food on the bus claiming that nothing should go to Harare because the people there are MDC. They would go with an MDC youth to help identify the other MDC youths escaping and force them to disembark and take them to the base to be beaten and detained. The next morning as they were beating us a policeman who I know came and then lied to them and said I have a pending case with the police and that he wanted to take me. I managed to escape and got a lift to Harare around 6. My whole body was painful from the eatings.

This indicates the use of torture using the Falanga Method, intimidation, deprivation of physical liberty, forced disappearance and political persecution all of which constitute crimes against humanity in term of article 7 of the Rome Statute of the International Criminal Court (Dugard, 2007). This would suggest that the Government of Zimbabwe committed crimes against humanity which is a serious violation of international human rights law.

Official election results showed that MDC leader Morgan Tsvangirai had obtained 47.9% of the votes in the presidential election against President Mugabe's 43.2%. The MDC claimed that it had won an outright majority of 50.3% in the presidential election, avoiding the need for a second round of voting. Nevertheless, a runoff was scheduled for 27 June, 2008, in which the MDC initially agreed to participate. At that point, President Mugabe made it clear that he would not concede defeat whatever the outcome of the second round of voting.

Mugabe's ZANU PF party and state security forces unleashed a campaign of state-sponsored violence referred to as Operation Mavhoterapapi ("Where Did You Put Your Cross"). In waves of unprecedented violence and intimidation, MDC activists, election volunteers and ordinary voters across Zimbabwe were harassed, beaten and tortured for no other reason than their support for the MDC. On 22 June, Mr. Tsvangirai announced his withdrawal from the election on the grounds that the circumstances in Zimbabwe were not conducive to a free and fair election and because he did not wish to put the lives of his supporters in danger. According to the MDC, 120 of its supporters were killed from the first round of voting on 29 March up to 18 July, 2008. They murdered for exercising their political rights, right to elect a leader of

their choice provided for in the International Covenant on Civil and Political Rights and the Universal Declaration for Human Rights.

According to the Universal Periodic Review as was seen in past elections, non-state actors, ZANU PF and war veterans were overwhelmingly named as the perpetrators but it is unusual on past experience to see the Zimbabwe National Army (ZNA) mentioned so frequently, supporting the notion that the ZNA has been intimately involved in the violence. As indicated above, the MDC was hardly mentioned and interestingly in relation to the Zimbabwe government's allegations about MDC violence, only in cases of intra-party violence and the few ZANU PF supporters that reported to the Human Rights Forum also mentioned intra-party conflict as the major reason for the violation. Thus, the evidence from the legal statements strongly supports the earlier finding that the violence was systematic in its application and although mostly against one political party, the MDC, almost exclusively so.

This strongly supports the many allegations in the press and media that the military have a controlling role in the violence, probably under the direction of the Joint Operation Command. The reports of the involvement of the ZNA have occurred outside of any formally proclaimed state of emergency or martial law and hence their presence in civilian life is unlawful and unconstitutional, never mind their involvement in alleged gross human rights violations.

Hundreds of thousands of people were internally displaced in Zimbabwe as a result of the actions of their own government that unleashed a campaign of state-sponsored violence following the elections on 29 March, 2008 and the second round of voting in the presidential elections on 27 June, 2008. People were forced to flee their homes as a result of the excessive violence. Precise figures are not available. The circumstances during the time made it impossible for anyone to conduct a comprehensive survey. However, in the wake of the elections, the estimates of the number of people internally displaced by the violence rose rapidly. By the end of April a group of UN Special Reporters estimated that hundreds of families and individuals mostly women and children had been displaced internally. By the end of May, UNICEF estimated that the violence had displaced at least 10,000 children. In a written statement dated 6 June, 2008 the British Foreign Secretary stated that in the 5 weeks since the elections in Zimbabwe, 7,000 people had been displaced.

By mid-June the MDC estimated that 25,000 people had been internally displaced while the General Agriculture and Plantation Workers Union of Zimbabwe

(GAPWUZ) estimated that up to 40,000 farm workers and their families had had to flee their homes because of the violence. By the time of the second round of voting at the end of June 2008, the MDC stated that 200,000 of its supporters had been displaced and this estimate has since been adopted by the International Crisis Group. However, by mid-July 2008 the UN used a significantly lower estimate of 36,000 people displaced by politically motivated violence.

Analysts have argued that the displacement of thousands of MDC activists and ordinary voters was not merely a by-product of the violence but was itself part of a systematic attempt to change Zimbabwe's political landscape. The British Broadcasting Corporation (BBC) coined the phrase "electoral cleansing" to describe ZANU PF's campaign to drive opposition supporters from their voting areas. According to Human Rights Watch, "ZANU PF deliberately displaced thousands of people from their homes in the rural areas both in an effort to change the political landscape of these areas and to prevent MDC supporters from exercising their rights to vote during the presidential runoff. This could be true to a greater extent given the degree of desperation that befell ZANU PF during the time. The former ruling party appeared to have orchestrated this mass displacement to ensure that those affected by the abuses could not return home. It did so through a campaign of beatings, burning of huts and homesteads, the deliberate slaughter of livestock and the looting of property.

Similarly, the Zimbabwe Human Rights NGO Forum maintains that the aim of the violence was 2 fold: to instill fear in the electorate and to drive people away from the wards where they were registered to vote. They claimed that the terror campaign was intended to ensure that in the event of a run-off in the Presidential Election people would be too frightened to vote for the opposition. Many MDC party officials were displaced from their own areas and were not able to organize party support in these areas. Party supporters were also driven out of the areas in which they were registered to vote and could not be able to vote in areas in which they sought refuge.

Political violence and displacement after the June 2008 elections: Political violence continued after the second round of voting on 27 June, 2008. Indeed, according to the MDC the political violence against its supporters escalated after Mugabe assumed the presidency. On 9 July, MDC spokesman Nelson Chamisa stated: "As the MDC, we are deeply concerned by the upsurge in political violence, especially in the countryside. We are overwhelmed by the number of internally displaced persons who continue to flock to our offices". According

to the Zimbabwe Peace Project, at Hopley Farm in Harare, by 29 June, a witch-hunt for those who voted for the MDC had started with reports that those suspected to have voted for the MDC and spoiling ballots lost their lodgings.

In August 2008, Human Rights Watch claimed that hundreds of MDC activists who fled the violence in the weeks before the June 27 runoff remained in hiding while 'war veterans' and youth militia continued to terrorize villagers in the rural areas." Zimbabwe Lawyers for Human Rights reported on 31 July that at least five MDC Councillors in Nyanga North constituency had been forced out of their homes after the 27 June elections and were continuing to seek refuge outside their constituency. This was part of the campaign, Operation Who Have Voted For.

Displaced people continued to be at risk of further attacks. For example, in the early hours of 7 July, 2008 two shelters where MDC supporters had sought refuge came under attack by armed militia, one at Chinyaradzo in Gokwe and the other at the National Rehabilitation Centre in Ruwa. At least ten people died in the Gokwe attack. In some parts of the country, ZANU PF supporters were reportedly refusing to allow villagers who had fled the violence to return home. At the same time, some displaced people continued to have serious concerns for their safety should they return home, highlighting the need to ensure that the voluntary aspect of any returns was guaranteed at all times.

With the high frequency of reported assault, allegations about torture as violation of international human rights law need to be considered. There is need to examine these torture cases to figure out if they would conform to the definitions contained in the United Nations Convention Against Torture and the Rome Statute of the International Criminal Court: pain and suffering, physical or psychological, done with intent and done by a state agent or with the approval of the state (Dugard, 2007). Using this criterion, 59% of the cases of assault would be classified as torture and many abuses characteristic of torture such as falanga, deliberate burning, use of restraints and forms of asphyxiation were examined. Furthermore, there were very high frequencies of displacement reported which not only reflects the destruction of property but also the extreme fear experienced. Although, it was not possible to determine the frequency of psychological torture, both as a consequence of direct violence as well as the threats and intimidation experienced, 38 and 60% of the cases reported threats and intimidation respectively and this can be taken as an indication of the extent of psychological torture. All these are indications of crimes against humanity, undermining international human rights law.

Operation Dzikisai Madhishi-deprivation of property:

Operation Dzikisai Madhishi, Pull Down Your Satellite Dish was a 2008 operation of the Military of Zimbabwe to pull down private home satellite dishes. These dishes were primarily used to view e.tv, SABC, Botswana Television and DSTV as alternatives to the state-owned Zimbabwe Broadcasting Corporation. It began in Matabeleland South in June 2008 and spread to other provinces, carried out by attaches of the Central Intelligence Organization, Zimbabwe Republic Police, Zimbabwe National Army and youth militia. Arguably, the purpose was to create media blackout. Questions emerged as to who was really targeted by this particular operation. However, the targets are of less importance rather importance should be attached to the purpose as well as the implementation methods and above all, the implications. The campaign was carried out violently. Those who refused to pull down their satellite dishes would be severely tortured. Since, it was carried out by police, army and intelligence there is no doubt that of course violence was associated with the operation. It occurred in violation of the right to property. People were deprived of their property. Chapter 3 Section 16 of the Zimbabwean constitution provides for the protection from deprivation of property (Constitution of Zimbabwe). Hence, through the operation the government was foolish enough to violate its own constitution. Human rights were grossly violated, the right to be protected by the law, personal liberty and freedom.

Politically motivated rape and violence against women in

2008: Politically motivated rape refers to rape that involved some political element such as an indication that the rape was committed as a punishment for a political party affiliation, the affiliation of a spouse or family member or occurred at a "political base" or political meeting. Violence against women in the context of political conflict, repression and resistance in Zimbabwe is a feature that has been seen in every election since 2000 and it is a frequent experience for women whether they are politically active or not. It happens to women merely because they are perceived to be an opponent of ZANU PF as was so clearly seen in the Presidential run-off in 2008: women who were MDC members or merely perceived to be a supporter of the MDC were 10 times more likely to report a human rights violation than a female member of ZANU PF.

However, as indicated above, 2008 was not an aberration. In 2008, about 448 cases of violence against women were recorded. It is important to note that between 2000 and 2008 Zimbabwe had had three national elections in 2000, 2002 and 2005 and it was well documented that

violence intensified during election years. Rural women were more likely than urban women to report property destruction, displacement, rape and torture, whilst urban women reported assault, unlawful detention and death threats more frequently. As was the case with the Human Rights Forum report, ZANU PF supporters and ZANU PF youth were cited as the most common perpetrators.

A Zimbabwe Human Rights NGO Forum publication supported these findings and this report is significant since the data came from cases before the High Court of Zimbabwe. The plaintiffs, both male and female that had experienced gross human rights violations at the hands of state agents, received favorable judgments or acceptance of liability in over 90% of the completed cases, providing strong evidence that state agents were violating human rights. Reporting upon 68 women out of 291 cases it was found that aggravated assault, assault and torture were the most frequent violations and the most common alleged perpetrators were the Zimbabwe National Army, reported by 68% of the women complainants.

Intimidation and all other coercive methods were closely linked to rape. Many reported being raped personally during the run up to the 27 June elections. The chances of rape were significantly increased if there were other violations and markedly more so where the alleged perpetrator was a not a government official. Women who claimed allegiance to the MDC-T reported significantly higher levels of rape and abductions. Whilst it is evident that women reported high frequencies of various forms of political violence, rape as a torture method can be argued to be perhaps a more serious violation than, say, threats or arbitrary arrest.

As indicated earlier, women alleged personal rape and 16% indicated that they knew of a rape in their community. This latter statistic can of course be very confusing since, as commented earlier, many women in the same community may be reporting on the same rape which obviously distorts the finding. Women reporting personal rape were significantly more likely to report being victims of political violence. Women reporting personal rape were also significantly more likely to report other forms of human rights abuses: abduction, torture, assault, destruction of property, arson, indecent assault and arbitrary arrest. They were also significantly more likely to report physical injury having sought medical attention and to have reported the matter to the police.

Women reporting personal rape were significantly more likely to have also had a family member as a victim of political violence. Family members were significantly more likely to have experienced a human rights abuse: murder, rape, abduction, torture, assault, destruction of property, arson, indecent assault, disappearance and arbitrary

arrest. They were also significantly more likely to have witnessed political violence in their community and to have witnessed human rights abuses: murder, rape, abduction, torture, assault, destruction of property, arson, indecent assault, disappearances and arbitrary arrests.

As was indicated in the previous section, all violations including rape were more frequently reported as being at the hands of non-official perpetrators but the picture was slightly different when rape alone was considered. Here, the most frequent perpetrators alleged to be associated with personal rape and the other violations were ZANU PF men, ZANU PF women and the ZRP and victims of personal rape were significantly more frequent in Mashonaland East Province. Allegations about political rape are always problematic because of the emotional responses that these engender but on a conservative interpretation of these findings, it is apparent that for a small percentage of Zimbabwean women, political rape in association with other gross human rights violations did occur.

Systematic rape is a serious human rights violation. It falls under the category of torture as it is intended to inflict physical and emotional harm and suffering. Furthermore, it is a crime against humanity because it is an offence particularly egregious in that it constitutes serious attack on human dignity, grave degradation and humiliation of human beings. Politically motivated rape in 2008 occurred in violation of international humanitarian law contained in article 7 of the Rome Statute.

Another disturbing predicament of the 2008 post election period was the systematic arrest and abduction of women human rights activists. Violations against human rights defenders in police custody often had specific gender manifestations and a gender specific impact on women defenders. Several cases of women defenders including members of activist organizations Women of Zimbabwe Arise (WOZA) and Zimbabwe Peace Project (ZPP) who were abducted and brutalized by police during arrest and while in police custody and subjected to humiliation and sexist verbal attacks were witnessed. Pregnant women and even mothers with babies were also detained, some in unknown locations.

In December 2008, the director of Zimbabwe Peace Project, Jestina Mukoko, together with MDC party activists were abducted and held in incommunicado detention for almost a month. Mukoko was only released from custody on 2 March, 2009. On 28 September, 2009, the Supreme Court of Zimbabwe granted her a permanent stay of criminal prosecution. The court ruled that the state, through its agents had violated human rights contained in the Zimbabwean constitution under Sections 13 (1) that provides for protection from deprivation of

personal liberty, 15 (1) that calls for protection from torture, inhuman and degrading treatment and 18 (1) that provides for protection of the law (Constitution of Zimbabwe). However, despite this positive ruling, no sanction has been brought against the state security agents responsible for these violations. The 2008 post election period witnessed the intensification of deterioration of the human rights and humanitarian situation in Zimbabwe.

Genocidal cholera epidemic in 2008: In late 2008 Zimbabwe was hard hit by the cholera epidemic. The outbreak of cholera shocked even the regional and international community. The most affected city was Kadoma. In Harare areas such as Budiriro were also severely affected by the epidemic. The crisis befell the country when it was facing a water crisis. Official Zimbabwean statistics estimated that about 500 people died. This is a huge number but NGOs dismissed that the government was trying to cover its back by giving a smaller figure. They pegged the figure at around 3000.

Questions and arguments were raised with regards to the causes of this phenomenon. Some said it was a result of water shortages which makes sense. Others were of the view that it was one of ZANU PF's calculated tactics to kill MDC supporters. Their arguments were based on the fact that the cholera epidemic affected MDC strongholds such as Kadoma. This could be true but it does not make sense. In other words, ZANU PF was accused of planting the cholera bacteria in water reserves with the intent to destroy MDC supporters. These are serious allegations to level against a de jure government.

Assuming the above is true, the government committed the crime of genocide which is a serious crime against humanity. This is so because the crime of genocide is committed when there is intent to destroy a certain group of people in part or whole. As indicated above, the intent was present, to destroy MDC supporters as claimed by skeptics. Consequently, the government violated article 7 of the Rome Statute of the International Criminal Court which belongs to the corpus of international human rights law.

In response to the above allegations, the government of Zimbabwe shifted the blame on Britain. President Mugabe accused Britain, the former colonial power of causing a genocidal cholera epidemic. He claimed, "Cholera is a calculated racist attack on Zimbabwe by the former colonial power so that they can invade the country". This argument holds much water because during the time the cholera epidemic occurred, Britain and the US were vying for the invasion of Zimbabwe to effect regime change. Thus, the Government of Zimbabwe did not commit the crime of genocide; hence, it did not violate norms of international human rights law.

Chiadzwa massacres: The Chiadzwa diamond mine was the property of London-based Africa Consolidated Resources until the government seized it and drove off the workforce. Shortly afterwards a ZANU (PF) official went on state television to urge ordinary people to go there and harvest the diamonds. Tens of thousands descended on the area to dig for diamonds which are not far below the surface. Later on the government decided to reassert control. In May 2009, reports emerged of appalling police brutality as they cleared people out.

Evidence exists on diamond smuggling, corruption and widespread human rights abuses including killings, torture, beatings and child labour in the Marange diamond fields in Eastern Zimbabwe.

Nearly 80 people were brutally murdered by the Zimbabwean Army in its campaign to take control of a diamond field near the eastern city of Mutare and dumped in a mass grave. According to a report by the Human Rights Watch, from the top government official in the district to the city's deputy mayor is the firmest evidence yet of reported massacres in the Chiadzwa diamond fields. Admire Mukovera, deputy mayor in Mutare where the city council is controlled by the opposition MDC said that the district administrator had called him to ask for space for a mass grave for 78 people who were killed in Chiadzwa". In addition, the report explains that Mr. Mukovera added that he never mentioned who killed them but obviously it was the army and police because they were the only people allowed to go there. It is further claimed that He told the major that the bodies were in the mortuary but it was not established which one and there was nothing in the Mutare general hospital's mortuary, the report postulates. Pishai Muchauraya, the MDC's district spokesman, claimed that President Mugabe's regime was trying to hide its "murderous activities" by dumping its victims in mass graves. The council refused to give them ground until the facts and figures were made public and the circumstances of the murder of 78 people were known.

There have been widespread accounts of the killings from survivors emerging from the area which was sealed off with military roadblocks and troops. Those who live in the region were not allowed to attempt to enter Chiadzwa. Those who attempted were arrested and possibly tortured and killed. Survivors spoke of machinegun attacks by helicopter as well as police and army troops shooting at and setting dogs on civilians. Police had tried repeatedly to drive off thousands of diggers and panners from the hot, arid landscape but with little effect because so many officers were easily bribed with diamonds.

According to the BBC Investigation Team, the actions of the government in Chiadzwa fall under war crimes even though the killings were committed in peace time. War crimes are committed in violation of international humanitarian law applicable during armed conflicts in terms article 8 of the Rome Statute. Putting

article 8 (2) (b) (iii) of the Rome Statute into consideration the claim that Chiadzwa massacres amounts to war crimes makes sense, albeit little. The article prohibits an attack which is intentionally launched in the knowledge that it will cause incidental loss of life or injury to civilians. Furthermore, article 3 and Additional Protocol 2 of the Geneva Conventions which provides for the protection of civilians in conflicts not of an international nature was violated during military operation in Chiadzwa. Since, these humanitarian law provisions were undermined in accordance with the above articles, the actions of the government could be categorized under war crimes.

It is rather a paradox to class Chiadzwa massacres as war crimes. Of course there was the involvement of the army and a state of shooting was present but there was the absence of war. As a result, the massacres could be perfectly classed as crimes against humanity. Human rights of Zimbabweans in terms of the African Charter on Human and People's Rights and the Declaration of Rights were undermined during the operation. In other words, international human rights law was disregarded. Moreover, human rights in terms of international humanitarian law contained in Geneva and Hague Conventions were undermined.

Human rights and the government of national unity in Zimbabwe: September 2008 marked the beginning of a new political dispensation in Zimbabwe. The signing of the Global Political Agreement (GPA) between the two factions of the MDC, MDC-T and MDC-M and ZANU PF gave birth to the Government of National Unity (GNU). The inception of the Government of National Unity raised hope for Zimbabwean in as far as the issue of human rights is concerned. The agreement contains provisions for protection of human rights. Concerns are raised that the Zimbabwe Human Rights Commission is still not operational despite constitutional provision for the Commission adopted in 2009.

Section 100R of the constitution provides for a national human rights institution, the Zimbabwe Human Rights Commission mandated to investigate any violation of the human rights enshrined in the Declaration of Rights under the constitution (Constitution of Zimbabwe). Its functions are also to promote awareness of and respect for human rights and to monitor and assess their observance. However, despite the 19th Amendment of the Constitution of Zimbabwe in 2009 the bill to operationalise the commission was only gazetted on 10 June, 2011 for debate in parliament and by end of July it had not been passed into law (Universal Periodic Review, 2011). This undoubtedly indicates lack of political wills in as far as the

issue of human rights is concerned in Zimbabwe. Amongst other shortcomings the bill seeks to limit the Commission to investigations of human rights violations that occurred after February 2009 only.

Despite the creation of the Government of National Unity in 2009, human rights violations against perceived opponents of ZANU PF persist. Although, under the Global Political Agreement which created the GNU, the Ministry of Home Affairs is co-chaired by ZANU PF and the MDC-T, the police and other security organizations are effectively under the control of ZANU PF and have continued to perform their duties in a partisan manner.

Evidence has been documented on incidents of unwarranted surveillance of the activities of human rights defenders by police and intelligence services. The presence of state security agents at meetings organized by human rights activists often intimidates participants and restricts freedom of expression. Okay Machisa, director of the Zimbabwe Human Rights Association was forced to temporarily leave the country in March 2010 after he was arrested for hosting an exhibition of photographs depicting the state-sponsored violations that engulfed Zimbabwe in the run up to the second round of the Presidential elections in June 2008. In March 2010, Owen Maseko, a Bulawayo-based artist was arrested, detained for 4 days and charged under the POSA for holding an exhibition depicting the atrocities committed by government forces in the 1980s in Matabeleland and parts of the Midlands Province where thousands of people were killed by security forces.

More recently, on Tuesday the 20th of September 2011, award winning human rights activists Jenni Williams and Godonga Mahlangu were arrested for leading peaceful protests in Bulawayo. It is not the first time that these two Women of Zimbabwe Arise (WOZA) leaders have been arrested. This time around they were arrested for leading peaceful demonstrations in celebration of the International Peace Day. This depicts the toothless bulldog in the GNU in as far as protection and promotion of human rights is concerned.

In Harare, there have been reports of Chipangano group of youth terrorizing people in Mbare Harare. This indicates the existence of political violence despite the existence of the Government of National Unity and in disregard of the Organ for National Healing and Reconciliation. Furthermore, this could mean that the Government of National Unity has not changed anything in as far as violence with impunity is concerned.

CONCLUSION

A critical assessment of the extent to which Zimbabwe has upheld international human rights law indicates that the Government of Zimbabwe has to a larger

extent violated these laws. By and large, violation of these laws was to some extent in the best interest of the state in relation to its survival. The Government of Zimbabwe acted in non-compliance of the rules and principles of international human rights law for the security of the state. International human rights law is often invoked by the West to advance their selfish interests because of their imperialist tendencies. They were designed to undermine sovereignty. Since 2000, Britain and her allies have been working tirelessly to effect regime change in Zimbabwe. Strategies employed were to create situations that would trigger Zimbabwe's retaliation in a manner that the international community would render violation of human rights. In any case, states are permitted under international law to derogate from the protection and promotion of human rights if situations that require state survival arise. But this does not justify the extent to which Zimbabwe violated human rights in the 21st century. By and large, violation of these laws was to a lesser extent legal and to a greater extent legitimate as this was in the best interest of the state in relation to its survival. The Government of Zimbabwe acted in non-compliance of the rules and principles of international human rights law for the security of the state. International human rights law is often invoked by the West to advance their selfish interests because of their imperialist tendencies. They were designed to undermine sovereignty, albeit to a lesser extent. Since 2000, Britain and her allies have been working tirelessly to effect regime change in Zimbabwe. Tactical strategies employed were to create situations that would trigger Zimbabwe's retaliation in a manner that the international community would render violation of human rights. In any case, states are permitted under international law to derogate from their responsibility to protect and promote human rights under circumstances of public emergency. But this does not justify the extent to which Zimbabwe violated human rights law in the 21st century.

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