

Zimbabwe Human Rights NGO Forum

Exploring Transitional Justice Options in Contemporary Zimbabwe

*“The wrongs which we seek to condemn and punish have been
so calculated, so malignant, and so devastating,
that civilisation cannot tolerate their being ignored.”*

Opening remarks for the prosecution by Justice Robert Jackson at the Nuremberg tribunal.

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Introduction

One of the greatest challenges in the aftermath of any violent conflict is the issue of accountability for serious human rights violations. Although impunity continues to characterise many post-conflict situations, since the end of World War 2 there has been perceptible progress in efforts towards securing justice and accountability and in undertakings to build polities based on fundamental rights and freedoms and respect for the rule of law. Although there is much work still to be done in this regard, addressing the rights of victims and survivors is increasingly recognised as an essential component of any credible efforts designed to tackle issues of justice and accountability, which are themselves integral components of building the foundations of a sustainable democratic culture. Policies of amnesia and avoidance, which have characterised so much of the past, are under attack and, in the words of the United Nations High Commissioner for Human Rights, “the preference for doing nothing is no longer an option.”¹

There is now a framework of international criminal law and institutions that operate at both international and domestic levels. This has culminated with the creation of the International Criminal Court whose statute has now been ratified by 97 States. The Statute is based on the principle that international prosecution complements national efforts and encourages the emergence of national judicial systems that are willing and capable of prosecuting serious violations (i.e. war crimes, crimes against humanity and genocide) in accordance with international standards.

A theoretical framework for criminal prosecutions of such violations has therefore been developed, but we are a long way from a comprehensive application of the principles of complementarity. In other words, in many jurisdictions, often for differing reasons (political and/or pragmatic), national judicial systems are simply not synchronised to pursue these options. Prospects for securing justice and accountability are further compounded by a host of complexities and challenges associated with investigating and prosecuting international crimes. International processes have been limited, and as experience has already shown in the case of Rwanda, for example, these processes do not effectively address the needs of victims and survivors.

Especially in developing countries, capacity within the formal criminal justice system is acutely limited and it is necessary to explore alternative approaches to justice and accountability. Consequently, it is necessary to assess the quality and capacity of national justice systems during transitional periods.

Transitional Justice – or, the pursuit of comprehensive justice during times of political transition – has come to refer to the development, analysis, and practical application of a wide variety of strategies for confronting the legacy of past human rights abuses in order to create a more just and democratic future.

In theory and in practice, the central objectives of a transitional justice approach are to confront legacies of abuse in a broad and holistic manner that encompasses criminal justice, restorative justice, social justice, and economic justice. In addition, this approach is premised on a belief that a responsible justice policy must include measures that seek to achieve both accountability for past crimes and the prevention of new crimes. In addition, it requires taking into account the collective character of the various forms of victimisation, as well as the trans-national character of certain human rights crimes.²

¹ High Commissioner’s opening address on the Rule of Law Tools for Post-Conflict States to the Transitional Justice Workshop, 27–29 September, 2004, <<http://www.unhchr.ch/hurricane.nsf>>.

² Taken from the ‘Background Paper’ provided to participants in the 2003 Summer Institute convened by the International Center for Transitional Justice, <<http://www.ictj.org>>.

This complex task requires dealing collectively with past, present and future exigencies, often in a context of acute resource limitations and adverse political conditions. Such conditions vary in each transitional context, and what can be achieved in terms of justice and accountability is often largely dependent on the nature of the specific obstacles and opportunities that present themselves.

Although the study of transitional justice situations and options remains relatively new, past experience demonstrates there are many similarities in terms of the challenges that are faced in the aftermath of political transitions from authoritarian rule. As such, we should learn from the experiences of others, in order to explore and develop a range of justice and accountability options. Such initiatives will be central to the rebuilding and consolidation of administrative and judicial systems that are premised on respect for the rule of law and the protection of human rights.

Transitional justice and Zimbabwe

The situation in Zimbabwe presents a related, yet somewhat different, challenge. This is not a post-conflict dispensation and the country remains in the grip of a repressive nationalistic regime. Prospects for meaningful change in the short term remain doubtful. Indeed, the situation looks set to continue deteriorating, especially in the wake of ZANU(PF)'s victory in the March 2005 parliamentary elections, and the subsequent systematic purging and relocation of the urban poor under the auspices of 'Operation Murambatsvina'.³

Consequently, prevailing conditions circumscribe the extent to which many unattended issues of justice and accountability are and can be freely aired and discussed. Repression and fear continue to pervade the realities and consciousness of the general population, as well as those who endeavour to further justice and accountability agenda. Efforts to employ domestic and international remedies that might address contemporaneous violations have had limited success, and have not prevented further violations and authoritarianism. In fact, the situation in Zimbabwe has been exacerbated by the anticipated introduction of new legislation ostensibly designed to regulate the non-governmental sector, but in reality intended to prevent the monitoring and documentation of human rights violations, as NGOs may be prohibited from receiving foreign funding for work dealing with issues of human rights and governance.⁴

These remain profoundly complex and controversial issues. The situation in Zimbabwe is further complicated as issues of human rights have been routinely manipulated, denied and distorted by the government and ruling party for partisan interests. Relentless propaganda has subverted meaningful debate around a broad range of social and economic concerns (such as the controversial land reform process) and ongoing civil and political violations are routinely denied or blamed primarily on opposition elements. Overwhelming evidence of systemic abuse is simply ignored or dismissed as neo-imperialist propaganda. Domestic organisations that continue to expose these abuses are labelled as imperialist fellow-travellers, doing the bidding of countries determined to undermine Zimbabwe's sovereignty.⁵

³ See *Order out of Chaos, or Chaos out of Order? A Preliminary Report on Operation Murambatsvina*, A Report by the Zimbabwe Human Rights NGO Forum, June 2005.

⁴ The legislation, the Non-Governmental Organisations Bill, was passed by Parliament but, for reasons that are not clear, the President refused to assent to it. There have been suggestions that in due course it will be reintroduced in Parliament, albeit in a modified form: *Zim Online*, 26 July 2005.

⁵ Without presenting any factual substantiation, ZANU has a long history of labelling its opponents as imperialists or imperialist fellow travellers. In a 1976 document, entitled, 'ZANU – Be Vigilant', the late Vice-President, Joshua Nkomo, in his capacity as the head of ZAPU, was described as "the lackey of all imperialist reactionaries ... untrustworthy and unreliable".

There have been many comparisons between the era of Rhodesian repression and the current situation in Zimbabwe. Although there are clear continuities between aspects of pre- and post-colonial authoritarianism, such comparisons are not altogether accurate. The widespread abuses that accompanied the repression in Matabeleland in the mid-1980s are certainly analogous to the violations from the height of Rhodesian counter-insurgency. The suppression that has characterised the post-2000 period has resulted in considerably fewer deaths, but has been both widespread and systematic. In the words of one exile: “ours is not a bloody war, ours is a silent and cunning war”. Despite these distinctions, the situations in both Rhodesia and Zimbabwe are similar in that there has been no meaningful effort to address the violations that have been perpetrated in either dispensation.

Understandably, most human rights organisations in civil society have continued to focus their attention on contemporary priorities. Their capacity to do so has been undermined by a continuing erosion of human resources, as the exodus of Zimbabweans across the socio-economic spectrum continues. This has contributed to a situation where human rights organisations remain primarily in a ‘reactive’ mode, in what many interviewees described as ‘fire-fighting’.

In spite of these circumstances, Zimbabwean non-governmental organisations have initiated a process that seeks to consider how best to address the litany of civil, political, social and economic violations that have characterised both colonial and post-colonial dispensations. In 2001, for example, the Amani Trust in Bulawayo convened a ‘Truth and Justice Conference’, which focussed specifically on the situation in Matabeleland. It was, however, a ‘Civil Society and Justice in Zimbabwe’ symposium convened in Johannesburg in August 2003 that for the first time provided a relatively detailed framework of issues that needed to be addressed. A detailed set of recommendations, in the form of a ‘Symposium Declaration’ was developed and adopted, and the Zimbabwean organisations present committed themselves to deepening discussion and debate on these issues, both within their own constituencies and amongst broader Zimbabwean society.⁶

⁶ See ‘Symposium Declaration’ – Annexure ‘A’.

The Report

Background

This report is the product of research that was undertaken in Zimbabwe during 2004 in the wake of the August 2003 symposium. In 2003, there was considerable speculation about the prospects of political talks, and even some sort of 'negotiated settlement' between the ruling ZANU(PF) and the opposition MDC. Three and half years of deterioration had resulted in considerable pressure from the international community and especially some African countries for dialogue between Zimbabwe's two main political parties. It was not clear what the prospective talks would in fact address, although human rights groups and other civil society structures were keen to ensure that acknowledgement of and responsibility for a host of human rights violations must be taken into consideration. Accordingly, at the August 2003 symposium there was a certain sense of urgency and necessity about beginning to address (or at least preparing to address) a range of transitional justice issues.

At the Johannesburg symposium two key areas requiring immediate attention were identified, namely the importance of widening the debate around transitional justice options, and an undertaking to review existing data sources of human rights violations that might be utilised in any subsequent justice and accountability endeavours. In this regard, specific attention would be given to the prospects of establishing a relational database which would enable a clearer understanding of 'who did what to whom, when, where, and how'. A specific, but not exclusive, focus was given to issues of organised violence and torture.

During the course of this project, however, a political settlement, or indeed any kind of meaningful talks designed to address the 'Zimbabwe Crisis', did not materialise. In fact, it is evident that the situation has actually deteriorated in many respects. Zimbabwe remains in a 'pre-transitional' phase, with no immediate prospects for an end to the pressing political, social and economic crises that continue to engulf the country. As such, it can be expected that repression and human rights violations will continue to characterise governance considerations by the ruling party, especially in the context of its primary objective of retaining power. Organised violence and torture have characterised all election processes throughout Zimbabwe's independence period. This has become increasingly evident since 2000, as established by available data, and raised prospects that the March 2005 parliamentary elections would also be characterised by violence.⁷ Although the elections were relatively peaceful, there is evidence of violence, as well as reports of pervasive threats and intimidation relating to the election processes.⁸

Although efforts to pursue a 'transitional justice agenda' appears to have been put on the backburner for most interested parties in civil society, the relevance of these issues and the need to take steps to address them remain germane. Of course, the evolving context in Zimbabwe requires a nuanced and flexible approach to these issues, and an acceptance that what can be undertaken in the present context is constrained.

It is also evident that there are no generic solutions to these sorts of challenges. Although there would be more opportunities to strengthen civil society's position vis-à-vis a range of justice and

⁷ See *Zimbabwe: Tortuous Patterns Destined to Repeat Themselves in Upcoming Election Campaign: A Preliminary Study of Trends and Associations in the Pattern of Torture and Organised Violence in Zimbabwe*, July 2001 – December 2003, The Redress Trust, November 2004.

⁸ See, for example, *Consolidated Election Climate, No. 1 – February 2005* and *Consolidated Election Climate, No. 2 – March 2005*, National Constitutional Assembly, <<http://www.nca.org.zw>>.

accountability considerations when there is more democratic space and opportunities to discuss and carry through a transitional justice agenda, it is also important to assess how justice and accountability considerations might be utilised as an integral part of efforts to (re)build democratic space. In these circumstances, the research/interview process also endeavoured to promote ideas and options for the promotion and realisation of justice and accountability within the confines of existing realities.

Methodology

Over a period of seven months, the writer visited Zimbabwe on six occasions where he met with and discussed transitional justice options and developments with a number of individuals and organisations, many several times over the project period.⁹ During these visits, the writer has also participated in several workshops, focusing specifically on transitional justice issues with victim groupings (see below), as well as other processes responding to proposed legislative initiatives to regulate the NGO sector and the introduction of 'electoral reform' in Zimbabwe. In addition, the writer has engaged with a range of civil society actors in both Zimbabwe and South Africa on a continuous basis throughout the project period. He has also accessed a wide cross-section of secondary source material on contemporary human rights issues in Zimbabwe.

This report is divided into three sections: exploring what has been done, as well as options and constraints around widening of the debate on transitional justice options; a review of human-rights data collection in Zimbabwe, with a particular focus on quantitative data collection; and an overview/assessment of existing human rights reports on Zimbabwe.

The report is intended as a resource and provides a framework for further engagement around certain transitional options. It also contains a number of recommendations on taking forward some of the various processes under consideration.

⁹ For obvious reasons it is not possible to publicise the list of individuals and organisations that have been engaged, although the author is confident it represents a cross-section of Zimbabwean civil society groupings working directly with core justice and accountability issues. For security reasons, this public report has also excised certain details relating to the work of specific organisations.

1. Widening the Debate on Transitional Justice Options

What do we mean by transitional justice?¹⁰

Transitional justice is premised on a belief that the demand for criminal justice is not an absolute, but must instead be balanced with the need for peace, democracy, equitable development and the rule of law. It also recognises that in contexts of transition there may be unique practical limitations on the ability of certain governments to adopt specific justice measures.

Transitional justice focuses on five primary areas:

- (1) trials (whether civil or criminal, national or international, domestic or foreign);
- (2) truth-seeking and fact-finding (whether via official national inquiries such as truth commissions, or via international commissions of inquiry, UN mechanisms, or NGO efforts);
- (3) reparation (whether compensatory, symbolic, restitutive or rehabilitative in nature);
- (4) institutional reform (including legal and institutional reforms, removal of abusers from public positions, and human rights training for public officials); and
- (5) memorialisation and “collective memory”.

The field also encompasses several related issues, including an examination of the dilemmas of impunity, and in particular the problematic role of amnesty during transition; and an understanding of initiatives aimed at engendering reconciliation. It is important to remember that the objectives and tools of transitional justice go beyond trying to secure formal accountability for human rights violations via trials and other forms of judicial sanction. Indeed, transitional justice goals are more holistic and include a commitment: to halt ongoing human rights crimes, to investigate the crimes, to identify those responsible, to impose sanctions on those responsible, to provide reparation to victims, to prevent future human rights crimes, to reconstruct State–citizen relationships, to preserve and enhance peace and democracy, and to foster individual and national reconciliation.

Another distinguishing feature of transitional justice is the premium placed on *balance* and *integration*. For example, transitional justice does not argue for retributive justice at any cost, or insist on preserving peace at the expense of victims’ right to justice, but rather insists on balancing the different and competing objectives and interests in accordance with international law, local advantages and constraints, as well as rational and fair policy making.

A victim-centred approach

In a context of power imbalances, which are usually characteristic with respect to the position of victims and survivors, a distinguishing feature of transitional justice approaches is the emphasis on a *victim-centred approach* to dealing with a violent and repressive past. A victim-centred orientation is necessary both in terms of the processes undertaken and the results secured. Consequently, in every endeavour, it is essential to ask how the victims and survivors benefit (or not). The credibility and legitimacy of transitional justice mechanisms are often measured by the extent to which victims and survivors oppose or support them, and the degree to which they are able to participate in and benefit from them. This places a premium on communication and consultation, both with what might best be described as ‘organised’ civil society (i.e. structures and organisations such as NGOs, churches, etc.), as well as the general public and other groupings that are not organised. In many situations, a core priority remains the need to build responsive and representative victim groupings.¹¹

¹⁰ The writer acknowledges the important contribution that the International Center for Transitional Justice has made and continues to make in developing a clearer understanding of the core content and parameters of what constitutes transitional justice.

¹¹ ICTJ, ‘Background Paper’, pp. 2–3.

(a) Transitional justice options in Zimbabwe: debates and developments

Civil society engagement

The debate around transitional justice options in Zimbabwean civil society is embryonic and remains largely confined to a small grouping of non-governmental organisations.

Since independence in 1980, a few human rights organisations have focused much of their attention on monitoring and the documentation of violations, seeking where possible some relief through the domestic courts and other local remedial mechanisms. In addition, violations have been recorded and exposed on an ongoing basis by international human rights organisations, such as Amnesty International and Human Rights Watch. A handful of criminal and civil matters were dealt with before the courts, and although Zimbabwe's courts have demonstrated their capacity for independence, and have made judgments that do not favour the government, by and large, justice and accountability considerations for serious human rights violations have fallen on deaf ears. This situation has been compounded in recent years as the judiciary has been politicised and therefore its integrity has been increasingly questioned.

The post-colonial State in Zimbabwe has never demonstrated a willingness to address issues of accountability for human rights violations – principally, it is suggested, because it was (and remains) one of the primary perpetrators. Violations perpetrated during the liberation war (by both sides in the conflict) as well as during the 1980s were indemnified and tied to broader national reconciliation objectives. During the 1980s, the context of security concerns – primarily as a result of South African sponsored destabilisation – provided a veneer of legitimacy for tough State actions. Violations during this period were also indemnified under the pretext of fostering national reconciliation. Not surprisingly, many Zimbabweans' perceptions of reconciliation remain at best highly cynical.

With the exception of a few organisations that documented and dealt with the large-scale atrocities committed in Matabeleland and the Midlands during the 1980s, and other (largely uncoordinated) efforts to seek relief through the courts, Zimbabwean civil society in general has not been particularly vocal or active in efforts to stamp out malpractices or hold the State accountable for gross human rights violations. Other interventions have included the provision of human rights training and orientation to the local police, but this has not averted the current levels of abuse.

With some individual exceptions during the first two decades of independence there has been a systematic failure to take legal responsibility for violations committed by State security agents. Allegations of abuse are generally ignored or denied. When the opportunity arose for widespread debate during the constitutional debates of the late 1990s, justice and accountability considerations were raised implicitly in relation to constitutional reform, but not in relation to retrospective notions of liability.

Widespread repression in the wake of the formation of the MDC in 1999 has, however, generated a renewed interest in issues of accountability, institutional transformation and reparation. Any prospects for meaningful developments in this regard, however, are predicated on significant political changes. The notion of reconciliation remains polluted as a result of its expedient political manipulation and its failure to deliver meaningful results.

Recommendations by the National Constitutional Assembly

Following the rejection of the Zimbabwean government's recommended constitutional reform process in 2000, and in the wake of deteriorating political, social and economic conditions across the country, the NCA continued to develop its alternative constitutional vision. During 2001, the NCA convened two 'all stakeholders' conferences at which elements to be contained in the 'final draft' were considered. In early 2002, this draft was released, and contained specific provisions in Chapter Nine to establish a 'Truth, Justice, Reconciliation and Conflict Prevention Commission'.

This Commission would sit for at least five years, with options to renew the tenure of commissioners for a further five years. Although not explicit, the Commission would be a permanent structure especially with regards to dealing with issues of reconciliation and conflict prevention. The Commission would be responsible, however, for investigations of past violations (and related considerations around prosecutions, amnesties, etc.), to 'provide remedies for people injured by such abuses', to 'promote reconciliation in order to avoid conflict in the future', and to 'prevent conflict in the future by engaging in mediation and dispute settlement in disputes that could lead to conflict'.¹²

Civil Society and Justice Symposium – August 2003

In August 2003, in a context of ongoing violations back home, approximately 70 civil society organisations from Zimbabwe met in Johannesburg to explore issues of redress, amnesty and impunity and to develop ideas about transitional justice options in Zimbabwe. The main purpose of the meeting was to explore how best to achieve justice in the broadest possible sense for the many victims of past and present human rights abuses in Zimbabwe. That they had to meet in a neighbouring country is testimony to the parlous state of affairs in Zimbabwe, but testimony to these organisations' commitment to promoting an accountability agenda.

Mindful of efforts underway at that time to secure a political settlement, symposium delegates felt it was necessary to ensure a range of transitional justice issues were incorporated into that process. As such, those gathered felt it was important for them to make a clear, unambiguous statement that could be delivered to all parties involved in trying to bring about a political solution. These organisations were particularly mindful that given the levels of responsibility the ruling ZANU(PF) has in relation to these violations, they would inevitably be interested in guarantees of immunity. Consequently a political settlement could well compromise the principles of justice and human rights, which are essential for rebuilding a peaceful society.

The scope of the symposium was ambitious, exploring the multi-faceted aspects of gross violations of human rights and of victimisation. Other issues examined, included reparations, healing, forensic and medic-legal aspects of human rights violations, juridical documentation, litigation and international legal instruments.

A 'Declaration' was developed that set out in considerable detail: what the symposium was about; the processes that were undertaken during the meeting; an acknowledgement of the violations under consideration; an undertaking to pursue accountability options and a condemnation of successive amnesties and indemnities adopted by both colonial and post-colonial regimes that had resulted in a culture of impunity; a set of detailed recommendations on how to address human rights abuses; and recommendations for institutional transformation and adherence to international human rights obligations.

¹² National Constitutional Assembly, *Proposed Draft Constitution of Zimbabwe*, Chapter Nine, Sections 128–130.

Although a number of NGOs and other civil society actors have called for justice and accountability in relation to human rights violations over the years, this meeting and its recommendations represented the first significant attempt by civil society groupings to introduce a more comprehensive and holistic agenda to secure justice and accountability. By tying these issues to prospective political dialogue, it was an important attempt to position these considerations at centre-stage.

Party political positions

The Movement for Democratic Change

Members and supporters of the MDC have been the primary targets of contemporary violations by State security agencies and their proxy forces.¹³ The party has consistently called for accountability, an end to partisan policing (and prosecutions) and a return to the rule of law. Understandably, the party's focus has remained on recent violations in the post-1999 period, although it acknowledges the importance of addressing all relevant abuses from both the colonial and post-colonial periods.

Initially, the MDC approached the issue of retrospective accountability with some degree of caution, seeking policy advice on a broad range of transitional justice options from the New York-based International Center for Transitional Justice. The ICTJ was able to provide some generic advice on what had been attempted elsewhere but, having no specific experience of Zimbabwe, was unable to make country-specific recommendations. In addition, it appears no advice was given to how best to engage civil society on these matters.

Prior to the August 2003 Symposium, and in a context where talks between the MDC and ZANU(PF) seemed possible, the MDC informally raised concerns with the conference organisers about the timing of the conference, indicating that a hard-line position from civil society on issues of retrospective accountability might be counter-productive, prompting the ruling party to 'dig in its heels'. In retrospect, and in light of the fact that political talks never produced tangible progress, senior members of the MDC informed the writer that they recognised the value of civil society taking an independent and principled position on these issues.

Regrettably, the MDC failed to respond to requests in late 2003 from the Zimbabwe Human Rights NGO Forum and the Crisis in Zimbabwe Coalition for a meeting to discuss the 'Johannesburg Declaration'. The MDC and key civil society organisations had already reached agreement on a number of the principles of transition, so it was not surprising that transitional justice considerations were subsequently raised and formally adopted at the party's December 2003 Congress. As part of a slew of policy positions, the party highlighted a series of measures it would take under the rubric of 'constitutionalism, truth and justice'. Included amongst these were a number of broad commitments to a transitional justice agenda.

"We will establish mechanisms for truth, justice and reconciliation and restitution. A Truth Commission will be established to gather evidence on human rights abuses reported to the public and to make recommendations on a course of action to government. While general provisions of amnesty for prisoners will continue, we will ensure that due legal process is applied to all human rights abuses, and provide for systems at community, traditional, social and national level to provide for restitution and reparation and for the rehabilitation of perpetrators of abuses."

¹³ See, for example, *Playing with Fire*, Zimbabwe Institute, March 2004. This report provides personal accounts of human rights abuses experienced by 50 opposition MDC Members of Parliament in Zimbabwe, and 28 opposition election candidates. Also, see *Disturbing the Peace: An overview of civilian arrests in Zimbabwe: February 2003 January 2004*, Solidarity Peace Trust, July 2004.

In addition, the MDC committed itself to institutional transformation, seeking “to rebuild democratic structures based on the rule of law”, and setting out more specifically, that “institutions that have been damaged or abused will be rebuilt, particularly the courts, the law enforcement agencies and public service. This will be done through extensive retraining and the redeployment of personnel”. The MDC also committed itself to a process of lustration, specifying that “no-one who is found guilty of serious human rights abuses will remain in a government post”.¹⁴

ZANU(PF)

The ZANU(PF) government and ruling party also ignored a request from the Human Rights NGO Forum and the Crisis Coalition of Zimbabwe, for a meeting to discuss the ‘Johannesburg Declaration’. Letters were sent to the Speaker of Parliament and the Ministers of Justice, Home Affairs and Defence, but no response or even acknowledgement was received. This is not surprising, given their track record towards dealing with issues of human rights violations and their increasingly hostile attitude towards the human rights NGO community.

As already indicated, ZANU(PF)’s reaction to ongoing and widespread allegations of abuse has been one of avoidance, denial and counter-allegation. More specifically, assertions of abuse are portrayed as malicious untruths sponsored by external imperialist interests (particularly the British) designed to undermine the legitimacy of the government and to effect ‘regime change’. No-one appears to be immune from such labelling, as illustrated by statements made by the Zimbabwean government against Nobel Laureate and former TRC Chairperson, Archbishop Desmond Tutu, the Congress of South African Trade Unions and the authors of a report compiled on Zimbabwe’s deteriorating situation by the African Commission for Human and People’s Rights and the United Nations Economic Commission for Africa.

The government does, however, selectively raise human rights issues, and frequently makes reference to past colonial violations, primarily as part of its general approach towards legitimising the land reform process. Despite this, it has not publicly engaged in any processes to address violations in the post-colonial era. The government did, however, appoint the Chihambakwe Commission of Inquiry in the face of widespread demands from civil society to investigate the Gukurahundi atrocities, but then refused to make the report publicly available.

Although organised violence and torture remains a critical concern to the MDC, the government/ZANU(PF) representatives involved in the tentative dialogue process have consistently refused to entertain any discussion on issues of accountability for human rights violations. This position is likely to be maintained, so long as ZANU(PF) believes it retains an insurmountable position of strength. If this situation changes, however, and a more meaningful dialogue with other parties develops, issues of justice and accountability could become subject to negotiation and political compromise. Experience elsewhere also suggests that such concerns could be sacrificed on the altar of political expediency.

Prior and current developments

The following sections explore some of the transitional justice developments that have already taken place in Zimbabwe, in spite of the current situation.

Trials

In the current context of continuing abuses in Zimbabwe, there is considerable support in many quarters for perpetrators of gross human rights violations to be brought to trial.

¹⁴ *From Crisis to Democratic Human-Centred Development: Values, Goals and Policies of the Movement for Democratic Change (MDC)*, December 2003, Section 2.3.1, pp. 23–24.

Zimbabwe does not have a good track record in terms of holding such perpetrators accountable, and the legal system has been used selectively and without meaningful commitment to address widespread and systematic violations which have characterised periods of both pre- and post-independent Zimbabwe. Both the Rhodesian and Zimbabwean courts have demonstrated a capacity for independence, and have made adverse rulings against State officials vis-à-vis gross human rights violations. Consequently, notions of criminal or civil liability are certainly not alien to many Zimbabweans. Despite this, in most instances perpetrators of gross human rights violations in both Rhodesian and Zimbabwean dispensations have retained some sort of *de jure* and *de facto* impunity.¹⁵

Although there are widespread allegations of violations, as documented by human rights organisations, it is not clear how many criminal charges have actually been laid with the police in this regard. The Zimbabwe Republic Police, which was not regarded as a primary perpetrator prior to 2000¹⁶ has become so discredited in recent years that very few people appear willing to lay charges, either because they do not expect any significant action will be taken, or because they fear retribution, especially if the perpetrator is a member of the State security forces, or part of a proxy youth militia or war veteran grouping.

Allegations of abuses by the ZRP, Central Intelligence Organisation, Zimbabwe National Army and others have, however, been raised during other criminal prosecutions (e.g. the Cain Nkala murder trial) and other court actions (e.g. interdicts against farm invasions). During 2003 and 2004, the Zimbabwe Lawyers for Human Rights and the Legal Resources Foundation instituted over 100 civil claims in relation to allegations of torture at the hands of State security agents. As a result, the civil division of the Attorney General's office is currently faced with a massive backlog of matters to be dealt with. Although it is not expected that these cases will necessarily bring any meaningful relief, they provide an important record of the efforts taken to seek some measure of account.

Legal efforts to force the government to release the report of the Chihambakwe Commission of Inquiry into the Gukurahundi were squashed by the Supreme Court during 2004.¹⁷ Zimbabwe Lawyers for Human Rights and the Legal Resources Foundation are still contemplating a class action suit to compel President Robert Mugabe to publish findings of investigations into military atrocities against civilians in Matabeleland in the 1980s.¹⁸

Experience shows that efforts to bring former dictators and perpetrators of past human rights violations to account are often mired in political controversy and practical difficulties. If and when a new political dispensation emerges in Zimbabwe the issue of how best to deal with past violations is likely to resurface. Although the August 2003 symposium recommended the establishment of a 'Truth, Justice and Reconciliation Commission' as the 'main mechanism' for dealing with past human rights abuses, the option of criminal trials has not been discarded. This is very much in line with general transitional justice principles that affirm the importance of retaining retributive justice options. There is, however, no certainty that this will happen, and much will depend on the nature of any new constitutional and legal arrangements, and the extent to which negotiation and political compromise dilute, or indeed bolster, commitments to justice and accountability.

¹⁵ A series of amnesties, pardons and indemnities have been granted between 1975 and 2002. This includes the 1975 Indemnity and Compensation Act, the 1979 Amnesty Ordinance, the 1980 General Amnesty Ordinance, 1988 Clemency Order, 1995 Presidential Pardon, 2000 Clemency Order and 2002 Clemency Order.

¹⁶ Human Rights NGOs in Zimbabwe were primarily concerned with the allegations against the Central Intelligence Organisation (now known as the Department of National Security), as well as the Zimbabwe National Army. In recent years, however, there have been an increasing number of allegations regarding several branches of the ZRP.

¹⁷ *Zimbabwe Lawyers for Human Rights & Anor v. President of Zimbabwe & Anor* S-12-03 (Civ App 311/99).

¹⁸ 'Mugabe faces class action lawsuit', *The Zimbabwe Independent*, 10 Sept. 2004.

In terms of criminal trials, any new political dispensation is likely to face a combination of contradictory pressures; on the one hand, addressing the desires and expectations of those who have suffered unspeakable acts of torture and abuse and who have had their lives torn apart by a repressive and unaccountable government, is a crucial element of democratisation and rebuilding the social contract between State and citizen. *“What better way can there exist of demonstrating that radically different legal and political norms are in effect by showing that the (leadership) of the old world are no longer immune to prosecution for their offences, and that they will be held accountable to the same standards of behaviour as any other citizens.”*¹⁹

On the other hand, retributive justice options are faced with a number of practical and political obstacles. Legal standards must be resuscitated and maintained, and this may not be possible if the courts are not equipped to handle such matters. In Zimbabwe, the independence of the police and courts has also been seriously brought into question.²⁰ Although elements of integrity remain within the criminal justice system, political manipulation and systemic malpractice has eroded any hopes of their providing a countervailing influence to the ongoing subversion of the legal system and policing agencies. Most importantly, in their current condition, the criminal justice system lacks fundamental credibility.

It is important for those advocating criminal trials for perpetrators of human rights violations to keep in mind that conducting trials will require using the existing legal infrastructure which has been increasingly compromised in recent years. It is therefore essential that a comprehensive evaluation of the criminal justice system and key actors is conducted, to determine if and where existing capacities can be utilised, and where lustration processes might or should be employed.

Much will also depend on the extent to which the new political authorities have consolidated their control of governance mechanisms, in particular the forces of law and order. If attempts are made to secure some measure of accountability for past crimes, it is likely that the security forces and policing agencies will face major scrutiny. Most transitions have not been accompanied by wholesale transformation in these agencies, and many members of the *ancien régime* are often incorporated into the new structures. Security force members who should be under investigation often remain in a position to influence whether this is actually done or not. Consequently, the position of the security forces in terms of supporting or opposing criminal trials of security force personnel in relation to legal violations must be ascertained. Any moves to pursue a retributive justice agenda will require a constitutional commitment that many security force chiefs would be unwilling to make. It is therefore necessary to assess their ability and predilection to undermine and disrupt such processes.

International legal action

Several ‘universal jurisdiction’ initiatives have been initiated to seek legal relief using courts outside the country. In late 2001, a New York court ordered ZANU(PF) to pay US\$100 million compensation to victims of the violence that engulfed Zimbabwe’s 2000 parliamentary elections.²¹ Although it is unlikely that the money will be paid, lawyers for the victims have initiated efforts to begin freezing and appropriating ZANU(PF) assets in Zimbabwe and world-wide. The court’s judgment also provides additional symbolic value to allegations of human rights violations in the country.

¹⁹ *Transitional Justice and the Rule of Law in New Democracies*, edited by A. James McAdams, University of Notre Dame, Indiana, 2001, p. x.

²⁰ See *Attacks on Justice 2002 & 2003: A Global Report on the Independence of Judges and Lawyers*, by the Centre for the Independence of Judges and Lawyers of the International Commission of Jurists. See also report by the Inter-Parliamentary Union’s Committee on the Human Rights of Parliamentarians, *Report of its Mission to Zimbabwe, 28 March – 2 April 2004*, October 2004.

²¹ ‘New York court tells Mugabe to pay up’, *Legalbrief Today*, 2 Nov. 2001.

In March 2003, the International Bar Association urged the International Criminal Court that its first act should be directed at the alleged atrocities committed by Zimbabwe's President, Robert Mugabe and his regime. The IBA argue, "there is already sufficient evidence to justify the investigation of allegations that Mr Mugabe has committed and continues to commit crimes against humanity."²² NGOs at the August 2003 symposium supported efforts to facilitate international remedies for victims, and recommended that any "new government should try to make full and effective use of the Rome Statute of the International Criminal Court."²³

Efforts by Canadian political parties and legal activists to indict Mugabe on charges of genocide, war crimes and crimes against humanity resulted in the filing of preliminary charges with the Canadian Minister of Foreign Affairs and Justice in November 2004. These charges are based on the testimony of more than 100 Zimbabweans about alleged rape, torture and mutilation at the hands of Zimbabwean security forces and youth militia. If the indictment were approved, Mugabe and officials of his government named in the order would be liable for arrest and extradition to Canada in any country that has an extradition agreement with Ottawa. This includes South Africa, which changed its legislation in 1996 in order to expedite extraditions to other Commonwealth country members.

Truth-seeking and fact-finding

Justice, and particularly retributive justice, options do not necessarily deliver the truth. For many victims and survivors, establishing the truth of what has transpired and why, often provides a foundation for closure, reconciliation and healing. There are numerous ways of establishing the truth about past human rights abuses. The most well known of these, has been the 'truth commission'.²⁴ There are however a range of other options, including historical commissions, commissions of inquiry (judicial and other), and fact-finding bodies — from multi-lateral institutions such as the African Union and UN (i.e. Special Rapporteurs, specific commissions and committees), international bodies such as the International Commission of Jurists, and international NGOs, such as Amnesty International. In addition, there are a range of official and unofficial domestic options that can be developed. Fact-finding bodies can operate very publicly, or *in camera*.

In Zimbabwe, for much of the pre- and post-colonial period, truth-seeking and fact-finding efforts took place under the radar screen, as they were and are perceived as anti-government activities and therefore subversive. In the mid-1970s, the Catholic Commission for Justice and Peace in Rhodesia released a series of reports based on individual testimonies detailing violations by the Rhodesian security forces. Although there was also considerable evidence of guerrilla-related violations, much of this was controlled and manipulated by the State for propaganda purposes and consequently lost much of its legitimacy, and it was not until the post-independence period that some insights into liberation movement violations were developed. The CCJP also released one report that provided detail on the invidious position of civilians caught between the State security forces and liberation insurgents.²⁵

²² 'IBA calls for ICC to try Robert Mugabe', *Legalbrief Africa*, 7 Mar. 2003.

²³ 'Symposium Declaration: Civil Society and Justice in Zimbabwe', 13 Aug. 2003. The ICC was established on 1 July 2002 as the first permanent international court to investigate and try individuals for the most heinous violations of international humanitarian law, including genocide, war crimes and crimes against humanity. Under the UN Charter, the Security Council can decide what measures should be taken to maintain or restore international peace and security. Thus, the referral to the ICC to immediately investigate the crisis in Zimbabwe would fall squarely within the powers of the Security Council.

²⁴ Recommendations for establishing a Zimbabwean Truth Commission, derived from other TRC-type experiences, have been made for several years – see, for example, *Truth and Reconciliation Processes: Lessons for Zimbabwe?* Max du Plessis, The South African Institute of International Affairs, SAIIA Report No. 44, 2002. The 2003 Johannesburg Symposium and subsequently MDC also called for the establishment of a 'Truth and Justice' Commission as a primary mechanism for dealing with past violations.

²⁵ *The Man in the Middle: Torture, Resettlement and Eviction*. Catholic Commission for Justice & Peace in Rhodesia, 1975.

Although some human rights organisations made whatever records they could during the 1980s regarding the violations in Matabeleland and the Midlands, it was not until the mid to late 1990s that significant efforts were made to develop a systematic record of this.²⁶ The Gukuruhundi has not been adequately addressed, and it retains a taboo status amongst many constituencies, and not only in the government and ruling party.

Other violations during the 1980s and 1990s were also routinely recorded by a handful of NGOs, and more often than not given international exposure by organisations such as Amnesty International and Human Rights Watch, which made (and continues to make) regular fact-finding missions to Zimbabwe.

It was not until the late 1990s that Zimbabwean human rights organisations took a more systematic approach to documenting and reporting human rights violations, and since then a huge amount of information has been gathered and generated. This has been complemented by increased co-ordination and sharing of data by human rights organisations, culminating in the formation of the Zimbabwe Human Rights NGO Forum in 1998.

A range of international bodies have also instituted fact-finding missions, including the International Commission of Jurists, the Inter-Parliamentary Union, and the African Commission on Human and People's Rights. Individual organisations and the Zimbabwe Human Rights NGO Forum have made numerous submissions to regional and international human rights mechanisms (AU, EU, UN, etc.), in an effort to secure some form of sanction or at least recognition for the violations perpetrated in Zimbabwe.

Although a number of adverse reports have been made, the Zimbabwean government routinely denies any malfeasance, or has been able to avoid scrutiny with the assistance of other developing countries that have blocked efforts to subject Zimbabwe to scrutiny by United Nations human rights mechanisms.

Reparation

In the face of widespread human rights crimes, States have an obligation not only to act against perpetrators, but also to act on behalf of victims. Given the unlikelihood of mass prosecutions in transitional contexts, a complementary way to address victims' claims for justice without threatening political stability in any obvious way is to try to directly *repair* some of the harm suffered. Reparation is also an obligation under international law. Although the precise obligations of each State vary in accordance with their respective treaty obligations, there is an emerging view that all States have an obligation to provide reparation or remedy to victims of human rights crimes.²⁷

In Zimbabwe, the State has paid virtually no attention to victims of post-independence violence (or indeed colonial era violence), but has instead focused its support and State resources on initiatives and schemes aimed at benefiting former veterans of the liberation war. Even these were not introduced until considerable pressure was placed on the government in the late 1990s, and lump-sum payments and monthly pensions to thousands of war veterans are commonly believed to have played a significant role in generating Zimbabwe's ongoing economic collapse. Parliament has also passed legislation designed to provide compensation to political activists detained and abused during the liberation struggle.²⁸

²⁶ *Breaking the Silence – Building True Peace: A Report on the Disturbances in Matabeleland and the Midlands 1980 to 1988*, The Catholic Commission of Justice and Peace in Zimbabwe and the Legal Resources Foundation, 1997. See also *Choosing the Path to Peace and Development – Coming to Terms with Human Rights Violations of the 1982–1987 Conflict in Matabeleland and Midlands Provinces*, Zimbabwe Human Rights Association, 1999.

²⁷ ICTJ, 'Background Paper', p. 21.

²⁸ The Ex-Political Prisoners, Detainees and Restricttees Act (No. 20 of 2004).

For a number of years, NGOs such as the Amani Trust have been advocating the development of reparation and compensation packages to assist victims and survivors of organised violence and torture. At the same time, the Amani Trust and others have been trying to build a 'victim constituency' that can articulate and advocate around these concerns.

During the course of the interviews, the writer was also informed about a pilot initiative in 1999 from the President's office (in conjunction with some church groupings and traditional leaders) to explore the problems and needs of victims, with a view to possible compensation. The initiative apparently established provincial structures to engage with grass roots communities, but evidently could not guarantee the control of information for government. In the wake of the 2000 Referendum, it appeared the government had developed 'cold feet' and the process had subsequently 'petered out'. The process did, however, generate a lot of interest in many communities, which highlights the importance of developing a broader constituency and lobby to advocate around these issues (i.e. church, social movements, etc.).

Institutional transformation

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

The range of possible reforms is extremely broad and includes: removing abusers from public positions, creating new institutions to protect human rights, dismantling or restructuring institutions prone to abuse, implementing human rights training and professionalisation policies and programmes, and introducing legal and constitutional amendments to enhance good governance and better protect human rights.²⁹

In Zimbabwe, the police and military have in varying degrees played a partisan political role since independence. In more recent years, the heads and other senior members of both the police and army have made public statements committing the loyalty of the security forces to the ruling party and denouncing the MDC opposition as violent, treasonous and the enemy of the State.

Partisan policing, selective prosecution, the non-enforcement of court orders and so on, have all contributed to the declining legitimacy of the country's criminal justice system. In addition, the integrity and independence of the judiciary is increasingly questioned. Although pockets of honesty evidently remain, it is increasingly apparent that Zimbabwe's judicial system has been deeply compromised, especially over the last four years.³⁰

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

²⁹ ICTJ, 'Background Paper', p. 29.

³⁰ See, for example, *Justice in Zimbabwe*, Legal Resources Foundation, 2002; *An Overview of the Human Rights Situation in Zimbabwe, with Specific Reference to Repressive Legislation, Impunity, the State of the Administration of Justice and Selective Application of the Law*, Zimbabwe Lawyers for Human Rights, 2004; as well as sections on Zimbabwe in the annual reports – *Attacks on Justice: A Global Report on the Independence of Judges and Lawyers* – by the Centre for the Independence of Judges and Lawyers of the International Commission of Jurists, <<http://www.icj.org>>. See also *The State of Justice in Zimbabwe*, a report to the International Council of Advocates and Barristers by five Common Law Bars into the state of justice in Zimbabwe.

begun in Zimbabwe. Zimbabwe Lawyers for Human Rights, for example, has documented a significant number of court orders that have been defied by respondents, and/or simply ignored by the police. It is important that a consolidated list be generated that can be used to identify patterns of contempt, in terms of the types and location of cases, as well as the responsible individuals and structures. This record is important not only in terms of illustrating the deteriorating respect for the rule of law, but subsequently for identification of appropriate persons and issues for investigation, subpoena and questioning.

In terms of the courts, it is also important to start systematically recording bias and improper behaviour by court officials and bad judgments from judges and magistrates. This is easier in the High and Supreme Courts, where records of trials and judgments are more regularly kept as a result of transcripts and (albeit limited) media coverage. For a number of reasons, the situation in the country's magistrate's courts is more difficult.

Any new political dispensation in Zimbabwe may look to see how it can remove individuals responsible for serious misconduct from public sector posts, including the police force, the prison service, the army, intelligence services, and even the judiciary. Human rights organisations have already drawn up extensive lists of named perpetrators of gross human rights violations. These include a considerable number of State security agents.

Piecing together the picture of what happened and why will also require developing an appreciation of acts of omission as well as commission. In this regard a more detailed understanding of the responsibilities of security structures, their policies and jurisdictions should be developed.

Memorialisation

"The struggle for control over the national or 'collective' memory lies at the heart of post-conflict or post-authoritarian accountability policies. On a basic level, remembering the past operates to honour those who died or were victimised. Mechanisms for remembering can, however, also contribute to other transitional justice goals including truth-seeking, prevention of future abuses, generating dialogue and discussion about the past, establishing an accurate historical record, listening to the voices of victims, and pursuing goals related to reparations for victims."³¹

In Zimbabwe, State-sponsored memorialisation initiatives have focused exclusively on the liberation struggle from colonial rule. In this regard, a number of important initiatives were undertaken by the Zimbabwean State, both in Zimbabwe as well as in neighbouring countries where Zimbabweans lost their lives during the war. Chimurenga populism has been recently and somewhat cynically resuscitated as a mobilisation and legitimising tool for the fast-track land reform, referred to by the government as the 'Third Chimurenga'. In what one interviewee described as the 'privatisation' of the ownership of the struggle, those opposed to the government and ruling party, including many with exemplary 'struggle credentials', have been sidelined and their *bona fides* questioned. This includes the Zimbabwe Liberators Platform which claims a membership of 12,000 former freedom fighters.

The issue of memorialisation in a post-ZANU(PF) controlled Zimbabwe presents a number of challenges. The transparent manipulation and selective application of 'struggle' identity and credentials by the incumbent regime has fundamentally devalued the contributions made by many Zimbabweans who fought against the colonial authorities. Any new government will have to explore innovative approaches to make sure that the realities of the liberation war are acknowledged

³¹ ICTJ, 'Background Paper', p. 25.

as well as celebrated, and will have to conduct an appraisal of how the history of the struggle was subsequently directed to service the ruling party's agenda.

Memory requires acknowledgement, and much of what has happened in terms of human rights violations, organised violence and torture in Zimbabwe in the post-independence era has been successfully suppressed. Determining what needs to be acknowledged, and how that acknowledgement is carried out, requires a sensitive interaction with victims and survivors. Victims and human rights activists are often deeply offended by efforts to create an "official story", a State-generated narrative about the past. Sometimes, transitional justice strategies — such as the establishment of a truth commission — are seen as both a necessary step toward remembrance but also an insufficient one.

The challenge from this perspective is to "never forget" what has happened to victims of past human rights abuse. This will inevitably result in 'contested truths', and also involve struggles over what will be taught in schools, how victims will be remembered, and whether the voices of victims will continue to be heard, even after the publication of a truth commission report or the successful trial of a perpetrator. Even if history books tell the stories of victims, remembrance should engage people in a dynamic, vibrant, and lasting dialogue not just about the past — the facts and their significance — but also about the way this past informs the present, which in turn allow societies to better prepare for the future.³²

(b) Broadening the transitional justice debate in Zimbabwe's civil society

The role of non-State actors in the promotion and influencing of transitional justice options remains a considerably under-studied area. In terms of credibility and legitimacy for the processes employed, however, meaningful civil society engagement and support is increasingly recognised as a critical precondition for effective implementation of transitional justice options. Exactly what this entails is moot, but there is some anecdotal consensus that this must go beyond an exclusive or principal engagement with 'organised' civil society.

Zimbabweans' own experience in terms of the debate on constitutional reform in 1999 and 2000 stands them in good stead in this regard. Despite its limitations, the constitutional debate was a widespread and largely participatory process, involving a broad cross-section of Zimbabwe civil society. Despite efforts to control and manipulate by government, it is argued that the processes employed enabled ordinary Zimbabweans to make an informed choice during the referendum.

Civil Society and Justice Symposium

The organisations gathered at the Johannesburg symposium in August 2003 recognised the importance of civil society speaking with 'one voice' regarding these difficult and sensitive issues, especially if its positions and arguments were to have any influence in a prospective political settlement or transitional arrangement. Consequently, these organisations made a commitment to actively promote discussion and debate about the issues contained in the 'Declaration' amongst their members and constituents. In addition, it was recognised that a host of other civil society organisations and structures that were not present at the symposium needed to be included in the process.

³² *ibid.*, pp. 25–26.

By and large, however, these undertakings have not been followed through. With no 'point' organisation driving the process, and in the context of evolving contemporary challenges (such as the March 2005 parliamentary elections), the 'transitional justice' debate has been effectively suspended.

The Zimbabwe Human Rights NGO Forum and Crisis in Zimbabwe Coalition attempted to initiate a dialogue with the main political parties, but were unable to secure any response from either party. There was some history of co-operation with the government, and it was hoped that it would be possible to engage in a rational deliberative process to ensure that the broad spectrum of violations from both colonial and post-colonial periods could be addressed. This was not, however, to be the case.

The Symposium Report was only officially launched in March 2004, some seven months after the event, and only in Johannesburg. The report was not officially launched in Zimbabwe, which has undoubtedly contributed to the lack of profile these issues currently hold inside the country. Copies of the report are available online at <<http://www.santsep.co.za/satc>>, and the symposium 'summary' and 'declaration' were posted on several websites focusing on Zimbabwe (e.g. <<http://www.kubatana.org>>).

Copies of the report (which included an executive summary and a record of the entire proceedings in hard copy and CD format) were printed in South Africa and sent to the Harare offices of the Zimbabwe Human Rights NGO Forum. Copies were disseminated to organisations that had participated in the Symposium, but not beyond this. Several organisations that had branches in different parts of the country (e.g. Civnet, Zimrights etc) and membership-based organisations (e.g. ZCTU) did not receive (nor, it would seem, did they request) multiple copies for wider distribution within their networks.

It is evident from this situation, as well as discussions held with a range of non-governmental organisations during 2004, that with a few exceptions (see section on victims below), the Symposium report and 'Declaration' have not been widely distributed within Zimbabwe. Consequently, the issues mooted and recommended by the Symposium were not disseminated or discussed in much (or any) detail, even by most organisations that participated. Indeed, most organisations interviewed during 2004 acknowledged that they should have taken more responsibility for this, feeling that evolving circumstances and ongoing 'crisis management' had prevented them giving the issue the necessary attention. Some (i.e. Zimrights) had engaged in limited internal discussions, but in the context of pressing contemporaneous priorities, the issues raised had not been carried forward.

Most organisations spoken to recognised the importance of keeping transitional justice concerns on the agenda and indicated they would remain receptive to related initiatives. It seems unlikely, however, that most organisations will proactively generate discussion within their own organisations, structures and constituencies without some form of stimulus, 'leadership' and/or guidance. In addition, many of these groups will require assistance with the development and/or direct provision of relevant resource material for dissemination.

Building a platform for victims

The legitimacy and credibility of transitional justice initiatives hinges on the support and involvement of victims and survivors. Moving beyond a rhetorical commitment to these objectives presents a major challenge to societies in transition.

In Zimbabwe, the Amani Trust has worked closely with individual victims and victim groupings, and has helped guide and facilitate the formation and development of victim groupings, material development, research and advocacy around victims needs.

Between April and August 2004, a joint NGO initiative involving the Advocacy Unit of IDASA's Zimbabwe office, the Amani Trust, the Centre for the Rehabilitation of Torture Victims and the Zimbabwe Community Development Trust ran a series of three workshops designed to enable victims of organised violence and torture to participate and share information on the subjects of democracy building, transitional justice, and advocacy.

The writer was actively involved in the transitional justice and advocacy workshops, at which a range of transitional justice concerns were raised and discussed, and where the 'Symposium Declaration' was assessed and effectively embraced.

This process has been an important development, but will need ongoing support if it is to be sustained and subsequently expanded. It is trite to say that we must be sensitive to victims' and survivors' needs. This goes without saying. They are amongst the most marginalised and vulnerable of Zimbabwe's citizens. It is also a constituency that is heterogeneous and continues to grow by the day. Their meaningful inclusion in any efforts and initiatives to promote the objectives of justice and accountability must become a priority and the *modus operandi* of the transitional justice lobby.

Issues and areas requiring more focused attention

Although the 'Johannesburg Declaration' provided a framework of issues with which to engage in terms of retrospective accountability, there was general consensus that the 'Declaration' was not written in stone, but instead provided an indication of issues requiring further engagement.

Over and above general concerns about the need to ensure that these issues become part of public consciousness and discourse, some specific challenges were raised. These included issues relating to social and economic structural considerations, class and gender. Several interviewees also pointed to themes that required considerably more structured interrogation. In particular, the need to develop a gendered understanding of violations and their impact was raised on several occasions. This reflects some broader concerns about the shortcomings of many transitional justice initiatives in this regard.

Gender

Some transitional justice approaches have indeed sought to shine light on the gendered nature of violations. These include strategies that have been used by truth commissions, courts, reparation programmes and institutional reform efforts, such as: focused research and/or hearings and testimonials on gendered patterns of human rights abuse; proactive efforts by prosecutors and investigators in pursuing gender-based abuses; developing flexible approaches to issues such as evidence and due process in addressing testimony for crimes such as rape; defining categories such as 'crimes against humanity', or 'politically motivated' human rights violations to include crimes such as rape; seeking to hire a significant number of staff members for truth commissions or prosecutorial offices; establishing protocols for victims in prosecutions or in public hearings to ensure the confidentiality of sensitive information; and reparation initiatives that are premised on addressing gender-specific violations; or seeking to take creative steps to avoid replicating problematically gendered patterns when providing restitution for losses.³³

³³ ICTJ, 'Background Paper', pp. 3–4.

Such endeavours are not without their weaknesses. Truth Commissions, for example, have struggled to ensure the widespread inclusion of women's experiences of violations, often because the data collection tools and instruments employed are insensitive to their specific needs. Employment quotas do not guarantee institutional shifts in attitude and behaviour and in many situations specific proactive efforts are required to orientate both men and women.

Social and economic violations

Another critical area requiring more attention relates to issues of social and economic violations, including issues of corruption. Typically, transitional justice approaches have given primary attention to violations of first generation rights, with only a limited focus on specific or structural socio-economic considerations. The interface between political, economic and social factors is often reflected in manifestations of abuse.

In Zimbabwe, this interrelationship has been borne out in a number of ways, especially in relation to the implementation of the post-2000 land reform programme, which not only resulted in a range of specific civil and political violations (physical and property-related), but also resulted in massive displacement and consequent loss of employment and earnings. Hundreds of thousands of people (in particular, commercial farm workers) have been discriminated against, and in the process impoverished, as part of a political strategy that has favoured a select few.

The land reform programme has also contributed to a massive drop in food production, and access to food has also become increasingly politicised, with food distribution subject to partisan interests. There have been acute increases in levels of hunger, Zimbabweans are now dying of malnutrition, and many millions remain vulnerable to starvation. The extent to which this is a 'man-made' crisis, and is being manipulated for party political interests requires further empirical study. Conditions in Zimbabwe, especially with regards to community access, however, continue to obscure the true picture in this regard.³⁴

State employees, such as nurses and teachers that have opposed government policies, and/or have been associated with the opposition MDC have been victimised and harassed, arrested and even tortured. Likewise, many members of the Zimbabwe Congress of Trade Unions have also been maltreated, and the union's activities consistently subverted.

Corruption has become endemic in Zimbabwe, and although the government introduced a high-profile anti-corruption campaign, even arresting senior government officials and ZANU(PF) members, it is evident that the measures taken were limited and highly selective, and they appear to have petered out.³⁵ The interface between corruption, fraud and socio-economic violations remains largely unexamined. The Johannesburg Symposium recommended the establishment of a Corruption Commission that would be empowered to conduct a forensic investigation that would examine different levels of fraudulent and corrupt practice by the State and its proxies in the private sector.

Reconciliation

Another vexed issue in the Zimbabwean context relates to experiences of 'reconciliation'. As in many other jurisdictions, the concept has been largely manipulated and distorted for specific political purposes, often presented as an intangible objective that will somehow be facilitated by the introduction of amnesty and indemnity provisions. Little attention, if any, is given to process

³⁴ *Zimbabwe: Power and Hunger: Violations of the Rights to Food*, Amnesty International, 15 October 2004.

³⁵ See, for example, *Zimbabwe Integrity Assessment*, Centre for Public Integrity, <<http://www.publicintegrity.org/ga/country.aspx?cc=zw&act=ia>>.

considerations, and the different levels of reconciliation – national / political, community, individual – that require attention if central objectives are to be realised and consolidated. Human rights advocates rarely accept the ‘forgive and forget’ construction of reconciliation, “arguing strongly that true reconciliation must be linked to accountability, justice, and acknowledgement of past crimes.”³⁶

In Zimbabwe, despite opportunities that did not necessarily require a focus on retributive justice options, this approach to reconciliation has been studiously avoided, with the result that the concept has been widely devalued, perhaps irrevocably.³⁷ Although negative attitudes towards reconciliation were demonstrated at the August 2003 symposium, and little attention was given to what must be done in this regard, there is broad consensus within the human rights community that meaningful reconciliation is intended to “generate peace and civic trust – in a context of *justice* and *accountability* – among former adversaries”.³⁸ This approach is certainly recognised in the work of the Zimbabwe Civic and Education Trust, which has established a number of Peace Committees across the country. It remains unclear, however, to what extent in the current context these committees are willing or indeed able to address issues of retrospective accountability.

Relations with Government – To engage or not engage?

Several interviewees felt that the ‘Symposium Declaration’ and follow-up processes needed to be rethought in the evolving Zimbabwean context, especially as prospects for political dialogue evaporated. Although this was not a widespread feeling amongst interviewees, it does reflect broader differences within civil society regarding the most appropriate methodologies in terms of engaging with government. Indeed, reflecting earlier concerns articulated by the MDC, some felt that hard-hitting statements such as the ‘Declaration’ could be counter-productive.

When interviews commenced in early April 2004, it was evident that a number of organisations (i.e. ZESN, TIZ, NANGO) advocated an approach of ‘constructive engagement’ with government, arguing that this was the most appropriate way of securing co-operation and concessions. NANGO and ZESN, for example, expended considerable energy and resources on engaging government on legislative reform processes around regulating the NGO sector and electoral reform respectively. The government’s *bona fides* in this regard have now been fundamentally questioned, as legislative reform in both these areas reflects little of what was discussed or recommended.

Despite this, civil society organisations have continued to engage government policy through the parliamentary portfolio committees, which have been greatly enhanced over the last four years through a programme facilitated by the State University of New York. A cross-section of interested civil society parties (i.e. trade unions, NGOs, residents’ associations, etc.), for example, have established a Public Information Rights Forum to engage government on enhancing access to public information. This Forum has met with the relevant Portfolio Committee to discuss concerns and recommendations, but to date has not secured any tangible results. Civil society groups have also vigorously engaged the parliamentary portfolio committees during the recent passage of NGO and electoral ‘reform’ legislation. Although public participation vis-à-vis the lawmaking process has been considerably developed, the extent to which this has extended beyond a limited number of non-governmental organisations remains moot. In addition, the portfolio committees have scarcely provided effective oversight of either the executive or State bureaucracy.

³⁶ ICTJ, ‘Background Paper’, p. 4.

³⁷ ‘Zimbabwe: Why Reconciliation Failed’, in *Reconciliation after Violent Conflict: A Handbook*, International Institute for Democracy and Electoral Assistance, 2003, pp. 34–39.

³⁸ ICTJ, ‘Background Paper’, p. 4.

Given this experience, and in light of the government's preference to deny or ignore that human rights violations are an issue (let alone a problem), it is highly unlikely that the government would be prepared to engage civil society on these issues in a meaningful way. Somewhat ironically, even organisations such as the Amani Trust, which have been publicly attacked by senior government figures, have been contacted by government departments to provide training and other inputs. This seems to reflect the contradictions between political and practical imperatives adopted by different arms of government.

Human rights organisations involved in monitoring and documenting violations under the banner of the Zimbabwe Human Rights NGO Forum have only last year begun to provide the government with copies of its monthly reports, and a limited process of denial (by government) and substantiation (by the Forum) has been entered into. Where government does not deny the assertions contained in the Forum's report, there is no evidence that they are taking any action to secure redress. Although there may be no immediate tangible benefit to this type of engagement, it remains strategically important for organisations to be able to counter any subsequent claims from government that they "didn't know" or "were not informed".

International engagement

Although Zimbabwean human rights organisations have sought and continue to seek solutions through the domestic courts, this increasingly appears to be a strategy designed to secure some sort of official record, as opposed to meaningful legal and compensatory relief. Even if positive judgments are secured, government has demonstrated a patent unwillingness to recognise them or pay damages.

Since 2000, human rights organisations have increasingly turned their attention to regional and international forums, including the United Nations, African Union, Commonwealth, SADC and European Union. As such, they have attempted to root their lobbying and advocacy efforts in the democratic and human rights principles underlying the operations and objectives of these groupings.

The Zimbabwe Human Rights NGO Forum has engaged the African Commission for Human and People's Rights since 2002 and has observer status in Banjul. In May 2002, the Forum made submissions to the African Union meeting in Pretoria. Following these submissions, the Commission sent an official mission to Zimbabwe. This resulted in a hard-hitting report which, however, the Zimbabwean government successfully prevented heads of State from discussing. Subsequent efforts have, however, resulted in the AC's report being adopted by the AU Executive in early 2005.

Despite grandiose rhetorical commitments to building democracy and a culture of human rights throughout the continent, there appears to be little real commitment on the part of many African governments to engage in such discussions. This is also reflected in their sponsorship and support of 'no action' motions at the United Nations Human Rights Commission, which have effectively prevented any discussion on the human rights situation in Zimbabwe. A similar process to block a motion condemning violations in Zimbabwe was recently carried out at the United Nations General Assembly. Developing countries sponsoring these blocking tactics argue that the sponsors of these motions and debates are pursuing a selective, partisan agenda with political and not human rights objectives. While the exposure of 'western double standards' is not without merit, those blocking these motions offer no alternative process, revealing their own reluctance to promote justice and accountability for violations. The 'politics of human rights' remains superimposed over the fundamental interests of victims and survivors.

The Zimbabwe Human Rights NGO Forum utilised the 'Symposium Declaration' as part of its lobbying initiative with the Commonwealth at the Marlborough House discussions and subsequently in Abuja, where the Zimbabwean government formally withdrew its membership of the Commonwealth. The Declaration was also disseminated to African embassies in Pretoria and Harare, but elicited no formal response. Indeed, SADC representatives have been conspicuously silent around these issues, presumably a reflection of 'quiet diplomacy' and a fundamental unwillingness to be seen as interfering in the affairs of another State, apparently regarded by many AU members as plausible justification for their inaction.

Civil society in Zimbabwe has increasingly turned its attention to influencing civil society groupings in the region, and South Africa in particular. As the pivotal external player in the region and continent, South Africa has the 'point' role for the international community in facilitating a resolution to the Zimbabwean crisis. Its cautious approach has increasingly galvanised groupings inside South Africa to challenge government policy (of 'quiet diplomacy'), and to urge it to exert more pressure on the Zimbabwean government. Consolidating these gains requires a much closer level of interaction and co-operation between all civil society groupings. South Africa's own experiences of trying to secure justice and accountability, including an end to organised violence and torture, provides an opportunity for messaging that should resonate with many South Africans. South Africa's 'organised' civil society provides an important potential conduit to the broader South African public, but it is important that Zimbabwean voices and priorities are the ones articulated. There are also a broad range of specific communities in South Africa (i.e. students, the legal profession, trade unions, victim groupings) which have equivalent groupings in Zimbabwe that are able to explain what has been happening in Zimbabwe. These groups should be equipped to address issues of justice and accountability in their deliberations with colleagues from South Africa. In this regard the establishment of the Zimbabwe Solidarity and Consultation Forum in early 2005 is an important development.³⁹

It is also important to ascertain the South African government's position vis-à-vis engagement with a transitional justice agenda. No mention has been made of justice and accountability issues by South Africa, and it is likely that it would prefer not to comment on them. Indeed, South Africa's official position has ostensibly downplayed the human rights situation. Although somewhat predictable, this position runs contrary to their stated support for the internationalisation of human rights standards, and their vocal support or condemnation of other human rights issues and causes. This should not, however, prevent the promotion of a discussion on these issues, and for South Africans, including the South African government, to hear from Zimbabwean civil society what they think should be happening in this regard.

Making the debate inclusive?

It is necessary for civil society groupings to examine how to generate a broader participation in the discussions around issues of transitional justice.

A number of generic constituencies within 'organised civil society' with which there should also be further engagement have been identified. This includes, political parties, the trade unions, the church, women groupings, students and youth groupings. In addition, specific consideration should be given to the broader victim constituency, which is becoming more organised.

³⁹ The Forum is a network of South African progressive civil society organisations including youth, women, labour and churches and students that are engaged in the promotion of solidarity for peace, democracy and human rights for Zimbabweans.

Political parties

The writer did not formally approach the two main political parties, but assessed their positions on justice and accountability issues from secondary sources, as well as from information gleaned from the general interview process. The writer also witnessed several public presentations from senior MDC figures, and held several informal meetings with opposition office bearers. The MDC was supportive of efforts to address these issues. Opportunities for engaging party political structures as part of a wider awareness-raising strategy should be explored.

Trade unions

Contact was also made with the main trade union federation, the Zimbabwe Congress of Trade Unions, also eliciting a positive response. The ZCTU, which had representation at the Johannesburg Symposium, has indicated a willingness to disseminate information on transitional justice to its membership, utilising existing structures, as well as through the Congress' monthly newspaper, *The Worker*.

'Transitional Justice' issues have not been formally discussed within the ZCTU, and many key ZCTU leadership figures remain in the dark about the issues under consideration, and the various justice and accountability initiatives and related developments. Consequently, it would be necessary to have a formal engagement with the ZCTU to orientate them on some of these, and to explore the possibility of developing tailored information products that would resonate with this constituency.

Churches

The Church is an extremely important constituency in Zimbabwe and has a pivotal leadership role to play around issues of justice and accountability, healing and reconciliation. It is, however, deeply divided politically and ideologically on a number of issues. With some notable examples, the church has not stood up in condemnation of the violations perpetrated. In the words of one interviewee, "it really comes down to individuals, some are pro-ZANU(PF), many are ignorant, and others are simply frightened." The situation appears, however, to be dependent on individual ministers, and attitudes are closely linked to experiences.

A number of church figures, the most prominent of whom is the Roman Catholic Archbishop of Bulawayo, have been increasingly vocal in their condemnation of violations. Church umbrella bodies such as the Evangelical Fellowship and Zimbabwe Council of Churches (ZCC) have remained cautious. Three Mutare bishops have engaged in a series of confidential discussions, in efforts to promote dialogue, and have steadfastly refused to apportion responsibility, in an apparent effort to appear 'even-handed'. These Bishops declined invitations to the Johannesburg symposium. Their activities have been shrouded in secrecy and there have been no tangible advances in terms of their dialogue or reasons forwarded for this failure. The interview process revealed considerable scepticism about this initiative from a wide range of civil society groupings. The process remains stillborn, and the ZCC was recently labelled as anti-government by the State media.

Many within the religious fraternity are interested and willing to engage in the promotion of debate around the transitional justice agenda. Groups in both the main cities and smaller towns, such as Christians Together for Justice and Peace (an inter-denominational group of Methodists, Presbyterians, Roman Catholics and Anglicans) have begun to come together to discuss the Zimbabwean crisis. Baptist Ministers in Matabeleland have been participating in a series of workshops to assess and document the needs of victims of (political) violence, and are trained in counselling and basic psychosocial skills. Justice and accountability concerns are an integral component of these considerations, and efforts to cultivate an interest from this constituency should be pursued.

More effort is needed to target and orientate church leaders, especially at the local level. They are an important conduit to communities, and carry weight and credibility amongst many Zimbabweans.

An informed strategic and targeted approach is also necessary with other constituencies, such as women, student and youth groups. Some constituencies are already actively engaged, and are likely to be more receptive than others. This includes many of the groupings recently participating at the Zimbabwean Social Forum, where the situation of victims of political violence was discussed.

Engagement with these groups must entail more than just information dissemination, but must seek to identify individuals and specific structures that will act as animators and contact points with the broader community. This will require the development of a proactive plan of action to engage and resource for the purpose of 'taking the debate to the people.'

Constraints on information dissemination

There are multiple constraints on the dissemination of information relating to issues of justice and accountability in Zimbabwe. The clampdown on the independent media in Zimbabwe has been well documented.⁴⁰ As a result most Zimbabweans remain almost entirely reliant on State organs or mouthpieces, which are characterised by propaganda and undisguised bias. The small independent press has very limited circulation as most people cannot afford to buy their publications, and distribution is severely limited, particularly in the rural areas.

The State retains a monopoly on the domestic broadcast media, and alternative radio beamed in from outside the country is only available for limited hours per day on short wave and medium wave. Many Zimbabwean do not have access to radio; in the current economic climate many are unable to even afford batteries for them.

Many parts of the country do not have radio and television reception, especially in the rural areas. In these locations there is strong reliance on local leaders, councillors, chiefs, village heads etc, many of whom are in the pay of the State. Many of these areas were principal beneficiaries of civic education programmes in the past. The contraction of democratic space, including limitations and a prohibition on involvement by non-governmental organisations in civic and voter education respectively has put constraints on delivering such programmes. It has become increasingly difficult to operate and disseminate information, particularly on human rights concerns, in geographical areas where the ruling party is dominant, such as Mashonaland Central and East. Under current security legislation, the Public Order and Security Act, any public gathering requires police notification, which has been deliberately misinterpreted by the police as giving them the power to veto such gatherings. An unspecified number of gatherings have been prohibited, whilst others have been physically broken open, with participants assaulted and detained.

There are very real security concerns for ordinary members of the public in the current political climate. All these experiences have contributed to a climate of self-censorship and political conservatism in certain quarters and there are widespread concerns about taking on overtly political causes, or 'anti-status quo' initiatives.

A number of organisations involved in civic education programmes face acute funding problems. Resource restrictions have resulted in the closure of offices (i.e. Zimrights, CCJPZ offices in Bulawayo). This has affected Bulawayo and Matabeleland adversely as a number of organisations

⁴⁰ See, for example, *Repression of Independent Journalism in Zimbabwe*, Article 19, July 2002; *State of the Media Report, 2002 & 2003*, MISA; *Annual Report on Press Violations*, Reporters without Borders; *Media under Siege: Report on Media Coverage of the 2002 Presidential and Mayoral Elections in Zimbabwe*, Media Monitoring Project of Zimbabwe, 2003.

have 'retreated' to Harare. Although several national NGOs retain a presence there, there is no representation from the two main networks (The Zimbabwe Human Rights NGO Forum and the Crisis in Zimbabwe Coalition). Many of these organisations will face closure if the government makes good its threat to pass legislation which will all but choke them of their remaining funding sources.⁴¹

This situation highlights the importance of identifying and mobilising resources and activities to priority constituencies. It will be important to develop profiles of where one can and cannot operate — existing violation reports provide a useful guide in this regard — and what remaining civil society infrastructure can be employed.

A crucial, but perhaps less obvious, constraint has been the difficulties that civil society itself has experienced in co-operating and co-ordinating its activities beyond sector-specific activities. The formation of the Crisis in Zimbabwe Coalition, which brought together over 300 civil society groupings, presented an important opportunity to develop a more consolidated and strategic approach around a number of key areas. Despite some important successes in this regard, the Coalition has failed to effectively galvanise activities and facilitate mobilisation on a range of issues, including the transitional justice debate. Despite its broad membership base, it has also failed to adequately provide crucial networking services, especially in the field of information dissemination. This, in turn, has inhibited and constrained opportunities for mobilisation as well as the impact of its campaigning and advocacy work.

Civil society actors dealing with human rights violations are also faced with a depreciating capacity as fewer and fewer 'hands on deck' are tasked with more and more challenges. Mounting levels of fatigue and disillusion further compound the situation.

There is an increasing distance between ordinary Zimbabweans and 'elite-led' civil society processes. Broader civil society did not defend the rights of NGOs that would have been targeted by the government's NGO Bill. This reflects the failure to invest in participatory processes that could have facilitated a broader mobilisation strategy amongst the general population. Any campaign or action to promote a transitional justice agenda must place a premium on communication, consultation and co-operation.

Opportunities for information dissemination

Despite prevailing circumstances, and the constraints placed upon information dissemination, opportunities for the spread of information remain. The extent to which these channels will be criminalised and closed down has yet to be seen. Legislation to control NGOs will certainly provide the State with an opportunity in this regard.

For the time being, therefore, there remain a number of civil society networks that can provide channels of communication and information dissemination. These include many of the groupings listed previously. As also mentioned, a number of these groupings remain sympathetic to the

⁴¹ The NGO Bill lapsed after Mugabe refused to assent to it, but the government has promised to reintroduce it in due course. Considerable damage has already been done, however, as NGOs have had to divert limited resources to raise awareness and lobby against the legislation. Efforts to develop a united front against it were thwarted by humanitarian NGOs that failed to raise their voices in opposition, effectively isolating a dozen or so human rights organisations that have documented human rights violations and lobbied loudly and vociferously against them. Several organisations have also had trouble securing funding, as some donors wait to see what will happen before committing themselves to further support.

principles of justice and accountability, some to a specific transitional justice programme. These include:

- (a) The church and church-based organisations. A number of churches produce community newsletters and pamphlets, some already registered in terms of the Access to Information and Protection of Privacy Act. There is also a wide range of prayer groups, and intra- and inter-denominational networks. The use of religious precepts to address issues of justice and accountability provides a potentially powerful means of familiarising a much broader audience.
- (b) The church-based Habakkuk Trust conducts research and advocacy around issues of governance, land and other social concerns. The organisation produces a monthly newsletter that is disseminated electronically to 150 targeted 'opinion leaders' (including pastors, civic leaders and so on).
- (c) Despite a shrinking membership, the trade unions also retain a national infrastructure and have a registered newspaper (the ZCTU's *The Worker*). Some unions have been directly affected by State repression, while others represent members who have been affected. The General Agricultural and Plantation Workers Union of Zimbabwe (GAPWUZ), representing commercial farm workers, has witnessed its constituency devastated by the land reform process. It is keen to seek justice and accountability, but is struggling to maintain its national network of 21 offices with 45 full-time officers.
- (d) The National Constitutional Assembly (NCA) network of approximately 480 formal and informal committees provides a well-established network, experienced in activism and proactively engaging the broader community. The NCA has consistently taken to the streets to demonstrate and has been repeatedly subjected to harassment, intimidation and assault.
- (e) The Bulawayo Agenda is made up of 36 active civil society organisations in Bulawayo and provides a platform for regular discussions on contemporary political and social issues. The organisation has established chapters in Gwanda (Matabeleland South) and Hwange (Matabeleland North), also acts as a regional 'desk' for the Crisis in Zimbabwe Coalition. Although the organisation has been repeatedly prevented from hosting meetings, and its Director and other members have been subjected to harassment by the State security forces, the organisation has been able to secure permission on a number of occasions to convene meetings. During a three-month period between September and December 2003, for example, Bulawayo Agenda ran meetings every Sunday with an average attendance of 800.
- (f) A number of organisations have been involved in civic education. Civnet, for example, has conducted programmes on electoral rights and human rights issues, and has offices in several major centres. These regional structures have also established a network of 'study circles' that meet on a regular basis.
- (g) The Zimbabwe Civic Education Trust (Zimcet), with its infrastructure of five regional offices has established 57 peace committees across the country, equipping committee members with peace-building and conflict-resolution skills. Some Committees are also engaged in small-scale development and income-generation projects. Particular emphasis has been given to a methodology known as 'sustained dialogue', which attempts to discuss and develop possible problem-solving mechanisms. Although issues of retrospective accountability and justice are evidently important issues for Peace Committees in certain parts of the country (such as Matabeleland), Zimcet has not yet introduced transitional justice considerations to the

Committees. The Peace Committees tend to focus on the present, to enhance levels of tolerance and provide a credible platform to counter negative actions or attempts to manipulate specific groupings.

In many areas, it is still early days, but once the work and capacity at this level has been consolidated, the Peace Committees could well be an important vehicle for raising issues of retrospective justice and accountability. Zimcet has indicated a willingness to do so, and would be keen to comment and make inputs into the development of related materials. Peace Committee activities have not been curtailed as a result of POSA and it remains to be seen whether new NGO legislation will be used adversely against them. Anecdotal evidence suggests that Peace Committee members associated with the ruling party would oppose such interference.

A number of other groupings, such as women, student and youth networks, the alternative ex-combatant/war veteran organisation, the Zimbabwe Liberators Platform, have important networks amongst grass-roots communities in both urban and rural areas and remain important 'conveyors of information' back to their home areas. Youth groupings in particular must be harnessed and developed as they have been largely ostracised from strategies to tackle State repression. The Association of Women Clubs, which is part of the Crisis in Zimbabwe Coalition's Peacebuilding Committee, has in the past provided a powerful platform for dissemination of information. Several interviewees pointed to their involvement reaching many communities in the 2000 constitutional referendum, arguing that they provided a critical local-level platform to counter State propaganda.

Zimbabwe retains a wealth of community-based organisations. Research carried out in Zimbabwe during 2004 collected detailed profiles of 5,000 social groups with more than 50,000 members in 50 districts. The research provides an unprecedented insight into the experiences, attitudes and preferences of these groups in relation to informing a new strategy of community education and communication.

Taking the process forward

During early November 2004 the writer presented the preliminary findings from the research to representatives of the Zimbabwe Human Rights NGO Forum and the Crisis in Zimbabwe Coalition.

Recognising that civil society is currently under tremendous pressure and there are a host of other pressing priorities, it was encouraging that so many organisations gave up their valuable time to engage in the discussions, exploring how it might be possible to pursue these sensitive matters in the current context.

The meeting reviewed what had happened since the Johannesburg Symposium, emphasising the victim constituency-building process, their endorsement of the 'Symposium Declaration' (with the victim/survivor group 'Lake Chivero Declaration'), and the establishment of a steering committee that was seeking to engage the NGO community, and in particular, the Zimbabwe Human Rights NGO Forum and Crisis in Zimbabwe Coalition.

Recommendations were made to establish a dedicated unit/element to drive the next stages of the transitional justice work: to focus on developing targeted processes for various constituencies (i.e. labour and the churches), to engage with and develop solidarity networks in the region, to continue to target African institutions and organs in SADC and the AU, to facilitate the development of transitional resource materials, as well as to co-ordinate the initiation of the human rights data project (discussed below).

An emphasis was placed on the need to move beyond a 'paternalistic' approach, to focus on grass roots and mass membership organisation and to tailor interactions according to needs and sensibilities. These processes must focus on the central justice and accountability objectives underpinning the transitional justice focus.

It was suggested that a campaign should be launched that would link in with a cross-section of justice issues (political, social and economic). The campaign would place a central emphasis on solidarity with and accountability to victims. A suggested campaign slogan EPIC – "Expand, Project, Innovate & Communicate" – was suggested. This would reflect:

- (a) *Expand* – developing support for and awareness of the transitional justice objectives, and support for the project within Zimbabwe, the diaspora and the international community (with a specific focus on African constituencies).
- (b) *Project* – to observe, document, publicise, assist, and litigate.
- (c) *Innovate* – to develop new modes of organising and mobilising, by creating linkages with broad range social and economic justice issues, synergy with existing campaigns and litigation initiatives.
- (d) *Communicate* – place a premium on effective and targeted messaging.

It was suggested that the Forum should provide a base for the 'campaign', but they would need additional and dedicated resources to take the process forward. A detailed proposal of activities and costing should be developed in consultation with Forum members in this regard.

(c) Messaging transitional justice options: debates and developments

The importance of tailoring messages to particular communities was repeatedly raised during the interview process. In this regard, a critical challenge remains to link the issues of justice and accountability relating to violence and repression contained in the 'Declaration' to the realities and concerns of various Zimbabwean constituencies. Of course, many Zimbabweans have direct experience of organised violence and torture, but for others their experience of the crisis does not necessarily relate directly to the repression. In this regard a number of priorities were identified, including socio-economic considerations, such as access to resources (i.e. land, water, sanitation, housing and education), corruption, economic concerns, labour issues, access to information, legal and gender considerations.

This messaging process must be relevant to people's political and socio-economic realities and experiences. These concerns must inform the production of relevant materials that are developed as part of the awareness-raising process. Such a process also provides an unprecedented opportunity to facilitate an understanding of these interconnections and relations.

Community publishing

Effective communication requires "an exchange of views, a two-way process based on free expression and access to information."⁴² The production of materials relating to the transitional justice agenda, cannot be imposed on different communities and constituencies, but must be determined on the basis of what people want and how they want it. In this regard, Zimbabwe has considerable experience in the utilisation of the 'community publishing' methodology that was developed and piloted in

⁴² *Follow the River and You Will Reach the Sea: Community Views on Communication*, Africa Community Publishing and Development Trust with The Media Institute of Southern Africa, Fingerprint Co-operative Ltd, 2004, p. 10.

the Ministry of Education during the 1980s. This work has been taken forward by a number of non-governmental organisations that have demonstrated the power and credibility of this methodology through a number of research-based publications that have dealt with a range of human rights and constitutional issues. The reports are developed through a participatory research process, and a subsequent dissemination process that workshops the reports at ward level and engages with a network of study circles.

Even in the prevailing circumstances, these organisations have indicated a willingness to develop educational products that addresses generic concerns of justice, accountability, conflict resolution, reconciliation, reparation and so on. These themes resonate strongly with the contents and objectives of the 'Symposium Declaration'. The methodology employed would avoid prescribing what specific issues are raised and/or prioritised, but would provide an important guide to NGOs and others as to what communities are thinking and saying around these issues, as well as direct them on how best to engage particular issues.

It is strongly suggested that this process is taken forward, with a view to undertaking the research and production of materials. This is a critical part of the preparation process. A number of other possibilities exist in terms of material production. During the course of the project, for example, the Amani Trust (with the assistance of the writer) produced a short 'easy-read' version of the 'Declaration'. This was subsequently translated into several indigenous languages, and several thousand copies were distributed using the victim group networks mentioned previously. Other options exist, and different constituencies should be encouraged to take ownership of these issues, and repackage them in whatever way they determine is most appropriate. In this regard, the churches are likely to want to utilise religious teachings, whereas youth and student groupings may want to relate these issues more closely to popular culture mediums (poetry, music, art, etc.).

Material production and dissemination in the current crisis remains a key priority. It is important to ensure that justice and accountability concerns are 'mainstreamed' as a central priority for civil society, and packaged as a core pre-requisite for sustainable political, social and economic solutions in Zimbabwe. As such, it is important to ensure that existing and emerging communication campaigns and strategies are engaged with, to ensure that these considerations are not left off the agenda.

Audio & audio-visual

Although the project has focused mainly on written materials, it is important to recognise that illiteracy levels have risen sharply in Zimbabwe in recent years, reflecting the collapse of the education sector. Consequently, it is important to make use of other communication mediums to market and generate discussion and debate around transitional justice concerns.

Efforts should be made to determine whether the three independent radio stations broadcasting into Zimbabwe are prepared to either develop their own programmes, or receive programming, on transitional justice issues. A range of options are available, from discussions/chat shows with one or more 'expert' guests, through to docu-dramas, plays, short stories and so on. There is already some experience of this; The Voice of the People, for example, ran a series of programmes entitled 'Reflections' in which war veterans reflected on the war of liberation and the ideals for which they were fighting. There is a considerable pool of Zimbabwean talent, both inside and outside the country, which could be drawn upon to explore the development of materials in this regard. It is recommended that further research on this be undertaken, and that this should also include engagement with other relevant international experiences.

In Zimbabwe, groups such as 'Radio Dialogue', which have to date failed to secure a community broadcasting licence, have experience in the production of audiocassettes for the local taxi industry, which are mainly popular music mixed with some social messaging. These are distributed free and have become a popular and powerful medium for getting messages across to ordinary commuters. They have been able to continue as they have been focusing on less politically sensitive issues, such as keeping Bulawayo clean and health messages (HIV / AIDS). Radio Dialogue has also produced a number of radio plays. The organisation has, however, also been under scrutiny by State intelligence services, who have unsuccessfully been trying to track down the people behind the very popular Zvakwana *samizdat* publication and activities.

As with radio, a range of products is possible in terms of producing audiocassettes on transitional justice issues. These materials could be extended to a number of constituencies, such as schools, and a range of other social forums. As with written materials, different products can be packaged for different communities.

Audio-visual production presents the greatest challenge. Not only is it the most expensive option in terms of information dissemination, it has the potential of having the most profound impact. Visual engagement remains for many people the most powerful medium, allowing difficult and complex issues to be presented in a clear and unambiguous way. In East Timor, the use of Video CDs was employed by their Truth Commission and was used extensively in the community socialisation process. Teams from the Commission went to remote parts of the country and, using generator-powered TV/VCD sets, they showed local communities a documentary of what the Commission was trying to do. This documentary included important and popular political players such as the President, the Prime Minister and senior churchmen. This contributed immeasurably to the legitimacy of the overall process, and also provided a platform of issues with which the communities could subsequently engage the Commission.

Zimbabwe's independent filmmakers have been effectively driven underground, but could be engaged to develop educational and promotional material dealing with the justice and accountability agenda. The writer has spoken with several of these, as well as some South African filmmakers, and they have shown considerable interest in engaging in these matters.

General

In the current situation, all communication mediums outside State control remain constrained. It would be possible to utilise elements of the remaining independent press (as some human rights organisations, such as the MMPZ do), and develop a transitional justice 'insert'. As with any of the options raised above, this would have cost implications, which might not reflect well in terms of a cost-benefit analysis. In the inevitable context of limited resources, it will be necessary to determine what are the priority constituencies.

Effective communication and material dissemination remain core priorities and challenges. Determining what are the best materials and then developing them is only one leg of the journey. Subsequently making sure they get to the right people is probably the most difficult hurdle. Even though the current circumstances restrict options in this regard, with varying degrees of risk, it will still be possible to leech a certain amount of materials into the country. Every effort must be made to explore all possible options in this regard. Over and above this, however, there is also an important opportunity for civil society groupings to develop materials on justice and accountability issues in preparation for a transition. This kind of preparation would be largely unprecedented, but would give civil society a much stronger platform with which to engage the general public, as well as political players, many of whom are likely to want to avoid such issues.

2. Preparation for Developing a Human Rights Violation Database

Existing human rights data sources

The research sought to develop a profile of existing human rights data with a view to determining what might be utilised for the development of a human rights violation database, with an emphasis on primary data sources (statements, interviews and other narratives). The following profile, however, includes a range of data sources. (The following section – 3 – deals with related qualitative reports on the human rights situation in Zimbabwe.)

Although the writer was looking at information from both colonial and post-independence periods, it is evident that there is considerably more information available relating to the post-independence period, and in particular to violations in Matabeleland and the Midlands in the 1980s and in relation to the post 2000 era. This certainly reflects the key periods of repression in the independent Zimbabwe. The project had less success in locating primary data from the colonial era. In this regard, there was some difficulty in determining where and in what condition the archives of the Catholic Commission for Justice and Peace in Rhodesia were.

There has been a significant increase in data collection in the post 2000 period, with many more organisations involved in monitoring and documenting human rights developments and violations, and covering a range of issues, civil and political, social and economic. This has resulted in both a greater degree of co-operation between different human rights organisations, as evidenced by the establishment of the Zimbabwe Human Rights NGO Forum, but also in a degree of duplication (e.g. a number of organisations are involved in newspaper monitoring, even though the MMPZ provides the most comprehensive service in this regard and could have been employed to provide this information.)

Data is largely metropolitan centred (Harare and Bulawayo), reflecting the operational focus of most monitoring organisations, and the difficulties of access to many parts of the country. There are some notable exceptions to this, such as one Harare-based organisation, which has monitors in every constituency of the country. Although information from the provinces is certainly recorded, this often comes from individual victims and survivors who have been able to seek relief in the cities and other urban centres. Consequently, many interviewees felt that a significant number of violations, especially in the rural areas, have not been captured.

A number of organisations have been involved in the monitoring and documenting human rights violations. Details of what organisations have collected what information have been gathered in this research process, and the information has been made available to relevant parties. For obvious reasons, this information cannot be made publicly available in the current circumstances, as there are vested interests that would want to sabotage and destroy these sources. Nevertheless, a considerable amount of this information is already public. The sources of this information include:

Zimbabwe Human Rights NGO Forum

The Zimbabwe Human Rights NGO Forum was established in 1998 and has been responsible for the production of monthly incident reports and other specialist reports relating to organised violence and torture. The Forum provides the main platform for most NGOs involved in monitoring and documenting human rights violations to pool their data in a collaborative endeavour designed to provide a regular overview of reported and recorded violations from across the country.

Between 2000 and 2004, the Forum documented over 3,500 cases submitted by its members. The database is violation focused, with 16 categories of violations (and four sub-categories of torture), and includes detailed categorisation on the victim, perpetrator, location of incident etc. Brief narratives relating to the violation are also included on the database. In addition, the Forum has a separate press-clipping database compiled from Harare-based newspapers, which focuses on reported incidents of violation and not individuals.

Media Monitoring Project of Zimbabwe

The Media Monitoring Project of Zimbabwe, which was established in 1999, monitors Zimbabwe's broadcast and print media (all national papers and most regional papers), and has constructed a considerable electronic archive, with over 70 different categories. The MMPZ gives specific attention to human rights issues, and records all reports relating to a range of civil and political violations. This is an important resource that can be used to identify additional cases, corroborate existing sources, and identify patterns and trends of repression, organised violence and torture.

The MMPZ also records media reports relating to gender, hate speech, food security, media repression, information rights, the security and intelligence forces and elections. This provides an important spectrum of subjects that can be examined in relation to issues of organised violence and torture.

The MMPZ produces a weekly report disseminated electronically that assesses a range of thematic and topical human rights issues, relating to policy, legislation, specific violation, political, social and economic developments, hate speech, propaganda and so on. These reports are submitted to the Forum.

The MMPZ is in the process of designing a new relational database that will require a detailed review of existing data.

Transparency International Zimbabwe

Transparency International Zimbabwe remains a relatively new organisation and retains a focus on issues of governance as it relates to public sector corruption. The organisation is actively engaged in monitoring anti-corruption activities and is participating in efforts to strengthen anti-corruption legislation and programme implementation. Although the organisation is committed to broad human rights objectives, it does not collect or submit case material to the Forum. It does not provide regular public reports. Consequently, an examination of the relationship between corruption, anti-corruption initiatives and human rights violations remains a pressing priority.

Zimbabwe Civic Education Trust

The Zimbabwe Civic Education Trust is a member of the Forum, but does not provide regular reports relating to specific human rights violations. Its current director is the former head of Zimrights. Zimcet has in the past been involved in civic education (democracy, voter education, human rights), but has focused its recent attention (since 2002) on the establishment of Peace Committees comprised of local political and social actors from various 'sides' of the conflict. There are now 57 across the country. Detailed information about what these Peace Committees are doing, the kinds of issues they are addressing and how they are addressing, however has not been forthcoming. Consequently, it is not clear whether the committees are dealing with violation issues 'in-house', what records they keep of them (if any) and whether they refer these matters to specific remedial mechanisms in the State or non-governmental sector. Although the regional Zimcet structures do compile reports, and Zimcet produces a monthly bulletin (primarily for internal distribution), these have not specifically addressed issues of justice and accountability.

Zimbabwe Human Rights Association

The Zimbabwe Human Rights Association (Zimrights), which was established in 1992, submits regular reports to the Forum from its head office, but has struggled to ensure reports are gathered from its five regional offices. There is no central archive of records, which includes casework related to welfare and other paralegal work, civic education and so on. In terms of record keeping, no specific focus has been given to issues of organised violence and torture undertaken by Zimrights. Despite this, Zimrights' records remain a potentially important and powerful source of primary data on a spectrum of human rights violations.

Zimbabwe Development Community Trust

The Zimbabwe Development Community Trust is a national network that provides assistance and relief to victims of political violence and socio-economic displacement. Following the 2002 Presidential elections, ZCDT ran 12 centres across the country. It is a regular contributor to the Forum's monthly report and interacts closely with other NGOs, such as the Amani Trust and ZLHR in terms of referrals for medical or legal assistance. The ZCDT has developed a database providing details on displaced commercial farm workers. The ZCDT provides the Forum with details of cases brought to its attention on a monthly basis.

Food Security Network

The Food Security Network (Fosnet) is a network of 24 civil society organisations from around Zimbabwe. The network began monitoring food security in Zimbabwe in July 2002, and provides monthly reports based on information pooled from most districts around the country. In 2004, the monitoring process was widened to cover other social and economic issues (i.e. health, education) and quarterly reports are now also produced with specific socio-economic thematic foci. These monthly and quarterly reports are generated from individual protocol reports that are compiled by network member organisations at ward and district level. These reports provide considerable opportunity for examining the interface between reported civil and political violations and particular socio-economic conditions on the ground.

Developing a relational database – a practical option?

The rationale for creating a relational database was clearly set out at the Johannesburg Symposium. Establishing an information management system that can collate a variety of existing data sources dealing with human rights violations would enable human rights researchers to make systematic, comparative analyses of patterns and trends of violations in time, space and social structure. This, in turn, would improve civil society's opportunities to ensure greater accountability for past violations, which in turn would help to promote the necessary institutional transformation and legislative framework that would avert a repeat of these abuses.

The overall list of possible data sources in Zimbabwe provides for considerable database opportunities. The character and quality of the data varies enormously, as well as the way it is coded and captured. Most of the electronic databases are not compatible and any attempts to create some sort of synergy between these databases would require a re-evaluation of the source material. While there is a lot of very useful data, it is evident that most would not be directly relevant to the creation of a new relational database. In this regard, it would be necessary to focus initially on those organisations that have primary data records, which include statements, narratives and substantive detail on the violations, perpetrated (i.e. type of violation, location of violation, date of violation, detail on victims and perpetrators, and where possible detail on context, witnesses, etc.).

In this regard, there are several important sources of primary data. These records alone amount to over 7,000 reports of violations covering the key periods of abuse in Zimbabwe's independence era. They also include some detail of violations perpetrated during the colonial period. Additional primary data records relating to this period, particularly from the CCJPR, if located, would help to address the deficit of primary data from this period. A number of other narrative records from the post-2000 period are available, although it is not clear to what extent these records complement or duplicate other records. The creation of a relational database would help eliminate this problem, and therefore permit the development of a more accurate picture of the violations perpetrated.

As a first step in the process, this means that we must rely exclusively on the utilisation (i.e. coding and processing) of primary data (i.e. statements, narrative accounts) of violations, and in this regard several key sources have been identified. All relevant parties have indicated a willingness to participate in the process of developing a relational database, although participation for some will be contingent on clear agreements around issues of confidentiality and conditions for the utilisation of the data.

Although the quality of narratives varies considerably, from detailed statements to limited note taking, the bulk of these primary sources are believed to contain adequate detail for the construction of a database. It is unlikely, however, that the available information would allow for the kind of detail contained in some of the relational databases developed by certain truth commissions or other human rights enquiries. Although it is inevitable that there will be a number of gaps in the available data, the database will help identify these, and if subsequent data collection processes are employed, these additional narratives could also be included on the database. As such, the development of the database is *not* dependent on all the information being available at one time. In other words, there is enough available information to start the process.

The Johannesburg Symposium Declaration requested some emphasis be given to issues of social and economic injustices and violations. Although a considerable amount of data on these issues has been collected (primarily it would seem in a qualitative format), at this stage it is not clear how these violations and issues can be captured in relation to a relational database that may focus essentially on gross violations of civil and political rights.

A more detailed overview of civil and political rights violations (i.e. types of violation, location of violations etc), however, will assist any analyses which attempt to explore the interface between these different sets of violations. For example, one would be able to examine how violence and displacement in certain parts of the country relate to depreciating social and economic conditions. Likewise, records – particularly from media monitors, such as the MMPZ – can create a chronology of events, enabling researchers to interrogate the interface, for example, of recorded statements of policy directives or hate speech by government officials and subsequent violations. This would be of critical importance for accurately assessing assertions, for example, that the land invasions were a spontaneous response from ordinary Zimbabweans. It would also enable researchers to empirically assess what efforts were made by the State to stop the violence, and/or hold perpetrators accountable.

The project would also be able to integrate information found in documentary sources with information coming from the narratives. In addition, if the organisation wants to provide some sort of central indexing of the ideas, events, or people covered in particular documents, then coded representations of these documents could be included in the information management system. "As with all data collection, the organisation must decide what information they want to extract from the documents in question. By developing a standard set of "questions", the organisation has defined

what is potentially relevant in each document.”⁴³ These issues would then have to be contained within the database design.

It is therefore important to see if other data sources will share their data, and to determine how best to relate this information to the central violations database. This will facilitate a broader understanding of a range of structural and thematic considerations and allow an assessment of violations at a local, as well as regional and national context.

The creation of a human rights violation relational database is a practical option on the basis of existing primary data sources in Zimbabwe, which can in turn be complemented by alternative data sources that would set out amongst other things a chronology of political, social, and economic events. This will provide a very rich base from which to analyse key patterns of violence. The process will, however, require a detailed and rigorous examination of existing data sources, which will in turn require the engagement of competent personnel and effective management to ensure the quality and consistency of data interpretation.

What is required to create the database?

The creation of an information management system requires the effective organisation and analyses of data. There are four main steps in an information management system:

- (a) Collection of data
- (b) Data processing – classification and coding
- (c) Database representation
- (d) Generating analytical reports

Collection of data

In most large-scale human rights data projects, the information is collected on the basis of a developed protocol, which in turn facilitates the consistency of the coding process. What is suggested in the current context is somewhat different and certainly more complex — in that we will be assessing multiple sources of data that already exist. This is likely to be considerably more time-consuming and will require more hands-on management and ‘quality control’ to ensure the data is interpreted consistently.

Data processing – classification and coding

“Data processing moves information from its partially structured, partly-coded state in a questionnaire (*statement/narrative/case file*) into a fully structured, fully-coded state in which it can be entered directly into a computer.”⁴⁴ Data processing is often very time consuming and requires skilled staff to do it. Narrative statements will be coded according to controlled vocabularies – i.e. an agreed list of types of violation. It will be necessary to assess a sample of existing statements to draw up this agreed list, as well as assessing existing violation categories already utilised by some organisations. The level of detail of violations captured will depend on what has been recorded. It is important, however, that each category in the controlled vocabulary exclude the other categories

⁴³ *Who Did What to Whom? Planning and Implementing a Large Scale Human Rights Data Project* Patrick Ball, American Association for the Advancement of Science, 1996, p. 31.

⁴⁴ *ibid.*, p. 32.

that are at the same level in the classificatory hierarchy. For example, instead of (two categories of) (a) torture, and (b) beating, a list should be created that has torture with various sub-categories, such as beating and electric shocks, etc.⁴⁵ This is already a fairly well-established practice in some Zimbabwean organisations involved in human rights data collection. Other lists of controlled vocabulary would include amongst others, regions of the country, State security agencies and proxy forces and so on.

It is important to remember that data processors apply the definitional decisions to the raw information that is available. This is the point at which there must be as much standardisation and consistency in terms of interpretation and definition – and the project management will have to assess the integrity of the coding process on an ongoing basis. This also underscores the importance of ensuring comprehensive training and ‘dummy runs’ before the processing is initiated.

This is tiring and time-consuming work. If the controlled vocabulary is complicated, the data processing will be much slower. This will obviously impact on the time taken to complete the project. At this stage it is impossible to give an accurate prediction on how long it would take to process 7,000 statements or to sufficiently train a team of coders and processors. A very general estimate based on previous experiences would be that ten data processors would take between four to six months to complete the task. This would probably be at the slower end of the ‘market’. This involves coding, as well as entering the data into the database. In many projects, these functions are separated. It took eight data coders and five processors over 15 months to process 8000 statements in Timor Leste, yet elsewhere others have argued that at ‘full steam’ a data processor can process as many as 10 to 12 statements a day. “As a very general rule of thumb, one data processor can do as many interviews in a day as an interviewer can do in a week.”⁴⁶

Database representation

The database must be able to represent all the information in the processed data, and must be able to produce the analytical reports that you are seeking to engage. In other words, it will be necessary to draw up a list of questions that you think the available data should be able to address.

Having the data already available, however, does allow for the database design and construction process to be more tailored around the existing information sources. In this regard, it would be necessary to take samples of individual cases (narratives and so on) to determine exactly what detail of information has been captured. Inevitably, large-scale databases often require further changes to the database design as additional fields of information are identified. This is often an ongoing process in situations where the data is being gathered from scratch. In this scenario, however, much of this can be avoided from the initial stages of the project.

It is recommended that the project engage a professional human rights relational database design expert to facilitate the database design process.⁴⁷ The project will need an in-house database programmer to handle the plethora of issues that inevitably arise. The project should consider how best the external professional can impart skills and expertise to the in-house programmer.

⁴⁵ *ibid.*, p. 33.

⁴⁶ *ibid.*, p. 74.

⁴⁷ A more detailed exposition of database design is available on request.

Generating analytical reports⁴⁸

After the data has been collected, processed and entered into the database, the information can be presented in analytical reports. These reports will provide the evidence necessary to support arguments made about who was violated, responsibility for violations, how they relate to policy changes, the roles of particular security structures and officials and many other claims. These reports will be based on statistical findings.

There are four main kinds of reports that can be generated from the databases in information management systems:

- (a) Lists – a “one-way tabulation” – i.e. a list of victims of disappearance that were killed in a particular district of a particular province during a set period of time. Various permutations of the same list can be developed.
- (b) Case summaries – case summaries put together all the facts for each case in a readable standard format – presenting a narrative description of the case, as well as elements of the case that were coded (i.e. violations, detail of victims, perpetrators). These cases, which draw on narrative that have more detail than others, or on multiple versions of the same incident, are often presented as ‘window’ cases.
- (c) Ad-hoc query results – this is where the database is able to respond to very particular questions. For example, analysts may find in a narrative a reference to an unnamed person who disappeared in a certain part of the country at a particular date. The analyst can then ask the database for the names of all victims of disappearances who fit those specifications (i.e. disappeared at that time at that place). The results may provide a starting point for subsequent inquiries.

Such queries are a way for the information management system to feed questions and ideas back to human rights workers, and can help us identify incongruities between data sources, areas that need additional attention or kinds of violations that seem to be the most important.

- (d) Counts – statistical outputs, such as (a) the number of disappearances, by month, and location in which they occurred, (b) the number of torture cases, by month, and perpetrating organisation, which will help identify proportional levels of responsibility etc. ... “there are many ways to count data. The difficult part in using statistics is not generating tables from the data: this is the mechanical application of a database after repeated data and bad data have been filtered out of the system – also known as ‘cleaning the data’. The hardest part of doing quantitative analysis is defining the proper analytical questions, and designing the appropriate tales that will best support an argument about a given question.”⁴⁹

These reports can provide powerful evidentiary weight to legal and other fact-finding endeavours.

⁴⁸ This section is based on materials drawn from *Who Did What to Whom?*, pp. 40–72.

⁴⁹ *Who Did What to Whom?*, p. 60.

Project management

The project must have adequate supervisory staff to maintain quality control and effective and efficient information flow. Often the biggest problem in large-scale human rights data projects is the inadequate co-ordination between the various stages.

Project management is therefore a critical consideration, not only in terms of the internal processes of the information management system, but also in terms of the organisations that have invested their data into the process. Understandably there are certain territorial and ownership issues that need to be addressed up front and it will be important to allay fears and concerns regarding issues of possession, confidentiality etc.

It would be necessary for participating organisations to develop a Memorandum of Understanding/ Agreement, which would stipulate details on the processes to be undertaken, the utilisation of data, and issues of confidentiality. During the interview process, several organisations raised concerns about security considerations in this regard, and that they would have to seek 'permission' from the persons they took statements from before divulging this information. While this is certainly a serious consideration for those who have taken statements in the context of lawyer-client arrangements, this is less clear for human rights organisations involved in the monitoring and documentation of violations. Indeed, it could be argued that no such 'privilege' exists and victims have volunteered this information in search of remedial options, and not for it to be secreted away for selective utilisation by the specific organisation or individual concerned. Obviously, in many contexts there are very real security considerations in terms of 'disclosure'.

Over and above this, however, it is important to point out that the overall objective of a relational database is not a focus on individuals, but a statistical analysis of collective/multiple experiences. As such, no victims will be named or identified in terms of database output. Nevertheless, their personal details will be included in the database, to ensure a methodologically defensible process that will ensure that duplications are avoided. Secure access to this information would be built into the database design, thereby ensuring security and confidentiality.

The organisational management of the project should be distinct from the day-to-day project management, with the latter reporting on progress and developments to organisations on an agreed and ongoing basis. In the current Zimbabwean environment, liaison between the project and participating organisations will depend on a number of factors. It is quite possible that some organisations will want to deploy staff to work on the project. Conversely, others may prefer to have a 'hands-off' approach and simply receive progress reports on the project's status. Agreement on these issues should be established up front to avoid any possible misunderstandings.

The *security* of the data project is critical, and participating organisations involved in the management of the process must decide where the project should be implemented. The current situation in Zimbabwe is clearly not conducive for this, and it is suggested that the project be undertaken in South Africa, where conditions are considerably better.

3. Identifying, Accessing and Collating Existing Human Rights Reports

During the course of the research, over 500 reports were collected relating to the human right situation in Zimbabwe. These reports are broken down into a number of sub-categories:

- Organised Violence and Torture – Pre-Independence
- Organised Violence and Torture – Post-Independence
- Organised Violence and Torture and elections
- Organised Violence and Torture and Land
- Organised Violence and Torture – Psychological/Psycho-social
- Legal and Constitutional Considerations
- Legislation
- Judiciary and the Criminal Justice System
- Media and Repression
- Refugees and Migrancy
- Social and Economic Violations
- Food Security and Agriculture
- Gender and Human Rights Violations

Electronic and hard copies have been collected of over half these reports and a draft electronic database has been collated, with hyperlinks between the 50-page index of reports and the available reports that have been collected. This material is available on CD-ROM. It is intended that this resource will be further developed as we access more of the 'hard copy' material, which we intend to scan and make electronic copies of. A full listing and copies of the report will be subsequently made available to Zimbabwean civil society.

Annexure

Declaration of

Civil Society and Justice in Zimbabwe

Symposium

The symposium

A symposium was held from 11 to 13 August 2003 in Johannesburg. Its theme was *Civil Society and Justice in Zimbabwe*.

This symposium brought together leaders from numerous civil society organisations in Zimbabwe, colleagues from civic organisations in South Africa and a number of experts from other jurisdictions.

The main purpose of the symposium was to explore how best to achieve justice in the broadest possible sense for the many victims of past and present human rights abuse in Zimbabwe.

The symposium noted that civil society organisations are non-partisan and are independent of any particular political party. Their main functions are to bring about a culture of human rights, justice and social and economic improvement and to promote and advance the interests of marginalised and victimised people.

In this document persons affected by human rights abuses are referred to as victims/survivors.

The process

The Zimbabwean participants of this symposium compiled this document and agreed upon the recommendations contained in it.

The Zimbabwean participants recognised they had initiated a process aimed at achieving justice for victims. They undertook to engage in wider consultation within their own organisations, other civic bodies not represented at the symposium and the general public. They will then incorporate these views into a final action plan. The civic organisations which endorse this plan and agree to participate in its implementation will present the plan to the political parties and other actors and demand that that it be fully taken into account in all deliberations relating to political transition. These civic organisations will monitor the political discussions pertaining to political transition to ensure that the needs of victims are fully met in the transitional and post-transitional periods.

Preamble

1. *Mindful that a political solution is urgently required in order to overcome the serious and rapidly worsening crisis in Zimbabwe that has resulted in such widespread suffering;*
2. *Requiring that the Zimbabwean people and civil society organisations be given a full opportunity to make an input into the process taking place to bring about transition to a new political order to influence the human rights content of any settlement that may be reached, not the political outcome of the negotiations.*

3. *Recalling the United Nations General Assembly resolution 53-144 of 9 December 1998 which outlines the rights and responsibilities of individuals, groups and organs of society to promote and protect universally recognised human rights and fundamental freedoms.*
4. *Emphasising the important role that individuals, civil society organisations and groups play in the promotion and protection of human rights and fundamental freedoms.*
5. *Fully accepting that historical social and economic imbalances must be remedied in order to achieve social and economic justice in Zimbabwe;*
6. *Insisting that strategies must be pursued that will cater for the needs of victims of violence and that the victims will be consulted about their needs and what the victims perceived as being the most appropriate mechanisms for satisfying their needs;*
7. *Understanding that lasting peace can only be achieved where human rights abusers are held accountable and meaningful steps are taken to try to heal the grievous wounds the violators inflicted on their victims and the society;*
8. *Recognising that it is imperative to preserve and fully and accurately record the past history of human rights violations.*

Based on these general considerations, the Zimbabwean participants resolved as follows:

The abuses in the past

Throughout colonial occupation, black Zimbabweans were oppressed by the regime and denied all civil and political rights. They were deprived of their land and socially and economically marginalised. From 1960 until 1980 they suffered even more widespread and systematic gross human rights violations. These violations and the subsequent impunity created the foundations for the human rights abuses experienced in subsequent decades.

In the 1980s large scale human rights violations occurred in the southern and western regions of Zimbabwe during military operations ordered by the government. These again were widespread, systematic and planned.

From 2000 onwards there have been increasing levels of violence resulting in pervasive human rights abuses. All available evidence indicates that the government has engaged in a widespread, systematic, and planned campaign of organised violence and torture to suppress normal democratic activities and to unlawfully influence electoral process. The government has also created and the law enforcement agencies have vigorously applied highly repressive legislation. These measures were directed at ensuring that the government retained power rather than overcoming resistance to achieving equitable land redistribution and correcting historical iniquities.

The human rights abuses, social and economic injustices suffered by the people are not merely the product of colonial injustices, but also the product of misgovernance, and massive corruption and asset stripping by State officials, persons within the private business sector, and others.

Accountability

The delegates noted that during the pre- and post-independence periods there have been successive amnesties and Presidential pardons for many of the persons who committed gross human rights

violations. The failure to punish these violators and to hold them accountable created a culture of impunity and the potential for the re-emergence of violence and abuse of human rights. The culture of impunity can only be ended if perpetrators of human rights abuses are held accountable for their abuses.

The participants noted and acknowledged that under international law and international humanitarian law gross human rights violations should never be ignored or be the subject of an amnesty.

Mechanisms for addressing the needs of victims

Victims of all past human rights abuses have the right to redress and to be consulted about the nature of the mechanisms that will be established to address their needs.

The mechanisms that are established must be victim-centred and must be capable of addressing the needs of victims in a meaningful way.

Prior to the establishment of these mechanisms there must be an extensive process of consultation with the victims and the broader community about the mechanisms and the sort of persons who should be made responsible for operating them. Civic organisations and the churches should assist in this process.

The main mechanism for dealing with past human rights abuses will be a Truth, Justice and Reconciliation Commission. This Commission will have the following functions:

Regarding the human rights abuses prior to 1960 the Commission's main functions will be:

- to investigate human rights abuses that occurred prior to 1960 and compile a full and accurate record of these abuses;
- to determine the social and economic effects of these abuses;
- to establish the extent to which these historical abuses continue presently to negatively impact upon the rights of Zimbabweans;
- to make appropriate recommendations about remedial steps to address the needs of victims of these abuses and present injustices emanating from past injustices;
- to refer cases involving gross human rights violations to the Attorney-General for possible criminal prosecution.

Regarding the human rights abuses subsequent to 1960 the main functions of the Commission will be:

- to take steps to ensure the protection and preservation of evidence of human rights abuses;
- to investigate human rights abuses that have occurred between 1960 and the date upon which this Commission commences its operations, including violations during a transitional period and compile a full and accurate record of these abuses using available documentation, victim statements and testimony from perpetrators;
- to require persons accused of human rights violations but who deny that they committed such violations to appear before the Commission so that these cases can be fairly investigated and findings can be made;
- to require persons who admit to having committed human rights violations over this period to appear before the Commission, make full and accurate admissions about their involvement;
- to recommend that those found to have committed gross human rights abuses should be

removed from any positions of power and authority that would allow them to commit further human rights abuses in the future;

- to recommend appropriate remedial steps to provide reparations to victims, including referral of cases for prosecution, non-repetition of abuse, rehabilitation, provision of monetary compensation to individuals or communities that have been particularly badly affected by grave human rights abuses, ordering perpetrators to pay monetary compensation or make other types of reparation to victims;
- to explore the desirability of facilitating genuine community reconciliation;
- to facilitate processes of community driven exhumation, reburial and memorialisation.

To be effective this Commission must be independent, credible, efficient, adequately resourced, accessible and victim-friendly.

Civic organisations should monitor and support the operations of this Commission.

Victims appearing before this Commission must be treated with sensitivity and respect and be given protection against reprisals.

There is need for a proper gender balance on this Commission and particular attention must be paid to the special needs of women and children victims.

The government formed after the transition must commit itself to co-operate with and to support the activities of this Commission and must give an unequivocal undertaking to implement its recommendations wherever possible.

The participants called for the conducting of a comprehensive people driven constitutional reform exercise that will lay emphasis on the protection of all human rights and the establishment of a number of Commissions to protect and promote these human rights.

There should be special Commissions to deal with land, gender issues and economic crimes such as corruption, asset stripping and debts incurred by previous governments in connection with human rights abuses.

The mandate of the Commission on economic crimes should include

- referral of cases to the Attorney-General for possible prosecution;
- in conjunction with other appropriate state agencies, taking of vigorous steps to recover misappropriated state assets;
- imposition of financial penalties upon those who were financial beneficiaries of human rights abuses.

A substantial portion of the assets recovered by this process should be devoted to compensating individuals and communities harmed by past human rights abuses.

All these Commissions must be given an explicit mandate to recommend measures aimed at redressing socio-economic injustices of the colonial and post-colonial periods.

The new Government must immediately establish a reparations fund to compensate victims of human rights abuses. Concerted efforts must be made to tap all possible sources of local and international finance for this fund, including assets recovered by the Economic Crime Commission. If financially feasible, full compensation should be paid to those who suffered the greatest harm as

a result of grave human rights abuses and some more limited compensation should be paid to other victims. The fund should also be used to establish local development projects in areas particularly badly affected by past human rights abuses.

All victims must be provided with free and proper health care and social support to deal with the lifetime disability that can arise from violations of their human rights.

Future human rights abuses

The decades of conflict and human rights abuses have badly weakened the institutions that should provide protection against human rights abuses and provide remedies for those harmed by human rights abuses.

A culture of respect for human rights will need to be re-established in Zimbabwe. Existing institutions will need to be strengthened and other institutions established to institutionalise this new culture. The justice delivery system should be re-designed in a way that will allow for accessible remedies for victims of human rights abuse.

The law enforcement agencies and prison service will need to be overhauled so that they once again become professional, politically neutral forces that respect the human rights of all Zimbabweans and enforce the law on a fair and impartial basis. Officers who planned and instigated or perpetrated particularly serious human rights abuses should be removed from law enforcement agencies and all law enforcement officers must be made to undergo thorough re-training focused on the protection of human rights.

Civic organisations should monitor law enforcement agencies to ensure that they do not commit human rights abuses and, when they do, to assist injured parties to obtain redress.

All militias and other irregular para-military forces must be immediately disbanded. There must be rehabilitation programmes to reintegrate members of these forces back into normal society.

The independence and impartiality of the judicial system and of the prosecution service has been undermined and public confidence in this system will need to be restored.

There must be effective constitutional mechanisms to ensure that judicial appointments are made on the basis of professional competence and suitability and that there is no political interference in the judicial process.

The human rights protections contained in the Constitution must be strengthened and made to conform to international standards on human rights.

A Constitutional Court should be established to ensure the enforcement of human rights and credible, politically neutral and competent judges should be appointed to this court.

A number of Commissions should be established to ensure the observance of human rights and provide accessible means of redress to those harmed by human rights abuse. These should include a Human Rights Commission, a specific Commission on Gender Rights and a Land Commission.

International remedies for victims

The new government should take steps to facilitate access by Zimbabweans for human rights abuses.

The new government should try to make effective use of the Rome Statute of the International Criminal Court.

It should enable all Zimbabweans to rights and protections of all regional and international rights instruments by becoming a State Party to such treaties as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the International Covenant on Civil and Political Rights. It should also make a declaration under Article 14 of the Convention for the Elimination of All Forms of Racial Discrimination. The provisions of all of these treaties must be incorporated into domestic law.

Conclusions

Over many years innumerable Zimbabweans have fallen victim to human rights abuses. All Zimbabweans earnestly look forward to a new era in which there is peace and stability that will allow for equitable economic growth and development and in which the fundamental rights of all Zimbabweans are respected. As is stated in the preamble to the United Nations Universal Declaration of Rights "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."