

ZIMBABWE HUMAN RIGHTS NGO FORUM



Zimbabwe
HUMAN RIGHTS
N G O Forum

**TAKING TRANSITIONAL JUSTICE
TO THE PEOPLE
OUTREACH REPORT**

JUNE 2009



Foreword

This is a preliminary report on transitional justice highlighting some of the key findings of the Forum's "Taking Transitional Justice to the People" Programme. To date, the Forum is working with the Legal Resources Foundation, Media Monitoring Project Zimbabwe, Crisis in Zimbabwe Coalition, Zimrights and Bulawayo Agenda as its implementing partners. The report is not in any way meant to be an exhaustive critique of Zimbabweans' position on transitional justice but it does capture some important observations that should be useful to many who wish to see past wrongs addressed and the nation move forward towards a more democratic and human rights respecting dispensation.

The Forum has only visited four provinces so far but will reach out to all the other provinces and listen to the communities. Eventually, it is hoped that the findings from the country's provinces will help shape and inform our engagement with authorities in encouraging them to ensure a formal transitional justice mechanism that respects the wishes of the victims and Zimbabweans is put in place.

The Forum wishes to thank the European Commission's Delegation to Zimbabwe (EC) for funding this initiative.

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Summary


Many years of direct and structural violence in Zimbabwe have left the country with a physically and emotionally wounded people; property destroyed; populations condemned to the Diaspora as political and economic refugees and many internally displaced peoples. Attendant on all this is the politics of violence and intolerance, which pervades Zimbabwe's political space and peoples. The *Global Political Agreement* (GPA) between the two MDC formations and ZANU (PF) in September 2008 provided the necessary reprieve to ask questions about the transition of the country into a democracy. The space or opportunity brokered by the GPA motivated the Zimbabwe Human Rights NGO Forum (the Forum) to set out a series of meetings in its *Taking Transitional Justice to the People* Program to consult and educate Zimbabweans who have gone through epochs of state sponsored and politically motivated violence in their lives on the nature and processes of transitional justice.

The exercise was not in any way structured to begin processes of transitional justice or national healing in Zimbabwe. However, it was set to begin consultations, educate and equip citizens with the necessary and background information on transitional justice and redress in all its forms.

From January 2008–June 2008 the Forum visited thirteen constituencies and met and discussed with people from all backgrounds; teachers, police officers, mothers, youths, elderly people, clergymen, traditional leaders and other professionals. The Forum conducted sessions in schools, town halls, in both rural and urban settings. Public discussions were held in English, Shona, Ndebele and Tonga speaking communities. In these open forum discussions, people expressed themselves in their language of choice.

In the consultative meetings, actors, sponsors and victims of violence were discussed. The participants noted the manifestations of these violent acts in rape, torture, murder, extortions, kidnappings, blackmail, disappearances, destructions of property, humiliations, selective food and agricultural input distributions and so many other methods. Actors in violence were identified as men, women and youths, soldiers in uniforms, the policemen on duty, secret police and youth from the National Youth Training Service commonly known as the “Green Bombers” among others. The victims also cut across sections of Zimbabweans from all walks of life.

Four hundred and forty two (442) people took part in the discussions stretching over six months. 47.1% of the participants were women and 52.9% were men. The participants just below the age of twenty years were 2.16% and those above the age of sixty constituted only 7.69% of the participants. It can be inferred that those below twenty years may not have been involved because they could have been at school or college during the sessions or they were not interested and those above sixty could have been apathetic to political discourses or may simply not have been able to travel to the venues.



The Forum approached its program in a manner that informed the participants about the concept of transitional justice, how it works and has been applied in other settings. Participants were given opportunities during the brief presentations to contribute in the debates. The transitional justice approaches that dominated the *Taking Transitional Justice to the People's* discussions were truth commissions, reparations, truth for amnesty and prosecutions.

The participants made interesting contributions that should be used to inform and shape the direction of transitional justice discourses in Zimbabwe. What became clear was that people want to talk about their past and they need the platform to do so. What they were not sure about was the possibility, in light of the fact that ZANU (PF) still wields enormous power to scuttle the process before it even begins. Accordingly, there were calls for thorough institutional reforms particularly the security sector, which they said was blatantly partisan, unprofessional and cannot be trusted. The participants proffered comprehensive options for security sector reforms, which they believed, could rescue these institutions from partisan influencing.

It was difficult to agree on the starting period for this transitional justice. The participants and victims constantly referred to the two phases - the recent past (1998 - 2008), and the distant past (1980s and back into the Rhodesian era). While challenges in handling the Rhodesian violations were acknowledged, there were serious concerns that leaving the era uncovered was an injustice on its own. It was pointed out that the seeds of current violence and impunity were sown during that time.

A small group of about 50–60 people per meeting was randomly invited to attend the meetings. The selection was not controlled/scientific in any way. This explains the gender representation at the discussions. Furthermore, the facilitators needed small manageable groups to be effective. However, in the rural areas articulate teachers and other professionals attended these meetings and contributed to the lively discussions.



Objectives of the *Taking Transitional Justice to the People* can be chronicled as follows:-

1. Training

The overall purpose of the training component of the project is to create awareness amongst ordinary Zimbabweans on what Transitional Justice is about. The specific objectives would be to train participants on:-

- a) The nature and history of transitional justice.
- b) The aims and objectives of transitional justice mechanisms and
- c) The options and challenges of transitional justice within the Zimbabwean context.

2. Consultation

- d) The overall purpose of the consultative component of the project is to consult, collect and collate, from the people of Zimbabwe in areas that have historically been affected by politically motivated violence, informed public opinion on the desired transitional justice model to be adopted in the transitional setting.
- e) The Consultative meetings would be conducted shortly after the conclusion of the training and would draw participants from the training component of the programme.
- f) The training is aimed at empowering the participants to effectively take part in the debate on transitional justice.

3. Involvement and participation in the constitutional making process

- g) It was the Forum's belief and hope that the Zimbabwean public would be able to respond and debate on these and other issues more meaningfully for possible inclusion in the proposed new constitution when the public consultation sessions envisaged in the political agreement (Article 6.1.ii) start. It would be prudent to have an enlightened Zimbabwean public to engage such state-centric processes that are most likely going to exclude civil society.

1. Putting the Zimbabwe Transitional Justice Discourse into Perspective

Background

The Forum has been in existence since January 1998. It was established by a number of non-governmental organisations working in the field of human rights, in response to what has now been called the “Food Riots” of January 1998. The Forum currently has sixteen (16) member organisations working in the areas of women's rights; civil and political rights; economic, social and cultural rights; freedom of expression and the media; gay and lesbian rights; prisoner's rights; anti-corruption; good governance; and peace building and non-violent ways of conflict resolution.

The mission of the Forum is to reduce organised violence and torture, cruel, inhuman and degrading treatment, to challenge impunity and to foster a culture and the building of institutions of non-violence, tolerance and respect for human rights in Zimbabwe. Its vision is a Zimbabwe that respects all human rights, free of organised violence and torture and cruel inhuman and degrading treatment. To this end the Forum has been working with victims of organised violence and torture with the view of bringing about redress and documenting the violations that would have been suffered by the victims.

Confronting the transitional justice question in Zimbabwe

Transitional Justice – or, the pursuit of comprehensive justice during times of political transition – has come to refer to the development, analysis and practical application of a wide variety of strategies for confronting the legacy of past human rights abuses in order to create a more just and democratic future. In theory and in practice, the central objectives of a transitional justice approach are to confront legacies of abuse in a broad and holistic manner that encompasses criminal justice, restorative justice, social justice and economic justice. This approach is premised on a belief that a responsible justice policy must include measures that seek to achieve both accountability for past crimes and the prevention of new crimes. In addition, it requires taking into account the collective character of the various forms of victimisation, as well as the transitional character of certain human rights crimes.



Despite numerous challenges that have characterised the socio-political environment in Zimbabwe, civil society has been discussing the prospects of transitional justice mechanisms in Zimbabwe for a long time. The ***Breaking the Silence Report***, published by the Legal Resources Foundation and the Catholic Commission for Justice and Peace began this debate. Further, in 2001 the Amani Trust in Bulawayo convened a 'Truth and Justice Conference', which focussed specifically on the situation in Matabeleland. It was, however, a 'Civil Society and Justice in Zimbabwe' Symposium convened in Johannesburg in August 2003 that, for the first time, provided a relatively detailed framework of issues that needed to be addressed. The Johannesburg Symposium brought together leaders from 74 civil society organisations in Zimbabwe, colleagues from civic organisations in South Africa and a number of experts from other jurisdictions.


The main purpose of the Symposium was to explore how best to achieve justice in the broadest possible sense for the many victims of past and present human rights abuses in Zimbabwe. The Johannesburg Symposium proposed the establishment of a '**Truth, Justice and Reconciliation Commission**' (TJRC) to deal with the civil, political, social and economic violations in the colonial and post-colonial dispensation in Zimbabwe. Furthermore, the Symposium Declaration recommended among other things that the proposed TJRC be able to:

'Investigate human rights violations, recommend cases for prosecution, provide for redress and reparations to victims, recommend for the lustration of all those involved in human rights violations, bring out the social and economic human rights violations perpetrated since colonial times and to ensure community reconciliation.'

On 9 and 10 September 2008 the Forum convened a follow-up meeting to the Johannesburg Symposium. The 2008 follow-up meeting restated and reiterated the resolutions made at the Johannesburg Symposium. The meeting further noted the need for an all-inclusive and comprehensive process based on fundamental principles of justice and accountability such as: victim-centric approaches; consultative participation of all stakeholders, particularly the victims; the establishment of the truth; acknowledgment; justice, compensation and reparations; national healing and reconciliation; non-repetition (never again); gender sensitivity; transparency and accountability and nation building and reintegration².

¹Declaration of the Johannesburg Symposium, August 2003, in Civil Society and Justice in Zimbabwe Summary of Proceedings of a Symposium held in Johannesburg 11-13 August 2003. <http://www.santep.co.za/satz/zim2003.htm> (last accessed 10 June 2009).

²Zimbabwe Human Rights NGO Forum Statement on the 15 September 2008 Agreement between ZANU PF and the two MDC formations.



Pursuant to the broad principles set out in the follow-up meeting, particularly the need for a victim-centred and participatory process, the Forum proposed to have training and consultative meetings with individuals in selected constituencies to canvass opinions on what the people of Zimbabwe would want to see in a Transitional Justice Process.³


The Forum is convinced that any discussion on Transitional Justice should begin with the people of Zimbabwe. The debate around transitional justice options in Zimbabwean civil society is very well developed but it remains largely confined to a small grouping of non-governmental organisations. The credibility and legitimacy of transitional justice mechanisms is often measured by the extent to which victims and survivors oppose or support them and the degree to which they are able to participate in and benefit from them. This places a premium on communication and consultation, both with what might best be described as 'organised' civil society (i.e. structures and organisations such as NGOs, churches, etc.), as well as the general public and other groupings that are not organised.

The Forum is convinced that the normative framework and basis for any groundwork on transitional justice in Zimbabwe has now been set in motion by the signing of the political agreement by ZANU PF and the two MDC formations. Civil society has been discussing issues on transitional justice for over ten years now and it is imperative that these discussions be broadened to include the general public and other groupings.

Article 7.1 (c) of the GPA of September 15, 2008 states in no uncertain terms that the new government *“shall give consideration to the setting up of a mechanism to properly advise on what measures might be necessary and practicable to achieve national healing, cohesion and unity in respect of victims of pre and post independence political conflict”*.

In light of these developments, the Forum proposed to conduct a series of public consultative meetings in selected House of Assembly constituencies with the Zimbabwean public at large and formally canvass their views on what they would want to see in any transitional justice process or clauses that will be put into the proposed new constitution.

³It must be noted here that on previous occasions the Human Rights Forum has used the mandate from its membership, information from its clients, information contained in the various databases operated by the Research Unit and the expertise of its staff members to propagate views on what would need to be done in a transitional justice process. However, since the political conditions have changed it would be prudent that civil society actors reengage Zimbabweans and get their views on what they would want to see in any transitional justice programme that would be rolled out in Zimbabwe.



Further to these developments, the Forum embarked on the *Taking Transitional Justice to the People* programme which now forms a fundamental component in the Forum's work on transitional justice. The Forum is convinced that the people's will must inform whatever mechanism or form of transitional justice is to be adopted in Zimbabwe. Prescribed mechanisms will not help the country move forward hence the need for the people to subscribe to the processes around transitional justice.

The Forum organized its meetings through the assistance of local civil society organizations and political parties. Bulawayo Agenda, the Progressive Residents of Bulawayo Association, Gwanda Agenda, and the ZimRights, among other members of the Forum and partners, assisted in organizing these meetings.

The Forum visited thirteen (13) constituencies and discussed with people from all backgrounds; teachers, police officers, mothers with children on their laps, youths, elderly people, clergymen, traditional leaders and other professionals. The Forum conducted sessions in schools, town halls, in the rural areas and cities. Public discussions were held in English, Shona, Ndebele and Tonga speaking communities. In these open forum discussions people expressed themselves in the languages of choice eclectically.

Four hundred and forty-two (442) people took part in the discussions stretching over six months. 47.1% of the participants were women and 52.9% were men. Strikingly, the participants just below the age of twenty years were 2.16% and those above the age of sixty constituted only 7.69% of the participants. It can be inferred that those below twenty years may not have been involved because they could have been at school or college during the sessions or they were not interested and those above sixty could have been apathetic to political discourses following many years of ceaseless violence. Yet it was expected to see more youths taking part because of their supposed interest and involvement in politics as militias, youth leagues and ordinary supporters of their parties. The bulk of participants were those between the ages of twenty-one and sixty years.

The discussions were prefixed by an explanation of what transitional justice is and its major approaches. The facilitators took turns to lead the participants through key areas of the transitional justice and the political processes that had given birth to the discourse in the first place. Facilitators made it clear to the participants that the discussions were not the beginning of the transitional justice process as set out in the GPA or national healing process. The *Taking Transitional Justice to the People Program* was to inform the people about the possible transitional justice mechanisms that can be used to rebuild relationships, communities and the nation twisted by cycles of violence for many years. The program also intended to find out if people were ready for national healing and if so what they wanted to see in terms of nation building and national healing in Zimbabwe.

Objectives of the Taking Transitional Justice to the People Project can be chronicled as follows; -

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The overall purpose of the training component of the project is to create awareness amongst the ordinary Zimbabweans on what Transitional Justice is about. The specific objectives would be to train participants on;-

- a) The nature and history of transitional justice;
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2. Methodology

In order to achieve the objectives set out above, the Forum conducted extensive training and consultative meetings with the general population of Zimbabwe.

The 13 meetings were part of a series of such meetings to be conducted in some 84 constituencies that have historically been the worst affected by violence and repression in the country.

Mapping of Constituencies

The Forum provides the main platform, for most NGOs involved in monitoring and documenting human rights violations, to pool their data in a collaborative endeavour designed to provide a regular overview of reported and recorded violations from across the country. In addition, the Forum has a separate press-clipping database compiled from Harare-based newspapers, which focuses on reported incidents of violations and not individuals. The information collected feeds into the Forum's database.

The database is violation focused, with 16 categories of violations (and four sub-categories of torture), and includes detailed categorisation on the victim, perpetrator, location of incident, etc.

Using the information contained in the database, and further building on information contained in the ***Breaking the Silence report***, the Forum was able to identify 84 constituencies that have been historically worst affected by violence and repression in post independence Zimbabwe.

Mobilisation of the participants to these meetings was done using existing structures of member organisations, partner organisations and all of the political parties operating in the various areas.

Selection of participants

Guided by the facts that:

- public meetings have a tendency of attracting only members of the population that are active in civil and political groups;
- people who are formally employed might not be able to take part in the process, as they are likely to be at work; and
- there is likelihood that some people might not be willing or able to express their view in a public forum;

- the Forum invited participants to attend. Only those reached out came to the meetings. As noted earlier, the selection of participants was not controlled in any way. This explains the gender representation at the discussions. The other factor is that the facilitators needed small manageable groups to be effective.

Selected secondary materials were also used for literature review in this report.

Analyzing participation

Disaggregating personal data of the participants who attended the Forum's meetings helps to demonstrate the participants' representation and how they contributed to the debates along gender lines. The quality of the debates and issues covered was not only a function of the issues the Forum set to cover under its *Taking Transitional Justice to the People* Program, but overall levels of representation along age, gender, level of education and whether one was a victim or affected by violence preceding the call for transitional justice and national healing.

The table below shows the overall representation of the participants at the meetings.

Fig.1

Age Range in years	Female	Male	Total
15-20	5	4	9
21-25	19	39	58
26-30	31	19	50
31-35	48	35	83
36-40	43	47	90
41-45	15	22	37
46-50	24	14	38
51-55	9	15	24
56-60	7	14	21
61-65	5	8	13
66-70	2	8	10
+71	-	9	9
Total	208 (47.1%)	234 (52.9)	442 (100%)

3. The context of violence and impunity in Zimbabwe

Zimbabwe is a country that has been engulfed by a culture of violence and impunity since pre-colonial times. This phenomenon can be traced to the historical tribal wars during the pre-colonial era. The violence was to be further evidenced in the arrival of the colonial settlers who unleashed violence on the indigenous populations in Zimbabwe up to 1980 when the country gained independence. Moreover, violence was predominant during the war of liberation amongst the black liberation fighters themselves. This has not been well-documented. Well-documented evidence abounds for the atrocities in Matabeleland in the 1980s, the violent invasions of farms starting from the year 2000 and in the various elections held in Zimbabwe. In 2005, the Government of Zimbabwe was involved in serious human rights violations during the controversial clearing up of slums exercise in 2005 known as **Operation Murambatsvina**. Most recently, Zimbabwe is still grappling with the aftermath of the violence that gripped the country in 2008 during the Harmonized elections in March 2008 and the failed June 27 Run off Presidential election. Impunity and the failure to hold perpetrators accountable have largely prevailed in most of the situations that have been mentioned above.

Human rights abuses perpetrated, encouraged or tolerated primarily by the state and its agents continue to this day. Most of these violations have constituted criminal and civil wrongs and have led to loss, pain, grief, distrust, uncertainty, suspicion, grievance, anger and dislocation.

Tracing Policies of Impunity in Zimbabwe

The Lancaster House Constitution that brought independence to Zimbabwe was fraught with agreements that abetted the culture of impunity over human rights violations that had occurred since the colonial days. Silence about the past was supposed to heal the nation and assist the politics of reconciliation that was being advocated for by the Mugabe government at independence. Thus on independence day in 1980, Mugabe persuasively told the nation that:

*'Henceforth you and I must strive to adapt ourselves intellectually and spiritually to the reality of our political change and relate to each other as brothers bound one to the other by a bond of comradeship. If yesterday I fought you as an enemy, today you have become a friend and ally with the same national interests, loyalty, rights and duties as myself. If yesterday you hated me, today you cannot avoid the love that binds you to me and me to you. Is it not folly, therefore, that in these circumstances anybody should seek to revive the wounds and grievances of the past? The wrongs of the past must now stand forgiven and forgotten.'*⁴

This strategy by Mugabe drew a veil over the human rights violations of the Rhodesian secret service, army and police. It was at the same time, appreciated by the leaders of the liberation movements because it meant also closing the books on their violence against civilians in Rhodesia and against their rivals in the training camps in Mozambique and Zambia.⁵ Indeed, nowadays this policy looks problematic in terms of condoning impunity. However, this report argues that during the 1980s using the peace vs. justice paradigm, this would have been a welcome development in a country emerging from a war. **However, it is contentious as to who would welcome such a development – the whites that had inflicted harm on the black population or the black majority population because of their quest for peace.**

In the then Rhodesia and Zimbabwe at present, amnesia had its institutional expression in legal immunity and amnesty by the state. Human rights defenders and the independent media have been prevented from documenting the activities of perpetrators. The government has also thwarted the prosecution of perpetrators by political manipulation of the police and by undermining the independence of the judiciary,⁶ either through apparent manipulation or by the passage of repressive legislation.

In any case granting amnesty to the Rhodesian police and military personnel for human rights violations was a tradition long before the liberation war was at its height although it abetted impunity. **The Indemnity and Compensation Act of 1975** sanctioned this tradition. The legislation sought to indemnify police and soldiers in advance for any human rights violations they perpetrated. The key provision of this Act was that *'if any member of the security forces, defined as the army, the police, and the CIO, or if any civil servant or any minister of government, acting in good faith, committed a breach of the law and became liable criminally or civilly, no court of law could hold them accountable.'*

⁴ "Zimbabwe: A Final Priceless Reward", Newsweek, 28 April 1980, in 'Foreword', B Raftopolous and T Savage (eds), *Zimbabwe Injustice and Political Reconciliation* (Cape Town, Institute for Justice and Reconciliation, 2004).

⁵ See NJ Kriger, *Zimbabwe Guerrilla War: Peasant Voices*, (Cambridge, Cambridge University Press, 1992) at 156 and H Luc "Why Reconciliation Failed in Zimbabwe" <http://www.idea.int/publications/reconciliation> (Last accessed 3 June 2006).

⁶ This can be established by the spate of resignations by senior members of the bench in Zimbabwe and statements by political figures that the government was in no position to protect judges from the wrath of war veterans if they were to pass unfavourable judgements especially in the land cases. It is alleged that being given farms silenced a number of high profile judges. A long-standing problem can also be discerned from the relationship between magistrates and the state where the former are employees of the latter. This certainly compromises the independence of the judiciary.

As part of the Lancaster House Agreement of 1979 that led to Zimbabwe's independence the **Amnesty Ordinance (3) of 1979** and the **Amnesty (General Pardon) Ordinance (12) of 1980** were legislated to grant an amnesty to all of those who had participated in the struggle for African self-determination or the defence of then-Rhodesia for any human rights violation they had committed such as killings, rape, assault or torture.

The Matabeleland Massacres

Starting in the early 1980s, the purported threat of "dissident" ex-guerrilla fighters in the Matabeleland and Midlands provinces led to a counter-insurgency war commonly known as the Gukurahundi⁷ in which several thousands of civilians were killed or "disappeared".⁸ Mugabe accurately presaged the violence in a 1982 speech to parliament. ***"An eye for an eye and an ear for an ear may not be adequate in our circumstances. We might very well demand two ears for one ear and two eyes for one eye"***.⁹ Some estimates put the number of deaths at up to 10,000 civilians. Thousands were arbitrarily detained, beaten and often tortured in official operations by the Zimbabwe National Army's Fifth Brigade that was directly 'answerable to Mugabe himself being outside of the normal army command structures'.¹⁰ Villagers in rural Matabeleland consistently refer to the violence of the 1980s as far worse than that of the liberation war.¹¹ Most of the perpetrators of other mass killings and "disappearances" can never conclusively be identified. The **Chihambakwe Commission** was set up by the government to investigate these events. However, the report of this Commission has never been made public. 'Just as much as the Nazi period was portrayed as an accident of German history'¹² the 1980s atrocities in Zimbabwe have been portrayed as a regrettable and ugly part of its history that should stand forgiven and forgotten. However, as Summerfield notes '**... the denial to acknowledge the dead victims as if they never existed ... must be challenged if survivors are to make sense of their losses and the social fabric is to mend.**'¹³ In 1999 human rights groups initiated court action to compel the government to release the report however, the government claimed that the report was missing and could not be located.

⁷ 'Gukurahundi' refers to the first rain of summer that washes away the chaff from the previous season. Mugabe gave this name to 5 Brigade at the passing out parade in December 1982. Civilians in Matabeleland see themselves as the rubbish that had to be washed away. See E Shappel p.59.

⁸ "The antagonisms between the two guerrilla armies hardened into hostilities between the two parties, as ZANU PF became convinced that ZAPU was supporting a new dissident war in order to improve its standing in the country. ZAPU in turn has expressed its belief that ZANU PF used the pretext of the disturbances as a long awaited opportunity to crush ZAPU once and for all." See Catholic Commission for Justice and Peace and the Legal Resources Foundation (CCJP and LRF). *Breaking the Silence, Building True Peace: A Report on the Disturbances in Matabeleland and the Midlands 1980 – 1988*. LRF and CCJP, Harare, 1997


⁹ Quoted by M Meredith, *Our Votes, Our Guns* (New York: Basic books, 2002) 65.

¹⁰ E Sharri at 45.

¹¹ Ibid at 46.

¹² H Adam, *Divided Memories*. Telos, No//18, Winter 2000, at 90.

¹³ D Summerfield 'Raising the Dead: War, Reparation, and the Politics of Memory', (1995) *British Medical Journal*, 311 at 495 – 497.




The culture of impunity originally conceived to deal with the human rights violations of the liberation war period, also became a driving force in the independence era. A **Clemency Order of 1998** pardoned all violations committed by all parties between 1982 and the end of 1987 – thus obscuring the Matabeleland atrocities.

Clemency Order (1) of 1995, officially excused the politically-motivated beatings, burning of homes and intimidation perpetrated by supporters of ZANU-PF during the 1995 elections, by granting amnesty to those liable to criminal prosecution for or convicted of these crimes. This set a further precedent for yet another presidential pardon for political violence, **Clemency Order (1) of 2000**, which was declared after the violent June 2000 parliamentary elections. Once again, those involved in human rights violations - such as kidnapping and torture, but excluding murder, rape and fraud, could not be held accountable for criminal or civil claims through the justice system. Contentious questions arise from these situations. Firstly the impunity gap arising from the pardons will need to be addressed somehow. Secondly there is need to establish whether the pardons were in fact legally binding. Questions can be asked as well with regard to whether victims and survivors of pardoned human rights violations can still have recourse to judicial or other mechanisms of redress.

Today, human rights violations occur and the majority of perpetrators mainly aligned to ZANU PF have not been punished and are not likely to be prosecuted or held accountable for their crimes. Names like Detective Constable Henry Dowa,¹⁴ Joseph Mwale, (a CIO operative) and many other state agents come to mind as people who continue to commit torture and other serious human rights violations in the name of the state with shocking impunity. Numerous cases of arbitrary arrests, displacement, extrajudicial killings, torture and other serious human rights violations have been documented but the perpetrators continue to enjoy impunity.

¹⁴ Detective Inspector Henry Dowa who is based at the Law and Order Section of the Criminal Investigation Department (CID) of the ZRP, Harare Central Police Station has numerous serious allegations of torture linked to him.



A highly contentious issue has been the effects and causes of **Operation Murambatsvina**¹⁵ wherein the government demolished slums and other living quarters for people countrywide. The operation conducted by the army, police and other government agents caused severe human rights violations attracting international condemnation. According to the United Nations Special Envoy Report¹⁶ an estimated 700, 000 people in the cities lost 'either their homes, their sources of livelihood or both', while a further 2.4 million people were affected indirectly.

Members of the security apparatus and militias lack confidence about the consequences of any change in regime, including exposure to prosecutions and retribution. In addition, state institutions for protecting or remedying abuses are weak or directly implicated in past and ongoing violence. Various elements of society may be marginalized, indifferent, unaware, insecure, afraid of discovery, suffering directly, desiring answers, accountability, or simply practical relief. There may also be high levels of denial or inability to know the truth, and especially if there is a change, there may be a desire for self-help retribution and settling of scores, where the truth of the violence is well known, its doers identifiable. The possibility also exists that the legacy of decades past unresolved violence might rise and manifest.

¹⁵ See two different reports by the Zimbabwe Human Rights NGO Forum, 'Order Out of Chaos or Chaos out of Order? A Preliminary Report on Operation Murambatsvina', June 2005 and 'The Aftermath of a Disastrous Venture: A Follow Up Report on Operation Murambatsvina', August 2005.

¹⁶ See United Nations' Report of the Fact Finding Mission to Zimbabwe to assess the scope and Implementation of Operation Murambatsvina by the United Nations Special Envoy on Human Settlements Issues on Zimbabwe Mrs Anna Kajumulo Tibaijuka, July 2005.

4. The concept of transitional justice

Transitional justice refers to a range of approaches that societies undertake to deal with diverse past political situations such as authoritarianism, totalitarianism, or conflicted democracies¹⁷ to a stable democratic state.¹⁸ States endeavor to achieve this by taking up a range of mechanisms to reverse a past marked by *inter alia*, regime illegitimacy, repressive institutions, absence of the rule of law and denial of human rights violations. In responding to the legacies of past widespread or systematic human rights abuses, states may have a number of objectives. These may vary from the need to punish perpetrators, establish the truth about past human rights violations, repair damages and prevent further abuses.¹⁹ Other aims include promoting national reconciliation through reversing past social and economic injustices.

Likewise there are a variety of mechanisms implemented to reach these objectives ranging from a forgive-and-forget policy, as in Mozambique, holding trials in domestic or international courts, lustration,²⁰ creating a commission of inquiry, awarding reparations, building memorials, or putting in place military, police, judicial or other reforms.²¹ South Africa took the way of a Truth Commission,²² Rwanda²³ and the Former Yugoslavia²⁴ opted for International Tribunals, there was a Special Court²⁵ and Truth Commission²⁶ established in Sierra Leone and a Historical Clarification Commission in Guatemala.²⁷

¹⁷ See C Colm and F Ni Aolian, 'The Paradox of Transition in Conflicted Democracies', (2005) 27 Human Rights Quarterly 172 at 213. Also see RG Teitel, *Transitional Justice* (Oxford University Press 2000) for more detailed discussions on the genealogy of transitional justice.

¹⁸ SP Huntington, *The Third Wave: Democratisation in the Late Twentieth Century* (University of Oklahoma Press 1991) at xiii.

¹⁹ See United Nations Secretary General's Report, *The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies* S/2004/616 para 8.

²⁰ UN Commission on Human Rights, *Report of the independent expert to update the Set of Principles to combat impunity*, Addendum, *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005 states that:

'Public officials and employees who are personally responsible for gross violations of human rights, in particular those involved in military, security, police, intelligence and judicial sectors, shall not continue to serve in State institutions. Their removal shall comply with the requirements of due process of law and the principle of non-discrimination. Persons formally charged with individual responsibility for serious crimes under international law shall be suspended from official duties during the criminal or disciplinary proceedings.'

²¹ See PB Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (New York and London Routledge 2002) at 11-12. For a more detailed discussion of transitional justice mechanisms see CT Call, 'Is Transitional Justice Really Just', (2004) 11 Brown Journal of World Affairs, 101.

²² See Truth and Reconciliation Commission of South Africa Report 1999; Promotion of National Unity and Reconciliation Act, No. 34 (1995) which established the Truth and Reconciliation Commission. For an historical and what this thesis considers an insider's perspective from the former Deputy Chairperson of the South African Truth and Reconciliation Commission see A Boraine, *A Country Unmasked* (Oxford University Press 2000).

²³ Statute of International Criminal Tribunal for Rwanda Nov 8, 1994, U.N.Doc.S/RES/827 (1993).

²⁴ Statute of International Criminal Tribunal for the Former Yugoslavia, U.N Doc. S/RES/827 (1993).

²⁵ Statute of the Special Court for Sierra Leone Aug 14, UN Security Council Resolution 1315 (2000).

²⁶ Sierra Leone Truth and Reconciliation Commission Act 2000.

²⁷ See generally, Guatemala: Memory of Silence – Report of the Commission for Historical Clarification Conclusions and Recommendations at <http://shr.aas.org/guatemala/ceh/report/english/toc.html> (Last accessed on 5 July 2006).

However, contentions have always arisen among other issues, on the ethical, legal and political consequences of the choices discussed above.²⁸ ***Questions of due process²⁹, who will be prosecuted, what crimes will be amnestied, what compensation will be given to victims or survivors, availability of resources, and the very fear of reverting to the status quo ante³⁰ come to the fore.³¹ In some cases, victims have become perpetrators such that when the time to hold alleged perpetrators accountable comes, the majority of the population will be both victims and perpetrators.³²***

Elin Skaar takes these issues into consideration and persuasively concludes that the choice of instituting truth commissions, trials or nothing for countries wanting to deal with past human rights violations

'depends on the relative strength of demands from the public and the outgoing regime, the choice tending towards trials as the outgoing regime becomes weaker and towards nothing as the outgoing regime becomes stronger, with truth commissions being the most likely outcome when the relative strength of the demands is roughly equal'.³³

Terms such as justice, amnesty, truth, and reconciliation tend to recur in many discussions on transitional justice in Zimbabwe and elsewhere. Therefore, there is need to explain their meanings. This report takes from the diplomatically accommodative definitions given in the UN Secretary General's report that justice is,

'an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims and for the well being of society at large'.³⁴

²⁸N Roht-Arriaza and L Gibson, 'The Developing Jurisprudence on Amnesty', (1998) 20 Human Rights Quarterly 843.

²⁹Due process considerations that need to be adhered to in prosecutorial initiatives include: rights of suspects; rights to be promptly informed of charges; legality and conditions of detention; an impartial bench; right to translated documents; right to be tried without delay; right to be present during trial; public trial; presumption of innocence; right to silence; right to appeal and remedies for breaches of due process.


³⁰See for example in SP Huntington supra note 2 at 216. General Pinochet when he was still president of Argentina declared that 'the day they touch any of my men will be the end of law'.

³¹See J Sarkin, 'To Prosecute or not to Prosecute? Constitutional and Legal Issues Concerning Criminal Trials', in C Villa – Vicencio and E Duxtader (eds), *The Provocations of Amnesty: Memory, Justice and Impunity* (Institute for Justice and Reconciliation Cape Town 2003) at 240 and B Hamber, 'Rights and Reasons: Challenges for Truth Recovery in South Africa and Northern Ireland' (2003) 26:4 *Fordham International Law Journal* 1074, at 1084.

³²See S Huntington supra note 18 and also V Havel, New Year's Address, *Uncaptive Minds* 3 (January – February 1990) at 2.

³³E Skaar, 'Truth Commissions, Trials – or Nothing? Policy Options in Democratic Transitions', (1999) 20 *Third World Quarterly* 1109, at 1110. See also RG Teitel, 'Transitional Justice Genealogy', (2003) 16 *Harvard Human Rights Journal*, 69. She argues for a theory that a close relationship exists between the type of justice pursued and the relevant limiting political conditions.

³⁴See UN Report at Para 7.



Amnesty in this report will be generally understood to be 'an official act that provides an individual with protection from liability – civil, criminal or both for past acts'.³⁵ Reconciliation, a difficult term to define, is generally taken in this report to be 'a cancellation of enmity ... achievable only when perpetrators and beneficiaries of past injustice acknowledge collective responsibility for wrong-doing and when victims, through the same process, regain their self-respect'.³⁶ Truth as described by Crocker quoting Alex Boraine is knowing about 'whose moral and legal rights were violated, by whom, how, when and why'.³⁷

Transitional justice will shape how the past violations are handled and how the future is mapped. The question of transitional justice, is how should a fledgling democracy reckon with severe human rights abuses that earlier authoritarian regimes, their opponents, or combatants in an internal armed conflict have committed? Sometimes the term transitional justice is used to refer exclusively to penal justice and even to retributive interpretations of trials and punishment. The term in this report is used more broadly to cover in addition such concerns as compensatory, distributive, and restorative justice.

The challenge for a new democracy or countries trying to break with the past is to respond appropriately to past evils without undermining the new democracy or jeopardizing prospects for future development.


A central factor in the transitional justice debate is the importance of balancing the need for 'restorative justice' with solemn principles pointing to criminal trials and 'retributive justice'. In the former, the focus is beyond simply ensuring formal accountability for wrongs; the focus is on the vindication of the victim, not the punishment of perpetrators. Restorative justice approaches also emphasize a need to focus on 'bottom-up' processes founded in ordinary people's experiences and concerned with taking steps that they feel would set things right. This is to be contrasted with processes involving only some elites – whether peacemakers, truth commissioners, prosecutors, or indicted persons.

A restorative justice approach does not, however, discount the value and effectiveness of criminal punishment, including as a means of affirming the dignity of victims and preventing vengeance. Trials in criminal courts in transitional settings cannot easily be dismissed as merely backward-looking: they may be essential to ensuring a sense of 'justice', avoiding self-help measures, and to deterring future abuses.

³⁵ RC Slye, 'Amnesty, Truth and Reconciliation: Reflections on the South African Amnesty Process' in R Rotberg and D Thompson (eds), *The Morality of Truth Commissions Truth v. Justice* (Princeton University Press United Kingdom 2000) at 171.

³⁶ R Bhargava, 'Restoring Decency to Barbaric Societies' in R Rotberg and D Thompson (eds) *The Morality of Truth Commissions Truth v. Justice* (Princeton University Press United Kingdom 2000) at 60.

³⁷ DA Crocker, Truth Commissions, Transitional Justice, and Civil Society in R Rotberg and D Thompson (eds), *The Morality of Truth Commissions Truth v. Justice* (Princeton University Press United Kingdom 2000) at 100



There are certainly real-world tensions between pursuing both 'peace' and 'justice'. In some cases, the price of peace is accepting that justice might need to be stayed against important stakeholders, although some aggrieved parties will simply not be able to contemplate peace without justice being seen to be done. To simply place prosecutorial justice and the attainment of peace 'into opposed, abstract categories' comes at the expense of 'an informed analysis of where tensions do, and do not, exist on the ground'.

³⁸ A Neier, 'What Should Be Done About the Guilty?', (1990) 37 New York Review Books at 32.

5. Taking Transitional Justice to the People Programme

To fulfill its stated objectives the Forum conducted outreach meetings in the four provinces of **Masvingo, Matabeleland South, Bulawayo and Matabeleland North**. The Forum met with people from the following constituencies: **Masvingo Central, Bikita East, Bikita South, Gutu Central, Chiredzi West, Gwanda Central, Nkulumane, Bulawayo East, Zaka East, Zaka Central, Matobo North, Tsholotsho North** and in **Chivi South**. Collectively, 442 participants attended the workshops and contributed to the lively discussions.

The *Taking Transitional Justice to the People* Program premised its discussions on truth seeking, prosecutions, reparations and institutional reforms. Although these concepts are techno-legal in nature when explained properly, even ordinary people could participate effortlessly and intelligently. In these meetings, the Forum introduced transitional justice concepts such as Truth seeking/Truth Commissions; Reparations; Prosecutions and Institutional Reforms. Other concepts of transitional justice were discussed along the four major ones stated above. The following is a brief outline of what transpired at the meetings and the report of what the people in these meetings conveyed to the Forum in terms of transitional justice in Zimbabwe.

³⁸ A Neier, 'What Should Be Done About the Guilty?', (1990) 37 New York Review Books at 32.

6. Truth seeking and Truth Commission for Zimbabwe

Sessions on this topic sought to introduce the idea of truth seeking, truth commissions, challenges faced and how the people thought they could deal with such processes.


In transitional justice discourses, truth recovery represents another key approach to finding out the truth about what happened to victims. Aryeh Neier notes that:

‘By knowing what happened, a nation is able to debate honestly why and how dreadful crimes came to be committed. To identify those responsible, and to show what they did, is to mark them with a public stigma that is a punishment in itself, and to identify the victims, and recall how they were tortured and killed, is a way of acknowledging their worth and dignity.’³⁸

Hayner adds that far beyond simply finding and stating the truth, official truth bodies have often been given a wide-ranging mission in conformity with the international norms discussed above. In a number of cases, they have become the most prominent government initiatives dealing with past crimes and the central point out of which other measures for accountability, reparations and reform programs are developed. The stated reasons behind setting up a truth commission have differed between countries. For example, **some stress national reconciliation and the need to close the book on the past**; others have framed it **as a step toward prosecutions that will follow**; yet others see **an inquiry into the past as a means to distance the new government's policies from the former regime and to highlight a new rights-respecting era**.

Discussions around coming up with a truth commission were held in the various meetings. The participants noted that a truth commission could establish the truth about what happened during Zimbabwe's dark past and recommend steps toward victim reparations. The participants noted that for the case of Zimbabwe, the establishment of a truth commission could address the dual victim/perpetrator identities since most of the post independence perpetrators are themselves victims of the colonial past including Mugabe and his top security men who are accused of perpetrating violations. The participants were concerned and noted that any truth seeking exercise had to be comprehensive and not only attempt to punish or seek revenge because the majority felt this would alienate victims of earlier generation victimization especially from the liberation war. Given the moral significance of individual accountability, most participants felt the identity of individual perpetrators should be brought to light. There is also what has been called emotional truth – knowledge concerning the psychological and physical impact on victims and their loved ones of rights abuses and the threat of such abuses. Just as important is less individualized and more general truth, such as reasonable interpretations of state actions and those of its opponents, as well as causal explanations of the chain of command, institutional structures and economic problems that resulted in rights violations.

³⁸ A Neier, 'What Should Be Done About the Guilty?', (1990) 37 New York Review Books at 32.




Victims also noted that the truth commission approach seemed to offer an opportunity for a public platform for victims. Victims noted that what they hoped to receive from a truth seeking process was acknowledgement by the perpetrators and the state for the harm suffered. Issues around victims feeling respected and recognized kept coming up in the meetings. Most of the victims insisted on a public way of truth seeking because they felt that since most of the violations were done in secret, the perpetrators would feel secure knowing that the victims would not air their grievances or tell their stories in public.

The participants pointed out that a truth commission would need to be formed by the people and not on their behalf. It was strongly put across that people, who have unquestionable integrity, are morally upright and with experience, should sit on such a body. The participants strongly held the view that people needed to control what the commission would do if it were set up. Participants recalled and mentioned the previous commissions set by the government whose reports were never made public, for instance, the *Chihambakwe Commission* set to establish what happened in the Midlands and Matabeleland Disturbances between 1983 and 1987. While some participants felt that these commissions can be formed and report to the parliament, they remained skeptical of parliament-controlled commissions which they viewed as close to political manipulation by political parties having the majority in parliament. To protect the integrity of any such commission, the participants suggested that their compositions should consist of representation from the civil society, judiciary, faith-based organizations and ordinary people.

Participants also noted the limitations of the truth commissions and suggested that a Truth, Justice and Reconciliation Commission was the way to go.

The participants acknowledged the weaknesses of truth commissions and aired their reservations around such processes. It was noted that under truth commissions, perpetrators of past violence often do not own up. Often, political parties protect their henchmen as a way of covering up the truth and avoiding prosecutions. The participants accepted this problem and concurred that given such challenges, the process had to be gradually implemented with all sensitivities acknowledged. Given this point, some argued that for Zimbabwe to achieve transition to democratic governance and have a complete break with the past, transition would mean the dismantling of ZANU (PF) control of the state and other functions which do not necessarily need to be controlled by the party such as state institutions – the police, army, CIO, state parastatals and so on. The participants pointed out that as long ZANU (PF) still had power, it would stop all forms of transitional justice that would amount to punishment of their own.



It was noted that any truth commission set to deal with Zimbabwe's past needed to create trust to enable the people to approach it for truth telling. Gender activists were concerned that commissions often leave out women representation on their panels. The participants suggested that the composition of the commissions must have women who understand the concerns of women who will appear before them.

Some participants at the meetings argued that the Government of National Unity (GNU) lacked the legitimacy of taking a lead in transitional justice processes in Zimbabwe, because some members of the GNU were also actors in violence.

The Forum enquired on what could be done to ensure that the transitional justice process was achieved in the light of these arguments. They argued that justice delayed is justice denied and something has to be done to expedite the process of transitional justice. Against this background, some participants argued for a new constitution and a new government that can be mandated to carry out the transitional justice process legitimately instead of the current arrangement.

In addition it was also noted that all transitional justice mechanisms should be part of a holistic, integrated process; truth telling without prosecutions will not be acceptable. Participants noted that "transitional justice processes should be conducted to their logical conclusion. Truth telling without justice (prosecutions) is not enough"



Truth for amnesty

One other avenue for transitional justice process is truth for amnesty in which the offender would trade truth with general pardon from the government. Participants felt disparaged by situations where the state can give amnesty in exchange for a truthful account from a perpetrator. Victims argued that while the state can give amnesty, total forgiveness, healing and reconciliation can only come from the injured person or survivor of that violence, therefore people were not comfortable with general pardon for criminals.

Participants pointed out that while the state can forgive, it is the duty of the perpetrator of violence to make good with the survivor. To be effective, truth for amnesty needs to be a two level process of receiving official pardon for saying the truth about one's acts of violence on one hand, and making efforts of seeking the victim of violence to say sorry. Participants acknowledged that the process of seeking to apologize for the wrong one committed can lead to a sustained dialogue between the victim and perpetrator and his/her victim. However, the participants were unanimously against the process of Truth for Amnesty as an avenue for achieving transitional justice.

Participants felt that peace-building efforts needed to be centered on the will of the people. The will of the people was to openly discuss and confess the evils of the past and therefore leaving the past alone was not viewed favourably. There was no one prepared to draw a line between the past and the present and move on just like that.

The truth, justice and reconciliation approach was important to the participants because it was noted that victims' needs are individual and communal, structural and psychological. Participants noted that truth; justice and reconciliation processes would provide a forum for forgiveness and formal recognition of victims, thereby helping them to reclaim their dignity. It was felt that such processes gave perpetrators formal mechanisms to renounce their violent deeds and rejoin the society in some fashion. Therefore the truth, justice and reconciliation instrument of transitional justice was viewed as cathartic and able to promote reconciliation, lift the lid off on human rights abuses, end denial that might persist in certain sectors of the community and create a visible distance from an abusive era.



Reparations


Reparations were suggested as one method that can be used to achieve national healing and effective transitional justice. Reparations are the same as compensations. The participants were informed that reparations have to take place at various levels; the government and perpetrator levels. To be effective, it has to be commensurate to the harm done.

What came out of the meetings was the observation that some people who committed acts of violence could not afford to pay material reparations. It was pointed out that under such circumstances the government had an obligation to pay. The difficulty with this approach was that government gets its resources from taxing people and therefore if the government were to pay it would be tantamount to victims/survivors compensating themselves.

Some participants suggested that NGOs could assist with funding to compensate victims of violence in light of the fact that the Zimbabwean government might not be able to afford such levels of claims as might arise from such processes. However, it was pointed out that this would continue to motivate the perpetrators to do more acts of violence knowing that they would always pay nothing. Participants emphasized that the perpetrators needed to meet all costs of reparations themselves.

Participants also wanted to know the course of justice in situations whereby one was injured by a person who was sponsored by some politician to commit the act of violence. Several interesting responses came out with some participants saying that the actors in violence should be jailed and the sponsor of violence pay the material compensation. Others noted that even the sponsor of violence should serve a jail term only after he had paid compensation in full because if he/she stayed out of jail he would recruit other people to commit further acts of violence.

On the question of youths from the National Youth Service who got politicized and committed gruesome acts of violence including murder, theft, rape and extortions some of whom are deeply traumatized by their acts, it was noted that they need to be persuaded to come out into the open and should not be threatened. However, participants said that the people were willing to forgive these youths provided that the offenders were truly remorseful and can come out and apologize publicly in their communities for what they did.



Some victims who were taking part in the discussions noted that material compensations were not good enough. They felt symbolic compensations of showing actual remorse would help in healing the injuries suffered for no amount of money can erase the memories of the violations they went through. Particularly those victims who suffered secondary victimization as patients of HIV/AIDS contracted as a result of rape or having to look after children born from rape, saw the need for instruments that would minimize incidences of secondary victimization as healing. Some suggested the setting up of a scholarship fund through the assistance of government or NGOs to meet the education expenses of the children of rape. Victims also pointed out that they needed to define the reparation formula themselves, because it is them who suffered violation.

There were concerns raised on how to compensate for those murdered. It was pointed that death cannot be compensated for and memorialisation for the relatives who were murdered needs to be set up.

On the question of collective reparations, the participants clearly objected to this approach, as this would not satisfy the expectations of the survivors of the violence.



Prosecutions

Participants noted that prosecutions within a transitional justice context would make people accountable for what they did. Questions were asked on the viability of having traditional justice mechanisms employed to deal with rights violations. Participants were keen on such processes but also felt that some of the traditional leaders had been heavily compromised because of their involvement in the violence and thus could not deliver objective justice.

There was general consensus among participants on the need to have prosecutions for violations that have taken place in the past. What was contentious in all the areas visited by the Forum was the form the prosecutions would assume, who would be prosecuted, for what violations and by which adjudicating body.

The retributive effect of prosecutions appealed to most of the participants who felt that before there could be any forgiveness and reconciliation the perpetrators had to be punished for their wrongs. However, various challenges concerning prosecutions were highlighted by the participants during the meetings. The participants noted the limitation of prosecution in the sense that it achieves a win-lose outcome, which is not conducive for national healing. The participants also noted the challenges that were created by the character and form of the current judiciary noting that it was under-resourced and that the bench had been heavily politicized. They also pointed out that while the International Criminal Court was a good initiative, it only tries the big time offenders like national elites and leaders leaving municipal courts to deal with small time offenders. It was pointed out that it can be an onerous task to gather convincing criminal evidence for events that occurred more than thirty years ago since the victims and perpetrators are now very old or dead. Such prosecutions may only be symbolic in this case.

Institutional reforms

Often countries coming out of an authoritarian past need to adopt institutional, legal and policy reforms that will enable the country to achieve the long-term social, economic and political objectives that are essential to preventing civic and/or democratic collapse in the future. Such reforms generally have, as their aim, the elimination of the conditions that led to and maintained prior conflict or repression.


There are many ways of dealing with the problem including removing abusers from public positions, creating new institutions to protect human rights, dismantling or restructuring institutions prone to abuse, implementing human rights training and professionalisation policies and programmes and introducing legal and constitutional amendments to enhance good governance and better protect human rights.

In Zimbabwe, the police and military have in many ways played a partisan political role. Recently, 'the heads and other senior members of both the police and army have made public statements committing the loyalty of the security forces to the ruling party and denouncing the opposition MDC as violent, treasonous and the enemy of the State'.

Partisan policing, selective prosecution, the non-enforcement of court orders and so on, have all contributed to the declining legitimacy of the country's criminal justice system. In addition, the integrity and independence of the judiciary is increasingly questioned. In this regard, it is also increasingly apparent that Zimbabwe's judicial system has been deeply compromised.

Developing a clearer picture of exactly what has transpired will in turn provide a more realistic understanding of what actions (in terms of training, lustration, policy development, etc.) need to be taken in order to rectify the situation. Most transitional situations are constrained by a fundamental lack of detailed information in this regard.

The above background motivated the strong arguments for institutional reforms. It was pointed out that the writing of a new constitution should set the tone for institutional reforms in the country. Against the background of violence in the country and the politicization and militarisation of public institutions, people had lost confidence and trust in the institutions of the state. Participants noted that the government had reduced the boundary between the government and the party to a point where it became difficult to see the differences. This led to the excessive abuse of government institutions and corruption.



Participants' demand for institutional reforms strongly considered reforms in the security sector. There was a clarion call for the removal of the heads of the current security organs such as the ZRP, ZNA, ZPS and the CIO which are not compliant with transitional justice processes. Participants also viewed service chiefs in Zimbabwean security institutions as having dirty hands and cannot serve in the GNU. Keeping them in government would create an invidious position of the perpetrator and victim in one government.

Participants observed that reforms in the security sector would help in professionalizing the security institutions, making them understand their mandate and that officers with dirty hands should be removed and public confidence restored in security institutions. There were suggestions of rebranding of the security institutions along the South African lines which went as far as changing the police uniforms, color of vehicles, curriculum for training to build people's confidence in these institutions.

Participants also noted the need to transform traditional leadership institutions. It was observed that the majority of the traditional leaders took part in or directly sponsored and condoned violence.

7. Timing of the Transitional Justice Process

There were serious debates on when the process of transitional justice should begin and how far back this process would go in terms of Zimbabwe's history of organized violence and torture. The participants could not agree on a particular cut-off date or period. Some argued that the history of Zimbabwe did not begin in 1980 and therefore Rhodesian violations needed to be taken into account. Other participants argued that there was not sufficient memory left to fully account for the violations, as most of the actors were presumed dead or very old. Some participants argued that ignoring pre-1980 occurrences diminishes the role of the liberation movement survivors in the acts of violence and presumes the official pardon and reconciliation pronouncement by Mr. Mugabe in 1980 were cathartic enough to effect lasting national healing in Zimbabwe.

Other dates proffered were 1983, 2000 and 2008. The choice of dates and periods for national healing seemed motivated by the individual circumstances, where violations did occur in that year or if a relative was killed or injured. Those in Matabeleland provinces favoured the timing of transitional justice around the 1980s because this is when the vicious cycle of violence landed heavily on their communities at the back of armoured carriers and tanks in the era of Gukurahundi.

The participants in Masvingo, while they sympathized with victims of violence in Matabeleland, felt that the process of transitional justice should concentrate around the the year 2000 because that was when they saw the epitomy of the violence characterized by the Fast Track Land Reforms, **Operation Murambatsvina** and the state sponsored political violence against opposition parties up to 2008. Setting the date was not really conclusive, but the wisdom of the GPA of accounting for pre and post independence political violence was more attractive.

8. Recommendations

The participants suggested the following recommendations during discussions:

The participants noted the need for a formal and comprehensive process of national healing, reconciliation and transitional justice to begin in Zimbabwe.

They suggested that for transitional justice to be effective the local communities needed to be involved and take ownership of the process.


Decentralization and restructuring of judicial processes in the event of massive prosecutions of many offenders was also recommended.

The participants noted the capacity of the Zimbabwe judicial system and its past record in dealing with political cases as needing innovative and immediate reforms and decentralization, particularly of the court system in order to deal expeditiously and conclusively with cases of violence.

The participants noted the challenges, which the victims and witnesses faced such as the long distances to the courts and the resistance by some perpetrators to stand before the courts and traditional leaders. The participants suggested the need for victim friendly processes that would also be accessible.

It was also recommended that women and men of integrity constitute any body that might be created to deal with transitional justice issues such as truth seeking or prosecutions, on an equal basis to ensure that interests of both sexes are equally and fairly heard.

The participants also voiced concerns on the involvement of actors in the former regime in any bodies that might be created and recommended victim-centered processes more than anything else.



The Zimbabwe Human Rights NGO Forum (also known as the “Human Rights Forum”) is a coalition comprising 16 member organisations. It has been in existence since January 1998 when non-Governmental organisations working in the field of human rights joined together to provide legal and psychosocial assistance to the victims of the Food Riots of January 1998.

The Human Rights Forum has now expanded its objectives to assist victims of organised violence, using the following definition:

“Organised violence” means the inter-human infliction of significant avoidable pain and suffering by an organised group according to a declared or implied strategy and/or system of ideas and attitudes. It comprises any violent action, which is unacceptable by general human standards, and relates to the victims' mental and physical well-being.”

The Human Rights Forum operates a Research and Documentation Unit and offers legal services to assist victims of organised violence and torture claim compensation from perpetrators through its Public Interest Unit.

Member organisations of the Human Rights Forum are:

- Amnesty International (Zimbabwe) (AI(Z))
- Catholic Commission for Justice and Peace (CCJP)
- Gays and Lesbians of Zimbabwe (GALZ)
- Legal Resources Foundation (LRF)
- Media Institute of Southern Africa (MISA)
- Media Monitoring Project Zimbabwe (MMPZ)
- Nonviolent Action and Strategies for Social Change (NOVASC)
- Transparency International (Zimbabwe) (TI(Z))
- Women of Zimbabwe Arise (WOZA)
- Zimbabwe Association for Crime Prevention and the Rehabilitation of the Offender (ZACRO)
- Zimbabwe Association of Doctors for Human Rights (ZADHR)
- Zimbabwe Civic Education Trust (ZIMCET)
- Zimbabwe Human Rights Association (ZimRights)
- Zimbabwe Lawyers for Human Rights (ZLHR)
- Zimbabwe Peace Project (ZPP)
- Zimbabwe Women Lawyers Association (ZWLA)

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