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Can you have a reparations policy without justice?

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Abtract

Under humanitarian law and a series of international conventions, all gross human rights violations are argued to require legal remedy. However, in situations of epidemic violence legal remedies may require extension through a policy of reparations. There are conceptual confusions that often impair the proper formulation of a reparations policy. This paper examines these problems in the context of Zimbabwe.

Reparations can be conceived as being composed of three major elements: justice, compensation and rehabilitation. All three elements are necessary to the overall definition, and address different components of the problems created by gross human rights violations. All are necessary both on the individual and the societal scale. Examples abound of countries where reparations are implemented without all three elements being present. Zimbabwe provides a good case example here.

In Zimbabwe, justice has been avoided through the promulgation of successive statutes of impunity. The long term consequence here is increasing executive unaccountability and massive government corruption. It also perpetuates the practice of torture, as the recent case of the torture of two Zimbabwean journalists illustrates. Compensation has implemented in a partial fashion, but provides little value to victims through its limited scope, its avoidance of punitive damages, and, above all, its emasculation through impunity. Rehabilitation is not offered in any explicit form, least of all as a component of a compensation scheme.

It is concluded that reparations policies that exclude justice as the central component cannot provide any redress for gross human rights violations or lead to situations of long-standing peace. As Richard Goldstone says, “justice does not depend on peace, rather that peace depends on justice”.

Background

Under humanitarian law and a series of international conventions, all gross human rights violations are argued to require legal remedy for the affected individual.[1] However, in situations of epidemic violence, legal remedies may require extension through a ***policy*** of reparations, but there are conceptual confusions that often impair the proper formulation of a reparations policy. Literally, "reparation" means to repair or put right, and thus refers to both legal and psycho-social interventions following a wrongful action.**[2]**

Reparation can refer to the process of prosecution under criminal law as amends for the wrong inflicted, but this is 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, 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. **[3]** 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**.[4]**

The concept can be narrowly defined, as in the Truth and Reconciliation Commission concept in South Africa, where reparations are seen as synonymous with "compensation". Here I shall

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[1] See *UN [1997], The Administration of Justice and the Human Rights of Detainees: Question of the impunity of perpetrators of humanrights violations (civil and political), Revised final report prepared by Mr. Joinet pursuant>to Sub-Commission decision 1996/119, United Nations. Economic and Social Council. Commission on Human Rights. Sub-Commission on Prevention of Discrimination and Protection of Minorities. E/CN.4/Sub.2/1997/20/Rev.1*

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

[3] **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*.

[4] **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*.

be arguing, in common with others writing in the field of humanitarian law, that reparation is a global concept, covering three crucial and interdependent aspects: justice, compensation and rehabilitation. I shall further argue, using Zimbabwe as a case example, that a policy of reparations that does not include all three aspects cannot repair the situation created by gross human rights violations.

Torture in Zimbabwe

Zimbabwe has an explicit provision against torture in its Constitution, where Section 15 states that " a person may not be subjected to torture or to inhuman or degrading punishment or other such treatment". Furthermore, Zimbabwe is a signatory to the International Covenant on Civil and Political Rights, and to the Declaration of Human and Peoples Rights of the Organisation of African Unity. It is still not a State Party to the Unites Nations Convention Against Torture.

Zimbabwe has seen torture in all of the past three decades. Prior to Independence in 1980 the soldiers, policemen and officers of intelligence units used torture on a widespread basis during the liberation war. Captured liberation fighters were usually viciously tortured and thousands of civilians were also subjected to torture. The extent of this torture is documented in such number of publications of the Catholic Commission for Justice and Peace in Zimbabwe and other books. [5] The evidence for torture during the Liberation War and its effects has been more recently detailed by the AMANI Trust.[6] Here we estimate on the basis of epidemiological research that 1 adult in 10 currently suffers the sequelae of organisaed violence and torture from the 1970 war. The soldiers of the guerrilla forces were also not immune from perpetrating torture, although the documented evidence shows few survivors, mostly because torture occurred in the context of an execution and hence few survivors.

Since 1980 torture has been used from time to time. During investigations into cases of sabotage and espionage, intelligence units and the police often made use of torture to extract information from persons who were suspected of having committed these offences. For instance in the cases of *S v Slatter*[7] *& Others* and *S v Harington*[8]. In the first case a number of air force officers were badly tortured in order to obtain confessions, and the judge ruled that their confessions were inadmissible. In the second case a woman who was being held in

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[5] **See** *CCJP[1975], The Man in the Middle; CCJP[1976], Civil War in Rhodesia 1976; CCJP[1977], Rhodesia The Propaganda War 1997; and Bruce Moor King [1987], White Man Black War, HARARE: BAOBAB PRESS.*

[6] See *AMANI[1998], Survivors of Torture and Organised Violence from the 1970s War of Liberation, HARARE: AMANI; REELER ET AL[1999], The prevalence of disorders due to torture in Mashonaland Central Province, Zimbabwe[submitted for publication];*

[7] **1983 (2) ZLR 144 (H)**

[8] **1988 ZLR 144 (S)**

connection with contravening the Official Secrets Act was stripped naked and sexually abused during interrogation. The evidence of torture was not challenged by the state, and the appeal court took this torture into account in mitigation of sentence.

Widespread torture occurred again in the 1980s. Most of the persons who were tortured were not dissidents but civilians. In the well-known report produced by the Catholic Commission for Justice and Peace[Zimbabwe] and the Legal Resources Foundation[9], the report concludes that it can be said fairly certainly that the conservative number of persons tortured was 7000 and several thousand more victims of public beatings can safely be assumed. Since that report was published there have been continuing investigations into the extent of victimisation during Gukurahundi and large numbers of further victims have been discovered. A recent study by the AMANI Trust in Gwanda District indicated that 5 out of 10 persons attending health care facilities in the District had experiences of torture leaving them psychologically disabled, whilst about 90% of the sample reported torture. [10]

Political torture re-emerged in the 1990s after a period of 10 years when it appeared to be on the decline. During the Food Riots in January 1998, quite apart from the deaths by shooting of some 8 people, there were credible reports of widespread torture by both the army and the police[11]. Torture was reported in the community, the police stations and the remand cells of the prisons. More recently, there has been the notorious affair of the two journalists were subjected to prolonged and systematic torture by Zimbabwean Government military and intelligence agents. There is highly convincing medical evidence that the two journalists were tortured in the ways they allege, despite facile denials by the Minister of Defence and many other senior Ministers. Most recently, there have again been allegations of torture in the cases of an Air Force officer detained on suspicion of leaking military secrets, the three Americans arrested on suspicion of smuggling arms, and the particularly horrible case of a woman tortured at St Mary's Police Station in Chitungwiza. There is no evidence to indicate the number of persons subjected to non-political torture in police stations or the prisons.

Impunity, amnesty, and pardon

Zimbabwe may hold a peverse world record for its commitment to dealing with gross human

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[9] The full title of this report is *Breaking the Silence Building True Peace A Report on the Disturbances in Matabeleland and the Midlands 1980 to 1988*. It is a report produced by two human rights organisations, namely the Catholic Commission for Justice and Peace in Zimbabwe and the Legal Resources Foundation.

[10] See *AMANI Trust[1998]*, *"Survivors of Organised Violence in Matabeleland: Facilitating an Agenda for Development"* WORKSHOP REPORT: Hotel Rio, Bulawayo, ZIMBABWE, 21st and 22nd July 1998 BULAWAYO: AMANI

[11] *Zimbabwe Human Rights NGO Forum [1999], A Consolidated Report on the Food Riots, 19-23 January 1998, Report compiled by the AMANI Trust on behalf of the Zimbabwe Human Rights NGO Forum, HARARE: AMANI*; see also the earlier report, *Zimbabwe Human Rights NGO Forum [1998](a), Human Rights in Troubled Times: An Initial Report on Human Rights Abuses During and After Food Riots in January 1998, HARARE:HUMAN RIGHTS NGO FORUM.*

rights violations by means of impunity, amnesty and pardons. All three methods have been used in Zimbabwe to avoid the justice component of reparations for gross human rights violations.

One of the most cynical acts of the white Rhodesian regime was to pass in 1975 the Indemnity and Compensation Act. Described by a senior judge as a "profoundly shocking law", the Act was passed at the time that senior members of the white government were assuring the world that the Rhodesian courts would always be open to persons seeking redress for illegal injuries inflicted by the security forces. The Act provided complete immunity from criminal and civil liability for acts done "in good faith" to suppress "terrorism" or to maintain public order, and, as a consequence, no actions could be brought against either the government or the perpetrators individually. This same Act was used later by the Zimbabwe government of Robert Mugabe to avoid the consequences of human rights violations in the Matabeleland disturbances.

In 1980 after the Lancaster House agreement to end hostilities in Zimbabwe and to move Zimbabwe towards majority rule, during the British Administration passed the Amnesty (General Pardon) Act [*Chapter 9:03*]. This exempted from criminal liability acts done in good faith before 1 March 1980 by persons fighting on both sides during the liberation war and persons striving for majority rule and persons resisting these efforts. The granting of such amnesty was obviously used as a device for stopping the fighting in order to proceed towards democratic government in the country.

The next amnesty which followed in Zimbabwe was the amnesty that followed the Unity agreement in December 1987. In terms of this amnesty rebels who had been operating in Matabeleland were given amnesty provided that they surrendered by a specified date. Some 113 rebels took advantage of this amnesty. This group in included for one notorious rebel who had been responsible for the massacre of missionaries and other atrocities. Later government announced that 75 members of the security forces or ZANU PF already sentenced or awaiting trial for human rights violations were to be released in terms of a special category under the amnesty. Amongst those released were four Fifth Brigade soldiers sentenced to death for murder and one CIO officer who had also been sentenced to death for murdering a prisoner, after assaulting him.

The Zimbabwean State has also had recourse to the use of pardons in excusing the perpetrators of gross human rights violations. In the most celebrated case, two members of the Central Intelligence Organisation were pardoned by the President, Robert Mugabe, after

having been found guilty of attempted murder. They had shot and severely injured a political opponent of the Vice-President, Simon Muzenda, during the 1990 general election. Currently, there has been little attempt by the government to investigate the torture of the two journalists, despite having made admissions in both the Magistrate's and the High Court that they were detained illegally and that that had in fact been tortured. In one of the very few cases to come to court from the Food Riots in 1998, that of the shooting and killing of an 11 year old child, the presiding magistrate clearly indicated that the police had made no serious investigations to identify the perpetrator, and, indeed, all the indications were that the police were obstructing inquiries.

So it is fair to claim that Zimbabwe shows little commitment to justice over the decades. The trends towards impunity, amnesty and pardons must all be taken to indicate the contrary. Thus, one of the key components of a reparations policy, justice, is almost entirely absent when we consider gross human rights violations in Zimbabwe. Impunity, with all its attendant hazards, is commonplace in Zimbabwe.[12]

Reparations

The issue of reparations and justice has been considered in detail recently by the Economic and Social Council of the United Nations [13], where the Sub-Commission identified four sets of overall principles as important to combating impunity:

(a) The victims' right to know;
(b) The victims' right to justice;
(c) *The victims' right to reparations;*
(d) *The right to non-recurrence.*

The right to know is not simply the right of any individual victim or closely related persons to know what happened, but is also a collective right, ensuring that history accurately records the violations to prevent them from recurring in the future. Its corollary is a "duty to remember", which the State must assume in order to guard against the perversions of; the knowledge of the oppression it has lived through is part of a people's national heritage and as such must be preserved.

The right to justice implies that all victims shall have the opportunity to assert their rights and receive a fair and effective remedy, ensuring that the perpetrators stand trial and that the

[12] See *REELER, A.P. (1998), Epidemic violence and the community: A Zimbabwean case study, COMMUNITY DEVELOPMENT JOURNAL, 33, 128-139.*

[13] See *UN [1997], The Administration of Justice and the Human Rights of Detainees: Question of the impunity of perpetrators of humanrights violations (civil and political), Revised final report prepared by Mr. Joinet pursuant>to Sub-Commission decision 1996/119, United Nations. Economic and Social Council. Commission on Human Rights. SubCommission on Prevention of Discrimination and Protection of Minorities. E/CN.4/Sub.2/1997/20/Rev.1*

victims obtain reparations. The right to justice entails obligations for the State: to investigate violations, to prosecute the perpetrators and, if their guilt is established, to punish them. Lastly, international human rights treaties should include a "universal jurisdiction" clause requiring every State party either to try or to extradite perpetrators of violations. The necessary political will is still essential, of course, to enforce such clauses. For example, humanitarian provisions in the 1949 Geneva Conventions or the United Nations Convention against Torture have scarcely ever been applied.

Restrictions justified by the desire to combat impunity may be applied to certain rules of law in order to support efforts to counter impunity. The aim is to prevent the rules concerned from being used to benefit impunity, thus obstructing the course of justice. The main restrictions are as follows.

- *No Prescription for offences;*
- *No Amnesty for offences;*
- *No Right to asylum for perpetrators;*
- *Extradition of all perpetrators;*
- *Trial in absentia;*
- *Due obedience is no defence;*
- *Legislation on repentance should not avoid either amnesty or prescription;*
- *Military courts should not be used;*
- *The principle of the irremovability of judges.*

The right to reparation entails both individual measures and general, collective measures. On an individual basis, victims - including relatives and dependants - must have an effective remedy. The procedures applicable must be publicized as widely as possible. The right to reparation should cover all injuries suffered by victims, and this right embraces three kinds of action:

- *Restitution (seeking to restore victims to their previous state);*
- *Compensation (for physical or mental injury, including lost opportunities, physical damage, defamation and legal aid costs);*
- *Rehabilitation (medical care, including psychological and psychiatric treatment).*

The right to non-recurrence are also crucial according to the Sub-Commission, and three measures need to be taken in order to avoid victims having to endure new violations affecting their dignity:

- *Disbandment of parastatal armed groups;*
- *Repeal of all emergency laws, abolition of emergency courts and recognition of the inviolability and non-derogability of habeas corpus;*
- *Removal from office of senior officials implicated in serious violations.*

As can be seen, the Sub-Commission separates justice from reparations, but nonetheless asserts the importance of justice and does not diminish the importance of compensation or rehabilitation. It merely places these in a different universe of actions, and this perhaps can lead to conceptual confusion.

Very simply, the separation can lead to a shopping basket notion of reparations. The right to know separated from the right to justice can be minimised into Truth Commissions, where all that mostly happens is that history will be recorded[14]. The shopping basket approach must be avoided at all costs, which, in fairness to the Sub-Commission is not its intent, but the lack of a clear statement that the need to repair requires all elements to be present leads to confusion and frequently plays into the hands of politicians needing to make pragmatic decisions for the purposes of peace.

Justice is perhaps the most important component, but equally the most difficult to achieve. As all commentators have observed, the price of peace is usually some form of amnesty or impunity[15]. The avoidance of justice is frequently the only way in which peace may be fashioned, especially in countries where human rights violations have become epidemic. This was clearly the case in the transition from Rhodesia to Zimbabwe, and also the case in the ending of the civil war of the 1980s. A modified version is also evident in the decision by the new South African State to adopt a Truth Commission approach, but it was clear that there would be prosecutions for gross human rights violations. Even this modified position is now under threat with the statements by several senior statesmen that a general amnesty should be declared. So the avoidance of justice generally follows the requirement for peace, and the adoption of a reconciliation approach. Reconciliation always seems sensible at the point of peace, but inevitably leads to long-term structural problems, as I shall show later.

Reparations, as restitution, compensation and rehabilitation, may be more easily accepted by the state, but is not without its problems. Restitution may just not be feasible in situations of epidemic violence. A small example from Zimbabwe may illustrate this. During the Liberation War of the 1970s, tens of thousands of rural people lost their homes, their possessions and their livestock, and, whilst no-one has attempted to calculate the loss in economic terms, the costs are enormous and still bitterly felt by the rural people. No attempt

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[14] **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.*

[15] 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 *UN [1997], The Administration of Justice and the Human Rights of Detainees: Question of the impunity of perpetrators of humanrights violations (civil and political), Revised final report prepared by Mr. Joinet pursuant>to Sub-Commission decision 1996/119, United Nations. Economic and Social Council. Commission on Human Rights. SubCommission on Prevention of Discrimination and Protection of Minorities. E/CN.4/Sub.2/1997/20/Rev.1*

has been made to provide restitution for these enormous losses.

However, there was acceptance by the Zimbabwe state that it would be liable for compensation for injuries has happened in Zimbabwe. The 1980 War Victims Compensation Act attempted to do just this, but, as I have argued elsewhere[16], the Act was flawed in many aspects, and, most seriously, proved to be so wide open to corruption that the legitimate beneficiaries did not benefit. Furthermore, if the provisions of the Act were extended to all victims, the Zimbabwe State would be unable to pay even the most minor amounts of compensation, and, if forced to follow the guidelines of the UN Commission on Compensation, would most certainly bankrupt the state for several generations. This can be more complicated when one section of the community is in reality responsible and should pay, as in many colonial situations. Here we start to run into the same problems as the justice component: that attempting to make the perpetrators pay will not end the conflict.

Rehabilitation is probably the most acceptable aspect of reparations, but interestingly Zimbabwe developed a policy for compensation and not rehabilitation. The War Victims Compensation Act made provision for payment for injuries sustained and not for the medical or psychosocial care for those injuries. Medical and psychosocial rehabilitation is probably within the financial and moral compass of most countries and could probably be done, but in Zimbabwe there has been no explicit policy on rehabilitation.

So the package can be opened up and different elements taken out, but with what consequence. It is not enough to merely assert that the package must be taken as a whole, we must demonstrate that not to do so has pernicious consequences. This is not so simple a task as it seems as first glance for the linkages are between complex macro systems such as the justice and political machinery and micro systems such as individual and family functioning are exceedingly complex, and we do not yet have either the conceptual tools or the methodologies to studies such interactions easily. As best we can rely upon impressionistic case studies, and here Zimbabwe can be used to illustrate the need the need for a holistic conception of reparations.

Effects of Impunity in Zimbabwe

As briefly stated earlier, Zimbabwe has a long history of both torture and impunity, and I believe that the consequences of both are now increasingly seen in the disease of impunity. There are three major symptoms evident, quite apart from the continuing torture, and all can

[16] **See** *Reeler, A.P [1998], Compensation for gross human rights violations: Torture and the War Victims Compensation Act.*
LEGAL FORUM, vol.10, no.2, p6-21.

be traced to the separation of the elements discussed earlier.

- *The avoidance of justice;*
- *The institutionalising of corruption;*
- *The creation of apathy based on fear;*

The ***avoidance of justice*** has become epidemic in Zimbabwe. It manifests itself in a variety of ways, most seriously with the passing of statutes of impunity, as described above. It also manifests in other more subtle ways in the ways in which government ministers and officials are able to avoid the consequences of their wrongdoings.

To avoid the consequences of human rights violations, the Government has a remarkable record of setting up judical commissions and then ignoring the findings, or even not making the findings public. In the 1980s, there were two such commissions; the Dumbutshena Commission and the Chihambakwe Commission. The findings of both commissions remain unpublished. Government now no longer tries to avoid by using this route, and, after the Food Riots in 1998, it merely ignores the calls for judicial or independent commissions of inquiry.

As regards other areas of wrongdoing, the government has largely adopted the same approach. For example, during the 1980s a scandal over the ways in which Ministers and other high officials used their offices to illegally obtain and sell motor cars was followed by a judicial commission, identification of the main culprits, and then exoneration by Presidential pardon of the same culprits. A similar scandal emerged in the 1990s, with massive fraud by Ministers and many other war veterans of the War Victims Compensation Fund. Over Z$1 billion was embezzled through fradulent claims, and, despite the findings of another judical commission, little serious action has been taken. Firstly, the report of the commission has not been made public, secondly the committee appointed to recommend prosecutions has not even met, and, thirdly, to add insult to injury, the President illegally disbursed Z$5 billion to all the war veterans in order to satisfy their demands for compensation. Many of the war veterans who benefited from this payment were also parties to the previous fraud. One needs little imagination to see how upsetting this must have been to the survivors, and may have been at least one reason behind the Food Riots[17].

The institutionalising of corruption becomes another consequence of impunity, and as can be seen from the earlier stories, corruption has become a way of life. How could it not when there is no accountability for wrongdoing? Corruption has now grown to the level where the Zimbabwe Congress of Trades Unions estimates that nearly Z$30 billion was lost in the

[17] **See** *Zimbabwe Human Rights NGO Forum [1999], A Consolidated Report on the Food Riots, 19-23 January 1998, Report compiled by the AMANI Trust on behalf of the Zimbabwe Human Rights NGO Forum, HARARE:*

1997-1998 period. The importance of this estimate can be seen when it is realised that all budgeted government expenditure in the same period was only Z$100 billion.

Corruption ranges from police officers soliciting bribes through to the flagrant flouting of government tender procedures. One of the most disgusting of the latter involved the President's nephew and the building a new airpot in Harare. The tender required the contractor to self-finance the construction, but, when the tender was awarded, it went to a company in which the President's nephew was a director, which had never built an airport before, and had no money to finance the construction. Parliament was instructed to provide the finance, which it did reluctantly, and now we learn that the construction is over time, way over budget, and that senior Ministers have been paid enormous consultancy fees for very dubious consultations.

The regulatory instrument, Parliament, can do little it seems to curb the corruption, and this relates to the third symptom, ***the creation of apathy based on fear***. Parliament was elected at the last general election with as little as 30% of the electorate voting. 50% of the seats, mostly in the rural areas, were returned unopposed, and, part from this, the President is able to nominate 20 seats himself. So Parliament owes no allegiance except to itself or to its benefactors. Parliamentarians are not likely to rock the boat, and those that do are dealt with in summary fashion.

The lack of a decent voter turnout is widely described as being due to apathy, but apathy in Zimbabwe is a lack of behaviour based on the motive of fear. An unpublished study of the last election showed that three factors lay behind the voter apathy: fears that the ballot was not secret, fears that adherence to an opposition party would lead to pre-election intimidation and violence, and fears that voting in an opposition candidate would lead to post-election discrimination and retaliation. In a country that has suffered two civil wars in two decades, where ZANU-PF uses continuously the rhetoric of violence, where ZANU-PF party members attack with impunity opposition parties, and where government officers have attempted to kill opposition candidates, can we be surprised that the ordinary people are fearful about involvement in politics.

Justice is the key, and it is the many sets of impunity that have set the tone for these symptoms of disease. When Zimbabwe embraced reconciliation in 1980, it set the tone for the future. When we forgave all the murderers and torturers of the 1970s, it was inevitable that we would forgive the murderers and torturers in the 1980s and the 1990s. When we

forgive the torturers and murderers, then we can easily forgive the corrupt. When we forgive the corrupt, then it makes little difference whether we have a Parliament that insists upon transparency and accountability. When we see the guilty of all kinds avoiding the consequences of their guilt with government connivance, the moral basis of society has eroded to a very dangerous degree.

From the lofty vantage point of history, we can see what happened in Zimbabwe. We needed to repair ourselves in 1980, but chose reconciliation rather than reparation. It was convenient to do so, and we sweetened the blow with a poor attempt at compensation. We removed justice and rehabilitation from the reparation equation, and this just could not work. We allowed people guilty of the most horrible crimes to go free, and with this model it was perhaps inevitable that we do the same things again, and we did: in Matabeleland in the 1980s, in Harare in 1998, and again in 1999. And if you can avoid the consequences of the most horrible crimes, why should there be any prohibition on committing less serious crimes? If the most serious crimes can be forgiven, why then should there be punishment for less serious crimes?

How can we get free of this terrible fate in Zimbabwe? As commentators have stated in the national newspapers, we cannot open a can of worms selectively[18]. We have to take on our whole sorry history as a whole, and view it from the perspective of justice, and from a complete perspective of reparations - justice, compensation and rehabilitation. Anything less will not do. There cannot be a shopping basket approach to the aftermath of gross human rights violations, and neither can we assert that different contexts require a different balance of remedies.

As Karl Popper says, we see the truth through the falsity we expose. In Zimbabwe, we have now exposed the falsity of reconciliation, and realise that the rhetoric of togetherness hides all manner of evil. Reconciliation has given us the avoidance of justice, the institutionalising of corruption, and created an apathy based on fear. This is not reparation; nothing has been fixed, and even the paltry attempt at compensation has failed due to corruption. Human rights violations strike at the moral foundation of society, and to restore this requires justice, compensation and rehabilitation. Nothing more than this, and certainly nothing less! As Richard Goldstone has said, “justice does not depend on peace, rather that peace depends on justice”.

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[18] **See** *Reeler, A.P. (1997), We cannot open cans of worms selectively, ZIMBABWE INDEPENDENT, April 23.***See also** *Reeler,A.P. (1994), I want my Nuremberg: Impunity and Racism in Zimbabwe, FINANCIAL GAZETTE, October 20;*