



**Putting it Right: Addressing
Human Rights Violations
against Zimbabwean Women.**

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Advocacy Unit**

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'Too often the great decisions are originated and given form in bodies made up wholly of men, or so completely dominated by them that whatever of special value women have to offer is shunted aside without expression.' – Eleanor Roosevelt

Introduction

The political parties in Zimbabwe signed a historic deal on the 15th September 2008 to put an end to the political and economic crisis that has been ongoing since 2000¹. In this deal, the parties agreed to put an end to politically motivated violence and bring all perpetrators to book², if only for the violence that took place between March and June 2008, and this implies that victims will have a right to a remedy that usually comprises three aspects; truth, justice, and reparations.

The new government will have to determine the truth about the abuses, bring the perpetrators to justice, and award the victims reparations, be it in the form of compensation, rehabilitation, restitution, or all three. The Global Political Agreement [GPA] does not, however, have any provisions for a transitional justice process or any compensatory or reparative process for the victims of the violence. To be credible, any effective deal should not only end ongoing violations and hold to account those responsible for past abuses, but should also attempt to return the victims to the position they were in before the abuses.

The GPA was welcomed by women as it acknowledges the equality between men and women and recognizes women's role in nation building and the abuses they suffered in the process, and continue to suffer, but it must be noted that women's representation at the negotiations was minimal and the issues affecting women were primarily decided by men. What remains to be seen is how the clauses in the GPA will be implemented and what real impact it will have on women's lives. The GPA does not look at women as a specific group, but, under Articles 7(a) and (d), combines them with the other generic groupings; race, age, gender and political affiliation. This suggests that the parties have not regarded women as a particularly vulnerable group in a time of crisis, which they obviously are; this has to be acknowledged in the implementation of the clauses in the GPA that relate to the position of women.

In all situations of conflict, merely by virtue of their gender identity, women are both primary and secondary victims; they suffer when they are themselves violated, and they also suffer when their family members are violated in that they have the responsibility of looking after the injured person or persons. This has not been any different in Zimbabwe. There is considerable anecdotal evidence of politically motivated violence against women, and organizations have been documenting the violence to support the anecdotal evidence.

In general, warring parties frequently target civilians and women are always primary amongst civilians in facing the consequences of the conflict. Women suffer as primary victims when sexual abuse is used as a weapon of war; they can be taken as sexual slaves to service the troops, as was seen during the liberation war in Zimbabwe where women cooked and provided sexual services to the guerilla army at their bases, and, in recent times, the militia camps to which women and young girls were abducted and abused. They are raped to dehumanize them and as a form of punishment for their male family members, as rape not only humiliates the person raped but also the whole family and their community. The specific sexual violence against women is in addition to other forms of violence that men suffer as well; torture, electric shocks and cruel, inhuman and degrading treatment.

Women also suffer as secondary victims because of their reproductive roles. Many women are frequently not economically independent; neither do they usually own resources such as land for sustaining their livelihoods. Therefore, when their male family members are injured or killed as a result of the conflict, they lose breadwinners, suffer the consequences of being displaced from their land, and they lose their status in the community. It is well documented that women suffer anxieties over their families and psychological/psychiatric disorders during and after the conflict, and often these are suffered silently. The fact that men and women experience life differently regardless of war or peace has to be taken into consideration especially after the conflict period when issues of redress are being brought up.

Political Violence against women in Zimbabwe

To varying degrees, women in Zimbabwe have been victims of political violence in all the past decades since the beginning of the Liberation War in the 1970s. Studies of the survivors of the Liberation War consistently showed large percentages of women amongst the victims, and this was hardly surprising given that the entire population was dragged, willingly and unwillingly, into the struggle. An early study showed that 36% of the victims seen were women³, and this was against the background of the finding that nearly 1 adult in 10 over the age of thirty years was likely to be survivor of torture⁴. A later unpublished study indicated more clearly the consequences for women, with the disturbing finding that, at least in the sample of victims seen, women were more likely to have had more severe torture and suffered worse subsequent adjustment⁵. Women were similarly affected during the disturbances of the 1980s in Matabeleland. Although the groundbreaking report of the Catholic Commission for Justice and Peace and the Legal Resources Centre did not produce a gendered analysis of the violations that took place during that time, it was clear from the many case studies reported that women were no less likely to suffer violations than their men folk⁶. A retrospective study of violations against women indicated that women from Matabeleland were significantly more likely to have experienced gross human rights violations in the 1980s than their Mashonaland counterparts⁷.

During the Food Riots in 1998, women were equal targets of the violence inflicted by the police and the army, with women suffering assaults, torture, and unlawful detention⁸. Since February 2000, women have been continuously reported as victims of the political violence, particularly during elections. The most comprehensive data on the violations experienced by women has been provided by Women of Zimbabwe Arise [WOZA]⁹. As the WOZA reports demonstrated, violations against women have been steadily increasing since 2000, with the number of violations increasing very dramatically in the past three years [2006 to 2008]. So it is clear that women activists are very likely to suffer violence at the hands of the state, but it is not only activists that are targets, as the reports of the Zimbabwe Human Rights NGO Forum [the *Human Rights Forum*] show¹⁰. In their reports, and especially those dealing with elections, women are equal targets to men, both because of their political affiliation, but also because of the affiliation of their male partners or their family members. For example, the reports on the Presidential Re-run in 2008 are replete with example of women being targeted in their homes because of their families perceived support for the Movement for Democratic Change [MDC], being assaulted, tortured, having their possessions stolen, and their homes burnt¹¹.

This very brief review cannot do justice to the enormous literature on human rights violations over the past decades, nor provide detail on all the ways in which these periods of epidemic violence have involved and affected women. However, it should be clear that there is abundant evidence for the proposition that women are at least as likely as men to suffer gross human rights violations, but the biggest gap in all the literature is on the violations that are usually specific to women, rape and sexual torture.

Whilst there has been considerable anecdotal evidence about rape and sexual torture, the data contained in human rights reports has been scanty. This undoubtedly has much to do with the

stigma attached to rape and sexual torture, as well as the fact that many of the victims will be the least powerful in Zimbabwean society: female, young, rural, generally less well-educated, and hence less likely to make any kind of public complaint. Some evidence for this assertion comes from an examination of the human rights reports of the past 9 years.

In the consolidated statistics from the Human Rights Forum, rape was less than 1% of the total number of violations [35,574] reported to the Forum. This is an extremely small number measured against the many anecdotal reports, but a study on female Zimbabwean refugees in South Africa indicated a much higher prevalence of rape, 15% of the women reported this¹². Presumably it was much safer for women to report their rape when outside of the country, and away from further victimization, than it was inside Zimbabwe. This, of course, fits with the general finding that women will infrequently complain of rape, and more so in situations of war or low-intensity conflict like Zimbabwe. And it is probable that further research, when it is possible to do this, will show that the frequency of rape and sexual torture was much higher still.

Impunity in Zimbabwe

As indicated above, the issue of reparations is not mentioned in the GPA but it does talk about applying the law impartially to ensure that perpetrators of political violence are punished. Article 18.5(c) implies that, if a victim wants to pursue the civil route under the law, they are entitled to do so, and be compensated for the injuries or loss of life and/or property during the periods of political violence. The GPA acknowledges the fact that violence 'dehumanizes and engenders feelings of hatred'. However, if impunity for the perpetrators continues and there is no justice, the victims' hatred and anger will never go away, and may be a source of future conflict¹³. Amnesty International defines impunity as "the failure to bring to justice those who commit serious violations of human rights".

Impunity in Zimbabwe began in 1975 with the Indemnity and Compensation Act, when Rhodesian soldiers were provided with legal indemnity, and retrospective indemnity at that, for their actions during the liberation war. This has continued to the present day¹⁴. Perpetrators have been allowed to go free, leaving the victims and their families with intensified pain, caused by the absence of justice, and the fact that the state ignores the violations and allows the perpetrators to continue their abuses. If the new government does not address the issue of human rights abuses, it will lose the credibility desperately required and it will have failed to abide to the GPA. As the Agreement states, "The power-sharing GPA should ensure justice for past and present human rights abuses and correct the systemic failures of governance in Zimbabwe. A political GPA built on impunity is unlikely to last – and may well serve as an invitation to more atrocities in the future"¹⁵.

According to Amnesty International, the pattern of impunity in Zimbabwe consists of five elements¹⁶:

- *The government prevents those responsible for human rights violations from being brought to justice through the granting of presidential amnesties, clemencies, and indemnities;*
- *The government has taken steps to obscure or prevent the identification of the state's agents in perpetrating human rights violations;*
- *Human rights defenders and the independent media are prevented from investigating and publishing accounts of human rights violations;*
- *Investigations and prosecution of state perpetrators has been blocked by the state's political manipulation of the police;*
- *Not simply encouraging the police to serve the political dictates of the government rather than the law, but also by eroding the independence*

of the judiciary and circumventing its effectiveness undermine the entire judicial system.

Apart from the formal amnesties and pardons implemented by the Zimbabwe government, a culture of practical impunity in Zimbabwe has been reinforced as state agents, the militia, and supporters of the ruling party carry out politically motivated violations, and the state condones it.

"Zimbabwe has a culture that condones politically motivated torture. Presidential pardon and periodic amnesty laws forgive police and military officials involved in torture. Police rarely investigate allegations of torture. Credible allegations of torture are regularly directed at individuals within Mugabe's ZANU PF party, agents of the Central Intelligence Organization, members of the police, and individuals within the pro-Mugabe youth militia."¹⁷

Human Rights Watch stated that Zimbabwe's long history of impunity for politically motivated crimes has contributed to the current crisis. Those who committed abuses in the past have remained free to carry out further acts of violence and intimidation, and have even been promoted. In the more recent past, supporters and officials of ZANU-PF, army officials, war veterans, and youth militia have been implicated in the killing of at least 163 people and the beating and torture of more than 5,000 others between April and August 2008, and tens of thousands of Zimbabweans have fled the violence that has plagued the country since the March 29 elections¹⁸. Now that the Zimbabwe unity government has been constituted, it is imperative for it to furnish the public with plans for dealing with the crimes of the past and not sweep them under the carpet in the spirit of "reconciliation and nation building". This, as indicated earlier, has not worked previously, and is unlikely to work now.

In Zimbabwe, there has not been any serious attempt previously to compensate victims by the government, but NGOs have been advocating for reparations and compensation for the victims of human rights abuses and torture from both the pre-Independence era and Gukurahundi¹⁹. The opportunity to advocate for this has come up again with the aforementioned deal. Traditionally, a perpetrator has to pay compensation if wrong is done to another, to appease the victim's family and the spirit of the dead. Compensation was strongly advocated especially where people were killed and/or not accounted for. The government in the 1990s, under immense pressure, compensated war veterans, and, in 2004, Parliament enacted further legislation that provides compensation for political prisoners, detainees and restrictees: The Ex-Political Prisoners, Detainees and Restrictees Act (No 20 of 2004). These initiatives have been very selective in their targets, and have not addressed the bigger questions about reparations, and have certainly not considered explicitly the issue of gender.

Furthermore, Zimbabwe's judiciary and police force have been severely compromised under the ZANU PF government in the past nine years. The police are allegedly responsible for widespread violations, including harassment, threats, and violence against opposition supporters and human rights activists, as well as torture and other mistreatment²⁰. Police have routinely refused to take action against ZANU-PF supporters and militia implicated in political violence.

One way of combating impunity, albeit a very partial solution, is to resort to the courts and civil action, which has been a reasonably successful strategy employed in Zimbabwe by human rights groups on the behalf of victims²¹. However, civil action is very slow and expensive, and moreover depends on a functional justice system. As indicated above, the justice system in Zimbabwe has been heavily compromised since 2000. It is now evident from many judgments that the Zimbabwean bench is partisan. The judges have been given farms and other perks, and all judges are also aware of the propensity for the government to take action against those judges seen as making unwelcome judgments. Anyhow, the government frequently states that it will not abide by judgments that they perceive to conflict with their interests. Most recently, the

government stated quite baldly that it would not abide by a ruling of the SADC Tribunal in Windhoek, and there are many other examples. So judges operate in a climate of intimidation and partisan preferences, and many judgments of the Zimbabwean courts reflect this.

Thus, civil action may not as useful an avenue for women to redress their wrongs, except perhaps as a route to establish legal precedent.

International law and Practice on Reparations

Reparations for human rights violations is a right, and mechanisms for reparations have been advocated in order to curb impunity and act as a deterrent for future human right abuses²². This right can also be perceived to be an empowerment tool for the victim where individuals or groups that have been wronged can bring a case against the state or individual responsible for the violation as there is a sense that what happened to them is regarded by society as wrong and there are mechanisms available to address the wrong. The right to compensation derives from the right to effective remedy and the struggle against impunity.

*'Reparations serve at least three aims: to recognize victims as citizens who are owed specific rights, communicating a message that a violation of such rights deserves action from the state; to contribute to the establishment of civic trust among citizens and between citizens and state institutions; and to build social solidarity where the society empathizes with the victims.'*²³

This right is found in the many human right instruments that were put in place due to the atrocities committed during World War II, and especially those that were committed by Nazi Germany. These instruments have become known as international human rights and humanitarian law. States in these instruments are obliged to observe and uphold these rights²⁴.

State responsibility for acts constituting violations of basic human rights has been in existence since 1907. The general principle of state liability was developed under the Law of The Hague in Article 3 of the Hague Convention IV²⁵. This article recognizes the general obligation on the perpetrator state to pay compensation for breaching the Convention. This principle of state liability for grave breaches of humanitarian law is also found in the four Geneva Conventions of 1949²⁶. In 1939, the International Military Tribunal for the Trial of the Major War Criminals (IMT) recognized the 'Law of the Hague' as resembling customary law, and an international law principle emerged that states are financially liable towards individual victims for wartime human rights atrocities²⁷.

With regard to the legal concept that the individual as a victim of human rights atrocities and a claim holder has an individual and enforceable right to financial redress with the necessary *ius standi*, has developed over the years and can be found in a number of human right treaty regime²⁸. The Universal Declaration of Human Rights (UDHR) in Article 8 grants 'everyone the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted to him by the constitution or by the law'. Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR) grants individual the same right. Article 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN Torture Convention), stipulates that the individual victim of acts of torture, or his or her dependants in the case of death, shall, besides the domestic remedies, have a direct right to financial compensation for suffering²⁹. The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power acknowledges the general principle of financial compensation for victims of particular 'state crimes' such as unlawful detention and acts of police brutality³⁰.

These declarations advanced by the United Nations in including human rights violations and fundamental freedoms as requiring redress indicate the growing determination to find an

international principle on, and formula for, state responsibility for human rights violations with financial redress as a further consequence. The formulation of the basic principles and guidelines on the right to a remedy and reparations for victims of violations of international human rights and humanitarian law [hereinafter referred to as the UN Principles on the Right to a Remedy] by the efforts of the Economic Social Council (ECOSOC) is an example of such determination³¹.

These UN Principles on the Right to a Remedy place an obligation on states to respect and to ensure the respect for human rights and humanitarian law. Included in this obligation is the right to prevent, investigate violations and take appropriate action against the violators, and to afford remedies and reparations to victims³². The aim of these principles is to afford a right to a remedy for victims of human rights and international humanitarian law. Included in the right to a remedy is access to justice, reparations for harm suffered, and access to factual information concerning the alleged violations. The key elements relating to the victim's rights to reparations shall be 'adequate, effective and prompt' and 'proportional to the gravity of the violations and the harm suffered'³³. There are five forms of reparations distinguished in these UN principles and guidelines and they are restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition³⁴.

The international tribunals, however, such as the International Criminal Tribunal for Rwanda [ICTR] and the International Criminal Tribunal for the former Yugoslavia [ICTY] have inherent problems with regard to remedies for victims. While their primary focus is on punishment of criminals, the focus on victims and their remedies is limited. Though the Statutes and Rules of both the Tribunals provide for restitution of property or the proceeds thereof to the victims, there are no remedies available for the victims under the statutes of the tribunals for serious crimes such as harm to life or person. Victims seeking compensation according to the Rules of both Tribunals must apply to a national court or other competent bodies; in these domestic proceedings, however, the victim may avail themselves to the judgments of the ICTY and that of the ICTR³⁵.

Because of the limited focus of these tribunals on the victims and the issue of remedies, many critics were advocating for the establishment of an international criminal justice system that would be victim orientated. This recognition of victims' rights prompted discussion and later the establishment of the International Criminal Court (ICC). The International Criminal Court created by the Rome Statute was bestowed with the power to grant reparations to victims of human right violations³⁶. There are three main categories of victims rights found in the Rome Statute and these are; the right to participation³⁷, the right to protection³⁸, and the right to reparations³⁹. They are scattered throughout the various pieces of legislation that govern the proceedings of the Court. The inclusion of the rights of victims in the Rome Statute is an innovative development unlike the other criminal courts that preceded the ICC; namely the Nuremberg and Tokyo military tribunals, and the ad hoc tribunals for the former Yugoslavia and for Rwanda, where there is no precedent, either in their statutes, and in practice, relating to the inclusion of victim's rights to those that are found in the Rome statute⁴⁰.

The Special Court for Sierra Leone has a similar provision regarding compensation for victims and this is found in its rules of Procedure and Evidence⁴¹. The victim seeking redress under these rules depends on national remedies, which are lacking in most instances. The national courts that the victims can approach for remedies are in most cases lacking in resources, have no power and will to award reparations, this therefore leaves the victim with no form of redress and in turn face a further violation of their secondary right of effective remedy. The Regional human right courts have heard the majority of compensation cases and they have the authority to award compensation to victims of human rights and humanitarian violations. These courts and commissions were established under human rights treaties as monitoring mechanisms that are competent to receive complaints from individuals and provide these victims of human rights violations with a remedy⁴². Victims of human rights violation therefore can approach these

regional courts for redress. The African Court on Human and Peoples' Rights' compensation mandate is found in Article 27 of the Protocol to the African Charter, which states that "if the court finds that there has been a violation of a human or Peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation."⁴³ The Inter-American Court on Human Rights and the European Court of Human Rights are other such courts with this authority, and they have awarded an array of remedies including compensation.

Reparations and Gender

The last decade has witnessed increased efforts to impose criminal responsibility on leaders and others responsible for serious international crimes during periods of armed conflict or mass violence⁴⁴. One of the most revolutionary advances in these efforts has been in redressing crimes committed against women and girls, particularly rape and sexual slavery. Though there have been international humanitarian and human rights laws prohibiting sexual violence, they were either not been implemented or ignored. International human rights law treaties that focus on women offered protection for women, but were never taken seriously either during war times or times of serious conflict. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), for example, prohibits discrimination and disparaging treatment on the basis of "sex", and this prohibition is extended to violence against women⁴⁵. The Declaration on Elimination of Violence against Women (DEVAW) also provides protection against all forms of violence against women, including sexual violence, whether committed in so-called peacetime or in wartime, in the private sphere or in the public sphere⁴⁶. The Optional Protocol to CEDAW also offers protection to women with enforcement measures to monitor and ensure compliance with CEDAW through its complaints procedure that allows women to submit claims of violations of the convention⁴⁷. This protection of women is also found in the African Union Protocol on the Rights of Women in Article 11, and the recently signed SADC Gender and Development Protocol has protective measures for victims of gender based violence, Article 20⁴⁸. The recent progress by the ICTR and ICTY in prosecuting various forms of gender-related violence has also been crucial in the fight towards the recognition of women and girls as victims and the crimes committed against them during times of conflict⁴⁹.

The Yugoslavia and Rwanda Tribunals have developed the most significant jurisprudence in relation to gender and sex crimes. The Akayesu judgment handed down by the ICTR characterized rape as an instrument of genocide⁵⁰. The court concluded that: 'rape and other forms of sexual violence were used as instruments of genocide, and also the crimes formed part of a widespread and systematic attack directed against civilians, constituting crimes against humanity'. This was the first ever conviction of either genocide or crimes against humanity for sexual violence. The Trial Chamber also articulated the seminal definitions of rape and sexual violence under international law, and recognized forced nudity as a form of sexual violence, constituting inhumane acts and as crimes against humanity⁵¹. The ICTY adopted the Akayesu definition of rape in the Celebici trial chamber judgment⁵². In the Celebici judgment by the ICTY it was found that superiors could be held criminally responsible for crimes committed or about to be committed by their subordinates. Superior responsibility may also be used to hold military and civilian leaders accountable for sexual violence committed by subordinates that the superior negligently failed to punish or prevent⁵³.

The inclusion of a broad range of sexual crimes within the jurisdiction of the ICC is a further development in the global awareness of continuing impunity for gender and sex crimes⁵⁴. The most significant provisions regarding women's rights, and the crimes that fall under the jurisdiction of the court are found in Part II of the Rome Statute. In Articles 7 and 8 of this statute, the definition of war crimes and crimes against humanity are given, and a broad spectrum of gender specific crimes is listed. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence constituting a grave

breach of the Geneva conventions regarding war crimes or other forms of sexual violence crimes of comparable gravity regarding crimes against humanity, are the sexual crimes that are all listed⁵⁵. These provisions on gender crimes in the statute are significant, in that previous international humanitarian law treaties failed to properly address sexual and gender violence. The inclusion of gender crimes as war crimes and crimes against humanity was a significant step, as this was overcoming the discriminatory and inadequate treatment of sexual violence crimes under international law. The characterization of sexual crimes in the statute is important to the ICC's capacity to indict sexual violence crimes in multiple ways⁵⁶.

In a majority of the cases, compensation or reparative justice either arrives too late or not at all for women. The inclusion of a gender dimension in transitional justice policies is clearly a function of the perception of women in a given society, and in many cases, as for example in Rwanda and South Africa, the effects of organized violence and torture on women are not given sufficient priority⁵⁷. Women during times of conflict suffer similar forms of violence to those that men may also suffer, but they are other forms of violence that women are subjected to which are specific to women, and which require special attention when the question of redress arises⁵⁸. As echoed by the United Nations Security Council Resolution 1325 on Women, Peace and Security, which recognized this loophole, expressed "*concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons and increasingly are targeted by combatants and armed elements.*"⁵⁹ There was a further call made in this resolution that "on all actors involved, when negotiating and implementing peace GPAs, to adopt a gender perspective, including, inter alia; the special needs of women and girls during repatriations and resettlement and for the rehabilitation, reintegration and post conflict reconstruction".

The treatment of women during times of conflict and the subsequent failure to incorporate gender based violence and women's participation in the transitional justice programmes adopted by governments, led to a group of women's organizations and activists from all over the world in coming up with a declaration that addresses the issue of organized violence against women. In May 2007, the Nairobi Declaration on Women and Girls' Rights to Remedy and Reparations was drafted with the belief that justice for women and girl survivors of sexual violence will never be achieved if reparations programmes are not informed and directed by those they are meant to serve⁶⁰. National governments are further called upon in the declaration to bear primary responsibility for providing remedy and reparation within an environment that guarantees safety and security. The Nairobi Declaration stresses that any form of compensation for women should be done with full consultation of the affected women themselves, as they know what they require. The Nairobi Declaration thus seeks to:

Empower women and girls, support their efforts to rebuild trust and relations and foster their participation in social reconstruction. Decision-making about reparations must include victims as full participants;

Address social inequalities and discrimination in existence prior to conflict, which lie at the root of violence against women and girls in times of conflict;

Promote social justice and encourage the transformation toward a fair and equal society;

Emphasize the importance of truth-telling in order to allow women and girls to move ahead and become true citizens. Abuses against women must be named and recognized in order to raise awareness about these crimes and violations, to positively influence a more holistic strategy for reparation and measures that support reparation, and to help build a shared memory and history.

Although the Nairobi Declaration has no binding authority, it raises the critical elements required to ensure that the issues raised by women victims of violence are addressed in a way that is

beneficial to them. Women in Zimbabwe would benefit from the adoption of the Nairobi Declaration now that the new government has been constituted and there is a move to address the current violence.

Compensation for Women Human Rights Defenders

Organizations like Zimbabwe Lawyers for Human Rights and the Zimbabwe NGO Human Rights Forum have taken cases for their clients before the courts to demand compensation for pain and suffering after having suffered human rights abuses perpetrated by state agents; mainly the police and the army⁶¹. These are cases that have gone through the courts of law since 1998 and they have received favorable judgments in most instances, proving that these cases are not bogus as has been claimed previously by government officials. In most of these cases the plaintiffs have been men, and, when women approach these organizations, they are usually the seeking compensation for wrongful death of their spouses as the latter were the breadwinners. This is not to say that women do not seek compensation for themselves; many women are involved in fighting for their rights and they have suffered just as much as the men. One of the biggest social justice movements in Zimbabwe is woman-based, Women of Zimbabwe Arise (WOZA), who have suffered greatly at the hands of the law enforcement agents, and they have instituted cases against the government for damages⁶².

The most recent period in Zimbabwe's history has produced a number of serious considerations about the role of transitional justice, and, the most formal of these, the resolutions of the 2003 Johannesburg Symposium, made strong recommendations for the establishment of a Truth, Justice, and Reconciliation Commission⁶³. The main recommendation of the 2003 Symposium, that there is need to consult the victims themselves, began, but this consultation has not been as broad and far reaching as it should have been. One small study with the victims indicated general approval of the 2003 Symposium, and the need for a strong emphasis upon justice in any transitional justice process⁶⁴.

With the likelihood of political transition looming, the need to consult the victims becomes imperative, and hence a small pilot study was recently undertaken to get a feel of the views of the victims⁶⁵. A simple questionnaire was designed that would cover the major areas involved in any transitional justice process in a future Zimbabwe. The questionnaire was translated into the two indigenous languages and 25 interviewers were then sent out into the community with the task of interviewing as many activists each as they could.

The choice of activists was deliberate. Those that have become activists have a high probability of having been affected by the organized violence and torture of the past 9 years, and hence the sample will reflect those that have a very high interest in transitional justice. The sample was not meant to reflect the attitudes of the general population, but rather a population that may be presumed to have strong personal interest in accountability and redress for the violations that they may have experienced. The final sample was composed of 514 activists, of whom 57% were male and 43% were female.

The questionnaire asked if the respondents thought that people who are victims of politically motivated crimes or crimes against humanity should receive compensation, a resounding 87% said yes. They were asked whether women had been affected differently to men by politically motivated crimes or crimes against humanity and 64% felt women have been affected differently. As mentioned, in the introduction women, suffer human rights abuses differently from men⁶⁶. The biggest difference between violations suffered by men and women was sexual violence. The survey also asked respondents if they thought that women victims of politically motivated crimes or crimes against humanity need to be compensated differently to men, and 53% felt that women should be compensated differently to men. This goes to show that the victims themselves are aware that there are differences between men and women's experiences

of violence and this has to be taken into consideration, as it was in the 2003 Johannesburg Symposium. One of the recommendations of the Symposium is as follows:

That the necessary institutions be set up to deal with past and present human rights abuses and that such institutions be empowered not only to investigate and seek the truth but also to recommend criminal prosecution, provide for redress and reparations for victims and lead to the healing of the nation. Such institutions must encourage and sensitively deal with special needs of the victims. This is particularly important in dealing with women and children as victims.

When dealing with crimes against women, and particularly sexual violence, it is important to be aware that violence involves psychological, emotional, and spiritual pain, which is compounded by the fear of contracting HIV/AIDS and the associated stigma. When women are subjected to sexual violence, this is frequently to punish the men because, when a woman's honour is compromised, it is the men that are the intended target, as they ought to suffer the shame and humiliation. Women and their families are generally the most common victims of conflict situations and Zimbabwe is no exception as has been pointed out earlier.

If a decision is made to embark on a compensation or reparations programme, it is thus important to pay special attention to women and children to provide individual support by being aware of the fact that victims of violence usually find it difficult to recognise their legitimate social rights, especially rights arising from their status as victims. Counselling centres should be established to help these women and those for whom they provide care for other victims of political violence in conjunction with the compensation programme. It must be made sure the programme is understood and that the women's expectations are kept realistic.

There are different remedies that can be taken when a person has been aggrieved by law enforcement agents, civil action or prosecution to name a few but the culture of fear that has permeated through all aspects of Zimbabwean society, coupled with impunity for the perpetrators, has made people wary to take matters up with the authorities when they have been violated⁶⁷. Ignorance of the law and what remedies are available when one has been violated are also to blame for the lack of action on the part of the victims. There is very little legal literacy in Zimbabwe, particularly amongst women, and in many instances the complainants give up before the process is finalized because of the failure to understand the legal process., the fact that the process is lengthy makes it worse as the women cannot afford to attend the court sessions. Any transitional justice mechanism has to take this into consideration, there has to be a programme that includes legal education. The programme must not only have information in print form and/or not in vernacular, as in most communities women are the least educated and as the intended beneficiaries this has to be taken into account. Information ought to be easily accessible, acceptable, and affordable, as well as clear and simple.

There are, however, some people who are brave enough and take up one of the possible ways of seeking redress; civil action for damages. As mentioned above, there are organizations suing government on behalf of these people, for pain and suffering resulting from organized violence and torture perpetrated by law enforcement agents, but there are problems related to this. These clients will have met their fate with the state agents, and when they sue it is mainly for injuries sustained from assault, assault with the intent to do grievous bodily harm (GBH), unlawful detention, and unlawful arrest, which are crimes stipulated under the Zimbabwe criminal code.

According to Zimbabwean law, torture is not a specific crime, but the violations described by the clients show that, according to the UN Convention on Torture's definition, the acts amount to torture⁶⁸. These violations include being beaten with baton sticks, butt of guns, electric wires,

metal rods, hosepipes (or whatever other instrument the police have at their disposal), falanga, and cruel and degrading treatment, with the specific abuse of women in having to remove their underwear whilst in detention⁶⁹. This has been a major obstacle with Zimbabwean cases of torture, but there have been cases where judges have acknowledged that the police have been guilty of torture and awarded substantial damages⁷⁰. Torture however is elevated to the status of *jus cogens*, that is to say, an unconditional norm of international law⁷¹. It is a norm, which cannot be derogated from by States and their officials, even if they are not party to any treaties prohibiting the same. Torture is also prohibited by the Universal Declaration of Human Rights, which is said to have achieved the status of customary international law⁷².

Torture of political prisoners, including vulnerable women⁷³, by the police has become common, and, unfortunately, it is not limited to political prisoners, but is also inflicted upon those accused of criminal offences as well. The police have been responsible for the worst human rights abuses in Zimbabwe and have shown complete disregard for the rule of law⁷⁴. They show disrespect and contempt for the law, lawyers and judicial authorities to an extent that has seriously endangered the administration of justice and the rule of law in Zimbabwe⁷⁵. As the police are following the orders of the ruling party, there has been nothing done to investigate the allegations of police brutality⁷⁶. The Police Act (Chapter 11:10) states, in Section 29, that a police officer who contravenes the Act or an order made under the Schedule of Offences shall be liable to be tried. One of the offences in the schedule is "using unnecessary violence towards or neglecting or in any way ill treating any person in custody or other any other person with whom he may be brought into contact in the execution of his duty." There is nothing on record that shows that a police officer has ever been disciplined for using violence against a detained person in custody. There are no proper internal police mechanisms for investigating cases of police abuse within the Zimbabwe Republic Police force⁷⁷.

According to Zimbabwe's Constitution, Section 76 (4a), complaints about torture can be lodged with the police or the Attorney General, who may order an investigation into allegations of torture or other abuse. In general, the police are responsible for carrying out investigations into all crimes. There is no special procedure relating to a person in custody who raises a complaint about torture. Under Section 113 (5) of the Criminal Procedure and Evidence Act, if a person appears in court and informs the magistrate that he or she has been tortured or abused while in custody, then the magistrate can order an investigation into the allegations⁷⁸. However, the State has shown little inclination to pursue cases against law enforcement agents who are perpetrators of politically motivated violence⁷⁹. Zimbabwe has no independent external body to adequately deal with cases of human rights abuses, but, in an April 2006 interview, the Minister of Justice and Parliamentary Affairs talked about a constitutional amendment to introduce a human rights commission but this never materialized⁸⁰. There is provision for the setting up of a Human Rights Commission under the Global Political Agreement, and the enabling Constitutional Amendment 19, but this will obviously not have retrospective powers unless this is specified in the statute setting up this Commission.

Challenges faced in awarding Reparations

Many of the cases in the international system regarding compensation have been heard in regional human rights courts⁸¹. However the methods employed by these courts to calculate damages have been inconsistent, and there is little explanation offered by these courts on the methodologies used, and the legal principles underlying these decisions are vague and inconsistently applied⁸². In some of the cases the judges have made decisions based on no more than a feeling for an appropriate compensatory sum. This problem is also found not only at regional court levels but also at national court levels. For example, the Rwandan national courts, through a modification of the current system creating a special chamber to deal with the 1994 genocide, victims can become party to a criminal trial and make civil claims before the same judge. If the perpetrator is found guilty, the judge can at award damages to the victims at the

same time. However there has not been consensus on an adequate compensation for the various violations: similar losses and damages have resulted in very different compensation being awarded by different judges⁸³.

The regional courts tend to calculate awards based on subjective judgments of worth for the victim and the wrongdoer, their conduct and social status rather than the objective standard⁸⁴. The UN Principles on the Right to a Remedy have failed to address these methodological issues, and, in discussions held in order to improve these principles and guidelines on this issue, there has been no mention of methodological considerations⁸⁵.

Different reparations policies have been applied by different countries. However there are similar problems that exist in those policies that need urgent attention. Firstly, the raw reality that exists is that women's voices are drowned during the formulation of the transitional justice mechanisms and there is growing need to reverse the traditional norms of gender absence in such discussions⁸⁶. Reparations policies that make compensation of victims its primary aim should not escape a gender sensitive analysis. For example, loss of land or property is an identifiable material harm suffered by victims and one that can be remedied either by restitution or compensation. But, if too much emphasis is placed on this loss, this might have a disparate impact on women who tend to be under-represented among land and property owners due to the cultural considerations and the general status of women in their society. There is a need to formulate social programmes and resources that will assist women in rebuilding their lives and that will reach out to rural women, who, in majority of the cases, are mostly affected during and after the conflict⁸⁷.

Linking access to reparations of female victims to participating in truth telling mechanisms can result in depriving many women of the possibility of reparation. In both the South African and Timor-Leste experience, it has been shown that forcing women to come out as victims to qualify for reparations may have a largely inhibiting effect, especially for victims of sexual violence who hold back because of shame or fear⁸⁸. It is important to highlight that reparations can never restore the victims fully to the status quo ante, and can be only a part of a package of transitional justice that may include other transitional justice options, such as truth-seeking, institutional reforms and prosecutions. An integrated approach is desirable, the failure of which might be perceived to be an attempt of buying victims.

Reparations often run up against a shortage of resources, and international donors cannot be relied on for such payments. For example in South Africa, the Committee for Reparations and Rehabilitation (CRR) assessed interim payment for victims with 'urgent needs such as medical, emotional, educational and material/or symbolic.' However, the payments were paid out very late, almost two years after the CRR recommendations were sent to the government. In Sierra Leone, the TRC recommended reparations for amputees, the wounded, women who suffered sexual abuse, children and war widows because they were victims of multiple violations, and deemed in an urgent need for a particular type of assistance to address their current needs. A Special Fund for War Victims was to be created to administer the reparations that were to be paid out. However the recommended timeline has passed and the fund has not been established⁸⁹.

The systems that have been formulated for the protection of human rights on charter and treaties suffer from a general absence of strong inter and intra-state accountability mechanisms. The existing human rights protection regimes are in themselves weak in terms of available sanctions and remedies against the violating state, and are even weaker in respect to the eventual enforcement of such sanctions. This is compounded by leaving the implementation of human rights solely left to the discretion of the individual signatory states⁹⁰.

Under the regional human rights regimes, some problems exist. The European Court of Human Rights, for example, does not acknowledge a general and independent right to financial compensation in all instances of violations irrespective of the gravity of the breach. The victim's right to financial redress under the European Convention remains therefore subject to the victim's home states internal domestic law, with a few exceptions permissible under this convention⁹¹.

The Inter-American system of human rights protection is faced with the problem of a lack of means necessary to enforce compliance with findings. Since 1988, the IACHR has delivered more than 41 judgments on state responsibility for human rights violations and have ordered respective states to pay reparations, but, however, the court lacks the power of executing its judgments. The Inter-American Commission on Human Rights can only request information on measures adopted by member states and not force a state to comply with its findings or follow its recommendations⁹². Under the African human rights system, the charter authorizes the African Commission on human and people's rights to consider complaints from individuals whose rights have been violated under the charter. But, unlike the European and Inter-American human rights courts, the commission is a quasi-judicial body and its decisions do not carry the binding force of decisions from a court of law, but has persuasive authority akin to the opinions of the UN Human Rights Committee⁹³.

Conclusions

Violence denies women their most basic human rights as it limits their access to resources, right to land, shelter and food, as well as their freedom of expression and association. Their ability to participate in activities such as work, empowerment programmes, and civic engagement is affected. Unless the government's legal and security departments are revamped and the culture of aggression and impunity is done away with, women will continue to be susceptible to violence inside and outside their home. From the research conducted before and after the Johannesburg Symposium, it is clear that victims of political violence are interested in truth, justice and remedies to address the human rights violations of the past. Lasting peace can only be achieved when proper and accurate records of the abuses are preserved, perpetrators are held accountable, individuals and communities are healed through remedies made after consultations with the victims as the intended beneficiaries, and assurance that the abuses will never happen again. The treatment of women during politically turbulent periods remains a serious matter, and the fact that the 15 September GPA recognizes this is welcomed. What remains to be seen is whether the clauses in the GPA will be fulfilled in order to protect and promote human rights particularly ensuring gender equality and ending politically motivated violence against women in accordance with all the regional and international human rights instruments Zimbabwe has signed. Addressing violence against women is investing in the future.

Recommendations

To the new government of Zimbabwe:

- *Adhere to the GPA particularly by;*
 - a) *Returning to the rule of law. Article 11*
 - b) *Bringing all the perpetrators of violence to book. Article 18.5 (c)*
 - c) *Ensuring that there is no discrimination based on gender. Article 7.1(a)*
 - d) *Ensuring community integration and national healing. Article 7.1(c)*
- *Any transitional justice mechanism needs to be complemented by other programs, e.g. education, legal literacy and socio economic concerns in order that victims especially women and girls be able to rebuild their lives;*
- *Recognized and involve women at every stage of the transitional process on issues that relate to them as women. The process has to look at human rights abuses perpetrated against women qua women not as generic human rights abuses;*

- *Incorporate all signed human rights instruments relating to women into domestic law; particularly the SADC Protocol on Gender and Development.*

To SADC:

- *Ensure the Zimbabwe government implements the GPA and the SADC Protocol on Gender and Development.*

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- ¹ Agreement between the Zimbabwe African National Patriotic Front(ZANU PF) and the two Movement for Democratic Change (MDC) Formations, on resolving the challenges facing Zimbabwe.
- ² Article 18.5 (c) of the Agreement.
- ³ Amani (1997), *Survivors of Torture in Mount Darwin District, Mashonaland Central Province: Overview of Report and Recommendations*, LEGAL FORUM, 9, 49-60.
- ⁴ Reeler, A.P., Mbape,P., Matshona,J., Mhetura,J., & Hlatywayo,E. (2001), *The prevalence and nature of disorders due to torture in Mashonaland Central Province, Zimbabwe*, TORTURE, 11, 4-9.
- ⁵ In terms of torture, the women reported significantly high frequencies of torture types, and especially Impact torture. The women were also significantly more likely to have serious psychological disorder, with significantly higher mean scores on the SRQ20 subscale for Depression. It is difficult to understand the reports of worse torture in women, but it is clear that the finding on adjustment, that women are affected more seriously than men, conforms to what might be expected. See Amani Trust (2006), *the Legacy of Liberation. Torture and its Long-Term Consequences in Survivors from Mashonaland Central Province*. HARARE: AMANI TRUST (unpublished).
- ⁶ CCJP & LRF (1997), *Breaking the Silence-Building True Peace: A Report on the Disturbances in Matabeleland and Midlands 1980 to 1988*, HARARE: CATHOLIC COMMISSION FOR JUSTICE AND PEACE IN ZIMBABWE & LEGAL RESOURCES FOUNDATION.
- ⁷ WOZA (2008), *The traumatic consequences of gross human rights violations suffered by WOZA women*. HARARE: WOMEN OF ZIMBABWE ARISE.
- ⁸ Zimbabwe Human Rights NGO Forum (1999), *A Consolidated Report on the Food Riots 19—23 January 1998*, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.
- ⁹ WOZA (2008), *The effects of fighting repression with love*. A report by Women of Zimbabwe Arise (WOZA). March 2008. ZIMBABWE: WOMEN OF ZIMBABWE ARISE; WOZA (2008), *The traumatic consequences of gross human rights violations suffered by WOZA women*. HARARE: WOMEN OF ZIMBABWE ARISE.
- ¹⁰ Zimbabwe Human Rights NGO Forum (2008), *If you can't join them, beat them! Post-election violence in Zimbabwe. An alert of the Zimbabwe Human Rights NGO Forum & the Research and Advocacy Unit. 5 May 2008*. HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM; Zimbabwe Human Rights NGO Forum (2008), *Damned Lies? Post Election Violence in Zimbabwe*. Report produced by the Research & Advocacy Unit. August 2008. HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.
- ¹¹ Zimbabwe Human Rights NGO Forum (2008), *Damned Lies? Post Election Violence in Zimbabwe*. Report produced by the Research & Advocacy Unit. August 2008. HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.
- ¹² ZTVP (2006), *Women on the run: Women survivors of torture amongst refugees in South Africa. Report produced for the Centre for the Study of Violence and Reconciliation and the Crisis in Zimbabwe Coalition*. November 2006. JOHANNESBURG: CSVR & CRISIS IN ZIMBABWE COALITION.
- ¹³ See Reeler, A.P (2004), *Sticks and Stones; Skeletons and Ghosts*, in D. Harold-Berry (Ed), Zimbabwe: The Past is the Future. Rethinking Land, State and Nation in the Context of Crisis, HARARE: WEAVER PRESS.
- ¹⁴ See Reeler, A.P (2000), *Can you have a reparations policy without justice?* LEGAL FORUM, 12, 202-209; Reeler, A.P (1998), *Compensation for Gross Human Rights Violations: Torture and the War Victims Compensation Act*, LEGAL FORUM, 10, 6-21.
- ¹⁵ 'Power sharing deal should end abuses, bring justice'
http://www.hrw.org/english/docs/2008/09/15/zimbab19807_txt.htm
- ¹⁶ Amnesty International (2002), *Zimbabwe: The Toll of Impunity*, LONDON: AMNESTY INTERNATIONAL.

¹⁷ Countries at the Crossroads: Country Profile of Zimbabwe by Robert B. Lloyd. Professor of International Relations at Pepperdine University in Malibu, California, USA. Accessed from <http://www.unpan1.un.org>

¹⁸ Zimbabwe Human Rights NGO Forum (2008), *If you can't join them, beat them! Post-election violence in Zimbabwe. An alert of the Zimbabwe Human Rights NGO Forum & the Research and Advocacy Unit. 5 May 2008.* HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

¹⁹ A Shona word meaning the rain that washes away the chaff from the last harvest before the spring rain. This was a period in the 1980s when the government reacted brutally to dissidents in Matebeleland. see CCJP & LRF (1997), 'Breaking the Silence, Building True Peace: A Report on the Disturbances in Matebeleland and Midlands (1980-1988)', HARARE: CCJP & LRF

²⁰ Zimbabwe Human Rights NGO Forum (2003), *Torture by State Agents in Zimbabwe: January 2001 to August 2002*, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.; Zimbabwe Human Rights NGO Forum (2006), *Who Guards the Guards? Violations by Law Enforcement Agencies in Zimbabwe, 2000 to 2006*, December 2006, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

²¹ See Zimbabwe Human Rights NGO Forum (2006), *An Analysis of the Zimbabwe Human Rights NGO Forum Legal Cases, 1998–2006*. Published by the Zimbabwe Human Rights NGO Forum. June 2006, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

²² See UN [1997], *The Administration of Justice and the Human Rights of Detainees: Question of the impunity of perpetrators of human rights violations (civil and political)*, Revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119, United Nations. Economic and Social Council. Commission on Human Rights. Sub-Commission on Prevention of Discrimination and Protection of Minorities. E/CN.4/Sub.2/1997/20/Rev.1.

²³ Bosire, L.K. (2006), *Overpromised, Underdelivered: Transitional Justice in Sub-Saharan Africa*. SUR International journal on human rights, , Number 5, Year 3, P.80.

²⁴ Akashah. M, (2005), *Accountability for the Health consequences of Human Right Violations: Methodological issues in determining compensation*, May 2005, (unpublished).

²⁵ Hague Convention (IV) Respecting the laws and Customs of War on land. Entered into force on 26 January 1910.

²⁶ Article 51 of Geneva Convention I, Article 52 of Geneva Convention II, Article 131 of Geneva Convention III and Article 148 of Geneva Convention IV.

²⁷ The IMT regarded violations of existing laws and customs of war according to the Hague Rules on Land Warfare of 1899 and 1907 as violations of Customary international Law.

²⁸ A number of cases in various international tribunals have acknowledged the protection of human rights as a state obligation. Iraq was held to be responsible in its commission of 'inhumane acts' during its unlawful occupation of the Kuwait territory in 1990. The United Nations Compensation Commission (UNCC) compensated the victims of human rights and humanitarian law violations, committed by the Iraqi military and security forces during the occupation of Kuwait as individual claims. The ICJ in the case of Bosnia and Herzegovina v Yugoslavia was faced with the question of state liability for gross human rights violations. The court found that Yugoslavia was obliged to pay Bosnia and Herzegovina, a sum to be determined by the court in its own right and as a *parens patrie* for its citizens, reparations for damages caused to persons by violations of international law.

²⁹ Article 14(1) of the Torture Convention.

³⁰ UN Security Resolution 687 (1991) par 16.

³¹ Was adopted by the UN commission on Human right at its 56th session in 2000. Adopted and proclaimed by the General assembly resolution 60/147 of 16 December 2005.

³² Principle 11 , United Nations Principles on the Right to a Remedy. See also, Zegveld, L,(2003), *Remedies for Victims of Violations of International Humanitarian Law*, IRRRC, , Vol 85, No. 851, p.498-499.

³³ Chapter IX par 15 of the adopted principles. See also, Bachmann,S., (2007), *Civil Responsibility for Gross Human rights Violations, The need for a Global Instrument*, Pretoria University Law Press, P.8

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- ³⁴ Principle 21 of the United Nations Principles on the Right to a Remedy.
- ³⁵ Rule 106 of the Rules of both Tribunals ICTR and ICTY.
- ³⁶ Article 75.1 of the Statute of Rome. Obliges the court to establish principles relating to reparations to or in respect of the victims, including restitution, rehabilitation and compensation.
- ³⁷ Article 68(3) of the Statute in conjunction with ruled 89 to 93 and those provisions of the Regulations of the Registry.
- ³⁸ Article 68(1) and Article 43(6) of the Statute.
- ³⁹ Article 75 of the Rome Statute.
- ⁴⁰ The Statute which establishes the principal rights, the Rules of Procedure and Evidence, the Regulation of the Court and the Regulations of the Registry of the Court. See International Criminal Court, Doc. ICC-ASP/1/3(Part II-A) International Criminal Court, Doc. ICC-BD/01-01-04/Rev.01-05), International Criminal Court, Doc. ICC-BD/03-01-06 respectively.
- ⁴¹ Rule 105 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.UN Doc.S/2000/915 (2000). See also SC Resolution 1315 (2000) as amended on 16 January 2002.
- ⁴² Commissions and/ Courts established in Europe, Europe Court of Human rights since the entry into force of the 11th protocol , Africa, Commission and Court on Human and People's Rights after the entry into force of the charter adopted on June 1998.
- ⁴³ Article 27(1) of the Protocol to the African Charter on Human and People's Rights on the establishment of an African Court on Human and People's Rights (1998/2004).
- ⁴⁴ The most recent development has been ground breaking, the indictment of the President of the Sudan under the Rome Statute of the ICC.
- ⁴⁵ Convention on the Elimination of all Forms of Discrimination against Women, Dec. 18, 1979, entered into force in Sept 1981.
- ⁴⁶ Declaration on the Elimination of Violence Against Women, G.A. Res 48/104, U.N. GAOR, 48th Session, Supp No 49, Vol 1, P.217.
- ⁴⁷ The Optional protocol has an inquiry procedure which enables the CEDAW committee to initiate inquiries for gross violations when the state is a party to the Women's convention and the Optional protocol.
- ⁴⁸ Of the African Charter on Human and People's Rights. Article 1, the definition of discrimination against women and violence against women is given. The Protocol was adopted in Maputo, Mozambique on 11 July 2003 and entered into force on 25 November 2005.
- ⁴⁹ Askin,K. (2003), *Prosecuting Wartime Rape and other gender- related crimes under international law: extraordinary advances, enduring obstacles*, , Berkeley International law Journal, P.1
- ⁵⁰ *Prosecutor v. Akayesu*, Judgement, ICTR-96-4-T, 2 Sept. 1998, para 416, 688.
- ⁵¹ *Prosecutor v. Akayesu*, Judgement, ICTR-96-4-T, 2 Sept. 1998, para 416, 688.
- ⁵² *Prosecutor v. Delalic*, Judgement, IT-96-21- T, 16 Nov. 1998, para 479.
- ⁵³ *Supra*, para 354, 395. The ICTY appeals chamber Judgment rendered on February 20, 2001, upheld the findings of the Celebici Trial Chamber Judgment. *Prosecutor v. Delalic*, Judgement, IT-96-21-A, 20 Feb. 2001, at para. 238.
- ⁵⁴ Askin,K. (2003), *Prosecuting Wartime Rape and other gender- related crimes under international law: extraordinary advances, enduring obstacles*, Berkeley International law Journal, P. 32.
- ⁵⁵ Bedont, B et al. (1999), *Ending Impunity for Gender crimes under the International Criminal Court*. Brown Journal of World affairs, Vol VI, Issue 1:65-69, P.5.
- ⁵⁶ *Supra*, P. 6-7.
- ⁵⁷ Rombouts, H, (2006), *Women and Reparations in Rwanda: A long path to Travel; What happened to the Women? Gender and Reparations for Human Rights Violations*, Rubio-Marin, R. (ed) International Center for Transitional Justice, New York, p.17-18, 35.
- ⁵⁸ Forms of violence such as systematic forms of sexual violence, or reproductive violence and domestic enslavements are some examples of violence that are specific to women. Rombouts, H, (2006), *Women and Reparations in Rwanda: A long path to Travel; What happened to the*

Women? Gender and Reparations for Human Rights Violations, Rubio-Marin, R. (ed) International Center for Transitional Justice, New York, p.22.

⁵⁹ United Nations Security Council Resolution 1325.

⁶⁰ SITO (2008), *The Relevance of the Nairobi Declaration for Zimbabwe*. Kudakwashe Chitsike, Research and Advocacy Unit. PRETORIA: IDASA.

⁶¹ Zimbabwe Human Rights NGO Forum (2006), *'An Analysis of the Zimbabwe Human Rights NGO Forum Legal Cases, 1998–2006.'* Published by the Zimbabwe Human Rights NGO Forum. June 2006, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

⁶² WOZA (2008), *The effects of fighting repression with love*. A report by Women of Zimbabwe Arise (WOZA). March 2008. ZIMBABWE: WOMEN OF ZIMBABWE ARISE

⁶³ See Themba Lesizwe (2004), *Civil Society and Justice in Zimbabwe*, Proceedings of a symposium held in Johannesburg, 11-13 August 2003, PRETORIA: THEMBA LESIZWE.

⁶⁴ See Reeler, A.P., & Chitsike, K.C (2004), *The youth are the hope of the future, but which future? A case study with Zimbabwean township youth*. IDASA: DIALOGUE UNIT.

⁶⁵ Research & Advocacy Unit (2009), *Transitional Justice in Zimbabwe: A pilot survey of the views of activists & victims*. Report produced by the Research & Advocacy Unit. January 2009. HARARE: RAU.

⁶⁶ See Zimbabwe Human Rights NGO Forum (2006), *A woman's place is in the home? Gender Based Violence and Opposition Politics in Zimbabwe*. Published by the Zimbabwe Human Rights NGO Forum. December 2006, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM; ZTVP (2006), *Women on the run: Women survivors of torture amongst refugees in South Africa*. Report produced for CSV & Crisis in Zimbabwe Coalition, JOHANNESBURG: CSV.

⁶⁷ HRW (2008), *'Bullets for each of you – State sponsored violence since Zimbabwe's 29th March elections'*, NEW YORK: HUMAN RIGHTS WATCH.

⁶⁸ "Torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising from only from, inherent in or incidental to lawful sanctions.

⁶⁹ WOZA (2008), *The effects of fighting repression with love*. A report by Women of Zimbabwe Arise (WOZA). March 2008. ZIMBABWE: WOMEN OF ZIMBABWE ARISE.

⁷⁰ *Chavunduka & Another v Commission of Police & Another* 2000 (1) ZLR 418 (S)

⁷¹ Article 53 of the Vienna Convention on the Law of Treaties

⁷² Universal Declaration of Human Rights; Article 5

⁷³ Sekai Holland a 64 year old grandmother, was arrested and beaten thoroughly by the police on March 12, 2007, after she had gone to a police station to inquire about her arrested colleagues. She was set upon by 16 men and a woman. The woman reportedly jumped on Mrs Holland, breaking three of her ribs. She also suffered a broken arm, a broken leg, a fractured knee and multiple bruises and lacerations. This was after the police crushed a Save Zimbabwe rally on the 11th March 2007, when over 80 people including Morgan Tsvangirai were badly injured in police custody.

⁷⁴ See Zimbabwe Human Rights NGO Forum [2009], *Only Bruises on the Soles of their Feet? Torture and Falanga in Zimbabwe*. Report produced by the Zimbabwe Human Rights NGO Forum. February 2009. HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

⁷⁵ International Bar Association Human Rights Institute (2007) *'Partisan policing: An obstacle to human rights and democracy in Zimbabwe'* An International Bar Association Human Rights Institute Report, October 2007. LONDON: INTERNATIONAL BAR ASSOCIATION.

⁷⁶ Human Rights Watch (2006), *"You Will Be Thoroughly Beaten". The Brutal Suppression of Dissent in Zimbabwe*. A Human Rights Watch Briefing Paper. November 2006. NEW YORK: HUMAN RIGHTS WATCH.

⁷⁷ The Ombudsman's office is the only body in Zimbabwe that is mandated to investigate the actions of government officials including abusive actions taken by state officials against members of the public, but the Ombudsman Act, 1982 precludes the Ombudsman from investigating the actions of the police, army, and prison services. See Redress (2004), *Zimbabwe: From Impunity to Accountability. Are reparations possible for victims of gross and systematic violations?* March 2004. LONDON: REDRESS TRUST.

⁷⁸ Redress (2005), *Torture In Zimbabwe, Past and Present Prevention, Punishment, Reparation? A Survey of Law and Practice.*, June 2005. LONDON: REDRESS TRUST.

⁷⁹ Solidarity Peace Trust (2004), *"Disturbing the peace". An overview of civilian arrests in Zimbabwe: February 2003 – January 2004*. July 2004. ZIMBABWE & SOUTH AFRICA: SOLIDARITY PEACE TRUST.

⁸⁰ *The Herald*, 1 April 2006

⁸¹ The African Court on Human and People's Rights, Inter-American Court on Human rights and the European court of Human Rights.

⁸² Akashah, M, *Accountability for the Health Consequences for Human rights Violations: Methodological issues in Determining Compensation*, May 2005, p6-7.

⁸³ Rombouts, H, *Women and Reparations in Rwanda: A long path to Travel; What happened to the Women? Gender and Reparations for Human Rights Violations*, Rubio-Marin, R International Center for Transitional Justice, New York, 2006, p.197.

⁸⁴ Shelton, D. (1999) Remedies in international Human Rights Law. New York, Oxford University Press. Cited in Akashah, M, *Accountability for the Health Consequences for Human rights Violations: Methodological issues in Determining Compensation*, May 2005, p.7

⁸⁵ Supra, p.6.

⁸⁶ Marin-Rubio, R. The Gender of Reparations: Setting the Agenda. *Women and Reparations in Rwanda: A long path to Travel; What happened to the Women? Gender and Reparations for Human Rights Violations*, Rubio-Marin, R (ed), International Center for Transitional Justice, New York, p.35.

⁸⁷ Supra

⁸⁸ Supra, p.34.

⁸⁹ Bosire, L.K. (2006), *Overpromised, underdelivered: Transitional Justice in Sub-Saharan Africa*. SUR International journal on human rights, 2006, Number 5, Year 3, P.81.

⁹⁰ Bachmann, S-D. (2007), *Civil Responsibility for Gross Human Rights Violations- The Need for A Global Instrument*. Pretoria University law Press.

⁹¹ Supra, p.11-12.

⁹² See again Bachmann, S-D. (2007), *Responsibility for Gross Human Rights Violations- The Need for A Global Instrument*. Pretoria University law Press, P. 12-13.

⁹³ Viljoen, F et al. (2006), *The Prohibition of Torture and Ill- treatment in the African Human Rights System. A Handbook for Victims and their Advocates*. OMCT handbook Series, Vol. 3.