

Full Length Research Paper

Reframing post-Mugabe justice: A critical need for a truth and reconciliation commission

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This paper interrogates conditions by which deeply divided societies such as Zimbabwe can move forward through a recognition paradigm often used by Truth Commissions (TCs). The study is located within a dispute that troubled societies cannot fully reconcile as long as pre-existing grievances are not addressed. The principal argument is that there have been human rights abuses under President Mugabe's presidency and the task of addressing the country's traumatic past can be effectively executed through the mechanism of a Truth and Reconciliation Commission (TRC). The study considers, how after the country's turbulent history, a TRC can enable Zimbabweans to come into terms with what happened, consequently, settle for a new social contract that seeks to bring justice to victims and survivors while also healing the nation's psyche. To achieve this, the study examines what happened under Mugabe's presidency by means of conceptualising primary and secondary data on postcolonial Zimbabwe. Findings suggest that there have been abuses that may have left the country divided and wounded, requiring an institutional response to deal with the past as a means of creating a positive shared memory. Findings also highlight that reparative justice has become more of an imperative as victims become more aware of their rights.

Key words: Zimbabwe, human rights, injustice, truth commissions, reconciliation, injustice, redress, reparations.

INTRODUCTION

Those upon the margins of transitional justice's disciplinary boundaries are beginning to understand the need for an alternative approach in reconciling troubled and divided nations (Stanley, 2001, 2005; Hayner, 1998; Scharf, 1997; Laplante, 2008). This realisation is invariably prompted by society's failure to divorce with the past, particularly in countries where there have been human rights violations such as in Zimbabwe.

In the early 1980s, just as when many African nations were congratulating Zimbabweans for successfully executing the struggle for independence, the same revolutionary structure that had championed the liberation war began to come apart. The Patriotic Front comprising the Zimbabwe African People Union (led by Joshua Nkomo) and Zimbabwe African National Union (led by Robert Mugabe) - that had for two decades confronted

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the minority Rhodesian¹ government of Ian Douglas Smith started squabbling amongst themselves, leading up to unprecedented cases of human rights abuses (Nkomo, 1984).

Human rights concerns in Zimbabwe have been well-articulated, not only by local and international media, but also by Non-Governmental Organisations such as the Catholic Commission for Justice and Peace (CCJ), and the Legal Resources Foundation of Zimbabwe (LRFZ). Perhaps, the CCJ and LRFZ, (1999) correctly captures what went wrong in post-colonial Zimbabwe.

People have been tortured, seen their dead ones murdered or abducted, had their houses burnt. No efforts have been made to alleviate their plight and those who caused the damage have not been made answerable (CCJ and LRF, 1999, p30).

The conflict that ensued was fought seemingly without respect for Human Rights (Human Rights Watch, 2007). What happened were clear cases of violation of civil and political rights alongside social, economic and cultural rights. The Ndebele people of Zulu origin who supported the election losing candidate Joshua Nkomo suffered both physical and economic exploitation, with thousands of them skipping the country to neighbouring South Africa. More than 3.6 million Zimbabweans are estimated to have deserted their country, most of them living as economic and political refugees in South Africa, Britain, Australia, New Zealand (Human Rights Watch, 2007). Conventional wisdom dictates that there is something grossly imperfect with a political system that forces its citizens away from their country of birth.

With this in mind, the study advances an argument that the legacy of the 1980 disturbances may never go away unless an effective transitional mechanism that seeks to address a post-conflict ideological baggage is instituted. Although Critical thinkers such as Gibson (2004) and Hayner (1998) have not directly examined the Zimbabwean case, they contextually conceive the view that Zimbabwe desperately needs a forward-looking political strategy to prevent further socio-political fragmentation resulting from abuses of rights. The conception is that Zimbabwe's Human Rights record remains a "scar" that may impede processes of peace and stability if it is left unhealed.

A TRC can enable Zimbabwe to directly and thoroughly confront its atrocious past, as a means of shaping the future (Gibson, 2004). This could be a pragmatic approach in trying to construct a shared memory which is critical for the creation of a more reconciled society.

The focus is primarily on the new understanding of justice promulgated by truth commissions using the formula: *Truth + Redress = Reconciliation*. The aim is to put forward an alternative and effective framework for uniting Zimbabweans. A political discourse highlighting

that recognising the truth about violations is imperative for the argument advanced in this study. The discourse also argues that instituting some redress policies may enable Zimbabweans to come into terms with their past, ultimately, reconcile. That way, Zimbabweans can at least begin to travel together on the road towards reconciliation and social cohesion.

What is a Truth Commission?

Truth Commissions are transitional justice mechanisms usually established during a transition to democracy to deal with human rights violations (Stanley, 2005; Hoffman, 2003). Transitional justice scholars, for example Minow (1998) have sought to define Truth Commissions in terms of philosophical standards of justice, while Allan and Allan (2000) define a truth commission as one of the institutions used in international law to investigate gross human rights violations within a specific country.

For Du Toit (2011), truth commissions are tools of transformative social action, which rests on the assumption that collective remembrance of the past will help prevent the recurrence of violence in the future. Du Toit (2011)'s views maybe critical for this analysis in terms of postcolonial abuses in Zimbabwe. Establishing a transformative mechanism may serve as a pragmatic approach in trying to address the legacy of post-colonial Zimbabwe injustices. Critical to this view is that social change in the wake of a culture of human rights abuses may require a shrewd transitional mechanism that is able to prevent the country from sliding into a civil war, hence it is posited that a TC can provide the required smooth transition of power. This is largely because victims who suffered grievously in the past may see an opportunity to engage in an orgy of revenge and retribution.

Characteristic of an effective Truth Commission

Efforts of establishing an effective truth commission should be guided by aspirations of the affected society (Scharf, 1997; Hayner, 1994, 2001, 2002). Critical to the premise of a TC are victims, survivors, bystanders and perpetrators as well. Consequently, TCs should seek to encompass many other causes of conflict with the hope of securing a peaceful post-conflict settlement (Hayner, 1998; Scharf, 1997).

For Freeman (2006), an effective TC should have five characteristics: be able to perform statement-taking, use subpoena powers, use powers of search and seizure, conduct public hearings, and be able to publish its findings in a final report.

Furthermore, TCs should provide assurances of non-repetition of repression or violence. For example, TCs can also be used against covert, state-sponsored crimes to reveal clandestine violence, establish the accountability of political and military leaders, and to

¹ Before Zimbabwe became independent in 18 April 1980, it was known as Rhodesia named after British colonialist Cecil John Rhodes.

publicly acknowledge the previously silenced stories of victims (Shaw, 2005). Public recounting of memories and testimonies about violence is also paramount. This may serve as a redemptive process of reconciliation and redress of injustice. The question of redress is imperative for post-Mugabe justice, for instance, one of the most divisive issues in Zimbabwe is the deployment of the Fifth Brigade (Gukurahundi) in Matabeleland and Midlands areas between 1982 and 1984 (Nkomo, 1984). The footprints of the Fifth Brigade are still vivid in Zimbabwe's socially-shared memory, and, perhaps more significantly, some perpetrators as well as the survivors can still be reached. The most productive approach maybe to redress victims and survivors as a means of paving way for reconciliation and unity.

Worldwide: Truth Commissions and Tribunals

This section examines the origins of Truth Commissions and explores how truth commissions have become increasingly popular transitional mechanisms in countries attempting to confront their past. The aim of this discussion is to demonstrate that the suggestion for a Zimbabwe TRC is a reflection of a wider world that is fast resorting to TCs; hence the idea is not a new one. It has been evolving for a long time. The main driver has been the search for social justice.

Citizens living under dictatorship that may have not only persecuted them, but also brought ravaged the economy are perhaps beginning to understand that poverty is both a cause and consequence of human rights abuse and lack of social protection (Fukuda-Parr, 2007). They now understand that extreme poverty which often is a consequence of controversial economic and political policies manifest as a violation of human rights, hence someone is morally responsible for their impoverishment (Pogge, 2003). Consequently, victims of violations must continue demanding redress for structural harms (Shaw, 2005). This new thinking, together with the desire for redress may have led to the formation of first TC in 1974 in Uganda under Idi Amin (Quinn, 2001).

For Scharf (1997), the first truth commission, the Carnegie Endowment for International Peace was set up in 1919 after World War I by allies to investigate alleged atrocities committed against civilians and prisoners of war during the Balkan Wars of 1912 and 1913. However, it is observed that the Carnegie Endowment for International Peace was not a national TC, but an international one. There is also a view that the first TC was the Bangladesh War Inquiry Commission appointed by the Pakistan president in December 1971 to investigate the killings of thousands of Bangladeshis (Government of Pakistan, 1974). The commission published its final report in 1974.

Nonetheless, much contemporary literature on transitional justice argues that the first conventional truth

commission was formed by Idi Amin in Uganda in 1974 (Hayner, 2001; Brahm, 2007). The 1974 Ugandan Commission was established to examine accusations of disappearances carried out by the Ugandan military (Robben 2010; Quinn, 2001). Known as the Commission of Inquiry into the Disappearance of People in Uganda it was established by Amin's government in June 1974 to cover a period from 25 January 1971. However, TCs did not gain prominence until the 1980s in Latin America. Brahm (2005) suggests that this could have been because the Ugandan commission did not appear to have been a sincere attempt to rectify an atrocious past, but rather a flimsy effort to placate international pressure. Consequently, the Ugandan commission did not reach its potential. This resulted in a gap in the use of TCs with the second historic TC having been set up in 1982 in Bolivia. However, from the 1980s to date, TCs have become popular mechanisms of transition from authoritarian regimes to democracy in many countries.

Early TCs in South America were charged with examining specifics of individual acts of violence according to the accepted norms of national and international jurisprudence (Grandin, 2005). Their main function was to address violations of civil and political rights. Apart from the Bolivia TC, amongst early truth commissions to be formed in South America were the Argentina Truth Commission in 1983. Grandin (2005) argues that political terror was one part of the early TCs' agenda to cultivate a notion that viewed the state as an executor of legal disputes and protector of individual rights. In this context, early TCs in Bolivia and Argentina were to be supplemented with prosecutions. Table 1 provides details about some of the South American truth commissions – the year they were formed and how they concluded their work.

The Bolivian National Commission of Inquiry into Disappearances created days after the return to democracy in 1982 and the Ecuadorian commissions were disbanded before completing their work because the investigations became too politically sensitive (Brahm, 2005). Table 1 show that some TCs made their final report confidential; for example the El Salvador TC although it recommended the dismissal of 100 military officers for human rights violations. The focus of human rights was critical to the South African TRC. This shows a conceptual relationship between TCs and, as stated earlier highlights that TCs investigate human rights violations.

From the 1980s onwards, TCs have been used as a social function to unravel the truth about injustices and educate the public about those historical injustices in order to prevent their recurrence, while making recommendations of redress to establish peaceful democracies. For instance, in 1984 the Argentine commission investigated the truth about injustices of the past before recommending that reparations and compensation must

Table 1. Early commissions in South America.

Country	Year	Commission	Result
Bolivia	1982	Commission of inquiry into disappearances	No report
Argentina	1983-1985	Commission on the disappearance of persons (Sabato Commission)	Nunca Mas report documented nearly 9,000 disappeared, analysed repression apparatus
El Salvador	1993-1994	Joint investigation committee on illegal armed groups	Reported many killings had political background; perpetrators mentioned in confidential appendix
Uruguay	1985	Parliamentary investigative commission on 'disappeared' persons	Report published, no details of individual cases
Honduras	1993	National commissioner for the protection of human rights	Report named those responsible for 1984 disappearances
Guatemala	1995	Commission of elucidation	Investigated human rights violations and acts of violence
Chile	1990-1991	National commission on truth and reconciliation	Extensive report documented 2,100 cases, analysed repression apparatus, many recommendations for reparation and rehabilitation
Chad	1991-1992	Commission of inquiry on crimes by ex-president Habre and others	Report said 40,000 were killed, details on 4,000 cases named perpetrators
El Salvador	1992	Ad hoc commission on the military	Confidential report recommended dismissal of 100 military officers for human rights violations
El Salvador	1992-1993	UN Commission of truth	Report said 60,900 killed, of which 5% by opposition; named perpetrators
Uruguay	1985	Parliamentary investigative commission on 'disappeared' persons	Report published, no details of individual cases

Adapted from: Human Sciences Research Council, <http://www.hsrc.ac.za/corporate>.

be paid to families of the killed and disappeared to redress the past (Bonner and James, 2011). In 1992 the Chadian Commission of Inquiry explored socioeconomic deprivations, including how ordinary people were made homeless and destitute, and further explored the plight of orphans living on the streets (Hayner, 1998).

In 2003, the Peru TRC implicated socioeconomic injustice as a cause of conflict. In 2004, the Sierra Leone TRC concluded that there was a link between conflict and socioeconomic inequalities (Peru TRC, 2003). These examples demonstrate a trend in terms of shift towards redress and social justice.

Campbell (2000) observes that the concept of seeking justice emerged at the end of World War II with both the Nuremberg and Tokyo tribunals. She argues that these tribunals have become the standard by which all transitional mechanisms are measured. This view is relevant in the debate about appropriate transitional mechanism for Zimbabwe. This serves to contextualize the proposed Zimbabwe TRC with other historic transitional mechanisms, suggesting that the proposed TRC is not unique, but a developed duplication of other transitional justice experiments that have emerged since the end of the Second World War. The proposed

Zimbabwe TRC can seek to address some various problems and obstacles encountered by many of the previous commissions, particularly those in Latin America (Campbell, 2000). This may mean that the proposed Zimbabwe TRC can improve over other experiments due to the nature of injustices and violations.

For example, the principle of crimes against humanity and systematic crimes against civilians set down by the Nuremberg Tribunals of 1945 which may apply to the Gukurahundi atrocities should be reflected in the mandate of the proposed Zimbabwe TRC but in a restorative format to help establish a human rights culture in Zimbabwe South Africa. A country which observes human rights may have lesser cases of crimes against humanity. As a result of the Nuremberg and Tokyo trials, 11 Nazis were sentenced to death and seven imprisoned at Spandau (Kaufman, 2010). In Tokyo, a military tribunal delivered retribution upon several prominent Japanese people. Two former Japanese premiers, Baron Koki Hirota and General Hideki Tojo, were hanged, as were five other Japanese generals (Kaufman, 2010). While in South Africa there is no record of death sentences resulting from apartheid crimes, a former apartheid police colonel in the counter-insurgency unit Eugene Alexander

de Kock was denied amnesty after he was found by the TRC to have kidnapped, tortured, and murdered hundreds of anti-apartheid activists (Mahlangu and Pather, 2012). De Kock confessed his unit's crimes while testifying before the TRC and was in 1996 consequently tried and convicted on eighty-nine charges resulting in him being sentenced to 212 years in prison (Mahlangu and Pather, *ibid*). However, the South African TRC's main objective was not focused on retribution but on building a future free from it.

In the post-World War 2 period, a number of transitional mechanisms were introduced. For example, the Universal Declaration of Human Rights² (UDHR) adopted by the United Nations General Assembly on 10 December 1948 at Palais de Chaillot, Paris, was part of a concerted effort to find alternative and better ways of confronting past crimes. UDHR arose directly from the experience of the Second World War and represented the first global expression of rights to which all human beings are inherently entitled.

This section has explored the history transitional mechanisms, how tribunals relate to TCs, in particular has discussed ways how the proposed Zimbabwe TC can learn lessons from these to make its own improvements. The section demonstrated the concept of TCs marks a departure from relying on prosecutions alone as a means of transforming an emerging democracy. A shift of trend was outlined and a range of TCs and their history in the context of the social justice perspective was examined.

METHODOLOGY

The section develops a critical methodology that underpins a transitional framework in trying to address the main research questions specified: *Is a TRC necessary for Zimbabwe?* To achieve this aim, the section details the approach used in gathering data. The approach seeks to identify underlying mechanisms in efforts to unite divided societies and conceives the potential of a Zimbabwe Truth and Reconciliation Commission (ZTRC) through different perspectives. The research design provides justification for the use of qualitative multiple methods while detailing the use of semi-structured questions, documents and statistical collection techniques. There were also seven sub-questions that were generated from the main research question: *Is a TRC necessary for Zimbabwe?*

1. Do you think there are human rights violations in Zimbabwe?
2. Do you think Zimbabwe needs a Truth Commission?
3. Should there be prosecutions for those who have violated human rights?
4. Are you proud of the independence of Zimbabwe which came in 1980?
5. If NO, explain why? If YES why?
6. What is your view on Gukurahundi?

²The UDHR consists of 30 articles including the International Bill of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols. The UDHR were used in the post-war period to attempt to address human rights abuses.

7. How can Zimbabwe deal with tribalism and racism currently pervasive in the country?

This is a multiple-methods qualitative research divided into three stages, thus literature review, semi-structured interviews, statistical collection which involve secondary data and document collection (Denzin 2003; Harrell and Bradley, 2009).

The use of multiple-methods reflects an effort to secure some in-depth understanding of how a proposed truth commission can help solve Zimbabwe's record of human rights abuses. The aim is to identify an appropriate and effective strategy of uniting Zimbabweans following three decades of postcolonial black-on-black abuses.

Choosing appropriate methods in social science research has always been a challenge; hence, in this study, qualitative multiple-methods were perceived as methodologically sound. Denzin (2003) commend the use of qualitative multiple-methods, noting that the strategy adds rigour, breadth, richness and depth. Nonetheless, the approach was chosen in consideration of the nature of the phenomenon being investigated (Silverman, 1993). This perception is developed by Maxwell (2005) who argues that the key issue in choosing one research method over another is to ensure compatibility with the goals of research questions. Views from Maxwell (2005) and Silverman (1993) were useful in choosing the qualitative multi-method used in this study.

The approach was found to be appropriate and more pragmatic in an attempt to identify effective mechanisms of moving Zimbabwe forward as a nation against dramatic cases of violations.

While several other studies were examined, the main important studies that formed the mainstay of this study included Hayner (1994), Stanley (2005), Shcarf (1997) and Gibson (2004). Most of these studies were chosen because they focus on divided societies, reconciliation, redress and truth commissions in general. Arguments in these studies served well in conceptualising primary data gathered through semi-structured interviews.

A semi-systematic literature review was conducted to complement and interviews. Literature review sought to analyse the use of ideas as a means of justifying the approach used in this research. Hart (1999) argues that literature review should be conducted with some appropriate breadth, depth and rigour. Hart (1999) also states that literature review should reflect consistency, clarity and brevity. In Hart's view such an approach would provide effective synthesis and analysis. Furthermore, Webster and Watson (2002) argue that an effective literature review creates a firm foundation for advancing knowledge. They also argue that effective literature review facilitates theory development, closes areas where a plethora of research exists, and uncovers areas where research is needed.

Semi-structured interviews were conducted with exiled Zimbabweans including those residents in Zimbabwe. The interviews were carried out in Britain, South Africa and Zimbabwe between February 2010 and April 2010. A follow up study was done in January and February 2015. Semi-structured interviews were chosen because they often allow respondents to answer more on their own terms than standardised interviews permit. The choice of qualitative semi-structured questions was influenced by an understanding that semi-structured interviews could offer a flexible approach to different respondents while still covering the same areas of data collection (Ritchie and Lewis, 2003). The following interviews were conducted with Zimbabwe exiles that included asylum seekers, recognized refugees, academics, policymakers, and those still living in Zimbabwe. For instance, academics were asked questions such as a) *Do you think Zimbabwe needs a Truth Commission?* B) *In what way can Zimbabwe deal with tribalism and racism currently pervasive in the country?* Ordinary Zimbabwean asylum seekers, refugees and those still in the country were asked the following questions: *Are you proud of the independence of*

Zimbabwe which came in 1980? B) If NO, explain why? If YES why? C) What is your view on Gukurahundi?

The interviews were tape-recorded to secure an accurate account of the conversations and avoid losing data since not everything can be written down during an interview. All the tape recordings were anonymised and numbered in order to avoid confusion at the analysis stage (Spencer et al., 2003). The interviews were conducted using a topic guide.

A thematic framework was used in the analysis of data which included familiarisation of raw data by listening to tapes, reading transcripts, and studying notes (Spencer et al., 2003). This entails identifying all the key issues, concepts, and themes by which the data were examined and referenced. Ritchie and Lewis (2003) state that the Thematic Framework is *a matrix based method for ordering and synthesising data* (p219). From the perspective of Ritchie and Lewis (2003), there are two key stages of the Thematic Framework, thus managing data and making sense out of it. This was achieved through descriptive and explanatory accounts.

Triangulation was achieved through the use of both quantitative (validation) and qualitative (inquiry) studies. This approach stems from Webb et al. (1966) who suggest that at least two measures are persuasive. Webb et al. (1966) state that:

Once a proposition has been confirmed by two or more independent measurement processes, the uncertainty of its interpretation is greatly reduced. The most persuasive evidence comes through a triangulation of measurement processes (p. 3).

Double measurement may be critical in ensuring credibility of a study of this magnitude. The approach may also help to clarify links between data, interpretation and conclusions within concepts such as validity, reliability, credibility (Spencer et al., 2003; Long and Godfrey, 2004).

The following section is based on a specific sub-research question that seeks to rationalise the purpose of this study - *Are there any unresolved violations in Zimbabwe?* Responses to this question serve as a basis of the study and bring up a diverse and rich responses, underscoring the need to deal with Zimbabwe's past.

Are there any unresolved violations in Zimbabwe?

The purpose of this section is to examine the diversity of views on the research question: *Do you think there are human rights violations in Zimbabwe?* The aim is to try and understand the views of Zimbabweans on whether a truth commission will be necessary for problems bedevilling their country. What is of particular interest are their views on the human rights record of their country, and means of redressing violations.

The question being explored is complex in the sense that different respondents have provided diverse and rich answers. Despite differing and divergent views, there is an underlying moral case for social justice that calls for justice and unity. For example, when questioned whether there are human rights violations in Zimbabwe, Interview (21) stated:

When the 5th Brigade was deployed to Tsholotsho I was pregnant. They came over to our village and started beating up villagers including my parents. They rounded up every one and took turns raping me. The soldiers were so cruel and behaved like wild animals. I saw

villagers, our neighbours including my friends being shot dead (Interview 21).

Interviewee (21) added:

I know one mass grave in which I personally witnessed people being buried alive after being ordered to get inside at gunpoint. Anyone who tried to escape was being shot dead. By sunset we had up to 10 dead villagers shot while trying to escape (Interviewee 21).

The claim of the presence of mass graves reflects the importance of a socio-political mechanism that could help investigate and find ways of identifying the victims for decent and "honourable burials". Interviewee (21) also reflects a pattern of systematic conduct by perpetrators which may have been a breach of the international law. The allegations can be criminalised in the light of Article 6 (c) of the International Military Tribunal developed by the United States and its Allies in the wake of Second World War crimes. Article 6 (c) defines crimes against humanity as *murder, extermination ...other inhuman acts committed against civilians*. Interviewee (21) can be conceptualised from the perspective of Article 6 (c).

Whenever such abuses happen, a TC maybe essential to construct an accurate memory of the past crimes. TCs can achieve this through archival and forensic truth-seeking processes complemented by interviewing of survivors and perpetrators (Boraine, 2000).

Interviewee (7) added:

Yes there were and there still are human rights violations to such an extent that I have lost count. I have personally seen people with decapitated limbs as a result of political torture (Interviewee, 7).

The quote highlights patterns of structural violence and scars of abuses, reflecting the need for some form of institutional response. What is remarkable is the interviewee's claim to have lost count of abuses. He however, states that he has encountered people with decapitated limbs, endorsing the much talked about claims of human rights violations in Zimbabwe.

Also responding to the question – *Are there human rights violations in Zimbabwe?* Interviewee (17) said:

Yes they have always been violations in Zimbabwe and there still are human rights violations to up to now. These violations include torture, murders and disappearances. We have lost many important relatives due to politics (Interviewee, 17).

The quote demonstrates an awareness of human rights violations in Zimbabwe by recounting the exact nature of violations, which in this case is torture, disappearances, and murder. This awareness endorses the view that a

mechanism that can directly confront the legacy of abuses is vital for the post-Mugabe era. Addressing such bitterness may prepare a foundation for a stable and peaceful future.

However, interviewee (2) stated in response to the same question:

I guess human rights records are dependent on what is acceptable within that particular country. For example, instant justice maybe considered a human right violation in England, but accepted in Zimbabwe (Interviewee, 2).

While the quote attempts to highlight the instant justice discourse which might be a pervasive issue in developing countries; however, it is clearly not the case in Zimbabwe as the country has a Western adopted legal system and endeavours to replicate a Eurocentric - Western ideology of democracy. Although the Zimbabwe's justice system is based on Roman-Dutch law, it is clearly designed in a way that all crimes go through a structured and independent court system; hence, the claim of "instant justice" maybe contextually inappropriate. For instance, the post-colonial Zimbabwe constitution has always provided a right to a fair trial for any crime or cases (Judicial Service Commission Zimbabwe 2012). The country's judiciary system has attempted to rigorously enforce the right to a fair trial despite an uncondusive environment.

However, claims of instant justice by interviewee (2) manifest in the 2002 findings by the African Commission which conducted a human rights fact finding commission. The African Commission (2002) stated that:

...there was enough evidence placed before the Mission to suggest that, at the very least during the period under review, human rights violations occurred in Zimbabwe. The Mission was presented with testimony from witnesses who were victims of political violence and others victims of torture while in police custody (African Commission, 2002, p4).

The AU statement is significant and adds value to claims of human rights violations in Zimbabwe, considering the legitimacy and role of the organisation in African continent. The AU succeeded the Organisation of African Unity (OAU) which played a vital role in the liberation of Zimbabwe. The AU has the mandate to prevent conflict, peacekeeping, peace-making and peace-building. The organisation was established to ensure continent-wide peace and security through its Peace and Security Council (Moolakkattu, 2010).

The AU Report added:

...The Government cannot wash its hands from responsibility for all these happenings...Government did not act soon enough and firmly enough against those guilty of gross criminal acts" (African Commission, 2002, p3-4).

The AU quote reflects a remarkable finding on human rights violations in Zimbabwe, consequently, reinforces the view for an alternative mechanism of dealing with rights violations. The quote also endorses claims of human rights violations and implicates the government of Zimbabwe for torture, stating that some victims were dying in police custody as a result of torture. Interviewee (4) echoes claims by the African Commission, stating:

In the first place, there have never ever been human rights in Zimbabwe (Interviewee, 4).

The quote suggests that the country has not installed a culture of human rights. This has a semblance of truth to a larger extent, considering what happened in Matabeleland and Midlands disturbances which left thousands of civilians dead soon after independence (CCJ, 1999).

The Matabeleland disturbances are further highlighted by interviewee (5):

Someone must be held accountable for Matabeleland massacres, it was a war I never saw but heard about in Matabeleland; the truth must come out (Interviewee 5).

The quote endorses the human rights paradigm of accountability whenever rights are violated (Hayner, 1994). In short, accountability highlighted by interviewee (5) serves as justice on its own. Consequently, it can be argued that a future government needs to ensure that the country upholds international human rights standards. This can be achieved by ensuring that perpetrators are brought to justice.

Interviewee (13) elaborates interviewee's views (4):

Yes, there have been human rights violations in Zimbabwe since 1980 up to now (Interviewee, 13).

Asked if he has forgiven those who committed atrocities, interviewee (13) said:

Reconciliation can never happen as long as the Shona people continue to discriminate Ndebele people and trivialise the Gukurahundi massacres. Restoration of Matabeleland Statehood would provide the best reconciliation that would be permanent (interviewee 13).

The above quote makes two important points, first, that there is a need to address tribal discrimination in Zimbabwe, secondly, there is a need to restore the historic Ndebele Kingdom which collapsed more than a century ago. Interviewee (13) provides evidence of pre-existing ethnic divisions which risks social conflict. Again, this points to ethnic divisions in Zimbabwe, requiring an institutional response.

Interviewee (13) added:

There must be reparations for Gukurahundi victims...and we should criminalise any trivialisation or of Gukurahundi massacres. We should also criminalise ethnic discrimination and nepotism and create an equal political system of sharing power between Shona people and Ndebele peoples (Interviewee 13).

The above quote highlights some critical issues in calls for justice. It states that there must be reparations for massacres committed during the Gukurahundi era. Claims for reparations following human massacres resonate with the aims of the International Criminal Court (ICC) 2004, which has provided victims of human rights violations the right to be redressed. The ICC notes that the right to reparation is a *well-established and basic human right that today is enshrined in universal and regional human rights treaties and instruments* (ICC, 2012, para.185).

This section has highlighted human rights violations in Zimbabwe which might need a TRC to move the nation forward. The section has demonstrated that Zimbabwe's past has not been addressed despite growing calls for justice and redress. The section has also shown that ordinary Zimbabweans are vying for a mechanism that will resolve divisive issues such as Gukurahundi massacres in Matabeleland. This pervasive view reflects unresolved black-on-black injustice which if not resolved risks repetition. Consequently, this calls for a TRC to deal with the past as a means of healing the society's psyche.

Nonetheless, views of research respondents highlight a critical need for a system of justice that focusses on the needs of survivors and victims. It is clear that such a system is needed to heal the society and restrain those who are in a habit of committing human rights crimes. The proposed TRC could enable victims and survivors obtain justice and redress, while promoting a post-conflict reconciliation project.

Is a TRC really necessary?

Reflecting on the achievements of the South African TRC, and based on narratives of flagged abuses in Zimbabwe, a proposed Zimbabwe TRC should serve as a response to victims' demands for justice and truth about why things happened the way they did? Who gave orders? What were the reasons behind it? Most importantly, a Zimbabwe TRC should serve as public acknowledgement of the suffering and victims. Victims would also expect a final report of the commission which should ideally recommend reparations and compensation for injustices.

Questioned if the Zimbabwe needed a Truth and Reconciliation Commission, interviewee (17) stated:

Yes the truth and reconciliation commission will be

appropriate for Zimbabwe because there are a lot of unacceptable political crimes that happened after independence. What makes this more serious is that it happened after the Rhodesian war when everyone was thinking there is freedom and security (Interviewee, 17).

The above quote reaches beyond a simplistic idea of a mechanism needed to redress postcolonial injustices. The quote reflects a pregnant perception that is shaped by unresolved political crimes in post-colonial Zimbabwe. It is imperative for critical scholars to develop an explicit assumption that understanding the past will contribute to a more peaceful and democratic future (Gibson, 2004). This hypothesis has been comprehensively tested in South Africa by Washington University Scholar, Prof James Gibson.

In his seminal study, Prof Gibson concludes that 42 percent of South Africans have reconciled as a result of the truth and reconciliation Commission. That way, Gibson (2004) alludes that South Africa has attempted to come to grips with its apartheid history through its truth and reconciliation processes.

Moreover, the need for a truth commission in Zimbabwe has not escaped the attention of the United Nations High Commissioner for Human Rights, Navanethem "Navi" Pillay (NewZimbabwe.com, 2012). In her 2012 visit to Zimbabwe Pillay urged the Zimbabwean government to establish a TRC to deal with post-independence atrocities in Matabeleland and the Midlands as well as alleged abuses in successive elections.

In the context of Pillay, establishing a truth commission would be helpful in trying to document the truth about political crimes, hence help the country move forward. The logic is that all victims of Matabeleland and Midlands areas have the right to the truth. In general, there is a strong notion that victims of rights abuses have a right to the truth.

A truth commission will be vital for Zimbabwe because so many things that still angers a lot of people has happened after Mugabe took over power in 1980. We need these things to be properly clarified to enable the country recover from all this (Interviewee, 18).

The above quote demonstrates the desire for accountability for political crimes that may have occurred in Zimbabwe under President Mugabe's reign. The quote also reflects the desire to bury the past which however can only be achieved through a truth and reconciliation process.

A critical view of Hayner (2001) and Gibson's (2004) arguments reflect a consensus that truth commissions can be effective in addressing deep social and political dysfunction after periods of mass repression and violence. This view is further developed by a number of

Transitional Justice scholars who have argued that truth commissions are a key bridge to sustainable peace, democracy and human rights (Scharf, 1997; Zyl, 1999). A link can be located between truth commissions and specific outcomes in post-conflict societies. This reflects a general understanding that truth commissions are appropriate for achieving peace and stability.

Interviewee (3) expresses the same notion:

We need a system like a truth commission to correlate information from both sides, that is, from victims and perpetrators. Although it will be hard to hold everyone to account such as tracking down the soldiers who committed Gukurahundi massacres, it may help with healing and closure (Interviewee, 3).

The quote clarifies an important element of truth commission, thus the investigative feature it has. The quote also reflects the potential of TCs and their ability to heal a divided nation.

While previous research has not adequately addressed the basis of the prosecution-to-truth commission paradigm shift, interviewee (3) shows the desire for system that is forward looking while at the same time healing the society. This view is critical, particularly from the perspective of growing calls for social justice (Varney, 2007; Schabas and Darcy, 2004). Interviewee (3) clearly shows a shift which is a result of a new social contract, both at domestic and international level - to bring justice and healing to people who have experienced violations (Graybill and Lanegran, 2004).

Hayner (1994) states that truth commissions may be ideal for such a task as they have an ability to transform an atrocious past into democratic politics. Hayner (2001) also observes that truth commissions focus on the past and in events that may have occurred in the recent past. Interviewee (19) shares this view:

Zimbabwe's past is a subject that has been ignored for too long. A lot of people have been scared by Gukurahundi and until it's addressed, there will never be true unity amongst Zimbabweans (Interviewee, 19).

The quote reiterates Hayner's views on the need to address the past. First, the quote is critical of lack of action on Gukurahundi atrocities and reflects a desire to deal with Zimbabwe's past. Secondly, the quote highlights that Gukurahundi has left a "scarred" society. It can be argued that the truth commissions' ability to investigate a pattern of abuse over a set period of time may be a suitable approach for post-Mugabe justice.

Consequently, there is a need for a new social contract which focuses on the country's turbulent history. Hoffman (2003, p302-303) talks of the need to *recognise the tragic experiences of others, and recognise ourselves in their experience. We cannot undo the past, or cure it, but we*

can perhaps – by small increments, and with sufficient awareness – derive from it the kind of insight that can be potentially reparative, and can begin to transform the potent forces of destruction into the energy of a more constructive vision.

Hoffman shares the view of a forward-looking strategy, thus, processes of truth-telling. This stems from the view that a truth commission can provide a platform for recognition, in the process transform shame to pride. It is generally recognised that truth processes focus on forms of repair that are conducive to national healing and state building. The approach may help inform the formulation of redress such as policies of compensation and reparation.

More often, there are demands for justice, particularly in cases where crimes have been committed, and these demands may serve to shape the proposed TRC's mandate. Hayner (2009) shares this view, noting that *there is often a clear and vocal public demand to account for crimes of the war, part of a growing public perception that impunity is wrong (p6).*

However, Gibson (2004) notes that truth may not be the only route to reconciliation, but has since become a popular mechanism of those seeking to move beyond the past to a more peaceful and democratic future. Interviewee (3) echoes this viewpoint:

My view is that the best way is to allow the course of justice to prevail. It's up to the law to determine convictions or amnesties. Yes they should be prosecuted. This will set the record straight and a precedent so as to abate and curb any future similar behaviours (Interviewee, 3).

The quote conceives the idea of prosecutions, but leaves it open for the law to determine the course of justice. Interviewee (3) reflects the desire to use the court system in addressing political crimes that may have been committed. However, commissions have not only attempted to redress the past, but are also therapeutic in nature (Hayner, 1994, Gibson, 2004).

Scholars in the discipline of transitional justice have also noted that in many cases, truth commissions have provided society with an opportunity of positive and new beginnings (Laplante, 2008; Gibson, 2004). Whenever human rights are violated, questions of accountability are often brought to the fore (Hayner, 1998). In fact, a starting point in most post-conflict societies is accountability which may be accompanied by criminal prosecutions of those responsible for serious crimes, followed by redress (Freeman, 2006).

The view that accountability and prosecutions are necessary is shared by interviewee (21):

The commission cannot be used to bring legal justice. We may need commissions alongside tribunals. We

cannot just for the sake of moving forward let people who have committed heinous crimes scot free. A truth commission must only be used to expose the truth and enable people to move forward (Interviewee, 21).

The quote argues that truth commissions are inadequate in trying to bring justice to victims. Interviewee (21) reflects a need for a retributive mechanism and views truth commissions as a mechanism that could also aid retributive justice. Moreover, these different viewpoints are closely linked to demands for justice on unresolved Zimbabwean abuses.

For instance, in concluding the report *Breaking Silence*, the Catholic Commission for Justice and Peace, and the Legal Resource Foundation of Zimbabwe point out concerns about the impact of violence in contemporary Zimbabwe.

There is great cause for concern in Zimbabwe when one considers the high numbers of survivors in the country. Many of these are survivors from the 1980s violence and the multiple impacts on people in physical, psychological and material terms have been enormous (CCJ and LRF, 1999, p30).

Moreover, the Catholic Commission for Justice and Peace, and Legal Resource Foundation have attempted to capture the more damaging and pervasive forms of post-violence in Zimbabwe, which by all means may require a truth commission. The above quote reflects the aims of this paper, thus the need to redress the past. The quote identifies harm caused by political violence in Zimbabwe and seeks to challenge lack of action in dealing with the harms.

While transitional societies have on many occasions used diverse strategies in dealing with their past, the idea of a TRC can be useful in confronting Zimbabwe's atrocious past. A TRC can unleash an effective and organised attempt to deal with crimes of the past placing an emphasis on redress through reparative justice to restore victims and survivors. The following section explores potential features for a proposed Zimbabwe TRC.

Proposed Zimbabwe TRC

This section seeks to identify the characteristic of a proposed Zimbabwe truth commission. As stated earlier, it is imperative that a truth commission should reflect the aspirations of the affected society to achieve desired outcomes.

The proposed Zimbabwe TRC should also encompass therapeutic interventions for survivors of human rights abuses. This view is shared by interviewee (18).

We are a traumatised nation. The wounds and anger

needs therapy, and this cannot just be ignored by politicians. There is no way the country can move forward with accountability and reconciliation (Interviewee, 18).

Kaminer et al. (2001) develops interviewee's (18) view, they suggest that truth commissions should be therapeutic in nature to help restore the victim's dignity.

This view stems from an understanding that abuses inflict injury which takes away dignity from the victim. For Lederach (1997), it is critical to create a space for victims to highlight their experiences as the approach allows them to validate their feelings, restore their dignity and assist them to re-enter society as equal partners. Furthermore, the proposed Zimbabwe TRC should be primarily aimed at addressing different grievances including political violence, murder, disappearances and inequalities that run on tribal lines with the Shona people of Mugabe's tribe being better off. This suggests a need to deal with black-on-black injustice. The truth commission should also seek to clarify what happened to Lockout Masuku³, Josiah Tongogara⁴, and the controversy behind the Bhalahwe mine⁵ which is among other burning issues of Zimbabwe's post-colonial turbulent history. Among other issues to be addressed by the proposed Zimbabwe TRC is the 2008 political violence which marred the country's national elections, including "Operation Murambatsvina" which started in the Zimbabwe capital, Harare, and spread into a nationwide demolition and eviction campaign by police and the army.

Moreover, the idea of a TRC reflects a growing debate over the need for a more pragmatic approach in dealing with injustices of the past. The call for a Zimbabwe TRC should also encompass violations such as poverty and state sponsored crimes that may have caused perennial anger, suffering and divisions. It should recognise that violations include a number of socio-political situations, and some of these events may cause considerable suffering, not only to survivors and victims, but also for perpetrators as well. Critically to all this, a Zimbabwe TRC can help locate some of the graves of the missing such as Patrick Nabanyama⁶ and clarify the murder of

³ Lieutenant General Lookout Masuku was commander the Zimbabwe People's Revolutionary Army, the militant wing of the Zimbabwe African People's Union, during the Rhodesian Bush War and served as the deputy commander of the Zimbabwe National Army until his arrest in 1982 for allegedly plotting to overthrow President Robert Mugabe. He denied the plot but was detained till his death in 1986.

⁴ Josiah Tongogara was a commander of the ZANLA guerrilla. He had a lot of support from the guerrilla movement who may have heard different political opinions from Robert Mugabe.

⁵ Bhalahwe mine is an old disused mine in Zimbabwe's Matabeleland South where it is believed there are thousands of dead Ndebele speaking people who were targeted by political hitmen.

⁶ Patrick Nabanyama was an opposition election agent abducted in June 2000 election in front of his family and has not been seen since. Six war veterans were arrested but later pardoned.

Strover Mutonhori⁷. It should also help construct a shared memory, which is useful for a country ready to move on.

Consequently, a proposed Zimbabwe TRC should reflect both historical and prevailing injustices. TRC should thrive to support “political paradigmatic” struggles for “recognition and redistribution” (Fraser, 1997). Thus, recognise injustices by unveiling measures that seek to prevent the past from re-occurring. This view brings into the fore political theories of recognition, developed by Nancy Fraser and others. These theories primarily focus on the role played by recognition in providing justice. This stems from the understanding that people who have been victims of human rights abuses lose something about themselves, hence restoration is critical. It is the “restoration” that the proposed Zimbabwe TRC should seek to achieve. That way, a more reconciled society can begin to emerge.

Righting Zimbabwe wrongs

Consequently, it can be argued that rectifying Zimbabwe wrongs can be achieved through a model propounded by Villa-Vicencio (2009) involving recognition which comes through compensation, reparation, restoration, apology and punishment for extreme criminal cases. This model can easily be achieved through processes of truth commissions as very few transitional mechanisms can afford to execute Villa-Vicencio's model. Villa-Vicencio (2009) argues that *both the material and subjective needs of victims and survivors of an oppressive past must be prioritised* (Villa-Vicencio, 2009, p106). This may imply that the proposed Zimbabwe TRC should recommend financial amounts to be paid out in reparations and compensation. The proposed TRC would be more informed to suggest pay-outs to the government as they would have met the victims and saw their plight. However, it can be suggested that there should be different pay-outs especially for people whose relatives were murdered or disappeared as a result of politics. The government must also consider socioeconomic reparations for survivors such as free education and monthly financial entitlements. What maybe required is a comprehensive social welfare for victims and survivors. Being compensated and having reparations paid may create a notion of justice being done. Receiving compensation and reparations for the harm suffered is an essential step in their rehabilitation. Also needed is appropriate psychosocial support for victims in their pursuit of justice and reparation.

Dyzenhaus (2003) has proposed a framework that focuses on social development and preservation of

human rights. He states that:

If one wants to build democracy after a period of severe injustice only a moral or justice-based justification will do (Dyzenhaus, 2003, p472).

For Dyzenhaus (2003), it is unlikely that rule of law and respect for human rights can be built in societies where injustices of the past have not been rectified. The onus is to build trust in state institutions as protectors of human rights violations.

TCs have provided a new framework for dealing with the past and in particular questions about human rights abuses. The TC thesis has established a new terrain for social, moral and political discourse about the need to right the wrongs of the past, through a truth-telling process. Transitional Justice experts such as Pricilla Hayner and Charles Villa-Vicencio have attempted to draw attention to the challenging question of how societies can right the wrongs of the past. They concede that truth commissions are equipped with mandates to construct just institutions of recognition of wrongs and then recommend redress. This approach is essential for post-Mugabe justice, and is vital for reconciliation and progress.

Conclusion

This paper has attempted to investigate the relevance of the formula *Truth + Redress = Reconciliation* - from the perspective of post-Mugabe justice. The formula conceives that by revealing the truth about what happened under President Mugabe's reign, and then institute redress, the country is more likely to reconcile, consequently, move forward as one nation. If a truth commission succeeded in transforming South Africa to a stable democracy, perhaps it can be posited that a similar mechanism can work in Zimbabwe, considering the nature of violations committed in both neighbouring countries. The formula encompasses years of political, tribal and economic divisions that have caused harm, suffering and pain to millions of Zimbabweans. It also represent an approach used by Truth Commissions, which maybe critical for Zimbabwe where questions on why things happened the way they did remain unanswered.

Given allegations of the Fifth Brigade, killings and disappearances, a TC may be useful in revealing the truth while also seeking to unite the nation. The proposed TC must have the mandate to conduct public hearings which can also be televised. This is designed to serve as an acknowledgment for victims. Also, there is a critical need to focus on perpetrators as well to avoid creating a notion of one sided justice. Nevertheless, focusing on victims only has its disadvantages in healing societal harms that might have been inflicted during disturbances.

⁷ Mutonhori disappeared from the Omadu Hotel in Kezi, Matabeleland South and his remains were later found at Matopo Hills, outside Bulawayo.

Consequently, the TC approach may provide recognition to victims of state crime who often suffer disadvantages that affect their ability to participate at par in the political economy.

This paper attempted to construct a model of the proposed truth commission from the perspective of the aspirations of Zimbabweans. For instance, it has been highlighted that the proposed Zimbabwe TRC may need public hearings which may be seen by many victims as therapeutic. Such an approach could be used as an abridgement of social distance between the perpetrator and victim.

Moreover, Zimbabwe may need to accompany a TRC with limited tribunals as some crimes committed maybe beyond human comprehension only requiring justice through a court system.

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