



Graduate School of Development Studies

POLITICS OF CLAIMING RIGHTS

How are Rights claimed under an authoritarian rule?

A case study of Operation Murambatsvina (clear the filth) in Zimbabwe, 2005.

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DEDICATIONS

To my lord, Jesus Christ

To my mum, Mildred Dekwe

To my late father, Zororai Katema

To the love of my life, Hildaberta

To my hero, Barack Obama

To all Human Rights Defenders in Zimbabwe

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LIST OF ACRONYMS

ACHPR	African Charter on Human and Peoples Rights
AI	Amnesty International
AIDS	Acquired Immune Deficiency Syndrome
CAT	Convention Against Torture
CHRA	Combined Harare Residents Association
COHRE	Centre for Housing Rights and Evictions
CSOs	Civil Society Organisations
GoZ	Government of Zimbabwe
HRBA	Human Rights Based Approaches
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
NGOs	Non-Governmental Organisations
MDC	Movement for Democratic Change
OG	Operation <i>Garikai</i>
OM	Operation <i>Murambatsvina</i>
SADC	Southern Africa Development Community
SAHRIT	Human Rights Trust of Southern Africa
UDHR	Universal Declaration on Human Rights
UN	United Nations
ZANU PF	Zimbabwe African National Union- Patriotic Front
ZLHR	Zimbabwe Lawyers for Human Rights

**“We must clean the country of the crawling mass of maggots bent on
destroying the economy,”**

Augustine Chihuri,
Zimbabwe Police Commissioner, 2005

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ABSTRACT

This study explores the potentials and challenges of claiming rights under rights an authoritarian rule. The study is not abstract; It is based on a case study of Operation *Murambatsvina* (literally means clear the filth), which took place in Zimbabwe in 2005. Operation *Murambatsvina* (OM) was basically about demolition of homes and forced evictions of predominantly poor masses. It resulted in a human rights crisis of national magnitude. Informed by my research findings, I did a critical analysis of the limitations and potentials of mechanisms, both legal and non-legal and at local and international levels used mainly by human rights NGOs to claim rights during OM. From the research findings, it is clear that legal responses are less effective under authoritarian rule as compared to the non-legal responses. Then the embryonic question is- should legal mechanisms give way to non legal mechanisms? I do not subscribe to the thesis of legal mechanisms giving way to non-legal mechanism but I try to rethink an integrated approach to the politics of claiming rights. That accordingly calls for the unification of protective mechanisms. In that connection, they have to be viewed holistically and as complementary to each other. A removal of one set of mechanisms has the effect of grossly weakening and ultimately undermining other mechanisms. More importantly, there is need to unlock the political will and foster a democratic political culture, which promotes and protect human rights in general.

KEY WORDS

Claiming rights, authoritarian rule, authoritarian development

CHAPTER 1 – INTRODUCTION

1.1 Introduction

This study sought to explore the potentials and challenges of claiming rights under an authoritarian rule. The study is not abstract, it is based on a case study of Operation *Murambatsvina* (literally means clear the filth) that took place in 2005 in Zimbabwe. It is important from the outset to explain what Operation *Murambatsvina* entailed; unpack its objectives and justifications. The following press statement by the then chairperson running the affairs of the city of Harare constitutes a succinct overview of Operation *Murambatsvina* (hereafter, OM):

The city of Harare wishes to advise the public that in its effort to improve service delivery within the city, it will embark on Operation *Murambatsvina*, in conjunction with the Zimbabwe Republic Police (ZRP)... This is a programme to enforce by-laws to stop all forms of illegal activities... Harare was renowned for its cleanliness, decency, peace, tranquil environment for business and leisure; therefore we would like to assure all residents that all these illegal activities will be a thing of the past... I urge all organizations and residents to cooperate during this on going exercise, which is intended to bring sanity back to the city of Harare.¹

The purported objective of OM was according to the government of Zimbabwe (hereafter, GoZ) a noble one, one which was clothed under the mantra of urban beautification. No sooner had the OM started however, than Zimbabwe experienced one of her greatest catastrophes in living memory². Described by Oskar Wermter, a priest in Harare as “social engineering with sledgehammers”³, OM resulted in the demolition of

¹ Her name is Sekesai Makwavarara and the speech was published in *The Herald (Zimbabwe)*, 25 May, 2005.

² “Things are definitely falling apart; I cannot believe what I am seeing. I am old and have seen a lot, but I cannot believe what is happening to this country”. This was a woman who was quoted in a report by Action Aid International. ‘*Burning down a house to kill a rat*’ Demolitions in Zimbabwe, July 2005 page 5.

³ Christina Lamb, *The Sunday Times*, June 19, 2005 Priests told: don’t aid ‘filth’

homes, outbuildings, informal business premises and vending sites in all major cities and towns in Zimbabwe.

OM started on 19 May 2005 and ended in July of the same year. The demolitions and mass evictions were spearheaded by heavily armed army and police officers⁴. Bratton and Masunungure noted that “those who were evicted were instructed to return to their “homes” in Zimbabwe’s rural areas regardless of whether they were born and bred urbanites or second- or third-generation descendants of immigrants from Malawi and Mozambique” (Bratton, and Masunungure, 2006: 26)

In the report by the United Nations (UN) special envoy Anna Tibaijuka, it was approximated that around 700,000 people in cities and towns across the country lost their homes, their source of livelihood or both. Indirectly, a further 2.4 million people were affected in varying degrees⁵. Further, in her report, the UN’s special envoy stated that:

Hundreds of thousands of women, men and children were made homeless, without access to food, water, sanitation and health care. Education for thousands of school age children [was] disrupted. Many of the sick, including those with HIV and AIDS, [could not] have access to care. The vast majority of those directly and indirectly affected are the poor and disadvantaged segments of the population. They are, today, deeper in poverty, deprivation and destitution, and [were] rendered more vulnerable.⁶

⁴ According to an official report, “Police had been approached by local authorities to help in enforcing Council by-laws, which were being ignored... (and) to relocate street kids, vagrants, touts and vendors who were causing chaos in town.” Zimbabwe Republic Police, “Zimbabwe Republic Police Response to Allegations of Deaths Suffered during Operation *Murambatsvina*/Restore Order,” (Harare, August 2005).

⁵ United Nations, Report of the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation *Murambatsvina* by the UN Special Envoy on Human Settlements Issues in Zimbabwe, Mrs. Anna Tibaijuka (New York, United Nations, July 18, 2005) p.34

⁶ United Nations, Report of the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation *Murambatsvina* by the UN Special Envoy on Human Settlements Issues in Zimbabwe, Mrs. Anna Tibaijuka (New York, United Nations, July 18, 2005), p.7.

In response, the GoZ dismissed the report as outright political machinations by Anna Tibaijuka. In a point of fact, the Minister of Defence Sydney Sekeramayi accused Ms. Tibaijuka of “whipping up the international community’s emotions and sending a wrong message about Zimbabwe”.⁷ And the Minister of Foreign Affairs Simbarashe Mumbengegwi was categorical in rubbishing the UN report on OM as prejudiced and out of touch with the realities. The Minister of Foreign Affairs further remarked that “throughout the report, submissions by the government are consistently referred to as ‘allegations’ while those of the opposition...are taken as statements of fact.”⁸

Of note, OM was launched shortly after the March 2005 parliamentary elections. The Movement for Democratic Change (MDC) won 26 of 30 parliamentary seats in major towns and cities,⁹ a clear testament that these urban areas, which were most affected by OM were actually opposition strongholds. Given that, Bratton and Masunungure argued that “there is reason to suppose that the crackdown constituted a form of collective punishment” (Bratton and Masunungure, 2006: 26). In the “opposition circles”¹⁰, OM was also seen as a deliberate “attack on the poor, a strategy to pre-empt the threat of social unrest in light of economic hardship in Zimbabwe”¹¹ by the GoZ. To dispel these allegations, the GoZ embarked on a “series of desperate but well-calculated damage control exercises”¹². Of note, the GoZ launched a corrective project to build new houses for the

⁷ “Annan May Take Up Mugabe Invite,” *The Scotsman* (United Kingdom), July 26, 2005.

⁸ “Mugabe Hoping to Sidestep Mbeki and Annan,” *Sunday Independent* (South Africa), July 24, 2005. Zimbabwe’s Ambassador to the UN also branded the report “biased and exaggerated,” *BBC News*, July 27, 2005.

⁹ “MDC retains urban support”, *The Daily Mirror* (Zimbabwe), 1 April 2005

¹⁰ In opposition circles I mean the opposition political parties such as the MDC and civil society organisations such as Crisis In Zimbabwe Coalition.

¹¹ Centre for Housing Rights and Evictions, Global Survey report number 10 page 37

¹² Burning down the house to kill a rat, Action Aid report June 2005 p.7

evicted. This unbudgeted¹³for project was code-named Operation *Garikai* (Live Comfortably)¹⁴.

It is important to realise that demolitions and forced evictions are not only peculiar to Zimbabwe, but have occurred in other parts of the world such as Cape Town, Nairobi, Jakarta, Narmadar and Rio de Janerio. Centre on Housing Rights and Evictions (COHRE)¹⁵, noted that “the Government of Nigeria is consistently one of the worst violators of housing rights in the world, with over two million people forcibly evicted from their homes in different parts of the country since 2000”.¹⁶ Reminiscent of the GoZ’s habit of not compensating the displaced, it was also noted by COHRE that in Nigeria “over the last fifteen years, evictions often have been undertaken without the provision of legal recourse, compensation, or alternative housing and land to victims”.¹⁷ It is not the intention of this research paper to make a comparative study but these concrete indicators show that there are challenges in claiming rights under an authoritarian rule.

In the light of the above, the study also looks at the mechanisms that were available for protection of human rights during OM, both legal and non legal and at both the domestic and international levels. Lessons learnt from this study forms the basis for the recommendations and the conclusions of the research.

¹³ see statement by the then Finance Minister Herbert Murerwa in Parliament, reported by *The Herald* (Zimbabwe), 7 July 2005

¹⁴ “Msika Officially Launches Operation Garikai,” *The Herald* (Zimbabwe), June 30, 2005

¹⁵ COHRE is “a leading international human rights organisation campaigning for the protection of housing rights and the prevention of forced evictions”, <http://www.cohre.org/aboutus>

¹⁶ Amnesty International and Centre on Housing Rights and Evictions, “Forced evictions reach crisis levels in Africa: More than 3 million evicted since 2000” [media release] (4 October. 2006), http://www.cohre.org/view_page.php?page_id=257 (http://www.cohre.org/store/attachments/Global_Survey_10.pdf)

¹⁷ Centre on Housing Rights and Evictions (COHRE), *Evictions Monitor* [pdf on website], vol. 1 no. 3, (August 2005), http://www.cohre.org/view_page.php?page_id=176

1.2 RESEARCH RELEVANCE AND JUSTIFICATION

Ramcharan observed that the “human rights movement is swimming against strong currents of barbarism and bad governance” (Ramcharan, 2008:143). Most African countries “are living through a human rights crisis” (Heyns and Steffszyn, 2006: 186). Zimbabwe is one of those countries. OM resulted in a human rights crisis of national proportion because more than 700 000¹⁸ people from all major cities and towns were left without homes or sources of livelihood or both.

While a lot of reports chronicling the social and economic effects of OM were released by many organisations such as the United Nations, Action Aid International, International Crisis Group among others, little has been said on the potentials and limitations of the displaced to effectively claim their rights under authoritarian rule. The work contained in this study will try to rethink the alternative politics of claiming rights under authoritarianism and address these challenges to mitigate the prevalent culture of impunity in Zimbabwe. For Barnhizer:

The human rights regime is not working as an effective system because virtually no one is afraid of the possibility of sanctions, and many of the violators feel that the gains from their actions outweigh the unlikely legal consequences that might ensue (Barnhizer, 2001:1)

In the field of claiming rights, human rights non-governmental organisations (human rights NGOs) played fundamental roles and that is the reason why this study is largely based on the roles of human rights NGOs. Of note, human rights NGOs mostly “build the records of human violations” for future purposes (Barnhizer, 2001:11). In this regard this research paper will also be used as an information tool to assist both human rights NGOs in strengthening their information data bases, strategies and

¹⁸ United Nations, Report of the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe, Mrs. Anna Tibaijuka (New York, United Nations, July 18, 2005)

tactics in the incessant struggle for claiming rights under an authoritarian rule.

It is important to note that although this paper focused on the work of human rights NGOs in Zimbabwe in general, it paid a special focus to the role played by the Zimbabwe Lawyers for Human Rights (ZLHR) during OM. ZLHR played a crucial role during OM by fighting for people's rights, among them, the right to remedy, protection of vulnerable groups' rights, right to life and livelihood. A potted description of ZLHR is captured below:

ZLHR is a not-for-profit human rights organization whose core objective is to foster a culture of human rights in Zimbabwe as well as encourage the growth and strengthening of human rights at all levels of Zimbabwean society through observance of the rule of law. ZLHR is committed to upholding respect for the rule of law and the unimpeded administration of justice, free and fair elections, the free flow of information and the protection of constitutional rights and freedoms in Zimbabwe and the surrounding region. It keeps these values central to its programming activities¹⁹

ZLHR sought many High Court relief orders to stop the OM albeit with little success. The lessons learnt by ZLHR and other civil formations in Zimbabwe will go a long way in educating them and a host of other human rights NGOs operating under authoritarian rule world over.

1.3 RESEARCH OBJECTIVE

The main objective of this research paper is to assess limitations of legal and non-legal mechanisms in claiming human rights under an authoritarian rule. This may assist the human rights NGOs in strengthening their tactics and strategies in claiming rights. In the process of assessing the limitations of legal and non-legal mechanism, the paper will inform human rights NGOs and the human rights defenders on the pitfalls of claiming rights under au-

¹⁹ the source of that information is ZLHR webpage ; www.zlhr.org.zw

thoritarian rule. This will raise their awareness and help in improving their potential in claiming rights under authoritarian rule.

1.4 RESEARCH QUESTION

The research question is; what were the potential and challenges in claiming human rights through legal institutions in the context of OM in Zimbabwe and what does this tell us more generally about the limitations of claiming rights in an authoritarian state?

1.4.1 Sub-Questions

- a) How (in)effective were local remedies in seeking a redress to forced evictions and destruction of property?
- b) How did the African Commission on Human and People's Rights and United Nations respond to OM?
- c) What other non-legal strategies were resorted to by human rights NGOs and human rights advocates to claim rights during OM?

1.5 RESEARCH METHODOLOGY

The research is mainly qualitative and relied extensively on secondary data; though primary sources such as interviews were also used. The research methodology section consists of three parts namely, methods of data collection, sources of data and a case study.

1.5.1 Methods of Data Collection

The triangulation method was employed to collect data from different sources and to expose any different perceptions. One of the methods was carrying out semi-structured interviews. Seven interviews were carried out with human rights NGOs²⁰ working in Zimbabwe. I used judgemental/purposive sampling in selecting the organisations and individuals to interview in those respective organisations because I wanted

²⁰ These are ZLHR, Crisis In Zimbabwe Coalition, Restoration for Human rights In Zimbabwe, Zimbabwe NGO Human Rights Forum, Zimbabwe Human Rights Association, Youth Initiative for Democracy in Zimbabwe and Media Institute for Southern Africa- Zimbabwe

to target organisations which were actively involved in defending human rights during OM. I also carried out interviews with some victims of OM

Interviews with leaders of opposition political parties in Zimbabwe were carried out. In this regard, I interviewed representative of the Movement for Democratic Change (MDC). I carried those interviews conscious of the fact that most of their supporters were the victims of OM and it was easy to approach them as compared to Zimbabwe African National Union (ZANU PF), the ruling party.

1.5.2 Sources of Data

On documentary sources, I used both electronic and print media. There are a lot of reports, compendiums and studies on OM carried out and produced by human rights organisations including: ZLHR, Zimbabwe NGO Forum, Zimbabwe Human Rights Association, Human Rights Trust of Southern Africa, Action Aid, Solidarity Peace Trust, Combined Harare Residents Association, Amnesty International, International Crisis Group, Human Rights Watch, Centre for Justice, Zimbabwe Women Lawyers Association²¹ among others. I also used various academic books²² as secondary sources of data.

On-line/Web resources were also used to collect some data on OM. I managed to do a media content analysis to capture the responses from the media during OM. In doing the analysis I looked into both the local and international Media. I also used my lecture notes as sources of data.

1.5.3 Case Study

I was attached at the Zimbabwe Lawyers for Human Rights (ZLHR)²³ as an intern from 8 July 2008 to 29 August 2008. I chose to do my internship with ZLHR because it took the lead in public interest litigation, helping defenceless and vulnerable people to access and seek protection from the law during OM. ZLHR has already been introduced in the research

²¹ For the reports see the reference section

²² See the reference section

motivation and justification section. The aims and objectives of ZLHR are annexed.

1.6 RESEARCH LIMITATIONS

The political climate in Zimbabwe deteriorated drastically after the 29 March 2008 harmonised polls. Political violence, killings, abductions and forced disappearances became the order of the day. A cloud of fear and suspicion eclipsed the nation. It was very risky and dangerous to carry out a research on sensitive issues such as human rights abuses in Zimbabwe. Moreover, NGOs were banned from operating. I wanted to interview and conduct focus group discussions with the affected persons but because of the volatile situation then I had to rethink my initial plan to visit places such as Porta Farm and Hatfield Extension in Harare where most affected persons stay.

As a social justice and human rights defender, I had the opportunity to work with the ZLHR during their research on the effects of OM in 2006. Building from this relationship, I had easy access to a lot of their reports. However, this background may therefore pose elements of subjectivity in my analysis. On the other hand it was also difficult to meet GoZ officials to get first hand information in regard to the OM. I had to rely on secondary sources, which are usually biased.

1.7 STRUCTURE OF THE PAPER

The paper contains four chapters. The next chapter is a brief discussion of concepts, which provides the framework for theorising and analysing claiming of rights under an authoritarian rule. Chapter three highlights the research findings and analysis focusing on the mechanisms resorted to and their efficacy and limitations during OM. Chapter four focuses on conclusions and recommendations

CHAPTER 2 –CONCEPTUAL FRAMEWORK

2.1 Introduction

This section sets out a conceptual framework which embraces the concepts and tools upon which the academic analysis of the research paper is based on. The study is basically about claiming rights in an authoritarian state. In the context of this study the concept “development” is largely associated with authoritarian development, which is clearly explained in this chapter. By its very nature authoritarian development is an affront to the human rights corpus. In the light of the foregoing the discourse of claiming rights becomes topical. In most cases, the right to remedy, right to participation, right to life and livelihood and right to development and self determination and rights of the vulnerable groups are eroded by authoritarian development. It therefore becomes important to focus on the rights-based approaches to enhance the protection of all human rights. It is important, however to note that all concepts mentioned in this chapter are largely normative. The practical implications of these concepts will be analysed in the following chapters.

2.2 Authoritarian Development

A moral critique of authoritarian development shows that it is mainly not in the best interest of the intended beneficiaries. Salih notes that authoritarian development denies peoples the right to livelihood resources in the name of progress (Salih, 2001). He further asserts that “authoritarian development represents a brutal attack on people’s sources of sustenance, which is basically negation of the right to livelihood” (Salih, 2001: 43). Salih went on to unpack the major features of authoritarian development. It is exclusionary in nature. It excludes the intended beneficiaries who are in most cases the poor and those lagging behind in terms of human development. Balakrishnan Rajagopal writing on the “violence of development” pointed out that “development *cleansing* may well constitute

ethnic cleansing in disguise, as the people dislocated so often turn out to be from minority ethnic and racial minorities”²⁴

The approach of authoritarian development is basically “top down and is implemented without consultation or involvement of the local communities” (Salih, 2001: 43). Furthermore, authoritarian development is characterised by the use of coercive forces “including the police and the army to evict those who oppose evacuation” (ibid). There is no restorative justice in the form of compensation to those affected by authoritarian development. The last major feature of authoritarian development is that it culminates in egregious violations of human rights and fundamental freedoms of “those evicted by force and denies them the rights to self development” (ibid). Centre for Housing Rights and Evictions (COHRE) notes that “forced evictions are unjust, illegal, and counterproductive to human development”²⁵

2.3 Human Rights-based approaches

The human rights-based approach to development (HRBA) is basically “a methodology, a process and a goal in development work”²⁶. It is important however, to state that there are many definitions of human rights-based approach to development²⁷. International Human Rights Internship Program (IHRIP) and Forum-Asia provided a clearer and concise definition:

a rights-based approach is founded on the conviction that each and every human being, by virtue of being human, is a holder of rights. A right entails an obligation on the part of the government to respect, promote, protect, and fulfill it. The legal and normative character of rights and the associated governmental obligations are based on international human rights

²⁴ Balakrishnan Rajagopal, August 9,2002, “The Violence of Development” *The Washington Post*

²⁵ Violations of Human Rights 2003-2006 Global Survey on Forced Evictions No. 10 page 5

²⁶ It’s a definition by an international human rights non-governmental organisation called Equal In Rights. For more about the organisation go to http://www.equalinrights.org/content/hrba_approach.html

²⁷ A presentation of current RBA definitions can be accessed at the InterAction website, www.interaction.org

treaties and other standards, as well as on national constitutional human rights provisions. Thus a rights-based approach involves not charity or simple economic development, but a process of enabling and empowering those not enjoying their ESC [economic, social and cultural] rights to *claim* their rights.²⁸

It must be highlighted that the definition of HRBA is “highly context-based”²⁹. In the context of this paper, rights based approach to development is the normative narrative of putting human rights agenda at the epicentre of development. This view point is supported by Filmer-Wilson who asserted that Human Rights-Based Approach to development puts “human rights at the heart of human development” (Filmer-Wilson, 2005: 213). I will examine, through analytical lenses of human rights the government policy actions focusing on key features of HRBA such as participation, empowerment, non-discrimination and accountability. In addition, Mary Robinson noted that “a human rights approach adds value because it provides a normative framework of obligations that has legal power to render governments accountable.”³⁰ Furthermore, development under the prism of HRBA is supposed to benefit the most vulnerable and excluded members of the societies.

2.4 Human rights based Non-Governmental Organisations (human rights NGOs)

Human rights NGOs are ordinarily by far the most effective protection mechanism for human rights. Further, human rights NGOs can be considered as one of the key drivers in the proliferation of the human rights

²⁸ International Human Rights Internship Program and Asia Forum for Human Rights and Development, Circle of Rights: Economic, Social and Cultural Rights Activism: A Training Resource (2000), the module is entitled :Developing a rights-based perspective

²⁹ This is according to a human rights organisation called Equal in Rights, see the reference section for more information

³⁰ Mary Robinson, speech to World Summit, Johannesburg, South Africa, August. 28, 2002.

discourse and practise. These NGOs seek to create settings in which a human rights culture flourishes (Welch, 2004: 207, Duane 1999). Their functions are multifarious, ranging from naming and shaming, awareness raising and are involved in public interest litigation among many others. Briefly put they cover all the space and restrain authorities from breaching human rights in future. Human rights NGOs also make civic legal claims through the courts, civic political claims by lobbying the state and civic social claims by working with the media to raise awareness (Handmaker, 2008).

2.5 Legal Framework

The demolitions of people's homes and forced evictions usually culminate in egregious violations of a host of human rights. Suffice to mention that in 1993 the United Nations (UN) Commission on Human Rights declared that "forced evictions are a gross violation of human rights."³¹ Furthermore, in 1998, the UN Sub-Commission on the Protection and Promotion of Human Rights reaffirmed that:

the practice of forced eviction constitutes a gross violation of a broad range of human rights; in particular the right to adequate housing, the right to remain, the right to freedom of movement, the right to privacy, the right to property, the right to an adequate standard of living, the right to security of the home, the right to security of the person, the right to security of tenure and the right to equality of treatment.³²

However, should it become necessary to forcibly evict, such evictions must answer to the requirements of human rights. The following are the relevant safeguards³³:

³¹ 55th session Sub-Commission on the Promotion and Protection of Human Rights 28 July-15 August 2003

³² 50th session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities Geneva, 3 - 28 August 1998

³³ General Comment 7 of International Covenant on Economic, Social and Cultural Rights (ICESCR).

- a) There must be an opportunity for genuine consultation with those affected³⁴.
- b) Prior adequate notice should be provided before the evictions³⁵.
- c) Information on the proposed evictions should be made available in reasonable time to those affected³⁶.
- d) Government officials should be present during the evictions³⁷.
- e) Evictions should not take place in particularly bad weather or at night³⁸.
- f) Legal remedies should be available to those affected and,
- g) Evictions should not result in individuals being rendered homeless, prior alternative accommodation should be secured³⁹.

These safeguards came as a realisation that forced evictions often constitute gross violation of a broad range, if not all human rights. The letter and spirit of the safeguards is accordingly to halt the incidence of forced evictions.

In relation the Economic Social and Cultural Rights, it must be explained that in terms of section 111B of the Constitution of Zimbabwe, international instruments only form part of domestic law not just after ratification but also after domestication. Zimbabwe subscribes to the dualist system as opposed to monism. The legislature is supposed to enact such treaty into law. Though ratified in 1991, the International Covenant on Economic Social and Cultural Rights (ICESCR) has not yet been domesticated in terms of the constitution of Zimbabwe.

Most human rights are usually violated during demolitions and mass forced displacements. It is important, however, to focus on a selected number of rights which are mostly violated during mass forced evictions. In this regard I will borrow from Bakakrishman Rajagopal who noted five “human

³⁴ *ibid*

³⁵ *ibid*

³⁶ *ibid*

³⁷ *ibid*

³⁸ *ibid*

³⁹ *ibid*

rights challenges” that arise in relation to development-induced development (Robinson, 2003:14). The five are, the right to development and self determination, right to participation, right to life and livelihood, rights of vulnerable groups and right to remedy.

2.5.1 Right to Development and Self Determination

The Declaration on the Right to Development was adopted in 1986 by the UN General Assembly. The right to development can only be fulfilled if all human rights are comprehensively realised, based on the principle of equity and social justice. In terms of article (Art.) 9 on the declaration of the right to development, all aspects of the right to development are indivisible and interdependent and each of them should be considered in the context of the whole. By Art. 2 (1) of the declaration the human person is the central subject of the right- as its beneficiary; s/he must actively participate in its realisation. In terms of Art. 2 (3) states have a duty to formulate appropriate development policies. Finally under Art. 5, states must take steps to eliminate massive and flagrant violations of human rights, in order for this right to be realised.

Robinson noted that the declaration affirms the right of people to self determination and “their inalienable right to full sovereignty over all their natural wealth and resources” (Robinson, 2003: 14). Robinson also noted that in Rajagopal’s understanding, such language makes it “clear that local communities and individuals, not states, have the right to development” (ibid)

2.5.2 Right to Participation

Robinson noted that “if self-determination is the right to say whether development is needed or not, participation rights begin to be relevant when development begins” (Robinson, 2003: 14). The right to participation finds expression in Universal Declaration on Human Rights (UDHR),

International Covenant on Civil and Political Rights (ICCPR) and ICESCR⁴⁰. More concretely, the 1991 International Labour Organisation (ILO) Convention Concerning Indigenous and Tribal Peoples in Independent Countries 169 Art. 7 articulate that the indigenous and tribal peoples be at the centre of all stages of development initiatives that affect them (Aird 2001). It is also important to note that forced displacement can also lead to “permanent disenfranchisement and loss of one’s political voice” (Robinson, 2003:13). This move suffocates the right to participation in political processes for the displaced persons.

2.5.3 Right to Life and Livelihood

The right to life finds protection under section 12 of the Zimbabwean constitution, Art. 6 of ICCPR, Art. 3 of UDHR and Art. 4 of African Charter on Human and Peoples Rights (ACHPR). From this array of sources it is only the Zimbabwean constitution that permits derogations. The right contains a lot of dimensions such as the right to minimum necessities of life and the right to livelihood. **In Olga Tellis and others v. Bombay Municipal Corporation and others**⁴¹, the court ruled without hesitation that the right to life included the right to livelihood. If that was not so, the court reasoned, it could be open to the state intending to take away lives to only compromise the right to livelihood and ultimately achieve its objectives. Apart from these emerging dimensions, it casts an obligation upon the state to respect the lives of its citizens and also to protect such lives.

There is also the Right to Shelter. This right finds expression in Art. 11 of ICESCR, Art. 25 of UDHR and Art. 16 of the protocol to the ACHPR on the Rights of Women in Africa. The ACHPR has no equivalent provision although the African Commission on Human and Peoples Rights (the Commission) has held in **Serac⁴² and another vs. Nigeria**⁴³ that a pur-

⁴⁰ Fact sheet No. 29 Rev.1, The International Bill of Rights of Human Right

⁴¹ (1985) 3 SCC 545),

⁴² Serac stands for Social and Economic Rights Action Center

⁴³ (2001) AHRLR 60 (ACHPR 2001).

positive reading of the right to life guarantees this protection. The Constitution of Zimbabwe also does not have an equivalent provision. Owing to the provisions of section 111B, none of these instruments could be directly enforced in the courts⁴⁴. There was nothing however to stop the court from a purposive reading of section 12 which protects the right to life in protecting the right to shelter. Linked to the rights linked to the right to life and livelihood is the right to right to property It finds expression in Art. 17 UDHR, Art. 14 ACHPR and section 16 of the constitution of Zimbabwe. The Supreme Court of Zimbabwe under the Chief Justice Anthony Gubbay religiously affirmed the centrality of this right in any modern democracy⁴⁵

2.5.4 Rights of Vulnerable Groups

There is a general consensus by various scholars that the “weakest demographic segments” of the population are the most affected by forced evictions and demolition of homes. These segments include women, children, indigenous groups, HIV and AIDS patients, and the elderly. Robinson reveals that “human rights of vulnerable groups are protected generically in the International Bill of Human Rights” (Robinson, 2003: 15). The rights of indigenous groups are also guaranteed in the International Labour Organisation (ILO) Convention 169. Other instruments which protect the vulnerable groups include Universal Declaration on Human Rights (UDHR) Art. 2, ICCPR Art. 2 and ICESCR Art. 2, which affirms the principle of non-discrimination. The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) also affirms the principle of non-discrimination.

⁴⁴ Constitution of Zimbabwe As amended at the 14 September, 2005

⁴⁵ See *Davies and others v Minister of lands, Agriculture and Water Development* 996 (1) ZLR 681 (S).

2.5.5 Right to Remedy

Rajagopal observed that “a right without a remedy is not a right at all” (Rajagopal, 2001: 11). The right to remedy is affirmed in Art. 8 of UDHR and in Art. 2 of ICCPR. As Rajagopal notes:

often, due to the nature of the development process, the project-affected peoples come to know about actions that have been taken without their knowledge or consent. Therefore, they need a quick and efficacious remedy that can halt on-going violations and future ones. The right to remedy is therefore crucial ...to all development projects (ibid).

Further, Michael Cernea⁴⁶ being quoted by Robinson noted that the displaced “are supposed to receive compensation of their lost assets, and effective assistance to re-establish themselves productively; yet this does not happen for a large portion of outees” (Robinson, 2003:11)⁴⁷. These are some logical reasons why the right to remedy must always be protected and observed.

The next chapter unpacks the research findings and will answer the research question by articulating the mechanisms resorted to during OM and explaining their limitations.

⁴⁶ Michael Cernea, is a sociologists based at the World Bank

CHAPTER 3- RESEARCH FINDINGS AND ANALYSIS: The mechanisms resorted to and their efficacy and limitations

3.1 Introduction

The research findings reveal that in claiming rights for the victims of Operation *Murambatsvina* (OM) ,Zimbabwe Lawyers for Human Rights (ZLHR) and other human rights advocates resorted to both legal and non legal mechanisms. The limitations encountered by the human rights non-governmental organisations (human rights NGOs) clearly showed that claiming rights under an authoritarian rule ceases to be a matter of the letter of the law. Indeed it ceases to be a question of rights only but of politics as well. A detailed survey of how each of the mechanisms employed responded puts the discussion into proper perspective.

3.2 Legal responses

Legal responses at local level centred on litigation in the Zimbabwean courts. At international level, there were legal responses from the African Commission on Human and Peoples Rights (ACHPR)

3.2. 1 Human rights NGOs

In an Interview with ZLHR Programmes Coordinator Mr O. Saki on 15 August 2008 he indicated that:

during OM recourse was sought from the courts. This was the immediate mechanism available to claim the right to remedy. The judiciary had by that time undergone a massive partisan shake-up, following the resignation of a host of judges who had opposed the land reform programme.

This was particularly in relation to the Supreme Court of Zimbabwe. The High Court of Zimbabwe on the other hand consisted of very green judges who had just been recipients of farms during the land reform programme⁴⁸.

⁴⁸ See *Burning down the house to kill a rat* : Demolitions in Zimbabwe, Action Aid International, June 2005

Those benefits were not the only factor in the equation but most of the judges knew that if there had been no resignations, they probably would not have attained judicial office. They had so much to thank the establishment for and confronting the executive at this delicate juncture never fell into the equation.

At law, various remedies were potentially available to the victims. In common law, victims could be granted spoliation orders⁴⁹ for having been despoiled of their properties. Spoliation orders would have resulted in those forcibly evicted being restored back to their properties. But in most cases during OM evictions were immediately followed by demolitions thereby denying people who could have successfully sought spoliation orders their right to property and shelter.

At the statutory level interdicts could be sought and granted on the basis that the evictions were not in accordance with the law. Most importantly both the Zimbabwean High Court and Supreme Court could be petitioned to deal with the matter from a direct human rights based perspective. On paper a number of human rights remedies were available and they were such as to put a halt to the OM or at least lead to appropriate reparations.

The first problem arose concerning the lower magistrate's courts. These are by far the most "dependant" courts in Zimbabwe as they are not recognised as forming part of the judiciary by the constitution. Sadly these courts have the most judicial officers and are the most economically accessible. In the Zimbabwean constitution, the office of tenure of judges is protected⁵⁰. Unfortunately, for magistrates in Zimbabwe their office is not even statutorily guaranteed. They form part of civil service meaning that in theory they are more pliant to executive influences. Unfortunately, for magistrates since they form part of civil service, if they are deemed

⁴⁹ Paralegal advisers defines it an order that an item of property must be returned to its owner immediately

⁵⁰ Constitution of Zimbabwe Constitution of Zimbabwe As amended at the 14 September, 2005 (up to and including Amendment No. 17) section 86

undesirable by the executive because of issuance of what are perceived to be unfavourable decisions, they can be transferred to other state departments. These intimidating situations are conducive for authoritarian development because there is no effective checks and balances system in the judiciary to ensure that government implements democratic development programmes.

The magistrates dealt with the first cases and granted relief in most of them⁵¹. The executive however quickly descended upon these courts and ordered them to stop dealing with issues arising from the OM⁵². These are elements of authoritarian development where there is no room for realisation and protection of the right to remedy. The magistrates complied thereby compromising the administration of justice in the process.

This problem with the magistrate courts in Zimbabwe seem to arise from two factors. The first is the conceptual inadequacy of the magistrate courts in their establishment. As has been remarked, constitutionally they do not form part of the judiciary and are thus not entitled to independence proclaimed in section 79 of the constitution of Zimbabwe. The second issue centres on the general culture of ambivalence to human rights issues. The executive issued orders because it could not countenance opposition to its policies more so by officials that it felt it was responsible for their upkeep. This philosophy is clearly in sync with the totalitarian nature of the leadership in Zimbabwe.

Then there were cases that were taken to the High Court⁵³ and how I wish that chapter never formed part of Zimbabwe's legal history. The following were the cases

⁵¹ Zamchiya and Anor v Officer in Charge Goromonzi Police Station and Ors Case no 51/05 and Tafira and Ors v Harare City Council and Ors Case No 16 5996/05

⁵² Sentiments echoed by Tafadzwa Mugabe, a leading lawyer with ZLHR on 16 August 2006

⁵³ This was done by ZLHR and the service was pro bono.

- ✓ **Dare Remusha Housing Cooperative v The Ministry of Local Government, Public Works and Urban Development and Ors HH2467/05⁵⁴**
- ✓ **Batsirayi Children's Care v The Ministry of Local Government, Public Works and Urban Development and Ors HH⁵⁵**

Unfortunately in both of the cases, the victims of the OM were defeated on technicalities. The facts of the first case were as follows. The applicant was a Housing Cooperative which had been allocated 2000 stands by the Ministry of Local Government on which to build houses for its members on land called Hatcliff Extension. The agreement between the ministry and the cooperative was that its members were supposed to build houses subject to approval of their housing plans. Unfortunately, the members did not obtain approval thereby breaching contracts⁵⁶. As a result, the municipality sought to evict the members of the cooperative in a typical case of authoritarian development because it led to egregious violation of rights of the displaced. The members as a protective measure approached ZLHR seeking temporary legal redress. These members sought a spoliation order or an interdict. However, the court ruled that they had breached their contracts with the Harare municipality. In the light of the foregoing, human rights based approach by the court could have protected the residence of Hatcliff Extension because such approach would have put human rights at the centre of its decisions.

The second case concerned a children's Trust which provided school fees and supplementary feeding to orphaned children. It was also evicted from its offices and sought a spoliation order. Batsirayi Children Care's relief programmes were interrupted thereby putting orphans into jeopardy. The rights of this vulnerable group were attacked under the pretext of

⁵⁴ See Dare Remusha Co-operatives vs. Minister of Local Government & Others HC 2467/05 (Supreme Court Appeal No. 169/05).

⁵⁵ Batsirayi Children's Care vs. The Minister of Local Government, Public Works & Urban Development & 4 Ors HC 2566/05

⁵⁶ *Burning down the house to kill a rat*, Action Aid International June 2005 report on Demolitions in Zimbabwe page 32

cleaning up cities. Understandably, the children's Trust made an urgent chamber application. However, the Judge did not decide on whether the application was urgent but decided to postpone the matter for various reasons on various times on June 10, on June 17 and on June 23 of 2005.⁵⁷

These cases it appears failed for the following reasons;

- 1) There is no separation of powers in the machinery of the government in Zimbabwe. There is excessive interference by the executive in the judiciary system. It appears that the government of Zimbabwe (GoZ) did not inculcate the Latimer House Guidelines into her constitution in order to enhance and deepen the separation of powers doctrine. Latimer House Guidelines are a body of principles adopted at Latimer House in the United Kingdom on 19 June 1998 by the Commonwealth Heads of States to strengthen parliamentary supremacy and judicial independence in their respective countries.
- 2) Ever since the resignation of senior judges during the fast track land reform in Zimbabwe and the replacement by politically compliant judges the High Court has allegedly shown its gratitude to the GoZ by towing its line. It certainly did not want to be seen to be opposing the executive on such a delicate issue which would confirm the executive's lack of proper human rights credentials.
- 3) The failure of the legal actions was as a result of the politicisation of the court by the executive. This is beyond doubt and evidenced by the fact that the High Court has still not determined some urgent applications filed during the period of OM⁵⁸. Those cases raised cogent issues that the court could not just disregard off hand.
- 4) No case was taken to the Zimbabwe Supreme Court. Precedent showed that if the court did not see dirty hands, it would hide behind some technicalities such as locus standi⁵⁹. The Supreme Court in Zimbabwe is politically compliant because of executive interfer-

⁵⁷ Public Interest Litigation: Operation Murambatsvina Cases, ZLHR File.

⁵⁹ According to a duhaime legal dictionary, locus standi is a right to address the Court on a matter before it.

ence in its operations. This has led to the erosion of human rights culture in the judiciary system.

ZHLR played a pivotal role in taking these matters up with the courts. Its activities reinforce the view that it is predominantly human rights NGOs which played a meaningful role in the protection of the rights albeit with mixed results. The reasons are varied. During a telephone interview on 16 August 2008 with Arnold Tsunga, a human rights lawyer, he noted that:

human rights NGOs have the technical and financial capacity to make their way through complex and expensive litigation mechanisms. They are also enlightened and possess the willpower to take authorities head on.....even in some cases where it is clear that no order will be forthcoming from the courts, litigation can be pursued for record purposes. Not only does this name and shame but it provides credible record should criminal proceedings be instituted at anytime in the future.

3.2.2 The legislative framework

OM came just after the controversial 2005 parliamentary elections in which the ruling party, Zimbabwe African National Union Patriotic Front (ZANU PF) had just defeated a divided opposition, Movement for Democratic Change (MDC). As a result the ruling party had a two thirds majority in parliament and the elected opposition members of parliament represented city constituencies. Two things were accordingly foreseeable.

- 1) That the opposition parliamentarians would raise the OM issue in parliament.
- 2) That the issue would fail.

Both happened.

The effect of the ruling party's two thirds majority was that it was able to entrench its authoritarianism in general and authoritarian development in particular. For example, supervisory/oversight role that parliament was supposed to adopt did not happen. The legislature was weak and the executive was not brought to account. It becomes very difficult to claim rights where the state has not only compromised them, but also has adequate parliamentary muscle to stifle dissent. In such circumstances right

gives away to might and principles bow down to principalities and authoritarian development becomes the order of the day owing to broken accountability systems.

Though OM issue was shot down in the parliament by alleged members of ZANU PF, the good thing was that it was raised and exposed the negative human rights record of the Government of Zimbabwe (GoZ). Further, the mere fact that it had to be shot down meant that the state would in future justify its actions before carrying them out. This would force GoZ to take human rights-based approaches to any future contemplated governmental action. Finally parliamentary debates provide a record in the form of the Hansard for future reference should it become important to reopen such issues.

3.2.3 African Commission on Human and Peoples Rights

ZLHR took up the matter to the African Commission on Human and Peoples Rights (hereafter, the Commission). This was made possible by the fact that the Commission has the power to hear and accept individual petitions, thus affording the right to remedy in cases of human rights violations. The issues of exhaustion of internal remedies however, potentially stood in the way. The Commission had previously handed down two seminal opinions on this potential stumbling block. In **Curtis Francis Doeblbler Vs Sudan**⁶⁰, the court held that none is obliged to pursue futile domestic remedies which have no prospect of success before having the right to approach the Commission. This meant that in view of the cold attitude by the High Court, nothing would stand in the way of justice in relation to the hearing of the matter. In **Pourh Moorhrit Vs The Gambia**⁶¹ the Commission had come to the conclusion that constitutional remedies were not available to the poor men in the streets. This meant that any charitable organisations could directly champion the rights of the poor

⁶⁰ Communication 236/2000

⁶¹ (2003) AHRLR 96

before the Commission after simply arguing that those people had no access to expensive local remedies. OM having been an attack on the rights of the poor and the vulnerable was clearly covered. This allowed ZLHR urgent audience before the Commission.

In **ZLHR and SAHRIT v Zimbabwe**⁶² an application was made to the Commission through its complaint procedure which allows any person to bring a complaint against his government where it allegedly violates human rights enshrined in the African Charter on Human and Peoples Rights. The applicants sought the following provisional namely that:

- ✓ HIV/AIDS victims who had been displaced be allowed access to anti retroviral drugs⁶³ (rights of vulnerable group).
- ✓ Organisations that provided anti retroviral drugs be allowed unimpeded access to patients⁶⁴.
- ✓ Satellite schools be opened in order to allow children access to education⁶⁵.
- ✓ That the GoZ provide interim measures to protect the displaced⁶⁶.

A provisional order was granted in communication reference number **ACHPR/B/PROT/ZIM/RK**. In a later communication addressed to the Commission by the two applicants, it was noted that the GoZ was yet to implement the provisional measures. In sum it can be noted that the Commission is still to give final communication on the matter. Apart from the inherent structural weakness of the Commission, it can also be interpreted that the Commission is not treating this matter seriously because authoritarian development is rampant in Africa. So Zimbabwe is not an exception.

The GoZ quite predictably opposed the matter and was not happy at the recommendations articulated by the Commission⁶⁷. Even if it were to be

⁶² Communication Number 314/05, and SAHRIT stands for Human Rights Trust of Southern Africa

⁶³ *ibid*

⁶⁴ *ibid*

⁶⁵ *ibid*

⁶⁶ *ibid*

rendered the problems would arise in enforcement as the Commission does not have enforcement mechanisms⁶⁸. The GoZ had also frustrated a special envoy, Bahare Tom Nyanduga, who was sent by Alpha Konare, the then chairperson of the Commission on June 29 2005. The GoZ cited some protocol technicalities to bar the special envoy from assessing the situation during the OM⁶⁹. This was a clear testimony that authoritarian development results in a human rights crisis, which is too embarrassing for international democratic scrutiny. The OM issue however could in turn be resolved at a political level by the executive council of the African Union (AU) or the assembly of heads of states. Thus the GoZ would not be able to manipulate the Commission as it does its own courts.

Another point merits further consideration. The Commission takes long to deliver its findings. This delay is characteristic of the Commission and constitutes its major drawback. In Serac⁷⁰ and Anor Vs Nigeria⁷¹ it took the Commission three years to deliver its findings on a very urgent and delicate matter which like the OM not only affected a huge mass of people but also a host of their rights, notably the rights of vulnerable groups, right to life and livelihood, right to development and self determination, right to remedy among others⁷². When the findings finally came through, they were in the form of politely phrased requests for the government to stop further violations, compensate victims and bring to book the perpetrators.

⁶⁷ In an interview with Otto Saki who had represented ZLHR at the African Commission, 15 August 2008. I paraphrased the findings

⁶⁸ This point is illustrated by **Constitutional Rights Project v Nigeria Communication Number 60/91**. This was a petition to challenge a death penalty that was imposed in violation of due process. The Commission declared that there was a violation of the Charter and “recommended “that Nigeria free the petitioners. Mutua says this must be understood that the object of the commission is to create dialogue between parties leading to an amicable solution. The commission thus when making decisions starts from the presupposition that State Parties will obey its recommendations which precisely is not the case.

⁶⁹ African Union press release, 29 June 2005. Mugabe accused the AU at the Sirte summit of breaching protocol with the Nyanduga mission

⁷⁰ Serac stands for Social and Economic Rights Action Center

⁷¹ (2001) AHRLR 60

In terms of legal mechanisms the above are the ones that were resorted to. The general trend running was that of the asphyxiation of these mechanisms leading to them not achieving a very high success rate. Jeff Handmaker once remarked that “litigation alone is rarely useful – securing political will is far more significant”⁷³ He was correct. It would however be excessive for anyone to argue that the mechanisms totally failed. Of note is also the fact that the mechanisms seemingly do not have back up measures. They were clearly put in place on the assumption that rights would be breached but effective measures handed down. That does not seem to be the case in regimes, pursuing authoritarian development such as Zimbabwe. Rights are indeed breached and if that sounds bad, what is worse is that the remedies are either not forthcoming or if they are, are not given effect to.

3.3 Non Legal Responses

The non legal responses came largely from the human rights NGOs, the media, political bodies and the United Nations.

3.3.1 The human rights NGOs

Apart from helping in legal mechanisms the human rights NGOs had a direct role to play by using non legal mechanisms such as making civic political claims by lobbying the state and civic social claims by raising awareness through the media. There is a healthy body of human rights NGOs which includes National Association of Non-Governmental Organisation (NANGO), Zimbabwe NGO Forum, Zimbabwe Doctors for Human Rights, Law Society of Zimbabwe, ZimRights, Southern Africa Human Rights Trust (SAHRIT), Amnesty International, Crisis in Zimbabwe Coalition, Student Solidarity Trust, International Crisis Group, and Human Rights Watch, Zimbabwe National Student Union, Media Institute of Southern Africa-Zimbabwe among other NGOs. However, leading in

⁷³Jeff Handmaker. Lecture notes on Claiming Rights, ISS course 4303, Institute of Social Studies in the Hague, The Netherlands

public interest litigation and protection of human rights during OM was Zimbabwe Lawyers for Human Rights (ZLHR).

In an interview with Murombo Takura on 29 July 2008 in Harare, it became apparent that her husband's health deteriorated rapidly after the OM. He died within six months of the operation. What is most objectionable however is that the GoZ had not played a part in the provision of such services but was content with hampering the efforts of those that had. Anti retroviral treatment services are mostly provided by NGOs. It was reported that at Porta Farm in Harare, "four people died while being evicted from their homes and of those two were confirmed as suffering from AIDS"⁷⁴.

ZLHR assisted victims suffering from HIV/AIDS⁷⁵ who had been displaced and by that fact removed from institutions that provided medical attention to them. In doing this work, it was neither paralleled nor hindered. When it however went public about the numbers of victims affected, it invariably drew sharp criticism from the GoZ. This clearly shows that human rights abuses and the asphyxiation of remedies and defenders worsens under an authoritarian rule.

In assisting the victims of OM, ZLHR was also joined by the faith-based organisations. These faith based organisations released strong-worded press statements condemning the OM⁷⁶. Notably, on 15 June during a civil society meeting at Silveria House, just outside Harare, Reverend Kuchera informed the GoZ officials that OM was both "unbelievable and barbaric": "It is like destroying the house to kill a rat"⁷⁷. This was basically naming and shaming the perpetrators of human rights violations and an indictment that OM did not take rights based approach in its conceptual and

⁷⁴ *Burning down the house to kill a rat*. Demolitions in Zimbabwe Action Aid International 2005 report. Page 12

⁷⁵ HIV stands for Human immunodeficiency virus and AIDS stands for Acquired immune deficiency syndrome

⁷⁶ Zimbabwe Catholics Bishop Conference Pastoral Letter issued on 17 June, 2005, as cited in *The Zimbabwe Independent*, page 15

And Zimbabwe Council of Churches Statement, "*Churches' Response to Operation Murambatsvina*", *The Sunday Mail* (Zimbabwe), Page E2, 26th June 2005

⁷⁷ *Burning down a house to kill a rat*. Zimbabwe Demolitions report by Action Aid International 2005 page 13

implementation strategy. However some GoZ aligned faith-based organisations supported the OM and castigated its attackers as puppets of the west⁷⁸. This showed that authoritarian development can be misconstrued by some supporters of authoritarian regimes as ‘good change’. These sentiments were echoed by McDonald Lewanika, the Chairperson of Crisis in Zimbabwe Coalition during an interview on 28 August 2008 in Harare. He noted that:

In politically polarised societies such as Zimbabwe, it is difficult for the affected persons to effectively claim their rights because those who try to claim their rights or on behalf of other are quickly labelled unpatriotic sell-outs.

The study also revealed that instead of the GoZ to protect the rights of the vulnerable groups, it was the civic society organisations that assisted the victims by providing them with tents and ultimately transports services. It will be recalled that the OM caught victims during the middle of the month, a month whose budget certainly did not involve the hiring of trucks for the removal of properties. In fact, in Zimbabwe very few people can still manage a budget given the hyper inflationary environment⁷⁹. In carrying out this process, ZLHR met with very few hindrances. The reason was that the process was less antagonistic and confrontational.

ZLHR finally carried massive public awareness campaigns. It is now accepted by many commentators that providing training and access to information is a prerequisite for the protection of human rights at the national level. If public opinion against governmental action grows, then the chances of those actions coming to a halt are greatly enhanced. Every totalitarian regime is primarily concerned with the retention of power. Such power is only retained, if it has a healthy body of the electorate behind it. If that body shrinks the authorities spring into action.

⁷⁸ Reverend Obadiah Msindo endorsed Operation Murambatsvina as a positive development during the 8:00 p.m. main news bulletin on the state-owned television network, ZTV, on 2 July 2005

The authorities in Zimbabwe fiercely countered the public campaigns against OM. The GoZ used the state media as its propaganda machine. ZLHR was attacked as an imperialist project which was anti-progress. Certain other veiled references centering on its source of funds⁸⁰ were habitually thrown as well in the GoZ futile attempts to repudiate that the OM had features of authoritarian development, chiefly, that it led to egregious violations of human rights.

3.3.2 The Media

A free and vibrant media is indispensable to the enjoyment of human rights. The tragedy with Zimbabwe is that it has “no independent” media. The state owned media churns out the ruling party’s hate propaganda day and night. By reason of the repressive Access to Information and Protection of Privacy Act (AIPPA) the loudest and most independent daily newspaper, the Daily News was shut down. A couple of other independent newspapers that remain are weekly publications and remain constrained by repressive laws.

This was the situation that obtained during the OM. In an interview in Harare with Tabani Moyo of the Zimbabwe chapter of Media Institute of Southern Africa on 2 September 2008 he highlighted that “the press did not engage into investigative journalism to pre-empt Operation Murambatsvina even to at least name and shame the real architects and perpetrators of Operation [Murambatsvina]”.

Up until now such individuals are veiled in obscurity, at least to the generality of the populace. The independent press was however content with trying to cast responsibility against the whole GoZ. This is of course

⁷⁹ It was reported by the British Broadcasting Corporation (BBC) that inflation in Zimbabwe had reached 1000% threshold by April 2005 <http://news.bbc.co.uk/2/hi/business/4765187.stm>

⁸⁰ *Arnold Tsunga: The bellwether of Imperialism*, *The Herald* (Zimbabwe) 19 August 2006

not the best way to go as it scarcely happens that an entire government could be brought to book. What is probably more efficacious is to identify certain individuals and take them all the way to expose and prosecute them. The right to remedy will be difficult to claim as long as the real architects of OM and authoritarian development in general are not exposed. It is important to note that authoritarian development can be exposed through making civic social claims and that can be done by working with the media.

By reason of Access to Information Protection and Privacy Act (AIPPA), the international media is barred from operating in Zimbabwe, save for a few handpicked organisations. The Act in question grants sweeping powers to the state to cherry-pick organisations to accredit. The effects are devastating. The international media has to make do with secondary information which is at times doctored. This gives the state the chance to counter most of the things that the media says. This was the situation that obtained during the OM. The media remained a little removed from the realities on the ground. That had the effect of weakening it. However, that did not hold true in relation to the internet which is unregulated and was a source of information. The major drawback of the internet lies in its unavailability to the ordinary man on the street.

Be that as it may, the story of Zimbabwe was nonetheless told with the effect of springing the international community to action. A well coordinated political lobby by the civic societies resulted in Zimbabwe being put on the spotlight by leading media houses such as Associated Press (AP) British Broadcasting Corporation (BBC) and Cable News Network (CNN). In a bid to clean its image amidst massive lobbying from ZLHR and Zimbabwe Human Rights NGO Forum, the GoZ was ultimately forced to come up with corrective Operation *Garikai* (OG). This damage control OG exposed the human rights crisis caused by OM. That OG was an afterthought project is very clear from the fact that it should have logically preceded the destruction of homes. The international media, though hamstrung, scored significant successes in the fight for justice.

3.3.3 Political bodies

Broadly and boldly put, the opposition did little during OM. It was only left to Mr Tsvangirai⁸¹ to visit and comfort the victims. The opposition was incapacitated by two factors. The first was the legal framework riven with repressive laws such as the Public Order and Security Act (POSA). This piece of legislation makes it difficult for an opposition movement to take to the streets in protest. It also makes it extremely difficult for it to coordinate any rallies. During the period, the law was applied with ruthless efficiency and that left the opposition largely ineffectual.

Secondly the opposition seemingly lacked a regional audience and could thus not mobilise on the continent. It appears however that , the ruling party, Zimbabwe African National Union - Patriotic Front (ZANU PF) has the muscle to bully the continent and it is debatable if anything concrete could have come from the continent under the circumstances. Mr. Mugabe's authoritarianism is clearly extra-territorial. Whatever one's view of the matter is, the fact is that political bodies remained hamstrung and could do nothing to defend rights. It is important, however to note that in ZANU PF, there was a small chorus of condemnation with only Pearson Mbalekwa, a senior party official standing up boldly against OM. He resigned from ZANU PF⁸².

In the region, the South African Finance Minister Trevor Manuel and former President Thabo Mbeki added their voices of concern over OM. Trevor Manuel was quoted saying that "the worst thing for South Africa was to have a failed state or a rogue state as a neighbour".⁸³ And Mr Mbeki added that "we engage them because we don't want Zimbabwe collapsing next door. South Africa would inherit all the consequences of Zimbabwe

⁸¹ Mr Tsvangirai is the president of the mainstream Movement for Democratic Change (MDC), the other small faction is headed by Prof. A.G.O Mutambara. MDC splited into the two formations on 12 October 2005

⁸² "Mbalekwa quits ZANU PF", *The Standard* (Zimbabwe), 3 July 2005

⁸³ "Beware failed state on SA boarder: Manuel", *The Business Day* (South Africa), 29 July 2005.

collapse”.⁸⁴ On the international arena, the most vociferous were the European Union (EU), United Kingdom (UK) and United States of America (USA). At the G-8 summit held on June 23 2005 in Gleneagles, Scotland decried the blatant violations of human rights and the general breakdown of the rule of law in Zimbabwe and bluntly condemned OM⁸⁵. On the other hand, it seems Africa generally suffers from quietism and the OM did not offer an opportunity for the shifting of ideology.

The international political bodies worked closely with the media which in turn worked with civic bodies. This ultimately culminated in the UN springing into action.

3.3.4 The United Nations (UN)

After some initial resistance by President Mugabe, reminiscent to Thabo Mbeki’s “there is no crisis in Zimbabwe”⁸⁶, it was finally agreed that the then UN Secretary General, Koffi Annan would send a special envoy to Zimbabwe. The UN Special Envoy on Human Settlement Issues, Anna Tibaijuka was sent to Zimbabwe. The envoy conducted a thorough fact finding mission which to date remains the loudest, boldest and daring indictment against Mugabe’s authoritarianism and crippled human rights record. She focused on the transit camps, had meetings with the GoZ and met with the civic structures including ZLHR. The mission was complete and unhampered. These efforts were rewarded by a comprehensive report on the situation obtaining in Zimbabwe. This report has been regarded by many scholars as the prime authority on the OM.

Broadly the envoy concluded that the situation had become both a humanitarian and human rights issue. Although her mission was not human

⁸⁴ Carol Hills, “SA 'cannot afford rogue neighbour', says Manuel”, *Mail & Guardian*, 28 July 2005. These were strong statements from someone who is viewed by many of his critics as an enabler and supporter of Mr. Mugabe

⁸⁵ “G-8 ministers denounce blitz”, *Business Day*, 24 June 2005

⁸⁶ These comments were made in the aftermath of the March 29 elections when ZEC could not release results, (the officials were possibly re doing arithmetic). Mbeki thought that no crisis had been brought by the non release of results.

rights biased, she dealt comprehensively with the major rights violations that had occurred. This exposed the OM for what it was. Because of that, the state loathed her, stopping short of calling her white as it always does to any opposition. It sought to discredit the report but the deed had already been done, the sinful act of man had been unmasked and the report had quickly received global affirmation

It must be emphasised that the mission was only successful because the envoy consulted a wide spectrum of society and did not only consult the GoZ. ZLHR particularly played a pivotal role providing the UN envoy with empirical data and taking her to places that GoZ officials would not have taken her to. Little wonder the Tibaijuka report contains a healthy body of ZLHR references. As the matter had attracted global attention, the state could do nothing to the human rights NGOs and for once they flourished and prospered. It accordingly looks as if global attention has a magical touch. This mechanism had been highly successful for three reasons. It was successful first in that the UN Secretary General managed to convince the GoZ that it was desirable that the avenue be explored. Successful in that the UN special envoy was given enough breathing space to deal with the issues, successful in that those organisations that aided her were allowed the opportunity to do so. Finally successful in that it exposed the real situation on the ground, however, the protection of rights goes beyond these successes. As Rajangopal puts it, “a right without a remedy is not a right at all” (Rajangopal, 2001: 11). Right to remedy must be protected to mitigate human rights violations and make effective claiming of rights a reality.

In the light of the foregoing the special envoy, Anna Tibaijuka made recommendations to both the state and to the UN. It will be seen that the recommendations were of an enforcement nature. That was the most important but sadly the least successful part.

Recommendation 1 implored the GoZ to stop further demolitions. This was dutifully complied with. It was however, more than a recommendation, it was an indictment, and the demolitions could only be stopped if there was something wrong with them. In paying heed to the

recommendation, the GoZ indirectly accepted that the OM was in fact a form of authoritarian development.

Recommendation 2 identified the urgent need on the part of the GoZ to facilitate a human rights based humanitarian operations, “within a pro-poor gender sensitive policy framework that provides security of tenure, affordable housing, water and sanitation and the pursuit of small income generating activities in a regulated and enabling environment”⁸⁷ There is no evidence that the GoZ ever took this recommendation to heart and there is no policy framework that has been put in place to date.

Recommendation 3 called upon the GoZ to realign the colonial Regional Town and Country Planning Act⁸⁸ and other acts to the socio-economic realities currently obtaining. None of the acts relied upon during the OM have been visited ever since, they remain stubbornly on the statute books. The fourth recommendation saw virtue in GoZ engaging the civil society. Firstly the call was totally ignored. Secondly GoZ seems to have taken engagement to mean combat and recently shut down all aid and human rights NGOs in the aftermath of the March 29 2008 elections.

The fifth recommendation called upon the GoZ to bring the OMs’ architects to account thereby protecting the right to remedy for the affected persons. No attempts were made at giving effect to the recommendation. The sixth invited GoZ to pay compensation to the victims, but this GoZ will do nothing of the sort. Again the right to remedy and the rights of the vulnerable groups was not respected and protected. In her seventh recommendation, she called upon GoZ to take remedial measures in view of the fact that the OM had knocked down the informal sector. In response

⁸⁷ United Nations, Report of the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe, Mrs. Anna Tibaijuka (New York, United Nations, July 18, 2005)

⁸⁸ OM was purportedly carried out in terms of the Regional Town and Country Planning Act (29:12) and relevant municipal by laws. The act under which it was carried out is not only a piece of colonial legislation but one meant to discourage blacks from building structures in towns and hence maintain the colonial policy of discrimination

GoZ only built some stalls in Mbare, Harare and allocated it to its supporters⁸⁹. In fact during the elections after OM, that part of Harare was the only one which received the most ZANU PF votes in Harare as everyone who has a stall in Mbare was ordered to register to vote therein. To many victims of OM, the right to livelihood remains a pipedream. Finally the GoZ was called upon to grant citizenship to former migrant workers who had been affected by the OM. This would take the amendment of the Citizenship Act. That Act is yet to be amended, and if precedent from displaced farm workers inform⁹⁰, will never be amended.

A seemingly effective avenue but one which fails when it comes to enforcement. The GoZ has been known to be obstinate and none of the recommendations were given effect to. Claiming rights in Zimbabwe is clearly a mammoth task.

The UN special envoy also made certain recommendations to the UN. Firstly her recommendations, she recognised GoZ's remedial efforts in the form of Operation *Garikai* (OG) and requested financial assistance from the UN to help the ailing GoZ. This never happened for apparently two reasons. The UN itself does not seem to have treated the request seriously. Secondly in a show of arrogance, the GoZ told everyone that it had resources to complete the ambitious project. Clearly the obstinacy of this GoZ is extra territorial and hampers everyone's best efforts. The GoZ is still continuing with its authoritarian development agenda, which does not put human rights at the centre of development. Most of the people affected by OM are still living in abject poverty without decent accommodation.

In her second recommendation she implored the UN working together with the AU and SADC to assist in the establishment of internal dialogue. This was a far reaching recommendation. Sooner rather than later talks commenced under the then South African President Thabo Mbeki, a

⁸⁹ Sentiments, which were echoed by the MDC youth international secretary Gladys Hlatwayo on 21 August 2008 during an interview with the researcher.

⁹⁰ Farm workers were displaced during the 2000 controversial land grab in Zimbabwe and most of them were from Malawi and Mozambique

Southern Africa Development Community (SADC) appointed mediator. In an interview with Gladys Hlatywayo on 21 August 2008, the SADC initiated political dialogue in Zimbabwe led to a slight evening up of the electoral playing field. On the 29th of March 2008, Zimbabweans resoundingly voted against Mr. Mugabe for his dirty human rights record and authoritarian development policies and practices. Further, OM was claimed by Gladys Hlatywayo to be a factor in the voting pattern more so in the reconstituted rural areas. The developments verify the fact that a dictator subjected to international attention is severely weakened.

In her final recommendation to the UN, Tibaijuka called attention to the need for the UN to assist the GoZ in prosecuting the architects of the OM. As has been remarked above this did not come to fruition as the GoZ was unwilling to pursue this route, it appears that the GoZ was reluctant to take this route because it has traditionally encouraged a culture of impunity.

3.4 Point of discussion - should legal mechanisms give way to non legal mechanisms?

The above exposition comfortably demonstrates beyond any doubt that legal mechanisms have problems working in an authoritarian environment. On the other hand however, non legal mechanisms are indicated as enjoying some efficacy. The question that accordingly arises is whether under the circumstances, legal mechanisms must now give way to non-legal mechanisms. Another question is whether non-legal mechanisms could unpack legal mechanisms at the helm of protective mechanisms.

Both questions must be answered in the negative. First of all it is clear that the protection of human rights is part of a wide struggle. The struggle has different facets and manifestations. That accordingly calls for the unification of protective mechanisms. In that connection, they have to be viewed holistically and as complementary to each other. A removal of one set of mechanisms has the effect of grossly weakening and ultimately undermining other mechanisms. There is thus no way that human rights activists and advocates can make do without legal mechanisms.

Secondly mechanisms only work to a certain extent. Legal mechanism will not work up until issues are brought either to the civil or criminal courts. In particular there can never be convictions in the absence of indictments. Non-legal mechanisms can only lead to attention and preliminary action but would need legal mechanisms for enforcement purposes thereby protecting the right to remedy. Thus sending a special envoy can only lead to the envoy unmasking the violations but she cannot bring anyone to book. I witnessed this after Operation *Murambatsvina* (OM)

In the final analysis the mechanisms are dependent on the goodwill of each other. They cannot operate independently. Further, the ultimate enforcement authority lies with legal as opposed to non legal mechanisms. Non legal mechanisms can accordingly not unseat legal mechanisms in the pecking order.

3.5 What now? Is there hope?

Strategies that one could resort to have been indicated in the recommendations and conclusions section. These strategies derive from our experience with the OM and authoritarian development in general. It has already been asserted that protective mechanisms during the OM were not a resounding success. The question therefore is whether employing the tried and failed mechanisms could bring any hope to the victims of OM. This is because OM was a concrete occurrence; it was a reality and it shows what works and what does not in the struggle of claiming rights under authoritarian rule.

One must however, guard against an extravagant analysis. In so guarding, many must remember that the protection of human rights in Zimbabwe is historically and still is a struggle. That is how OM should be viewed together with the mechanisms adopted to counter it. In that context one could possibly accept that the mechanisms worked to an extent if viewed holistically. At least they led to the violations stopping. OM is currently not going on, it stopped. It can also be argued that the protective mechanisms have not reached their swansong as yet. In this connection it

will be recalled that the architects of OM have not been brought to justice. In terms of legal principles nothing stops that from happening.

Indeed the Rwandese experience lends credence to this. Individuals who committed genocide in 1994 are still being tried and convicted to date. Some of them are already doing time under deterrent sentences. With Zimbabwe's bad record of human rights abuses, the international community can establish a tribunal to prosecute violators. In fact it may not even require the international community to act. A simple change of government could be all that it takes. Viewed in this light, it would be extravagant to condemn the strategies employed as total failures.

3.6 Revisiting the problem

In order to properly highlight the prospects of the strategies in the next chapter, it is essential to revisit the problem. The problem with which Zimbabwe is grappling with transcends human rights; it is one of misgovernance and a lamentable human rights culture. It is a problem which not only centres on a failure to recognise rights but a refusal to let the protective mechanisms operate. It is a deliberate problem and one that arises consciously. For that reason, it is a colossal problem.

Theoretically, the fact that we know the problem constitutes half the solution. The other half however, must consist of tangible devices. The tangible devices are however, informed by the nature of the problem.

CHAPTER 4 – CONCLUSIONS AND RECOMMENDATIONS

4.1 Introduction

In making the recommendations, it is important to note that Operation *Murambatsvina* (OM) called to attention the various inadequacies in the enforcement mechanisms of human rights. The OM accordingly gives me an opportunity to consider strategies that could be employed to secure rights in an authoritarian environment. In formulating those strategies academics must let the OM educate them. I must accordingly consider the lessons learnt from the OM.

4.2 Lessons Learnt

- a) ***Some enforcement mechanisms will not work at all in an authoritarian environment.*** This is particularly so in relation to legal mechanisms on the local front. On the domestic plane, such mechanisms are heavily infiltrated by executive influence and patronage. On the other hand mechanisms on the international front are highly dependant on the goodwill of the offending state and the neighbouring states.
- b) ***Some non-legal mechanisms will be limited at the domestic front.*** This arises as a result of closure of operating space by the executive. This has the effect of severely inhibiting or curtailing the effective operation of human rights based non-governmental organisations (NGOs) and propagating authoritarian development.
- c) ***Other mechanisms will work particularly well at the international level.*** As has been seen already, exposure to the international attention works wonders. Every authoritarian regime can only hold the act together to a certain extent and for just as far. The pressure that is brought about by international attention leads to a gradual weakening of the state's grip and encourages certain compromises.

It has however been clearly established that human rights NGOs play a pivotal role in these situations and so does the press. It could also be argued that these organs should be ably assisted by an informed citizenry which is ultimately the heart of any power play as the electorate. Be that as it may, there is no less important mechanism in this set up. These mechanisms operate holistically and should be construed in that way. This is more so the case when the adopting a human rights based approaches is viewed as a struggle. As a struggle it is accordingly a continuum. Thus by way of illustration, the superior courts are courts of record. Even if they do not render favourable judgements, the mere fact that a matter came before the courts is important for record purposes. This will be crucial and will provide a credible source of information in the future should by any stroke of chance criminal proceedings be instituted. In any event, judicial determination will pave way for access before international mechanisms⁹¹.

- d) ***Courts will not be independent***- an authoritarian regime can only exist if first of all it reaches out to the courts. This will ensure that it does not continuously suffer the indignity of adverse court orders and that nothing will accordingly stand in the way of its nefarious machinations. The right to remedy will remain a daydream in under an authoritarian rule. This consciousness must accordingly shape the construction of any strategies.
- e) ***The national structure will not provide any sanctuary***- if there is to be any assistance for the victims, such assistance for the victims will not come from an established constitutional framework but from outside. The outsiders will however, have to interact with the insiders who are invariably NGOs. The rights of vulnerable groups and the right to livelihood will be protected by various NGOs and

⁹¹ This is by reason of the concept of the exhaustion of local remedies.

not by the state which is by and large vested with the primary responsibility to provide for those rights.

- f) ***The international community (UN) will always act against established and authoritarian regimes.*** Its actions will drive the regime into frugal mode. The mode will ultimately lead to a cessation of hostilities.
- g) ***International action referred to in (f) above will not be sufficient and should not be the end of the matter.*** After cessation of violations there should be further action to bring perpetrators to book. If that does not happen, the intervention would have been in vain. It cannot be expected that the offending state will seek out the perpetrators of human rights violations. There can only be such expectation in the interests of self delusion.

4.3 Strategies

It is in the context of the above framework that the question of relevant and credible strategies has to be addressed. There must of course be different strategies for both none-legal and legal mechanisms. These strategies indicated below, construed holistically should ultimately assist the victims of human rights violations. Each however, gets inspiration from the other's strength so every indicated strategy must be both conceptually and practically adequate.

4.3.1 Legal strategies

- a) **Domestication:** It is of utmost importance that human rights advocates pursue the domestication of all internal human rights instruments. It might be that at certain times the argument could be that some standards have become part of international customary law. The problem however, is that non-domestication will lead a pliable judiciary into finding an escape avenue. Domestication will put human rights based approaches at the centre of any development agendas, democratising authoritarian development. In any event the enforcement of rights may not be left to the vagaries of international customary law.

b) Litigation: There must be a deliberate attempt by human rights defenders to litigate on all fronts even if the view is taken that no reprieve will come from the courts. This will ensure that human rights violations are placed on record. This record will be like an axe dangling over the heads of the violators. At a certain stage it will compel restraint.

Even if it does not compel restraint the record could in the future be made good use of. It must be remembered that international mechanisms pay scant regard to the fact that local courts had at some stage agreed to the impugned conduct. In fact the complicity of the courts will serve as an aggravating factor if the violations are then tried by an international tribunal. It is currently beyond doubt that notwithstanding the Zimbabwean High Court's attitude towards the OM, if an international tribunal for Zimbabwe is established its architects will certainly be brought to book.

c) The African Commission on Human and Peoples Rights

The African Commission on Human and Peoples Rights (hereafter, the Commission) is currently working on rules that will enable it to enforce its orders. The Commission will have to bite if it is to stand tall and deal with violators. Strategic synergies must be established between it and regional political organs in relation to enforcement so that its orders do not become merely that, orders.

Further if the Commission resource base is replenished that will enable it to deal fairly quickly with violations. This will go a long way in strengthening of the right to remedy. At the current rate it could actually be said that the Commission's delays constitute a negation of the right to a fair hearing within a reasonable time. The orders that the commission hands down are very important. Not even the most insane of dictators would want to discount them on the basis of sovereignty or western imperialism. Such actions will of course rankle with African Leaders. This mechanism could easily become one of the most effective in the fight for rights against authoritarian rule and development. It has

been included here because it has a part to play in the fight for rights especially in view of the fact that it is currently preparing enforcement mechanisms.

d) Tribunals

Still under regional mechanisms but outside the Commission, the establishment of a regional criminal tribunal could ultimately be the solution. The current problem is that people know that they can do what they want without incurring any sanction. If that view is changed then there will contemporaneously be a change in the perception of rights. The fact that a regime is authoritarian could soon become irrelevant.

Every authoritarian regime thrives by the infliction of pain. Such a regime clearly understands and appreciates that pain is indeed painful. If such pain is directed towards its members there could be amazing results. We must caution against the temptation to use the domestic criminal system as that will not work at all. It should be accepted that regional criminal tribunals will constitute the “pain” needed to wrest human rights from the jaws of authoritarian development such as OM.

4.3.2 Non legal strategies

The non-legal strategies will focus on the roles of human rights NGOs, the UN and the media.

a) Role of Human Rights NGOs

Human rights NGOs permeate both legal and non legal mechanisms. They are at the center of the protection mechanisms. Not only do they dominate the local field but they are also largely responsible for springing the international community into action. They justifiably sit at the apex of human rights protection mechanisms.

Human rights organisations should accordingly be sufficiently financed and protected so that they can play their part. In this regard, their human resources base should be widened and their technical

outlook enhanced. All protection mechanisms should involve NGOs and make them their lifeblood. This is because they provide the most realistic protection for human rights, without them people might as well capitulate before human rights violators.

On their part the NGOs should also carry the following functions:

- 1) Actively pursue the domestication of all ratified international human rights instruments.
- 2) Pursue the ratification of instruments not yet ratified such as Convention Against Torture (CAT).
- 3) Continuously engage other NGOs, the Government of Zimbabwe (GoZ) and international organs with the ultimate view of encouraging the creation of a human rights culture.
- 4) Pursue an aggressive human rights education initiative so as to keep the citizenry well informed of its rights and the enforcement thereof
- 5) Be at the forefront of and champion human rights litigation at the national, regional and global levels.
- 6) Lobby for the establishment of a standing human rights regional criminal tribunal.
- 7) Adopt both confrontational and less confrontational approaches as may suit the situation. It must be accepted that in the absence of any operation immediately impacting on the rights, the opportunity for dialogue between NGOs and the state must arise. This seems to have been recognised by the United Nation (UN) special envoy in her recommendations dealt with above. There is need to unlock the political will to dissuade the GoZ from pursuing authoritarian development as a government policy.

It is now clear that it is predominantly human rights NGOs which can operate in both legal and non legal mechanisms. All the mechanisms are such as to allow NGOs space to operate in them. By way of illustration, NGOs can litigate before the courts but the courts may not operate through NGOs. Further, NGOs might call the attention of the international community to certain situations bearing human rights implications but the opposite may not happen. It is for that reason that human rights NGOs

justifiably sit at the apex of protection mechanisms. For that reason, they offer the greatest protection and are the first point of reference in claiming rights under an authoritarian rule.

In the light of the above contextual framework it can be asserted that this is the most efficacious avenue for the protection of rights in an environment of authoritarianism. Any strategy ultimately has to involve human rights NGOs otherwise it is doomed to failure. This seems to be the result of the above survey and is supported by the reality on the ground.

b) The United Nations system (The International Community)

The United Nations (UN) system has various mechanisms for reacting to human rights violations associated with authoritarian development. The multiplicity of the measures at least ensures efficacy. More importantly however, than the number of measures is the fact that when the UN acts, the international community pays attention. Or maybe the point should be put differently; the UN acts because international attention has been aroused. Whatever the sequence, there is action and attention. This is mostly done through the agency of human rights NGOs and the press.

By reason of a multiplicity of measures available, that allows for the most appropriate measures to be applied to a situation. This enables the UN to appropriately deal with authoritarian regimes as it will use measures deemed acceptable by the dictatorship. If for instance, the UN had decided to deal with OM only at the UN Security Council level, then the matter would have become political and Mugabe's traditional allies would certainly have fought in his corner. The UN Secretary General however sought a diplomatic channel which as it turns out was more devastating than what one might have ever imagined. Such multiplicity of measures accordingly makes the claiming of rights a reality.

The question of the attention of the international community is also vital. It has been seen that this attention softens positions and weakens the state's resolve. It must be emphasized that it is only global as opposed to regional attention that works. Africa is renowned for its *quietism* probably epitomised by South Africa's so called quiet diplomacy against Mr. Mugabe.

In seeking to protect rights, a deliberate decision to the effect that Southern African Development Community (SADC) and the African Union (AU) cannot be the answer must be made. Any protection mechanism must of a necessity include the global community.

A comment should be made on the invariable defence of dictators-sovereignty. It is true that this concept is recognised both by international law and the community of civilised nations. The concept should however, not be used to try to mask authoritarian development and rights violations. When it is so used, the international community must contest it undeterred. In point of fact a regime that violates rights forfeits the entitlement to raise issues of sovereignty. This is because the duty to protect human rights rests in usufruct with the international community. The violations of rights accordingly call the international community into action and relegate to the sidelines the issue of sovereignty. A country can only be sovereign if it respects the rights of its own citizens.

c) The media

It has been noted that authoritarian rulers operate in such a way that the press is stifled. The world however, must be kept informed of violations. This function cannot be carried out by the local press which might either be non existent or severely compromised by restrictions. This leaves human rights advocates with the option to only turn to the international press and make civic social claims. The international press however cannot operate on the ground by reason of stringent measures put in place by authoritarian regimes.

Under the circumstances it is proposed that the international press must work with human rights NGOs. The NGOs will be on the ground and will give up to date and accurate information on violations. Reports produced on the basis of such information will accordingly be accurate. This is the only way that violations will end up getting to the attention of the international community. The strategy also has the effect of sidestepping oppressive media laws such as Access to Information Privacy and Protection Act (AIPPA).

4.4 CONCLUSIONS

As part of the conclusion, it is important to revisit the research objectives and research questions to tell whether the research paper has been able to meet the research objectives and answer the research questions. To this end, the main objective of this research paper was primarily to assess limitations of the legal and non-legal mechanisms in claiming human rights under an authoritarian rule. The research question read - what have been the challenges in claiming human rights in the context of OM in Zimbabwe and what does this tell us more generally about the limitations of claiming rights in an authoritarian state?

The research paper managed to answer its main objective and to answer the main and sub-research questions. The survey makes very sad reading. It clearly appears that barring some successes scored; the general picture is that of failure in the traditional mechanisms. Nevertheless, evaluation of the mechanisms used to claim rights by human rights NGOs reveals that non legal as opposed to legal mechanisms were more effectual in righting the wrongs of the OM. The reason for this seems to be that any authoritarian regime naturally suffocates legal mechanisms, infiltrates them and renders them nugatory. A culture of impunity is prevalent. At both the regional and international levels the remedies are slow in coming and even when they do come; they are not amenable to ready and immediate enforcement.

It has been remarked that the picture presented is that of a general failure. This merits further consideration. I can conclude that there was a failure of the mechanism because of three reasons outlined below:

- a) Three years after the OM nothing has still happened to the architects of the OM. They remain free and ready to cause more misery, which apparently they did after the March 29 2008 elections.

b) There has been no compensation or any form of restitution to assist the victims. One victim stated that her conclusion is that she “either has no rights or there is no law to protect her”⁹². It is clearly impossible to fault such a conclusion under the circumstances.

c) Though the international community responded through the UN Special Envoy Anna Tibaijuka, her recommendations have not been given effect neither by the GoZ nor the UN.

It is primarily for these reasons that the conclusion is reached that the mechanisms generally failed in the struggle to claim rights for the affected persons during OM. One however does not have to be extravagant in their assessment. Significant successes were scored principally by the human rights NGOs and the UN Special envoy. It would be injudicious to fail to appreciate those successes. However, a simple and logical point of conclusion is that the fight for human rights is a continuing struggle. For that reason it demands a holistic approach to protective mechanisms. Further, there is need to unlock the political will and foster a democratic political culture which promotes and protect human rights.

⁹² Remarks by a victim of Murambatsvina during an interview in Harare on 17 July 2008. She elected to remain anonymous.

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ANNEX

Annex 1 - ZLHR Aims and Objectives

-  To strive to protect, promote, deepen and broaden the human rights provisions in the Constitution of Zimbabwe⁹³.
-  To strive for the implementation and protection in Zimbabwe of international human rights norms as contained in important international conventions such as, but not limited to, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Convention on the Elimination of all Forms of Discrimination against Women, the United Nations Convention on the Rights of the Child, and the African Charter on Human and People's Rights⁹⁴.
-  To strive for the adoption of a Southern African Human Rights Charter and the establishment of a Southern African Court of Human Rights⁹⁵.
-  To endeavour to find common ground with and to work alongside other Zimbabwean groups, organisations, activists and persons who share a broadly similar concern for and interest in human rights⁹⁶.
-  To liaise and work with other human rights groups wherever situated but particularly in Southern Africa and especially those closely linked to the legal profession.⁹⁷

⁹³ <http://www.zlhr.org.zw/about/objectiv.htm>

⁹⁴ *ibid*

⁹⁵ *ibid*

⁹⁶ *ibid*

⁹⁷ *ibid*