

Political Crisis, Mediation and the Prospects for Transitional Justice in Zimbabwe.

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Part I: Introduction

On the 15th September 2008 Zanu PF and the two MDC formations signed a political agreement brokered by Thabo Mbeki under the mandate of SADC. The agreement was the culmination of a process that had begun in March 2007, which was itself preceded by various other attempts by African leaders, as far back as 2004, to bring an end to the Zimbabwean political crisis. The central aim of the September agreement was to find a power sharing arrangement that would reflect the balance of political power in the country after the March 2008 Harmonised elections, which, together with the abortive presidential run-off election at the end of July 2008, left the issue of the presidential election unresolved. While the Agreement left key areas, such as the allocation of ministerial portfolios unresolved, it also comprised a good basis for moving the political situation forward in Zimbabwe.

However one of the major silences in the Agreement was around the area of Transitional Justice. This was not surprising given the fact that Zanu PF, the major perpetrator of human rights offences in the post-colonial period, was not likely to support such a process. Moreover the MDC for its part, though not without its own problematic history of intra-party violence, neither sought to make this issue a deal breaker in the negotiations, nor had the political muscle to enforce such an inclusion. Thus the September 2008 Agreement contained one section that set out to:

..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.¹

Moreover this provision was lodged in the context of a discourse in the Agreement which attempted to combine the demands for dealing with human and civic rights abuses, with the need to resolve issues around the redress of historical inequalities. Thus the language sought to encompass both Zanu PF's redistributive demands around the land question, with the more political demands for democratization that have become the hallmark of the MDC and civil society movements in

¹ Agreement between the Zimbabwe African National Union-Patriotic Front (Zanu-PF) and the Two Movements for Democratic Change (MDC) Formations, on resolving the challenges facing Zimbabwe. 15th September 2008, Harare.

Zimbabwe.² It is around such tensions in the political struggles in the country that discussions on Transitional Justice need to be contextualized.

Within the framework of the broad structural and human rights abuses that were a constitutive part of colonial rule, there have been three major periods of human rights abuses: The War of liberation 1965-79; the 1980s disturbances in Matabeleland and the Midlands, 1980-1988; and the era of violence since 2000.³ The human rights abuses of the colonial period were generated in the long struggles between the violent structural exclusions of settler colonial ideology and practice, and the often intolerant assertions for unity by a nationalist movement that was ‘majoritarian without qualification’.⁴ In the post-colonial period a combination of the authoritarian legacy of settler rule, the militarist forms of nationalist struggles and the monopolisation of the state by the ruling party bred a new round of human rights abuses that have continued into the present period. Moreover such abuses have been embraced with various amnesty laws at the end of each of these periods of state-led violence.

From the period of the 1990s, with the emergence of vibrant civil society struggles around constitutionalism and human rights in Zimbabwe, human rights organizations intensified their efforts to place transitional justice questions on the national political agenda. The Report on the disturbances in Matabeleland and the Midlands in the 1980s was arguably the first major call for transitional justice in the independence era, and remains a central reference point for continuing work in this field.⁵ Its major recommendations were centered on the following areas: National Acknowledgement; human rights violators; legal amendments; identification and burial of the remains of missing persons and remains buried in unmarked graves; health; communal reparation; and constitutional safeguards. Many of these recommendations remain pertinent in the contemporary period.

Following this report in the late 1990s, an important symposium on ‘Civil Society and Justice in Zimbabwe’ was held in Johannesburg in August 2003, that brought together many of the key civil society organizations working in this field. This symposium set out several recommendations that sought to deal with human rights abuses in both the colonial and post- 1980 periods.⁶ Many of these

² For a discussion of the tensions around this debate in Zimbabwe see Brian Raftopoulos, “The Zimbabwean Crisis and the Challenges for the Left.” *Journal of Southern African Studies*, Vol 32, No 2, June 2006, pp 203-220.

³ Shari Eppel, “A Brief History of Violations of Human Rights in Zimbabwe since 1965 to the Present.” Paper prepared for the International Centre for Transitional Justice, New York, October 2003.

⁴ Terence Ranger, ‘Introduction’ in Terence Ranger (Ed) **The Historical Dimensions of Democracy and Human Rights in Zimbabwe**, University of Zimbabwe Press, Harare, 2003, p21.

⁵ The Catholic Commission for Justice and Peace and The Legal Resource Foundation, **Breaking the Silence, Building the Peace: A Report on the Disturbances in Matabeleland and the Midlands 1980 to 1988**. CCJP/LRF Harare, 1997.

⁶ **Civil Society and Justice in Zimbabwe: Summary of the Proceedings of a Symposium held in Johannesburg 11-13 August 2003**. Themba Lesizwe, Pretoria, 2004.

recommendations were then included in the recommendations of a workshop held by the Zimbabwe Human Rights Forum on 9-10th September 2008, in Harare. The Forum called for transitional justice mechanisms that would recognize the following principles: “Victim-centered; comprehensive; inclusive; consultative participation of all stakeholders particularly the victims; the establishment of truth; acknowledgement; justice, compensation and reparations; national healing and reconciliation, non-repetition; gender sensitive; transparency and accountability; and nation-building and re-integration.”⁷ The Forum also set what it termed ‘non-negotiable minimum demands for a transitional justice process.’ These included:

- No amnesty for crimes against humanity, torture, rape and other sexual offences, and economic crimes such as corruption;
- No extinguishing of civil claims against the perpetrators or the state;
- Comprehensive reparations for victims of human rights violations;
- No guarantee of job security for those found responsible for gross human rights violations and corruption.
- A credible and independent truth seeking inquiry into conflicts of the past which holds perpetrators to account and which provides victims the opportunity to tell their stories with a view to promoting national healing.
- Independent monitoring and reform of operations and structures of the police, army, paramilitary, security coordination, administration of justice, food distribution and other organs of state involved in the implementation of the transition.
- Development of interim or transitional rules to guarantee the rule of law and upholding of all basic rights during the transition, including the right to engage in political activities. These rules must be enforceable. They must be encapsulated in amendments to the Constitution or an interim constitution. Such rules must remain in place until free and fair elections are held and until a final Constitution, endorsed by the people, is in place.
- A gender equity in official bodies and for transitional justice initiatives to pay particular attention to marginalized communities in Zimbabwe. ⁸

These demands were very much a wish list of desirable processes and outcomes for transitional justice and accord with Boraine’s conception of the five key pillars of what he calls a ‘holistic

⁷ Zimbabwe Human Rights Forum, Minimum demands adopted by participants at the Transitional Justice Workshop “Options for Zimbabwe” held at the Holiday Inn, Harare 9-10 September 2008.

⁸ Ibid

approach to transitional justice': Accountability; truth recovery; reconciliation; institutional reform; and reparations.⁹ However it is also clear that such a set of demands are not likely to be implemented, given the nature of the September political agreement in Zimbabwe, and the balance of political power in the country. Thus there is a danger of setting out civic demands for transitional justice that are, to use Mahmood Mamdani's critique of the ethos of the Truth and Reconciliation Commission in South Africa, a 'combination of strong moral fervor and weak political analysis.'¹⁰ Moreover such transitional justice recommendations tend to gloss over the longer term structural injustices that have engendered Mugabe's authoritarian nationalism and the anti-colonial discourse that has constructed the human rights question as a Western imposition. In the context of the failures of neo-liberal economic policies in Africa, the efficacy of transitional justice processes that are not connected to broader structural changes in the economy can very quickly be undermined by revived nationalist politics around redistributive agendas. It is therefore important to understand the broader global context for the emergence of TRCs in which the latter have "served as instruments for re-establishing political and institutional stability according to liberal democratic norms" and the discourses of reconciliation, forgiveness and political consensus "have been understood as the basis for moving forward into an era of market-driven economic progress."¹¹ The Zimbabwe crisis and the repudiation of Reconciliation politics that accompanied it at the end of the 1990's, emerged in the context of a failed economic liberalization programme.¹² Given the enormity of the economic collapse that characterizes the current situation in the country, and the global catastrophe around de-regulated finance capital in 2008, measures around transitional justice which lose sight of these major structural constraints have little chance of success.

It is therefore the major purpose of this paper firstly, to set out the current political and economic constraints in Zimbabwe in **Part 11**, and then, in **Part 111**, to suggest ways in which transitional justice options can begin to be set out. It is hoped that the analysis provided here will present a more realistic assessment of the prospects of transitional justice processes being placed on the national political agenda in Zimbabwe in the current context.

Part II: The Political Context 2008

⁹⁹ Alex Boraine, "Transitional Justice: A Holistic Interpretation," In A Boraine and S Valentine (Eds), *Transitional Justice and Human Security*, International Centre for Transitional Justice, Cape Town, 2006

¹⁰ Mahmood Mamdani, 'Reconciliation without Justice.' *Southern African Review of Books*, November/December 1996. .

¹¹ Greg Grandin and Thomas Miller Klubock, " Editors Introduction- Truth Commissions: State Terror, History and Memory." *Special Issue, Radical History Review*, Issue 97, Winter 2007, p5-6.

¹² Brian Raftopoulos and Tyrone Savage (Eds), **Zimbabwe: Injustice and Political Reconciliation**. Institute for Justice and Reconciliation Cape Town, Weaver Press, Harare, 2004.

The elections for parliament, senate, local government and the presidency that took place on 29 March 2008, led to the first electoral defeat for the ruling party Zanu PF and its president Robert Mugabe. The two formations of the MDC, which split in October 2005, won a majority 109 seats in parliament against Zanu PF's 97 seats, while the first round of the presidential vote gave the MDC leader 47.9% of the vote to Mugabe's 43.2%. The remainder of the vote went to Zanu PF dissident Simba Makoni. However the inability of either presidential candidate to win 50% plus one of the votes necessitated a run-off vote. The state-led violence that preceded this run-off at the end of June was of such intensity that even Mugabe's long standing support in SADC and the AU could not endorse his election 'victory'.

Mugabe's failure to receive an endorsement in Africa combined with the long-standing condemnation he had received from the West, added to the pressure for the Mbeki-led SADC mediation to find a political solution to the crisis. On 21 July 2008 both Zanu PF and the two MDCs signed a Memorandum of Understanding (MOU) committing their parties to 'creating a genuine, viable, permanent, and sustainable solution to the Zimbabwe situation.' The agreement also set out to achieve : The immediate cessation of violence and the withdrawal and disbanding of militia groups, paramilitary camps and illegal blocks; the normalization of the political environment; the reinstatement of access by humanitarian agencies to the people of Zimbabwe in order to provide food, medical and other critical services throughout the country; and the commitment not to take any decisions that would have a bearing on the agenda of the dialogue such as the convening of parliament or the formation of a new government.

On 24 July 2008 Zanu PF and the two MDCs resumed the negotiations that had broken down before the March elections under the mediation of SA President Mbeki. By 6 August the negotiators adjourned with several issues outstanding: The duration of the transitional government; the form and structure of the interim constitution; framework issues pertaining to the new government; the powers and duties of the president and the prime minister in the transitional government; and the method and appointment or election of the prime minister and president. Whereas the South African mediators had crafted a compromise that attempted to spread executive authority of an inclusive government between the President, Prime Minister and cabinet, the MDC of Morgan Tsvangirai saw the compromise as allowing Mugabe to retain too much power as the Head of State. For Tsvangirai and his party, any agreement under the MOU needed to reflect the parliamentary and presidential outcomes of the March elections, effectively installing Tsvangirai as interim head of state until a new presidential election could take place under a constitutional reform process endorsed by a referendum.

In Zanu PF's view Tsvangirai asked too much of the March elections which had left the Presidency undecided. The ruling party thus sought to retain as much power as possible under a government of national unity headed by Mugabe, with the Joint Operation Command composed of the heads of the army, police and security services, continuing to play a central role. In the words of one Zanu PF's negotiators, Patrick Chinamasa:

‘There is no basis whatever to justify Tsvangirai’s demands. He wants President Mugabe to become (former titular President Canaan) Banana. But judging by the March 29 Elections there can be no basis for these demands. What he is asking for is a transfer of power, not a sharing of power.’¹³

Mugabe’s negotiators felt that ‘no single party can argue for transfer of power to itself because no single party has the absolute majority to say we are entitled to have power transferred to us.’¹⁴ The growing congruence between the position of the smaller MDC, on the one hand, and Zanu PF and SADC on the other was the result of several factors. These included the increasing tensions and lack of trust between the two MDCs since the 2005 split, the shrinking of the support base of the Mutambara formation, and the greater reliance on the mediation process by the Mutambara group to secure a foothold in a political settlement. The fact that the minority MDC gained 10 seats in the March election also gave it important leverage between the two major political parties, since it held the votes that could swing the majority in parliament. Since the discussions began under the July MOU, the tensions between the two MDC formations continued. Mugabe was not slow to capitalize on these tensions and attempted to cultivate a closer relationship with the Mutambara group, thus weakening the negotiation position of the opposition.

The result of these tensions between the two MDCs was exemplified in the vote for the speaker of parliament on 25 August 2008. Both MDCs put up rival candidates for the post, with most of the Zanu PF MPs voting for the Mutambara candidate Paul Themba Nyathi. The Tsvangirai, candidate, Lovemore Moyo, won the speakership with additional votes from both Zanu PF and the smaller MDC, dealing a major blow to the smaller MDC. In the process of winning the speaker position Mugabe was jeered and howled at during his speech in parliament, and suffered a deep sense of humiliation. This event evoked a short-term sense of victory. However the sad irony of watching the two MDCs foreground their own differences before the larger problem of the Mugabe regime, spoke to the continuing difficulties of building strong opposition politics in Zimbabwe.

With the continuing blockages in the mediation process the MDC (Tsvangirai) adopted a three pronged strategy against the Mugabe regime. Firstly it chose to reject the current terms of the agreement crafted through Mbeki’s mediation, and to push for the mediation process to be shifted from SADC to the AU and the UN. This position accorded with the MDC’s well known distrust of Mbeki’s ‘quiet diplomacy,’ as well as with the tensions that emerged between Mbeki and the EU/US on the Zimbabwe question, with the latter pushing for a UN Security Council decision on sanctions against the Mugabe government. Both the EU and the US repeatedly made it clear that they would only accept an agreement on Zimbabwe that registered a decisive movement of power away from Mugabe. This is the position that the Tsvangirai MDC took in its attempt to move the negotiation

¹³ Jason Moyo and Mandy Rossouw, ‘MDC: Brown’s Trojan Horse?’ Mail and Guardian, 22-28 August 2008.

¹⁴ Interview of Welshman Ncube, Secretary General of the MDC(Mutambara), www.newzimbabwe.com/pages/mdc253.18653.html. 22/v111/2008.

initiative away from SADC. The second and perhaps less important, prong of attack by the MDC was to use its control of the legislature to create an alternative centre of power against the executive, blocking attempts by Mugabe to govern outside of a broader agreement. The third part of the MDC approach was a somewhat fatalist belief that the crisis economy would effectively undermine Mugabe's ability to govern.

The first prong of this strategy was unlikely to succeed given that the AU took its cue from SADC on the Zimbabwe question, particularly since representatives of the AU had been part of the extended reference group attached to the SADC mediation. It would thus be very difficult for the current Chair of the AU, Tanzanian President Kikwete, who had been critical of Mugabe, to move the AU away from the collective SADC position. With regard to the UN it was highly unlikely that either China or Russia, particularly in the context of the Georgia debacle, would support another attempt by the West to get a Security Council sanctions vote against Zimbabwe. On the parliamentary strategy, Mugabe had already begun a process, after the March 2008 elections, of whittling down the majority position of the MDC by arresting MDC MPs suspected of engaging in election violence.¹⁵ Such a strategy would more than likely intensify in the event of a persistent deadlock in the mediation.

Turning to the belief in the capacity of the economy to deal the fatal blow to the Mugabe government, it is clear that the majority of Zimbabweans face the prospect of continued devastation of their livelihoods as a result of the disastrous policies of the incumbent regime. Beyond the profits being made by foreign capital in the extractive sector, and the rent-seeking activities of sections of the ruling elite, the majority of the workforce in both the rural and urban sectors, face the likelihood of deepening poverty, if not mass starvation. Three prominent characteristics stand out in the economic devastation that has taken place. Firstly the hyperinflation of about 10 million % in the economy has wiped out the savings and earnings of the workforce in the context of a serious drop in production, and major shortages of food, electricity, fuel and all basic goods. As a result of this process most key transactions in the economy have been dollarized, resulting in rent-seeking activities, speculation, cross-border trading, dependence on remittances from outside the country, and criminal activity.

Secondly there has been a huge decline in formal sector employment and a corresponding growth in the informalisation of labour. The indicators of this process include: the shrinking of the formal sector workforce from 1.4 million workers in 1998 to 998000 in 2004, with the current unavailable data probably indicating further decline; and the share of wages and salaries in gross domestic income dropping from an average of 49% during the pre-structural adjustment 1985-90, to 29% in the period 1997-2003. Moreover the production crisis resulting from the land occupations has created a double squeeze on the livelihoods of workers as the breakdown of production and incomes in both the agricultural and the manufacturing sector has placed enormous stress on the reproduction of labour households.

¹⁵ "Zanu PF 'plots to seize' parliament." Business Day, 1st September 2008.

Thirdly the economy has witnessed a growing displacement of labour. During the structural adjustment period in the 1990's the volume of urban-rural labour circulation increased because of the difficulties of sustainable livelihoods in the urban areas. This trend has intensified by the greater displacement of families since 2000 as a result of the land occupations, electoral violence, the growing diasporisation of the labour force, and mass urban evictions during Operation Murambatsvina in 2005.¹⁶ The latter, aimed at clearing away the informal sector in the urban areas, and diminishing the opposition's primary constituencies, resulted in the loss of livelihoods of some 700,000 people, and a labour migration process that both pushed numbers of people out of the cities and forced others to find new places in the urban spaces.

While this enormous destruction of the economy eroded the support for the Mugabe regime, the process also presented challenges for the opposition. A central pillar of the MDC since its formation in the late 1990's has been the labour movement. However this base of opposition politics has been adversely affected by the economic crisis described above, and this has in turn created very difficult conditions for political mobilization in a number of ways. Firstly the shrinkage of formal sector employment has resulted in a drop in the rate of unionization and subscriptions, thus undermining the capacity of unions to carry out various organizational and educational activities for their members. Secondly as a result of this structural decline and more aggressive attacks from the state on union leaders, the labour movement has become more strategically defensive, and less able and willing to lead broad civic alliances as it did in the period from the late 1980's to 2000. Thirdly the strikes and stay-aways that were such an effective weapon against the state in the 1990's, when the economy was more buoyant, were no longer viable mobilization strategies in the context of a rapidly shrinking labour force. The informalisation of the labour force has moved workers away from formalized labour practices and protest actions in the public sphere into more individualized and criminalised strategies of survival. The progressive regulation of labour relations that was one of the early achievements of the post-colonial state has been replaced by growing uncertainties around work and formal labour organization.

This weakening of the labour movement and the culture of worker mobilization and organization that was central to it, has led to urgent appeals from the once strong Zimbabwean Congress of Trades Unions, for international intervention in the Zimbabwe crisis. A report on a statement made by the President of the ZCTU in 2008 to this effect noted that:

Mr. Matombo said that many of his members are too brutalized by Zimbabwean forces to organize effectively. That is why he will push his group to support stronger international

¹⁶ 'Operation Murambatsvina' is the Shona term for 'clear out the filth', an expression often used by the ruling party to refer to the urban support base of the MDC.

intervention, despite the short-term pain that a blockade or other action could cause to Zimbabwe's poor.¹⁷

Given the serious weakening of this central organisational base of the MDC it is not surprising that there emerged an almost desperate compulsion to view the economy as an active ally in the struggle against Mugabeism. What amounted to an admission of the diminished capacity of the opposition to mobilize politically at national level was increasingly translated into an adamant assertion of the capacity of an economic crisis to complete the task of that depleted resistance. Several reports indicated the pervasiveness of this conception. Morgan Tsvangirai was recorded as saying that Zimbabwe's rapid downward economic spiral would 'eventually force Mugabe to compromise,'¹⁸ a view shared by key civic leader Lovemore Madhuku who stated:

Mugabe will have a difficult time governing without a majority (in parliament), but that is not his real problem. His main and insurmountable problem is the crumbling economy. He has no room to move.¹⁹

Mugabe himself was aware of this argument and was not slow to link it to his view that this was part of a 'regime change' strategy sponsored by the West. In his opinion the MDC,

...have been promised by the British that sanctions would be more devastating, that our government will collapse in six months' time.²⁰

There was certainly a general opinion, in the opposition and the donor community, that the parlous state of the Zimbabwean economy was unsustainable and that its disastrous deterioration would soon impact on the capacity of Mugabe to continue in office. However it was also apparent that the crisis was beneficial to key sections of the ruling elite, particularly in Mugabe's major support base, the military. Additionally there was insufficient information on the survival mechanisms of the poor in Zimbabwe, and the different forms of economic relations emerging out of the crisis, that would allow the economy to persist, albeit at deplorably low levels of survival. Thus to predicate a strategy of change largely on the assumed imperatives of economic decline, faced the danger of leading to a dangerous underestimation of the continued ability of an authoritarian regime to persist.

¹⁷ Margaret Coker, 'Powerful South African labour group ponders how hard to press Mugabe.' Wall Street Journal, 9th July 2008.

¹⁸ Basildon Peta, 'Mugabe advised to quit talks.' Cape Times, 22nd August 2008.

¹⁹ Dumisani Muleya, 'Mugabe to call new cabinet, dealing blow to talks.' Business Day, 28th August 2008. This argument is also put forward by Piers Pigou, 'Malice in Blunderland,' Molotov Cocktail, 05, September-October 2008. Pigou asserts that "if Morgan Tsvangirai and the MDC can hold their nerve, the economic pressure on the rulers of Zimbabwe will eventually pay off." P15.

²⁰ Jason Moyo, 'Mugabe prepares for the next move.' Mail and Guardian, 29th August- 4th September 2008.

Political Agreement.

Given the above analysis it was not surprising that the Mbeki mediation led to a political agreement being signed by the major parties on the 11th September 2008. With limited options available to the major political players in Zimbabwe, Mbeki used the combination of such limits at a national level and pressures for change from regional and international forces, to push for a political settlement. The agreement that was eventually signed signaled the uneasy relations between a once dominant party forced to concede to the sharing of power, and an opposition party unable to muster the pressure to deliver the decisive transfer of that power away from the ruling party.

Amongst the major areas of the agreement are the following:

- Mugabe will continue to be President with two vice presidents from Zanu PF.
- The new position of Prime Minister will be occupied by opposition leader Morgan Tsvangirai with two deputy prime ministers one from each formation of the MDC.
- There shall be 31 Ministers, with 15 nominated by ZANU PF, 13 by MDC (Tsvangirai) and 3 by MDC (Mutambara), and 15 Deputy Ministers with 8,6, and 1 respectively from Zanu PF, MDC (Tsvangirai) and MDC (Mutambara).
- The cabinet will be chaired by Mugabe with Tsvangirai as his deputy and will have the responsibility to ‘evaluate and adopt all government policies and the consequential programmes.’
- The Prime Minister will chair a Council of Ministers which will oversee ‘the formulation of government policies by the Cabinet’ and ‘ensure that the policies so formulated are implemented by the entirety of government.’
- A new constitution will be agreed upon within 18 months as a result of a process that will include the participation of the Zimbabwean public and will culminate in a referendum.
- The implementation of the Agreement will be monitored by a Joint Monitoring and Implementation Committee (“JOMIC”) composed of four senior members from Zanu PF and four from each of the MDC formations.²¹

The Agreement left many areas unclear, such as the relation between the authority and decision-making status of the Cabinet and the Council of Ministers, as well as which specific ministries would be allocated to different parties. The latter problem continues to delay the implementation of the agreement as the Mugabe regime persists in its efforts to retain control of key security and economic ministries. However the agreement should be viewed very much as a terrain of struggle in which both

²¹ Agreement 15th September 2008 op cit.

parties will continue their fight for state power, in a situation where the ruling party still has the advantage over the control of the means of coercion. Zanu PF is much weaker as a political party than it was after the 2005 election, while the MDC is not yet strong enough to exert its hegemony over the state.

There have been critical positions on the Agreement from some key voices in civil society. The Zimbabwe Congress of Trades Unions warned that:

A Government of National Unity is a subversion of our National Constitution and only a Transitional Authority should be put in place with a mandate to take Zimbabwe to fresh, free and fair elections that will hopefully not be disputed by parties.²²

Moreover for the Chair of the National Constitutional Assembly (NCA) the Agreement represented a ‘capitulation by the MDC.’ However it is clear that neither of these social forces have the capacity to resist this process, and indeed the alternative proposed by the Chair of the NCA of ‘going back to the trenches and putting pressure’²³ is, for the moment, more a harking back to past possibilities than a realistic assessment of present challenges. However other voices in civil society have expressed a more cautious openness to the Agreement, willing to explore its capacity to open up political spaces in the country, and aware also of the lack of political alternatives in the current political conjuncture.

At the time of writing this assessment, the Agreement signed by the major political formations on the 11th September remains to be implemented, halted by a dispute over the distribution of ministerial posts. That the agreement should be mired in such a dispute is a reflection once again that often such struggles over the post-colonial state are viewed as zero-sum battles, with access to the state being the sine qua non for employment, patronage and future accumulation. For the ruling party the danger of losing control of this resource threatens to unravel the rent-seeking structures of profiteering that have become the dominant feature of the fortunes of the political elite. In the case of both MDCs there is clearly a sense that a prolonged period in opposition cannot be sustained in the current context of economic decline. Under these conditions the challenges of introducing transitional justice issues into the political debate will be formidable, and it is this question that the paper attempts to address in the next section.

Part III. Transitional justice options in Zimbabwe 2009/10

This paper began by referring to the demand from civil society in Zimbabwe for an end to impunity, for justice and truth, and for reparations in the wake of many decades of state violence against its own

²² Statement by the Zimbabwe Congress of Trades Unions, Harare, 16th September 2008.

²³ SW Radio Hot Seat Transcript of Interview with Lovemore Madhuku,
www.swradioafrica.com/pages/hotseat250908.htm

citizens. Both MDCs have stated in their policy documents over the last nine years, that a truth commission should take place under an MDC government, and civics have stated there should be no amnesties. Interactions at the community level by ourselves and others for more than a decade make it clear that many victims urgently desire both justice, and the chance to be heard. One of the primary criteria for the likelihood of any formal truth-telling and/or prosecutorial process taking place and succeeding is thus in place in Zimbabwe – namely a strong desire on the part of a significant segment of the population for such a process to take place.²⁴

However, there are other important preconditions and realities to be considered in assessing whether a nation is likely to succeed in adopting an official policy of transitional justice processes, including widespread prosecution of senior leadership, or in the setting up of a truth commission. The earlier sections of this paper have already located the Zimbabwean transitional justice debate as occurring in the context of a near total collapse of the economy, including of health, education and food production, and this collapse is itself indicative of longer term structural injustices that have enabled ZANU PF to entrench its authoritarianism. Furthermore, any TJ process under the current power-sharing arrangement risks being derailed by the ideological clash between the understandings of MDC and ZANU PF as to what it is that should be accounted for, and as to whether there should be any accounting at all for post colonial abuses, for example.

There have been at least 25 official truth commissions/commissions of inquiry into human rights abuses world wide since the June 1974 Commission of Inquiry into the Disappearance of People set up by Idi Amin in Uganda. The majority of these have been only very marginally successful, or have failed to achieve much – including the 1974 Ugandan one. Amongst the major challenges facing truth commissions are: The problem of “over-reach” in the context of debilitating economic and political conditions; lack of consultation with a broad range of political and civic actors; inadequate preparation by groups hoping to make inputs into the process; high expectations particularly around the problems of reparation and prosecutions; the absence of long-term institutional follow-up to support the process; avoiding the temptation to use other countries experiences in this area as a model to be replicated in different contexts.²⁵

Under the power sharing arrangement, ZANU PF retains much control of the state and the accompanying corrupt access to wealth. It is hard to imagine, therefore, that they will allow prosecutions of, for example, Perence Shiri, who was Commander of the 5 Brigade in 1983/4, when 10,000 Ndebele speakers were massacred in the west of Zimbabwe, and who is now Commander of

²⁴ Priscilla Hayner, *Unspeakable truths: confronting state terror and atrocity*; Routledge, 2001.

²⁵ *Ibid*, page 214. (Also contribution by Priscilla Hayner at an Idasa Meeting on “Transitional Justice Options in Zimbabwe”, Pretoria, 24th October 2008.) The Uganda Commission was set up by Amin as a face saving measure because of international pressure, without political commitment to real change: it documented 308 forced disappearances but did not prevent a worse wave of abuses in its wake. Only one copy of the report is alleged to exist in Uganda.

the Zimbabwe Air Force.²⁶ Emmersen Mnangagwa who was head of the Central Intelligence Organisation (CIO) in the 1980s, remains highly influential within the ruling party and has allegedly played a key role in the violence of the Joint Operational Command during 2008.²⁷ Much of the Zimbabwean bureaucracy has been militarised, and military chiefs are to be found in many high places in parastatals and elsewhere, with a vested interest in the current status quo of impunity being maintained, in order to maintain not just their freedom, but their excessive, corruptly gained wealth. Previous reports by human rights organizations have shown clear links between many in senior positions and gross human rights violations.²⁸ In terms of the power sharing deal, ZANU PF retains control of the Ministry of Justice, the CIO, the army, and through the fact that the president appoints the Chief of Police, will continue to have close to blanket control of the whole Joint Operational Command – now called the National Security Council.

How, in this situation, in which furthermore the impartiality of the Courts has been shown to be highly suspect, does civil society intend to ensure prosecutions of senior perpetrators? As mentioned already in this paper, it seems unlikely that Morgan Tsvangirai will push for any process of national accountability at this stage. He has remained vague recently on the issue of amnesties and prosecutions, and has reiterated several times that ZANU PF should not fear MDC having the Ministry of Home Affairs (including the police) as they would not use this to seek vengeance.²⁹ In the interests of maintaining the power sharing deal, MDC is unlikely to rock the boat by reminding ZANU PF of their transgressions at this stage.

Prosecution aside, a key criterion in the success of a truth commission is that official support must be there at the highest level. If this is not the case, then the process is likely to be derailed by: debates around its preparation that last indefinitely; a toothless model being agreed to; the repression of the final report, or by creating unacceptable risks to those who come forward to testify.

Zimbabwe already has a very bad record in relation to official commissions of inquiry into human rights abuses since Independence in 1980. There have been two formal commissions of inquiry – the Dumbutshena Commission of Inquiry into the Disturbances in Entumbane (Bulawayo) in 1981 and the Chihambakwe Commission of Inquiry into the Disturbances in Matabeleland, in 1984. Both of

²⁶ CCJP and LRF, op cit.

²⁷ 'Exposed: The Mnangagwa, Makoni Plot', Zimbabwe Times, 17 July 2008.

²⁸ See Zimbabwe Human Rights NGO Forum reports at; www.hrforumzim.com/frames/inside_frame_special.htm. See also Amnesty International, "Time for Accountability", November London, 2008.

²⁹ Most recently at a rally in Harare on Sunday 12 October 2008. Then on 1 Nov in Bulawayo, Tsvangirai called for a truth commission and said that "without justice we cannot move forward" ["Tsvangirai calls for truth commission, AFP, 1 Nov 2008.] This immediately led to ZANU PF accusing Tsvangirai of trying to derail the unity agreement, 'in illustration of the point we are making that a truth commission is too divisive to be successful at this point in time.' [Tsvangirai dabbling in peripheral issues: ZANU PF, www.zimonline.co.za, 4 Nov 2008.]

these commissions have had their findings suppressed by the State to date – in both instances to suppress State complicity in the abuses. The Chihambakwe Commission of 1984 investigated the massacres of what is now believed to be around 10,000 people by the 5 Brigade during 1983; yet at the very same moment as commissioners sat recording statements in February 1984, the same 5 Brigade was actually overseeing further murders in Bhalagwe Camp in Matabeleland South, less than 200km away from where the Inquiry was taking place in Bulawayo! The LRF recently took the government to court demanding the right of the nation to see the Chihambakwe Report: the court ruled in favour of LRF, but the government then announced that there had only been one copy of the report and it had been lost, so they were unable to comply!

In short, even though it would not be easy for such blatant suppression of proceedings and findings to occur at this stage in Zimbabwe, we need to be sure that conditions are right for an official, full disclosure of truth before promoting a half hearted process that aggravates and thwarts the nation's ultimate need for truth and accountability.

Commissioning a commission

If one examines who creates and empowers a truth commission, it can be seen that the majority of truth commissions are established by presidential decree.³⁰ This seems an unlikely prospect in Zimbabwe under Robert Mugabe! Less commonly, the national legislature may create a truth commission, such as in South Africa. Although the MDC has a majority of support in the Lower House, ZANU PF still has the overall legislative power to block such a move in the Senate if they wished to, and certainly to water down the terms of reference and powers of such a commission, possibly rendering it a face saving but powerless event.

Truth commissions can be introduced as part of a peace accord – however the power sharing agreement signed by ZANU PF and the MDC in September 2008 does not clearly enunciate on the issue of a formal truth commission, as we have already pointed out, making only a weak reference to “considering” a mechanism for national healing. This rather tentatively framed clause is a good indication of the ambivalence with which ZANU PF views such a process – an agreement to *consider* such a mechanism is not an agreement to *agree* to such a mechanism!

Even though the likelihood of a strong framework for a truth commission being developed at this stage is not strong, should some kind of an official process nonetheless be pushed for at this time?

The shortcoming with this is that if a commission is instituted and is given a weak mandate, or if it turns out that the space/freedom of movement/security for victims does not currently exist for a successful inquiry, it is not likely that a second commission will be set up when the timing is better.³¹ Most seriously, testifying at a commission ought not to create risks for victims, and as long as ZANU

³⁰ Ibid, page 214, for summary of most common histories of truth commissions in section following.

³¹ Hayner. Ibid, page 202.

PF remains in control of the army, CIO and the Ministry of Justice, the risk to victims, particularly in rural areas, cannot be minimised. While one can be generally optimistic that Zimbabwe will not deteriorate into widespread violence at this stage, it could be pragmatic to let events unfold over the next year or two and then to reassess the degree of official space for a truth commission initiative.³²

However, while an official truth commission may not be possible or advisable at this time, civil society and the opposition should continue to debate the parameters and mandate of a future truth commission, which may become more possible in a year or two from now. Such discussions involving all Zimbabweans could occur in the context of the forthcoming, officially mandated process of debating a new constitution. In terms of the power sharing agreement this process will begin with the appointment of the new cabinet and will run for eighteen months.

Transitional Justice initiatives possible now

While official, national TJ processes are unlikely to take place, much can still be done towards promoting “*accountability; truth recovery; reconciliation; institutional reform; and reparations*”.

I. Accountability

Since the food riots of 1998, Zimbabwean civics have endeavored to make the law work for victims of political abuses by prosecuting perpetrators where known. While this has seldom proved successful, on occasion damages have been won through the courts, notably for some of the victims of the food riots.³³ Throughout the last eight years, civics has continued to attempt to use the law to achieve moments of justice, but this has become increasingly difficult as the impartiality of the judiciary has become undermined, and as the state has turned the tables by passing repressive and unjust laws, which it has then used to criminalize the opposition. The Public Order and Security Act in particular has been used to prevent civic and political activity, with several thousand political arrests since 2000.³⁴ However, legal records exist of many of these arrests, contributing to documentation of events, and Zimbabwean lawyers have done a courageous job of trying to insist that the police and the courts hold people accountable, and exposing their failure to do so.

While prosecutions of senior government officials is unlikely to be possible for reasons given above, the prosecution of many hundreds or even thousands of human rights violators at the community level is more likely to be accomplished – and may well go a long way towards the deeply perceived need for justice currently felt by victims. A remarkable phenomenon of the violence of April-June 2008, is that probably the majority of victims are able to name at least some of their perpetrators. This

³² At the moment human rights violations continue in pockets of the country, notably in Manicaland.

³³ Zimbabwe Human Rights NGO Forum managed to win damages for a handful of victims; this was then challenged by the state and in the meantime inflation has rendered the damages meaningless.

³⁴ See SPT, *Policing the State*, 2006, for an account of around 2,000 political arrests.

is the result of the tragic reality that it has most often been neighbours and even family members that were responsible for horrendous assaults, murders, and destruction of property within their own communities.³⁵

In relation to 2008 violence, there have already been arrests and prosecutions of handfuls of individuals who stole cattle from their neighbours or who assaulted them in the context of the political violence. Such prosecutions have depended very much on the cooperation of specific local policemen and magistrates.³⁶ But the precedent has been set, and it is a straightforward strategy for civics to continue to promote such arrests and trials across the country, in both the urban and rural settings, by providing free legal and moral support to those willing - and brave enough to risk repercussions in the still unstable current context - to go ahead with laying charges. However, prosecution is more problematic for victims whose attacks occurred more than three years ago, as these the right to claim damages will have prescribed in terms of current laws. An amendment is needed to the law when politically possible, as indicated already by the Forum - "no extinguishing of civil claims against the perpetrators or the state".³⁷

2. *Truth recovery*

Civil society in Zimbabwe has already done a remarkable job of keeping track of human rights violations, in particular over the last eight years, but also previously to this.

In 1998, the Catholic Commission for Justice and Peace and the Legal Resources Foundation released "Breaking the Silence, Building True Peace: a Report on the Disturbances in Matabeleland and the Midlands 1980 to 1988." This report, and the processes undertaken to develop it, emulated many of the characteristics of a formal truth commission. Over a thousand victims of the atrocities came forward to testify to two interviewers over the course of several months, and their testimonies together with archival evidence, was used to produce a history and a database of abuses. The report included a section on recommendations of what was needed to heal the region. Interest in this report has not waned, as it remains the only concerted locally driven effort to document events of these years, and it was in fact reprinted in 2007, ten years after its initial release. A summary has also been released in all three official languages.

In the late 1990s, state violence once more rose, in relation to food riots in Harare in 1998, and civil society came together at that time to document and prosecute state offenders where possible. This meant that in 2000, when abuses became epidemic ahead of the June election, civics were well situated to document them.

³⁵ HR organizations have tracked the names of perpetrators over the last few years, but in many instances victims have not been able to name their torturers.

³⁶ SPT, *Desperately seeking sanity*, July 2008.

³⁷ The Forum, *op cit*, 10 Sept 2008.

Since 2000, literally hundreds of documents and reports have been released by organisations such as the Zimbabwe Human Rights NGO Forum, which does monthly violence reports, Solidarity Peace Trust, which does two or three major reports a year on current violence and related issues. The Crisis in Zimbabwe Coalition, the Zimbabwe Peace Project, Zimbabwe Lawyers for Human Rights, the Media Monitoring Project of Zimbabwe, the Zimbabwe Electoral Support Network and the Catholic Commission for Justice and Peace have all produced reports on a periodic basis over the last eight years, particularly with regard to human rights abuses during election periods.

These records importantly include thorough medical records of torture, murder and assault, as well as lawyers' records and sworn statements relating to abuses both in and out of state custody.

In many countries around the world, such as in Guatemala, Brazil and Colombia, Nigeria, Turkey and Morocco, civic groups have led the way in recording the abuses of their governments. In Brazil, while there has never been an official truth commission established, the *Nunca Mais* report of 1985 by church activists and lawyers became a best seller and has achieved something of the status of an official inquiry.³⁸

In Guatemala, the REMHI project (Recovery of Historical Memory) produced the *Nunca Mas* report based on tens of thousands of interviews conducted by the Catholic Church, after their Bishops seized the initiative in the wake of their 1996 Peace Accord.³⁹ In terms of this peace accord, a Historical Clarification Commission (CEH) was agreed to, but the Church feared that this government driven process would be highly selective and it was not mandated to name perpetrators. They therefore set up a parallel process, and as the Catholic Church reaches into the remotest of villages in Guatemala, they gathered remarkable and shocking evidence of the massacres and disappearances of 30,000 people.⁴⁰ The REMHI report is a remarkable piece of work, running to thousands of pages; a 300 page summary has been translated into 16 languages and sold worldwide. The REMHI report, released early in 1999, ultimately fed into and greatly enriched the official CEH report, released later that same year. While the unofficial REMHI report remains more widely read, the combination of these two reports, one official and one unofficial, means that the history of events in Guatemala during the 1980s can never again be denied – and hopefully also cannot be repeated.

The examples from around the world, and from Zimbabwe itself, is that formal reports can be written and processes that in many ways are identical to those of official truth commissions, can be undertaken by civic and church groups. Victims can be given the chance to be heard and of having their story recorded, either by individual interviewers, or by their local communities, as a result of

³⁸ Daan Bronkhorst, "Truth commissions and transitional justice – a short guide for users", Amnesty International, Netherlands, 2003.

³⁹ Human Rights Office, Archdiocese of Guatemala, "Guatemala: never again!" Recovery of Historical Memory Project: 1999. Summary published by Orbis Books, Maryknoll, 1999.

⁴⁰ An estimated 200,000 died in Guatemala during the 1980s, under the military rule of Rios Mont, among others.

civic initiatives.⁴¹ If the intention of any truth telling process is to ensure that the national memory incorporates and acknowledges both the suffering of ordinary people during a time of oppression, the culpability of the state, and the consequences of this for the present and future, then formal but unofficial processes can make a significant contribution. “Breaking the Silence” managed to do just that, and ensured that the Matabeleland massacres are now very much part of the national memory in Zimbabwe. However, the “Building True Peace” aspect of this report will rely on the goodwill of a future Zimbabwe government prepared to implement recommendations of this report and those that may come from future civic initiatives linked to the more recent violations.

As in Guatemala, it is highly possible that formal, detailed reports produced by civics in Zimbabwe will in due course contribute to an official truth commission process, and also possibly to future prosecutions.

A truth commission: summary

- A truth commission may not be possible or may not be pragmatic in Zimbabwe while the current transitional government is in place.
- Civics and opposition groups should continue to debate and consider how a future truth commission should function, and what its mandate should be. Discussion around this issue should be careful not to focus exclusively on the post-independence period, but to ensure that abuses of the colonial period are dealt with. This is important not only to properly historicise human rights abuses in Zimbabwe’s history, but will assist in ensuring a more serious engagement with Zanu PF on the challenge of truth recovery.
- International players could play a useful role in terms of financial support for a Truth Commission and in helping to greater credibility for the commission. However the advantages of involvement of the international community needs to be balanced against the dangers of international agendas complicating and stalling a national process.
- Extensive consultation around such a process, in particular in rural Zimbabwe, should be undertaken on a continuous basis so that when the space opens up, civics and opposition groups have a good idea of what people would expect from a truth commission.
- Zimbabwean civics should continue to document and write up in formal reports the human rights violations of both pre and post independence periods, depending on what communities themselves wish to have documented, and to begin contextualising these more broadly in the larger structural and historical reality that is Zimbabwe .

3. “Reconciliation”

A great deal has been written on how this term should be defined in relation to TJ processes, and the concept remains contested. However, most people broadly accept that a major intention of TJ is to

⁴¹ In Bulawayo, the Catholic Church began a process of encouraging victims of abuses to testify in front of congregations in 2002, and these services for Justice and Peace were then replicated in other parts of Zimbabwe and even in London, where refugees now testify on UN Day in Support of Victims of Torture. The experience of Amani Trust Matabeleland with exhumations also resulted in mini truth telling processes in Matabeleland – see ahead under reconciliation.

promote reconciliation at some level - that after massive conflict, relationships between individuals and communities will be damaged and will need interventions to heal; also that failure to attempt to do this could lead to long term negative repercussions, such as further cycles of violence.

Broadly speaking, reconciliation incorporates peace-building, victim empowerment, individual healing, but also needs a context of economic development and extensive social reform. It is hard to imagine that any person or community could begin a real process of reconciling, in a nation with 400 million % inflation, no access to health or education, no access to formal employment, and with 45% of the country dependent on food donations. A recent pilot survey in Matabeleland in which people were asked to list their communities' priorities found that 100% of respondents rated food as the current most urgent need, followed by water at 87%.⁴² This same survey found that most people rated their leadership either Bad or Very Bad, and similarly rated intra community relationships as Very Bad, mainly because of the political violence and years of political manipulation of access to resources by local leadership. This survey also did not manage to interview anyone between the ages of 18 and 25 as this age group was entirely absent in the villages targeted, and women respondents predominated, as a result of the diasporisation of Matabeleland's rural population. Very few able bodied men remain in the rural setting, and this in turn impacts dramatically on the capacity of communities to till land and grow crops – particularly bearing in mind that 9% of these same respondents have no donkeys or cows.

In the face of such extreme poverty, where people's priority right now is to simply survive for another day, what interventions are sensible? We would suggest that peace-building and leadership building are needed, but that this needs to occur simultaneously with efforts to economically empower rural families, and to improve access to basic education and health care. Schools and clinics where they exist, are barely functioning, with no staff or resources. It will take state intervention and massive interventions by development organizations specialized in small enterprise projects to begin to reverse this situation. It will also require the normalization of the macro economic environment, so that it becomes financially possible for a teacher or nurse to survive on a formal salary.

We would agree with Brandon Hamber that reconciliation is “a voluntary act and cannot be imposed”.⁴³ It is also most difficult for the poorest people in a nation to “reconcile” to their pasts and to forgive the neighbours who burnt down their homes when they themselves remain with no prospect of replacing what was lost, considering an entirely bleak future.

We need to begin developing a new culture of leadership that is not about repression and bullying, exclusion and impunity. Many civic organizations in Zimbabwe already undertake conflict resolution

⁴² Masakhaneni Trust: “A base line report on the means and priorities of targeted communities in Matabeleland North and South”, Bulawayo, October 2008.

⁴³ Brandon Hamber, “Evaluating projects and programmes for reconciliation and transformation: experiences from the field.” Cape Town conference, April 2007.

programmes, inclusive of leadership training and empowerment of ordinary people to challenge their leadership. Such organizations need to coordinate their activities and methodologies, and to expand them to include more grass roots churches for example. The proposed constitutional consultation process, which is part of the September 2008 Agreement, is ideally suited for civics to combine skills training with debate on constitutional issues, including how to hold leadership accountable in the future in Zimbabwe.

Civic organizations already working in rural communities, and also churches, should discuss with communities the possibilities of local solutions to the recent violence, such as those who destroyed homes being ordered by local leadership to rebuild for their neighbours, and to make other material reparations at the local level, including of livestock and furniture, where the perpetrators own such things. There is no need to wait for national consensus on this approach, but to explore over the next few months where and how this might be adopted by villagers, either through communal court processes under cooperative traditional leaders, or through church mediation at the local level. In our own experience fear and anger remain high in villages affected by recent violence; there is a need for impartial mediation as soon as possible in as many places as possible to prevent further cycles of violence. In Matabeleland it is our observation that it is now ZANU PF that is afraid and being ostracized at village level. ZANU PF supporters are being thrown out of village funeral gatherings for example, their “ZANU” maize meal being churned into the dust when they bring it as an offering to such gatherings. In a starving community this is an impressive act of contempt and rejection!

In Matabeleland, the issue of mass graves in the community setting remains a burning one. Once the space allows, it will be a priority to resume the exhumations conducted by Amani Trust Matabeleland in the late 1990s in the region. This is a highly skilled task, for properly trained forensic experts only, and needing extensive psycho social support, but Amani’s experience is that exhumations and the accompanying “healing of the dead” is a life changing tool that lends itself to conflict resolution and truth telling.

In Mashonaland too, in the wake of the recent violence, there are reports of shallow graves, and of bodies being dredged out of dams in Mashonaland East. The problem of these recent enforced disappearances must be dealt with, including the setting up of a database to begin tracking who these disappeared might be. There are well established data formats for entering all relevant information including pre, peri and post mortem information of disappeared people all over the world, and a request for training for interested persons in Zimbabwe, to learn how to access and use such a database has already been activated.

It would appear that the space exists for many different types of community based interventions that might contribute to the possibility of “reconciliation”. Many activities that could be classified as transitional justice-oriented are already taking place, including conflict resolution and leadership training. These need to be better resourced and coordinated.

4. *Institutional reform*

Institutional reform will need the cooperation of the state. Many of the institutions most in need of reform seem likely to remain in ZANU PF control. However, it is to be hoped that in a transitional phase, as national polarization declines, ZANU will be amenable to suggestions on where and how to reform. The police and prison services are in a dire state of maladministration, politicization and lack of resources. The justice system barely functions, with massive staff turnover, absenteeism, and empty posts. The magistrate's court in Bulawayo cannot find a simple sheet of A4 paper on which to type a letter. There is a need to de-politicize these institutions, and to try to reverse the tide of bribery and corruption which predominates in all of them now. This will take massive resources, as well as the normalization of the economy, so that police and court officials do not have to rely on bribes and goods stolen from vendors to survive themselves!

Civics can play a key role here in engaging the relevant ministries, in documenting the collapse and corruption of state institutions and in insisting on a state response. A workshop took place in October 2008 in Bulawayo involving senior prison officials and members of civics, including lawyers and people who had recently been incarcerated in the jails. The prison officials were apparently open to comment. There is a need for relevant civics groups in different sectors to undertake more discussions of this nature with officials of all state institutions. We need to develop coherent policies and action plans on what can be done, to de-politicise our High and Supreme Courts, for example. We need to develop and offer training programmes for police and prison officers, for magistrates and prosecutors. We are talking about decades of work ahead, but it is possible to strategise around this now, and again this does not require us to wait for the state to develop a broad policy, but to begin to develop working relationships with officials that can implement immediate change at the micro level – such as fixing toilets in remand cells, and reviving prison programmes to grow food for prisoners' consumption.

5. *Reparations*

Most victims of violence in Zimbabwe, whether recent or from the 1980s, will raise the need for compensation. At the moment, apart from the desire for justice, the desire for compensation rates most highly. However, Zimbabwe has a very poor history of individual compensation, with the War Victims Compensation Fund being looted in the 1990s by those with political connections. In 1997, Mugabe also bent to massive pressure from the War Veterans Association and paid out Z\$50,000 per ex combatant, an act that caused a dramatic decline in the value of the Z\$ at that time. In both situations, many who did not qualify for benefits received compensation while others did not. In Matabeleland, the handful of ex-dissidents from the 1980s who were also ex-ZIPRAs received payouts, for example – while those whose lives they had destroyed received no compensation, as this payout was only for ex combatants and not their victims.⁴⁴

⁴⁴ It must be added that only 122 dissidents surrendered in 1988, but this example serves to illustrate the pitfalls of singling out certain groups for individual monetary compensation and not others.

Considering the scale of the violence in Matabeleland in the 1980s, and the scale of violence in certain parts of Mashonaland in 2008, there will be entire regions where almost every family may have a legitimate claim to compensation. The question then has to be raised whether individual compensation is a practical option. In the case of violations which took place more than a few years ago, including violence back to 2000, families may find it hard to prove their losses at this stage. Furthermore, a system of making people individually responsible for recounting their abuses, especially in a situation of dire poverty, will more or less invite fraudulent claims and invented histories, which will confound our efforts to reach any kind of “forensic” truth in terms of patterns of violations in the future.⁴⁵ The expertise and human resources that would be required to thoroughly double check every such claim would tie up such a process for years, resulting in frustration and disillusionment for genuine claimants.

The concept of community compensation should therefore be considered, with individual compensation being restricted to support for families of political murder victims, for example. As mentioned previously in this document, individual compensation at the community level could be partly facilitated by perpetrators being forced to help with the rebuilding and restocking of homes they have destroyed. Large, government driven urban housing initiatives could prioritise those who were displaced by Murambatsvina, and a proactive policy on vending and the informal sector could help those who lost livelihoods to rebuild them without state harassment. Longer term skills training and possibly small business loans could help shift the informal sector back into the formal sector over time, and all of this could be done in the name of compensation.

Compensation on the scale required will need to be dealt with at the level of government, and probably international donors, but civics can continue to consult on community needs and priorities. In our experience over more than a decade, communities in Matabeleland are open to the idea of communal reparation, including improved access to health, education, small enterprises and in the urban setting, state housing.

Conclusion

There is an overwhelming cry for justice and compensation in Zimbabwe in the wake of recent violence. It is indeed necessary to put an end to the pattern of one hundred years of impunity, but the road to doing this is going to be complex, particularly in the current political context. The political space is not likely to open up at the state level any time soon to enable the widespread prosecutions of senior position holders. It may be highly problematic to push for a truth commission at this stage, as

⁴⁵ We were recently told in rural Matabeleland by a headman that it should be expected that people would lie about being victims if they thought they stood to gain materially by doing so, as people are so poor. He claimed that when church officials came asking about the post March violence, some families in his area had falsely claimed to have been among those beaten, in the belief that these officials were undertaking some sort of “registration for compensation” exercise - when in fact they were simply trying to document what had happened in the area. Personal interviews, Lupane, October 2008.

the current transitional government will be too weak and compromised to give such a commission the power that would make its outcomes useful. However, there remain many activities that civics could be pushing for and accomplishing from this point onwards; some will require government support, and others can go ahead regardless, as long as some level of democratic space exists. Perpetrators could be held accountable at the community level, either through the courts, or through a compromise of local reparation. Truth recovery can be on-going, and formal reports can continue to be written by civics, although there is a need at this stage to return to source to validate claims that were made at a point in time when it was difficult to do so. Peace building and leadership building activities that are already taking place need to be expanded and methodologies shared. Civics need to lobby for institutional reform, and to take part in this process where feasible, with training and simple resources. Above all, there is a need for civics to maintain a dialogue with victims and victimised communities, to establish each community's own priorities and understanding of what it is that has happened in their area over the years, and what needs to be done about it now. This may vary considerably from one village to another, and there should not be an oversimplified approach to what needs to take place at this time.

Recommendations.

The battle for transitional justice issues to be placed more squarely on the Zimbabwe political agenda has been going on in one form or another since the 1980s. However as the country struggles to find a way out of the current political quagmire, and to develop a democratic discourse beyond the stale imperatives of an authoritarian nationalism trapped in the narcissism of its narrow version of the past, the need for a sustainable transitional justice process must be pursued more vigorously. Moreover the pursuit of the process must be understood as a terrain of competing national agendas within a particular historical and political context that will be one of the key determinants of future political struggles in the country.⁴⁶ As a way forward this paper recommends the following:

1. **Accountability:** While prosecution of senior government and party officials is unlikely to be possible under the current political conditions, the prosecution of perpetrators at community level is more likely to be accomplished. This can be done both through the court system and through forms of accountability developed through community structures.
2. **Truth Recovery:** Civil society groups need to continue with the valuable work of truth recovery that they have carried out since the 1980s. However this work needs to move beyond the empiricist, forensic nature of evidence gathering, to more historical understandings of processes of state and community violence.

⁴⁶ For an excellent discussion of the 1979 peace settlement and its aftermath in Zimbabwe see Norma Kriger, *Guerrilla Veterans in Post-War Zimbabwe: Symbolic and Violent Politics 1980-1987*. Cambridge University Press, 2003.

3. **Reconciliation:** Processes of Reconciliation are more likely to succeed in conditions of economic recovery where the hope of a better future can provide a material basis for linking reconciliation to economic reconstruction. Moreover at any one time reconciliation is built around contested notions of legitimacy, and building linkages between different sites of legitimacy will demand careful balancing between the state and different sites of power within society. It will be important therefore not to reduce the debate on reconciliation to a moralizing voice that places the burden of reconciliation on the victims. A much more sustainable process will link such a debate to material changes in power relations within a society, ensuring growing empowerment for the marginalized and victimized.
4. **Institutional Reform:** Indications of reforms within the coercive arms of the state must become immediately apparent in a political transition in order to begin the long process of building trust in the state. Thus reforms in the judiciary, the police and the army must begin to point the way towards a greater respect for the rule of law. Once again a stabilization of the economy is an essential part of reviving the capacity to deliver in these areas.
5. **Reparations:** In Matabeleland and in some parts of Mashonaland, almost every family would have a legitimate right to claim that they have suffered state orchestrated human rights violations at some point since the 1960s. However, the problems of how individual reparations should be validated and financed, together with the pressing demands for more general economic recovery and development, mean that communal reparation could be explored as an alternative to individual payouts. There is a need for extensive consultation with victims around any process of reparation