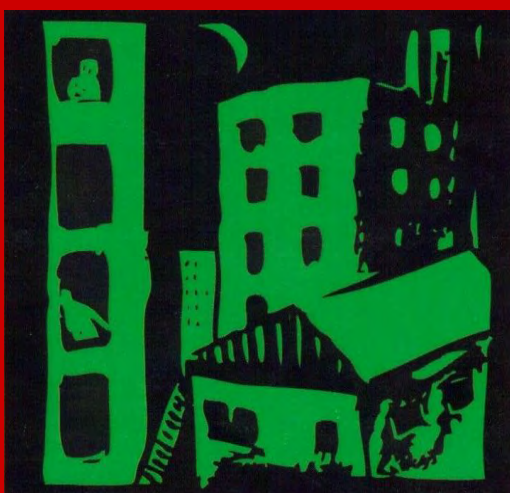
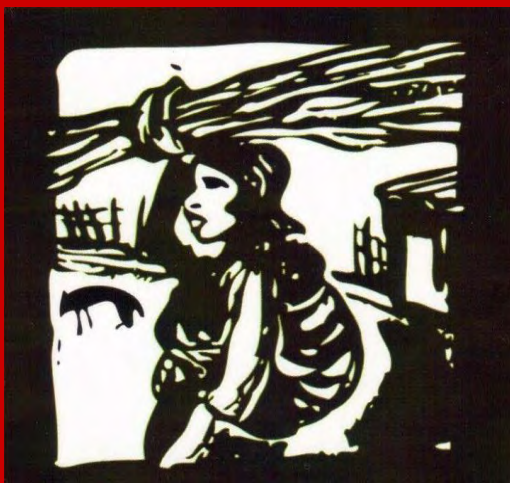


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**A turning-point for
transitional justice?
Political violence in
Zimbabwe, and
transformative
justice as a way
forward**

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ABSTRACT

Since 2000, elections in Zimbabwe have been hotly disputed and marred by violence. Victims of politically orchestrated violence have received neither apology nor compensation from the government. Whilst transitional justice mechanisms such as the due processes of law, closure for victims, indemnification, and the restructuring of state institutions are essential to ensure justice, there is a need to go beyond the legal system and focus on socio-economic issues. Transitional justice's emphasis on the state and institutions is not enough, margins, places greater emphasis on transformative justice, which it sees as a step towards grassroots reconciliation and the prevention of further rights

violations. Transformative justice emphasises peacebuilding initiatives, as well as conflict transformation and development, in the interests of securing sustainability in the future. The study does not dismiss or reject transitional justice as a field of practice and scholarship, but argues rather that transformative justice can complement it. While transitional justice should be applauded for identifying the core themes that characterise and establish a terminus a quo for ensuring justice, the dilemmas raised in allied disciplines and contemporary scholarship and practice call for a broader framework informed by an intersectional analysis of the complexities and contradictions of state–society relations.

Keywords: transitional justice, transformative justice, justice, political violence, victims, elections, Zimbabwe.

1 INTRODUCTION

Since independence in 1980, Zimbabwe has endured dark episodes of gross human rights violations that include political killings and enforced disappearances. This study seeks to understand the impact of politically motivated killings and abductions on the families of surviving victims and their needs for redress. This provides a different perspective from the conventional top-down approach in which the state and other actors define the kind of redress that victims require. The study seeks to understand the factors that drove such rights violations, as well as to prevent their recurrence by proposing that steps towards national healing, reconciliation and community cohesion be guided by the needs of victims.¹ The study focuses on the large number of cases recorded during the 2008 elections, one of the most violent in the annals of Zimbabwe’s post-independence history,² and on what may be inferred from the shootings that occurred in the country on 1 August 2018.

This study was conducted in three provinces of Zimbabwe that have been hotspots of political violence over the years, namely Mashonaland Central, Mashonaland East, and Manicaland, territories that cover 16 of the country’s then 210 parliamentary constituencies.³ The study also engaged with the victims of the shootings on 1 August 2018. Here, violence broke out when, after having voted on 30 July 2018, opposition supporters demonstrated for the early release of election results by the Zimbabwe Electoral Commission.

Respondents were selected both randomly and through snowball sampling, in which respondents referred researchers to others with similar experiences. Data were

¹ See, for example, Van Zyl P “Dilemmas of transitional justice: The case of South Africa’s Truth and Reconciliation Commission” (1999) 52(2) *Journal of International Affairs* 647 at 658.

² Sachikonye L *When a state turns on its citizens: Institutionalised violence and political culture* Sunnyside: Jacana Media (Pty) Ltd (2011) at 45.

³ Now, the National Assembly, the lower house of the Parliament of Zimbabwe, consists of 270 members. Of these, 210 are elected in single-member constituencies of roughly equal size, with provinces having a varying number of constituencies depending on population. 60 seats are elected using proportional representation at the province level, and are reserved for women.

A TURNING POINT FOR TRANSITIONAL JUSTICE? POST-ELECTION VIOLENCE IN ZIMBABWE

collected largely through in-depth, semi-structured interviews.⁴ In three constituencies, respondents requested that they share their experiences collectively, given that the assaults and abductions they faced individually were interlinked and that they shared similar experiences as regards the killing and enforced disappearance of their relatives. In these cases, focus group discussions (FGDs) were conducted. A total of 17 people were interviewed in individual interviews and 58 in nine FGDs. Among the challenges to collecting data were cases where deep-seated fear and trauma resulting from exposure to political violence prevented people from talking openly; in other instances, family members were themselves implicated in the death of relatives and unwilling to speak.

2 CONTEXTUAL BACKGROUND

This section briefly sketches out the political landscape in Zimbabwe in order to provide a basis for the study. Following the electoral success in 1980 of the Zimbabwe African National Unity-Patriotic Front (ZANU-PF), the governing party, Zimbabwe was a staunchly ZANU-PF-supporting country for almost two decades. However, in the late 1990s, the party's popularity dwindled, and in 2000 the main opposition at the time, the Movement for Democratic Change (MDC), undercut the supremacy of then President Mugabe by winning most of the country's parliamentary seats, especially those in urban areas. The MDC became a dominant party in all urban councils, confining ZANU-PF to the rural authorities.⁵ This came as a shock to ZANU-PF, and subsequent elections became violent. The ruling party's chances of re-election in urban areas had evaporated, fundamentally changing the political matrix. In the wake of Zimbabwe's post-2000 turmoil, a period of crises and legal complexities,⁶ the political environment was marked by constitutional and democratic backsliding.⁷

Political contestation related to elections began to emerge. The spillover-effects of the regime's survival tactics resulted in the violation of human rights. Violence in Zimbabwe intensified after the Fast Track Land Reform Programme of the early 2000s, and as a result, the government took a political position in a plethora of issues as a means to garner electoral support and counter the influence of the rising opposition movement. The ruling party's quest for dominance over the past two decades since then has resulted in political violence, as voters have repeatedly returned opposition parliamentarians and councillors in urban areas.⁸ The quest for domination can therefore be situated in the broader landscape of nationwide repression and the shift

⁴ The names of victims have been withheld in the interests of confidentiality. Victims agreed to be interviewed on condition of anonymity.

⁵ Kamete AY "The return of the jettisoned: ZANU-PF's crack at 're-urbanising' in Harare" (2006) 32(2) *Journal of Southern African Studies* 255 at 256.

⁶ See McGregor J & Chatiza K "Geographies of urban dominance: The politics of Harare's periphery" in Goodfellow T & Jackman D (eds) *Controlling the capital* Oxford: Oxford University Press (2023) at 177.

⁷ See, for example, Masunungure EV & Chimanikire P "Policy paradigm shifts in the Zimbabwe: From statism to rolling back the State to Policy vacillations" in Maphosa F, Kujinga K & Chingarande S (eds) *Zimbabwe's development experiences since 1980: Challenges and prospects for the future* Harare: OSSREA (2007).

⁸ McGregor J and Chatiza K (2023) at 172.

A TURNING POINT FOR TRANSITIONAL JUSTICE? POST-ELECTION VIOLENCE IN ZIMBABWE

towards patronage politics, factors which have had a major impact on respect for and promotion of fundamental human rights and freedoms. In elaborating on this scenario, the article contributes to debates on how transformative justice should be embraced as a supplement to transitional justice.

3 TRACING ZIMBABWE'S HISTORY OF VIOLENCE

The darkest episodes in Zimbabwe's history cannot be understated. The country's body politic can be understood through the lens of path dependency.⁹ Violence, as a product of historical processes, has been recycled. Contemporary political processes are occurring alongside historical processes of state formation and efforts to maintain political order. Though Zimbabwe, like any other former colony, is making its own history, it does not do so entirely as it pleases. Zimbabwe is not making history under circumstances chosen by it, but under circumstances directly found in, given by, and transmitted from the past.¹⁰ The colonial legacy pervades the country's post-independence structures, with colonial authoritarian systems of governance having been carried over into the present day. For instance, the politics of the former President of Zimbabwe, Robert Mugabe, had always been anti-colonial¹¹ rather than decolonial,¹² which is why his post-colonial practice of governance was, at many levels, not very different from that of the colonialists, in particular his embrace of violence as a pillar of

⁹ Subramanyam G "Ruling continuities: Colonial rule, social forces and path dependency in British and Africa" (2006) 11(1) *Commonwealth and Comparative Politics* 84 at 85.

¹⁰ Sithole M *Zimbabwe: Struggles within the struggle* Harare: Rujeko Publishers (1991); Young K "The African colonial state revisited" (1998) 11(1) *An International Journal of Policy and Administration* 101 at 116; Pridham G "Confining conditions and break with the past: Historical legacies and political learning in transitions to democracy" (2000) 7(2) *Democratisation* 36 at 38; Subramanyam G (2006); Mamdani M *Citizen and subject: Contemporary Africa and the legacy of late colonialism* Princeton: Princeton University Press (1996); Crowder M "Whose dream was it anyway? Twenty-five years of African independence" (1987) 86(342) *African Affairs* at 7 at 20; Carver R "Zimbabwe: Drawing a line through the past" (1993) 31(1) *Journal of African Law* 69 at 74; Chikwanha ABH *The politics of housing delivery: A comparative study of administrative behaviour in South Africa and Zimbabwe* Bergen: The University of Bergen (2005) at 9; Mupanduki MT *An analysis of the nature of corruption and remedies for corruption in sub-Saharan Africa: Focusing on Zimbabwe* University of Texas at Dallas: UMI Dissertation Publishing (2012) at 23.

¹¹ Anti-colonialism entails overt resistance and radical critique geared to rising up to overthrow domination. Although anti-colonialism is closely related with decolonisation in terms of revealing and dismantling colonialist power in all its forms, it differs from it in its primary vision of resisting and pushing back against colonial structures rather than envisioning a society free of them. See Hiraide LA "Postcolonial, decolonial, anti-colonial: Does it matter?" in Vocker J & Ilsley N (eds) "New voices in postcolonial studies" (2021) *New Voices in Postcolonial Studies Magazine* 1 at 13.

¹² The decolonial school of thought that was vigorously applied in Latin America consists in a literature on anti-coloniality that interrogates how knowledge is produced and is neither superior nor universal. Decoloniality moves to expose the underlying coloniality within Western modernity by de-linking, denaturalising and critiquing Western knowledge – a process of emancipatory rupture that confronts and resists the pervasiveness of Eurocentrism (Quijano A "Coloniality and modernity/rationality" (2007) 21(2-3) *Cultural Studies* 168 at 172; Mignolo WD "Introduction: Coloniality of power and decolonial thinking" (2007) 21 (2-3) *Cultural Studies* 155-158.

A TURNING POINT FOR TRANSITIONAL JUSTICE? POST-ELECTION VIOLENCE IN ZIMBABWE

governance.¹³ The vestiges of colonialism have haunted Zimbabwe's political trajectory, given that much the modus operandi of the colonial state has remained in effect in the post-colonial epoch.

The liberation struggle left a significant mark on the Zimbabwean political structure. The new government inherited colonial institutional and legal frameworks, together with their adverse effects. The post-independence era saw the resurrection of colonial forms of governance and the inheritance of colonial institutions of rule.¹⁴ The Lancaster House Constitution of 1979 was meant to do away with the possibility of future African rule. In short, development trends in Zimbabwe have followed, or are consistent with, Karl Marx's classic observation that the tradition of all the dead generations weighs like a nightmare on the brains of the living. As Olouw has observed, "African states are the product of imperial adventure. The foundation of class domination by a handful of persons was laid during the colonial period, and the relationship between the dominated and the rulers has changed little since independence."¹⁵ Colonial systems of governance permeate the administration of today. To understand violence in Zimbabwe, it is necessary to find the antecedents of contemporary state practices in those of the colonial state, the better to grasp how they have replicated or differentiated themselves in contemporary Zimbabwe.

In the mid-2000s, a debate arose when some dismissed the notion of colonial legacy as irrelevant.¹⁶ The "post" in "post-colonialism" appears to signal a chronologically defined periodisation and linear progression from pre-colonialism through colonialism to post-colonialism. An inquiry into post-colonialism reveals continuity, fluidity and interconnectedness. Despite independence in many African countries, it soon became evident that there was a wholesale importation of the routines, practices and mentality of African colonial states into their successors.¹⁷ The post-colonial state failed to remove an ulcer that was poisoning the whole system. The ulcer produced two toxins, that is, the art of refining and perfecting colonially inherited authoritarian structures, and the violence perpetrated by nationalist movements in their quest to dislodge the settler oligarchy.¹⁸

The current Zimbabwean body politic can thus be understood through the lens of path dependencies imposed by the political economy of war-to-peace transitions.¹⁹ This school of thought demonstrates the idea that historically constructed institutions, structures and vested interests are the major determinants of political behaviour. This is countered by the quest of seeking to increase returns, as political leaders are rational

¹³ Ndlovu-Gatsheni SJ (ed) *Mugabeism? History, politics, and power in Zimbabwe* New York: Palgrave Macmillan (2015) at 1.

¹⁴ Mupanduki (2012) at 164.

¹⁵ Olowu D "Bureaucratic morality in Africa" (1988) 9(3) *International Political Science Review* 215 at 221.

¹⁶ Young K (1998); Pridham G (2000); Subramanyam G (2006).

¹⁷ Young (1998).

¹⁸ Pridham (2000).

¹⁹ Subramanyam G (2006).

A TURNING POINT FOR TRANSITIONAL JUSTICE? POST-ELECTION VIOLENCE IN ZIMBABWE

actors and have ample room to challenge or maintain the status quo. The liberators-turned-political leaders would suspend civil liberties and use preventative detention, a colonial practice employed to neutralise or eliminate political opponents and suppress criticism.²⁰ This reflects the colonial politics of control. Political patterns and trajectories in Zimbabwe therefore need to be located within the elastic rubric of British imperialism.

Africa has known many tragic histories, but Zimbabwe's is especially rich.²¹ Zimbabwe enthralls as it disappoints.²² There is a host of issues which Zimbabweans have been yearning to address for decades.²³ The bleakness of the political moment makes initiatives such as transformative justice more, not less, important in Zimbabwe, with most of its problems linked to the history of the country,²⁴ a history which seems to continue in state forms and practices and regimes of capital accumulation.²⁵ Despite the hope since November 2017 that a new narrative was beginning, what is happening does not reflect change post-2017, but rather continuation rather than change.²⁶

This study stems from the realisation that transformative justice is a plausible alternative in an environment where there is political violence and where it is challenging to roll out transitional justice mechanisms. Transformative justice provides recognition to victims, enhances the trust of individuals in state institutions, reinforces respect for human rights, and promotes the rule of law. Questions of state malpractice and authoritarianism are often brought to the fore in Zimbabwe's national elections,²⁷ and such issues provide differences between theory and praxis of transformative justice.²⁸

4 DEFINING TRANSITIONAL JUSTICE, RESTORATIVE JUSTICE, AND HUMAN SECURITY

It is vital to define the terms "transitional justice", "restorative justice" and "human security" so as to understand Zimbabweans' needs for justice.

²⁰ Subramanyam G (2006).

²¹ Dorman SR *Understanding Zimbabwe: From liberation to authoritarianism* London: Hurst (2016) at 140.

²² Mavengano E & Chirongoma S (eds) *Electoral politics in Zimbabwe, Volume I: The 2023 election and beyond* Cham: Springer Nature (2023) at v & vi.

²³ Gukurume S & Nhodo L "Forced displacements in mining communities: Politics in Chiadzwa diamond area, Zimbabwe" (2020) 38(1) *Journal of Contemporary African Studies* 39 at 49.

²⁴ Sachikonye (2011) at 20 & 50.

²⁵ Helliker K & Murisa T "Zimbabwe: Continuities and changes" (2020) 3(1) *Journal of Contemporary African Studies* 5 at 11.

²⁶ See, for example, Mkandawire T "Zimbabwe's transition overload: An interpretation" (2020) 38(1) *Journal of Contemporary African Studies* 18 at 32.

²⁷ Helliker & Murisa (2020) at 15.

²⁸ Evans M (ed) *Transitional and transformative justice critical and international perspectives* Oxfordshire: Routledge (2020); Gready P & Robins S "From transitional to transformative justice: A new agenda for practice" (2014) 8(3) *International Journal of Transitional Justice* 339 at 370.

A TURNING POINT FOR TRANSITIONAL JUSTICE? POST-ELECTION VIOLENCE IN ZIMBABWE

Transitional justice as a field of scholarship and practice came to light in the 1990s, and has become the principal lens used by countries emerging from conflict and authoritarian rule to address legacies of violence and serious human rights abuses.²⁹ Concerned as it is with questions related to large-scale violence, transitional justice has been defined by measures such as criminal trials, truth commissions, and reparations, as well as societal outcomes such as healing, reconciliation and peace.³⁰ Aside from national institutional mechanisms such as truth commissions and trials, it is also associated with, among other things, public hearings or testimony collection that takes place in local spaces.³¹

Restorative justice, a new movement in the fields of victimology and criminology, entails a course of action that seeks to repair the harm done to victims as a result of injustices and human rights violations. It consists in measures that can contribute to prevention, and is best accomplished through cooperative processes that include all stakeholders in efforts to secure truth, justice, reparations, and guarantees of non-recurrence.³² It is also a tool against denial and revisionism in that it ensures that future generations have access to primary sources of direct relevance to the causes of conflict.³³ Restorative justice focuses on repairing the damage caused by the wrongful action and on restoring the well-being of all those involved, with the emphasis on the restoration of respect, equality, dignity, and the relationships affected by the harmful event. Rather than deferring all responsibility to the state, it aims to engage the immediate participants in resolving the harm.

Restorative justice is called “restorative” because it is guided by restorative values that favour collaborative and consensus-based procedures over the adjudicative and adversarial forms that characterise conventional criminal justice procedures.³⁴ When parties who have caused harm are invited to truthfully admit their wrongdoing, listen respectfully to the victims, and honour their duty to put things right again, significant steps are taken to restoring dignity and meeting the needs of all parties, thus showing their commitment to accepting accountability for harms and commitment to remedying them.

As for “human security”, the term refers to an enabling and conducive political, social and economic environment that can sustain dignified livelihoods. The concept of human security represents a departure from orthodox security studies, which focus on

²⁹ See Gready P & Robins S (eds) *From transitional to transformative justice* Cambridge: Cambridge University Press (2019).

³⁰ De Haan M & Destrooper T “Using restorative justice to rethink the temporality of transition in Chile” (2021) 4(2) *The International Journal of Restorative Justice* 206 at 208.

³¹ Gready P & Robins S “Transitional justice and theories of Change: Towards evaluation as understanding” (2020) 14 *International Journal of Transitional Justice* 280 at 287.

³² Aloyo E, Dancy G & Dutton Y “Retributive or reparative justice? Explaining post-conflict preferences in Kenya” (2023) 60(2) *Journal of Peace Research* 258 at 260.

³³ Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/30/42, 7 September 2015, para. 96.

³⁴ Robins S “Restorative approaches to criminal justice in Africa: The case of Uganda” (2015) *Institute for Security Studies* 57 at 70.

A TURNING POINT FOR TRANSITIONAL JUSTICE? POST-ELECTION VIOLENCE IN ZIMBABWE

the security of the state.³⁵ The subjects of the human-security approach are individuals, and its end goal is the protection of people from traditional³⁶ and non-traditional threats, such as poverty and disease. As the UNDP Human Development Report of 1994 notes, human security is people-centred.³⁷ Central to this approach is the understanding that human-security deprivations can undermine justice and that, in turn, the undervaluing of justice can be detrimental to human welfare. The state remains a central guarantor of human security, albeit that, as with restorative justice, responsibilities can be deferred to non-state actors.

The human-security environment in Zimbabwe cries out for urgent reconsideration, redefinition, reconfiguration, and reformulation. The study is, therefore, necessary to provide an understanding of human security in an ever-changing society where political violence constantly threatens to destabilise communities as well as society at large. The response to injustice and human rights violations must be redefined, and the focus must shift to include threats to human security. This entails taking a broader view of what, over and above conflict and physical violence, can cause insecurity; it also involves recognising that many threats are interconnected with each other and mutually reinforcing.³⁸

Zimbabweans have faced extreme violations of their human rights at the hands of state-supported actors, along with violations more specifically of their social and economic rights.³⁹ Against this backdrop, efforts must be made to understand how justice is conceived. In a broad sense, it is also critical to understand how the needs for justice can be articulated, both at macro and micro level, as well as individually and collectively, and what Zimbabweans themselves and the authorities can do in seeking to advance transformative justice, dignity and development for all Zimbabweans. Transitional justice should incorporate a rights-based developmental approach.⁴⁰ This echoes the objectives of South Africa's Truth and Reconciliation Commission (TRC), which were to assist in restoring the dignity of victims by affording them an opportunity to testify about the violation of their rights or the death of their loved ones.⁴¹

The study is premised on the understanding that there is an urgent need in Zimbabwe for routes to advance justice, in its broadest terms, whether or not the transitional phase that appeared to have begun with the departure in 2017 of President Mugabe leads to a formal transitional justice process. The violence that characterised

³⁵ See, for example, UNDP *Human development report* Oxford: Oxford University Press (1994) at 47.

³⁶ Albert C, Baez A & Rutland J "Human security as biosecurity: Reconceptualising national security threats in the time of COVID-19" (2021) 40(1) *Journal of Politics and Life Sciences* 83 at 91.

³⁷ UNDP *Human development report* Oxford: Oxford University Press (1994) at 19.

³⁸ Gilder A "Using human security to harness human rights in the post-COVID world" (2021) *Völkerrechtsblog* (Symposium, Covid-19 and "New" Human Rights) available at <https://ssrn.com/abstract=3848564> or <http://dx.doi.org/10.2139/ssrn.3848564> (accessed 14 September 2023).

³⁹ See, for example, Sachikonye (2011) at 60.

⁴⁰ Sooka Y "Dealing with the past and transitional justice: Building peace through accountability" (2006) 8(862) *International Review of the Red Cross* 311 at 313.

⁴¹ Van Zyl (1999) at 654.

A TURNING POINT FOR TRANSITIONAL JUSTICE? POST-ELECTION VIOLENCE IN ZIMBABWE

much of the so-called “new dispensation” has its roots in a range of injustices that must be addressed in order for the nation to move forward. While justice is not understood – or advanced – in purely formal legal terms, the country’s apparent lack of application of the law is a fundamental constraint on progress on many fronts. Efforts to examine what “justice in transition” could mean for communities in Zimbabwe, in the light of long histories of injustice and rights violations,⁴² can catalyse real progress at various levels. A broad approach to addressing past and ongoing injustice is required, including healing and reconciliation, alongside accountability and a restoration of the rule of law. As such, these tenets must inform the work of all relevant stakeholders and agencies seeking to advance justice and peace in Zimbabwe, including the National Peace and Reconciliation Commission (NPRC), which is one of the few institutions formally established to deal with such issues.

Zimbabwe is currently a place largely without justice, in the sense that the legal system is arguably partisan,⁴³ politicised, and partial.⁴⁴ The application of law in Zimbabwe is uneven and skewed in favour of the ruling party. Far from protecting citizens and guaranteeing rights, state actors have victimised those they perceive as political opponents of the governing party. Moreover, under Zimbabwe’s new president, Emmerson Mnangagwa, there is little evidence of any substantive change under the “new dispensation” or “second republic”, as it is termed in post-coup ZANU-PF political texts. The term “new dispensation” implies a transition, or the beginning of a post-Mugabe era, one which marks a departure from the past and brings with it political and socio-economic reform. Not everyone is convinced, though: progressive change has yet to occur.

There is, however, a broader understanding of justice that goes beyond the law and involves ideals of fairness and equality. In terms of everyday needs, the desire is for a vibrant economy and employment for all, circumstances which are typically linked to the need for (and lack of) development. The injustice of the present moment is typified by unemployment and the pressure on youth to leave the country; by poor-quality infrastructure; and by poverty and daily economic challenges, which are sometimes termed economic violence.⁴⁵

4.1 Justice as a formal system

How people conceive of justice varies depending on who they are. Those whose families had been victims of killings or enforced disappearances engineered by the state see justice through the lens of their experience, demanding both justice for their particular case – in terms of acknowledgment,⁴⁶ compensation,⁴⁷ and prosecution of perpetrators

⁴² See, for example, Sachikonye (2011) at 2.

⁴³ Verheul S “Zimbabweans are foolishly litigious’: Exploring the logic of appeals to a politicised legal system” (2016) 86(1) *Journal of the International African Institute* 78 at 83.

⁴⁴ Bratton M “Violence, partisanship and transitional justice in Zimbabwe” (2011) 49(3) *Journal of Modern African Studies* 353 at 357.

⁴⁵ Sachikonye (2011) at 60.

⁴⁶ Mhlanga B “No justice yet for August 1, 2018, shooting victims” *Newsday*, 3 August 2020.

A TURNING POINT FOR TRANSITIONAL JUSTICE? POST-ELECTION VIOLENCE IN ZIMBABWE

– as well as for state-perpetrated violence more broadly. This represents the articulation of justice in a largely formal sense, and is seen as a prerequisite for the restoration of the rule of law, something which many people, and not just direct victims, regard as largely absent in Zimbabwe today.⁴⁸ This is justice as *transitional justice*, which involves the idea that moving on from periods of authoritarianism and impunity demands that violations of human rights in the past be recognised and their legacies addressed, including through the reform of institutions that are failing, in particular the NPRC.

While the Constitution of Zimbabwe has clearly outlined laws providing protection against torture and inhuman and degrading treatment,⁴⁹ the extent to which these laws have been implemented or enforced remains minimal. Any political transition in Zimbabwe will be incomplete as long as the rule of law remains invisible to Zimbabweans. Where past violations have left legacies, interviewees' views regarding the issues that they were asked about revealed that affected communities wanted these violations be acknowledged and remembered; they also wanted redress to be made, and compensation awarded to victims for property that was lost and homesteads that were burnt.⁵⁰ Redress is seen as beginning with state officials listening to people who suffered and issuing an official apology – this equates to a truth-telling process, which is a component of transitional justice.

The current discourse on the state of the country, exemplified by a range of testimonies about violence perpetrated – so far without punishment – against citizens by persons linked to the state or the ruling party, underlines the need for a dramatic change in how formal justice should unfold. During the violence committed in the 2008 elections, victims reported crimes to both the police and the local traditional leaders, but saw no action taken.⁵¹

These narratives also came to light in accounts given by the study's interviewees.⁵² In particular, alleged perpetrators linked to ZANU-PF were set free without due process having been followed.⁵³ This resembles what happened in Matabeleland. The law was similarly perceived as being applied selectively among those who suffered the consequences of the Gukurahundi, with those in power and in the ZANU-PF being

⁴⁷ Masau P & Gumbodete P “Justice eludes 2018 shooting victims” *Newsday*, 3 August 2023; Mudewairi V “No compensation yet for Aug 2018 shooting victims” *Newsday*, 23 September 2022.

⁴⁸ The World Justice Project (WJP) WJP Rule of Law Index (2021) at 1; Makaripe T “Zim judiciary crying for help” *Zimbabwe Independent*, 23 September 2022.

⁴⁹ In Chapter 4, the Constitution of Zimbabwe provides that no person may be subjected to physical or psychological torture (section 53), that the right not to be tortured may not be limited by any law, and that no person may violate the right (section 86(3)).

⁵⁰ Victims' views.

⁵¹ Sachikonye (2011) at 55.

⁵² Victims' views.

⁵³ Sachikonye (2011) at 55.

A TURNING POINT FOR TRANSITIONAL JUSTICE? POST-ELECTION VIOLENCE IN ZIMBABWE

favoured.⁵⁴ Interviewees said that, in the 2008 election, women were assaulted while naked, with most of them sustaining permanent physical injuries.⁵⁵ They have lived in pain ever since they were tortured, while perpetrators have walked free.⁵⁶ The independent role of the police has been fundamentally undermined, in the process endangering the very people that officers are supposed to protect and serving as a microcosm of Zimbabwe's flawed system of governance.

Violations linked to political contestation go beyond the many acts of violence that have occurred. For instance, being denied food aid and agricultural inputs on grounds of political affiliation or of being linked to an opposition party is a contravention both of international human rights provisions⁵⁷ and the Constitution.⁵⁸ The law is politicised. The situation has been described as the infliction of 'economic violence, victimisation or penalties on the opposition', with the harms including the spoliation and confiscation of livestock, food crops, and farming equipment.⁵⁹ Furthermore, many have been victimised either for having suffered violence at the hands of the state or for having been mobilised by the state. In this regard, victims have been discriminated against in ways that deny them both social and economic rights as well as the fundamental rights of citizenship.⁶⁰

4.2 Justice as an aspect of human security

Justice is linked to better livelihoods and quality of life. It entail fairness; the existence of jobs and a better economy; safety; a clean environment; and the availability of basic services and amenities such as access to health care, water, and sanitation. Justice is not only an outcome of a legal system, but is also something evident in how the state delivers services and welfare to citizens. Such needs can be framed in terms of how the state should address the daily challenges people face, for instance by providing free education for schoolchildren, providing farm inputs to agriculture, and exempting the elderly from taxation.

There should be buy-in from all, that is, collective ownership of the process.⁶¹ As such, the transformation which is required is one of empowering victimised

⁵⁴ A series of massacres of Ndebele civilians carried out by the Zimbabwe National Army between 1983 and 1987. The name derives from a Shona term loosely translatable as "the early rain which washes away the chaff before the spring rains".

⁵⁵ Victims' views.

⁵⁶ Sachikonye (2011) at 55.

⁵⁷ The Committee on Economic, Social and Cultural Rights, Forty-second session (2009) General Comment No. 20: Non-discrimination in economic, social and cultural rights [article 2, para. 2 of the Covenant], paragraph 1-41; the Committee on Economic, Social and Cultural Rights, Twentieth session (1999) General Comment No. 12: The right to adequate food [article 11, para. 3 of the Covenant], paragraph 1-41.

⁵⁸ Chapter 4, section 77(b) of the Constitution of the Republic of Zimbabwe, Amendment (No. 20 of 2013).

⁵⁹ Sachikonye (2011) at 60.

⁶⁰ See, for example, The Zimbabwe Human Rights NGO Forum & The Zimbabwe Peace Project *The politics of food: A contextual analysis of the distribution of food aid in Zimbabwe* (2021) at 16.

⁶¹ Sooka (2006) at 313.

A TURNING POINT FOR TRANSITIONAL JUSTICE? POST-ELECTION VIOLENCE IN ZIMBABWE

populations. Genuine transformation is characterised by adherence to the rule of law and the presence of strong institutions responsible for judicial and non-judicial oversight. As previously noted, the UNDP Human Development Report of 1994 stresses that human security is people-centred, and is concerned, among other things, with how people live in a society, how freely they exercise their choices, how much access they have to socio-economic opportunities, and whether they live in conflict or in peace.⁶²

4.3 Towards transformative justice

In formal terms, the justice that victims and affected communities demand involves, in brief, recognition, redress, and retribution. The government must acknowledge what has happened in Zimbabwe's post-independence legacy of violence,⁶³ and it must offer redress, largely through compensation. There is, however, also an understanding that stopping such cycles of violence requires an end to impunity and accountability for past crimes. Here, the approach is future-oriented and concerned not only with individual perpetrators but with systemic problems. Transformative justice can be applied across a range of settings and to groups affected by structural and systemic violence.⁶⁴ This would entail the wholesale reform of the many institutions that have failed Zimbabweans in recent decades, with such reform directed towards ensuring that institutions act within the bounds of the Constitution, and geared, overall, to renegotiating the relationship between the state and citizens.

Nonetheless, there are some existing spaces of governance where justice is still seen as achievable. A key example is engaging traditional leaders in mediating between victims and perpetrators in ways that address victims' needs as well as advance reconciliation. Whilst such leaders are acknowledged as part of the country's governance arrangements, they operate outside of the formal justice system – a fact which gives them the freedom to work at local level and, in many instances, to resist the political pressure they invariably face. This shows that, via community mobilisation, local people and community leaders can work to advance justice despite resistance from the authorities. In this fashion, victims have obtained admissions of guilt, apologies, and compensation. So, whilst transformation demands change within central authorities and structures, it can also be advanced locally – and in the current environment, this may be the most relevant level of all at which to work.

However, it is important to note that the perceived alignment of traditional leaders with the ruling ZANU-PF party has an ambiguous impact on their relevance. Although this does not entirely contradict the idea that – in Africa as in other parts of the world – traditional leadership is generally an essential element of transformative justice, it is often argued that, in Zimbabwe, traditional leaders are pro-ZANU-PF and at the

⁶² UNDP *Human development report* Oxford: Oxford University Press (1994) at 23.

⁶³ Sachikonye (2011) at 14 & 15.

⁶⁴ Hoddy ET "Transformative justice in practice: Reflections on the pastoral land commission during Brazil's political transition" (2021) *Journal of Human Rights Practice* 339 at 340.

A TURNING POINT FOR TRANSITIONAL JUSTICE? POST-ELECTION VIOLENCE IN ZIMBABWE

forefront of denying villagers food aid and agricultural inputs.⁶⁵ Interviewees in areas affected by political violence reported that in some instances local leaders worked alongside perpetrators, with chiefs, headmen and village heads asking victims of torture, assault and abduction to pay fines so as to “cleanse themselves” of the taint of being opposition supporters.⁶⁶ In this regard, civil society organisations have a vital role to play in bridging the divides between communities and authorities. In other words, to counter human rights violations, there is a need for a traditional leadership which is genuinely responsive and accessible to the people.

4.3.1 *Transformative justice*

Transformative justice has been conceptualised as transformative change that emphasises local agency and resources, the prioritisation of process over predetermined outcomes, and the act of challenging unequal, intersecting power relations and structures of exclusion at local and global levels.⁶⁷ Its relevance to Zimbabwe emerges clearly in view of the decades of institutionalised violence⁶⁸ and, more importantly, the evidence of election violence.

Whilst transitional justice mechanisms such as trials, truth-telling, institutional reform, and reparations are essential to ensuring justice in Zimbabwe, there is also a need to go beyond the legal system and focus on social and political questions, doing so not only in regard to the state and its institutions but also in regard to the everyday concerns of citizens and communities.⁶⁹ This is meant to circumvent the inability of the justice system to deal successfully with those responsible for human rights violations and develop a more creative approach to dealing with the past.⁷⁰

In Zimbabwe’s current conversation, it is noted, however, that although transitional justice scholarship and practice has expanded over geographical space as well as over a variety of thematic areas, it is entangled in deformations that are unlikely to curb the propensity for political violence to recur; there is thus a need for a process that takes place within the context of a shift to democracy and which is capable of addressing the causative factors that gave rise to conflict.⁷¹

Seen in this light, transformative justice is the result not of a top-down imposition of external legal frameworks or institutional templates, but of a bottom-up understanding and analysis of the lives and needs of populations. Transformative justice must see value in the local institutions of traditional governance and in the social, economic and cultural priorities of communities; above all, it cannot and should

⁶⁵ See, for example, Chigwata TC “The role of traditional leaders in Zimbabwe: Are they still relevant?” (2016) 20 *Law Democracy & Development* 69 at 70.

⁶⁶ Victims’ views.

⁶⁷ Gready P & Robins S (eds) *From transitional to transformative justice* Cambridge: Cambridge University Press (2019).

⁶⁸ Sachikonye L (2011) at 49 & 50.

⁶⁹ Gready P & Robins S (eds) *From transitional to transformative justice* Cambridge: Cambridge University Press (2019).

⁷⁰ Van Zyl (1999) at 653.

⁷¹ See, for example, Sooka (2006) at 313.

A TURNING POINT FOR TRANSITIONAL JUSTICE? POST-ELECTION VIOLENCE IN ZIMBABWE

not be considered an end in itself⁷² but as a means of continuous engagement and interfacing with affected communities.

The impacts of violence on families include severe economic deprivation. Some families lost breadwinners, and as a result children have dropped out of school since households are no longer able to pay fees.⁷³ Many families are living in acute poverty because their physical fitness was affected by the abductions, assaults or torture they experienced, leaving them incapable of working to sustain their families. Some have been disabled by their experience of state violence.⁷⁴ Interviewees revealed too that their poverty is worsened by the fact that they are excluded from receiving food aid on the grounds of supporting opposition parties.⁷⁵

Indeed, the social impact of their victimhood has been that families have become social outcasts in communities where they have always lived, with fear of reprisal by the broader community leading them to disassociate themselves from surviving families. For instance, interviewees indicated that they no longer participate in religious and community gatherings due to being stigmatised as opposition supporters.⁷⁶ In some cases, family members have similarly distanced themselves from each other. These social impacts aggravate the trauma many still experience as a result of having seen their parents taken away, never to return again – trauma made all the worse by seeing the perpetrators walking free and serving as continuing reminders of their extreme experiences in the past.

4.3.2 *Suggested framework for the future*

The research undertaken for this article sought to give voice to surviving families of victims of politically motivated violence – in particular, on the kind of redress they prefer given their experiences. Paramount here is the arrest, prosecution and imprisonment of perpetrators.⁷⁷ To give remedy to the victims of political violence, there is a need for the state to bring perpetrators to book.⁷⁸ South Africa did not grant unconditional amnesty, however. In some instances, it was denied for various reasons. At the end of its work, the TRC handed over certain cases to the National Prosecuting Authority for investigation and possible prosecution.⁷⁹ This is an important means of deterring the recurrence of such violations, especially since many families are pained to see perpetrators walking free and bragging about their crimes. Yet while arrests are important in healing wounds, some do not see the value of it, as it would not change the

⁷² See Sooka (2006) at 313.

⁷³ Masau P & Gumbodete P “Justice eludes 2018 shooting victims” *Newsday*, 3 August 2023.

⁷⁴ Sachikonye L (2011) at 86 & 89.

⁷⁵ Victims’ views.

⁷⁶ Victims’ views.

⁷⁷ Kairiza T & Mananavire B “August 2018 killings: No apology, no compensation four years on” *Zimbabwe Independent*, 1 August 2022.

⁷⁸ See for example, Van Zyl (1999) at 650.

⁷⁹ See, for example, Truth and Reconciliation Commission of South Africa Report, Volume Five available at http://www.sahistory.org.za/sites/default/files/volume5_0.pdf (accessed 23 January 2024).

A TURNING POINT FOR TRANSITIONAL JUSTICE? POST-ELECTION VIOLENCE IN ZIMBABWE

situation they find themselves in; instead, socio-economic opportunities are seen as more important, given that this would aid their survival.

Secondly, compensation is something which is both concrete, in that would address the poverty that many victim families live in due to their experience, and a form of “consolation”. Compensation, according to victims, could take the form of cash, livestock, or projects that ensure a sustainable livelihood. These demands reflected the fact that respondents’ livestock was forcibly taken from them, and that their houses were destroyed and their property stolen. Indeed, many families are in desperate need of material support in the form of, among other things, employment, food, clothing, medical support, and money with which to send children to school. Generally, it is crucial to bear in mind that transitional justice does provide for compensation as a form of reparation. In South Africa, for example, the TRC recommended that the government provide reparations to victims of apartheid-era violations, with the reparations taking various forms such as monetary compensation or housing and educational assistance.⁸⁰

Another critical factor to consider as a way forward is confession and public apology by perpetrators. This could be a *terminus a quo* of accountability for the crimes committed and open doors for forgiveness. Truth-telling and disclosure by perpetrators as to what really happened, who was responsible for killings and enforced disappearances, and what the reasons were for these actions are crucial requirements, however herculean a task it might be to bring this about in practice. Some families do not know the whereabouts of loved ones who have disappeared and presumably been killed, and accordingly want to know the truth about where they are and be able to bring their bodies home for burial following traditional cultural practices. Significantly, justice is served not only in the relationship between the state and citizens; indeed, settling matters through traditional structures may be more feasible than waiting for the formal justice system. This could be achieved through admissions of guilt, cleansing ceremonies, and compensation from the traditional courts.

In addition, in the face of unequal power relations, citizens see huge challenges in ever enjoying justice. Families’ needs can be understood in terms of healing, but, given that it was the governing party that perpetrated the violations, some believe that only a change of government would yield the redress they seek; they thus bank on the opposition winning power as the only way through which their lives could change for the better. In this regard, it may be noted that power-sharing arrangements are a feasible way of facilitating political accommodation, and would hence be key to bringing about transformative change. This would serve to alter critical political and social conditions, thereby creating an enabling environment for deeper reform and genuine peacebuilding processes.⁸¹

Transitional justice sees political transitions as moments in which justice and human rights can be advanced, most notably by addressing past rights violations in

⁸⁰ See, for example, Truth and Reconciliation Commission of South Africa Report, Volume Five.

⁸¹ Evans M (ed) *Beyond transitional justice: Transformative justice and the state of the field (or non-field)* (1st ed) Oxfordshire: Routledge (2022) at 3.

A TURNING POINT FOR TRANSITIONAL JUSTICE? POST-ELECTION VIOLENCE IN ZIMBABWE

ways that make their recurrence less likely. Zimbabwe's transition, however, remains ambiguous: whilst the "new dispensation" is a transition of sorts, the presence of ongoing human rights violations by agents of the state instead points to significant continuities with the Mugabe era. Moreover, the proximity to power of those linked to some of the most extreme violations of the past suggests that deeper change is required before the formal machinery of transitional justice – truth-telling, trials, and reparations to victims – becomes feasible. There is a desperate need to engage with both historical and contemporary violations of the rights of Zimbabweans, as it seems that this would be essential for the country to have any hope of a peaceful and prosperous future. It is clear that the political space for comprehensive approaches to the many historical violations is currently absent; it is also clear that ongoing engagement with affected communities and, more generally, continued efforts at civil-society strengthening by civil society organisations are vital to creating such a space.

A range of injustices have been, and are being, experienced in Zimbabwe over and above the human rights violations that dominate most transitional justice processes and the non-institutional routes to addressing them. These injustices are long-term threats to socio-economic rights, in contrast to acts of violence. This demands an approach to justice which is broader than that offered by transitional justice, in that it must go beyond legal and institutional approaches to deliver change that is social and political. Such an approach has been conceptualised as *transformative justice*,⁸² that is, as an endeavour that puts as much emphasis on social and economic rights as it does on civil and political rights, and which focuses on collective experiences of structural and systemic violence, not just on individual victimisation.⁸³ This approach acknowledges that much of the injustice of Zimbabwe's post-independence history has been experienced collectively. Addressing such issues, and their legacies, demands not only institutional change but also processes at a multitude of other levels, including, for example, mediation by traditional leaders at the local, community level.

Transformative justice will begin not from legal frameworks but from the empirical experience of Zimbabweans' everyday lives. Here, people-centred processes, in which affected communities are at the vanguard, inform legal processes, rather than vice versa. The evidence from interviews in areas affected by political violence indicates overwhelmingly that the approach should be holistic, encompassing trials and formal truth-telling where feasible and politically possible, as well as violations of social and economic rights.⁸⁴ As such, transformative justice would incorporate social, political and economic approaches that promote social justice. This requires broad-based grassroots participation in which members of affected communities lead the process and influence wider community structures in developing new norms for resolving conflict, harm and

⁸² Gready P & Robins S (eds) *From transitional to transformative justice* Cambridge: Cambridge University Press (2019).

⁸³ See, for example, Hoddy ET (2021) at 341.

⁸⁴ Victims' views.

A TURNING POINT FOR TRANSITIONAL JUSTICE? POST-ELECTION VIOLENCE IN ZIMBABWE

victimisation.⁸⁵ Harms stemming from rights violations should be addressed through reparative approaches that are not only restorative but also engage with the structural underpinnings of violations. This is the basis of transformative justice, since the role of reparations in unequal societies is not to return victims to poverty and discrimination (that is, to obtain restitution) but to transform their circumstances by addressing the injustices that drive conflict (that is, to build communities).⁸⁶ This emphasises that change-processes at the institutional level must be echoed and reinforced by those at the grassroots level.

Respondents stressed that engagement with affected and concerned communities is the most important way of advancing an agenda for justice that comports with how communities articulate their needs.⁸⁷ There is also a need for research that covers other regions of the country and examines a greater variety of contexts in which rights have been violated. This would inform a larger, and desperately needed, enquiry seeking to comprehend the justice needs of Zimbabweans; such an enquiry would in turn inform any emerging formal process as well as informal efforts at the community level.

Unofficial approaches include using traditional leaders as an indigenous transitional justice mechanism that could address the needs of victims of often severe violations for truth, reparation, and (to some extent) accountability. Whilst traditional leaders as a forum for acknowledgement and healing are likely to be relevant in many communities, it is important that each affected community be supported to use whatever approach works for it in placing itself at the centre of processes to deal with the past and move forward.⁸⁸

What this approach suggests is that one does not necessarily have to await any major changes at the national level: there is already space at the community level in which to engage with legacies of state violence. Whilst formal accountability for the extreme violence that took place still seems a distant prospect, documenting violations and the needs of victims, and seeking local approaches to address them, is one way of working to enlarge the country's political space.

There are also a number of institutions that could be engaged now in the struggle for justice, most notably the NPRC, the goal of which is "transitioning Zimbabwe from a conflictual past to a sustainable, harmonious & peaceful society".⁸⁹ This resonates with the aims of transformative justice: acknowledging that past and current political violence and its drivers must be addressed in order to ensure reconciliation, reconstruction and future peace – goals which are to be accomplished on the basis that there is a need for understanding but not for vengeance, and a need for reparation but

⁸⁵ See, for example, Eriksson A "A bottom-up approach to transformative justice in Northern Ireland" (2009) 3(3) *The International Journal of Transitional Justice* 301 at 307.

⁸⁶ Winn MT "Restorative justice, civic education, and transformative possibilities" (2023) 701(1) *The American Academy of Political and Social Science* 156 at 161.

⁸⁷ Victims' views.

⁸⁸ McGill D "Different violence, different justice? Taking structural violence seriously in post-conflict and transitional justice processes" (2017) 6(1) *State Crime Journal* 79 at 88.

⁸⁹ NPRC *National Peace and Reconciliation Commission: Strategic Plan 2018 – 2022* Harare: NPRC (2018).

A TURNING POINT FOR TRANSITIONAL JUSTICE? POST-ELECTION VIOLENCE IN ZIMBABWE

not for retaliation.⁹⁰ Avenging the death of loved ones and hoping to see the death of perpetrators is simply not sustainable.

5 CONCLUSION

The article has considered issues of justice in a nation where needs for justice are enormous and felt by every community. In so doing, it has demonstrated both the scale and nature of the challenges that Zimbabwe faces and outlined various approaches for addressing them. Affected families are seized by a desire for justice, in terms both of accountability and of redressing immediate economic needs arising from the social and economic consequences of their victimhood. The societal implications of the transformations required to address legacies of violations and prevent their recurrence are profound and far-reaching, especially in regard to community-building. There must be a change in the political environment – a genuine transition – such that the space is created for the acknowledgment of past violence and accountability for it. For this to come about, the nature of political contestation must change so that disagreement is expressed through discourse and debate, not violence.

But the possibility of reconciliation is hampered by the continued hatred and bitterness that actors in the ruling party and opposition have for each other. At the current time, it is clear that conditions for reconciliation across the political divide do not exist; indeed, a precondition for ending political violence is ending impunity. What Zimbabwe needs primarily is truth-telling and reparations. This must be complemented by unpacking the root causes of violence, documenting the victims of murder and abduction, and supporting the work of the NPRC in the endeavour to drive social change, healing, and reconciliation.

⁹⁰ See, for example, Van Zyl (1999) at 650.

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