

**THE REPUBLIC OF
ZIMBABWE**

**7TH, 8TH, 9TH AND 10th COMBINED
REPORT**

UNDER THE

**AFRICAN CHARTER ON HUMAN AND
PEOPLES' RIGHTS**

20 October 2006

CONTENTS

	Page
LIST OF ABBREVIATIONS.....	iv
LISTS OF FIGURES & TABLES.....	iv
INTRODUCTION.....	1
PART I: CIVIL AND POLITICAL RIGHTS.....	7
1.1 Articles 2: Non-Discrimination.....	7
1.2 Articles 3: Equality before the Law; and Equal Protection of the Law.....	12
1.3 Articles 4 & 5: The Right to Life, Integrity of the Person and Dignity.....	12
1.4 Article 6: The Right to Liberty and Security of the Person.....	16
1.5 Article 7: The Right to have one’s cause heard; Presumption of Innocence until Proven Guilty; Prohibition of Retrospective Penal Law and Punishment.....	18
1.6 Article 8: Freedom of Conscience and Religion.....	24
1.7 Article 9: The Right to Receive Information and Freedom of Expression.....	26
1.8 Articles 10 & 11: Freedoms of Association and Assembly.....	31
1.8.1 Registration of Trade Unions.....	32
1.8.2 Controls Exercised By Government over Association Activities.....	32
1.9 Article 12: Freedom of Movement and Residence; the Right to Seek and Obtain Asylum and the Prohibition of Mass Expulsion of Non-Nationals.....	35
1.10 Article 13: The Right to participate freely in the Government of one’s Country and the Right of Equal Access to the Public Service of one’s Country.....	36
1.10 Article 14: Right to Property.....	39
1.10.1 Operation Garikai/ Hlalani Kuhle.....	41
PART II: SOCIAL, ECONOMIC AND CULTURAL RIGHTS.....	44
2.1 Article 15: Right to Work.....	44
2.1.1 Remuneration.....	46
2.1.2 Equal Opportunity for Promotion.....	47
2.1.3 Rest, Leisure, Limitation of Working Hours & Holiday with Pay.....	47
2.1.4 Right to Form and Join Trade Unions.....	47
2.1.5 Right to Strike.....	47

2.1.6	Termination of Employment.....	48
2.1.7	Domestic Employees.....	48
2.1.8	Maternity Related Rights.....	49
2.2	Article 16 & 18: Family, Adequate Standard of Life and Highest Attainable Health	
2.2.1	The Right to an Adequate Standard of Living.....	51
2.2.2	The Right to Physical and Mental Health.....	52
2.2.3	Child Mortality.....	53
2.2.4	The Right to Clean Water and Sanitation.....	55
2.2.5	Access to Medicine and Essential Drugs.....	55
2.2.6	The Fight Against the HIV/AIDS Pandemic.....	55
2.2.7	Elimination of Discrimination against Women and the Protection of Children in Terms of International Declarations and Conventions.....	58
2.2.8	Special Measures for the Protection of the Aged and the Disabled.....	58
2.3	Article 17.1: Education and Compulsory Primary Education.....	65
2.3.1	Right to Primary Education.....	66
2.3.2	Improvement of the Material Conditions of Teaching Staff.....	68
2.4	Article 17.2: Right to take part in Cultural Life and to enjoy the benefits of scientific progress and the protection of the interests of author	
2.4.1	Right to Take Part in Cultural Life.....	70
2.4.2	Protection of Moral and Material Interests of the Author.....	71
2.4.3	Steps Taken For the Conservation, Development and Diffusion of Science and Culture; Right to the Freedom of Scientific Research and Creative Activity; Encouragement and Development of International Contacts and Co-operation in the Science and Cultural Fields.....	71
PART III: PEOPLES' RIGHTS.....		72
3.1	Article 19: Equality of all Peoples.....	72
3.2	Article 20: Right to Self-Determination.....	72
3.3	Articles 21 & 22: Right to freely dispose of Wealth or National Resource; Right to Development.....	72
3.3.1	The Right to Development through Land Resettlement.....	73
3.4	Article 23: Peoples' Right to National and International Peace and Security.....	73
3.5	Article 24: Peoples' Right to Satisfactory Environment.....	74
PART IV: SPECIFIC DUTIES ON STATES.....		78
4.1	Article 25: Duty to Promote Awareness of the Charter.....	78

4.2 Article 26: Duty to Guarantee the Independence of the Judiciary.....	78
4.3 Articles 27, 28 & 29: Individual Duties.....	78
PART V: RACIAL DISCRIMINATION.....	80
5.1 Education.....	80
5.2 Employment.....	82
5.3 Enjoyment of Rights without Racial or Other Distinction	
5.3.1 Refugees, Migrants and Non-Nationals.....	82
5.3.2 Citizenship for Spouses of Nationals.....	83
5.3.3 Citizenship for Children born to Nationals living outside the Country.....	83
5.3.4 Marriage Laws.....	84
5.3.5 Protection of the Rights of Minorities.....	85
5.3.6 Protection against and Remedies for Racial Discrimination.....	85
PART VI: GENERAL PROMOTION OF HUMAN RIGHTS	
6.1 Education and Teaching.....	86
6.2 Culture.....	86
6.3 Establishment of a National Human Rights Commission.....	86
PART VII: ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN.....	87
CONCLUSION.....	91
ANNEXES	
I. The Labour Relations Amendment Act, 2002 (No. 17 of 2002)	

LIST OF ABBREVIATIONS

PASS	Poverty Assessment Study Survey
SADC	Southern African Development Community
UNCITRAL	United Nations Commission for International Trade Law
NGO	Non Governmental Organisation
AIPPA	Access to Information and Protection of Privacy Act
ZANU PF	Zimbabwe African National Union-Patriotic Front
MDC	Movement for Democratic Change
POSA	Public Order and Security Act
MIC	Media and Information Commission
ILO	International Labour Organization
NECs	National Employment Councils
USA	United States of America
ESC	Electoral Supervisory Commission
ZEC	Zimbabwe Election Commission
AU	African Union
SEDCO	Small Enterprises Development Corporation
TRIPs	Trade Related aspects of Intellectual Property Agreement
ZIMPREST	Zimbabwe Programme for Economic and Social Transformation
MERP	Millennium Economic Recovery Programme
NERP	National Economic Revival Programme
UN	United Nations
CERD	Convention on the Elimination of all forms of Racial Discrimination
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
UNICEF	United Nations Children’s Fund
UNDP	United Nations Development Programme
SAHRIT	Human Rights Trust of Southern Africa
ZMDGs	Zimbabwe Millennium Development Goals
NCA	National Constitutional Assembly
VCT	Voluntary Counselling and Testing
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora

LIST OF FIGURES

	Page
FIGURE ONE: Tertiary Enrolment for Women.....	9
FIGURE TWO: Number of People Sentenced to Community Service since 1996.....	18
FIGURE THREE: Structure of the Courts.....	19
FIGURE FOUR: Net Enrolment in Primary Schools.....	67
FIGURE FIVE: Literacy Rate.....	68
FIGURE SIX: Pupil/Teacher Ratio.....	50

LIST OF TABLES

TABLE ONE: ILO Conventions and the Labour Act.....	45
TABLE TWO: Teacher Pupil Establishment.....	67

TABLE THREE: Black/White Ratio in School 81

INTRODUCTION

Zimbabwe submitted her first report to the African Commission on Human and Peoples' Rights in 1992. This was followed by the 1996 periodic report, which combined overdue reports for the reporting periods up to 1996.

This Report addresses measures taken to implement provisions of the African Charter on Human and Peoples' Rights ("The African Charter") from 1996 to May 2006. The Report will, therefore combine the 6th, 7th, 8th, 9th and 10th reporting periods. It is being submitted at a time when the Government of Zimbabwe has completed the massive land reform programme that took place between 2000 and 2004 and against the backdrop of a well orchestrated, sustained, unrelenting, pervasive and omnipresent campaign by Britain, the European Union (EU) and the United States of America (USA) against Zimbabwe since the inception of that land reform. Further the report is being submitted after the African Commission on Human and Peoples' Rights (ACHPR) sent a fact finding mission to Zimbabwe in June 2002, following allegations of violations of human rights by the Government of Zimbabwe. In its findings the ACHPR made a number of recommendations which the Government of Zimbabwe will address in this report.

The Human Rights of the people of Zimbabwe are recognized and enforced by virtue of the Bill of Rights contained in Chapter III of the Constitution of Zimbabwe. Although the "Core Document" and the periodic report submitted in 1996 provided an overview of Zimbabwe, which included its population, general political structure and the general legal framework, this combined report gives an up-date of the developments that have occurred within the stated areas. The up-date is necessary because the changes have a bearing on compliance levels.

The total population of Zimbabwe stood at 10, 4 million in 1992 and was estimated at 11, 8 million in 1997. The 2002 population census revealed that the population had increased to 11, 6 million. The annual average intercensal growth rate between 1992 and 2002 was projected at 3.2%. At the cited rates the population was expected to be higher in 2002, as it had decreased between 1997 and 2002. The possible causes of the decrease could be the HIV/AIDS scourge and emigration.

Poverty also impacted negatively on the general populace of Zimbabwe, compelling the Government to abandon the Economic Structural Adjustment Programme after identifying it as a root cause. The results of Poverty Assessment Study Survey conducted in 1999, for example,

revealed extensive poverty (Consult PASS 1999). It was revealed that the majority of the Zimbabwean population live below the poverty datum line. According to the 2003 PASS, the total consumption poverty increased from 20% in 1995 to 63% in 2003. To counter this growth rate, the Government undertook a nationwide PASS to get an in-depth understanding of the poverty status in the country. The findings of the Assessment are expected to be the basis of the country's Poverty Reduction Strategy. Source: ZMDS 2004 Progress Report

The campaign orchestrated by Britain, the EU and USA against Zimbabwe since 2000 in reaction to the Land Reform Programme violates the economic, social and cultural rights of the people of Zimbabwe.

The skewed land tenure system inherited from the colonial era in Zimbabwe, as is the case in many other African countries, lies at the heart of the prevailing economic challenges.

The land reform programme in Zimbabwe caused the country to be put under international spotlight, and untold criticism on its leadership. It has led to a lot of negative consequences on the country, which includes its suspension from the Commonwealth and Zimbabwe's consequent decision to withdraw from the same body. It has led to the so-called targeted sanctions and travel bans against the country's political and business leadership. It also led to the enactment of the Zimbabwe Democracy and Economic Recovery Act by the USA Government. It has resulted in aid that was being received by the Government of Zimbabwe being channelled to western backed Non-Governmental Organisations (NGOs), and the IMF and World Bank withholding balance of payments to the Government. It is a fact that the issue of land in Zimbabwe is a social economic imperative that cannot therefore be separated from the human rights record of the country. For this reason, the land issue will be put in its proper context.

It is worth noting that land was at the core of the protracted armed struggle that was waged by the black majority in order to free themselves from nearly a century of colonial and successor settler occupation. The total land area of Zimbabwe is approximately 39 million hectares of which 33.3 million is suitable for agriculture. The Lancaster House Negotiations that eventually brought the war to an end in 1979 were deadlocked and almost collapsed because of the 'Land Question'.

The Republic of Zimbabwe wishes to reiterate and place on the record of this august Commission that the breakthrough at Lancaster was only made possible by certain substantive pledges made by

the then Conservative Government in Britain and the USA Government to provide funding for land reform in Zimbabwe.

As it turned out, the relevant provisions of the Lancaster House Agreement did not result in a transfer of land from the 4000 or so white commercial farmers who occupied over 70% of the country's prime arable land by the time of Zimbabwe's Land Conference in October 1998 to blacks in the quantities and quality that would have put this matter to rest once and for all. Two key provisions prohibited the new Government of Zimbabwe from acquiring the land and redistributing it soon after independence in 1980, namely the willing -buyer willing- seller provisions and the pledges for support by the British Government, the USA and other western countries on the one hand and the provision entrenching the property rights of the whites which prohibited the amendment of the Constitution for the first 10 years after independence.

Between 1980 and 1997, the British support pledged at Lancaster came in trickles, totalling 44 Million Pounds, but enough to maintain a façade of British commitment. When Prime Minister Tony Blair took over office in 1997, his Government unilaterally abrogated all provisions that were crucial for the delicate compromise reached at Lancaster and cut all funding previously directed at Land Reform. It declared an abandonment of the policy of 'containment' pursued by the Tories for one of 'intrusive confrontation' and categorically denied any British responsibility to compensate the white farmers in Zimbabwe or the colonial excesses of their ancestors. In a letter addressed to the Minister of Agriculture and Land on 5 November 1997, the Secretary of State, Clare Short stated that Britain had no special responsibility to meet the cost of land purchase in Zimbabwe, as there was in place a new Government from diverse backgrounds without any links to former colonial interest. Further, although Ms. Short admitted, with some degree of doubt, that the land reform could be an important component of a programme designed to eliminate poverty, she asserted that it was not possible for her Government to support a programme of rapid land acquisition. This foreign policy, indeed, set the stage for Britain's present antagonism towards Zimbabwe.

The USA Government, on the other hand, receded into indifference on Land Issues, repeatedly making new pledges, which were not fulfilled.

On the ground, not many of the white farmers were willing to sell land to the Government. They instead, conspired to systematically hike the unit price of land beyond the reach of the supposed

‘willing buyer’, the Government, which had to make do with the little money availed from national savings.

As a result, very little land actually changed hands towards addressing the colonial land tenure imbalances in Zimbabwe prior to 2000. In view of the mounting crisis of expectation and the increasing congestion of the rural areas, any resettlement that took place turned out to be negligible. This crisis and years of inaction culminated in the first occupations of white owned farms by peasants and veterans of the Liberation War, in 1999.

As would have been expected, at first the Zimbabwe Government ordered the law enforcement authorities to arrest the farm occupiers and bring them to book. By 2000, however, the farm occupations had become nationwide, assuming revolutionary proportions. Government, faced with the impossible challenge of having to arrest and charge over 70% of the population who were by then occupying white owned farms, was compelled to enact legislation to accommodate the wishes of the people. The Fast Track Land Reform Programme, which resulted in a rapid transfer of land from mainly whites to the landless black majority, followed.

It is important to stress that Zimbabwe’s reality, which lies at the core of its national purpose and its very existence as a sovereign, independent, inviolable and unitary State is that whoever controls the land also controls the economy, politics and socio-cultural patterns. The land lies at the core of everything, down to the quality of life expected of the people, including their rights and privileges. The Land Reform empowers the previously disenfranchised black majority, provides a firm basis for national progress and prosperity, and also sets the stage for comprehensively meeting the provisions of the African Charter on Human and Peoples’ Rights.

A fundamental aspect of the response of the Blair Administration to Zimbabwe’s Land Reform has been to internationalize its purely bilateral dispute with Zimbabwe on the ‘Land Question’. To this end, it has successfully ‘Europeanized’ or ‘Westernized’ its anti-Zimbabwe crusade by enlisting the support of the European Union, the USA and the countries of the so-called white Commonwealth, namely Australia, Canada and New Zealand.

British attempts to ‘globalize’ the dispute have so far failed, starting at the Commonwealth until Zimbabwe opted out in 2003 and, lately, at the United Nations over the TIBAIJUKA Report on Operation Restore Order/MURAMBATSVINA. These embarrassing failures are because Zimbabwe’s Land Reform makes indisputable moral and legal sense to the majority of Third

World States, which themselves are victims of similar skewed land tenure patterns inherited from their colonial era.

In the present context, the British anti-Zimbabwe campaign has peddled falsehoods about the ‘rule of law’, human rights and a wide range of ‘governance’ issues that it claims to be violated by the Zimbabwean Government. Britain and its allies fund and control a ‘civil society’ that has mushroomed in and outside the country since 2000, which is tailor-made to feed the litany of lies that give life to this crusade.

It is in the context of the above that many measures instituted locally by the Zimbabwe Government in conformity with the Charter, are opposed, discredited and undermined at the international level by the British-led anti-Zimbabwe crusade. Examples include the British opposition to such a positive and fundamental issue as the Land Reform, relevant amendments to the legislative framework, British’s leverage on international multilateral institutions to interdict Zimbabwe’s economic progress and classically, the denial of international HIV/AIDS support to Zimbabwe on political grounds since 2004.

The undeclared and declared sanctions imposed on Zimbabwe, investor flight, shortage of basic commodities, a range of externally generated inflationary pressures and the sustained diplomatic isolation orchestrated by Britain and its allies against Zimbabwe are negatively impacting on Zimbabwe’s security, political and economic well-being, hence the quality of life and the fundamental rights of its people. Clearly, the land issue is central to the problems bedeviling the country, a fact that other African leaders recognised. In his statement published in ‘ANC Today, Volume 3 No. 18 of 15 May 2003, His Excellency the President of South Africa stated that:

Contrary to what some in our country now claim, the economic crisis affecting Zimbabwe did not originate from the desperate actions of a reckless political leadership or from corruption. It arose from a genuine concern to meet the needs of the black poor without taking into account the harsh economic reality that in the end we must pay for what we consume. The longer the problem of Zimbabwe remains unresolved the more entrenched poverty will become. The longer this persists, the greater will be the degree of instability as the poor try to respond to the pains of hunger. The more protracted this instability, the greater will be the degree of polarisation and generalised social and political conflict.

This was reiterated by His Excellency, the President of Nigeria in a letter to the Prime Minister of Australia, a member of the Troika Group, pursuant to the Abuja Declaration, when he said:

In many of our previous meetings it has been admitted that the issue of land is at the core of the current crisis in Zimbabwe and that an appropriate solution to this problem would go a long way in bringing to early conclusion other associated issues.

Yet Britain and its allies believe that the ‘rule of law’ and ‘human rights’ will only be respected in Zimbabwe through a restitution of the 2000 land tenure. *This they have attempted to achieve by founding and funding an opposition party in Zimbabwe, the Movement for Democratic Change (MDC). The MDC leadership has openly undertaken to reverse the land reform programme, in the event that they form the next Government, thus echoing Britain’s assertions.* The Government and people of Zimbabwe, for their part, are under no illusion whatsoever as to the importance of the Land Reform towards addressing all their fundamental human and peoples’ rights.

This report will therefore highlight the developments that have taken place since 1996. In so doing, responses to each article will contain legislative, administrative, policy and other measures taken to implement the Charter. It also brings out the achievements and challenges faced in implementing the measures. The first part of the report will cover civil and political rights while the second part will deal with economic, social and cultural rights. The rights of the peoples will be discussed in Part III and the duties of states as well as those of individuals will be dealt with under Part IV. Issues relating to racial discrimination, apartheid and gender or sex-based discrimination will be discussed under Parts V, and VI.

PART I: CIVIL AND POLITICAL RIGHTS

This part of the Report will address the extent of implementation of each individual right, as enshrined in the Charter.

The Declaration of Rights in the Constitution of Zimbabwe guarantees civil and political rights to the extent expounded in the last report. The framework within which these rights are recognized has not been altered since the last report. The Government is working towards the incorporation of those civil and political rights that have not been domesticated.

1.1 Article 2: The Principle of Non-Discrimination

“Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin fortune, birth or other status.

Constitution

The Constitution of Zimbabwe upholds the principle of non-discrimination and equality before the law. Constitutional Amendments No. 14 of 1996 and 17 of 2005 prohibit discrimination on the grounds of gender and sex respectively. The Amendment No. 14 was a Bill during the previous reporting period and has since become law. ***Section 9(5) of the Constitution reads as follows:-***

“(5) Nothing contained in or done under the authority of any law that discriminates between persons on the grounds of their gender shall be held to be in contravention of subsection (1) (a) or (b) to the extent that the law in question;-

- (a)*
- (b) Takes due account of physiological differences between persons of different gender;*
or
- (c)*”

The provisions of section 23 of the Constitution are progressive as they do not prohibit legal provisions that take into account physiological differences between men and women. However, whilst the provision can be used to enforce rights that are peculiar to people of one sex, it can also be abused to discriminate against a particular sex due to their physiological make-up. The amendments however remain testimony of the Government’s growing efforts to eliminate all forms of discrimination and can be seen as a platform upon which future laws can be built.

Legislation

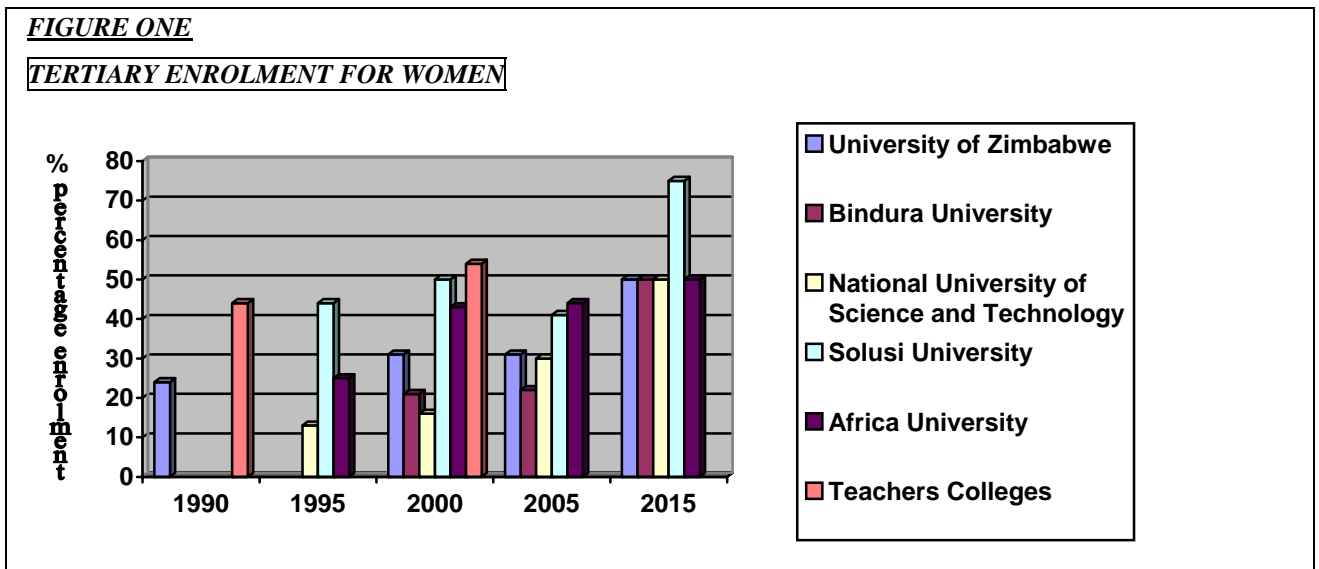
Pursuant to the Government’s commitment to eradicate all forms of discrimination, as enshrined in Section 23 of the Constitution the following statutes have been enacted; -

- The Land Acquisition Act [Chapter 20:10] as amended, seeks to correct the imbalances created by the colonial settler regime. For an in-depth analysis of this process reference is made to Part V of this report.
- Labour Relations Amendment Act, 2002 (No. 17 of 2002) particularly section 7 thereof amended section 5 of the Labour Act [Chapter 28:01] by substituting the word “sex” wherever it occurs with “gender, pregnancy, HIV/AIDS status or disability”. In so doing it eliminated all forms of discrimination at the work place on the grounds listed above. The Act also provides for the “equal pay for work of equal value” concept in paragraph 2 (b) of the Act. A copy of the Act and amendment are attached.

Policies

Zimbabwe introduced the Affirmative Action Policy in order to redress cultural historical imbalances. This policy enabled the institutions of higher learning to reduce entry qualifications for women, thereby increasing the number of women in these institutions. Women had been disadvantaged by cultural practices which did not acknowledge the importance of educating the woman. However the program has no time frame within which it is to be implemented and it can, therefore, lead to a situation which is discriminatory to men.

Figure one shows the success of the affirmative action program in Zimbabwe and the percentage of women in tertiary institutions. It also shows a projection of the likely percentage by 2015.



Other policies relate to issues of political representation, economic empowerment, as indicated below;

- Zimbabwe recently adopted the S.A.D.C Declaration on Gender 1998, which demands a 1/3 of the elected Members of Parliament to be women.
- As part of continuing efforts to redress past inequalities, the Government has embarked on the land redistribution program as one approach to addressing structural imbalances in the economy, so as to reduce poverty and inequality.
- **See CEDAW Report**

The Rights of Female Prisoners

In Zimbabwe, research conducted at and through the Southern and Eastern African Research Centre for Women's Law (SEARCWL) at the University of Zimbabwe and also by the Zimbabwe Women Writers, has revealed that some women experience difficulties in coping with menstruation during remand in holding cells, court hearings, as well as in the course of serving custodial sentences due to inadequate sanitary wear. This exposes them to the possibilities of emotional and physical discomfort. The effect is that Government's efforts to protect people from discrimination that may be perpetuated due to physiological differences between men and women are not being fully implemented. In terms of section 23 (3)(g) of the Constitution differential treatment derived from the recognition of physiological differences cannot be said to be discriminatory, hence the need to pursue such peculiar needs as the proper management of menstruation.

The research findings have yielded positive results in the prison service as special recognition has since been made of the menstrual requirements of female prisoners. The Prisons budget now includes sanitary wear for female prisoners. Some civil society and business organisations are also complement efforts in this regard. (Source: *A Tragedy of Lives: Women in Prison in Zimbabwe, 2003; Weaver Press; Graduate Dissertation on Police Holding Cells, 2004*)

The establishment of a Ministry that is mandated to deal with women's issues should give the Government an opportunity to ensure effective management of all such peculiar requirements.

Challenges

Discrimination, in particular that based on racial grounds, is being encountered. This manifests itself through latent corporate administrative policies and practices. In sporting, educational and recreational institutions, as well as residential areas, racial discrimination has come to the fore. Historically privileged classes deny the under-privileged citizens access to privately owned facilities through hiking of school fees and levies, as well as medical fees and offering contracts to one race against the other. These challenges have, however, come packaged differently, for instance sponsors withholding sponsorship for sports and in recreational centres by the hiking of private social club membership fees.

The complete eradication of discrimination that emanates from customary or cultural practices is gradually being implemented in the area of family law. The gradual implementation is designed to avoid a revolt from the society if change to cultural practices is brought about too suddenly. This was the case when the Legal Age of Majority Act was passed. People resisted the Act as they felt that it took away their cultural rights in the sense that parents lost legal control over their children as soon as they turned 18 years of age. Resistance was also experienced when inheritance laws were amended as they took away the rights of the male heir.

Great challenges remain in the inheritance sphere, where an estate evolved prior to the landmark amendment to inheritance laws, which allowed women to inherit. Such estates can still be wound up according to the discriminatory laws, much to the detriment of women and girl children, unless a presiding officer decides to invoke the non-discrimination clause, as enshrined in international or regional human rights treaties.

The non-retrospective application of new laws, as demanded by common law, was what saw the Judiciary decide the case of *Magaya vs Magaya SC 210/98* between a brother and a sister in favour of the brother for the mere fact that he was male yet he had never formed part of the household prior to their father's death.

The Government seeks the cooperation of all citizens and stakeholders to report all forms of discrimination, as allegations of politicised food distribution and reverse racism seem to be emerging, without being formally pursued.

As will be discussed under Part VI, legislative measures are being taken to outlaw harmful cultural practices, which then build up to major constitutional changes.

Responses

The Government has made attempts to re-dress the racial divide and challenges in the education sector through limiting the levies paid by parents/guardians on behalf of their children and is still working on addressing other challenges. In cricket, the Sports and Recreation Commission intervened by introducing a quarter system, which will include blacks in the realm of players who get paid higher salaries.

The Government has also carried out education programmes on inheritance laws in order to sensitise the public.

As regards human rights generally, the Government is working with UNDP to sensitise judges and magistrates to human rights principles. This should see the judiciary applying human rights principles in the delivery of its judgments.

1.2 Article 3: Equality before the Law and Equal Protection of the Law

Article 3

“(i) every individual shall be equal before the law.

(ii) Every individual shall be entitled to equal protection of the law.”

Section 18 of the Constitution provides for protection before the law. The extent to which the law protects individuals cuts across all other Articles dealing with specific rights and freedoms.

1.3 Articles 4 & 5: The Right to Life, Integrity of the Person and Dignity

Article 4:

“Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5:

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”

Constitution

Sections 12 and 15 of the Constitution of Zimbabwe, guarantee the freedom from arbitrary deprivation of one’s life and from inhuman and degrading punishment. No constitutional amendments have been made since the last periodic report. Zimbabwe still maintains the death penalty for murder, treason and certain military offences. Presently, 48 people are on death row for murder. The last execution was made in 2005. In conformity with the recommendations of the Human Rights Committee under the United Nations International Covenant on Civil and Political Rights to Zimbabwe’s initial report, the number of offences that attract the death penalty have not been increased.

Legislation

Legislation, which include the Public Health Act [Chapter 15:09], the Children’s Act [Chapter 5:05], the Criminal Procedure and Evidence Act, as amended in 1997, the Maintenance Act [Chapter 5:09] and the Matrimonial Causes Act [Chapter 5:13], make provisions that enhance the enjoyment of the rights to life, dignity and integrity of the person. In order to promote the enjoyment of the right to life:-

- The Public Health Act provides for immunization of all children even in circumstances where parents object to such immunization on religious grounds. The Act gives the Minister of Health and Child Welfare the responsibility of promoting public health. Further the Act establishes the Advisory Board on Public Health that advises the Minister on all matters of health.
- The Children’s Act provides for protection, adoption and care of all children by their parents or guardians, neglect of which becomes a punishable offence. To ensure that children are protected from sexual abuse, the Act prescribes deterrent forms of punishment for sexual offenders. The definition of a sexual offender is also extended to persons who,

although not directly involved, allow the abuse of children, either on their premises or elsewhere.

- The Criminal Law Code also criminalizes sexual abuse of children and the conducting of medical and scientific experiments by ensuring that only the Medical Research Council approves experiments on human beings. The prohibition of sexual abuse of children applies to acts committed outside Zimbabwe by Zimbabweans. This is also designed to curtail child or human trafficking for purposes of sexual abuse.
- The Criminal Procedure and Evidence Act, establishes the victim friendly Court system which allows all vulnerable witnesses to give evidence in a closed circuit system without the fear of facing the perpetrator, thereby protecting the integrity and dignity of the victims.
- The Maintenance Act and Matrimonial Causes Act seek to ensure that children and all beneficiaries are maintained both within and outside the marriage.
- Under the Labour (Declaration of Essential Services) Notice 2003, S.I 137/2003; various services have been declared as essential services for the purposes of the Labour Act. The Notice prohibits collective job action within the essential services. An essential service means “*any service, the interruption of which endangers immediately the life, personal safety or health of the whole or any part of the public*”. Therefore so as to ensure that the right to life is guaranteed the Government has curtailed the right to strike. See attached hereto a copy of the said Statutory Instrument for the list of the services

Allegations of use of excessive force have been made by civil society organisations to the effect that extra judicial killings have gone unpunished where they have been said to be politically motivated. However, the Zimbabwean legal system does not preclude anyone from seeking redress from the courts of law. The Government does not tolerate abuse of office and has often warned its officials against human rights violations, asserting the fact that such officers would not be immune from the due process of law should they be found wanting, as they would not be violating human rights on the instructions of the Government.

As documented by the Public Interest Unit of the Legal Resources Foundation, a number of civil suits instituted against government officials, members of political parties and even private individuals have been decided in the favour of the complainants, an indication that such people are not immune from the due process of law.

It is not Government's policy to tolerate violent activities, as these are criminal. Authorities at as high a level as the Presidency have condemned violence and called upon the Police to effectively deal with perpetrators.

The position in relation to corporal punishment of up to six strokes only for male juvenile offenders still remains. The penalty is strictly supervised in the sense that prison officials of a designated rank administer it and where possible it should be administered in the presence of the child's parents. A medical officer should also certify that the child is medically fit to receive such punishment. In schools, it can be administered only by the head of the school or by an official in the presence of such head and it should be recorded.

In March 2005, a Headmaster applied corporal punishment to a number of children, in their palms, for reporting late to school. One of the children, who had medical problems unknown to the Headmaster, collapsed and died as a result of the punishment. The matter was reported to the police and it attracted public attention and debate. Death resulting from corporal punishment is associated with excessive force, hence attracting criminal proceedings. The case is still being investigated by the police for prosecution. Disciplinary proceedings were instituted by the Ministry of Education, Sport and Culture according to Public Service Regulations.

Challenges

Zimbabwe is facing challenges in the area of torture, as allegations of torture by law enforcement agencies have been raised by sections of civil society organisations as well as opposition political parties.

Through the records of court cases as well as interactions with civil society organisations dealing with rights of women, it has emerged that the right to life is also threatened in the private sphere through domestic violence.

Response

Zimbabwe is in the process of ratifying the Convention Against Torture and its optional protocol and is working with the office of the special rapporteur on torture with a view to inviting the rapporteur to assist law enforcement officers to appreciate the implications of torture.

Although the majority of victims are women, the Government is in the process of taking legislative measures against domestic violence in every form, without restricting the victims to women. The measures are not only aimed at punishing perpetrators of domestic violence, but also providing social remedies such as counselling for the entire affected household in order to address the root cause of the violence. The measures also seek to inculcate a culture of violence-free household by punishing violence committed in the presence of children as violence against such children.

The Bill, which has since been tabled before Parliament, has undergone a long process of consultations to ensure that it is effective, as it will be agreed that it is generally difficult to legally enforce laws that affect private homes.

1.4 Article 6: The Right to Liberty and Security of the Person

Article 6

Every individual shall have the right to liberty and to security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

As previously reported, the Constitution guarantees the right to liberty and to the security of one's person. No one may be deprived of his freedom except for reasons and conditions laid down by the law. In particular, no one may be arbitrarily arrested or detained.

Legislation

The Criminal Procedure and Evidence Act [*Chapter 9:07*] generally provides for 48 hours as the period within which a suspect must be brought before the Court. However, in order to safeguard national economic interests, the Act was amended in 2004 to provide for the extension of the

detention period from 48 hours to 21 days for suspects alleged to have committed serious economic crimes. Government has also enacted a Criminal Code to cover all criminal offences.

The rationale behind the extension of the detention period is the complex nature of economic crimes and the possibility of tampering with or destroying evidence. Further, it has become common practice for suspects in economic crimes to abscond to other countries as soon as allegations against them come to light. This is worsened by the fact that most such offences tend to have global/international impact, especially in cases of money laundering and externalisation of foreign currency.

Suspects are mainly bankers and prominent businessmen who have sought refuge in countries that are politically opposed to the Government which deliberately refuse to bring them to book. This has made it difficult for the State to successfully prosecute the many offences that have adversely affected the economy, hence the need to extend the detention period. Although some of such cases attract fines equivalent to the externalized amount of money, successful completion of cases is compromised when the suspect is remanded out of custody considering the rate at which the suspects are absconding. As stated above, many such cases, are still pending before the courts.

Policies

Community Service

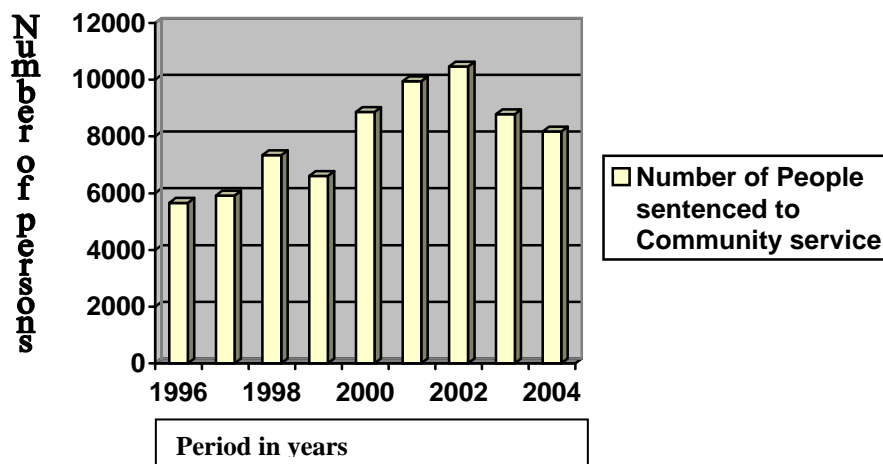
One of the policy frameworks that the Government has put into place to guarantee an individual's right to liberty is the Community Service Program. Community Service was introduced in Zimbabwe in 1992 and first became operational in 1993. Since then Community Service has become one of the most commonly used sentencing option for non-serious offences. The number of orders made by the Court has increased steadily over the past thirteen years. The rate of recidivism is very low, which is indicative of the rehabilitative nature of the program.

Community Service is a non-custodial sentence whose thrust is not only to reduce the number of prisoners, but also to rehabilitate offenders. Although the prison population is still high as against the holding capacity, the number has steadily been reducing over the years, indicative of the effective use of Community Service, as reflected in Figure two. The prison population which was around 20 000 in 2004, now stands at 18 000.

The Government is, with the support of UNDP, working towards the strengthening of the capacity of the National Community Service Committee in order to further reduce the prison population and also to enhance the rehabilitation of offenders. Within the same programme the Government is also formulating a policy termed Pre-Trial Diversion, which will divert young offenders from the ordinary criminal processes into more rehabilitative programmes. Although the essence of the Pre-Trial Diversion programme is to protect young offenders from exposure to seasoned criminals, it also promotes the right to liberty.

FIGURE TWO

NUMBER OF PEOPLE SENTENCED TO COMMUNITY SERVICE SINCE 1996



The Government has embraced the Community Service scheme which has remained a very successful model not only for Zimbabwe and Africa, but also for other countries outside the continent.

1.5 Article 7: The Right to have one’s cause heard; Presumption of Innocence until Proven Guilty; Prohibition of Retrospective Penal Law and Punishment

Article 7

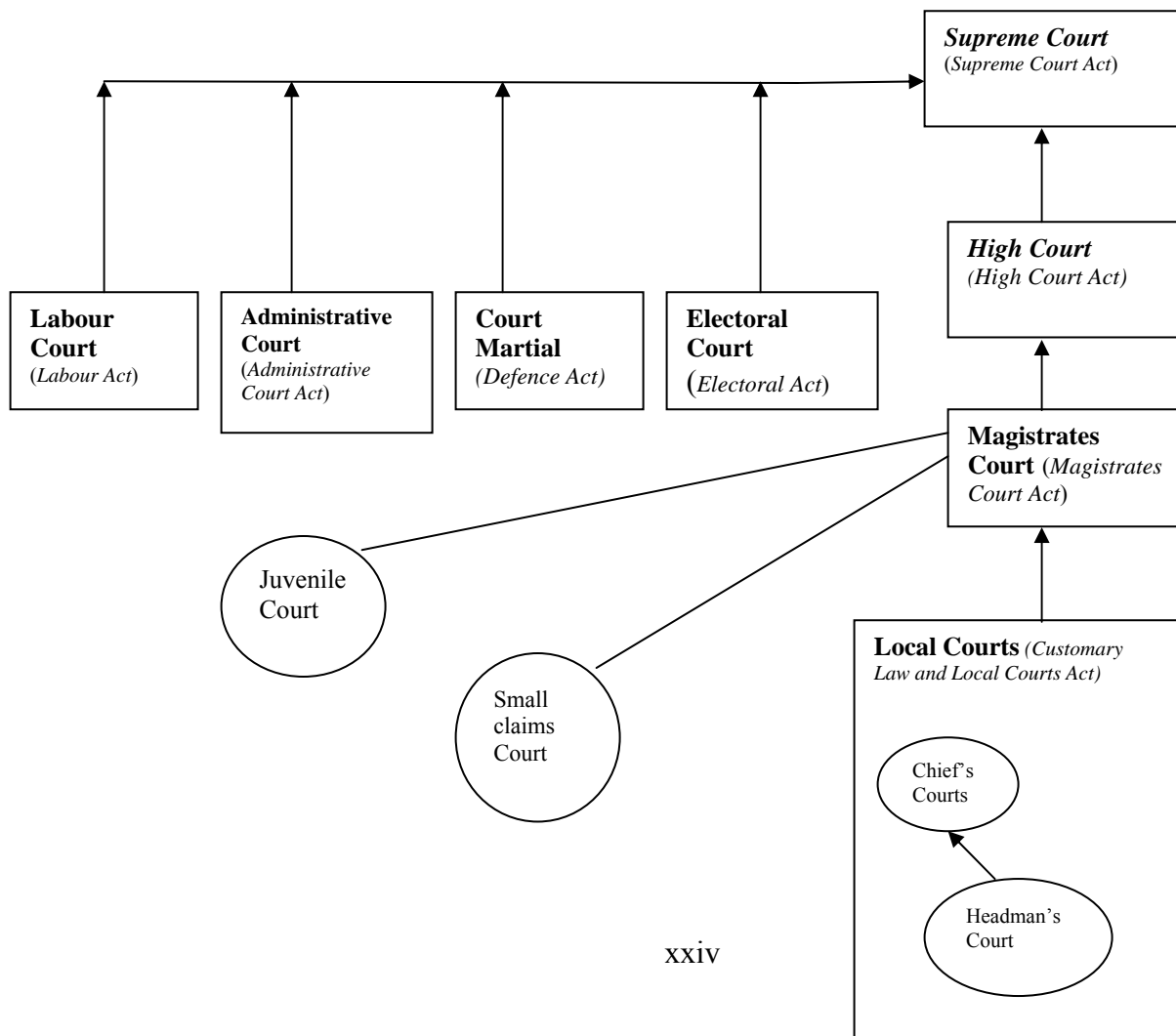
1. *Every individual shall have the right to have his cause heard*
2. *No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed.....*

The Constitutional guarantee remains as was last reported. However, Zimbabwe has gone further to amend the Criminal Procedure and Evidence Act to include provisions that safeguard the processes of fair trials in the Courts and other institutions. Zimbabwe has also gone further to incorporate common law provisions of fair trial into a piece of legislation styled the Administrative Justice Act of 2004. The Act allows aggrieved parties to lodge complaints through the administrative structures set up in institutions. If the party remains unsatisfied then the matter can be heard in the Courts. Therefore the Act has in a sense codified the application of the “principle of legality”.

Legal action is instituted in a particular Court according to its gravity and also with the advent of specialised Courts the process has even become more efficient. Figure Three shows the structure of the Judicial System in Zimbabwe.

FIGURE THREE

The Judicial System in Zimbabwe



The structure includes the Martial Courts. Although it operates as administrative structures provided for within the Defence Act, it does exercise criminal jurisdiction over army officials. It is presided over by members of the Defence Forces only. However, it should be noted that Appeals from the Martial Court lie with the Supreme Court. Specialised courts such as the Juvenile Court and the Small Claims Court are part of the Magistrates Courts dealing with juvenile cases and small claims below a specified monetary value, respectively. On the other hand, Local Courts comprise the Headman's and Chief's Courts. Appeals from the former, lie to the latter court and from the latter to the Magistrates' Courts. The Customary Law and Local Courts Act has since been amended to give chiefs jurisdiction to dissolve marriages. This is designed to promote access to the courts. Capacity building programmes for the chiefs are being run in order to assist them handle their new tasks.

The independence of the judiciary is enshrined in Sub-Section (3) of Section 86 and also in Section 87 of the Constitution of Zimbabwe. In accordance with Section 88 the salaries of Judges of the Supreme Court and the High Court are paid from the Consolidated Revenue Fund. This fund is appropriated separately from Parliament. The independence of the Judiciary is also extended to specialized Courts, such as the Administrative Court and Labour Court, in the sense that the appointment procedures and conditions of service of the presiding officers of these Courts are aligned to those of the Judges of the Supreme and High Court. The Constitution, therefore, provides for the independence of the judiciary through security of tenure and the constitutional guarantee of non-interference in decision-making (Section 79B of the Constitution). A Court decision that comes to mind is that of the *State v Morgan Tsvangirai, 169/2004 HC*. This was the treason trial of the opposition Movement for Democratic Change (MDC) leader; Mr. Morgan Tsvangirai who was acquitted of allegations of conspiracy to eliminate the President of Zimbabwe.

Further, the case of High Court Judge, Justice Paradza also demonstrates the extent to which the independence of the Judiciary is observed and respected by the executive arm of the State. Justice Paradza, in this case, was accused of attempting to influence a fellow High Court Judge to release his (Paradza) business partner's passport, which partner was facing a charge of murder and hence restricted from travelling outside the country while the case was still before the Court.

In terms of the Constitution, the Chief Justice arranged that an enquiry be set up. Judges constituting the Tribunal were recruited from outside the country. At the enquiry stage, Justice Paradza challenged the manner in which the Tribunal had been appointed. The Supreme Court dealt with his appeal and dismissed it. Because what he was alleged to have done was a criminal offence according to our criminal laws, the State preferred criminal charges against him for which he was tried by a Supreme Court Judge serving in a foreign country. He was convicted of the offence and at sentence stage, fled the country, resulting in his sentence being passed in absentia.

From the time of his suspension to the time of conviction and sentence, Justice Paradza continued to receive all his benefits and continues to do so until he is lawfully removed from the bench in terms of the Constitution.

Section 79B of the Constitution specifically prohibits interference with members of the Judiciary in the exercise of their judicial authority, by anybody, without exception. The trial of the Judge, who attempted to interfere with another Judge's process, is, therefore, a demonstration of the extent to which the independence of the Judiciary is guaranteed.

Magistrates, on the other hand, are civil servants and are therefore subject to the disciplinary rules of the Public Service Commission. However, ongoing judicial reforms which are intended to enhance the independence of the judiciary and to address among other things, the recommendations of the fact finding mission of the African Commission among other issues, will transfer magistrates from the Public Service Commission to the Judicial Services Commission. The new system will provide for the appointment and removal from service of judicial personnel, including magistrates, as well as providing for the formulation of a code of conduct, among other issues.

Further efforts include donor sponsored capacity development and systems strengthening projects. Currently and as indicated under Article 6, the Ministry of Justice, Legal and Parliamentary Affairs, is, with the support of UNDP running programmes that will strengthen the capacity of human rights structures within the State, as well as the Judiciary to enable the latter dispense justice effectively. Delays in the completion of cases are to a large extent caused by human and material resource constraints.

Legislation

The Zimbabwean Government put in place the Legal Aid Act of 1996 that provides for the establishment of a Legal Aid Directorate. Its main function is to provide legal aid to persons who do not have sufficient means to obtain the services of legal practitioners from their own resources. Eligibility for legal aid is measured from the resources as well as the reasonableness of initiating, or defending, legal proceedings. The Directorate offers legal representation in Courts of law for criminal as well as civil cases. In criminal cases where the accused is facing a serious charge like armed robbery the Magistrates can advise the accused to seek legal advice and representation from the Legal Aid Directorate and the matter may be adjourned solely for purposes of giving the accused time to seek legal representation.

To alleviate the burden on the Courts and to ensure that the right to have one's cause heard is enhanced, the Arbitration Act was repealed, in 1996, and substituted by a new Act (No. 6 of 1996). The new Arbitration Act enshrined, in the second schedule thereof, the UNCITRAL model rules. The Act was enacted to give effect to domestic and international arbitration agreements; to apply with modifications, the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law thereby giving effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted in New York on the 10 June 1958.

Challenges

The Legal Aid Directorate has only one centre situated in Harare against the mandate to deal with cases from all provinces of the country. This creates a backlog, as the Directorate does not have the capacity to sufficiently deal with all cases referred to it by the Courts. Efforts are currently in place to decentralise the operations of the directorate to other parts of the country.

The economic hardships stated in the introduction have also impacted negatively on the society's enjoyment of the right to choose a legal representative. Despite efforts by the Government to reduce inflation rates, the impact of legal fees is felt, as consultation and legal fees have gone beyond the reach of most Zimbabweans.

Further, there has been an influx of complaints against Zimbabwe on allegations of human rights violation to regional and international human rights treaty bodies, thereby placing under question the domestic mechanisms that guarantee the right to have one's cause heard. This is despite the existence of the Supreme Court, which can sit as Constitutional Court and a court of first instance for such matters, as well as the Office of the Ombudsman which is mandated to investigate violations of human rights by public authorities and individuals.

Civil Society has particularly expressed lack of confidence in the judicial system, as judged from the influx of complaints to the African Commission on Human and Peoples Rights. They cite interference of the judiciary by the executive, as well as corruption among personnel within the justice delivery system. The truth is that the judiciary is as independent as any other in the world and the alleged corruption is smokescreen which Western backed NGOs operating in Zimbabwe apply to justify their approach to such organisations as the present Commission and the recently established Geneva based Human Rights Council.

There is also an apparent lack of consensus on the meaning of human rights associated with the land reform programme. Constitutional amendment No. 17 has, for example been criticised for what has been termed as limitation to the right to have one's cause heard in land matters, yet the ill that the amendment has sought to address does not at all seem topical to the privileged minority. The Law Society of Zimbabwe has made an application to the Supreme Court challenging the legality of the amendment and the matter is still pending.

Allegations have been made to the effect that magistrates have been instructed not to handle cases arising out of the Operation Murambatsvina. To the contrary, the Chief Magistrate's Office has administrative power over magistrates courts, but does not interfere with the exercise of judicial power.

Responses

The Government has allocated a budget to the Legal Aid Directorate to enable it to open centres in other provinces. This will make its services more accessible to the rural community. Government efforts are being complemented by civil society organisations in guaranteeing access to courts and legal aid.

In most provinces, Government has been working with Non Governmental Organizations (NGOs); such as the Legal Projects Centre, Zimbabwe Women Lawyers Association and Musasa Projects in identifying and training paralegals. The paralegals would be employed by NGO's to give legal advice, assistance and in some cases representation of members of the public to complement efforts of Government to uphold the right to a fair hearing.

People with labour cases can be represented in the Labour Court by their union leaders or any labour experts. This procedure has made it less rigorous and cheaper for labour complainants whose cases usually result in impoverishing them through loss of employment by way of suspension or termination.

Magistrates Courts have also been increased, with the regional divisions being increased from two to three in 2002, and additional resident and circuit courts are being established throughout the country. The ratio of magistrate to litigants currently stands at 1: 50 000 as per establishment. However the number may reduce from time to time due to high staff turnover. In addition, Small Claims Courts have been increased from 2 in 1996 to the present nine.

The Government, in consultation with stakeholders, is working on mechanisms to establish a human rights commission, whose investigatory mandate will be broader than that currently held by the Ombudsman. Funding has already been secured from UNDP for the consultative process. The motive is therefore, well founded; which is to have an independent body that will be acceptable to all stakeholders, while at the same time strengthening the capacities of existing structures.

1.6 Article 8: Freedom of Conscience and Religion

Article 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

Constitution

Section 19 of the Constitution provides for freedom of conscience and religion. The position remains as previously reported, save to add that although Zimbabwe is predominantly a Christian nation all religions are tolerated.

Legislation

There are no statutory provisions relating to freedom of conscience but the Public Health Act makes it an offence for parents and guardians to disallow their children from receiving any form of medical treatment on religious grounds.

Case Law

In the case of *In re Chikweche: 1995 (4) SA 284 (25) at 200* per Gubbay CJ:- the applicant a prospective legal practitioner was a follower of the Rastafari Movement. When he appeared before a High Court Judge to take the oath of loyalty, a preliminary requirement for registration as a Legal Practitioner, he wore his hair in a style known as “dreadlocks”. The Judge declared he was “improperly” dressed and declined to allow him to take oath as a legal practitioner.

The applicant requested that the matter be referred to the Supreme Court on the ground that the refusal to register him as a Legal Practitioner because of his hairstyle contravened his constitutional right to freedom of conscience. The Supreme Court determined the matter in terms of Section 24 (2) of the Constitution of Zimbabwe and decided in the applicant’s favour. This Court decision illustrates that Zimbabwe upholds the freedom of conscience and religion as enshrined in Section 19 of the Constitution.

Similar cases have been taken to court in the education sector and courts have ruled that children should continue with their headdress.

In addition to the law already analysed the Traditional Medical Practitioners (Professional Conduct) By-laws, 1997 (No. 245 of 1997) was enacted to regulate the professional conduct of traditional healers. Therefore, traditional practices and beliefs embedded within cultural traditional practices are recognized and upheld in the legal system.

Policies

Generally the country has tended to observe Christian holidays like Easter, Christmas as opposed to other religions such as Islam among others. However, the Moslems have been allowed to

perpetuate the teaching of their religion without interference, indicative of religious tolerance in the country.

Challenges

Although Government is making efforts to outlaw harmful practices, some of the traditional cultural practices still violate the rights of children in the form of appeasing vengeful spirits by giving off young girls in marriage to the relatives of the deceased, for example. This is in a situation where the girl's family takes the blame for the deceased's death and wants to avoid vengeance from the spirit of the deceased person.

As far as worship is concerned some academic institutions practice Christianity predominantly at the expense of other religions, on the other hand some schools indirectly refuse to enrol children who do not subscribe to their denomination. . In certain families some married women are compelled to convert to their husbands denominations.

Responses

The Government has created a conducive environment within which a person is free to worship and practise their religion. However, due to the reality of infringement by fellow individuals the Government will carry out awareness campaigns in Human Rights.

In cases where certain traditional healers have been suspected of irregular conduct the matters have been taken through the criminal justice system for determination.

1.7 Article 9: The Right to Receive Information and Freedom of Expression

Article 9

- (1) *Every individual shall have the right to receive information*
- (2) *Every individual shall have the right to express and disseminate his opinions within the law.*

Constitution

As is the case with most of the rights and freedoms, the guarantee of the freedom of expression and the right to receive information under section 20 of the Constitution, have not been altered.

However, a number of Acts of Parliament have been enacted in terms of the Constitution, as fully discussed below.

- **The Broadcasting Services Act [Chapter 12:06] (Act No. 3 of 2001)**

This Act establishes the Broadcasting Authority of Zimbabwe (BAZ) and gives it power to consider applications for broadcasting or signal carrier licenses, as well as to monitor and track the use of the broadcasting services bands. Applications are submitted to BAZ following an invitation published in the press.

- **The Access to Information and Protection of Privacy Act (AIPPA) [Chapter 10:27] (Act No. 5 of 2002)**

The AIPPA was enacted to give members of the public the right to access records and information held by public bodies and also to request corrections of misrepresented personal information. Further, the Act provides for the regulation of the mass media through the establishment of the Media and Information Commission (MIC). AIPPA, therefore, makes provision for responsible reporting by regulating registration and obligating all media practitioners and organizations to be issued with licenses and to operate professionally. This was done for purposes of enforcing truth, veracity, morality and accountability in reporting.

It is the latter aspect of the AIPPA that has attracted a lot of debate and legal challenges by private mass media players. The Media and Information Commission (MIC), was established to regulate mass media operations. Private players, therefore, have to apply and be issued with licenses to operate print media. This was done to promote accountability especially in cases where private operators were found to have been misinforming the public in various issues.

- **Postal and Telecommunications Act [Chapter 12:05] (Act No. 4 of 2000)**

Section 4 of the Act removed the monopoly of Posts and Telecommunications Corporation (PTC) and allowed other players to come into the telecommunications industry. The PTC monopoly was challenged in the Retrofit Supreme Court case as

contravening section 20 of the Constitution. The Court decided in favour of the applicant Retrofit.

Where such laws have been found to interfere with the constitutional guarantee, the Supreme Court has declared them unconstitutional. Section 51 of the repealed Law and Order (Maintenance) Act of 1960 was, for example declared unconstitutional as it interfered with the freedom of expression to the extent that it defined acts of terrorism or sabotage too widely hence inhibiting persons from legitimately exercising their freedom for fear of falling foul of the law. The Court also ruled that the means used by the law to curtail freedom of expression were more than was necessary to accomplish the objective. On the other hand, the Postal and Telecommunications Act [Chapter 12:05] (Act No. 4 of 2000), under section 98, gave holders of postal or telecommunications licenses power to intercept communication by such means as, telegraph, cellular, or telecommunications, where they indicated criminal activities. The Supreme Court also declared the section unconstitutional.

The Government of Zimbabwe is the majority shareholder in the public media. Zimbabwe also boasts of a very strong and thriving private media, consisting of newspapers and a plethora of Internet Websites.

A highly disturbing development is that many of the private media organizations have been peddling deliberate falsehoods, which undermined the State and individual security in support of the British-orchestrated strategy of ‘regime change’, thus compelling Government to enact the AIPPA.

Specific Case Law

Although no determinations have been made in some cases involving, in particular biased or false reporting by the private media, the Courts have decided in the favour of applicants where they have alleged violation of rights.

In particular:-

- Mark Gova Chavhunduka, Ray Morgan Choto v The Commissioner of Police & the Attorney General

Messrs M. Chavunduka and Ray Choto, who were journalists with the Standard Newspaper, falsely reported that officers of the Zimbabwe National Army were intending to topple the President through a *coup de etat*. This compromised the peace and security of the nation, as it caused a lot of anxiety among the people. The Court decided in the applicants' favour, but did not make any determination as to the falsity or truthfulness of the publication.

- *Association of Independent Journalists & Others v The Minister of State for Information & Others, SC 136/02*

This was an application in terms of Section 24 of the Constitution of Zimbabwe, which entitles an aggrieved person direct access to the Supreme Court sitting as a Constitutional Court. The Applicants challenged section 80 of the AIPPA, among other sections, as infringing their right to receive and impart information and ideas without hindrance and interference. The Constitutional Court declared paragraphs (a), (b) and (c) unconstitutional as they criminalized abuse of privilege.

- *Capital Radio (Private) Ltd v The Broadcasting Authority of Zimbabwe & Others, SC 128/02*

The issues raised in this case were the same as the above case (SC 136/02) and were to the effect that freedom of expression as enshrined in the Constitution, included freedom of the press. The Court declared section 9 (1) – (3) of the Broadcasting Act as unconstitutional. Section 9, in particular was found to be too restrictive in the sense that it prohibited people from holding both a broadcasting licence and a carrier licence.

In a case involving one *Andrew Barclay Meldrum*, the accused had published a false report to the effect that an opposition linked woman had been beheaded by supporters of the ruling ZANU (PF) Party in the presence of her two daughters, one of whom was a minor, during the 2000 election campaign.

The children of the named deceased person denied the allegations and asserted that their mother died of natural causes, after a long illness and did not have any minor child.

Challenges

As already stated, there is a negative perception around the impact of the provisions of AIPPA, which is said to be a “draconian” piece of legislation enacted with a view to restricting the citizens’ freedom of expression.

Allegations have been levelled against the Media and Information Commission on politicising its registration processes. The same applies to the processes of accrediting foreign journalists.

Responses

The Government realized that the architects of ‘regime change’ and their local and international allies were exploiting loopholes in the old legislation on information to subvert public opinion and undermine State security.

AIPPA was a real response to the needs and aspirations of the law abiding, patriotic and peace loving citizens of Zimbabwe. They have visibly improved peace and security in Zimbabwe and, therefore, are critical pieces of legislation to the protection of human and peoples’ rights.

These pieces of legislation, besides, are not peculiar to Zimbabwe. In this era of trans-national terrorism and cyber subversion, they are progressive and appropriate laws. Suffice to highlight that they drew extensively from, and are similar, to laws from other countries particularly, the security and ‘gag’ laws in other democracies like Britain, the USA, Australia and Canada.

Registration of media organisations as well as accreditation of foreign journalists is done according to the law and not political inclinations. This explains the existence of such independent papers as the *Financial Gazette*, *the Independent*, *the Standard* and *the Daily Mirror*, among others. The question therefore, remains; should the denial to register one independent media house, against several other independent media institutions be used as a yardstick to measure the State’s capacity to uphold freedom of expression?

1.8 Articles 10 and 11: Freedoms of Association and Assembly

Article 10

(1) *Every individual shall have the right to free association provided that he abides by the law.*

Article 11

Every individual shall have the right to organise freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety of others, health, and rights and freedoms of others.

Constitution

The constitutional provisions on the freedoms of assembly and association have not been amended since the last report.

Zimbabwe has, however adopted some International Human Rights Instruments and has also passed domestic legislation that impact on the freedoms of assembly and association. She did in 2003, for example ratify the ILO Convention No. 87 on the Freedom of Association and Protection of the Right to Organize. The Labour Act has been amended in line with the Constitution.

Legislation

POSA regulates the exercise of the freedoms of association and assembly by making provision for notification of the police by certain categories of groups before assembling. Trade unions can assemble for purposes of conducting business in terms of the Labour Act. The same applies to religious, educational, sport, charitable and musical gatherings. However, due to the very volatile nature of political gatherings, the purpose of POSA is to ensure political parties or persons intending to hold public gatherings notify the police of such gathering. The Police would then provide security at such gatherings.

Section 108 of the Labour Act, on the other hand, provides for the protection of persons engaged in lawful Collective Job Action. The section sets out what is considered to be lawful Collective Job Action and thereafter goes on to spell out the protection that people engaged in Collective Job Action are entitled to, such as, protection from civil suits. This also places a restriction upon the employer from replacing employees who are engaged in a lawful Collective Job Action.

Challenges

The MDC has alleged that the police are biased towards the application of POSA when it relates to notifications from their party to hold political gatherings. In the same vein, the MDC, alongside some members of the Civil Society such as the National Constitutional Assembly (NCA) have undertaken to ignore the provisions of POSA and AIPPA, hence participating in demonstrations or political gatherings outside the requirements of the law. This is aimed at attracting the attention of the Police and to use their arrest as evidence of victimization by the Police. This remains a challenge on the part of the law enforcement arm of Government, as its efforts to enforce the law are viewed otherwise. The Police will, however not tire in the application of the law.

1.8.1 Registration of Trade Unions

The Ministry of Public Service, Labour and Social Welfare is responsible for registration of Trade Unions and Employers Organisations. Such registration however is not compulsory and an association can choose not to be registered. However, registered associations enjoy privileges over unregistered associations such as the ability to represent employees at the Labour Court and to recommend Collective Job Action, among other things.

1.8.2 Controls Exercised by Government over Association Activities

- The Government has set up National Employment Councils (NECs), which are sector specific. They deal with employment and labour issues. The NECs facilitate bipartite consultations and negotiations between Employers and Workers representatives, which mainly focus on conditions of work, and wage fixing through collective bargaining agreements. Government's role is only to ensure that the agreed wages are not less than the gazetted general minimum wage.
- Government also sets minimum conditions that associations should follow. Section 28 of the Labour Act provides what should be in the constitutions of these associations. However the Government does not prescribe or regulate the following issues;-organisational structure, size and membership of unions,
- Government supervises NECs through Compliance Audit Checks. Essentially, Government, through the Ministry of Public Service, Labour and Social Welfare checks the NECs' Constitution, Audited Financial Statements, the latest Collective

Bargaining Agreement, and other administrative issues. This however, does not apply to employers and workers associations, as they are free to organise themselves. Government only ensures that their Constitutions are in line with the provisions of the Labour Act, and therefore in accordance with ILO Convention 87 on Freedom of Association and the Right to Organise.

Challenges

The Government continues to face challenges in guaranteeing the freedoms of association and assembly within the world of work, because of mischievous trade unionists. While POSA clearly exempts trade unionists from notifying the police when gathering for official trade business, the leadership of the ZCTU continues to apply for ‘Police Clearance’. These are deliberate attempts by the ZCTU to their foreign donors the image that Zimbabwe does not guarantee the freedoms of association and assembly.

The greatest challenge faced by the Government therefore, is that trade union leaders of the ZCTU are also high ranking members of the opposition MDC party and other anti-Government civic society groups, who misuse their trade union privileges to advance their political ambitions. Attempts by the police therefore to invoke the law have been misconstrued as restricting the freedoms of association and assembly.

1.9 Article 12: Freedom of Movement and Residence; the Right to Seek and Obtain Asylum and the Prohibition of Mass Expulsion of Non-Nationals

Article 12

1. *Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.*
2. *Every individual shall have the right to leave any country, including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.*

3. *Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions.*
4. *A non-national legally admitted in a territory of a State party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.*
5. *The mass expulsion of non-nationals shall be prohibited. Mass expulsions shall be that which is aimed at national, ethnic or religious groups.*

Constitution, Legislation and Policies

The Constitutional provisions, as well as policies remain as was outlined in the previous report. The freedom of movement and choice of residence are still guaranteed. However, section 22 of the Constitution as amended by amendment number 17 of 2006, has increased the grounds on which an enactment can be made to restrict the freedom of movement, namely; national, public or economic interest. No such law has been made, but should a law be enacted in the spirit of the Constitutional Amendment, it should meet certain requirements. In terms of section 22(3) of the Constitution, the law so enacted should be reasonably justifiable in a democratic society. Further, it has to pass through other processes such as scrutiny by the Parliamentary Legal Committee on the one hand, and will be open to challenges in a court of law, on the other hand.

The effect of the additional grounds for restricting freedom of movement will be limited to persons intending to leave the country and not those wishing to return. Citizenship and the choice of residence will, therefore, not be affected. Foreign nationals who enter and/or reside in the country will still be governed by immigration laws.

It will be understandable that due to the bad publicity that the country has received, its security and economic well-being have been compromised. Persons travelling on Zimbabwean travel documents have called for the imposition of sanctions against the country thereby causing untold suffering for the majority of people in Zimbabwe, all this being attributed to the long overdue Land Reform Programme.

Challenges

The populace of Zimbabwe is characterized by such historical events as the Federation of Rhodesia and Nyasaland and the struggles for independence, which caused a lot of movement

across borders, as well as inter-marriages. The result was a great portion of the population settling as permanent residents, while others acquired Zimbabwean citizenship. Also resultant from these events were children born out of or between the above immigrants, most of whom had never attempted to claim citizenship from the countries of origin of their parents. However, the legal systems of some such countries allow dual citizenship, contrary to the provisions of the Constitution of Zimbabwe, hence the requirement for them to renounce their foreign citizenship. This required them to either travel to such foreign countries or approach their missions in Zimbabwe.

While Zimbabwe allows free movement of its citizens within and outside the country, a challenge has developed in the form of travel bans on some Zimbabweans by countries which have imposed economic sanctions on the country, such as Britain, USA and Canada among others. The cases in point are those pertaining to the former Minister of Labour and another who almost failed to attend the African, Caribbean, Pacific Conference of 2003 in Brussels.

These countries have also, through “travel alert” announcements, discouraged their citizens from coming to Zimbabwe. The trend nowadays is to include subtle means of discouraging Zimbabweans from either attending meetings outside the country or obtaining visas. Even where a Zimbabwean secures a place in an academic institution, he or she is still denied a visa to pursue his or her studies.

Although there is no legal provision that forces women to adopt their husband’s surnames, there are allegations that such demands are made when attempting to obtain such vital documents as passports and birth certificates for their children. This is discriminatory, as no such demands are made of men. Yet the denial to process travel documents for women on such grounds restricts their freedom of movement. The Government will engage in internal consultations with respective departments to seek effective solutions.

Responses

The renunciation process has been simplified to enable affected persons to renounce their foreign citizenship without necessarily accessing the legal systems of the concerned foreign countries. In terms of section 9 of the Citizenship Act [*Chapter 4:01*], a person may renounce foreign citizenship and confirm Zimbabwean nationality by making an application to the Registrar on the

prescribed renunciation form. The Registrar transmits the form to the concerned foreign mission in Zimbabwe for endorsement. This is only applicable to citizens of SADC countries, as they form the majority of the affected persons due to the historical events in the region, as discussed above.

1.10 Article 13: The Right to participate freely in the Government of one's Country and the Right of Equal Access to the Public Service of one's Country

Article 13

- 1. Every citizen shall have to right to participate freely in the Government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.*
- 2. Every citizen shall have the right of access to the public service of his country.*
- 3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.*

Constitution, Legislation and Policies

Constitutional provisions relating to participation in the country's Government either directly or indirectly and access to the public service and public property were dealt with in the 1996 First Periodic Report. Although people have equal access to public services, economic constraints have further limited their ability to access these services.

Zimbabwean citizens still hold the rights to vote and to be elected. Political candidates are free to campaign so long as they adhere to the law governing public meetings, wherein persons intending to hold public meetings are required to seek police clearance. Postal voting is sanctioned under Part XIV of the Electoral Act [*Chapter 2:13*], on the condition that a registered voter has reason to believe that they would not be in their constituency at the time of voting due to the following circumstances:

- Away from the constituency on duty as a member of the disciplined force, as an electoral officer or a monitor;
- Absent from Zimbabwe in the service of the Government of Zimbabwe; or
- Absent by virtue of being a spouse of persons under the above two situations.

Zimbabwe has since reformed its electoral laws in line with the S.A.D.C. Principles and Guidelines Governing Democratic Elections on the conduct of elections. This has seen the introduction of a new electoral body namely; the Zimbabwe Electoral Commission, whose functions are, among others:-

- To prepare for and conduct presidential, parliamentary and local authorities elections, as well as referendums;
- To direct and control the registration of voters by the relevant authorities;
- To compile voters' rolls and registers; and
- To conduct voter education.

The Chairperson of the Commission is a person qualified for appointment as Judge of either the High Court or the Supreme Court. The other four Commissioners are appointed by the President from a list of seven nominees submitted by the Parliamentary Committee on Standing Rules and Orders. In an effort to attain gender balance, the law specifically requires that two of the nominees should be women. No sex specification is made of the chairperson.

In practice, the Parliamentary Committee on Standing Rules comprises Members of Parliament from all parties represented in Parliament. This is designed to ensure all interested parties put the Commission in place. Section 8 of the Zimbabwe Electoral Commission Act [*Chapter 2:12*], requires the Commissioners and their support staff to '*maintain strict impartiality in the exercise of their functions*'. To this end Commissioners and their support staff are precluded from:-

- seeking appointment, election or nomination to any elective or political office;
- performing work for political parties or candidates, except in the exercise of their functions under the Commission;
- knowingly wearing any badge or article of clothing that is or is likely to be associated with a political party or candidate who is contesting any election; and
- supporting or opposing any question put to a referendum.

Further, the financial requirements of the Commission will be covered through funds appropriated by an Act of Parliament.

The Electoral Court, whose mandate is to hear and determine election petitions and other matters in terms of the Electoral Act [*Chapter 2:13*], was established in 2005. The Court will be presided over by Judges of the High Court and will sit on an *ad hoc* basis. Election petitions are not new to the judicial system, as after the 2000 Parliamentary Elections, for example, a number of petitions were filed with the Courts and in some cases the court decided in favour of the opposition. In the case of Movement for Democratic Change & Another v Chinamasa & Another NNO 2001 (1) ZLR 69 (S), the Movement for Democratic Change (MDC), being the main opposition party in Zimbabwe, filed an application with the Supreme Court, sitting as a Constitutional Court. The second applicant had lost the 2000 general election to the Ruling Party. The MDC cited irregularities such as violence, meanwhile a Presidential Notice to validate the elections had been published in terms of section 158 of the Electoral Act which gives the Head of State power to validate elections. The MDC challenged the constitutionality of the Notice, claiming the right to the protection of the law under section 18(1) of the Constitution, which protection was of the right to a fair and impartial hearing in the determination of a civil right. The Constitutional Court declared the Notice null and void. This decision gave the MDC the right to challenge the results of the elections in the High Court. Election petitions have also been lodged in a number of constituencies such as Hurungwe East, Buhera North and Mutoko South. These were decided in favour of the MDC as the Court nullified the elections, one of which was contested by the MDC leader.

General elections have continued to be held every 5 years for Parliamentarians with the latest having been conducted on 31 March 2005, in line with SADC Guidelines. These were declared credible and described as a true reflection of the will of the people by SADC, AU, Libya and some local observers, Zimbabwe Election Commission (ZEC), Malawi, Botswana, South Africa, Namibia to name just a few.

Challenges

Despite successful nullification of election results due to allegations of such irregularities as politically motivated violence, despondency is still expressed in certain circles to the effect that the right to political participation has been eroded. The Government maintains that the right to seek redress from the Constitutional Court is guaranteed.

1.11 Article 14: Right to Property

Constitution, Legislation and Policies

Section 16 of the Constitution provides for the right to property as reported in the last periodic report. However, this provision has been amended to provide for further instances where property can be compulsorily acquired in the public interest. This amendment was necessitated by the need to finalise the land reform programme. The land reform has therefore enhanced the right to property. The Government protects the right to property by ensuring that the previously disadvantaged black majority have access to the land, at the same time ensuring that compensation is paid for improvements on or to the land to those who are disposed of the land.

The Government was not, on attainment of independence in 1980, in a position to immediately embark on land reforms as the Lancaster House Constitution provided that land would only be acquired on a willing buyer willing seller basis. There were promises to fund the land reform exercise from that dimension by the Governments of the United Kingdom, as well as the USA Government and other donor communities. These were not honoured. More particularly, the present British Government, openly reneged on the obligation to fund the land reform in Zimbabwe. Between 1980 and 1990, when the Constitution of Zimbabwe was first amended, only 3.5 million hectares had been acquired, thereby resettling 71 000 households.

As also observed by the UN Committee on the Elimination of Racial Discrimination in its consideration of Zimbabwe's Initial Report in 1996, the criteria established for persons to qualify as beneficiaries under the Commercial Farm Settlement Scheme after independence, limited the number of black farmers who would qualify. While the Government continued with its efforts to establish effective methods of distribution, the people got incensed and started occupying white owned commercial farms. This led to the current land reform programme.

Consequently, land was distributed in two models; to the landless people who required homes and small scale farming through the A1 Model and to commercial farmers through the A2 Model. A total of 127 192 households were settled under the A1 Model, taking 4 231 080 hectares of land, while 7 260 beneficiaries were settled under the A2 Model on 2 198 814 hectares. Of the settled households under the A1 Model, 97% have taken up their land, while the A2 Model has seen a take-up rate of 66%.

As regards concerns raised on the capacity of the resettled commercial farmers, it has been noted that the existing training institutions may not be adequate for the increased number of new farmers. The Presidential Land Review Committee, established in May 2003 to assess the implementation of the Land Reform Programme, recommended, among others, that more such institutions be established as a long term measure. On a short term basis the Committee recommended that:

- Government accelerates the deployment of village extension workers;
- It identifies and uses specialized skill among former farm workers;
- It encourages farmer-to-farmer training at farm level; and
- It establishes village libraries and ward information kiosks to enhance information dissemination.

Financial assistance is offered by government, in the form of loans, through financial institutions such as the Agricultural Bank of Zimbabwe. (Source: Presidential Land Review Committee Report, 2003)

Challenges

Instances of multi-ownership of the acquired land have surfaced. In response, interventions have been made by offices as high as the Presidency and penalties include withdrawals of offers of land that had been made to the concerned persons.

Despite government's ability to pay compensation for improvements on land, most white farmers have refused to accept such compensation citing that their improvements are undervalued.

Some new farmers lack the capacity to fully utilise the land due to shortages of inputs as well natural conditions such as drought.

1.11.1 Operation Garikai/ Hlalani Kuhle

The Government embarked on a programme termed *Operation Restore Order*, to decongest the highly populated areas of the cities, as well as to remove illegal structures and unlicensed trading premises that had proved to be a strain on sanitation facilities, which has, unfortunately received negative publicity, in particular by those that are already

opposed to the Government of Zimbabwe due to its decision to embark on the Land Reform Programme.

The Government has embarked on a property ownership scheme termed, 'Operation Garikai/ Hlalani Kuhle/Better Life'. Under the scheme, plots have been allocated to various home seekers, in particular those that were affected by Operation Restore Order. On the sites specifically allocated to the affected persons, construction of homes is in progress. The Government's target under *Phase One* was to build 5000 housing units nationwide, of which 2000 were earmarked for Harare and 3000 were to be distributed among the remaining 9 provinces. By December 2005, 3000 housing units had been completed. The focus in 2006 is to complete the remaining units and provide infrastructure thereto. To this end, the Government has allocated Z\$ 800 Billion approximately US\$8,9million, to the programme.

On the other hand, the Government has put in place *Phase Two* of the construction programme termed *Aided-Self-Help-Housing-Scheme*. A total of 1500 stands have been allocated to the private sector, cooperatives, insurance companies, building societies and also individuals countrywide to build houses. The Government has also allocated Z\$ 1.3 Trillion, approximately US\$13 million to local authorities to provide services in the form of roads and water.

Small and Medium Enterprises have also been catered for in this exercise. Funds have been set aside to construct and renovate sites for their operation. Some business centres, such as the 'Mbare Musika' Market in Harare have since reopened.

Also available are loan facilities targeting small and medium enterprises. In particular, Small Enterprises Development Corporation (SEDCO) has set aside Z\$23.3 Billion approximately US\$232 000 to boost the loan facility.

Challenges

The Government is concerned that Britain and its allies have associated land reform with lawlessness, emphasizing the belief that the rule of law can only exist in Zimbabwe through the restitution of individual property rights to white commercial farmers.

There is a lack of consensus between civil society and Government on the realisation of the right to property. While Government took measures to redress the historical imbalances that existed in the ownership of land, civil society take that as an erosion of the right to property. The question then becomes, *whose right to property is in issue?* It would seem that there is no agreement as Government on the one side has taken measures to redistribute land to the indigenous landless, while civil society believe the situation should have been maintained as was before the land redistribution exercise.

The lack of consensus also applies to the principles behind Operation Restore Order, as civil society do not seem to share the Government's concerns on the health risks posed by the overcrowding that existed before the operation.

Further, there are allegations that Operation Garikai/Hlalani Kuhle has been riddled by corrupt practices and that the houses have been given to undeserving beneficiaries.

Responses

The Government of Zimbabwe does not tolerate corruption, hence the setting up of a Ministry to specifically deal with corruption. There are ongoing enquiries on the allocation of houses under 'Operation Garikai'. So far houses that had been allocated to undeserving beneficiaries including some civil servants have been repossessed. Certain perpetrators have since been prosecuted.

PART II: SOCIAL, ECONOMIC AND CULTURAL RIGHTS

The Constitution of Zimbabwe does not specifically enshrine social, economic and cultural rights. However, in addition to the African Charter which enshrines economic, social and cultural rights and recognises the application of the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR), Zimbabwe is also a signatory to the latter and has entrenched most of the rights in various pieces of legislation and policies.

Zimbabwe is facing great challenges in implementing economic, social and cultural rights. This has, to a very large extent, been exacerbated by the imposition of both economic and political sanctions. The imposition of sanctions is in contravention of the United Nations Charter and Article 2 of the ICESCR, which places an obligation on States to take steps individually and through international assistance and cooperation to progressively achieve the full realisation of enshrined rights. It is the imposition of sanctions that have limited Zimbabwe's access to international assistance and cooperation, hence curtailing her ability to provide for her people.

2.1 Article 15: Right to Work

Although the Constitution of Zimbabwe does not provide for the right to work, there are other legal provisions, which contribute to the promotion of the right to work. There are no legal restrictions on one's choice of work. Further, the State has amended the Labour Act (No. 17 of 2002), of which Paragraph (b) of Subsection (1) of section 2A specifically incorporates international labour standards into domestic laws. It reads as follows;-

2A *Purpose of Act*

(1) *The purpose of this Act is to advance social justice and democracy in the workplace by-*

(a)

(b) *giving effect to the international obligations of the Republic of Zimbabwe as a member state of the International Labour Organisation and as member of or a party to any other international organisation or agreement governing conditions of employment;*

Therefore by virtue of the afore-mentioned section 2A of the Labour Act, all the provisions of the African Charter, the Human Rights Treaties under the United Nations system and I.L.O

Conventions in so far as these regulate or guarantee the right to work form part of the Zimbabwean labour laws. Moreover the Labour Act itself has specifically incorporated provisions of the I.L.O Conventions that have been signed by Zimbabwe. Table1 highlights the convention and the particular provision incorporated into the Labour Act.

Convention Number	Title	Year of ratification	Provisions of the Labour Act that give effect to the I.L.O Conventions
29	Forced Labour (1930)	1998	Section 4
87	Freedom of Association and Protection of the Right to Organise (1948)	2003	Section 4
98	Right to Organise and Collective Bargain (1949)	1998	Section 74 to 82
100	Equal Remuneration (1951)	1989	Section 5
105	Abolition of Forced Labour (1957)	1998	Section 4a
111	Discrimination (Employment and Occupation)	1999	Section 5
138	Minimum age (1973)	2000	Section 11
182	Worst form of Child labour	2000	Children's Act
14	Weekly Rest (Industry) 1921	1980	Section 14
26	Minimum Wage And Fixing Machines (1928)	1993	Section 20
81	Labour Inspection (1947)	1993	Section 63
129	Labour Inspection (Agriculture) (1969)	1993	Section 63
135	Worker's Representative	1998	Section 14, 23 to 26
140	Paid Education Leave (1974)	1998	Section 14B

Principal Laws

The Labour Act is the principal law governing the right to work and it guarantees the right to work under equitable and satisfactory conditions, as well as to receive equal pay for work of equal value. The Labour Act still does not apply to the public servants and uniformed forces who are governed by the Public Service Regulations, the Police, Prisons and Defence Acts.

The Act provides for the following

- i) The Act prohibits discrimination on the ground of pregnancy, HIV/AIDS status or physical, mental or sensory disability.
- ii) Sexual harassment of employees (referred to as unwelcome sexually determined behaviour) is made a criminal offence.
- iii) Minimum conditions of employment relating to engagement, duration, remuneration, retrenchment, leave, and over time are specified in the Act. Previously most of these conditions were stated in Regulations or Collective Bargaining Agreements.
- iv) The Labour Relations Tribunal has been re-established as the Labour Court. The Court is presided over by presidents who are former Judges or Magistrates or persons qualified to be appointed as Judges. The presidents are assisted by assessors. The Labour Court has exclusive jurisdiction to hear appeals and applications under the Act, and can exercise the same powers as the High Court in relation to those matters. Appeals from the Court's decisions on questions of law lie with the Supreme Court.

2.1.1 Remuneration

As previously reported, every person who is engaged in any form of work is entitled to remuneration for the work. In the case of *Bata Shoe Co Ltd vs. Pangweni & Another S-115-02*, the Court held that non-payment of wages constituted an unfair labour practice in accordance with section 13 (1) of the Labour Act.

2.1.2 Equal Opportunity for Promotion

Section 5 of the Labour Act outlaws all forms of discrimination at the work place, thereby ensuring that everyone is guaranteed to have equal opportunities for promotion.

2.1.3 Rest, Leisure, Limitation of Working Hours and Holiday with Pay

Sections 14, 14A, 14B, and 14C provide respectively for sick leave, vacation leave, special leave and weekly rest and remuneration for work during public holidays. It is clear from those provisions that the Government is keen to ensure that these entitlements are afforded to every employee.

2.1.4 Right to Form and Join Trade Unions

The Labour Relations (Protection against any acts of interference between Workers Organisation and Employers' Organisation) Regulations, 2003 (SI 131 of 2003) prohibit Employer's Organizations from interfering with the establishment, functioning or administration of Trade Unions, Staff Associations and Workers Committees, and vice versa. Workers have the right to form and join trade unions in almost every sector of the economy.

2.1.5 Right to Strike

Collective Job Action (i.e. a strike or lockout) is prohibited with regards to 'disputes of right'. These are disputes involving legal rights and obligations such as those occasioned by unlawful labour practices. Collective job action is also prohibited in regard to essential services. An essential service means "*any service whose interruption endangers immediately the life, personal safety or health of the whole or any part of the public*".

In situations where Collective Job Action is allowed, employees are required to give fourteen days' written notice of their intention to strike. Also, an attempt should have been made to conciliate the dispute and a certificate of no settlement issued by a Labour Officer. There are other conditions that have to be met before employees engage in Collective Job Action as provided for in the Labour Act but essentially employees have the right to strike.

Peaceful picketing is permitted outside and in some circumstances inside the workplace. The immunity of persons who engage in or threaten lawful collective job action is clarified, and employees who engage in such action are entitled to certain benefits from their employers.

On the other hand, engaging in unlawful job action is criminalized and persons who engage in such action are rendered liable for any damage caused by it.

2.1.6 Termination of Employment

Individuals are protected from arbitrary termination of employment under section 12 of the Labour Act. According to the section, an employee has the right to a fair disciplinary hearing prior to dismissal. An employer has to follow laid down procedures before termination of employment. Failure to do so constitutes an unfair labour practice by the employer who then becomes liable to compensate the employee. If the matter is not settled, the employee can take it up with the Ministry of Public Service, Labour and Social Welfare where it will be conciliated, and if this fails, arbitration will follow. An appeal shall lie to the Labour Court from any decision of an Arbitrator appointed in terms of the Labour Act.

2.1.7 Domestic Employees

The Labour Act also applies to domestic employees. They have a Trade Union that represents them. However, the National Social Security Authority does not cover them yet. This social security system covers mostly workers in the formal sector. However, Government is currently doing the necessary groundwork of ensuring that the informal sector (which includes domestic employees) is covered by the social security system.

Challenges

The practical challenges faced by domestic workers are difficult to deal with, as they relate to their treatment in the privacy of the homes of their employers. Their plight may include low wages below those legally prescribed, long working hours and lack of such benefits as

maternity leave. Despite the availability of complaint mechanisms, most domestic workers are reluctant to speak out preferring to maintain their employment status. As the majority of domestic workers are women, this perpetuates their low economic status. The Government will continue working on measures that will address these challenges.

2.1.8 Maternity Related Rights

In order to avoid discrimination against women during the performance of their reproductive roles, women are by law entitled to ninety-eight days maternity leave in compliance with ILO requirements. However, the implementation of the progressive Labour Act is not without challenges, as the private sector often avoid the cost of maternity benefits by hiring most women, in particular those in child bearing age, on short term, part-time and casual work basis.

The right of the nursing child to have its mother leave the workplace an hour earlier than the normal schedule in order to suckle is also recognised.

There have been discussions towards the adoption of a Public Service Gender Policy, which should pave way for the consideration of support facilities such as childcare centres within the workplace.

Challenges

The economic challenges currently prevailing in Zimbabwe have not spared the employment sector. The rate of unemployment has increased pushing persons in the formal sector to the informal sector.

Responses

Operation Restore Order has improved the livelihoods of persons engaged in the informal sector, through the provision of regulated and environmentally safe areas. This provides easy access for Government authorities, such as those from the Ministry of Small and

Medium Enterprises, who interact with persons in the informal sector on matters of financial and technical assistance.

Policy

a.) The Draft Employment Policy

Although this Policy has not yet been officially launched, the necessary groundwork has been done and plans of its launch are at an advanced stage. The policy seeks to reduce unemployment by implementing the Ouagadougou Plan of Action on Poverty Alleviation. As a result of this Plan of Action, the Government has formed a Steering Committee to look into ways of creating employment in the various sectors.

b.) The Monetary/Fiscal Policy

The Government has launched the Monetary Policy, which is aimed at reviving the economy. One of the key areas in the monetary policy has been towards the creation of employment, for instance several Government offices involved with Employment Creation have been allocated funds from the National Budget to kick start employment creation. Some of these include the Ministry of Small and Medium Enterprises, the Ministry of Youth and Employment Creation, the Ministry of Public Service, Labour and Social Welfare through the Jobs in Africa Project and also the allocation of funds to the National Productivity Institute has been proposed.

c.) The Gender Policy

This Policy advocates for Affirmative Action to give equal employment and business opportunities to both women and men at all levels in the business sector. In addition, the policy seeks to introduce special rewards such as tax incentives to financial institutions that have special programmes to support disadvantaged groups especially women in business.

2.2 Article 16 & 18: Family, Adequate Standard of Life and Highest Attainable Health

2.2.1 The Right to an Adequate Standard of Living

The Government supports and enhances the family environment by providing health, educational and social facilities, while family heads have the responsibility of giving their families, the required standard of life and health care. Parents who do not live with their children have the duty to make maintenance contributions for the welfare of their children, in terms of the Maintenance Act [*Chapter 5:09*]. Where one such parent resides outside the country, recovery of maintenance is done under the Maintenance Orders (Facilities for Enforcement) Act [*Chapter 5:10*]. The Act empowers the State to enter into reciprocal arrangements with other countries to enhance the enforcement of court orders on maintenance. In countries where no such arrangements have been made, the Government relies on the diplomatic relations it has with the concerned country.

Parents who are unable to provide for their children can apply to the Government, through the Department of Social Welfare for assistance, under the Social Welfare Assistance Act [*Chapter 17:06*]. Assistance is given in the form of payment of school fees through BEAM and Public Assistance allowances. The Government through the department of Social Services is working with UNICEF on a child welfare programme which is targeted at assisting children and families in the streets. Street kids are placed in institutions where they are expected to stay. However, they always find their way back to the streets where they get money through begging. On the other hand, private players such as civil society organisations complement Government efforts by providing support for the needy. For example, Farm Orphan Trust and Zimbabwe Widows and Orphans Association, NGOs that promote the rights of orphaned and vulnerable children, facilitate access to health centres by orphans and vulnerable children.

The right to life, as provided in the Constitution, can also be enforced to ensure families attain the maximum standard of life and health. In so doing, several pieces of legislation, some of which have been discussed under Articles 4 & 5, have been enacted to provide for the different aspects that can hinder the enjoyment of one's right to life:-

- **Health Professions Act [*Chapter 27:19*]**

The above Act provides for the conduct of health care givers. Any misconduct can result in their being deregistered. Doctors and nurses are, therefore, subjected to the highest code of

conduct in carrying out their duties in order to ensure that the health of their patients is not compromised.

- **Traditional Medical Practitioners Act [Chapter 27:14]**

The Act permits traditional healers to practice traditional medicine without interference. Under the Act, are promulgated By-Laws to regulate the conduct of Traditional Healers, to safeguard the interests of patients. For example, traditional healers are precluded from selling their medicines from unhygienic premises. The Government has also carried out programmes to educate traditional healers on the need to use sterilized items, such as razor blades when treating their patients.

2.2.2 The Right to Physical and Mental Health

Zimbabwe, through its expanded programme of immunisation is on target for the eradication of polio, hence promoting physical health. Immunisation programmes have generally been a success in Zimbabwe with the assistance of such stakeholders as UNICEF, Plan International and Rotary Club, among others. Supplementary feeding schemes have been introduced in some schools to alleviate hunger. Policies are in place to ensure that people who cannot afford to pay in public hospitals are assisted. Assessments are done by the District Social Welfare officers and these target children whose parents are not working, orphaned children, the elderly and those affected with HIV/AIDS pandemic. These are given free medical Treatment Orders to present to the Hospitals which receive the money from the department of Social Welfare. The Department sometimes faces a challenge in updating payments due to financial constraints and the ever increasing costs of medical treatment.

The Mental Health Act, 1996 (No. 15 of 1996) provides for the welfare of the mentally ill. There are currently three (3) major mental health institutions in the country where the ill can receive free treatment.

The Act establishes the Mental Health Review Tribunal whose duty, among others, is stated as: -

- (c) *“To take all necessary steps to ensure that patients are accorded the rights to which they are entitled in terms of this Act and any other law”*

The Tribunal is chaired by a retired Judge of the High Court and comprises members from all the disciplines that deal with mental patients at different levels, this includes the determination of whether or not a patient detained in a mental institution has fully recovered and is ready for reintegration into society. Although it is independent in its operations, the Tribunal is housed and funded by the Ministry of Health and Child Welfare.

2.2.3 Child Mortality

The Zimbabwe Demographic Health Survey, 1999 indicates that the infant mortality rate for the ten (10) year period preceding the survey was 47 deaths per 1000 live births in urban areas. This was attributed partly to the 25% of households who had no access to portable water and were exposed to water borne diseases and to 42% of households who had no access to sanitation.

The country has, however, a number of policies, which are supportive of the reduction of the infant mortality rate. These include:

- **Re Introduction of the Village Health Worker**

The village health worker programme is meant to promote the health of the communities. The reintroduction of the village health worker will assist families to practice hygienic child nutrition and the immunization of their children.

- **Free Treatment of Children under the Age of five (5) and Expectant Mothers in Public Institutions**

In order to ensure as much as possible that everyone has access to medical care, public institutions offer free medical treatment to children under the age of five, as well as expectant mothers who cannot afford.

- **Expanded Programme on Immunization**

The expanded programme on immunization has maintained a high coverage of above 90%. Zimbabwe observes and conducts National Immunization days and institutes effective surveillance, thus creating a conducive environment for the universal immunization of children.

- **Child Supplementary Feeding Programmes**

Under this programme, children under the age of five (5) as well as school going children from under-privileged families receive supplementary food, particularly during food shortages.

- **Orphans and Vulnerable Children**

Cabinet adopted the Orphan Care Policy in 1999, which was later upgraded to include other vulnerable children, in order to cater for their welfare. It covers free health care and food subsidies for orphans and vulnerable children.

2.2.4 The Right to Clean Water and Sanitation

Clean water and sanitation are essential in any society for the good of its people. With regards to safe sanitation, 58% of rural households had access to safe sanitation in 1999 whilst 75% had access to clean water in the same year.

2.2.5 Access to Medicine and Essential Drugs

The Government has made an effort to ensure that medical care is offered free of charge at public health institutions mainly to children below the age of five and senior citizens. However, due to shortages of foreign currency the drugs are not always available and so patients are often requested to purchase the drugs from private dealers at their own expense. The imposition of sanctions has a direct bearing on the State's ability to provide essential drugs in public medical institutions. This does not only contravene the ICESCR, but also inhibits Zimbabwe's effort to promote the right to health through the provision of free medical care.

In the case of critical areas such as the HIV/AIDS pandemic, the Government has put in place other measures to ensure essential drugs are available.

It has, in particular, declared a state of emergency to facilitate the relaxation of certain requirements related to the treatment of HIV/AIDS. Declaration of Period of Emergency on (HIV/AIDS) Notice 2003, S.I 32 of 2003 empowers the Minister of Justice, Legal and Parliamentary Affairs, in consultation with the Minister of Health and Child Welfare, to authorize persons to make or use patented drugs or import generic drugs in order to combat the pandemic and other related conditions. There are some companies, which have been issued with licences to manufacture and import patented drugs.

2.2.6 The Fight Against the HIV/AIDS Pandemic

From the recording of the first HIV case in 1985, the rate of infection increased, as by the year 2000, 2.3 million people were infected and the prevalence rate was recorded at 34%. The high infection rate resulted in an increased number of orphans, estimated at around 780 000 in 2001. It has since emerged, however, that the prevalence rate dropped to about 20% in 2005 and to about 18% in 2006.

The Government has, adopted strategies to fight the spread of the epidemic, starting with the National Aids Coordinating Programme up to the recently established National Aids Council (NAC). Established under the National Aids Council of Zimbabwe Act [*Chapter 15:14*], the Council's functions, among others, are:-

- To ensure the development of strategies and policies to combat HIV and AIDS and to control and ameliorate the effects of the HIV and AIDS epidemic.

- To promote and co-ordinate research into HIV and AIDS and to ensure the effective dissemination, as well as the application of the results of such research.

NAC is multi-disciplinary in composition and its membership includes, a Government official from the Ministry of health and Child Welfare, an Executive Director, a representative of the Law Society of Zimbabwe, a Traditional Medical Practitioner, about 10 other members to represent the interests of such groups as care givers, women, youth, religious groups, trade unions, industry, information media, commerce and organizations dealing with HIV/AIDS related issues.

As of March 2006, NAC has injected Z\$132 Billion worth of anti-retroviral drugs to the Government Health Institutions. Around 20 000 people are currently benefiting from the *Public- Anti-Retroviral Therapy Programme*, while 6 000 access the drugs privately. The drug consignment, which was distributed to referral hospitals and other identified sites, enabled the Government to put more people on treatment, as over 300 000 people are in need of medication. Although not distributed free of charge, the drugs are accessed at a nominal charge per month.

Challenges

Despite the wide publication of information on HIV/AIDS, little behavioural change has been noted in the sexually active age group of 15 years and above. It is not clear where the challenge lies.

Zimbabwe is also facing resource constraints; human, material and financial. The shortage of foreign currency has particularly made it difficult for NAC to purchase anti-retroviral drugs. On the other hand, the Health Sector, in particular, continues to experience brain drain occasioned by unattractive conditions of service and the decline in wages. The

current economic climate has also increased poverty levels resulting in more HIV/AIDS related vulnerabilities.

Other challenges include, stigmatization and discrimination suffered by the infected sometimes resulting in them not accessing care, treatment and support. Harmful cultural practices, mainly targeted at the girl child, also play a significant role in the spread of HIV/AIDS.

Responses

NAC has worked in partnership with such United Nations Agencies as UNICEF in securing the necessary foreign currency to access the drugs.

Other responses include programmes to achieve the following:-

o Influencing Behavioural Change

There is need to undertake a study to establish the reasons for the slow reaction to information, in terms of behavioural change. The study should include the impact of vulnerabilities caused by aspects of stigmatization, discrimination, poverty and harmful cultural practices.

o Enhancing Resources

In addition to the NAC, the Government has taken the following measures:

- the setting up of a Cabinet Committee on HIV/AIDS to focus on HIV/AIDS issues;
- strengthening of partnerships with stakeholders and developmental agencies, such as membership to the United Nations Global Fund for AIDS. This has already seen the release of a grant of US\$ 105Million from the Fund, part of which will be used for anti-malarial and anti-tuberculosis programmes.

-Also as a result of such partnerships, private players have set up Voluntary Counselling and Testing (VCT) centres to enable more people to know their status and take the appropriate action.

2.2.7 Elimination of Discrimination against Women and the Protection of Children in Terms of International Declarations and Conventions [Article 18 (3)]

Zimbabwe is a signatory to a number of regional and International Declarations and Treaties that are designed to promote the rights of women and children. In particular, Zimbabwe is a State Party to the Convention on the Elimination of all forms of Discrimination Against Women, the Convention on the Rights of the Child, the SADC Declaration on Gender and Development and the African Charter on the rights and Welfare of the Child, among others. Zimbabwe is in the process of ratifying the Protocol to the African Charter on the rights of women.

Submissions on measures taken to eliminate discrimination against women and children have been made under Articles 2, 4, 5 and 12 of Part I and Parts V and VI, respectively.

2.2.8 Special Measures for the Protection of the Aged and the Disabled

A. Persons Living with Disabilities

The Government of Zimbabwe duly recognizes and subscribes to the United Nations Standards for the equalisation of opportunities for people with disabilities. This is reflected in the Disabled Persons Act [*Chapter 17:01*] of 1992 which embodied the United Nations Standard rules. Furthermore, progressive policies in respect of education, sport, health, employment and provision of welfare services have been introduced in respect of the disabled persons, through the Department of Social Welfare and through the coordination of the Director of Disabled persons as provided for by Section 3 of the Disabled Persons Act.

In addition, the Government of Zimbabwe has created a Disabled Persons Fund, through which funding is provided for various activities. Lastly, the Supreme Law of the country, the Constitution, has now been amended (Amendment No. 17) to include disability in the non-discriminatory clauses.

Legislation and Policies

As indicated above, the Disabled Persons Act gives the Department of Social Welfare the mandate to cater for the welfare and rehabilitation of disabled persons. In the implementation of the Act the Department has two major roles that of coordination and service provision.

Types of Disability

According to the Disabled Persons Act section 2, a disabled person means, “*a person with a physical, mental or sensory disability, including a visual, hearing or speech functional disability, which gives rise to physical, cultural or social barriers inhibiting him from participating at an equal level with other members of society in activities, undertakings or fields of employment that are open to other members of society*”.

The provisions of the Act apply to;

- Physically handicapped.
- Visually handicapped.
- Speech impairment and hard of hearing.
- Mentally handicapped.
- Albinism

Coordination

In the implementation of the Disabled Persons Act the Department of Social Welfare plays a coordinative role in the disability programs. The Department provides secretarial services to the National Disability Board. Section 3 of the Disabled Persons Act provides for the post of Director for Disabled Persons whose main functions are to-

- Coordinate the activities of institutions, associations and organizations concerned with welfare and rehabilitation of disabled persons.

- Assist in the implementation of measures, which are recommended by the Board through liaison with other ministries and other authorities involved in disability issues.
- To formulate measures that ensure that people with disabilities live independent lives and that they have access to all social services and submit them to the board.

The National Disability Board is formed in accordance with section 4(1) of the Disabled Persons Act. The membership of the Board consists of 20 people, half of whom are drawn from Disabled Persons Organizations (DPOs) and the rest from Government Ministries.

Functions of the Board

The main functions of the Board are to formulate and develop measures and policies relating to the welfare and rehabilitation of disabled persons.

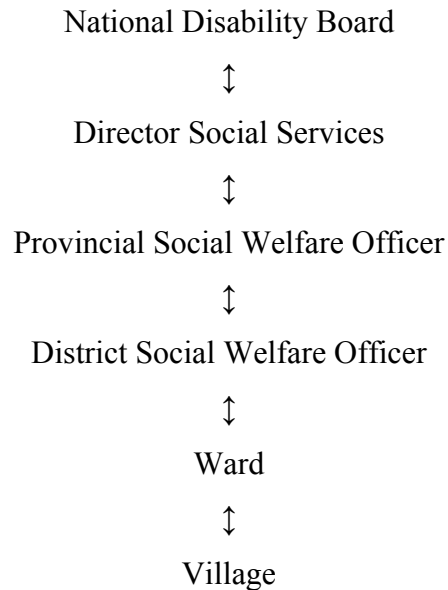
There has been a paradigm shift from treating disability as a charitable issue to treating disability as a human rights issue. Therefore as part of its campaign, the National Disability Board has been holding decentralisation workshops and campaigns throughout the country with a view to decentralising and mainstreaming disability in the already existing development structures.

The following Illustration shows the already existing development structures



Reporting System

It is anticipated that the National Disability Board will have access to information on the status or situation of people living with disabilities through a reporting system that will emerge right from the village level. The illustration below shows the expected reporting system:

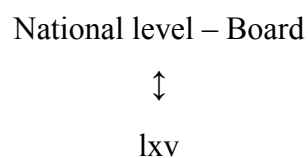


The role of information dissemination is not the role of the Director or Head office staff alone but the Provincial and District Officers also take part.

Decentralization Process

The decentralization process is not expected to take a new shape but to fall into the already existing decentralized structures of Government. Decentralization means officers at grassroots level have to keep abreast of what is happening at National level and vice versa. The reporting system also becomes a dual system of top down and bottom up approach.

The illustration below shows the decentralization process



Provincial Level – Provincial Social Welfare Officer



District level – District Social Welfare Officer



Ward level- Representatives of board (e.g. DPOs)



Village

Service Provision: The Disabled Persons Fund

In order for the Department of Social Welfare to be able to fully provide the above-mentioned services without financial hiccups a fund was established namely the Disabled Persons Fund. The funding is provided by Treasury as well as donors. The Department manages the fund with the assistance of the National Disability Board. The Fund caters for a variety of needs, as indicated below:

- **Public assistance**

This is in form of monthly allowances for disabled persons and their families. Rentals are also included in this package.

- **School fees**

Disabled children who are at primary and secondary levels are assisted with the payment of school fees and levies under the Basic Education Assistance Module (BEAM). Under this scheme 10% of the total allocation for each year is set aside to benefit disabled children.

- **Vocational training fees**

The vocational training fees facility is meant to benefit the disabled people who are past primary and secondary school levels. At the vocational training centres various courses are offered for instance basketry, weaving, and carpentry, secretarial and bookkeeping. The Department is responsible for the payment of fees at these

centres, which include Daniko in Harare, and Ruwa Rehabilitation Centre. Upon completion, people with disability are absorbed in Public Offices.

- **Per capita grants**

Institutions, both private and public, receive monthly grants that are meant for the upkeep of those who are under the care of such an institution.

- **Medical fees**

Disabled people are issued with Assisted Medical Treatment Orders (AMTO), which they use to access free medical treatment in Government hospitals.

- **Purchase of assistive devices**

Disabled people are also assisted with the purchase of assistive devices such as wheelchairs, spectacles, crutches, artificial limbs and treatment creams for Albinism conditions. Civil Society Organisation also complement government efforts in this area.

Challenges

The assistance programmes for persons living with disabilities are not without challenges, as fully indicated below:

- **Inflation and Bureaucracy**

Inflation and bureaucracy are the problems hindering the proper delivery of all social services. The processing of an application for assistance can take a long time, such that by the time funds are availed, the cost would have been overtaken by inflationary pricing trends. In such cases the client is issued with funds to cover the shortfall, which funds have to be processed within as short a period as a week. This

is only possible if the client deals directly with the Head Office, as opposed to the District Office, hence defeating the purpose of decentralization.

- **Limited information on operational systems**

There is limited information on the part of the Social Workers and the disabled persons themselves as to the decentralized structures of the Department of Social Welfare and their roles. At times disabled people are misinformed at the district level and they end up approaching the Head Office seeking assistance, which they can access at the district level. On other occasions the disabled persons themselves out of their own ignorance go straight to the Head Office instead of approaching the District Office for assistance.

- **Resource Constraints**

The department of social welfare is facing human, financial and material resource constraints.

B. Older Persons

As regards elderly persons, Zimbabwe has embraced the United Nations principles on the caring of older persons and is in the process of drafting the relevant legislation. At present, older persons are covered by the Social Welfare Assistance Act of 1988 in terms of Section 6 which provides for the assistance of a destitute or indigent person who is over 60 years of age or handicapped physically or mentally or suffers continuous ill health or is a dependent of a person who is a destitute. Further, Government has a budget provision for Older Persons' Social Protection.

Challenges

The Social Welfare Assistance Act does not make adequate provision for the welfare of the elderly persons. Although resource constraints have delayed the completion of the Older Persons Bill, Government is now working with Civil Society Organisations such as Helpage to finalise the Bill.

2.3 Articles 17.1; Education

In terms of the Education Act [*Chapter 25:04*], every child in Zimbabwe has the right to formal education and parents are obliged to send their children to a school of their choice. The Government has also set up a number of tertiary institutions to ensure that higher education is accessible to as many people as possible. Private players are also allowed to set up institutions as long as they conform to the legal requirements of doing so. Although no such provision exists in the Constitution, the Government, for a period of approximately ten years after independence, provided free education. However, due to inadequate resources the programme could not be sustained. It is still the intention of the Government to ensure that primary education is compulsory. To this end, the Act requires school fees to be maintained at the lowest possible levels. In Government schools, the fees are pegged around Z\$ 1.5 Million (around US\$ 50.00) for urban areas, while Zimbabwean children in rural areas are not required to pay fees. This is a step towards the realization of the right to free education, as it is generally felt that people living in urban areas have some form of income as opposed to those living in rural areas. Examination fees on the other hand are only charged at Ordinary and Advanced levels. (*Source: Ministry of Education, Sport and Culture, Secretary's Circular No. 9 of 2005*).

However, due to the need to maintain and equip schools with the necessary requirements, as well as the maintenance of infrastructure, the Government has allowed schools to charge levies that are adopted by parents in conjunction with school authorities and approved by the Ministry of Education, Sport and Culture. Where the Ministry feels that the proposed figure is too high, it prescribes a lower figure.

In order to sustain the education system in the country, the education sector is one of the categories that receive a high budgetary allocation. The Government allocated 22% of the total national budget in both the 1996-1997 and the 1998-1999 budgets to the education sector.

2.3.1 Right to Primary Education

Since independence in 1980, the expansion of the education system in Zimbabwe has been described as phenomenal. This followed the democratisation of education to enable the formally deprived majority to acquire education as a basic human right. The number of

secondary schools for example increased from 197 in 1980 to 1 642 in 2006, while the number of primary schools grew from 3 161 in 1980 to 4842 in 2006.

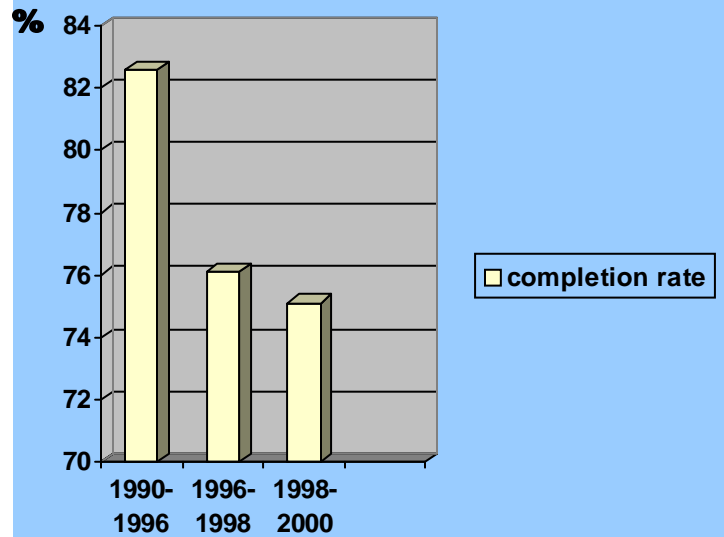
In her efforts to promote literacy through compulsory and free education, Zimbabwe had by mid-1990's achieved near universal primary education. In 1994 the Net Enrolment Ratio was 82%, improving to 88% in 2004 (Figure 5). Consequently, literacy levels rose from 95% in 1992 to 97% in 2002.

The following Table and Figures show the number of secondary schools, enrolments and teacher establishment from 1996 to 2005, as well as the primary school enrolment and completion rates.

TABLE 2

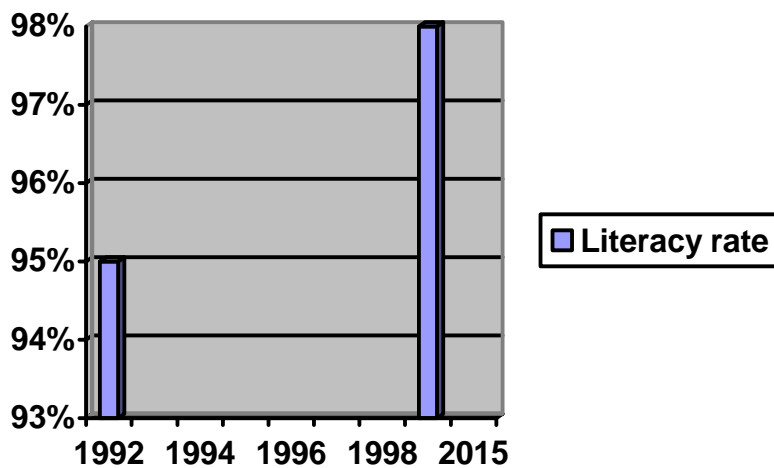
Year	Total schools	Male	Female	Total	Teachers: Male	Teachers: female	Teacher:Total
1996	1529	404405	346944	751349	18039	10215	28254
1997	1530	421039	367565	788604	18651	10787	29438
1998	1540	442226	387751	829977	20195	11927	32122
1999	1548	443067	391813	834880	19153	11419	30572
2000	1555	448981	395202	844183	21397	12766	34163
2001	1570	458948	407223	866171	21796	13620	35416
2002	1570	428024	378980	807004	21189	13791	31580
2003	1567	397918	360311	758229	19542	13032	29253
2004	1567	431880	394514	826394	23736	15136	33964
2005	1606	441152	420191	861343	21154	14740	33965

FIGURE FOUR: PRIMARY SCHOOLS COMPLETION RATE



The figure shows the decrease in the completion rate over the past decade

FIGURE FIVE: LITERACY RATE



2.3.2 Improvement of the Material Conditions of Teaching Staff

There have been significant improvements in the quality of teaching personnel in the education sector. In 1990, for instance 51,1% of the 60 886 primary school teachers were trained, while 48.5 were untrained. By 2000 the proportion of trained teachers had increased to 88.7% and to 91.2% in 2004, while that of untrained teachers reduced to

11.6% out of a total of 66 640 primary school teachers. The number of trained teachers enrolled at primary schools for 2006 stands at 66 220.

Challenges

However, due to economic sanctions and the general down sizing of the economy a lot of teachers have left the country. As a result the quality of education has been affected negatively due to the high teacher to pupil ratio of about 1:40 in primary schools and an average of 1:27 in secondary schools. In some cases it is as high as 1:50, against a desired ratio of 1:28. Other challenges include high pupil to book ratio of 1:10, shortage of textbooks and teaching material. This situation has been exacerbated by human resources depletion due to HIV/AIDS, as well as, the need to provide for the newly resettled families under the land resettlement program.

The education system also faces challenges pertaining to the learning environment, which can be poor and inadequate infrastructure such as classroom space, teacher accommodation, libraries and ablution facilities. School children are also affected by accommodation constraints faced by parents. This affects Government's efforts to zone residential areas to particular schools so that children attend Government schools nearest to their residential areas. This has become difficult to achieve as parents move in search for cheaper accommodation.

Yet another challenge has arisen from Operation Restore Order/ Murambatsvina, which has resulted in the movement of children from one area to another, risking the possibility of change of schools or loss of places at schools altogether. This has posed difficulties for the Government in ascertaining the status of children who would have left certain schools, as most parents moved voluntarily to areas of their choice.

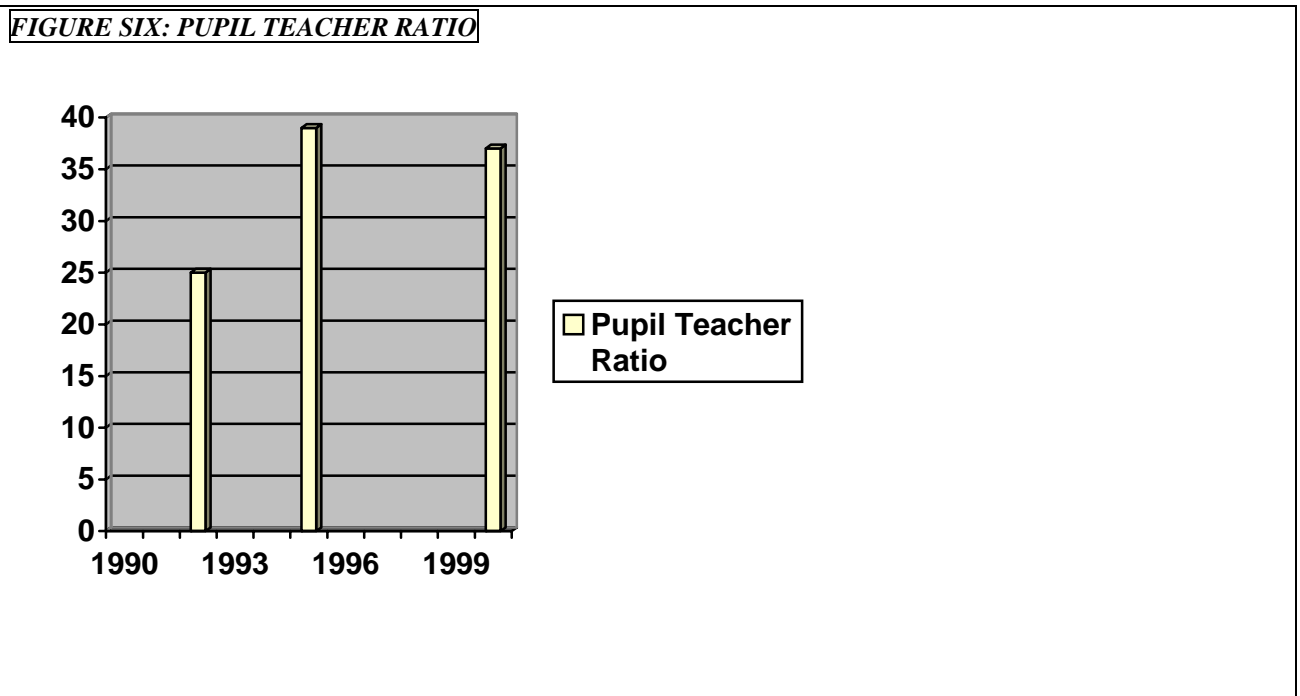
There are still isolated incidences of families preferring to send boy children to school at the detriment of girls. This is usually due to economic challenges.

Responses

The Government embarked on an exercise to ascertain the number of school children displaced by the Operation Restore Order and ordered that they be admitted to the schools they would have moved to at the reopening of schools for the third term in September 2005. This ran parallel to the

‘Back to School’ exercise whose objective was to ensure that all children of school going age are in school. To achieve this goal the Government made a specific budget allocation for vulnerable children under the Basic Education Assistance Module (BEAM). In 2005 alone, BEAM assisted over 800 000 children with the payment of levies, school and examination fees.

In support of this effort, NGOs such as Farm Orphan Trust, offered block grants to schools on agreement that a specific number of orphans and vulnerable children attend lessons in such schools without being required to pay fees. The schools are also supplied with teaching material. The programme has benefited 7000 direct beneficiaries, who also received uniforms and stationery, and 45 000 indirect beneficiaries. In all, a total of 100 schools have been involved in the programme. This is a result of joint programming and networking between Government and Civil Society Organisations.



2.4 Article 17.2: Right to take part in Cultural Life and to enjoy the benefits of scientific progress and the protection of the interests of author

2.4.1 Right to Take Part in Cultural Life

There is no legal prohibition of cultural activities, unless they are identified and described as harmful practices. Measures to outlaw harmful cultural practices are discussed under marriage laws in Part V of this report.

As discussed under the right to life, the Government has taken cognisance of the various circumstances in the private sphere that can threaten one's right to life, including harmful cultural practices. The measures referred to above have also been taken in the Bill on Domestic Violence referred to under Articles 4 and 5.

2.4.2 Protection of Moral and Material Interests of the Author

Authors are protected under copyright laws. Zimbabwe is a signatory to the Trade Related aspects of Intellectual Property Agreement (T.R.I.P.S) and has incorporated its provisions in various pieces of legislation.

2.4.3 Steps Taken For the Conservation, Development and Diffusion of Science and Culture; Right to the Freedom of Scientific Research and Creative Activity; Encouragement and Development of International Contacts and Co-operation in the Science and Cultural Fields

Zimbabwe has since adopted a science and technology policy whose objectives are, among others, to:-

- *Stimulate the development of scientific and technological capabilities in all sectors of the economy;*
- *Raise public awareness of the relevance and importance of science and technology and offer an opportunity to the people to participate in decision-making on scientific and technological matters that affect them; and*
- *Encourage co-operation in science and technology with regional and international organizations.*

It is believed that this is a positive step towards the promotion of the freedom of scientific research. The Policy is fairly recent and measures are being worked on towards its full realization. Furthermore, a Science and Technology Innovation Bill is being worked on.

PART III: PEOPLES' RIGHTS

3.1 Article 19: Equality of all Peoples

By upholding the different positive cultural norms and practices, Zimbabwe recognises equality of all peoples.

3.2 Article 20: Right to Self-Determination

As previously reported, Zimbabwe asserted its right to self-determination through the liberation struggle and has since stood as a sovereign State.

3.3 Articles 21 & 22: Right to freely dispose of Wealth or National Resources; Right to Development

Natural Resources in Zimbabwe fall under the management and control of the State. All Agricultural land, vests in the state. The Water Act was amended to ensure that no individual would have exclusive rights over water.

The period from 1996 to date, has been marked by the deterioration in the socio-economic situation. There was a turnaround in the economic fortune. Some of the factors leading to the decline in the economy include recurring droughts and floods. The HIV/AIDS pandemic has also contributed to the decline as the working class has been highly affected. Government has tried to address the problem by implementing reform packages which include;-

- i) The Zimbabwe Programme for Economic and Social Transformation (ZIMPREST) which was introduced in April 1998, but failed due to financial constraints.
- ii) The Millennium Economic Recovery Programme (MERP) was launched in August 2001 as a short-term economic recovery programme, for 18 months. The programme sought to restore economic vibrancy and address the underlying macro-economic fundamentals. It also failed because of lack of funding.
- iii) In February 2003, Government launched yet another 12 month program dubbed National Economic Revival Programme (NERP). Although it was better funded than the other two, it still did not result in the desired economic turn-around.
- iv) Through the Reserve Bank, the Government has put in place a number of policies to turn around the economy, among them is the Macro-Economic Policy Framework 2005-2006, whose implementation is being consolidated by regular and broad-based consultative quarterly fiscal and monetary policy reviews. Although achievements have been noted in the fall of the inflation rate in 2004, inflation remains a major obstacle to ensuring a conducive macro-economic environment.

The Government has also set up a Ministry to cater for the needs of small to medium sized enterprises, which aims to develop small businesses for the empowerment of the people and as an attempt to turn-around the economy.

The major challenge faced by small and medium sized enterprises is failure to access the capital required to kick-start their businesses and the necessary working capital to stay afloat.

3.3.1 The Right to Development through Land Resettlement

As will be fully discussed under Article 14, the aim of the land resettlement programme was to give the black majority an opportunity to have access to land so as to take part in the economic development of the nation, while at the same time developing themselves.

3.4 Article 23: Peoples' Right to National and International Peace and Security

The Public Order and Security Act (POSA) [*Chapter 11:17*], as also discussed under Part I, was passed to maintain order during public gatherings. Members of the public who wish to hold gatherings should inform the police of their intentions. Section 26 of the Act provides that the police may prohibit a gathering if they believe on reasonable grounds that it will occasion public disorder.

In the case of the *Movement for Democratic Change vs. Muzeze and Anor HB-25-03 (HC 293-03)* for example, the respondents rejected an application from the applicants to hold a report back rally on the ground that, the police had insufficient manpower to ensure the maintenance of order at the rally because of the need to provide security at a concurrent international cricket tournament. The Court held that their refusal to sanction the rally was *bona fide* and that it would be failing in its duty to protect the public if it allowed the rally to proceed when the police had proved that they were not ready to deal with the situation.

Zimbabwe also showed its capacity to protect and promote international peace when in 2004, authorities at the Harare International Airport managed to stop a plane which was on its way to the Equatorial Guinea to attempt a *coup de tat*. The accused persons were convicted and sentenced to custodial sentences by the Magistrate Court. (*The State vs. Simon Mann and Others*).

Other interventions to promote international peace were shown in Zimbabwe's participation in the SADC regional efforts to assist with the insurgency situation in the Democratic Republic of Congo. Zimbabwe also participates in the United Nations and African Union peace keeping missions in troubled countries.

3.5 Article 24: Peoples' Right to Satisfactory Environment

The Government recognizes that a safe and healthy environment enhances the enjoyment of other rights that accrue to its people.

Zimbabwe is also a State Party to a number of multilateral agreements on environment, amongst others:-

- The UN Convention on Biodiversity
- The UN Framework Convention on Climate Change
- The CITES Convention

- The Biosafety Protocol

Zimbabwe is in the process of ratifying the following instruments;

- The Kyoto Protocol on the Convention on Climate Change.
- Ramsar Convention on Wetlands of International importance
- Rotterdam Convention on prior Informed
- African –Eurasian Waterbird Agreement
- SADC Protocol on Forestry
- SADC Protocol on Fisheries
- SADC Protocol on Conservation and Law Enforcement.

Several pieces of legislation have been enacted to protect the environment in different spheres.

- **Environmental Management Act [Chapter 20:27]**

This Act provides for the sustainable management of the natural resources and the protection of the environment. It also provides for a framework for mainstreaming environment into national policies and programmes.

- **The Forestry Act [Chapter 19:05]**

The Forestry Act provides for the establishment of a Commission for the administration, control and management of state forests and the protection of private forests, trees and forest produce. As reported in the ZMDGs 2004 Progress Report, land clearing in the new resettlement areas for agricultural, building and fuel purposes, has contributed to a gradual degradation and deforestation of the environment. This Act provides a regulatory framework for the removal or cutting down of trees in the A2 Resettlement Farms.

- **Parks and Wildlife Management Authority Act [Chapter 20:14]**

This Act provides for the establishment of national parks, botanical reserves and gardens, sanctuaries, safari areas and recreational parks, among other things. It also makes provision for the preservation, conservation, propagation or control of the wild life, fish and plants of Zimbabwe, her natural landscape and scenery.

- **Communal Lands Forest Produce Act [Chapter 19:04]**

The Act regulates the exploitation and the protection of produce within communal lands and ensures the establishment of plantations within communal lands.

- **The Mines and Minerals Act [Chapter 21:05]**

The Mines and Minerals Act regulates all mining activities to ensure that a safe operating and post operating environment is attained in the mining sectors.

Zimbabwe has registered commendable progress in environmental management programmes, such as, afforestation, land reclamation and natural resource conservation, which have assisted in transforming the degraded parts of land to natural resource reservoirs. It is estimated that deforestation ranges between 100 000 to 320 000 hectares per year. To reverse the current trend, the Ministry of Environment and Tourism has made it part of its policy to integrate the principles of sustainable development into legislation and programmes.

Plans are underway to adopt a national policy on environment. The Draft Policy has been presented before Cabinet for approval.

Challenges

The major challenge to the promotion of a satisfactory environment has been the mushrooming of unplanned settlements in both the urban and peri-urban areas. This in turn leads to the problem of air and water pollution. It has also exerted pressure on city authorities in their efforts to provide adequate portable water. To reverse the current trend of environmental degradation, the Government has tried to integrate the principles of sustainable development into the country's policies and programmes. The Government is also working on putting safe water and sanitation in areas where new farmers have been resettled.

Operation Restore Order, as stated in Article 14, was multi-tier in the sense that it had an impact on different sectors of society. Of relevance to this Article is the need to enhance and maintain an environment conducive for human habitation. Studies have shown that overcrowding and squalid living conditions subject people to disease outbreaks such as cholera, diarrhoea and tuberculosis.

Zimbabwe also faces another challenge that can be termed Poverty Induced Land Degradation. It has been noted that the frequency of periodic droughts and the prevailing unsustainable macro-economic environment have increased the population leaving in poverty, hence leading to activities that have severe negative repercussions on the bio-physical environment. The desire to meet basic livelihood requirements by these people has led to the proliferation of such activities as veld fires, illegal gold panning, deforestation, illegal sand abstractions and encroachment on wetlands, leading to accelerated land degradation.

The quest for firewood for purposes of fuel due to electricity power cuts have also contributed to deforestation.

Responses

Concurrent to the foregoing is the execution of Operation Garikai/Hlalani Kuhle, which is aimed at providing planned infrastructure for both residential habitation and business activities of the vibrant informal sector.

Operation Garikai/Hlalani Kuhle is aimed at providing descent residential and business accommodation to the people of Zimbabwe, it is hoped that people involved in such activities will make use of Government's efforts. To this end, the Government intends to establish schemes to assist home seekers access financial, technical and material support. In the same vein, plans are underway to upgrade poor quality housing structures.

As regards proper management of waste, the Government has, through the Ministry of Environment and Tourism, formulated the Waste Management Strategy. The Strategy was borne out of the realization that waste management is becoming a major challenge in urban and peri-urban areas, resultant from the increase in rural-urban migration was launched in March 2006. It seeks among others to:

- Educate and raise public awareness on hazards emanating from littering, dumping of waste, improper waste disposal methods and defective sewer systems;
- Promote a pro-active approach to waste management;
- Promote the use of cleaner technologies in all economic sectors in order to reduce waste generation and encourage re-use and sound disposal; and
- Monitor waste through the production and consumption cycle.

PART IV: SPECIFIC DUTIES ON STATES

4.1 Article 25: Duty to Promote Awareness of the Charter

The position largely remains as was previously reported, due to financial constraints. The Government works in cooperation with U.N. Agencies and civil society to carry out human rights awareness training for public officers such as the police and judicial personnel. There is a joint programme between the Government and such Civil Society Organisations as the Human Rights Trust of Southern Africa (SAHRIT) for the training of the judiciary and other court officials on the due process of law. The mandate of carrying out public awareness campaigns vests with the Ombudsman. Measures will be put in place to consider the running of awareness programmes.

4.2 Article 26: Duty to Guarantee the Independence of the Judiciary

The constitutional guarantee of an independent judiciary was covered in the last report. The Commission is referred to Part I of this report for further detail.

4.3 Articles 27, 28 & 29: Individual Duties

As reflected in the last report, no programmes have yet been initiated to enhance individual duties. However, between 2000 and 2004, the people of Zimbabwe were politically polarised and this situation brought about moral decay in some sectors of society, notably, the press. Reports that affect such vital aspects as community and national solidarity, as well as the integrity of families, have been published without due regard to their effect on the communities or families concerned. Yet when the Government enacted the Access to Information and Protection of Privacy Act, the legislation was received with the same political inclination and was therefore perceived as Government's instrument of repression.

An example in point was a false report that was published in the then Daily News, during the same period, to the effect that a family watched their mother being beheaded by sympathizers or agents of the Ruling Party. Although the report was principally political in the sense that it was targeted at discrediting the Ruling Party, it affected the emotional well-being of the concerned family, an aspect the publishers of the paper negligently ignored. A sense of duty should, therefore, be

imposed on reporters, for example, to ensure that they report responsibly with due regard to their societal duties.

The promotion of duty awareness as enshrined in the Charter is therefore, worth considering. It is hoped that efforts will be put in place to evaluate the ways of enhancing individual duties.

Zimbabwe is among those African countries that were highly affected by racial discrimination. After the colonial regime, the Government adopted a reconciliation policy that aimed at accommodating people of all races in all spheres, on an equal basis. All laws, policies and practices that entrenched racial discrimination were, therefore, outlawed. The Constitution of Zimbabwe under section 23 specifically prohibits discrimination on the ground of race.

Discrimination on the ground of race is also prohibited under various pieces of legislation in particular the Prevention of Discrimination.

However, the black majority continued to experience discrimination in the various sectors, under methods that would not, on the face of it, appear non-discriminatory, as will fully appear below. The Government is therefore, still facing challenges in its attempts to completely eradicate racial discrimination. In particular, efforts continue to be applied in the education and employment sectors, among others.

5.1 Education

On a general basis and in compliance with the Constitution, all educational institutions in Zimbabwe are open to people of all races. However, it has been noted that due to high fees, few sectors of the society have access to non-Government schools, hence forcing the majority to resort to Government schools. This, as was stated by the UN Committee on the Elimination of Racial Discrimination in its comments on Zimbabwe’s last report considered in 2000, creates racial segregation.

The Government has made attempts to reduce the disparity in the parallel education system by regulating the fees charged by all schools. Statistics indicating racial disparities in schools prior to Government interventions, for both pupils and teachers are not available. Although the disparity gap, as reflected on the Table below, seems to be reducing in some non-Government schools, the ratio still favours the white population while the opposite is true in Government schools.

TABLE THREE: BLACK/WHITE RATIO IN SCHOOLS

Black/White Pupil Ratio in Schools			Black/White Teacher Ratio in Schools				
	Black	White	Percentage of Black		Black	White	Percentage of Black

			Pupils				Teachers
School 1	127	224	37%	School 1	3	16	16%
School 2	365	156	70%	School 2	19	24	44%
School 3	369	533	41%	School 3	20	25	44%

Source: Ministry of Education, Sport and Culture

The Education Act was amended in 2005 provides that the three main languages of Zimbabwe, namely Shona, Ndebele and English be taught on an equal time basis in all schools up to Form 2 level. This is designed to facilitate communication among people in all parts of the country and also to promote national unity. At the same time, the Act provides for the teaching of local languages in areas where they are spoken thereby promoting culture. The Act also provides for the teaching of foreign languages such as French and Portuguese to enable the country to participate fully in technological developments.

Challenges

The Government is, however, still facing resistance from non-Government schools, in its endeavour to reduce the racial disparities. It is, for instance, a Policy of the Ministry of Education, Sport and Culture to enhance consultations between school authorities and parents prior to any review of school levies. Some non-Government schools increase fees unilaterally, leaving parents with the option of either paying or pulling their children from such schools.

Consultations with parents should ideally be followed by the presentation of the proposed level of fees to the Ministry of Education, Sport and Culture for consideration. Where the Ministry is of the view that the proposed fees would be too high, it prescribes a lower figure. Non-Government schools have, however, challenged the Government in a court of law, which court decided in their favour, thereby allowing them to increase fees.

Responses

In order to address the resistance from non-Government schools, the Government has amended the Education Act, to provide for the establishment of school/parents assemblies at each school. The Assemblies will in turn elect School Development Committees whose mandate will be to manage the financial affairs of respective schools, including the raising of fees and/or levies.

5.2 Employment

In addition to the constitutional prohibition of racial discrimination, the Public Service Act [*Chapter 16:04*] and the Labour Act [*Chapter 28:01*], specifically prohibit racial discrimination in the field of employment. The establishment of a Human Rights Commission whose mandate will cut across all sectors is a positive step towards that protection of the work force in the private sector.

5.3 Enjoyment of Rights without Racial or Other Distinction

5.3.1 Refugees, Migrants and Non-Nationals

The non-discrimination clause in the Constitution applies to all. Refugees, Migrants and Non-Nationals are also governed by refugee and immigration laws. To safeguard the rights of refugees, the Government has incorporated the provisions of the United Nations and African Union treaties on refugees in the Refugees Act [*Chapter 4:03*].

The Act provides for the creation of the Zimbabwe Refugee Committee which determines refugee status. The Government of Zimbabwe hosts a total number of 3040 refugees and asylum seekers from mainly Rwanda, DRC and Burundi.

The Ministry of Public Service Labour and Social Welfare is working with UNHCR and other NGOs to provide protection and social services to refugees. Refugees have access to obtaining registration documents like identity cards. Refugee children attend primary, secondary, vocational and university education in local schools. They also pay school fees, which is the same with any other Zimbabwean child.

In addition, all refugees get assisted Medical Treatment Orders through the Social Welfare and are treated in public hospitals. Refugees with special needs, for example unaccompanied minors are placed in local institutions and assisted with tracing of their relatives through the International Committee of the Red Cross (ICRC).

5.3.2 Citizenship for Spouses of Nationals

In the past, the laws allowed the female spouse of a national to automatically acquire citizenship, as culturally a woman is expected to move to her husband's home. However,

this was found to be discriminatory and a decision was made in the case of *Rattigan & Others v Chief Immigration Officer & Another 1994 (2) ZLR 54 (S)* (facts of which are stated below) leading to amendments of the affected laws. Foreign spouses of both sexes are now legally required to meet all immigration requirements like any other foreigner seeking residence in Zimbabwe. These laws apply equally to people of all races.

The Rattigan case was brought by three women citizens of Zimbabwe who had married foreigners. Their husbands had been denied permanent residence in Zimbabwe because they had no skills to offer the country. The Supreme Court ruled that to prohibit the husbands from residing in Zimbabwe, and so disable them from living with their wives in the country in which they are citizens, is in effect to undermine and devalue the protection of freedom of movement accorded to each of the wives as a member of the family unit.

A number of decisions have since been made in line with the Rattigan case. However, the right of a citizen to reside in the country with a foreign spouse is subject to some limitations. Where the foreign spouse is declared to be a prohibited person, the operation of the immigration laws to deport such person overrides the right to reside in the country by virtue of marriage.

5.3.3 Citizenship for Children born to Nationals living outside the Country

The Constitution of Zimbabwe provides that citizenship is acquired by birth, descent and registration. Therefore children born to Zimbabweans outside the country are citizens by virtue of their descent.

Challenges

There is limited awareness of the procedures that one has to follow to obtain citizenship.

5.3.4 Marriage Laws

There are three types of marriages in Zimbabwe:- the civil marriage, which is monogamous; the registered customary law marriage; which is potentially polygamous and the unregistered customary union, which is also potentially polygamous. Due to their registration status, the first two types of marriage enjoy superiority over the third type. However, the registered customary marriage also places women on an unequal footing with

men, as men retain the right to take other wives. Spouses to the customary union are also prejudiced in such issues as dissolution of marriage under the Matrimonial Causes Act [*Chapter 5:13*] and spousal inheritance matters. The previous injustices in inheritance laws were corrected by the amendment to the Administration of Estates Act [*Chapter 6:01*]. The amendment provides that spouses to any type of marriage are able to inherit from the estates of their deceased spouses. Women married under the customary union have continued to suffer prejudices in the event of death of the spouse, as the proof of marriage is provided by the deceased husband's relatives. Where there are misunderstandings, such relatives have denied the existence of the marriage hence denying the widow of her inheritance.

To remedy the situation, the Government has since adopted policies to amend marriage laws with the aim of equating all types of marriage. For purposes of proof of marriage, spouses to the customary union will be required to certify their marriages. Where a male spouse is resistant to the process, the female spouse can make an application to certify and the male spouse will be required to give reasons why the certification should not be effected.

Vital to racial segregation is the distinction between the civil marriage and the customary marriage in the requirement for parental consent. Customary law is ideally applicable to blacks hence the only race where women are required to obtain parental consent to marry even after they obtained majority status. The proposed marriage law reform will remove this requirement.

Another positive aspect of the law reform is the adopting of one marriageable age for people of both sexes. This will apply to all types of marriage. Currently, under customary law, girls can be married at any age, while under civil law they can only marry at the age of 16. This was found to have an impact on racial discrimination in the sense that girls from races other than black could marry at a more advanced age. The proposed marriageable age is 18 years for all types of marriage.

5.3.5 Protection of the Rights of Minorities

Minority groups in Zimbabwe are more linguistic than ethnic. The non-discrimination clause applies to them, like any other people living in the country. However, for purposes of recognizing them, the Government, as already alluded to, has allowed the teaching of minority languages in schools.

Other promotional programmes include the broadcasting of media programmes in their languages.

5.3.6 Protection Against and Remedies for Racial Discrimination

- **Equal Access to Tribunals and Other Institutions Without Distinction on Racial and other Grounds**

There is no policy in Zimbabwe that distinguishes access to tribunals or other public institutions on racial grounds.

Challenges of this nature are found in private institutions, such as social clubs, where membership, although not so prescribed, is limited to people of one race. Exclusion is made through the charging of astronomical membership fees, as well as the reservation of the right of admission.

- **Ability of Ombudsman to Monitor Public Officials and their Powers**

In order to extend the mandate of the Ombudsman to investigate public officials, the Ombudsman Act [*Chapter 10:18*] was amended in 1997. The Ombudsman can now investigate the Defence Forces, Police Force and the Prison Service. In addition, the President may, by regulation, appoint any other authority to exercise the power of the Ombudsman in relation to the Defence, Police and Prison Institutions.

PART VI: GENERAL PROMOTION OF HUMAN RIGHTS

6.1 Education and Teaching

The Government, in collaboration with UNICEF developed teaching material on human rights for schools. This was designed for secondary schools in order to give pupils an understanding of basic human rights.

6.2 Culture

Harmful cultural practices that impact negatively on human rights are normally practised under the belief that they are necessary. The Government intends, in the proposed marriage law reform, as well as the proposed law on domestic violence, to outlaw harmful cultural practices.

6.3. Establishment of a National Human Rights Commission

As earlier stated, the Government is in the process of establishing a National Human Rights Commission to spearhead the protection and promotion of human rights in Zimbabwe.

PART VII: ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

As was previously reported, Zimbabwe is a State Party to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). A state party report has been submitted to the Committee on the Elimination of all forms of Discrimination Against Women for the period ending 1995 and a follow-up report will be submitted.

The Constitution of Zimbabwe specifically prohibits discrimination on both grounds of gender and sex. As undertaken in the previous report, the ground of sex has since been included to the non-discrimination clause by Constitutional Amendment No. 17 of 2005. This is part of the Government's continued effort to advance the rights of women. Although the two grounds protect women in different spheres of life in the sense that 'sex' entails physical differences while 'gender' entails socially ascribed roles to people of different sexes, it has been noted that the two terms have, in the past, been used interchangeably, hence extending protection to the ground of sex. For example, in the case of *Mandizvidza vs. Morgenster HH 236/99*, a female college student was expelled for falling pregnant. This was not necessarily a gender issue, but sex, in the sense that by her biological nature, a woman can fall pregnant and because she is pregnant she is deemed unfit or unsuitable for an academic set-up. The aggrieved person in the above case successfully challenged her dismissal in the Supreme Court, claiming discrimination on the ground of gender.

The specification of the two grounds is, however, a progressive development that will go a long way in getting society to appreciate the difference between the two terms, identify areas of discrimination and correct them.

Constitutional Amendment No. 17 also makes specific provision for the equal treatment of women in land allocation or redistribution. This enhances women's rights to own property, particularly land, which is culturally considered to be a preserve of men. Land is a vital resource to the economic empowerment of women and Constitutional Amendment 17 reaffirms Government's commitment to ensure equal access to immovable property in the commercial sphere, as provided for under sections 4 and 5 of the Prevention of Discrimination Act [*Chapter 8:16*]. Women were disadvantaged both on the ground of sex and race, the legacy of which the Government seeks to fully address through the implementation of the Constitutional Amendment.

Still on the furtherance of the rights of women, Zimbabwe now has in place the National Gender Policy. A fully-fledged Ministry responsible for the affairs of women as well as gender issues has also been formed. These efforts will enhance concentration on women's issues, thereby leading to the discovery and correction of negative aspects that affect the promotion of women's rights. The elevation of the first woman to a post as high as vice president will have a positive bearing on the Zimbabwean society in appreciating the role that women can play in decision-making and high-level positions.

Legislation

Since the last report more pieces of legislation have been enacted, while some of the existing ones have been amended to promote the rights of women. In particular, the following achievements have been made:

- **The Administration of Estates Act [Chapter 6:10]**

The Act extended the right to inherit from the estate of one's parents and spouses to women. The concept of the male heir was, therefore, abolished. Previously, women could be prejudiced of their inheritance on the mere ground that they were female. The Act also recognised spouses of unregistered customary unions for purposes of inheritance. However, challenges are still being faced in this area as the identification of the women as spouses of deceased persons is dependent upon the goodwill of the relatives of the deceased husband. Where relations are constrained, women have been denied of their inheritance.

- **The Criminal Law Code**

The Criminal Code broadens acts that constitute sexual offences. It recognizes both boys and girls as potential victims of sexual abuse. Further it prohibits trafficking of persons for purposes of prostitution and imposes stiffer penalties for violations. The Act also prohibits wilful transmission of sexually transmitted infections, including HIV/AIDS. Above all, the Act introduces marital rape, primarily to protect women against HIV/AIDS. However, practical challenges have arisen as to the determination of when and who actually transmits an infection to the other. Debate is on-going as to how the practical difficulties can be addressed.

- **The Labour Act**

Women are protected from discrimination on the ground of gender. The Government has effected further amendments to the Act to enhance women's maternity benefits.

- **The Interpretation Act [Chapter 1:01]**

Previously, the Act specifically provided for the recognition of words importing masculine language to include women. The Act has since been amended to equate the words importing either gender, hence removing the dominance previously placed on words importing masculine language. This has been followed by a revolutionary drafting style that ensures that words importing both feminine and masculine language are used simultaneously, such as '*he or she*'. The effect of the amendment is the removal of language in pieces of legislation that is perpetuative of the consideration of women as lesser beings to their male counterparts.

- **Legislation on Gender-Based Violence**

The Government has, in collaboration with Civil Society, formulated legislation on violence at the domestic level. Although still in its draft form the Bill provides for a wide range of acts that constitute domestic violence, such as economic and psychological abuse. The Bill takes a holistic approach towards eradicating domestic violence by including children, as well as men, as potential victims of domestic violence. As regards children, the Bill protects them from acts of violence between adults, taking place in their presence. Although this is principally intended to protect the children from psychological damage, it also protects them from unnecessary exposure to abuse, hence growing up in a violent free environment. In the long term, such children are highly unlikely to engage in abusive behaviour, hence grooming a violent free society.

The Bill also embraces social remedies to abuse, such as counselling for the affected families, including the perpetrator. Counselling may be ordered by the courts in the course of hearing cases of domestic violence.

Challenges

The many challenges still faced by women despite all the efforts that have been made by the Government, with the support of stakeholders from among civil society organisations, as well as UN Agencies remain a concern. While pursuing further legislative measures, it is hoped that women can start to benefit from previously limited opportunities through affirmative action, which is now constitutionally sanctioned. Efforts will also be placed towards the curtailing of the effect of the current economic decline on women.

CONCLUSION

Zimbabwe is committed to meet its obligations under the African Charter through the submission of reports to the African Commission on Human and Peoples' Rights, although consistency in doing so has been affected by financial and human resource constraints.

By enshrining the Declaration of Rights into the national Constitution, Zimbabwe has shown commitment to the protection and promotion of the human rights. Where it has been felt that the vital rights are either inadequately provided for or absent altogether, debate has ensued leading to adjustments being made, such as the inclusion of 'sex' as a ground of discrimination. Such dialogue on human rights issues will continue to be engaged.

Structures such as the Office of the Ombudsman have been put in place to enforce and enhance the protection and promotion of human rights. Human resource constraints have also played a negative role in the effective operation of, in particular, the Office of the Ombudsman. Measures will be put in place to ensure such constraints are overcome.

The efforts to protect and promote human rights, have however, not gone without other challenges occasioned by the imposition of sanctions by countries opposed to the Land Reform Programme. This has increased poverty levels thereby putting a strain on the Government's efforts to alleviate the suffering of its people. The HIV/AIDS pandemic has also played a negative role although the Government has sought to curtail its effects by introducing the AIDS Levy on the entire workforce.

Since she submitted her last report, Zimbabwe has put in place several measures to ensure the protection and promotion of human rights, which measures include the enactment of appropriate legislation. Policies have also been put in place and their effects can be seen from the statistical data provided in this Report.

Finally, Zimbabwe reaffirms her commitment to the human rights cause and recognises the challenges she faces in the execution of her efforts and will continue to put in place new measures to ensure that Zimbabwe meets her human rights obligations. The Government of Zimbabwe acknowledges the support given by the United Nations Development Programme (UNDP), the Human Rights Trust of Southern Africa (SAHRIT), the Southern and Eastern African Centre for

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