

# TRANSITIONAL JUSTICE IN PRE-TRANSITIONAL SOCIETIES

The Case of Uganda and Zimbabwe





# TRANSITIONAL JUSTICE IN PRE-TRANSITIONAL SOCIETIES

The Case of Uganda and Zimbabwe  
August 2020

## HEAL ZIMBABWE TRUST

36 Arundel School Road, Mount Pleasant Harare, Zimbabwe  
Email: [research@healzimbabwetrust.org](mailto:research@healzimbabwetrust.org) / [info@healzimbabwetrust.org](mailto:info@healzimbabwetrust.org)  
Website: [www.healzimbabwetrust.org](http://www.healzimbabwetrust.org)

## Researchers

Solomon Mungure (PhD)  
Edknowledge Mandikwaza

Copyright © 2020 Heal Zimbabwe Trust

*With Support from*



# TABLE OF CONTENTS

i	<b>Executive Summary</b>
1	<b>1. INTRODUCTION</b>
3	<b>2. THEORY AND PRACTICE OF TJ</b>
6	<b>3. TJ CONCEPTUAL CONTRADICTIONS</b>
7	Types of Transitions
10	<b>4. RESEARCH OBJECTIVES AND METHODOLOGY</b>
10	a. Objectives
10	b. Methods
11	<b>5. UGANDA AND ZIMBABWE'S TRANSITIONAL JUSTICE CONTEXTS</b>
17	<b>6. TJ EFFORTS IN ZIMBABWE AND UGANDA</b>
20	<b>7. TJ POLICY AND PRACTICE RESPONSE MECHANISMS IN UGANDA AND ZIMBABWE</b>
20	7.1. The Conception of Transition in Uganda and Zimbabwe
21	7.2. Uganda and Zimbabwe's Existing TJ Policy and Legislative Frameworks
23	7.3. Transitional Justice Actors and Approaches in Uganda and Zimbabwe
30	<b>8. UGANDA AND ZIMBABWE TJ PROCESS SIMILARITIES</b>
30	a. Commission of Inquiry
31	b. Amnesties
32	<b>9. UGANDA AND ZIMBABWE TJ PROCESS DIFFERENCES</b>
33	a. Political Agreements
33	b. Internationalization of TJ
33	c. Symbolic reparations / Rehabilitation programmes
36	<b>10. CHALLENGES OF TJ IN ZIMBABWE AND UGANDA</b>
39	<b>11. OPPORTUNITIES FOR SUCCESSFUL TJ</b>
41	<b>12. RECOMMENDATIONS: TJ OPTIONS FOR NON-TRANSITIONAL SOCIETIES</b>
42	<b>13. CONCLUSION</b>

## Executive Summary

Transitional justice (TJ) is the array of responses to gross human rights violation, which offers recognition and recourse to the grievances of the victims of such violations. The general theory of TJ presupposes a package of processes to address past injustices through mechanisms that include prosecutions, reparations, memorialisation and healing and reconciliation among others. TJ assumes that a transition should occur first in the governance system, halting gross human rights violations, before transitional justice processes are implemented. However, countries such as Zimbabwe and Uganda are implementing transitional justice initiatives without major power transformation while gross human rights violations continue, which raises questions on whether fundamental TJ measures can be achieved. Given such conditions, the possibility of TJ delivering healing and reconciliation and promoting sustainable democratic processes and practices is bleak.

While the two countries acknowledge the need for TJ, they have adopted piecemeal, adhoc and often defective mechanisms to manage state power and national politics. Resultantly TJ objectives become difficult if not impossible amid powerful gatekeeping and calculated authoritarianism. Based on the Zimbabwean and Ugandan TJ experiences, this study sought to establish the policy options for transitional justice in non-transitional societies. The central issue was to establish “*what stands in the way of TJ processes in non-transitional societies?*” The study explored the conflict histories of Uganda and Zimbabwe and the countries’ transitional justice experiences and challenges with a view to draw analytical parallels in policy and practice. The study observed that the global TJ template is erroneously conceptualized as it treats TJ in substantive transitional settings where there has been a shift from conflict to peace or from authoritarianism to democracy.

Observations demonstrate that TJ practices must be contextual and modeled towards meeting the interests of citizens and states. TJ processes in Zimbabwe and Uganda are framed to address selected transitional issues without taking a holistic approach, hence the continuation of gross human rights violations. TJ processes in non-transitional societies have failed to break from the past as was the case with the South African transition (from apartheid to majority rule) or the Rwandese post-genocide transition. In Zimbabwe and Uganda, TJ processes address selected legacies, giving an impression of addressing a shared national grievance while serving sectarian interests. Essentially, the two governments perpetually violate human rights and have been complicit in past injustices and therefore are not amenable to comprehensive TJ processes that might end up prosecuting their henchmen. Rather, they select specific TJ processes where their surrogates or proxies benefit. The study concludes that TJ is inevitable even in non-transitional societies even if the policy pathways remain chaotic and uncertain.

# 1. INTRODUCTION

This study is a comparative analysis of dynamics, complications and complexities of transitional justice in pre-transitional societies using the case of Uganda and Zimbabwe. The study provides a critical contextual examination of Uganda and Zimbabwe's transitional justice processes with a view to establish generalized possibilities of implementing a successful TJ process under pre-transitional conditions. As such, TJ programmes and processes are central in catalysing transition from war or authoritarianism to broad-based democracy.

Uganda and Zimbabwe, were chosen as case studies because they are implementing transitional justice initiatives yet they exhibit pre-transitional characteristics. The countries' current governance systems are characterized by recurrent human rights violations, suppression of opposition movements, constrained media freedoms, and militarized governance structures. The study considers the following elements: countries respect human rights, levels of political violence, adherence to the rule of law, democratization, popular perceptions of regime legitimacy and political culture of human diversity (Thoms, Ron and Paris 200:331).<sup>1</sup>

Uganda and Zimbabwe are former British colonies whose political histories have implications for general political transformation. Uganda gained independence in 1962 while Zimbabwe became independent in 1980.

In the two countries the British imperial interests differed with a more settler entrenched establishment in Zimbabwe, then Rhodesia than in Uganda. For this reason the two post-colonial polities have experienced multiple cycles of conflict with Uganda experiencing nine regimes and presidencies since 1962 and Zimbabwe only having two presidents since 1980. Nonetheless, both countries demonstrate the remnants and effects of the British neo-colonial interests. For both countries, post-colonial regimes have struggled to disentangle themselves from the colonial umbilical cord and their democratization struggles have racial and colonial, religious, ideological, constitutional and legislative legacies and reverberations. It is the two countries' historical legacies and divergent political developments that inform the way current TJ processes are formulated and implemented.

*TJ programmes and processes are central in catalysing transition from war or authoritarianism to broad-based democracy.*

1. Thoms, Ron and Paris (2010) State-Level Effects of Transitional Justice: What Do We Know? The International Journal of Transitional Justice. Vol. 4(3)2010, 329-354.



## 2. THEORY AND PRACTICE OF TJ

There is a global acknowledgement of the need to confront legacies of gross human rights violations as evidenced by the proliferation of transitional justice interventions in post conflict and post authoritarian societies. This makes TJ a central process in entrenching post-authoritarianism democratic practice. Beyond post-conflict or authoritarian societies, legacies of past violations may also “*manifest in broadly democratic states that have experienced prolonged political violence*” (Campbell and Ni-Aolain 2005).<sup>2</sup>

*The theory of TJ is “founded on the principles of fundamental human rights which are; holding individuals accountable for the worst transgressions of universal human rights, including genocide, war crimes and crimes against humanity”. (Campbell and Ni-Aolain)*

The concept of transitional justice stems from the international human rights normative frameworks (Fisher 2011). The field has evolved from being an instrument of democratization and human rights to becoming an essential component of liberal peacebuilding operations (Kora, 2010).<sup>3</sup> TJ refers to a set of judicial and non-judicial measures that are implemented to address legacies of gross human rights abuses committed during an armed conflict or periods of repression. In other words, “*TJ seeks to hold human rights violators accountable at the end of a conflict or at the end of a repressive regime by addressing past wrongs, and restoring the dignity of victims*” (Franzki and Olarte)<sup>4</sup>2013. Teitel (2003:69) associates transitional justice ‘with

*periods of political change’, intended to ‘confront the wrongdoings of repressive predecessor regimes.’*

Such violations include, but are not limited to extrajudicial killings, disappearances, torture, and arbitrary arrests and imprisonment (Olsen et al 2010:805). In Zimbabwe expropriation of property has also been rampant since the Fast Track Land Reform programme and the proclamation of the indigenization laws.



*The function of TJ is to “exercise justice and provide some form of repair after horrifying violence”*

*(Walker, 2006b: 12)*

This pursuit is based on the assumption that societies must confront the legacies of past gross human rights violations in order to sustain democratic dispensations where human rights; civil, political and socioeconomic liberties are respected and fulfilled. That being said, the goals

2. Campbell, C., & Ni Aolain, F. (2005). The Paradox of Transition in Conflicted Democracies. *Human Rights Quarterly*, 27, 172-213.

3. Kora, A. (2010) Transitional Justice: A New Discipline in Human Rights, *Violence de masse et Resistance - Reseau de recherche*, [en ligne], publié le: 18 Janvier, 2010,

4. Franzki, Hanna and Olarte Maria (2013) Understanding the Political Economy of Transitional Justice: A Critical Theory Perspective.

of TJ are to “achieve truth, accountability and punishment, the rule of law, compensation to victims, institutional reform, long-term development, reconciliation and public deliberation” (Crocker 1999:303).<sup>5</sup> Despite significant geographic and institutional variations, transitional justice mechanisms commonly endeavour to avoid repeating, reenacting, or reliving past horrors and to deter future violations (Bhargava, 2000:54 in Olsen, Payne and Reiter 2010).<sup>6</sup>

The discourse of TJ is a neoliberal idea conceptualized in the Western concept of democracy. The concept is largely based on implicit Western assumptions about transition and/ or justice. “These assumptions are strongly influenced and shaped by particular historical experiences, such as the Nuremberg and Tokyo trials after the Second World War, the transitions of South American countries from dictatorship to democracy, international criminal tribunals, such as the tribunals for the former Yugoslavia and Rwanda, or the Truth and Reconciliation Commission (TRC) in South Africa”,<sup>7</sup> (Buckley-Zistel et al 2013). As such, the TJ concept, in its contemporary manifestations has become a new trait of contemporary international relations, especially in the post WW2 and post-Nuremberg international politics. This conceptualization completely ignores the organic traditional justice arrangements that exist within African communities and are more functional, subsidiary and less costly.

As noted earlier, the theory upon which TJ is founded is based on the principles of fundamental human rights, which include; holding individuals accountable for the worst transgressions of universal human rights, including genocide, war crimes and crimes against humanity (Thoms, Ron and Paris 2010). Accountability, rule of law and the redress of past violations cannot be separated.

TJ is a subset of the human rights discourse by virtue of it allowing communities to confront legacies of systematic human rights violations in order to promote reconciliation, and psychosocial healing, fostering respect for human rights and the rule of law and helping establish conditions for a peaceful and democratically governed society. There is also a connection between the democratization and the ability to implement transitional justice. Thus the quality of a democracy, (functioning institutions, absence of privileges, responsiveness, inclusion of the subaltern) together with transitional mechanisms will make TJ more realistic.

*The discourse of TJ is a neoliberal idea conceptualized in the Western concept of democracy.*

5. Crocker, David A (2009). "Rectificatory Justice: Righting Past Wrongs In Spring, U. O., Aharoni, A., Summy, R. V., & Elliot, R. C. (Eds.) (2010) Peace Studies, Public Policy and Global Security–Volume V. EOLSS Publications

6. Olsen, Payne and Reiter (2010) Transitional Justice in the World, 1970 – 2007: Insights from a new dataset. Journal of Peace Research. 47 (6) pp 803-809.

7. Buckley-Zistel et al () Transitional Justice Theories: An introduction.



### 3. TJ CONCEPTUAL CONTRADICTIONS

There are however, inconsistencies in methodological and philosophical persuasions around which TJ is framed and implemented. The Western concept of TJ assumes that the process takes place in contexts where there is a total removal of the old political regime and the installation of a new regime, whether post conflict or post autocracy. However, transitions themselves, exhibit wide contextual variations which in turn demand varied responses. Variations in states' socio-economic and political realities such as their quality of transitions, the quality of democracy and technical capacities to manage transitional processes challenge the notion of a one-size-fits-all TJ. The Western TJ approach may, therefore, not apply to the African contexts where leadership changes happen while maintaining predecessor's authoritarian governance structures.

The template for TJ assumes that justice and reconciliation must take place when there is a transition in the political realm of any state particularly a change of government from one leadership to another. It also accepts change of governance system from authoritarianism to democracy. In the African context, transition is hugely not achieved as there are changes in governments while the institutions are maintained. As a result some African regimes consider implementing TJ processes to mark a shift from one political episode to the other while maintaining the same system, leadership or ideological practice that perpetuated gross human rights violations. This observation also raises questions on whether TJ is limited to a post-conflict and post-repression era or it can happen in both contexts. It also raises questions about TJ's potential successes if implemented in contexts of continued gross human rights violations.

In addition, skeptics and hardliners in Zimbabwe

and Uganda have challenged the claims of TJ arguing that, *"digging up the past and identifying perpetrators can trigger renewed conflict by sharpening societal divisions or provoking backlash."*<sup>8</sup>

In Rwanda for example, during the TJ process the victims sought revenge upon realising who the perpetrators were. Burnet (2008:179) notes that *"the gacaca process is perceived as one-sided, as victors' justice, ..... RPF soldiers whose families were decimated are (understandably) angry, and many seek revenge through the gacaca courts against anyone they know who is Hutu."*<sup>9</sup> However, the government of Uganda has been reluctant to prosecute those who commit revenge offences (Waldorf 2009).<sup>10</sup> Brounéus (2008:55)

8. Snyder and Vunjamuri 'Trials and Errors, Principle and Pragmatism ...

9. Burnet, Jennie E. "The injustice of local justice: Truth, reconciliation, and revenge in Rwanda." *Genocide Studies and Prevention* 3, no. 2 (2008): 173-193

10. Waldorf, Lars (2009) *Transitional Justice and DDR: The Case of Rwanda*. International Center for Transitional Justice, June 2009 [Online] Available at: <https://www.ictj.org/sites/default/files/ICTJ-DDR-Rwanda-CaseStudy-2009-English.pdf>. Accessed on: 12 January 2020

also carried out a study on 16 Rwandese women “who had testified in the *gacaca*, the village tribunals initiated to enhance reconciliation after the 1994 genocide” and found out that there was retraumatization, ill-health, isolation and insecurity dominating their lives. The women were also “threatened and harassed before, during, and after giving testimony in the *gacaca*” (ibid).<sup>11</sup>

In view of the above, the prospect of TJ may also reduce the chances of negotiating peace settlements in the first instance especially where the perpetrators of past violations fear punishments for their past actions. In this instance, therefore, TJ is not neutral because it pits the state, individuals and collective victims, perpetrators, international community, all of which have different stakes in the power dynamics of a country.

*However, Dancy (2010:376) argues against the claim that transitional justice mechanisms have uniquely destabilizing impacts within transitional contexts, a claim that has been made repeatedly within the justice-versus-peace debate. Dancy supports the assumption that ordinarily most successful TJ efforts occur where authoritarian regimes are totally removed or deposed yet in the case of Zimbabwe and Uganda the authoritarian regimes have remained entrenched for over thirty years.*

## Types of Transitions

What is a transition in the context of transitional justice?

There are several types of transitions defined by Dancy's which include pre-transitions, total transitions, double transitions, major termination and democratization (Dancy 2010).<sup>12</sup>

Transition implies two related sets of processes:

- (a) a movement towards democracy and
- (b) and a movement towards peace.

This paper suggests that the movement towards democracy must concur with the movement towards peace in order to befit a description of transition because the processes overlap each other. However, most comparativists normally select either post-conflict or democratizing countries exclusively (Dancy 2010). Therefore, for comparative study purposes, this paper conceptualizes transition as instances where democracy and peace are ongoing processes that are minimally present when they are institutionalized and when adverse disruptions such as widespread violence are avoided (Dancy 2010:372). The criteria of measuring transition depend on various methodologies. Using Polity IV scale, when a regime exhibits a three-point move toward institutional democracy, it is considered a movement towards liberalization (transition towards democracy).

11. Brounéus, Karen. “Truth-telling as talking cure? Insecurity and retraumatization in the Rwandan *Gacaca* courts.” *Security Dialogue* 39, no.1 (2008): 55-76.

12. Dancy, Geoff (2010) Impact Assessment, Not Evaluation: Defining a Limited Role for Positivism in the Study of Transitional Justice. *The International Journal of Transitional Justice*. Vol. 4(3)2010, 355-376.

On the other hand, a movement towards peace (transition towards peace) can be measured by the Peace Research Institute of Oslo data on internal wars. The data presuppose that countries that experience less than 25 individual deaths in fighting between government and the opposition in

one year followed by fewer than 25 deaths for a spell of two years are having peaceful transitions. Other measures of transitions include; decrease in political violence and major violent conflict termination and liberalization in its broad definition.

*This study is interested in Uganda and Zimbabwe as pre-transitional societies implementing transitional justice in order to determine practical policy processes and gaps that could inform the interventions' successes.*



## 4. RESEARCH OBJECTIVES AND METHODOLOGY

### a. Objectives

The overall goal of this study is to establish transitional justice policy processes and practice gaps in pre-transitional societies using the case of Zimbabwe and Uganda.<sup>13</sup> The study findings will assist in strengthening victim-centered and evidence-based transitional justice policy advocacy.

### b. Methods

This project engaged qualitative methodologies in both data collection and analysis. Data for the study was collected through interviewing a total of 30 key informants in Uganda and Zimbabwe. The data solicited purposefully documented transitional justice history, perceptions, challenges and opportunities in both countries.

The character of the study used purposive sampling given the technical character of the field and the deliberate targeting of individuals with prior knowledge and memory of TJ in the two countries. The study targeted individuals who have a national footprint in the national TJ processes and policy making. The participants included civic organizations, women, youth, ruling and national political leadership, war veterans and serving public servants. The research also relied on secondary data found in journal articles, national documents of on TJ including Acts of Parliament, Constitution, TJ policies and reports and other publications. The study spanned for 30 days, from 1-30 December 2019, with fieldwork in both Uganda and Zimbabwe taking into consideration sectoral and regional



# 30

*key informants in  
Uganda and Zimbabwe  
where interviewed.*

In terms of limitations, data collection took place towards year-end. Hence, the process could not access key informants who mostly were approaching their year-end programme cycles and were busy with their annual shut down. As a result, the researchers instead had to snowball to meet the alternative saturation sample.

Sensitivities regarding political rule in both countries were cautiously handled. Data recorded through audio records and transcripts was treated with utmost confidentiality.

<sup>13</sup>. Pre-transitional societies are also referred to as non-transitional societies.

## 5. UGANDA AND ZIMBABWE'S TRANSITIONAL JUSTICE CONTEXTS

Uganda and Zimbabwe are currently implementing transitional justice initiatives, in which both have numerous similarities and differences. Commonalities between Zimbabwe and Uganda's TJ implementation context relate to the countries' similar colonial history, post-independence authoritarian regimes establishment and flawed democracies characterized by contested electoral systems, repression against opposition parties, lack of rule of law and gross human rights violations. Hence, their TJ processes are similarly selective and modeled towards regime self-preservation.

However, as will be noted in subsequent sections, both countries' socio-economic and political developments are contextually dissimilar. Firstly, Uganda gained its independence in 1962 and has been led by seven presidents with only one being democratically elected while the subsequent six Presidents ruled the country through military coups.

In the case of Zimbabwe, two post-independence presidents have ruled the country with the latter President assuming power through a military coup in 2017. Secondly, Uganda experienced an internal armed struggle for about three decades (1979 – 2005) pitting the government's army and the insurgent Lord's Resistance Army, which is the central basis for the current TJ process mainly, confined in Northern Uganda.

However, Zimbabwe's post-independence conflict has been characterized by excessive use of force by the government's security services to decimate political opponents beginning with the *Gukurahundi genocide* where approximately 20 000 people from the Midlands and Matabeleland provinces were killed followed by years of establishing a one party state through violent campaigns against opposition parties and citizens during elections.

After gaining independence in 1962, Uganda endured nearly three decades of civil strife under Milton Obote I (1962–1971) Idi Amin (1971–1979) and Milton Obote II (1980-85). Approximately, 300,000 people died during this period (Nabukeera-Musoke 2009, Cecily and Ssekandi, 2007).

In 1979, exiled Ugandans including the current President Yoweri Museveni invaded the country. In 1986 following years of guerilla war, the now-President, Museveni's National Resistance Army (NRA) gained control of the country and coalesced with other rebel movements to govern Uganda. However, in 1987 a rebel movement called the Lord's Resistance army emerged in Northern Uganda, fighting to overthrow

Museveni's government in the Northern and Eastern region. The LRA engaged in a prolonged conflict against the government army with both sides committing gross human rights violations including abductions, killings and sexual violence. The LRA pervasively abducted children and forced them to serve as combatants, porters and sexual slaves. The ICJT (2020) notes that between 1979 and 2005 about 75 000 children were abused as child soldiers, sex slaves and porters.<sup>14</sup>

Unlike Uganda, Zimbabwe's independence came later in 1980. The country never faced a post-independence armed conflict to challenge the government, as was the case with Uganda. What Zimbabwe experienced is a situation where the government, in conflation with the ruling party Zimbabwe African National Union Patriotic Front (ZANU PF), repeatedly quashed unarmed opposition activities and public protests with violent campaigns and gross human rights violations. Between 1983 and 1987 the Zimbabwean government (through the Zimbabwe National Army - ZNA) launched a violent campaign in the Matabeleland and Midlands provinces where an estimated 20 000 people died, many others were tortured, abducted, and assaulted, and had their property destroyed.

It is important, however, to indicate that the Government of Zimbabwe's justification of the violent campaign was to fight dissident Zimbabwe People's Revolutionary Army (ZIPRA)<sup>15</sup> soldiers who were undertaking destabilization operations in the region.<sup>16</sup>

In the 1990s the police, army and war veterans were used to commit atrocities, during food riots in 1998, during large scale farm invasions from 2000 onwards, and during the destruction of homes and livelihoods of the urban poor in 2005 (Operation Murambatsvina).<sup>17</sup> In addition, acute violence and brutality has surrounded every Zimbabwean election, which reached its climax in June 2008. For Zimbabwe *"incomplete decolonisation provoked the Third Chimurenga/ Jambanja, the violent Fast Track Land Reform Programme that commenced in 2000. Ethnicity and internationalist power-struggles provoked Gukurahundi (1983-1987) that targeted Ndebele speaking people of Matabeleland and Midlands of Zimbabwe"* (Ndlovu-Gatsheni and Benyera 2015:13).<sup>18</sup> Zimbabwe's conflict basically, is a result of ruinous economic policies and ZANU PF government fomented reign of terror which did *"not only violate the rights of Zimbabweans but broke the relationship between the government and its citizens"* (Chengeta 2018:1)<sup>19</sup>

14. International Centre for Transitional Justice (2020) Uganda. [Online] Available at: <https://www.ictj.org/our-work/regions-and-countries/uganda> (Accessed: 03 January 2020).

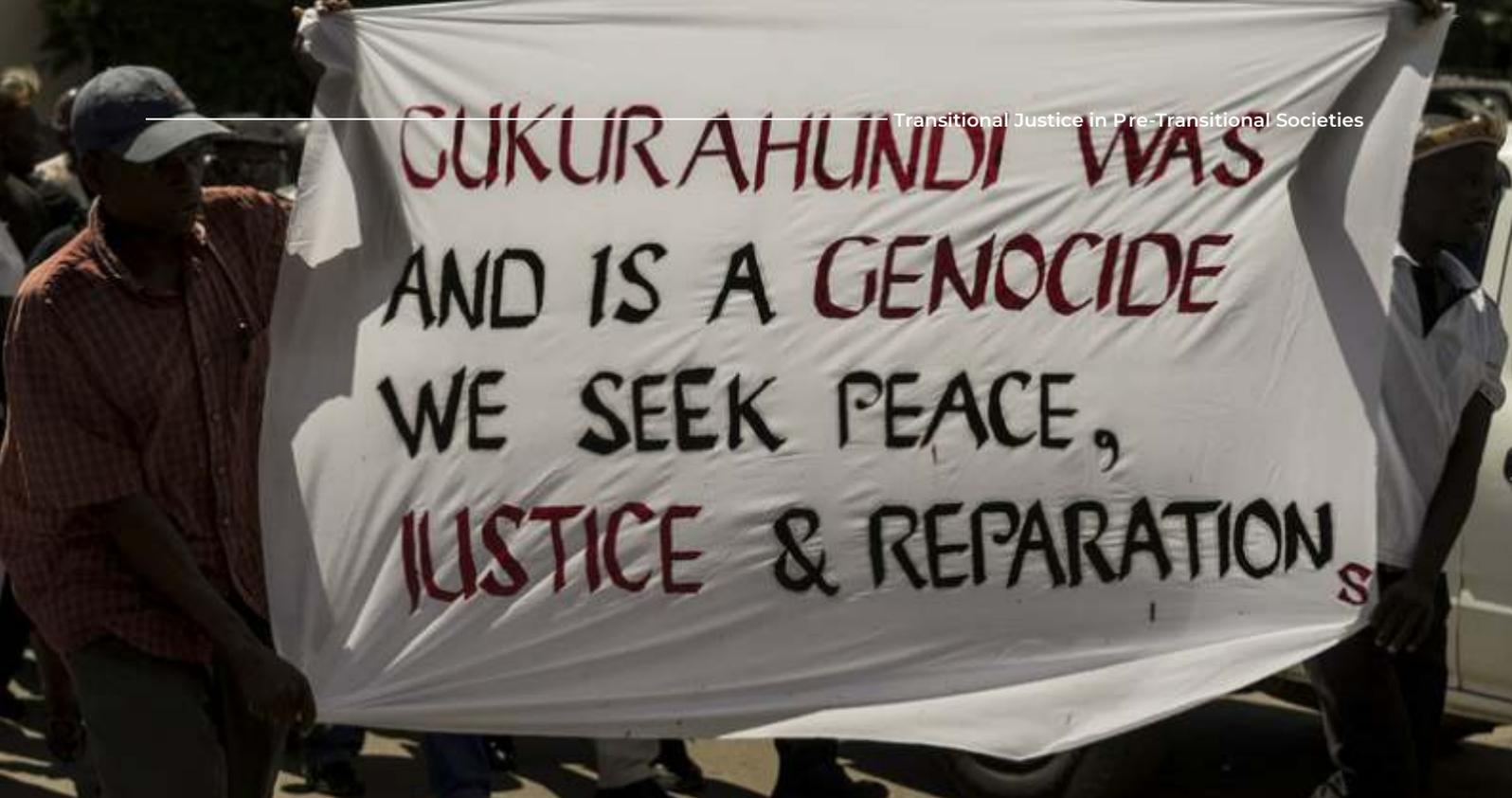
15. ZIPRA was a liberation war army of the Zimbabwe African People's Union (ZAPU) which was equivalent to the Zimbabwe African National Liberation Army (ZANLA) the of ZANU. These groups had mistrust of each other from the liberation struggle with ZANLA being a Shona dominated army while ZIPRA was dominated by the Ndebele speaking people.

16. See Alexander, Jocelyn. (1998) Dissident Perspectives on Zimbabwe's Post-Independence War. Africa: Journal of the International African Institute, Vol. 68, No. 2, (1998), pp. 151-182

17. Ndlovu Mary (2009) What transitional Justice in Zimbabwe: Women of Zimbabwe Arise (WOZA) prepares for popular participation. Conflict Trends 2009/2 - <https://www.acCORD.org.za/ajcr-issues/%EF%BF%BCwhat-transitional-justice-in-zimbabwe/>

18. Ndlovu-Gatsheni, Sabelo, and Everisto Benyera. "Towards a framework for resolving the justice and reconciliation question in Zimbabwe." African Journal on Conflict Resolution 15, no. 2 (2015): 9-33.

19. Chengeta, Thompson. (2018) The Possibility of Transitional Justice Post-Mugabe in Zimbabwe. Justice Info.Net. [Online] Available at <https://www.justiceinfo.net/en/other/37708-the-possibility-of-transitional-justice-post-mugabe-in-zimbabwe.html> Accessed on



*Ethnicity and inter-nationalist  
power-struggles provoked Gukurahundi  
(1983–1987) that targeted Ndebele speaking  
people of Matebeleland and Midlands  
of Zimbabwe”*

What is strikingly clear between Zimbabwe and Uganda is that both countries are former British colonies whose socio-economic and political developments were not uniform. Regardless of having gained independence at different levels, the countries' conflict episodes have traces of incomplete decolonization, militarized government systems and regime preservation efforts. The role of the military in establishing and sustaining authoritarian regimes is evident in both Uganda and Zimbabwe, albeit at different levels. Uganda's key historical moments are marked by prolonged years of internal fighting between the government and rebel movements whereas Zimbabwe's key historical moments are marked by electoral violence campaigns against opposition groups and civilians. For comparative purposes, Table 1 on the next page, shows conflict timelines for Uganda and Zimbabwe.



Table 1: Conflict timelines for Uganda and Zimbabwe

Uganda Conflict Timeline	Zimbabwe Conflict Timeline
<ul style="list-style-type: none"> <li>• Pre-colonial wars</li> <li>• Liberation war leading to independence in 1962</li> <li>• Milton Obote overthrow 1971</li> <li>• Idi Amin overthrow 1979</li> <li>• The Oyoro Boys (1979-1980)</li> <li>• The Yerego War (1980)</li> <li>• Milton Obote II overthrow 1986</li> <li>• Museveni reign of terror 1986-present</li> <li>• NRA/UPDF vs Karimojong conflict (1986-present) and Karimojong/NRA raids (1989-present)</li> <li>• NRA/UPDF war against citizens in the North (1986-2006)</li> <li>• Lord’s Reistance Army (1987-present)</li> <li>• Holly Spirit Mobile Forces (1986-1987) and Jo Pa Won Holy Spirit Movement II (1987-89)</li> <li>• The Trinity Wars (1986-present)</li> <li>• Pigi Ligi War (1988-present)</li> <li>• Post-conflict robberies, land and domestic conflicts in Acholiland communities (2006-present)<sup>20</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Pre-colonial wars</li> <li>• Liberation war leading to independence in 1980</li> <li>• Entumbane uprisings (1981)</li> <li>• Gukurahundi (1983-1987)</li> <li>• Electoral /political violence (1980-2018 hitting its crescendo in 2008)</li> <li>• Economic Structural Adjustment Programmes (ESAP) (1990s)</li> <li>• Fast track land reform conflict (2000 – present)</li> <li>• Operation Murambatsvina (2005)</li> <li>• Hyperinflationary economic conflict (2008)</li> <li>• Military coup (2017)</li> <li>• August 1 killings (2018)</li> <li>• January 2019 violence</li> <li>• July 31 violence (2020)</li> </ul>
<p><b>Source:</b> <i>Refugee Law Project (2014) Compendium of Conflicts in Uganda: Findings of the National Reconciliation and Transitional Justice Audit.</i> Makerere University, Kampala</p>	<p><b>Source:</b> <i>Heal Zimbabwe Trust (2018) A Baseline Study report on the Peace and Reconciliation Processes in Zimbabwe: A bottom-Up Peace and Reconciliation Framework for Zimbabwe.</i> Heal Zimbabwe, Harare.</p>

20. See the Compendium of Conflicts in Uganda: Findings of the National Reconciliation and Transitional Justice Audit for further details. Conflicts identified in table one are not exhaustive, table 1 above only depicts key conflict issues

The table shows that Uganda has had more coups and internal rebel wars compared to Zimbabwe. Of seven Uganda's seven distinct post-colonial regimes, six were influenced by military coups whereas in Zimbabwe of the two post-independence regimes one (pseudo regime shift)<sup>21</sup> assumed power through a military coup. The two polities have covert military presence in party politics. Besides coups, the countries also experienced land conflicts. Zimbabwe has had more of electoral conflicts and ruinous economic and welfare policy challenges that influenced political activism. Like the past President of Zimbabwe (Robert Mugabe - 1980-2017), Museveni has been in power for over two decades (1986-current).

In view of the above, the paradigm of war and authoritarianism in both countries has inscribed interminable violence and conflict, which created cycles of victims, and perpetrators in which victims become perpetrators in one episode and perpetrators become victims in another episode. Under such circumstances, transitional justice becomes essential.

In fact, citizens of both countries continue demanding a paradigm of peace, healing and reconciliation. As a result, both Uganda and Zimbabwe have instituted some TJ processes in some way.

*Uganda's key historical moments are marked by prolonged years of internal fighting between the government and rebel movements whereas Zimbabwe's key historical moments are marked by electoral violence campaigns against opposition groups and civilians.*

21. However, this may not be a regime shift because of the existence of the same governance policy, systems and the leaders were of the same regime face.



## 6. TJ EFFORTS IN ZIMBABWE AND UGANDA

Both Uganda and Zimbabwe have instituted TJ processes in cycles. TJ measures considered by both countries include amnesties, commissions of inquiry, political agreements, constitutional reforms and symbolic development programmes. In their TJ attempts there are outstanding similarities and differences, which define the contextual variations in which the two countries' polities exist. Of greater importance is that both countries recognize the import of transitional justice, as a measure towards enhancing national unity, peace and development. Table 2 below shows various TJ efforts in both Uganda and Zimbabwe



### TJ MEASURES

*TJ measures considered by both countries include amnesties, commissions of inquiry, political agreements, constitutional reforms and symbolic development programmes.*

Table 2: TJ Efforts in Uganda and Zimbabwe

Uganda TJ Efforts	Zimbabwe TJ Efforts
<ul style="list-style-type: none"> <li>• Commission of Inquiry on Disappearances and Human Rights violations (1974 –by Idi Amin)</li> <li>• Commission of Inquiry on human rights violations covering violations between 1962-1986 (1986 –by Museveni)</li> <li>• Amnesty Act of 2000 (establishing the Amnesty Commission)</li> <li>• Lord's Resistance Army referred to the ICC for prosecution (2003)</li> <li>• Juba Accountability Agreement on Reconciliation (2005-2008)</li> <li>• Transitional Justice Working Group - 2008</li> <li>• Uganda International Crimes Division (High Court) (2008)</li> <li>• Transitional Justice Policy draft 2014-2019 (policy approved on 18 June 2019)</li> </ul>	<ul style="list-style-type: none"> <li>• Mugabe Independence Forgive and Forget Reconciliation Decree (1980)</li> <li>• Chihambakwe and Dumbutshena Commissions 1983</li> <li>• Unity Accord - Uniting ZANU PF and PF ZAPU (1987)</li> <li>• War Victims Compensation Fund (1995 &amp; 1997)</li> <li>• Constitutional Referendums (2000 &amp; 2013)</li> <li>• Fast track land reform (2000 onwards)</li> <li>• Global Political Agreement (establishing and coalition government with mechanisms such as the Organ on National Healing, Reconciliation and Integration, Joint Monitoring and Implementation Committee and Constitutional Select Committee) (2009)</li> </ul>

Uganda TJ Efforts	Zimbabwe TJ Efforts
<ul style="list-style-type: none"> <li>• Lowero Rehabilitation programme</li> <li>• Karamoja Integrated Development Programme</li> </ul>	<ul style="list-style-type: none"> <li>• National Peace and Reconciliation Act (establishing the National Peace and Reconciliation Commission) (2019)</li> <li>• The Motlanthe Commission of Inquiry 2018</li> <li>• Several CSO efforts including the setting up of the National Transitional Justice Working Group</li> <li>• Traditional mechanisms and CSO initiated peace committees</li> </ul>

Table 2 shows a list of diverse efforts towards transitional justice, national healing peace and reconciliation processes attempted by both the Ugandan and Zimbabwean governments. The efforts listed are not exhaustive but they reveal seemingly popular TJ efforts and how each government recognized the need to address justice, healing and reconciliation issues taking into consideration historical conflict experiences.

Study respondents were asked whether some of these efforts were either successful or failed and reasons justifying the results of the TJ interventions. One responded from Uganda pointed out that the setting up of the International Criminal Division (ICD) (1998/2000) was a successful initiative and the commitment to the Juba Peace process is also a recognizable success.<sup>22</sup> Another Ugandan respondent added that what has been successful was the use of traditional peacebuilding mechanisms which were nationally recognized.

For Zimbabwe, respondent ZWR1 cited that *“the problem of TJ in Zimbabwe is that there is massive desire for change, but the politics of the day does not allow for transition to happen.”* Those in power see authority as non-negotiable. Leaders in Zimbabwe and Uganda see their power through the National Resistance Movement (NRM) and the Zimbabwe African National Union Patriotic Front (Zanu PF) which entrenches state-party conflation.<sup>23</sup> This perspective means while different efforts towards TJ were made, they could not succeed because of the political interests that are declared ahead of national healing and reconciliation processes.

Uganda’s TJ is highly focused on Northern Uganda where the LRA was highly concentrated and where the conflict atrocities were more gross. However, the *“Cycles of violence perpetrated by a series of military coups including the ousting of Milton Obote in 1971, Idi Amin Dada’s*

22. Interview with Jackson Odong UGR2

23. Interview with Shasrty Njeru (Research and Advocacy Unit) ZWR1

overthrow in 1979, Milton Obote's second deposition in 1985 and Tito Okello's fall in 1986 and Museveni now - are not covered in the TJ process (Nabukeera-Musoke 2009)."<sup>24</sup> This means the Ugandan TJ has been partial and ad-hoc. In Zimbabwe the Gukurahundi massacres of ethnic Ndebeles in the early 1980s is seen as a central issue in TJ. However, many of the perpetrators of the killings are still active members of the ruling political establishment. These perpetrators also indicate that they too were victims of the *colonial injustice and historic ethnic raids of cattle and women by the Ndebele*, and the massacres of people in liberation army camps by the Rhodesia Front during the liberation war. It is such victim - perpetrator complexity that has resulted in some institutions and players resisting TJ completely.

In view of the case of Uganda and Zimbabwe's TJ efforts are predominantly applied in weakly institutionalized settings, hence making it difficult to achieve the intended goals.

Macdonald (2019:230) confirms that *"Uganda is a semi authoritarian regime where TJ processes are very unlikely to function well..."* a reflection of both countries TJ efforts indicate cosmetic and opportunistic interventions by political elites.

The fact that the TJ programmes continue in cycles largely reflects the non-transitional character of the governance systems. Transitional justice in non-transitional states

is describes as an *"isomorphic mimicry and calculated stasis, which stalls the emergence of substantive TJ reform"* (McDonald 2019:225). It is therefore important to question what could have affected Uganda and Zimbabwe's prior transitional justice efforts in order to predict the possibilities of any current or future TJ process. Is transitional justice possible under their current convoluted political contexts littered with regime preservationist tendencies?

For Uganda, can the existing transitional justice process address grievances from a series of coups experienced between 1971 and 1986, atrocities committed by both rebel groups and the government forces against the civilians in Northern Uganda.

For Zimbabwe can the current TJ framework address the Gukurahundi atrocities, the structural adjustment programme's economic injustices, political violence of the land reform among other violent experiences? In addition, for both countries, the fundamental question is *"whether there can be transitional justice without a meaningful transition of political power and whether such transitional justice can succeed without taking into account victims of political persecution ....?"* (Chengeta 2018:1). The section addresses these questions reflecting on both literature review and responses from the study's key informant interviews.

24. Nabukeera-Musoke, Harriet (2009) Transitional justice and gender in Uganda: Making Peace, failing women during the peace negotiation process. Conflict Trends 2009/2. <https://www.acCORD.org.za/ajcr-issues/%ef%bf%bctransitional-justice-and-gender-in-uganda/>

## 7. TJ POLICY AND PRACTICE RESPONSE

### MECHANISMS IN UGANDA AND ZIMBABWE

*This section provides reflections on the practice and policy processes of TJ in Uganda and Zimbabwe.*

#### 7.1. The Conception of Transition in Uganda and Zimbabwe

Given that Uganda and Zimbabwe have had a series of conflict episodes followed by transitional justice efforts, it is essential to determine whether the countries have at any point transitioned or they are in perpetual transition. Asked on whether Uganda has transitioned, one respondent said *“With respect to Uganda, we view ourselves as a pre-transitional society because we have not had accountability, compensation, reconciliation and most of the grievances are still unresolved. After 20 years of conflict, the war ended, the guns are silent but a lot of the grievances remain unaddressed. The ex-combatants and victims have many questions on issues of rehabilitation and the insecurity.”*<sup>25</sup>

This response shows that war has ended, but Uganda is in negative peace. In addition, there is a stasis on transitional justice characterized by lack of accountability, restorative justice and reconciliation. To buttress the condition of transitional justice stasis, another respondent, UGR2 says in Uganda, *“there are a lot of untreated wounds and some conflicts are still ongoing and unresolved. Many groups consider themselves as victims but they too evolve to perpetrators.”*<sup>26</sup>

*There is a stasis on transitional justice characterized by lack of accountability, restorative justice and reconciliation.*

Respondent UGR1 also argued that *“...in Uganda we always ask ourselves if we have transitioned and if we did, from what to what? So we conclude that we have not had TJ. Since 1986 we have had the same Head of state and that Museveni now almost 36 years in power. He ascended to power through conflict and the Northern Uganda conflict has been the major one”*. From this perspective it is essential that change of a political system of governance precedes TJ. Zimbabwe had some semblance of transition when Robert Mugabe was overthrown from power (respondent ZWR8).

25. Interview with Charles Onencan, CEO of the United Movement to End Child Soldiering – UMECS, UGR3

26. Interview with Jackson Odong UGR2

However, “the status quo was maintained after the military assisted transition” (respondent ZWR1). The respondent further says “if we consider the military coup as a transition, then we are in a post-transition period but there is nothing that the dispensation has brought to warrant it being called a transition. The idea of a new dispensation is not accurate.”<sup>27</sup> This perspective articulates the dilemma of defining a transition by demonstrating that a transitional state where transitional justice has to take place should not only be defined by a change of political leadership, but a change of the system of governance that was used by the older regime. This makes both Zimbabwe and Uganda as either evolving or pre-transitional societies.

Some respondents such as UGR6 believe that for Uganda “the transformation is very much work in progress”<sup>28</sup> because there are institutional configurations in Uganda. Thus presenting transition as societal institutional configurations as opposed to a change of leadership.

In view of the above, the paper submits that both Uganda and Zimbabwe are experiencing embryonic transitions propelled by circumstances. The countries’ leaders implemented transitional justice processes for window dressing purposes as opposed to genuine intentions to support sustainable peace building. Where efforts to show a transition have been exhibited, they are “fake transition efforts meant to derive

economic benefits,” according to respondent UGR3. The end of war (in Uganda) and the change of political leadership (in Zimbabwe) are inadequate to mark a definitive transition, rather both countries are in perpetual transition and perpetual conflict cycles that regresses any transitional justice effort, hence effectively oscillating in a non-transitional space. If a genuine transition transpires in a post-conflict or post-authoritarian system, then the TJ process must be marked by specific actions that translate to sustainable peace building.

## 7.2. Uganda and Zimbabwe’s Existing TJ Policy and Legislative Frameworks

While evidence shows that Uganda and Zimbabwe are in a pre-transition phase, both countries have standing transitional justice frameworks reflective of their governments’ consciousness of the value of TJ as a process towards sustainable peacebuilding. Uganda has a transitional justice policy adopted in 2019, the Amnesty Act and the Amnesty Commission (Government of Uganda).<sup>29</sup> Zimbabwe on the other hand has the National Peace and Reconciliation Commission [NPRC] Act (2018) which establishes the National Peace and Reconciliation Commission (for Zimbabwe). Zimbabwe’s NPRC is established as one of five independent commissions supporting democracy. The major differences between the Zimbabwean and Uganda’s transitional

27. Interview with Bere (NTJWG) ZWR3

28. Interview with Dr Job Akuni UGR6

29. Government of Uganda (2019) Special Report: The National Transitional Justice Policy. Justice Law and Order Sector. [Online] available at: <https://www.jlos.go.ug/index.php/com-rsform-manage-directory-submissions/services-and-information/press-and-media/latest-news/item/698-special-report-the-national-transitional-justice-policy>

justice framework are centred on the legal frameworks for TJ. Zimbabwe's TJ framework is firmly underpinned on the constitution and the Act of Parliament whereas in Uganda, the policy is yet to be supported by law.

Zimbabwe's TJ framework is established through section 152 of the constitution (Constitution of Zimbabwe Amendment number 20 of 2013). The legal provision establishes the National Peace and Reconciliation Commission whose enabling legislation was enacted in 2018 (five years later after the adoption of the new constitution). Therefore, the Zimbabwean government, churches and CSOs undertake TJ interventions by invoking the legal obligations espoused in the constitution and the NPRC Act.

Uganda, on the contrary, does not have a clearly established legislative framework for transitional justice. The country currently relies on the National Transitional Justice Policy (NTJP) established in 2019, 5 years after its drafting began in 2014. Uganda's NTJP proposes the legal and institutional framework for investigations, prosecutions, trials within the formal system, reparations and alternative justice approaches. These matters are clustered into 5 key areas including, formal justice, traditional justice, nation building and reconciliation, amnesty and reparations. The ultimate goal of the NTJP is to pave the way towards achieving peace, stability and social cohesion in Uganda.<sup>30</sup>

Interestingly, some policy makers in Uganda perceive the transitional justice policy as applicable only to the Northern region of Uganda where the LRA was pre-dominantly operational instead of applying to the whole nation. For example, respondent UGR2 who is a policy maker said, "we have had few engagements to feedback on the TJ policy. It's an MPs platform for the formerly LRA affected regions. Actually it covers 8 sub regions (Acholi-Iango, west Nile, Teso, Karamoja, Bunyoro and Bugisu)."<sup>31</sup> If this view to be accepted, then the Ugandan TJ policy is biased, but if inaccurate, then there is a misunderstanding on what the policy seeks to achieve in Uganda.

*Transitional justice policies must stand to address gross human rights violations experienced by specific communities and they must be legally enforced. Justice should not be discretionary. In the case of Zimbabwe, it is clear that the legal basis of transitional justice is backed by the constitution and a statute whereas in Uganda the transitional justice policy is currently the basis for legislation rather than the practice of transitional justice.*

As such both Uganda and Zimbabwe have different transitional justice frameworks, with different entry points yet seeking the same goal of standard TJ processes. That being the case, what mechanisms did the countries put in place to address the transitional justice challenge?

30. Avocats Sans Frontières (2019) <https://www.asf.be/blog/2019/10/14/the-long-walk-uganda-adopts-a-transitional-justice-policy/>  
31. Interview with Christine, Greater Northern Uganda Parliamentary Programme, UGR4

### 7.3. Transitional Justice Actors and Approaches in Uganda and Zimbabwe

There are three key actors in TJ processes that help implement retributive justice, restorative justice and social justice processes. These actors include state, non-state actors and international actors. State actors involved in executing TJ are usually meant to be independent bodies established by the government such as TRCs as well as other associated (but not independent) government departments.

Non-state actors can be categorized into two; that is civic society organizations (CSOs) and local communities.

i. **Civic society organizations** are non-governmental organizations (NGOs) that facilitate TJ processes either to complement government efforts or to act as alternative TJ platforms creating systems without necessarily complimenting the government.

ii. On the other hand, **communities** can implement their own TJ processes without necessarily waiting for the government or NGOs to support them.

Communities TJ processes are espoused in the quotidian TJ where every day processes support victims' healing and victim-perpetrator reconciliation. Both Uganda and Zimbabwe's transitional justice actors have involved both state and non-state actors.

#### a) State-led TJ

Generally, states are responsible for initiating TJ programmes with a view to address stretches of gross human rights violations. In the case of Zimbabwe *"we have to accept that the state is a bigger player and it is the one that ensures political will and enforces political accountability (and accountability to citizens) (respondent ZWR3)"*.<sup>32</sup> This also applies to Uganda given that most transitional justice efforts discussed earlier were largely driven by the state, hence making it a bigger player in mooting TJ processes.

However, most African governments, in general, have done little to successfully implement TJ programmes such that *"few victims have received redress and few perpetrators have been held accountable for their crimes,"* (ICTJ 2016).<sup>33</sup> This state failure to genuinely and successfully lead the TJ processes has created room for CSOs to play a complementary role in facilitating TJ as discussed below.

Commenting on state failure and inertia to facilitate transitional justice in Uganda, respondent UGR5 argued that the *"government cannot be willing to poke itself in the eye because some crimes were committed by the Uganda People's Defence Forces (UPDF) and it will be very hard for them to swallow their bitter pill."*<sup>34</sup>

32. Interview with Dzikamai Bere (NTJWC) ZWR3

33. ICTJ (2016) ICTJ Partners Victims, Civil Society and Officials on Transitional Justice in Great Lakes Region. Available at: <https://www.ictj.org/news/ictj-partners-victims-civil-society-transitional-justice-great-lakes-region> [Accessed 12 January 2019]

34. Interview with Opiio UGR5

A similar remark was made on Zimbabwe by respondent ZWR1 who argued that “admission means the emperor has no clothes, they cannot legislate themselves out of power through reforms.<sup>35, 36</sup> Just like in Uganda, the current Zimbabwean authorities find it difficult to facilitate a genuine transitional justice process because “the majority of the perceived and real injustices were perpetrated by members of the dispensation: the Joint Operations Command, the current President, the state security.”<sup>37</sup> In view of the above discussion it appears evident that a transitional justice accountability process that takes a statist approach in the case of Uganda and Zimbabwe may be unsuccessful unless the perpetrators are no longer in power.

## b) CSO-led TJ

Given the challenges that official transitional justice processes (led by the state) have faced, civic society organizations have played a significant role in supporting transitional justice. To meet transitional justice needs, CSOs lobby the government to implement genuine TJ processes while at the same point providing capacity building support to grassroots actors and citizens.<sup>38</sup> In Uganda for example, CSOs led by Refugee Law Project were actively involved in drafting the country’s transitional justice policy. However, the challenge that emerges when CSOs

succeed in lobbying for policy changes is that “the implementation plan is set for government not for CSOs,”<sup>39</sup> which makes it difficult to influence implementation progress.

As an alternative, CSOs assist to enforce accountability in different ways including documenting human rights violations, helping victims to access justice through formal channels and generally raising awareness on TJ. In Zimbabwe, the churches and civic organizations have been instrumental in documenting gross human rights violations and exposing the perpetrators which then forces accountability (respondent ZWR5). CSOs also mobilize citizens to participate in state organized platforms and disseminate lessons for TJ.

However, the CSOs are “often weak, disorganized and lack independence ...” (Brahm 2007).<sup>40</sup> They become weak and disorganized as a result of either state interference or sheer lack of leadership congruency. The state interferes when it “does not want TJ mechanisms that will open up some space, as is the case in Zimbabwe.”<sup>41</sup> Respondent ZWR6 notes that the Zimbabwean government has managed to divide and rule the CSOs so that they do not speak with one voice in their demands for transitional justice.

35. A onetime ZANU PF government Minister, Professor Jonathan Moyo is known for having declared that ZANU PF ‘cannot legislate itself out of power’ by implementing institutional reforms. The remark has largely characterised the behaviour of the government since independence in 1980 to date.

36. Interview with Shasrty Njeru (Research and Advocacy Unit) ZWR1

37. Interview with Chirunga (NPRC) ZWR2

38. ICTJ (2016)

39. Interview with Patricia (ASF) UGR1

40. Brahm, Eric (2007) Transitional Justice, Civil Society and the development of the Rule of Law in Post-Conflict societies. International Journal of Not for Profit Law. Vol. 9(4) 2007.

41. Interview with Ray Motsi ZWR5

To worsen matters, in cases where the state does not endorse the work of CSOs in transitional justice, it limits their legitimacy in intervention areas. Both Ugandan and Zimbabwean CSOs have experienced state restrictions leaving communities to devise their own transitional justice mechanisms.

### c) International Actors (Donor/Externally Driven TJ)

Donors through the state and CSOs are also critical actors in TJ processes. They both fund and provide technical support to CSOs and governments which influences context TJ processes. In some instances, donors support comes with pre-conditions dictating what constitutes TJ. For example, in Uganda donors influenced the TJ process through funding the AAR, the establishment of the ICD and even the reference of the LRA to the ICC in the interest of meeting international legal standards without considering domestic contextual TJ needs (Macdonald 2019). The ICD is a special division of the High Court of Uganda established after the Juba Agreement and has been trying, Thomas Kwoyelo, a former LRA commander on charges of war crimes and crimes against humanity. The case has been delayed several times. Respondents indicated that there has not been any other perpetrator tried under this court, let alone UPDF even though the Government of Uganda claims that members of the UPDF have been called to the dock.

In Zimbabwe the international actors have been limited to CSO funding and the NPRC

funding. No efforts have been done to create a court to try perpetrators of past atrocities. Several voices have come out with claims to arraign perpetrators of the Gukurahundi and other massacres to The Hague. However, some of the cases in Zimbabwe and Uganda fall outside the jurisdiction and mandate of the ICC as some cases occurred before the ICC itself was established in 2002. The ICC is also undergoing the trial of Dominic Ongwen, alleged Brigadier General of the Lord's Resistance Army and a former child soldier who is charged with 70 counts of crimes against humanity and war crimes by the International Criminal Court. Northern Ugandans feel that the trial in the Hague does not allow the communities to face Ongwen directly and removes justice from the contexts where the atrocities occurred. While these trials and courts were the entry point of state participation in Uganda, in Zimbabwe national TJ efforts started with political agreements, moved to constitutional provisions, eventually leading to the NPRC Act.

Unfortunately, TJ processes influenced by international actors at times disregard local and national contexts. *"This is not always a good thing, in some cases, donors have been complicit in human rights abuse legacies and may be<sup>42</sup> keen to whitewash their own reputations"* hence, there may be a good reason to distrust bilateral and multilateral donors sponsoring TJ. In this view, donors are sometimes undesirable in TJ processes because their *"cookie-cutter interventions are normatively desirable in theory but easily hijacked by domestic elites and insensitive to*

42. Macdonald, A., 2019. 'Somehow This Whole Process Became so Artificial': Exploring the Transitional Justice Implementation Gap in Uganda. *International Journal of Transitional Justice*, 13(2), pp.225-248.

victims' priorities in practice." (McDonald 2019:326). Nonetheless, a TJ programme must pay heed to the equally important imperatives of vertical accountability to the donor and horizontal accountability to a wider base of civil society stakeholders.<sup>43</sup>

#### **d) The role of the military/ security services**

Transitional justice processes in Uganda and Zimbabwe have revealed the central role of the military in unseating governments and as part of the repressive state apparatuses that have been used to suppress the calls for transitional justice. In both societies the uniformed forces (military, police and prisons) have been deployed nationally and internationally to execute acts of violence against citizens or to loot foreign resources from other states. In the case of Uganda the army has been used by every other President to unseat their predecessors. According to respondent UGR3, there has been no proper handover of power since 1962. All 9 presidents came through violent conflict which has delayed TJ and peace building. The mistakes have been recurring. The UPDF has been manipulating soldiers since Amin, Obote and now Museveni.<sup>44</sup>

In Zimbabwe, however, there has been only one coup de tat that removed Robert Mugabe from power in 2017. Past atrocities before and after independence were perpetrated by different armed groups (ZIPRA, ZANLA, and Rhodesia Front among others) before independence and by the

Zimbabwe National Army after independence. Other respondents also revealed that the current transitional justice process is being stifled by the military. For example, respondent ZWR2 said "*the President seems very committed and wants the TJ to move forward only that the military is skeptical. There is suspicion between the President and the military, the generals are sinking their feet.*"<sup>45</sup> When the military is weaponised as is the case in Zimbabwe institutions become less accountable to the people and the military is now weaponising other institutions. In Uganda on the contrary it's the individual using the military for their ends.<sup>46</sup> In view of the above, this paper submits that the politicization of the military or the militarization of politics in both countries are seen to be the basis for the inertia towards transitional justice as the generals are scared of prosecution and being arraigned to the Hague. Transitional justice becomes even more complicated when the transition is military enabled.

#### **e) Conflation of the state and the political parties**

In both countries there is substantial impunity by the ruling National Resistance Movement (NRM) and Zimbabwe African National Union - Patriotic Front (ZPF) respectively as these ruling parties and their cronies are hardly called to account in the courts or arrested for their contravention of national laws. In Zimbabwe the conflation of the ruling party the state and government has been expressed through claims that *'the*

43. (ibid).

44. Interview with Charles Onencan, CEO of the United Movement to End Child Soldiering - UMECS, UGR3

45. Interview with Chirunga (NPRC) ZWR2

46. Interview with Dzikamai (NTJWG) ZWR3

party cannot legislate itself out of power' or create mechanisms that would end in the prosecution of its own cronies. Given the extent of capture of the key institutions by the state, the time has not ripened for the wholesome implementation of transitional justice in both countries. While in Uganda the state has facilitated the prosecution of the so called international crimes through the International Crimes Division of the High Court and the ICC, the trials have only been done for the members of the Lord's Resistance Army and not the Uganda Peoples Defence Forces (UPDF) which is also understood to have committed several crimes since the independence and, more so, in Northern Uganda during the civil war with the Lord's Resistance Army. In Zimbabwe few low profile cases have been brought to the courts at the instigation of civil society. Such cases in Zimbabwe have simply been treated as criminal but not as part of a broader transitional justice effort. Most of those who have taken cases to the courts (domestic and international) in both countries fear serious retribution due to the absence of proper witness protection measures.

## f) Community based approaches to TJ

Communities, noting lack of progress and in some instances, irrelevance of state-led or CSO-led TJ processes, initiate their own interventions, which are customized to meet individual, and community level needs at grassroots level. For example, in Uganda respondent UGR5 who resides in Northern

Uganda where the Lord's Resistance Army was based said *"before the contemporary mechanisms, we already had TJ in our communities, so the ICC, ICD developments are actually new"*, the *mato-oput* rituals were widely conducted in the North.<sup>47</sup> This was a process where non-returnees would host the (returnees) formerly abducted whose position in the societies attracted rejection, rebuke and therefore need for mediation. The process would lead to the returnees being reintegrated into communities with the assistance of religious leaders. In addition, the *"use of prayers and preaching in churches to reconcile citizens at the grassroots complemented the traditional cleansing ceremonies."*<sup>48</sup>

For Zimbabwe, *"we have worked extremely quietly. We have used traditional leaders, we are healing the dead not for criminal purposes because the possibility of justice is next to zero. We then give the bones to the people for reburial. We also try to keep peace in the families which is a realm of traditional leaders. In the cultural way of life of this community, we pick up bones from the forests each year to clear the spirits/ancestors. At first chiefs were also afraid of the state,"* notes respondent ZWR9.<sup>49</sup> The respondent is a CSO representative and her view shows the linkages between civic organizations work and traditional practices in transitional justice processes. In addition, the response reveals fear instilled in traditional leaders by the state when it comes to participating in transitional justice processes, which is against meeting TJ needs

47. Interview with Opio (UGR5)

48. Interview with Opio (UGR5)

49. Interview with Sharry Eppel (Ukhuthula Trust) ZWR9

of communities.

Slow progress creates frustration and fatigue among genuine players including CSOs and international donors which leaves communities with no option, but to initiate their own grassroots TJ mechanisms, which are also demand driven. However, there are always limitations on what communities can do to support TJ - it only ends at the community level whereas the state's monopoly of power can undo local communities' efforts through intimidation and coercive restrictions to suppress any progressive TJ actions.

Nonetheless, while there is a lot of critique of the western conceptualization of transitional Justice, there is a very high acceptance of the traditional and community based approaches to transitional justice. In the case of Uganda, the local chiefs and traditional leaders have always invoked indigenous ways of reconciling people. The Acholi ethnic communities and the Karamajongs use traditional ceremonies including the *mato oput* to bring disputed parties to reconcile. *Mato Oput* is a ritualised form of reconciliation that involves the drinking of a locally brewed concoction by former protagonists. The practice is widely held in Ugandas Acholi communities. In Zimbabwe the traditional leaders are locally accessible institutions with a lot of state support. In Zimbabwe, traditional leaders sometime play pseudo-state roles which compromises their impartiality especially in conflict involving the ruling ZANU PF and the state. These quotidian approaches have evolved

together with societies. However, traditional approaches are usually rendered ineffective where the state is implicated in perpetrating injustices. The community based approaches deal with land based conflict, village level violence and other inter-family disputes. However, in Northern Uganda traditional institutions cannot handle issues like cattle raids because they don't have arresting powers. Similarly in Zimbabwe, high level crimes such as killing of political rivals should ordinarily be handled by the state institutions such as the courts, the police etc.

To evade prosecution and other retributive measures the government of Zimbabwe has been pushing for the traditional leaders to be the vanguards of the TJ efforts, even if the ten functions of the NPRC also allow for retributive mechanisms. For example, one of the NPRC's functions is "*to ensure post-conflict justice, healing and reconciliation*" (NPRC Act)<sup>50</sup> which in itself allows the government to implement prosecutorial justice.



*Mato Oput*

50. NPRC Act (2017) National Peace and Reconciliation Act. Chapter 12:13, No.11/2017



## 8. UGANDA AND ZIMBABWE TJ PROCESS SIMILARITIES

### a. Commission of Inquiry

Both countries have used commissions of inquiry as initial steps towards transitional justice. Uganda and Zimbabwe at one point established Commissions with mandates to investigate gross human rights violations cases as basis for transitional justice. However, the results and recommendations of the inquiries have never been implemented, at least visibly in both countries. In Uganda, both Idi Amin and Yoweri Museveni commissioned inquiries on human rights violations.<sup>51</sup>

Equally, in Zimbabwe, both Robert Mugabe and Emmerson Mnangagwa commissioned inquiries on gross human rights violations. However, to demonstrate the regimes disinterest in political transformation and genuine transitional justice, the reports and recommendations of the Commissions were never implemented. In Uganda, for example, Quinn (395) observes that Idi Amin's appointed 1974 Commission of Inquiry's report was never published and none of its recommendations were published. In addition, Museveni also established his own Commission of Inquiry into Violations of Human Rights (CIVHR) in May 1986 (3 months after he took office). The Commission lasted up to April 1993 and it emerged unsuccessful because *"most of its recommendations, which included suggestions for democratic development, human rights education, constitutional guarantees and international treaty responsibilities, prosecutions and legal*

*To demonstrate the regimes disinterest in political transformation and genuine transitional justice, the reports and recommendations of the Commissions were never implemented.*

*need for reform in military and security sectors, were never implemented. Even the report and its findings were never broadly publicized; most people in Uganda remain unaware that a truth commission was ever at work."*<sup>52</sup>

Having unpublished reports of human rights violations investigations equally happened in Zimbabwe when the Dumbutshena and Chihambakwe Commissions of Inquiries<sup>53</sup> were appointed to investigate gross human rights violations. The Commissions' reports were never made public and the recommendations were not implemented. Zimbabwe's Motlanthe Commission of Inquiry, is another one, its report was published but the recommendations are yet to be.

51. Commission of Inquiry on Disappearances and Human Rights violations (1974 –by Idi Amin) and the Commission of Inquiry on human rights violations covering violations between 1962-1986 (1986 –by Museveni)

52. Quinn, Joanna (395) Social Reconstruction in Uganda: The Role of Customary Mechanisms in Transitional Justice. Human Rights Review, July 2007. Pp389-407

53. The Dumbutshena and Chihambakwe Commissions of Inquiries are Commissions of Inquiry established to investigate gross atrocities in the Matabeleland region in 1982 and 1983 respectively

This lack of commitment by the Ugandan and Zimbabwean regimes towards completing commenced TJ work confirms what Brown (2012) considers political artifice where political elites offer declaratory support and calculatively stall progress along the way, which is a show of unwillingness and self-interest driven political maneuvering.<sup>54</sup> As for both countries, there is an exhibition of an implementation stasis of well-defined TJ processes.

McDonald (2019:226) aptly considers this situation as an *“implementation gap whereby measures to address past human rights violations are proposed and even designed but go unimplemented or only partially implemented.”*<sup>55</sup>

## b. Amnesties

Amnesties are one similar means both countries have used as a transitional justice mechanism. Amnesty *“refers to the act of forgiving someone or a class of persons for past offences”* (Mandikwaza 2016). In Uganda, the General Amnesty Act of 2000 pardons all people who were involved in rebel activities, such that by October 2019 over 15,000 rebel defectors had been reintegrated and about 27, 000 people had been given resettlement packages by government. Uganda’s amnesty program largely targeted people who were associated with the Lord’s Resistance Army.<sup>56</sup>

*This clearly means the Amnesty law was meant to support disarmament, demobilization and reintegration (DDR) only, which excluded kidnapped children including girls who were used as sexual slaves.*<sup>57</sup>

This approach presents a number of problems. The process was exclusionary and did not aim at reconciliation and healing, but it aimed at reducing the LRA combatants only leaving out major perpetrators of gross human rights violations, including those in the government.

Unlike the Ugandan situation, Zimbabwe’s amnesties were offered to perpetrators of gross human rights violations, either before or after conviction from courts. Over nine Amnesty laws were invoked in Zimbabwe between 1975 – 2014 as general pardons through the President. Most of these amnesties protected those who murdered, tortured and perpetrated gross human rights violations.

The general amnesty of 2000 (GN457A), for example, benefited ZANU-PF supporters who were implicated in unleashing politically motivated violence, arson, the burning of homes and the intimidation of opposition supporters (Mandikwaza, 2016) and participated in the violent land reclamation of 2000 onwards.

54. Brown, Stephen (2012) Transitional Justice as Subterfuge.

55. McDonald, A. (2019) 'Somehow this whole process became so artificial!' Exploring the Transitional Justice Gap in Uganda. International Journal of Transitional Justice, Vol.13, pp225-248.

56. Amamukirori, Betty (29 October 2019) Poverty Forcing Ugandans to fake rebel involvement Available at: [https://www.newvision.co.ug/new\\_vision/news/1509443/poverty-forcing-ugandans-fake-rebel-involvement/](https://www.newvision.co.ug/new_vision/news/1509443/poverty-forcing-ugandans-fake-rebel-involvement/)

57. Fondation Hironelle (March 27, 2019) Uganda’s amnesty law and the peace/justice dilemma - <https://www.hironelle.org/de/unsere-medien/747-uganda-s-amnesty-law-and-the-peace-justice-dilemma/>

## 9. UGANDA AND ZIMBABWE TJ PROCESS DIFFERENCES

Outstanding differences between both countries' TJ measures are largely because the countries experienced dissimilar conflict issues; Uganda's major TJ problem is anchored on the civil wars and coups, experienced since independence, with a particular focus on the Lord's Resistance Army atrocities in Northern Uganda whereas in Zimbabwe the TJ process is largely anchored on the government's stifling of multiparty democracy against opposition parties and the citizens in general. As such, Uganda's transitional justice conceptualization has a regional dimension, instead of assuming a national outlook. The TJ processes prominently exclude atrocities committed during the coup episodes from the first Obote's regime demise to Museveni's assumption of power in 1986, whose effects went beyond Northern Uganda. However, for Zimbabwe, the TJ conceptualization takes a national status and efforts are directed to the whole country as opposed to a fraction of communities. However, the Zimbabwean government has, of late, been pushed to pay attention to the Matabeleland region Gukurahundi atrocities because of the magnitude of violations experienced in the region - which to some extent invoke a similarity of regional bias with Uganda, albeit different circumstances.

### a. Political Agreements

In an attempt to arrest ensuing political crisis, political agreements and negotiations have taken place in both countries whose results had recognizable transitional justice direction. Faced with decades of rebel insurrection the Ugandan government participated in political negotiations with the rebel LRA, which was the most prominent and powerful insurgent movement. The negotiations culminated to an Agreement on Accountability and Reconciliation (AAR) signed in 2007.<sup>58</sup> The agreement served as a peace accord and a transitional justice deal including five transitional justice issues namely; *"national proceedings,*

*restorative accountability, alternative sentencing, individual responsibility and forward-looking victimhood"* (Gissel 2017:367).<sup>59</sup>

However, the AAR was not fully implemented as evidenced by the Ugandan government's failure to establish a transitional justice policy from 2008 until 2019, over 10 years after signing the AAR.

In Zimbabwe, the Unity Accord of 1987

58. UCDP (2007) Agreement on Accountability and Reconciliation. Available at: <https://ucdpged.uu.se/peaceagreements/fulltext/Uga%2020070629.pdf> [Accessed 17 January 2020].

59. Gissel, Line Engbo. "Legitimising the Juba peace Agreement on Accountability and Reconciliation: the International Criminal Court as a third-party actor?." *Journal of Eastern African Studies* 11, no. 2 (2017): 367-387.

and the 2008 Global Political Agreement (GPA) served as a peace deal between the opposition parties. The Unity Accord ended the Matabeleland genocide known as Gukuruhundi in which the state sought to crush ZIPRA insurgents and ethnic Ndebeles. In 2008 the GPA, on the other hand, followed electoral disputes that triggered acute violence and destruction of properties. The GPA served as a transitional arrangement which created a coalition government, introduced the Organ on National Healing, Reconciliation and Reintegration (ONHRI), the Joint Monitoring and Implementation Commission and the Constitutional Select Committee (COPAC). All these were transitional arrangements that mirrored transitional justice mechanisms.

## b. Internationalization of TJ

The Ugandan government internationalized its transitional justice processes by first referring the Lord's Resistance Army top leaders to the International Criminal Court (ICC) in 2003. By referring cases of gross human rights violations to the ICC, Uganda appeared to be reforming itself and conforming to international best practices that safeguard human rights and democratic governance. To expedite the prosecution of perpetrators of gross human rights violations the government of Uganda also established a domestic court, the International Crimes Division (ICD). However, the ICD since its set up in 2008 it has only prosecuted one person (the LRA Commander Kwoyelo) and "*the court lacks government support*" (MacDonald 2019:236) which makes it useless and inconsequential. In 2015 Jamil Mukulu of Allied Democratic

Forces (ADF) was also arraigned before the ICD and is yet to be sentenced. More importantly, it is essential to underscore that, to date, not any state actor has been investigated or tried at the ICC or by the ICD for war crimes, which creates a pervasive feeling within affected communities that the government of Uganda is implementing a partisan transitional justice process (ibid).

Unlike Uganda, Zimbabwe has never internationalized its transitional justice process. There are no justice mechanisms that were put in place to facilitate the prosecution of the perpetrators of gross human rights violations. As noted earlier, the government of Zimbabwe only established an Organ on National Healing and Reconciliation as the facilitator of TJ yet it had no mandate to effect prosecutions. In addition, the Zimbabwean governments rather preferred offering amnesty to the perpetrators or remain silent about the victims' cases. A similarity, however, that comes striking between the two countries' regimes is their attempt to shield and or protect state-led perpetrators of human rights violations.

## c. Symbolic reparations /

### Rehabilitation programmes

While targeting perpetrators and victims differently, both Zimbabwe and Uganda implemented group reparations programmes. In Uganda the Karamoja Integrated Diarmament and Development Programme (KIDDP) and the Luwero Rehabilitation programme are symbolic developmental programmes whose aims were to provide group remedies to the past

violations. For instance, the Ugandan Office of the Prime Minister notes that the objectives of the Luwero programme is to:

i. To redress the adverse socio economic effects of the NRM liberation war (1981- 86) and ADF insurgency (1996-2003) that disrupted the development of 39 districts in the two sub-regions of Luwero and Rwenzori and also reduce the number of people living below the poverty line by 5% by 2015 and

ii. To coordinate the payment of war debts and pay one off gratuity to civilian veterans in Luwero Triangle Region.<sup>60</sup> Among their achievements between 2017 and 2018 about 15,869 Civilian Veterans received once off gratuity payments. In Karamoja, on the other hand, the KIDDP's overall programme was to *"ensure human security and promote conditions for recovery and development in Karamoja as part of the broader National Development Plan and the Peace, Recovery and Development Programme (PRDP)."*<sup>61</sup>

For Zimbabwe, the compensation was given to war veterans of the liberation struggle who fought against the colonial government. Through the War Victims Compensation Fund, the Government of Zimbabwe paid ZW 50 000 dollars (once off gratuity) in November 1997 to war veterans.

The effort however still left most war veterans without the relevant psycho-social support to deal with the trauma of the liberation war.

The compensation was largely interpreted as pacifying the war veterans who were disenchanted with declining living standards and welfare amid increasing corruption and biting neoliberal reforms. These conditions were seen as threatening the political power base of the ruling ZANU PF. Following the compensation, war veterans became strong campaign foot soldiers of the ruling party and wreaked havoc from the land reform land grabs to the 2008 political violence in support of the ruling party ZANU PF.

It can be argued that the symbolic rehabilitation and development programmes implemented in both Uganda and Zimbabwe were largely meant to serve the interest of the ruling elites as opposed to the common people with genuine grievances of past violations.

*Nonetheless, the programmes cannot be discounted from being transitional justice mechanism regardless of the kind of beneficiaries and the value of their benefits.*

60. Office of the Prime Minister (2019) Luwero-Rwenzori Triangle (Support to LRDP) –Office of the Prime Minister. Available at: <https://opm.go.ug/luwero-rwenzori-triangle/> [Accessed 18 January 2020]

61. Office of the Prime Minister (2019) Karamoja Intergrated Development Programme (KIDP) – Office of the Prime Minister. Available at: <https://opm.go.ug/karamoja-intergrated-development-programme-kidp/> [Accessed 18 January 2020].



## 10. CHALLENGES OF TJ IN ZIMBABWE AND UGANDA

### Transition without transformation

Both Uganda and Zimbabwe faces a challenge of transitions without transformation. Uganda has had leadership changes through military coups for about 9 times while Zimbabwe has had one-time leadership change. However, in both instances there has not been any transformation in the governance systems which imply the continuation of authoritarianism by new leaders. In Zimbabwe, for example, Emerson Mnangagwa has been portrayed as more dangerous and equally authoritarian like Robert Mugabe, his predecessor. Within two years of leadership as President he has authorized the use live bullets by the military to disperse unarmed civilians protesting against the worsening economic situation in the country. For example, in 2018 and 2019 alone the military used live ammunitions killing at least 6 people in 2018 and 17 people in 2019)<sup>62</sup> something Mugabe never did, with the exception of the Gukurahundi massacres.

### Military interference

Military involvement in both countries political processes is immense. In Uganda, the military has always determined the country's leadership since 1962 and *"the UPDF has been manipulating soldiers since Amin, Obote and now Museveni,"*<sup>63</sup> hence little chances for a democratic transitional justice process. For Zimbabwe, *"the President seems very committed and wants the TJ to move forward only that the military is skeptical. There is suspicion between the President and the military generals."*<sup>64</sup>



*The military involvement in national politics weakens public institutions and accountability mechanisms around transitional justice institutions.*

### Lack of a national narrative

Lack of a shared national narrative and shared national vision makes it difficult to facilitate a transitional justice process that heals past wounds, united people in their diversity and contributes towards sustainable peace. Uganda's long struggle for peace has divided the country along ethnic lines and regional boundaries (especially the Northern and Southern region distinction) have entrenched local narratives more than the national narrative.

62. Mavhinga, Dewa (18 February 2020) EU Urges Zimbabwe to Bring Abusive Security Forces to Justice. Renews Arms Embargo, Asset Freeze Against State Owned Military Company. Human Rights Watch. [Online] Available at: <https://www.hrw.org/news/2020/02/18/eu-urges-zimbabwe-bring-abusive-security-forces-justice> (Accessed on 20 April 2020)

63. Interview with Charles Onencan, CEO of the United Movement to End Child Soldiering –UMECS, UGR3

64. Interview with Chirunga (NPRC) ZWR2

In Zimbabwe, on the other hand, there are many narratives on the liberation struggle, party politics and tribal conflicts. On tribal conflicts for example, there is a clear divide between Ndebele and Shona tribes whose national narratives are divergent and disagreed. A separatist attitude in both countries exists among citizens and regions that feel ‘unUgandan’ and ‘unZimbabwean’ because of the marginalization from the mainstream government development programmes, hence stifling opportunities for national unity, reconciliation and collective developmentalism.

### Funding challenges

Transitional justice is an expensive initiative that requires huge financial investment. Both Zimbabwe and Uganda have weak economies that cannot spare resources to meet, for instance, reparations and rehabilitation needs for their citizens. According to UGR1 from Uganda, *“the ICD has no resources and only sits in Gulu and with a specific narrow mandate.”*<sup>65</sup>

The Zimbabwean NPRC has a similar situation, it has offices in the capital city and does not have funding for meaningful outreach activities. In fact, both governments have considerably starved transitional justice bodies to weaken their strategic and operational effectiveness. International donors and local non-governmental organizations are evident sponsors of transitional justice in both countries, a situation which has its own pitfalls.

### Amnesties and Commission of Inquiries

The use of amnesty and Commissions of Inquiry have, in Uganda and Zimbabwe, show the state’s insincerity. State amnesties without communities’ consent benefit the perpetrators of violence. Amnesties take away opportunities for truth telling, reparation, healing and reconciliation. Commissions of inquiry in Uganda and Zimbabwe have been largely window dressed because the Commissions’ findings have never been positively used to facilitate justice and reconciliation. Instead, amnesties and commissions of inquiry have seen re-victimisation of those who testified before commissions.

### External interference

External interference is evident in both transitional justice design and resourcing (funding). The Western governments and donors have in some way offered conditional funding to Uganda and Zimbabwe to support transitional justice. Most funding conditions are centered on commitment to prosecutorial justice, as part of the transitional justice design. Such conditions upset peace negotiations and progressive compromises. For instance, Kone’s failure to support the Juba Agreement was partly because of his fears of being prosecuted. ‘Donor-defined transitional justice’ has possibilities of contradicting traditional mechanisms for transitional justice, healing and reconciliation, hence stifling with genuine transitional justice that heals the

65. Interview with Patricia (ASF) UGR1

past wounds, reconciles the society with their context and facilitates peace building.

## Government tactical delays in facilitating transitional justice

In Uganda and Zimbabwe the pace at which transitional justice initiatives are implemented are slow and research participants concurred that it is part of the governments' tactics to avoid accountability. Respondent UGR3, for example, argued that the *“seating regime also committed a lot of crimes and they don't want to set a framework which may work against them.”*<sup>66</sup> This argument is substantive if one considers that the Ugandan transitional justice policy was initiated in 2014 and only to be adopted in 2019, 5 years after. In Zimbabwe, the constitution establishing a transitional justice mechanism, the National Peace and Reconciliation Commission was adopted in 2013, but the NPRC was then set up legally in 2018, five years later. Delaying transitional justice is done with the hope that natural dynamics of time will heal the wounds of the aggrieved parties yet valuable memory and knowledge is lost in the delay process hence creating room for perpetual hatred, conflicts and hurt.

## State interference and manipulation

in addition to the government delays, fears of the state interfering with institutions they set up for transitional justice is a challenge. It was notable that in Uganda and Zimbabwe, the transitional justice mechanisms were controlled by the state which effectively took away their independence.

Emphasizing fears of state interference in Zimbabwe respondent ZWR10 says *“I don't think the state wants the NPRC to be effective. They want window dressing just to look democratic. An example is that they will conduct hearings and may not take any action after.”*

For Uganda, respondent UGR3 said his government is manipulative by using the International Criminal Court (ICC) in its transitional justice processes as a way of appealing for international donor funds and transitional justice window dressing. In this view, an overbearing state manipulation can strain opportunities for transitional justice.

*Most funding conditions are centered on commitment to prosecutorial justice, as part of the transitional justice design.*

66. Interview with Charles Onencan, CEO of the United Movement to End Child Soldiering – UMECS, UGR3

## 11. OPPORTUNITIES FOR SUCCESSFUL TJ

Regardless of the countries' projected challenges in supporting a genuine national transitional justice process, it is necessary to acknowledge that both Zimbabwe and Uganda are in perpetual transition regardless of their poor governance. Hence, there is an opportunity to work on preparatory actions that build up towards a full-fledged transitional justice process.

Awareness raising on transitional justice, utilizing community level traditional mechanisms in transitional justice and taking advantage of the existing national infrastructures for transitional justice are possible constructive interventions.

### Preparing for transition

There is room to prepare for transitional justice given the existing political environment. Respondent ZWR3 argues that there will never be a conducive environment in Zimbabwe that allows transitional justice to take place genuinely. Therefore, *“there is need to building on what we have ...struggles where never fought in a comfortable environment.”*<sup>67</sup>

This view was also corroborated by respondent ZWR7 who stated that *“the window of opportunity is not wide, so let’s do what can be done, let’s not stop, let’s test the government’s commitment continuously.”*<sup>68</sup> In this view, there is an existing window to implement activities that support transitional justice without waiting for the most conducive time frame.

*There is room to prepare for transitional justice given the existing political environment.*

### Awareness raising

As part of preparing for a genuine transition, there is need to raise communities' consciousness about the essence of transitional justice, components of transitional justice and how victims can demand justice and healing. When the time for transitional justice reaches its maturity state, it will be easier for communities to identify violations, document them and report as well as taking active steps towards demanding justice, healing and reconciliation.

### Traditional mechanisms

There is room to use traditional mechanisms to advance transitional justice within local communities without waiting for the government to create policy level frameworks.

67. Interview with Dzikamai (NTJWG) ZWR3

68. Interview with Alfred (Sibanye Animal Welfare Trust) ZWR7

*“There is transitional justice in the quotidian (daily processes), the daily communal processes which always at the micro level. It constitutes strong cement for building peace. At present the state does not rely on these approaches... because it does not thrive much in building relations.”*<sup>69</sup> Uganda and Zimbabwe, and Africa in general have strong traditional practices that advance peaceful resolution of conflicts in a reconciliatory manner. Therefore, in non-transitional societies tradition can play a strong peace, healing and reconciliation.

## International Community Support

There is an opportunity to engage the international community to support transitional justice initiatives at policy level and community level. The United Nations Development Programme (UNDP), for example, is already supporting the Zimbabwean NPRC to advance transitional justice processes.

## Focus on institutional TJ

There are opportunities to facilitate transitional justice through focusing on institutional transformation as opposed to targeting individual perpetrators. The resistance to transitional justice by the military and the ruling elite is because they feel targeted for prosecution. Hence, the need to focus on transforming the institutional practices that allow gross human right violations may helpfully deflect resistance towards more collaboration by perpetrators.

## Language mechanisms

The language of transitional justice naturally creates fear among perpetrators and it brings a picture of retribution. Therefore, there is an opportunity to engage in transitional justice processes without using its conventional language. For instance, using conflict resolution language of mediation, dialogue and negotiation could be more forthcoming to perpetrators than talking about prosecutorial justice, truth telling and reparative justice.

## Memory building

It is possible to document human rights violations and establish grassroots level memorial spaces virtually or physically. This alone cannot be limited by the existence of an authoritarian regime. As such, communities and civic society organizations can possibly engage in memory building activities without seeking the consent of the state.

## Cultivating political will

A negotiated peace process that advances transitional justice is possible if civic organizations and political actors cultivate political will. In authoritarian non-transitional systems like Uganda and Zimbabwe, it is essential to appreciate that suspicion and mistrust is very high. Hence transitional justice can be enabled by negotiation as opposed to demanding rule of law and constitutionalism.

69. Interview with Shasrty Njeru (Research and Advocacy Unit) ZWR1

## 12. RECOMMENDATIONS: TJ OPTIONS FOR NON-TRANSITIONAL SOCIETIES

Transitional justice in non-transitional societies is possible. However, the transitional justice interventions will move away from the conventional internally defined practices that emphasizes truth telling, prosecutorial justice, reparations, reconciliation and memorialization. The best approach will focus on either preparing for transitional justice in case of a transition or mooted community level interventions. In this view, there are three key recommendations that transitional justice can take.

### Transformative advocacy

Transitional justice can take a transformative approach where interventions attempt to improve the attitudes and behaviors of institutions that allow gross human rights violations. These institutions include

- human rights institutions,
- legislative institutions and
- service providers towards effective human rights protection and policing.

These institutions will require capacity building.

### Working with the grain

The approach will consider the existing as perfect enough to begin some transitional justice activities. This means accepting that there will never be a perfect environment to fight for healing, peace and reconciliation, hence the need to make preparatory actions and pushing the boundaries for democracy. Nonviolent actions and lobbying and advocacy become essential actions including government institutions and international actors.

### Building a critical mass

The people power essentially requires confronting the state to capitulate into addressing transitional justice questions. This means there is need to build a critical mass and demand evolutionary and or revolutionary changes towards a more democratic society that believes in healing the citizens' wounds. If anything communities will have to be mobilized along the few windows of opportunity to address transitional justice.

In cases where the state consent to transitional justice without creating a conducive environment for the process to become effective, which is the case in Zimbabwe and Uganda, it is largely ideal to consider negotiations to build trust and make concessions as steps towards transformative engagements.

## 13. CONCLUSION

Uganda and Zimbabwe are pre-transitional societies whose socio-economic and political developments are reflective of a militarized governance system, which obstructs transitional justice. For transitional justice to occur, at least successfully, in any polity there is need for a total change of the old regime replaced by a new political order that is amenable to cleansing the past. In cases where transition takes place on political leadership while leaving the governance system unchanged, there is high likelihood of transitional justice failure.

The countries' socio-economic and political circumstances reflect that in pre-transitional societies, transitional justice may only take place as part of preparing for the actual transition, through communities' capacity building, documentation of memory and citizens awareness raising on their right to healing, justice and reconciliation. Symbolic transitional justice activities such as group justice through development projects may also take effect. If transitional justice is to happen genuinely in pre-transitional societies there is need to have the incumbent government and ruling elites to consent, an opposition-civic society negotiated process must take effect and the incumbent

government and party will have to crumble through internal party reformist actions. In Uganda and Zimbabwe, transitional justice is impossible, but preparatory activities towards a genuine transitional justice process including negotiating for memory documentation, cumulative legislative reforms, raising communities' awareness and accelerating symbolic developmental justice are very possible.

Most work on transitional justice will largely involve the role of civic society organizations and the general quotidian transitional justice processes effected through community level engagements.

***For transitional justice to occur, at least successfully, in any polity there is need for a total change of the old regime replaced by a new political order that is amenable to cleansing the past.***



36 Arundel School Road, Mount Pleasant Harare, Zimbabwe  
Email: [research@healzimbabwetrust.org](mailto:research@healzimbabwetrust.org) / [info@healzimbabwetrust.org](mailto:info@healzimbabwetrust.org)  
[www.healzimbabwetrust.org](http://www.healzimbabwetrust.org)