



NATIONAL ASSOCIATION OF NON-GOVERNMENTAL ORGANISATIONS

RESEARCH PAPER

**“The Zimbabwean Situation from a Human Rights
Perspective”**

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INTRODUCTION

This paper seeks to highlight the Human Rights situation in Zimbabwe. It is not the intention of the writer to create a bleak picture of the situation in Zimbabwe, but to aid the audience (which it is assumed is made up predominately of Zimbabweans living in Zimbabwe) to come up with some sort of understanding and appreciation of the situation given the discourse of International Human Rights as it stands at the moment. The analysis of the Zimbabwean situation will be largely based on the Amnesty International Report on Zimbabwe. This paper shall be presented in three parts to allow for a more holistic understanding of the concept of human rights as these relate to the Zimbabwean situation. The paper shall therefore be structured thus; -

- i) HUMAN RIGHTS AS A CONCEPT;
- ii) ZIMBABWE'S INTERNATIONAL OBLIGATIONS; and
- iii) HUMAN RIGHTS SITUATION IN ZIMBABWE.

1. HUMAN RIGHTS AS A CONCEPT

HISTORY OF UNIVERSAL HUMAN RIGHTS - UP TO WW2¹

Human rights is a concept that has been constantly evolving throughout human history². It has over the years been intricately tied to the laws, customs and religions throughout the ages.

It was in ancient Greece where the concept of human rights began to take a greater meaning than the prevention of arbitrary persecution. Human rights became synonymous with natural rights, rights that spring from natural law. According to the Greek tradition of Socrates and Plato, natural law is law that reflects the natural order of the universe, essentially the will of the gods who control nature³. This idea of natural rights continued in ancient Rome, where the Roman jurist Ulpian believed that natural rights belonged to every person, whether they were a Roman citizen or not.

Despite this principle, there are fundamental differences between human rights today and natural rights of the past. For example, it was seen as perfectly natural

¹ Extracted from a literary paper by Moira Rayner

² One of the first examples of a codification of laws that contain references to individual rights is the tablet of Hammurabi. The tablet was created by the Sumerian king Hammurabi about 4000 years ago. While considered barbaric by today's standards, the system of 282 laws created a precedent for a legal system. This kind of precedent and legally binding document protects the people from arbitrary persecution and punishment.

³ A classic example of this occurs in Greek literature, when Creon reproaches Antigone for defying his command to not bury her dead brother, and she replies that she acted under the laws of the gods.

to keep slaves, and such a practice goes counter to the ideas of freedom and equality that we associate with human rights today. In the middle ages and later the renaissance, the decline in power of the church led society to place more of an emphasis on the individual, which in turn caused the shift away from feudal and monarchist societies, letting individual expression flourish.

The next fundamental philosophy of human rights arose from the idea of positive law. Thomas Hobbes, (1588-1679) saw natural law as being very vague and hollow and too open to vast differences of interpretation. Therefore under positive law, instead of human rights being absolute, they can be given, taken away, and modified by a society to suit its needs. Jeremy Bentham, another legal positivist sums up the essence of the positivist view:-

Right is a child of law; from real laws come real rights, but from imaginary law, from "laws of nature," come imaginary rights....Natural rights is simple nonsense⁴.

The doctrines of human rights that we now have are direct descendants of this thinking as it was further developed by the following declarations:-

A human right is 'natural' in that every one owns them, not because they are subject to any particular system of law or religious or political administration. They can be asserted against individuals, but they express the political objective: that governments must respect, protect and promote them.

The greatest 20th century statements of 'natural' or human rights can be dated to 1948, the [Universal Declaration of Human Rights](#). This preceded a range of international [Conventions, Covenants, Declarations](#) and other treaties that have followed the tradition. Most came from the United Nations. But other groups have also adopted human rights standards. The European community, for example, has adopted a Convention on Human Rights. The African Union has the [African \(Banjul\) Charter on Human and Peoples Rights](#). Many nations have incorporated rights into their national constitutions - acknowledging that the rights exist, not that they are created by their laws⁵.

The most common 'universal' rights are the right to life; to freedom; to own property (limiting where government may intrude); citizenship rights (voting, nationality and participation in public life); rights to standards of good behaviour by governments (or protection of the rule of law), and social, economic and cultural rights. The latter have become important during the 20th century, and raise important and still controversial issues about social justice and the distribution of wealth.

Universal human rights are, historically, the flower of what was originally a

⁴ J.Bentham, Anarchichical Follies, quotes in N.Kinsella, "Tomorrow's Rights in the Mirror of History" in G. Gall, ed., Civil Liberties in Canada (Toronto: Butterworths, 1982), p.17.)

⁵ Reference is made to the Chapter III of the Constitution of Zimbabwe.

European plant. They have now received the support of world nations. Respect for human rights is becoming a universal principle of good government.

FIGURE I; - RECOUNTED MODEL (CLAUDE AND STROUCE)

HISTORICAL PERIOD OF DEVELOPMENT	HUMAN RIGHTS POLICIES	ASSOCIATED PUBLIC CHOICE PROCESSES	ASSOCIATED PUBLIC CHOICE PROCESSES	REQUISITE IDEOLOGICAL TRANSFORMATION
18 th Century	Civil Liberties	Liberty	Market Choice	Secularized Ideology of the right basis of Political Authority
19 th Century	Civil and Political Rights	Equality	Group Bargaining	Legitimacy through the amelioration of Stratified Social Interaction & Inclusion of new Group
20 th Century	Social-Economic Rights	Welfare	Centralized Planning	Recognition of the need for Universal Sharing of Risk of Individual Development

Note: *Illustrates the model by Claude and Strouce in what I believe to be a self-explanatory manner. It basically illustrates the development of Human Rights from around the 18th Century.*

FIGURE II; ASBJORN EIDE'S PARADIGM

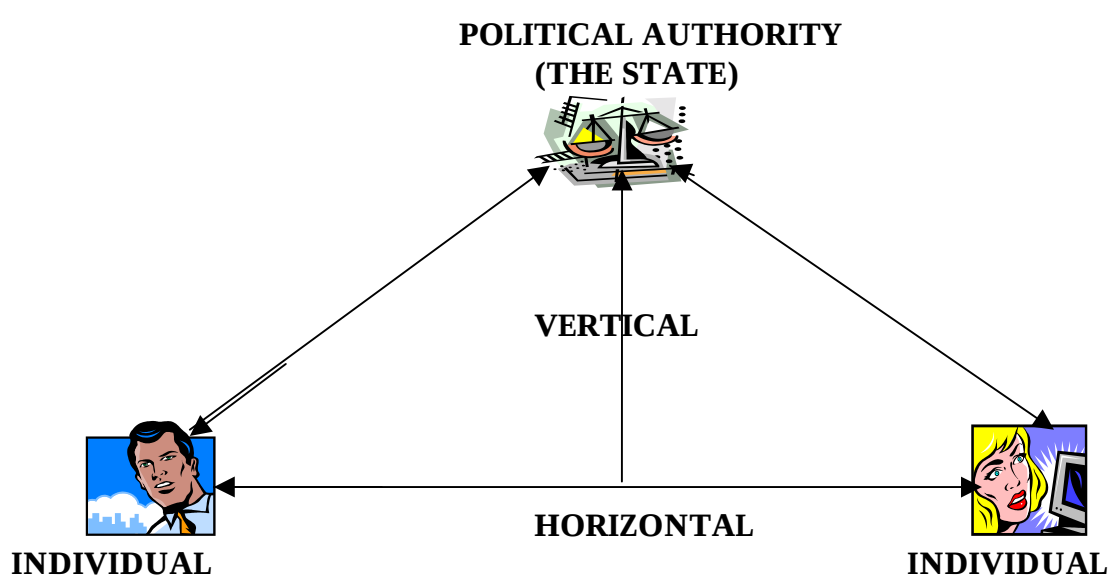
STAGE OF HUMAN RIGHTS DEVELOPMENT	EIDE'S IDEOLOGY/PARADIGM
1. Idealization	This is the stage when the notion of human rights was concerned with the relationship between the individual and society.
2. Positivation	Called for the translation of the articulated ideals into a formal text whereby rights and their corresponding obligations were spelt out.
3. Realization	This is socio-political in character, during which period social adjustments and

	institutional arrangements are made so as to confirm with the formal legal provisions.
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HUMAN RIGHTS AS A CONCEPT; - THE NORMATIVE STRUCTURE⁶

One of the characteristics of Human Rights as a concept is that governments' sponsorship and protection is needed to make them enforceable; other kinds of rights, which are not categorized as human rights, may not necessarily have the state as the addressee of a right under claim.

FIGURE II



Note: The figure shows two relationships. The relationship between two individuals on the one hand and the relationship between the individuals and the state. As the figure indicates, the relationship between the two individuals is a horizontal one placed on an equal footing. But the individual's relationship to the state is a vertical one. And claims made against the state are human rights and the state is the best-constituted institution within the society as a whole to address those claims. It is the nature and character of this vertical relationship that Human Rights issues center.

2. ZIMBABWE'S INTERNATIONAL OBLIGATIONS

THE UNITED NATIONS⁷

A BRIEF HISTORICAL OVERVIEW

The League of Nations era witnessed three important developments in the

⁶ Extracted from a paper by Nana K.A. Busia, Jr (Senior Legal Advisor UNDP) titled What are Human Rights, The Normative Structure.

⁷ Extracted from a paper Dr Cephas Lumina, titled The International Protection and Promotion of Human Rights

international protection of Human Rights; -

- a) **The Mandates System** established in 1919 to promote the welfare of *“peoples not yet able to stand by themselves under the strenuous conditions of the modern”*;
- b) **The International Labour Organisation (ILO)** set up in 1919 to improve the working conditions of workers; and
- c) **Minorities Treaties** designed to safe guard the rights of ethnic, religious and linguistic minorities in the Balkans and Eastern Europe.

The gravity of the atrocities committed by Hitler's Nazi party changed the nature of international law. A state was no longer free to treat its citizens as it pleased. This new order was reflected in the UN Charter, which recognised the promotion of Human Rights as a principal goal of the United Nations and by the London Charter of 1945, which provided for the trial of the major Nazi war leaders at Nuremberg (Nuremberg Tribunals).

THE UNITED NATIONS AND HUMAN RIGHTS

Pursuant to its establishment in the aftermath of the Second World War, the United Nations began setting up international standards designed to establish conditions under which justice and respect for the obligations arising from the treaties and other sources of international law could be monitored and maintained. Although the Charter is not a Human Rights Treaty, it contains numerous references to human rights and is a useful starting point for consideration the development of international human rights law under the auspices of the UN.

(a) The UN Charter

Contains numerous references to human rights & showed the commitment of the UN to human rights.

Art 1 (purposes of the UN): promotion & encouragement of human rights observance.

.Art 13 enjoins the General Assembly to initiate studies & make recommendations for promoting human rights.

.Art 55 obliges the UN to promote universal respect for & observance of human rights without discrimination.

.Art 56: all UN members pledge to take 'joint & separate action in cooperation with the UN for the achievement of the purposes in Art 55.

(b) The Universal Declaration of Human Rights 1948

In 1946, the Economic and Social Council of the United Nations established a Commission on Human Rights. This Commission was tasked to draft an International Bill of Rights consisting of a declaration and a multilateral treaty. The Universal Declaration of Human Rights, drafted by the Commission was adopted by the General Assembly on the 10th of December 1948. This was (and still is) a Recommendarory Resolution contains a catalogue of socio-economic and civil & political rights - 'A common standard of achievement for all peoples & nations'.

(c) Other International Human Rights Treaties

There are Seven 'core' international human rights treaties:

i) Convention on the Elimination of All Forms of Racial Discrimination 1965;

Due to the cold war and the polarisation between the east and the west, the Human rights Commission was unable to draft a single multilateral treaty giving legal effect to the Universal Declaration of Human Rights. Consequently two covenants were drafted; the Covenant on Civil & Political Rights and Covenant on Economic, Social & Cultural Rights.

ii) Covenant on Civil & Political Rights 1966; - contains rights similar to those enumerated in the Universal Declaration of Human Rights e.g. the rights to life, the prohibition on torture, the prohibition of slavery, what are commonly known as first generation rights. Under this treaty, a state party is obliged "to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present convention, without distinction of any kind." Further states undertake to adopt such legislative measures within their domestic jurisdiction as may be necessary to give effect to the rights set out in the Covenant and to provide an effective remedy in the event of violation.

States may only derogate from their obligations therein in cases of public emergency and only "to the extent strictly required by the exigencies of the

situation. However no derogation is allowed for such rights as the right to life and the freedom from torture.

- iii) *Covenant on Economic, Social & Cultural Rights 1966*; deals with second generation rights, such as the right to work, to form and join trade unions, to social security, **to adequate standard of living**, to education and to participate in cultural life. Second generation rights differ in two ways from the so called first generation rights; -
 - a) Most of these rights depend on the availability of resources for implementation. See article two of the ICESCR, which provides that each state party undertakes not to implement the covenant immediately as is the case with the ICCPR... but instead “ to take steps to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means; and
 - b) Since the implementation of socio-economic rights protected depends on the availability of resources, they are less capable of judicial determination.
- iv) *Convention on the Elimination of All Forms of Discrimination against Women 1979*;
- v) *Convention against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment 1984*;
- vi) *Convention on the Rights of the Child 1989*; and
- vii) *Convention on the Protection of All Migrant Workers & Members of their Families 1990*.

AFRICAN UNION

No attempt was made in this paper to define what human rights are. This is because this widely used term continues to mean different things to different people. Culture religion and even politics are among some of the factors that influence the way the terms are used.

- i) *Radical Universalism*; - which posits that culture is irrelevant to the validity of moral rights and rules, which are universally valid.
- ii) *Radical Cultural Relativism*; - which presupposes that culture is the sole source of the validity of moral rights and rules. It recognises the need for human rights to respect the variety of the world's cultures.

- iii) *Strong Cultural Relativism*; - culture is the principle source of the validity of the moral rights and rules. The presumption is that rights are mainly determined by the culture and the universality of human rights serves as a check on potential excesses of relativism.
- iv) *Weak Cultural Relativism*; - culture may be an important source of the validity of the moral rights and rules.

International Human Rights Law is sensitive to some of the challenges attendant thereto; -

- i) Treaty law is based on voluntary agreement to what may be said to be a minimum common denominator. Within the framework of the treaty law there are mechanisms to take into account cultural relativism.
- ii) Another mechanism that exists is to enter a reservation.
- iii) The system of regional human rights instruments provides for respect for regional peculiarities, which brings us to the African system on Human rights.

The protection and promotion of human Rights in Africa is underpinned by the African Charter on Human & People's Rights, which was adopted by the assembly of the Head of State and Government of the Organisation of African Unity on the 27th of June 1981. The Charter entered into force on the 21st October 1986 and has been ratified by 53 members states of the African Union as of July 2004.

The Charter's section on individual rights commences with a general non-discrimination clause, an equal protection clause and a guarantee of the right to life. A number of other individual rights including the prohibition on slavery, torture, cruel, inhuman and degrading treatment and punishment, arbitrary arrest and detention are guaranteed. Provision is made for the freedom of thought, religion, information, expression, assembly, and association. Freedom of movement and the right to seek asylum are provided for and the mass expulsion of non-nationals', which is aimed at national, racial, ethnic or religious groups, is prohibited.

The Charter guarantees the right to property, the right to work (including equal pay for equal work), and the right to enjoy the best attainable state of physical and mental health.

The right to education is protected with the attendant obligation on the state to promote and protect the "moral and traditional values recognized by the community". The family is declared to be the "natural unit and basis of society" which must be protected and assisted by the state. Special protection is provided for in respect of the rights of vulnerable groups such as children, women, the aged and people with disabilities.

NB. The section on individual rights refers to and incorporates other international instruments. For example Article 18(3).

3.THE HUMAN RIGHTS SITUATION IN ZIMBABWE

BACKGROUND

This paper is drafted on the assumption that the audience is familiar with the situation on the ground and will not go to great lengths to describe each situation. The information that will be used is from the Amnesty International Report on Zimbabwe for the year 2006. In describing the situation reference will be made to the African system as opposed to the U.N system. This is intended to avoid falling into the trap of cultural relativism.

NB. A report by the African Commission on Human and People's Rights (ACHPR) of a fact finding mission to Zimbabwe in 2002, which was officially made public in February 2005, concluded that Human rights violations had occurred in Zimbabwe. The ACHPR made several recommendations, but by the year 2005 almost nothing had been done to implement them. In December the ACHPR adopted a resolution on Zimbabwe for the first time, condemning the Human Rights violations and calling on the government to implement ACHPR and UN recommendations including an end to forced evictions and respect for freedom of expression, association and assembly.

The focus therefore shall be on these aspects, that is the forced evictions (what was commonly known as Operation Murambatsvina) and the freedom of expression, association and assembly. It is also the writer's intention to discuss in brief the phenomena of organized violence and torture in the wake of the assault of Trudy Stevenson and the Bindura University student's.

MASS EVICTIONS AND DEMOLITIONS

Operation Murambatsvina (remove the filth) was carried out a year ago from 18 May 2005 "with disquieting indifference to human suffering". This operation was profoundly distressing and represented a "catastrophic injustice" on the poorest segments of Zimbabwean society. 700 000 people in the informal sector were reported to have lost homes or livelihoods or both with the impact being felt by a further 2.4 million people. *Operation Garikai (live well/better lives)* has hardly corrected the injustices that befell Zimbabwe during those dark days one year on. The Government has used justifications rather than actions as regards the restoration of the houses, incomes and lives destroyed by *Operation Murambatsvina*. The people affected are deserving of an apology from the Government for this *disastrous venture* and should be provided with alternative accommodation by the State as a matter of right, with or without international assistance.

a) RIGHTS TO HEALTH

The African Commission has elaborated on the content of the right to health in article 16 of the Charter and on the nature of states obligations arising therefrom.

In *PUROHIT & MOORE VS. THE GAMBIA COMMUNICATION* 241/2001, the Commission considered the meaning of the Right to health under the Charter. The Commission emphasized that the enjoyment of the right to health is vital to all aspects of a person's life and well-being and is crucial to the realization of all the other fundamental human rights and freedoms.

In *FREE LEGAL ASSISTANCE GROUP ET AL VS. ZAIRE COMMUNICATION* 25/86 the Commission found that the failure of a state party to provide basic services necessary for a minimum standard of health such as safe drinking water and electricity as well as the shortage of medicine constituted a violation of the right to the enjoyment of the best attainable state of physical and mental health.

b) RIGHT TO HEALTH ENVIRONMENT

This is guaranteed in article 24 of the Charter.

In *Social and economic rights action center & another vs. Nigeria*, the Commission stated that this right requires the state to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure ecologically sustainable development and use of natural resources.

c) RIGHTS TO EDUCATION AND CULTURE

The Commission has elaborated on the contents and nature of the rights to education and culture. *FREE LEGAL ASSISTANCE GROUP ET AL VS. ZAIRE COMMUNICATION* 25/86 the Commission found that the closure of the universities and schools, non payment of teachers salaries, thus preventing them from providing education and students from attending school, constituted a violation of the right to education.

d) RIGHTS TO WORK

The Commission has not dealt with too many cases involving the right to work, however the following cases are instructed on the matter; -

- *PAGNOULLE VS CAMERON (2001) AHRLR 57(ACHPR 1997)*
- *MALAWI AFRICAN ASSOCIATION & OTHERS VS MAURITANIA (2000) AHRLR 149 (ACHPR 2000)*

e) THE RIGHT TO ADEQUATE HOUSING

A lot of socio-economic rights are not expressly provided for the Charter. Nevertheless, the Commission has implied these rights through innovative

interpretation of other Charter provisions. For example in *SOCIO-ECONOMIC RIGHTS ACTION CENTER & ANOTHER VS, NIGERIA (2001) AHRLR 60 (ACHPR 2001)* where it found violations of the right to food and housing neither of which are provided in the Charter. The Commission held that the right to housing or shelter is implicitly entrenched in the totality of the right to enjoy the best attainable standard of mental and physical health, the right to property, and the protection of the family.

The Commission stressed that the Charter, in common with other international human rights standards, imposes four kinds of duties on the states parties, namely the duty to *respect*⁸, *protect*⁹, *promote*¹⁰ and *fulfill*¹¹ human rights.

Further according to the Commission the right to shelter obliges the state not to destroy the housing of its citizens or obstruct efforts by individuals or groups to rebuild lost homes. The duty to respect also implies that the state and its agents refrain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of the individual or infringing upon the freedom of an individual to use available resources to satisfy individual, family, household or community housing needs. The duty to protect includes the prevention of violation of the right by any individual or non-state actor such as landlord and property developers.

f) Humanitarian crisis

OM resulted in enormous internal displacement of people. The UN described the aftermath as a “Humanitarian crisis of immense proportion.”

ORGANIZED VIOLENCE AND TORTURE

Torture is “*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 of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*” as defined by The UN Convention Against Torture and other cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Although incidents of torture decreased in 2005 when 136 violations were recorded by the Forum¹², this trend has drastically shifted with the first quarter of 2006 alone

⁸ Entails that the state should refrain from interfering in the enjoyment of all fundamental rights.

⁹ The obligation to protect requires that the state take measures to protect beneficiaries of the protected rights against political, economic and social interference.

¹⁰ The obligation to promote entails that the state should ensure that individuals are able to exercise their rights and freedoms by promoting tolerance, raising awareness and building infrastructures.

¹¹ Requires the state to take measures to ensure, for persons subject to its jurisdiction, opportunities to obtain satisfaction of the basic needs as recognized in the human rights instruments.

recording 39 incidents up to April 2006. On 8 May 2006, following class boycotts at Bindura State University, the police, CIO operatives and ZANU-PF activists, reportedly tortured 16 students. The students were made to crawl all the way to the Charge Office from the car park. They were further forced to frog jump from the Charge Office to the holding cells, a distance of about 60 to 70 meters. The students were also forced to walk in a bending posture as if they were going underneath an imaginary fence, wire or line and they were also forced to touch the ground with a finger and then run in circles until they became dizzy and fell down.

FREEDOM OF ASSOCIATION AND ASSEMBLY

- Reference is made to Public Order and Security Act and
- The Miscellaneous Offences Act

These acts continue to be used to prevent the opposition and civic society from meeting and engaging in peaceful demonstrations.

¹² The Zimbabwe Human Rights NGO Forum is a coalition of 16 N.G.O, whose mandate is to document and litigates incidence of organized violence and torture.