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The History of International Human Rights Law in Zimbabwe

Torque Mude[1]

Abstract

The paper assesses the history of international human rights law in Zimbabwe. The main thrust of the paper is to trace the historical development of the law that promotes the entitlements individuals have as a virtue of being human. Instances where Zimbabwe is seen taking hid by ratifying and or compliance with human rights agreements or conventions are examined as they determine whether or not the instrument is recognised and the roots of the recognition of the human rights legal framework.

Introduction

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

International human rights law is concerned with the promotion and protection of lives, health and dignity of individuals, albeit from a different angle (Higgins, 2000). It is interwoven with international humanitarian law.

[1] PhD Fellow, Department of Political Sciences, University of South Africa, Lecturer of International Relations, Midlands State University, P. Bag 9055, Senga Road, Gweru, Zimbabwe.

While distinct in formulation, the essence of most of their rules and principles is similar and almost identical. They aim to protect life, prohibit torture or cruel treatment, prescribe basic rights for all individuals and prohibit discrimination. On the contrary, rules and principles of international humanitarian law deal with a lot of issues that are outside the purview of international human rights law (ICRC Report, 2002). The two are also regulated by legally separate frameworks, operate in different contexts and regulate different relationships.

It must be noted that acting in accordance with rules and principles of international human rights law is not mandatory (Wallace, 2007). Observing these rules is voluntary. That is the distinct feature of the international legal system as a whole. Some say it's the inherent weakness of the international legal system which is not true. It is rather the distinct feature of the international legal system. Therefore when Zimbabwe is seen violating these rules, justification can be given on the basis of the right to comply or not which is the major characteristic of the international legal system. However, certain rules that form the corpus of international human rights law are non-derogable, for instance, the right to life. In other words certain human rights have the status of *jus cogens*. Moreover, the emergence of norms such as responsibility to protect (R2P) has made international human rights mandatory. It is therefore the purpose of this research to assess the extent to which Zimbabwe has observed these rules in relation to her right, in certain circumstances, to derogate from complying with these rules.

Theoretical Framework

Human rights have failed to present a universally acceptable meaning, presenting a big problem to both international and national regulation. Theories have propounded to attempt to define and analyse the nature of human rights, As a result, they have reflected the distinction between two theoretical approaches namely universalism and cultural relativism (Wallace, 2007). Universalism reflects a position endorsed by the United Nations Conference on Human Rights that human rights are universal. They contend that human rights are not culture specific, but that they are universal. More importantly, the emphasis in universalism is on the individual. They maintain that states should perform their duty to promote and protect the rights of individuals. Majority of countries are inclined to the universalist theory in their approach to human rights.

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

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

Theories have also been propounded to explain the intercourse of states in the international system. Such theories are political realism, idealism, game theory, interdependence theory and many others. Of these theories only political realism and idealism are relevant to this research. These theories can also be used to explain internal relations of a state that is relations between governments and their citizens. Idealist theory is sometimes called utopianism. The theory advocates a peaceful and just world where states should observe rules and principles in good faith. Morality is the basis of the idealist theory. Idealists do not subscribe to the view that politics and power are central in international relations. Moral imperatives such as the respect for human rights should take first priority in international relations.

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

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

Contending Issues

This paper provides a comprehensive background and account of international human rights law in Zimbabwe. It traces the historical development, describes the major protective rules and principles and the principal sources of international human rights law. In addition, the chapter examines the status of these branches of international law in Zimbabwe. Furthermore, the paper examines the systems of implementation of this body of international law at the international, regional and national level in accordance with the international rules of state responsibility.

The background of international law in Zimbabwe, international human rights law in particular, began with the first European settlement in the country. International law is the product of the European state system that came into being in the 16th century. Until the 19th it was in reality a European law of nations (Shaw, 2003). This system of law, rooted in convictions of European superiority, accorded little recognition to the political organisms of Africa, whatever their level of sophistication (Wallace, 2005). African territories, including present day Zimbabwe, occupied by non-European people were treated as terra nullius, as belonging to no one.

In simple terms, the international legal system that comprises within its ambit international human rights law was imported by white settlers. During the period before white settlers, human rights law was not visible.

In fact many of the branches of the international legal system were not in existence or at least were not recognised. Individual had no visible rights under international law, only states were recognised as a result of the Westphalia sovereignty.

In the aftermath of the atrocities of World War II there was increased concern in the social and legal protection of human rights as fundamental freedoms. The foundation of the United Nations and the provisions of the United Nations Charter would provide a basis for a comprehensive system of international law and practice for the protection of human rights. The term "international human rights law" is often used as a category of reference to describe these systems, but this can be a source of confusion as there is no separate entity as "international human rights law" but an interlocking system of non-binding conventions, international treaties, domestic law, international organisations and political bodies.

Upon attaining independence from Britain in 1980, Zimbabwe signed and ratified several regional and international human rights conventions and instruments as part and parcel of her fulfillment of the 'responsibility to protect' citizens which is a general rule in international law (Dugard, 2007). As a full member of the international community, Zimbabwe accepted the responsibility to act in compliance with international human rights law.

As a body of international law, international human rights law is designed to promote and protect lives, health and dignity of individuals (Higgins, 2000). Sometimes it is difficult to deal with international human rights law independent of international humanitarian law because they both seek to protect people's rights, albeit from a different angle. It is therefore not surprising that while very distinct in formulation, the essence of most of their rules is similar, if not identical. They aim to protect life, prohibit torture or cruel treatment, prescribe basic rights for all individuals, prohibit discrimination, comprise provisions for the protection of men, women and children and regulate aspects of the right to food and health (HRW Report, 1999). On the contrary, rules and principles of international humanitarian law deal with a lot of issues that outside the purview of international human rights law (International Committee for the Red Cross Report, 2002). The two are also regulated by legally distinct frameworks and usually operate in different contexts and regulate different relationships.

International human rights law refers to the body of international law that regulates the promotion and protection of inherent entitlements individuals have by virtue of being human (Dugard, 2007). As a branch of the international legal system, international human rights law is primarily made up of treaties, agreements between states intended to have binding legal effect between the parties that have agreed to them and customary law. In addition, rules of law derived from the consistent conduct of states acting out of the belief that the law required them to act that way comprise international human rights law (Shaw, 2003). Other international human rights instruments while not legally binding contribute to the implementation, understanding and development of international human rights law and have been recognized as a source of political obligation.

Human rights, the instruments that international human rights law strives to protect, are difficult to define, notwithstanding that the term is used extensively and frequently (Wallace, 2007). Generally, human rights are regarded as those fundamental and inalienable rights which are essential for human life (Guzman, 2005). They are inherent entitlements which belong to every person as a consequence of being human. There is, however, an absence of consensus as to what these rights are and frequently it is easier to identify what it is human rights are intended to achieve rather than what they really are, for instance protection of the individual from an abuse by state authority.

Furthermore, International humanitarian law is a body of international law that governs the protection of persons and property in times of international and non-international armed conflicts (Malanczuk, 2000). It is a set of international rules established by treaties and customs which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts (AJIL, 2001). This body of law protects persons, civilians and combatants that are or may be affected by an armed conflict. Above all, it limits the rights of the parties to a conflict to use methods and means of warfare of their choice. International humanitarian law seeks to protect human rights in international and non-international armed conflicts.

The Development of International Human Rights Laws

International Human Rights Law is of recent origin (Bowett, 1997). Early international law was primarily concerned with interstate relations only.

It concerned itself with diplomatic relations and the conduct of war, jus ad bellum (Jennings, 1971). Contemporary international law encompasses within its ambit relations between states and citizens therein the need to regulate relations between states and individuals necessitated the development of international human rights law.

Some argue that this branch of the international legal system is a western machination designed to entail the powers of modern states. Arguably, the purpose is to advance the national interests of western powers. Zimbabwe is amongst countries that question the purpose of these branches of international law, both in practice and theory. To illustrate Zimbabwean president Robert Mugabe has recently slammed and lambasted North Atlantic Treaty Organization's (NATO) humanitarian intervention actions in Libya.

There is a measure of truth, however in these suspicions partly because of their western orientation and partly because of the way they have been and are applied and enforced. They are often applied unilaterally and in an unorthodox manner. However, this should not discredit the importance of international human rights laws in as far as the respect for human rights is concerned.

The development of contemporary human rights law was facilitated by the need for a new world order in which the state is no longer free to treat its own nationals as it pleases (Dugard, 2007). National leaders are no longer able to claim immunity from prosecution for egregious human rights violations by invoking the protection of municipal law or superior orders. Every state which is a member of the international community including Zimbabwe, through obligations *erga omnes* is obliged to respect and honor human rights law principles.

According to Dugard, the starting point of modern human rights law applicable in times of conflict was the battle of Solferino in 1859 between Austrian and Franco-Italian forces. Thousands of wounded combatants were allowed to die with getting medical attention. This prompted Henry Dunant, a Swiss banker to initiate a movement which then led to the establishment of Geneva-based international Committee of the Red Cross (ICRC). ICRC is a non-governmental organization committed to providing relief to the victims or armed conflict.

Furthermore, Dunant's movement led to the conclusion of the first multilateral humanitarian treaty, the Geneva Convention on the Amelioration of the Condition of the Wounded in Armies in the Field of 1864 (Dugard, 2007). Since then a host of multilateral treaties has been adopted. These treaties together with a body of customary rules comprise modern international humanitarian law (Brownlie, 1998).

The most important of these treaties were adopted in 1899 and 1907 at The Hague in Netherlands, dealing with the laws and customs of war. More recent important treaties were concluded in Geneva in 1949 and 1977. These are largely concerned with the protection of persons form the effects of armed conflicts (Harris, 2001). It is because of this that international humanitarian law is described as comprising 'the law of the Hague' and the 'law of Geneva'. However, in its ordinary opinion on the Legality of the Threat or Use of Nuclear Weapons, the International court of Justice stated that the two systems have become so closely interrelated that they are considered to have gradually formed one single complex system, known today as international humanitarian law (Shaw, 2003). This is true to a larger extent. The two cannot operate independent of each other. They are inseparable twins.

Modern international human rights law is a post-World War II development. Prior to 1945, the concern shown by international law for the treatment of aliens did not extend to the treatment of individuals by their own states, pre-war international law provided protection to individuals, other than aliens lawfully admitted to the injury state in limited situations and circumstances (Forsyth, 1996). States could treat individuals the way they see fit. In other words, individuals did not have full legal rights under international law. That is no longer time. The emergency of the human rights law changed history.

Humanitarian intervention which permits to intervene forcibly in states, whose treatment of their own nationals shocks the conscious of mankind, was recognized by international law as early as the 17th century (Dugard, 2007). But during that time it was used primarily as a pretext for non-altruistic political intervention. It often necessitated a moral imperative for states pursuing national interests. The slave trade was abolished largely by collective international action. This points to the existence of international human rights law though in its infancy.

The period of the League of Nations saw three important developments in the international protection of human rights in 1919.

The mandate system was established as a sacred trust of civilization to provide the welfare of peoples not yet able to stand by themselves under the strenuous conditions of the modern world (Shaw, 2003). The International Labor Organization was also created in 1919 to improve the working conditions of employees. More so, the minority treaties were designed to safeguard the rights of ethnic, religious and linguistic minorities in the Balkan and Eastern Europe (Shaw, 2003).

In spite of these developments in the international legal system aimed at promoting the welfare of individuals, minorities and underdeveloped people, international law until 1945 was largely concerned with states and their intercourse (Wallace, 2007). At that stage states were the only subject of international law. The prohibition on intervention in the domestic affairs of states contained in the Covenant of the League of Nations was respected as a guiding and sacred principle (Watts, 1992). Sovereignty was the cornerstone of international law. It was because of this that states failed to intervene in Germany before 1939, despite awareness of the atrocities committed by the Nazis against their own nationals.

The enormity of the atrocities committed by the Nazi regime dramatically changed the nature of international law. This experience compelled statesmen to accept the need for a new world order in which the state was no longer free to treat its national the way it pleases (Jennings, 1984). This new world order was proclaimed by the Charter of the United Nations which recognized the promotion of human rights as a principal goal of the new world organization and by the London Charter of 1945 which provided for the trial of the major Nazi war leaders (Watts, 1992). All this necessitated the development of international human rights law.

In 1945, the United States, the Soviet Union, the United Kingdom and France agreed in London to establish an International Military Tribunal agreed in London to try the major Nazi leaders for crimes against peace, war crimes and crimes against humanity (Kittichaisaree, 2001). The Nuremberg Tribunal was established. The Nuremberg trial was followed by the Tokyo trial of the Japanese war leaders on similar charges. These trials have had a major impact on the development of international humanitarian law. They have inspired the establishment of international criminal courts to try those responsible for the systematic and large scale violation of human rights (Shaw, 2003). More importantly they contributed substantially to the development of international human rights law.

Form a human rights perspective, the main significance of the Nuremberg and Tokyo precedent is that national leaders and government officials are no longer able to claim immunity from persecution of egregious human rights violations by invoking the of municipal law or superior orders.

The commitment of the United Nations to human rights was made clear in the Preamble to the Charter which reaffirms faith in fundamental human rights, in dignity and worth of the human person (UN Charter). Zimbabwe is a member of the United Nations, thus has obligations to protect the rights of Zimbabweans in accordance with rules of state responsibility. The Charter itself contains a number of references to human rights. Article 1 includes among the purposes of the United Nations the promotion and encouragement of human rights (UN Charter). Most important are articles 55 and 56. Article 55 obliges the United Nations to promote universal respect for and observance of human right and fundamental freedoms for all without distinction.

In 1946, the Economic and Social Council of the United Nations established a Commission of Human Rights, whose first task was to draft an International Bill of Rights comprising a declaration and a multilateral treaty (Shaw, 2003). The first step in this direction was the drafting of the Universal Declaration of Human Rights which was approved by the Geneva Assembly on 10 December 1948. The Universal Declaration of Human Rights proclaims both first generation rights, civil and political rights, and second generation rights, economic, social and cultural rights, in the language of aspiration (Abraham, 2002). The declaration is not a treaty but a recommendatory resolution of the general assembly and is therefore not legally binding on states. Its preamble states that the purpose of the declaration it is to serve as a common standard of achievements for all peoples and all nations. Although not legally binding, the Universal declaration has undoubtedly guided the political organs of the United Nations in their interpretation and application of human rights clauses in the Charter.

The impact of the Universal Declaration on the development of international human rights law has been immense. It has undoubtedly inspired the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and several regional human rights conventions. It also serves as a model for national bills of rights. The declaration serves as a sacred and useful framework in upholding international human rights law in Zimbabwe.

Chapter III of the Zimbabwean constitution enshrines the Declaration of Rights. Most importantly, the Declaration of Rights has been the essential feature of Zimbabwe's 'law of the land' in as far as human rights are concerned since independence. However, the declaration has been criticized for being too shallow in terms of the few rights it provides for. There is a measure of validity in these critics because Chapter 3 does not provide for cultural rights. This does not however weigh down the efforts Zimbabwe has made in upholding human rights law.

Moreover, the Universal Declaration of Human Rights has been used by the organs of the United Nations as a standard by which to measure the conduct of states (ILM 1293, 1978). Consequently is argued that the Universal Declaration now forms part of customary international law.

In 1968, at an International Conference on Human Rights in Teheran called by the United Nations to review the progress made since the adoption of the Universal Declaration, a Proclamation of Teheran was adopted by 84 states which declared:

'The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning their inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community" (Dugard, 2007).

Zimbabwe, then a British colony did not adopt the proclamation. The Proclamation of Teheran went too far if it suggests that all the rights contained in the Universal declaration have acquired the status of customary international law. On the other hand, Conradie went too far in the other direction in SV Petane Case where he stated: "…it is dangerous to describe the practice oriented character of customary law by making it comprise methods of law making which is not practice based at all. This undermines the certainty and clarity which the sources of international human right have to provide. The Universal Declaration of Human Rights may be taken as an example in this respect. It has been asserted that in the course of time it provisions have grown into rules of customary international law. This view is often established by citing abstract statement by states supporting the Declaration of references to the declaration in subsequent resolutions or treaties.

Sometimes it is pointed out that the provisions have been incorporated in national constitutions, but what if states making statement like these of drawing up their constitutions in conformity with the Universal Declaration of Human Rights at the same time treat their nationals in a manner which constitutes a flagrant violation of its very provisions for instance, by not combating large scale disappearances, practicing torture or by imprisoning people for long periods of time without a fair trial? Even if abstract statements or formal provisions in a constitution are considered a state practice, they have at any rate to be weighed against concrete acts like the ones mentioned" (ILM 1298, 1975).

Zimbabwe is one of the countries criticized for voluntarily incorporating provisions of the Universal Declaration of Human Rights in her constitution on the one hand. And flagrantly violate the same provisions on the other hand, through the acts of the government torturing, murdering and maiming its own citizens, especially in election times. The critiques are justified to a larger extent given the history of political violence in Zimbabwe in relation to egregious human rights violations in the country since 2000.

The truth lies closer to the centre of the spectrum. Some of the more basic principles of the Universal Declaration, such as that of non-discrimination, the right to a fair trial and the prohibition on torture and cruel, inhuman or degrading treatment, undoubtedly belong to the corpus of customary law today despite the fact that they may not always be observed.

During the colonial era both governmental and no-governmental organizations frequently judged present day Zimbabwe by the standards of the Universal Declaration of Human Rights. Today, the Universal Declaration is an instrument to which Zimbabwean courts may turn to in their interpretation of the Declaration of Rights found in Chapter III of the Zimbabwean Constitution (Constitution of Zimbabwe). As an authoritative statement of the international community, several of whose provisions have acquired the force of customary law, it is eminently suited for such a role.

All the above developments combined to form what became international human rights law. Rules and principles that constitute intentional human rights law are similar with those of international humanitarian law. Essentially because they both strive to protect human dignity and lives.

Some of the principles are even identical. For instance, both promote the right to life, freedom for torture and cruel, inhuman or degrading treatment or punishment. Consequently, the development of international human rights law may undoubtedly seem as the development of international humanitarian law. However, international humanitarian law was established before international human rights law came into being.

Ideological differences exist between developed and less developed countries over the actual application and implementation of human right law (Eden, 2001). This has made it impossible to produce a single multilateral treaty giving legal effect to the Universal Declaration. Developing countries, Zimbabwe amongst them argue that human rights perceptions and the laws that govern their protection are Western narratives used to advance the interest of the West. This is true to a greater extent taking the effects of these perceptions on sovereign to consideration. Sovereignty is often disregarded when it comes to issues of humanitarian intervention operations. Critics dismiss the legality and legitimacy of for instance humanitarian intervention in states deemed human rights violators.

They argue that the United Nations which has the prerogative to enforce international human rights law is a club of western powers infected with imperialist tendencies. When human right law is violated by states that are aligned with the West, such as Israel, no action is taken. But when a state not aligned with the West violates this branch of international law, these powers would make sure something is done, sanctions or military intervention, as in the case of Libya recently. Thus developing countries are justified to point to the double standards and hypocrisy of the West whenever they invoke international human rights law. This also points to the centrality of power politics in international relations, the use of the international legal system in pursuit of national interests.

Israel's actions in Palestine are not seen constituting violation of either international human rights law. This is because Israel is an ally or rather puppet state of the West, particularly Britain and the United States of America. But when Zimbabwe, Libya and other perceived enemies of the West seem to be acting slightly in non-compliance with rules and principles of international human rights law, a lot of noise is made by individual states or collectively within the United Nations.

However, this does not mean that the UN should not intervene where there are gross human rights abuses because ensuring the promotion of human rights is one of the functions of the organization.

When approaching international law, including international human rights law, one should do so from the viewpoint of a politician rather than of lawyer (Wallace, 2007). They should be looked at with the eyes of a politician if one aims to appreciate the fundamental importance of this dynamic legal system. This is because of the centrality of politics in international relations which cannot be subverted. Skeptics view this as an inherently weakness of the international legal system. They argue that this legal system lives a lot to be desired basing their arguments on the centrality of politics. That is a misnomer, the fact is the international legal system is unique in its form, it is not a solution, for instance, to human rights abuse or inhuman treatment, but rather exists for the co-existence of states and find ways of solving international problems (Watts, 1992). Paradoxically, the international legal system is utilized by politicians to advance their self interests relative to others. Consequently, politicians often invoke international human rights law to pursue self interests. This is true especially with regard to the great powers because of their insatiable quest for power to dominate others.

Sources of International Human Rights Laws

Source of international human rights law are materials and processes out of which the rules and principles of this branch of international law are developed. Article 38(1) of the statute of the International Court of Justice describes sources of international law (Dugard, 2007). According to this article, the sources are international conventions or treaties, international custom, general principles of law recognized by civilized nations and judicial decisions and teachings of highly qualified publicists.

When it comes to international human rights law, the principal sources are conventions and international customs. Several multilateral treaties have been concluded to provide the framework for upholding international human rights law rules and principles at the international, regional and national level.

International human rights law is made up of and found in multilateral treaties as well as regional conventions.

The main treaty sources of international human rights law are the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights of 1966 as well as the Conventions on Genocide of 1948, Racial Discrimination of 1965, Convention against Torture of 1984 and other regional instruments such as the African Charter on Human and Peoples Rights.

Contemporary international human rights law applicable in times of conflict comprises the Geneva Conventions of 1949 and 1977 and the Hague Convention of 1899 and 1907 as well as subsequent treaties, case law and customary international law (Shaw, 2003). Thus it is made up of two historical streams, the law of Geneva and the law of The Hague. These two streams take their names from a number of international conferences which drew up treaties relating to war and conflict.

Hague Conventions and Law of The Hague

The Hague conventions are the result of processes that developed in a number of stages between 1899 and 1907. Adopted treaties deal primarily with the laws and customs of war (Dugard, 2007). Hague Conventions enshrines what is known as the law of The Hague. The law of The Hague determines the rights and duties of belligerents in the conduct of their military operations and limits the choice of means of doing harm (Guzman, 2006). It seeks to strike a balance between military necessity and humanitarian considerations. This body of law is founded in the Hague Conventions of 1899 as revised in 1907. Zimbabwe became a state party when she signed The Hague Conventions on 19 September 1984. By so doing Zimbabwe accepted the responsibility to comply with the provisions of this international humanitarian law instrument.

The most important of these conventions is the Forth Convention of 1907 respecting the laws and customs of war on land to which is attached an annexure known as the Hague Regulations (Roberts and Guelff, 2004). These regulations deal with the status of belligerents the conduct of hostilities, the prohibition of weapons calculated to cause unnecessary suffering, the termination of hostility and the rules governing military occupation. According to article 22 of Hague Conventions, the right of belligerents to adopt means of injuring the enemy is not unlimited.

The Hague Regulations, to which Zimbabwe is a state party, are today generally accepted as forming part of customary law (Smart, 1987).

Since 1907 many treaties have been adopted to limit the use of weapons designed to inflict unnecessary suffering. The Geneva Protocol prohibiting the use in war of poisonous gases and bacteriological methods of warfare was adopted (ILM 49, 1975). This treaty is supplemented by a 1972 Convention that prohibits the production and stockpiling of bacteriological weapons (ILM 309, 1972). In 1993, another Convention on the prohibition of the use of chemical weapons was adopted. Zimbabwe is a party to all those conventions. Zimbabwe is also a party to a convention prohibiting the use of laser weapons designed to cause permanent blindness (ILM 1218, 1998).

In 1977, another convention known as the Ottawa Convention was adopted to ban the use, production and transfer of anti-personnel landmines (ILM 1507, 1997). According to its preamble, the Ottawa Convention aims to put an end to the suffering and casualties caused by anti-personnel mines that kill or main hundreds of people in war times. It is found on three principles, that the right of parties to an armed conflict to choose methods of warfare is limited, the prohibition of the employment in armed conflicts of weapons that cause untold and unnecessary suffering (Bowett, 1984). And the need to distinguish between civilians and combatants in international and non-international armed conflicts (Bowett, 1984). In accordance with article 1, states undertake 'never under any circumstances to use develop, produce or acquire anti-personnel mines and to destroy all anti-personnel mines in areas under their control.

It is difficult to reconcile nuclear weapons with the norms of humanitarian law, especially the prohibition on weapons that cause unnecessary suffering. These are therefore agent reasons to support their illegality (Miller, 1984). A number of treaties seek to limit the testing and proliferation of such weapons. These are the 1963 treaty banning nuclear weapons tests in the atmosphere, in Outer Space and under water (ILM 889, 1963), the 1971 treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Nuclear Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof (ILM 1461, 1971), and the 1996 Comprehensive Test Ban Treaty (ILM 1439, 1996). In Africa the African Nuclear Weapons Free Zone was adopted through the Treaty of Pelindaba. The purpose is to prohibit the use, production and transfer of nuclear weapons in the continent.

Zimbabwe is a state party to the Treaty of Pelindaba which was concluded within the framework of the African Union to prohibit the use, production and transfer of nuclear weapons in Africa. As a consequence of Zimbabwe's bonafide bilateral friendship with Iran, the production of uranium and the conclusion of uranium mining and trade deals with Iran, the US and other Western countries are of the view that Zimbabwe might be in possession of at least some nuclear materials. Zimbabwe is blamed for not complying with international humanitarian law that prohibits the possession of nuclear material. These are mere speculations and it displays the dogmatic nature of the US and her allies. They are the chief culprits in as far as stockpiling and proliferating nuclear weapons is concerned.

In 1996, the International Court of Justice, the principal judicial organ of the United Nations gave an advisory opinion on the Legality of the Threat or Use of Nuclear Weapons at the request of the United Nations General Assembly (ICJ Reports 226, 1996). Arguments raised against the legality of nuclear weapons were founded on the prohibition of the use of force in article 2(4) of the Charter of the United Nations. Furthermore, the arguments are supported by conventional and customary rules of international humanitarian law governing the law of armed conflict and neutrality, human rights and environmental conventions and treaties and General Assembly resolutions restricting the use and testing of nuclear weapons.

In an unsatisfactory opinion, the court failed to answer the question on whether the threat or use of nuclear weapons was prohibited in all circumstance. The court stated (a) unanimously, that neither customary nor conventional international law specifically authorizes the threat or use of nuclear weapons (b) by eleven votes to three, that neither customary nor conventional international law comprehensively and universally prohibits the threat of use on nuclear weapons (c) unanimously that a threat or use of force by means of nuclear weapons that is contrary to article 2(4) of the UN Charter and that fails to meet all the requirements of article 51 is unlawful (d) unanimously, that a threat or use of weapons should be compatible with the requirements of international humanitarian law and specific obligations under treaties and other undertakings expressly dealing with nuclear weapons (ICJ Reports 325, 1997).

By seven votes to seven, by the Presidents casting vote, that the threat or use of nuclear weapons would generally be contrary to the rules and principles of international humanitarian law, but that in view of the current state of international law and the facts before the court, it could not conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self defence in which the very survival of a state would be at stake (ICJ Reports 262, 1996). The court failed to give a clear conclusion, but there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmaments in all its aspects under international control.

The Geneva Conventions and the Law of Geneva

The Geneva Conventions of 1949 and 1977 are sources of the Law of Geneva which belongs to the corpus of international human rights law applicable in conflict times. The Law of Geneva aims to protect combatants no longer engaged in the conflict and civilians not involved in the hostilities (Brownlie, 1998). It has its roots in the Hague Regulations of 1907 and in the Geneva Conventions of 1929, providing for the protection of prisoners of war and the wounded and sick. Zimbabwe became state party on 7 March 1983.

By 2004 all 53 African Union countries, including Zimbabwe, had ratified the four Geneva Conventions. However, this manifestation of respect for international humanitarian law by state parties does not give a complete picture of reality. Between 1955 and 2005, more than 200 armed groups were involved in about forty armed conflicts on the African continent displaying actions of violations of the Geneva Conventions (Churchill, 2008). This would suggest lack of respect for human rights and lack of political will to comply with rules and principles that outlaw war.

These 1929 Conventions were replaced by the four Geneva Conventions. They seek to ameliorate the conditions of the wounded and sick in armed forces in the field and of the wounded, sick and shipwrecked members of armed forces at sea, to regulate the treatment of prisoners of war and to protect civilians in time of war. Two Additional Protocols of 1977 supplement these conventions (Roberts and Guelff, 2000). Protocol I deals with the protection of victims of international armed conflicts and Protocol II aims to expand the protection provided to the victims of non- international armed conflicts accorded for in article 3 common to the four Geneva Convention of 1949.

By 2005 the Geneva Conventions of 1949, had been accepted by 192 states members of the international community while 163 states were party to Protocol I and 159 to Protocol II. Nearly all states are parties to the 1949 Conventions, but some important states such as India, Indonesia, Iran Iraq, Israel, Malaysia, Morocco, Pakistan, Philippines, Sri Lanka, Sudan, Turkey and the United States are not parties to the Additional Protocols (Henckaerts and Beck, 1997). Many of the principles embedded in these Protocols are, however, rules of customary international law.

The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR deals specifically with first generation rights. Zimbabwe signed and ratified this human rights instrument. It commences with the recognition of the right of self determination in article 1. Other United Nations of similar importance recognizes this right in the context of decolonization, but the ICCPR asserts the right of self determination in general (Jennings, 1984). Article 6 proclaims the right to life. Death penalty is not prohibited except in respect of persons below the age of 18 and pregnant women. An Optional Protocol was adopted in 1989 to outlaw the death penalty completely. To this day, this protocol has been accepted by only a small number of states. Zimbabwe has not adopted this protocol and the death penalty is still practiced in Zimbabwe.

Article 7 of the ICCPR prohibits torture, cruel, inhuman or degrading treatment. Slavery is prohibited under article 8. The right to liberty and security of person is recognized under article 9. Everyone is entitled to a fair and public trial with due regard to a number of minimum guarantees under article 14. The principle of *millum crimen sine lege* is recognized except in respect of any act or omission which at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations, article 15 (Dugard, 2007), such as war crimes, crimes against humanity and genocide.

The covenant recognizes the freedoms of movement in article 12, thought conscience and religion under article 18, expression under article 19, assembly article 21 and association under article 22, but accepts that these rights may be restricted where this is necessary to protect national security, public order, public health or morals or the right and freedom of others.

Zimbabwe justified Operation Restore Order along these lines, which would be justified; the issue will be thoroughly looked at in chapter two.

Article 20 qualifies the freedom of expression by prohibiting war propaganda and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination hostility or violence. According to article 25, every citizen is to have the right to vote in elections. These elections should be regular, free and fair. Privacy family life and protection of children are recognized by articles 17, 23 and 24 respectively.

Furthermore, all persons are to enjoy equality before the law and are entitled without any discrimination to the equal protection of the law. This is incorporated into Zimbabwe's national law, but in practice the opposite is true. Discrimination on the ground of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status is prohibited in accordance with article 26. For ethnically diverse societies, such as Nigeria and South Africa, Article 27 provides that "in those states in which ethnic religions or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language" (ICCPR).

When it comes to periods of public emergency threatening the survival of the nation, state may derogate from their obligations under the covenant to the extent strictly required by the exigencies of the situation (Brownlie, 1998). This is stated in article 4. No derogation is permitted, however from a number of absolute provisions such as the right to life and the freedom from torture and cruel, inhuman or degrading treatment or punishment. The reason is that such rights possess the status of *jus cogens*.

States have an obligation in accordance with rules of state responsibility to ensure that their legal systems provide effective remedies against violations committed by state officials (Shaw, 2003). The rule is found in article 4of the covenant. Like many other members of the international community, Zimbabwe's legal system caters for this rule.

The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR is primarily concerned with second generation rights. Zimbabwe ratified this covenant on 13 May 1991. Article 6 recognizes the right to work, the enjoyment of just and favorable conditions of work. The fair wages and safe and healthy working conditions are provided in article 7. In addition, article 6 recognizes the right to form and join trade unions. Provision of the right to social security is found in article 9, to an adequate standard of living in article 11. The enjoyment of the highest attainable standards of physical and mental health is recognized under article 12. Article 13 provides the right to education, including free and compulsory primary education and article 15 extends the right to participate in cultural life (ICESCR).

The International Convention on the Elimination of all Forms of Racial Discrimination

The convention came into force in 1969. Zimbabwe signed and ratified the convention in 1981, but does not recognize article 14 for political and strategic reasons. Article 14 allows parties to recognize the competence of the Committee to hear complaints individuals about violation of the rights protected by the convention (Dugard, 2007). Racial discrimination is defined in article 1of the convention as any distinction, exclusion, restriction, or preference based on race, color descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing of human rights and fundamental freedoms in the political economic, social cultural or any other field of public life (ICEFRD).

Contracting states condemn racial discrimination and undertake to eliminate it by all appropriate means, article 2 (Dugard, 2007). Apartheid received particular condemnation in article 3. In pursuance of the undertaking to eliminate racial discrimination states agree to guarantee civil and political rights and economic and social and cultural rights in a non- discriminatory manner, article 5 furthermore understate to assure to everyone within their jurisdiction effective protection and remedies against acts of racial discrimination, article 6 (Shaw, 2003).

The more controversial features of the convention are those concerning private or non-governmental discrimination, restrictions on freedom of speech and affirmative action (Harris, 2001). Despite article1(1) defining racial discrimination as comprising certain distinctions in the political, economic, social cultural or any other field of public life: article 2(1) obliges states to bring to an end by all appropriate means, including legislation as required by circumstances racial discrimination by any person, group or organization and article 5(f) guarantees equality before the law in the right to access to any place or service intended for use by the general public such as transport, hotels restaurants, cafes, theatres and parks. All of this indicates that discriminatory action by non-governmental parties is prohibited by the convention (Moir, 1987). Racist speech is clearly outlawed.

Article 4 obliges states to criminalize dissemination of ideas based on racial superiority and incitement to racial discrimination and to prohibit organizations which promote and incite racial discrimination (Moir, 1987). Affirmative action is recognized in 2 ways. First, article1(4) excludes affirmative action from the ambit of racial discrimination provided such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved. On the other hand article 2(2) obliges states to take affirmative action when circumstances so warrant.

Convention on the Elimination of All forms of Discrimination against Women (CEDAW)

CEDAW was opened for signature in 1979 and came into force in 1981. Over 170 states have ratified or acceded to the Convention. Zimbabwe signed and ratified the convention on 13 May 199 accepting the responsibility to protect the rights of women. For the purpose of the convention, discrimination means any distinction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status on the basis of equality of men and women, of human rights in any field, article 1 (Wallace, 2007). More so, the convention condemns discrimination against women and obliges states to ensure that their legal systems guarantee equal rights to women in all spheres of life.

Affirmative action is recognized in article 4(1) which permits states to adopt temporary special measures aimed at accelerating de facto equality between men and women. Article 4(2) provides that special measures aimed at protecting maternity shall not be considered discriminatory (CEDAW).

Although reservations incompatible with the object and purpose of the convention are prohibited, no criteria are given for the determination of incompatibility. Consequently a number of reservations have been made, particularly those that preserve the Islamic Sharia, which seem to defeat the purpose of the convention (Clerk, 1991)

As commitment to international human rights Law Zimbabwe acceded to the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 192 (Weston, 1994), This amounts to Zimbabwe's recognition and actual application of international human rights law. The national legal in Zimbabwe incorporated the above rules that recognized internationally. One doesn't require a rocket scientist to let him or her know that, in this regard, that Zimbabwe acknowledges international human rights law.

Convention on the Rights of the Child (CRC)

In 1989, The General assembly adopted the Convention on the Rights of the Child which came into force in 1990. The Convention protects children against discrimination and accepts their civil and political, economic, social and cultural rights. This convention is to be monitored by a Committee without any provision for inter-state claims or individual petitions (Guzman, 2005). Zimbabwe signed and ratified the CRC in 1991. One hundred and ninety one states are parties to this convention.

The CRC as a source of human rights law is of fundamental importance as a tool for international humanitarian law. It clearly condemns the participation of children in armed conflicts. For the purpose of this convention, a child is any human being below the age of 18 years. Arguments were raised as to the range of age that constitutes childhood. Some say 16 years and below and others cite anyone below 21 years. Somalia and the US have not ratified the convention.

United Nations Convention against Torture (UNCAT)

This anti torture convention came into force in 1987. Torture and other cruel, inhuman or degrading treatment is prohibited by the international Covenant on civil and political Rights and other international and regional human rights conventions and instruments (Sieghat, 1983). Zimbabwe did not ratify the anti-torture convention due to lack of political will. Efforts to ratify the CAT in 2009 were shot down in parliament in Zimbabwe, may be because ZANU PF has a lot in its closet. Some states which have ratified it made declarations under article 28 that they do not recognize the competence of the Committee against Torture to investigate allegations of widespread torture within their boundaries. Such declarations, though lawful, defeats the whole purpose of the Convention against torture. It is as good as not ratifying the convention.

For the purpose of this convention torture is defined in article 1 as any act by which severe pain or suffering whether physical or mental is intentionally inflicted on a person for such purpose as obtaining from him or a third person information or a confession, punishing him for an cat he or a third person has committed or is suspected to have committed or intimidating or coercing him or a third person or for any reason based on discrimination of any kind when such pain suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity (Shaw, 2003). It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The prohibition on torture is to be enforced by both domestic criminal law sanctions as well as international supervision (Guzman, 2005). States undertakes either to extradite torturers. Jurisdiction is recognized on the basis of the principles of territoriality active and passive nationality under article 5of the convention (Wallace, 2007). A ten person committee on torture was established with powers similar to those of other supervisory committees. The committee receives and considers national reports and there is provision for optional interstate and individual petition procedures (Dugard, 2007). An innovation contained in article 20 allows the committee to examine allegations of systematic torture in a state if necessary by an inspection in loco, provided the host state consents. However states may exclude the operation of article20 by a special declaration contained in article 28.

In 2002 an Optional Protocol to the Convention was adopted which enables a subcommittee on prevention to conduct regular visits to places of detection and requires states parties to maintain at the domestic level, one or several visiting treaties for the prevention of torture(ILM26, 2003).

In Zimbabwe, NGOs and civil society groups advocated for regular visits to places of detention especially in 2008. This followed speculation by journalists that opposition supporters and activists were being kept under precarious conditions in Zimbabwean prisons. But such efforts were fruitless because the Zimbabwean government rejected the move as it was interference with domestic affairs of a sovereign country, which is true.

The corpus of international human rights law extends beyond international treaties to include declarations of the general assembly and other political organs of the United Nations or its specialized agencies. As well as standards formulated by such bodies. In 1993, a Worlds conference on Human rights, sponsored by the United Nations adopted the Vienna Declaration on Human rights and Programme of Action which proclaims the universality of human rights and reaffirms the obligation on all states, including Zimbabwe, to promote and respect human rights (Weston, 1996). Of significant importance are the standards laid down by the International Labor Organization and the Standard Minimum rules for the treatment of Prisoners.

International Labor Organisation Standards (ILO)

ILO adopted several hundreds of conventions and recommendation enunciating standards in the area of industrial relations (Rubin, 1998). Conventions were adopted by the general conference and submitted to member states for ratification. Zimbabwe signed and ratified all fundamental conventions in August 1998 and December 2000. If ratified such a convention has the same weight and effect as a treaty (Shaw, 2003). Recommendations on the other hand are designed to provide guidelines to states. These conventions and recommendations have laid down standards on matters such as freedom of association, conditions of work, social security, health and safety as well as acceptable working hours. Zimbabwe has adopted these recommendations and standards.

In the domestic law of Zimbabwe, the Labor Relations act Chapter 28(1) contains provisions on the relationship between employers and workers and stresses the need for adherence to labor laws (Constitution of Zimbabwe). Labor laws govern or call for good treatment of workers by their employers, decent working standards and conditions as well as acceptable working hours. The Labor Relations Tribunal was also established in Zimbabwe in 2004. The function is to administer justice which is sensitive to the plight of workers. The court deals with labor issues alone.

Standard Minimum Rules for the Treatment of Prisoners

The first United Nations congress on the prevention of crime and the treatment of offenders in 1995 adopted a set of Standard Minimum rules for the treatment of offenders .I was subsequently approved by the UN Economic and Social Council (Buegenthal, 1995). The adopted rules have been widely accepted by governments and have influenced judicial decisions in many countries.

The African Charter on Human and People's Rights

The African Charter on Human and Peoples Rights was approved by the Organisation of African Unity (OAU) in 1981 and came into force in 1986. It is also known as the Banjul Charter. Zimbabwe ratified the charter in 1986. The principal supervisory organ of the African Charter on Human and Peoples Rights is the African Commission on Human and People's Rights (Dugard, 2003). In 2003, a protocol establishing an African Court of Human Rights, to which Zimbabwe is a party, came into force. But this court has yet to be established.

Unlike under the new African Union (AU) with its promising commitment to the promotion and protection of human rights, the question of human rights did not feature prominently on the agenda of the OAU following its creation in 1963. Article 2(1) (e) of the OAU charter declared as one of the OAUs goals that member states should promote international co-operation having due regard to the Charter of the United Nations and the Universal Declaration of Human rights (Shaw, 2003). It took almost two decades before assembly of heads of states and governments was prepared to adopt, in 1981a human rights document for the continent. The document in question was the African Charter on Human and Peoples Rights.

Protective Principles of International Human Rights Law

International human rights is premised on the respect for human dignity. Therefore are separate parts of a single order committed to respect for human rights (Drevost, 2002). This is borne out by the jurisprudence of the ad hoc criminal tribunals, for Rwanda and former Yugoslavia and the International Court of Justice. In its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestine territory the International Court of Justice rejected Israel's argument that humanitarian law alone was applicable to its administration of the Occupied Palestine territory (ICJ Reports, 102-113, 2004). Instead it held that Israel conduct in the occupied Palestine territory was to be judged in accordance with norms of both humanitarian law and human rights law. This indicates the fact that protective principles of human rights law and humanitarian law are intertwined.

The fundamental principles of humanitarian law govern the question of who may be targeted and what may be attacked in the conduct of hostilities. These are the principles of distinction and proportionality. The principle of distinction is codified in article 48 of Protocol (Harris, 2001). It provides that the parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

The principle of proportionality requires that even military objectives may not be attacked if an attack is likely to cause civilian casualties or damage which will be excessive and disproportionate in relation to the concrete or direct military advantage, which the attack is expected to produce. According to the international Criminal Tribunal for former Yugoslavia 'an armed conflict exist whenever there is resort to armed force between states or protracted armed violence between governmental authorities and organize armed groups or between such groups within a state. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached or in the case if internal conflicts when a peaceful settlement is achieved. Until that moment International humanitarian Law continues to apply in the whole territory of the warring state or in the case of internal conflicts the whole territory under the control of a party, whether or not actual combat takes place" (Dugard, 2007).

The above citation makes it perfectly clear that humanitarian law applies to both international and internal conflicts (Moir, 2003). Thus operations such as Chikorokoza Chapera (No illegal panning), Murambatsvina and Chiadzwa atrocities can be cited as evidence of Zimbabwe's violation of international humanitarian law and international human rights law. Such operations 'are governed by common article 3 of the 4 Geneva Conventions. The article provides hat in such conflicts each part to the conflict is bound to accept, as a minimum, that persons taking no active part in hostilities are to be treated humanely. In the case of operations by Zimbabwe government forces to disperse civilians from Chiadzwa diamond Mines, civilians were not treated humanely. Therefore Zimbabwe violated article 3 of the Geneva Convention.

To this end , the following acts are prohibited, violence to life and person in particular murder, cruel treatment and torture, hostage taking, outrages upon human dignity, particularly humiliating and degrading treatment and the passing of sentences and the carrying out of summary executions in the absence of due process.

Applicability of International Human Rights Law

International human rights law applies at all times, both in peace time and in situations of conflicts. However, some international human rights law treaties permit governments to derogate from certain rights in situations of public emergency threatening the security of a nation (Wallace, 2007). However, derogations must be proportional to the crisis at hand and must not be introduced on a disciplinary basis and must not contravene other rules of international law, including rules and principles of international humanitarian law which seeks to promote human rights in times of conflict. International humanitarian law is applicable in times of international or non-international armed conflicts. International conflicts are wars involving two or more states and wars of liberation despite whether a declaration of war has been made or whether the parties involved recognize that there is state of war (Wallace, 2007). Non-international armed conflicts are those in which government forces are fighting against insurgents or rebel groups fighting amongst themselves.

A handful of human rights are never derogable. These are the right to life, prohibition of torture or cruel, inhuman or degrading treatment.

The Constitution of Zimbabwe which is the supreme law of the land contains these internationally recognized non-derogable human rights. However, what matters is practice and adherence to those provisions and this is lacking in Zimbabwe.

Domestication of International Human Rights Law in Zimbabwe

The first and foremost important focus of assessing the extent to which Zimbabwe has upheld international human rights laws is the country's 'law of the land' enshrined in the Zimbabwean Constitution. It is important to determine Zimbabwe's incorporation of rules and principles of international human rights law into her domestic legal system.

It is also of significant importance to note that the approach of a state's national law and courts to international law is determined by the state's attitude to and reception of international law (Wallace, 2007). Such an attitude may and does differ according to the type of international law in question. Strictly speaking, the reception of international law by a state and its internal effect is a matter of municipal law (Wallace, 2007). There is no universal and uniform practice stipulating how states should incorporate rules of a particular branch of international law into their domestic legal system. To this end, there are no rules or practice stipulating or forcing Zimbabwe to incorporate international human rights law into her legal system. Furthermore, acting in compliance with rules and principles of international human rights law is voluntary not mandatory.

In conjunction with the above, it is a Zimbabwe's perception of the international legal system which determines the way in which rules of this system becomes part of domestic law. In other words, states differ in the way their practice are either required or allowed to give effect to international obligations.

Before venturing into the main thrust, mention, albeit brief, must be made to the approaches which have evolved on the relationship of national law to international human rights as well as practice per se. Traditionaly, these approaches were divided between two principal schools of thought namely monism and dualism.

Monism has a unitary concept of law and view all law and consequently international law and municipal law as an integral part of the same system (Ortega, 2005). In the event of a conflict between the two, monists would contend that international law should unquestionably prevail.

Dualists see national law and international law as two independent legal systems. They are viewed as completely separate from each other. They maintain that the two systems regulate different subject matters (Ortega, 2005). International law regulates the relations of sovereign states, while national law regulates affairs internal to the state. Accordingly, dualists hold, the two systems are mutually exclusive and can have no contact with each other. If international is applied within a state, it is only because it has been expressly incorporated into municipal law. The question of primacy is not one to which dualists address themselves. As formulated, dualism does not admit a conflict can arise between the two legal systems.

Sir Gerald Fitzmaurice stepped into the debate between monists and dualists when he articulated what has become popularly known as the "Fitzmaurice compromise" (Fitzmaurice, 1960). He acknowledged that international law and municipal law have, for the most part, separate fields of operation and each is supreme in its own domain.

Nevertheless, on occasion they have a common field of application and should conflict arise, what is involved, Fitzmaurice concluded, is not a conflict of legal systems but rather a conflict of obligations (Ortega, 2005). If a state is, by its national law, unable to act in the manner required by international, it is not its internal law which the national courts will uphold, which is called into question, but rather the state's liability on the international plane for the non-fulfillment of its international obligations (Murray, 1987). This suggests that the differences between rules and principles of internal and international law are just cosmetic.

In practice, the differences between international law in general and a particular national system are minimized and every effort is made to achieve harmonization between the two systems (Guzman, 2005).

In Zimbabwe there exists "a *prima facie* presumption that parliament does not intend to act in breach of international law, including therein specific treaty obligations and if one of the meanings which can reasonably be ascribed to the legislation is consonant with the treaty obligations and another or other are not, the meaning which is consonant is to be preferred" (Wallace, 2007).

Against this background, Zimbabwe is dualistic in its approach to international human rights law. This means that these bodies of international law only become part of Zimbabwe's national law if it has been expressly adopted as such by way of legislative act.

Section 3b of the Zimbabwean constitution states that any international convention, treaty or agreement acceded to, concluded or executed by or under the authority of the president with foreign states or organizations (a) is subject to approval by parliament (b) shall not form part of our law by or under an act of parliament (Zimbabwean Constitution). This simply means that Zimbabwe is not bound by international human rights law unless the law is legislated by parliament into the local statutes of Zimbabwe. That's what makes Zimbabwe's approach to international human rights law dualistic.

However, the above is not reason enough for Zimbabwe not to comply with rules and principles of international human rights law. There are certain rights that are non-derogable, that possess the status of *jus cogens*. These are the right to life, protection from torture, cruel and inhuman treatment. They do not require any act of parliament to be adopted into a country's legislation and any treaty or law conflicting with them becomes null and void *ab initio*.

It is apt to state that customary international law is part of Zimbabwe's law as it is *erga omnes*. This position was first made precedent by Waddington J when he stated that "there is no doubt that customary international law is part of the law of this country" in the case of Barker McComarc (Pvt) Ltd versus Government of Kenya (Rowland, 1996).

Chapter 3 of the Zimbabwean constitution which contains the Declaration of Rights is evidence to this. This chapter contains rules of customary international law.

Among these rules are protection of the right to life section 12, the right to personal liberty section13, protection from slavery and forced labor section 14, protection from inhuman treatment section, freedom of movement section 22 and protection from discrimination on the grounds of race section 23 (Zimbabwean Constitution, Chapter 3).

Despite having incorporated international human rights law into national law, Zimbabwe has failed to meet legal obligations to respond to human rights violations under the national legal framework. Zimbabwe does not have an a Constitutional Tribunal with specific powers to review and abrogate legislation, to control judicial decisions with respect to human rights and to decide about the application of international law. Furthermore, the general legal framework does not provide for judicial review of the decisions of public officials and of legal decisions in any court proceeding. Above all, there is no independent body that has any powers to conduct investigations into the actions of public bodies, and to give specific recommendations for the fulfillment of human rights.

Conclusion

In conclusion, international human rights law is designed to promote and protect lives, health and dignity of individuals, albeit from a different perspectives. It aims to protect life, prohibit torture or cruel treatment, prescribe basic rights for all individuals and prohibit discrimination. The background of international human rights law in Zimbabwe began with the first European settlement in the area presently known as Zimbabwe. But during that time, this body of international law was not visible. It was only visible in relation to state practice. Its importance came to be recognised in the 21st century. In other words, the international legal system that comprises within its ambit international human rights law was imported by white settlers. During the period before white settlers, human rights law and humanitarian issues were not visible. In fact most of the bodies of the international legal system were not in existence or at least were not recognised. Individual had no visible rights under international law, only states were recognised as a result of the Westphalia sovereignty.

Post-independence Zimbabwe witnessed the signing and ratification of various human rights instruments as an effort to respect and recognize international human rights law.

Furthermore, Zimbabwe incorporated rules and principles of international human rights law into the national law based on dualism. Although Zimbabwe incorporated international human rights laws into national law, the country has failed to meet legal obligations to respond to human rights violations under the national legal framework. There is no Constitutional Tribunal with powers to review legislation, control judicial decisions with respect to human rights and to decide about the application of international law. However, the centrality of politics should not be brushed aside because issue to do with human rights plays second fiddle in both international and internal relations. In fact, international law permits states to derogate from the respect for human rights if matters of higher politics arise.

Reference

Abraham Godfrey, Public International Law, London, Macmillan, 2002.
Bowett Derek William, International Law, London, Oxford University Press, 1984.
Brownlie Ian, Public International and Politics, London, Macmillan, 1998.
Churchill Ewunben, International Law and Conflicts in Africa, New York, ASD Publisher, 2008
Clerk Gary B, Dynamics of International Law, New York, Law Book Company, 1991.
Dugard John, International Law: A South African Perspective, Pretoria, South Africa, APH, 2007.
Eden Peter, International Law and Domestic Law, London, Oxford University Press 2001.
Fitzmaurice Gerald, International Law and Municipal Law, Colombia, Macmillan 1960.
Forsyth Christopher, Contemporary International Law, Cambridge University Press, New York, 1996.
Guzman Andrew T, International Law: Compliance and Reciprocity, New York, Palgrave, 2001.
Harris David John, Cases and Materials on International Law, Oxford University Press, 2001.
Higgins Rosalyn, International Law and How we Use It, Columbia, Royal Institute of International Affairs, 1984. 150
Kittichaisaree K, International Criminal Law, 2001.
Malanczuk Peter, Public International Law, OUP, London, 1999.
Miller Antony, Modern International Law, Palgrave, 2003.
Moir Lindsay, The Law of Armed Conflicts, OUP, London, 1987.
Murray Tods, International Law of Human Rights, Millerton Publishers, New York, 1989.
Ortega Martin, International Law, Palgrave, 2005.
Roberts Anthea, Humanitarian Law, Agea, Colombia, 2004.
Rowland Moores, Problems of Human Rights Law, Palgrave, Minnesota, 1996.
Rubrin Anold, International Politics, Cambridge University Press, 1998.
Schabas Wallas A, Introduction to the International Criminal Court, London, Cambridge University Press 2004.
Shaw Malcolm, International Law, London, Macmillan, 2003.
Wallace Rebecca, International Law, New York, Macmillan, 2007. 2004.

Reports

Amnesty International Report, March 2011.

United Nations Universal Periodic Review for Zimbabwe, 2011.

Amani, An Investigation into the Sequelae of Torture and Organised Violence in Zimbabwean war veterans, Harare: Amani, 2001. 151

Constitution of Zimbabwe

United Nations Universal Periodic Review for Zimbabwe, Office of the High Commissioner for Human Rights, 2005.

Feltoe G, The onslaught against democracy and rule of law in Zimbabwe, Paper presented to "Crisis in Zimbabwe: Implications for South Africa and Southern Africa", South African Institute of International Affairs, Johannesburg, South Africa. 152

Journals

American Journal of International Law.

South African Journal of International Law.