



The trajectory of human rights violations in Zimbabwe

The history of human rights violations in Zimbabwe is complicated by the inheritance of a colonial system that, because of skewed racial considerations, did not universally respect and protect basic human rights. Just as religious societies justify their human rights stance through religious arguments, the post-liberation state of Zimbabwe has tried to justify its position through non-imperialist ideological arguments. This poses a problem on consensus of what should be the universal content of human rights. Various perceptions on what constitutes human rights are embodied in the United Nations charter and its various covenants, even though individual states attach different values and priorities to the many rights that guarantee individuals a decent standard of life. The United Nations' instruments on human rights cover a wide range of rights and it is generally acknowledged that at times threatening situations can compel a nation to curtail them.

The conflicts over land and intolerance for political opposition are at the locus of the violation of human rights in Zimbabwe. The arbitrary use of power by the state on these two issues has generally had a multiplier effect with regard to disrespect for citizens' freedoms and autonomy. Many of the rights that have been violated include the right to life and to a decent standard of living; the right to freedom of expression, association and assembly; and the right to choose leaders and to participate in political life. Many theorists emphasise the connection between negative and positive human rights, and developing countries such as Zimbabwe have a great obligation to clarify and promote these connections with regard to their necessary redistributive actions (e.g. land). Negative human rights limit the arbitrary use of power by spelling out prohibitive acts for governments.¹ Positive human rights spell out what governments should provide for the development of conditions that will empower citizens to enjoy all the other rights.

Zimbabwe's independence came in 1980 after a protracted guerrilla war against the white minority settler regime in which regaining land taken away

from the indigenous people since 1890 was a central issue.² Land remains one of the most important causes of violent conflict throughout the world and at all levels – the family, community and national. Even in pre-colonial Zimbabwe, there were land wars among the local ethnic groups, mainly the Ndebele and the Shona. In Africa's agrarian economies, and in particular in Zimbabwe where 70 per cent of the population relies on subsistence farming, land is regarded as that 'thing which completes a human being' and this places it at the locus of all activities. All other rights derive from the right of its ownership and this opens up access to all other basic human rights such as housing, food, education and general livelihood.

Using a complex web of legal instruments and institutions, the colonial regime systematically dispossessed the indigenes of their land. The colonists ended up controlling over 87 per cent of the fertile land, while the blacks were shepherded into unfertile reserves.³ Racial discrimination with regard to land ownership violated the basic human rights of the Africans as it denied them access to a productive livelihood and forced them to become labourers.⁴ Land claims pertaining to forced removals during the colonial period were never addressed and this led to intensified demands for justice after independence. Land reform has thus lain at the heart of Zimbabwean politics, as equal access to and ownership of land by the majority would contribute to political stability and the enjoyment of land property rights. It is also important to point out that any discussion of human rights in Zimbabwe, as it relates to the land issue and governance, must take into account two issues: one is that of upholding the rule of law and the other is the international context in which Zimbabwe is located. In this regard, the Universal Declaration of Human Rights expresses the moral thinking on international law and sets the standard for judging governments that act outside the ethical framework it has established for safeguarding citizens' rights.

In this paper, the rule of law refers to the fact that governments are expected to exercise their authority

in accordance with the written laws of the country. Whether the laws are unfair is irrelevant, but it matters that they were arrived at through an acceptable and legal process. This makes the rule of law a prerequisite for democracy and a fundamental principle for shaping human rights content.

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With positivists and natural law thinkers dominating the debate on the rule of law, it becomes important to concentrate rather on the quality of the rule of law in Zimbabwe – and the same can be said for many other countries in the region that share the same colonial legacy. Does Zimbabwe fulfil both requirements of the positivists? That is, does it make laws through a legal process and apply them indiscriminately, and does it have laws that are not contrary to the basic values intrinsic to human society that form and influence its laws and rules?

This paper analyses how the ruling party, the Zimbabwe African National Union – Patriotic Front, has utilised a critical resource, land, to justify the abuse and violation of its citizens' rights in its quest to maintain its hegemonic position in the post-colonial state of Zimbabwe. It also points to the importance of safeguarding human rights in states in transition. Zimbabwe committed itself to the International Bill of Human Rights, which covers three covenants: the International Covenant on Civil and Political Rights,⁵ the International Covenant on Economic, Social and Cultural Rights⁶ as well as the Universal Declaration of Human Rights⁷ that was unanimously adopted by the United Nations General Assembly. The charters are not self-enforcing even though the United Nations Commission on Human Rights is mandated with monitoring the implementation of the provisions. Each country bears the responsibility for incorporating these guiding provisions into its policies. The simple act of joining the United Nations implies acceptance of its charter as well as the Universal Declaration of Human Rights. However, the present government of Zimbabwe has failed to live up to these pledges just like its predecessor, the Ian Smith government.

HUMAN RIGHTS – WESTERN OR UNIVERSAL VALUES?

The June 1981 the African Charter on Human and Peoples' Rights attempted to draw a distinction between Western and African values and their implications of what constitutes human rights.⁸ The charter has done this by referring to the values of African civilisation and historical traditions that should inspire and characterise conceptualisations of human rights and people's rights. This position is a response to the ongoing scholarly debate on the origin of human rights and, in particular, against the perceptions by some theorists that African culture has no contribution to make to the content of human rights.⁹ Without disputing the universality of the Western conceptualisation of the term, cultural relativists do raise important arguments on the apparent 'universalism of culture' and its implications for the human rights debate. Mahmood Mamdani thus has a valid point when he states that human rights are a product of people's struggles against oppression.¹⁰ This is important since the concept 'civilisation' was used by colonial regimes to deny Africans civil, political and property rights. The result of taking traditions into account is that African governments seem to define human rights as being community rather than individually based. In Africa and other regions, the collective good has usually taken precedence over the individual's rights and preferences.

HUMAN RIGHTS AND THE CHARACTER OF THE STATE

The character of the colonial state is the starting point for understanding the violation of human rights in Zimbabwe. The post-colonial state has become just as discriminatory as the colonial state was. The colonial state evolved from the conquest of different chiefdoms in Rhodesia. The state started with the establishment of a town, Bulawayo, in the southern part of the country, and then finally the establishment of a capital, Harare (formerly Salisbury), in a more central region of the country. The chiefdoms were incorporated under one new authority through the use of a bureaucracy that reflected the former (British) imperial power's institutional patterns for its colonies. The colonial state established separate structures for the conquerors with the vanquished natives being ruled through a system of indirect rule in which local traditional authorities were separate parts of the governance structures.¹¹ Traditional authority was desired for its role in confining Africans to their ethnic collectives thus averting their attention from pursuing individual democratic and human rights. What some authors have described

as a 'systematic distrust of power' arose under this forced unification.¹²

Colonial policies placed many limitations on the development of a human rights culture on the continent. This was done through the denial of human rights and democracy to Africans. In addition to exploitation, the regime acted against the promotion and protection of human rights on the continent as a whole. The colonial regime defined the concept of citizenship in a way that exalted white supremacy and hegemony. Citizenship came to be defined as a privilege for the civilised man who then could enjoy all his civil rights, but for the so-called uncivilised native, political rights in particular were seriously and systematically denied. This categorisation and treatment was the root cause of all anti-colonial resistance and made Africans defiant from the very beginning. In concurrence with literature on the neo-patrimonial post-colonial African state, the only advantage for the African of the colonial state was its use for the pursuit of self-interest. It was rejected as an authoritatively imposed state that perpetuated racial differences. The colonial state became responsible for engendering social patterns that militated against the enjoyment of social, political and economic rights by Africans.

THE COLONIAL RELIGION AND HUMAN RIGHTS

After the colonisation of Zimbabwe in 1890 by the British South African Company, the colonisers immediately institutionalised a political economy that was anchored in the ideology of racism. This made racism the state 'religion' and the organising principle on which national resources were authoritatively allocated and authoritatively denied so that power and all socioeconomic resources were skewed in favour of the minority ruling white race.¹³

Colonialism was interested only in the physical maintenance of the African urban labour force, while denying these people any human rights of habitat. Institutional design equally centred on keeping the public service in white hands as evidenced by the 1931 Public Services Act, Chapter II, section 8 (I), which stated in very explicit terms that service in the public sector would not be open to any native or coloured person.

The 1961 constitution was the first in the country to provide for a controversial justiciable Bill of Rights. However, this Bill of Rights did not provide for the protection of some basic rights as espoused in international conventions. Furthermore, the state of emergency it allowed was abused across regimes, from the colonial to the independent, that is, from 1965 until 1990 when it was effectively suspended. Even further, the all-white

legislature in the period 1965 to 1979 was partisan and its interpretation of human rights provisions relating to the right to personal liberty was not uniform according to the analysis of some legal analysts.

Under Ian Smith's Unilateral Declaration of Independence (UDI) in 1965, the need to uphold the racist ideology resulted in an extraordinary emphasis on security by the colonial state and this resulted in the development of authoritarian administrative systems that were closely woven, centralised and hierarchical. The UDI period (1965–1979) was characterised by a brutal and intensified denial of basic human rights to the Africans, continued expropriation of their land and severe political repression that was upheld by the legal system. The excessive preoccupation with maintaining law and order exacerbated the denial and curtailment of basic freedoms for the black population.

As in apartheid South Africa, under UDI, segregation in all spheres of life was enforced and intensified as the nationalist threat rose. Zanu-PF and the Zimbabwe African Peoples' Union (Zapu) started an armed struggle against the colonial government shortly after UDI. The Smith government fought a violent civil war against the nationalist liberation forces that had located themselves in exile in several neighbouring countries. To cut off support for the liberation armies, the government forcibly moved rural people into 'keeps' – a concept similar to concentration camps where the occupants' movements were constantly under surveillance. Passes were issued to the people in a bid to account for their movements.

UDI made it possible for Ian Smith's government to ignore international conventions on human rights since Britain, the imperial power from which it had distanced itself, had ratified the conventions on behalf of its colonies. With Britain turning a blind eye to human rights abuse in the country, Smith's Rhodesia could ignore the expected extension and protection of basic human rights for the Africans with the full knowledge that it was not posing an international threat since self-determination was narrowly defined in terms of national interests. Despite Rhodesia being an illegal entity, Britain felt no legal obligation to press it to conform. This has led many analysts to denounce the hypocrisy of the West in generally sanctioning the abuse of human rights in Africa by white men and yet condemning such abuse by indigenous people in their own territory.

In the UDI era, a few individuals and organisations became champions for advocating the restoration of dignity to the Africans. Among these were the Catholic Commission for Justice and Peace (CCJP), which spoke out against the excesses of the Smith government and compiled a report on the civil war in Rhodesia. Another prominent human rights activist, Judith Todd, the

daughter of the former prime minister Garfield Todd, was forced into exile for expressing liberal concerns over the plight of Africans.

LIBERATION WAR MOBILISATION AND HUMAN RIGHTS

For the liberating forces, securing the backing of the masses during the guerrilla war resulted in the rampant disregard and disrespect for basic human rights even though the liberation war itself was defined in terms of the struggle for democracy and the achievement of human rights. Convincing civilians to support the war meant emphasising the colonial disrespect for basic human rights. Nationalist rhetoric mobilised the nation to concentrate on dismantling racial discrimination and neglected other types of discrimination. The Zanu-PF ideology of human rights was linked to the party's conception of democracy that was defined as majority rule by the liberators. The concern was clearly with national identity and not with human rights. All opposition was considered treacherous and loyalty to the liberators was crucial for survival.

Historians such as Terence Ranger and Jocelyn Alexander have documented the experiences of villagers in encounters with the liberators during the war in rural areas.¹⁴ This situation initially resulted in the exaltation of guerrilla fighters, and civilians condoned their use of violence to achieve fundamental human rights for all Africans. Atrocities committed by the liberators were thus ignored in the aftermath of the war as having been justified in the collective pursuit of collective human rights.

BASIC HUMAN RIGHTS IN THE POST-COLONIAL WELFARE STATE

On attaining independence, the government's immediate policies to correct racially based injustices have best been described as social-welfarist. The main target was to address issues of social equity by reducing income gaps between the racial divide and emphasising the alleviation of poverty. The immediate post-war period was clearly a time in which the new government experimented with its socialist ideas.

Rural development was a big success in terms of granting human rights to rural residents, who, for the first time, enjoyed access to public education and health. There was some significant restoration of dignity to the rural populace even though access to land rights remained elusive. As opposition to the new liberating government's authoritarian governance style increased, the country ceased to be a haven of respect for individual human rights the liberators had preached during the war, nor was it an example of where democracy was the only option.

POWER CONSOLIDATION, VIOLENCE AND HUMAN RIGHTS – THE GUKURAHUNDI MASSACRES

The two parties that had fought against the colonial regime had different ideological inclinations and the dominant party, the Zanu-PF, had been adamant that the smaller party, the Zimbabwe African People's Union (Zapu), should come into its fold unconditionally. Problems with integrating the two liberation armies, the Zimbabwe African National Liberation Army (Zanla) and the Zimbabwe People's Liberation Army (Zipra), into the new national force were widespread throughout the country. As discrimination against Ndebele and Zipra soldiers increased, many desertions from the army made the government uneasy. The detention of the Zipra leadership without laying charges or bringing these people to trial for up to four years on allegations that they were supporting the insurgents confirmed the Zipra fears that Zanu-PF wanted to wipe them out. This led to a situation that the government described as an insurgency aiming to forcefully remove it from office.

In October 1980, prior to any civil unrest, an agreement was signed with North Korean president, Kim Il Sung, which allowed for the training of a militia force that Mugabe claimed he needed to deal with the disgruntled citizens. This was before problems started in Matebeleland. However, to contain the supposed insurgency in the southern part of the country, Matebeleland, the government massacred an estimated 7 000 civilians between 1980 and 1988. Another estimated 20 000 are still unaccounted for. The provisions of the Convention on the Prevention and Punishment of the Crime of Genocide did not deter the then new government.¹⁵ A report of these atrocities titled 'Breaking the silence, building true peace' was compiled from 1 000 witnesses by the CCJP and the Legal Resources Foundation. The report detailed how the Korean trained 5th Brigade or Gukurahundi – meaning the 'first rain that washes away the chaff before the spring rain' – created carnage among the Ndebele people who were accused of supporting the insurgents. The report provides disturbing evidence of how thousands of civilians were tortured, starved and murdered in public executions. Zapu lost all its property as the government confiscated it under the pretext that Zapu was preparing for a war against the new government.

To stop the massacres, Zapu eventually signed a peace accord, 'the Unity Accord', in December 1987 in which it was effectively dissolved into Zanu-PF. Three months later an amnesty was immediately extended to all alleged insurgents as well as to security forces who had committed atrocities during the period. However, the confiscated property was never returned to Zapu and President Mugabe's only response to the report was to castigate the authors for digging up the wrong historical

facts which would disrupt the unity he had achieved and consequently wreck the peace. He refused to make a public apology or to compensate the relatives of the victims. Instead he insisted that the government had a legitimate right to use any method to contain insurgency. The Gukurahundi Massacres took place just before the president of Zimbabwe became the next chairman of the then Organisation of African Unity (now the African Union). His human rights records did not seem to affect the new role he was to assume.

THE FAST-TRACK LAND REFORM

The fast-track land reform programme, which started in 2000, resulted in serious human rights violations and contributed to a breakdown in the rule of law in the country. The reforms that included taking over 4 500 commercial farms from white farmers and giving them to landless peasants were necessary, but the modus operandi caused more problems including discrimination in the reallocation process that further affected the citizens' enjoyment of equality of treatment. The provisions of the Convention on the Elimination of All Forms of Racial Discrimination were thus violated.¹⁶

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The farm seizures were often violent as landless citizens took it upon themselves to oust white commercial farmers from the fertile land the farmers now legally occupied. By failing to protect and uphold the rights of those affected by land dispossession and to end the violence associated with the invasions, the government created a situation that resulted in the erosion of the recognition of basic human rights, and which amounted to the government's neglect of its own policies as well as those of internationally recognised human rights agreements that generally cover the rights to property, life, dignity, freedom of movement, association and information. Article 20 of the African Union Charter on Human and People's Rights states that colonised or oppressed people shall have the right to free themselves from the bonds of domination by resorting to any means

recognised by international law, and this the government of Mugabe interpreted as a way out of economic bondage to the imperialist owners of land in Zimbabwe.

The African Charter on Human and Peoples' Rights leaves room for corrective action through the following statement:

The right to property shall be guaranteed. It may only be encroached upon in the interest of the public's need or in the general interest of the community and in accordance with the provisions of appropriate laws.

The government of Zimbabwe has accommodated the above provisions by amending section 16A of its constitution to allow for the legal acquisition of agricultural land for resettlement. Its argument is that it is essential to correct the historical dispossession of land and to allow the indigenous people to reclaim their rights by regaining ownership of the land.

Article 14 of the Universal Declaration of Human Rights states that 'everyone has a right to own property alone as well as in association with others ... no one shall be arbitrarily deprived of his property'.

Many constitutions safeguard property rights. The International Covenant on Economic, Social and Cultural Rights guarantees this under its article 11 where it guarantees rights to housing.¹⁷ This principle implies that the right to own property is covered under international law as a basic human right.

Although property rights are protected under international law, contradictions inevitably arise owing to the need to take into account redistributive obligations of formerly colonised states in particular. Governments do have a legitimate basis for broadening access to property rights for the poor, the vulnerable and the marginalised. This allows for the fulfilment of their obligations to promote and secure the rights for all to internationally guaranteed human rights.

Discrimination in the land allocation process has led to a demand for safeguards that will ensure that land distribution is equalised and does not violate the basic human rights of those who are opposed to the ruling party, Zanu-PF. However, ruling party affiliation has become the criterion for accessing land rights under the fast-track land reform programme, with many reports on human rights documenting this unfair practice in the land redistribution process. Women too have failed to benefit from the allocation process as they have continued to be defined as minors in the rural areas. In principle, section 23 of the constitution protects them, but administratively, and under customary law, the law does not protect them from non-discrimination, a situation that has left them with uncertainty in regard to enjoying full citizenship rights.

In particular, this situation has worsened the plight of widows, who are yet to benefit fully from the protection promised by the Convention on the Elimination of All Forms of Discrimination Against Women.¹⁸ Women married under customary law are still discriminated against with regard to inheritance after the death of a husband as male siblings and offspring still take precedence over the widow. Contradictions are evident in that the Administration of Estates Amendment Act makes inheritance more favourable to women even though the constitution still allows discrimination under customary law.

Zimbabwe is a signatory to many international best practice conventions on elections and the role of the free media

The harassment and assault of farm owners and their workers during the land seizures was extended to the sympathisers of the main opposition party, the Movement for Democratic Change (MDC). Human Rights Watch has witnessed and recorded many incidents of assault and collected many testimonies of such evidence.¹⁹ The police failed to act in most reported incidences of abuse and the president extended amnesty to all politically motivated assaults and crimes prior to each election campaign. Although the constitution prohibits torture, inhuman and degrading punishment, the security forces have consistently been accused of using excessive force in apprehending and detaining suspected opposition members as well criminals. Members of the opposition are denied fair public trials.

The Supreme Court ruled against the fast-track land reform programme stating that it was unconstitutional since it violated equal rights to protection, non-discrimination and due process. The government responded by interfering with judicial independence and forcing judges opposed to the exercise to resign from the bench. The constitution does provide for an independent judiciary, but since 2001 it has come under pressure to conform to government policies and the government has openly and repeatedly refused to abide by judicial decisions that are not in its favour. In a public speech in July 2002, the president remarked, 'If judges are not objective, don't blame us when we defy them.' This despite Zimbabwe, then a Commonwealth member, agreeing in the 1991 Harare Declaration to maintain and strengthen the

independence of the judiciary in recognition of its being a fundamental requisite for political stability.

POST-LIBERATION WAR OPPOSITION

The new government's human rights record has remained poor as it has continued to use legal provisions and institutions to commit serious abuses against any political opposition. The Zimbabwe government has used all legal instruments at its disposal to entrench its hegemonic position. It has also demonstrated a deliberate unwillingness to comply with its own laws as well as with international obligations it entered into willingly.

Since 2000, the quest for the maintenance of this hegemonic position has resulted in the deliberate and systematic destruction of the economic base of the country. This started with the payment of the Z\$50 000 gratuities demanded by war veterans in 1999 as a payment for services related to liberating the country in 1980, 19 years after the event. Owing to a lack of education, many of them had lived as paupers after the war ended as they had failed to integrate successfully into civilian life. These gratuity payments caused the Zimbabwe dollar to plummet against the American dollar, the major international trading currency, and since then the situation has spiralled out of control. After the public rejected the government-sponsored proposed draft constitution in February 2000, the government sat back and watched the war veterans lead civilians in seizing land from white commercial farmers under the guise that this was an expected reaction since the rejected constitution would have addressed the long-overdue land redistribution exercise.

INFORMATION AND EXPRESSION RIGHTS

The Universal Declaration of Human Rights, article 19, states that everyone has the right to freedom of opinion and expression which includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers. In Zimbabwe, freedom of speech and association is limited in the interest of public order, state economic interests and state security.

In 1989, the government made a move to restrict academic freedom through the University of Zimbabwe Amendment Act. The National Council for Higher Education further subjected universities to government influence by taking responsibility for senior appointments at all public universities. The private press was banned in 2002 through the Access to Information and the Protection of Privacy Act that controls every aspect of the media. It also requires journalists to get accreditation and demands that media companies pay exorbitant

application fees to operate in the country. Both local and foreign journalists have been arrested in the country for writing articles that were considered inflammatory and inciting public unrest. A few foreign journalists were deported for allegedly undermining the government's work. This leaves the government as the dominant player in the print media with its two main daily newspapers, *The Herald* and *The Chronicle*.

In addition, deliberate interference in and violation of privacy started in 2000 when the government enacted a law that allowed it to monitor and intercept private communication between citizens via emails leaving and entering the country. Furthermore, through the Zimbabwe Broadcasting Corporation, the government also controls the electronic media, especially domestic radio broadcasting.

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The Public Order and Security Act (POSA) restricts individuals' freedom of assembly by requiring all organisers of public gatherings to seek police permits seven days prior to such an event.²⁰ Failure to do so results in criminal prosecution as well as civil liability. This controversial bill was enacted to replace the inherited colonial Law and Order Maintenance Act. After parliament and the parliamentary legal committee had passed a revised version that did not violate many international treaties and covenants to which Zimbabwe is party, the president refused to sign the bill into law stating his preference for the colonial Law and Order Maintenance Act that gave him unbridled powers. The Supreme Court, in a bid to protect basic rights, continued to find many of the POSA provisions unconstitutional forcing the Act to be repeatedly revised.

In a bid to prevent voluntary organisations from building capacity, especially through civic education programmes that would inform people of their rights, the Private Voluntary Organisations Act demanded the registration of all voluntary organisations. Since 2002, non-governmental organisations (NGOs) have been required to register with the Ministry of Public Service, Labour and Social Welfare. Prior to this development,

organisations were free of governmental interference as long as their activities were viewed as non-political. Owing to what the government terms external interference through aid agencies, it has been working on a new NGO bill since early 2004. Its aim is to outlaw any humanitarian assistance from sources perceived as hostile to the government.

FREEDOM OF CHOICE

Zimbabwe is a signatory to many international best practice conventions on elections and the role of the free media. However, neither the constitution nor the electoral laws of the country guarantee this basic right. Throughout independent Zimbabwe's 25-year history, nothing much has changed with regard to violence associated with elections. Most of the violence has been directed at the opposition by the ruling party, Zanu-PF. Political violations of civil, social and economic rights escalated in the period 2000–2005. Although the government adopted the Southern African Development Community (SADC) Parliamentary Forum's Norms and Standards for conducting elections, the commitment is yet to be put into practice as manipulation takes place in all ways – from disenfranchising voters to administrative inadequacies.²¹

During the 2002 elections, Human Rights Watch collected evidence of a total of 25 889 violations of human rights: 11 855 of these were associated with political intimidation, 5 263 pertained to political discrimination, 5 212 affected the right to vote and 503 were property related, either the destruction or seizure of property.²² Throughout Zimbabwe's electoral history, every post-election period has been characterised by the destruction of homes of known opposition members especially in low-income residential areas. During the 2000 and 2002 elections, some schools in rural areas were closed because of the political violence during the election campaigning period.

CONSTITUTIONAL REFORMS AND HUMAN RIGHTS

The new government's constitution had two main clauses that were designed to cater for the minority white citizens. These were the 20 parliamentary seats reserved for white Zimbabweans and the restrictive property clause that limited land distribution. Many multiparty democracies have such in-built mechanisms to protect minority rights. However, from the outset, the Lancaster House Constitution, which ended the liberation war in 1979, was viewed locally as a legal fraud that militated against the achievement of redistribution goals. Constitutional reviews instigated in the immediate aftermath of the

process called for the building of a strong state that would realise expropriation capacity to acquire land as the asset that would be redistributed to the majority. By 1998, the constitution had been amended 15 times and the net effect was the entrenchment of the ruling party. Many of the amendments gave the incumbent president power to thwart any opposition to his rule. Under the presidential powers (Temporary Measures Act 1986), the president can make regulations for urgent matters such as he considers essential to deal with a situation. Reducing and limiting these presidential powers has been one of the reasons cited for the need for a new constitution.

In response to the above, the National Constitutional Assembly was founded in May 1997 by a group of civic organisations that pressed for publicly debated constitutional reforms that would recognise and respect human rights. The group has experienced disruptions in all its attempts to express demands for a new constitution that would reflect the values and aspirations of Zimbabweans. Whenever this organisation seeks permission to hold demonstrations, the police cordon off the entire city to prevent any marchers from entering it.

INTERNAL DISPLACEMENT

Since February 2002, land reforms have resulted in the internal displacement of many citizens. The first group to be affected was the farm workers who became the largest group of victims and casualties of the rushed land reform programme. The United Nations Development Programme estimates that half a million farm workers have been displaced. Many of these people are descendants of colonial era migrant workers and have undefined citizenship status owing to the poor registering of births and record keeping by the bureaucracy.

A challenge for future generations in the country is changing the mindset of the current generation of youth who have witnessed the disrespect for human rights

Another act that resulted in the displacement of low-income citizens was the 2004 government city clean-up campaign that was code named 'Operation Murambatsvina' – clean-up.²³ The clean-up resulted in the destruction of houses the construction of which had not been authorised

by the municipalities, as well as the removal of all street vendors and flea markets. The informal sector and markets were destroyed instantly as all makeshift premises were deemed untidy and were alleged to be harbouring criminals. An estimated 250 000 urban dwellers were displaced by these operations in the middle of the winter in 2004. The loss of earnings as a result of the destruction of venues of productive ventures led to a dramatic fall in living standards for the displaced. This adversely affected their satisfaction of economic, social and cultural rights which is needed for the enjoyment of civil and political rights. The African Charter on Human and People's Rights recognises the right to development and that civil and political rights cannot be dissociated from economic, social and political rights.

In another attempt to minimise support for the real threat posed by the opposition party, the MDC, the government sought to deny citizens of foreign origin the right to vote. It simply ordered all those with either dual citizenship or without the necessary papers either to renounce their other citizenship or to leave the country. This again forced some citizens to seek citizenship in their countries of ancestral origin. Many acquired Malawian, South African and Mozambican citizenship.

GROUPS PROMOTING HUMAN RIGHTS IN ZIMBABWE

The increased erosion of basic human rights has produced new personalities and institutions that have arisen either to draw attention to the abuses and violations, to assist with humanitarian needs or to document the abuses. An Anglican clergyman, Pius Ncube, who has faced death threats often, was given the Human Rights Award for being an outspoken critic of the Mugabe government's violation of human rights since 2000. Ncube demanded that the government stop offering food for votes and hence the deliberate starvation of citizens who did not follow the ruling party. This earned him the support of a multid denominational church coalition that has become committed to resolving the crisis. He also campaigned against the torture and rape perpetrated by members of the ruling party's youth militia that are trained in the National Youth Service Training Programme which was started in 2001. The government argues that the aim of its re-education centres is to reorient the youths' values and make them more patriotic.

The National Youth Service Training Programme has, however, worsened the problem of child labour, with the National Child Labour Survey estimating that 25 per cent of the children aged between 12 and 15 in the country are victims of this practice. Many children work as domestics, car guards and street vendors. The government contributed to an escalation of this problem with its compulsory

youth service requirement which was supposed to produce patriotic youths imbued with national pride, full of the liberation struggle history and with some basic development skills. However, reports from human rights groups state that these camps have produced ruling party loyalists with paramilitary skills that are still being used to suppress the opposition. An estimated 1 000 girls were reported to have been interned as sex servants for the commanders. This is in direct contradiction to the provisions of the Conventions on the Rights of the Child.²⁴

Religious leaders have routinely played their part in condemning the human rights violations and abuses. The following groups have all spoken out against the government's excesses and have all issued pastoral letters calling for the eradication of political violence: the National Pastors Conference, the Evangelical Fellowship of Zimbabwe, the Jesuit Fathers and Brothers, the Catholic Bishops' Conference and the Zimbabwe Council of Churches, the Catholics, Baptists, and Methodists.

The CCJP, a commission of the Zimbabwe Catholic bishops affiliated to the Pontifical Commission for Justice and Peace in Rome and to other commissions in other countries, has continued to act across regimes, the colonial and post-colonial, as a watchdog against the erosion of human rights.

Efforts to press the government into respecting human rights and upholding the rule of law have been exerted by different international actors

Many civil society groups came together on 8 December 2004 as the African Civil Society Consultation on Zimbabwe to put regional pressure on the Zimbabwean government that would result in an improvement in the protection of basic human rights by that government.

All the human rights groups in Zimbabwe are designed to deal with various aspects of the human rights violations in the country. The Amani Trust, the CCJP, the Legal Resources Foundation, the Media Institute for Southern Africa and the Musasa Project have all reported incidences of politically motivated rape. The Solidarity Peace Trust reported growing evidence of systematic rapes at the National Youth Service Camps that emerged in the aftermath of the land invasion. The National Alliance of Non-governmental Organisations,

the National Constitutional Assembly, Transparency International – Zimbabwe, Women and Law in Southern Africa, Women in Law and Development in Africa, the Zimbabwe Electoral Support Network and the Zimbabwe Human Rights NGO Forum have consistently led in the coordination of reports on human rights violations and abuses. Zimbabwe Lawyers for Human Rights, the Zimbabwe Liberators Platform, the Zimbabwe Union of Journalists, the Zimbabwe Women Lawyers Association, the Zimbabwe Civic Education Trust and Zimrights have all spoken out against the violations and mobilised resources to fight the government legally.

THE INTERNATIONAL RESPONSE TO HUMAN RIGHTS VIOLATIONS IN ZIMBABWE

Many studies have demonstrated that internationally recognised important norms have been playing an increasing role in orienting state behaviour in key areas such as trade, security, the environment and human rights. Many of these norms are incorporated into bilateral or multilateral agreements. Efforts to press the government into respecting human rights and upholding the rule of law have been exerted by different international actors.

Throughout the world reputation has become a major driving force in urging compliance with human rights. Many former communist states in Europe have bent over backwards to improve their human rights records in order to qualify for European Union membership. Muammar Qaddafi of Libya announced some reconciliatory measures in a bid to improve relations with the West. However, suggestions that a state will comply with international human rights standards when its reputation is at stake do not seem to work for Zimbabwe, let alone for much of Africa. Nor has regional pressure from organisations to which the country belongs yielded any positive results with regard to preventing human rights abuses, while the poor enforcement capacity of regional organisations is also a factor.

Using conditionalities for cooperation under the Cotonou Agreement, article 17, the European Union imposed a travel ban and some sanctions on Zimbabwe's leadership because of the violations of human rights and bad governance with regard to politically related violence, farm seizures, a partisan judiciary and flawed electoral processes.

The Commonwealth Foreign Ministers' Communique of the 6 September 2001 recognised the need for land redistribution and how this is intertwined with all other issues such as the rule of law, human rights, democracy and the economy. It called for a fair land reform programme that would be in line with the constitution as a

partial answer to the human rights crisis in the country. The Zimbabwe government's failure to adhere to good governance, however, eventually led it to withdraw from the Commonwealth.

The United Nations' Commission for Human Rights supported the United Nations Secretary General, Kofi Annan's comments that the country needed to restore basic human rights that had been affected by political violence and disrespect for the rule of law.

SADC expressed concern at the economic crisis in the country and emphasised the need to commit to free and fair elections. Free and fair elections have been peddled as the panacea for many of Africa's governance ailments by aid agencies and bilateral agreements.

Amnesty International, concerned about the reports of systematic political beatings and killings, forced evictions and arbitrary arrests, appealed to the European Union and the Commonwealth Ministerial Action Group in 2001 to use their clout to press the Zimbabwe government into complying with human rights treaties to which it was a signatory. It again called on the United Nations Commission for Human Rights to undertake a thorough investigation into the violations of human rights by the government.

In 2001 in Nigeria, the government of Zimbabwe signed the Abuja Agreement²⁵ where it pledged to: 'protect and promote the fundamental political values of the Commonwealth as elaborated in the Harare Declaration'.

The Zimbabwe government has failed throughout to honour this pledge.

CONCLUSION

The disregard for human rights in Zimbabwe sends signals to the rest of the world that countries in transition are the most vulnerable states as they can easily regress in upholding and adhering to universal norms and standards. Zimbabwe continues to demonstrate how, despite being legal, governments can become tyrannical through the use of draconian laws.

As evidenced by the plethora of civic groups working in the area of human rights in the country, the citizens of Zimbabwe have come to realise the value of political commitment as the solution to respecting and honouring human rights and this must not be lost to future governments. Another implication is that the protection of human rights is essential for the development and prosperity of the nation especially where the fostering of human capital faces many challenges. The economic regression that has occurred in Zimbabwe as a result of an unlawful land reform programme and the denial of political space for opposition groups has contributed to a massive brain drain.

Another area that poses a challenge for future generations in the country is changing the mindset of the current generation of youth who have witnessed the disrespect for human rights under Zanu-PF rule. An educational curriculum that emphasises the value of respecting human rights would go a long way to instilling positive values with regard to safe guarding respect for human dignity.

NOTES

- 1 See Tibor R. Machan, The perils of positive rights, April 2001. <http://www.fee.org/pdf/the-freeman/machan0401.pdf> (accessed 15 June 2009).
- 2 Terence Ranger, *The historical dimensions of democracy and human rights in Zimbabwe: nationalism, democracy and human rights*, vol 2, Harare: University of Zimbabwe Publications, 2003.
- 3 See R Palmer, *Land and racial discrimination in Rhodesia*, Berkeley: University of California, 1977.
- 4 Sam Moyo, *The land question in Zimbabwe*, Harare: Jongwe Press, 1987.
- 5 The International Covenant on Civil and Political Rights (ICCPR) is a United Nations treaty based on the Universal Declaration of Human Rights, created on 16 December 1966 and entered into force on 23 March 1976. International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March, 1976.
- 6 International Convention on the Elimination of All Forms of Racial Discrimination adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 and entered into force 4 January 1969, in accordance with Article 19.
- 7 The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly (10 December 1948 at the Palais de Chaillot, Paris). The Declaration arose directly from the experience of the Second World War and represents the first global expression of rights to which all human beings are respectfully entitled. It consists of 30 articles which have been elaborated in subsequent international treaties, regional human rights instruments, national constitutions and laws.
- 8 African Charter on Human and People's Rights, OAU doc CAB/LEG/67/3 Rev 5, 1981.
- 9 Issa G. Shivji, *The concept of human rights in Africa*, London: Council for the Development of Economic and Social Research in Africa (CODRESIA Book Series), 1989.
- 10 Mahmood Mamdani, *Citizen and subject*, New Jersey: Princeton University Press, 1996.
- 11 E Masunungure, Zimbabwe's political culture, Unpublished Ford Foundation research paper on democratic governance in Zimbabwe, Department of Political and Administrative Studies, University of Zimbabwe, 1998.
- 12 Mamdani, *Citizen and subject*.
- 13 E Masunungure (1998) uses the concept of 'religion' to illustrate the systematic denial of rights to Africans during colonial rule.

- 14 See J Alexander, Things fall apart, the centre can hold: processes of post-war political change in Zimbabwe's rural areas, in T Ranger and N Bhebhe (eds), *Society in Zimbabwe's liberation war*, vol 2, Harare: University of Zimbabwe Publications, 1995.
- 15 Catholic Commission for Justice and Peace and the Legal Resources Foundation, Breaking the silence, building true peace. A report on the disturbances in Matebeleland and Midlands 1980–1989, <http://www.sokwanele.com/BTS.pdf> (accessed 5 January 2006).
- 16 International Convention on the Elimination of All Forms of Racial Discrimination adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965. Entered into force 4 January 1969, in accordance with Article 19.
- 17 See the International Covenant on Economic, Social and Cultural Rights (G.A. res. 2200A (XXI), 21 U.N.GAOR Supp (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force 3 January 1976)
- 18 The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) is an international convention adopted in 1979 by the United Nations General Assembly. Described as an international bill of rights for women, it came into force on 3 September 1981. Several countries have ratified the Convention subject to certain declarations, reservations and objections. The United States is the only developed nation that has not ratified the CEDAW.
- 19 Human Rights Watch, Fairness of Zimbabwe elections compromised, March 2008, and Bullets for each of you, 19 June 2008, <http://www.hrw.org/en/node/40483/section/5> (accessed 15 May 2009).
- 20 The Public Order and Security Act (POSA) is a piece of legislation introduced in Zimbabwe in 2002 by the Zanu-PF-dominated parliament. The Act was amended in 2007 and gives untold powers to the police, the Zimbabwe Republic Police. It is thus viewed as an Act that helped Robert Mugabe consolidate his power.
- 21 The report setting norms and standards for elections in the SADC region was adopted by the SADC Parliamentary Forum Plenary Assembly in March 2001.
- 22 The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) is an international convention adopted in 1979 by the United Nations General Assembly. Described as an international bill of rights for women, it came into force on 3 September 1981. Several countries have ratified the Convention subject to certain declarations, reservations and objections. The United States is the only developed nation that has not ratified the CEDAW.
- 23 Human Rights Watch, Zimbabwe: evicted and forsaken internally displaced persons in the aftermath of Operation Murambatsvina 17(16(A)), December 2005. {As above: author to supply publication detail.]
- 24 See Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entered into force 2 September 1990, in accordance with article 49.
- 25 Human Rights NGO Forum (Hrforumzim), Zimbabwe, the Abuja Agreement and Commonwealth principles: Compliance or disregard? September 2003. The government of Zimbabwe signed the Abuja Agreement on Zimbabwe in Abuja, Nigeria on 6 September 2001 and committed itself to ending the occupation of white-owned farms and return the country to the rule of law, in return for financial assistance.

ABOUT THIS PAPER

This paper discusses the course of human rights violations in Zimbabwe through a historical approach that focuses on the immediate pre-independence (Ian Smith's regime) and the post-independence (Robert Mugabe) eras. The argument is that the conflicts over land and intolerance for political opposition are at the locus of the violation of human rights in Zimbabwe, generally triggering multiplier effects with regard to disrespect for the citizens' freedoms and autonomy. Whereas colonial regimes did not respect and protect basic human rights for Africans on the basis of race, the post-liberation state of Zimbabwe has tried to justify its position through non-imperialist ideological arguments in the same way religious states/societies justify their human rights stance through religious arguments. The discussion raises questions on the content of universal human rights that are embodied in the United Nations charter and its various covenants. The case of Zimbabwe demonstrates that where regime survival is threatened, countries can often curtail these United Nations' instruments on human rights. The conclusion shows the vulnerability of countries in democratic transition as they can easily regress in the upholding of rule of law and adherence to universal human rights.

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