

Human rights in contemporary Zimbabwe: paper for Uppsala conference

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1 Introduction

This paper will consider the prospects for an improvement in the human rights situation in Zimbabwe, following the creation of a government of national unity in early 2009, and against the background of serious abuse before and after the creation of the independent state of Zimbabwe in 1980. After a historical overview it will look at the current roles of the ZANU-PF-led government, the human rights defenders inside Zimbabwe, and the international community.

2 History

The difficulty of creating a strong culture of human rights, a key ambition of Enoch Dumbutshena, who was Chief Justice from 1984 to 1990, is illustrated by the long history of abuse in the geographical area known from the 1890s as Rhodesia and, from 1980, as Zimbabwe. The Ndebele and Shona, who had occupied the region prior to the arrival of Cecil Rhodes’ pioneers in 1890, had little idea of human rights in the modern sense. The Ndebele, who were dominant, had practised slavery; Lobengula, the Ndebele ruler tricked by Rhodes’ representatives into handing over much of his dominion, had Lotshe, one of his trusted advisers, and 300 members of Lotshe’s extended family, killed in reprisal for his role in the concession to Rhodes. The British South Africa Company, Rhodes’ vehicle, conquered Lobengula in 1894 and followed up with forced labour, dispossession of land and cattle, and ruthless punishment when white rule was threatened.¹ When the Ndebele and Shona rose in revolt, Rhodes with the aid of British troops used all means possible to defeat the guerrillas – blowing up caves, cutting off food and water to villages – and not sparing women and children. At the same time, in the London press, he was generating propaganda against African “barbarism.”

The colonial period, through to Ian Smith’s unilateral declaration of independence in 1965, was characterised by a two-tier system of governance and law, determined by race. The fundamental fact was that power lay with a relatively small white minority. After a referendum in 1922 in which white voters chose “responsible government” for themselves over union with white-governed South Africa, the white colony had effective autonomy from the British Empire. The British Colonial Office, which sought to protect the interests of indigenous populations elsewhere, had little influence. Africans came under Native Commissioners, chiefs on a government stipend, and traditional law. They were required to carry registration certificates, were theoretically restricted to reserves, were not permitted to have homes in the towns, and black males were severely punished for sexual relations with white women.² Workers’ rights were restricted, and the Compulsory Native Labour Act, 1942, a

measure introduced in wartime, made most strikes illegal; nonetheless 100,000 black workers launched a general strike in 1948.

With the dismemberment of the British Empire, following the independence of India in 1947, there was increasing friction between Africans and the settler regimes in central and southern Africa. A key period in awareness-raising among Africans, and in clampdowns on their human rights, lay with the misbegotten Central African Federation of 1953-63, a British Government creation strongly pushed by Godfrey Huggins of Southern Rhodesia (which became Rhodesia after the breakdown of Federation) and Roy Welensky, of Northern Rhodesia. It brought together Nyasaland and Northern and Southern Rhodesia. But African opinion, particularly in Nyasaland and Northern Rhodesia where there were few white settlers, had been opposed from the start, and the declaration of a state of emergency in those two territories in 1959 was the preamble to the Federation's dissolution.

In Rhodesia, a right-wing government, the Rhodesian Front came to power in 1962. Even before that the government passed draconian legislation in 1960 – the Law and Order Maintenance Act, and the Emergency Powers Act – which gave the government and police authority to make arrests at will. Africans, who had no legitimate avenues to express their grievances, protested by rioting; police and armed troops responded brutally. A succession of African nationalist parties was banned, and when Ian Smith declared independence unilaterally in 1965, many nationalist leaders, including Ndabaningi Sithole, Joshua Nkomo and Robert Mugabe, were in prison.

The UDI era of Ian Smith, 1965-1980, was, from the viewpoint of human rights, a continuation of what had gone immediately before. Human rights, above all for Africans, were tightly restricted and the courts were constrained. Within the African townships the police had spies, and militant nationalists used physical violence against those they termed “sellouts.” What was different, however, was that Rhodesia's government was now a pariah regime in the international order, subject to a growing African insurgency which became increasingly significant in the 1970s. While whites might be more impressed by the blank spaces in the “Rhodesian Herald”, as newspaper censorship was imposed, Africans in the countryside were subject to intimidation both by the Rhodesian security forces and the two guerrilla armies – ZANLA, linked to ZANU (the party which Mugabe came to control) and ZIPRA, the force linked to ZAPU (the party led by Nkomo, from which ZANU had broken away prior to UDI).³ Rural Africans suffered most from the growing civil war; some were rounded up into “protected villages” by the Rhodesian forces, in an attempt to cut off support for the guerrillas. Rhodesian attacks on guerrilla bases in neighbouring Zambia and Mozambique did not spare women and children.⁴

Hence, when Robert Mugabe's ZANU party won the first democratic elections, and took power at independence in April 1980, it was inheriting a state with a poor human rights heritage. ZANU itself, following Leninist principles of “democratic centralism” and seeing itself as a revolutionary force, lacked human rights sentiment. The Lancaster House constitution, negotiated in London in late 1979, was supposed to guarantee human rights. But the concern was primarily with the situation of the white minority; the constitution was expected to last ten years; the Zimbabwean courts were expected to protect human rights.

Initially there were many who were optimistic about the prospects for the newly independent country; complaints that ZANU's win rested partly on intimidation of voters, by those guerrillas who had not entered the assembly areas to disarm, were dismissed as propaganda from its opponents who had lost.⁵ And in the 1980s there was significant human rights progress in terms of women's rights, and in socioeconomic rights, especially the right to education. A 1982 statute on the legal age of majority gave women equality at the age of 18; the Sex Disqualification Removal Act entitled women to be appointed to any post in the civil service. The right to education, a particular concern for Mugabe who had been a teacher, became a reality with African literacy rates rising sharply.⁶ Health and other services for the majority also improved.

However the new government did not sign the international convention against torture, and other cruel, inhuman or degrading treatment or punishment; in 1983 a judge threw out a case against the second and third most senior officers in the Zimbabwe air force, accused of complicity in a South African plot to blow up planes in July 1982, on the grounds that the evidence had been obtained under torture.⁷

The reality was that the new state was surrounded by wars – in South Africa and Namibia, where liberation struggles against racism were growing more powerful, and in Mozambique, where the apartheid-sponsored Renamo guerrillas were trying to overthrow the Frelimo government. For the ZANU-led government in Zimbabwe, initially a coalition with ZAPU, the sense of itself being involved in continuous warfare was used to justify most serious breaches of human rights. In July 1980 the government reinstated the state of emergency which had applied during UDI; former ZIPRA and ZANLA guerrillas fought each other; and in 1982 the coalition government broke up violently when alleged ZAPU arms caches were discovered.

This precipitated the human rights disaster known as Gukurahundi, literally “the rains that wash away the chaff” in Shona, in which an estimated 20,000 people lost their lives and 7,000 were tortured.⁸ In 1983-4 a ruthless Shona brigade, the Fifth Brigade, was unleashed on the minority Ndebele provinces and told to hunt down “dissidents.” In six weeks alone in Matabeleland North, from January to March 1983, 2000 civilians were killed, mostly in public executions. In the neighbouring province of Matabeleland South, in 1984, there was a food embargo and 2000 people were held in the Bhalagwe camp; Ndebele fled into neighbouring Botswana.

International criticism was muted. Many found it hard to accept that the repression had been authorised by the government. The report of a commission of inquiry, chaired by Simplicius Chihambakwe, was never published. A parliamentary bill was passed to excuse both security forces and “dissidents” for all acts undertaken during this period, and ZAPU was coerced into unity with ZANU in December 1987; Robert Mugabe, hitherto prime minister, became executive president; Zimbabwe in effect was, for a few years, a one-party state as it departed significantly from the Lancaster House constitution which brought it to independence in 1980.

In the early 1990s it looked as though the human rights situation for Zimbabwe might become more benign. The one-party dictatorships in eastern Europe collapsed after the Berlin Wall came down in 1989. Peace was breaking out in Namibia, in Mozambique and, most importantly in South Africa, where apartheid was finally

demolished with the democratic elections of 1994. In Harare, in 1991, Commonwealth leaders agreed the Harare Declaration which committed them to just and accountable government, the rule of law, and fundamental human rights. But although an election over the border in Zambia swept away the UNIP government of Kenneth Kaunda which had ruled since independence, students who marched on the Commonwealth conference were greeted by teargas.

The free market nostrums which accompanied the end of the Cold War for western donors, and the unresolved issue of white landownership in Zimbabwe, led to economic setbacks and social conflict in the 1990s. The Zimbabwe Confederation of Trade Unions established its independence from the government, and embarked on an aggressive series of strikes which aimed to restore living standards. In 1997 the Mugabe government sought to appease war veterans, whose compensation fund had been corruptly raided, by an unaffordable Z\$50,000 (US \$2,500) and a regular gratuity to each; a “war veterans’ levy” applied to the rest of the population, created uproar. At about the same time the government joined the war in neighbouring Congo, on the side of the Kabilas, exposing generals to opportunities for resource enrichment, and troops to a war of brutal ferocity and abuse.

Security forces killed ten persons in food riots in several towns in early 1998. In response, several legal, women’s and other bodies came together to create the Zimbabwe Human Rights NGO Forum, whose witness and testimonies became a crucial element as the human rights situation worsened over the following decade. The government tried to restrict labour rights, by promulgating the Presidential Powers (Temporary Measures) Regulations in August 1998, which would have the effect of making strikes illegal in the private sector.

In 2000 the government was defeated in a referendum on a new constitution, and a powerful union-based opposition party, the Movement for Democratic Change, emerged to challenge the dominance of ZANU-PF.⁹ In March 54 per cent voted No to the government’s proposed constitution, in a relatively low poll; parliamentary elections were scheduled for June; and, in an effort to shore up its rural vote and threaten its opponents, the government unleashed “war vets” in a chaotic process of occupation and ransack of the white commercial farms. The scale of intimidation, with consequent collapse in food outputs, was enormous; altogether some 200,000 farm workers were estimated to have lost their jobs in the farm invasions; the Amani Trust, a human rights body, recorded 5070 cases of political violence, nearly all caused by ZANU-PF; and the MDC stated that it could only campaign safely in 25 constituencies and in 49 it was so dangerous that the party could not campaign at all. Police, increasingly politicised, ignored calls for help, and a bishop resigned from the Electoral Commission, saying that it had lost all credibility.¹⁰ In spite of glaring defects in the process, ZANU-PF won only 62 seats, with 48 per cent of the votes, while the MDC won 57 with 47 per cent.

The events of 2000 set the stage for an economic, social and human rights decline which lasted for most of the decade, and has not yet been reversed. Legislation was passed that restricted the public space for criticism and free discussion,¹¹ and state media attacked non-governmental and opposition voices. Opponents of the regime were beaten up and put on trial (this included, in 2007, a life-threatening assault on Morgan Tsvangirai, leader of the MDC); millions were pauperised and made hungry

by the collapse in food production and a hyper-inflated currency which was not abandoned until early 2009; around a quarter to a third of the population fled the country; judges were coopted by the gift of formerly white-owned commercial farms; the government rejected the jurisdiction of the Southern African Development Community tribunal, based in Namibia, when it ruled that the takeover of white farms had been discriminatory. A nadir was reached in 2008 when, by the regime's slow release of election results, Tsvangirai was said to have beaten Mugabe in the first round of voting, and ZANU-PF responded by a terror campaign which led Tsvangirai to withdraw from the second.

It is not appropriate here to recapitulate the story of the first decade of the 21st century, but it is worth referring to three events which were significant for the diminution of human rights. The first was the loss of independence of the judiciary. This happened in the backwash of the violent farm invasions which started in 2000. In 2001 Anthony Gubbay, Chief Justice since 1990, was forced to take early retirement after the Supreme Court had found that the takeover of farms, without compensation, was against the law. Thugs threatened his court. He was succeeded by Godfrey Chidyausiku, a man who had the confidence of the Mugabe government and who had chaired its constitutional review commission. In due course the loyalty of the senior judges was confirmed when they accepted farms which had formerly belonged to white commercial farmers who had not been compensated.

The second specific event was Operation Murambatsvina, a brutal "slum clearance" operation which the government launched in urban areas on 19 May 2005.¹² The claimed purpose was to remove pavement dwellers, illegally built houses and shacks, and unregistered petty entrepreneurs, but a trigger was the MDC victories in cities in parliamentary elections that March. The operation was largely conducted by police, with army support, and those whose homes had been demolished were transported out into the bush. The scale dwarfed the impact of the commercial farm invasions, when it was estimated that some 200,000 workers had lost their jobs, and frequently their homes. With Murambatsvina it was estimated that 650,000-700,000 homes were destroyed, with 2.4M people affected.

A national and international outcry caused Kofi Annan, UN Secretary-General, to invite Anna Tibaijuka, the Tanzanian head of UN-Habitat, to carry out a rapid inquiry. Her report was highly critical, concluding that "while purporting to target illegal dwellings and structures and to clamp down on alleged illicit activities [the operation] was carried out in an indiscriminate manner, with indifference to human suffering." She criticised a governance crisis which made it unclear who had ordered the operation, the lack of support for those who had been dispersed, and the ban on the World Food Programme providing food for the hungry homeless. She commented that it would be many years before the families concerned, and the country as a whole, would recover. From a rights perspective there was a sharp contrast with what had been happening in South Africa, with its rights-based constitution, where Joe Slovo had been trying to make a reality of a right to housing.

Nearly two years later, on 7 March 2007, the politicised police force broke up a Sunday rally by the Save Zimbabwe Campaign with such violence that the world and Southern African region was forced to take notice. The context was one of tight restrictions on political meetings – the Zimbabwe government had been unwilling to

permit freedom of assembly since the 1990s – and this was to be an ostensibly “non-political” gathering with civil society as well as MDC participants. However 100,000 demonstrators were expected to march in from the poor, high-density suburbs which supported the MDC, and Tsvangirai, its leader, was due to speak. What happened then was that there were roadblocks, live ammunition was fired which killed one demonstrator, and Tsvangirai and other MDC figures were beaten up and tortured. Tsvangirai was particularly badly treated, with his head repeatedly bashed against a cell wall, and his skull fractured. When his release was ordered three days later by the High Court, so that he could get medical help, photographs went round the world showing his head and face to be terribly bruised.

Following this public relations disaster for the ZANU-PF government, President Mbeki of South Africa became more active in the Zimbabwe crisis. He was the mediator appointed by SADC to resolve differences between government and opposition and South Africa itself had a strong interest in finding a resolution; in 2005 the South African authorities had deported 150,000 Zimbabwean refugees back to their country, and economists estimated that the ongoing crisis in the northern neighbour was impacting adversely on investment in South Africa and its economic growth.

Mbeki brokered talks which resulted in two sets of elections in 2008 – the first comprehensively won by the MDC in March, the second a presidential run-off in June from which Tsvangirai withdrew after he said that government-induced violence had killed 86 of his supporters and forced 200,000 from their homes. The upshot was the “unity government”, of ZANU-PF and the two MDC factions, which took power in February in 2009 and is still in office. It is appropriate now to turn to the roles of the ZANU-PF government up to 2009, and to the coalition government it now dominates; to the situation of human rights defenders inside Zimbabwe; and to the role of the international community.

3 The government of Zimbabwe

ZANU-PF was, and maintains that it continues to be, a Southern African liberation movement. In the 1960s it was a breakaway from the Zimbabwe African Peoples Union, led by Joshua Nkomo, and in the 1970s it was strongly influenced by Marxism and oriented towards the Chinese communist line.¹³ By the early 1990s, when the government adopted a free market structural adjustment policy which caused much hardship, it was moving away from Marxism towards capitalism with an indigenist twist.

But the attitudes formed during the guerrilla war in the 1970s, including the brutal handling of the internal rebellion in 1974 led by Thomas Nhari and Dakarai Badza, were profoundly antipathetic to the growth of a human rights culture in ZANU-PF. The ends justified the means. The Rhodesian security forces were adopting oppressive methods, including torture and transfer of rural people into “protected villages”, which were used to justify ZANU’s own use of terror. ZANU and its guerrillas ran indoctrination sessions, similar to those of Chairman Mao. Many of the military leaders from ZANU’s military wing, ZANLA (the Zimbabwe African National Liberation Army), took key positions in government after ZANU won the 1980 elections. Further, there was a widespread feeling in the party’s upper echelons that it had won a war rather than an election; this was not entirely inaccurate, since perhaps a

third of the ZANLA guerrillas had never handed in their arms and remained in rural areas during the election, backing party propaganda with intimidation.

There was a contrast with what was happening in South Africa, where the ANC sought to maintain some principles of human rights in its struggle against apartheid, and where the transfer of power from white to black was achieved through lengthy direct negotiation, not brokered by a former colonial power.

But in its self-image as a liberation movement, ZANU saw continuities between the struggle of the 1970s, its Gukurahundi repression in the 1980s (justified in part by fears that apartheid South Africa was stimulating a Mozambican-style proxy), and the violent land invasions from 2000 onwards which its propagandist, Jonathan Moyo, styled as the “third chimurenga”.¹⁴ There was an element of truth here, for the white farmers had been the backbone of Ian Smith’s army, party and economy; when photos appeared of white farmers handing cheques to Tsvangirai’s MDC in the 2000 the state media could hardly conceal their glee. ZANU-PF was up against its old enemy.

In the 1990s, when many human rights organisations got going in Zimbabwe, it briefly looked as though the authoritarian predisposition of ZANU might be outgrown. The state had never quite achieved the one-party dictatorship which had been foreshadowed in the ZANU-ZAPU unity accord of 1987, and Harare hosted the significant Commonwealth summit of 1991 at which President Mugabe and his peers made commitments to democracy, the rule of law, and fundamental human rights. An account of Gukurahundi unveiled the truth of massacres which had been hushed up,¹⁵ and even teenagers showed strong awareness of human rights principles.¹⁶ With Namibia’s independence in 1990, peace in Mozambique in 1992, and South Africa’s democratic elections in 1994, the regional environment had become more benign.

But this brief moment of hope was not consolidated. Economic failure, the rise of serious civil society and political opposition to ZANU-PF hegemony, and involvement in an unpopular war in the Congo which could taint military professionalism – all these factors combined with the unfinished problem over inequitable land distribution to create crisis. And in the crisis, which broke in 2000, ZANU-PF reverted to an essentialism that had no sympathy for human rights. In this century the politicisation of military, police, prisons and security services has been a key element in the government’s retention of power. Although it is not fair to say that the judiciary has always done the government’s bidding, its independence has been compromised, and the rule of law has taken second place to the power of the executive.

How far has the “global political agreement” of September 2008, which in February 2009 ushered in a unity government with Robert Mugabe as president and Morgan Tsvangirai as prime minister, made any difference to human rights? The agreement itself had several articles which, if fully implemented, would make substantial changes. Article 7 covers the promotion of equality, national healing, cohesion and unity; article 10 would guarantee free political activity; article 11 supports the rule of law, respect for the constitution and other laws; and article 12 would guarantee freedom of assembly and association.¹⁷

The trouble is that, principally due to obstruction by ZANU-PF, this agreement has not been implemented. While the MDC factions were given economic and social ministries in the coalition, ZANU retained home affairs and security ministries. The ZANU Attorney-General, Johannes Tomana, was appointed by Mugabe without approval; when Tsvangirai wished to appoint Roy Bennett as deputy minister of agriculture – he was a former farmer who had become treasurer of the MDC – he was locked up in a treason trial.¹⁸ Civil society and human rights leaders were hounded and, in late 2010 and early 2011, when ZANU-PF was pressing for an early election, intimidation and violence by its thugs rose in a characteristic pre-election crescendo. The promised Human Rights Commission had no funding.¹⁹ In late 2010 licences were issued for non-government newspapers, and Trevor Ncube's *Newsday* began publication. But Wilf Mbanga, editor of *The Zimbabwean*, an opposition paper, was declared a prohibited immigrant, and no independent broadcasters were permitted to break the state monopoly. At the same time the police continued to break up civil society demonstrations, and the right to free assembly remained a dead letter. Human rights abuse was reported in the military-controlled Marange diamond fields, which became an important source of revenue for ZANU.

What improvements were noticeable lay in the economic and social fields. After the hyper-inflated Zimbabwean dollar was finally abandoned, just prior to formation of the inclusive government, a gentle economic recovery began. This was helped by improving mineral and commodity prices, and better yields from small-scale agriculture. The education system, virtually at breakdown in the nadir of 2008 but a source of pride in the early years of independence, was on the way to recovery in 2010. Although western nations were not keen to ease sanctions directed at ZANU high-ups, they were supportive of education and health ministries led by MDC ministers.

Hence, with a political stasis bound up with plans for a new constitution and elections – furthered by a roadmap prepared by President Zuma of South Africa, now the SADC mediator in Zimbabwe – there was only the most gradual improvement in the human rights scene, and little sign of a change in attitude in ZANU-PF. ZANU-PF remained the dominant partner in the coalition. The organ for national healing, an original product of the inclusive government, was designed to take the violence out of national life. With senior persons from each party involved it sought to heal the widespread traumas faced by ordinary Zimbabweans since the war in the 1970s. Mrs Sekai Holland, of the larger MDC formation, was its keenest advocate. She argued that at least a million people were seriously traumatised. But the inability of the organ to tackle continuing violence, and to achieve change in the security services and their traditions of impunity, meant that its efforts seemed slight and cosmetic.

4 The human rights movement in Zimbabwe

In spite of harassment, and the limits of officially permitted public space, one of the major achievements in Zimbabwe over the last 20 years has been the creation of a diverse and vital human rights community. At the time of the Commonwealth conference in Harare in 1991 there were only a handful of activists specialising in human rights. The non-governmental Commonwealth Human Rights Initiative organised a conference then, covering rights issues in Commonwealth African countries, with three Harare-based partners – the Legal Resources Foundation, the Catholic Commission for Justice and Peace, and the Southern African Non-

governmental Development Organisations Network. None were exclusively concerned for human rights, although the CCJP had won attention by speaking out against abuses by the Smith regime in the 1970s, as well as against Gukuharundi.

But by the early years of this century, and in spite of beatings and intimidation, the scene had broadened enormously; campaigners took issues to the courts, got their stories out to the world via the internet and family relations, and provided a continuing counterpoint to state propaganda. A key element in this was a willingness to work together, and with other civil society organisations. An umbrella group, the Zimbabwe Human Rights NGO Forum, published members' statements almost every day, and had an active publicity office in London as well as in Harare. In a statement on 17 May 2011, on the way forward for fair elections, the Forum joined with seven other networks in a call for an end to violence and hate speech, and an immediate opening of the media environment.²⁰

It is almost invidious to list particular groups, but among the most active have been and are Zimbabwe Lawyers for Human Rights, Gays and Lesbians of Zimbabwe (up against the outspoken homophobia of President Mugabe and his associates), WOZA (Women of Zimbabwe Arise) and the Amani Trust with its associated Research and Advocacy Unit. A high proportion of WOZA activists have been beaten or arrested after demonstrations; the Amani Trust and RAU, with a background in concern for the psychological damage to the victims of violence, have produced a series of careful, research-based reports.

There are also a number of heroic, high-profile individuals who have taken significant personal risks in the interest of human rights and justice. Among these are Jestina Mukoko, director of the Zimbabwe Peace Project, who was kidnapped by the security services in December 2008, tortured, and not released until March 2009 when she was thrown a trumped-up charge that she had been training insurgents in Botswana. Another is Beatrice Mtetwa, a lawyer who has defended several journalists and been recognised with media awards. A third is Abel Chikomo, director of the Zimbabwe Human Rights NGO Forum, who was arbitrarily arrested in March 2011 after months of harassment, along with Macdonald Lewanika, coordinator of the Crisis in Zimbabwe Coalition.

But the human rights community has problems to overcome. One, which has been exploited by ZANU-PF, is the degree to which it overlaps with the official opposition of the MDC formations, and the degree to which it depends on external funding. A second relates to its attitude to the potential conflict between justice and reconciliation.

The MDC was originally formed as a movement, rather than a party, and in the context of the campaign against the new constitution proposed by the ZANU-PF government in 2000. Although Zimbabwe trade unions formed the nucleus of the MDC a number of civil society organisations participated in its start. The range of opinions and interests was wide, though all were united in a desire to change the government, and install a more popular constitution. Nonetheless, to begin with, it was not difficult for the government to lump all of civil society, including the human rights groups, as part of a political opposition. With the passage of time, and the 2005 split in the MDC, some civil society bodies dissociated themselves from the political

opposition and indeed were critical of it, for undemocratic practices and other reasons. The foreign funding jibe from ZANU-PF was harder to combat, for western and humanitarian funders were sympathetic to the beleaguered human rights groups, and it was hard for them to keep offices and projects going when the Zimbabwean economy was in free fall.

More challenging, perhaps, was the issue of whether it was right to make a political compromise with a ZANU-PF which had committed egregious human rights abuse. Did the interest of national reconciliation, and a desire for peace, override the need for justice? The question became more salient with the establishment of an International Criminal Court in The Hague, and the sight of prominent European and African politicians going on trial. It was widely thought that one reason why President Mugabe was reluctant to step down, even after his defeat in 2008, was his fear of such a trial. Instead he became, in all but name, a president for life.

One human rights lawyer who decided that pacification and national recovery required a deal with ZANU-PF, however distasteful, was David Coltart, who became Minister of Education in the unity government. Based in Bulawayo he had helped collect evidence after the Gukuruhundi and was under no illusion about the scale of human rights abuse. He belonged to the smaller MDC faction of Arthur Mutambara and Welshman Ncube and concluded with them that, after the violence of the second round presidential election in 2008, a deal had to be done.

Not all in the human rights community agree with this, desiring an end to an official culture of impunity. South Africa, after the end of apartheid, avoided trials and set up a Truth and Reconciliation Commission, but with a strong constitutional commitment to rights. At least one prominent Zimbabwean lawyer and businessman believes that the country can never put violence, and uncertainty over property rights, behind it until the rule of law is firmly established with a new constitution.²¹

5 The international community

How far has the international community assisted human rights in Zimbabwe, in a situation where one political party has sought to cling on to power at the expense of the economy and many citizens? Talk of an “international community” conceals the varied interests of nations and regional groupings. In the Zimbabwe case these include traditional friends of ZANU-PF, such as China, Malaysia and Colonel Gaddafi’s Libya; regional and continental associations, SADC and the African Union; the European Union including a vociferous ex-colonial power, the United Kingdom; the United States; and the United Nations.

These players have simply not been pulling in the same direction. For example in 2008, when the European Union had sanctions in place against around 200 ZANU-PF persons, China was trying to send an arms shipment to the Zimbabwe government.²² Fear of Chinese vetoes in the UN Security Council limited UN action against the Mugabe regime, which prevented a UN rapporteur on torture from visiting the country. Although international aid from the IMF and World Bank was cut off after the chaotic land invasions both China and Libya have invested in Zimbabwe in this century. Hence much of the criticism of the regime’s abuse has been rhetorical, and not greatly effective in changing the situation inside the country. More significant have been the political changes in 2011 in Ivory Coast, North Africa and the Middle

East, which seem to have lent new power to President Zuma's SADC mediation mission; by insisting on a new constitution, with a referendum, he appears to have scuppered President Mugabe's plan for a rushed election under the old constitution and forced ZANU-PF to look to a future beyond its aged leader.

The west has consistently called for fair elections in Zimbabwe; in effect it has been calling for a new government. But a change of government would not of itself resolve the deep-seated problems of violence, trauma and inherited impunity and abuse. The 1991 change of government in Zambia, which led to serious corruption and disrespect for ex-president Kaunda by the victorious Movement for Multiparty Democracy, is a warning that an election in central Africa does not necessarily usher in paradise. Furthermore, while much western support has for obvious reasons been channelled through NGOs in Zimbabwe, it will be government, security and central institutions that will need reform if a new commitment to human rights is to take hold.

6 The future

Forecasting is fraught with error, and much in Zimbabwe will depend on the way in which the new constitution emerges, whether it passes in a referendum, and the longevity of Robert Mugabe who is now aged 87. Hence the political and constitutional context for human rights will dictate the capacity for betterment.

But some aspects are clear. There can be no quick fix for a country and society which has been suffering from different kinds of internal warfare for at least 40 years; attitudinal change must take time; police, military, judges and civil servants will all need a process of reeducation. Further, most of this work will have to be done by Zimbabweans themselves, rather than outsiders, and Zimbabweans who show a respect to fellow-citizens which in the past has been lacking. Yet room must also be created for those Zimbabweans who have left the country, now more numerous than the exiles from the bush war in the 1970s. These migrants must be encouraged to come home, bringing with them new skills and a new understanding of rights; in those who have been caught by xenophobia in South Africa, or the sharp edges of asylum policy in the United Kingdom, there should be sympathy for rights and due process.

Above all there has to be a reinstatement of the rule of law, with depoliticised police and independent judges. Socioeconomic rights, including rights to property as well as rights to food and education, have to be given a firmer footing. The land audit, promised by the "global political agreement" as a way to start tackling the unresolved issues in land distribution, has been baulked by ZANU-PF trustees who were given land for free but did not farm it. Yet there is something ridiculous about Zimbabweans having to depend on handouts from the World Food Programme when white farmers, dispossessed in Zimbabwe, are growing food on 90 year leases in Zambia and 50 year leases in Mozambique. The decision by the SADC Tribunal in Windhoek in 2008 that farm takeovers were racially discriminatory, and that 79 commercial farmers deserved compensation, may assist a post-Mugabe settlement; a favourable review of the tribunal, completed in 2011 after the Zimbabwe government refused to recognise this finding, and then trampled on by SADC leaders, could eventually confirm its wider human rights importance for the region.

It is possible that the long suffering of Zimbabweans may lead to a more just society, as the second world war led to the UN Declaration of Human Rights and the

covenants, constitutions and decisions which flowed from it. But with an aged President Mugabe still in power, surrounded by ZANU-PF colleagues with much to lose, it will require considerable wisdom and patience to take the people of Zimbabwe forward.

¹ For example, four chiefs were shot dead by BSAC police, with no due process, at a Methodist mission farm near Zvimba in 1894 after a white man had been murdered.

² By an ordinance of 1903 a black man could be sentenced to five years in prison and a white woman to two; there were no punishments for a white man consorting with a black woman.

³ ZANLA stood for the Zimbabwe African Liberation Army and ZANU for the Zimbabwe African National Union; ZIPRA stood for the Zimbabwe Peoples Revolutionary Army and ZAPU for the Zimbabwe African Peoples Union. Both parties claimed to be Marxist. ZANU leant towards Chinese communism and was dominated by the Shona ethnicity; ZAPU leant towards Soviet communism and was dominated by those of Ndebele origin, a smaller group than the Shona.

⁴ One of the worst examples of a Rhodesian attack on Zimbabwean refugees occurred in Nyadzonja, in Mozambique, where 600 were killed in a terror raid in 1976.

⁵ The defeated African parties were ZAPU, and the United African National Congress of Bishop Abel Muzorewa, who had briefly shared power with Ian Smith.

⁶ Between 1980 and 1990 the number of primary schools rose from about 1,800 to over 4,500; the number of secondary schools jumped from less than 200 to over 1,500; “double-sessioning”, with pupils taking it in turns to go to school in shifts, accelerated the educational revolution. Prior to independence only 2 per cent of Africans had had an education.

⁷ The two were Hugh Slatter and Philip Pile.

⁸ See “Gukurahundi in Zimbabwe: a report on the disturbances in Matabeleland and the Midlands, 1980-88”, first published by the Catholic Commission for Justice and Peace in Zimbabwe and the Legal Resources Foundation, Hurst and Company, London, 1997

⁹ ZANU had become ZANU-PF after the unity accord in 1987. The addition of PF – Patriotic Front” harked back to the loose alliance of ZANU and ZAPU at the Lancaster House talks of 1979.

¹⁰ Bishop Peter Hatendi.

¹¹ Two key pieces of legislation were the Public Order and Security Act (POSA), of 2002, which limited civil society, and the Access to Information and Protection of Privacy Act (AIPPA) of 2003, which provided for government restriction of the media.

¹² The 2005 report of Anna Tibaijuka, UN Special Envoy on Human Settlements Issues in Zimbabwe, is available on the United Nations website. See also “The Hidden Dimensions of Operation Murambatsvina in Zimbabwe”, ed M Vambe, Weaver Press, Harare, 2008.

¹³ The Soviet Union was supporting ZAPU, as it also supported the African National Congress in South Africa; it was not until 1983, three years after Zimbabwe gained independence, that the Soviet Union opened an embassy in Harare.

¹⁴ The first “chimurenga” was the revolt against Cecil Rhodes; the second was the guerrilla war against Ian Smith’s Rhodesian regime.

¹⁵ “Gukurahundi in Zimbabwe”, *ibid.*

¹⁶ See “School-based understanding of human rights in four countries: a Commonwealth study” by R Bourne, J Gundara, A Dev, N Ratsoma, M Rukanda, A Smith, U Birthistle, Department for International Development serial 22, 1997. The study followed 915 secondary students in Botswana, India, Northern Ireland and Zimbabwe. At that time, Zimbabwean students said they heard more about human rights from radio, TV and press than they did from school or family, expressed highest concerns about violence among the four samples, and wanted to learn more about human rights in the school curriculum.

¹⁷ The full version of the Global Political Agreement, 15 September 2008, is published by the Ministry of Constitutional and Parliamentary Affairs, Harare in English, Shona and Ndebele.

¹⁸ Although released from prison, Bennett fled to South Africa and, in 2011, to the United Kingdom.

¹⁹ The inclusive government appointed Professor Reg Austin, a respected lawyer who had headed the Legal and Constitutional Affairs Division at the Commonwealth Secretariat, to chair this commission.

²⁰ The other bodies were: the Crisis in Zimbabwe Coalition; the National Association of Non-Governmental Organisations; the National Constitutional Assembly; the Women’s Coalition of Zimbabwe; the Zimbabwe Elections Support Network; and the Zimbabwe National Students Union.

The first point in the joint statement was to endorse the resolution of the SADC Troika in Livingstone which had demanded “the active and full participation of the people of Zimbabwe in the elections.”

²¹ Author interview with Sternford Moyo.

²² The ship was unable to unload in Mozambique, South Africa, Namibia or Angola.