

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 4

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

The Impact of International Sanctions on Human Rights and Constitutionalism: The Case of Zimbabwe

HAZVINEYI CHIOTA RUKANDE¹

ABSTRACT

Drawing from a variety of source documents in the form of books, journals and statutes and other sources of legal authority, this article examines the effectiveness of sanctions and their impact on human rights and constitutionalism with a focus on Zimbabwe as a case study. The imposition of sanctions on Zimbabwe by the United States of America (U.S) and the European Union (EU) was aimed at addressing human rights violations by the government of Zimbabwe pursuant to the accelerated land reform program which saw the white minority who had acquired land originally belonging to the locals in Zimbabwe during the colonial era when Zimbabwe, then known as Rhodesia, was colonised by the British. The article attempts to draw attention to the ineffectiveness of sanctions and how they worsen the human rights problem they seek to address, thereby undermining Constitutionalism by making it impossible for the government to meet their Constitutional obligations in respect of protecting and promoting the fundamental rights accruing to their citizens. The article notes that the practice of sanctions was adopted by the United Nations Security Council as a tool to enable cooperation among states towards maintaining peace and security on the global scene. Several scholars who have canvassed the topic on the effectiveness of sanctions and have highlighted their negative effects on human rights. However there has not been sufficient debate addressing the indirect impact of sanctions on constitutionalism, as well as the misalignment created in the international law discipline in relation to human rights protection as enunciated in the Universal Declaration of Human Rights by the practice of sanctions, as well as the trickling down impact on constitutionalism as a sub-sphere of international law. By highlighting this misalignment in international law and the practice of sanctions, the article proposes or suggests a review of the practice and an amendment of the policy on sanctions.

Keywords: Sanctions, Human Rights, Constitutionalism, Policy, International Law.

¹ Author is a Legal Practitioner with the Law Society of Zimbabwe, Public Prosecutor with the National Prosecuting Authority of Zimbabwe, and a PhD Scholar at University of South Africa.

I. INTRODUCTION

Zimbabwe's experience with political and economic sanctions has been somewhat of a burden to the country.² Formerly the bread basket of Africa and a global economic trade hub,³ Zimbabwe was poised for sustainable growth and development. In the pre-sanctions era, Zimbabwe had surplus production capability and the ability to feed its citizenry and cater to other African countries.⁴ Things changed in 1990 when the government introduced the land reform programme. The land reform programme was intended to restore farming land to its original owners, the black majority.⁵ However, the programme was riddled with violence as white farmers were violently displaced and had their farms dispossessed without compensation.⁶ The dispossessions evoked wide-ranging international condemnation as a violation of human rights.

Consequently, the United States of America (USA), through the Zimbabwe Democracy and Economic Recovery Act (ZIDERA) of 2001,⁷ imposed targeted sanctions against selected Zimbabwean officials.⁸ The Act was amended in 2018 to tighten sanctions further.⁹ The new set of sanctions imposed travelling and financial restrictions on targeted individuals labelled human rights abusers who allegedly impeded democratic processes and were embroiled in corrupt practices.¹⁰ The European Union imposed further sanctions on the Zimbabwe government in 2002. According to Lester and O'Kane, 'EU sanctions were first imposed in 2002, by Common Position 2002/145/CFSP, in relation to the escalation of violence and intimidation of political opponents and the harassment of the independent press.'¹¹ The sanctions focused on arms embargo, travel bans, and targeted asset freezes meant to pressure the Zimbabwean government to cease the practice of grave human rights violations that

² Office of the High Commissioner for Human Rights, *Impact on Zimbabwe and the Region of the Unilateral Sanctions Imposed by the United States of America and the European Union* (SADC Permanent Missions in Geneva, 2020).

³ Dorothy Musariri, 'Zimbabwe's Hyperinflation: How the Former Breadbasket of Africa Lost All its Money' (2018) <<https://www.ns-businesshub.com/science/zimbabwes-hyperinflation/>> accessed 27 July 2023.

⁴ Office of the High Commissioner for Human Rights, 'Once the Breadbasket of Africa, Zimbabwe Now on Brink of Man-Made Starvation, UN Rights Expert Warns' (2019) <<https://www.ohchr.org/en/press-releases/2019/11/once-breadbasket-africa-zimbabwe-now-brink-man-made-starvation-un-rights>> accessed 3 July 2023.

⁵ Neil Thomas, 'Land Reform in Zimbabwe' (2003) 24(4) *Third World Quarterly* 709.

⁶ Prosper Matondi, 'Zimbabwe's Fast Track Land Reform' (2011) *The Nordik Africa Institute* 8.

⁷ Thabani Nyoni, 'The Curse is Real in Zimbabwe: Economic Sanctions Must Go' (2019) *Munich Personal RePEc Archive* 3.

⁸ Chipso Dendere, 'Zimbabwe: The Long Shadow of Sanctions' *The Southern Mirror* (Zimbabwe, 29 June 2022).

⁹ Office of the High Commissioner for Human Rights (n 1) 4.

¹⁰ Dzikamai Kanyongo, 'Targeted Sanctions as a New Political Discourse in Zimbabwe: Transition or Obstacle to Democracy 2000-2013' (LLD Thesis University of KwaZulu-Natal 2016) 4.

¹¹ Maya Lester and Michael O' Kane, 'Law, Practice and Guidance 'Sanctions Profile: Zimbabwe At a Glance' (2022) <<https://www.europeansanctions.com/region/zimbabwe/>> accessed 8 August 2023.

prevailed during former President Robert Gabriel Mugabe's rule. Admittedly, Robert Mugabe's political tenure as the President of Zimbabwe was characterised by political violence and human rights abuses.¹² There would have been no true independence if Zimbabwe was to gain political independence without economic independence, so Mugabe reclaimed the land which consisted of discriminatory land tenures which the political elite inherited as a result of colonial rule while relegating the majority of the population to marginal lands.¹³ The sanctions imposed were meant to persuade the Zimbabwean government to overturn their decision regarding land reform. However, this would have caused an uproar from the black majority who had reclaimed the land they had gone to war for and would cause political instability. According to Makonye, the sanctions imposed on the government of Zimbabwe were only going to be reviewed if the government of Zimbabwe had proven a guarantee to an equitable, legal and transparent (in their own terms) land reform programme. If Robert Mugabe had complied with the requirements for sanctions to be lifted, his own people would have rebelled against him, and chaos would have ensued, resulting in consequent human rights violations if he had responded by unleashing the security forces on them. This presents another downside of sanctions in that they induce and increase political tension in a country, paving the way for injustices in the name of protecting state sovereignty at the expense of human security.

The government or ardent government supporters can perpetuate these injustices. Such kinds of problems arose during Robert Mugabe's tenure. Freedom of expression was restricted; critics of the regime were either violently attacked, arrested, murdered or mysteriously disappeared.¹⁴ Through the land reform programme, Mugabe took land from the white minority without compensation, and hooliganism was the order of the day. Violence was used to drive them out and seize the farms.¹⁵ According to Dendere, the EU and the United States have received attention because of the sanctions placed on Zimbabwe after the land reform programme and alleged years of human rights abuse.¹⁶ The land reform programme began in the 1980s and was fast-tracked in July 2000. The sanctions were meant to persuade the Zimbabwean government to desist from continuing with the human rights violations induced by political violence and the land reform programme, however, the sanctions have caused human rights violations in

¹² Muleya Mwananyanda 'Obituary: Robert Mugabe- 1924-2019, A liberator turned oppressor' (2019) <<https://www.amnesty.org/en/latest/press-release/2019/09/robert-mugabe-1924-2019-a-liberator-turned-oppressor/>> accessed 23 August 2023.

¹³ Sam Moyo and Walter Chambati, 'Roots of the Fast Track Land Reform in Zimbabwe' in *Land and Agrarian Reform in Zimbabwe: Beyond White-Settler Capitalism* (2013) CODESRIA 1-28.

¹⁴ *ibid.*

¹⁵ MacDonald Dzirutwe, 'Mugabe's Farm Seizures: Racial Injustice or Catastrophic Power Grab?' *Reuters* (Zimbabwe, 6 September 2019).

¹⁶ Chipso Dendere, 'Zimbabwe: The Long Shadow of Sanctions' *The Southern Mirror* (Zimbabwe, 29 June 2022).

Zimbabwe, thus defying their purpose, and proving contrary to the tenets of public international human rights law and constitutionalism.

II. THEORETICAL AND CONCEPTUAL FRAMEWORK OF INTERNATIONAL SANCTIONS

The term ‘sanctions’ is usually related to economic measures employed against a state that has committed a wrongful act and breached an international obligation. It includes adopting measures to pressure a state into complying with international obligations.¹⁷ Sanctions are a form of economic coercion in political strategy. Other than changing the target state’s behaviour, they can also be used to achieve economic goals. According to Strydom, sanctions are non-force measures used by one or more states which are intended to exert pressure on the target state.¹⁸ A resolution on democracy, human rights and the rule of law¹⁹ highlighting the negative impact of sanctions on the enjoyment of human rights was passed by the UN Human Rights Council on 21 March 2023.²⁰ Traditionally, sanctions were used to regulate and dissuade abuse of military power, but the contemporary form of sanctions that have become popular are those against perpetrators of human rights violations. Evidence suggests that economic sanctions, a prevalent modern foreign policy instrument, have devastating effects on the receiving state’s political system, possibly repressive effects.²¹ The repressive effects emanate from the lack of accountability by governments that are created by a sanctioned environment. In recent years, economic sanctions have become a primary tool used by the US government and international organisations to promote human rights, though they have proven to be highly ineffective and harmful to ordinary citizens.²² Sanctions have sometimes been used to push for regime change in target states.²³ According to Schmitt, the effectiveness of sanctions must be measured according to their success or failure.²⁴ The two-decades-long sanctions on Zimbabwe are indicative of the failure of sanctions and prove that sanctions inflict significant damage, particularly socio-economic and political damage in target countries,²⁵ and they could be a detrimental instrument in foreign policy due to the inadvertent destabilising effects they create

¹⁷ Hennie Strydom (ed), *International Law* (Oxford University Press, 2016) 203.

¹⁸ Myriam Dunn Cavelty and Thierry Balzacq, *Routledge Handbook of Security Studies* (2 ed, 2017) 360.

¹⁹ Paolo Turrini, ‘The Legality of Sanctions Between the Condemnation of their Extraterritorial Application and Humanitarian Concern’ (2022) 31(1) *The Italian Yearbook of International Law Online*.

²⁰ UN Human Rights Council Resolution 46/5 of 23 March 2021.

²¹ Tobias Lechner, ‘Collateral Damage Autocracy?: On the Impact of Economic Sanctions on the Political System’ (2020) Vol. 81.

²² Stephanie Chan, ‘Principle Versus Profit: Debating Human Rights Sanctions’ *Human Rights Review* (2018).

²³ Seyed Razavi and Fateme Zeynodini, ‘Economic Sanctions and Protection of Fundamental Human Rights: A Review of the ICJ’s Ruling on Alleged Violations of the Iran-U.S. Treaty of Amity’ (2020) 29 *Washington International Law Journal* 303.

²⁴ Cavelty and Balzacq, *Routledge Handbook of Security Studies* (n 33) 363.

²⁵ Dursun Perksen, ‘Better or worse? The Effect of Economic Sanctions on Human Rights’ (2009) *Journal of Peace Research* 213-233.

in target countries.²⁶ As a result, sanctions have become an increasingly useless tool in deterring states from violating human rights, and most scholars argue that sanctions can harm the civilian population of the receiving state, exacerbate human rights abuses, and undermine economic development, even when targeted.²⁷

International law encourages state sovereignty in the quest for self-determination and the territorial integrity of states within their jurisdictions. Human rights must be protected in realising this objective, and states must endeavour to uphold their constitutional obligations. That is why it is important to establish other no-force measures that do not infringe on the rights of citizens within a territory burdened by the imposition of sanctions. The UN's main usefulness lies in its protection of national sovereignty.

The success of the UN in creating and preserving independent states post-World War II emanates from allowing independent decision-making to different cultures and identities, but due to the tribal nature of most human beings, problems of cohesion are likely to emerge.²⁸ Sanctions against human rights violations have always been debated, and it is apparent that there is no universal and uniform interpretation of the application of international sanctions through the standard of human rights protection.²⁹ International sanctions and human rights can never co-exist because they oppose each other in character. In the case of Zimbabwe, the sanctions imposed by the United States of America and the European Union were outside the legal mandate of the UNSC and the European states are currently faced with the dilemma of how to safeguard acceptable implementation of the UNSC resolutions while also respecting human rights as per their obligations under the European Convention on Human Rights.³⁰ This reflects the current existence of the misalignment of international practice relating to sanctions and reflects the UN's advocacy position in protecting human rights.

Zimbabwe has been under sanctions for over two decades, which were meant to pressure the government to desist from human rights violations. Even though initially, the sanctions may have been legitimately imposed for a justifiable reason, they ceased to be so because of their ineffectiveness and failure over a lengthy period of time to achieve their intended goal. The length of time has eroded the enjoyment of human rights and has made the issue of human rights

²⁶ *ibid.*

²⁷ Petrica Dan, 'The Paradox of Sanctions: A Critical Analysis of Zimbabwe's Experience' (PhD thesis, Agora University Romania 2023).

²⁸ Global Strategy Forum, *The value of dialogue in times of hostility: A collection of Essays and personal reflections* (British Council 2015) 7.

²⁹ Alina Orosan, 'Sanctions vs the European Convention on Human Rights' (2020) <<https://rm.coe.int/the-unsc-sanctions-vs-the-european-convention-on-human-rights/1680a05730>> accessed 27 August 2023.

³⁰ Machingura (n 28).

violations more intense and more important as the necessity of maintaining the sanctions has fallen away due to them now becoming the precursor of the violations of humanity.

(A) Sanctions and human rights

International human rights law has informed the Bills of Rights for many national constitutions.³¹ The Universal Declaration of Human Rights has been the foundation of much of the post-1945 codification of human rights.³² Most constitutions borrow from the International Bill of Rights to include human rights protections as a significant part of what informs the idea of constitutionalism at its core. Part 2 of the Constitution of Zimbabwe provides for fundamental human rights and freedoms. Some of the rights that come to the fore when we look at the impact of sanctions are section 48 (the right to life). We have seen many die because they have no access to healthcare (section 49). The right to personal liberty has suffered the most as there have been incarcerations of people who oppose the government, violating section 50 rights of arrested and detained persons and section 51 (right to human dignity). Also affected is the right to education (section 75), as most parents and guardians cannot afford to put their children through school. Other sections affected are section 76 (right to healthcare) and section 77 (right to food and water) because the water supply is cut and inflation has run too high for the ordinary citizen to afford a decent meal. These rights have been affected the most as socio-economic rights and the demand for human security take up most of the more modern demands regarding the progress made in the human rights trajectory.

Sanctions have been applied differently and for variable reasons over the years, particularly the protection of human rights and democracy. States, however, do not act in line with their obligations under international law treaties concerning the protection of human rights when sanctions burden them. That is why while sanctions are often implemented with the intent to advance human rights and democratic values, they can be counterproductive, adversely and disproportionately impacting the rights and interests of vulnerable communities.³³ Inefficiency has been the major outcry from sanctioned states and other affected territories within their regions. Cuba is an example of the negative impact of sanctions on constitutionalism and human rights. another example which is evidence that sanctions are ineffective as they have played a counterproductive role in addressing the problem they sought to address and led to the

³¹ Michael Kirby, 'International Law-The Impact on National Constitutions' (2006) 21(3) *American University International Law Review* 327-364.

³² Hurst Hannum, 'The UDHR in National and International Law. Health and Human Rights' (1998) 3(2) *Health and Human Rights* 154-158.

³³ Peter Micek, 'When sanctions undermine human rights' (2023) <<https://www.accessnow.org/sanctions-undermining-human-rights/>> accessed 5 September 2023.

deterioration of human rights in the country. Human rights abuses have been cited as one of the reasons for US sanctions against Cuba,³⁴ yet the sanctions have worsened the human rights situation in Cuba. Therefore, considering the required standard of human rights protection,³⁵ they lack consistency in their implementation.

The Constitution of Zimbabwe, in Chapter 4, provides a list of fundamental rights which must be protected as constitutional rights. It is a Constitutional requirement for the state to take reasonable measures within the limits of its available resources to realise these rights progressively. This is the same state under sanctions and restricted from receiving multilateral financing. As a result, more needs are competing for little resources.³⁶ It therefore becomes evident that sanctions unintentionally and negatively impact the protection of these rights because they make it impossible for the government to guarantee human rights.

Sanctions have created many human rights violations that have eroded the value of state institutions that are provided for in the Constitution, and questions have been raised surrounding the limits for embargos put in place as punishment on target countries for their wrongful conduct due to the adverse humanitarian and economic impact they bring about.³⁷ There is a direct correlation between the economy and the enjoyment of human rights, and due to the economic decline that sanctions have contributed to in Zimbabwe, citizens' enjoyment of human rights has been impacted. There is no doubt that imposing economic sanctions has been a form of collective punishment on civilian populations,³⁸ and the main idea behind smart sanctions is to target powerful government supporters so that when they feel the pressure, they will, in turn, pressure the target regime to change its position. The logic behind smart sanctions suggests that targeting powerful supporters of a government will pressure the targeted regime to change its shunned conduct as they begin to feel the pressure in the running of their businesses and their daily lives as monetary restrictions are placed on them and travel bans are imposed on them with their assets being frozen.³⁹ While this giving in to pressure is anticipated, the regimes

³⁴ Aryeh Neier, 'Sanctions and Human Rights' (2015) *Johns Hopkins University Press* 875-886.

³⁵ Alina Orosan, 'UNSC Sanctions vs European Convention on Human Rights' (2020) <<https://rm.coe.int/the-unsanctions-vs-the-european-convention-on-human-rights/1680a05730>> accessed 3 September 2023.

³⁶ Remarks By Mrs V. Mabiza the Permanent Secretary For Ministry of Justice, Legal and Parliamentary Affairs on the Occasion of the Constitutional Awareness on the Negative Impact of Sanction on Enjoyment of Rights Held at Gokwe Center, Midlands Province (25 October 2022) <<https://justice.gov.zw/remarks-by-mrs-v-mabiza-the-permanent-secretary-for-ministry-of-justice-legal-and-parliamentary-affairs-on-the-occasion-of-the-constitutional-awareness-on-the-negative-impact-of-sanction-on-enjoyment/>> accessed 29 August 2023.

³⁷ Seyed Razavi and Fateme Zeynodini, 'Economic Sanctions and Protection of Fundamental Human Rights: A Review of the ICJ's Ruling on Alleged Violation of the Iran-US Treaty of Amity' (2020) *Washington International Law Journal* 304.

³⁸ *ibid*, 308.

³⁹ Emma Gilligan, 'Smart Sanctions against Russia: Human Rights, Magnitsky and the Ukrainian Crisis' (2016) *The Journal of Post-Soviet Democratisation* 257-277.

remain stubborn, and civilians bear the pressure as the economy is affected to their detriment as their human rights are violated. It then becomes inevitable that there will be a human rights violation, which constitutes international legal wrongfulness.⁴⁰

Economic growth and development have been impeded because of trade restrictions imposed by sanctions, and this has led to the deterioration of the standard of living for the ordinary citizen because sanctions restrict the enjoyment of several fundamental rights and freedoms which are provided for in Chapter 4 of the Constitution of Zimbabwe and which are meant to be enjoyed by every person in Zimbabwe.⁴¹ Chapter 4 of the Constitution provides a comprehensive outline of these rights, and the Constitution is the supreme law of the land. Anything that contradicts it and infringes on the rights therein is unconstitutional.

(B) Constitutionalism and good governance

The restriction of government by the law, as stipulated by a constitution, is known as constitutionalism. Constitutionalism is inextricably linked to democracy. Democracy is governing for the people, and the negative impact of sanctions on human rights is pronounced in the existing literature and the impact of sanctions on democracy.⁴² Respect for constitutionalism is an integral part of good governance. The doctrine of constitutionalism governs the legitimacy of government action. Good governance is highly dependent on constitutionalism. Good governance sets the parameters for the legitimacy of government action.⁴³ The idea of democracy remains a blur in Zimbabwe as the government continues to enact laws that stifle freedom of expression. The government recently passed into law the Patriotic Act. This Act vaguely prohibits meetings with foreign entities and specifically emphasises meetings concerning promoting sanctions against Zimbabwe. This draconian law seeks to target any form of government opposition because the promotion of sanctions is loosely pronounced. This is potentially a ground for injustices to be borne out of a broad interpretation of the Act, as well as unlawful arrests because it would be difficult for State Prosecutors to prove the context in which a meeting is held without being privy to it.

Sanctions have limited generation of foreign currency revenue in Zimbabwe. According to Shava, the Zimbabwe Minister of Foreign Affairs and International Trade, 'Foreign Direct

⁴⁰ Nathanael Tilahun, 'The EU Global Economic Sanctions regime' (2023) 25 *International Community Law Review* 3–35.

⁴¹ Keynote Address by Honourable Ziyambi Ziyambi, Minister of Justice, Legal and Parliamentary Affairs on the Occasion of the Constitutional Awareness on the Impact of Sanctions on enjoyment of rights by Zimbabweans Held at Gokwe Center, Midlands Province (2022).

⁴² Dursun Peksen and Cooper Drury, 'Economic Sanctions and Political Repression: Assessing the Impact of Coercive Diplomacy on Political Freedoms' (2009) *Human Rights Review* 393-411.

⁴³ Bazezew (n 67).

Investment (FDI) stimulates economic growth and employment creation in any economy,⁴⁴ and Zimbabwe has been unable to attract foreign investment because of the volatility of the economy indirectly impacted by sanctions through trade and financial restrictions and this has limited economic development, and also increased corruption levels. However, to blame all Zimbabwe's economic ills on sanctions is disingenuous and untrue. Part of Zimbabwe's economic woes can be attributed to bad governance. Over the past two decades, corruption has reached a record high in Zimbabwe, with billions of government funds publicly declared to have been misappropriated but unaccounted for. Since early 2000, Zimbabwe's economy has suffered distress and stagnation, undergoing periods of hyperinflation leading to the collapse of the national currency and adopting a multi-currency system in 2009. The government and its allies attribute this to sanctions, while others blame bad governance.⁴⁵ Bad governance caused by high levels of corruption has worsened Zimbabwe's economic woes because the government has been allowed to hide behind sanctions and create a smoke screen, which allows them not to be accountable for bad governance and blame it all on sanctions. Sanctions have worsened the situation by creating a conducive breeding ground for corruption and zero accountability that has left the country crippled, if not paralysed. Amid all the uncertainty, 'it is necessary to establish a just and equitable economic and social order through the elimination of economic inequalities, the establishment of rational and equitable international economic relations.'⁴⁶ This is what public international law advocates for in promoting equality and state sovereignty. Sanctions, on the other hand, promote inequality, which is against public international law guidelines.

(C) The interplay between international sanctions, human rights and constitutionalism

The Constitution of Zimbabwe, in Chapter 4, provides a list of fundamental rights which must be protected as constitutional rights. Sanctions have, however negatively impacted the protection of these rights. While constitutionalism as a political philosophy is based on the idea that government authority is derived from the people and should be limited by a constitution that clearly expresses what the government can and cannot do, it is also grounded on the idea that the state is not free to do anything it wants, but is bound by laws limiting its authority.⁴⁷ Under the intense sanctions environment, the rule of law has not been achievable in

⁴⁴ Ministry of Foreign Affairs Zimbabwe Report 'Impact on Zimbabwe and the region of the unilateral sanctions imposed by the United States of America and the European Union' (Zimbabwe, 15 October 2019).

⁴⁵ Michelle Chifamba 'Zimbabwe's economic woes: Sanctions or poor governance?' *The Africa Report* (Zimbabwe, 26 November 2020).

⁴⁶ The Constitution of the United Nations Industrial Development Organisation, 1979.

⁴⁷ Bazezew (n 67) 358.

Zimbabwe.

The systematic destruction that is created by unilateral coercive sanctions constitutes a violation of international human rights law enshrined in the International Covenant on Civil and Political Rights (ICCPR) and established by the normative framework under the UN Charter.⁴⁸ Zimbabwe's economic growth and development have been impeded because of trade restrictions imposed by sanctions, and this has led to the deterioration of the standard of living for the ordinary citizen because sanctions curtail the enjoyment of a number of fundamental rights and freedoms which are provided for in Chapter 4 of the Constitution of Zimbabwe which are meant to be enjoyed by each and every person in Zimbabwe.⁴⁹ Constitutionalism assumes an obligation from international human rights treaties, while sanctions find authority in international law. However, compliance with constitutionalism has not been possible due to the economic meltdown caused by the impact of sanctions, and the state has failed to make good on its obligation and has breached its Constitutional mandate. This poses a misalignment between the body of public international law and Constitutional and human rights law as bodies of international law.

III. METHODOLOGY

The research takes the approach of a single case study on the nation of Zimbabwe, and utilises an empirical approach in an attempt to clearly outline the results emanating from observing the way of life and experiences of the people of Zimbabwe, and analysing the impact of international sanctions on human rights and constitutionalism in Zimbabwe. This is an empirical enquiry that seeks to evaluate a real-life experience through delving into an investigation of a contemporary phenomenon. It analyses and evaluates the problems faced by Zimbabwe of two decades under international sanctions. The research is based on a critical and interpretive paradigm “which is the view that reality has been shaped by “social, political and economic values.”⁵⁰ Qualitative research, the methodology employed, gives an opportunity to carry out an in-depth study through fieldwork to gain understanding of the experiences of the Zimbabwean populace and evaluate the impact of international sanctions on human rights in

⁴⁸ Shannon Jackenthal, ‘Trump-Era Terrorism Designated Sanctions Violate International Human Rights Norms Protecting Life, Health and Security’ (2013) 25(1) *Human Rights Brief* 48.

⁴⁹ Keynote Address by Honourable Ziyambi Ziyambi, Minister of Justice, Legal and Parliamentary Affairs on the Occasion of the Constitutional Awareness on the Impact of Sanctions on enjoyment of rights by Zimbabweans Held at Gokwe Center, Midlands Province (25 October 2022) <<https://justice.gov.zw/keynote-address-by-honourable-ziyambi-ziyambi-minister-of-justice-legal-and-parliamentary-affairs-on-the-occasion-of-the-constitutional-awareness-on-the-impact-of-sanctions-on-enjoyment-of-rights-by/>> accessed 4 September 2023.

⁵⁰ Scotland, J. (2012). Exploring the philosophical underpinnings of research: relating ontology and epistemology to the methodology and methods of scientific, interpretive, and critical research paradigms” 5 (9) English language teaching. Canadian Centre of Science and Education.

Zimbabwe. The impact of sanctions on constitutionalism is also evaluated. Open-ended interviews are conducted, with a series of questions posed to the respondents with further discussions around their given answers. Additionally, the research will use primary and secondary sources of data. The sources include books, legal documents and international, regional and Zimbabwe national policy frameworks. A descriptive research design will be employed using Zimbabwe as a case study to show whether sanctions pressure governments to honour their human rights obligations are effective and whether or not sanctions comply with constitutional obligations. In terms of the research methods this study undertakes a historical approach to try and explain the origins of sanctions, their implementation and their impact on human rights and constitutionalism. It evaluates the changes on the previous social, political and economic position of Zimbabwe before sanctions were imposed on it by the United States (US) and the European Union (EU) and its status under the grip of sanctions. The aim is to reveal the devastating effects of sanctions on a country's economy, as well as the impact of sanctions on human rights and constitutionalism in a democratic State. The research uses the qualitative research approach through mainly relying on desktop research while utilising secondary sources of data such as books, academic journals and news articles that focus on the impact of international sanctions and their impact on human rights and constitutionalism.

(A) Findings

The study found out that the imposition of sanctions is regulated by the UN Charter and. It also found that sanctions, in whatever form, have a negative indirect impact on the protection of human rights and constitutionalism because of the interdependence of fundamental rights on economic stability and the provision of services that advance socio-economic rights.

(B) Discussion

While the practice of sanctions is sometimes a necessary deterrent measure employed to ensure the safeguarding of peace and security among states, it is prone to manipulation by superior states in advancing their national interests. The effectiveness of these sanctions has proved ineffective, particularly in Zimbabwe, as it is proven and evident that they fall short of achieving their intended purpose and exacerbate the human rights situation in target states or the states to which their targeted individuals come from or conduct their business interactions and transactions from. Sanctions further worsen the human rights situation as nation governments fail to uphold their constitutional mandate to provide basic amenities and ensure the protection of human rights as mandated by their national constitutions.

IV. CONCLUSION

Sanctions have been relied on to curb autocratic rule. The use of sanctions has increased in intensity in the last two decades, and the human rights system in Zimbabwe has worsened to a point even greater than when sanctions were initially imposed. Zimbabwe is the best example to illustrate the inefficiency of sanctions and their impact on human rights and constitutionalism. With high levels of corruption, inflation, poverty and the erosion of democracy in governance all under the guise of the effects of sanctions, one can only wonder whether sanctions have assisted in protecting the civilian majority from having their fundamental rights violated by the government or whether they have assisted the government in finding a way to evade accountability for their maladministration and unjust actions. As previously highlighted, the impact of sanctions has been creating a new system known as exacerbated sanctions. Instead of curing the problem, it worsens an already bad situation by creating room for worse and new forms of violations. It emerges upon analysis that there is a need for the employment of dialogue to get state parties to co-operate in international relations in place of sanctions.

V. REFERENCES

(A) Books

- Albuquerque C, et al *The Optional Protocol on the International Covenant on the Economic, Social and Cultural Rights* (Pretoria University Law Press 2016).
- Brownlie C, *Principles of Public International Law* 8th Edition (Oxford University Press) 2012.
- Cavelty M and Balzacq T *Routledge Handbook of Security Studies* 2nd Edition (Routledge) 2017.
- Curray I, *Bill of Rights Handbook* (Juta 2016).
- Eyler R, *Economic Sanctions: International Policy and Political Economy at Work* (Palgrave Macmillan) 2004.
- Geoff S, *Imposing Economic Sanctions: Legal Remedy or Genocidal Tool* (Pluto Press 1999).
- Giumelli F, *The Success of Sanctions: Lessons Learned from the EU Experience* (Routledge 2013).
- Hufbauer G et al, *Economic Sanctions Reconsidered* (Petersen Institute for International Economics 2007).
- Shaw M, *International Law* (Cambridge University Press 2008).
- Shelton D, *The Oxford Handbook of International Human Rights Law* (Oxford 2013).
- Strydom H, *International Law* (Oxford University Press Southern Africa 2016).
- Van Aaken A and Motoc I, *The European Convention on Human Rights and General International Law* (Oxford University Press 2018).
- Weiss T, *Political Gain Civilian Pain: Humanitarian Impacts of Economic Sanctions* (Rowan & Littlefield 1997) 57.

(B) Case law

- *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no. 5809/08, 21 June 2016.
- *Nada v. Switzerland* [GC], no. 10593/08, 12 September 2012.

- *Yassin Abdullah Kadi v Council of the European Union & Commission of the European Communities* (2005) Case T-315/01.

(C) Legal Instruments

- African Charter on Human and Peoples' Rights, 1981.
- African Charter on the Rights and Welfare of the Child, 1999.
- Charter of the United Nations and Statute of the International Court of Justice, 1945.
- Universal Declaration of Human Rights, 1948.
- The Constitution of the United Nations Industrial Development Organisation (UNIDO), 1979.
- Convention on the Rights of the Child, 1989.
- The Constitution of Zimbabwe Amendment (No. 20) Act, 2013.
- Zimbabwe Education Act [Chapter 25:04].

(D) Hard Copy Journal Articles

- Aditya Sudarshan, 'Constitutional Perspectives on Good Governance' (2005) *Student Bar Review*.
- Alicia Wendlandt-Law, 'International Human Rights Sanctions and their Effectiveness on Regimes' (2022) *International Journal of Interdisciplinary Global Studies*.
- Aryeh Neier 'Sanctions and Human Rights' (2015) *Johns Hopkins University Press*.
- Chidiebere Ogbonna, 'Politics of sanctions. Impact of US and EU sanctions on the rights and well-being of Zimbabweans' (2015) *African Journals Online*.
- Chidochashe Munangagwa, 'The Economic Decline of Zimbabwe' (2009) *Gettysburg College*.
- Dursun Peksen and Cooper Drury, 'Economic Sanctions and Political Repression: Assessing the Impact of Coercive Diplomacy on Political Freedoms' (2009) *Human Rights Review*.
- Dursun Perksen, 'Better or worse? The Effect of Economic Sanctions on Human Rights' (2009) *Journal of Peace Research*.

- Elena Chachko, 'Due Process is in the Details: US Targeted Economic Sanctions and International Human Rights Law' (2019) 113 *American Journal of International Law Unbound*.
- Emma Gilligan, 'Smart Sanctions against Russia: Human Rights, Magnitsky and the Ukrainian Crisis' (2016) *The Journal of Post-Soviet Democratisation*.
- Fatemeh Kokabisaghi, 'Assessment of the Effects of Economic Sanctions on Iranians' Right to Health by Using Human Rights Assessment Tool: A Systematic Review' (2018) *International Journal of Health Policy and Management*.
- Francesco Giumelli, 'The Success of Sanctions: Lessons Learnt From The EU Experience' (2016).
- Hurst Hannum, 'The UDHR in National and International Law. Health and Human Rights' (1998) 3(2), *Health and Human Rights*.
- Jan Grebe, 'And they Are Still Targeting: Assessing the Effectiveness of Targeted Sanctions against Zimbabwe' (2010) 45(1) *Sage Journals*.
- Maru Bazezew Constitutionalism (2009) *Mizan Law Review Journal* 3(2).
- Seyed Razavi and Fateme Zeynodini, 'Economic Sanctions and Protection of Fundamental Human Rights: A Review of the ICJ's Ruling on Alleged Violations of the Iran-U.S. Treaty of Amity' (2020) *Washington International Law Journal*.
- Stephanie Chan, 'Principle Versus Profit: Debating Human Rights Sanctions' *Human Rights Review* (2018).

(E) Online Journal Articles

- Alina Orosan, 'UNSC Sanctions vs European Convention on Human Rights' (2020) <<https://rm.coe.int/the-uns-c-sanctions-vs-the-european-convention-on-human-rights/1680a05730>> accessed 3 February 2024.
- Dan Petrica, 'The Paradow of Sanctions: A Critical Analysis of Zimbabwe's Experience' (2023) *Online Journal Modelling the New Europe* 41 <<http://neweurope.centre.ubbcluj.ro/wp-content/uploads/2023/04/4.pdf>> accessed 3 February 2023.
- ISS Africa, 'The curious case of Zimbabwe sanctions' (2022) <<https://issafrica.org/iss-today/the-curious-case-of-zimbabwe-sanctions>> accessed 3 February 2024.

- Maya Lester and Michael O' Kane, 'Law, Practice and Guidance 'Sanctions Profile: Zimbabwe At a Glance' (2022) <<https://www.europeansanctions.com/region/zimbabwe/>> accessed 8 February 2024.
- Michael Brzoska, 'International sanctions: A useful but increasingly misused international tool' (2015) <<https://www.visionofhumanity.org/international-sanctions-a-useful-but-increasingly-misused-policy-instrument/>> accessed 2 February 2024.
- Peter Micek, 'When sanctions undermine human rights' (2023) <<https://www.accessnow.org/sanctions-undermining-human-rights/>> accessed 5 February 2024.

(F) Newspaper Articles

- Chipo Dendere, 'Zimbabwe: The Long Shadow of Sanctions' *The Southern Mirror* (Zimbabwe, 29 June 2022).
- MacDonald Dzirutwe, 'Mugabe's Farm Seizures: Racial Injustice or Catastrophic Power Grab?' *Reuters* (Zimbabwe, 6 September 2019).
- Machingura G 'Western sanctions undermining enjoyment of human rights in Zimbabwe' *Xinhua News* (Zimbabwe, 28 October 2021).
- Michelle Chifamba 'Zimbabwe's economic woes: Sanctions or poor governance?' *The Africa Report* (Zimbabwe, 26 November 2020). Siphosami Malunga, 'Zimbabwe: Corruption and patronage do more damage than sanctions' *The Africa Report* (Zimbabwe, 25 October 2019).

(G) Command Papers and Law Commission Reports

- Office of the High Commissioner for Human Rights, *Impact on Zimbabwe and the region of the unilateral sanctions imposed by the United States of America and the European Union*. (SADC Permanent Missions in Geneva, 2020).
- The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights (1993).
- United Nations Office of the High Commissioner for Human Rights 'Frequently Asked Questions on Economic, Social and Cultural Rights' Fact Sheet NO. 33.
- United Nations Human Rights Office of the High Commission, *UN Human Rights' work on unilateral coercive measures* (2018).

(H) Dissertations and Other Research Papers

- Dzikamai Kanyongo, ‘Targeted Sanctions as a New Political Discourse in Zimbabwe: Transition or Obstacle to Democracy 2000-2013’ (LLD Dissertation University of KwaZulu-Natal 2016).
- Joseph Gutmann et al ‘Economic sanctions and human rights: Quantifying the legal proportionality principle’ (2018) Research Paper in Economics No 2/18, University of Trier.
- Petrica Dan, ‘The Paradow of Sanctions: A Critical Analysis of Zimbabwe’s Experience’ (PhD thesis, Agora University Romania 2023).
- **Internet Sources**
- Al Jazeera Investigative Unit, ‘Six secrets uncovered by Aljezeera’s Gold Mafia’ (Al Jazeera News Network, 14 April 2023) <<https://www.aljazeera.com/news/2023/4/14/six-secrets-uncovered-by-al-jazeeras-gold-mafia>> (accessed on 24 February 2024).
- Mabiza, V ‘The Negative Impact of Sanction on Enjoyment of Rights’ (2022) <<https://justice.gov.zw/remarks-by-mrs-v-mabiza-the-permanent-secretary-for-ministry-of-justice-legal-and-parliamentary-affairs-on-the-occasion-of-the-constitutional-awareness-on-the-negative-impact-of-sanction-on-enjoymen/>> accessed 8 February 2024.
