

## POLITICAL VIOLENCE IN ZAMBIA AND STATE RESPONSIBILITY

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Zambia has been rocked in recent times by unacceptable levels of political violence perpetrated against those expressing views contrary to those held by the Patriotic Front Party government. Those perceived to be opponents of the Government are attacked, assaulted, their meetings disrupted while a highly compromised police force unashamedly looks on. Perpetrators of the violence openly carry weapons (most commonly *pangas*) and state publicly in the presence of the police their intent to harm their opponents. The Government reaction, when not blaming the victims for the violence that befalls them, has been to disclaim any responsibility for the actions being perpetrated by vigilantes and party cadres. Surprisingly, some civil society groups, prominent citizens, organizations and church leaders are afraid to assign blame for the violence to the rightful owners and instead call for restraint on both sides. It is yet to be explained how a victim can exercise restraint against armed and brutal assailants, unless what is meant is that the victims should forego their rights to freedom of expression and assembly. That, unfortunately, would be to let tyranny triumph and we know well Burke's quote that "*the only thing necessary for the triumph of evil is for good men to do nothing.*"

Zambians must remember that tyranny, once allowed to take root, deprives the people of the capacity to resist bad governance because of the pervasive atmosphere of terror, fear and insecurity created in them by repeated arrests, police harassment and unwarranted prosecutions. It intimidates them, and induces in them a mood of cautiousness so as not to risk their lives or liberty, resulting in an attitude of resignation, submissiveness and timidity.

Tyranny insidious effects can be seen in the regimes of Idi Amin in Uganda (1971-1979); Emperor Bokasa Jean –Bedal Bokasa Central African Republic (1965-1979); Col Mengestu Haile Marian in Ethiopia (1977-1991); Sani Abacha Nigeria (1993-1998); and, the current regime of Omar al Bashir in Sudan which stands charged with committing Genocide and Crimes against Humanity against the people of Darfur. As one of Africa’s leading constitutional scholars Benjamin Nwabueze has observed *“absolute power corrupts a people and its cherished values and virtues. The wilder of power is of course the first to be corrupted. Those around the wilder of power are also corrupted into fawning sycophants”*. He further observes that indeed *“one of the worst tragedies of absolute power is the large number of people it turns into sycophants and praise singers and the longer a dictatorship endures so do more and more people take to sycophancy as a way of feathering their own nest”*.

In this article I show that International Human Rights law is very clear on whom to place the responsibility for the political violence occurring in Zambia. After examining the jurisprudence developed by international human rights courts and international human rights instruments to which Zambia is a signatory, I argue that under international human rights law, the Zambian state is legally liable for the political violence occurring in the country even where the violence is perpetrated by private actors. This view is well supported by decisions of international human rights tribunals such as the African Commission on Human and Peoples Rights, the European Court of Human Rights and the American Court of Human Rights..

The Zambian Constitution, the International Covenant on Civil and Political Rights, and the African Charter of Peoples and Human Rights all guarantee the right to participate in one’s country’s governance, free speech, liberty and freedom of movement. Article 2(1) of the

Covenant of the Civil and Political Rights states that parties to the covenant undertake “to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant, without distinction of any kind, such as race, color, sex language, religion, political or other opinion, national or social origin, property, birth or other status.” In Article 2(2), the “state parties to the covenant undertake to take the necessary steps in accordance with their constitutional processes and with the provisions of the present covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present covenant.” In Article 2(3), each state party undertakes to “(a) ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding the violation has been committed by persons acting in an official capacity.” Article 2 (3) further states that “states undertake to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the state, and to develop the possibilities of judicial remedy and to ensure that the competent authorities shall enforce such remedies when granted”. The African Charter on People and Human Rights echoes this in Article 1 and provides that-“member states of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this charter and shall undertake to adopt legislative or other measures to give effect to them”.

The question that arises then is what obligations do these conventions impose on Zambia as state that is party to the instruments? International human rights courts and tribunals unanimously and uniformly state that the language of Article 2 in the American Convention and in the Covenant and that in Article 1 in the African Charter and European Convention impose positive obligations on states. The positive obligations that are imposed on the state by both documents are to ensure that all individuals within its jurisdiction enjoy the rights guaranteed in the Conventions. The leading case on this issue is *Valaqueze vs.*

*Honduras*(1988) where the Inter American Court of Human Rights examined language contained in article 1 of the American Convention on Human Rights which states that: “ *The state parties to this Convention undertake to respect the rights and freedoms herein recognized and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.*” The court held that three obligations resulted from the document. The first, assumed by the state under Article 1, is to respect the rights and freedoms recognized by the Convention. The second obligation implies a duty of the state to organize the governmental apparatus and, in general, all the structures through which public power are exercised, so that they are capable of judicially ensuring the free and full enjoyment of human rights. Third, as a consequence states must prevent, investigate and punish any violation of the rights recognized by the conventions and moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.

The International Human Rights Courts have interpreted the obligations imposed on states as meaning that any exercise of public power that violates the rights recognized by the convention is illegal. (*Valequeze v. Honduras*) Whenever a state organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the conventions (*Valaqueze v. Honduras* (1988)). This conclusion is independent of whether the organ or official has contravened provisions of internal law or overstepped the limits of his or her authority. Under international law, therefore, a state is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law. Thus, in principle, any violation of rights recognized by International Human Rights Conventions

carried out by an act of public authority or by persons who use their position of authority is imputable to the state. Significantly, international human rights courts have recognized an illegal act, which violates human rights and which is initially not directly imputable to a state (for example, because it is the act of a private person, e.g. vigilante or party cadre or because the person responsible has not been identified) can lead to international responsibility of the state, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the conventions (*Valaqueze v. Honduras, (1988)*).

What is decisive is whether a violation of the rights recognized by the any of the International Conventions to which a state is party to has occurred with the support or the acquiescence of the government, or whether the state has allowed the act to take place without taking measures to prevent it or to punish those responsible. When the state allows private persons or groups to act freely and with impunity as is happening in Zambia, to the detriment of the rights recognized by the convention, those acts are attributable to the state. The state has a legal duty to take reasonable steps to prevent human rights violations and to use every means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim receive adequate compensation. The impunity that the perpetrators of the political violence enjoy and continue to enjoy in Zambia is at odds with the international commitments voluntarily assumed by Zambia when it ratified both the Covenant on Civil and Political and the African Charter on Human and People's Rights. It is also at odds with the freedom of speech and assembly guaranteed in the Zambian constitution. The state is obligated to investigate every situation involving a violation of the rights protected by the convention. The Zambian government cannot with any credibility claim that it is conducting serious investigations when perpetrators are captured on video and hold press conferences to publicly

state their intentions to harm others and the state fails to arrest them. The obligation to ensure that rights are protected within Zambia requires effective investigation. The investigation must be effective in the sense that it is capable of leading to the arrest of the perpetrators. The police must act with reasonable effort to secure evidence concerning the violations including eye witness testimony. There is an implicit requirement of promptness and reasonable expedition. Where the acts of private persons that violate the convention are not seriously investigated, those parties are in a sense aided by the Government, thereby making the state responsible under international law and national law as well. Whenever the state apparatus acts in such a way that the violation goes unpunished and full enjoyment of such rights is not restored to the victims as soon as possible, the state has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction

The African Commission adopted the principles stated above in the case of *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria (2001)*. In this case, the violation of a wide range of rights guaranteed under the African Charter for Human and People's Rights were alleged to have been committed by Nigeria in the Delta region. The Commission ruled that "internationally accepted ideas of the various obligations engendered by human rights indicate that all rights both civil and political and social generate at least four levels of duties for a state that undertakes to a rights regime, namely the duty to respect, protect, promote, and fulfil these rights." The commission added that at a secondary level, the state is obliged to protect rights-holders against other subjects by legislation and provision of effective remedies. This obligation requires the state to take measures to protect beneficiaries of the protected rights against political, economic, and social interferences. Protection entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and

regulations so that individuals will be able to freely realize their rights and freedoms. The state must ensure that individuals are able to exercise their rights and freedoms.

The European Court of Human Rights in its interpretation of article 1 of the European Convention which states that “*The High Contracting Parties shall ensure within their jurisdiction the rights and freedoms in section 1 of the Convention*” has similarly upheld the afore-articulated principles of state liability. It held in *A v. UK (1998)*. In this case the European Court on Human Rights considered the obligation of a state under Article 1( the article has similar wording as of the European Convention on Human Rights. The Court stated that “*the obligation on the High Contracting State under Article 1 is to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention. This requires states to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman degrading treatment or punishment, including such ill treatment administered by private individuals.*”

It is quite clear, therefore, that international law imposes obligations on the Zambian Government. By allowing vigilantes and party cadres to disrupt meetings and assault their fellow citizens who were exercising their freedom of assembly and freedom of speech, the government lamentably failed to carry out its obligations to protect and ensure that people under its jurisdiction are not subjected to political and other forms of violence and is therefore guilty of violating the human rights conventions it is party to. Zambia should immediately take effective and credible measures to ensure that such things do not reoccur and when they do, the government should punish those that perpetrate these violations of human rights and must provide reparation to victims of this violence. This means that Zambia should be organized in such a way as to be able to live up to these responsibilities. It implies that Zambia should organize the state apparatus and in general all the structures through which public power is exercised, in such a way that they are capable of ensuring that political violence does not occur

and that violent vigilantes do not operate freely. *“When the people fear the government, there is tyranny, when the government fears the people, there is liberty.”* Sadly, Zambians today fear their government and its violent surrogates who are inflicting untold terror and anguish on citizens exercising their constitutionally guaranteed rights of freedom of speech and assembly.

Looking forward, those that bear the gravest responsibility for the tragic situation that exists in Zambia and the violations of human rights (the leadership in both the police and the government) must be held accountable today and tomorrow if democracy and respect for human rights is going to underpin our democracy. Justice demands accountability and the people must be free to not only exercise their guaranteed rights but to demand accountability when those rights are denied.

It is fitting to conclude with the words of 1991 Nobel Peace Prize winner Aung San Suu Kyi “

*Within a system which denies the existence of basic human rights, fear tends to be the order of the day. Fear of imprisonment, fear of torture, fear of death, fear of losing friends, family, property or means of livelihood, fear of poverty, fear of isolation, fear of failure. A most insidious form of fear is that which masquerades as common sense or even wisdom, condemning as foolish, reckless, insignificant or futile the small, daily acts of courage which help to preserve man's self-respect and inherent human dignity. It is not easy for a people conditioned by fear under the iron rule of the principle that might is right to free themselves from the enervating miasma of fear. Yet even under the most crushing state machinery courage rises up again and again, for fear is not the natural state of civilized men.”*