The LEGAL MONITOR

ZIMBABWE LAWYERS FOR HUMAN RIGHTS
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Closing borders of impunity

...few places to run for torturers

HARARE-The days when Zimbabwean officials who torture civilians and then use political connections to evade international justice for crimes against humanity are coming to an end.

Neighbouring South Africa is one country which Zimbabwean ministers, security sector commanders and their foot soldiers who are accused of torture could soon be afraid of visiting.

In a landmark ruling, the North Gauteng High Court declared that political and diplomatic relations cannot be used to shield these officials from being investigated by South African police and prosecuting authorities for torture and other grave human rights violations.

The ruling leaves Zimbabwean officials accused of torture but "immune" to justice at home vulnerable to arrest in South Africa under its domestic as well as international law.

North Gauteng High Court judge, Justice Hans Fabricius, was ruling on a case brought by Southern African Litigation Centre (SALC) and Zimbabwe Exiles Forum (ZEF).

The two human rights groups wanted the court to force South African authorities to take action against alleged perpetrators who commit abuses in Zimbabwe, and regularly visit South Africa for medical treatment and on business, or shopping jaunts.

This was after the South African police and that country's National Prosecuting Authority (NPA) refused to investigate a docket on Zimbabwe torture cases that implicated six ministers and several senior security sector commanders.

Justice Fabricius dismissed arguments by South African police and the NPA that investigating or prosecuting Zimbabwean officials would strain diplomatic relations.

"Respondents' approach, according to this argument, would lead to the untenable situation that it would deny victims of international crimes standing in South African proceedings, and would shield decision-makers, like the respondents, from accountability when faced with making decisions regarding prosecutions of international crimes that occurred outside South Africa," reads Justice Fabricius' ruling, in a case which was the first of its kind in South Africa.

SALC and Pretoria based ZEF, which campaigns for the rights of exiled Zimbabweans, cited South Africa's national director of public prosecutions in the NPA as the first respondent, the head of the priority crimes litigation unit as second respondent, the director-general of justice and constitutional development as third respondent and the police commissioner as fourth respondent.

"Political considerations were taken into account by institutions, which, according to law, are obligated to act independently in the context of the Constitution and the legislation governing their functions, duties and obligations," reads the ruling, which notes that "a number of the implicated torturers had in fact visited South Africa during certain periods."

"First and fourth respondents' view was therefore affected by irrelevant political considerations having regard to their duties. Their attitude trivialised the evidence. Diplomatic considerations were also not the business of fourth respondent, to put it bluntly," reads the ruling.

Gabriel Shumba, chairman of ZEF, said the ruling would help keep "untouchable" perpetrators of torture in check.

"We are ecstatic about this decision, which shrinks further the borders of impunity for crimes against humanity not only in Zimbabwe, but on the continent," said Shumba, who fled Zimbabwe in 2003 after being tortured by intelligence officers for offering legal representation to an opposition legislator.

"This judgment is propitious in that it comes before yet another round of elections in Zimbabwe, and will go a long way in sounding the warning salvo to those who have previously and presently committed crimes against humanity under the guise of campaigning for ZANU PF," said Shumba.

Justice Fabricius said the Rome Statute of the International Criminal Court (ICC) Act, mandated South African authorities to act against perpetrators of torture from outside its borders. South Africa passed the ICC Act in 2002. "In order to give effect to the principle of universal jurisdiction, and to confer jurisdiction on domestic courts for international crimes, the ICC Act deems that all crimes contemplated by that Act, wherever they may occur, are committed in South Africa. Therefore it was legally irrelevant that the victims were tortured in Zimbabwe, because the ICC Act requires that they are to be regarded as having been tortured in South Africa," reads the ruling.

Justice Fabricius agreed with SALC and ZEF that acting to the contrary would make South Africa a "safe haven" for perpetrators of torture and genocide.

"This would make a mockery both of the universal jurisdiction principle endorsed by Parliament when enacting the ICC Act, as it would render the legislative provisions redundant, as well as the principle of accountable governance to which the Constitution commits South Africa," reads the ruling.

"South Africa comports itself in a manner befitting this country's status as a responsible member of the international community, and this would be done by seeking to hold accountable those responsible for crimes that shock the conscience of all human kind. The decision not to do so is effectively a shirking of these responsibilities, and therefore is of concern to the South African public," reads the ruling, which has been described by Zimbabwe Justice Minister Patrick Chinamasa as political.

The judge ruled that both SALC and ZEF had *locus standi* to bring the case before the court on behalf of the Zimbabwean torture victims.

"The applicants state that they bring this application in their own interest in terms of s38 (a) of the Constitution of 1996, on behalf of and in interest of the victims of torture in Zimbabwe who cannot act in their own name in terms of s38 (b) and (c)of the Constitution, and in the public interest in terms of s38 (d) of the Constitution.

"They say that torture as a crime against humanity is one of the universally condemned offences, the prohibition of which is regarded as a norm of jus cogens under international law (a preventary norm from which no derogation is permitted)," reads the ruling, which notes that Zimbabwe is still undergoing a cycle of political violence.

Hon. Moses Mzila-Ndlovu (third from left) with Zimbabwean civil society representatives at the launch of the Zimbabwe Human Rights NGO Forum report on transitional justice in London. Read story on page 2

Perpetrators face justice in SA

By Gozho Mhini

The judgment delivered in the High Court in Pretoria, South Africa last week by Justice Hans Fabricius must be read by those who have committed or intend to commit heinous crimes in Zimbabwe. Victims have every right to celebrate the decision. International crimes fall under three categories, namely, genocide, war crimes and crimes against humanity. The days of partisan state impunity and protection face a new formidable challenge. The long treasured immunity and lack of accountability now seems illusory. South Africa has the responsibility to investigate, and in the face of sufficient evidence, the power to prosecute the perpetrators. Crimes against humanity committed in Zimbabwe are in terms of South African and international law deemed to have been committed in South Africa. Yes, that includes the barbaric and sickening torching of bodies in Zaka four years ago! For the purposes of the law, the murderous perpetrators might as well have done it on the Johannesburg freeway during rush hour! That would not make a difference in terms of South Africa's power to hold them liable.

For the avoidance of doubt the following, among other crimes, constitute 'crimes against humanity' *when committed as part of a widespread or systematic attack directed against any civilian population*; (a) murder (b) extermination (c) deportation or forcible transfer of a population (d) imprisonment or severe deprivation of physical liberty in violation of fundamental rules of international law (e) torture (f) rape (g) sexual slavery (h) persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender or other universally recognized grounds, (i) enforced disappearance of persons, and any other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.

By this wide definition, many of the heinous crimes committed by state agents, politicians, militia and their supporters in Zimbabwe constitute crimes against humanity deemed to have been committed in South Africa.

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Diaspora demands justice

LONDON-Stripped of their identity after being forced out of the country by political violence and economic collapse, Zimbabweans in the diaspora are demanding justice.

They also want an equal say on how issues of transitional justice are tackled "whether they subsequently return or not", according to the first volume of a report recently released by a leading local human rights coalition following an outreach programme.

Migration bodies estimate that about three million Zimbabweans-a quarter of the population-fled the country between 2000 and 2008 when Zimbabwe suffered serious political and economic turmoil. Most of them migrated to South Africa and former coloniser Britain.

It is this population, which has largely been ignored by the coalition government of President Robert Mugabe and Prime Minister Morgan Tsvangirai, that Zimbabwe Human Rights NGO Forum tapped into as part of its "Taking transitional justice to the diaspora" programme aimed at gathering the views of exiled Zimbabweans.

"The voices of displaced and disenfranchised Zimbabweans are crucial in the realisation of the Forum's mission to reduce organised violence and torture, cruel, inhuman and degrading treatment; to challenge impunity and to foster a culture of accountability and the building of institutions of non-violence, tolerance and the respect for human rights in Zimbabwe," reads the report, emphasising the importance of the diaspora.

"A substantial number of Zimbabweans in the diaspora fled from organised violence and torture to countries that promised them tolerance and respect for human rights. However, some of them find themselves as victims on the margin of their new societies, without proper immigration status or the right to work, and with slim prospects of ever being reconciled with their families," reads the report.

The report shows that many Zimbabweans in the diaspora have not lost touch with home and are keen to participate in rebuilding the country, starting with transitional justice.

As the report notes: "Throughout the outreach exercise, the need to be acknowledged as victims came out as the overarching demand of Zimbabweans in the diaspora. Armed with that new identity they would like to play a crucial role in shaping a new dispensation in Zimbabwe premised on the respect for human rights, tolerance and democracy."

"Those who participated in the workshops largely felt that, in addition to being victims of political violence and human rights abuses, they also lost their inalienable right to citizenship and the right to vote. They are now demanding these rights back," reads the report, adding that they cannot play a role in this crucial exercise unless their right to nationality and to vote is constitutionally guaranteed.

Zimbabwe Human Rights NGO Forum director Abel Chikomo

The culture of impunity in Zimbabwe can be traced back to the Rhodesian era. When one reflects on Zimbabwe's history, it is clear that waves of violence have repeatedly ravaged peace-loving communities in the past, primarily because the voices of the victims have not been listened to, let alone taken into account, in addressing the causes of such violence.

The mass exodus of Zimbabweans to the diaspora in the past decade has not quenched the victims' voice but rather strengthened a united call for 'truth recovery and accountability as critical prerequisites to sustainable peace, national healing and cohesion'.

This call, which began in Zimbabwean villages and towns, is echoed abroad.

Zimbabweans living in the diaspora are demanding that a credible, transparent and non-partisan framework be instituted, which should first uncover the exact truth behind past human rights violations and hold the architects of such violations to account, according to the report.

In Zimbabwe, however, many of the perpetrators still hold high offices in government and the security sector.

The report noted that people who participated in its outreach programmes insisted that, apart from institutional reform, such figures should be nowhere near the administration of the transitional justice process.

"A substantial section of participants felt that, since a complete overhaul of the institutions is required, those who have participated in past human rights violations should not undertake such an exercise. To achieve this, there is need for a free and fair election to ensure that those who craft and preside over new institutions have the people's mandate to do so," reads the report.

"They said that 'such self-serving and partisan' institutions, which include the police, security services, the birth and deaths registry, the electoral registry, the Attorney-General and the judiciary, are an antithesis to the proposed new framework," reads the report.

A key feature of the country' human rights abuses, which include outright atrocities, has been the involvement of State agents.

Rampant during the white supremacist colonial era, these human rights violations have continued to pervade the country even after independence as the new regime took aim at fellow citizens in a bid to crush dissent.

Lack of efficient transitional justice mechanisms have been cited as the major reason why successive governments get away with gross rights abuses on sections of the population, the report noted.

"At the heart of the abuse of human rights in Zimbabwe, both before and since independence in 1980, is impunity for those who have committed crimes against humanity, torture and other gross violations," reads the report.

"Violent State and State-sponsored criminals who get away with their crimes will continue to commit violence for so long as they are not brought to justice. Survivors of endemic abuse and the relatives of those who have not survived continue to wait for the perpetrators to be brought to book, for reparations and for the circle of violence to be broken.

"The vast majority of Zimbabweans want a decisive break with the vicious past, the creation of a State no longer tolerant of killing and maiming for political causes, and the guilty to be held accountable," reads the report.

Compensation of victims and their communities to bring a measure of justice and restoration should be a critical component in the transitional justice process, the report noted.

HIV treatment, financing on spotlight

HARARE-Human rights lawyers and representatives of people living with HIV and AIDS have embarked on a programme to probe access to treatment, financing and criminalising the transmission of the pandemic disease.

A National Heath and Rights Advocacy workshop held in Harare early this month and attended by representatives of Zimbabwe Lawyers for Human Rights (ZLHR), Zimbabwe National Network for People Living With HIV and AIDS (ZNNP+) and the Cancer Association of Zimbabwe highlighted that these issues should form the core activities of a joint committee formed after extensive discussions .

The committee will have representatives from every province who will spearhead the activities.

According to Tinashe Mundawarara, the ZLHR project manager for HIV/AIDS, Human Rights and Law Project, 57 people who participated at the workshop agreed that the activities that the advocacy team should prioritise include:

- Access to treatment-activities to be done here include investigating the challenges National Pharmaceutical Company of Zimbabwe (Natpharm), a government owned firm charged with securing drugs on behalf of State institutions, is facing, as well as conduct studies at local level for input at central level and engaging the parliamentary portfolio committee on health.
- Criminalization of HIV transmission- here there is need to seek buy in from parliamentary portfolio committees on health, gender, justice and law and Zimbabwe Parliamentarians Against HIV and AIDS (ZIPAH) and the Speaker of Parliament.
- Health care financing-sensitise stakeholders in all provinces on healthcare financing through sensitization meetings and write follow up letters to Ministry of Health and Child Welfare and the portfolio committee on budget, finance and investment promotion.

Former Health Minister Dr David Parirenyatwa, who presented a paper on access to medicines and Natpharm operations gave a list of the types of medicines that are used in Zimbabwe, among them Chinese and traditional herbs. He said in as far as natural herbs are recognised, a person on life prolonging ARV drugs should not substitute them with the traditional drugs.

Emphasising the need for government to increase money given to Natpharm, Dr Parirenyatwa said 98 percent of the drugs found at the drug procurement firm are donor funded while only two percent are local.

Dr Parirenyatwa said focus should be put on targeting local companies and looking at the possibility of funding coming from the vast natural resources in Zimbabwe.

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Warning shots from across Limpopo

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South African International Law Policy

The reaction of Zimbabwe's politicians and preferred legal analysts shows either a poor understanding of the legal position or mere denialism. It also betrays a failure to carefully examine and understand South Africa's consistent message regarding international crimes.

It serves well to remember that on 27 May, 2010 the South African President, Jacob Zuma was asked in Parliament whether Omar al-Bashir, the President of Sudan would face arrest if he came to attend the Soccer World Cup in South Africa. Zuma, confirming that the Sudanese leader faced arrest if he landed in South Africa, said;

"South Africa respects the international law and certainly we are signatories and we abide by the law."

A year before that, Zuma had asked the Sudanese leader to stay away from his inauguration in South Africa. The reason was consistently that South Africa had an obligation to enforce international law. If Omar al-Bashir had turned up, the South African government would have been compelled to arrest him on the basis of an International Criminal Court ('ICC') warrant currently in force against him. Even if the South African government had preferred not to, on the application of a wide class of persons a court could have ordered the man's arrest.

South Africa's acceptance of the importance of international justice is well recorded. A decade ago, while debating the passing of legislation to domesticate international criminal law in South Africa, the late former deputy Minister Cheryl Gillwald stated:

'...for a country like ours whose history has for decades been ravaged by daily acts of crime against humanity, the ICC has a particular and poignant significance; it offers us the prospect that these heinous crimes will never again be tolerated or perpetrated with impunity. South Africans almost without exception, have the absolute conviction that the ICC is the most important human rights institution the world has seen in recent history. That the ICC has jurisdiction over individuals not just in nations accused of genocide, war crimes and crimes against humanity, is a compelling reason for us to support its establishment...'

South Africa's message is no different from Botswana and Malawi's position. Mrs Joyce Banda, the new President of Malawi has already indicated that al-Bashir is not welcome to her country which hosts the African Union summit later this year. For his part, the Botswana president Lt Gen Khama Ian Khama stated in 2009:

"As a state party to the Rome Statute of the ICC, and member of the United Nations, Botswana is highly conscious of, and deeply committed to its obligations under international law. We attach great importance to the letter and spirit of the Rome Statute, and fully support the work of the international criminal court. African countries constitute the largest block of states parties to the Rome Statute, and must demonstrate an unflinching commitment to combating impunity, promoting democracy, the rule of law and good governance throughout the entire continent.

"This is why Botswana does not associate itself with the position taken by the African Union regarding the process issued against certain African personalities. We cannot accuse the ICC of applying selective justice when the majority of cases before that court were taken by African countries themselves. Botswana therefore intends to cooperate fully with the ICC in bringing any perpetrators of international crimes to justice."

South Africa signed the Rome Statute establishing the International Criminal Court on the day that it was opened for signature on 17 July 1998. It ratified it on 10 November 2000. In July 2001, a bill to domesticate the Rome Statute was introduced in Parliament. The *Implementation of the Rome Statute of the International Criminal Court Act No. 27 of 2002* ('ICC Act') was signed into law by then President Mbeki in 2002.

Zimbabwe signed the Rome Statute!

It must never be forgotten that Zimbabwe signed the Rome Statute on 17 July 1998, the same day as South Africa and Zambia. The only difference between South Africa and Zimbabwe is that we did not ratify the treaty. We in fact heavily participated in the SADC and the African Union preparatory meetings on the Rome Statute. The ICC is not as unfamiliar to Zimbabwe as some of our leaders and 'analysts' act it out to be!

Selective Justice

We have often heard Zimbabwe shouting amidst the usual chorus of African solidarity about the selective application of the law by the International Criminal Court. However, little is said about how Zimbabwe itself is a co-author of this selective application of international criminal justice. After signing the Rome Statute Zimbabwe then went on to enter into a Bilateral Immunity Agreement with the United States, which agreement prevents the handing over of American citizens, military personnel or government employees to the ICC. This is despite the fact that under the *Vienna Convention on the Law of Treaties*, as a signatory we are obliged to refrain from acts which would defeat the object and purpose of a treaty. The frequent Zimbabwean rhetoric about the US government unfairly sending other people to the ICC while protecting its own is not entirely honest. We are complicit in this.

Fortunately, South Africa has not entered into these agreements with the US or any of its neighbours. South Africa's steadfastness in this regard has provided an important avenue for holding perpetrators of crimes against humanity accountable. The lucid judgment handed down in Pretoria offers a unique and impeccable opportunity.

It must be stated for the benefit of any doubting Thomases that the South African government has not disobeyed a single court order since 1994. As a keen observer of the South African legal scene, I must hasten to add that there have been unpopular court rulings made, many of them, and yet the government has obeyed them notwithstanding. It is for this reason that the decision issued this week in the Pretoria High Court must be taken very seriously by any person who has committed or intends to commit international crimes in Zimbabwe.

The case before the Court

The applicants, the Southern Africa Litigation Centre ('SALC') and the Zimbabwe Exiles Forum ('ZEF') went to Court to force the South African government, through its prosecutorial authorities and police to investigate and prosecute alleged cases of crimes against humanity committed in Zimbabwe. This application focussed on one particular event which will be vividly remembered by many in Zimbabwe. On 27 March 2007, the Zimbabwe Republic Police, assisted by its usual security companions, raided Harvest House, the headquarters of the Movement for Democratic Change (MDC). During that raid, over 100 people were arrested and taken into custody. The arrestees were either found within the headquarters or taken from neighbouring shops and buildings. The detained persons were seriously assaulted and tortured while in custody. They were being tortured for their association with the MDC and their opposition to ZANU PF. The assaults and torture were perpetrated by state agents and the police. It was clear from the evidence presented to the South African government for investigation that the use of torture had been systematic and part of a widespread use of violence against the opposition.

Prior to going to Court, SALC presented the prosecuting authorities and the police with comprehensive dockets on crimes committed against the detained persons. The evidence included affidavits, medical reports, reports of lawyers and other material. **The dockets identified the perpetrators of the crimes by name.** They also showed that many of these perpetrators, and their commanders visited South Africa from time to time. SALC insisted to the authorities that South Africa had an obligation under international law and under domestic law to investigate these crimes. The authorities declined to investigate for what the judge found to be spurious reasons. This prompted SALC and the Zimbabwe Exiles Forum to approach the Pretoria High Court to enforce the law.

South African Domestic Legal Obligations

The creation of the International Criminal Court under the Rome Statute of 1998 was intended to provide the world with a court that would be able to prosecute international crimes and reduce impunity. The ICC provides a complimentary facility. The primary responsibility lies with state parties to prosecute the crimes. This is why member states have the obligation to domesticate the Rome Statute and prosecute offenders. South Africa's ICC Act allows it to prosecute international crime allegations including crimes against humanity allegations brought by any person against a person accused of having committed the crime in South Africa or outside the borders of the Republic. This gives the country what is known as 'universal jurisdiction'. The *Princeton Principles (2001)* on universal jurisdiction state that:

'Universal jurisdiction is criminal jurisdiction based solely on the nature of the crime, without regard to where the crime was committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, or any other connection to the state exercising such jurisdiction.'

This philosophy underlies the ICC Act. South Africa can investigate and prosecute the following persons if accused of crimes against humanity;

(1) Its own citizens

(2) A person who is not a citizen but *is ordinarily resident* in South Africa

(3) A person who committed a crime against humanity and *after commission is present in South Africa.*

(4) A person who *committed a crime against humanity against a South African citizen or a person ordinarily resident in South Africa*.

South African jurisdiction is therefore universal. It is clear that the cries of 'sovereignty**' are therefore misplaced.** This wide classification of cases upon which South Africa will have jurisdiction is very pertinent. It gives the South African courts the power to prosecute a foreigner who committed an offence far away from South Africa's borders. All that South Africa needs is for the perpetrator; to be its citizen; or to be present within its borders; or to be ordinarily resident in the country; or to have committed the offence against its citizen; or against a person ordinarily resident in South Africa.

In addition the ICC Act overrides any diplomatic immunity. Under the Act, the authorities can prosecute a person who is or was a head of State or government, a member of a government or parliament, an elected representative or a government official. In addition, a member of a security service or armed force acting under orders will also be subject to prosecution. They cannot claim that they were under a legal obligation to obey a manifestly unlawful order. Their liability of course does not excuse the commanders who gave the orders. Their sponsors and commanders are similarly liable.

Faced with a compelling legal argument, Justice Fabricius overturned the decision of the South African authorities not to investigate. He dismissed political considerations as a defence to the performance of South Africa's constitutional and international obligations. He declared the attitude that had been shown by the South African authorities to the requests to investigate as unlawful and unconstitutional. In granting an order compelling the authorities to investigate the alleged crimes against humanity committed in Zimbabwe, the judge further ordered that the investigating authorities co-operate with other government departments in order to ensure that victims and witnesses are granted the necessary visas and travel documents to travel to South Africa in order to assist the investigators. The reality though is that many of the displaced victims and witnesses are already refugees in South Africa.

In effect, this decision seeks to ensure that, despite the collapse of the Rule of Law in Zimbabwe, victims of crimes against humanity have access to justice. It is no longer safe to simply have a partisan police force, a weak and compromised Attorney General and a supine judiciary for protection. The Pretoria decision is a wake-up call. The wheels of justice may turn slowly, but are turning indeed. This investigation will open up opportunities for the investigation of various other heinous crimes committed over the last decade. Who knows, it may present a serious opportunity to bring out many skeletons in state cupboards! South Africa does have an effective plea bargain policy. Who knows what a desperate and used foot soldier may offer in return for a reduced sentence?

But what does this decision mean for the perpetrators?

This decision has great significance for the perpetrators of these crimes. Firstly, on arrival in South Africa, you face arrest. In fact, in the court papers, the South African Police stated that they had checked the travel records of some of the alleged perpetrators and found details of their travel into South Africa. So, the next time you are in South Africa, a shopping trip may end with you in a place of little comfort. Diplomatic immunity, as stated above, will never be a bar to prosecution. In fact, the South African Constitution does not provide any immunity against any person, including the president, for crimes and civil suits while in office.

Secondly, political intervention to save murderous agents from a neighbouring country is unlikely to be top of President Zuma's mind. He is facing a serious backlash for his appointments in the police force, prosecuting authorities and in the judiciary. His own criminal court troubles continue to hang above his head, like the sword of Damocles. The last thing Zuma needs is criticism for protecting Zimbabwean officials. Even then, after the investigations are done, it is for the head of the independent prosecuting authority to make the decision on prosecutions. Zuma's choice for that top job was in the Constitutional Court this week fighting for his job. Zuma abandoned him at the door of the highest court. After this drama, it is obvious to expect a more independent minded and more competent candidate to be appointed.

Thirdly, the South African authorities in court **'admitted that a reasonable suspicion that crimes against humanity were committed in Zimbabwe during that period, existed.'** This is a serious warning. It won't be very difficult to identify who committed these, especially the commanders.

Fourthly, it ought to be noted that the Southern African Development Community ('SADC') in its declaration after the conference held in 1997 in preparation for the adoption of the Rome Statute declared, among other things, that the functions of the ICC 'must not be unduly prejudiced by political considerations.' It would be surprising that a South African court would allow the authorities to be prejudiced by political considerations in their decision-making. Having borne the biggest brunt of the political and economic turmoil in Zimbabwe, it is surely in South Africa's public interest to act. The authorities will be alive to the need to ensure that perpetrators are brought to book.

Fifth, the report prepared by Deputy Chief Justice Moseneke and Justice Khampepe in 2002 on the presidential election is available. It will soon be released to the public. The details contained therein may provide ample evidence for more people to be investigated and charged. The fierce fight put up, albeit unsuccessfully, by the South African presidency against the release of the report indicates that there are some unpalatable truths that may emerge. It can only be of use to those against whom violence and torture were used.

Need I mention the Report of the South African generals sent by Mbeki in 2008?

Sixth, it has been established in international law that amnesties or immunities do not cover serious international law crimes. So, any immunity or amnesty promised is not worth the paper it is written on. Prosecutions are still possible. No country can effectively hold up domestic amnesty as a defence to responsibility and accountability under international law.

Seventh, when a perpetrator is arrested in South Africa, they are unlikely to get bail. South African law sets a high bail threshold for premeditated serious crimes. In addition, the obvious difficulty in bringing back into South Africa a perpetrator who has absconded makes it unlikely that it would be in the interests of justice for a perpetrator to be released. Further, perpetrators face long periods of imprisonment if convicted, including life sentences.

Eighth, should a perpetrator avoid South Africa by staying away, his or her arrest can still be facilitated through extradition agreements with Zimbabwe or countries they may visit. Many of the victims have to run away from Zimbabwe and live in South Africa. Their testimony and evidence will be easy to procure.

Indeed, this judgment while compelling the authorities to investigate specific complaints creates a very serious judicial precedent. It opens up the possibility that other crimes against humanity committed may be investigated and punished by a fellow African country. This puts paid much of the anti-ICC rhetoric.

Any appeal by the South African authorities against the decision may only be a delay of the inevitable. The Constitutional Court has already acknowledged the extreme gravity of international crimes and **'**the powerful national and international need' to have them properly tried.

Conclusion

Those who harbour the mistaken belief that the need for 'peace and reconciliation' will trump accountability are mistaken. There will never be peace without justice. A clamour to eradicate the culture of impunity that infests our motherland is too loud to be ignored. Lawlessness for political and economic gain and the destruction of the rule of law can never be condoned. Any peaceful co-existence that must emerge in Zimbabwe must be rooted on the restoration of the rule of law, punishment of the perpetrators and the respect for human rights. As Valentina Torricelli put it:

"The contention that justice must be sacrificed to ensure peace and reconciliation must be rejected. Sustainable peace is based on rebuilding a society in which individuals can live their lives free from fear, in which perpetrators know that impunity will not be tolerated; in which victims can see the perpetrators brought to justice and be provided with protective measures and reparations."

Gozho mhini gara mumwena, chomudzimu chikuwanire imomo!

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With workmates like these...

BINDURA-Next time beware of what you say when you comment about labour issues.

And think twice of the company you are in before making any contributions on such subjects.

Ask 42-year-old Washington Kaziso, a pump attendant at Trojan Mine in Bindura, Mashonaland Central province, how things can turn nasty in a flash, particularly when one is in the wrong company.

Kaziso is in the dock after Simbarashe Govera, a workmate, whom he was with at a meeting organised by the miners' labour leaders to discuss the payment of workers outstanding terminal benefits reported him to the police for allegedly undermining the authority of or insulting President Robert Mugabe in contravention of Section 33 of the Criminal Law (Codification and Reform) Act.

This was after Kaziso allegedly accused Govera and the octogenarian leader of being responsible for the non-payment of their terminal benefits.

Prosecutors charge that Kaziso insulted and undermined President Mugabe by telling Govera that; "*Imimi ndimi muri kutinyimisa mari pamwe chete nekamudhara kenyu kachembera* Mugabe," which the State translated to mean: "You are depriving our monetary rights together with your old Mugabe."

For allegedly uttering such a statement Kaziso ended up spending three nights in police custody before he was granted free bail by Bindura Magistrate Feresi Chakanyuka following the intervention of his lawyer, Ernest Jena, a member lawyer of Zimbabwe Lawyers for Human Rights (ZLHR).

Jena is also under prosecution on charges of undermining and insulting President Mugabe while enjoying some refreshments at Kimberley Reef Hotel in Bindura. According to ZLHR Bindura has recorded the highest number of victims of insult laws.

Zim's loss, the region's gain

BULAWAYO-Born in Zimbabwe in 1930, Justice John Manyarara left a proud legacy of media freedom in the Southern African region.

While other countries in the region embraced his campaign for a free and self regulatory press, media in his home country remain under the shackles of tight government control.

Having served Zimbabwe's High Court and Supreme Court until his retirement in 1994 before joining the Namibian High Court until his death in 2010, Justice Manyarara moved into another area close to his heart-media freedom.

As founding Chairperson of the Media Institute of Southern Africa (MISA) Regional Trust Fund Board, Justice Manyarara vigorously campaigned for press freedom, media plurality and self regulation.

This was in line with the principles and vision of the 1991 Windhoek Declaration, which mandated MISA to advocate for freedom of expression as a cornerstone of a flourishing democracy and economic growth.

But as Zimbabwe joined the world to commemorate World Press Freedom Day earlier this month, the freedom that Justice Manyarara fought so hard for remains missing as media personnel and institutions continue suffering harassment such as arrests, detentions and criminal charges.

At the Justice John Oliver Manyarara Memorial Lecture held in Bulawayo to coincide with the commemorations, delegates bemoaned the resistance by Zimbabwe's government to adopt his progressive ideals.

Guest speaker, retired High Court Judge, Justice Siwanda Kenneth Sibanda, said he regretted that while countries such as Mozambique and South Africa have Constitutions guaranteeing media freedom and access to information, Justice Manyarara's own home country is still to provide similar constitutional shields.

"Regrettably, as we commemorate a life well lived and a character so principled, we have seen threats to corrode the very pillars of freedom Justice Manyarara embraced," said Justice Sibanda, who delivered the lecture.

He expressed disappointment that some countries that were role models were taking steps to tighten control on the media.

"While we are slowly and reluctantly, if not deceitfully, fulfilling Justice Manyarara's dream of a free media space, we sadly read that our own neighbour, South Africa, which we hold in high regard as a model in the promotion of freedom of expression and the media, is now mooting instruments to control the free flow of information," he said.

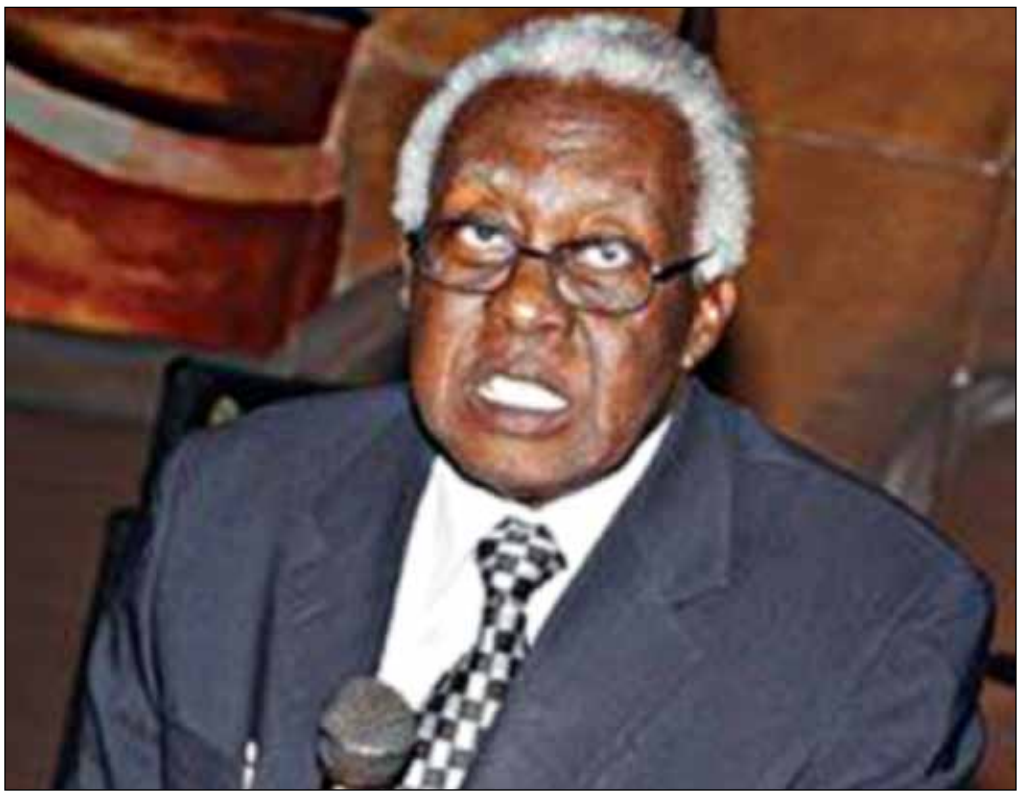
He described Justice Manyarara as a "luminary, a champion and studious advocate of justice and human rights".

"Justice Manyarara was not only passionate about justice delivery but a firm believer in the promotion and protection of basic civil liberties.

"He did not only fight for these freedoms in the country, but straddled across borders. His stubborn fight for justice and the protection of fundamental freedoms contributed in the adoption of explicit constitutional guarantees for a free press and access to information in the region," said Justice Sibanda.

Justice Sibanda said the progress by some SADC countries in press freedom and increase in private commercial and community radio stations was a result of Justice Manyarara and his colleagues' work.

But Justice Manyarara should be turning in his grave at the situation in his home country, where the Minister of Information Webster Shamu used the World Press Freedom Day commemorations to issue dreadful warnings to an already strangled press.



Turning in his grave... Justice Manyarara

MP on Mugabe slur charges off the hook

BINDURA-Epworth Member of Parliament Hon. Eliah Jembere is a free man after he was removed from remand on charges of insulting and undermining the authority of President Robert Mugabe.

"We successfully applied for him to be removed from remand," said Hon Jembere's lawyer Jeremiah Bamu of Zimbabwe Lawyers for Human Rights.

The legislator had been under prosecution since his arrest in June 2010 for allegedly contravening Section 33 of the Criminal Law (Codification and Reform) Act.

Prosecutors had alleged that Hon Jembere insulted President Mugabe when he addressed his party's supporters at a constitution making awareness campaign meeting held in Shamva, in May 2010 by saying: "*Mugabe mudenga, ZANUPF mudenga, vabatanidzei, roverai pasi,*" which the police interpreted to mean: "Mugabe up, ZANU PF up, bring them together and drop them down."

The case started crumbling when the trial was postponed several times after State witnesses failed to show up.

Hon. Jembere was arrested together with Gilbert Kagodora, the Movement for Democratic Change provincial treasurer for Mashonaland Central province who allegedly uttered a slogan, stating that; "*Mugabe mudenga, Grace mudenga, vabatanidzei, roverai pasi,*" which the police deduced to mean "Mugabe up, Grace up, bring them together and drop them on the ground."

However, Kagodora was later removed from remand after his lawyers successfully filed an application for refusal of further remand in 2010.

Jeremiah Bamu