

**TRANSITIONAL JUSTICE POLICY BRIEF SERIES 1:  
FEBRUARY 2016**

**EXPLORING INDIGENOUS  
TRANSITIONAL JUSTICE  
MECHANISMS IN ZIMBABWE**

**PRODUCED BY: HEAL ZIMBABWE TRUST (HZN) & ZIMBABWE CIVIC  
EDUCATION TRUST (ZIMCET)**

# OVERVIEW OF HEAL ZIMBABWE TRUST AND ZIMBABWE CIVIC EDUCATION TRUST

## Heal Zimbabwe Trust



Heal Zimbabwe is a non-profit peacebuilding organization established in 2009 with a mission to prevent and transform conflicts in Zimbabwe with a particular focus on social justice and human rights protection. We envision a peaceful and prosperous Zimbabwe that celebrates diversity in local communities. Heal Zimbabwe was established to contribute to the broader national healing and reconciliation processes. The organization focuses its services towards the least accessible and underserved areas where violence is most prevalent.

## Zimbabwe Civic Education Trust



Zimbabwe Civic Education Trust is a not for profit, non-partisan non-governmental organization founded in 2000 to advance an empowered, peaceful, confident Zimbabwean society, aware of its rights, duties, responsibilities and obligations through full participation in socio-economic, political, civic and cultural development. Since 2000, the organization has done tremendous work especially in the areas of peace-building and civic education. In particular was the creation of peace committees, made up of various stakeholders including political parties to advance peace in various communities across Zimbabwe.

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## LIST OF ABBREVIATIONS

HZT	Heal Zimbabwe Trust
TJ	Transitional Justice
UN	United Nations
ZIMCET	Zimbabwe Civic Education Trust

## FOREWORD

Zimbabwe's body politic has been marred by high levels of intimidation, violence, impunity and intolerance of divergent political views. Realizing this fact, the political actors in Zimbabwe were pushed to form an inclusive government in 2008 that spearheaded a constitutional reform process ushering in a new constitution in 2013. As part of the provisions of the constitution, section 251 to 253 provides for a National Peace and Reconciliation Commission (NPRC) with a mandate to ensure post conflict justice, healing and reconciliation among other functions. For the first time in independent Zimbabwe, the government acknowledged in the supreme law of the land that it was important to look back and take measures to remedy past human rights abuses. More than two years after the adoption of the new constitution, the President of Zimbabwe appointed the National Peace and Reconciliation Commission and a Bill on the same has since been introduced in Parliament.

It is in this context that Zimbabwe Civic Education Trust and Heal Zimbabwe Trust are producing this paper to inform national conversations on transitional justice and the operationalisation of the NPRC. The focus of this particular paper is to look at the efficacy of traditional mechanisms in transitional justice in Zimbabwe. The role of indigenous knowledge systems and use of local capacities can no longer be underestimated in development. Traditional mechanisms are often viewed with a lot of suspicion possibly because they do not fit in western perceptions and notions of justice. They are often located deep in rural areas and operate oblivious of national initiatives. Whilst traditional or indigenous mechanisms of justice have their own shortcomings such as bias against women and children, failure to abide by international human rights standards and failure to document judgements among other shortcomings, the mechanisms remain key in ensuring that justice is domestically rooted and owned by local communities for sustainability of peace and justice. It is imperative to build on cultural and contextual resources present within a setting. Far from being archaic, this paper argues that traditional mechanisms are actually modern phenomena as they have been adapted overtime. Traditional mechanisms of transitional justice facilitate citizens to have access to justice in less costly ways and foster greater ownership through the use of local languages. They have been deployed successfully in the Rwandese gacaca courts, the mato oput of Uganda, barza intercommunautaire of DRC and bashingantaha of Burundi among other countries. Whilst traditional mechanisms of transitional justice are not panacea for all ills, they are an approach that so far has been underestimated by actors. They demonstrate that beyond the state, there are other existing institutions and actors for ensuring peace and justice.

The paper is informed by the work ZIMCET and HZT have been conducting in the last 15 years and 6 years respectively. The paper does not seek to put finality on the matter of traditional mechanisms of transitional justice but rather seeks to reignite discussions on the efficacy of traditional mechanisms and offer recommendations on how they can be strengthened in light of their shortcomings. It is hoped that the paper will provide useful discussion points on how Zimbabwe can deal with its dark past and set a solid foundation for the future.

## ACKNOWLEDGEMENTS

This publication was made possible by a number of stakeholders. Zimbabwe Civic Education Trust (ZIMCET) and Heal Zimbabwe Trust (HZN) would like to express their sincere gratitude to all the communities in rural and urban Zimbabwe who have allowed them into their homes over the past few years to learn more about their experiences on politically motivated and state sanctioned human rights violations. The experiences in most instances are quite harrowing and are never easy to narrate both for the survivors and civil society groups working in the field of human rights and peace building.

Despite the sometimes difficult operating environment, traditional leaders welcomed the two organisations into their areas of jurisdiction to discuss critical issues on human rights. Such cooperation and sacrifice is greatly appreciated. In addition, ZIMCET and HZN wish to thank their community structures, in particular the peace committees, peace clubs, community based organisations, early warning committees and community human rights monitors for their enormous contribution in building peace and fostering a culture of human rights through documentation of human rights violation and their community based response mechanisms to human rights violations over the years.

Heal Zimbabwe Trust and ZIMCET acknowledge the support of their key funding partners without whom projects and logistical arrangements would have been impossible to carry out.

The understanding and cooperation of various government bodies including the Zimbabwe Republic Police and other institutions in this work is acknowledged.

Lastly, profound gratitude goes to all of the ZIMCET and HZN staff members who continue to work tirelessly under difficult circumstances to facilitate reconciliation and justice in Zimbabwe.

## 1. INTRODUCTION:

The serious crimes and violations that victims of politically motivated and state sanctioned violence were and have been subjected to in Zimbabwe are numerous, multiple and recurring<sup>1</sup>. From the colonial period<sup>2</sup>, to independence and present day Zimbabwe these crimes and violations are well documented in human rights reports<sup>3</sup> and well known to those working on Zimbabwe. One peculiar aspect of this bleak situation in Zimbabwe is that the gross human rights violations have been committed with thousands of people killed, maimed, disappeared, properties burnt down, livestock stolen and livelihoods destroyed<sup>4</sup>. What remains lacking in Zimbabwe is an effective and final way for the nation to come to terms with this bleak past in a process that provides the truth, justice, reformed state and security institutions, remedies and guarantees of non - repetition<sup>5</sup>. Zimbabwe Civic Education Trust (ZIMCET) and Heal Zimbabwe Trust (HZZT), two leading human rights organizations advocating for community justice in Zimbabwe believe that whether these challenges occurred in urban or rural settings or were committed by state agents or private individuals remedies must be accorded to victims<sup>6</sup>.

In Zimbabwe, there is no doubt that real fears of being sent to prison abound for those who have been fingered in past gross human rights violations either as planners, financiers or as the actual

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<sup>1</sup> See reports from the Heal Zimbabwe Trust on politically motivated and state sanctioned violence in Zimbabwe on [www.healzimbabwe.co.zw](http://www.healzimbabwe.co.zw)

<sup>2</sup> See NJ Kriger, *Zimbabwe Guerrilla War: Peasant Voices*, (Cambridge, Cambridge University Press, 1992) at 156 and H Luc "Why Reconciliation Failed in Zimbabwe" <http://www.idea.int/publications/reconciliation>.

<sup>3</sup> For example see the report on the Matabeleland massacres in the late 1980s in See Catholic Commission for Justice and Peace and the Legal Resources Foundation (CCJP and LRF). *Breaking the Silence, Building True Peace: A Report on the Disturbances in Matabeleland and the Midlands 1980 – 1988*. LRF and CCJP, Harare, 1997

<sup>4</sup> See, An Analysis of the Zimbabwe Human Rights NGO Forum Legal Cases 1998 – 2006" Zimbabwe Human Rights NGO Forum June 2006, copy on file with author. The report outlines close to 15 000 cases of human rights violations that have been reported to the organization since 1998 and other reports from Amnesty International and Heal Zimbabwe Trust

<sup>5</sup> Declaration of the Johannesburg Symposium, August 2003, in Civil Society and Justice in Zimbabwe Summary of Proceedings of a Symposium held in Johannesburg 11-13 August 2003. <http://www.santep.co.za/satz/zim2003.htm> (last accessed 10 January 2006).

<sup>6</sup> Redress Trust, *Implementing Victims' Rights, A Handbook on the Basic Principles and Guidelines on The Right to a Remedy and Reparation*, March 2006 United Kingdom at 22.

perpetrators. Communities and other stakeholders also fear a backlash from those especially who have served in the security forces or are connected to the state especially if they are treated too harshly<sup>7</sup>. Victims and communities affected at the same time are afraid of the recurrence of past human rights violations if these perpetrators are not brought to book. This presents a vicious cycle which has to be handled in dynamic and innovative ways taking into consideration the views of perpetrators and victims alike.

The dilemma Zimbabwe faces is not uncommon to many other countries that have experienced similar situations such as Rwanda, Kenya, Uganda, South Africa, Malawi and Mozambique. These are countries which witnessed gross human rights violations at a scale where the normal court systems could not even begin to fathom taking every perpetrator to court because the judicial system just could not cope<sup>8</sup>. More importantly and for purposes of this briefing paper it is encouraging that all is not lost for Zimbabwe. The country and its people have long held traditions and justice systems capable of handling some of the serious human rights violations cases especially those that occurred at a community level. This briefing paper seeks to discuss the traditional justice methods that are currently in use and that have the potential to deal with the dilemma that Zimbabwe finds itself in with regards to handling past gross human rights violations. Commenting on the efficacy of traditional justice mechanisms and transitional justice the UN former Secretary General Kofi Annan noted in his August 2004<sup>9</sup> report that,

... due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their often vital role and to do so in conformity with both international and local tradition.

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<sup>7</sup> F Marvin, *Out of the Shadow of the Night: The Struggle for International Human Rights* (Delarcote Press, New York 1989).

<sup>8</sup> S Landsman, "Alternative Responses to Serious Human Rights Abuses: Of Prosecutions and Truth Commissions" <<http://www.law.duke.edu/journals/lcp/articles/lcp59dFall19996p1.htm>>

<sup>9</sup> United Nations Security Council 2004. Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies (S/2004/616). August, 3. From <<http://daccessdds.un.org/doc/>

## 2. CIVIL SOCIETY WORK ON TRADITIONAL JUSTICE SYSTEMS AND MECHANISMS IN ZIMBABWE'S COMMUNITIES.

ZIMCET and HZT have long been working in diverse Zimbabwean communities that have been affected by politically motivated violence and violence perpetrated by state agents or those acting with their acquiescence. In most of the programs, the two organizations have utilized well established traditional mechanisms to bring communities together, restore livelihoods, and establish peace and reconciliation. The two organizations as with many other civil society organizations in Zimbabwe envisage a situation where traditional justice mechanisms can work alongside other transitional justice mechanisms within the larger justice and reconciliation framework in Zimbabwe.

Indeed, traditional justice systems and their accompanying mechanisms have been in existence in Zimbabwe for long periods and they have existed primarily for the purpose of resolving conflicts within and between communities. Some of these traditional institutions and practices have however been dogged by a myriad of challenges such as being undermined by serious and real accusations of politicization, resistance from rising Christian culture and practices, accusations of serious bias against women, unprofessionalism and a failure to embrace internationally recognized standards in judgments. Victims of serious crimes and violations that ZIMCET and HZT have spoken to often mention serious hesitation to bring cases to authorities they do not trust. Women respondents especially in the rural communities mentioned that most traditional justice mechanisms are biased in favor of men. Violations and crimes of a sexual nature against females carry heavy stigma, making such cases difficult if not impossible to bring forward in the present setting of most Zimbabwean traditional justice systems. Normally, the hearing of such cases occurs in the open, often under a tree, with no protection or privacy for victims to come forward. The traditional leaders who comprise the body to hear the cases most

of them are labeled partisan and instigators of human rights violations. Most of the traditional leaders are also old men and, if one is lucky, a few old women as well.

Yet in spite of all these challenges, ZIMCET and HZT believe that traditional justice mechanisms have a huge potential to bridge the community fissures that still exist from years of politically motivated and state sanctioned violence in Zimbabwe. The past and current work administered by ZIMCET and HZT has proven that if traditional justice systems are administered effectively they can prove to be more transparent, less expensive and therefore more accessible, more in touch with community values, more conveniently located, and easier to understand than their formal system counterparts due to the use of familiar and indigenous languages. Indeed, studies have also shown that those who preside over the traditional justice mechanism and processes are largely trusted in communities which offers significant opportunities for reconciliation and dispute resolution in non-adversarial ways.

### 3. THE SPIRIT OF HUNHU/UBUNTU IN ZIMBABWE AND ITS RELATION TO TRADITIONAL JUSTICE

The spirit of Hunhu/Ubuntu forms the embodiment of peaceful human coexistence in African cultures. Ubuntu is an ancient African word meaning 'humanity to others'. "The community values define an individual as a person and in addition the traditional values and ethics that are to be upheld by the members of the customary community. Any violation to these ethical values is an offence to the whole community and is punishable"<sup>10</sup>. Zimbabwe is no exception. Some of the characteristics that are reflective of Hunhu/Ubuntu are the affirmation of other peoples' humanity, unity, community building, and respect for other peoples' rights and a general fear for wrong doing which is supported by the need to voluntarily acknowledge wrongdoing when

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<sup>10</sup> Matavire. M, 2012, Interrogating the Zimbabwean Traditional Jurisprudence and the Position of Women in Conflict Resolution: A Case of the Shona Tribes in Muzarabani District, International Journal of Humanities and Social Science

found guilty<sup>11</sup>. This spirit guides and informs a whole host of traditional justice institutions and mechanisms that have been practiced in Zimbabwe for centuries to deal with community problems, crime, social maladies, natural calamities and other social problems. It is the two organizations' belief that with a view to finding lasting solutions to Zimbabwe's justice challenges it is necessary to adopt some traditional justice measures. This is because of a whole list of reasons which might incapacitate the state from carrying out full-fledged prosecutions or even robust truth seeking mechanisms such as lack of resources, weak judicial systems and a sheer overload from too many victims and perpetrators on the justice system.

#### 4. GUARANTEES TO RIGHT TO A REMEDY PROTECTED IN INTERNATIONAL AND DOMESTIC LAW AND TRADITIONAL SYSTEMS IN ZIMBABWE

Victims whether in a rural or modern setting have a clearly established right to remedy and reparation for serious violations of international human rights law and international humanitarian law<sup>12</sup>.

**4(i) Remedy** encompasses the right to:

- equal and effective access to justice;
- adequate, effective and prompt reparation for harm suffered;
- Access to relevant information concerning violations and reparation mechanisms; and access to fair and impartial proceedings.

**4(ii) Reparation** is a part of remedy. Reparation has five components: (1) **restitution** (seeking insofar as possible to restore victims to their original state prior to the violations, including land

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<sup>11</sup>Samkange S, Samkange TM 1979. Hunhuism or Ubuntuism: A Zimbabwe Indigenous Political Philosophy. Salisbury: Graham Publishing.

<sup>12</sup> See The Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violators of International Humanitarian Law (adopted 16 December 2005 UNGA 60<sup>th</sup> Session, Resolution 147 (A/Res/60/147)

restitution); (2) **compensation** for economically-assessable damage; (3) **rehabilitation** (ensuring access to medical and psychological care and legal and social services); (4) **satisfaction** (measures such as attested public disclosure of the facts around disappearances, abductions and killings; identification and burial of the dead; and apologies from and sanctions against perpetrators); and (5) **guarantees of non-repetition**.

## 5. CULTURAL PRACTICES THAT COMPLIMENT TRADITIONAL JUSTICE SYSTEMS IN ZIMBABWE

Zimbabwe's traditional justice system is made up of an uncodified system consisting of a hierarchy of courts that are largely recognized by most people. There are different characteristics to the composition of the courts; the costs to be incurred by litigants; the participation of women; and enforcement of rulings. Some of them are discussed below:

### 5(i) Composition:

Generally the traditional justice system is manned and run by men. Membership to the *dare* (court) is hereditary on patrilineal lines and there is very little in terms of women presiding over the cases. In most instances members of the courts will be old men, who are married and regarded to be knowledgeable about life and local customs. Women usually only serve as victims, witnesses or as part of the audience who may be asked to vote for a decision in the event of a stalemate.

### 5(ii) Structure:

These will vary from community to community but there are general similarities. In the majority of communities in Zimbabwe, there are three types of courts that are ordinarily recognized in the traditional system and these are: the **family court**, the **village court** and

the **chief's court**<sup>13</sup>. This system is largely patrilineal and emphasizes the importance of men as adjudicators but has been used to deal with cases of human rights violations in instances where this has been necessary.

#### **5(iii) Enforcement:**

Remedies in traditional court settlements take various forms. Remedies range from apologies to the payment of fines such as monetary awards, cattle, goats, sheep, and fowls depending on the gravity of the offence. In such informal processes, it has been observed that adherence to judgments of the court processes can be weak. However, the main advantage of the traditional justice system and what ZIMCET and HZT sees as the power of the spirit of Ubuntu/Hunhu is the effectiveness of the spiritual sanctions which usually weigh down on an individual perpetrator and his or her family to comply. These spiritual sanctions usually take the form of bad omens besieging the immediate and extended family of the perpetrator; unexplained deaths, children who cannot stay in marriages, unexplained illnesses, failure to secure jobs, extreme poverty among other sanctions.

#### **5(iv) Appeal Processes:**

Dissatisfied parties are allowed to appeal against chiefs' judgement to the provincial magistrate's courts. The traditional courts system places emphasis on simplicity and informality in order to achieve amicable dispute resolution which in the end should restore and promote social harmony within the community.

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<sup>13</sup> Gombe, 1980 Tsika Dzava Shona, Harare. College Press

## 6. THE DIFFERENT TYPES OF COURTS RECOGNIZED AS TRADITIONAL ONES IN ZIMBABWE ARE DESCRIBED BELOW.

### **6(i) Family Court:**

This is usually the first port of call when families and communities deal with disputes. It is mainly used to deal with internal family disputes of a domestic nature such as divorcees, incest, disputes between parents and their children or cases involving in laws. However, this system has also been used in cases involving theft, assault and wrongs committed to other families in the community wherein cases can be resolved in between families amicably. Families in Zimbabwe have mostly used this process to deal with cases involving theft of livestock, destruction of granaries (food storage sites), crops and assault in the communities. Families have summoned each other for talks which in many cases have led to peaceful resolution of disputes.

### **6(ii) Headman's Court:**

This court is usually presided over by the Headmen in the community. These are usually men who have inherited such positions of power by patrilineal linkages. In a number of instances where the family dispute system has failed to resolve the cases they are referred to the Headman's court. Kraal heads preside over the cases which are usually valued to the tune of USD 100.

### **6(iii) Chief's court:**

The highest traditional court is the chief's court. The chief settles disputes with the help of advisors who are chosen on the basis of intelligence, knowledge of the customs and eloquence of speech. This court transcends the limitations of both family and village courts to involve the larger community. Community elders along with the traditional chief are the judges in judicial proceedings. Chiefs' courts are empowered to hear a variety of

civil matters in which customary law would appear to be applicable provided that the defendant is a resident of the area in which the court operates or that the defendant agrees to be tried by that court.

## 7. DISCUSSING ZIMBABWE'S TRADITIONAL JUSTICE MECHANISMS

In addition to the traditional justice mechanisms discussed above, Zimbabwe has rich customs which are well engrained in its society and capable of dealing with different types of crimes committed in communities. These mechanisms can as well be used to rectify the wrongs and human rights violations of the past and contribute to transitional justice efforts.

These mechanisms are steeped in humanism and the spirit of Hunhu/Ubuntu which has been discussed earlier. Some of the mechanisms have attracted criticism from different religious groups as being archaic and barbaric. This criticism is unfair and is often made by people from other cultures that treat anything that does not conform to their culture as not modern and pre-historic. It is ZIMCET and HZT's wish that the nation takes stock of these long held traditions and interrogate how they can assist in rebuilding the nation, communities and its peoples to achieve much needed justice, healing and reconciliation. The following exposé discusses the different mechanisms that are practiced by many Zimbabweans and which ZIMCET and HZT have been engaging with communities to seek reconciliation and justice.

### 7(i) Kurova guva/Umbuyiso

The spirit of Hunhu/Ubuntu in Zimbabwe enjoins citizens and communities to value human life even in death. It is taboo for one to take the life of another as much as it is in Western criminal justice systems. In the traditional sense, it can even be more challenging dealing with such cases because as for Zimbabweans, they value their dead to the point that they have to be **"brought"** back home to continue looking after their families after a period of one year after their demise<sup>14</sup>.

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<sup>14</sup> D Summerfield "Raising the Dead: War, Reparation, and the Politics of Memory", (1995) British Medical Journal, 311 at 495

This tradition is known as *kurova guva/umbuyiso/magadziro* ((bringing back the spirit of the deceased) <sup>15</sup>. Indeed then if the person has died under mysterious circumstances or disappeared and his or her remains are not found, it becomes impossible to carry out such an important ritual. People in most Zimbabwean communities believe that if this process is not carried out there can be no closure or finality to this person's estate and death which has the potential of bringing calamities to the perpetrator and his family and even the victims' family as well. HZT as part of its contribution to the process of national and community healing assists in various ways for such ceremonies to be conducted.

### **7(ii) Nyaradzo (Memorial Service)**

This is a practice meant to bring closure to the family of the deceased and is usually performed a month after the burial of the deceased. Most of the victims of politically motivated violence in Zimbabwe were not properly mourned <sup>16</sup>, with some having their *nyaradzo* postponed for security reasons. Civil society organizations such as HZT donated tombstones which were erected as part of the memorial service. *Nyaradzo* culminated with the erection of these tombstones as memorials, to remind the community of the impact of gross violations of human rights and as a mechanism of deterrence.

### **7(iii) Ngozi/Avenging spirits**

In Zimbabwean culture and traditions, Ngozi is regarded as a metaphysical phenomenon and a belief system in which those who die unnaturally are believed to return in spirit form to force those responsible for their death to compensate and reconcile with the deceased's family.

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<sup>15</sup> See E Benyera, Exploring Zimbabwe's Traditional Transitional Justice Mechanisms, *J Soc Sci*, 41 (3): 335-344 (2014)

<sup>16</sup> Heal Zimbabwe Trust has carried out work with a majority of victims from the 2008 violence and has collected strong evidence on the needs of this group of victims.

In cases where the perpetrators of a murder refuse to cooperate through confessing and compensating for their wrong deeds, the family of the deceased can invoke the spiritual sanction of ngozi to force the family of the perpetrator to initiate the reconciliation process. So the ngozi mechanism has been used for centuries in Zimbabwe in assisting to bring perpetrators to account and settling the closure of unsolved deaths. When the ngozi is appeased, the family of the deceased usually is able to then carry on with such processes as kurova guva/umbuyiso and nyaradzo/memorial service.

#### **7(iv) Nhimbe/Ulima/Collaborative platforms**

This is a traditional communal African practice mostly practiced in Zimbabwe in which communities come together to pool their resources and labor to offer assistance, usually to the vulnerable members of the community. The same institution is also used for other purposes such as pooling labor during peak harvest time. In terms of building resilient livelihoods, it is used to shield orphans and vulnerable children as well other child headed households from hunger by providing them with pooled labor to enable them to cope with farming labor demands.

ZIMCET and HZT have captured the dynamism of such a process and utilized it as a truth seeking and acknowledgement mechanism wherein victims met their perpetrators in a non - hostile situation. For the communities where the two civil society organizations have been working to reconcile perpetrators and victims the efficacy of nhimbe lies in the fact that it provides a non - hostile platform for victim and perpetrator to meet. It is a sure way of establishing the truth for everyone in the community to know, seeking acknowledgement from the perpetrator and securing reparations for the aggrieved<sup>17</sup>.

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<sup>17</sup> For an expose on the concept of nhimbe/ulima and how it has been used in transitional justice processes in Zimbabwe see reports from <http://www.healzimbabwe.co.zw/#>

In terms of process, Nhimbe/ulima relies on a middleman or a family friend known in local parlance as sahwira. The Sahwira knowing fully well what has transpired with regards to the violations be it stock theft, destruction of homes and crops will initiate talks between aggrieved families to hold a nhimbe in the victim's field. The whole community is informed of the day of the nhimbe and they will congregate at the victims' homestead to assist in ploughing, weeding and other agricultural processes that will need to be carried out. As the day progresses and almost when all the tasks are done, the Sahwira acting as a family friend and mediator will at some point introduce the matter of human rights violations, wrongs committed/perpetrated against the victim family and ask that the identified perpetrator give their own narration of what happened, why they did it and to ask for forgiveness.

This is never easy but the fact that the environment is cordial and secure, perpetrators usually come forward because they want to cleanse (kuchenuwa) themselves and be relieved of the "burden" of guilt they would have been carrying for long periods of time, or even facing the wrath of their own kith and kin who might be blaming the perpetrator for bad omens besieging their family through unexplained deaths, children who can't stay in marriages, unexplained illnesses, poverty among other challenges. When the perpetrators confess, the whole community will be witness and it is then the duty of local traditional leaders such as chiefs to give their judgments which might ask for reparations to the aggrieved family among other remedies.

Again when all truth is established the victim's family can now begin processes to honor their dead, "bring" them back to the homestead through processes of kurova guva, performing memorial services and relieving the perpetrators family of the ngozi and bad omens that could have befallen them. In other instances there have been cases where victims' families have refused to bury their dead demanding compensation before the burial. This has caused

acrimony and government has usually intervened forcing the victims' family to bury the dead relative.

### **7(v) Botso (Self shaming)**

Botso is an institution that is used in intra-family wrongdoings, usually when a child abuses a parent. There are a number of cases where young men and women rebuked their parents or abused their parents when they tried to stop them from engaging in politically motivated violence or being conscripted into political gangs. As a transitional justice mechanism, botso works in that it allows the whole community to know the truth as the process involves the perpetrator wandering around the community telling every person he or she meets the wrongs that they committed. In the process of roaming the villages the perpetrator collects an assortment of grains to be used for brewing beer for his/her cleansing ceremony. This practice is not widespread as cases of intra- family violence are usually solved at the family level without escalating the matter to the spiritual or 'living dead' level<sup>18</sup>.

### **7(vi) Chenura (Cleansing Ceremonies)**

This is a set of cleansing ceremonies undertaken to appease the land after the commission of a crime such as murder. Zimbabwean people believe that such crimes defile the land, angers ancestors and lead them to withdraw blessings, chief among them rain and peace. Only after the land would have been cleansed would peace, rain and other blessings return to the land.

Once the family and community-based rituals of nyaradzo and kurova guva have been performed, the healing process in rural areas usually takes on a grander dimension in which the land is cleansed of spilt blood, made holy and ready to receive the blessings of rain and bumper harvests. The traditional leaders preside over the cleansing ceremonies. The offender provides

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<sup>18</sup> Ibid Benyera

the animal which is slaughtered during the ceremony, and traditional beer is brewed and consumed as part of the ceremony.

## 8. THE POWER OF TRADITIONAL JUSTICE MECHANISMS AND PROCESS IN ENHANCING TRANSITIONAL JUSTICE

Through the work that has been carried out by ZIMCET and HZT over the years, there is a sound understanding that traditional justice systems and mechanisms in Zimbabwe have the ability to contribute to transitional justice in Zimbabwe. There are inherent weaknesses in the system of course but these can be worked on and improved. The discussion below describes how traditional justice fundamentals such as truth seeking, deterrence, reparative justice, reconciliation, closure have been achieved in different communities in Zimbabwe.

### **8(i) Truth Seeking:**

Traditional justice mechanisms have the potential to bring out the truth about past human rights violations as the perpetrators are allowed to present their stories and narrations in community based environments where their safety is guaranteed by the rest of the community.

As much as in modern criminal prosecutions and court processes the risk of half - truths, lies and manipulation of information can never be done away with. However, the fact that a perpetrator comes seeking for community cleansing and is also aware of the need to “cleanse” his own family of social ills bedeviling his relatives facilitates a natural inclination towards bringing out the whole truth.

The kind of social and community ostracism that accompanies perpetrators who are perceived to be uncooperative with the truth seeking process is enormous. A whole host of social

repercussions can be invoked by communities when dealing with recalcitrant culprits. Usually communities can shun attending or associating with the perpetrators' family at community gatherings, funerals or even weddings. In a close knit society/community this is not desirable and thus will usually force a culprit to become an acceptable member of the community by telling the truth and being seen as a person who values Hunhu/Ubuntu. Such truth seeking mechanisms are central to the promotion of reconciliation in divided societies, healing wounds that trials and purges can deepen. It can as well be that for the family and friends of victims there can be no closure, no moving on and leaving the past behind, without knowing what happened to their loved ones. As a bereaved Zimbabwean woman would confess, "I am ready to forgive, but I need to know whom to forgive and for what."

**8(ii) Acknowledgement:**

This is closely connected to truth seeking and seeks to place the victims in a place where they are recognized as human beings by the perpetrators who acknowledge and accept what wrongs they have committed. In Zimbabwe, most victims especially in the rural communities know the people who committed rights violations against them. ZIMCET and HZT have learnt through their engagements with communities that what victims need at times is not necessarily the truth or information but an acknowledgement by the perpetrators. Traditional justice systems such as *nhimbe* are plausible platforms for achieving this goal. By knowing what happened, communities are able to debate honestly why and how dreadful crimes came to be committed. To identify those responsible, and to show what they did, is to mark them with a public stigma that is a punishment in itself, and to identify the victims, and recall how they were tortured and killed, is a way of acknowledging their worth and dignity<sup>19</sup>.

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<sup>19</sup> A Neier, *What Should Be Done About the Guilty?*, (1990) 37 *New York Review Books*

### **8(iii) Reconciliation:**

This is a difficult term to define but is generally taken to be a cancellation of enmity ... achievable only when perpetrators and beneficiaries of past injustice acknowledge collective responsibility for wrong- doing and when victims, through the same process, regain their self – respect. In Zimbabwe it has been observed that in traditional justice mechanisms victims and perpetrators meet in amicable situations and environments, discussing what transpired<sup>20</sup>. Through the help of family friends and traditional leaders such as Headmen and Chiefs they are able to come up with a way forward and usually the talks end up in reconciliation through the holding of cleansing ceremonies and payment of reparations.

### **8(iv) Deterrence**

As much as deterrence is seen to be the preserve of modern day judicial systems, traditional justice systems in Zimbabwe have the potential and ability to deter future human rights violations perpetrated in communities. The invocation of the ngozi or avenging spirits against the perpetrator and his or her family is one mechanism that has played a huge role in ensuring that young people do not engage in criminal activities in the name of political parties or other motives. The spiritual sanction of ngozi removes collective guilt that is usually abused to hide behind gross criminal acts and it individualizes the offence. Several advocacy campaigns have been carried out in Zimbabwe especially in rural communities by ZIMCET and HZT piggybacking on the spiritual sanction of ngozi/avenging spirits that if one murders someone in the community they must know that they will be held accountable spiritually by the avenging spirits of the dead community member and they will have to answer on their own rather than in a group.

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<sup>20</sup> M Minnow, *Between Vengeance and Forgiveness* (1998) at 25 in HJ Steiner and P Alston (eds) *International Human Rights in Context: Law, Politics, Morals* (2<sup>nd</sup> Edition Oxford University Press) 1143.

### **8(v) Reparations**

Traditional justice mechanisms rely mainly on the power of reparative justice. The processes are usually never confrontational. The main aim being to repair the damages caused and taking back victims to a situation they were before. In Zimbabwe, the majority of cases that occurred in rural communities involved theft of livestock, destruction of granaries, food reserves, maiming of fellow villagers leaving them crippled and in some instances murders and rapes. It is important therefore that since traditional platforms already exist and are known to function well, they are instituted to bring perpetrators, victims and community members to discuss what transpired, repayment plans and forgiveness. Where perpetrators cannot pay it is essential that other forms such as community service in the fields, and community are used to make the perpetrators pay<sup>21</sup>.

### **8(vi) Closure**

Traditional justice mechanisms have a way of bringing closure to most cases of human rights violations and community crimes. When victims and perpetrators meet, discuss and finalize the outstanding issues, there is usually an agreement to bring closure and finality to the case. This usually takes the form of performing traditional rituals such as nyaradzo/memorial service for the deceased, kurova guva/umbuyiso and kuchenurwa/cleansing for the perpetrator. In addition, because the fate of the disappeared, dead, stolen livestock is known, it becomes easier for victims' families to get death certificates, and even finalize the estate of the deceased. Inheritance issues can also be dealt with in cases where families would not have distributed the estate fearing that the person might emerge one day.

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<sup>21</sup> See E Kiss, "Moral Ambition Within and Beyond Political Constraints: Reflections on Restorative Justice", in R.I Rotberg and D Thompson (eds), *The Morality of Truth Commissions* (Princeton, NJ: Princeton University Press, 2000) 68.

### **8(vii) Enhanced community unity and security**

The fact that communities are able to congregate at victims' homesteads, sit under trees, drink traditional brews and perform rituals together cement traditional values of Ubuntu/Hunhu, oneness and unity. This is one important and key aspect of traditional justice mechanisms that are employed in Zimbabwe in the pursuit of transitional justice.

### **8(viii) Justice**

Many will argue that traditional justice mechanisms usually might not be able to guarantee due process for perpetrators of gross human rights violations especially in communities where there is no sound knowledge of the law. However, ZIMCET and HZT argue that in instances where the crimes and human rights violations do not need scientific verifications or are embedded in deep legal challenges/innuendos it is possible to achieve justice for past human rights violations through traditional justice mechanisms. In cases where livestock has been stolen, killed or maimed, the simple solution would be to ask for the perpetrator to bring back or repay whatever was stolen. In the case of crops destroyed, the perpetrator can be asked to pay back the grain or even pay by way of working for that family for a given period without having to go to criminal or civil courts where the case might drag expending huge resources and time.

## **9. WHAT CONDITIONS NEED TO BE MET BY TRADITIONAL JUSTICE MECHANISMS?**

Communities where ZIMCET and HZT have been working over the past years have expressed interest and need for traditional justice mechanisms to be accorded a higher level stake in dealing with cases of past politically motivated human rights violations. There is no doubt that

there are potential risks of injustices especially against women and child victims if due care is not taken to put control measures on these processes which remain largely led by men. Indeed arguments have been raised over the ineffectiveness of traditional justice mechanism in Zimbabwe to deal with gross human rights violations such as torture and rape which are proscribed internationally. ZIMCET and HZT are of the view however that digging in and not allowing the process of traditional justice to be put to the test will not help the situation.

There are well documented cases and instances where traditional justice systems and institutions have been utilized and they have delivered much needed justice and peace in communities. Moreover, in many instances some of the crimes that have been committed are not regarded as international crimes or gross human rights violations. In addition, in any implementation of traditional justice mechanisms, there must be proof that the processes do not impinge on fundamental principles of international human rights law. Thus, for example, traditional methods of reparation through the duty to surrender a female relative as payment for a crime would be unacceptable no matter how steeped in tradition they might be. Where people have been wronged through theft of livestock, destruction of crops, houses, assault and other related crimes there should be an effort to try and use traditional justice mechanisms which in Zimbabwe's are quite reparative and can lead to more peaceful co - existence in communities.

## 10. RECOMMENDATIONS

ZIMCET and HZT recommend that if traditional justice mechanisms are to have any meaningful impact on helping victims in Zimbabwe realize their rights to remedy and reparation, efforts need to be made to reinvigorate traditional justice systems and apply them to current debates on transitional justice through some processes outlined below:

**10(i) Harmonised Processes:** There is need for a harmonized process between the statutory courts and traditional justice processes in Zimbabwe. For example, traditional justice cases that violate rights enshrined in formal law should immediately be removed to a constitutional or statutory court. The constitutional court will then rule on the constitutional issue alone and remand the case back to the customary court with guidance on how the judgment needs to change to comply with constitutional provisions.

**10(ii) Alternative Remedies:** In instances where traditional justice systems are not in a position to provide remedy and reparation, the government in consultation with communities and civil society groups such as ZIMCET and Heal Zimbabwe should come up with alternative systems to enable victims of serious crimes to realize their rights to redress under Zimbabwean law.

**10(iii) Gender Sensitivity and Mainstreaming:** Traditional justice systems and processes are often male-dominated and a hostile location for women participants - potentially discouraging women from bringing cases and/or affecting the impartiality of proceedings. While courts are more accessible and the judgment of traditional authorities generally respected, traditional norms often violate women's substantive and procedural rights, in some cases to grossly inhumane proportions. There is therefore need to mainstream and ensure gender mainstreaming is made a key component of the traditional justice system.

**10(iv) Holding State Actors Accountable:** Traditional justice systems must not be used to try cases of state officials or those who served as government officials. This should be handled by national court processes to ensure that punishments such as lustration and being relieved of public duties are well executed.

**10(v) Documentation Of Traditional Justice Processes And Outcomes:** The idea of documenting traditional justice processes especially those occurring at community levels should not be seen as an attempt to codify or formalize customary law, but instead stimulate self-reform through local ownership by traditional authorities. Creating a database of judgments of customary justice practices would complement oral traditions. Documentation research through participatory action methodologies can help give greater ownership, capture changing oral jurisprudence and increase consistency of judgments.

**10(vi) Civil Society Monitoring and Advocacy:** Empowering local civil society organizations and other community groups to demand reforms from the traditional justice processes especially at community level creates a sustaining incentive for long, difficult reforms. Civil society legal service providers, such as community paralegals, can also play a key role in navigating the space between customary and statutory systems, and identifying cases that should be removed to appeal courts. An active civil society will be essential for challenging local power dynamics that co-opt both formal and customary justice systems. Civil society can expose these abuses, raise awareness of human rights and other legal entitlements, and build dialogue and demand for justice at the community level.

**10(vii) Training Of Traditional Authorities:** Traditional authorities should be trained on human rights. However, all trainings should be designed in a manner that circumvents perceptions of cultural imperialism and introduction of foreign values.

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