

**Compensation for gross human rights violations:  
Torture and the War Victims Compensation Act.**

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## **Introduction**

Similar to most countries that have been through a civil war, Zimbabwe has struggled with the issue of compensation for its victims. In 1980, the Zimbabwean government enacted the War Victims Compensation Act [Chapter 22]. The purpose of the Act was to provide payment of compensation for sustained injuries or the death of persons caused by the Liberation War. The War Victims compensation Act repealed the Victims of Terrorism (Compensation) Act [Chapter 340] and the notorious Indemnity and Compensation Act (1975), and amended the Workmen's Compensation Act [Chapter 269] and the Pensions Review Act [Chapter 334]. This Act has thus been in existence for more than 17 years, but without substantive review or amendment. This can be taken as evidence that the Act has fulfilled its purpose well, but recent events have suggested that there may be problems with the Act, and these problems may be of two kinds: inadequacies in the original drafting, and inadequacies in the implementation. Here it is of concern to the AMANI Trust that few members of the community, ordinary citizens as opposed to ex-combatants, have received any compensation.<sup>1</sup>

This present paper will first analyse the problems involved in compensating victims of human rights violations, summarising the international perspective. It will then turn to a summary of the situation in Zimbabwe, detailing what is known here in Zimbabwe about the victims of gross human rights violations, and then examining these findings with respect to the War Victims Compensation Act (1980), and its provisions and procedures. Finally it will suggest various recommendations for the future review and amendment of the Act. The focus will be mostly upon victims of torture, as defined by the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, since torture victims are a very numerous - possibly the most numerous - category of victim in Zimbabwe, and a category for whom the War Victims Compensation Act is largely silent.

## **Compensating victims of human rights violations**

The post-Second World War period has seen a sustained interest in issues of reparation, but the interest has grown rather more strongly in last two decades. In general, the field of international human rights law and international law have not devoted much time and effort to the problems of impunity, reparation, and rehabilitation, but this too has changed in the past decade. Much of this has been devoted to the issues of impunity and Truth Commissions, with the issues of compensation and rehabilitation being very much a secondary matter. The concept of reparation covers a variety of different actions, ranging from criminal prosecutions, civil suits for damages, compensation, and finally rehabilitation. Literally, "reparation" means to repair or put right, and thus refers to both legal and psycho-social interventions following a wrongful action.<sup>2</sup> We shall not consider the problems of impunity or Truth Commissions, although they are clearly relevant to any consideration of human rights abuses, and also to reparation, and rehabilitation, but there has recently been interesting analyses of the concept of Truth Commissions.<sup>3</sup>

As pointed out above, reparation can refer to the process of prosecution under criminal law as amends for the wrong inflicted, but this is most frequently excluded by amnesties or statutes of impunity. Reparative damages can also come from civil actions, and there have been interesting developments in this area over recent years, particularly in the United States courts, and, also, there are now a substantial number of international legal instruments that support the concept of reparations following human rights violations. Here we might mention the Universal Declaration of Human Rights of the United Nations, the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel,

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<sup>1</sup> See AMANI (1997.a.), Report on Compensation claims made by AMANI clients (1995-1997), Harare: AMANI.

<sup>2</sup> See Edelstein (1994), "Rights, reparations and reconciliation: Some comparative notes", paper presented to Centre for the Study of Violence and Reconciliation, 27<sup>th</sup> July 1994.

<sup>3</sup> See Hayner (1996), "Commissioning the truth: further research questions", *Third World Quarterly*, 17, 19-29; Hayner, (1994), "Fifteen Truth Commissions - 1974 to 1994: A Comparative Study", *Human Rights Quarterly*, 16, 597-655.

Inhuman or Degrading Treatment or Punishment, and the International Convention on the Elimination on the Elimination of All Forms of Racial Discrimination. Furthermore,

Paragraph 59 of the Vienna Declaration and Programme of Action on Human Rights, which was ratified by all 183 Member States of the United Nations, states the need for assistance to victims of torture, as well the need for effective remedies for their physical, psychological and social rehabilitation.<sup>4</sup> Furthermore, the legal foundation for reparation and rehabilitation has been extended in international law by a series of land mark court cases in which courts, such as the Inter-American Court of Human Rights, have held that, under international law, a duty to provide reparations attaches to every violation.<sup>5</sup>

Although it is important to consider the legal basis for reparations and rehabilitation, this might not seem so relevant to the present discussion since the War Victims Compensation Act by virtue of its existence concedes that there is need for compensation. What is not so clear in the Act, however, are the intended beneficiaries of this legislation, and hence it remains important nonetheless to consider the international position regarding torture survivors. The legal basis for making reparative awards to torture survivors is well-discussed by Lillich and Lutz (Lillich.1993; Lutz.1989), to whom the interested reader may be referred.

### **Human rights violations**

Torture is expressly forbidden by the Constitution of Zimbabwe, under the section dealing with Protection from Inhuman Treatment, but there is no mention of the matters of reparation or rehabilitation. Reparation for torture is specifically guaranteed in the UN Convention Against Torture, which, unfortunately, Zimbabwe has yet to sign or ratify. This Convention, signed by over 72 member states of the United Nations, states clearly in Article 14, that “each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible”. Furthermore, “in the event of death of the victim as a result of his torture, his dependants shall be entitled to compensation”. Thus, the UN Convention deals expressly with both the issues of compensation and rehabilitation.

However, as serious a violation of human rights as torture is, it is only one of the forms of human rights violation that can be considered as worthy of some form of reparation. As Lutz (1989) has pointed out, the forms of gross human rights violations are still very much under discussion in different parts of the world, with torture, disappearances, detention and summary executions all currently receiving the attention of human rights tribunals and commissions. However, a short list can be compiled, using criteria from the United States of America.<sup>6</sup> This list would include the following:

- (a) genocide;
- (b) slavery or slave trade;
- (c) murder or disappearance of individuals;
- (d) torture or other cruel, inhuman or degrading treatment or punishment;
- (e) prolonged, arbitrary detention
- (f) systematic racial discrimination;
- (g) consistent patterns of gross violations of internationally protected human rights.

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<sup>4</sup> See the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention on the Elimination on the Elimination of All Forms of Racial Discrimination. Paragraph 59 of the Vienna Declaration and Programme of Action on Human Rights.

<sup>5</sup> See Lillich (19993), “Damages for Gross Violations of International Human Rights Awarded by US Courts”, *Human Rights Quarterly*, 15, 207-229; Lutz (1989), “After the Elections: Compensating Victims of Human Rights Abuses”, in E.L. Lutz, H.Hannam, & K.J.Burke, (eds), “New Directions in Human Rights”, Philadelphia: University of Pennsylvania Press.

<sup>6</sup> See Restatement(Revised) Foreign Relations Law of the Unites States, Sec.703.Comment C.

Most of these would have occurred in the period covered by the War Victims Compensation Act, the period from 1972 to 1980, but none are expressly mentioned in the Act. However, torture is expressly mentioned in this American list, as is systematic racial discrimination, and thus there are grounds for seeing that reparations for human rights violations involves a broader range of events than war-related injury, which is the expression of the Zimbabwean legislation.

An alternative list has been provided by the Governing Council of the United Nations Compensation Commission.<sup>7</sup> This list may be described shortly as follows:

- Category A: A spouse, child or parent of the individual who suffered death;
- Category B: The individual suffered serious personal injury involving dismemberment, permanent or temporary significant disfigurement, or permanent or temporary significant loss of use or limitation of use of a body organ, member, function or system;
- Category C: The individual suffered sexual assault or aggravated assault or torture;
- Category D: The individual witnessed the intentional infliction of events described in Categories A, B or C on his spouse, child or parent;
- Category E: The individual was taken hostage or illegally detained for more than 3 days, or for a shorter period, in circumstances indicating an imminent threat to his or her life;
- Category F: On account of a manifestly well-founded fear for one's life or of being taken or illegally detained, the individual was forced to hide for more than three days;
- Category G: The individual was deprived of all economic resources, such as to threaten seriously his or her survival and that of his or her spouse, children or parents, in cases where assistance from his or her Government or other sources has not been provided.

This is a more explicit list of violations for which reparation may be sought, and was produced in response to the gross human rights violations committed by Iraq on the citizens of Kuwait. This is a useful categorisation, and, as will be seen, covers all the gross human rights violations that have been experienced by Zimbabweans, both during the War of Liberation and the disturbances of the 1980s'.

There are other questions to be answered though in deciding upon reparation. As Lutz has commented, the issue of the guidelines to be adopted in providing redress is not simple, and requires some thought about reparation, compensation and rehabilitation (Lutz.1989). Her definition of compensation is helpful here: "that which is necessary to extinguish, as far as possible, all the consequences of the illegal act and re-establish the situation which in all probability would have existed if that act had not been committed"(Lutz.1989.p201).<sup>8</sup> This definition is useful since it allows a multiplicity of actions to be taken in respect of reparation, ranging from financial payments through the provision of medical and rehabilitative care, even to the payment of punitive damages.

<sup>7</sup> See United Nations (1994), "Report of the Panel of Experts Appointed to Assist the United Nations Compensation Commission in Matters Concerning Compensation for Mental Pain and Anguish", Geneva: United Nations; See also United Nations Security Council (1992), "Determination of Ceilings for Compensation for Mental Pain and Anguish", Decision taken by the Governing Council of the United Nations Compensation Commission, Fourth Session, Geneva, 20-24 January 1992.

<sup>8</sup> See Lutz (1989), "After the Elections: Compensating Victims of Human Rights Abuses", in E.L. Lutz, H.Hannam, & K.J.Burke, (eds), "New Directions in Human Rights", Philadelphia: University of Pennsylvania Press.

The particular course of actions that might apply would depend upon the situation in any particular country: the problems produced by Argentina's "dirty war" are very different from the epidemic violence of the Zimbabwean War of Liberation.

Nonetheless, it is a complicated matter to decide upon the width of a compensation programme. As Lutz comments,

"One might argue that it is impossible to restore former victims of atrocious violations of human rights to the positions they were in beforehand, and that therefore creating a system to compensate them is fundamentally misguided. Under this view, one could still advocate that former victims be given necessary medical or psychological care, and other benefits to assist them in meeting their individual needs, not as compensation for their suffering but because their conditions entitle them to the aid and comfort that such services or benefits provide."  
(Lutz.1989.p202)

Thus, for both of the schema described above it would be possible to produce reparative programmes that met the compensation criteria, or the rehabilitative criteria, or even both. For the UN Commission's scheme, medical and psychological assistance could be provided to victims in most of the categories described, and one could ignore altogether the notion that reparative damages should be made for the violations suffered. The system to be adopted will depend on a range of factors, and will vary from context to context.<sup>9</sup>

However, apart from the problems of deciding upon which human rights violations are deserving of compensation and rehabilitation, there are also problems about upon what basis to make the awards, which is also an area that has received a certain amount of consideration. In view of the recent developments in the administration of the War Victims Compensation Fund, it is worth devoting some time to this issue.

### **Compensation Guidelines**

The matter of compensation guidelines has been well covered by Lutz(1989), and much of the following discussion derives from her article. As Lutz points out, there are a series of questions to be answered in fashioning model guidelines for the awarding of compensation for human rights violations. Her comments apply equally to the award of financial compensation and rehabilitative assistance, and hence no distinction is drawn between these.

Lutz summarises the pertinent questions as follows:

1. who is entitled to compensation?
2. for what categories of loss or damage should compensation be paid?
3. from whom may compensation be sought?
4. when may a person seek compensation?
5. what procedures should be followed in awarding damages?

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<sup>9</sup> For a more detailed discussion of these points, see Lutz (1989), "After the Elections: Compensating Victims of Human Rights Abuses", in E.L. Lutz, H.Hannam, & K.J.Burke, (eds), "New Directions in Human Rights", Philadelphia: University of Pennsylvania Press; see also United Nations (1994), "Report of the Panel of Experts Appointed to Assist the United Nations Compensation Commission in Matters Concerning Compensation for Mental Pain and Anguish", Geneva: United Nations; and also Espersen & Genefke(1994), "Considerations concerning criteria for financial compensation to victims of torture, Copenhagen: IRCT.

The first two questions have been partially addressed above, especially with reference to the United States and the United Nations Compensation Commission. It seems clear that, in international human rights law, claimants can be both direct and indirect victims, and certainly the United Nations Commission accepts this. Lutz points out that there is little difficulty with direct victims: there is no problem in a person suing for their own torture, as was clearly established in the US case of *Filartiga v. Pena-Irala*.<sup>10</sup> Here the US court held that, while torture is a violation of international law, it is also a civil wrong for which individuals may sue, and hence allowed relief to the victim's relatives.

The point about who is a victim and what constitutes loss or damage due to torture is an empirical question as well as a legal one, and there is now considerable forensic evidence to demonstrate the effects of torture upon individuals, as well as the families of torture victims. It is now conventional to distinguish between Primary and Secondary victims. Primary victims are those who have directly experienced physical or psychological torture or organised violence, or who have witnessed or been forced to witness torture or organised violence. Secondary victims are those who live with torture survivors, or have lived in situations of epidemic violence. Both Primary and Secondary victims can suffer disorders as a consequence of their experiences. Below we will provide some Zimbabwean material to support the international findings, but it is sufficient at this point to comment that the UN Commission's view has the general support of most medical scientists working with torture survivors.<sup>11</sup>

The question of damages is not so simple to resolve. Lutz argues that two classes of claims must be entertained: actual damages or reparation for what was actually lost, as well as punitive damages or damages for the nature or severity of the violation. This involves some brief discussion since the principle of punitive damages is not established in Zimbabwean law. The matter of the actual damage has been discussed recently in respect of human rights violations in Matabeleland and the Midlands in the 1980's.<sup>12</sup> This report based its findings on a survey of the existing case law in Zimbabwe, and the actual costs calculated from a series of case studies, but it does not consider the issue of punitive damages.

The notion behind punitive damages is clearly due to the intentional nature of the harm inflicted, which to some extent differentiates torture and inhuman treatment or abuse from other torts or delicts. That torture attracts large damages is well-demonstrated by recent decisions in US courts, dealing with suits under the Alien Tort Statute.<sup>13</sup> These cases have shown damages ranging from US\$2,707,516 to US\$60,004,852, following the landmark case of *Filartiga v. Pena-Irala* in 1980.

However, the principle of punitive damages for gross violations of human rights has yet to be established in international human rights law, although authorities, such as Lutz(1989) may argue that they are necessary, and this view is supported by others working with torture survivors.<sup>14</sup> It is also argued in international human rights law that the victims of human rights violations are entitled to redress from both those who actually caused the injury or suffering and the state. The rationale for making the state responsible lies in the fact that the state is responsible for ensuring that serious human rights violations do not take place. In the Rhodesian state, for example, there was legal responsibility on the government to ensure that security forces and police did not assault or torture citizens, but this responsibility was avoided by the passing of the Indemnity and Compensation Act(1975). Lutz details further reasons for making the state responsible.

<sup>10</sup> *Filartiga v. Pena-Irala*, 630 F.2d 876 (2dCir.1980).

<sup>11</sup> See Espersen & Genefke(1994), "Considerations concerning criteria for financial compensation to victims of torture, Copenhagen: IRCT.

<sup>12</sup> See "Breaking the Silence. Building True Peace: A Report on the Disturbances in Matabeleland and the Midlands. 1980 to 1988, Catholic Commission For Justice And Peace In Zimbabwe & The Legal Resources Foundation, especially Part Three. II. "Legal Damages".

<sup>13</sup> See Lillich (1993), "Damages for Gross Violations of International Human Rights Awarded by US Courts", *HUMAN RIGHTS QUARTERLY*, 15, 207-229.

<sup>14</sup> See Espersen & Genefke(1994), "Considerations concerning criteria for financial compensation to victims of torture, Copenhagen: IRCT.

Firstly, the identity of those causing the harm is frequently not known to the victim, and there may be little or no possibility of subsequently discovering their identity. This is frequently the case in Zimbabwe: in AMANI's experience in Mount Darwin, only two persons have been able to give a name to their torturers. Secondly, victims may be unwilling to reveal the names of their former persecutors for fear of retribution. This is uncommon in Mount Darwin, but has been a factor in Matabeleland, where many former torturers still retain public office in the military or a branch of the civil service. Thirdly, the former torturers are invariably part of a hierarchic chain of command, all of whom are responsible, and should be held responsible. Here, only the state has the power to hold all parties liable and to institute action against the entire chain. The instructive example here is from Germany, and the way in which prosecution of Nazi war criminals has proceeded against all persons involved in gross human rights violations: defence of orders by former soldiers and civil servants has not been allowed to ensure immunity from prosecution, although it has been allowed subsequently.

Finally, only the state is in a position to meet the costs of damages. If civil suits against individuals is the only remedy for torture survivors, then wealthy human rights violators will be sued and poor violators escape, which is scarcely just. The principle here, as Lutz points out, is that damages must be measured according to the needs of victims and not the means of the perpetrators. As Lutz comments here:

“Even states faced with severe economic problems must honour their duty to provide redress to former victims of human rights abuses. A state's shortage of hard currency may, as a practical matter, delay some portion of compensation payments, but it should not be an excuse for failure to review claims or award appropriate damages. The very process by which a state acknowledges that a former victim is legally entitled to compensation is likely to restore that person's sense that justice is being done and may have a positive impact on his or her mental health.” (Lutz.1989.p206)

This is an important point, and one that has agreement from those concerned with the rehabilitation of torture survivors, who have made the point that compensation has rehabilitative as well as legal consequences.<sup>15</sup>

Lutz's fourth point above, relating to the timing of damages claims, is very important too, more especially in the Zimbabwean situation of 1997, where government is seeking to set a time limit for claims. As Lutz comments, there is no statute of limitations for bringing criminal charges against those who have committed gross violations of human rights, which is amply attested by the continued prosecution of Nazi war criminals. However, there are practical considerations to be addressed in deciding upon civil damages, most important of these is that the damages will often be paid by a government that is not responsible for the human rights violations, as is the case with Zimbabwe. This may be unpalatable, but frequently states elect to pay damages rather than to allow politically unpopular prosecutions to take place. Indeed, it is often the case that any form of criminal prosecution of human rights offenders will create massive political instability, and here it is instructive to note the events in Chile, and particularly the events following the Letelier case.<sup>16</sup>

However, it is again important to stress a point made above: that the damages awards must be driven by victims' needs rather than any other need. Victims will frequently place a higher priority on rebuilding lives after the abuse, and thus have little interest in damages for some considerable time after the event. Furthermore, as all those experienced in the rehabilitation of torture survivors will attest, many of the sequelae of torture are not immediately obvious to survivors, especially the psychic effects. There is considerable evidence to demonstrate that psychological disorders may only emerge years, and sometimes

<sup>15</sup> See Gordon (1994), “Compensation suits as an instrument in the rehabilitation of tortured persons”, *TORTURE*, 4, 111-114.

<sup>16</sup> See Lillich (1993), “Damages for Gross Violations of International Human Rights Awarded by US Courts”, *HUMAN RIGHTS QUARTERLY*, 15, 207-229.

decades after torture, and

thus it is inappropriate to place short-time limits on claims for compensation. Some authorities therefore argue that there should be no time limitation on compensation or rehabilitation claims.<sup>17</sup>

Finally, there are the procedural considerations, dealing with the fifth point above: that of the manner of making claims for compensation. Given many of the observations above, it is evident that claiming for serious human rights abuses can be a very difficult process for a person, and hence it is extremely important that the manner of claiming does not disadvantage the survivor or exacerbate their suffering. “Primum non nocere” - “first do no harm” - must always be the guiding principle here, in law as in medicine. Obviously there must be a balance between ensuring that survivors are not further traumatised and the need to ensure that only legitimate claims are processed, and this balance is very much at issue in the current furore over the administration of the War Victims Compensation Fund.

Fortunately, this balance is an issue faced elsewhere, and there are models for Zimbabwe to consult. Lutz offers the procedures set up under the Federal Indemnification Law of the Federal Republic of Germany as exemplary model.<sup>18</sup> There are other alternative models, and still more are being developed, but there certain principles that should guide all procedures:

1. respect for a claimant’s privacy;
2. procedures should be as simple and non-confrontational as possible;
3. procedures should respect any cultural or linguistic differences between those who suffered persecution and the larger society;
4. must be latitude in evidence requirements. If records or other proof are unavailable, then the burden of proof should be on the government and not the claimant;
5. claimants should be entitled to appoint legal representatives to act on their behalf;
6. no person should be deprived of a rights to claim owing to inability to pay for the procedure;
7. there must be legal right of appeal for any denial of a claim.

The justification for these points is largely obvious, but it should be remembered that these points will apply equally to claiming under a statutory provision, such as the War Victims Compensation Act, as they do the bringing of civil suits for damages. The general point once again is that the procedure needs to be “victim-friendly”, to use a contemporary phrase, rather than legalistic in the extreme.

Before moving now to a consideration of the War Victims Compensation Act, it is worth spending a short time detailing the likely recipients of compensation in Zimbabwe, for, although the Act was promulgated to deal with war victims, it is now apparent that there were some groups of victims that were excluded or their needs inadequately understood at the time.

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<sup>17</sup> See Espersen & Genefke(1994), “Considerations concerning criteria for financial compensation to victims of torture, Copenhagen: IRCT.

<sup>18</sup> For detail of this procedure, see Bundesentschaedigungsgesetz (BEG), 29 June 1956; Also see Lutz (1989), “After the Elections: Compensating Victims of Human Rights Abuses”, in E.L. Lutz, H.Hannam, & K.J.Burke, (eds), “New Directions in Human Rights”, Philadelphia: University of Pennsylvania Press.

### **Victims of human rights violations in Zimbabwe (pre-1980)**

Here we will consider those victims of war and torture survivors covered by the Act; that is, those who suffered gross human rights violations between 1972 and 1980.

The consequences of organised violence are many and complex, and include both physical and psychological effects, and, since this is a new field there are still controversies about these effects and how best to classify them.<sup>19</sup> Whilst the work done on the physical effects of torture and organised violence has generated some controversy, mainly over the neurological effects of physical abuse, the field of work concerned with the psycho-social effects is still in its infancy and there remain considerable conflicts. Most of this conflict is over classifications rather than a dispute over whether there are adverse psychological consequences due to torture. Here, some workers have suggested that the Post-Traumatic Stress Disorder(PTSD) concept is too narrow to cover the wide range of effects seen in torture survivors, whilst others have argued that the concept may be adequate with revisions.<sup>20</sup> However, it is apparent that this concept does not cover the physical sequelae, or the possible interactions between the physical and psychological sequelae, phenomenologically-speaking.

Most work on survivors of violence and torture has been done on Western populations, especially on war veterans, or on survivors who are either refugees or forced immigrants in host countries. These studies generally support the view that PTSD is a frequent consequence of organised violence. Studies of PTSD in torture survivors also demonstrate high rates of the disorder in these persons. For example, in a study of Turkish prisoners, it was shown that 85% of the sample had been tortured. Of the tortured group, 39% showed PTSD, whilst none of the non-tortured group had the disorder, and, of those who showed physical sequelae of torture, 71% had PTSD.<sup>21</sup> Since torture survivors will frequently have both physical and psychological sequelae as a consequence of their abuse, this can complicate the clinical picture and research findings.<sup>22</sup>

Psychological disorder is also found in groups exposed to war and other related trauma. For example, high rates of psychological disorder have been found in survivors of concentration camp experiences, with the most common symptoms being those of PTSD -startle reactions, emotional numbness, intrusive thoughts and nightmares. In these studies, there was a consistent clustering of symptoms, which included the following: depression, anxiety, sleep disorders, fatigue, recurring

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<sup>19</sup> See Basoglu (1993) *Torture and Its Consequences: Current Treatment Approaches*, Cambridge: Cambridge University Press. Reeler (1993) *Is Torture a Post-Traumatic Stress Disorder?*, *TORTURE*, 4, 59-65.

<sup>20</sup> See Turner & Gorst-Unsworth.(1990); Also McNally.(1993), *Pathology of post-traumatic stress disorder(PTSD): Boundaries of the syndrome*, in M. BASOGLU (ED), "*Torture and Its Consequences: Current Treatment Approaches*", Cambridge: Cambridge University Press.

<sup>21</sup> Paker et al.(1993), *Psychological effects of torture: An empirical study of tortured and non-tortured non-political prisoners*, in M. BASOGLU (ED), "*Torture and Its Consequences: Current Treatment Approaches*", Cambridge: Cambridge University Press.

<sup>22</sup> See Helzer et al.(1987), *Post-traumatic stress disorder in the general population: Findings of the Epidemiologic Catchment Area Survey*, *N.E.J.MED.*, 317, 1630-1634; Kulka et al. (1988), *National Vietnam Veterans Readjustment Study (NVVRS): Description, current status, and initial PTSD estimates*, Research Triangle Park, NC: Research Triangle Institute; Kinzie et al.(1984), *Post-traumatic stress disorder among survivors of Cambodian concentration camps*, *AMER.J.PSYCHIAT.*, 141, 645-650; Allodi. (1980) *The psychiatric effects in children and families of victims of political persecution and torture*, *DAN.MED.BULL.*, 27, 229-232; Paker et al.(1993), *Psychological effects of torture: An empirical study of tortured and non-tortured non-political prisoners*, in M. BASOGLU (ED), "*Torture and Its Consequences: Current Treatment Approaches*", Cambridge: Cambridge University Press; Rasmussen.(1990), *Medical Aspects of Torture*, *DANISH MED.BULL.*, 37, 1-88; Goldfeld et al.(1988), *The physical and psychological sequelae of torture: Symptomatology and diagnosis*, *J.AMER.MED.ASSOC.*, 259, 2725-2729; Genefke.(1982), *Morbidity spectrum amongst torture survivors*, *ACTA.NEUROLOG.SCAND.*, 65, 320; Rasmussen & Lunde.(1980), *Evaluation of 200 torture victims*, *DAN.MED.BULL.*, 27, 241-243.

nightmares, irritability, ruminations, isolation, and startle reactions.<sup>23</sup> In populations experiencing active war, there is strong evidence for high rates of

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<sup>23</sup> See Kinzie et al.(1984), Post-traumatic stress disorder among survivors of Cambodian concentration camps, *AMER.J.PSYCHIAT.*, 141, 645-650; Eitinger.(1961), Pathology of the concentration camp syndrome, *PSYCHIAT.*, 5, 371-379; Ostwald & Bittner.(1968), Life adjustment after severe persecution, *AMER.J.PSYCHIAT.*, 124, 1393-1400.

psychological disorder. One study from Sri Lanka showed a prevalence of about 64% in a general population, with a wide variety of disorders seemingly related to war trauma,<sup>24</sup> which is a prevalence rate frequently found in refugee populations.<sup>25</sup>

The prevalence of disorders due to trauma is rather variable, and has been assessed in two ways: one approach has been to examine prevalence in the general population, whilst the other has been to examine prevalence in "high risk" groups. For example, the Epidemiological Catchment Area(ECA) Survey estimated the lifetime prevalence of PTSD at about 1.3% in the general population, and at 3.5% in persons exposed to civilian or military violence, whilst a rate of 20% was found for veterans wounded in Vietnam.<sup>26</sup> Another community based epidemiological study estimated the lifetime and six-month prevalence rates at 1.3 and 0.44% respectively.<sup>27</sup> Those with PTSD had greater job instability, a family history of psychiatric disorder, parental poverty, and child abuse. The National Vietnam Veterans Readjustment Study reported lifetime prevalence rates of 30.9% for males and 17.5% for females, whilst, for those exposed to high war zone stress, the current prevalence rates were 38.5% and 17.5% for men and women respectively.

Thus, work on the health consequences of trauma and organised violence indicates very strong associations between trauma and psychological disorder, and an indication that there is a "dose -response" effect: the more severe the trauma the more likely that there is an associated psychological disorder. This hypothesis would therefore predict much higher rates of disorder in torture survivors than in people who merely experience an isolated incident of trauma, such as a motor traffic accident. However, this view is modified by a recent study which demonstrated that PTSD was more strongly predicted by the subjective appraisal of trauma than the type of injury received.<sup>28</sup> Furthermore, the applicability of PTSD to torture has also been modified by recent work, which indicates that PTSD is merely one of several diagnoses applicable to torture.<sup>29</sup>

In Africa, clinical or epidemiological studies of the health consequences of organised violence are rare, although there is a large literature making comment upon such effects, especially the effects upon children.<sup>30</sup> There are a few clinical studies, which generally support the conclusions of the Western work.<sup>31</sup> Recent Zimbabwean work has suggested that disorders due to violence may be high in vulnerable populations, such as refugees, and the most recent work indicates very high rates of these disorders in areas that suffered during the Liberation War of the 1970's.<sup>32</sup>

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<sup>24</sup> See Somasundaram & Sivayokan.(1994), War trauma in a civilian population, *BRIT.J.PSYCHIAT.*, 165, 524-527.

<sup>25</sup>See Reeler & Immerman.(1994), An initial investigation into psychological disorders in Mozambican refugees: Prevalence and clinical features, *CENTRAL AFRICAN JOURNAL OF MEDICINE*, 40, 309-315

<sup>26</sup> See Helzer,Robins & McEvoy.(1987), Post-traumatic stress disorder in the general population: Findings of the Epidemiologic Catchment Area Survey, *N.E.J.MED.*, 317, 1630-1634.

<sup>27</sup> See Davidson et al.(1991), Post-traumatic stress disorders in the community: An epidemiological study, *PSYCHOL.MED.*, 21, 713-721.

<sup>28</sup> See Feinstein & Dolan.(1992), Predictors of post-traumatic stress disorder: A examination of the stress criterion, *PSYCHOL.MED.*, 21, 85-91.

<sup>29</sup> See Turner & Gorst-Unsworth (1990), Psychological sequelae of torture, a descriptive model, *BRIT.J.PSYCHIAT.*, 157, 475-480.

<sup>30</sup> See Dawes.(1994), The Emotional Impact of Political Violence, in A.DAWES, & D,DONALD, (eds), "Childhood and Adversity", Cape Town: David Phillip.

<sup>31</sup> See Michelson.(1994), Township violence, levels of distress, and post-traumatic stress disorder, among displacees from Natal, *PSYCHOL. IN SOCIETY*, 18, 47-56; Straker.(1993), Exploring the effects of interacting with survivors of trauma, *J.SOC.DEV. IN AFRICA.*, 8, 33-47.

<sup>32</sup> See Reeler.(1995), Trauma in Mozambican refugees: Findings from a training programme for refugee workers, *TORTURE*, 5, 18-21; Reeler & Immerman.(1994), An initial investigation into psychological disorders in Mozambican refugees: Prevalence and clinical features, *CENTRAL AFRICAN JOURNAL OF MEDICINE*, 40, 309-315; Reeler & Mupinda.(1996), An Investigation into the Sequelae of Torture and Organised Violence in Zimbabwean war veterans, *LEGAL FORUM*, 8, 12-27; Reeler & Mupinda.(1995), Report of a pilot project to assist survivors of torture and organised violence in Mount Darwin District, Zimbabwe, April-July 1995, Harare: AMANI.

### **Mount Darwin District: A case study**

Mount Darwin is an administrative district in Mashonaland Central Province of Zimbabwe. Situated in the north-east of the country, this district was very early involved in the Liberation War of the 1970's, with the first attack of the ZANLA forces coming in December 1972 at Altena Farm in Centenary, an adjacent district. Mount Darwin, with Rushinga, comprised "Chaminuka" operational area for the ZANLA forces, and, with "Nehanda" and "Takawira" operational areas, formed the first major offensive of the war. These three areas were part of "Hurricane" operational area, the term used by the security forces of the illegal Rhodesian government.

These two districts were involved very early in the liberation war, both because of their proximity to Mozambique, and the long, easily penetrated border. It is not surprising, therefore, that they are districts with some of the worst records for human rights violations during that war. Much of the recording during this time was done by the Catholic Commission for Justice and Peace(CCJP), and it is noteworthy that reports of torture and ill-treatment were coming in as early as March 1973.

The rural people of Mount Darwin were subjected to extreme pressure and deprivation during these years. In order to control the guerrillas' access to the populace, a policy of forced villagisation was instituted: termed "keeps" or "protected villages", the population was forced to reside in these villages by night with a strict dawn-to-dusk curfew imposed. Between 1973 and 1978 almost 750 000 rural people were forced into keeps throughout Zimbabwe. The life within these villages was extremely hard, and, in the north-east, malnutrition, starvation, overcrowding, and inadequate sanitation were commonplace, as the investigations of the

CCJP demonstrated. After the Altena Farm attack, the security forces instituted severe reprisals against the population that was felt to be supporting the ZANLA forces. Schools, clinics, mills, shops, and beerhalls were closed; property was confiscated and destroyed; collective fines were imposed for failures to report the guerrillas; and mass arrests were made, with detentions and interrogations, involving torture, following. By 1975, the CCJP had compiled comprehensive reports on the activities of the Rhodesian security forces, including one on the north-east.<sup>33</sup>

The torture and ill-treatment of civilians is amply attested by these and other human rights reports, as well as by many other commentators. Moore-King, a former Rhodesian soldier, bluntly catalogues the kinds of treatment meted out by security forces: beatings, suspensions, electrical torture, submarino and suffocations, mock executions, and real, arbitrary killings.<sup>34</sup> This is well attested to by the civilians and guerrillas who experienced these human rights violations, and should also include those who were the victims of ZANLA reprisals. In 1975, a dawn-to-dusk curfew was imposed along the Mozambique border, and severe penalties prescribed for breaking the curfew. In practice, curfew breakers were frequently shot, and always punished. Beatings, rapes, killings, and torture were commonplace. The enacting of the notorious Indemnity and Compensation Act of 1975 (with retroactive application to 1972) gave security forces the impunity to kill and maim at will. Attacks on villages became more frequent, with the government explanation of civilians being "caught in crossfire". Such explanations, when investigated by CCJP, were often less plausible, and, for example, one such incident, at Karima village near Mount Darwin, suggested no presence of ZANLA forces, and much more a deliberate massacre to intimidate the local population. Thus, throughout the 1970's, the people of Mount Darwin and Rushinga were subjected to continuous stress, ill-treatment, deprivation, torture, and killing. They suffered materially too, with

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<sup>33</sup> See CCJP.(1974) *The Man in the Middle*, Gwelo: Catholic Commission for justic and Peace; see also CCJP (1976), *Civil War in Rhodesia*, Gwelo: Catholic Commission for justice and Peace.

<sup>34</sup> See Moore-King(1986), "White Man, Black War", Harare: Baobab Press.

property being destroyed as punishment, livestock being confiscated, and fines being imposed, both individually and collectively, for failure to assist the security forces. It is probable, in the words of one district person, that everyone either directly experienced violence or witnessed it.

A report on the survivors of violence in Mount Darwin District was prepared in 1995 (Reeler & Mupinda.1995), and this has remained the most complete report to date. This report summarised the results of screenings in the outpatient departments of two District hospitals: Mount Darwin District Hospital and Karanda Mission Hospital.

A total of 182 persons with psychological disorders were identified at the 2 hospitals, as well as 57 survivors of organized violence. As a whole, there were not many differences between the two groups, and it was clear that the screening procedure adopted would identify both psychological disorder and disorders due to organized violence with high accuracy. Ordinary psychological disorders are those conditions such as anxiety, depression, and the like, whose causation is not traumatic, but largely insidious or characterological, whilst disorders due to violence have clear traumatic origins. This is a distinction according to causation rather than the form the disorder takes, which may be difficult to distinguish in many conditions apart from whether there exist traumatic nor non-traumatic origins. For example, depression can be the long-term consequence of torture, as well as having non-traumatic origins. These issues apart, it was clear that there were large numbers of both survivors and psychological disorders attending the outpatient departments of these two hospitals, and this corroborated the general picture found in Zimbabwe.

As regards the survivors of organized violence, this was a significant group in terms of numbers, about 34% of all psychological cases in the outpatient setting, and, of the forms of violence experienced by the survivors, very high rates of physical torture were reported.<sup>35</sup> Both samples reported beatings at about the same rate, but the more unusual forms of torture - abnormal postures, submarino, and electrical shock - were reported more frequently at Karanda. High rates of psychological torture were reported by both samples. The two samples reported very high rates of witnessing of violence by family members, and, disturbingly, very high rates of witnessing by children at the time. Furthermore, the two samples also reported very high rates of witnessing torture and executions by the survivors who were assessed. The survivors reported high rates of torture, killings, and disappearances in other family members. Disappearances were a significant problem reported by these survivors, and AMANI carried out a small investigation of the consequences of disappearances on families.<sup>36</sup> The preliminary data indicated that families were deeply troubled by the disappearances.

The injuries reported by survivors complimented the kinds of violence and torture reported. In general, the Karanda sample reported higher rates of physical symptoms than the Mount Darwin sample, but both samples reported high rates of symptoms that would be expected to be the consequence of physical abuse. The psychological symptoms indicated many symptoms that were congruent with diagnoses of Post-Traumatic Stress Disorder(PTSD). Not all cases of torture resulted in PTSD, but Mixed Anxiety-Depressive Disorders and Depressive Disorders were also commonly seen in this clinical population.

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<sup>35</sup> A more recent unpublished report indicates that 1 adult in 10 attending a health care facility in Mount Darwin District is torture or organised violence victim; here see Reeler, A.P., et al (1997), "Prevalence of Torture-related psychological disorders in Mount Darwin District", (in preparation).

<sup>36</sup> See Mupinda.(1995), Loss and Grief among the Shona: The Meaning of Disappearances, Paper presented to VIIIth International Symposium on "Torture as a Challenge to the Medical Profession", Cape Town, 14-17 November 1995.

## War Veterans

A study of Zimbabwean war veterans was conducted in 1995,<sup>37</sup> which provide another source of data on the consequences of torture and organised violence. As regards the types of trauma reported, significant numbers reported physical and psychological torture, and a very high proportion reported some form of war injury together with an experience of torture. The types of torture experienced were similar to those found in other studies of torture survivors, with beatings and severe beatings being the most common forms of physical torture. The rates of witnessing human rights violations was also very high, both of torture, and war injuries and deaths. Furthermore, many persons reported a disappearance in their family, and a significant number also reported other family members having experienced some form of human rights violation during the war. In general, these results indicated a very high rate of organised violence and torture having been experienced by these veterans and their families.

The prevalence of psychological disorders in these veterans was very high, with most reporting a mixture of physical and psychological symptoms. In fact, the rate of self-reported symptoms was considerably higher than comparable epidemiological studies in Zimbabwe. The sample showed clinically significant levels of disorder on the psychiatric screening instrument, but the pattern of diagnoses did not support PTSD being the most common diagnosis for survivors of organised violence and torture. As was seen from these results, PTSD was no more common than Somatoform Disorder, and only twice as common as Depression. This lent support to views that PTSD should not be seen exclusively as an Anxiety Disorder,<sup>38</sup> and supported the view that the effects of torture should be broadly conceived. As a whole, these data indicated that Zimbabwean war veterans exhibit significant psychological disorders as a consequence of both war and torture, and that there was a significant need for rehabilitation services for these survivors of organised violence in Zimbabwe. Both sets of data taken together show that disorders due to human rights violations are common in areas which were reported to have experienced epidemic violence. A rough categorisation of the likely victims would go as follows:

1. War injuries
2. Torture survivors
3. Witnesses of war injury or death and torture
4. Families of torture survivors
5. Families of disappeared persons

This list will include both primary and secondary victims, but does not include the damage to the social fabric of the community, or the material losses experienced by the community, but does give an idea of whom might need to be the recipients of a compensation policy. Here we would stress the tentative nature of these scientific findings, which can only be regarded as pilot studies in the main, but more comprehensive and reliable reports are in preparation, and will shortly be available.<sup>39</sup>

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<sup>37</sup> See Reeler & Mupinda.(1996), An Investigation into the Sequelae of Torture and Organised Violence in Zimbabwean war veterans, LEGAL FORUM, 8, 12-27.

<sup>38</sup> See Turner & Gorst-Unsworth (1990), Psychological sequelae of torture, a descriptive model, BRIT.J.PSYCHIAT., 157, 475-480.

<sup>39</sup> See AMANI(1997), "Survivors of Torture in Mashonaland Central Province: Report and Recommendations", Harare: AMANI (in preparation); Also Reeler, A.P., et al (1997), "Prevalence of Torture-related psychological disorders in Mount Darwin District", (in preparation).

### **The War Victims Compensation Act (Chapter 22 of 1980)**

The War Victims Compensation Act was enacted in 1980 specifically to “provide for the payment of compensation in respect of injuries or death of persons caused by the war”. Its ambit may well cover all the issues related to torture detailed above, but makes no explicit reference to torture, and there is no reference to rehabilitation explicitly in its this definition.

#### **Eligibility**

Generally, a claim for compensation may be made by or on behalf of any person who has sustained injury or death caused directly or indirectly by the war.<sup>40</sup> At first glance, the criteria for eligibility seem to be inclusive, and the act should apply to war veterans as well as civilians.<sup>41</sup> This has been re-iterated recently by the Minister responsible for the administration of the Act.<sup>42</sup> However, a careful reading of the Act proves it to be exclusive, since war is defined as “the armed conflict that occurred in Zimbabwe and in neighbouring countries between December 23, 1972, and February 29, 1980, in connection with the bringing about of, or resistance to, political and social change in Zimbabwe”.<sup>43</sup> Also, the claimant must have a citizen at the time he received the injury.<sup>44</sup> However, the war began as early as 1962,<sup>45</sup> and, therefore, Zimbabweans who received injuries prior to 1972 are excluded. Furthermore, the Act’s coverage ends at February 29, 1980.<sup>46</sup> Human rights violations occurred in Matabeleland after independence are excluded from compensation,<sup>47</sup> as are the cases of war injury after 1980, such as landmine injuries on Zimbabwe’s border with Mozambique. Hence victims who suffered gross human rights violations before or after these dates are excluded. The landmine injuries are a particular anomaly, for these cases of injury are caused by ordinance placed there between December 1972 and February 1980, which is commonly accepted by the government, but nonetheless are excluded from claiming compensation. Those who suffered gross human rights violations in Matabeleland or the Midlands remain a politically problematic category.

A claimant’s compensation is determined by the degree of disablement resulting from the injury<sup>48</sup>, and not by the type of human rights violation experienced, as in the UN Commission’s categorisation. The Act supplies a schedule of injuries that varies in the degree of disablement per centum. For example, loss of foot of tarso-metatarsal joint carries a degree of disability of twenty-five per centum.<sup>49</sup> The Act’s guidelines only contain explicit reference to physical injuries,<sup>50</sup> and thus assessments of injury can cause problems. The First Schedule contains explicit criteria, whilst all injuries not so contained in the First Schedule are assessed at the discretion of the medical practitioner concerned.

First, the schedule is contradictory to the purpose of the Act. The Act allows persons to claim compensation for Liberation War injuries. Then the Act defines injury as ill-health, physical or mental incapacity or personal injury.<sup>51</sup> However, the schedule does not reflect any mental incapacities or personal injuries,<sup>52</sup> and, as we have seen above, these are an equally serious consequence of gross human rights violations. Again, the Act may exclude any war victim who may have mental

<sup>40</sup> Sec 4, War Victims Compensation Act, [Chapter 11:16].

<sup>41</sup> supra

<sup>42</sup> See Ministerial Statement on the War Victims Compensation Fund, Zimbabwe Parliamentary Debates, Vol.24, No.4, Thursday 10<sup>th</sup> July 1997.

<sup>43</sup> Sec 2, War Victims Compensation Act, [Chapter 11:16].

<sup>44</sup> Sec. 4, War Victims Compensation Act, [Chapter 11:16].

<sup>45</sup> Ellert, H. *The Rhodesian War Front*, (1993) Gweru: Mambo Press.

<sup>46</sup> Sec2, War Victims Compensation Act, [Chapter 11:16].

<sup>47</sup> The Catholic Commission for Justice and Peace in Zimbabwe, *Breaking the Silence*, (1997) The Legal Resources Foundation.

<sup>48</sup> Sec 7(1), War Victims Compensation Act, [Chapter 11:16].

<sup>49</sup> supra

<sup>50</sup> supra

<sup>51</sup> Sec2, War Victims Compensation Act, [Chapter 11:16].

<sup>52</sup> Sec 7, War Victims Compensation Act, [Chapter 11:16].

illness because there is no guideline for assessment of psychological sequelae.

Second, the injuries are not reflective of those received in a war.<sup>53</sup> War as defined as organized violence has both physical and psychological consequences.<sup>54</sup>

“Organised violence is the interhuman infliction of significant avoidable pain and suffering by and 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 victim’s feelings. Organised violence includes inter alia torture, cruel, inhuman or degrading treatment or punishment . . . Imprisonment without trial, mock executions, hostage taking or any other form of violent deprivation of liberty also fall under the heading of organised violence. The effects of apartheid, destabilisation, civil war, the forced displacement of people, and political violence constitute organised violence. Violence which occurs in these situations as a direct consequence of political repression, although it may appear random, is of structural nature, involves violations of basic human rights and can only disappear when human, social and political relationships are profoundly changed.”<sup>55</sup>

This definition of organised violence covers all the categories mentioned above, as well as making reference to certain regional specialities such as apartheid or forced displacement. The definition of war given in the Act is broad enough to reflect all these categories apart from the reference to “armed conflict”, which is capable of restrictive definition.

The lack of specification of mental or psychological sequelae is also a deficit, but one that can be excused historically since the first international definition of Post-Traumatic Stress Disorder (PTSD) only came in 1980. As we have seen above, war and torture victims frequently suffer from Post Traumatic Stress Disorder (PTSD),<sup>56</sup> and the effects can be prevalent for a lifetime.<sup>57</sup> Moreover, those who suffer from PTSD have greater job instability, a family history of psychiatric disorder, parental poverty, and child abuse.<sup>58</sup> Studies show high levels of PTSD in torture survivors.<sup>59</sup> Furthermore, torture survivors show a wide range of sequelae both physical and psychological with high rates of psychological disorders.<sup>60</sup> The effects can range from neurological impairment usually produced by violent beatings, to minor scarring, produced by burns or electrical

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<sup>53</sup> supra

<sup>54</sup> Reeler & Mupinda.(1996), An Investigation into the Sequelae of Torture and Organised Violence in Zimbabwean war veterans, LEGAL FORUM, 8, 12-27; Reeler & Mupinda.(1995), Report of a pilot project to assist survivors of torture and organised violence in Mount Darwin District, Zimbabwe, April-July 1995, Harare: AMANI.

<sup>55</sup> Psychiatric Association of Zimbabwe (1990), Report on an International Conference on “The Consequences of Organised Violence in Southern Africa, Harare:PAZ.

<sup>56</sup>Reeler & Mupinda.(1996), An Investigation into the Sequelae of Torture and Organised Violence in Zimbabwean war veterans, LEGAL FORUM, 8, 12-27; Reeler & Mupinda.(1995), Report of a pilot project to assist survivors of torture and organised violence in Mount Darwin District, Zimbabwe, April-July 1995, Harare: AMANI.

<sup>57</sup> supra

<sup>58</sup> supra

<sup>59</sup> Reeler & Mupinda.(1996), An Investigation into the Sequelae of Torture and Organised Violence in Zimbabwean war veterans, LEGAL FORUM, 8, 12-27; Reeler & Mupinda.(1995), Report of a pilot project to assist survivors of torture and organised violence in Mount Darwin District, Zimbabwe, April-July 1995, Harare: AMANI.

<sup>60</sup> supra

torture.<sup>61</sup> The most frequent complaints of torture survivors relate to somatic illness, with neurological symptoms, cardiac symptoms,

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<sup>61</sup> Reeler & Mupinda.(1996), An Investigation into the Sequelae of Torture and Organised Violence in Zimbabwean war veterans, LEGAL FORUM, 8, 12-27; Reeler & Mupinda.(1995), Report of a pilot project to assist survivors of torture and organised violence in Mount Darwin District, Zimbabwe, April-July 1995, Harare: AMANI.

gastrointestinal symptoms and motor symptoms being the most frequent.<sup>62</sup> Motor and neurological symptoms are the likely sequelae from violent beatings and other physical abuse.<sup>63</sup>

Zimbabwe has very high rates of reported events of physical torture; i.e., in Mount Darwin District, one out of every ten adult is a torture survivor.<sup>64</sup> Apart from beatings, many survivors report other forms of torture, such as, abnormal postures for lengthy periods, submarino- place the person in water until the point of drowning, and electrical shock.<sup>65</sup> Also, survivors witness torture, executions and violence to others.<sup>66</sup> Last, survivors reported high rates of disappearances in their families.<sup>67</sup> Given, Zimbabwean's culture, disappearances have an extremely detrimental psychological consequence.<sup>68</sup> One defines their individuality by reference to the family. Therefore, every individual misfortune is a misfortune for the whole family.<sup>69</sup> When an individual dies, it is important for the whole family that traditional rites are observed. The failure to observe traditional rites are seen as leading to misfortune for the family.<sup>70</sup> Thus when a person disappears, the whole family suffers, and the family may suffer from misfortune, quite apart from being unable to grieve in the proper fashion.<sup>71</sup> The Act is silent on most of these pertinent issues, and, in general, the Act derives its criteria for disablement from standard schedules that apply well to the work place, but do not reflect the peculiarities of deliberately inflicted injuries such as torture.

Given such physical and psychological ramifications, the issue of treatment or rehabilitation is a serious issue for consideration, but the Act is silent on the matter of rehabilitation. The Act does state that, "a disabled person maybe required by the Commissioner to under go such reasonable medical examination or treatment as the Commissioner considers necessary or desirable in the circumstances,"<sup>72</sup> and it further states that if the claimant refused the required treatment he may make a request in writing for the medical board to review the case.<sup>73</sup> However, the Act speaks of treatment as unwanted and involuntary,<sup>74</sup> and it does not create the option for persons who may want treatment.<sup>75</sup> Moreover, it leaves the Commissioner with the only power to diagnosis treatment.<sup>76</sup> In addition, a claimant may receive a refund for any necessary expenses incurred by him as a result of his injury, i.e., dental, nursing services, etc. He may receive transportation allowance for any required trips.<sup>77</sup> However, the

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<sup>62</sup> supra

<sup>63</sup> supra

<sup>64</sup> See Reeler, A.P., et al (1997), "Prevalence of Torture-related psychological disorders in Mount Darwin District", (in preparation).

<sup>65</sup> supra

<sup>66</sup> supra

<sup>67</sup> supra

<sup>68</sup> Reeler & Mupinda.(1996), An Investigation into the Sequelae of Torture and Organised Violence in Zimbabwean war veterans, LEGAL FORUM, 8, 12-27; Reeler & Mupinda.(1995), Report of a pilot project to assist survivors of torture and organised violence in Mount Darwin District, Zimbabwe, April-July 1995, Harare: AMANI.

<sup>69</sup> supra

<sup>70</sup> supra

<sup>71</sup> supra

<sup>72</sup> Sec. 10, War Victims Compensation Act, [Chapter 11:16].

<sup>73</sup> supra

<sup>74</sup> supra

<sup>75</sup> supra

<sup>76</sup> supra

<sup>77</sup> Sec 11, War Victims Compensation Act, [Chapter 11:16].

claimant is not automatically granted free medical services or transportation.<sup>78</sup> These necessities are only granted when it is required by the Commissioner.<sup>79</sup>

Thus, it seems fair to conclude that the Act is excludes or is unclear about many of the consequences of gross human rights violations, and is wholly silent about rehabilitation.

### **Process of application**

The Act states “any person who claims compensation shall apply therefore in the prescribed manner and shall submit such evidence and information in support of his claim as may be prescribed or required by the commissioner.”<sup>80</sup> The procedure to apply for compensation as described by the Act is faulty for three reasons: (1) it is overbroad and vague, and (2) inappropriately distributes power and (3) it provokes a problem of notice and detection.<sup>81</sup>

Under a plain reading of sec 5(2), the language is overbroad and vague.<sup>82</sup> The section is overbroad in that it does not indicate a procedure.<sup>83</sup> Moreover, it does not give any structure for a procedure.<sup>84</sup> Ultimately, it gives the commissioner total discretion to create a process of application.<sup>85</sup> Simultaneously, it is vague for similar reasons.<sup>86</sup> It does not define the commissioner’ job in detail, i.e., what is required and when.<sup>87</sup> Basically, the Act does not define “the prescribed manner”.<sup>88</sup> We should bear in mind here the kinds of procedure advocated by Lutz(1989), as well as the models that already exist elsewhere for making applications for compensation.

In practice, a war victim in Zimbabwe applies for compensation through the Department of Social Welfare. In this case, the victim must establish identification through an Outpatient Department (OPD) of a hospital.<sup>89</sup> There are two systems of procedures, one old and the other new.<sup>90</sup> Under the old system, the victim must supply two affidavits from persons who are not his or her relatives, and acquire a medical report.<sup>91</sup> The affidavits are usually a detailed account of the war event that establishes that the victim was a participant in or a victim of the war.<sup>92</sup> It is only after the victim receives the affidavits that he or she may continue to any government state doctor for an examination.<sup>93</sup> The doctors examine the victim in order to determine the amount of disability.<sup>94</sup> Then the doctor submits the forms to Social Welfare.

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<sup>78</sup> supra

<sup>79</sup> supra

<sup>80</sup> Sec 5(2), War Victims Compensation Act, [Chapter 11:16].

<sup>81</sup> supra

<sup>82</sup> supra

<sup>83</sup> supra

<sup>84</sup> supra

<sup>85</sup> supra

<sup>86</sup> supra

<sup>87</sup> supra

<sup>88</sup> supra

<sup>89</sup> Ministry of Health and child welfare, “Medical Boards: War Victims Compensation”, circular 8, 1997.

<sup>90</sup> supra

<sup>91</sup> supra

<sup>92</sup> supra

<sup>93</sup> supra

<sup>94</sup> supra

Under the new (1997) system, the victim must now get two affidavits from non-relatives and one from the community leader.<sup>95</sup> Also, the victim has the option of submitting a letter from the police that incident was reported or a hospital report of sustained injuries.<sup>96</sup> Then the Department of Social Welfare will give the victim two forms, one medical and one application.<sup>97</sup> The Department of Social Welfare then schedules the applicant's visit to a government doctor.<sup>98</sup> Previously, the applicants could have been examined by any government doctor but the new system has only one reviewing doctor.<sup>99</sup> Although, the new system is more stringent and better to prevent sham claims, the system fails.<sup>100</sup> The Act inappropriately gives the medical doctor power to make legal decision of compensation.<sup>101</sup>

According to section 7(2), the medical doctor is not to consider the claimant's earning capacity, but he must make an assessment base upon a comparison to a healthy person using the schedule of injuries.<sup>102</sup> The drafters attempted to separate the legal assessment of compensation from the medical assessment.<sup>103</sup> However, when the doctor assesses the claimant's degree of disability using the schedule of injuries, he has determined the claimant's compensation, which is a legal analysis.<sup>104</sup> Furthermore, the reliance upon a single medical doctor reviews the claimant's condition poses problems.<sup>105</sup> Most medical doctors are currently trained to detect physical ailments rather than psychiatric ailments. Even with provisional training in psychology, some mental related injuries will remain undetected, i.e., neurological injuries.

The value of the assessment lies only in the training and experience of individual doctors, and thus doctors with no experience of torture, psychological disorders or rehabilitation will be ill-equipped to make the sensitive assessments required to determine realistic compensation. In practice, assessment of torture survivors requires a medical team composed of medical doctors, psychologists, nurses, physiotherapist, occupational therapists, and social workers. The process of assessment is usually lengthy, victim-friendly, and always with rehabilitation in mind. This is seldom the case in Zimbabwe, and the referral to other medical specialities or health professionals is purely at the discretion of the examining doctor.

Additionally, most Zimbabwean War Victim live in the rural areas, and, since the Act does not require notice, Zimbabweans war survivors can only receive informal notice. In practice, this turns out to be by word of mouth. Therefore, the potential to have a number of actual victims remain uncompensated exists.

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<sup>95</sup> supra

<sup>96</sup> supra

<sup>97</sup> supra

<sup>98</sup> supra

<sup>99</sup> supra

<sup>100</sup> supra

<sup>101</sup> supra

<sup>102</sup> Sec 7(2), War Victims Compensation Act, [Chapter 11:16].

<sup>103</sup> supra

<sup>104</sup> supra

<sup>105</sup> Ministry of Health and Child Welfare, Medical Boards: War Victims Compensation Act, [Chapter 11:16].

## Conclusions

It does appear that the War Victims Compensation Act is not wholly satisfactory, but, at the time, was a commendable attempt to provide redress for the many victims of the gross human rights violations that had taken place during the War of Liberation. It is not partial, providing redress for both combatants and civilians, and also for victims of the abuses inflicted by both all sides to the conflict. However, the Act is a victim of its own time.

In 1980, it is fair to conclude that there was a relative paucity of scientific information about the short and long-term consequences of organised violence, and hence the content of the Act could only reflect what was known at the time. In particular, the Act did not place much emphasis upon torture and other forms of organised violence, and, as we have seen above, there may be good reasons for seeing torture and organised violence as being considerably more prevalent than conventional war injuries. There is now no good reason why the Act should not be amended to reflect this later knowledge, and here the amendments can draw upon a considerable body of legal and forensic material for its guidance.

For example, The United Nations Compensation Commission included a panel of experts from various fields, i.e., finance, law, accountancy, insurance, and environmental damage assessment and psychiatry.<sup>106</sup> This UN Compensation Commission devised an ideal categorisation system for war-related injuries.<sup>107</sup> Furthermore, there are alternative models, such as that devised by the Federal Republic of Germany, to which reference may be made in deciding upon explicit categories of consequences.

In addition, there are several models for processes to handle such claims.<sup>108</sup> The UN Commission divided the administrative process into instalments.<sup>109</sup> It also divided themselves into a panel of three members to review claims.<sup>110</sup> Basically, the claims would be presented to the panel in different instalments.<sup>111</sup> The first instalment was the precedential phase of the work.<sup>112</sup> In the precedential phase, there is a small number of claims and an individualized review of the claims.<sup>113</sup> Also, the panel must identify and define issues that appear to be relevant to the evaluation of the claim and compensation.<sup>114</sup> Next instalment would be the application phase.<sup>115</sup> In the application phase, the panel reviews the recommendations made concerning those groupings.<sup>116</sup> The panel must insure that the groupings and compensation recommendations developed in the precedential phase are proper claims.<sup>117</sup>

Unlike Zimbabwe, the UN Compensation Commission is both more intricate and clear, and is better for several reasons. The Commission's process allows a case by case analysis that permits the panel to be flexible in those necessary situations. Zimbabwe does not have such a mechanism.<sup>118</sup> Also, unlike Zimbabwe, the Commission establishes a safeguard against fraudulent claims.<sup>119</sup> The UN's system has panels to review the same claims twice but for different reasons, and the last review operates as a check on the first.<sup>120</sup> In Zimbabwe, such a system would be desirable, but the system should also

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<sup>106</sup> supra

<sup>107</sup> supra

<sup>108</sup> United Nations Compensation Commission, Report of the Panel, 6, 1996.

<sup>109</sup> supra

<sup>110</sup> supra

<sup>111</sup> supra

<sup>112</sup> supra

<sup>113</sup> supra

<sup>114</sup> supra

<sup>115</sup> supra

<sup>116</sup> supra

<sup>117</sup> supra

<sup>118</sup> Sec.4 , War Victims Compensation Act, [Chapter 11:16].

make explicit

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<sup>119</sup> United Nations Compensation Commission, Report of the Panel of Experts Appointed to Assist the United Nations Compensation Commission concerning compensation for Mental Pain and Anguish, 7, 1996.

<sup>120</sup> *supra*

reference to the principles outlined above by Lutz(1989); namely, privacy, simplicity, cultural appropriateness, latitude in the evidential burden, access to legal representation, legal aid, and right of appeal.

The major area of deficit lies in the specification of rehabilitation for survivors. Nowhere does the Act make reference to a right to rehabilitation, nor does it provide any mechanism for rehabilitation to take place. As we have noted above, rehabilitation may be the only practical redress that a government can offer to the victims of gross human rights violations. It is desirable that compensation be paid, and it would be exemplary if a government were able to compensate survivors for both actual and punitive damages, but this is rarely possible in the real world, and certainly very difficult in a poor country such as Zimbabwe.

However, at the least the right to free rehabilitation should be enshrined in the amended Act, with all aspects of rehabilitation - medical, psychological and social - being made available to survivors. This can be practically achieved in Zimbabwe, even in the current climate of cost-recovery and diminished health service delivery. There are examples of how this can be achieved, and the AMANI Trust has provided one small local example to substantiate this.<sup>121</sup>

Reparation, as compensation and rehabilitation, should nonetheless be the goal, within limits, victims and survivors should be compensated. Indeed, many have already been so compensated, and the government has expended enormous sums doing this. However, the commitment to date is still only a fraction of the need, and does not even address several categories of survivors. Primary victims are the major recipients to date, and there is no possibility under the present Act for secondary victims - families, spouses, or children - to receive compensation. On the data compiled by AMANI from the Mount Darwin programme, we estimate 1 adult in 10 is a survivor, and, extrapolating to the nation, this would mean a very conservative figure of some 50 000 primary victims. This figure could rise by as much as 4 or 5 times if we take into account secondary victims, and this from the Liberation War alone. The figure, if added to by the survivors from the Gukurahundi, begins to beggar description. Furthermore, there is no possibility for redress of the material losses, and these were not inconsiderable.

However, it is not beyond the capacity of the nation to offer rehabilitation to the thousands of survivors, and this should be a priority for an amended Act. To provide a legal right to rehabilitation, together with formal, financially-supported access to the health and psycho-social facilities providing this, is a task within the compass of the nation. Reconciliation requires healing, but whether healing alone will be sufficient only time will tell. Truth may be impossible, but redress and rehabilitation are not so. Here an amended War Victims Compensation Act may provide one of the more enlightened pieces of legislation in the history of Zimbabwe.

### **Recommendations:**

This analysis has suggested certain deficits in the Act, which can be shortly summarised as follows:

1. that the definition of a claimant in terms of the Act can be interpreted restrictively to only include victims of military actions, and exclude survivors of torture and other forms of organised violence;

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<sup>121</sup> See AMANI(1997), "Survivors of Torture in Mashonaland Central Province: Report and Recommendations", Harare: AMANI (in preparation).

2. that the Act is wholly silent about the need for rehabilitation, which must be seen as an integral part of a reparative process;
3. that the assessment of injuries is overly dependent upon the competence and discretion of individual doctors;
4. that the schedule of injuries does not reflect the types of injuries likely to occur as a consequence of torture, and, furthermore, has no explicit reference to psychological disorders due to trauma or criteria for the assessment of disability due to such disorders;
5. that no clear procedure for the making of claims is laid down by the Act.

Consequently, the AMANI Trust would wish to make several broad recommendations, as follows:

1. that the Act should be amended to make explicit reference to various kinds of victims not currently defined within the Act: namely, survivors of torture and organised violence, both primary and secondary;
2. that the Act be amended to provide a clear structure for the assessing and awarding of compensation claims, which should include assessments by medical doctors, psychologists, nurses, physiotherapists, occupational therapists, and social workers;
3. that the assessment process should be victim-friendly, and cognisant of the special difficulties that torture survivors may experience in being assessed. Here it is important that the assessment process ensures privacy, simplicity of application, cultural appropriateness, latitude in the evidential burden, access to legal representation, legal aid, and a right of appeal against decisions;
4. that the Act be amended to ensure a right to free rehabilitative services for all torture survivors.

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