

A Long Road Littered With Injustice

Transcript of David Coltart's Gerard Brennan Lecture to Bond University, 30 July 2005

Good Evening. Last week a UN special Envoy, Mrs Anna Tibaijuka, issued a report on the recent mass evictions by the Zimbabwe Government of poor people who have been, in the course of the last two months, evicted from their homes and many of whom have been deprived of their source of income. This action, which the Zimbabwe Government has termed Operation Murambatsvina, which is a Shona term for "clean out the trash", commenced on 19 May and Mrs Tibaijuka's report finds that 700,000 of the poorest of the poor have in the last two months been either evicted from their homes or deprived of their source of livelihood or both. In the same report, she finds that 2.4 million Zimbabweans have been indirectly affected by this action.

Let me stress that this is the first United Nations report on Zimbabwe since it became independent in 1980. For some in the international community the actions of the Zimbabwe government in the last two months are an aberration. Tragically, what has happened in the last two months is the direct result of a culture of impunity. It is also the result of the failure of the international community to respond to human rights abuses which took place 20 years ago in Zimbabwe, and it is also a failure of international law.

To understand why what I have just said is correct, one needs to appreciate the historical context in which Operation Murambatsvina has taken place. In that regard, I need to trace the human rights history of Zimbabwe since Zimbabwe obtained independence in 1980. I would divide it into four chapters.

The first I would entitle The Honeymoon. This period deals with the time from the signing of the Lancaster House Constitution in late 1979 and the subsequent elections which brought about black Zimbabwean rule in 1980, to the end of 1982. The world's superficial view of that period was that it

was a time of reconciliation. Robert Mugabe established his credentials as a statesman through enunciating his policy of reconciliation which was directed at the white minority and which was designed to bring this dreadful civil war which raged during the latter half of the 1970's to an end. Mugabe during that period was correctly praised for that policy of reconciliation. But sadly the international community focused on that policy. Unbeknown to the international community, unbeknown to many within Zimbabwe, at the very time that the Mugabe regime was promoting a policy of reconciliation with the white community, it was plotting the demise of the most powerful opposition figures headed by Joshua Nkomo who ranked with Robert Mugabe as one of Zimbabwe's leading black nationalist leaders. He was the leader of a party called ZAPU.

As early as 1980, Robert Mugabe travelled to North Korea where he met with Kim il Sung and, during that meeting the two of them agreed that North Korea would provide military expertise so that a new brigade could be trained under the auspices of the Zimbabwe National Army - a 5th brigade trained by the North Koreans with the specific objective of quelling internal dissent. But that was kept under wraps.

At the passing out of the 5th Brigade in November 1982, Robert Mugabe made the chilling statement that their purpose was "to go to the people to plough and reconstruct". The significance of those words will become apparent. That passing out parade marked the ending of our first chapter.

The second chapter started in January 1983, I would term it Gukurahundi. This is another Shona word that describes the spring rain that falls and clears out the chaff that has accumulated over the dryer winter months. However, Gukurahundi had a far more sinister objective and meaning.

During the period January 1983 through to mid 1984 the 5th Brigade was deployed into the south west of Zimbabwe, the heartland of the Ndebele people and the heartland of Joshua Nkomo and his ZAPU party. These North Korean-trained soldiers went systematically village by village. If they came across males aged between 16 and 40 and people who spoke Ndebele and especially people who were on the list supplied to the 5th Brigade detailing prominent leaders in ZAPU, they were summarily executed or hauled away to concentration camps. In the course of that period it is estimated that 20,000 Zimbabweans were massacred - that can only be described as genocide.

Sadly the world at the time looked the other way, it was preoccupied with cold war concerns. It was also justifiably concerned about apartheid. Apartheid was unresolved at the time and the western world needed a good precedent on South Africa's doorstep to encourage white South Africans in particular that there could be life after apartheid.

The second chapter Gukurahundi came to an end in December 1987 when Robert Mugabe achieved his objective of creating a de facto one party state. Joshua Nkomo and his ZAPU party were in effect swallowed up by Robert Mugabe's ZANU PF party.



A unity agreement was signed on December 22, 1987 and that ushered in our third chapter of our history, a chapter I would entitle 'The Gathering Storm', a chapter which deals with the period 1988 – 2000. This was a period of relative peace and calm in Zimbabwe. It already enjoyed acceptance by the west, so much so that the British Government, knowing full well what had happened in Matabeleland between 1983 and 1987, conferred an honorary Knighthood on Robert Mugabe. The IMF and World Bank had offered Balance of Payment support and encouraged the Mugabe regime to embrace its Structural Adjustment Programs.

Many of us in the human rights community were alarmed. I argued in the State Department in Washington in August 1992, pleading that conditions be attached. For Zimbabwe to liberalise its media; that conditions be imposed regarding the level of defence spending and the like. I was dismissed as many of my colleagues were, in like manner.

This rooted the culture of impunity and it flourished. The Zimbabwe Constitution was amended in 1988, it further entrenched executive power. At the time we recorded Lord Atkin's statement, 'power tends to corrupt, absolute power corrupts absolutely'. But the human rights community was ignored.

Almost inevitably with that consolidation of executive power came corruption and by the late 1990's, corruption was flourishing and consequently the economy started to plummet. That in turn led to dissatisfaction amongst workers and that in turn led in September 1999 to the establishment of the Movement for Democratic Change, the party which I represent which was, and is, a broad church incorporating the Trade Union movement, churches, civil society groups and the human rights community.

It was the formation of the MDC in September 1999 and a constitutional reform debate promoted by the MDC and its allies in civil society that ushered in the fourth and final chapter of this potted history which I will term the 3rd Chimurenga, which deals with the period 2000 to current time. Chimurenga is another Shona term, it denotes a war of liberation. The first Chimurenga was fought against the British colonel settlers in the 1890's and lost. The second Chimurenga was the liberation struggle during the 1970's which brought to an end white minority rule. The third Chimurenga was the name given by the Mugabe regime to describe its policy of acquiring white farms which has drawn so much attention internationally.

Unfortunately, it has been the acquisition of farms that has acted as a very effective foil for the regime, because our view is that the acquisition of farms, whilst a legitimate objective – no one in their right mind would argue that there was not a need for fundamental changes to our land holdings – was not the political objective of the regime. Their political objective was in fact the consolidation of power. And so we have seen in the last five years under the foil of acquiring white commercial farms a further attempt to obliterate a lawful political opposition.

The press has well documented what has happened in the last five years. Three hundred MDC members have been murdered. Of the 57 colleagues elected with me in June 2000, six died during that term of office, all as the direct or indirect result of torture perpetrated by state agents. All of this has now culminated in Operation Murambatsvina, which in turn was reported on by the UN special envoy last week.

I wish now to address another more insidious assault on Zimbabwe's laws and legal system. What has gone largely unreported in the last five years is the systematic subversion of our legal institutions which are there, or should be there, to uphold the rule of law, to protect human rights, but which have now been subverted to such an extent that these institutions are used as the principle weapons to oppress and to deny Zimbabweans their constitutionally enshrined rights. And during the last five years virtually every single institution in our legal system has been so totally subverted that they are now virtually unrecognisable as law enforcement bodies.

The police force in the last five years has been politicised. Individuals who are independent and professional police officers have systematically been forced out. Senior officials have been corrupted, they have been allocated farms, so much so that the Commissioner of Police in the course of the last few weeks described the poor people who have been ejected from their homes as maggots.

But it hasn't just been subverted at the level of the hierarchy, the rank and file have also been subverted. In the last three years, Zimbabwe has seen the emergence of something equivalent to the Hitler Youth. Youth brigades have been trained: we have 80% unemployment and young people have very little hope. They have been attracted into youth brigades, they are taken through a course of indoctrination and they have now been channelled back into the police. They are recognisable by their youth and their shaven heads and they have been the vanguard of those destroying homes and ejecting vendors from their vending sites in the course of the last two months. The police have even gone to the extent of looting the goods of informal traders on a massive scale.

The Attorney General's Office has also been affected. I have spoken about 300 murders perpetrated and let me stress that many of these were in broad daylight. Many of the perpetrators are well known. My own polling agent, Patrick Nabanyama, was abducted at four o'clock in the afternoon in



the presence of his wife and children. We know the names of his eight abductees, they have been reported to the police, I have spoken about them in parliament persistently for five years. They walk the streets of Bulawayo today.

That is but one of many cases [where] judges have – in civil cases brought by the MDC – stated that these people clearly appear to be guilty of murders. Requests have been made to the Attorney General's Office for further investigations to be done and prosecutions initiated. Nothing has happened and yet in contrast, we have seen during the same period the vigorous prosecution of political opponents. The most high-profile of these was the treason trial of Morgan Tsvangirai the MDC leader.

In a report produced by a South African Civil Society organisation – The Solidarity Peace Trust – in March last year, it was documented that over 50% of all MPs have been subjected to some spurious prosecution, including myself. It continues.

The judiciary has not been immune. Let me stress that Zimbabwe had a fine judiciary, the Supreme Court in particular deservedly built a great reputation in the first twenty years since Zimbabwe's independence. It was often favourably reported on by other commonwealth jurisdictions. Sadly that judiciary itself has been almost completely subverted. This process started in 2001. The Chief Justice Mr Antone Gabe was personally threatened by the Minister of Justice who stated in mafia style that the government could not guarantee the Chief Justice's safety, and he then resigned.

The Supreme Court is a mere shadow of its former self. Of the six Supreme Court Judges, only one is viewed as independent by the legal profession. The Chief Justice, a Senior Judge, the Judge President, the head of our second tier of courts, the High Court, have been allocated farms. Judges have been threatened and driven out. This in turn has led to absolutely farcical judgements.

The Law itself has been subverted. We have seen the passage of what can only be described as draconian, unconstitutional and fascist laws.

Let me give you two examples. The first is the so-called Access to Information and Protection of Privacy Act. It is no such thing. It has been used in the course of just the last ten days to prevent a licence being given to an independent daily newspaper with the largest circulation in Zimbabwe. Another law is the so-called Public Order and Security Act. In

terms of that act, if any politician wishing to have a political meeting – and that is defined as a meeting in a public place involving more than one person – you have to notify the police and the police are given virtually absolute powers to approve of that meeting or to disallow it. If the police disallow the meeting, you have a right of appeal not to the courts but to the Minister of Home Affairs, and our meetings are routinely banned.

From this you will see that there has been a systematic campaign, an all embracing complex program to undermine institutions that should uphold the rule of law. And that brings me full circle back to the current situation, to Operation Murambatsvina, the so called clean out the trash operation.

One can only understand Operation Murambatsvina fully if one understands this historical perspective that I have set out for you this evening. In the run-up to the March election this year, Robert Mugabe and ZANU PF declared that their intention was to "bury the opposition" in the same way that the 5th Brigade was used in the 1980's to crush ZAPU, Joshua Nkomo's party.

Despite all that I have told you, despite the human rights violations, despite the murders, the rapes, the acts of arson, despite the subversion of all these institutions, despite a flawed General Election, the MDC was not buried in March, in fact it won every single urban seat bar one. It did not win rural seats because we were unable to counter the vile and wide-spread acts of intimidation and fraud. But the point is that the political objective of burying the opposition was not achieved and, it is our belief that, as a result of that, Operation Murambatsvina commenced.

In Bulawayo, the city I represent, the city council is controlled by the opposition. When Mrs. Tibaijuka visited a few weeks ago, she was handed a report which documented that 74,165 people in Bulawayo alone had been evicted from their homes between 19 May and 6 July this year. In doing this the government has violated its own laws. These laws have reasonable provisions, all of them say that even if there are illegal structures, the owners of those structures are entitled to personal service of a notice telling them that those structures are illegal. And after service of those notices, they are entitled to a period of grace, one month in which to rectify the illegality. In the vast majority of cases, people were given no notice, in some cases a few hours. The maximum notice that I am aware of is a couple of days.

In terms of the UN Report tabled last week, they estimate that 700,000 Zimbabweans have either been evicted from their homes or deprived from the source of their income since 19 May this year. A further 2.4 million Zimbabweans have been directly affected by what has gone on. But let me make this point: operation Murambatsvina came on the back of a humanitarian crisis that was already grave. James Morris the Executive Director of the World Food Program, said that "the greatest humanitarian crisis we face today is not in Darfur, Afghanistan or North Korean but is in Southern Africa and the epicentre of this humanitarian crisis is Zimbabwe where the world food program estimates four million Zimbabweans are desperately in need of food aid".

In the same address Mr Morris said life expectancy in much of Southern Africa is barely more than it was in Europe during the middle ages. Life expectancy in Zimbabwe has in fact declined now to 54 years. 4,000 Zimbabweans die a week



David Coltart with Castan Centre Director, Sarah Joseph

through the dreadful culmination of AIDS and malnutrition and it is this catastrophic mix of AIDS and starvation which is now combined with homelessness, in mid winter when temperatures go overnight to below freezing.

Mrs Tibaijuka has produced what is in UN terms an excellent report. I want to touch on two aspects of her report. The first deals with her reference to the international responsibility to protect doctrine [which is defined as follows]:

“Where a population is suffering serious harm as a result of, *inter alia*, repression or state failure and the state in question is unwilling or unable to act, or halt, or revert it. The principle of non-intervention, because of the sovereignty of the country, yields to the international responsibility to protect”.

This document goes on to establish further principles. It speaks about the responsibility of the international community to react urgently and quickly when a population is at great harm. Mrs Tibaijuka made the following finding: “The issue remaining for the United Nations however, is whether the government of Zimbabwe is able to offer effective assistance to its people in practical terms. It is the view of the special envoy that the scale of the problem is too large and exceeds the present ability of the government to address the basic needs by those affected by Operation Restore Order.” And she concludes “The international community has a responsibility to protect those affected. The impact will not be easy to address and requires immediate large scale and unconditional humanitarian assistance to protect those in need”. So far, so good.

The problem however, is that the Zimbabwean Government has responded by rejecting this report. Robert Mugabe just this week has said in China that Mrs Tibaijuka has been put under pressure and the destruction continues in Zimbabwe even this week. Let me stress that Robert Mugabe in April last year said to James Morris [World Food Program] that

despite the obvious need for food relief, the Zimbabwean government would handle it itself. It did this with the General Election in March this year in mind, it knew that if food was brought into the county by the World Food Program and distributed through NGOs, churches and the like, food would not be able to be used as a political weapon. No agreement has yet been reached for food supplies to resume. The Mugabe regime persists in its stance that it is only prepared to allow food in if it controls its distribution.

The point that I am making is that whilst we commend Mrs. Tibaijuka’s comments, whilst we are delighted that the responsibility to protect doctrine has been invoked, in practical terms, unless the international community acts vigorously, her recommendations in this regard are simply going to be ignored and this humanitarian crisis will not be averted.

But it goes further than that. Many of us including myself in my representations to Mrs. Tibaijuka made the point that in terms of Article 7 of the Treaty of Rome, the deportation or forcible transfer of a population constitutes a crime against humanity and our contention is that this allegation needs to be investigated. The Special envoy responded to those conditions as follows:

“It is the view of the Special Envoy that an international debate on whether the statute of Rome could be successfully invoked is bound to be acrimonious and protracted. It would serve only to distract the attention of the international community from focusing on the humanitarian crisis facing the displaced who need immediate assistance,” and she concludes “nevertheless, it remains the strong recommendation of the special envoy that the culprits who have caused this man made disaster are best handled and brought to book under Zimbabwean national laws”.

The following two issues are raised by these comments. Firstly the report itself documents the rule of law in Zimbabwe, and to that extent the suggestion that the culprits of these crimes should be brought to book under Zimbabwean National laws is simply farcical. How that can even be put forward as a possibility is beyond our belief.

Secondly, this culture of impunity which was sewn in the early 1980’s is demonstrated this week by the rejection of this report. The tragic irony is that perhaps the only way of addressing the special envoy’s principle concerns is through the threat of international law, but therein lies the problem. Professor Hersch-Lauterbach once said, “International law is not much good. It creates laws which the wicked do not obey and the righteous do not need”.

I have another quote for you in closing from Martin Luther King. He once said “Human progress is neither automatic nor inevitable. Every step towards the goal of justice requires sacrifice, suffering and struggle, the tireless exertions and passionate concern of individuals. This is no time for apathy or complacency. This is a time for vigorous and positive action”.

Sir Gerard Brennan showed tireless exertion during his professional career in upholding the human rights of Australians. We all would be well advised to display similar vigorous and positive action in addressing the present crisis in Zimbabwe. Thank you.

This is an edited transcript of Mr Coltart’s Gerard Brennan Lecture to Bond University available at: www.bond.edu.au/law/



Bond University Dean of Law, Duncan Bentley, introducing his long-time friend