

Mugabe Prosecution Unlikely

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Experts say amnesty, not a prison cell, awaits Zimbabwe's president if he ever leaves office.

The list of human rights violations allegedly committed by Robert Mugabe, the only ruler Zimbabwe has known since achieving majority rule in 1980, is long. It includes the forced eviction of some 360,000 people from their homes; the suppression of civil society, opposition political groups, and the media; and political interference in the country's critical food supply.

But although these abuses have been chronicled in detail both by the media and human rights organisations, the prospects that Mugabe will ever have to stand trial for them at home or abroad are bleak, most legal experts say.

Richard Dicker, director of the International Justice program at Human Rights Watch, said that in order to pursue a case against Mugabe in any court, "one would need to put together a legally persuasive memo that crimes against humanity have occurred in Zimbabwe and that the President of Zimbabwe is very much linked to the commission of those crimes".

However, Gugulethu Moyo, a Zimbabwean lawyer who works in London for the International Bar Association's Human Rights Institute, wants Mugabe to face justice at the International Criminal Court, ICC, in The Hague, which is already investigating crimes in Sudan, Uganda, the Central African Republic and the Democratic Republic of Congo.

"There is an obligation on all states to actually protect human rights and what has happened with Zimbabwe is that it's the abuser who's being protected," she said.

The ICC could initiate an investigation if a state that has ratified the Rome Statute setting up the court requests it or if the United Nations Security Council was to do so. Alternatively, the ICC prosecutor could decide to pursue an investigation on his own.

But whether or not the ICC even has jurisdiction over crimes committed in Zimbabwe remains an open question. Although Zimbabwe has signed the ICC's statute, it has not ratified it.

Mark Ellis, executive director of the International Bar Association, argues that Mugabe's failure to ratify does not necessarily protect him, and that a new government in Harare could accept the court's jurisdiction immediately and ask it to investigate.

"Such an investigation would give a tremendous boost to the people of Zimbabwe," he wrote last year in the *International Herald Tribune*. "They would know that although Mugabe can manipulate and evade domestic justice, he cannot do the same under international law."

However, the prospect of Mugabe being toppled from power soon is unlikely. With the opposition diminished by an electoral loss rubber-stamped by African leaders, an uprising looks improbable. Mugabe shows no inclination to step down - in part, critics say, because the presidency confers at least some immunity from prosecution.

But even if Mugabe's rule were in jeopardy, analysts say any handover of power will almost certainly be accompanied by a promise of amnesty.

"If he was overthrown, I think part of the deal would be that he is allowed to retire quietly and live in peace," said Richard Dowden, director of the Royal African Society.

Pointing out Mugabe's anti-colonial past and his success in portraying British concern about recent abuses as the racist complaints of a former ruling power, Dowden said, "He's a huge hero in Africa. I can't think that anyone in Africa would allow him to be handed over Milosevic-style." Dowden added that even that current leaders of the opposition Movement for a Democratic Change do not want to humiliate Mugabe. "I can't see any circumstances in which he would be handed over," he said.

Even if the ICC were to determine that it did have jurisdiction, it would only be able to investigate serious crimes committed since July 1, 2002, when the court went into force.

A history of torture in Zimbabwe and white-ruled Rhodesia published last month by Redress, a London-based human rights organisation that supports the victims of torture, documents numerous abuses that have taken place since then, the most graphic of which is the alleged torture of an opposition member of parliament, Job Sikhala, and his lawyer, Gabriel Shumba, arrested in January 2003.

"Shumba was apparently tortured by a group of about fifteen men," said the report.

"He was periodically kicked with booted feet and slapped about his head from the time of arrest, and tightly hooded so that breathing was extremely difficult. He was threatened with dogs and taken hooded to what was believed to be the CIO [Central Intelligence Organisation] underground torture chambers at Goromonzi [east of Harare], where he could hear the sounds of screaming in another room, and thrown against the wall before being stripped naked and hands and feet shackled together in the fetal position.

"He was then assaulted all over his naked body with fists, booted feet and thick planks and hung upside down and beaten on the bare soles of his feet with wooden, rubber and metal truncheons.

"He was given severe electric shocks to the feet, ears, tongue and genitals, and threatened with acid, crucifixion and needles thrust into the urethra. He was covered in some unknown chemical substance.

"Having lost control of his bodily functions he was forced to drink his own urine and lick up his blood and vomit. His torturers urinated on him, took photographs of him being tortured, and threatened him with death."

Sikhala was also said to have been tortured.

Although these crimes could fall under the ICC's jurisdiction, the litany of Mugabe's alleged crimes began well before the court's treaty went into force.

The Redress report argues that the 1979 Lancaster House agreement ending white rule and providing amnesty for human rights violators set a pattern for the Mugabe era.

Just as Ian Smith's Rhodesian enforcers got away with murder, so did the new regime.

During the 1980s, Mugabe's troops were blamed for the killing of some 20,000 people in Matabeleland during the six years of civil war known as the Gukurahundi, a Shona word meaning "the wind that sweeps away the chaff before the rain".

"Thousands of unarmed civilians died or were physically tortured or suffered loss of property, most as a result of the actions of government forces and some at the hands of dissidents," the Redress report says.

However, a peace deal in 1987 included amnesties for all involved.

Between 1998 and 2005, the report describes "widespread and systematic human rights abuses, including torture on a scale not seen since the bitter days of the liberation struggle in the 1970s" and more amnesties granted by Mugabe.

The Security Council has the authority to set up an ad hoc tribunal that could have jurisdiction over crimes committed before July 2002. However, the chances of the council ordering an inquiry into Zimbabwe are "vanishingly small", said Steve Crawshaw, director of the London office of Human Rights Watch, pointing out that even in Sudan's Darfur region, "where you have slaughter upon slaughter", it was difficult to get the UN to act.

Gugulethu Moyo argues that scale should not be the issue. "There are those who argue that it would be a disproportionate response, that the case of Zimbabwe is not so serious, but I think there is an abundance of evidence that crimes against humanity have been committed in Zimbabwe, and to say that the situation in Zimbabwe is not as bad as in Sudan is not the point," she said.

Barring an ICC investigation or a UN Security Council decision to create a special tribunal for Zimbabwe, Mugabe could potentially face justice in another country. Several states, mostly European, have laws allowing for the arrest of visiting foreigners accused of serious crimes in the event that a credible complaint is made.

However, this too is an unlikely scenario. Mugabe is unlikely to travel to a European country that has such laws, and African countries would be reluctant to detain him.

Said one Zimbabwean who asked not to be identified, "There seems to be so many parties interested in protecting Robert Mugabe."

Tiseke Kasambala, a Human Rights Watch researcher who recently returned from Zimbabwe, said although Mugabe would ensure he is protected before stepping down, the same might not hold true for his subordinates.

"Zimbabwean civil society is very strong. They will not accept just any immunity for all the leadership and forget the past. They would look at ways to bring the people responsible for the massacres in Matabeleland and the more recent killings to justice," said Kasambala.

Although there have been no criminal prosecutions for torture, victims have found some legal redress, according to one Zimbabwean activist who preferred not to be named. Human rights groups "have instigated many civil cases against the state for gross human rights violations, and they are mostly

winning”, though often out of court. “The state is conceding these things happened.”

In August 2003, more than 70 Zimbabwean groups took part in a symposium in Johannesburg on civil society and justice in Zimbabwe. Delegates noted that “the culture of impunity can only be ended if perpetrators of human rights abuses are held accountable for their abuses”.

The symposium made seven recommendations, including “that the necessary institutions be set up to deal with past and present human rights abuses and that such institutions be empowered not only to investigate and seek the truth but also to recommend criminal prosecution, provide for redress and reparation for victims and lead to healing of the nation”.

But while lawyers say that it would be possible to overturn the amnesties granted in Zimbabwe, putting alleged perpetrators on trial would be a lengthy and uncertain process. In Argentina and Chile, for instance, courts only recently began proceedings for crimes committed in the 1970s and 1980s.

And the vital importance of holding rulers accountable is sometimes surrendered even by the most impassioned of human rights campaigners. “The price of peace is quite clearly transitions that involve impunity,” said one. “It’s problematic for Zimbabwe because there are so many people who are violently anti-impunity, but you can also see many situations where it’s a necessary evil to change a fairly intolerable situation.”

Richard Dicker of Human Rights Watch disagrees, “I think it’s a fool’s price. It’s not a price worth paying because the peace you buy with it is an illusory one.”

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