

The University of the Western Cape



**UNIVERSITY of the
WESTERN CAPE**

MODE II

**A critical analysis of the impact of the fast track land reform programme on
children's right to education in Zimbabwe.**

Mini-thesis submitted in partial fulfillment of the requirements of the LLM degree in the Faculty
of Law of the University of the Western Cape.

By

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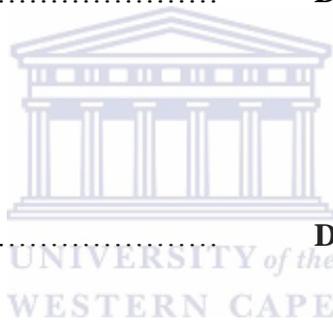
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I declare that ‘**A critical analysis of the impact of the fast track land reform programme on children’s right to education in Zimbabwe.**’ is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Signed by:

Student **Date**.....

Supervisor **Date**.....



Dedication

I dedicate this piece of work to my son King Emmanuel as a gesture of appreciation for sacrificing your motherly care for this to be a reality.

I also dedicate it to my husband Dr Jephias Mapuva for being a pillar of strength and a source of inspiration, whose love, care and guidance have led me to where I am today. Thank you so much my dear.

Last but not least, I dedicate it to my sisters Flora, Marjury, Mary and Brother Dennis.



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Key words

Children

Commercial farms

Education

Fast-track

International law

Land

Reform

Socio-economic rights

Violence

Zimbabwe



Acronyms

ACHPR	African Charter on Human and People's Rights
ACRWC	African Charter on the Rights and Welfare of Children
BSAC	British South Africa Company
CADE	Convention against Discrimination in Education
CFU	Commercial Farmers' Union
COPAC	Zimbabwe Constitution Select Committee
CRC	Convention on the Rights of the Child
EFA	Education for all
EFU	European Farmers Union
FTLRP	Fast Track Land Reform Programme
GAPWUZ	General Agriculture and Plantation Workers Union of Zimbabwe
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immune Deficiency Syndrome
ICCPR	International Covenant on Civil and Political Rights
ICSECR	International Covenant on Economic, Social and Cultural Rights
IDPs	Internally Displaced Persons
INEE	Inter-Agency Network for Education in Emergencies
MDC	Movement for Democratic Change
MDGs	Millennium Development Goals
MSEEs	Minimum Standards for Education in Emergencies
NGOs	Non-Governmental Organisations

NLHA	Native Land Husbandry Act
TTL	Tribal Trust Land
UDHR	Universal Declaration of Human Rights
UDI	Unilateral Declaration of Independence
UN	United Nations
UNDP	United Nations Development Programme
UNDPM	United Nations Development Programme Mission
UNESCO	United Nations Educational, Scientific, and Cultural Organization
VIPs	Ventilated Improved Pit Latrines
ZANU-PF	Zimbabwe African National Union-Patriotic Front
ZESA	Zimbabwe Electricity Supply Authority
ZINWA	Zimbabwe National Water Authority
ZLHR	Zimbabwe Lawyers for Human Rights
ZUM	Zimbabwe Unity Movement

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CHAPTER 1: INTRODUCTION

1.1 BACKGROUND

During the 19th Century, the practice of colonisation swept across the African continent. Different European countries parceled out different parts of Africa, with Zimbabwe falling under British rule.¹ Thus, the colonization of Zimbabwe officially began on October 13, 1888, with the signing of the Rudd Concession² which was an agreement between the white settlers and the Ndebele king which deprived indigenous people of their traditional land. The British settlers, comprising about 5 per cent of the population, occupied half of the agricultural land leaving the indigenous people with inadequate land for agriculture.³

In 1980, after almost a “century of colonial subjugation, the advent of independence ushered in new expectations and goals with regard to a fair distribution of land and other natural resources.”⁴ The new government pursued a land acquisition strategy which sought to address the racially skewed land distribution pattern inherited at independence.⁵ The first ten years of independence were based on the ‘willing-seller-willing-buyer’ principle that was agreed upon in the Lancaster House Agreement of 1979, during the country's independence negotiations.⁶ Thereafter, the new government enacted new laws and amended the existing laws to allow it to compulsorily acquire land for redistribution.

In 1985, the Land Acquisition Act was passed which allowed the Government of Zimbabwe the right of first refusal on all large scale commercial farms put up for sale.⁷ In 1990, Amendment 16 of the Constitution of Zimbabwe was enacted⁸ providing for the limitation of the degree of protection afforded by the Constitution against the acquisition of land for

¹ Lebert T ‘An Introduction to Land and Agrarian Reform in Zimbabwe’ in Rosset P, Pate R & Courville M (eds) *Promised Land: Competing Visions of Agrarian Reform* (2006) 41.

² Hone B T *The First Son of South Africa to be Premier, Thomas Charles Scanlen* (1993) 235; Sibanda M & Moyana H *The African Heritage* (1999) 40.

³ Chimhowu A & Woodhouse P ‘Forbidden but Not Suppressed: a ‘Verneacular’ Land market in Svosve Communal Lands, Zimbabwe’ (2010) 80 (1) *Africa: The Journal of International African Institute* 14.

⁴ Masaka D ‘Zimbabwe’s Land Contestations and her Politico-Economic Crises: A Philosophical Dialogue’ (2011) 13 (1) *Journal of Sustainable Development in Africa* 333.

⁵ Njaya T & Mazuru N ‘Land Reform Process and Property Rights in Zimbabwe: Constraints and Future Prospects (1980-2002)’ (2010) 12 (4) *Journal of Sustainable Development in Africa* 165. See also Lebert T (2006) 43.

⁶ Jansen J ‘The State and Curriculum in the Transition to Socialism: The Zimbabwean Experience’ (1991) 35 (1) *Comparative Education Review* 82.76-91

⁷ Land Acquisition Act No. 21 of 1985.

⁸ Section 3 of the Constitution of Zimbabwe Amendment Act (No. 11) No. 30 of 1990.

resettlement purposes.⁹ In 1992, another Land Acquisition Act¹⁰ was passed in order to create a statutory basis for the National Land Policy.¹¹ By 1996, less than 23 per cent of the white-owned commercial farmland had been bought by the government and re-distributed to the landless indigenous people of Zimbabwe.¹² In 1997, as part of the implementation of the 1992 Land Acquisition Act, the government published a list of 1 471 farmlands that it intended to compulsorily acquire for redistribution.¹³

From 1997, Zimbabwe saw a deterioration of its economic and democratic institutions. This resulted in the ruling party, Zimbabwe African National Union-Patriotic Front (ZANU-PF) becoming unpopular¹⁴ as evidenced by the results of the consecutive elections held in the country which showed that the electorate preferred alternative political parties.¹⁵ As a result, ZANU-PF used the land issue as a campaign tool to regain its lost political ground. In a bid to appease its members, especially war veterans, in 2000, the ZANU-PF government embarked on a chaotic land grab known as the 'Fast Track Land Reform Programme' (FTLRP) as part of its ongoing land reform and resettlement programme.¹⁶

The aim of the FTLRP was to accelerate the pace of compulsory acquisition and the redistribution of prime land.¹⁷ Hence, the Constitution of Zimbabwe and the Land Acquisition Act were amended to accommodate the rapidly changing policies of land acquisition and to legitimize the FTLRP.¹⁸ This FTLRP became the climax of the land reform process as it was politically-charged and characterised by gross human rights violations.¹⁹

⁹ Dube M & Midgley R 'Land Reform in Zimbabwe: Context, Process, Legal and Constitutional Issues and Implications for the SADC Region' in Bosl A, Breytenbach W, Hartzenberg P, McCarthy & Schade K (eds) *Monitoring Regional Integration in Southern Africa Yearbook 2008* (2008) 8.

¹⁰ Land Acquisition Act of 1992.

¹¹ Coldham S 'The Land Acquisition Act, 1992 of Zimbabwe' (1993) 37 (1) *Journal of African Law* 83.

¹² Tucker N 'In The Shadow of Empire in 21st Century Socialism' available at http://21stcenturysocialism.com/article/in_the_shadow_of_empire_01694.html (accessed 24 March 2012).

¹³ Mario P *The Haunted Nation 2ed* (2011) 33.

¹⁴ Sachikonye L 'Constitutionalism, the Electoral System and Challenges for Governance and Stability in Zimbabwe' (2004) 4 (2) *African Centre for the Constructive Resolution of Disputes* 175.

¹⁵ Makumbe JM 'Zimbabwe's Hijacked Election' (2002) 13 (4) *Journal of Democracy* 88.

¹⁶ Marimira SC (2010) 'Livelihoods after Land Reform in Zimbabwe' Working Paper 6 Institutions Leadership and Service Delivery in New Resettlement Areas of Zimbabwe (2010) 1.

¹⁷ Obi A 'Impact of Zimbabwe's fast track land reform programme on the production and marketing of maize in smallholder sector' in van Trijp H & Ingenbleek P (eds) *Markets, Marketing and Developing Countries: Where We Stand and Where We Are Heading* (2010) 78.

¹⁸ Chitigaa M & Mabugub R 'Evaluating the Impact of Land Redistribution: A CGE Microsimulation Application to Zimbabwe' (2008) *Journal of African Economies* 539.

¹⁹ Waeterloos E & Rutherford B 'Land Reform in Zimbabwe: Challenges and Opportunities for Poverty Reduction Among Commercial Farm Workers' (2004) 32 (3) *World Development* 551.

Violence was mostly directed towards white commercial farmers and their workers both of whom were accused of supporting opposition politics.²⁰ Additionally, the process disregarded commercial farmers' property rights and disrupted farming activities.²¹ As a result, the chaotic FTLRP led to a decline in food and export production, remarkable inflation, loss of jobs and shelter within the agricultural sector and collapsing health and education systems.²²

It is against this background that this study sought to critically analyse the impact of the FTLRP on children's socio-economic right to education.

1.2 PROBLEM STATEMENT

Prior to the implementation of the FTLRP, the agricultural sector in Zimbabwe provided employment to more than 70 per cent of the labour force in the country and contributed over 40 per cent of total exports.²³ In addition, it also provided food for the whole population of Zimbabwe²⁴ and 60 per cent of all raw materials for the industry came from this sector.²⁵ Since the FTLRP, about 75 per cent of farm workers were evicted during the farm invasions.²⁶ As a result, they lost their jobs, accommodation as well as other socio-economic services.²⁷ Furthermore, the violent character of the land reform exercise led to gross human rights violations such as assaults, torture and loss of lives by those involved in expropriation of white commercial farmland.

²⁰ GAPWUZ If something is wrong...The invisible suffering of commercial farm workers and their families due to "land Reform" Report produced for the General Agriculture and Plantation Workers Union of Zimbabwe [GAPWUZ] by the Research and Advocacy Unit [RAU] and the Justice for Agriculture [JAG] Trust.

²¹ Manby B *Zimbabwe - Fast Track Land Reform in Zimbabwe* (2002) 18.

²² Hellum A & Derman B 'Land Reform and Human Rights in Contemporary Zimbabwe: Balancing Individual and Social Justice Through an Integrated Human Rights Framework' (2004) 32 (10) *World Development* 1786.

²³ Zikhali P 'Fast Track Land Reform and Agricultural Productivity in Zimbabwe' Environment for Development Discussion Paper Series (2008) 2. See also Hove M & Gwiza A 'The Fast Track Land Reform Programme and Food Insecurity: A case of Zimbabwe from 1992 to the present' (2012) 2 (8) *American International Journal of Contemporary Research* 282.

²⁴ Zimbabwe's population was estimated at 11 634 663 in 2002.

²⁵ Mushunje A *Farm Efficiency And Land Reform In Zimbabwe* (Unpublished PhD thesis in Agricultural Economics, University of Fort Hare, 2005) 1.

²⁶ Hellman A 'Zimbabwe: One Million Casualties of Land Reform' *Inter Press Service News Agency* January 25 2010 1.

²⁷ Sachikonye LM *The Situation of Commercial Farm Workers after Land Reform in Zimbabwe* A report prepared for the Farm Community Trust of Zimbabwe (2003) 7.

Farm schools were also affected when the farm owner was served with an eviction order.²⁸ The maintenance of schools which had previously been under the farm owner ceased, leading to the closure of most farm schools. Although the employment and payment of teachers fell under the auspices of the Ministry of Education, the fact that some schools were closed, led to loss of jobs and salaries. The same happened to health institutions such as clinics on the farms leading to their closure.²⁹ In addition, those former farm workers who were fortunate enough to benefit from the FTLRP were resettled in places where there were no social amenities and utilities such as water, schools, clinics and sanitation.³⁰ Since jobs were lost, it became difficult for the evicted farm workers to fend for their families leading to rising poverty and hunger.

These developments translated into a deprivation of basic needs such as food, health centers, clean drinking water, housing and sanitation,³¹ which had a negative impact on the realisation of the right to education.³² As a result, the takeover of commercial farms impinged on the different socio-economic rights, not only of commercial farm owners and their workers but also of their respective families.

1.3 RESEARCH OBJECTIVES

The aim of this study is to critically analyse the impact of the FTLRP on children's right to education in Zimbabwe. The research is guided by the following sub-objectives:

1. To examine the international and regional legal framework providing for children's right to education applicable to Zimbabwe.
2. To examine the impact of the FTLRP on the right to education in Zimbabwe.
3. To analyse steps taken by Zimbabwe in providing for children's right to education during the FTLRP.

²⁸ Sachikonye LM (2003) 7.

²⁹ Sachikonye L 'Land reform and farm workers' in Harold-Barry D (ed.) *Zimbabwe: the Past is the Future* (2004) 72.

³⁰ Sachikonye L (2004) 72.

³¹ Magaramombe G 'Displaced in Place': Agrarian Displacements, Replacements and Resettlement among Farm Workers in Mazowe District' (2010) 36 (2) *Journal of Southern African Studies* 367.

³² Liebenburg S & Goldblatt B 'Interrelationship between Equality and Socio-Economic Rights under South Africa's Transformative Constitution, The Substantive Equality' (2007) 23 *South African Journal on Human Rights* 337. See Liebenburg S *Socio-economic Rights: Adjudication under a Transformative Constitution* (2010) 35.

1.4 LITERATURE REVIEW

While a lot has been written about the FTLRP in Zimbabwe and its impact on socio-economic rights of farm workers, there is no research that directly focuses on the impact of the FTLRP on children's right to education. Much focus has been on the impact of land reform programme on human rights in general, focusing on women and children's property and inheritance rights.

For example, the study by Hellum and Derman³³ specifically discusses the extent to which human rights were violated during the FTLRP in Zimbabwe. However, it focuses on the vulnerability of farm workers and women. The study recommended that there must be appropriate balances between social, economic and individual rights, hence, a need for participatory frameworks involving all appropriate actors at international, regional and national levels.³⁴

In addition, Bhatasara's³⁵ study established that different categories of women were affected by the FTLRP in Zimbabwe. Most women who had worked as farm workers were deprived of prospects of secure jobs, income, food and homes as well as fending for their children. Bhatasara's study concluded that, the FTLRP diminished the opportunities for women to be empowered. Consequently, it reduced the democratic spaces for genuine participation of women in development processes by denying them the right to land, thereby, widening gender inequalities and ultimately exacerbating their poverty.³⁶

Furthermore, the GAPWUZ's³⁷ assessment of the FTLRP found that, up to two-thirds of the former farm workers were rendered jobless, lost their entitlement to housing on the farms, to basic social services and to subsidised food. Where a farm owner was evicted, the running and maintenance of the schools and clinics and payment of the staff often ceased, leading to

³³ Hellum A & Derman B (2004).

³⁴ Hellum A & Derman B (2004).

³⁵ Bhatasara S 'Women, Land and Poverty in Zimbabwe: Deconstructing the Impacts of the Fast Track Land Reform Program' (2011) 13(1) *Journal of Sustainable Development in Africa*.

³⁶ Bhatasara S (2011).

³⁷ GAPWUZ If something is wrong...The invisible suffering of commercial farm workers and their families due to "land Reform" Report produced for the General Agriculture and Plantation Workers Union of Zimbabwe [GAPWUZ] by the Research and Advocacy Unit [RAU] and the Justice for Agriculture [JAG] Trust.

eventual closure of affected schools. The GAPWUZ Report focused on the general impact of the FTLRP on former commercial farm workers.³⁸

This research, therefore seeks to fill this gap in literature on the impact of the FTLRP on children's right to education in Zimbabwe.

1.5 SIGNIFICANCE OF THE STUDY

It is acknowledged that much has been written about the FTLRP in Zimbabwe. However, this study, through presenting children as victims of the violation of the right to education during the FTLRP in Zimbabwe, aims to contribute to existing knowledge on children's right to education. Through reviewing relevant literature, the study also sought to fill the gap on aspects of the FTLRP that has not received much attention, notably, the impact of the programme on children's right to education in Zimbabwe. The examination of international and regional instruments in this study helps to provide a standard under which the domestic laws and policies, providing for the protection of children's right to education in times of conflict in Zimbabwe can be evaluated.

This research, therefore, would be of interest to a cross-section of individuals and institutions such as legislators, policy-makers and advocates of children's rights. Future land reform programmes and policies will be informed by approaches envisioning civil, political and socio-economic rights as an integrated whole, invoking the international and regional African legal instruments.³⁹ In addition, there are countries which are debating on land issues, especially those in Sub-Saharan Africa which may also benefit from this study.

1.6 RESEARCH METHODOLOGY

In determining the impact of the land reform on children's rights to education in Zimbabwe, the researcher used documentary analysis of primary sources of law such as international conventions and protocols that seek to protect children's right to education, the Constitution

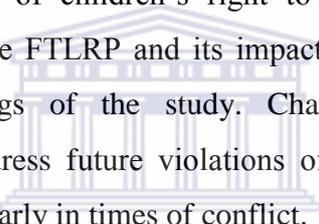
³⁸ GAPWUZ If something is wrong...The invisible suffering of commercial farm workers and their families due to "land Reform" Report produced for the General Agriculture and Plantation Workers Union of Zimbabwe [GAPWUZ] by the Research and Advocacy Unit [RAU] and the Justice for Agriculture [JAG] Trust.

³⁹ Hellum A & Derman B (2004) 1801.

of Zimbabwe, relevant legislation and case law that relates to the land reform programme and children's right to education. Secondary sources such as textbooks, journal articles and newspaper articles that deal with land reform and children's right to education in Zimbabwe were referred to. Internet based publications, reports and other desktop materials were also useful for this study.

1.7 CHAPTER OUTLINE

Chapter 1 has outlined the background to the study, laid down the statement of the problem, provided for aims of the study, stated the rationale of study, presented the research methodology and discussed the literature review. Chapter 2 presents a legal framework and explores international, regional and national instruments for the protection of the right to education particularly, in times of conflict. The aim is to provide a standard under which the domestic law for the protection of children's right to education in Zimbabwe can be evaluated. Chapter 3 discusses the FTLRP and its impact on children's right to education. Chapter 4 analyses the findings of the study. Chapter 5 makes conclusions and recommendations on how to address future violations of children's right to education in Zimbabwe and elsewhere, particularly in times of conflict.

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CHAPTER 2: THE NORMATIVE FRAMEWORK FOR PROTECTING CHILDREN'S RIGHT TO EDUCATION

2.1 INTRODUCTION

This chapter presents a normative legal framework on children's right to education. The aim is to establish the scope of the children's right to education, particularly in times of internal conflict. Consequently, various international, regional, and national laws on the right to education are explored. The international instruments that are discussed include: the Universal Declaration of Human Rights (UDHR) (1948);⁴⁰ the UNESCO Convention against Discrimination in Education (CADE) (1960);⁴¹ the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966);⁴² the International Covenant on Civil and Political Rights (ICCPR), (1966)⁴³ and the Convention on the Rights of the Child (CRC), (1989).⁴⁴ Additionally, since some families were displaced during the FTLRP process, international and regional instruments that protect internally displaced persons, such as the Guiding Principles on Internal Displacement (non-binding) (1998);⁴⁵ Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009)⁴⁶ and the Additional Protocol II to the Geneva Conventions of 1977,⁴⁷ is also be discussed.

⁴⁰ The UDHR was adopted by the United Nations General Assembly on 10 December 1948. It should be noted that its adoption fortified the international human rights movement.

⁴¹ Zimbabwe Zimbabwe deposited the instrument on 30 May 2006.

⁴² Zimbabwe acceded to the ICSECR on 13 May 1991.

⁴³ Zimbabwe also ratified the ICCPR on 13 May 1991.

⁴⁴ Zimbabwe ratified the CRC on 11 Sep 1990.

⁴⁵ The Guiding principles on Internal Displacement is not a binding instrument, hence states cannot ratify it. Consequently, the principles are consistent with international human rights law and international humanitarian law such that States ratifies human rights and humanitarian law instruments which are based on the Guiding Principles. Conversely States can make the Guiding Principles binding by incorporating them into their domestic law. Although they are not legally binding, the Guiding Principles have been disseminated widely among States and international agencies and are increasingly being used to guide protection and assistance strategies.

⁴⁶ Zimbabwe signed the Convention on 22 October 2009, but has not yet ratified it, as a result it is not bound by the Convention.

⁴⁷ International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, 1125 UNTS 609, available at: <http://www.refworld.org/docid/3ae6b37f40.html> (accessed 18 May 2013). According to the definition provided by Department of Peace and Conflict Research the FTLRP can qualify as an armed conflict under the Protocol 11.

A plethora of regional instruments are discussed and these include: the African Charter on Human and Peoples Rights (ACHPR), 1981;⁴⁸ the African Charter on the Rights and Welfare of the Child (ACRWC), 1990;⁴⁹ the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2005);⁵⁰ the African Youth Charter;⁵¹ and A Framework for Action in Sub-Saharan Africa: Education for African Renaissance in the Twenty-first Century.⁵² At national level the study will discuss the old Constitution of Zimbabwe,⁵³ the new COPAC Constitution⁵⁴ and the Children's Education Act.⁵⁵ Furthermore, declarations such as the Jomtien Declaration (1990),⁵⁶ the World Education Forum Framework for Action (2000) promoting Education for All (EFA)⁵⁷ and the Millennium Development Goals (MDGs, 2000) are also included in the exploration of relevant legislation.

Most of these instruments provide that education should be accessible, adaptable, acceptable and available to those entitled to it, known as the 4-A scheme.⁵⁸ General Comment 13 emphasises that education in all its forms and levels must exhibit these four inter-related and essential features.⁵⁹ Furthermore, the former Special Rapporteur on the Right to Education, Ms Tomasevski, suggested that these four essential features could be used to monitor and assess the realisation of the right to education.⁶⁰ Consequently, the discussion of these instruments in this study is provided under the 4-A scheme as a standard for measuring

⁴⁸ Zimbabwe ratified the ACHPR on 30 May 1986.

⁴⁹ Zimbabwe acceded to the ACRWC on 19 Jan 1995.

⁵⁰ Zimbabwe signed and ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa on 15 April 2008.

⁵¹ Zimbabwe ratified the African Youth Charter on 16 March 2009.

⁵² Zimbabwe adopted A Framework for Action in Sub-Saharan Africa: Education for African Renaissance in the Twenty-first Century in December 1999.

⁵³ The Constitution of Zimbabwe was published as a Schedule to the Zimbabwe Constitution Order 1979 (S.I. 1979/1600 of the United Kingdom).

⁵⁴ This was a draft Constitution which was voted in favour of in March 2013.

⁵⁵ Children's Education Act Chapter 25:04.

⁵⁶ World Declaration on Education for All, adopted by the World Conference on Education for All: Meeting Basic Learning Needs, Jomtien, Thailand, 5-9 March 1990.

⁵⁷ Dakar Framework of Action on Education for All: Meeting our Collective Commitments, adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000.

⁵⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, available at <http://www.refworld.org/docid/4538838c22.html> (accessed 6 May 2013) para 6.

⁵⁹ General Comment 13 para 6.

⁶⁰ Beiter KD *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights* (2006) 335.

Zimbabwe's compliance with the legal framework for the achievement of the right to education during the FTLRP.⁶¹

2.2 THE SCOPE OF THE RIGHT TO EDUCATION USING THE 4-A SCHEME

The 4-A scheme of education denotes access to education on a non-discriminatory basis, enjoyment of free and compulsory primary education, quality education and the right to free choice of education. It therefore, imposes an obligation on the state to ensure that education is available, accessible, acceptable and adaptable to every child of school-going age as summarised in figure 1 below.⁶²

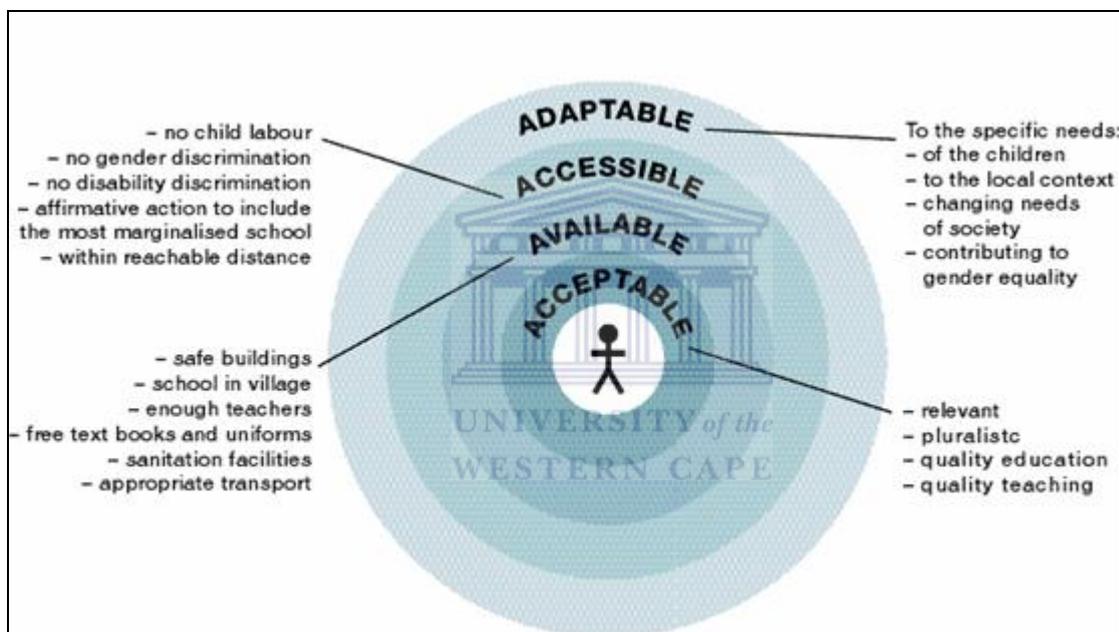


Figure 1

⁶¹ Coomans F 'Content and Scope of the Right to Education as a Human Right and Obstacles to Its Realisation' in Donders Y & Volodin V (eds) *Human Rights in Education, Science, and Culture: Legal Developments and Challenge* (2007) 197.

⁶² Diagram taken from Right to Education Project Education and the 4As available at <http://www.right-to-education.org/node/231> (accessed 6 November 2012).

2.3 UNPACKING THE 4-A SCHEME

As presented in Fig.1 above, the 4-A Scheme comprises the availability, accessibility, adaptability and acceptability of education to all those of school-going age. Below is a step-by-step discussion of the 4-A Scheme.

2.3.1 Availability of education

Human rights instruments provide that everyone has a right to education.⁶³ These instruments do not give a detailed explanation of what availability entails.⁶⁴ However, the UN Committee on Economic, Social and Cultural Rights has expanded the meaning of availability of education in General Comment 13 by providing that education is available if there are functioning educational institutions and programmes in sufficient quantities.⁶⁵ According to the General Comment, the meaning of functional schools and programmes depends on various factors such as the developmental context within which they operate.⁶⁶ Generally, the Committee has noted that, all educational institutions and programmes require adequate and safe infrastructure for school programmes to function properly.⁶⁷ In addition, it entails that schools should be well-equipped with furniture and fittings such as desks, chairs and chalkboards. Furthermore, the General Comment provides that schools should have at least the basic sanitation facilities for both sexes.⁶⁸

Moreover, General Comment 13 provides that schools must have access to safe drinking water for their programmes to function effectively.⁶⁹ This is also in line with human rights

⁶³ Article 26 (1) of the UDHR; Article 13 (1) of the ICSECR; Article 28 of the CRC; Article 17 (1) of the ACHPR; Article 11 (1) of the ACRWC ; Guiding Principle 23 (1) of the Guiding Principles on internally displaced persons and the Zimbabwe Education Policy Number 3 of 2006. It should be noted that the CRC and the ACRWC specifically endows children with the right to education. A Framework for Action in Sub-Saharan Africa: Education for African Renaissance in the Twenty-first Century reaffirmed that “education is a basic right and a basic need for all. However, the previous Constitution of Zimbabwe did not protect the right to education.

⁶⁴ CESCR, General Comment 13, Art. 1 (21st Session, 1999), UN Doc E/C.12/1999/10 (1999), at para. 43-45.

⁶⁵ General Comment 13 para 6 (a).

⁶⁶ General Comment 13 para 6 (a).

⁶⁷ General Comment 13 of the Right to education Para 6 (a).

⁶⁸ General Comment 13 of the Right to education Para 6 (a). To that end, it should be noted that the Children’s Institute of South Africa (CISA) has described basic sanitation facilities as “including flush toilets, ventilated improved pit latrines (VIPs) and Enviro loos.” The institute has established that ordinary pit latrines, buckets or no toilets constitute inadequate sanitation facilities.

⁶⁹ General Comment 3 of the Right to education Para 6 (a).

instruments which proclaim that everyone, including children have a right to water.⁷⁰ It is also important to note that the right to water is critical for the achievement of adequate sanitation and health since human rights are interlinked and interdependent.

In terms of the legal instruments the welfare of the teaching personnel is also vital in ensuring that education is available to children. For example, the UNESCO CADE provides that governments should make available training for teachers without discrimination⁷¹. In addition, the ICSECR provides that the material conditions of trained teachers should be continuously improved inter alia.⁷² Similarly, General Comment 13 stipulates that trained teachers should receive domestically competitive salaries.⁷³

Furthermore, availability entails that schools must be equipped with sufficient teaching materials so as to function properly and have sufficient programmes.⁷⁴ Additionally, General Comment 13 notes that facilities such as libraries, computer facilities and information technology should be availed so as to enhance children's understanding thereby enabling schools to function properly with sufficient teaching materials.⁷⁵ Furthermore, the CRC encourages states, especially those in developing countries to facilitate access to scientific and technical knowledge as well as modern teaching methods.⁷⁶ With the developments in technology, modern teaching methods should be made available to teachers so that scientific and technical knowledge can be cascaded to children. The new technological teaching methods should enhance teaching and learning as opposed to relying on traditional textbooks, board and chalk.

In addition, the UNESCO CADE and the ICSECR provides that governments should formulate, develop and apply national policies to ensure that people who did not receive primary education or failed to complete their primary education can complete their education.⁷⁷ These provisions protect both males and females. Nevertheless, the African Youth Charter protects females only in this regard and provides that states should give

⁷⁰ Article 12 of the ICESCR. CISA has also emphasises that safe drinking water should be available on site or near site for easy access by teachers and students.

⁷¹ Article 4 (d) of the UNESCO CADE. See also Hyll-Larsen P 'Brief on human rights and the right to education in emergencies Input to the 2010 revision of the Inter-agency Network for Education in Emergencies Minimum Standards Handbook' (2010) 3.

⁷² Article 13 (2) (e) of the ICSECR.

⁷³ General Comment No 13 para 6 (a). See also Hyll-Larsen P (2010) 3.

⁷⁴ General Comment No 13 para 6 (a).

⁷⁵ General Comment No 13 para 6 (a).

⁷⁶ Article 28 (3) of the CRC.

⁷⁷ Article 4 (c) of the UNESCO CADE. See also Article 13 (d) of the ICSECR.

another opportunity to girls and young women who failed to complete their education because of pregnancy or early marriage.⁷⁸ This provision seeks to make education available to girls and women who could not finish their education due to different reasons such as pregnancy, early marriages and poverty. It is common that, in times of conflict some girls and young women do not finish their primary education due to poverty, pregnancy or early marriages. Another opportunity should be granted to such people to enable them to complete their primary education, thereby making education available to them. In addition, the African Women's Protocol takes another dimension by providing that the girls and young women should be kept in school or be enrolled at schools if they prematurely or unintentionally fall pregnant.⁷⁹

Furthermore, the ACRWC obliges governments to ensure equal access to education for all sections of the community by making education available to females as well as gifted and disadvantaged children.⁸⁰ In addition, the Framework for Action in Sub-Saharan Africa targets at ensuring that by 2015 all children of school-going age have access to quality primary education and that at least 80 per cent of those who enrol in primary schools should be able to complete their education and at least 90 per cent of these should proceed to secondary level.⁸¹

Availability also provides that the funding of schools and their programmes is crucial for their effective operation. It is the responsibility of the governments to ensure that schools are well funded for education to be made available to all children. According to the former Special Rapporteur on Education, governments should establish schools or set aside funding to allow private individuals to establish schools.⁸² Similarly, the New Constitution of Zimbabwe allows the establishment of independent educational institutions of reasonable standards.⁸³ Furthermore, the Act encourages all local authorities to establish and maintain primary schools in their areas of jurisdiction to ensure every child attends school.⁸⁴ In terms

⁷⁸ Article 13 (4) (h) African Youth Charter.

⁷⁹ Article 12 (2) (c) African Women's Protocol to the ICHPR.

⁸⁰ Article 13 (e) of the ACRWC.

⁸¹ Article 5.2 Framework for Action in Sub-Saharan Africa: Education for African Renaissance in the Twenty-first Century.

⁸² Tomasevski K *Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable* (2001) 13.

⁸³ Section 75 (2) of the COPAC Draft Constitution.

⁸⁴ Section 8 of the Education Act.

of these provisions, if more schools are established, more children of school-going age will be able to attend school.⁸⁵ Consequently, governments should set aside a substantial percentage of money in their national budgets for education.

More relevant to this mini-thesis is that people who are found in internal crisis also need protection of the law to ensure the right to education is available to them. To that end, Guiding Principle 23 provides that education facilities should be made available to internally displaced persons, in particular teenagers regardless of whether they live in camps or not.⁸⁶ Similarly, the Convention for the Protection and Assistance of Internally Displaced Persons provides that states must provide internally displaced persons with adequate humanitarian assistance, including education in times of internal crisis.⁸⁷ Just like the other instruments, the Additional Protocol II to the Geneva Conventions of 1977 obligates states to provide children with access to education inter alia in times of crisis.⁸⁸ Furthermore, the Jomtien Declaration (1990),⁸⁹ the World Education Forum Framework for Action (2000) promoting Education for All (EFA)⁹⁰ and the Millennium Development Goals (MDGs, 2000) pay specific attention to education in crisis situations that displace people such as refugees and internally displaced persons (IDPs). In Zimbabwe, the Education Act guarantees that every child in the country has a right to school education⁹¹ and that no child in Zimbabwe shall be refused admission to any school.⁹² Likewise, the new COPAC Constitution of Zimbabwe also protects the right to education.⁹³

2.3.2 Accessibility to education

Different instruments concur that everyone, including children of school-going age, has a right to education.⁹⁴ As a result, states are obliged to ensure that schools and educational

⁸⁵ Tomasevski K (2001) 17.

⁸⁶ Principle 23 (4) of the Guiding Principles on Internally Displaced Persons.

⁸⁷ Article 2 (b) of the Convention for the Protection and Assistance of Internally Displaced Persons.

⁸⁸ Article 4 (3) (a) of the Additional Protocol II to the Geneva Conventions of 1977 the obligates states to provide children with care and aid they require and to make education available to them.

⁸⁹ World Declaration on Education for All, adopted by the World Conference on Education for All: Meeting Basic Learning Needs, Jomtien, Thailand, 5-9 March 1990.

⁹⁰ Dakar Framework of Action on Education for All: Meeting our Collective Commitments, adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000.

⁹¹ Section 4 (1) of the Education Act.

⁹² Section 4 (2) (a) of the Education Act.

⁹³ Section 75 (1) of the Final Draft Constitution of Zimbabwe (COPAC).

⁹⁴ Article 26 (1) of the UDHR; Article 13 (1) of the ICSECR; Article 28 of the CRC; Article 17 (1) of the ACHPR; Article 11 (1) of the ACRWC; Guiding Principle 23 (1) of the Guiding Principles on Internally

programmes are accessible to everyone including children.⁹⁵ According to General Comment 13, accessibility has three overlapping magnitudes.⁹⁶ These are physical accessibility, economic accessibility and non-discrimination which are discussed below.

2.3.2.1 Physical accessibility

Physical accessibility suggests that schools should be within the safe physical reach of all children of school-going age.⁹⁷ Similarly, the Inter-Agency Network for Education in Emergencies (INEE) promotes physical access to high quality education for all people including children affected by emergencies, crises or chronic instability.⁹⁸ Hence, in cases where schools are not within the physical reach of children, appropriate transport facilities should be arranged to transport such children from their homes to school and back so that they do not walk long distances to school.⁹⁹ The Ministry of Education, Sports and Culture in Zimbabwe has recommended a radius of 3 kilometres to the nearest school as within reasonable distance.¹⁰⁰ As a result, if children walk more than 3 kilometres to the nearest school that means that such a situation violates the provision of physical accessible to education.

In addition, physical accessibility does not only refer to the provision of school buildings alone but attendance is also indispensable. Accordingly, the CRC and the ACRWC require states to take reasonable measures to encourage regular attendance at schools and reduction

Displaced Persons. The CRC and the ACRWC specifically mentions children as right holders who should also have access to education.

⁹⁵ General Comment 13 para 6 (b).

⁹⁶ General Comment 13 para 6 (b).

⁹⁷ General Comment 13 para 6 (b). UNESCO 'Implementation Of The International Covenant On Economic, Social And Cultural Rights Third Periodic Report Submitted by States Parties under Articles 16 and 17 of the Covenant New Zealand' available at

<http://www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E.C.12.NZL.3AUV.pdf> (accessed 26 February 2013).

⁹⁸ INEE is an open network of UN agencies, NGOs, donors, practitioners, researchers and individuals who work together to ensure that the right to education is realized during and after crisis. It is responsible for gathering and disseminating good practices, tools and research for people affected by emergencies through advocacy, and exchange of information among its members and partners to promote the right to education. It provides Minimum Standards for Education in Emergencies (MSEEs) which are the global tools to ensure quality and accountability of the provision of education in emergencies.

⁹⁹ Tomasevski K (2001) 10. See also Profiles in Displacement: Mexico. Report of the Representative of the Secretary-General on Internally Displaced Persons UNdoc. E/CN.4.2003/8/Add.310 January 2003 para 29.

¹⁰⁰ Policy Brief No. 10/2012 of 2012 Local Government and Access to Education for Orphans and Vulnerable Children under Zimbabwe's National Action Plan for Orphans and Vulnerable Children in Zimbabwe (NAP for OVCS). Also note that in South Africa a school is considered to be far if a child travels for more than 30 minutes to school, irrespective of the mode of transport.

of school drop-out rates.¹⁰¹ Similarly, the African Youth Charter encourages states to “take steps to encourage regular school attendance and reduce dropout rates.”¹⁰² The Education Act of Zimbabwe also obligates parents to ensure that their children attend primary school.¹⁰³ According to the former Special Rapporteur for Education the elimination of any legal and administrative obstacles that hinder children’s physical access to school is also significant.¹⁰⁴ Obstacles such as the need for a birth certificate for a child to enrol at a school can hinder a child from attending school. Hence, the abolishment of such obstacles will enable education to be physically accessible to all children of school-going age.¹⁰⁵

2.3.2.2 Economic accessibility

Legal instruments explicitly provide that primary education must be free and compulsory.¹⁰⁶ Likewise, the INEE provides that all people affected by emergencies, crises or chronic instability should have economic access to high quality education. This is to ensure that every child of school-going age receives an education. According to General Comment 11, school fees and other direct costs may constitute disincentives to the enjoyment of the right to education and may jeopardize its realization. But what does it mean for education to be free? In terms of General Comment 11, education is free if there are no other charges to the child, parents or guardians.¹⁰⁷ If education is free, every parent or guardian can afford to send their children to school, hence, education can be made compulsory for all children of school-going age.

In addition, according to General Comment 11, accessibility also entails the elimination of any direct costs involved in ensuring children acquires an education.¹⁰⁸ Most parents especially in developing countries are generally poor and cannot afford to pay for their children’s school fees let alone, additional or hidden costs. Hence, the elimination of any direct costs such as expensive uniforms and textbooks can reduce the burden on parents and

¹⁰¹ Article 28 (1) (e) CRC; Article 11 (3) (d) of the ACRWC.

¹⁰² Article 13 (4) (c) of the African Youth Charter.

¹⁰³ Section 5 of the Education Act.

¹⁰⁴ Tomasevski K (2001) 12.

¹⁰⁵ Tomasevski K (2001) 12.

¹⁰⁶ Article 26 (1) of the UDHR; Article 13 (2) of the ICSECR; Article 28 (a) of the CRC; Article 4 (a) of the UNESCO CADE; Article 13 (4) (a) African Youth Charter.

¹⁰⁷ General Comment 11 para 7.

¹⁰⁸ General Comment 11 para 7.

would be able to send their children to school. As already mentioned education is free and affordable if there are no other costs attached to it.¹⁰⁹

Furthermore, in sub-Saharan Africa, efforts are being made to ensure that all children of school-going age attend school so as to eradicate illiteracy within the Sub-Saharan region.¹¹⁰ Article 5.2 encourages states to increase the universal access and completion of primary or basic education.¹¹¹ The Framework for Action in Sub-Saharan Africa targets at ensuring that by 2015 all children of school-going age have access to quality primary education.¹¹² While international and regional instruments provide that primary education should be free and compulsory, the Education Act of Zimbabwe only provides for compulsory primary education. However, in contrast to the provisions of the international and regional instruments, the Education Act provides for the lowest possible fees consistent with the maintenance of high standards of education.¹¹³

Furthermore, Article 14 of the ICSECR goes further to encourage new state parties to achieve free and compulsory primary education within two years of becoming a member.¹¹⁴ As a result, if a state cannot achieve free and compulsory education; it must adopt a plan of action to realise the right to education progressively within a reasonable number of years.¹¹⁵

2.3.2.3 Non-discrimination

Legal instruments on access to education assert that everyone has a right to education regardless of who they are or their background hence. Access to education must be non-discriminatory.¹¹⁶ General Comment 13 provides that no-one should be discriminated against based on race, colour, ethnicity, sex, language, economic or social status, religion.¹¹⁷ Additionally, the Education Act states that no child may be discriminated against based on

¹⁰⁹General Comment 11 para 7.

¹¹⁰ Preamble of the Framework for Action in Sub-Saharan Africa: Education for African Renaissance in the Twenty-first Century.

¹¹¹ Framework for Action in Sub-Saharan Africa: Education for African Renaissance in the Twenty-first Century.

¹¹² Article 5.2 Framework for Action in Sub-Saharan Africa: Education for African Renaissance in the Twenty-first Century.

¹¹³ Section 6 of the Education Act of Zimbabwe.

¹¹⁴ Article 14 of the ICSECR.

¹¹⁵ Article 14 of the ICSECR.

¹¹⁶ Beiter K D (2006) 661. See also Hyll-Larsen P (2010) 3.

¹¹⁷ General Comment 13 para 6 (b).

the stated grounds¹¹⁸ in regard to admission to any school.¹¹⁹ In Zimbabwe, non-compliance with this provision is an offence and anyone involved will be liable to a fine or imprisonment for a period not exceeding one year or to both.¹²⁰ The Guiding Principles affirms that, aid to IDPs should be provided impartially and neutrally, that is without discrimination based on grounds including, race, ethnicity, religion and status. In cases where some children are displaced, they can be discriminated against based on the fact that they are displaced and this can be so rampant as to limit the IDP children access to school.¹²¹

General Comment 11 provides that children living under desperate situations are vulnerable to forced labour, child marriages and other forms of exploitation.¹²² Hence, governments must enact laws and policies to ensure that education is accessible to such children. It has also been noted that most children who leave school prematurely are caught up in child labour, early marriages, child trafficking and many other social predicaments.¹²³ As a result, governments must enact and enforce laws that prohibit child labour, early marriages and child trafficking to ensure children of school-going age are kept in school.¹²⁴ Furthermore, the education system must cater for everyone including those who are marginalised in communities such as the disabled, the poor, homeless, internally displaced persons, refugees, street children and illegal immigrants.

Duty-bearers must eliminate any discrimination on the basis of internationally prohibited grounds including ethnicity, economic status, disability and gender. They should take positive steps to incorporate the most marginalised categories of people into the education system. The governments must ensure that there is a link between school leaving age and minimum

¹¹⁸ There should not be discrimination based on grounds including race, tribe, place of origin, national or ethnic origin, political opinions, colour, creed or gender.

¹¹⁹ Section 4 (2) (b) of the Education Act.

¹²⁰ Section 4 (4).

¹²¹ Mooney E and French C 'Barriers and Bridges: Access to Education for Internally Displaced Children' available at

[http://www.nrc.ch/8025708F004CFA06/%28httpKeyDocumentsByCategory%29/CD4655D8BD64EFB7C1257280005166D0/\\$file/IDP_Child_Education_Brookings_JAn_2005.pdf](http://www.nrc.ch/8025708F004CFA06/%28httpKeyDocumentsByCategory%29/CD4655D8BD64EFB7C1257280005166D0/$file/IDP_Child_Education_Brookings_JAn_2005.pdf) (accessed on 9 May 2013). It has been reported that, some IDP children can be turned away even before entering classrooms in Colombia and Mexico and child was told by his teacher that "no wonder you are so stupid -- you are a displaced."

¹²² General Comment 11 para 7.

¹²³ The Right to Education Project 'Beyond statistics Measuring Education as a Human Right' available at http://www.right-to-education.org/sites/r2e.gn.apc.org/files/Background_paper.pdf (accessed on 6 March 2013).

¹²⁴ The Right to Education Project 'Beyond statistics Measuring Education as A Human Right' available at http://www.right-to-education.org/sites/r2e.gn.apc.org/files/Background_paper.pdf (accessed on 6 March 2013).

age for employment, marriage, military, criminal responsibility. It is also important that these laws are strictly implemented and enforced so as to protect children from such harmful practices. It has already been shown that most farm workers became wandering and destitute-like.¹²⁵

2.3.3 Acceptability of education

The international standards do not only call for education to be available and accessible, but also demand that it should be acceptable. For example, General Comment 13 provides that the content of education including the curricula should be acceptable.¹²⁶ The acceptable content of education should be of good quality, relevant and culturally appropriate. Consequently, quality education does not discriminate against children based on any of the prohibited grounds. Governments must also pay utmost attention to the needs of minorities and indigenous population.¹²⁷ According to Hyll-Larsen, the content of education should not be biased or subjective but should take an objective perspective.¹²⁸

Acceptable education should have a positive psychological impact on the child's personality. It should be capable of moulding the pattern of behaviours and attitudes that make a child distinctive over time. Accordingly, different human rights instruments concur that the content of education should be directed at the full development of the personality of a child.¹²⁹ Research has shown that educational experiences are associated with changes in personality qualities in human beings.¹³⁰ Hence, after going through the education system, a child should not remain the same but certain aspects about them should change in terms of behaviour and attitude. After all, education is about change in behaviour.

Furthermore, fundamental legal instruments stipulate that education should be geared towards strengthening respect for human rights and fundamental freedoms.¹³¹ As behaviours and

¹²⁵ Sachikonye LM 'From 'Growth with Equity' to 'Fast-Track' Reform: Zimbabwe's Land Question' (2003) 30 (96) *Review of African Political Economy* 237.

¹²⁶ General Comment 13 para 6 (c).

¹²⁷ Hyll-Larsen P (2010) 3.

¹²⁸ Hyll-Larsen P (2010) 3.

¹²⁹ Article 26 (2) UDHR; Article 13 (1) ICESCR; article 29 (a) and (b) CRC; article 5 (1) (a) of the CADE; Article 11 (2) (a) ACRWC; Article 13 (3) (a) African Youth Charter.

¹³⁰ Jackson JJ *The Effects of Educational Experiences on Personality Trait Development* (unpublished Doctoral thesis, University of Illinois 2011) 13.

¹³¹ Article 26 (2) UDHR; Article 13 (1) ICESCR; article 29 (a) and (b) CRC; article 5 (1) (a) CADE; Article 11 (2) (a) ACRWC and Article 13 (3) (a) African Youth Charter.

attitudes are moulded with education, children should develop respect for human rights. Respect for human rights is a tool for sustainable development, hence, strong and better communities are built if people have respect for them.¹³² Respect for human rights is therefore reinforced into children whilst they are still in their youth so that when they grow up to be responsible adults who appreciate the importance of human rights.

International organisations such as the UN campaign for unity and peace among people in their diversity.¹³³ To that end, different legal instruments provide that education should promote understanding, tolerance and friendship among nations, racial or religious groups, and shall further the activities of the United Nations for maintenance of peace.¹³⁴ In addition, declarations such as the Dakar World Education Forum Framework for Action, promoting Education for All, establishes that educational programmes should promote mutual understanding, peace and tolerance, and that help to prevent violence and conflict in communities affected conflict.¹³⁵ These provisions allude to the need for an acceptable form of education which should transform children to achieve understanding, tolerance and friendship among different people.¹³⁶

The legal instruments do also acknowledge people's diverse religious, moral and philosophical beliefs hence the need for education to be acceptable. They endow parents with the freedom to choose the type of education for their children in conformity with their religious beliefs.¹³⁷ They also establish parents' prior right to choose the kind of education that should be given to their children.¹³⁸ This provision places an obligation on parents to play a role in determining an acceptable form of education that should be given to their children which conforms to their cultural convictions.

In addition to what the international instruments have already proclaimed, regional instruments also make provisions to certain issues that are peculiar to the Africans. Within the African context, people have their own needs peculiar to them, hence the regional

¹³² Mutema EP 'The Fast Track Land Reform Programme: Reflecting On The Challenges And Opportunities For Resettled Former Farm Workers At Fairfield Farm In Gweru District, Zimbabwe' (2012) 14 (5) *Journal of Sustainable Development in Africa* 102.

¹³³ Osler A (2012) 4.

¹³⁴ Article 26 (2) UDHR; Article 13 (1) ICESCR; article 29 (b) and (d) CRC and article 5 (1) (a) CADE.

¹³⁵ One of the aims of the Dakar World Education Forum Framework for Action.

¹³⁶ UN 'Background Note for the UN General Assembly: Education in Emergencies' available at <http://www.un.org/ga/president/63/letters/background.pdf> (accessed on 10 February 2013).

¹³⁷ Tomasevski K (2001) 29.

¹³⁸ Article 26 (3) UDHR; Article 13 (3) ICESCR and article 5 (b) CADE.

instruments make provisions for such special needs. While the international instruments encourage understanding, tolerance and friendship among nations, racial or religious groups, the ACRWC goes further to encourage the same amongst different ethnic, tribal and religious groups.¹³⁹ They provide that education should be directed at encouraging Africans to freely participate in preserving and strengthening positive African morals, traditional values and cultures.¹⁴⁰

According to the former Special Rapporteur of Education acceptability also involves ensuring that schools are safe and free from any forms of violence.¹⁴¹ Similarly, the CRC and the ACRWC, provide that children should be protected from all forms of physical or mental violence.¹⁴² In addition, the acceptability feature of the right to education obligates governments to establish minimum standards for education. In terms of the General Comment 13, governments must establish the minimum standards which include the teacher-pupil ratio, the number of textbooks and the methods of instruction.¹⁴³ The teacher-pupil ratio in primary schools of Zimbabwe is 1:40.¹⁴⁴ Additionally, as required by General Comment 13 minimum educational standards should be observed at schools.¹⁴⁵ These minimum standards help to ensure that the education system does not go beyond the basic requirements in education hence making it acceptable.

2.3.4 Adaptability of education

Adaptability of education is fashioned by acknowledging the existence of a variety of cultures since human beings have various cultural groups. It is therefore, imperative that education should adapt to the needs of different societies as they live in a dynamic world.¹⁴⁶ Therefore, education should be flexible so that it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.¹⁴⁷ As a result, the conceptualisation of the adaptability of education can be based on

¹³⁹ Article 13 (3) (c) African Youth Charter and Article 11 (2) (d) ACRWC.

¹⁴⁰ Article 17 (2) ACHPR; article 11 (2) (c) ACRWC and Article 13 (3) (d) African Youth Charter.

¹⁴¹ Tomasevski K (2001) 35.

¹⁴² Article 19 of the CRC.

¹⁴³ General Comment 13 para 6 (c).

¹⁴⁴ UNESCO 'The EFA 2000 Assessment: Country Reports Zimbabwe' available at http://www.unesco.org/education/wef/countryreports/zimbabwe/rapport_2_1.html (accessed on 8 March 2013)

¹⁴⁵ General Comment 13 para 6 (c).

¹⁴⁶ Naidu KB & Barman A 'The world is dynamic, we have to change all the time: Ramesh Chandak' *Business Standard* 18 February 2012 3.

¹⁴⁷ General Comment 13 para 6 (d).

children's cultural affiliations and their preferences.¹⁴⁸ In terms of the CRC, education should be directed towards developing respect for parents, cultural identity, language and values, for the country in which the child lives, the country of origin, and civilization."¹⁴⁹

According to Almog and Perry-Hazan, legal instruments formulate the adaptability feature by mentioning several circles of belonging where the children belong to such as family, community, nation and the global village.¹⁵⁰ The adaptability of education to the children's cultural affiliations is part of the children's right to culture, which is perceived by some scholars as linked to other human rights such as the freedom of association, freedom of religion, freedom of conscience, and freedom of expression.¹⁵¹ If education is to adapt to children's needs it must guarantee them freedom of thought, conscience and religion¹⁵² and freedom of expression.¹⁵³ Children should be able to freely express their thoughts, conscience and exercise their religion.

Consequently, legal instruments guarantee the adaptability of the right to education by protecting the rights of children belonging to different ethnic, religious or linguistic minorities. They provide that such children have a right to enjoy their own culture, profess and practice their own religion and to use their own language with other members of their groups.¹⁵⁴ Similarly the ACRWC specifically provides that education should be directed at preserving and strengthening of positive African morals, traditional values and cultures.¹⁵⁵ This therefore means that adaptable education should be directed at pointing at children's identities.

The societies in which children find themselves in are dynamic, hence, education should adapt to their changing needs within their diverse social and cultural settings.¹⁵⁶ General Comment 13 provides that the content of education should be flexible enough to adjust to the

¹⁴⁸ Almog S & Perry-Hazan L 'Conceptualizing the Right of Children to Adaptable Education' (2012) 20 *International Journal of Children's Rights* 490.

¹⁴⁹ Article 29 (1) (c) of the CRC.

¹⁵⁰ Almog S & Perry-Hazan L 'Conceptualizing the Right of Children to Adaptable Education' (2012) 20 *International Journal of Children's Rights* 490.

¹⁵¹ Almog S & Perry-Hazan L (2012) 490.

¹⁵² Article 14(1) of the CRC.

¹⁵³ Article 13 of the CRC.

¹⁵⁴ Article 30 of the CRC.

¹⁵⁵ Article 11 (2) (c) ACRWC and Article 13 (3) (d) of the African Youth Charter.

¹⁵⁶ General Comment No 13 para 6 (d).

changing needs of societies and communities.¹⁵⁷ Education should also be able to address the challenging inequalities such as gender discrimination. Furthermore, education should prepare children to be responsible citizens; preserving their national independence and territorial integrity. It should also result in achieving African Unity and Solidarity, developing respect for the environment and natural resources¹⁵⁸ and understanding primary health care.¹⁵⁹

Legal standards on children's right to education also provide that in every issue dealing with children, the best interest of the child is paramount.¹⁶⁰ If education is to adapt to the needs of children, their views should be considered. According to the CRC, children should be capable of forming their own views in all matters affecting them and their views should be given due weight depending on age and maturity of the child.¹⁶¹ Furthermore, the CRC states that school discipline should be administered in a way that respects the child's human dignity.¹⁶² Moreover, schools should be run in an orderly way and without the use of violence for children to benefit from education.¹⁶³ The case of children's right to education is linked to the existence of a peaceful environment; with the CRC specifically stipulating the need for protection of children against violence. Article 9 of the CRC states that governments should take appropriate measures to protect children from all forms of violence.

2.4 CONCLUSION

This chapter provided a normative legal framework on the right to education which is used to critically analyse the extent to which children's right to education was observed during the FTLRP. What has been highlighted by most instruments is that education should be accessible, adaptable, acceptable and available to those who are entitled to it. In addition, legal instruments that were explored have established that children who are in crisis situations such as IDPs also have a right to education without discrimination. As a result, different human rights instruments place obligations on state parties towards the realisation of the right

¹⁵⁷ General Comment No 13 para 6 (d).

¹⁵⁸ Article 13 (3) (e) of the African Youth Charter.

¹⁵⁹ Article 11 (2) (d-h) of the ACRWC and Article 13 (3) (f) of the African Youth Charter.

¹⁶⁰ Article 3 of the CRC. See also General Comment 13 para 7.

¹⁶¹ Article 12(1) of the CRC.

¹⁶² Article 28 (2) of the CRC.

¹⁶³ UNICEF 'Fact Sheet: A summary of the rights under the Convention on the Rights of the Child' available at http://www.unicef.org/crc/files/Rights_overview.pdf (accessed 6 November 2012).

to education both in normal and crisis situations. Hence, governments should respect, protect and fulfill the right to education, both in normal and crisis situations. The onus, therefore, rests with state parties to take reasonable measures to achieve the right to education. In addition to calling upon state parties to take reasonable measures, international instruments also exhorts states to domesticate international and regional instruments into their national legislation and policies. Chapter 3 will look at the fast track land reform programme and how it impacted on the right to education during the FTLRP.



CHAPTER 3: A SYNOPSIS OF THE LAND REFORM PROGRAMME IN ZIMBABWE

3.1 INTRODUCTION

This chapter gives a historical overview of the land reform programme in Zimbabwe. The programme was divided into two main parts. The first part explores the issue of land administration during the pre-colonial, colonial and post-colonial eras. The aim is to lay a framework on which the impact of the FTLRP on children's right to education would be understood. The second part discusses the manner in which the FTLRP was implemented and the impact that it had on human rights, particularly, socio-economic rights.

3.2 LAND ADMINISTRATION BEFORE THE FTLRP

3.2.1 Pre-colonial era (1000-1886)

The Bantu people were the first people to migrate from the south of Africa around 1000s and crossed the Zambezi River¹⁶⁴ into the country¹⁶⁵ now known as Zimbabwe.¹⁶⁶ This Bantu tribe is believed to be the ancestors of the Shona people who make the majority of Zimbabweans today.¹⁶⁷ During the 1840s, the Ndebele people also entered Zimbabwe from South Africa and settled in the southwest.¹⁶⁸ The two tribes, namely the Shona and the Ndebele, lived in small groups of a few hundred people under headmen, chiefs and kings respectively.¹⁶⁹ They survived on subsistence farming, cattle rearing, hunting, carving and craft production. Some of them were involved in trade with traders who came to Africa from as far as China, India, Middle East and Europe.¹⁷⁰ They exchanged gold with the traders for

¹⁶⁴ Zambezi River is the northern boundary that separates Zambia and Zimbabwe.

¹⁶⁵ Sean S *Cultures of the world: Zimbabwe* 2nd ed (2004) 58. Also note that the place had no name during the pre-colonial era. During the colonial era it became known as Southern Rhodesia and later on as Rhodesia. It was only after its independence in 1980, that the country became known as Zimbabwe.

¹⁶⁶ David L *Guns & Rain: Guerillas & Spirit Mediums in Zimbabwe* (1985) 222.

¹⁶⁷ Chikuhwa J W A *Crisis of Governance: Zimbabwe* (2004) 6.

¹⁶⁸ Di Piazza F *Zimbabwe in Pictures* (2005) 7.

¹⁶⁹ Sean S (2004) 58. Zimbabwe is a conglomeration of the two main ethnic groups which are further divided into ten ethnic groups of people. These are the Shangani/Tsonga who inhabited the south-eastern parts of the Zimbabwe plateau, the Venda in the south, the Tonga in the north, the Kalanga and Ndebele in the south-west, the Karanga in the southern parts of the plateau, the Zezuru and Korekore in the northern and central parts, and finally, the Manyika and Ndaus in the east.

¹⁷⁰ Government of Zimbabwe on line 'The History of Zimbabwe available on <http://www.zim.gov.zw/index.php/zimbabwe-in-brief/history-of-zimbabwe> (accessed on 9 May 2013).

commodities such as beads and other ornaments.¹⁷¹ According to their traditional agricultural methods, both tribes cultivated piece of virgin land for two or three years then move to another virgin piece of land. When the suitable land for farming in the vicinity was exhausted, the whole village would shift to another area.¹⁷² The indigenous people were therefore, semi-nomadic. As a result, villages were moved every six to eight years, mainly depending on the amount of arable land available within their easy reach.¹⁷³ This was possible during that time because the population was still small, there was ample land and residences could be easily built using mud and poles.¹⁷⁴

As the Ndebele moved up the country in search of fertile lands, they met up with the Shona people. The Ndebele people were known to be riotous and fraught in fighting.¹⁷⁵ Hence, the Shona people feared them as they were stealing their land, cattle, crops and their women.¹⁷⁶ These two tribes fiercely contested for land as a natural resource. Hence, bloody tribal battles were fought for land and other natural resources amongst these indigenous people.¹⁷⁷

During this period land was owned collectively and no individual ownership of land existed.¹⁷⁸ The indigenous people believed that their ancestors were the owners of the land and that certain pieces of land were sacred.¹⁷⁹ Therefore, kings, chiefs and headmen were in charge of allocating it to families, clans and villages falling under their jurisdiction.¹⁸⁰ They also had powers to adjudicate any disputes about land and any other issues affecting the people under their leadership.¹⁸¹

¹⁷¹ Dennis N & Brett MR *Images of a Great African Park Kruger* (2000) 2.

¹⁷² Dore D 'Transforming Traditional Institutions for Sustainable Natural Resource Management: History, Narratives and Evidence from Zimbabwe's Communal Areas' (2001) 5 (3) *African Studies Quarterly* 3.

¹⁷³ Dore D (2001) 3.

¹⁷⁴ Bowyer-Bower TAS 'Criticism of Environmental Policy for Land Management in Zimbabwe' (1996) 5 (1) *Global Ecology and Biogeography Letters* 7.

¹⁷⁵ Ndlovu-Gatsheni SJ 'The Ndebele Nation' available at <http://rozenbergquarterly.com/?p=64> (accessed 2 April 2012).

¹⁷⁶ Chanaiwa D 'The Army and Politics in Pre-Industrial Africa: The Ndebele Nation, 1822-1893' (1976) 19 (2) *African Studies Review* 50.

¹⁷⁷ Masiwa M 'The Fast Track Resettlement Programme in Zimbabwe: Disparity between Policy Design and Implementation, The Round Table' (2005) 94 (375) *The Commonwealth Journal of International Affairs* 217.

¹⁷⁸ Peters BL & Peters JE 'Women and tenure Dynamics In Pre-colonial, Colonial and Post-colonial Zimbabwe' in Gonese F & Roth M (eds) *Delivering land and securing rural livelihoods: post-independence land reform and resettlement in Zimbabwe* (2003) 186.

¹⁷⁹ Chitiyo TK 'Land Violence and Compensation Reconceptualising Zimbabwe's Land and War Veterans' Debate' in Batchelor P, Kingma K & Lamb G (eds) *Demilitarisation and Peace-Building in Southern Africa: National* (2000) 48.

¹⁸⁰ Andersson JA 'The Politics of Land Scarcity: Land Disputes in Save Communal Area Zimbabwe' (1999) 25 (4) *Journal of Southern African Studies* 554.

¹⁸¹ Chitiyo TK (2000) 48.

Additionally, there were no towns or cities during this period, except for a few stone built partially-ruined fortifications found in several parts of the country such as the Great Zimbabwe.¹⁸² Consequently, land was a source of human sustenance. Indigenous people lived and earned their living from tilling the land as subsistence farmers.¹⁸³ It has been noted that their agricultural output was enough to feed their families using the labour mainly provided by women and children to produce food crops.¹⁸⁴

Furthermore, there was no formal education system hence, neither the Shona nor Ndebele people had an alphabet or written language.¹⁸⁵ Both of them had a rich oral tradition as evidenced by some remarkable rock paintings which portray scenes relating to their hunting activities.¹⁸⁶ In addition, other socio-economic rights such as the right to health were not protected. For example, there were no clinics and sick people were treated with traditional medicines taken from roots, leaves and barks of plants.¹⁸⁷

3.2.2 Colonial era (1888-1979)

The colonial period of Zimbabwe can be divided into four phases during which the white settlers controlled the land, economy and political affairs. The first phase was that of the British South Africa Company (BSAC) from 1888 to 1922. Secondly, there was the Responsible Government from 1923 to 1952. Thirdly, there was the Federation from 1953 to 1963 and lastly, the Unilateral Declaration of Independence from 1964 to 1979.

¹⁸² The fortifications suggest that people may have congregated at these places during inter-tribal warfare or for trading purposes.

¹⁸³ Patel D 'Some Issues of Urbanisation and Development in Zimbabwe' (1988) 3(2) *Journal of Social Development in Africa* 18.

¹⁸⁴ Maravanyika S & Huijzenveld FD 'A Failed neo-Britain: Demography and the Labour Question in Colonial Zimbabwe c.1890 – 1948' (2010) 1 (1) *African Nebula* 1 (1) 25.

¹⁸⁵ Furlong A *Gender, Land and Women in Zimbabwe in the Light of Nussbaum's Understanding of the Capabilities Approach* (unpublished M Phil (Peace Studies) thesis, University of Dublin, 2003) No page numbers provided.

¹⁸⁶ Furlong A (2003) No page numbers.

¹⁸⁷ Akada WE *Traditional African Medicine And The Benedictine Monks: A Discourse* (2011) 1 (2) *American Journal of Social Issues & Humanities* 139.

3.2.2.1 The British South Africa Company (1888 to 1922)

During the 16th Century, Protestant and Catholic missionaries entered into Zimbabwe ostensibly to spread Christianity into the country.¹⁸⁸ They introduced the first formal education system in Zimbabwe; hence, mission schools became the first source of education for the indigenous people and many schools still retain a strong religious affiliation.¹⁸⁹ During the 1880s, British and German prospectors entered Zimbabwe from South Africa, under the guidance of Cecil Rhodes, in search of gold.¹⁹⁰ This movement was prompted by the massive discoveries of gold on the Rand, now known as Johannesburg in South Africa.¹⁹¹ They obtained a treaty known as the Rudd Concession from the Ndebele King, Lobengula, which granted BSAC mining and administration rights. The Ndebele King signed the treaty in exchange for an insignificant amount of guns, bottles of wine and some money.¹⁹² Hence, the signing of the Rudd Concession marked the official colonisation of Zimbabwe.¹⁹³ The Concession specified among other terms, that the mining company could do anything necessary for its operations.¹⁹⁴

As a result, the Concession allowed the colonisers to explore minerals in the whole country.¹⁹⁵ As the searches infiltrated the inner parts of Zimbabwe into the highlands, gold was indeed discovered and they exploited it.¹⁹⁶ Unfortunately, the profits did not turn out to be as they had anticipated because the gold deposits were not concentrated in reefs as in South Africa.¹⁹⁷ Unlike in South Africa, gold deposits in Zimbabwe were scattered, hence, impossible for the mining company to extract the mineral profitably.¹⁹⁸ After the gold deposits had been largely depleted the BSAC encouraged whites to settle for farming as an alternative means of generating income for the company. In 1890, the BSAC sponsored the settlement of whites at Fort Salisbury (now known as Harare), where land was parceled out as

¹⁸⁸ Maenzanise B 'The Church And Zimbabwe's Liberation Struggle' (2008) 46 (2) *Methodist History* 68. See also Sibanda EM *The Zimbabwe African People's Union, 1961-87: A Political History Of insurgency in Southern Rhodesia* (2005) 18.

¹⁸⁹ Shizha E & Kariwo MT *Education and Development in Zimbabwe: A social political Economic analysis* (2011) 13.

¹⁹⁰ This movement was spurred by massive discoveries of gold on the Rand Now Johannesburg in South Africa in the late 1970s.

¹⁹¹ Ndlovu-Gatsheni SJ 'Colonial Modernity and African' (2011) XXVII (2) *Worldview* 99.

¹⁹² Douglas RGS *Zimbabwe Epic* National Archives (1984) 182.

¹⁹³ Ndlovu-Gatsheni (2009) 39.

¹⁹⁴ Thomas NH 'Land Reform in Zimbabwe' (2003) 24 (4) *Third World Quarterly* 693.

¹⁹⁵ Chikuhwa JW *A Crisis of Governance: Zimbabwe* (2004) 13.

¹⁹⁶ Lebert T (2006) 41.

¹⁹⁷ Lebert T (2006) 41.

¹⁹⁸ Lebert T (2006) 41.

farms with each farmer receiving 6 000 hectares of land. Indeed, this strategy resulted in indigenous people being dispossessed of their land.

Unlike the indigenous people, the colonisers believed in individual ownership of land and considered it as a tool for promoting economic growth and human development. Hence, conflicts erupted between them and the Ndebele people forcing the indigenous people to rise up in war known as the Anglo-Ndebele War of 1893-4. Unfortunately, the colonisers won the war leading to the fall of the Ndebele monarchy.¹⁹⁹ In 1894 the colonialists established Native Reserves to suppress and force the indigenous people to work on the farms.²⁰⁰ This was the genesis of indigenous people working as farm workers for the colonisers. From this period though not required by law, farmers provided for their workers' economic wellbeing as well as for their social welfare through the provision of pre-schools, schools, clinics, and housing, water and sanitation facilities and so on.²⁰¹

During this period more and more fertile land was expropriated from the indigenous people as new commercial farms were established, leading to the eviction of indigenes to less fertile areas.²⁰² This left the indigenous people with insufficient land for agriculture and grazing their livestock. In 1896, the indigenous people fiercely resisted the uptake of land by the colonisers in a war known as the 'First Chimurenga'.²⁰³ Likewise, the indigenous people were defeated again. So to assert their authority over the defeated indigenous people, the colonizers enacted several ordinances and legislation. Under these laws the colonisers seized about 18 million hectares of land²⁰⁴ in agro-ecological regions with good rainfall patterns.²⁰⁵

As a result, more mines and farms were established across the country in areas where there was rich mineral deposits and prime agricultural land respectively. Obviously, this created

¹⁹⁹ Ndlovu-Gatsheni SJ 'Colonial Modernity And The African world view: Theorising And Historicising religious Encounters In South-Western Zimbabwe' available at http://www.academia.edu/1586505/Colonial_Modernity_and_African_Worldview (accessed on 3 May 2013).

²⁰⁰ Dore D (2001) 3.

²⁰¹ Magaramombe G 'Displaced in Place': Agrarian Displacements, Replacements and Resettlement among Farm Workers in Mazowe District' (2010) 36 (2) *Journal of Southern African Studies* 361.

²⁰² Douglas RGS (1984) 184. See also Wilson P *Land Reform in Zimbabwe: A Development Perspective* (unpublished MA thesis in Development Studies, UNISA, 2004) 19.

²⁰³ Sibanda EM (2005) 24. Chimurenga is a Shona word which means a fight, struggle or uprising.

²⁰⁴ Roder W 'The Division Of Land Resources In Southern Rhodesia' (1964) 54 (1) *Annals of the Association of American Geographers* 41.

²⁰⁵ Mazingi L and Kamidza R 'Inequalities in Zimbabwe' in Jauch H. & Muchena, D (eds) *Tearing Us Apart: Inequalities in Southern Africa* (2011) 324.

demand for indigenous people's labour, coercing them to work as mine and farm workers.²⁰⁶ Also during this period the colonisers were in charge of running the country. As the colonisers' population was growing, schools were established in all the major towns for them. Despite missionaries having introduced the African education and being in charge of it, the colonisers influenced the content of education that was taught to African children.²⁰⁷ Consequently, the African education was limited to basic literacy and a few relevant physical skills to enable them to provide the required labour.²⁰⁸

The table below shows the distribution of land between whites and the indigenous people in 1914.

Land distribution in 1914

Race	Population	% Population	Acres of Land Occupied	% Acres of land occupied
White	23 730	0.03	19 032 320	0.47
Black	752 000	0.97	21 390 080	0.53
TOTAL	<u>775 730</u>	<u>1.00</u>	<u>40 422 400</u>	<u>1.00</u>

Source: Report of the Presidential Review Committee (2003)13.

3.2.2.2 The Responsible Government (1923 to 1952)

During this period, profits from the mining company continued to go down; hence, it resolved to close down in Southern Rhodesia. The colonisers opted for self-governance and the Responsible Government was granted a government status in 1923.²⁰⁹ The new government enacted segregatory laws which designate areas as blacks only and whites only. Subsequent to that, in 1925 the Morris Carter Land Commission created Native Reserves for 'Master

²⁰⁶ John P 'Black and White: The 'Perils of Sex' in Colonial Zimbabwe' (1990) 16 (4) *Journal of Southern African Studies* 701.

²⁰⁷ Zvobgo RJ 'Colonialism and education in Zimbabwe' (1996) 37 (3) *The Journal of African History* 497.

²⁰⁸ Zvobgo RJ (1996) 497. See also Sibanda EM (2005) 18.

²⁰⁹ Windrich E *The Rhodesian Problem: A Documentary Record 1923-1973* (1975) 9.

Farmer²¹⁰ graduates who were allocated up to 100 hectares of land with the intention of developing an African middle class.²¹¹

In 1930, the Land Apportionment Act was passed in order to reduce pressure for land from the indigenous people by creating separate zones for whites, Shona or Ndebele.²¹² In terms of the Act, it was not permissible for people from one race to buy land in areas designated for other races.²¹³ In addition, the Act reserved about 50 per cent of the land for the colonialists, 30 per cent for the indigenous people (African Reserve Areas now known as Communal Areas) and 20 per cent for the commercial companies and the colonial government.²¹⁴ The Act provoked a widespread of the indigenous people's resistance resulting in conflicts between the colonisers and the indigenous people.²¹⁵

On one hand, the growing indigenous people's head in the Native Reserves led to overpopulation and overstocking. As a result, more indigenous people were forced to work on mines and farms because of limited space to carry out their farming activities. On the other hand, restrictive laws, such as the Maize Control Act of 1931²¹⁶ and the Cattle Levy Act of 1931²¹⁷ were introduced²¹⁸ to promote discrimination in marketing.²¹⁹ Consequently, competition on the market between colonisers and indigenous small-scale farmers was prohibited.²²⁰ Towards the end of 1930s, the growing industrial sector called for skilled labour force.²²¹ As a result, the African formal education system was improved as an essential

²¹⁰ 'Master Farmer' was a training programme conducted by the Department of Agriculture Research and Extension under the Ministry of Agriculture for rural communities. Certificates were issued to those who successfully complete the course and pass the written examinations.

²¹¹ Thomas NH (2003) 693.

²¹² Hove M & Gwiza A 'The Fast Track Land Reform Programme and Food Insecurity: A case of Zimbabwe from 1992 to the Present' (2012) 2 (8) *American International Journal of Contemporary Research* 282.

²¹³ Bowyer-Bower TAS (1996) 7.

²¹⁴ It was set aside for the acquisition through freehold or leasehold by richer Africans or by small groups of African people.

²¹⁵ Palmer R 'Land Reform in Zimbabwe, 1980-1990' (1990) 89 (355) *African Affairs* 168.

²¹⁶ This was enacted to ensure that the blacks had limited markets to sell their maize so as to avoid competition between whites and blacks.

²¹⁷ This was enacted to ensure that the number of cattle that an individual owns is reduced as each cattle attracted the payment of tax. Most communities reduced their number of cattle to avoid paying too much tax.

²¹⁸ Thomas NH (2003) 693.

²¹⁹ Masuku MM 'Livestock Markets' *Sunday News* 16 March 2013 2.

²²⁰ Cliffe L 'The politics of land reform in Zimbabwe' in Bowyer-Bower TAS & Stoneman C (eds) *Land Reform in Zimbabwe: Constraints and Prospects* (2000) 36.

²²¹ Zvobgo RJ (1996) 497.

strategy for African economic integration. Furthermore, the indigenous people continued to be involuntarily moved.²²²

Meanwhile, the overpopulation resulted in land dilapidation and the colonialists believed it was caused by the indigenous people's land practices.²²³ As a result, the Native Land Husbandry Act (NLHA) of 1951 was passed to reduce land degradation²²⁴ by converting the traditional tenure system into a private landholding system to ensure proper control and conservation of land. From then, the NLHA was strictly enforced following a series of resolutions passed by the European Farmers Union (EFU). They resolved to restrict African food production for their commercial farming to survive²²⁵ as the indigenous people were leading in producing commercial beef in the country.²²⁶

3.2.2.3 The Federation (1953 to 1963)

In 1953, a referendum was held on the formation of a Federation of Rhodesia and Nyasaland and was voted in favour by 63.45% of the voters. During this period, educational policies were implemented to expand and improve African schooling services.²²⁷ In 1962, the NLHA which had been used to regulate private land allocation and use in the African areas was abandoned.²²⁸ As a result, land for indigenous people was again held in trust on a communal basis known as "tribal trust lands" (TTL). Hence, the NLHA was replaced by the Tribal Trust Land Act of 1967. Consequently, this Act stipulated the power of 'communal' land tenure, in dealing with the indigenous people's complaints about land shortages.²²⁹ During this period adult literacy rate was 39 per cent.²³⁰

²²² Dancaescu N 'Land Reform in Zimbabwe' (2003) 15 *Florida Journal of International Law* 619 . See also Cliffe L (2000) 36.

²²³ Wilson P (2004) 21.

²²⁴ Mataya C, Gondo P and Kowero GS 'Evolution of land policies and legislation in Malawi and Zimbabwe' in Kowero GS, Campbell BM & Sumaila UR (eds) *Policies and Governance Structures in Woodlands of Southern Africa* (2003) 95.

²²⁵ Masuku MM 'Livestock Markets' *Sunday News* 16 March 2013 2.

²²⁶ They were producing about 80 per cent of the commercial beef in the country.

²²⁷ Zvobgo RJ (1996) 497.

²²⁸ Nyambara P S 'Immigrants, 'Traditional' Leaders and the Rhodesian State: The Power of 'Communal' Land Tenure and the Politics of Land Acquisition in Gokwe, Zimbabwe 1963-1979' (2001) 27 (4) *Journal of Southern African Studies* 771.

²²⁹ Nyambara P S (2001) 771.

²³⁰ Institute for African Development 'Profile-Zimbabwe' available at http://www.inadev.org/profile_-_zimbabwe.htm (accessed on 5 May 2013).

3.2.2.4 The Unilateral Declaration of Independence (1964 to 1979)

Meanwhile, the colonisers demanded the right to self-government and on 11 November 1965 the Unilateral Declaration of Independence (UDI) of Rhodesia was signed under the Rhodesian Front Party.²³¹ The victory of the Rhodesian Front Party marked the end of the education reform period that had started during the Federation.²³² The colonial government established separate schools for indigenous people and colonisers, hence, many conflicts erupted between the two races.²³³ It restricted indigenous people's access to academic education as well as advanced technical and industrial training.²³⁴ Consequently, policies were implemented to exclude Africans from skilled and better paying jobs.

As a result, land degradation continued as the colonial government failed to provide sufficient human and financial resources to implement the Tribal Trust Land Act of 1967. In response, the Land Tenure Act of 1969 was enacted to make stricter prohibitions of land claims on land allocated to the colonialists.²³⁵ It divided land into two equal halves disregarding the fact that whites were only 5 per cent of the population at that time and blacks were 95 per cent.²³⁶

In 1977, the Land Tenure Act of 1969 was amended by the Land Tenure Amendment Act of 1977 which combined the Land Apportionment Act and the Land Tenure Act.²³⁷ The Amendment Act consolidated commercial farms into a general area distinct from the communally held TTL.²³⁸ In 1978, the Amendment Act was converted into the Land Tenure Repeal Act of 1978. During the same year, the Muzorewa/Smith administration introduced some educational policies which improved the quality of African due to the demand for more African experts in different specialist areas by the industry. This resulted in a conflict

²³¹ Boddy-Evans A 'Unilateral Declaration of Independence (UDI): African History' available at <http://africanhistory.about.com/od/glossaryu/g/def-UDI.htm> (accessed on 15 March 2013). Also note that Southern Rhodesia became known as Rhodesia from 1965 till 1979.

²³² Zvobgo RJ (1996) 497.

²³³ Matsika C Traditional African Education: It's Significance to Current Educational Practices with Special Reference to Zimbabwe (*unpublished UMI thesis, University of Massachusetts, 2000*) 23.

²³⁴ Zvobgo RJ (1996) 497.

²³⁵ The Land Tenure Repeal Act of 1978 was influential in the enactment of the Rural Settlement Policy which was adopted at independence of Zimbabwe in 1980.

²³⁶ Chimhowu A & Woodhouse P 'Forbidden but Not Suppressed: a 'Verneccular' Land market in Svosve Communal Lands, Zimbabwe' (2010) 80 (1) *Africa: The Journal of International African Institute* 14.

²³⁷ Cheater AP 'Formal and Informal Rights to Land in Zimbabwe's Black Freehold Areas: A Case Study from Musengezi' in David J, Peel Y & Ranger TO (eds) *Past and Present in Zimbabwe* (1983) 77.

²³⁸ Cheater AP (1983) 77.

between the industrialists and the commercial farmers who had depended on cheap, unskilled African labour. Commercial farmers employed hundreds of indigenous people and provided them with subsidised socio-economic needs such as housing, schools, and clinics. Hence, they felt threatened by any developments in educational and industrial spheres by the indigenous people. However, the demand for land by indigenous people continued leading to the liberation struggle.²³⁹ This liberation struggle locally known as the ‘*Second Chimurenga*’ that led to the Lancaster House Agreement which ended the war and the writing of the Lancaster House Constitution (LHC) which became the national law of the first three decades of the post-colonial era from 1980 to 2013 when a new Constitution replaced the LHC.

3.2.2.5 The Lancaster House Agreement (LHA)

The LHA negotiated an end of hostilities and paved way for democracy leading to the attainment of political independence of Zimbabwe in 1980. As a result, discriminatory laws were repealed; hence, people were free to buy land wherever they want regardless of their race.²⁴⁰ Furthermore, the agreement restricted compulsory expropriations of land from the colonialist commercial farmers during the first 10 years of independence.²⁴¹ Hence, the parties resolved that no changes were to be effected on the provisions of the LHC relating to land until 1990. Likewise, the British government promised to financially support the land reform under the *willing-buyer-willing-seller* principle.²⁴² It was going to meet half way the costs of land purchase and investments such as water boreholes, schools, clinics and roads to improve the livelihoods of the indigenous people in communal areas.

3.2.3 Post-colonial era (1980-to date)

At its independence, Zimbabwe inherited a racially biased land ownership scheme. According to the UN Development Programme of Zimbabwe Land Reform and Resettlement, in 1980 about 6 000 colonial commercial farmers owned 15.5 million hectares of land, while

²³⁹Sachikonye LM (2003) 228.

²⁴⁰ Southern Rhodesia Constitutional Conference Held At Lancaster House London Report (1979) 11.

²⁴¹Shay C ‘Fast Track to Collapse: How Zimbabwe's Fast- Track Land Reform Program Violates International Human Rights Protections to Property, Due Process, and Compensation’ (2012) 27 (1) *American University International Law Review* 137.

²⁴² Internal Displacement Monitoring Centre ‘The Many Faces of Displacement: IDPs in Zimbabwe’ (2008).

8 500 small-scale indigenous farmers had 1.4 million hectares.²⁴³ Furthermore, an estimated 700 000 indigenous communal farmers occupied only 16.4 million hectares.²⁴⁴ These statistics clearly shows an imbalance in the allocation of land, hence, the new government had to redress the injustices through land redistribution.²⁴⁵ In addition, the new government enacted laws to address the inequity in land distribution. The discussion of acquiring and redistributing land has been presented in two phases below.

3.2.3.1 Phase one (1980-1997)

As previously mentioned, during this phase, land was administered in terms of the Lancaster House Agreement for the first ten years of independence.²⁴⁶ Compulsory land expropriations were prohibited and land could only be acquired on a 'willing-buyer, willing-seller' basis. Thus, financial resources were required to convert large commercial farms into viable resettlement areas for peasant or communal farming. Hence, the British government volunteered to play a key role in the land reform of Zimbabwe after its independence by providing financial assistance.²⁴⁷ The British further agreed to assume the responsibility of purchasing land and compensating the white farmers who wanted to leave Zimbabwe.²⁴⁸ During this phase, the new government targeted to resettle poor and landless rural farmers from the communal areas and potential entrepreneurial farmers with college certificates and 'Master Farmer' certificates.²⁴⁹ It aimed to acquire 8.3 million hectares and to distribute it through four settlement models of varying sizes and land use²⁵⁰ and resettling 162 000 families.²⁵¹

²⁴³ United Nations Development Programme of Zimbabwe Land Reform and Resettlement: Assessment And Suggested Framework For The Future Interim Mission Report (2002) 3. See also Sachikonye LM (2003) 228.

²⁴⁴ Sachikonye LM (2003) 228.

²⁴⁵ Goebel A 'Zimbabwe's 'Fast Track' Land Reform: What about women? Gender, Place & Culture' (2005) 12 (2) *A Journal of Feminist Geography* 148.

²⁴⁶ United Nations Development Programme Zimbabwe Land Reform And Resettlement: Assessment And Suggested Framework For The Future Interim Mission Report (2002) 4.

²⁴⁷ This was mainly because the majority of companies and individuals were of British origin.

²⁴⁸ Palmer R (1990) 165.

²⁴⁹ Chaumba J, Scoones I and Wolmer W 'From Jambanja To Planning: The Reassertion Of Technocracy In Land Reform In Southeastern Zimbabwe?' (2003) 41 *The Journal of Modern African Studies* 538.

²⁵⁰ United Nations Development Programme Zimbabwe Land Reform And Resettlement: Assessment And Suggested Framework For The Future Interim Mission Report (2002) 4.

²⁵¹ This figure represents approximately 23 per cent of the households from the congested communal areas onto new land.

Consequently, in 1981, the Communal Land Act was passed to shift power from traditional rulers to local authorities and altered the title from Tribal Trust Lands to Communal Areas. However, in 1985, a new Land Acquisition Act²⁵² was passed to allow the Government the right of first refusal on all large scale commercial farms put up for sale. The Act did not have much impact since the government did not have enough money to reimburse the owners of the land. Moreover, commercial farmers were volunteering to sell land in unfertile areas to the new government. Furthermore, in 1989, an opposition political party Zimbabwe Unity Movement (ZUM) emerged as a vibrant opposition party. The emergency of ZUM took ZANU-PF by surprise as it had never anticipated anything of that sort.

During the early 1990s and up to the mid-1990s, political pressure for land reform was less intense. Hence, the ruling party comfortably won the 1990 elections, taking about 95 per cent of the parliamentary seats. In 1990, when the Lancaster House Agreement expired, the government amended the Constitution to enable it to compulsorily acquire more land.²⁵³ In 1992, the Land Acquisition Act²⁵⁴ was enacted to speed up the land reform process by allowing the government to compulsorily buy land for redistribution, with a fair compensation.²⁵⁵ In terms of this Act, landowners could challenge the price set by the acquiring authority in court.

In 1993 the Constitution was further amended twice. The first amendment was enacted to limit compensation to improvements on land only.²⁵⁶ The second amendment was passed to oust entirely the jurisdiction of courts over cases of acquisition of land by the state.²⁵⁷ Clearly, this had an effect of rendering impotent national and international protections of the fundamental right to protection of the law, a fair hearing, and the independence of the judiciary.²⁵⁸

²⁵² Land Acquisition Act Number 21 of 1985.

²⁵³ Thomas NH (2003) 699.

²⁵⁴ Land Acquisition Act Number 3 of 1992.

²⁵⁵ Land Acquisition Act Number 3 of 1992.

²⁵⁶ Zimbabwe Amendment Act Nos. 12.

²⁵⁷ Zimbabwe Amendment No. 13.

²⁵⁸ The Zimbabwe Lawyers for Human Rights (ZLHR) described the constitutional amendments as an assault on democracy and constitutionalism Zimbabwe Lawyers for Human Rights Amendments to the Constitution of Zimbabwe: a constant assault on democracy and constitutionalism available at <http://www1.umn.edu/humanrts/research/constitution%20statementsunday%20mirror%0pdf> (accessed 9 May 2013).

Again in 1995 elections, the then ruling party ZANU-PF won about 95 per cent of the parliamentary seats the High Court declared the election results invalid.²⁵⁹ However, in the 1996 election, despite a low turn-out of voters, President Mugabe was re-elected as president.²⁶⁰ Soon after the presidential elections in 1996, an attempt was made to raise the tempo in the land question by the landless indigenous people. As a result, in November 1997 the government listed 1 471 commercial farms which it proposed to buy compulsorily for redistribution in terms of the Land Acquisition Act of 1992.²⁶¹ The list was compiled through a nationwide land identification exercise of underutilised land, derelict farms or where the owner had more than one farm or is absent.²⁶² Land owners were allowed to oppose the decision by submitting written objections. Unfortunately, the British government failed to fund the purchase of land by the government of Zimbabwe.

By the end of this phase, the government acquired about 3.5 million hectares of land and resettled 71 000 families from communal areas.²⁶³ However, it should be recalled that initially the target was to acquire 8.3 million hectares of land and to resettle 162 000 families. Despite the families being resettled they faced insecure as they did not have title deeds for the land.²⁶⁴ On the other hand, the government managed to construct 10 per cent of the planned roads, 86 per cent of schools were built.²⁶⁵ In addition, only 34 per cent of the planned Blair toilets were constructed. The government cited some constitutional constraints and the lack of financial resources amid the dramatic rise in land prices as the major reasons for the non-achievement of set targets.²⁶⁶

3.2.3.2 Phase two (1998-2004)

During phase two, the government planned to resettle landless, poor, overcrowded families, youths as well as graduates from agricultural colleges and people with experience in

²⁵⁹ African Studies 'Centre Zimbabwean elections' available at <http://www.ascleiden.nl/?q=content/webdossiers/zimbabwean-elections> (accessed on 25 April 2013)

²⁶⁰ African Studies 'Centre Zimbabwean elections' available at <http://www.ascleiden.nl/?q=content/webdossiers/zimbabwean-elections> (accessed on 25 April 2013)

²⁶¹ Chaumba J, Scoones I and Wolmer W (2003) 538.

²⁶² Thomas NH (2003) 700.

²⁶³ United Nations Development Programme Zimbabwe Land Reform And Resettlement: Assessment And Suggested Framework For The Future Interim Mission Report (2002) 5.

²⁶⁴ Matondi PB & Dekker M (2011) 3.

²⁶⁵ United Nations Development Programme Zimbabwe Land Reform and Resettlement: Assessment and Suggested Framework for the Future Interim Mission (2002) 5.

²⁶⁶ Goebel A (2005) 149.

agriculture in a gender-sensitive manner. In June 1998, the Government outlined a programme aimed at acquiring 5 million hectares of land in which 91 000 families were targeted to be resettled.²⁶⁷ As a result of insecurity faced by the settlers in phase one, phase two shifted the land tenure policy towards providing 99-year leases.²⁶⁸ This phase was expected to bring the total acquired land to about 8.5 million hectares. This phase was aimed at reducing poverty, increasing agricultural GDP, promoting environmentally sustainable land use and enhancing conditions for sustainable peace and social stability. Unfortunately, the donors of this phase failed to finance the Inception Phase as per their promises with the exception of the World Bank which assisted the pilot project with \$5 million.²⁶⁹

In the meantime, there was little pressure for land reform from peasants and the landless indigenous people. However, this phase saw a major development in the emergence of the members of the ruling elite pursuing access to land ownership.²⁷⁰ Indeed, state land was leased to senior government officials such as parliamentarians, cabinet ministers, judges, civil servants and senior army officers.²⁷¹ The Member of Parliament, Margaret Dongo, published a long list of senior government officials who had benefited from the land reform in Zimbabwe.²⁷² This sparked a heated debate about the government's promise to benefit the poor through the land acquisition and resettlement process. In other words, the resettlement programme had been turned into an 'embourgeoisement' process through which the elite had gained state-facilitated access to land.²⁷³

Towards the end of the 1990s, about 90 000 families still needed to be resettled in order for the resettlement programme to reach its original target of resettling 162 000 families.²⁷⁴ However, an official explanation was that acquisition of land through the 'willing seller willing buyer' approach significantly restricted matching of demand and supply of land.²⁷⁵

²⁶⁷ United Nations Development Programme Zimbabwe Land Reform And Resettlement: Assessment And Suggested Framework for the Future Interim Mission (2002) 8.

²⁶⁸ Matondi PB & Dekker M (2011) 3.

²⁶⁹ Thomas NH (2003) 698. This was aimed at testing the feasibility of two possible models for land reform that were designed to be an integral part of the Inception Phase.

²⁷⁰ Masiwa M Land Reform Programme in Zimbabwe: Disparity between Policy Design and Implementation *Institute of Development Studies* (2004) 7.

²⁷¹ Masiwa M (2004) 4.

²⁷² Dawson M & Kelsall T 'Anti-developmental Patrimonialism in Zimbabwe' Working Paper 19 (2011) 13.

²⁷³ Moyo S 'Land Reform and Development Strategy in Zimbabwe: State Autonomy, Class and Agrarian Lobby' (1990) 6 (3-4) *Africa Focus* 215.

²⁷⁴ Sachikonye LM (2003) 231.

²⁷⁵ Lebert T (2006) 45.

By 1997, only 4 697 families had been resettled under this phase on about 145 000 hectares of land. As a result of the inter-related developments discussed above, a novel, but unprecedented intensity for the land question was brought about. During the end of 1997, the rural indigenous population ‘voted with its feet’ by moving onto state or designated land and became ‘squatters’.²⁷⁶ According to Goebel, this was a major political expression of dissatisfaction by the rural masses with the pace of government in resettling people. Consequently, in mid-1998, the squatting was transformed into protests for land by the landless poor in a number of districts where congestion had reached critical levels. A series of spontaneous invasions of commercial farms adjacent to overcrowded communal areas were reported.²⁷⁷ The first spontaneous occupation of a commercial farm occurred first in Svosve village in Mashonaland Province.²⁷⁸ This was followed by Nyamandhlovhu farm invasions in Matabeleland province.²⁷⁹

The media reports in the country from July to September 1998 described these invasions as ‘landmark events’ that accelerated or enhanced processes of disconnection between the state and the landless poor.²⁸⁰ The impatient landless people forcibly moved onto commercial farms to try and force the government to give them land.²⁸¹ It had been 18 years since independence, the slow pace at which the process was carried out angered and frustrated the landless people of Zimbabwe.²⁸² They became weary of politicians’ promises²⁸³ and decided to camp on the commercial farms until the government would give them land.²⁸⁴ This triggered a wave of land invasions of commercial farms, marking the genesis of a complex

²⁷⁶ Goebel A (2005)168.

²⁷⁷ Sachikonye LM (2003) 228.

²⁷⁸ Mawere M *Moral Degeneration in Contemporary Zimbabwean Business Practices* (2011) 72.

²⁷⁹ Sithole B, Campbell B, Dore D & Kozanayi W ‘Narratives on Land: State Peasant Relations Over Fast Track Land Reform in Zimbabwe’ *African Studies Quarterly* 7.

²⁸⁰ Zimbabwe Lawyers for Human Rights Amendments to the Constitution of Zimbabwe: a constant assault on democracy and constitutionalism available at

<http://www1.umn.edu/humanrts/research/constitution%20statementsunday%20mirror.pdf> (accessed on 25 March 2013).

²⁸¹ Masunda D ‘Is Chenjerai Hunzvi Dead and Buried’ *Financial Gazette* (Harare) 31 August 2000 3.

²⁸² Mawere M (2011) 72.

²⁸³ Zimbabwe Lawyers for Human Rights Amendments to the Constitution of Zimbabwe: a constant assault on democracy and constitutionalism available at (see next page)

<http://www1.umn.edu/humanrts/research/constitution%20statementsunday%20mirror.pdf> (accessed on 2 May 2013).

²⁸⁴ Thomas NH (2003) 700.

crisis in Zimbabwe.²⁸⁵ It became clear that the unfulfilled promises by Zimbabwe's political leadership were backfiring.²⁸⁶ Chiwewe²⁸⁷ equated the failure by the government to take action with sitting on a time bomb which could explode any time.²⁸⁸

At first, the government was against the invasions as it considered them to be illegal and unplanned. It urged everyone who was involved in the invasions to be patient as everyone was to be treated equally. According to the government, allowing that kind of behaviour would set a wrong precedent which could spread like veld fire.²⁸⁹ The invaders were informed that the government was not going to protect them and that the law was going to take its course should they refuse to move back to their villages as policy could not be compromised.²⁹⁰ President Mugabe also admitted that the implementation of the resettlement programme was slow but assured them that they were all going to be resettled.²⁹¹

However, as the ruling party was facing declining popularity, the question of senior government officials acquiring land and a lack of financial resources to implement the land reform programme, it decided to withdraw all the statements previously made against farm invasions.²⁹² The ruling party, ZANU-PF, started describing itself as the only political party that was genuinely committed to serve the landless people's demand for land.

The political elite described the landless people's grievances as longstanding against inequitable distribution of land between the communal farmers and white farmers. After this pronouncement, more communities followed suit and went ahead invading commercial farms as the invasions had been declared legal.²⁹³ At that time, the spontaneous invasions were

²⁸⁵ Mafundikwa I 'Zimbabwe's Controversial Land Reform Program Started 10 Years Ago Voice of America' available at <http://www.voanews.com/content/tenth-anniversary-of-zimbabwes-controversial-land-reform-program-84497672/153286.html> (accessed on 3 May 2013).

²⁸⁶ Masunda D 'Is Chenjerai Hunzvi Dead and Buried' Financial Gazette (Harare) 31 August 2000 3.

²⁸⁷ This was said by the Secretary for Local Government, Rural and Urban Development, Mr Willard Chiwewe. See also Staff Reporter 'Land Issue a Time Bomb: Chiwewe' The Herald 29 July 1996 1.

²⁸⁸ Staff Reporter 'Land Issue a Time Bomb: Chiwewe' The Herald 29 July 1996 1.

²⁸⁹ Minister John Nkomo cited by Nyandima in *The Herald* 23 June 1998 2.

²⁹⁰ Minister John Nkomo cited by Nyandima in *The Herald* 23 June 1998 2.

²⁹¹ Agricultural Reporter, *The Herald*, 20 September 1998 3.

²⁹² Moyo S. *The economic and social implications of recent designations*. Seminar on "The land reform challenge: An economic and social perspective" (1995) 56.

²⁹³ Crime Reporter, *The Herald*, 01-07-1998. Sixty Nyazura villagers disgruntled by what they perceive as the slow pace of land acquisition excise have followed in the footsteps of the Svoswe clan and resettled themselves at Beestkraal farm in Odzi. This is the fourth mass exodus by land hungry villagers who have taken the land resettlement programme into their own lands. They accused the government of letting them down twice.

peaceful. During the same year, 11 million hectares of the richest land were still in the hands of about 4 500 commercial farmers. It was also noted that some of the farms which were purchased for redistribution were not given to the landless people.²⁹⁴ Some of the acquired land was grabbed by government ministers and other senior officials in the government.

In February 2000, ZANU-PF experienced high levels of unrest and political uncertainty after losing the constitutional referendum and in June 2000 general elections.²⁹⁵ This sent a message to the ruling party that the party's support base was swiftly declining.²⁹⁶ The draft Constitution had a controversial clause that obliged Britain, as the former colonial power, to pay compensation for compulsory land acquisition.²⁹⁷ The white commercial farmers were branded as supporters of the MDC and were alleged to have campaigned for a no vote against the draft constitution. Hence, the land reform programme and politics became deeply intertwined. In response to this development, ZANU-PF used the land issue to manipulate the landless indigenous people as a way of regaining its majority people's support.²⁹⁸

Pursuant to this, war veterans started the first forceful land occupations on 16 February 2000. This was an absolute departure from a planned and systematic land reform programme of the early 1980s.²⁹⁹ The peaceful farm invasions were transformed into violent and systematic "drive in and set up camp" invasions.³⁰⁰ According to Masiiwa, "law and order, which had been strictly upheld in the previous two decades, were significantly compromised in favour of land demonstrations and the politics of land invasions."³⁰¹ The war veterans were in charge of reallocating the land on fast-tracked lands. Truly, the land reform programme was reintroduced, in a revolutionary manner, locally known as the 'Third Chimurenga' or 'Jambanja'.³⁰²

²⁹⁴ Moyo S (1990) 215.

²⁹⁵ Goebel A (2005) 147.

²⁹⁶ Sithole B, Campbell B, Dore D & Kozanayi W 'Narratives on Land: State Peasant Relations over Fast Track Land Reform in Zimbabwe' *African Studies Quarterly* 7 available at <http://ccs.ukzn.ac.za/files/Bev-Sithole.pdf> (accessed 7 January 2013).

²⁹⁷ Chaumba J, Scoones I & Wolmer W (2003) 539.

²⁹⁸ Mutanda D "The politicisation, dynamics and violence during Zimbabwe's land reform programme" (2013) 5 (1) *Journal of Aggression, Conflict and Peace Research* 42.

²⁹⁹ Masiiwa (2005) 220.

³⁰⁰ Sibanda A. *The millennium land policy and the economics of farm occupations by war veterans in Zimbabwe*. Working paper 32. (2000) 67.

³⁰¹ Masiiwa M (2005) 220.

³⁰² Masiiwa (2005) 219.

3.3 THE FAST TRACK LAND REFORM PROGRAMME (FTLRP)

The aim of the FTLRP was to accelerate the pace of addressing the imbalances in land distribution. This was in order to alleviate population pressure in communal areas and improving agricultural production by small-scale farmers as well as bringing idle and under-utilized land into full production. As mentioned above, phase two was aimed at acquiring 5 million hectares of land by December 2001.³⁰³ However, when the pace was accelerated, the target was shifted from 5 million to 9 million hectares of land, with the aim of resettling 160 000 landless poor families and 51 000 small to medium-scale indigenous commercial farmers.

Consequently, to enable the acquisition of more land as quickly as possible, the FTLRP was carried out rapidly thereby short-circuiting legal procedures as they would require more time. As a result, the beneficiaries' title to the land was unsecure as no formal procedures for the transfer of land took place. Due to the fast pace at which the FTLRP was implemented, the provision of roads, schools, clinics and boreholes was lagging far behind the settlement process. Hence, those who were fortunate to be resettled, were settled at places where there were no facilities such as clean and safe water, schools, clinics and adequate sanitation.

The FTLRP saw a surge in political violence, with forced evictions happening violently without any compensation to the land owner. White commercial farmers were forced off their farms regardless of whether the farms had been listed for compulsory acquisition or not as the process lacked clear criteria for the acquisition and allocation of land.³⁰⁴ In some cases, farmers were chased away together with their workers, some of whom were of foreign descent. Likewise, the resettlement process was changed to an entirely government driven approach.

White commercial farmers and their employees were intimidated, assaulted, threatened and several of them killed by the war veterans and the ZANU PF youth militias. The violence was linked to the suspicion that white commercial farmers and their workers were stern supporters

³⁰³ Human Rights Watch 'Fast Track Land Reform in Zimbabwe' (2002) 14 (1) 2.

³⁰⁴ Human Rights Watch (2002) 15.

of the MDC.³⁰⁵ Their farms were invaded regardless of whether the farms were listed for acquisition by the government or not. They were assaulted and according to the UN Report³⁰⁶ several tens of farm workers were killed.³⁰⁷ To show their anger while being chased away from their farms some white commercial farmers destroyed some structures on their farms before leaving the farms. Some farm workers' houses were burnt by the invaders on allegations of supporting MDC.

The Government of Zimbabwe is alleged to have tolerated and at times tacitly encouraged violent farm invasions by ignoring its own laws.³⁰⁸ On 17 March 2000, the High Court of Zimbabwe³⁰⁹ issued an order in *The Commercial Farmers Union (CFU) v The Commissioner of Police*,³¹⁰ in which it declared illegal any occupation of land since February 2000 in pursuit of any claim to a right to occupy that property as part of the demonstrations instigated, prompted or encouraged by any person. Secondly, it warned everyone who had taken up occupation of any land as a result of the invasions to vacate such land within hours of the making of that order.³¹¹

However, ZANU-PF enacted laws that sought to legalise the land invasions in an effort to restore the rule of law. Consequently, the Rural Land Occupiers (Protection from Eviction) Act, 2001 was enacted to legalise all land invasions that took place from 16 February 2000 to 1 March 2000.³¹² In April 2000 the laws that governed the land acquisition were revised to take into account the changes in government policy. The Land Acquisition Act was amended in May and November 2000 to explain, restructure various procedural aspects of the land resettlement process and to recommend new compensation rules in accordance with the Constitution.

³⁰⁵ Politically related deaths now over 150, See also Staff Reporter *The Zimbabwe Independent* 4 October 2002 2. See also Goebel A (2005) 147.

³⁰⁶ Human Rights Watch (2002) 2.

³⁰⁷ It is not clear on exactly how many farm workers were killed but there is a clear indication that there are farm workers who were killed.

³⁰⁸ Medicine Masiwa (2005) 220.

³⁰⁹ The presiding judge was Garwe J.

³¹⁰ *Commissioner of Police v Commercial Farmers' Union 2000 (1) ZLR 503 (HC) at 525-526.*

³¹¹ Masiwa M (2005) 220.

³¹² Masiwa M (2005) 221.

In April 2000, the Constitution of Zimbabwe was amended to further speed up the acquisition of land.³¹³ This amendment clearly stated that it was the British Government's obligation to compensate for land compulsorily acquired. Furthermore, it provided that if the British Government fails to pay compensation the Government of Zimbabwe would not be liable. However, this amendment was taken word for word from clause 57 of the rejected Draft Constitution of 2000 that was rejected. Amendment (No. 16) Act provided that:

1. In regard to the compulsory acquisition of agricultural land for the resettlement of people in accordance with a programme of land reform, the following must be regarded as of ultimate and overriding importance;
 - (a) under colonial domination the people of Zimbabwe were unjustifiably dispossessed of their land and other resources without compensation;
 - (b) the people consequently took arms in order to regain their land and political sovereignty and this ultimately resulted in the Independence of Zimbabwe in 1980;
 - (c) the people of Zimbabwe must be enabled to reassert their rights and regain ownership of their land and accordingly.
2. the former colonial power has an obligation to pay compensation for agricultural land compulsorily acquired for resettlement, through a fund established for this purpose.
3. if the former colonial power fails to pay compensation through such a fund, the Government of Zimbabwe has no obligation to pay compensation for agricultural land acquired for resettlement.

Consequently, in terms of the Amendment the FTLRP was justified, hence, it was imperative to bring about equity through land acquisition and resettlement.³¹⁴ Thus, violence was allowed to go on as an ill-fated cost of a long-overdue land reform that had been obstructed by the colonial settlers. As the June 2000 parliamentary elections were approaching, farm invasions became more violent. Despite the ruling party winning the majority of seats during the parliamentary elections, the invasions continued.

On 15 July 2000, the Fast Track Land Reform Programme was officially announced by the then Vice President of Zimbabwe, Joseph Msika.³¹⁵ Equipped with the Rural Land Occupiers

³¹³ Amendment (No. 16) Act of 2000.

³¹⁴ Sachikonye L M (2003) 3.

³¹⁵ Precious Zikhali Fast Track Land Reform and Agricultural Productivity in Zimbabwe Environment for Development Discussion Paper Series (2008) 4.

(Protection from Eviction) Act, of 2001, the government went back to the Supreme Court,³¹⁶ seeking an order that the rule of law had now been restored. The matter was heard in September 2001 in the case of *the Minister of Lands, Agriculture and Rural Resettlement & Others v The Commercial Farmers Union*³¹⁷. In this case, the Supreme Court ruled³¹⁸ that, the land acquisition programme had become lawful as the government had restored the rule of law. Furthermore, the Rural Land Occupiers (Protection from Eviction) Act of 2001 was upheld and declared constitutional. Hence, the Court claimed that the land reform programme had complied with the Constitution of Zimbabwe.³¹⁹

In July 2003, the Fast Track Resettlement Programme came to an end but pockets of similar invasions continued with no end in sight. By the end of 2003, more than nine million hectares of land had been transferred from white commercial farmers to the black majority. In other words, about 78% of the white commercial farmers' land was redistributed to the landless people. Masiwa argued that the fast track land reform programme managed to put to an end a century-long land inequity problem.³²⁰ However, the infrastructure development was lagging ten years behind.³²¹ The provision of roads, schools, clinics, and boreholes was lagging far behind settler emplacement. In fact, fewer than 500 new boreholes have been drilled to date and fewer than 50 classrooms and teachers' houses have been constructed.³²² According to the United Nations Development Programme Mission (UNDPM), the FTLRP was not as a satisfactory plan for sustained development of the new settlements.

3.4 CONCLUSION

This chapter discussed the different land reforms that took place in Zimbabwe during the pre-colonial, colonial and post-colonial eras. In this chapter, it has been highlighted how the

³¹⁶ The government had reconstituted the Supreme Court by removing the Judge Garwe who had previously ruled that the land invasions were unconstitutional and illegal by replacing them with people who were known to be loyal to the ruling party.

³¹⁷ *Minister of Lands, Agriculture and Rural Resettlement & Ors v Commercial Farmers Union 2001 (2) ZLR 457 (S)*

³¹⁸ The matter was presided over by the newly appointed Chief Justice Chidyausiku. It was ruled by a majority of four judges against one.

³¹⁹ Masiwa M (2005) 221.

³²⁰ Masiwa M (2005) 221.

³²¹ United Nations Development Programme Zimbabwe Land Reform and Resettlement: Assessment and Suggested Framework for the Future Interim Mission Report (2002) 21.

³²² United Nations Development Programme Zimbabwe Land Reform and Resettlement: Assessment and Suggested Framework for the Future Interim Mission Report (2002) 21.

FTLRP was carried out leading to a violation of different socio-economic rights of commercial farmers and their workers as well as their families. What is important is that the chapter has shown that some of the human rights were violated during the FTLRP and had a direct impact on children's right to education. Commercial farms were owned by white families which employed hundreds of black people. In most cases the white farmer provided the basic facilities such as housing, schools and clinics for his employees and their families.

The next chapter shows how the implementation of the FTLRP impacted on children's right to education, particularly farm workers' children.



CHAPTER 4: ASSESSING THE IMPACT OF THE FAST TRACK LAND REFORM PROGRAMME ON CHILDREN'S RIGHT TO EDUCATION IN ZIMBABWE

4.1 INTRODUCTION.

This chapter seeks to establish the extent to which the FTLRP impacted on children's right to education in Zimbabwe. As previously discussed in chapter 2, all legal instruments generally guarantee that education should be available, accessible, acceptable and adaptable to all people, notably children of school-going age.³²³ The discussion on the content on the children's right to education has also highlighted that the realisation of the right to education is dependent on and should be allied to the realisation of other socio-economic rights. So, in order to adequately address the impact of the FTLRP on children's right to education, this chapter discusses the impact that the programme had on other human rights, particularly, socio-economic rights, since, all human rights are universal, indivisible, interlinked, interrelated and interdependent.³²⁴

4.2 THE EFFECTS OF THE FTLRP ON HUMAN RIGHTS

The implementation of the FTLRP had far-reaching effects on a number of socio-economic as well as associated issues ranging from food production, school infrastructure, shelter, clean drinking water, health provision among others. This section discusses these issues and how the FTLRP impacted on their provision.

4.2.1 Provision of food

Throughout its history, Zimbabwe's agriculture has been hailed as the Southern Africa's bread basket.³²⁵ But as a result of the FTLRP, Zimbabwe's agricultural output decreased by 70 per cent as a result of the eviction of almost 90 per cent of white commercial farmers by the end

³²³General Comment 13 para 6.

³²⁴Mario G 'Social Economic Rights and Human Rights Commissions' (1995) 17 (1) *Human Rights Quarterly* 155. See also The Vienna Declaration and Programme of Action, Part I, paragraph 5 adopted by the World Conference on Human Rights on June 25, 1993.

³²⁵Mawere M (2011) 72. See also introduction in chapter 1 of this mini-thesis.

of 2009, with the number continuing to increase.³²⁶ Consequently, this eviction triggered a wave of food shortages and contributed to the pushing up of the prices of food stuffs.³²⁷ This has also seen a precipitous decline in rural economies with the majority of the farm labour force losing jobs.³²⁸ Generally, the food situation was bad in the whole country and worst for farm workers who had lost their jobs as they did not have money to feed their families.³²⁹ This did not only affect people within the farming communities only, but Zimbabwe as a whole including urban areas. The government and individuals had to go to neighbouring countries such as South Africa, Zambia, Mozambique, and Malawi in search for food.³³⁰ Some online delivery services were also devised to deliver food stuffs from as far as overseas to Zimbabwe.³³¹ Obviously this had a direct impact on children's right to education as hungry children could attend and concentrate in school.

4.2.2 Shelter

Before the FTLRP, farm workers lived in houses provided by their employers.³³² Their right to live in farm houses was tied to their conditions of employment on the farms.³³³ When the commercial farmers were evicted and the farm was taken over by the new owner, most farm workers lost their jobs³³⁴ as well as their entitlements to live in farm houses.³³⁵ It is estimated that about 300 000 to 350 000 people were employed only in large-scale commercial farms as permanent workers.³³⁶ These workers and their families make up a population of about 2 million people.³³⁷ This therefore means that about 2 million people were left without

³²⁶ Mawere M (2011) 73.

³²⁷ Musemwa L and Mushunje A (2011) 37. The right to food is protected in human rights instruments at international, regional and national levels. See Article 25 of the UDHR; Article 11 of the ICSECR.

³²⁸ Scoones I, Marongwe N, Mavedzenge B, Murimbarimba F, Mahenehene J & Sukume C Zimbabwe's Land Reform: A summary of findings (2011) 1.

³²⁹ Article 25 of the UDHR and Article 11 (1) of the ICESCR recognize the right to food under the right to adequate standard of living. However, Article 11 (2) of the ICESCR recognises everyone's right to be free from hunger.

³³⁰ Shaw A 'Food Shortages: Zim Buys Maize from Zambia' *News24* 8 May 2012 2.

³³¹ Parcel2Go.com is one of the courier service providers that deliver groceries to Zimbabwe. See their website and what they say about their courier services to Zimbabwe. See the Parcel2Go.com 'Parcel Delivery to Zimbabwe' available at <http://www.parcel2go.com/parcel-delivery/zimbabwe> (accessed on 6 May 2013).

³³² The right to housing is a human right. See Article 25 UDHR; Article 11 ICSECR; Article 20 (2) (a) of the ACRWC.

³³³ Waeterloos E & Rutherford B (2004) 547.

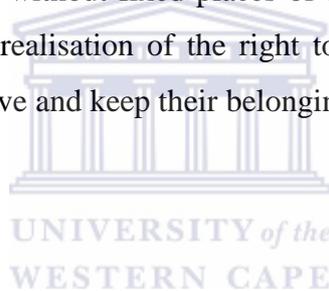
³³⁴ Waeterloos E & Rutherford B (2004) 547.

³³⁵ Sachikonye LM (2003) 7.

³³⁶ Internal Displacement Monitoring Centre 'The Many Faces of Displacement: IDPs in Zimbabwe' (2008) 32.

³³⁷ Internal Displacement Monitoring Centre Zimbabwe: *Unknown Numbers of IDPs Still Need Humanitarian Assistance as Well as Support for Long-Term Durable Solutions* (2011) 4.

shelter.³³⁸ Given that the FTLRP was characterised by violence, some houses belonging to the commercial farmers as well as those of the farm workers were looted, burnt down or destroyed by marauding ZANU PF youth militias as well as war veterans who spear-headed the farm invasions during the FTLRP.³³⁹ Hence, farm workers and their families were left without shelter and their belongings being destroyed in the process. In January 2002 the UNDP reported that the number of Zimbabwean and foreign nationals displaced as farm workers during the FTLRP was estimated at 30 000 families.³⁴⁰ As a result, some of the displaced farm workers had nowhere to go hence they opted to live with their families in squatter camps that mushroomed on the outskirts of the farms or informal settlements where there was no decent shelter.³⁴¹ It was noted that the living conditions in the squatter camps were so horrendous, sanitation facilities inadequate, and basic health care scarce, with limited schools available for commercial workers' children. Some workers became stranded and wandered about since they had nowhere to go and ended up living in situations similar to those of destitute and vagabonds without fixed places of abode.³⁴² Lack of accommodation also had a direct impact on the realisation of the right to education, as it is essential that people have a home which they live and keep their belongings.



4.2.3 Schools

Before the FTLRP, Zimbabwe had been known for its highest percentage of adult literacy of approximately 90 per cent which is almost the highest in Africa.³⁴³ On commercial farms, educational facilities were also provided by the farmers for their workers' children.³⁴⁴ They

³³⁸ Article 25 of the UDHR

³³⁹ Exploring Africa 'Module 30: Zimbabwe Teacher's Edition. Activity three: Expand the Land Question' available at <http://exploringafrica.matrix.msu.edu/teachers/curriculum/m30/activity3.php> (accessed on 5 May 2013)

³⁴⁰ United Nations Development Programme Zimbabwe Land Reform And Resettlement: Assessment And Suggested Framework For The Future Interim Mission Report (2002) 35.

³⁴¹ Chambati W & Moyo S 'The Impact of the Fast Track on Former Farm Workers' in the Utete Report (2003) 147. Also available at http://www.sarpn.org/documents/d0000746/P840-Utete_Report_August2003_Former-farm-workers.pdf (accessed on 2 May 2013). See also Sachikonye LM (2003) 235.

³⁴² Sachikonye LM (2003) 235.

³⁴³ Trading Economics 'Literacy Rate; Adult Total (% of People Ages 15 and above) in Zimbabwe' available at <http://www.tradingeconomics.com/zimbabwe/literacy-rate-adult-total-percent-of-people-ages-15-and-above-wb-data.html> (accessed on 5 May 2013)

³⁴⁴ Mabvurira v, Masuka T, Banda RG & Frank R 'A Situational Analysis of Former Commercial Farm Workers in Zimbabwe, a Decade after the Jambanja' (2012) 3(3) *Journal of Emerging Trends in Economics and Management Sciences* 226.

funded the schools and oversee their maintenance.³⁴⁵ However, during the FTLRP, the schools were closed as commercial farmers were evicted and there was no one to fund and run the schools. On the face of marauding war veterans, ZANU-PF militia and youths, some farm schools were turned into bases for the invasions.³⁴⁶ Some teachers were intimidated, assaulted and tortured as they were suspected of being supporters of the MDC.³⁴⁷

When the new owners took over land ownership buildings which were used as classrooms were converted to some other uses. Hence, teachers and children in some cases used old dilapidated buildings as classrooms some of which were on the verge of collapse. Some children were also forced out of school on suspicion of their families supporting the opposition party, MDC.³⁴⁸

As some schools were closed, children were forced to go and attend other schools which were still functional far away from the farms. Some children had to walk very long distances of 30 kilometres to the nearest school and another 30 kilometres coming back.³⁴⁹ In addition, walking long distances made children vulnerable to abuse, especially girls, some of whom were raped on their way to school resulting in unwanted pregnancies.³⁵⁰ As a result, some children had to drop out of school because they lived far away from the schools and had no transport to carry them to school unlike previously when the white commercial farmer would provide transport in such cases.³⁵¹

At some farms, the buildings which were used as schools were burnt down or destroyed during the violence that occurred.³⁵² It is acknowledged that most farm schools were not well furnished, however, the little furniture that they had was destroyed during the FTLRP.³⁵³ As a result, some children were left with no classrooms or furniture and some had to learn under

³⁴⁵ Mabvurira v, Masuka T, Banda RG & Frank R (2012) 226.

³⁴⁶ Human Rights Watch (2002) 21.

³⁴⁷ Masiwa M (2005) 222.

³⁴⁸ Human Rights watch (2002) 16.

³⁴⁹ Dube S 'Rural pupils disadvantaged' *Chronicle* 10 February 2013 2.

³⁵⁰ Dube S 'Rural pupils disadvantaged' *Chronicle* 10 February 2013 2.

³⁵¹ Dube S 'Rural pupils disadvantaged' *Chronicle* 10 February 2013 2.

³⁵² Exploring Africa 'Module 30: Zimbabwe Teacher's Edition. Activity three: Expand the Land Question' available at <http://exploringafrica.matrix.msu.edu/teachers/curriculum/m30/activity3.php> (accessed on 5 May 2013).

³⁵³ Exploring Africa 'Module 30: Zimbabwe Teacher's Edition. Activity three: Expand the Land Question' available at <http://exploringafrica.matrix.msu.edu/teachers/curriculum/m30/activity3.php> (accessed on 5 May 2013.)

trees sitting on the ground or on bricks which is a situation that is not conducive for learning purposes.³⁵⁴ Also those who were resettled, they were resettled at places where there are no schools or where the schools had just been introduced, hence there are no buildings and furniture.³⁵⁵

At some schools the war veterans, and the youth militias took over the teaching of the political history of ZANU-PF and patriotism as they believed teachers were criticising the ruling party.³⁵⁶ They would teach children to chant revolutionary songs which oppose whites, instilling in children the idea that all whites are bad people who took land from the indigenous people.³⁵⁷ Children were also taught to chant ZANU-PF slogans during the lessons to ensure that children would view the ruling party as the only party that is entitled to rule Zimbabwe.³⁵⁸ Some school children especially boys joined the war veterans and youth militias in committing acts of violence such as beating people, destroying and looting properties.³⁵⁹ Hence, children witnessed human rights gross violations happening to their teachers, parents, relatives and neighbours. In places where new schools have been built in places where new schools had been built and even in the existing ones there was a shortage of trained teachers as these were not willing to work in such areas for fear of being victimised.³⁶⁰ This had a direct impact on children's right to education as some children were left with no schools in their vicinity and some did not have access at all as the schools had been destroyed.

³⁵⁴ Mutema EP 'The Fast Track Land Reform Programme: Reflecting On The Challenges And Opportunities For Resettled Former Farm Workers At Fairfield Farm In Gweru District, Zimbabwe' (2012) 14 (5) *Journal of Sustainable Development in Africa* 102.

³⁵⁵ Smith AD 'Aid to Zimbabwe must take account of resettled farmers on contested land' *The Guardian* 4 May 2012. Also available at <http://www.guardian.co.uk/global-development/poverty-matters/2012/may/04/aid-zimbabwe-resettled-farmers-contested-land> (accessed 26 August 2013).

³⁵⁶ Langa V 'Coltart Warns War Vets' available at <http://davidcoltart.com/2011/03/coltart-warns-war-vets/> (accessed 25 December 2012).

³⁵⁷ Guma L 'War vets demand to teach history in schools' available at <http://www.zimeye.org/?p=27489> (accessed on 6 May 2013).

³⁵⁸ Sithole B, Campbell B, Dore D & Kozanayi W 'Narratives on Land: State Peasant Relations Over Fast Track Land Reform in Zimbabwe' *African Studies Quarterly* 7 available at <http://ccs.ukzn.ac.za/files/Bev-Sithole.pdf> (accessed on 22 April 2013).

³⁵⁹ Exploring Africa 'Module 30: Zimbabwe Teacher's Edition. Activity three: Expand the Land Question' available at <http://exploringafrica.matrix.msu.edu/teachers/curriculum/m30/activity3.php> (accessed on 5 May 2013)

³⁶⁰ Mutangi GT 'Livelihoods after Land Reform in Zimbabwe' Working Paper 13 The Changing Patterns of Farm Labour after the Fast Track Land Reform Programme: The Case of Guruve District Working Paper Series (2010) 12.

4.2.4 Safe drinking water

Before the FTLRP, people on farms used either tapped water or borehole water provided by the commercial farmers. However, soon after the FTLRP when the farm owners had been evicted the sources of tapped water were either vandalized or disconnected by the Zimbabwe National Water Authority (ZINWA) due to non-payment.³⁶¹ Also, borehole water ceased as electricity that was used to pump it up was cut by Zimbabwe Electricity Supply Authority (ZESA) for unpaid bills.³⁶² This also affected schools which had dependant on borehole for safe drinking water. Hence, people resorted to running water from the nearby rivers for drinking purposes or used unprotected wells dug on river banks.³⁶³ As a result there were outbreaks of waterborne diseases such as typhoid and cholera within the farming communities.³⁶⁴ The lack of safe drinking water had a direct impact on the realization of the right to education because some children could not attend school due to illnesses caused by the use of unsafe drinking water.

4.2.5 Health centres

Previously, the farm owners had provided health facilities to farm workers and their families on the farm. But as a result of the FTLRP, health facilities such as clinics on the farms were closed during as the new farmer owners were not able to provide the same health services previously provided by commercial farmers.³⁶⁵ Satellites clinics were provided, however, they were not adequate to cater for the whole community as they would visit may be three times per month. Consequently, most people, including children, were affected by diseases such as cholera, measles, malaria and typhoid. In addition because of high levels of poverty, there was an equally high prevalence of HIV/AIDS hence, some parents were affected and they became ill or died, leaving the children without a bread winner who would send them to school. As discussed above there was no clean water hence it was difficult to achieve minimum health standards such as adequate sanitation and health since human rights are

³⁶¹ Mabvurira v, Masuka T, Banda RG & Frank R 'A Situational Analysis of Former Commercial Farm Workers in Zimbabwe, a Decade after the Jambanja' (2012) 3(3) *Journal of Emerging Trends in Economics and Management Sciences* 226.

³⁶² Mabvurira V, Masuka T, Banda RG & Frank R (2012) 226.

³⁶³ Mabvurira V, Masuka T, Banda RG & Frank R (2012) 226.

³⁶⁴ WHO World Water Day Report available at http://www.who.int/water_sanitation_health/takingcharge.html [Accessed 2 April 2013]

³⁶⁵ Mutangi GT (2010) 10.

interlinked and interdependent. In the existing health centres, there as a shortage of trained personnel as most qualified people got scared to work in such volatile areas for fear of being victimised.³⁶⁶ This had a direct impact on the realisation of the right to education as children would miss out classes while trying to get treatment in cities where health centres were available.

4.2.6 Employment

Before the FTLRP the agricultural sector employed the highest number of employees in Zimbabwe. It is estimated that about 300 000 to 350 000 people were employed only in large-scale commercial farms as permanent workers and a further 250 000 to 270 000 as seasonal workers.³⁶⁷ Approximately, 70 per cent of the farm labour force was affected by the massive job losses as a result of the FTLRP.³⁶⁸ Their contracts of employment ceased as a result of the large scale invasions of the commercial farms without any notice. Clearly, the job losses did not only result in the loss of livelihoods but the risk of losing other benefits and entitlements as workers.³⁶⁹ Benefits and entitlements such as basic social services like schools, clinics, clean water, sanitation, supplementary rations and access to plots on which they would grow food for their families were also lost.³⁷⁰ Furthermore, some farm workers who managed to secure jobs from the new farm owners were exploited by either being underpaid or not being paid.³⁷¹ This had a direct impact on children's attendance at school, as most parents could not afford to pay school fees since they had lost their jobs on the commercial farms.

4.2.7 Property

As discussed above, the FTLRP was characterised by politically-motivated violence, chaos, disorder and lawlessness. Farmers were chased away from their farms without following any

³⁶⁶ Mutangi GT (2010) 10.

³⁶⁷ Internal Displacement Monitoring Centre (2008) 32.

³⁶⁸ Sachikonye L (2003) 6. Also available at http://www.kubatana.net/docs/landr/ftz_farm_workers_0305.pdf (accessed on 8 May 2013).

³⁶⁹ Chambati W & Moyo S (2003) 140. Also available at http://www.sarpn.org/documents/d0000746/P840-Utete_Report_August2003_Former-farm-workers.pdf (accessed on 2 May 2013)

³⁷⁰ United Nations Development Programme Zimbabwe Land Reform And Resettlement: Assessment And Suggested Framework For The Future Interim Mission Report January 2002 Page 34.

³⁷¹ Mazingi L & Kamidza R 'Inequality in Zimbabwe' in Jauch H & Muchena D (eds) *Tearing Us Apart: Inequalities in Southern Africa* (2011) 350.

formal or legal procedures.³⁷² As a result of the nature of the programme the invaders would just take over the farms, peg-off the land, at times damage the property, steal equipment and livestock, loot homes, burn crops, barricade homes, and search homes without search warrants³⁷³ and occupy land without proper documentation.³⁷⁴ All these were in violation of the right to property and the right not to be interfered with.³⁷⁵ All these violations were done without the owner's consent.³⁷⁶ As a result of the FTLRP, 4 500 commercial farmers were thrown off their farms and replaced by 150 000 families of the indigenous people.³⁷⁷ However, some teaching materials such as textbooks which were already available at some farm schools and mini libraries that were starting to develop were destroyed.

4.2.8 Right to life, assaults and torture

Before the FTLRP, people lived peaceful lives and any violence was reported to the police and the perpetrators were apprehended. During the FTLRP, when the police were called to intervene in the violence they did not take any action to halt the violence and in some cases they were directly implicated in the abuses.³⁷⁸ As a result, by June 2000, at least 26 farm workers had been killed and no arrests were reported to have been made in connection with any of the murders.³⁷⁹ Some farm owners were also killed in the ensuing violence and according to the Human Rights Watch at least seven farm owners had been killed in the violence by 2002.³⁸⁰ According to the Human Rights Watch, war veterans and ZANU-PF militia who were leading the farm intimidated and assaulted both the farmers and their workers. As a result, in June 2000, at least 1,600 farm workers had been assaulted, and 11 raped in the ensuing violence.³⁸¹ No arrests were also reported to have been made in

³⁷² Sithole B, Campbell B, Dore D & Kozanayi W 'Narratives on Land: State Peasant Relations Over Fast Track Land Reform in Zimbabwe' *African Studies Quarterly* 7 available at <http://ccs.ukzn.ac.za/files/Bev-Sithole.pdf> (accessed 22 April 2013).

³⁷³ Chaumba J, Scoones I and Wolmer W (2003) 542.

³⁷⁴ Chaumba J, Scoones I and Wolmer W (2003) 542.

³⁷⁵ Article 17 of the UDHR states that everyone has a right to own property alone as well as in association with others and that no one can be arbitrarily deprived of his property; See also Article 14 of the ACHPR.

³⁷⁶ Chaumba J, Scoones I & Wolmer W (2003) 542.

³⁷⁷ Aid to Zimbabwe must take account of resettled farmers on contested land available at <http://www.guardian.co.uk/global-development/poverty-matters/2012/may/04/aid-zimbabwe-resettled-farmers-contested-land> (accessed on 28 December 2012)

³⁷⁸ Human Rights Watch (2002) 2. See also Human Rights Watch (2002) 23.

³⁷⁹ This was reported by the National Employment Council for the agricultural industry, a tripartite body of government, employers and unions.

³⁸⁰ Human Rights Watch (2002) 19.

³⁸¹ Amnesty International 'Zimbabwe: Human Rights in Crisis Shadow' Report to the African Commission on Human and Peoples' Rights (2007) 7. Also available at

connection with any of these human rights abuses.³⁸² This also had a direct impact on children's right to education as they lost their breadwinners or when the parents were tortured or assaulted and could not fend for their families hence, some children had to drop out of school.

4.2.9 Children's vulnerability

The FTLRP resulted in massive unemployment hence, poverty was rife. Most children had to drop out of school as their parents could not afford to send them to school. As discussed in chapter 2, poverty makes children vulnerable to exploitation and abuses such as child labour, trafficking, substance abuse, early marriages and so on. As a result, most children were forced to work to supplement their families' income. Some especially the girls were impregnated during the time they attended rallies and other over night meetings locally known as 'pungwe'. Some girls fell pregnant because they were raped while walking long distances to school and some entered into early marriages because they were idle or needed food or somewhere to settle. As have already been mentioned, some boys joined the ZANU-PF youths and were involved in the violence that took place during FTLRP. Because of the nature of the FTLRP's environment some boys engaged in activities such as drug and alcohol abuse. This had a direct impact on the realisation of children's right to education as most children were caught up in different exploitations and abuses.

4.3 THE EFFECTS OF THE FTLRP ON CHILDREN'S RIGHT TO EDUCATION

4.3.1 Availability of education

As discussed in chapter 2, international standards on the right to education provide that education should be made available to everyone.³⁸³ Similarly, the UN Committee on Economic, Social and Cultural Rights has provided in General Comment 13 that education should be available.³⁸⁴ It provides that education is available if there is adequate and safe

<http://www.amnesty.org/en/library/asset/AFR46/016/2007/en/6f1c11c5-d38e-11dd-a329-2f46302a8cc6/afr460162007en.pdf> (accessed 7 May 2013).

³⁸² Botswana Centre of Human Rights 'Human Rights in Zimbabwe' available at http://www.ditshwanelo.org/bw/zim_rights.html#portaeg (accessed 8 march 2013). Also note that people who went to report cases of violence were in some cases arrested and detained without being charged.

³⁸³ Article 26 of the UDHR.

³⁸⁴ General Comment 13 para 6 (a).

infrastructure for teaching and learning purposes.³⁸⁵ The discussion in chapter 3 indicated that commercial farm owners who were funding farm schools were evicted from their properties during the farm invasions. On one hand, this culminated in a violation of the farmers' right to property which is protected by different legal instruments.³⁸⁶ On the other hand, as a result of the curtailed movement of people on the face of marauding war veterans, ZANU-PF militia and youths and the closure of farm schools as the farmers were evicted, education on farm schools became unavailable.³⁸⁷ Additionally, the change in ownership as the farms were taken over by the new farm owners meant changes in the use of buildings which had been previously used as classrooms.³⁸⁸ Some classrooms were converted to other uses by the new owners and in some cases old dilapidated horse stables and garages were used as classrooms some of which were on the verge of collapse.³⁸⁹ In some cases, some classrooms were burnt or destroyed during the violence that obtained during the FTLRP.³⁹⁰ The destructive behaviour also affected the furniture, although previously most farm schools had not been well furnished, the few furniture that they had was destroyed during the FTLRP. As a result, some children were left with no classrooms because they were either used for a different purpose or destroyed. Moreover, the old dilapidated buildings which were used posed a danger to children and their teachers. Clearly this is a violation of the provision of General Comment 13, which provides that education is available if there is adequate and safe infrastructure.³⁹¹

Furthermore, it should be recalled that General Comment 13 states that education is available if there are adequate sanitation facilities for both sexes.³⁹² In addition, the inadequate sanitation facilities that were available catered for an increased number of children than before. As some schools were closed because of the FTLRP, some children went on to enrol at neighbouring schools thereby, increasing the number of enrolment of those schools that remained. Additionally, people who were employed to ensure that sanitation facilities are

³⁸⁵ General Comment 3 Para 6 (a).

³⁸⁶ Article 17 (1) of the UDHR; Article 14 of the ACHPR.

³⁸⁷ Sachikonye LM (2003) 7.

³⁸⁸ Sachikonye LM (2003) 7.

³⁸⁹ Mutema EP 'The Fast Track Land Reform Programme: Reflecting On The Challenges And Opportunities For Resettled Former Farm Workers At Fairfield Farm In Gweru District, Zimbabwe' (2012) 14 (5) *Journal of Sustainable Development in Africa* 102.

³⁹⁰ Exploring Africa 'Module 30: Zimbabwe Teacher's Edition. Activity three: Expand the Land Question' available at <http://exploringafrica.matrix.msu.edu/teachers/curriculum/m30/activity3.php> (accessed on 5 May 2013)

³⁹¹ General Comment 3 para 6 (a).

³⁹² General Comment 3 para 6 (a).

clean lost their jobs as the farmer was evicted. An NGO, Save the Children, has also indicated that basic sanitation services and the health care system have collapsed in Zimbabwe since the FTLRP.³⁹³ This clearly violates the right to health as proclaimed by legal instruments³⁹⁴ and the provision of General comment 13, which requires schools to have adequate sanitation facilities for both sexes.

Furthermore, General Comment 13 provides that schools must have safe drinking water if they are to function properly. As noted in chapter 3, soon after the eviction of farm owners, the sources of tapped water on the farms were disconnected by ZINWA due to non-payment.³⁹⁵ Where there were boreholes, the water ceased as electricity that was used to pump it up was cut as there was no one to pay for the bills.³⁹⁶ As a result, there was no safe drinking water at most schools and children were required to bring their own water bottles from home for drinking. Hence, people resorted to running water from the nearby rivers for drinking or use unguarded shallow wells on the river banks.³⁹⁷ This poses a high health risk especially when it comes to outbreaks of waterborne diseases such as cholera, malaria, diarrhoeal diseases and typhoid.³⁹⁸ This had a direct impact on children's right to education as some of them would get sick because of using unclean and unsafe water, hence, would not attend school and lag behind others. Obviously this violates the provisions of the General Comment 13 which provides that there must be access to safe drinking water at schools and human rights instruments which provides for everyone's right to water.³⁹⁹

It is also important to note that the right to water is also critical for the achievement of adequate sanitation and health since human rights are interlinked and interdependent. As a result of the FTLRP, clinics on the farms were closed during the FTLRP and the new farmer owners could not provide the same health services as those provided by the white commercial

³⁹³ Save the 'Children Zimbabwe: Relief and Development for Children' available at <http://www.savethechildren.org/site/c.8rKLIXMGIpl4E/b.7086115/k.D96C/Zimbabwe.htm> (accessed on 14 April 2013)

³⁹⁴ Article 25 of the UDHR.

³⁹⁵ Mabvurira v, Masuka T, Banda RG & Frank R (2012) 226.

³⁹⁶ Mabvurira v, Masuka T, Banda RG & Frank R (2012) 226.

³⁹⁷ British Red Cross 'Water and Sanitation in Zimbabwe' available at <http://www.redcross.org.uk/What-we-do/Health-and-social-care/Health-issues/Water-and-sanitation/Water-and-sanitation-in-Zimbabwe> (accessed on 20 February 2013).

³⁹⁸ British Red Cross 'Water and Sanitation in Zimbabwe' available at <http://www.redcross.org.uk/What-we-do/Health-and-social-care/Health-issues/Water-and-sanitation/Water-and-sanitation-in-Zimbabwe> (accessed on 20 February 2013).

WHO World Water Day Report available at http://www.who.int/water_sanitation_health/takingcharge.html (Accessed 2 April 2013)

³⁹⁹ General Comment 13 para 6 (a).

farmers as they could not bear the costs of running such centers.⁴⁰⁰ Although satellites clinics were provided, they were not adequate to cater for the whole community as they would visit may be three times per month. As a result, an escalating number of children and families were affected by infectious diseases such as HIV/AIDS, cholera, measles, malaria and typhoid. This had a direct impact on children's right to education as sick children cannot attend school because of illness or death in the family.⁴⁰¹ Consequently, there was a prevalence of HIV/AIDS hence, some parents were affected and they became ill or died, leaving the children without a bread winner who would send them to school.

Further, the ICESCR as discussed in chapter 2 seeks to protect the working conditions of teachers as a pre-requisite for making education available to children. It states that the material conditions of teaching staff should be continuously improved inter alia. Similarly the General Comment 13 clearly states that trained teachers should receive domestically competitive salaries.⁴⁰² However, it has been noted that since the FTLRP the economy of Zimbabwe has gone down. As a result teachers' salaries continued to be low and unattractive as the government could not afford to increase them neither improve their working conditions.⁴⁰³ Soon after the FTLRP, teachers' protests and strikes for salary increases were reported in the press and all over the world. Up to now in 2013, teachers' salaries are still not lucrative. As a result of this of the FTLRP, most teachers have fled to neighbouring countries such as South Africa, Malawi, Zambia and Mozambique and some even went overseas in search of greener pastures. This has not only affected farm school teachers but teachers in general as they were facing an unsecured future.

Moreover, General Comment 13 states that schools are available if there are sufficient teaching materials. Undoubtedly, teaching materials include textbooks, writing boards, chalks which are indispensable educational resources. In addition, the UN Committee on Economic, Social and Cultural Rights, provides that facilities such as a library, computer facilities and information technology are also necessary if educational programmes are to be available in sufficient quantities.⁴⁰⁴ It has been noted that most schools in Zimbabwe lacked libraries, computers and information technology. However, some teaching materials such as textbooks

⁴⁰⁰ *Mutangi GT* (2010) 10.

⁴⁰¹ *Sachikonye LM* (2003) 63.

⁴⁰² General Comment No 13 para 6 (a).

⁴⁰³ Education in crisis available at <http://www.educationin crisis.net/learn-more/country-profiles/africa/item/495-zimbabwe> (accessed on 18 March 2013)

⁴⁰⁴ General Comment 13 para 6 (a).

which were already available at some farm schools and mini libraries that were starting to develop were destroyed during the FTLRP. This violated the provision of the general comment 13 which requires schools to have sufficient teaching materials.

Generally, the UNESCO CADE and the ICSECR provide that governments should formulate, develop and apply national policies to encourage education for persons who did not receive primary education or failed to complete their primary education.⁴⁰⁵ During the FTLRP, both boys and girls dropped out of school because their parents could not afford to send them to school as they had lost their jobs. Some children, especially boys dropped out as they joined the war veterans, youth and the militia in invading farms. Furthermore, the African Youth Charter, encourages that states should ensure that girls and young women who fail to complete their education because of pregnancy or early marriages are afforded another opportunity to complete their education.⁴⁰⁶ This provision seeks to make education available to girls and women who could not finish their education due to different reasons such as pregnancy, early marriages and poverty. As noted in chapter 3, some parents lost their jobs and could not afford to pay for children's school fees.⁴⁰⁷ As a result, some girls got pregnant or some entered into early marriages as they were no longer attending school some were raped while walking long distances to school. During the land invasions, youths were forced to attend overnight meetings or vigils to show that they support the ruling party and not oppositional politics. During those meetings some girls were impregnated, hence they had extra responsibility as compared to their male counterparts, hence could not attend school. So in terms of this provision, the government of Zimbabwe should take reasonable measures to ensure such women and girls get another opportunity to finish their education. This will make education available to these unfortunate girls and women.

According to the Former Special Rapporteur of education, governments should establish schools or fund them as well as allow private individuals to establish schools.⁴⁰⁸ This provision allows governments to permit both private and public schools so as to ensure that education is available to all children who are supposed to attend primary school.⁴⁰⁹ It has

⁴⁰⁵ Article 4 (c) of the UNESCO CADE. See also Article 13 (d) of the ICSECR.

⁴⁰⁶ Article 13 (4) (h) of the African Youth Charter.

⁴⁰⁷ Article 23 of the UDHR and Article 6 of the ICSECR.

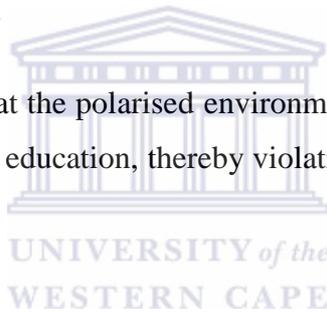
⁴⁰⁸ Tomasevski K (2001) 13.

⁴⁰⁹ Tomasevski K (2001) 17.

been noted that during the FTLRP, some private schools, were closed. As a result, not all children of school-going age were able to access school.

More relevant to this study is Guiding Principle 23 which provides that education facilities should also be made available to internally displaced persons, in particular teenagers regardless of whether they live in camps or not.⁴¹⁰ Similarly, the Convention for the Protection and Assistance of Internally Displaced Persons provides that states must provide internally displaced persons with adequate humanitarian assistance, including education in times of internal crisis.⁴¹¹ During the FTLRP, most families were displaced and lived on squatter camps where there were no educational facilities. No schools were immediately established on those camps.⁴¹² This had a direct impact on the availability of schools to internally displaced children; hence a violation of Guiding Principle 23 and Convention for the Protection and Assistance of Internally Displaced Persons which provides that education should be made available to IDPs.

Therefore, it can be concluded that the polarised environment that existed during the FTLRP deprived children of their right to education, thereby violating the availability of education to children.



4.3.2 Accessibility of education

4.3.2.1 Physical accessibility

General Comment 13 provides that schools should be within the safe physical reach of all children.⁴¹³ Likewise, if schools are not within the physical reach of children, the former Special Rapporteur has provided that alternatively, appropriate transport facilities should be organised to transport them from home to school and back.⁴¹⁴ According to a Policy Brief of Zimbabwe, it is recommended that children should not walk a distance more than 3 kilometres to the nearest school.⁴¹⁵ However, as discussed in chapter 3, some farm schools

⁴¹⁰ Principle 23 (4) of the Guiding Principles on Internally Displaced Persons.

⁴¹¹ Article 2 (b) of the Convention for the Protection and Assistance of Internally Displaced Persons.

⁴¹² Schools were only re-established after some years when satellite schools were established.

⁴¹³ General Comment 13 para 6 (b).

⁴¹⁴ Tomasevski K (2001) 10.

⁴¹⁵ Policy Brief No. 10/2012 of 2012 Local Government and Access to Education for Orphans and Vulnerable Children under Zimbabwe's National Action Plan for Orphans and Vulnerable Children in Zimbabwe (NAP for OVCS).

were closed because of the FTLRP, hence, most children were left without schools nearby and had to walk up to 30 km to the nearest school without the option of transport.⁴¹⁶ Further, no transport arrangements were put in place to ensure that children are transported to their schools as the commercial farm owners had previously done. As a result, some children had a bad perception about attending school and viewed it as a burden upon them.⁴¹⁷

In addition, walking long distances has made children vulnerable, especially girls, some of whom were raped on their way to school resulting in unwanted pregnancies.⁴¹⁸ As a result, some children had to drop out of school because they lived far away from the schools and had no transport to carry them to school. This, therefore, means that as a result of the FTLRP education has become physically inaccessible to most children. This therefore is clearly a violation of the provision of General Comment 13 which provides that schools should be within the safe reach of children as well as the Education policy of Zimbabwe which limits the maximum distance that children should walk to the nearest school to 3 kilometres. Moreover, children's right to be protected from any forms of violence and abuse was also violated.

Again on physical accessibility, international standards require states to take measures to encourage regular attendance at schools and reduction of school drop-out rates.⁴¹⁹ According to the CRC, governments must encourage regular attendance at schools and aim at reducing drop-out rates.⁴²⁰ Similarly at regional level states are expected to "take steps to encourage regular school attendance and reduce dropout rates".⁴²¹ Circumstances surrounding the FTLRP negated this provision in that the eviction of commercial farmers and their workers resulted in children of commercial farm workers dropping out of school. In addition, the Education Act of Zimbabwe also obligates parents to ensure that their children attend primary school.⁴²² However, following the massive job losses during the FTLRP former farm workers

⁴¹⁶ Chronicle 'Rural pupils disadvantaged Sunday 10 February 2013 available at http://www.chronicle.co.zw/index.php?option=com_content&view=article&id=46211:rural-pupils-disadvantaged-&catid=39:opinion-a-analysis&Itemid=132#.UX1fF0rLtb4 [Accessed on 28 April 2013]

⁴¹⁷ Mutema EP (2012) 102.

⁴¹⁸ Chronicle 'Rural pupils disadvantaged Sunday' 10 February 2013 available at http://www.chronicle.co.zw/index.php?option=com_content&view=article&id=46211:rural-pupils-disadvantaged-&catid=39:opinion-a-analysis&Itemid=132#.UX1fF0rLtb4 [Accessed on 28 April 2013]

⁴¹⁹ Article 28 (1) (e) of the CRC.

⁴²⁰ Article 28 (1) (e) of the CRC.

⁴²¹ Article 13 (4) (c) of the African Youth Charter.

⁴²² Section 5 of the Education Act.

(parents) obviously had no means to pay for their children's school fees. This therefore means that FTLRP, as implemented by the Government of Zimbabwe did not support regular attendance at schools. Rather, it promoted absenteeism as well as high rates of drop outs instead of encouraging regular attendance and reducing drop outs. This therefore violates Article 28 (1) (e) of the CRC whose thrust is to ensure the physical accessibility of education to children

4.3.2.2 Economic accessibility

International⁴²³ and regional⁴²⁴ legal instruments explicitly state that education should be free, at least in the elementary and fundamental stages. Education is said to be free where there is no charge to the child, parents or guardians.⁴²⁵ During the FTLRP, the commercial farmers who had previously subsidised their workers children's education were evicted leaving no one to fund the schools. As a result, parents were supposed to pay school fees for their children to attend the available schools, hence most children have dropped out of school as their parents could not afford to pay for their fees. In addition, primary education could not be made compulsory as most children were kept out of school because of financial problems.

Economic accessibility also entails the elimination of any direct costs such as expensive uniform and textbooks.⁴²⁶ It has also been noted that houses and property belonging to farm workers were burnt on allegations that they supported oppositional politics, notably the MDC.⁴²⁷ Clearly, this is a violation of the right to housing and property. When properties were burnt some children's school uniforms and textbooks were also burnt in the process. As a result some children were kept out of school as there was no money at their disposal to buy new school uniforms and textbooks. Fees imposed by the Government, the local authorities or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardize its realization.

In addition, according to the UN Committee, any legal and administrative obstacles that hinder children's access to school should be eliminated. As discussed in chapter 3, some

⁴²³ Article 26 (1) of the UDHR; Article 13 (1) and (2) of the ICESCR; Article 28 (a) of the CRC and Article 4 (a) of the UNESCO CADE.

⁴²⁴ Article 13 (4) (a) of the African Youth Charter.

⁴²⁵ General Comment 11 para 7.

⁴²⁶ General Comment 11 para 7.

⁴²⁷ Sachikonye (2003) 234.

families' houses were burnt down or destroyed during the FTLRP, hence, all the documentations they had such as birth certificates were also destroyed in the process. When these families relocated in other areas it was difficult for the children to enrol at schools as they did not have adequate documentation for registration.⁴²⁸ As a result, such children were kept out of school as their parents did not have money to go to the Registrar of Births and Deaths to apply for new documents as they no longer had any source of income.

Although there have been no reports about children losing their lives during the FTLRP, some parents lost their lives in the violence which is in violation of the right to life.⁴²⁹ This also has a direct impact on children's ability to attend school as they lost their breadwinners. As a result, some of them were left as orphans or living in child-headed households with no one to take care of them.⁴³⁰ Consequently, most children living under such conditions could not afford to pay for their school fees and other costs involved. This violates children's rights to a family environment, right to be taken care of by their parents which has a direct impact on their right to attend school.⁴³¹



4.3.2.3 Non-discrimination

General Comment 13 provides that no-one should be discriminated against based on race, colour, ethnicity, sex, language, economic or social status, religion.⁴³² During the FTLRP some children could not access education because of their parent's economic status. It will be recalled that most farm workers lost their jobs during the FTLRP; hence, they became poor and could not afford to pay for their children's school fees. Therefore, the education system was discriminatory as it failed to accommodate every child based on the economic status of the family. In addition, while legal instruments endow the right to education to all regardless of their political affiliation, some children were forced out of school as their families were

⁴²⁸ Exploring Africa 'Module 30: Zimbabwe Teacher's Edition. Activity three: Expand the Land Question' available at <http://exploringafrica.matrix.msu.edu/teachers/curriculum/m30/activity3.php> (accessed on 5 May 2013)

⁴²⁹ Article 3 of the UDHR.

⁴³⁰ Sachikonye LM (2003) 8.

⁴³¹ Article 9 of the CRC states that children have a right to live with their parents. Likewise, Article 19 of the ACRWC provides that every child is entitled to the enjoyment of parental care and protection. See also Article 18 of the CRC.

⁴³² General Comment 13 para 6 (b).

suspected of supporting the opposition party, MDC.⁴³³ Furthermore, no one was charged under this provision, as there were a lot of such instances which were reported during the FTLRP. This therefore, is a violation of the General Comment 13 which prohibits discrimination in education based on political affiliation.

Furthermore, legal instruments urge governments to enact laws and policies that prohibit child labour, early marriages, child trafficking and so on to ensure that education is accessible to all without discrimination.⁴³⁴ The government should take positive steps to include the most marginalised categories of people into the education system. It was noted that most children who dropped out of school opted to work so as to improve the family income. Some children were impregnated and some entered into early marriages because they were not attending school.

Regardless of the Government of Zimbabwe's obligation to address gender inequality in land distribution, women, whose land rights under customary law are known to be frail, did not benefit proportionately from the fast track process.⁴³⁵ This also had a direct impact on children's right to education especially those with single mothers.⁴³⁶ They did not have anywhere to stay as their mothers did not get pieces of land where they could settle and have an education.

4.2.3 Acceptability of education

General Comment 13 provides that the content of education, including the curricula should be acceptable.⁴³⁷ During the FTLRP it was noted that the war veterans, youth and the militia without any educational qualifications took over the teaching of the political history of ZANU-PF and patriotism. As part of their work, they would teach children to chant revolutionary songs which oppose whites, instilling in children the idea that all whites were bad people who took land from the indigenous people. ZANU-PF slogans were also chanted

⁴³³ Reuters 'Violence seen rising ahead of Zimbabwe polls' available at <http://www.zimbabwesituation.com/april30.html> (accessed on 5 May 2013)

⁴³⁴ See Articles 32 to 36 of the CRC; Article 10 of the ICSECR; Articles 15, 27 28 and 29 of the ACRWC.

⁴³⁵ Bhatasara S (2011) 320.

⁴³⁶ Matondi PB & Dekker M 'Land Rights and Tenure Security in Zimbabwe's Post Fast Track Land Reform Programme A Synthesis report for LandAc' (2011) 24. Also available at http://www.landgovernance.org/system/files/Zimbabwe_RuzivoTrust_ASC_0.pdf (accessed 2 May 2013)

⁴³⁷ General Comment 13 para 6 (c).

during the lessons to ensure that children consider the ruling party as the only party which is entitled to rule the country in Zimbabwe. The manner in which this was done made the content of education unacceptable, hence a violation of the provision of General Comment 13 which provides that education should be acceptable.

Acceptability also entails that education should be directed to the full development of personality.⁴³⁸ During the FTLRP, land invaders had taken over the teaching of certain subjects, all they taught children was hatred amongst races that is creating a negative attitude towards people of other races. They labelled them as bad people, who had made the indigenous people suffer since the colonial era. Hence, children were taught to develop hatred for the whites for all that they did to their ancestors since they entered the country. As a result some school children joined the war veterans and youth militia in committing acts of violence such as beating people, destroying and looting properties. Therefore, this was a violation of the provisions that requires education to be directed at the full development of personality.

In addition acceptability entails education should be geared at strengthening respect for human rights and fundamental freedoms.⁴³⁹ As stated above, during the FTLRP there was no respect for human rights. Children were taught to take the law into their own hands by committing acts of violence. Violence was instilled in them as the only way of resolving conflicts. They also witnessed gross human rights violations happening to their teachers, parents, relatives and neighbours. As a result, children learnt that human rights can be violated. Undoubtedly, education during the FTLRP period did not strengthen respect for human rights and fundamental freedoms a clear violation of the provisions that provide that education should be geared at strengthening respect for human rights and fundamental freedoms by legal instruments.

Furthermore, different legal instruments require that the content of education should promote understanding, tolerance and friendship among nations, racial or religious groups, and shall further the activities of the United Nations for maintenance of peace.⁴⁴⁰ These articles of

⁴³⁸ Article 26 (2) of the UDHR; Article 13 (1) of the ICESCR; Article 29 (a) and (b) of the CRC; Article 5 (1) (a) of the UNESCO CADE; Article 11 (2) (a) of the ACRWC and Article 13 (3) (a) of the African Youth Charter.

⁴³⁹ Article 26 (2) of the UDHR; Article 13 (1) of the ICESCR; Article 29 (a) and (b) of the CRC; Article 5 (1) (a) of the UNESCO CADE; Article 11 (2) (a) of the ACRWC and Article 13 (3) (a) of the African Youth Charter.

⁴⁴⁰ Article 26 (2) of the UDHR; Article 13 (1) of the ICESCR; Article 29 (b) and (d) of the CRC and Article 5 (1) (a) of the UNESCO CADE.

legislation allude to the need for an acceptable form of education. Given the hostile atmosphere that characterised the FTLRP, it fell short of the provisions of the international and regional laws which call for the promotion of understanding and tolerance as well as friendship among racial and religious groups. The fact that the FTLRP was directed at white commercial farmers brings in discriminatory and racial element into the whole process. Children were taught not to tolerate their counter-racial group of whites. In addition, as discussed above they were taught revolutionary songs that incite whites at schools. Clearly, education during the FTLRP did not promote understanding, tolerance and friendship among nations, racial or religious groups, hence violating the provisions of the international and regional instruments.

Legal instruments establish parents' prior right to choose the kind of education that should be given to their children.⁴⁴¹ As mentioned above, during the FTLRP, children were taught politics and that the ruling party was the only party which should rule the county. Parents had no say about the kind of education that was being taught to their children. Consequently, anyone who tried to oppose what was being taught to children was labelled as a supporter of the opposition party, hence an enemy.⁴⁴²

Apart from international instruments, regional instruments go further to provide that education should be directed at encouraging Africans to freely participate in preserving and strengthening positive African morals, traditional values and cultures.⁴⁴³ While the international instruments encourage understanding, tolerance and friendship among nations, racial or religious groups regional instruments the ACRWC goes further to encourage it amongst the ethnic, tribal and religious groups.⁴⁴⁴ It was noted that during the FTLRP no understanding, tolerance and friendship was encouraged amongst the ethnic, tribal and religious groups found in Zimbabwe. For example the Ndebele people were labelled as supporters of the opposition politics. This is because the opposition party MDC was first established in Matabeleland and most people there supported it.⁴⁴⁵ So by virtue of being a Ndebele speaker or of Ndebele origin in the Mashonaland province would automatically be labelled as supporters of the opposition party. Children were also caught in between, resulting

⁴⁴¹ Article 26 (3) of the UDHR; Article 13 (3) of the ICESCR and Article 5 (b) of the UNESCO CADE.

⁴⁴² Mutanda D (2012) 270.

⁴⁴³ Article 17 (2) of the ACHPR; Article 11 (2) (c) of the ACRWC and Article 13 (3) (d) of the African Youth Charter.

⁴⁴⁴ Article 13 (3) (c) of the African Youth Charter and Article 11 (2) (d) of the ACRWC;

⁴⁴⁵ This view follows the political history of Zimbabwe.

in some having to quit school as either being Ndebele speakers or of Ndebele origin. Clearly, this violated the provisions which encourage Africans to freely participate in preserving and strengthening positive African morals, traditional values and cultures.

In terms of the General Comment 13, acceptability of education also entails that governments must establish minimum standards such as the teacher-pupil ratio, the number of textbooks and the methods of instruction. As a result of closure of some farm schools, the children went to enrol on the few schools that survived the FTLRP, hence, the schools were overcrowded.⁴⁴⁶ In addition, some farm school teachers left the farming communities because of assaults and threats as they were considered to be supporters of the opposition party. This increased the teacher-pupil ration which should be maintained at 1:40, as schools were faced with a shortage of teachers.⁴⁴⁷ However, the situation was made worse by the FTLRP when schools and houses were burnt, this meant that a few textbooks that were available were destroyed; hence, teachers and children were left without any textbooks for teaching and learning purposes.

Additionally, the minimum health standards should also be observed at schools to reduce cases of contamination of diseases. During the FTLRP it was noted that it became difficult to maintain a certain level of health standards. The teacher-pupil ratio was high resulting in teachers' being over worked. The government itself could not afford to follow up in schools to ensure minimum health standards were being practiced. As discussed in chapter 3, health standards deteriorated and most children and their families were affected by infectious diseases such as cholera, malaria and tuberculosis.⁴⁴⁸

4.3.4 Adaptability of education

General Comment 13 provides that education should be flexible so that it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.⁴⁴⁹ As has been mentioned in chapter 3, during the FTLRP the needs of societies and communities changed. There was a need to teach children about their history; however the manner it was done was not proper. The Ministry of

⁴⁴⁶ Sachikonye (2003) 17.

⁴⁴⁷ Generally, in most schools there had been a shortage of text books and children had to share textbooks in groups and in some cases learn without any.

⁴⁴⁸ Masuku A Squatters' Misery Worsening *NewsDay* 16 January 2013 3.

⁴⁴⁹ General Comment 13 para 6 (d).

Education and Culture is responsible for developing a curriculum of the content that should be taught in school. During the FTLRP it was noted that the war veterans and ZANU-PF would go to schools and teach children or tell teachers what to teach with regard to being sons of the soil (*vana wevhu*). Clearly, that violated the provisions of General Comment 13 which provides that the content of education should be flexible enough to adjust to the changing needs of societies and communities.⁴⁵⁰

The ACRWC also provides that education should be directed at promoting the child understanding of primary health care.⁴⁵¹ The African Youth Charter also provides that education should be directed at developing life skills to function effectively in society.⁴⁵² In addition the African Youth Charter goes further to explain what primary health care is. It states that it include issues such as HIV/AIDS, reproductive health, substance abuse prevention and cultural practices that are harmful to the health of young girls and women as part of the education curricula.⁴⁵³ As has been discussed in chapter 3, the FTLRP has resulted in an increase in poverty, HIV/AIDS prevalence, unwanted pregnancies and an increase in drug abuse as males are laid off from jobs and from attending school. However, there is a dire need to ensure children are taught about issues such as HIV/AIDS, reproductive health, substance abuse prevention and cultural practices that are harmful to the health of young girls and women while they are still at school. In this case the FTLRP has not violated the provision of the African Youth Charter which provides that such issues should be taught at schools.⁴⁵⁴ In fact it triggered the need for the government to ensure that such issues are taught at school.

The General Comment 13 also provides that in every issue dealing with children the best interest of the child is paramount. If education is to adapt to the needs of children, their views should be considered. According to the CRC, children should be capable of forming their own views in all matters affecting them and such views should be given due weight depending on the age and maturity of the child.⁴⁵⁵ It is clear that during the FTLRP children's views were not considered and some just found themselves out of school without knowing why things were happening that way. The fact that the process was unplanned and

⁴⁵⁰ General Comment 13 para 6 (d).

⁴⁵¹ Article 11 (2) (h) of the ACRWC.

⁴⁵² Article 13 (3) (h) of the African Youth Charter.

⁴⁵³ Article 13(3) (h) of the African Youth Charter.

⁴⁵⁴ Article 13(3) (h) of the African Youth Charter.

⁴⁵⁵ Article 12(1) of the CRC.

disregarded all the legal procedures explains it all. Hence, the provisions of General Comment 13 and the CRC were violated as children were not asked for their own views pertaining to the implementation of the FTLRP as they were also affected.

Furthermore, legal instruments provide that if education is to adapt to children's needs, it must guarantee them freedom of thought, conscience, religion and expression.⁴⁵⁶ Children should be able to freely express their thought, conscience and exercise their religion. However, the FTLRP and the teachings they received from the war veterans and the ZANU-PF militia as well as what was happening taught them that there is no freedom of expression, thought and conscience as people were not allowed to say what they think especially if it is against the ruling party or its people. Therefore, education during the FTLRP did not guarantee children of freedom of thought, conscience, religion and expression.

4.4 CONCLUSION

From the way the FTLRP was executed, it can be noted that the different legislative provisions on children's right to education were not considered and their violation was rampant. The violation of other human rights had a direct impact on children's right to education. Consequently, it follows that the 4-A scheme was disregarded during the FTLRP. On the whole, the practice and legislation that propelled the FTLRP violated children's right to education and curtailed the elements of the 4As, namely availability, accessibility, acceptability and adaptability.

⁴⁵⁶ Article 14(1) and Article 13 of the CRC.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

5.1 INTRODUCTION

This mini-thesis set out to critically analyse the impact of the FTLRP on children's right to education in Zimbabwe. The assessment of the impact of the FTLRP on children's right to education was based on the comparison of the legal framework guiding the right to education as discussed in Chapter 2 and the FTLRP which was deliberated upon in Chapter 3. Overall, the assessment of the impact of the FTLRP on children's right to education has shown that the FTLRP has had a negative impact on the realisation of the right to education.

There are several observations that the researcher noted. First, the national programme was politicised as it was spearheaded by the former freedom fighters known as war veterans and the ZANU-PF militia.⁴⁵⁷ They took over commercial farms from their owners, ignoring laws that govern different aspects of human rights, including property rights.⁴⁵⁸ The programme was also characterised by violence, chaos, disorder and a lack of planning, hence impacted negatively on some sections of the Zimbabwean population.⁴⁵⁹

Secondly, the research has shown that the FTLRP led to an economic meltdown, resulting in high inflation rate, pushing most people, not just in farming areas, to live below poverty datum line.⁴⁶⁰ This also resulted in brain drain not only in the educational sector but in all sectors in the country. Most skilled personnel, including teachers left the country in search for greener pastures in other countries.⁴⁶¹ In addition, the decrease in agricultural output led to food shortages pushing up the prices of basic food stuffs in the whole country.⁴⁶² As a result,

⁴⁵⁷ Zimbabwe Human Rights NGO Forum 'Land Reform and Property Rights in Zimbabwe' (2010) 3. Also available at http://www.kubatana.net/docs/hr/hrf_land_reform_property_rights_100812.pdf (accessed 7 May 2013).

⁴⁵⁸ Chisoro C & Naidu R 'The Zimbabwean Crisis: Where To From Here?' available at www.ddp.org.za/information-material/articles/...pdf/at.../file (accessed on 25 March 2013.)

⁴⁵⁹ Fontein J 'We Want to Belong to Our Roots and We Want to be Modern People': New Farmers, Old Claims Around Lake Mutirikwi, Southern Zimbabwe' (2009) 10 (4) *The Online Journal for African Studies*. Also available at <http://www.africa.ufl.edu/asq/v10/v10i4a1.htm> (accessed on 4 May 2013).

⁴⁶⁰ Moyo S, Chamabati W, Murisa T, Siziba D, Dangwa C, Mujeyi K & Nyoni N *Fast track Land Reform Baseline Survey in Zimbabwe: trends and Tendencies*, 2005/06 (2009) 3.

⁴⁶¹ In 2005, About 3.4 Million People Out Of A Population Of Approximately 11.6 Million People Were Living Outside The Country In Search For Better Opportunities. International Monetary Fund 'Zimbabwe: Selected Issues and Statistical Appendix' IMF Country (2005) Report No. 05/359. See Also Mutangi (2010) 9.

⁴⁶² Maguwu F Land Reform, Famine And Environmental Degradation In Zimbabwe EPU Research Papers (2007) 16.

most people could not afford to feed their families. These, inevitably had a direct impact on children's right to education.

Thirdly, the massive loss of jobs resulted not only in the loss of employment but other benefits that farm workers enjoyed by virtue of being employed.⁴⁶³ As previously discussed, the right to live in farm houses was part of the employment package. However, when employment was terminated the workers lost their entitlements to live in farm houses which they had lived in for the greater part of their lives.⁴⁶⁴ As a result, most farm workers were displaced and had nowhere to go with their families. Some went to live in squatter camps and some were wandering about and became vagabonds and destitute.⁴⁶⁵ They also lost other socio-economic benefits that they were receiving from their employers such as subsidised food, clean tapped water, health and educational facilities.⁴⁶⁶ All these, as discussed in chapter 4 had a direct impact on realising children's right to education during the FTLRP.

Fourthly, from the analysis in chapter 4, the researcher concluded that the implementation of the FTLRP failed to comply with the provisions of the legal framework on the realisation of the right to education in times of internal crisis. It can also be noted that the practice and implementation of the FTLRP, did not only negate international benchmarks as provided in different legal instruments but fell short of making education available, accessible, acceptable and adaptable to children of school-going age.⁴⁶⁷ The researcher therefore concluded that the FTLRP had a negative impact on the realisation of children's right to education.

5.2 RECOMMENDATIONS

Given the negative impact that the FTLRP had on children's right to education, it is necessary that recommendations be put in place to avoid similar occurrences. As a result, the following are recommendations to facilitate the realisation of the right to education, particularly in times of internal conflict. These are meant to inform a cross-section of individuals and

⁴⁶³ Sachikonye (2003) 7.

⁴⁶⁴ Shay S (2012) 145.

⁴⁶⁵ Sachikonye LM (2003) 12.

⁴⁶⁶ Mbaya S Land Reform In Zimbabwe: Lessons And Prospects From A Poverty Alleviation Perspective A Paper Presented At The Conference On Land Reform And Poverty Alleviation In Southern Africa Human Sciences Research Council (HSRC), Pretoria, South Africa 4th –5th June, (2001) 16. See Also Sachikonye LM (2003) 5.

⁴⁶⁷ Mbaya S (2001) 9.

institutions such as the government of Zimbabwe, other governments, legislators, policy-makers and advocates of children's rights in dealing with the right to education, particularly in times of internal conflict.

5.2.1 Emergency Preparedness Plan

As part of its general education plans, the government should develop an emergency preparedness plan. First, the government should pass laws and policies which recognise the right to education in emergencies.⁴⁶⁸ Such laws and policies will enable it to amicably deal with crisis, ensuring safe continuity of teaching and learning at all levels. The plans should include education in humanitarian response and long-term disaster prevention policy and support.⁴⁶⁹ Hence, pedagogic institutions should teach peace education and conflict resolution through both formal and informal education.⁴⁷⁰ In-service training can be provided for teachers who are already qualified and encourage communities to work together on approaches to reduce and prevent risk from occurring.⁴⁷¹

Secondly, immediate action should be taken to replace and/or fix damaged and unsafe school buildings that are used as classrooms, especially those that are on the verge of collapse.⁴⁷² The replacement and fixing of schools after crisis have an advantage of making them centres for protective, care and socio-economic services such as safe water and sanitation, nutrition, health and recreation especially in rural communities.⁴⁷³ This will enable communities to revive themselves and the government to rebuild the country's capacities by developing new and better education systems.⁴⁷⁴ Such proactive measures to prevent internal conflict should be promoted during normal times so that when crisis strikes, people will be ready to deal with

⁴⁶⁸ UN 'Background Note for the UN General Assembly: Education in Emergencies' available at <http://www.un.org/ga/president/63/letters/background.pdf> (accessed 7 May 2013).

⁴⁶⁹ UN 'Background Note for the UN General Assembly: Education in Emergencies' available at <http://www.un.org/ga/president/63/letters/background.pdf> (accessed 7 May 2013).

⁴⁷⁰ UN 'Background Note for the UN General Assembly: Education in Emergencies' available at <http://www.un.org/ga/president/63/letters/background.pdf> (accessed 7 May 2013).

⁴⁷¹ UN 'Background Note for the UN General Assembly: Education in Emergencies' available at <http://www.un.org/ga/president/63/letters/background.pdf> (accessed 7 May 2013).

⁴⁷² Philippine Report to the Royal Government of Netherlands Education in Emergencies & Post-Crisis Transition Programme: Building Safe Learning Environment – Safe Schools Project First Progress Report 15 January – 31 December (2007)5. In Philippine, the Building Safe Learning Environment (BSLE) Project had to replace damaged schools about 18,000 school children in 29 recipient primary schools and to 780 teachers in the 72 targeted elementary and secondary schools.

⁴⁷³ INEE *Coordinator for Minimum Standards and Network Tools Minimum Standards for Education: Preparedness, Response, Recovery* (2012) 2.

⁴⁷⁴ UNICEF 'Emergencies and Post-Crisis Education' available at http://www.unicef.org/education/index_44883.html (accessed on 9 May 2013)

it. The government should work with children, parents, communities and civil societies in establishing schools as zones of peace (ZoP).⁴⁷⁵ Sanctions should be devised to deal with any cases of disruption of education in times of internal conflict.

5.2.2 Minimum Standards for Education in Emergencies (MSEEs)

MSEEs are useful in emergency preparedness and in humanitarian advocacy. Hence, the government should draw from the MSEEs that are designed for use in emergency response to education in crisis situations.⁴⁷⁶ For example, the MSEEs such as INEE and other frameworks such as the Education for All Fast Track Initiative (FTI) Progressive Framework are very useful. They are built on the foundations of the CRC, the Dakar Education for All (EFA) framework, the UN Millennium Development Goals (MDGs) and the Sphere Project's Humanitarian Charter.⁴⁷⁷ They help governments and individuals to acquire relevant technical knowledge, tools and good practices which will help it to amicably deal with education in times of conflict.⁴⁷⁸ They also help improve coordination and capacity building amongst actors at national, regional and international levels.⁴⁷⁹

5.2.3 Makeshift schools

In cases of displacement and where schools are destroyed or closed, the government should ensure that displaced children and those whose schools have been destroyed or closed have access to national education systems and are integrated into them.⁴⁸⁰ The government can achieve this by encouraging makeshift schools to ensure that children have access to a minimum level of education during and after internal crisis.⁴⁸¹ Such schools do not need any

⁴⁷⁵ UNICEF 'Schools as Zones of Peace' http://www.unicef.org/infobycountry/nepal_65410.html (accessed on 7 May 2013). The UN System appeals to governments, the political parties, and all child protection partners and youth organisations to respect the spirit of Schools as Zones of Peace. For example, in May 2011 the Nepal Government endorsed a directive declaring all schools, (including school buses) as Zones of Peace.

⁴⁷⁶ Anderson A Implementing minimum standards for education in emergencies: lessons from Aceh available at <http://www.odihpn.org/humanitarian-exchange-magazine/issue-32/implementing-minimum-standards-for-education-in-emergencies-lessons-from-aceh> (accessed on 8 May 2013)

⁴⁷⁷ INEE *Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction* (2001) 7. Redesign: London

⁴⁷⁸ UN 'Background Note for the UN General Assembly: Education in Emergencies' available at <http://www.un.org/ga/president/63/letters/background.pdf> (accessed 7 May 2013).

⁴⁷⁹ UNICEF Machel Study 10-year Strategic Review: Children and Conflict in a Changing World (2009) 121. UNICEF: New York.

⁴⁸⁰ UN 'Background Note for the UN General Assembly: Education in Emergencies' available at <http://www.un.org/ga/president/63/letters/background.pdf> (accessed 7 May 2013).

⁴⁸¹ Mwambene L (2008) 232-233.

formal infrastructure and resources to set up. They can be built with logs and rocks or can be held under trees, under bridges, in caves, camouflaged huts and tents or on the streets, to enable continuation of attendance by children.⁴⁸² They are normally overseen by volunteers in the communities who wish to help children realise their right to education regardless of the situations they found themselves in.⁴⁸³ Home based schools are also makeshift schools and are helpful to keep children safe in times of crisis.

5.2.4 Government interventions

The government should facilitate the provision of education and take measures to protect children who are vulnerable to abuse and teachers who are targeted in times of crisis as a matter of priority. Measures should be taken to protect especially girls and female teachers who are most vulnerable to abuse and exploitation.⁴⁸⁴ Their safety should be guaranteed en route to and from school as well as provide an aggression free environment to help keep them in school.⁴⁸⁵

Appropriate education programmes should be put in place to cater for children who could not complete their education as a result of the internal crisis in the country. These could take the form of second-chance, accelerated learning programs and life skills education.⁴⁸⁶ In addition, vocational skills and job training programs that are market-driven and lead to sustainable employment opportunities are also necessary to improve their socio-economic lives.⁴⁸⁷ The

⁴⁸²In Delhi a makeshift school was conducted under a railway bridge and it proved to be a success. Up to 70 children between four and fourteen years old benefited from a makeshift school with some having higher aspirations of being medical doctors. See Bhattacharya S 'Makeshift school under railway bridge helps students beat the odds' available at <http://www.thenational.ae/news/world/south-asia/makeshift-school-under-railway-bridge-helps-students-beat-the-odds> (accessed on 6 May 2013). In Tanzania 65 per cent of refugee children have accessed minimum level of education in makeshift schools. See Mwambene L (2008) 233.

⁴⁸³In Mumbai a group of 15 volunteers use a public park as a makeshift school and some 250 children from local neighborhoods and slums attend the school. See Pande 'A Makeshift Schools Help Mumbai Slum Children Beat the Odds' Voice of America 30 April 2013. In addition, about 80 children from Zwelitsha in Khayelitsha, Western Cape in South Africa are attending a makeshift school at a local church. See Fredericks I 'Unplaced pupils taught by volunteers in church' *IOL* 29 January 2013.

⁴⁸⁴UNICEF Education in emergencies available at http://www.unicef.org/ceecis/education_13051.html (accessed on 7 May 2013).

⁴⁸⁵INEE *Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction* (2001) 39.

⁴⁸⁶UN 'Background Note for the UN General Assembly: Education in Emergencies' available at <http://www.un.org/ga/president/63/letters/background.pdf> (accessed 7 may 2013.)

⁴⁸⁷Article 13 (4) (e) of the African Youth Charter.

government should ensure that such programs are available at their discretion so that they improve their standards of life.⁴⁸⁸

Girls and young women who got pregnant as a result of the implementation of the FTLRP by the government should also be considered in government interventions.⁴⁸⁹ The child-mothers can be supported by providing them with scholarships⁴⁹⁰ to enable them continue with their education as well as materials such as uniforms, books and pens.⁴⁹¹ Child grants should also be provided to enable them to take care of the children they have as a direct impact of the FTLRP.

Psycho-social support, counseling services and socio-economic needs should be made available to young men and women who were affected by the FTLRP, so that they can be able to cope with their experiences during the conflict.⁴⁹² The government should fund the policies and programmes to promote quality education in emergencies, including free primary education.⁴⁹³ This will enable making primary education compulsory possible.

5.3.5 Child participation

Children make important contributions to extensive forms of accountability in times of crisis.⁴⁹⁴ The government and international organisations should support child participation and allow them to voice their views about what they and learn, and how they learn and are empowered by the relevant content of education and an active learning process.⁴⁹⁵ Such participation can enhance children's psychosocial well-being, helping them gain the tools to protect themselves and participate in the decisions and events affecting their lives.⁴⁹⁶ This can

⁴⁸⁸ Article 14 (2) (a) of the African Youth Charter.

⁴⁸⁹ Article 13 (4) (h) of the African Youth Charter.

⁴⁹⁰ Article 13 (4) (l) of the African Youth Charter.

⁴⁹¹ Mwambene L (2008) 234.

⁴⁹² INEE *Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction* (2001) 19.

⁴⁹³ INEE (2001) 7.

⁴⁹⁴ UN 'Background Note for the UN General Assembly: Education in Emergencies' available at <http://www.un.org/ga/president/63/letters/background.pdf> (accessed 7 May 2013).

⁴⁹⁵ INEE *Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction* (2001) 18. See also Article 13 of the CRC.

⁴⁹⁶ UN 'Background Note for the UN General Assembly: Education in Emergencies' available at <http://www.un.org/ga/president/63/letters/background.pdf> (accessed 7 May 2013). See also Article 12 of the CRC.

be achieved by drawing upon good practices in community-based and child-led experiential learning.⁴⁹⁷

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⁴⁹⁷UN 'Background Note for the UN General Assembly: Education in Emergencies' available at <http://www.un.org/ga/president/63/letters/background.pdf> (accessed 7 May 2013).

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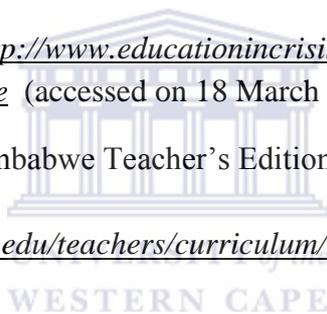
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