Re-inventing the Wheel? Transitional Justice in Zimbabwe

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As Zimbabwe moves inexorably towards a resolution of the current political crisis, one of the most serious issues on the table, but almost wholly ignored by the United Nations, the African Union, and SADC, is accountability for the violence that has been such a feature of Zimbabwe's history. All these parties have now increasingly deprecate the "violence", but few raise the issue of which party is responsible for the violence, and, if it is the state, as is alleged in countless reports, what are the implications of this.

Accountability is however not a new problem, and has received serious consideration already by Zimbabweans themselves. In 2003, a symposium was held in Johannesburg, South Africa, with participation by various civic groups and experts from Zimbabwe, the region and other jurisdictions.[1] There were 74 leaders from civil society organizations in Zimbabwe, South Africa and a number of legal and rehabilitation experts.

The purpose of the symposium was to discuss and draft a transitional justice model suitable for Zimbabwe. The focus of discussion was to ascertain how best justice could be achieved, with a concentration on both past and present gross human rights abuses that have been perpetrated in Zimbabwe. The discussion also focused on how to ensure that any transitional mechanism used in Zimbabwe was developed and carried out in a manner that would end impunity and prevent future abuses from taking place.

If one looks at Zimbabwe during both the colonial and post-independence periods, the country's history has been marred by human rights violations and abuses, and subsequent impunity. At independence, for the sake of reconciliation and national peace, an agreement was reached where all perpetrators of violations were pardoned. As a result, national reconciliation and integration were given greater weight and focus at the expense of the victims.[2] This culture of impunity and the absence of accountability have subsequently become embedded in the fabric of Zimbabwean society, and have significantly contributed to the widespread systematic political violence that has gripped Zimbabwe since 2000.

Thus, the discussions at the symposium focused on the inter-related imperatives of securing justice and accountability and putting an end to impunity. It was agreed that it was necessary to examine these

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[1] See Themba Lesizwe (2004), *Civil Society and Justice in Zimbabwe, Proceedings of a symposium held in Johannesburg, 11-13 August 2003*, PRETORIA: THEMBA LESIZWE.

[2] In 1980 when Zimbabwe gained its independence from its colonialist the British; pardons were granted to perpetrators of gross human rights abuses from both sides of the front mainly the Rhodesian Army and the Guerillas who were fighting for the liberation of the country. In October 2000 clemency orders were granted by the President that exonerated perpetrators of violations that had been committed in the run up of the June 2000 elections. These run up to these elections in 2000 were the most violent since independence. Here see G. Feltoe, (2003), *Rule of Law-Façade of Democracy*, a paper presented at the Civil Society and Justice in Zimbabwe Symposium.

matters and draw up feasible recommendations on how these contentious issues could be addressed in order that the rights of ordinary citizens of Zimbabwe be guaranteed in the future, and be in accordance with national and international law.

One of the major issues at the symposium was to first identify where and how the discussions were going to evolve, and most importantly who were going to be the drivers and developers of the process. There was unanimous agreement that civil society was to be the central force in the development and ownership of the process in Zimbabwe.[3]

Subsequent to the symposium there has been little further development of the declaration by Zimbabwean civil society, and no response from the political parties in Zimbabwe, all of whom were sent copies of the symposium proceedings.[4] There has been much talk about transitional justice and the measures and mechanisms that should be adopted, often with a focus on international mechanisms, but virtually no reference has been made to the 2003 symposium.

The lack of development of this symposium can be largely attributed to the fact that there has been no change in the political and economic sphere of Zimbabwe since the meeting, and even a significant worsening. Civil society in Zimbabwe has not been as united since the inception of the 2003 meeting, and furthermore has been under sustained attack. The human rights climate has shown marked deterioration in the past few years, and this has worsened dramatically since the March 2008 election. NGOs have been a regular target, with the fears of severe state control via the NGO Bill in 2005 and, most recently, there has been a massive clamp down on civil society organizations around the country. The manner in which events unfolded after the 29 March Harmonised elections and in the run up to the June 27 runoff[5], has led to great uncertainty as to the feasibility of such organizations being able to undertake their core activities in the country.

The current political climate is as repressive as it was five years ago, and the violence, intimidation and tactics of repression that were being used back then have recently been resuscitated by the government of Zimbabwe. Since the defeat of ZANU PF in the Harmonized election held on the 29th of March 2008, widespread systematic violence has been unleashed on the rural citizens of Zimbabwe. The current post

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[3] Themba Lesizwe (2004), *Civil Society and Justice in Zimbabwe, Proceedings of a symposium held in Johannesburg, 11-13 August 2003*, PRETORIA: THEMBA LESIZWE. p33-34

[4] There were attempts to extend the findings of the symposium. See Redress (2004), *Zimbabwe: From Impunity to Accountability. Are reparations possible for victims of gross and systematic violations?* March 2004. LONDON: REDRESS TRUST; Zimbabwe Human Rights NGO Forum (2006), *Exploring Transitional Justice Options in Contemporary Zimbabwe*. January 2006, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

[5] According to the Zimbabwe Electoral Commission's controversial Presidential results of the March harmonised elections held on the 29th of March, for the first time ever in Zimbabwe's post independence history Movement for Democratic Change candidate Morgan Tsvangirai beat ZANU-PF candidate Robert Mugabe but failed to secure the 50% absolute majority required to be declared president of Zimbabwe; according to the electoral laws a run off in such circumstances was necessary in order to determine a clear winner.

election violence that is being perpetrated by the government of Zimbabwe is a very obvious repeat of the violence that followed the 2002 election period. The acts that are being committed are similar in type, and the major perpetrators of both periods have been ZANU PF Youth, ZANU PF supporters, "war veterans", and the youth militia.[6] The major sites of the violence, when one looks at the 2000 and 2002 elections, are the same areas where politically motivated violence is being perpetrated to date. The victims seen in 2000 and 2002, and those of the 2008 Harmonised March election, are the same; namely MDC activists, human rights defenders, known supporters of other political parties, and local election observers.

Political bases similar to those set up in the liberation war have been set up across the country, as was the case in the period leading up to the 2002 election; similarly schools, clinics, farms, churches, and business centres are being used as torture camps.[7] This time, however, there is a more obvious state hand, and the Joint Operations Command [JOC] is reportedly playing an active role in the violent campaign that is the currently sweeping the country it has emerged according to a recent Human Rights Watch report.[8] It is evident from all reports that state machinery is being used to silence any form of dissent[9] and most acts of brutality are being committed with the conviction that immunity will be granted to the perpetrators.

Thus, there has been no significant change in the human rights climate since the symposium in 2003, and hence the findings and conclusions of the symposium are as relevant today as they were then.

What was agreed at the symposium?

After much debate and deliberation a declaration was formulated that highlighted the possible manner in which issues of justice and accountability would best be achieved for victims of gross human rights abuse in Zimbabwe [see below]. The major point that was emphasized in much of the debate was that in formulating the proposed resolution, the participation of victims, and victim-centredness, was to be the central pivot of the whole process. The resolution was to be publicly released and widely distributed for

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[6] Zimbabwe Peace Project, *March 29 harmonized elections Post Mortem, An analysis of Trends, patterns and predictions for Electoral Runoff*, p 4, 5-6.

[7] There are large number of reports concerning the 2000 and 2002 elections. For a sample see the following: Zimbabwe Human Rights NGO Forum (2001), *Human Rights and Zimbabwe's June 2000 election*, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM; Zimbabwe Human Rights NGO Forum (2001), *Who was responsible? A consolidated analysis of pre-election violence in Zimbabwe*, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM; Zimbabwe Human Rights NGO Forum (2002), *Human Rights and Zimbabwe's Presidential Election: March 2002*, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM; Zimbabwe Human Rights NGO Forum (2002), *"Are They Accountable?: Examining alleged violators and their violations pre and post the Presidential Election March 2002",* HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

[8] The JOC is headed by senior ZANU PF officials, the Zimbabwe Republic Police, the Zimbabwe National Army, the Zimbabwe Prison Service, and the Central Intelligence Organisation. "Bullets for you" State Sponsored Violence since Zimbabwe's March 29 Elections, p.8

[9] There has been an outright clamp down on civil society, lawyers, journalists, Members of parliament of the opposition, trade unionist and the police has come out an publicly announced that they will not tolerance or grant bail to politically motivated violence offenders.

further debate by the Zimbabwe participants, and would be the beginning of a national consultation with grassroots organisations and other relevant stakeholders.

However, the political space in Zimbabwe has not opened up sufficiently for transitional justice matters to be widely discussed with the victims, but this does not mean that some of the relevant stakeholders cannot begin to discuss these issues for the future. The groundwork that was laid out at the symposium was derived from a relatively representative quorum of Zimbabwean society, and it would seem that it is now time for civil society to revisit this declaration and engage in a countrywide census on transitional justice issues. In addition, civil society needs to begin to rally and mobilise the victims and survivors of gross human right abuses in order that the victims and survivors of these crimes speak a common language; and are not forgotten once the political environment changes.

In conclusion, it is evident that civil society must be engaged in and be included in the transitional justice process when the time comes. Political parties, relevant actors and the general public have to be consulted on and be included in the final transitional justice plan. The whole process must be victim-centred and have the ability to address the needs of the victims in a long lasting and meaningful manner. Breaking the culture of impunity, which is evident in Zimbabwe today, will only become sustainable if the nation establishes institutions that promote justice, openness and accountability. Existing institutions will have to be strengthened and be adequately resourced in order to achieve the same. It is time for civil society to act on the undertaking they gave at the symposium in 2003. The wheel was set in motion five years ago; let us not re-invent it, but keep it moving.

Symposium Declaration[10]

The leaders representing the various civic society organizations from Zimbabwe resolved that there was a urgent need to make representations to the negotiating political parties with recommendations on the issue of human rights, justice and accountability in that the proposed recommendations form part of the political settlement by the relevant political parties.

It was agreed that:

Human rights abuses that have been committed against the citizens of Zimbabwe both during the colonial period and post independence eras need to be addressed;

Mechanisms need to be developed and established that guarantee the non occurrence of future Human Rights abuses in Zimbabwe;

Blanket amnesties and general amnesties for human rights abusers should never be allowed or find a space on the negotiating table;

There is a need for the establishment of the necessary institutions that will deal with past and present human rights abuses, and such institutions need to be empowered to not only investigate and seek the truth, but the recommend criminal prosecutions, be adequately resourced to provide for redress and reparations for victims for the healing of the nation. These institutions need to address the specific needs of the victims especially women and children;

The government of Zimbabwe must enable Zimbabweans to take advantage of the protection and remedies that are offered by International human rights instruments;

An investigation should be carried out on corruption and asset stripping, and the repossession of all assets misappropriated from state and private enterprise, or acquired through corruption and other illegal means.

Demands made on the Government of Zimbabwe:

That there be an immediate end to political violence and intimidation, an immediate disbanding of the militia, and an immediate return to non partisan police, army and intelligence services and non selective application of the law;

That there be an immediate repeal of all repressive legislation and unjust laws such as the Public Order Security Act, Access to Information and Protection of Privacy Act, and the Broadcasting Services Act; and that all charges brought before the repeal of these laws should be withdrawn and sentences previously imposed be annulled;

That there be an immediate opening up of political space including the immediate and complete overhaul of the electoral law and institutions to enable all the elections to be held under free and fair conditions;

That the economic and humanitarian crisis in Zimbabwe must be immediately addressed.

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[10] Themba Lesizwe (2004), *Civil Society and Justice in Zimbabwe, Proceedings of a symposium held in Johannesburg, 11-13 August 2003*, PRETORIA: THEMBA LESIZWE, p39-40.