



## Second International Conference on Transitional Justice in Zimbabwe

9 – 11 October 2013  
Johannesburg, South Africa

### CONFERENCE REPORT



**KENYA**

**GUATEMALA**

**SIERRA LEONE**

**SOUTH AFRICA**



**IJR**  
THE INSTITUTE  
FOR JUSTICE AND  
RECONCILIATION



The Hague Institute  
for Global Justice

**The Second  
International Conference  
on Transitional Justice  
in Zimbabwe**

**Truth Commissions: the Best Practices**

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Johannesburg, South Africa

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# Contents

<b>Executive Summary .....</b>	<b>ii</b>
Transitional Justice in the context of Zimbabwe .....	ii
Key lessons drawn from case studies .....	iv
About the Conveners .....	vi
<b>INTRODUCTION .....</b>	<b>1</b>
Summary of Presentations .....	4
<b>CASE STUDIES.....</b>	<b>10</b>
1. Sierra Leone by Ms. Yasmin Sooka .....	10
2. Guatemala by Professor Elizabeth Olgesby .....	11
3. Bosnia-Herzegovina by Professor Hans-Joachim Heintze .....	14
4. Kenya by Dr. Ahmed Yassin .....	15
5. South Africa by Dr. Fanie Du Toit .....	16
<b>ANNEXES .....</b>	<b>19</b>
<b>CASE STUDIES PRESENTATIONS.....</b>	<b>41</b>
1. Sierra Leone by Ms. Yasmin Sooka .....	41
2. Guatemala by Professor Elizabeth Olgesby .....	50
3. Bosnia-Herzegovina by Professor Hans-Joachim Heintze .....	54
4. Kenya by Dr. Ahmed Yassin .....	57
5. South Africa by Dr. Fanie Du Toit .....	63
<b>ABOUT THE ZIMBABWE HUMAN RIGHTS NGO FORUM.....</b>	<b>70</b>

# Executive Summary

This report captures the proceedings of the Second International Conference on Transitional Justice in Zimbabwe held from 9th to 11th October 2013 in Johannesburg, South Africa. The conference discussed the prospects of establishing an effective National Peace and Reconciliation Commission in Zimbabwe, which meets the expectations of the people and is also in sync with international best practices. The conference was co-hosted by the Zimbabwe Human Rights NGO Forum (the Forum), the Institute for Justice and Reconciliation (IJR) and the Hague Institute for Global Justice (THIGJ). The presentations and discussions at the conference interrogated how Zimbabwe could learn from the experiences of other countries in Africa and other parts of the world, and to propose a programme of action.

The meeting discussed the provisions of section 252 of the new Constitution of Zimbabwe, which mandates the National Peace and Reconciliation Commission (NPRC) to ensure post-conflict justice, healing and reconciliation. It also seeks to promote truth telling and accountability for past human rights violations and anything incidental to the prevention of conflict and the promotion of peace<sup>1</sup>. The meeting provided a platform for stakeholders to contribute to the establishment of a credible and effective Commission capable of fulfilling its constitutional mandate.

## Transitional Justice in the context of Zimbabwe

Over the past couple of decades, the United Nations (UN), the international community and individual countries have sought to find the right responses to the devastating legacies of human rights violations, mass atrocities and genocide. In numerous cases, an important part of the response has been the establishment, in one form or another, of truth recovery mechanisms such as truth commissions. Truth seeking and reconciliation have now become a universal feature of the architecture of post-conflict peace building.

Zimbabwe has had a history of violence and impunity that continue to threaten peace. In some instances the government responded to episodes of violence, looting and other gross human

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<sup>1</sup> See Section 252 of the Constitution of Zimbabwe [Amendment (No. 20) Act 2013], which outlines the functions of the National Peace and Reconciliation Commission.

rights violations by setting up commissions of enquiry. In other cases the government responded to these problems by giving clemency to perpetrators of violence. For example, government pardoned Gukurahundi<sup>2</sup> perpetrators that included soldiers of the 5th Brigade alleged to have committed serious atrocities. Key leaders of waves of politically motivated violence (which resulted in deaths, mass displacements, rape, torture and other human rights violations) ahead of successive elections between 2000 and 2008 have also been pardoned.<sup>3</sup>

After the disputed presidential election of June 2008, the Zimbabwe African National Union Patriot Front (ZANU-PF), led by Robert Mugabe and the two Movement for Democratic Change (MDC) formations, one led by Morgan Tsvangirai (MDC-T) and the other then by Arthur Mutambara (now led by Welshman Ncube) signed a "Global Political Agreement" (GPA) that led to the creation of an "Inclusive Government". The GPA required the government to give consideration to the setting of a mechanism to "*properly advise on what measures might be necessary and practicable to achieve national healing, cohesion and unity in respect of victims of pre and post independence political conflicts*". This objective was not, however, realized since Organ for National Healing, Reconciliation and Integration (ONHRI) which took up this function failed to achieve tangible results that could bring lasting peace, for a number of reasons, which included lack of political will and a limited mandate.

The formation of the NPRC brings new expectations for the country to effectively deal with its violent past and build a new culture of peace. It is against this background that the Forum, IJR and THIGJ organised this conference which brought together commissioners, civil society activists and academics to share best practices (with examples from Commissions from four country case studies - Guatemala, Kenya, Sierra Leone and South Africa), to come up with recommendations and to consider the requirements and conditions for an effective commission that can potentially fulfill its constitutional mandate.

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2 Gukurahundi is a traditional Shona word, which means 'the early rain which washes away the chaff before the spring rains.' It is the word used to describe a military operation against a civilian population in the Midlands and Matabeleland regions of Zimbabwe during the 1980s, see [http://www.sokwanele.com/articles/sokwanele/gukurahundiinzimbabwe\\_29May2007.html](http://www.sokwanele.com/articles/sokwanele/gukurahundiinzimbabwe_29May2007.html). (Accessed on 27 May 2014).

3 Mugabe's power to grant pardons was derived from Section 31(I) of the old Constitution (entitled 'Prerogative of mercy'), to the following effect: "(1) The President may, subject to such lawful conditions as he may think fit to impose – (a) grant a pardon to any person concerned in or convicted of a criminal offence against any law..." This power was found in the 1953 Constitution to the extent that the governor and later the head of state could grant a pardon to a person convicted of a crime. The prerogative was widened in the 1969 Constitution to allow the head of state to grant clemency to those "concerned in" criminal activities, that is, to allow pardons prior to conviction, thus precluding prosecutions of those covered by the clemency. Since 1987 the President has issued a series of "Clemency Orders" covering both the Gukurahundi period and political violence during electoral periods. For example, Clemency Order No. 1 of 2000, published as General Notice 457A of 2000 in the Government Gazette Extraordinary on 6 October 2000 granted pardon for 'politically-motivated crimes' which were defined as 'any offence motivated by the object of supporting or opposing any political purpose and committed in connection with the Constitutional Referendum...or the general Parliamentary elections...whether committed before, during or after the said referendum or elections.' In terms of this order a free pardon was granted to every person liable to prosecution for any politically-motivated crime excluding murder, robbery, rape, indecent assault, theft, possession of arms and any offence involving fraud or dishonesty.

The keynote address was delivered by Professor Pablo de Greiff, the United Nations Special Rapporteur on the Promotion of Truth, Reparations and Guarantees of Non-Recurrence. He highlighted the fact that truth-seeking initiatives contribute to the strengthening of the rule of law, yet the success of any Commission depends on the credibility, competence and independence of the commissioners. In addition, the Special Rapporteur emphasised that truth commissions often build their foundation on the existing work of civil society organisations that document incidences of gross human rights violations.

## **Key lessons drawn from case studies**

1. The experience from Sierra Leone showed that *specific Gender Concerns need to be taken into account.*
2. The experience of Guatemala exposed *the challenges of shifting identities where an individual can be a victim in one instance and a perpetrator in another.*
3. The Kenyan experience demonstrated the need for a *credible, transparent and independent process in order to ensure a smooth, competent and an uninterrupted implementation of mandate.*
4. The South African case demonstrated the need to *implement the commission's recommendations immediately. There is therefore a need to have a monitoring and evaluation mechanism during and after the expiry of its mandate.*

## **The conference came up with the following recommendations;**

1. Civil society should establish an independent National Transitional Justice Working Group, with a framework designed to proactively ensure that the needs of the victims are prioritised.
2. Public participation and input into the National Peace and Reconciliation (NPRC) draft bill, should be ensured and present in all processes leading to the appointment of commissioners who are independent, impartial and competent.
3. Civil society should monitor and advocate that the government ensures adequate protective mechanisms for victims and witnesses who will testify before the NPRC as well as for institutions that will provide relevant information.
4. Appropriate bodies should research, collect, archive and coordinate all existing historical narratives of the past. A particular concern should be the retrieval of information through

an established credible body, the collection of information from all actors carrying out documentation, and the standardisation of the process of documenting violations to make the data useful for history, prosecutorial and educational purposes.

5. Civil society should advocate and lobby for Institutional Reform. Mechanism must be put in place to provide for continued monitoring of institutions.



## **About the Conveners**

### **The Zimbabwe Human Rights NGO Forum**

The Zimbabwe Human Rights NGO Forum (“the Forum”) - a coalition of 20 human rights organisations - was established in 1998 as a response to human rights violations and other concerns which arose after the repressive response by the State to widespread riots which took place around the country in that year over the price of foodstuffs. Since then it has extended its mandate with the objective of eliminating organised violence and torture (OVT). Among other activities, it provides legal assistance to victims of OVT, monitors the human rights situation in the country and publishes its findings. The Forum envisions a society free from organised violence and torture.

### **The Institute for Justice and Reconciliation**

The Institute for Justice and Reconciliation (IJR), launched in 2000 in the aftermath of South Africa's Truth and Reconciliation Commission (TRC), and winner of the 2008 UNESCO Prize for Peace Education, works to stabilise post-conflict societies by promoting a culture of peace, justice and reconciliation through research and analysis, sustained interventions, capacity development and education. IJR draws lessons from its interventions in eight countries on the African continent where the Institute works, as well as from its world-wide network of partners.

### **The Hague Institute for Global Justice**

The Hague Institute for Global Justice is an independent, nonpartisan organisation established to conduct interdisciplinary policy-relevant research, to develop practitioner tools and convenes experts, practitioners and policymakers to facilitate knowledge sharing. Through this work, The Hague Institute aims to contribute to, and further strengthen, the global framework for preventing and resolving conflict and promoting international peace. The Hague Institute was established in 2011 and is located in the city that has been a symbol of peace and justice for over a century - The Hague. The Hague Institute is positioned uniquely to address issues at the intersection of peace, security and justice.

# Introduction

Since 2006, the Forum has spearheaded transitional justice (TJ) issues in Zimbabwe. The history of Zimbabwe has been marred by several episodes of violent conflict that have created deep divisions within society, not least of which was the protracted and violent struggle against white minority rule which led to the emergence of Zimbabwe as a fully independent state. In terms of reconciliation and justice, Zimbabwe's violent pre-independence past was never addressed by way of a coordinated transitional justice process.

Following Zimbabwe's attainment of independence, episodes of violent internal conflicts ensued and negatively impacted on Zimbabwe's development. These include: the Midlands and Matabeleland atrocities in the 1980s, also known as Gukurahundi where it is estimated that over 20,000 people lost their lives; the 1995 electoral violence against the opposition Zimbabwe Unity Movement, the Food Riots of 1998; waves of violent farm invasions since 2000; election-related violence since 2000; the displacement of over 700 000 Zimbabweans in the high-density areas of Zimbabwe during Operation Murambatsvina in 2005; and the June 2008 presidential run-off election that was characterised by politically-motivated violence.

No justice and/or healing process at a national and community level has taken place following these events. There has been no comprehensive approach addressing these past gross human rights violations.

From the perspective of civil society, there are clear minimum conditions that need to be met to satisfy the demands transitional justice in a comprehensive manner. These build upon the resolutions of the Johannesburg Symposium of 2003 (Civil Society and Justice in Zimbabwe) the first major meeting of a variety of stakeholders convened to discuss issues of transitional justice in Zimbabwe.<sup>4</sup> In 2008, civil society organisations in Zimbabwe adopted the Symposium's minimum conditions<sup>5</sup> for a lasting closure of Zimbabwe's violent past, that is, that the process of transitional justice in Zimbabwe should:

- ▶ Be victim-centred
- ▶ Be a comprehensive, participatory, inclusive and consultative process
- ▶ Seek the establishment of the truth

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4 See Penny Morrel (ed) (2004), *Civil society and justice in Zimbabwe: proceedings of a symposium held in Johannesburg 11-13 August 2003*, Southern African Trauma Coalition (SATC).

5 See the Report of the meeting organised by the Civil Society on the way forward on transitional justice in 2008.

- ▶ Seek acknowledgement of gross violations of human rights perpetrated by the state
- ▶ Provide justice, compensation and reparations
- ▶ Provide national healing and reconciliation
- ▶ Ensure non-repetition
- ▶ Be gender sensitive in its processes
- ▶ Ensure transparency and accountability
- ▶ Facilitate nation-building and re-integration

Using these minimum demands, from 2009-2011 the Forum undertook a *Taking Transitional Justice to the People Outreach Programme* with the objective of bringing the concept of transitional justice to ordinary Zimbabweans and the victims of organised violence and torture. In 2012, the Zimbabwe Human Rights NGO Forum published views and recommendations from Zimbabweans in the Diaspora on transitional justice, which were sent out to various stakeholders, including policy makers.<sup>6</sup>

In October 2012, the Forum organised the First International Conference on Transitional Justice in Nyanga, Zimbabwe. The conference provided a platform for numerous stakeholders to share ideas and experiences around TJ. The participants included: civil society organisations; legislators; government institutions; development partners; faith-based organisations; labour; farmers' organisations; the security sector; academia and the media. Based on the presentation of the case studies and group discussions, the two-day conference recommended the "Way Forward for Zimbabwe"<sup>7</sup> in transitional justice as being:

1. *To establish a Transitional Justice National Working Group*
2. *To ensure credible research and efficient archiving of documentation*
3. *To advocate policy change and the enactment of appropriate legislation*
4. *To ensure national engagement in the process*
5. *To facilitate the rehabilitation of survivors of OVT and human rights violations, with specific attention paid to women and children*
6. *To reform and monitor existing relevant institutions*

A new constitution for Zimbabwe, following a successful referendum, was signed into law by the President on 22nd May 2013. This new Constitution has a Bill of Rights encompassing civil and political, social, cultural and economic rights.

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<sup>6</sup> See the Forum's Report on Transitional Justice in the Diaspora, 2012.

<sup>7</sup> Zim Human Rights NGO Forum(2012). International Conference on Transitional Justice, Nyanga.

One of the major contributions of the Forum, together with the Organ of National Healing Reconciliation and Integration (ONHRI) and Churches and Civil Society (CCSF) was the inclusion of a provision for a National Peace and Reconciliation Commission in the new constitution.

The Commission is mandated to bring about national reconciliation by encouraging people to tell the truth about the past, facilitate the making of amends, the provision of justice and also to receive and consider complaints from the public and to take such action in regard to the complaints as the Commission considers appropriate.<sup>8</sup>

However, few of the powers necessary to accomplish this were included in the constitution. It is against this background that the Forum, together with IJR and THIGJ organised this follow-up International Conference on Transitional Justice under the rubric - *Truth, Justice & Reconciliation Commissions: Learning from Best Practices* that brought together 75 human rights practitioners, academics, civil society activists and diplomats.

### **The objectives of the conference were:**

1. To provide a platform for stakeholders to contribute to the establishment of a credible and effective National Peace and Reconciliation Commission (NPRC) capable of fulfilling its constitutional mandate.
2. To set out the minimum expectations of the people of Zimbabwe regarding truth, post-conflict justice, healing and reconciliation.
3. To provide training for government and CSOs in advocacy, engagement and responses to practical challenges and issues emerging from NPRC.
4. To share experiences and lessons learnt from other countries.

The conference methodology included:

- ▶ **Presentations:** Six presentations by former members of truth commissions
- ▶ **Discussion groups:** (pre-defined) division of the participants into separate groups to discuss set topics. **Roundtable and plenary discussions** to define best practice for Zimbabwe as summarised below.

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8 See Constitution of Zimbabwe Chapter 12, Section 253

## Summary of Presentations

A society with a violent past has the right to seek the truth. At the international level, the right to truth has been recognised as a legal basis to establish truth commissions or other similar mechanisms, due to the need of the victims, their relatives and general society to know the truth about what has taken place. A commission is able facilitate the reconciliation process; contribute to the fight against impunity as well as reinstall and strengthen democracy and the rule of law. It provides a public platform for victims to address the nation directly with their personal stories and can facilitate public debate about how to come to terms with the past. Truth commissions have numerous facets and the wealth of first-hand experience available from countries like Sierra Leone, Guatemala, Kenya and South Africa directed the conversation. The discussions ranged from the history of violations, to the International Criminal Court (ICC), to the internal dynamics of commissions. The manner in which the various commissions dealt with human rights, reconciliation, mediation and legal frameworks were only some of the many additional topics discussed by civil society representatives and academics.

### A. *Dr. Khanyisela Moyo: Forbidden Truth? — Background to Truth Recovery in Zimbabwe, Challenges, Opportunities and Threats*

Dr. Moyo provided a historical context to dealing with the past by highlighting Zimbabwe's key periods of violence, peace and reform from the pre-colonial era to the present. Dr. Moyo noted that Zimbabwe's history can be described by reference to sequences of challenges which, at different epochs were expressed through violent conflicts. As is the case with most post-colonial societies, the country's abuses can be traced from the pre-colonial era, colonialism, liberation wars, post-independence political and ethnic struggles and gender conflicts. Since none of these periods heralded increased justice and democracy, it is doubtful that any could be described as transitional.

Although it is debatable whether Zimbabwe is in a state of "transition", Chapter 12 (Sections 252 and 253) of the new constitution establishes a National Peace and Reconciliation Commission (NPRC) and provides for its composition, functions and reporting structure.<sup>9</sup> Given Zimbabwe's experience with state-led processes of dealing with the past, like the Chihambakwe Commission of inquiry,<sup>10</sup> it is still to be seen whether there will be a genuine

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<sup>9</sup> Constitution of Zimbabwe Amendment (No. 20) Act 2013.

<sup>10</sup> The Chihambakwe Commission of Inquiry was to investigate the killing of 1,500 political dissidents and other civilians in the Matabeleland region in 1983 and to gather testimony from villagers about what occurred. No official report was issued because the government argued that the publication of the report could spark violence over past wrongs. (USIP, <http://www.usip.org/publications/commission-of-inquiry-zimbabwe/>), (Accessed on 27 May 2014).

public acknowledgement of past human rights violations. Public acknowledgement of human rights abuses is necessary for peace, national healing and reconciliation as it establishes trust and accountability. In other words, the NPRC is the *de jure* institution that is empowered to usher in a new era of transitional justice in Zimbabwe.

Four questions were posed that need to be asked when envisaging the truth recovery process in Zimbabwe: the first one relates to the passage of time and the effects of past amnesties; the second has to do with the truth and responsibility for violations of economic, social and cultural rights and how amends can be made; the third relates to the paucity of evidence that victims want a truth process or that there are prospects that such an exercise will establish the truth; and the fourth relates to finding the truth about human rights abuses attributed to pre-independence regimes.

Dr. Moyo concluded that there is a culture of impunity in Zimbabwe that can be attributed to the failure to address human rights atrocities associated with 19th century colonialism. Truth seeking can contribute to peace, national healing and reconciliation. While it may seem practical to focus on post-2000 human rights abuses, this approach may be restrictive by excluding some victims, which may limit its chances to foster peace. Thus, for the sake of inclusivity, account needs to be taken of all the different historical narratives. In her opinion all different sets of history ought to be attended to and consequently there ought to be diverse methods for addressing different abuses associated with each historical epoch.

However, two potential challenges may need to be considered: firstly, it may be difficult to recover the truth about violations of economic, social and cultural rights, gender based violations and colonial style wrongs. Secondly, while the importance of international law and the comparative method cannot be understated, it is important that concerns of Zimbabwean victims take priority over those of local politicians and the international community. Dr. Moyo proposed that, going forward, it may be important to attend to different historical periods using different methods of truth recovery; to be grounded in international law; and to identify what localised justice should look like for Zimbabwe.

In this presentation the following stood out as themes critical to effective truth recovery in Zimbabwe:

- ▶ The need for inclusive narratives
- ▶ The need for public acknowledgment and consensus
- ▶ The need for gender-sensitive mechanisms

## **B. Mrs. Sibusisiwe Zembe: Vision for Peace and Reconciliation in Zimbabwe**

Mrs. Zembe gave the background to the establishment of the Organ of National Healing and Reconciliation and Integration (ONHRI), which came into effect after the signing of the Global Political Agreement (GPA) in 2008 which established a government from 2009 to 2013 which included all three main political parties. Its mandate was to achieve the restoration of the dignity of all Zimbabweans regardless of age, gender or creed; to achieve peace, stability, unity and prosperity for individual Zimbabweans, their families, communities, organisations and the country as a whole. Under the heading **“Promotion of Equality, National Healing, Cohesion and Unity”**, Article VII (1)(c) of the GPA stipulates that the signatory parties “shall give consideration to the setting up of a mechanism to properly advise on what measures might be necessary and practicable to achieve national healing, cohesion and unity in respect of pre and post-independence political conflicts”. This led to the establishment of ONHRI for this purpose.

In working towards the establishment of the infrastructure for peace, ONHRI conducted consultations with a number of stakeholders who included traditional leaders, faith based organisations, civil society, business, women and youth groups as well as political parties in the Inclusive Government, among others. It adopted participatory, grassroots-based and inclusive approaches to respond to the specific needs of the people of Zimbabwe in order to get their views on the type of an infrastructure for peace they wanted to be established. The overall consultations culminated in the production of the draft Zimbabwe National Policy Framework for Peace and Reconciliation (ZNPFFR), which was adopted by Cabinet as a precursor to the creation of the National Peace and Reconciliation Commission.

The ONHRI also successfully lobbied for the provision of the National Peace and Reconciliation Commission (NPRC) in the new constitution and it became one of the five “Independent Commissions Supporting Democracy” set out in Chapter 12 of the new Constitution. Mrs. Zembe noted that the Zimbabwe's peace architecture recognises that there is no single player who can resolve all conflicts across the breadth of Zimbabwe, but rather, there are a number of stakeholders including the NPRC itself, other Government structures, traditional leaders, civil society organisations, youth organisations, women's organisations, faith-based organisations and the private sector, who can play synergistic roles in conflict prevention, management, resolution and transformation whilst the NPRC would be the facilitator.

In Mrs Zembe's opinion, NPRC will not only respond to the specific historical experiences and current needs of the people of Zimbabwe, but also re-affirm Zimbabwe's adherence to

international norms and agreements on matters of peace and security. Mrs. Zembe stressed that the infrastructure or architecture for peace as provided through the Zimbabwe National Policy Framework for Peace and Reconciliation bestows a legacy to succeeding generations of solving disputes through dialogue rather than violent conflict, enabling a break away from the culture of cyclical violence inherited from the past.

In conclusion, Mrs. Zembe stated that issues that pertain to reparations, restitution, compensation, among other perceived entitlements arising from violent historical epochs of our country will fall under the purview of the National Peace and Reconciliation Commission as an institution to deal with the past and future occurrences of violence.

Mrs. Zembe outlined the following themes as fundamental to the effective national healing:

- ▶ The importance of resolving multiple conflicting narratives about the past in Zimbabwe and the need to integrate these narratives into a representative inclusive narrative
- ▶ The importance of widespread consultations on the nature and mandate of the NPRC
- ▶ The importance of a transparent process in the establishment of the NPRC
- ▶ Concern over timing (periodisation) and the potential opening of wounds (re-traumatisation)

### **C. *Prof. Pablo de Greiff: Transitional Justice: A Catalyst for Peace and Reconciliation***

Professor Pablo de Greiff argued that transitional justice should not be taken to be a soft form of justice but a strategy that achieves various kinds of justice. He contended that reconciliation should not be understood as an alternative to justice, but rather, a state of social relations that requires the implementation of the measures under the mandate of a commission or their functional equivalent. He emphasised the important pillars of transitional justice: truth, justice, reparations and guarantees of non-recurrence. Furthermore, he highlighted how truth-seeking can contribute to strengthening the rule of law by:

- ▶ Establishing grounds for the resignation or removal of public officials, who have committed human rights violations
- ▶ Providing a description and analysis of shortcomings in the security sector and subsequent recommendations
- ▶ Providing opportunities for a country to engage in a discussion of what the rule of law requires
- ▶ Restoring the condition of victims as bearers of rights.



Professor Pablo de Greiff warned of the underlying challenges facing many truth commissions which include an expansion of mandates, rushed set-up processes that undermine credibility and a lack of follow-up of recommendations. He advised that it is a mistake to establish transitional mechanisms until conditions are right. He also emphasised the importance of the work of civil society as partners for any official process since truth commissions do not start work from scratch but benefit from the background work done by CSOs.

His presentation highlighted the following themes:

- ▶ The importance of parallel civil society processes to ensure that the government is pressured to institutionalise transitional justice
- ▶ The need to take into account the timing and conditions for a successful process.
- ▶ The importance of victim-centered TJ processes
- ▶ The importance of holistic and comprehensive TJ processes
- ▶ The necessity of political will to implement recommendations

#### **D. *Professor Elizabeth Olgesby: Truth Recovery and Strategic Choices in Design***

Professor Oglesby's presentation highlighted three periods of tension for most truth commissions. These include: the creation of the commission and definition of its mandate; the functions of a commission and whether it will focus on juridical human rights violations or a broader historical context; and the aftermath of the commission and how its report will be disseminated and interpreted, especially in schools. She emphasised that a truth commission should ultimately open up debates over the past. She further emphasised the importance of not limiting the truth recovery process to legal personnel but including historians and social scientists who can provide a contextualised analysis and can enhance recommendations for addressing underlying causes of violence.

Important themes that came out of her presentation included

- ▶ The challenges in the nature of truth to be pursued whether it should be forensic truth versus historical truth.
- ▶ The potential of the truth commissions to document alternative histories
- ▶ The recognition of the complexity of victims' identities and agency
- ▶ The need for access to archives as an important source of records.

## **E. *Professor Jeremy Sarkin: Legal and Normative Frameworks for Truth Commissions.***

Professor Sarkin's presentation focused on the normative framework for truth commissions. He outlined the points for consideration when setting up a truth commission and emphasised that the process of establishing a commission is as important as the process implementing it. It is important for the Commission to have a well-crafted mandate that is not incomplete, obscure or contradictory. A platform for victims to participate in telling their stories should be created even if it is not clearly embedded within the establishing Constitutional provisions. The Professor recommended that the development of a commission and its mandate be an inclusive, consultative process that involves all stakeholders. When constitutional provisions on the appointment of commissioners do not deal with representation or the diversity commissioners, it is crucial that there be integrity, experience and political independence of the commissioners. The final report is fundamental, and it is important to make sure that the report is made accessible to the public.

Important considerations for the integrity of the commissions were shown to be:

- ▶ That the process is perceived to be legitimate and credible
- ▶ That civil society is involved
- ▶ That there is public involvement and buy-in from the beginning
- ▶ Pre-transition issues and timing of the process

# Case Studies

## 1. SIERRA LEONE

### ***Ms. Yasmin Sooka: How can a Commission ensure gender justice for both Victims and Perpetrators?***

The Sierra Leone Truth and Reconciliation Commission (SLTRC) established a framework that integrated gender into all its work. A major development in the SLTRC was the broadening of its mandate from one restricted to civil and political rights, to one that looked at the structural causes and socio-economic component of the conflict. The Commission also provided safe spaces for women to comfortably



testify, including in-camera and women-only hearings. In her presentation, Dr. Yasmin Sooka argued for the provision of spaces for input from women's groups on appropriate gender-sensitive issues and recommendations, including reparations. Furthermore, she highlighted the importance of focusing on matters related to masculinity in the country so as to move beyond gender tokenism and to dismantle patriarchy.

### **Similarities and differences with Zimbabwe**

In terms of similarities, while the patterns of violations [torture, rape, "bush wives"] were similar, the difference was in scale. Sierra Leone experienced violations on a much larger scale than Zimbabwe. Both countries experienced the deployment of youth as perpetrators and, in Sierra Leone, rebels recruited child soldiers who committed human rights violations. Both countries experienced the challenges of shifting identities where an individual would be a victim in one instance and a perpetrator in another. They both had patriarchal societies that allowed conflict to be a space where perpetrators on both sides committed gender-based violence, including rape, against women as part of the overall strategy of violence.

## Lessons Learned

There are lessons that Zimbabwe could learn from the Sierra Leone case study to create a gender sensitive framework that takes into account the specific concerns of women.

1. *Ensuring Gender Justice in the NPRC*

An effective NPRC that will ensure gender justice should create a conducive environment through the inclusion in enabling legislation of appropriate provisions which address gender. Sierra Leone ensured that specific concerns were taken care of by providing that women comprised 50% of all institutions of governance, including the Truth Commission. This facilitated a process that ensured that women were able to narrate their experiences and guaranteed their safety and confidentiality.

2. *Addressing fear among victims and witnesses*

Victims and witnesses find it difficult to testify for fear of being victimised again. To protect witnesses after testimony, the importance of security after disclosure was emphasised, including ensuring sufficient privacy to avoid 'shaming' families of the victims. Also emphasised was the need to let victims choose whether or not to disclose the names of perpetrators. Safety of commissioners was also considered of great importance, particularly in a violent post-conflict society where the judiciary may be equally vulnerable. Finally, networking was valued as critical, including the support from the Diaspora, and other groups.

## 2. GUATEMALA

### ***Professor Elizabeth Olgesby: Balancing the Scales of Justice: How can a Commission best serve the Interest of the Victims while Promoting Reconciliation with Perpetrators?***

Professor Olgesby gave an overview of the Guatemalan Commission for Historical Clarification's (HC) and how the focus of its work combined analyses of violations in order to find a deeper understanding of the context of the conflict. An exploration of the history of racism was embarked on, together with the socio-political factors of exclusion and regional social struggles.

Professor Olgesby elaborated the role played by state security forces in the perpetration of violations against the Guatemalan people, and how villagers were coerced into participating in massacres in conjunction with the army. Police were mainly implicated in the commission of crimes in the urban areas.



Outlining how a considerable period of time passed without any response to the brutalities of the period, Professor Olgesby said that the publication of the Guatemalan Truth Commission's report provided the impetus and opportunity for activists who, invoking the principle of the universal jurisdiction, brought the Guatemalan case before the courts in Spain. The process for prosecution was stalled for several years but, eventually, in 2011, several high level officers were arrested for human rights violations in Guatemala. With regard to the issue of whether the Guatemalan Truth Commission achieved social reconciliation, Professor Olgesby stated that this was not achieved because the nature of the transition itself was one of limited power sharing which reflected the continued domination of the army and a government which did not accept or assimilate the findings of the Commission's report and harboured considerable hostility towards both the report and the Commission itself furthermore, conditions were not conducive for reconciliation and many people in Guatemala asked: "How can we have reconciliation when we never had conciliation?"

However, Professor Olgesby stated that a number of positive things came out of the Guatemalan Truth Commission, such as the dignification of the victims, the willingness of the United Nations to call and brand the atrocities a genocide, the involvement of human rights groups and the realisation by communities that what happened to them was part of a larger national problem. The Truth Commission not only revealed the violations that people experienced but the process helped explain why they were targeted, thus contextualising the violations. In conclusion, Professor Olgesby stressed that all material gathered from different stakeholders made the report good, and although the information could not be used for judicial cases, it provided the background context to the human rights violations for the genocide trials in Guatemala.

From Guatemala case study, the emerging themes included:

- ▶ The complexity of victim identities
- ▶ The importance of parallel truth-telling, data collection, and memorialisation mechanisms
- ▶ The importance of establishing historical clarifications and archives

## **Practical Questions**

In Guatemala the naming of perpetrators was avoided so that people would feel safe to testify. However, the NPRC may find it necessary to name perpetrators or risk failing in its mandate. Many believe that “truth” is contingent upon the naming of perpetrators, whether individuals or institutions.

It was argued during the discussion that a victim-centred process was necessary and this can be achieved by engaging in institutional and structural reform, which will result in public institutions that are professional and accountable.

## **Lessons Learned**

- ▶ Assessment of the legitimacy of the NPRC was important.
- ▶ A process parallel to the national process is valuable in instances where state institutions are compromised. This can be achieved through initiatives such as:
  - The historical process of truth and documentation of history
  - Victim protection to provide confidence to testify
- ▶ The efficacy of the Hybrid Commission (International and Local Commissioners) needs to be evaluated. This, however, needs to be addressed innovatively for the Zimbabwe situation.
- ▶ Civil Society Organisations can build on prior documentation and reconciliation work
- ▶ The necessity for capacity building, skills and training for dealing with the past in order to:
  - Analyze policies
  - Critique legislation
  - Adopt sustainable advocacy activities
- ▶ The setting-up of a National Reparations Committee would be important for the management and distribution of reparations.

### **3. BOSNIA-HERZEGOVINA**

#### ***Professor Hans-Joachim Heintze: The Rule of Law and the Duty to Prosecute***

Professor Heintze gave an overview of the link between humanitarian assistance to victims of conflict and transitional justice, and stated that people in conflict need protection and it is the responsibility of the states/parties to the conflict to provide that protection.

Professor Heintze expressed concern about the balance between truth commissions and the principle of the rule of law. The rule of law means that the law binds people and administrations. It is one of the pillars of democracy. There is another notion that people responsible for human rights violations should be held accountable. It is known that amnesties are one possible way of dealing with the past, but one can argue that they are an abdication of the obligation to deal with the past and establish a new society.

However, in an effort to deal with violations against vulnerable groups, truth commissions are an excellent mechanism that gives people an opportunity to talk about their experiences and to give a voice to the victims. Apart from truth commissions there is also a need to apply criminal law to deal with all kinds of human rights violations, genocide and war crimes. It is important to combine legal procedures and other actions that are not based in law to address the past. It is not only the application of criminal law that is important, but also the application of human rights law.

Professor Heintze noted that there are shortcomings in legal processes for crimes that were committed in the past because criminal law primarily deals with perpetrators and not with victims. This is a very important advantage of the approach of truth commissions as they are more flexible than legal procedures. Legal procedures are bound by obligations, which are written down in local statutes and international treaties. Truth commissions on the other hand can apply case-by-case solutions to meet the requirements of the situation. Professor Heintze concluded that in order to get the best results, both approaches – the legal approach and that of truth commissions – should be implemented.

## 4. KENYA

### ***Dr. Ahmed Yassin: Social, Political and Economic Factors affecting the operations of a Commission***

Dr. Ahmed Yassin noted the similarities between Kenya and Zimbabwe, particularly due to the fact that both countries experienced disputed elections followed by violence that only stopped when the political contestants agreed to form governments of national unity. They also had to have new constitutions before holding elections.



Dr Yassin provided an overview of the Truth, Justice and Reconciliation Commission (TJRC) and the National Commission for Integration and Cohesion (NCIC) that were formed in the aftermath of the disputed December 2007 elections in Kenya. The TJRC focused on the historical injustices dating back to 1963, when Kenya attained independence, to February 2008 when the peace accord was signed. He noted that TJRC was ambitious in trying to handle truth, justice and reconciliation and did not know how much truth and justice would emerge. He argued that they certainly had no time to handle reconciliation in addition to the other components. The NCIC has continued after the TJRC, and its mandate is to deal with matters related to reconciliation. A number of projects were initiated by NCIC that focused on inter and intra-ethnic dialogue meetings in order to find solutions to the problems of ethnicity in Kenya.

Highlighting the social, economic and political factors that affect the operation of NCIC, Dr Yassin stated that one of the main social issues was religious discrimination. Kenya has two major religions - Islam and Christianity - and a small number of Hindus. In order to embark on national cohesion, discrimination had to be prohibited. In regard to the economic factors, the main concern was to ensure equal distribution of resources as a way of building national cohesion as well as empowering youth through various projects. He emphasised goodwill is important for the success of any commission. The challenge, however, is linking political will and resourcing the commission.



With respect to reconciliation, there is need for inclusivity, equal opportunities for jobs, resources and respect for diversity, all of which are vital for peaceful existence. There is also need for a sound legal and policy framework for the Commission to ensure that the recommendations of its report are implemented. In conclusion, Dr. Yassin stated that truth telling is essential for authentic reconciliation. He urged the NPRC not only to encourage truth telling but to also ensure full recovery of the truth about the past through various methods. He advised that the process of appointments to the commission should be competitive, reflect the diversity of the people and where possible, should avoid political bias in order to guarantee its independence.

Important factors for a successful Commission include:

- ▶ Political will
- ▶ Credibility and independence

## **Lessons Learned**

The following were important lessons learned for Zimbabwe:

- ▶ The need for the temporal mandate of Zimbabwe's commission to extend beyond 1980
- ▶ The need for a successor commission to continue the work of the NPRC after its mandate ends
- ▶ The need to explicitly incorporate truth - seeking in the mandate of the NPRC in its enabling legislation
- ▶ At the minimum, the need for a comprehensive truth-recovery process

## **5. SOUTH AFRICA**

### ***Dr. Fanie Du Toit: The Morning After: What happens after the work of the Commission: Recommendations and Implications***

The presentation identified three main ingredients essential for a Commission: firstly, the need for political tolerance, generosity, resolve and political will in order for recommendations to be honoured; secondly, the need to maintain both accountability and inclusivity to make good on promises; and, thirdly, in order to make redress a reality, the need to recognise the difference between



development and reparations. From the experience of the South African truth commission, Dr. du Toit identified the notion of accountability as critical to avoid cycles of revenge and retribution and a return to the past.

Going forward, he proposed working carefully to ensure that political will is secured, to empower educators to take results of truth commissions to the classroom and to ensure that promises made, are promises kept.

### **Lessons Learned**

- ▶ The need to address the needs of both victims and perpetrators
- ▶ The need to strike a balance between peace and justice
- ▶ The need to ensure that follow-up mechanisms are not vague
- ▶ The need for follow-up mechanisms that will ensure the lack of political will does not interfere with the implementation of the recommendations
- ▶ The need for collaboration and coordination across government departments

### **Way Forward**

The following points were discussed as the framework for engagement around NPRC in Zimbabwe:

- ▶ Civil society organisations (CSOs) should actively engage with the political formations on the NPRC and campaign for persons of integrity to be included as commissioners
- ▶ That CSOs should introduce the functions of the NPRC into mainstream activities and train and educate society on the role of NPRC
- ▶ CSOs should engage with parliamentarians because of their role in establishing enabling legislation for the NPRC
- ▶ Civil society should emphasise the best practices in setting up of commissions.
- ▶ The relationship between government and CSOs should be reconfigured to build shared truths and develop a good working relationship
- ▶ When engaging the state, CSOs need to develop strategic not offensive language - a language of truth, justice and reconciliation. There is a need for actors in Zimbabwe to grow beyond a language of violence as a strategy for building bridges.
- ▶ There is a need for a clear and comprehensive compilation of data on human rights violations for the benefit of the NPRC
- ▶ CSOs to come up with key benchmarks of an acceptable commission and engage key sectors and stakeholders before the commission is established.

- ▶ A culture of openness, in preparing the public for the process of transitional justice through public awareness campaigns was recommended as a good strategy. This would be made possible through community trainers who can disseminate the message in a more organised manner and establish information ports where data can be collected.
- ▶ Civil society should lobby for protection mechanisms for witnesses and victims before they begin truth telling. This is critical to ensure victims are secure and not subject to re-victimisation
- ▶ The need to set up a National Working Group on Transitional Justice inclusive of all stakeholders to direct the push for a comprehensive transitional justice policy, including, but not limited to the NPRC
- ▶ The need to engage the media more effectively to carry the message of transitional justice to the people and to articulate the transitional justice agenda in all public and intellectual spheres
- ▶ CSOs were encouraged to broaden the processes of accountability beyond the NPRC and to include all other commissions and mechanisms that support truth, justice and accountability



# Annexes

## ***Dr. Khanyisela Moyo: Forbidden Truth? - Background to Truth Recovery in Zimbabwe, Challenges, Opportunities and Threats***

### **Abstract**

This paper gives a background to truth recovery in Zimbabwe. It covers the relevant episodes requiring attention, past attempts at recovering the truth, past bodies tasked with truth recovery and reconciliation, the main obstacles in history and an overview of future opportunities and threats to truth recovery and reconciliation in Zimbabwe. The paper also looks at the current truth recovery prospects as laid down in the new constitution.

### **Introduction**

It is now common practice for societies emerging from conflict to use various truth seeking initiatives as a way of dealing with past human rights abuses, reconciling or healing communities and delivering justice. Zimbabwean policy makers, human rights NGOs and academics have been considering, for many years, the question as to whether or not the country should have a truth commission or some other form of truth seeking mechanism. Efforts have also been made to garner public views on the subject though there are no conclusive findings as to whether the people of Zimbabwe consider "truth seeking" as the best way of dealing with the past. At the extreme there are those who feel that this will be a time wasting exercise, as those initiatives would not ineluctably establish the truth. They are also some critics who believe that there are other imperatives that have a better claim upon resources.

At the same time, it is facile to state that the quest for the truth is futile. Zimbabwean victims of human rights abuses deserve both answers and redress so that peaceful coexistence among previously opposing parties can be fostered. This invites further questions as to the period to be covered, the implication of past amnesties and as to which truth seeking method would best suit the Zimbabwean context. These are all questions which have been explored elsewhere and answers to them have been largely contingent on who asks them or who is asked.

They may be asked from the viewpoint of the ZANU PF old guard who see themselves as victims of both colonial injustices and recent international interventions yet who are often implicated in post colonial atrocities. Or they may be asked from the perspective of white farmers and those who reside in Mashonaland provinces, whose narrative of serious rights violations begins in 2000. There is also the standpoint of the people of Matabeleland and former ZAPU cadres whose narrative of the liberation struggle is often sidelined and who are still seeking justice for the 1980s Gukurahundi massacres. Or again, the questions may be considered from the perspective of human rights scholars and activists who are schooled in the notion of combating impunity and the need to respect victims' memory. Or yet again, the side-lined narrative of women who at different epochs have been silenced in attempting to expose abuses by key political male figures who were seen as indispensable to different political goals. Further, the question may be asked from the standpoint of the Zimbabwean diaspora who are labelled as those "people who ran away", marginalised in their places of residence, yet they are the people who sustained the Zimbabwean economy through remittances between 2000 and 2008.

This confirms the need for a national narrative of the past. Of course, there is an additional question as to whether the truth articulated by the state is unlike the truth expressed by individuals or groups. Nonetheless, this paper is guided by Kriesberg's notion of the truth as a collective appreciation of each other's historical accounts. Truth can only be covered by a programme which acknowledges and connects varied narratives of the past. This shared narrative of history forms a basis for reconciliation and national healing.

Against this background, the paper starts by pointing out the key historical periods that can be subjected to truth recovery initiatives. It then discusses previous attempts at recovering the truth and past bodies tasked with truth recovery and reconciliation. This section covers both state-led initiatives as well as those initiated by civil society and addresses the main historical obstacles. The paper proceeds to give an overview of future opportunities and threats to truth recovery and reconciliation in Zimbabwe. This section also looks at the current truth recovery prospects as laid down in the new Constitution. The paper ends with conclusions, which serve to re-examine the benefits and objectives of truth seeking mechanisms in Zimbabwe.

## Key Historical Epochs

*Haunted by the historical tragedies of colonialism, the liberation struggle, the Gukurahundi Massacres; the "Third Chimurenga"; Operation Murambatsvina; the 2000, 2002, 2005, March and June 2008 election violence as well as other isolated but politically and socially linked tragic events of our past....*

Zimbabwe's history can be described by reference to sequences of challenges, which at different epochs were expressed through violent conflicts. As is the case with most post-colonial societies, the country's abuses can be traced from the pre-colonial era, colonialism, liberation wars, post-independence political and ethnic struggles and gender conflicts. All these "transitions" were often questionable since justice was not ushered in and alleged perpetrators were often rewarded with positions of authority.

### Pre-colonial and Colonial Era

The recorded history of the territory now called Zimbabwe is characterised by great violence. This is largely traced to the arrival of Mzilikazi and his entourage in 1838. In keeping with the times, Mzilikazi is said to have forcefully assumed control over the already existing Shona people in the process of establishing the Ndebele nation in the south-west of present day Zimbabwe.

The next main epoch was the creation of the state of Rhodesia, and again the use of violence was central to its inception. The sequence of historical events starts with Cecil John Rhodes' British South Africa Company (BSAC)'s fraudulent treaties with the King of the Ndebele, which led to the natives' uprisings of 1893 and 1896. Both uprisings were stopped by private sector force, which led to the conquest and annexation of the territory into the British Empire. It is widely documented that the colonial regime used both the law and force to expropriate land. Thus for the purposes of this paper it suffices to point out that racially based capitalistic exploitation of resources, which was validated by law, intensified in 1922 when political power was handed over to the white settler population.

Britain's commitment to the decolonisation process was resisted by the Rhodesian white settlers, who unilaterally declared Rhodesia to be independent (UDI) in 1965. This UDI regime, which faced international isolation, was under the leadership of Ian Douglas Smith. It declared a state of emergency, which was renewed 49 times and remained in force until 1990. This was ten years after

majority rule had been established. Thus the application of certain fundamental rights, which include freedom of association, assembly and movement, was suspended for twenty-five years. Nonetheless, the Smith regime adopted harsher measures and rigorously implemented racial segregation. The greatest incidents of widespread and systematic violence occurred after 1972 during the civil war between Zimbabwean liberation movements and the Rhodesian forces. It is said that other tactics employed included the use of food as political weapon, strict control over access to land, propaganda, censorship and the use of biological warfare. In addition to violations by the Smith regime, the liberation movements have been implicated in gender based violence and humanitarian and human rights violations committed during the civil war. Unanswered questions about high profile murders of Herbert Chitepo, Josiah Tongogara, Nikita Mangena and Jason Ziyaphapha Moyo linger in the memories of most Zimbabweans who are familiar with this historical period.

### **Impunity and the transition from Rhodesia (1979-1980)**

Economic pragmatism in the Lancaster House Agreement necessitated the inclusion of sweeping amnesty provisions. This was typical of negotiated settlements that were part of Britain's process of de-colonisation. These provisions covered both infringements of rights by the Rhodesian regime and those committed by the nationalists in attempts to overthrow it. The British government was also excused from any liability in tort and reparations proceedings. Public debts accrued from Rhodesia, including war debts, were however, not extinguished and accordingly inherited by the new Zimbabwean state.

It has to be highlighted that the decision to draw a line through the past was negotiated amongst three sets of elites who had in one way or another all been complicit in Rhodesian human rights abuses. Victims were not consulted and after his electoral victory in 1980, ZANU PF leader Robert Mugabe declared that for the sake of nation building and reconciliation, Zimbabwe had now forgiven and forgotten the human rights atrocities committed in Rhodesia. As will be briefly highlighted below, this post-Rhodesia amnesia was to be the preferred strategy of independent Zimbabwe in dealing with human rights abuses that occurred during its periods of unrest. In this regard, four post-independence epochs can be analysed.

#### **I 1980-1988**

To reiterate, human rights abuses committed in the colonial era were not punished, investigated or even publicly acknowledged. Enabling legislation was adopted to facilitate the 'forgive and forget'

strategy. Senior Rhodesian army, police and security officials who had operated in a state of emergency and participated in the widespread and systematic human rights abuses were retained. The state of emergency that had existed since 1965 together with the legal framework that had enabled the Rhodesian government to illegally detain without trial, torture, execute and cause the forced disappearances of its opponents was maintained during the first ten years of independence.

However, peace and stability did not immediately ensue after independence. This was initially attributed to the difficulties of trying to integrate three former rival armies into one national army. ZANU PF government's reaction to dissent was to unleash the retained institutions that the Rhodesians had dedicated to the abuse of human rights of its opponents, thereby legitimising a tradition of human rights abuse and a culture of impunity. This reaction can be illustrated by two examples.

Firstly, the Rhodesian army was used to commit atrocities against the perceived ZAPU dissidents in the Bulawayo Entumbane township barely a year after independence. Note that the integration of the former Rhodesian army was not problematic largely due to the fact that this force continued to enjoy favourable working conditions during the transitional phase. However, bringing together the military wings of ZANU (Zimbabwe African National Liberation Army (ZANLA) and Zimbabwe African People's Union (ZAPU)'s Zimbabwe People's Revolutionary Army (ZIPRA) who were housed in makeshift camps, proved to be difficult.

Grievances over poor conditions fueled differences between ZIPRA and ZANLA in Entumbane Township (Bulawayo), which culminated in an open conflict in November 1980 and February 1981. In a bid to quash the fighting in February 1981, ZANU PF deployed former Rhodesian forces, including the air force, against ZIPRA perceived dissidents. More than a hundred people died and these included civilians, prisoners and children.

Secondly, in the advent of increased military action against the perceived dissidents of Matabeleland and Midlands, the government took advantage of the existence of a state of emergency to issue regulations that exculpated its officials and security forces from any consequent criminal and civil acts. In this environment and in particular, between 1983 and 1987, there were reports of mass killings, torture, burning, bayoneting, rape, burning, destruction of property and enforced 'disappearances' by the North Korean trained Fifth Brigade that was deployed by ZANU-PF. It is estimated that approximately 20,000 people lost their lives. Of significance is the fact that some of the tactics used in the military action against the Ndebele dissidents had been employed by the colonial regime in its campaign against the nationalists' forces.



A related critical point worth underlining is the inheritance of the Rhodesian culture of impunity and the normalisation of the Lancaster house precedent of judicial amnesia. This is exemplified in the way in which the state dealt with human rights violators after the Matabeleland atrocities. After the unity accord of 27th March 1987, an amnesty for dissidents was deemed imperative for the sake of peace. However, to date there are unanswered questions about the deaths of some alleged dissidents, including Lookout Masuku, a senior ZAPU official who was detained in 1982 and died in 1986.

In June, this amnesty was extended to the army and other state actors. Seventy-five security force members who had either been sentenced or were awaiting trial for several human rights violations and four Fifth Brigade soldiers who were on death row for committing murder in Matabeleland are some of those who escaped justice. A pattern of impunity was thus set for the current era.

## **II 1989-1999**

If there was ever a time when Zimbabweans enjoyed a semblance of peace, it was during the period from 1990 to 1996. After the state of emergency ended in 1990, the government ratified a number of international conventions and even collaborated with non-governmental organisations in providing human rights training to the police and prison officers. However, the culture of impunity still manifested itself on some three occasions, when the government was faced with allegations of human rights violations by its state machinery.

Firstly, this was through the granting of amnesty to alleged perpetrators of human rights abuses after the 1990 and 1995 elections, which were considered to be marred by state-linked political violence. Secondly, in the wake of the 1998 food riots, the government ignored human rights organisations' calls for the creation of an independent inquiry, which would look at the reported abuses. Similarly, the United Nations Human Rights' Committee's recommendations that an impartial inquiry be set up were not acted upon. Thirdly, when faced with a court action initiated by domestic human rights organisations in 1999 compelling the release of the report on the 1983-1987 Matabeleland atrocities, the government simply stated that the document had been misplaced.

Nevertheless, in 1999, a formidable opposition party, the Movement for Democratic Change (MDC) was born and ZANU PF ceased to be politically secure. It became extremely hostile to both human rights organisations and the opposition party as it saw them as vicarious agents of foreign ideologies. It thus stopped making any pretences at taking responsibility for alleged

human rights violations. Against this background, the culture of impunity became firmly entrenched and this is to be demonstrated by the subsequent narrative.

### **III 2000-2008**

In October 2000, an amnesty for politically motivated crimes was announced. This was after allegations of state-orchestrated violence both before and after the constitutional referendum of February 2000. This amnesty covered the period of violent invasions of white owned commercial farms and the parliamentary elections in June 2000, which were marred by violence. It was not extended to those who had committed crimes such as 'murder, robbery, rape, indecent assault, statutory rape, theft, possession of arms and any offence involving fraud or dishonesty'. However, those responsible for other egregious offences including torture were also excused from any liability.

Throughout this period there was an increasing level of repression. This was mostly manifested in unabated, widespread and systematic human rights violations during presidential elections of 2002 and also in local, mayoral and parliamentary by-elections held in 2003. Other human rights violations included attacks on human rights defenders, infringements on freedom of association and assembly, censorship of the independent media, excessive use of force by the Zimbabwe Republic Police including torture and ill-treatment, and violations of the right to food and housing.

It is fair to state that the country's human rights abuses mainly occurred before and after elections and were also associated with the state's excessive use of force when responding to demonstrations. This does not mean that there was no crisis since the country during this period faced the worst economic challenges ever since its formation. It is thus fair to state that the worst violations during this epoch were those of economic, social and cultural rights.

Of significance is the gender dimension of the country's crisis, evidenced by the fact that the impact of the economic decline has been felt more acutely by women who have openly protested against the same. Of course women in Zimbabwe have also suffered physical rights violations in common with men, for example the Women of Zimbabwe Arise (WOZA) group which has been at the forefront of demonstrations and whose members have frequently been physically assaulted by the police.

Nonetheless, other recorded gender based violations include sexual violence perpetrated by those identified to be supporters of ZANU PF during the election periods in the years 2000 and

2002. Furthermore, women are said to have been more affected by the internal displacements which occurred during the farm invasions of 2000-2005 and the urban clean-up operation known as Operation Murambatsvina. Approximately, 700 000 people were displaced during the latter exercise and a number of homes were destroyed. Most women who were involved in the informal trading sector also lost their means of livelihood. However, the classification of Operation Murambatsvina as a human rights violation is problematic since this exercise could also be interpreted as a state policy for implementing its international obligation to *protect* the enjoyment of the right to health.

It has to be pointed out that whilst the state publicly denied any violations of human rights, it conceded liability in the confines of judges' chambers. This fact has been confirmed in the analysis of civil proceedings that the Zimbabwe Human Rights NGO Forum has been instituting on behalf of victims of state-orchestrated violence since 1998. According to their June 2006 report, 90% of their completed cases were either settled out of court or the court's findings favoured the victims. This however, cannot be seen as effective redress for victims of human rights violations in Zimbabwe since these are only those cases which were brought to the attention of the Forum. There has also not been any public acknowledgement of wrongdoing by the state.

### **2008-2013 – Opportunities – the 2013 Constitution**

On the 15th of September 2008, following a decade of negative publicity, violence, social and economic collapse, Zimbabwe's key political parties signed a power sharing agreement known as the Global Political Agreement (GPA). Articles 6 and 7 of the GPA are worth special attention. Article 6 provided for the creation of a Parliamentary Select Committee which would lead the process of producing a "people driven" Constitution and Article 7 dealt with the promotion of "equality, national healing, cohesion and unity". In particular, Article 7 (c) stated that the parties:

*Shall give consideration to the setting up of a mechanism to properly advise on what measures might be necessary and practicable to achieve national healing, cohesion and unity in respect of victims of pre and post-independence political conflicts.*

When the power-sharing agreement itself ended with ZANU PF's victory in the 2013 Harmonised Elections, both Articles 6 and 7 of the GPA had been implemented. This paper will not discuss the role of the Organ on National Healing and what it has achieved so far but will comment on the relevant provisions of the 2013 Zimbabwean Constitution, which relate to truth recovery.

Part 6 of the Zimbabwean 2013 Constitution establishes a National Peace and Reconciliation Commission (NPRC) and provides for its composition, functions and reports. This is supposed to be a temporary body led by an experienced lawyer, which will last for 10 years. This body has a broad mandate as it supposed to be both forward and backward looking. In particular, the NPRC has to recover the truth about past atrocities, facilitate the provision of reparations, resolve disputes and pre-empt future conflict. On the face of it, the Constitutional provisions are progressive as they factor the four key areas which a state has to address so that it can adequately deals with its past. These are the right to know, right to justice, right to reparation and guarantees of non-recurrence. However, given Zimbabwe's experience with state-led truth recovery processes it is still to be seen whether there will be a genuine public acknowledgement of past human rights violations. Public acknowledgement of human rights abuses is necessary for peace, national healing and reconciliation as it establishes trust and accountability.

### **Challenges & Threats**

The National Peace and Reconciliation Commission has one of the following functions. . . .

*(c) to bring about national reconciliation by encouraging people to tell the truth about the past and facilitating the making of amends and the provision of justice.*

At least four questions need to be asked about the envisaged Zimbabwean truth recovery processes and all of them relate to the feasibility of its mandate. The first issue has to do with passage of time and effects of past amnesties. On this note, the paper assumes that dilemmas of amnesties and the passage of time can be dealt with as the legacy of Nuremberg has set the precedent that there are some heinous crimes whose prosecution are not constrained by time limits. It is now accepted that certain amnesties are not permissible in international law and can thus be waived.

The second question has to do with the truth about responsibility for violations of economic, social and cultural rights and how amends can be made. Despite the fact that the notion of indivisibility and interdependence of rights is now recognized, Zimbabwean human rights documentation is still largely Eurocentric in that its principal focus is on civil and political rights. This issue has more added importance when it comes to gender based violence and any discussions of human rights violations in Zimbabwe between 2000 and 2008.

NGO reports on this topic reveal an interface between violations of bodily integrity rights and breaches of economic social and cultural rights. For example, women whose source of livelihood was destroyed during the urban clean up are alleged to have been more vulnerable to sexual exploitation and abuse. Similarly, the women-led protests against economic challenges have been brutally suppressed by the state, which has in the process violated women's bodily integrity rights. Some of these women have been arrested and subjected to inhumane and degrading treatment due to the country's poor prison conditions and their situation has been further exacerbated by the state's inability to provide sanitary towels to the incarcerated.

This raises the issue of the suitability of Western models of dealing with the past for the Zimbabwean context. This is not the first time that Western notions of harms have been critiqued in a post-colonial context. For example, in an indirect response to critiques that individual financial awards, which were given in pursuance of South Africa's reparatory justice programs, were inadequate, Thabo Mbeki expressed the opinion that the TRC should have been about:

*The continuing challenge of reconstruction and development: deepening democracy and the culture of human rights, ensuring good governance and transparency, intensifying economic growth and social programmes, improving citizens' safety and security and contributing to the building of a humane and just world order.*

The third concern is that there is little evidence that victims want a truth process or that there are any prospects that such an exercise will establish the truth. According to Sheri Eppel, in a 2008 survey, which looked at the urgent needs of the people in Matabeleland, most people considered food security to be their immediate priority, and 80% of them put water as their second most urgent need. Much more importantly, when asked about a specific mechanism for redressing the past, in comparison to the 5% who said truth telling was important, 80% of the respondents are said to have wanted exhumations and memorialisation of their deceased relatives who are still in mass graves.

This story of Zimbabwe is a story of most post-colonial societies. For example, Rosalind Shaw's ethnographic study of ordinary Sierra Leoneans' perceptions of the TRC, which was established after the country's eleven-year civil war observed that this mechanism was only popular with politicians and NGOs and not with the victims. In her opinion;

*Ideas concerning the conciliatory and therapeutic efficacy of truth telling are the products of Western culture of memory deriving from North American and European historical processes.*

On the same note, research conducted by Timothy Sizwe Phakathi and Hugo van der Merwe found that most victims did not see even the celebrated South African TRC as a success. Interestingly, Priscilla Hayner, an expert on the subject, conceded in 2001 that the majority of TRCs, which had been established, had not been successful. The reasons for this failure have been lack of public involvement and resource constraints. There are also doubts that some TRCs can even meet their core objective of correcting history.

On a positive note, Rwanda is a post colonial example where truth recovery processes have assisted in finding the bodies of those who had disappeared and their subsequent reburial. Zimbabweans, especially in Matabeleland are still struggling to locate the bodies of their loved ones who disappeared during Gukurahundi - thus an effective truth recovery process might be useful in that regard.

The fourth challenge is finding the truth about human rights abuses attributed to the colonialists. Both civic society and academics have noted that in addition to the Mugabe regimes' excesses, the culture of impunity in Zimbabwe can be attributed to the influence and history of colonialism. Indeed, colonialists committed serious human rights violations during both the formation of the state of Rhodesia and the time when they suppressed nationalist resistance to their racist rule. It is axiomatic that economic considerations impelled the independence negotiators to grant blanket amnesties for colonial era violations.

This fact can be inferred from proceedings of a Civil Society Symposium held in South Africa in 2003, which suggested that colonial human rights abuses can be addressed by a TRC. They proposed the separation of pre-1960 and post-1960 (Rhodesian) crimes. This was based on a perception that the period after 1960 represented the living memory of Zimbabweans. The accuracy of this view is still to be tested and this work is of the view that the participants were alive to the fact that Western governments are not likely to commit their resources to a project which has the effect of undermining their position as champions of human rights. Thus, in the case of Zimbabwe, focus on those atrocities committed after Ian Smith's UDI has the effect of shifting the blame from Britain, the colonial master, to a small group of individuals who governed Rhodesia during that time.

In fact, there may be practical difficulties in attempting to seek individual redress for violations committed in British former colonies. The creation of an accurate historical account of colonialism can be impeded by the fact that records from this era were either expunged or are withheld as confidential. In any event, such an exercise in Zimbabwe might be of little use since

most of key perpetrators from the colonial era are too old, dead or are no longer residing in the country.

Much more importantly, focus on individual responsibility exposes the limitations of international law, which attends to physical rights violations and not the far-reaching effects of colonialism in post-colonial societies. There is a common proclivity in Western legal renditions to offer a universalistic positivist approach to international legal issues. Yet, in addition to the failure to account for violations of bodily integrity rights, there are a number of indirect ways in which colonialism fostered the culture of impunity in former colonies.

### **Opportunities – Previous Attempts at Truth Recovery**

There have been state led attempts at truth recovery, initiatives by domestic and international organisations and unofficial recording of history in vernacular novels.

#### **State-led truth seeking initiatives**

As discussed above, at independence the Mugabe regime adopted a policy of reconciliation and subsequently granted amnesties to human rights abusers in all key historic periods. Heroes and Independence Day celebrations commemorate the colonial legacy. Much more specifically, in response to allegations of post-independence human rights abuses and demands for the truth, the government established Commissions of Inquiries. For example, when faced with allegations of human rights atrocities in military camps in 1981, the government reacted by setting up a judicial commission of inquiry. Justice Enoch Dumbutshena chaired this body, which investigated the events but was precluded from publicising its findings. In 1983, another commission, chaired by Simplicius Chihambakwe was established to look into reports of killings of civilians by the army in Matabeleland. Again the report was not published. Thus there is no official truth; fact-finding has been largely confined to efforts of non-governmental organisations and academics.

#### **Civil society led initiatives**

Nevertheless, in addition to state led initiatives, the country's opposition parties and civic society have made parallel efforts. They have documented allegations of political violence, pursued civil claims against the state and examined possible justice options. Civil society has also attempted domestic and international litigation on behalf of post-independence human rights victims.

Indeed, domestic and international organisations have played a fundamental fact-finding role in reporting alleged human rights abuses. The Catholic Commission for Justice and Peace in Zimbabwe (CCJP) formally called the Catholic Commission for Justice and Peace in Rhodesia has actually consistently done so since the 1970s when it documented abuses by the Rhodesian security forces. It was also a lone fact-finding body during the Gukurahundi massacres of the early 1980s.

These initiatives are however inadequate since they are led by elites who are mainly based in the country's two capital cities. Thus there is insufficient ethnographic knowledge of those communities mostly affected by the violence. Although some of the civic groups engaged in documentation claim to have provincial offices, their effectiveness in the villages, where violent incidents have been known to be prevalent, is still to be tested.

Much more significantly, whilst civic society reports might be a useful lobby tool they do not also present a complete and accurate historic account. For example, the statistical figures of the CCJP report of the Matabeleland atrocities are not accurate. This can be attributed to the fact that during the disturbances, most of the affected areas were inaccessible. The state's propaganda at the time also laid the bulk of the blame on the so-called dissidents.

On the same note, while the Zimbabwe Human Rights NGO Forum, for example, can be cited as perhaps one of the few non-governmental organisations that have ensured accuracy in their reports, their political violence monthly reports are very positivist and might even distort history. Consider the Forum's September 2008 report, where they state that there have been 385 incidents of human rights violations. Yet, the bulk of those incidents include infringements of rights of those who wished to protest against economic hardships.

### **Other initiatives**

In addition to state and civic society initiatives, external actors and the opposition party have been involved in useful documentation and informal inquiries. Of these, the 2009 International Labour Organisation (ILO)'s Commission of Inquiry is significant for its focus on worker's rights as opposed to the usual proclivity to focus on violations of bodily integrity rights. Also noteworthy is the 2006 internal investigation by the Movement for Democratic Change (MDC) into the attack on their four provincial executive members and the then Member of Parliament for Harare North Constituency, Trudy Stevenson. The significance of this inquiry was its revelation that non-state actors also violated rights in Zimbabwe.



The media has also played an important role in this regard; in particular, they have exposed some controversial deaths, including those of Rashiwe Guzha, Captain Nleya, Mthandazo Ndema Ngwenya, and Samson Benard Paweni.

## **Conclusion**

In Zimbabwe, there is a culture of impunity, which developed from the failure to address human rights atrocities associated with 19th century colonialism. Truth seeking can contribute to peace, national healing and reconciliation. While it may seem practical to focus on post 2000 human rights abuses, this approach may be restrictive, exclude some victims and not foster peace. Thus for the sake of inclusivity, account needs to be taken of all of the different historical narratives.

Current deliberations on the subject are at an advanced stage and have the advantage of a new Constitution, which contains relevant provisions. The envisaged truth recovery process also has the pre-existing benefit of official and unofficial records of the past. However, there is a limitation on the part of the current Constitution, which seems to have traded justice for peace and reconciliation. Also, some of the information which is contained in previous reports may not be accurate or may even need to be updated to reflect contemporary thinking in international law, in particular developments relating to the indivisibility of rights and gender mainstreaming.

Nonetheless, this paper suggests that truth recovery is essential. Yet this single method cannot address different abuses associated with each historical epoch. It thus recommends that all different sets of history ought to be attended to and consequently that there ought to be diverse methods of addressing different abuses associated with each historical epoch. Two healthy cautions are considered. Firstly, that it may be difficult to recover the truth about violations of economic social and cultural rights, gender based violations and colonial wrongs. Secondly, that while the importance of international law and the comparative method cannot be understated, it is important that concerns of Zimbabwean victims take priority over those of local politicians and the international community.

## **Mrs. S. Zembe: Vision for Peace and Reconciliation in Zimbabwe**

### **Background**

Peace-building by its very nature, requires multi-level and long-term investment targeted at building capacities and structures that can help prevent violent conflicts, manage those that erupt, ensure the implementation of peace agreements and address over time, the structural roots of violent conflict. The infrastructure for peace concept acknowledges the need for structural and long term measures founded on capacities and ownership within the country and its communities.

The Organ for National Healing, Reconciliation and Integration (ONHRI) was established as a Department in the Office of the President and Cabinet (OPC) after the signing of the Global Political Agreement (GPA) in 2008. Its mandate is to achieve restoration of the dignity of all Zimbabweans regardless of age, gender or creed; to achieve peace, stability, unity and prosperity for individual Zimbabweans, their families, communities, organisations and the country as a whole. According to Article VII of the GPA, ONHRI was established for the **“Promotion of Equality, National Healing, Cohesion and Unity”**. Article VII (1)(c) clearly states that ONHRI “shall give consideration to the setting up of a mechanism to properly advise on what measures might be necessary and practicable to achieve national healing, cohesion and unity in respect of pre and post-independence political conflicts” and this forms the basis for developing an infrastructure for peace in Zimbabwe.

In working towards the establishment of the infrastructure for peace, ONHRI conducted consultations with a number of stakeholders who included Traditional Leaders, Faith Based Organisations, Civil Society Organisations, employers, women, the youth, and political parties in the Inclusive Government among others. It was important to adopt a participatory, grass root based and inclusive approach to respond to the specific needs of the people of Zimbabwe in order to get their views on the type of an infrastructure for peace they would want established as peace is an all inclusive facet of the people’s day to day lives and cannot be dealt with by a few people. ONHRI consultations with the Churches and Civil Society in particular culminated in the production of a joint report between ONHRI and civil society. The overall consultations also culminated in the production of the draft Zimbabwe National Policy Framework for Peace and

Reconciliation (ZNPFFR), which was adopted by Cabinet as a precursor to the creation of the National Peace and Reconciliation Commission.

The ONHRI also successfully lobbied for the provision of the National Peace and Reconciliation Commission (NPRC) in the new Constitution and it became one of the five “Independent Commissions Supporting Democracy” as highlighted in Chapter 12 of the new Constitution.

The ONHRI has since worked on the draft principles of the NPRC Bill, which will form the basis of the NPRC Act. It should also be noted that the NPRC came into effect after the President's assent to the new Constitution.

Thus, after the establishment of the new Government, ONHRI is now working on the finalisation of the draft principles for the NPRC Bill so that once approved by Cabinet, the Bill can be drafted with the assistance of the Ministry of Justice, Legal and Parliamentary Affairs. The Bill will then be presented to Parliament for debate and once accepted, the NPRC Act will be passed into law, hopefully, before the adjournment of the current session of Parliament. ONHRI is cognisant of the ticking clock as the NPRC has a life span of 10 years, hence the need to ensure that the legislation is in place before year-end. This is in tandem with part (g) of the Lesotho Declaration which states that: Governments of the SADC member States are encouraged to facilitate the development of national legal frameworks, as appropriate, for the establishment, strengthening and operationalisation of “national infrastructures for peace and development”

## **Establishment of the National Peace and Reconciliation Commission (NPRC)**

In the establishment of the infrastructure for peace, the Government of the Republic of Zimbabwe considered the words of the Former Secretary General of the United Nations, Kofi Annan who said: “the aim should be the creation of a sustainable national infrastructure for peace that allows societies and their governments to resolve conflicts internally and with their own skills, institutions and resources”. Zimbabwe is, therefore, no exception as it aims to put in place an infrastructure for peace that will address the needs of Zimbabweans.

The Zimbabwe peace architecture recognises that there is no single player who can resolve all conflicts across the breadth of Zimbabwe, but rather there are a number of stakeholders –

including the NPRC itself, other Government structures, traditional leaders, civil society organisations, youth organisations, women organisations, faith-based organisations, the private sector etc. - who can play synergistic roles in conflict prevention, management, resolution and transformation whilst the NPRC will be the central mechanism, it will collaborate with other stakeholders in the implementation of its activities.

The NPRC will not only respond to the specific historical experiences and current needs of the people of Zimbabwe, but also re-affirm Zimbabwe's adherence to international norms and agreements on matters of peace and security. While Zimbabwe subscribes to the principles that "conflict prevention is a primary responsibility of Member States" and subsidiarity on matters of conflict resolution, it is also steadfastly committed to working with the United Nations, the African Union (AU) the Southern Africa Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA) to build the relevant institutions as provided for in the various international statutes, including:

- ▶ The 2002 AU Heads of State Memorandum of Understanding (MoU) on Security, Stability, Development and Cooperation in Africa which requires that all AU member states should "Establish, by 2004, national institutions or mechanisms for prevention, management and resolution of conflicts at community and national levels with active involvement of Civil Society Organisations and Community Based Organisations".
- ▶ The New Partnership for Africa's Development (NEPAD) whose programmes are anchored in the determination of Africans to extricate themselves and the continent from the malaise of underdevelopment, and to take the responsibility of "strengthening mechanisms for conflict prevention, management and resolution at the sub-regional and continental levels, and to ensure that these mechanisms are used to restore and maintain peace".
- ▶ In its 2004 Strategic Indicative Plan for the Organ (SIPO) on Politics, Defence and Security Cooperation, the Southern African Development Community (SADC) noted, "Peace, security and political stability are the linchpins for socio-economic development". Among the objectives of SIPO, is to "prevent, contain and resolve inter and intra-state conflict by peaceful means" by (i) enhancing the capacity for conflict prevention, management and resolution; (ii) encouraging the contribution of civil society to conflict prevention, management and resolution; (iii) establishing and operationalising confidence building measures for conflict prevention, management and resolution mechanisms.

- ▶ The 1993 Treaty for the Common Market for Eastern and Southern Africa (COMESA), which mandated member states to “co-operate in the promotion of peace, security and stability in order to enhance economic development in the region”.

It is also significant to note that West African States met on 10 September 2013 in Ghana and SADC countries met on 17 September 2013 in Lesotho and both meetings came up with declarations which amongst other things, stated that:

- ▶ The following principles shall underpin the establishment and functioning of the “infrastructures for peace and development” in Member States: national ownership and leadership, sustainability, inclusiveness, gender sensitivity, integrity, institutional and financial autonomy; and harmonisation, solidarity, complementarity, subsidiarity, coordination and legality
- ▶ Member States shall reinvigorate and integrate indigenous and traditional methods of healing, reconciliation, and alternative dispute resolution into local and national efforts.

The NPRC will therefore be established based on the tenets stipulated in Chapter 12 of the new Constitution of Zimbabwe, paying special attention to the need for incorporating indigenous systems into the work of the institution. It should also be noted that in Southern Africa, Zimbabwe is the only country that has made provision for an infrastructure for peace in the Constitution.

## Functions of the NPRC

Whilst the functions of the NPRC are as outlined in the new Constitution, the details will be given in the Act. The functions of the NPRC include among others:

- ▶ Post-conflict justice
- ▶ Healing and reconciliation
- ▶ Developing procedures and institutions at a national level to facilitate dialogue among political parties, communities, organisations and other groups, in order to prevent conflicts and disputes arising in the future
- ▶ Developing mechanisms for early detection of areas of potential conflicts and disputes, and to take appropriate preventive measures

- ▶ To conciliate and mediate disputes among communities, organisations, groups and individuals
- ▶ Developing and implementing programmes that promote national healing, unity and cohesion in Zimbabwe, and
- ▶ Peaceful resolution of disputes

The NPRC as an independent body-corporate is anticipated to transparently and in a non-partisan manner, analyse, interpret and contextualise past conflicts in order to shape a truly peaceful future; provide safe spaces for facilitated dialogues; provide extensive training programmes in prevention of violent conflict and in the management, resolution and transformation of conflicts; provide extensive mediation services and commission studies to inform its work. The Commission shall provide policy advice to the Republic of Zimbabwe and key stakeholders in sustaining peace and development in the country and facilitate the development and supervise implementation of programmes and activities for the promotion of equality, national healing, cohesion and unity.

It should be noted that the NPRC is not a Truth and Reconciliation Commission but seeks to promote peace building and reconciliation amongst Zimbabweans. It seeks to restore relationships, which were violated, making amends and integrating societies that were otherwise torn apart by violent conflict. One of the key functions of the NPRC is to bring about national reconciliation by encouraging people to tell the truth about the past and facilitating the making of amends and the provision of justice. The NPRC therefore is envisaged to go beyond just truth telling by bringing healing and reconciliation and ultimately development.

## **Structure of the NPRC**

As outlined in the Constitution, the NPRC Commissioners will be chosen for their integrity, knowledge and understanding of, and experience in, mediation, conciliation, conflict prevention and management, post-conflict reconciliation or peace building.

In terms of its structure, it is envisaged that the NPRC will have structures from the national level right down to the village. At the national level, there shall be the NPRC which will have nine members with half of them being women.

At the Provincial and District levels, there shall be Committees whose membership shall mirror that at the national level and will be inclusive with a focus on the youth. The relevance and use of traditional and community level dispute resolution and healing mechanisms and processes are key and most appropriate for many situations in Zimbabwe, and will be given the prominence and support that they need and deserve. To achieve this objective, the District Peace and Reconciliation Committees shall work closely with traditional leaders, as well as sub-local government structures, families and individuals. The NPRC will coordinate the work of all-provincial and district Peace and Reconciliation Committees.

In order to formalise the Peace Building, Reconciliation and Social Cohesion at the Ward and Village level, there shall be Peace and Reconciliation Committees. It should be noted that Villages and Wards are the domain of Headmen and Chiefs who have always played the role of peace building. The NPRC thus hopes to work closely with these structures as it embarks on its work. The Committee members shall also serve as the frontline of conflict early warning and report to the District Peace and Reconciliation Committee as well as other sub local governance structures.

The NPRC shall have a Secretariat headed by an Executive Secretary that will service the Commission. The Commission shall appoint the Secretariat. The Commission shall, through the appropriate Minister, report to Parliament on its work. A Peace and Reconciliation Fund shall be established to finance the operations of the Commission. These structures will assist the NPRC to execute its work.

## Lessons Learnt

In executing national peace building and reconciliation initiatives, the ONHRI has gone through learning experiences where it had to seriously interrogate perceptions held. The summary of lessons learnt is as follows:

- ▶ Zimbabweans without exception want sustainable peace to be able to enjoy life and engage in meaningful and rewarding economic activities for the benefit of their immediate and extended family, communities and the nation at large.
- ▶ Existence of rich traditional and cultural systems of healing and reconciliation, mechanisms and techniques which, if combined with the modern methods of peace building, will

transform conflicts into positive energy to drive socio-economic development in Zimbabwe.

- ▶ There is need to continue to utilise Government Ministries, Traditional Leadership, civil society organisations, faith based organisations inclusive of the Church, among others, as “Entry Points” in the implementation of peace building programmes and projects.
- ▶ There is an inescapable reality that national healing, reconciliation and integration processes are long term and should be all-inclusive.
- ▶ The cyclical nature of violent conflicts in different epochs of the history of Zimbabwe shows that peace building and conflict resolution measures cannot be linear in approach.
- ▶ Retribution or revenge, though advocated by some, is not perceived as key to national healing and reconciliation but acknowledging the past wrongs, seeking redress and finding a mutually agreed way forward. The quest is for truth telling, justice, people apologising to each other accompanied by forgiveness. This will help build relationships.
- ▶ People expect the leadership to assist in consolidating the Zimbabwean lived reality, real identity and restoring ubuntu bethu / hunhu hwedu and not exposing ourselves as a disintegrated nation.

## Conclusion

In conclusion, it has to be stressed that peace and reconciliation are evolving processes whose responsibility belongs to all Zimbabweans based on our lived reality and premised on the values of ubuntu bethu / hunhu hwedu.

The infrastructure or architecture for peace as provided through the Zimbabwe National Policy Framework for Peace and Reconciliation bestows a legacy of solving disputes through dialogue rather than violent conflict to succeeding generations, enabling a break away from the culture of cyclical violence inherited from the past epochs of history.

Issues that pertain to reparation, restitution, compensation, among other perceived entitlements, arising from violent historical epochs of our country will fall under the purview of the National Peace and Reconciliation Commission as an institution, once legally established, to deal with the past and future occurrences of violence.



Details of how these historical, contemporary and future issues of violence will be dealt with should be left to the people appointed to the NPRC as long as they understand the ultimate objective, terms of their mandate, seek guidance from the people at individual, family, community and national levels and integrate themselves within existing informal and formal structures.

# Case Studies Presentations

## **PRESENTATION ON SIERRA LEONE**

### ***Ms. Yasmin Sooka: How can a Commission ensure gender justice for both Victims and Perpetrators?***

At the end of a conflict, there is an expectation that societies will have to deal with the past if they are to build a new society in which the underlying causes of conflict are addressed and the rule of law is restored. Dealing with the past requires that issues of truth about the past conflict, justice and accountability, reparations and institutional reform are addressed.



Transition to a new democracy offers unique opportunities to manage transformation. For women it is a particularly opportune moment as it provides a unique moment to address law reform and issues of equality at a legal, procedural and substantive level. The truth commission, if properly utilised and structured, can be that vehicle.

Sierra Leone is a tiny country on the West African Coast, blessed by ample rainfall, fertile land and richly resourced by diamonds. At last call, the population numbered 5,5 million people. However on the UN index, it remains at the bottom of the index for poor countries and proper figures have not existed for the last ten years in respect of developmental indices given the conflict which raged there.

## **Context-Civil War**

The Sierra Leone Civil War (1991–2002) began on 23 March 1991 when the Revolutionary United Front (RUF), with support from the special forces of Charles Taylor's National Patriotic Front of

Liberia (NPFL), intervened in Sierra Leone in an attempt to overthrow the Joseph Momo government. The resulting civil war lasted 11 years, enveloped the country, and left over 50,000 dead.<sup>[1]</sup>

During the first year of the war, the RUF took control of large swathes of territory in eastern and southern Sierra Leone, which were rich in alluvial diamonds. The government's ineffective response to the RUF, and the disruption in government diamond production, precipitated a military coup d'état in April 1992 by the National Provisional Ruling Council (NPRC).<sup>[2]</sup> By the end of 1993, the Sierra Leone Army (SLA) had succeeded in pushing the RUF rebels back to the Liberian border, but the RUF recovered and fighting continued. In March 1995, Executive Outcomes (EO), a South Africa-based private military company, was hired to repel the RUF. Sierra Leone installed an elected civilian government in March 1996, and the retreating RUF signed the Abidjan Peace Accord. Under UN pressure, the government terminated its contract with EO before the accord could be implemented, and hostilities recommenced.<sup>[3][4]</sup>

In May 1997, a group of disgruntled SLA officers staged a coup and established the Armed Forces Revolutionary Council (AFRC) as the new government of Sierra Leone.<sup>[5]</sup> The RUF joined with the AFRC to capture Freetown with little resistance. The new government, led by Johnny Paul Koroma, declared the war over. A wave of looting, rape, and murder followed the announcement.<sup>[6]</sup> Reflecting international dismay at the overturning of the civilian government, ECOMOG forces intervened and retook Freetown on behalf of the government, but they found the outlying regions more difficult to pacify.

## **Lome Peace Accord**

In January 1999, world leaders intervened diplomatically to promote negotiations between the RUF and the government.<sup>[7]</sup> Between 1996 and 1999, the government and the rebel groups had signed three peace agreements, the Abidjan and Conakry Accord and finally the Loma Peace Accords. The Lome Peace Accord, signed on 27 March 1999, was the result. Lome gave Foday Sankoh, the commander of the RUF, the vice presidency and control of Sierra Leone's diamond mines in return for a cessation of the fighting and the deployment of a UN peacekeeping force to monitor the disarmament process.

## **Violation of the Peace Agreement**

RUF compliance with the disarmament process was inconsistent and sluggish, and by May 2000, the rebels were advancing again upon Freetown.[8] The British intervened to save the failing UN mission and the weak government of President Ahmad Tejan Kabbah. With help from a renewed UN mandate and Guinean air support, the British Operation Palliser finally defeated the RUF.

## **Operation No Living Thing**

In May 1997, the newly elected government was forced into exile following a bloody coup as former members of the military (AFRC) and the RUF invaded Freetown, the capital and in an operation named “Operation No Living Thing” killed thousands of civilians, looted and raped young girls, took many as sexual slaves and carried out amputations.

## **Rescue Operation**

The paratroopers landed in Freetown on 8th May, 2000 with a limited mission – named Operation Palliser – which was to secure Lungi airport and evacuate British nationals and foreigners out of the country as the civil war raged on around them. The mission was expected to last for ten days, after which time they would depart and leave Sierra Leone to its fate.

After landing at Lungi airport, brigadier David Richards, force commander of the mission, approached the capital by crossing Man O’War Bay in a dinghy. He looked out at the water, which seemed to be full of logs, but soon realised the ‘logs’ were floating dead bodies, many of them children. As he entered Freetown he witnessed the shocking sight of hundreds of amputees, terrified refugees streaming into the city, blood-stained hospital corridors packed with the injured and hundreds more dead bodies – all victims of “Operation No Living Thing”. He knew that once the British troops left in a few days, the people of Sierra Leone would have no protection and that the capital would fall to the RUF.

The West Side Boys were another rebel group operating in Sierra Leone and, like the RUF, were particularly brutal. They were fond of kidnapping children and dehumanising them in order to participate in their killing sprees. They dressed in bizarre clothing, namely women’s wigs and flip-flops and were constantly either drunk or under the influence of heroin and cocaine. This made

them completely unreliable and erratic and they wouldn't think twice about killing the man standing next to them – even if it were one of their own.

Eleven (11) members of the Royal Irish Regiment, who were returning from a visit to Jordanian peacekeepers based in the hills outside Freetown, were taken hostage by the West Side Boys. Alongside the 11 Royal Irish Regiment was the patrol's liaison from the Sierra Leone Army – Lieutenant Musa Bangura.

## Establishing a Truth Commission (TRC)

**The Lome Peace Agreement** provided a blanket amnesty for the RUF and other rebel groups. In the face of complete impunity, the High Commissioner argued for setting up a Truth Commission. There was limited involvement of civil society from Sierra Leone. This could have resulted in the delay in passing the enabling law.

Major difficulties in the establishment of the TRC:

- ▶ Government did not really want a TRC foisted on them.
- ▶ Weak civil society process.
- ▶ The Commission was Office of the High Commission for Human Rights (OHCHR) driven and funded.
- ▶ It consisted of four National Commissioners and three Internationals and these lacked legitimacy in the early phase.
- ▶ Their credibility was built later.
- ▶ The public hearings were not properly funded.

However, the commission scored early successes by ensuring transparency in its work and holding all sides and political groupings to account. It also dealt with child soldiers and the sensitive gender based crimes.

### Gender Issues

The Commission in Sierra Leone became the next Commission to be established after the South African Commission. The South African Commission only dealt with the gender issue once it was

established, as the legislation was silent on this issue - surprising given the information provided by the Women's Coalition during the negotiations phase. It was only through the intervention by feminists and activists that an opportunity was created for the Commission to explore the experiences of women. There were budgetary allocations for gender and dealing with male patriarchy in the Commission. Sierra Leone represented a unique opportunity given the reference in both the Lome Peace Agreement and the establishing legislation. The Lome Peace Accords in the article on war rehabilitation and reconstruction stated:

*“Given that women have been particularly victimised during the war, special attention shall be accorded to their needs and potentials in formulating and implementing national rehabilitation, reconstruction and development programs, to enable them to play a central role in the moral, social and physical reconstruction of Sierra Leone which was to take special account of the experiences of women.”*

As Commissioners,<sup>11</sup> we also noted that the reference only perceived women to be victims and not perpetrators or taking on different gendered roles. Also reference was made to them playing a role in reconstruction and not in political life. What was unique of course in the Sierra Leonean Commission is that there was an expectation that the Commission would explore the structural issues underpinning the conflict. This was unlike the South African Commission.

An important aspect for the work of Truth Commissions was the ability to look at the structural issues impacting on specific sectors of the society. In this sense the Sierra Leonean Commission was innovative as it looked at the socio-economic dimensions of the conflict as well as the civil and political rights issues.

## **Integrating the Gender Approach**

The TRC Act refers directly to gender twice – that is, in the provisions related to the composition of committees functioning under the Commission and the Selection Panel and Coordinator which require that gender as well as regional representation be taken into account. Although no reference is made to the composition of the highest organ itself, the Commission, in reality, there was an acute awareness of the need for this and it resulted in three of the seven commissioners being women.

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11 Ms Yasmin Sooka was a sitting Commissioner in Sierra Leone at this point

## **TRC Strategy**

### **Policy Making**

Policy on gender went beyond just the notion of looking at the experiences of women and explored how it would ensure that in all of its structures, processes, procedures, documentation, investigations, research, hearings, findings and the Final Report, it would integrate a gendered approach that would also include ensuring that data was disaggregated in order to establish clear patterns of how the war had affected women and girls differently and disproportionately. The Commission also signaled its intention to hire a gender advisory. It did not, but ensured gender representation in every aspect of recruitment.

### **Partnerships**

The TRC concluded an extremely valuable partnership with UNIFEM and many women's organisations in Sierra Leone. In the case of UNIFEM, the partnership provided that they would provide experts that would work with women both in the urban and rural areas of Sierra Leone which would enable statement taking, participation in making submissions to the Commission and would facilitate participation in the Special Hearing on Women as well as facilitate making submissions on reparations and recommendations for institutional reform

### **Special Conditions**

There were special conditions applying to the women

- ▶ The choice whether to make their statement to a man or a woman
- ▶ Confidentiality arrangements
- ▶ Identity protection
- ▶ Freedom to decide on whether to attend a public hearing or to testify at a closed hearing
- ▶ Special closed hearings for women and children
- ▶ Lay counseling services provided for women

### **Violations**

The TRC defined the crimes of rape, sexual slavery, forced impregnation and enforced sterilisation. It found that 275,000 women and girls experienced sexual violations during the war including enforced displacement (23.5%), abductions (15.7%) and arbitrary detention (12.0%)

## **Different roles played by Women**

The Commission recognised that women play different roles, some as witnesses, perpetrators, victims, or collaborators. Women had agency and chose to exercise it. In view of the special circumstances of women, the Commission held a Special Hearing on Women. The Women's Ministry, UN and NGOs as well as International NGOs made oral and written submissions. Women appeared before the Commission and testified, some behind screens and others in open hearings.

Highlighted are some of the specific experiences of women in Sierra Leone:

### Reparations

- ▶ Role of UNIFEM in assisting women and women's groups to formulate recommendations was scaled up.
- ▶ Key recommendations were also made by women
- ▶ Law Reform-need to reform law so that women can own and inherit property, reform of law of primogeniture
- ▶ Ensure that girls can attend secondary and tertiary education without having to pay fees
- ▶ Raise the age of marriage for girls

### Final Report

- ▶ Special Chapter on Women and Armed Conflict
- ▶ Status of women before the war
- ▶ Documented their experiences of the war and the violations suffered
- ▶ Making links between past, the conflict and present day
- ▶ Findings and Recommendations

### Achievements

Captured 13 000 statements

- ▶ Successfully dealt with myths around the conflict and debunked the notion that the major cause of conflict was diamonds
- ▶ Demonstrated successfully that poor governance, corruption, indifference of successive governments led to disenchantment by youth and ultimately to the conflict. Diamonds were noted as the fuelling factor in this violent conflict.



In 2008, the Government of Sierra Leone acted upon the TRC's recommendations and, with support from the UN Peace Building Fund and the UN Development Fund for Women (UNIFEM), founded the Sierra Leone Reparations Programme (SLRP).

The project is implemented by the National Commission for Social Action. Up to today, over 33,000 victims have been registered and 20,000 of them have already received a cash allowance as livelihood or education support in 2009 in line with the reparations conditions. In addition, over 250 particularly affected victims received fistula surgery or other emergency medical treatment.

Psychosocial support sessions were organised in all four districts of the country and 40 communities received financial means to hold at the community level symbolic reparation events such as burials and other forms of recognition. As recommended by the Truth and Reconciliation Commission, the 28,000 primary beneficiaries of the SLRP were:

- ▶ Amputees
- ▶ War wounded civilians
- ▶ War widows
- ▶ Orphans
- ▶ Victims of sexual abuse

The National Commission for Social Action (NaCSA) yesterday began a new round of cash payments to 10,753 victims of gross human rights violations suffered during Sierra Leone's decade long conflict that ended in 2002. The payments, financed by UN Peace Building Fund (UNPBF) and implemented by NaCSA with IOM support, were worth a total of USD 860,240 and were disbursed nationwide. Some 20,000 Sierra Leoneans have already benefited from the scheme. The payments, averaging USD 80 per victim, were part of the USD 4.55 million PBF-funded Sierra Leone Reparations Programme (SLRP), which received technical, administrative and operational support from International Office of Migration. Since its inception in 2009 the SLRP has registered and verified 32,148 civilian victims of war, of whom 13,283 were war widows, 8,677 child victims, 5,448 war-wounded, 3,602 victims of sexual violence and 1,138 victims of limb amputation.

## Lessons for Zimbabwe

- ▶ Legislation needs to be empowering and specifically include gender
- ▶ Reference must be made to gender inclusiveness at all levels including the Commission, staff, statement takers, investigators and researchers
- ▶ Once established, Commission needs to establish policies and procedures as to how gender will be taken into account both in terms of its procedures, policies and at a substantive level
- ▶ Partnerships with UN and other international agencies, Civil Society and International NGOs
- ▶ Training of Commissioners and staff on gender sensitive practices
- ▶ Specialist training on sexual violence
- ▶ Ensuring that a database is built to allow for disaggregated data to be collected and analysed
- ▶ Understanding the legal, social, political and economic environment that affects women

## **PRESENTATION ON GUATEMALA**

### ***Professor Elizabeth Olgesby: Balancing the Scales of Justice: How can a Commission Best Serve the Best Interests of the Victims while Promoting Reconciliation with Perpetrators?***

There is a little bit of basic data on the Guatemala case. I then have a few reflections at the very end about some of the contributions and challenges of the Guatemala truth Commission. The Truth Commission report was called "Memory of Silence". People in Guatemala had not been completely silent before the Truth Commission came along. Survivors had been speaking out and many human rights reports had been written. But it took a while to create the institutions for the Guatemalan society to be able to hear what people were saying. Actually the peace process started in the 1980s but a number of peace accords were signed in the 1990s including the accord that created the Commission for Historical Clarifications (CH) and it took testimonies in 1997 and 1998 and published its report in February 1999.



As you know already, the Commission had three commissioners. There was the Head Commissioner, Christian Tomschat, who was a West German Human Rights Lawyer with a lot of international experience. Then there were two Guatemalan Commissioners who had been selected by Tomschat himself from a list of names provided by the government and the rebels. There was quite a number of staff, around 300, divided between Guatemalans and international staff. So the Commission was an example of a 'hybrid commission'. It was half national and half international.

The Commission was initially under the United Nations Office of Projects and Service, but it was also somehow rooted in Guatemala. The CH was preceded in Guatemala by a very important Catholic Church led human rights project which was called Recovery of Historical Memory and

which worked for many years with many of the rural communities that were devastated, taking testimonies and training local animators to encourage people to come forward to give testimony. That was a very big help for the Truth Commission because when they started a lot of these communities had the experience of giving testimonies. The mandate of the Commission stretched the whole 34 years of war from 1962-1996. The worst years were in the 1980s, which was the period of the scorched earth massacres. For the period covering 34 years, the Truth Commission, using its own testimonies and data that had been accumulated, estimated that 200 000 people were killed in Guatemala's civil war. The Truth Commission documented 669 mass graves in the early 1990s in the Maya regions. The Maya region is currently the centre of the genocide trial in Guatemala, one of the hardest hit areas in the whole country

## Responsibility for the rights violations in Guatemala

The Truth Commission (TC) notes that the state forces committed 93% of the violations. That could include the army. That could also include the army organised under a civil control system; that is villagers who were coerced to participate in massacres, sometimes in conjunction with the army. It also comprised other authorities like the police, which operated mainly in the urban areas. 3% of the atrocities were held to have been committed by insurgents and 4% by others who were unidentified. Over 80% of the violations documented by the TC were committed against Mayans especially in the 1980s. At the same time as the TC, a number of truth telling projects were taking place, including community level projects through memorial museums where family members would write the names of relatives killed. Exhumations were taking place to facilitate forensic investigations.

It took quite some time before the genocide trial could start in Guatemala. A number of years passed before the genocide trials could start in Guatemala, but right after the Truth Commission published its report, the 2000 Nobel Prize winner Roberto Matthews presented a genocide case against 12 high-level army officers in a Spanish court. At that time it would have been impossible to prosecute a genocide case in Guatemala so activists were using Spanish courts under the principle of universal jurisdiction which states that crimes against humanity can be prosecuted anywhere. So the case of Guatemala went through Spanish courts for a few years and eventually was stalled because Guatemala refused to extradite the accused. Finally, in 2011 several high level officers were arrested for human rights violations in Guatemala. In February 2012 Rio Smat, who had been a member of the congress after he had ended his term as *de facto* head of state lost

his immunity and was arrested. It took a year for the trial to start, and I was an expert witness in the trial. Rio was convicted but 10 days later the conviction was barricated by another court on procedural grounds and the case may have to be repeated at the same time with other cases that are coming forward pretty quickly.

There were discoveries of various state archives – a huge cache amounting to nearly five million documents from a police archive dating back to the 1800s, but definitely covering the period of urban repression and the latter part of the 20th century, was discovered a few years ago. Human rights activists have been working very hard to preserve and catalog these documents. This has started to bear fruit in terms of prosecutions and also in terms of finding out what happened to some of the disappeared.

So what do we get from Guatemala's TC? Do we get some form of social reconciliation? I would have to say NO in the case of Guatemala when I look at the title of this panel in terms of promoting peace and reconciliation with perpetrators, because there was very little of that in the Guatemala case. The nature of the transition itself does not represent enough power sharing but reflects domination by the army itself. The government also never really accepted or assimilated the findings of the Report. So what exists is a kind of a hostile state towards the Truth Commission. Conditions in most areas were not conducive for reconciliation. You had in some areas victims and perpetrators still living together under conditions of a general dearth of prosecutions against perpetrators. There are also lots of grey areas, which are not being addressed, for instance, there are members of the civil patrol who were both victims and perpetrators. This complicated things. Many people in Guatemala would say "how could we have reconciliation, we never had conciliation". In other words we don't have a traditional harmonious society that we can look back to. The cleavages in our society are very profound.

But I do believe there are some good things that came out of the Guatemala TC in terms of dignification for the victims. The willingness of the UN to call this process and brand it a genocide, the involvement of human rights groups and, in communities, the realisation that what had happened to them was part of a larger national problem. So it had the effect of de-privatisation of guilt.

The TC also helped not only to reveal the violations that people experienced, but the process also helped explain why they were targeted, what we call contextualisation of violations. So there

were a few ways in which we were able to combine the historical and the legal causes of the violations. One was a historical analysis through research done by a technical team of 12 academics from various disciplines that included sociologists, anthropologists, and economists. Christian Tomasson went to various universities and invited them to recommend people for this group. This group worked for several months collecting input on various topics like the History of Racism against the Maya, like the history of various kinds of social, political, economic, cultural discrimination and social exclusion. The history of the state and the militarisation of the state were subjects for research.

At the national level this provided important contextual information to be able to understand human rights violations. We also needed to know what had happened in the various localities; the regional characteristics of this conflict down to the village level. So all the 15 field officers were asked to prepare a regional context report for their own regions in terms of the history of social differences, land battles, labour organisation, and cooperative movements. All those social movements had been exterminated by the scorched earth policy in the early 80s. This could assist in better understanding the lives of these communities beyond just being victims of massacres.

The commission also produced a series of about a hundred illustrative cases of about 5-6 pages each which were illustrative of not only the types of violations and repressions, but also gave a sort of history of the person, why were they targeted, what were they doing, and what kind of movements were they involved in. My last point is that I think all of these materials, put together, this made the report a much better report and though the information cannot be used in judicial cases it can be used to provide background context to the human rights violations for the genocide trials in Guatemala. I will end there.

## **PRESENTATION ON BOSNIA-HERZEGOVINA**

### ***Prof. Hans-Joachim Heintze : The Rule of Law and the Duty to Protect***

I am a professor at a German University. I have a Masters programme in Humanitarian Action. And my University is responsible for training people who are involved in European issues in crisis countries through giving humanitarian assistance to the victims of conflict. And where is the connection with Transitional Justice? Those people in conflict are in need of protection; and the protection must be provided by states or by parties to the conflict. Therefore one of the issues we discuss with those people is the rule of law to protect vulnerable groups.

I am also a professor at the University of Sarajevo, which is the capital of Bosnia-Herzegovina, one of the successor states of Yugoslavia. And this program deals with human rights and democratization South East Europe. That means we invite students from all over the Balkans with the intention of bringing young people together from all the former enemy states. Of course one of the issues is to deal with the past.

To deal with crimes, which happened during the Yugoslavia war, the United Nations organised the International Criminal Court and Yugoslav Tribunal. My experience is that young people over there consider the Tribunal as an instrument of victory and justice. But the international community put it in place to deal with crimes against humanity. The acceptance of this Tribunal is not very much developed among the young people from the former Yugoslavia who felt that it was an imposition.

Bosnian people talk to each other because of politics. Before, the intention was to get rid of the problems but this created a system that deepened the differences between the different groups in Bosnia-Herzegovina. Among them are the Serbs, the Croats and the Muslims. Because the governance system is divided, politicians are going for fast solutions, which cannot be found in one election.

Seeking solutions in one election can be a problem, as it seems to me that the Truth Commissions can overcome the problem because people still talk to each other. And therefore I am eager to learn more about truth and reconciliation systems. And perhaps we can establish them in several institutions. In the Balkans, I had problems with the Truth Commission especially against the

background of the rule of law. The rule of law means that people are bound by the law in governance and administration. Everybody understands it and it is interesting to see the next steps. One can argue that the rule of law is one of the pillars of democracy. And there is also the idea that those people who are responsible for human rights violations should be held accountable and regime change should deal with those responsible for these violations through the rule of law. It is all too clear that politicians want to get rid of the past sometimes by providing amnesties. We all know that amnesties are a possible way of dealing with the past, no doubt about that. But one can also argue that amnesties are an abdication of the obligations to deal with the past and establish a new society.

The other problem is that it creates bad laws in society because we also have the duty to prosecute. And Guatemala is a good example of dealing with the past. There was effort to deal with violations against vulnerable groups and I think the idea was excellent to have the truth commission so that people could talk of their experiences. On the other hand we also have the obligation to prosecute as this is found in treaties like the Genocide Convention, the Torture Convention, the Rome Statute.

The Truth Commission in Guatemala was not an excuse to not deal with these kinds of human rights violations. Therefore, apart from Truth Commissions, there is also need for criminal procedures; the need to apply criminal law to deal with all kinds human rights violations, genocide, and war crimes. Therefore, there is need to combine legal procedures and other actions that are not based in law to address the past. That means a duty to prosecute and respect for that duty to prosecute. It is not only the application of criminal law that is important, but also the application of human rights law. Human rights mechanisms can be used to deal with human rights crimes committed in the past.

About the shortcomings of legal processes for crimes that were committed in the past, I agree there are shortcomings because criminal law at first line deals with perpetrators and does not deal with the victims at first line. And the advantage of the truth commission approach is "Lets give voice to the victims". And that seems to me a very important advantage of the truth commission approach. And I see this in the Balkans where criminal procedures have targeted the big fish and people ask, "Now that the big fish have been caught what about the victims?"

Another advantage is that Truth Commissions are more flexible than legal procedures because legal procedures are bound by the obligations which are written down in international treaties. Truth commissions can apply case-to-case solutions to meet the requirements of the situations.



However, the question is always the outcome. How binding are the outcomes of a process like the Truth Commission. If we are talking about the legal quality of the outcome we must also talk about compensation issues. Are governments, the rulers committed to enforce the recommendations of the Truth Commissions.

Coming to the conclusion, I would argue that both approaches are possible. Both approaches make sense. The legal approach and the truth commission approach. But I think there is need to combine both approaches to get the best results. Thank you.

## **PRESENTATION ON KENYA**

### ***Commissioner Dr. Ahmen Yasin: Social, political and economic factors affecting the operations of a commission***

I want to divide my talk into about four sections. One: I want us to look at ourselves, who we are, so that we understand where we are coming from; then we look at our work and programs to see if we can deduce any areas that we can discuss further. We will also look at challenges in terms of social, economic, and political factors and finally we will look at the way forward and some thoughts and issues that we may want to reflect on.



Just as an introduction, some of you

may be aware that in 2007 we had a contested presidential election and there was Justice Kriegler from South Africa who chaired this Commission as a result of this disputed Presidential election.

Kenyans will never know who won that election. So what happened between January and February 2008? We killed each other. About a thousand people were killed. Over 600 000 people were displaced and as we are talking now the last batch is being relocated as well. So we invited the regional and international friends to come and mediate our dispute. The African Union became handy, we had various people coming in and out and eventually Kofi Annan was appointed to chair a Council of Eminent Persons composed of the President of Tanzania, Benjamin Mkapa and Graca Machel.

On the 20th of February 2008 we signed a peace accord. So a national dialogue and reconciliation framework was negotiated and it was agreed that the winner of the elections was to become the President and whoever was number two becomes the Prime Minister. There was also a Vice President from another big party.

Four agendas were agreed on and the first agenda was, of course, the cessation of hostility. And then the second up to the fourth had to do with the forming of the government. So our own Commission was among five or six others of what we call "Agenda Four Commissions". All the others were interim or temporary commissions. They came in under specific themes, did their work and submitted their reports. When we came in, ours was controlled by an Act of Parliament created for us in 2009.

We had a negotiating team from all the disputing parties. They sat down and through their wisdom felt that this, our Commission, was supposed to be a permanent and long term Commission mandated with looking at ethnic issues. Ethnicity is a big problem in Kenya and perhaps in other African countries. We came up with a mission, which looks forward to a peaceful existence and harmonious and integrated Kenyan society whose values are harmonious and not discriminatory. We wanted to facilitate equality of opportunity and good relations, one community. We also wanted to eliminate all forms of ethnic, religious and racial discrimination in the Kenyan society through civic education.

How were the Commission members appointed? An advertisement was put in major daily papers and for all to respond. A short list was made by the National Assembly or Parliament. Shortlisted candidates were interviewed by the National Assembly's Committee that was responsible for national cohesion at that time. We were also vetted to ensure that we could meet the test of integrity required. Fifteen names were submitted to the President to appoint nine. Eight from each region and the chairman would come from one of the eight provinces. Ethnicity was an issue and so was regional representation. We were appointed to the Commission for three years renewable for another three years. Things have changed and in 2010 we had a new Constitution, which we had been writing for twenty years.

The truth is Constitutions are never written in times of peace. So when we went to "war" we achieved that in 2010. Now the constitution has changed the interview process, which is now initiated by the President who appoints a selection panel to carry out the interviews. The selection panel shortlists, vets and eventually sends the names to Parliament. The Parliament can either approve or reject and all Commissioners work for six years non-renewable. So it's a transparent process because there are two levels. One is the executive who does it through a selection panel and the names are submitted to the Parliamentary Committees responsible for national cohesion and then to the full parliament who can either accept or reject the names.

I mentioned that a number of Commissions was established and one was the Truth, Justice and Reconciliation Commission. Again it was established through an Act of Parliament. It was not a constitutional commission. I'm sure you are aware that if something is statutory its easy to do away with it. Just a simple minority in parliament and the commission is gone. But when it is constitutional you need at least two-thirds majority or in some cases a referendum.

Now the difference between the NCIC and the TJRC was that TJRC was looking at historical injustices dating back to 1963, which is when we got our independence to 28 February 2008, which is when we signed the peace accord. It hasn't been very smooth for our TJRC because for me they were very ambitious wanting to handle truth, justice and reconciliation at the same time. In my own opinion I don't know how much truth came out of that process and or how much justice came out. They certainly had no time to handle reconciliation. That's why it was felt that the NCIC, which came more or less at the same time, should take on some of the functions of the TJRC.

The TJRC had some issues and one was the credibility of the Commissioners particularly the Chairman. Civil society claimed that he had been involved in some historical injustices and there was an impasse for about a year before they were reconciled. And then there was uproar again when the report was published because the chair was one of the signatories. This has affected the progress of the report. The report was supposed to go to Parliament for it to be debated and adopted, but we hear that probably the report is going to be changed to remove some contentious issues. I don't know which issues. But many issues in that report relating to reconciliation should come to NCIC.

When we were appointed to the NCIC, we immediately initiated a number of projects. We started by initiating the inter and intra ethnic dialogue meetings. We realised that if our role is going to be ethnic then we must have these meetings so that we appreciate who we are as well as others. We involved religious leaders in some trauma and counselling sessions. We also agitated for dispute resolution mechanisms, plus reconciliation, arbitration, etc. In order to trace who we were, we decided on what we call "Kenya kwanza." Kwanza means one. In other words can we put our country first. This means putting service before self. We brought issues of patriotism, nationalism and all that.

We also have the *Wiyano* platform. *Wiyano* means reconciliation. We brought together civil society and government departments, who were dealing with peace to talk about peace and reconciliation both at the constitutional referendum process in 2010 and during March 2013

elections. And this resulted in a peaceful referendum and elections. We have also been conducting research in several areas the results of which have been published. One of them is the *'Ethnic Audit'* particularly in the civil service, where we found that there were the five biggest ethnic groups. We have called these, the 'Big Five', for they occupy 70% of jobs in the civil service. In Kenya we have 45 ethnic groups. We also found out that there was coded language and use of stereotypes to refer to some of the ethnic groups and it was creating a lot of tension.

We are doing a "cohesion index" to see if the 'Big Five' still have the commanding role in all those jobs as well as access to amenities and political space. Then the other most interesting thing is hate speech. Again political leaders at meetings and at rallies used nothing but hate speech to win votes. So we wanted to encourage politicians not to use hate speech and to propagate their party manifestos, ideologies and all, but not their ethnicity.

Hate speech now has moved to the social media and this is the challenge. Some people use pseudonyms and others use other people's names on sites such as Twitter and it's not easy to catch them. So it's now in the social media as well in the electronic or print media. It is very important for media houses to work closely with us. We have trained them on hate speech reporting because we are all aware that there is a very thin line between freedom of speech and hate speech. So now, when they write, they know that there is somebody out there watching if there is hate speech or not.

Next are the social, economic and political factors affecting the operation of NCIC and of course the issues of religious discrimination. Kenya has two major religions, Islam and Christianity. But there are also the Hindus. We wanted to be sure that when we embark on national cohesion, discrimination is not allowed.

On economic factors we looked at equal distribution of resources as a way of building national cohesion as well as empowering youth through various projects. The current President promised that if there was not going to be a repeat election resulting in a clear winner, the money earmarked for the re-run would be used for not only youths but women's projects also. So now that the election is over and there emerged a clear winner, that means there is 600 million Kenyan shillings, not only for youth but also for women's projects.

Political factors, for any Commission, are very important. These are important not only in terms of the selection process but also in terms of support. If the political goodwill is not there, I don't see the Commission being successful. The challenge is linking political will and resourcing the

Commission. When it comes to budgeting resources there is a plug that they put there. Where you ask for 500 million they will give 100 million. In our case we have been put under the Office of the President who, in the new Constitution has to give the annual report on the status of cohesion and unity in the country. We are telling him that we need the support and the funding. We are also looking at pro poor policies and legislation because if you want cohesion these things should be a must.

Again, as a way forward, we need to value the political goodwill. You cannot succeed in National Healing, in our perspective, without political goodwill. In reconciliation there is need for inclusivity, equal opportunities to jobs, resources, respect for diversity and we believe this is vital for peaceful existence. There is also need for a strong legal and policy framework. In our case we have a policy on national cohesion and integration and at the same time we have a law for that.

The Truth, Justice and Reconciliation Commission - when they handed in their report they made several recommendations. They want mechanisms put in place to ensure that the report is implemented and they just mentioned in passing that the NCIC should take over some of the functions or recommendations. I think that is not enough. It should be backed by a sound legal and policy framework.

In terms of the donor support, I think we are very fortunate in our case. Actually we had donors coming to our offices and asking, 'how can we work together.' So I think for Zimbabwe, once the Commission is there, see how the donors can work with you. They provide both technical and financial support.

Now let me move to what I can say is, "Kenya at the crossroads". Firstly, the TRC report is with parliament and the way forward has not been agreed upon. It has credibility problems, and we are not sure how we are going to implement that report. I think you are aware that both our President and the Vice President are indicted at the International Criminal Court (ICC). They have a date with the Hague process. And I cannot imagine for the first time a sitting President and his deputy are before the ICC. So we really don't know how they are going to run the country. The European Union initiative in this case is to bring the matter nearer home, otherwise Kenya will pull out.

You are aware of the threats of Al Qaeda and Al Shabaab; the Westgate issue. I think what the terrorists are trying to do is to divide Kenyans on religious lines and its not good for the country. But some of the leaders have stood up to call these criminals, terrorists. And this has helped us to

accept and to appreciate that this is not a religious war. The President made it clear that they will stay in Somalia for as long as is necessary and Al Shabaab are saying they will continue hitting hard. So I think if you are talking about national cohesion and reconciliation, it also depends on factors beyond our borders.

In view of the Commission, Kenya was lucky because we had a regional support that provided oversight during the National Accord under the able chair of Mr. Kofi Annan, Benjamin Mkapa, Graca Machel. This has helped ensure that what was agreed upon in the accord is implemented. But for Zimbabwe we need to be wary that any appointment to the Commission is competitive and in our case it is very clear that if one was a known and active member of a political party then they could not become a Commissioner. In Kenya under the new Constitution we have about 15-20 constitutional commissions and independent offices. The appointment process to these commissions should be competitive, reflect the diversity of the people, avoid political class, where possible, and only then can they say they are independent. Because experience shows that truth telling is essential for true reconciliation, the NPRC must not only encourage truth telling but must ensure full truth recovery of the past through various methods.

## **PRESENTATION ON SOUTH AFRICA**

### ***Dr. Fanie du Toit: The Morning After: What Happens after the work of the Commission: Recommendations and Implications.***

I remember making a phone call to the office of the Truth Commission in South Africa just after the report had been sent to President Mandela in 1998. The phone just rang unanswered. Because at that point our commissioners Yasmin Suikah and others were all international figures touring the world. They were telling the story. And there was very little left back home both institutionally and in terms of personnel or staff to actually do anything because its recommendations had been handed over to the government and now, we all assumed there would be political will to implement these recommendations.



Well, we were wrong.

Fifteen years later the legacy of the Truth Commission in South Africa is under pressure because of the failure to systematically implement what were 45 pages of very carefully crafted recommendations. We failed to have a follow up mechanism that would be at least semi-autonomous and that would keep the recommendations on the agenda of the government.

This has not happened once since 2003 when the final two volumes of the report were finally handed over to President Mbeki and to parliament. The first five volumes were handed to President Mandela in 1998, then followed five years of on-going amnesty hearings, and started, but not finished, court cases. When all of that was finished, President Mbeki also received the report in 2003 and announced a package of measures and reparations that the state would pay. It was nothing like what the TRC had recommended. The TRC recommended something like the basic minimum wage over six years for the victims and the government decided to give a once



off lump sum payment of \$3 000 or 30 000 rand which is like a sixth of what the victims were expecting after waiting for five years.

So imagine the kind of bad blood that was created even when 16 000 people received this payment. There were also about 300 names sent to the government for possible prosecution. Of these names there was one plea bargain with one former head of police. The whole hearing took about forty minutes or so. When the bargain was reached, nothing was disclosed and it was shoved aside. There were prosecution guidelines at one point brought about by the cabinet and rejected by the civil society because we said amnesty was a once off thing and you can't have a second bite of the cherry because this meant that if you are coming back as a perpetrator you could still get a plea bargain or amnesty if you disclosed stuff to the National Prosecuting Authority except that now it would not be public. It would all be done in private. And we disagreed with that. That was challenged in the Constitutional court and we won the case but the result was NOTHING.

So since then nobody has been prosecuted, but just for the integrity of the process there needed to be prosecutions. We were never meant to have a restorative justice process only; it was always meant to be a retributive and restorative process in conjunction.

The second thing is reparations. There were three different forms of reparations recommended. There were symbolic reparations, there were personal or individual pension-like reparations, and then there were community reparations. There was a presidency fund set up under the Ministry of Justice and the TRC Unit created in the Ministry of Justice. It was clear for us right from the start that this unit was understaffed and not empowered. This is now 2013 and here we are, still nothing has happened. And by the way there is a billion rand sitting in President's fund and treasury is saying we will nationalise this money if it is not used. But the problem is that some of this money is actually private money. It was donated and you can't just take that money legally.

We still do not have regulations today for community reparations. Things like trauma counselling, health care and community development projects are specifically framed as reparations. But never make the mistake of confusing reparations with development. They are not the same thing and victims find it insulting if you say we are making you this tarred road as reparations. It's not. Reparations come with acknowledgement that you were harmed by the state of South Africa. This state has legal continuity and has enjoyed legal continuity through transition; which means irrespective of the government in power the state remains liable. That is why the ANC had to pay

reparations because they were now the custodians of the state that had committed crimes against humanity before.

Worryingly, few lessons have been learnt through the TRC process about how South Africa should be governed. I visited the Marikana mines recently on the Invitation of the Socio-Economic Rights Institute and they are representing the rights of these forgotten victims. And when we look at that process, we have put up a Commission for the Marikana mine disaster where 34 people were killed. We learnt very few lessons from the TRC. The Commission is structured as a quasi-judicial Court, not an evidence based hearing. So the victims are not empowered to take part fully. They do not have legal representation. The state has put several millions aside but that is only for the police, whereas the victims have none. Reparations have been promised to these victims but none has been paid. The fact that the families have lost breadwinners due to police brutality does not matter at all.

This is a year on and the police report has been given to the Commission. Obviously it conceals more than it reveals. There is talk of other reports circulating in the background that have not been given to the Commission. And on the day of the disaster it was clear that the police came with a military intent and the TRC should have taught us that the kind of violence we had in the 1980s was also the result of “illegal strikes” and things like that. But there is a certain pattern here. It seems to me that the way South Africa is governed has not been sufficiently informed by the lessons of the TRC and in fact those lessons have been systematically shunned and government has refused to acquit themselves against these benchmarks set by the TRC.

The Institute of Justice and Reconciliation did a national survey in 2001. It was a sample representative of the whole population. About 3 500 respondents in six languages, stratified for race, rural areas, the whole thing. And interestingly, the majority of South Africans of all race groups said they were in favour of amnesty. They were positive towards the TRC and 73% of white respondents agreed that apartheid was a crime against humanity. Now that would not have been the case before the TRC.

There were some nasty things said about Archbishop Desmond Tutu, you know, the ‘Arch Angel of Revenge’ cartoon. Still the conscience began to work and operate and after the Commission had finished it was clear that no South African would, with a straight face, make a case for apartheid anymore. Now in terms of “Never again” that’s an achievement. A popular consensus was built around victim narratives that this was not right.

I spoke about reconciliation last night but we now turn to the other side of the coin. Accountability is the key contribution to transitional justice. It does say that if you do not have accountable peace, the violence will come back to haunt you. If the transitional process does not usher in accountable governance in the pilot schemes of social justice, also in accounting for the monies into and out of the government coffers, it makes a mockery of the values it promotes. Thus it follows that a nation can only be ready for a transitional justice experiment if it's truly ready for democratic and accountable governance.

Last week in the same room we launched the Afrobarometer results. Its part of a survey done across 34 African countries and we coordinated 10 southern countries. And what we launched specifically was the Lived Poverty Indicator. 'How do people in Africa feel about poverty? Do they feel their situation has improved?' We did it against the backdrop of the narrative of 'Africa rising,' that things are getting better. It seems interesting, Ahmed, that Kenya despite the growth rate of up to 5% in the last five years had the biggest discontent on the list. Which means what the citizens are saying is that our country is rich but the money is not seen on the ground. On what TJ ought to achieve, communities across 34 countries indicated that if the TJ process does not provide a dispensation that starts to reduce poverty then we are seriously going to have problems.

The second thing I want to say is that you know I have often wondered about South Africa, Kenya, and Zimbabwe - whether the battle for transitional justice is not really the battle to control institutions? It's interesting. I attended the induction of both the TJRC and NCIC in Kenya and it was interesting to note the difference between the two commissions. In the TJRC, the politics was thick in the air and you could just see people who were occupied with themselves. They had a three-year mandate. It was also more high profile, always in the media, controversial and so on. And then I attended the NCIC Commission and it was understated, calm but resolved and had an open-ended mandate, decided that they would start small and move systematically. We have gleaned a huge amount of knowledge from their work but the point is if you look at the two Commissions, which one has been more successful? I don't think it's difficult to conclude. And I would say the battle for transitional justice is crucial for the institutional independence. What we usually forget about the truth making process is that without the courts in South Africa we would not have had the TRC. The courts provided the expertise. We had judges sitting on the Amnesty Committee; it provided the credible threat for the perpetrators to come forward. It provided the powers of arbitration when the Commissioners actually had fights within their own ranks. And finally the courts also pronounced the TRC process "legal" with a very interesting ruling, which I

just want to quote you to refresh your memory. What this ruling says is that, “judicial justice and the TRC need one another”.

## **What is the implication for Zimbabwe?**

You know for us coming from South Africa our legal system was totally compromised. We had the rule of law but it was the wrong law. And judges slavishly followed the law and executed hundreds of activists through the death penalty. So the rule of law can be very violent and if you come out of a system where the rule of law has been compromised, how do you restore its credibility? Judge Mohammed says, “Most of what transpired in South Africa’s shameful history is shrouded in secrecy. Secrecy and authoritarianism have concealed the truth in little crevices of obscurity in our history. Records are not easily accessible, witnesses are often unknown, dead, unavailable, or unwilling. All that effectively remains is the truth of wounded memories of loved ones sharing instinctive suspicions.”

The TRC addresses this problem by encouraging these survivors and the dependents of the tortured and wounded, the maimed and the dead to unburden their grief publicly, to receive collective recognition of a new nation that they were wronged, and crucially, to help them discover, what did in truth happen to their loved ones. That truth which the victims of repression seek and are desperate to know is in the circumstances much more likely to be forthcoming if those responsible for such monstrous deeds are encouraged to disclose the whole truth with the incentive that they will not receive punishment, which they undoubtedly deserve if they did do these things. With that incentive, what might unfold are objectives fundamental to the ethos of a new constitutional order. Both victims and the culprits who walk on the historic bridge described in the epilogue of the interim constitution will hobble more than walk to the future with heavy and dragged steps delaying and impeding a rapid and enthusiastic transition, which is the vision of the epilogue.

So restorative justice was seen as creating the condition for the restoration of the credibility of the rule of law, which is being discredited by revealing the truth, coming clean and starting with a new dispensation. And if that process is seen as a cover up like the Marikana Commission now, then you are not taking the nation forward to the future. It is vital that a new beginning is made in such a commission. So, ‘the day after, the morning after’ all this happened: Government understood the monumental clash between the project of Thabo Mbeki to rewrite South African

history from an apartheid perspective into a liberation mode perspective and the project of TRC to say two things.

*“We acknowledge a just war against apartheid, but we also acknowledge that bad things happened in that just war and that just war does not justify rights abuses. Everybody has to account for their actions.”*

Now to that Tutu was basing his thoughts on a particular line of thinking in the ANC that goes back to three commissions of inquiry that the ANC instituted on themselves. Before democracy the ANC investigated its own camps for human rights abuses. So the ANC had already started its own abuses. Similarly the apartheid government had instituted the Goldstone Commission. On the basis of what was revealed, the about the Third Force three generals were fired by De Klerk as a result before the transition.

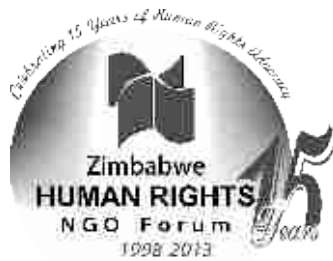
But there was another stream in both parties, the politicians, saying we need amnesty. And, apparently, it seems now that the apartheid generals blackmailed the ANC into amnesty. But it's not like that. It's because earlier on they had agreed on the need for amnesty. In fact Thabo Mbeki seems to have already said this in 1987 in London. So the politicians agreed on amnesty though there were these introspective accountability streams in the parties, and these streams of amnesty and accountability in the TRC. But Mbeki was leading the process now saying we cannot now think of SA in terms of apartheid any more. We have got to create a narrative of the past. And he did not agree with what the TRC said and he clashed publicly with Tutu on this. And this was then rolled over on our schools where the TRC was not taught for some five or so years until my organisation stepped in and they began producing resources for the schools in SA. Be prepared 'the morning after', for major ideological clashes. The report will make everybody cross. If it does its job well it is going to irritate across the political spectrum as it did with De Klerk - he is still cross with it. The TRC did its work well and the political will to say "well we will implement something that irritated us" is crucial.

Secondly I will just say I think that subsequent to the commission, a major problem is that governments tend to veer towards unaccountability. That's why we need independent institutions. That's why I said the accountability line and the amnesty line came together afterwards. The accountability line faulted when we gave it back to government and the amnesty line continued. So be prepared that you are going to have an independent monitoring agency with great credibility and if there is any country that has capacity to have a civic body of

heavyweights, it is Zimbabwe that can oversee that this process and make sure that the recommendations are implemented, unbiased in any way.

And finally, we once had a meeting where we asked the then Finance Minister Trevor Manuel to come and speak on reparations and this was in 2004 or so. Then at that point the Minister said, "My responsibility is not to the 22 000 victims of the TRC, my responsibility is to the 22 million victims of apartheid." That was Trevor Manuel's line. To him apartheid was primarily a structural violence process and not a personal violence process. So this emphasis on personal crimes detracts from the bigger picture which is the structural violence, the disenfranchisement of land and so on. And he has a point but fails to recognise that there was a deal made by the people that arguably suffered most. They suffered both structural injustice and personal violence. And those people were identified by the TRC and they qualified for reparations. And government had made that deal with the victims and seemed to be going back on their deal in favour of the broad development approach. And that's what governments the world over do.

And I just want to say reparation is different from development because it comes with acknowledgement, saying sorry. And even if the apartheid government did this and it's the ANC government now in power, it is the state of South Africa that should say sorry. And therefore our mandate of the TRC talks of restoration of the dignity of the person and civic dignity of the victims. Restore their dignity as citizens and this should be an act of generosity by the incumbent government. If we don't have that view we also miss crucial aspects of addressing the past legacies of violence. For example in SA, imagine if we had extensive trauma counselling, would our violent crimes be that violent? Would our rape statistics compare to war zones if we had made more effort with trauma counseling in this country? So, I think it's very important to keep separate the whole idea of reparations from the idea of development and understand that there is additional symbolic acknowledgement needed for those who suffered most, that is, those who suffered both structural and personal violence as opposed to 'only' structural violence.



# About The Zimbabwe Human Rights NGO Forum

The Zimbabwe Human Rights NGO Forum is a coalition of 20 human rights organisations. The Human Rights Forum has been in existence since January 1998 when Non-Governmental Organisations working in the field of human rights joined together to provide legal and psychosocial assistance to the victims of the food riots of January 1998. The Human Rights Forum has now expanded its objectives to assist victims of organized violence and torture (OVT).

The Forum has three operational Units: the Public Interest Unit (Legal Unit), the Research and Documentation Unit and the Transitional Justice Unit.

The Forum works in close collaboration with its member organisations to provide legal and psychosocial services to victims of OVT and to document all human rights violations, particularly politically motivated violence.

## **Member organisations of the Zimbabwe Human Rights NGO Forum**

- ▶ Amnesty International-Zimbabwe
- ▶ Catholic Commission for Justice and Peace - Zimbabwe
- ▶ Counseling Services Unit
- ▶ Gays and Lesbians of Zimbabwe

- ▶ Justice for Children
- ▶ Legal Resources Foundation
- ▶ Media Institute of Southern Africa-Zimbabwe
- ▶ Media Monitoring Project Zimbabwe
- ▶ Non-violent Action and Strategies for Social Change
- ▶ Research and Advocacy Unit
- ▶ Students Solidarity Trust
- ▶ Transparency International-Zimbabwe
- ▶ Women of Zimbabwe Arise
- ▶ Zimbabwe Association for Crime Prevention and Rehabilitation of the Offender
- ▶ Zimbabwe Association of Doctors for Human Rights
- ▶ Zimbabwe Civic Education Trust
- ▶ Zimbabwe Human Rights Association
- ▶ Zimbabwe Lawyers for Human Rights
- ▶ Zimbabwe Peace Project
- ▶ Zimbabwe Women Lawyers Association

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## Second International Conference on Transitional Justice in Zimbabwe

**KENYA GUATEMALA SIERRA LEONE SOUTH AFRICA**

A society with a violent past has the right to seek the truth. This right belongs to individuals, as well as the society as a whole. At the international level, the right to truth has been recognised as a legal basis to establish truth commissions or other similar mechanisms, due to the need of the victims, their relatives and general society to know the truth about what has taken place. A commission is able to facilitate the reconciliation process; contribute to the fight against impunity as well as reinstall and strengthen democracy and the rule of law. It provides a public platform for victims to address the nation directly with their personal stories and can facilitate public debate about how to come to terms with the past. Zimbabwe's new Constitution provides this platform through the National Peace and Reconciliation Commission. To interrogate the question on how to make this commission effective, the Zimbabwe Human Rights NGO Forum, the Institute for Justice and Reconciliation and the the Hague Institute for Global Justice convened the Second International Conference on Transitional Justice in October 2013. Presenters came from Kenya, Guatemala, Germany, South Africa and Sierra Leone and shared the experiences of different countries in establishing commissions. Truth commissions have numerous facets and the wealth of first-hand experience was shared from the listed countries. The discussions ranged from the history of violations, the International Criminal Court (ICC), to the internal dynamics of commissions. The manner in which the various commissions dealt with human rights, reconciliation, mediation and legal frameworks were only some of the many additional topics discussed by transitional justice stakeholders and academics from Zimbabwe and around the world. This report presents the substance of the conference as well as the outcomes, which are currently shaping the transitional justice stakeholders' strategy on making Zimbabwe's National Peace and Reconciliation Commission effective.

**TRUTH, JUSTICE & RECONCILIATION COMMISSIONS**



The Hague Institute  
for Global Justice