Civil society leading transitional justice in southern Africa: Lessons from Zimbabwe

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Introduction

In February 2019, the African Union (AU) adopted the African Union Transitional Justice Policy (AUTJP) after almost a decade of advocacy efforts by civil society. The AUTJP is expected to act as a guideline for member states in their quest to confront and address past injustices. The adoption of the AUTJP is the first step in a continental drive to implement a coherent transitional justice mechanism that can be applied to different contexts. Just as the role of civil society was critical in the development of the AUTJP, similar proactive civil society leadership will be required to ensure the implementation of transitional justice at national level in AU member states.

Using Zimbabwe as a case study, this policy brief presents a practice model of how civil society can play an effective and proactive leadership role in pushing for the implementation of transitional justice. The briefing outlines the civil society-led process in Zimbabwe that moved the transitional justice agenda from the early stages of isolated solution-seeking initiatives like the report, Breaking the Silence, Building True Peace: A Report on the Disturbances in Matabeleland and the Midlands, 1980–1988, produced in 1997, to more organised consensus-building processes such as the 2003 Johannesburg Symposium on Civil Society and Justice in Zimbabwe, the establishment of a broad civil society coordination framework designated the National Transitional Justice Working Group (NTJWG), and the adoption of the 2013 Constitution of Zimbabwe, which laid down a number of transitional justice measures, including the establishment of the National Peace and Reconciliation Commission (NPRC). This policy brief, while focusing on a specific jurisdiction, as well as the experiences and models developed in Zimbabwe, can be used (with the necessary adjustments according to the context) in other countries in order to ensure that civil society can play a proactive role in leading transitional justice efforts.
Highlights of the African Union Transitional Justice Policy

The African Union Transitional Justice Policy (AUTJP) was adopted unanimously in February 2019 after almost a decade of advocacy work. The policy brings what has now become a global practice in post-violent conflict situations back to Africa, in line with African values of ubuntu. It covers both retributive justice and restorative justice. It is anchored upon the nine principles that constitute the basic minimum values and standards across processes.

Principles guiding the AUTJP

1. African leadership
2. National and local ownership
3. Inclusiveness, equity and non-discrimination
4. African shared values
5. Context specificity
6. Synergising, sequencing and balancing transitional justice elements
7. Due regard to the gender and generational dimensions
8. Cooperation and coherence
9. Capacity-building for sustainability

Key among the principles is the principle of African leadership, which makes it clear that implementation of transitional justice is a responsibility of African governments.

The other and equally important principle is national and local ownership, which states that partnerships – particularly at the national level – between beneficiaries and the government and between state and non-state actors are critical to nationally driven, successful transitional justice processes. It is in this principle mainly that the role of civil society is acknowledged as critical to ownership of the process. This is also linked to the principle of equity, inclusivity and non-discrimination. The principle is in line with global best practice. The United Nations High Commissioner for Human Rights has pointed out that ‘transitional justice must have the ambition of assisting the transformation of oppressed societies into free ones by addressing the injustices of the past through measures that will procure an equitable future’.5

The case of transitional justice in southern Africa

The story of Africa is a story of the liberation of a people burdened by the legacy of oppression dating back to the time of slavery, the slave trade and, later, colonialism and apartheid, as well as experiences of post-independence human rights violations.

In southern Africa, the burden of apartheid and post-colonial repression created a legacy which continues to haunt the region. Significant steps were taken in the initial days of independence. Most notable was the Truth and Reconciliation Commission (TRC) established by Nelson Mandela in South Africa. While its success remains debatable, the TRC led to the birth of a vibrant, global transitional justice movement that documented key lessons and practices which were adopted in many other contexts. What has necessitated the current push has been the relapse of many African states into repression, as well as the mere failure by even non-autocratic states to adequately confront the legacy of colonialism.

These include: failure to dismantle the colonial architecture of violence; failure to provide rehabilitation for the many victims of the wars of liberation; failure to promote inclusive economic growth; widening inequality leading to an increase in social tensions; the continued marginalisation of women; and the perpetuation of systems that prolong harmful power relations. These failures present a threat to Africa’s continuing liberation agenda. It is this legacy which, if not addressed, will create a risk of instability in the region socially, economically and politically.

It is against the background of this legacy that the African Union Transitional Justice Policy (AUTJP) presents an opportunity for southern Africa to begin an honest conversation about its past. The policy allows Africans to knit together experiences from various jurisdictions for a progressive transitional justice agenda that enhances the potential for justice, peace and reconciliation.
Brief background to transitional justice in Zimbabwe

Zimbabwe's transitional justice question goes as far back as the colonial era, and specifically the liberation war when organisations like Amnesty International and the Catholic Institute for International Relations (CIIR) documented the atrocities committed by the Rhodesian regime. Historians have also documented violations committed by liberation-war fighters against civilians. Studies have shown shocking levels of trauma in post-independence times. While there were some piecemeal overtures aimed at addressing the legacy of pre-independence atrocities, there was no comprehensive transitional justice programme. In 1980, the Zimbabwe government proclaimed the policy of national reconciliation. The government also established the War Victims Compensation Fund in 1982 in order to provide compensation for victims of liberation-war violence. Despite having a policy of national reconciliation in place, Zimbabwe had, by 1983, fallen into the Gukurahundi massacres during which the government unleashed the military in the Midlands and Matabeleland provinces where it is estimated that over 20,000 people were killed. Later, many more atrocities were committed by the government, including police brutality against rioters in 1998, farm invasions from 2000 to 2008, political violence, and Operation Murambatsvina, which displaced over 700,000 people.

Locating the role of civil society in transitional justice in Zimbabwe

While the state is equipped with the necessary resources and infrastructure for the implementation of transitional justice, civil society as a representative of various communities of interest brings wide participation and the technical expertise necessary to ensure the process is undertaken according to best practice. Without the participation of survivors and victims of past violations, the principles of equity, inclusivity and non-discrimination remain empty.

Civil society thus plays its leadership role within the parameters of these principles while acknowledging that responsibility for implementation lies with the respective African governments.

From 2003, civil society began leading transitional justice dialogue at the Johannesburg Symposium at which a number of transitional justice priorities that were ultimately adopted in the 2013 Constitution, were identified. In 2014, the National Transitional Justice Working Group (NTJWG) came into existence as a broad coalition of civil society actors eager to see the implementation of the transitional justice provisions of the Constitution.

The evolution of the current transitional justice movement in Zimbabwe can be reduced to five key steps. These are:

- Conceptualisation and consensus-building;
- Establishment of a coordination framework;
- Building the transitional justice community of ordinary people;
- Developing a national strategy; and
- Implementation.

In the subsections that follow, these steps are summarised.

Conceptualisation and consensus-building

In Zimbabwe, the transitional justice conversation was triggered by politically motivated violence which accompanied the 2000 and 2002 parliamentary and presidential elections, respectively. From the frustration of the growing number of neglected victims, civil society actors began building an alternative platform that sought to advance the needs of the victims of past atrocities. This pushed the Zimbabwe Human Rights NGO Forum, in collaboration with the Southern Africa Trauma Coalition, to convene a major meeting in Johannesburg called Civil Society and Justice in Zimbabwe. It was at this meeting, attended by over 68 organisations from Zimbabwe, that a comprehensive transitional justice programme was conceived.

Delegates at the symposium were unanimous that ‘civil society must play a central role in the development and ownership of processes that explore transitional (justice) options and solutions’, and that an elite ‘deal’ must be avoided and countered wherever possible. In this regard, many participants stressed the necessity of engaging a broader cross section of Zimbabwean civil society in order to develop awareness and lay the foundations for legitimacy (Morrell & Pigou, 2004:30).
Public outreach: Cascading the message and consulting

Civil society organisations charged themselves with developing awareness for transitional justice and laying the foundations for legitimacy. It was resolved that this was to be done through a process of civic education and public consultations. The Zimbabwe Human Rights NGO Forum (the Forum) was given the task of bringing this vision to fruition. In 2009, the Forum launched the Taking Transitional Justice to the People Programme. The first phase of the programme consisted of mainly civic education. Fifty-two meetings were held across the ten provinces of Zimbabwe. The meetings were twofold in nature. Firstly, they provided communities with education on what transitional justice is as well as important information on the unfolding events in Zimbabwe that made such justice a necessity. Secondly, they were consultative in the sense that they allowed members of the public to share their vision on how they expected the crisis in Zimbabwe to be resolved.

An outreach report was published which captured the views of the various communities. In addition, a community education tool on transitional justice, *The Peoples’ Guide to Understanding Transitional Justice*, was produced. This tool unpacked the concepts of transitional justice in a way that was easy to understand and most communities could relate to.

Policy recommendations were extracted from these reports and presentations were made to the Parliamentary Select Committee working on the reform of the Constitution. This became the second level of outreach, that is, targeting policymakers with recommendations on transitional justice policy for Zimbabwe.

In May 2013, the new Constitution came into effect in Zimbabwe, capturing some of the policy proposals presented by stakeholders. These included the establishment of the National Peace and Reconciliation Commission (NPRL) and provision for the establishment of an Independent Complaints Mechanism to handle complaints against the security sector.

A key question at this stage is how civil society can mobilise community participation in policy formulation and ensure that the significant transitional justice issues form part of the important policy discussion and, ultimately, are contained in an official document.

Coordination framework: Designing the rules of the game

Following the adoption of the 2013 Constitution in August 2013, the Zimbabwe Human Rights NGO Forum (the Forum), in collaboration with the Institute for Justice and Reconciliation (IJR) together with the Hague Institute for Global Justice (HIGJ), convened the Second International Conference on Transitional Justice in Zimbabwe. The conference was a theatre of imagination as to how the transitional justice measures in the Constitution could be envisioned in reality. It focused on the constitutional requirements regarding the establishment and operationalisation of the National Peace and Reconciliation Commission (NPRL) and on how stakeholders could work to ensure that these measures were implemented faithfully. It was at this conference that a major resolution concerning the establishment of a transitional justice coordination framework was adopted. This came in the form of the National Transitional Justice Working Group (NTJWG).

The role of the NTJWG as a coordinating platform was mainly to establish the rules of the game, coordinate transitional justice advocacy, and provide an interface between civil society and official mechanisms. The NTJWG was established before any of the official transitional justice bodies came into being. It thus became the precursor to the constitutionally mandated NPRL-led transitional justice process in Zimbabwe. The group dedicated considerable time to developing standards and guidelines in respect of specific transitional justice processes.

Developing a national strategy

A critical step that must be taken deliberately is the development of a national strategy as an advocacy tool and as a rallying point for demanding the implementation of transitional justice.

In November 2018, the National Transitional Justice Working Group (NTJWG), in collaboration with the Centre for the Study of Violence and Reconciliation (CSVR), convened a Transitional Justice Policy Symposium in order to begin the process of developing a national strategy for Zimbabwe. The symposium brought together over 113 delegates from different sectors of society, including civil society leaders, independent commissions, parliamentarians, international experts, local victim groups and experts from the African Union who had been working on the African Union Transitional Justice Policy (AUTJP). Two propositions came out of the symposium and the subsequent reflective sessions: the Civil Society Transitional Justice Strategy and a Framework for a National Transitional Justice Policy.
The push for implementation

Transformative-advocacy approach

In pursuit of the identified objective, civil society adopted the transformative-advocacy approach. Transformative advocacy is a proactive approach that pursues principled, direct interaction and engagement with systems with a view to influencing positive transformation from the inside out and from the outside in.

• From the outside in, societies and communities’ good practices and success stories can persuade policymakers to adopt certain models in order to achieve social change. A case in point is Sierra Leone’s Fambul Tok Programme which used community approaches to make some of the recommendations of Sierra Leone’s Truth Commission a reality.16 In terms of this approach, building networks for sharing knowledge and establishing communities of practice for the purpose of observation and learning, are critical. Such communities can be either domestic or global.

• From the inside out, advocacy groups can provide policymakers with sufficient knowledge and evidence to influence transformative decision-making. This can be done through, among others, field visits, exchange programmes and reflective meetings. An example of this approach is the National Transitional Justice Working Group’s (NTJWG) engagement with parliamentarians ahead of the passage of the National Peace and Reconciliation Commission (NPRC) Act in 2016 and 2017. This provided lawmakers with adequate information to pass good laws.17

‘Working with the grain’
The working-with-the-grain approach provides an opportunity for pursuing transitional justice in the ‘now’ with the resources available rather than waiting for a perfect opportunity ‘tomorrow’.

To many activists, the insistence on transitional justice in a non-transitional state seems to be folly and miscalculated. For them, transitional justice is a very straightforward task. All that is needed is: an end to/collapse of the old order; some international frameworks and a toolkit for vetting; lustration; institutional reform; an international tribunal to try some perpetrators for international crimes; to put ‘the bad guys’ in prison; and to have a truth commission and generate the kind of publicity that South Africa generated through its Truth and Reconciliation Commission (TRC). And soon, the nation is on the path to healing and recovery. The presumption, as Brian Levy18 puts it, is that there is a best practice out there which, once identified could – given ‘political will’ – be adopted, cookie cutter-like, as the solution to the problems of our countries.

Levy argues that (in the case of social transformation) there is no need to wait for perfect conditions and that we must start working with what we have in the ‘now’. He calls this approach ‘working with the grain’19 and describes it as follows:

A with-the-grain approach conceives of change in evolutionary rather than engineering terms and so directs attention away from the search for ‘optimal’ policies and toward the challenges of initiating and sustaining forward development momentum. Its point of departure is that a country’s economy, polity, and society – and the institutions that underpin each of these – are embedded in a complex network of interdependencies. To be successful, reforms cannot be re-engineered from scratch but need to be aligned with these realities. They need to be compatible with the incentives of a critical mass of influential actors … so that they have a stake in the reforms and are willing to champion them in the face of opposition from those who benefit from the pre-existing arrangements. The aim is to nudge things along, seeking gains that, though useful, often are initially likely to seem quite modest but can, sometimes, give rise to a cascading sequence of change for the better. (Levy, 2014:9)

In its strategy, the National Transitional Justice Working Group (NTJWG) recognises that there is some grain, or spaces for entry, which can be utilised to catalyse great transformative processes without the need to wait for perfect conditions. This approach, together with a number of transformative-advocacy tools, underlies the NTJWG’s National Transitional Justice Strategy.
Building a critical mass

Following the successful convening of the 2018 Transitional Justice Policy Symposium in Bulawayo, delegates realised the potential that lies in uniting different actors for action. In the words of one of the delegates:

Transitional justice won’t happen unless it becomes not only a concept and a program, but a social movement. I saw that beginning to happen in Bulawayo and saw that this movement not only includes the strategically invited participants from various institutions around the country, but also the community members and leaders we met on our field visits – we are now all in this together.

What she expressed here forms the third pillar of the National Transitional Justice Working Group’s (NTJWG) National Transitional Justice Strategy. Transitional justice will not happen when only one or two voices are heard. It will only happen when there is a critical mass demanding it and civil society leadership modelling it. This builds on the primacy of participation.

Gladwell (2000:259) writes that, although the world ‘may seem like an immovable, implacable place’, it isn’t. ‘With the slightest push – in just the right place – it can be tipped.’

The critical-mass approach requires that conversations on critical matters break open the doors and windows of the conference room and go beyond Twitter into the streets, motivating people to take action on matters they care about. Building on the success of the previous interventions in laying down the principles and clarifying the message for communities, the NTJWG approach sought to influence conversations and actions in multiple ways in order to build the critical mass that would make transitional justice unavoidable. While the working-with-the-grain approach and the transformative-advocacy approach target process, the critical-mass approach focuses on movement-building. In the absence of political will, a critical mass can create (or rather force) political will.

Policy recommendations

Every society has to develop its own strategy according to the context and based on the tools available. Once the key elements of a strategy are agreed on by all key sectors, specific actions will have to be undertaken to transform strategy into action and results. Implementing a national strategy is an ongoing process, which may take various forms under the three pillars outlined above.

In Zimbabwe, these actions have been implemented in various forms. For the Southern African Development Community (SADC) region, the following are some recommendations.

Recommendations to the Southern African Development Community Secretariat

a. Creating expert partnerships with civil society organisations. The African Union Transitional Justice Policy (AUTJP) is an example of an effective partnership between intergovernmental agencies and civil society actors. The process that saw the birth of the AUTJP involved a decade of collaboration. The SADC Secretariat can draw lessons from this process and can begin building synergies with civil society in the SADC so as to kick-start the process and begin the push for implementation in the SADC region.

b. Documenting success stories from the region. The SADC region has many success stories pertaining to transitional justice implementation. In South Africa, the story of the Truth and Reconciliation Commission (TRC) and the continuing legacy of national dialogue visible in many sites of memory across the country are examples that can be used for the advancement of transitional justice in the region.

c. Putting transitional justice on the SADC agenda. Transitional justice has not been top of the agenda for the SADC. In contrast, a considerable amount of work has been put into decentralising the transitional justice agenda at African Union (AU) level. This momentum provides an opportunity for the SADC Secretariat to tap into the regional drive and bring the conversation into the SADC.
Recommendations for national governments

a. **Connecting national systems into regional developments.** National governments can accelerate transitional justice implementation and build national will by plugging into the ongoing regional drive. This will allow them to obtain the necessary technical support from regional partners. It further allows them to benchmark their local processes against regional and international standards. This will improve the quality of their interventions.

b. **Creating government departments with a transitional justice focus.** Governments are encouraged to create special units in order to manage transitional justice processes. This will allow for a specialised, focused approach which can then spearhead the government’s way of mainstreaming transitional justice. By creating a special unit in government, opportunities for funding are increased.

c. **Partnerships with civil society.** In line with the principle of inclusivity, governments will benefit if they promote collaboration with non-state actors. This will help create national ownership and generate citizen buy-in.

Recommendations regarding civil society

a. **Collaboration with national processes.** Just as it is recommended that the state collaborate with non-state actors, it is also recommended that state-actors value collaboration with the state concerning transitional justice measures. This is in line with the principles of African leadership and cooperation.

b. **Policy modelling.** Through using the transformative-model approach, one way of pushing for the implementation of transitional justice is by developing model policies relevant for the necessary transitional justice processes. The African Union Transitional Justice Policy (AUTJP) provides a regional model of what a transitional justice policy may look like. With the AUTJP in place, civil society can begin producing domestic policy models which governments can employ in implementing transitional justice.

c. **Capacitating transitional justice actors.** Policy modelling does not only happen outside the official processes. It can happen inside official processes through engaging key actors. There are policy champions in many governments and transitional justice bodies who want to implement transitional justice according to the law and best practice but fail to do so due to lack of expertise. Provision of the relevant expertise could be civil society’s way of providing process leadership. In Zimbabwe, when Parliament was making amendments to the National Peace and Reconciliation Commission (NPRC) Bill in 2017, the National Transitional Justice Working Group (NTJWG) worked with individual parliamentarians in drafting amendments relating to gender in the Bill. These were introduced successfully and led to the current section 9 provisions of the NPRC Act.

d. **A reconciliation barometer for every country in the region.** Another important role for civil society is to monitor the process and assess its impact. When transitional justice is being implemented, such implementation must not be merely for the sake of ‘ticking the boxes’. This would amount to pseudo-transitional justice, which will not contribute to the building of sustainable peace. A best practice in that process is to capacitate local actors in monitoring the processes concerned. This can be done through the introduction of a reconciliation barometer for every country in the region so that they can take stock of how they are doing and identify the gaps.

Recommendations for development partners

a. **Supporting collaboration between state and non-state actors.** Funding partners are encouraged to build on the existing partnership that has developed from the African transitional justice agenda so as to support continuing collaboration between state and non-state actors.

b. **Long-term support for capacity-building.** Transitional justice processes are resource-intensive. In the past, mistakes were made by investing in quick-fix solutions and forgetting investments in sustainable knowledge systems like research and institutions of higher learning. Funding partners can help design knowledge systems that support practice.
General recommendations

a. Building a transitional justice knowledge economy. Many communities make the mistake of thinking that transitional justice merely requires common sense. It does not. Over the years, this has become a knowledge-intensive field with many frameworks applied in different contexts. It is a complex field that brings in different disciplines, including law, history, political science, anthropology, art and pathology. The expertise required has to be assessed according to context and stage. In view of these dynamics, all actors have to play a role in building a transitional justice knowledge economy. Possible programmes may include creating partnerships with universities regarding research, developing transitional justice internships and fellowships, hosting public lectures, and establishing exchange programmes. Such programmes will assist transitional justice bodies by providing them with the expertise needed and will deepen the community discourse on transitional justice.

b. Mainstreaming gender into transitional justice. Transitional justice processes must mainstream gender justice. This has to be treated both as a separate issue and as a cross-cutting issue. In many African countries, the legacies of violence are not merely linked to militarised states but also to the harmful power relations and patriarchal systems that sustain repressive power relations. Women, who constitute the majority of the population in Africa, have become the main victims. Transforming these relations requires deliberate, targeted investments in the area of gender justice. In Zimbabwe, for instance, efforts were made to ensure that, in the enabling Act of the National Peace and Reconciliation Commission (NPRC), gender was treated as both a cross-cutting issue and a separate issue.

Conclusion

While the basics of transitional justice look the same, each context remains unique. Responses to massive human rights violations often depend on a context that is transitional to a certain extent, but those engaged in advocacy should not wait for such contexts to be ideal before beginning their task. The African Union Transitional Justice Policy (AUTJP) is an important icebreaker with regard to the different contexts in Africa. The suggestions discussed in this policy brief may not fit every situation, but they can provide valuable lessons. It is difficult to imagine a successful transitional justice process in a society where civil society does not rise to the challenge. Even under progressive governments like the Mandela government in South Africa, civil society continued its running battles with the process, providing valuable input in the course thereof. In some cases, civil society experts end up in the official bodies providing leadership for the process. There are no limits to what role civil society is expected to play. It is important that there be early investments in imagining how each process can be designed and in identifying the necessary expertise to take it forward – as was attempted in Zimbabwe.
Endnotes


3 The symposium brought together over 70 organisations. For the full report of the proceedings, see P Morrell & P Pigou (August 2003). Civil Society and Justice in Zimbabwe: Proceedings of a Symposium Held in Johannesburg, 11–13 August 2003, Published by Themba Lesizwe on behalf of the Southern African Trauma Coalition.

4 The National Transitional Justice Working Group (NTJWG) was established in 2014, bringing together 46 non-governmental organisations (NGOs) to push for the implementation of transitional justice measures in the 2013 Constitution. For more information on the NTJWG, see www.ntjwg.org.zw.


7 See Catholic Commission for Justice and Peace in Zimbabwe (note 3 above). Many groups have argued that the figure may be much higher than estimated in this report.


18 From Brian Levy’s Working with the Grain.


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ABOUT THE INSTITUTE FOR JUSTICE AND RECONCILIATION

The Institute for Justice and Reconciliation (IJR) was launched in 2000 by officials who worked in the South African Truth and Reconciliation Commission, with the aim of ensuring that lessons learnt from South Africa’s transition from apartheid to democracy are taken into account and utilised in advancing the interests of national reconciliation across Africa. IJR works with partner organisations across Africa to promote reconciliation and socio-economic justice in countries emerging from conflict or undergoing democratic transition. IJR is based in Cape Town, South Africa. For more information, visit http://www.ijr.org.za, and for comments or enquiries contact info@ijr.org.za.

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