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The Politics of documenting violence and trauma for transitional justice: The role of civil society in Zimbabwe

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Abstract

This article captures the politics of documenting trauma for transitional justice, particularly in contexts where transitional justice is contested in its norms and practices. The paper unpacks how documenting trauma by civil society becomes political, yet provides key references for transitional justice processes in the future. These nuances were captured through semi-structured, in-depth interviews with field officers from five civil society organisations who documented the 2008 electoral violence in Zimbabwe. The paper shows how documented violence and human rights violations have been used towards advocating for transitional justice and educating communities and other stakeholders of obligations emanating from domestic and international laws while impacting on ongoing violence. The article argues that while creating critical dossiers of violence and trauma for the future, documentation by civil society can also play a key role where violence is ongoing by creating awareness of what is happening and can be used to shift prevailing conflict dynamics. Etched in the theory and practice of transitional justice as a tool towards sustainable peace for post-conflict societies, the research used an interpretivist qualitative research methodology. This paper captures the reflections of those who have studied the norms of transitional justice and experienced the realities of practicing them in a contested field, thereby providing a nuanced contribution to the study of peace and conflict in which theory and practice converge.

Keywords: *Zimbabwe; Transitional Justice; Human Rights; Documentation; Civil Society; Elections.*

Introduction

Civil society remains key to documenting political violence, human rights violations, and their traumatic implications across the world. Documentation of human rights violations has been argued by some scholars and practitioners to favour top-down approaches to transitional justice; civil society often remains the only source of documentation for such heinous acts, particularly where contestations about the narrative exist. Without this documentation, the facts about the past are sometimes shrouded in a mythical past about the role of different actors in conflict or may remain shrouded in secrecy. Therefore, civil society plays an important role in presenting different narratives of conflict that may be otherwise erased or hidden. This documentation is also critical in transitional justice processes such as truth commissions, memorialisations, prosecutions, and inquests, among others.

However, this important work faces numerous pitfalls, not only for the individuals and organisations involved but for transitional justice itself. Documenting violence, trauma, and human rights violations is political. Not only in Zimbabwe, but across the globe, where these acts are often hidden by the perpetrators for fear of being called to account in future processes such as transitional justice.

This paper shows how documentation of human rights violations by civil society organisations in Zimbabwe was used to pursue the transitional justice concerns of truth and accountability following the 2008 electoral violence. This documentation was done within a milieu of contested narratives and a shrinking civic space. While this is not the primary focus of this paper, civil society has also used their documentation processes to lobby the state to put in place transitional justice institutions, as well as to educate communities and state entities about human rights and transitional justice. The article also shows, through these reflections, how documenting for future transitional justice can play a role in preventing or reducing violence and other atrocities in the present.

Study methodology

While many groups and individuals played an important and significant role in documenting the 2008 electoral violence, this study focused on the Zimbabwe Human Rights Non-Governmental Organisation Forum (ZHRNGOF) and its partners, as they formed a significant and

coordinated process of documenting the violence as well as advocating for transitional justice from the evidence collected. The research used an interpretivist qualitative research methodology in which in-depth interviews with key informants from selected organisations as well as independent experts in the field of transitional justice and human rights in Zimbabwe were carried out.

The qualitative methodology was selected as it best allowed the key informants to give deep reflections on their experiences, as is in line with the interpretivist paradigm adopted for this study. For interviews with key informants, the ZHRNGOF was the starting point for the research, and from there, referrals were made to other organisations dealing with transitional justice. This technique was chosen because the targeted key informant group is usually unwilling to discuss their work with outsiders due to the security threats they often face including from the state security agencies and the uncertainty of how the information would be used. For this reason, data collected from field officers was presented anonymously.

Chain referral sampling was also instituted to ensure that the researcher approaches the correct organisations and individuals who had knowledge on the subject matter (Penrod et al. 2003). Key informants in the study included lawyers who dealt largely with the retributive aspects of justice, researchers who investigated and documented human rights violations, as well as those involved in conducting community meetings in which issues of transitional justice were discussed. These participants were drawn from the ZHRNGOF, Heal Zimbabwe Trust, Evangelical Fellowship of Zimbabwe (EFZ) the Church and Civil Society Forum (CCSF), ZIMRIGHTS, and the Zimbabwe Peace Project (ZPP) and collectively were referred to in this research as Key Informants (KIs). Their contributions were presented under the codes KI1, KI2, etcetera. The ZHRNGOF was selected as a starting point because it is one of the pioneering organisations in the transitional justice debate and it is a large coalition with up to twenty member organisations dealing with issues of human rights, including transitional justice. Interviews were carried out between December 2014 and October 2019.

Ten interviews were carried out in this period, and informal insights were also shared through various informal discussions. Primary research was carried out through the University of Pretoria Library, and ethical clearance granted for the study also by the University of Pretoria. While this cannot be concluded to be a comprehensive assessment, it does give important insights on the role of documenting processes for changing

conflict dynamics and setting the stage for transitional justice even when violence is ongoing.

In the following sections, I discuss how civil society organisations in Zimbabwe have used documentation as a tool for advocating for transitional justice as well as the potential of this work.

Documenting violence for transitional justice: Entangling of the past, present, and future

Documenting violence for transitional justice is centred on inviting a moral response while providing evidence that wrongs were indeed committed. This is done more so for the future than for the present. The focus on the relationship between transitional justice and documentation has increased over the past three decades as transitional justice processes have emerged in more contexts (Nassar and Rangelov 2020). While transitional justice's normative foundations are focused on looking into the violent past (Sarkin 2016), in the case of ongoing conflicts, it has become inadvertently entangled with the present and the questions of an envisioned future. In fact, scholars such as Sarkin (2016) argue that transitional justice should be more involved with the present to secure the future. The application of transitional justice measures during conflict and violence can therefore have a positive impact on changing the conflict dynamics by exposing what is happening.

Transitional justice has been used to address past violence emanating from conflicts. Its processes have included formal and collective apologies, truth-telling projects, amnesty, reparations, as well as inquiries into crimes committed during conflicts. According to (Sarkin 2016:298), "transitional justice is concerned with looking backwards in time to deal with atrocities that have occurred". However, Sarkin (2016:297) further argues that it is pointless to wait for conflict and violence to end before taking action towards transitional justice, as "numerous steps can be taken to help prepare for the future, even if these are limited or cannot achieve that much". This argument by Sarkin (2016) has anchored the work of civil society in Zimbabwe, hence the great efforts that have gone into the documentation of political violence, and other violations of civil and political rights over the past two decades.

In many contexts, where conflict and strife take place, the only factual records of the violations remain with local civil society groups (see, for example, Visoka 2016). The role of this documentation has been crucial not only for transitional justice but also for human rights work.

As Baumgartner et al. (2016:1) contend, "The documentation of past human rights violations can help with the prosecution of perpetrators, identification of victims for reparations programmes, and the planning of memorials". Documentation therefore paves the way for transitional justice processes and for a more peaceful future for conflict-torn communities. Civil society documentation has become a catalyst for formal transitional justice measures in different contexts and also giving way for bottom-up approaches (Nassar and Rangelov 2020).

Documentation can also shape the narratives of the past and future about conflict and violence (see, for example, Matshaka 2022). According to Baumgartner, et al. (2016:1), narratives "can arguably help to define a new social contract between citizens and the state following gross human rights violations and give voice to ongoing tensions and disagreements about what, in fact, constitutes the past". For this reason, civil society has fought to disseminate documented violence and trauma, particularly during ongoing conflicts. Due to technological advancements over the past few decades, dissemination of information has become faster and more widespread, allowing civil society groups and individuals to document and share instances of human rights violations. However, as argued by Baumgartner et al. (2016), within transitional justice mechanisms, the utility and protection of this information have often been disregarded, hence the importance of supporting and protecting the work of civil society organisations in this regard.

However, there have been critics of the documentation efforts of civil society groups. Nassar and Rangelov (2020) contend that civil society documentation has often been plagued by co-option by the state and international bodies. This has been an allegation made by the state against Zimbabwean civil society groups who have been accused of being co-opted by foreign forces, as is discussed in this article (also see Matshaka 2022). These allegations are often linked to the norms in which these documentation processes are linked, including human rights and transitional justice, which are seen by some states as being aligned to foreign priorities (Nassar and Rangelov 2020). According to Nassar and Rangelov (2020:2), "The emphasis on accountability, in particular, reflects the reality that international actors have created opportunities for civil society groups to connect their work to a well-organised and well-resourced documentation effort, or simply to be brought on board". Having said this, it is also important to note that the work of civil society has largely been viewed to be more responsive to community needs and narratives by being more participatory (Nassar and Rangelov 2020).

The link between documentation and transitional justice processes can also be drawn from the importance of timing. Documentation efforts are time-sensitive; they have to be carried out soon after the violations have been committed so that evidence of injuries and the testimonies of victims and witnesses can be captured. With the passage of time, the availability and quality of witness statements can be negatively compromised (Nassar and Rangelov 2020). This is why documentation during ongoing conflict is critical for transitional justice processes, as this evidence is key to ascertaining culpability in the crimes committed. The changing of testimonies may also occur where. for example, reparations may be on the table, hence the importance of documenting consistently, as done in most contexts by civil society.

The following section outlines the role of civil society in transitional justice processes.

Civil society and transitional justice

Transitional justice is a field of study and practice that grapples with how societies emerging from mass atrocities, war, and conflict, as well as other forms of violent political practice, can carve a different path towards civil order (Eisikovits 2009; Turner 2013). Civil society groups across the world have emerged as the champions of transitional justice. From the mothers of the forcibly disappeared in Argentina to the more structured human rights organisations of Zimbabwe's campaign for transitional justice, civil society has been key to calling for justice and accountability for politically motivated violence in difficult and often dangerous circumstances.

There are wide-ranging definitions of the concept of civil society as a theory and practice that has evolved over the years. While this paper does not go into these various debates, it outlines some of the key characteristics that have become synonymous with civil society. These definitions stem from the functions and roles as well as composition and the relationship with the state. The world outlines the character of civil society as being,

> "…the space among family, market and state; it consists of not-for-profit organisations and special interest groups, either formal or informal, working to improve the lives of their constituents… [including] research and policy design organizations, labour unions, the media, NGOs, grassroots associations, community-based organizations, religious groups and many others typical examples of the actors that

> comprise the dynamic web known as civil society" (World Bank 2000:8).

Civil society can play an important part in building democracy and consolidating it, monitoring human rights, challenging the state's abuse of power, and providing alternative means outside the state for communities to raise their level of material development (Makumbe 1998; Sachikonye 1995). However, it is important to note that the character and sometimes the conception of civil society will differ according to context, with history playing an important role in shaping the nature of civil society that emerges (Toepler et al. 2020).

While there have been significant developments in the theory of civil society over the past few decades, there has also been a significant challenge to its practices by changes in the political and economic dynamics across the world (Anheier et al. 2019). These changes include the rise of authoritarianism in many states during and post the COVID pandemic, shrinking civic spaces, wars, as well as strains in the global economy. Such shocks in the global system have changed the operating parameters for civil society and, in many cases, have made the operating environment more unstable, particularly where the work of civil society has been deemed to be political.

Crocker (1998) has described the role of civil society organisations in transitional justice as largely complementary to the activities and mechanisms put in place by states and international agencies and rejects the notion of parallel transitional justice activities between the state and civil society. This notion by Crocker (1998) puts the trajectory of transitional justice firmly in the hands of the state, with civil society playing a largely supportive role. However, as many post-conflict contexts have shown and certainly as the Zimbabwean case has revealed, the relationship between the state and civil society in the transitional justice space has not unfolded as neatly and as logically as this (see, for example, Matshaka 2022), with prolonged battles and hardened interests dominating.

Data collection, monitoring, advocacy and representation, collaboration, facilitation, and consultation are some of the roles of civil society identified in the work by Backer (2003) and Crocker (1998). According to Andrieu (2010:550), "civil society's role in transitional justice is thus multidimensional. It can act as an innovator, facilitator, temporary substitute, educator, or critic… They often have greater legitimacy in local communities and may therefore be better able to win

the cooperation of those who do not trust the government." The legitimacy of civil society organisations is especially important in the institution of informal transitional justice as it influences participation by the affected communities. The lack of legitimacy of informal civil society-driven mechanisms of transitional justice and acceptance by the communities they work with may be due to concerns about leadership, funding, or previous civil society initiatives that were deemed unsuccessful, among other reasons (see, for example, Matshaka 2022).

Crocker (1998:502) identifies three models of civil society approaches to their respective functions: first, the anti-government approach, which emphasises civil society's freedom from state influence and dominance; second, the associational approach, which emphasises non-profit and diversity of objectives within civil society; and third, a model that focuses on the communicative functions of civil society. The anti-government approach implies a civil society whose processes are parallel to those of the state and government, which would pose challenges in a transitional justice setting where the state should provide institutional and material resources for mechanisms of redress.

This anti-government approach has also been defined by Andrieu (2010:549) as "the place where people and groups are free from government interference to pursue their own conceptions of good." Crocker (1998:501), however, critiques this approach to civil society in relation to transitional justice and argues that "it neglects the myriad ways in which government and non-governmental groups can work together and supplement each other's efforts…Government and civil society need not be at odds, and each can contribute to something important to democratisation and transitional justice."

The anti-state approach can be seen to be the approach of civil society in Zimbabwe in its process of advocating for transitional justice through documenting the excesses of the state since independence. This has resulted in the emergence of a narrative of a civil society that is 'anti-state'. These strained relations have shaped the trajectory of transitional justice in Zimbabwe, and the process remains difficult. In this strained environment, there are limits to the transitional justice work that can be done by civil society, and documenting violence is one of these key roles, particularly where violence remains an ongoing scourge, as will be explored in this article.

Significance of documenting the 2008 election violence in Zimbabwe

Subsequent to the difficult documentation process for the *Gukurahundi* genocide in the 1980s, it became clear to civil society groups in Zimbabwe that documentation was critical to dealing with the checkered past and bringing those responsible for such crimes to account. More so where the state suppresses accounts of the violence, as in the case of the report of the Chihambakwe commission of enquiry into the killings, which has never been released (Eppel and Raftopoulos 2008). Civil society organisations in Zimbabwe began a process of rigorous documentation of electoral and other politically motivated violations in the late 1990s to early 2000s, with these processes growing in scope as Zimbabwe's political landscape became increasingly violent (see, for example, Matshaka 2022).

The 2008 electoral violence is one of the most documented episodes of political violence in Zimbabwe. It is a period that saw a heightened mobilisation of civil society groups and even individuals towards recording the violence that engulfed many parts of Zimbabwe during this electoral period. Many parts of the country were immersed in a wave of unprecedented state-sanctioned violence that sought to punish the opposition Movement for Democratic Change (MDC) and its supporters, as well as perceived supporters following a defeat at the polls for the late former president Robert Mugabe and his ZANU-PF party (Masunungure 2009; Mwonzora 2022).

In this period of violence and turmoil, many of the established civil society organisations that had been documenting and challenging the excesses of the state over many years had to increase their capacity to capture these unprecedented events. Many new actors in the documentation space also emerged from newer organisations, as well as more spontaneous and unexpected sources, including churches and individuals within the communities that bore the brunt of the violence. The opposition party, largely through its grass-roots structures, also became a key participant in this documentation process as their supporters were targeted in the violence. This was largely due to the fact that many of these communities became inaccessible to the opposition, civil society groups, and anyone deemed an ally of the opposition (Mwonzora 2022).

A picture of the systematic and well-coordinated nature of the violence showed high incidents of political violence and targeted

displacements across several rural and urban areas across the country (Zimbabwe Human Rights NGO Forum 2009; Mwonzora 2022). This picture of violence was also documented and broadcast by international stakeholders such as international civil society groups, embassies of states represented in Zimbabwe, and regional and national news agencies, among others. This put the violence of the 2008 electoral violence in Zimbabwe firmly on the international stage and eventually led to interventions such as the mediation and brokering of the Government of National Unity (GNU) by the Southern African Development Community (SADC)[6]. The following section focuses on how civil society has used documentation for transitional justice.

How civil society has used documentation for transitional justice

There are a number of processes and spaces in which civil society has used documented outcomes of their work to push for transitional justice processes, including advocacy and lobbying for transitional justice policies, civic education and awareness, litigation, and transitional justice research, among others. While these are all important contributions of documenting violence towards transitional justice processes, in this paper I focus on documenting for litigation and the implications of these actions.

Unofficial truth projects

As part of their advocacy and lobbying strategy, civil society organisations have embarked on what Bickford (2007) terms "unofficial truth projects". Unofficial truth projects for the 2008 electoral violence by civil society organisations took the form of extensive documentation of the individual cases of violence and torture that were carried out during the period under study. Some of these reports also proffered recommendations for the state in dealing with the aftermath of the violence.

Documentation by civil society organisations comes in the form of weekly or monthly reports detailing various incidents of violence from different parts of the country as shared by KI2.

[6]This mediation process was a Southern African Development Community (SADC) intervention through a mediation initiative led by former South African President Thabo Mbeki and led to the brokering of the GPA on 15 September 2008. The GPA was entered into by ZANU PF, MDC-Tsvangirai (MDC-T) and a splinter formation of the MDC led by Arthur Mutambara. It led to the creation of an interim GNU and among its primary objectives, the GNU was to oversee the writing of a new constitution within its first 18 months and enable free and fair elections to take place thereafter (Eppel, 2009).

> Incidents were captured during field visits when we went to affected areas after the violence had died down, because during the actual periods of violence, we could not access these areas. Some of the incidents we captured as the violence was actually happening where we had walk-in clients who came to seek refuge from the violence. As you know they came mainly from the rural areas to the cities where incidents of violence were not as bad (Individual Interview).

Examples of such documentation were the Monthly Political Violence reports produced by the ZHRNGOF and the Food Monitoring reports by the Zimbabwe Peace Project (ZPP), among others by various organisations.

KI1 noted that

> "The documentation of individual cases at the time of the violence was mainly for the purposes of monitoring the situation and keeping detailed record of what was happening as well as creating awareness both locally and outside the country of what was happening" (Individual Interview).

This documentation as highlighted by KI1 was an important source of information particularly because other public sources of information were either under the control or threat of the state, making access to information difficult (United States Department of State 2008). This has meant that truth telling has not deferred for official transitional justice processes to take place, rather it has been a sustained process that will also be useful for future transitional justice projects in the country.

The documented human rights violations and the presentation of these findings were also used in the aftermath of the violence to seek redress for the victims. In the context of seeking redress for the crimes of this period, these reports have become an important account of the violations and, in some cases, fulfilling the principles of truth-telling by answering questions such as 'who, why, when, and how' in light of the state's obligation to investigate human rights violations and the rights of victims to truth.

However, this form of advocacy has not been well received by the state, particularly where it has been done at regional and international forums such as the African Commission on Human and People's Rights (ACHPR). As stated by KI1

> "The state's approach was to ignore these submissions. However, at the height of the political crisis they were not too pleased with us and accused civil society of pushing for regime change and tarnishing the image of the country" (Individual interview).

Civil society has struggled to disassociate itself from the tag of being pro-opposition, and this has caused state representatives, including those in the aforementioned instance, to dismiss genuine concerns about human rights violations as well as redress for these violations. Expressions of civil society as anti-state have been made by various state representatives in the media as well as at international forums. A case in point is cited by Bere and Maguchu (2014a), in which Minister Patrick Chinamasa before the United Nations Human Rights Council on 10 October 2011 in Geneva said, "…Zimbabwe has more than 2500 NGOs who are paid to throw stones. These organisations [are] responsible for spreading falsehoods about Zimbabwe."

A former human rights lawyer interviewed for this study contended:

> These are not unfounded allegations. Civil society actors have caused this. You saw what happened after the signing of the Global Political Agreement (GPA), the number of civil society members that jumped ship to join government on an MDC ticket was amazing…This only served to confirm what the government has been saying all along…It then becomes difficult to have a meaningful discussion without this coming up (Individual interview).

Concurringly, late human rights activist Dewa Mavhinga, in an article titled 'Zim civil society misunderstood', highlights the 'crossing of the floor' from civil society to opposition politics by some actors as fuelling tensions between the state and civil society (Mavhinga 2014). Muzondidya (2011:29) similarly argues that "Most NGOs have sided with the opposition MDC and have doubled as office bearers in both the MDC and their civic society organisations". However, the lack of separation between the state and ZANU PF was also posed by key informants in the study as a challenge for transitional justice. In the words of KI4,

> "You see, ZANU PF is the state and the state is ZANU PF, you can't distinguish between the two; and that's where our challenge lies as much as we bring up all these other issues" (Individual interview).

The partisan nature of both state and civil society was presented by key informants in the study as a challenge in the transitional justice discussion in Zimbabwe, as the independence of both spheres has been compromised by alleged allegiances and control by political parties. KI3 asserts that

> There is a need to clarify the roles of both civil society and the state. There is a need to separate them from partisan politics and instil principles of objectivity. The state should play its role in protecting the rule of law and the constitution, but rather we see one party controlling the state and now you cannot separate the state and the party (Individual interview).

Mavhinga (2014) similarly alludes to the need for civil society actors to realise that they can still be relevant without partisan allegiances. From the arguments and discussion above, it can concurringly be inferred that there is a need for civil society and the state to step away from partisan influences in order for the concerns of transitional justice to be effectively dealt with.

However, one human rights activist interviewed for this study lamented the lack of momentum in civil society to use this important information gathered through documentation and unofficial truth projects and argued that,

> It is not enough because of the huge gap of acknowledgement by the state and the failure to take on board the recommendations of civil society and other stakeholders. There are steps that remain missing. The push for accountability remains the missing link. What will they do with that body of evidence? So far it has not been used (Individual interview).

Contrary to these perceptions that information gathered through unofficial truth projects has been unused for the purposes of accountability, litigation for the 2008 electoral violence has been ongoing.

However, a human rights lawyer who shared insights for the study was more cautious of using these dossiers too early, contending that

> Calling for prosecutions without a political transformation would be a futile process for civil society as state actors responsible for the violations would never allow them to take place. There is also the risk that once civil society starts calling for prosecutions, the gains that they have made in engaging the state and pushing for the formation of the NPRC and Human Rights Council (HRC) will all be lost. The state may

> simply decide to shut the space that had been opened to discuss issues of transitional justice once civil society tries to go after them (Individual interview).

While many organisations, including the ZHRNGOF, documented these violations with the intention of seeking redress through litigation as well as providing a record of the violations, some organisations lacked a clear vision of what was to be done with this information as put forward by KI2

> After the electoral violence, there was a proliferation of non-governmental organisations (NGOs) seeking to document the violations that had taken place. There was funding for this from the funding partners and everyone wanted to be relevant and seen to be doing something during the crisis. There was no proper training for many of these people on how to document the violations and more importantly many had no idea of what to do with this information after it had been collected. We then saw many weekly or monthly reports coming out from everywhere, and we do not even know whether these cases are true or not (Individual interview).

The sentiments expressed by KI2 illustrate how, apart from painting unofficial truth processes through documentation as being a means of securing funding by various NGOs, it also points to the polarisation within civil society in Zimbabwe itself not only on the basis of strategy but also in terms of competition for resources and space for advocacy, among other issues. This polarisation was also attributed by Saki and Katema (2011) as well as Muzondidya (2011) to concerns such as differences in ideologies and approaches of the different organisations on how to engage the state, power struggles within and among organisations, as well as the lack of accountability within these organisations.

The sentiments expressed by KI2 also point to the practical challenges of documentation for transitional justice, especially where violence and intimidation are ongoing. The regulation of the documentation space in terms of gathering information that is factual about the violence and human rights violations becomes increasingly challenging. This has key implications for accountability processes where transitional justice processes eventually occur.

How documentation was used for litigation: implications for transitional justice

Prosecutions and civil suits are part of the transitional justice package of litigation and are used to contest impunity, restore the rule of law, and in adherence with domestic and international norms of human rights (Moyo 2022). Civil society has played a key role in both instances, through their documentation processes. Through documented evidence by civil society, prosecutions have taken place in some contexts, such as in Ethiopia following the fall of the Mengistu regime in 1992, in which international organisations such as Human Rights Watch provided documented evidence of atrocities (Moyo 2022). Where there has been a push for institutional reforms, as in the case of Zimbabwe, civil suits against individual perpetrators and institutions have been pursued.

Given the challenges of criminal prosecutions for political violence in Zimbabwe, civil society organisations have sought accountability through civil litigation, a practice that is often an exception in most transitional processes. This has been done over the years by organisations including the ZHRNGOF and Zimbabwe Lawyers for Human Rights (ZLHR) and has been a product of consistent and detailed documentation processes. KI3 notes that,

> The state has a monopoly over the criminal justice system and we used civil law to bring perpetrators of human rights violations to book. We usually sued for shock, pain and suffering as well as assault, loss or damage to property and humiliation of the victim caused by the perpetrator. Summons are issued to claim damages…to compel the state to compensate victims of state sponsored violence. It has also been used to seek redress for human rights violations perpetrated by individuals with the acquiescence of the state and we have also used civil litigation to challenge impunity for the 2008 violence. We [ZHRNGOF] (at some point) had a portfolio of over 1000 cases before the courts …and these emanated from the 2008 electoral violence as well as other periods of violence (Individual interview).

KI3 further shared that

> At the international level, we have also filed communications or complaints through the African Commission on Human and Peoples' Rights which operates under the auspices of the African Union, but this has only been limited to very few cases (Individual interview, 8 November 2014).

The sheer size of the ZHRNGOF's case portfolio is an indication of a significant process of documentation. While this litigation has failed to yield significant results as attested by key informants to the study, it is still seen as a critical part of keeping transitional justice concerns on the state agenda. One human rights lawyer puts forward that,

> Zimbabwean civil society needs to re-look their strategy of getting redress from the state through civil litigation. It has clearly not worked and has given victims false hope only to be disappointed when the state has not paid up. When it comes to suing ordinary individuals however, it is still an important approach (Individual interview).

Scholars such as Sharp (2019) argue for transitional justice processes that manage expectations by factoring in the realities and nuances of each context, hence managing the question of 'success' in transitional justice. This goes beyond the practical challenges of the absence of critical institutions for particular forms of transitional justice but also encompasses the key understandings of what harm is and the required remedies according to each context (see, for example, Murambadoro 2020). Such a process is also largely dependent on the type of transition, whether it be an overthrow, reform, or compromise (Sarkin 1999:253), as well as the subsequent political arrangement following the transition.

While the state has largely not honoured judgments to pay claims against it and criminal prosecution, particularly for high-ranking political figures, has not been possible, public interest litigation has had a greater impact at the community level. Public interest litigation has largely been a judicial procedure for promoting the social and economic rights of disadvantaged and marginalised groups (Gauri 2009). According to KI3,

> Public interest litigation had an impact on the communities in which victims of the 2008 violence reside. We had feedback to say some of the perpetrators have fled the area after summonses have been issued. They have done this in fear and realising that they are not immune to prosecution for politically motivated violence as is often the perception of perpetrators in many of these communities. In some areas where violence was ongoing, we have had reports that the institution of litigation brought some form of sanity and peace as it made perpetrators aware that someone was taking stock, and watching what was happening. It is also a form of recognition for the victims and an acknowledgement that they have been violated and the impunity enjoyed by the perpetrators thus far is being challenged (Individual interview).

While the state's property cannot be attached for filing to settle claims made against it through civil litigation, as highlighted above, individuals can have their property attached by the courts. A case in point is when the "Deputy Sheriff for Mount Darwin took 14 cattle and 10 goats belonging to some of the 13 ruling party activists fingered in the [2008] violence, to be used as compensation for their victims. This followed a default judgement passed by High Court Judge Garainesu Mawadze …following applications filed by three of the victims" (Tafirenyika 2015).

Perpetrators of the violence have struggled to pay claims against them where such judgements have been; the human rights lawyer interviewed for the study notes that

> There was often an exaggeration of claims by the victims especially for loss of property. This was done in anticipation of being awarded a larger claim than was due to them. Hence, some of the victims of the violence have sought to manipulate the system and gain more than what they lost materially during the violence (Individual interview).

The exaggeration of claims noted above can also be seen to be a consequence of the high expectations with which many of the victims view civil society processes. Documenting violations of material claims hence becomes a challenging enterprise, especially where documentary proof of ownership cannot be accessed or is unavailable, as in the case of most rural communities in Africa.

Civil society organisations have also had to rely on their funding partners to fund these processes—another source of contention between them and the state. This tension is due to the fact that most of civil society's funding partners are of European or 'Western' origin, and the state has declared many of these countries its enemies following the fallout from the land reform programme (Muchadenyika 2018). Without this funding, many of the cases that have been documented and gone before the courts, system would not be heard. Therefore, funding from the donor community is critical to this form of advocacy for transitional justice. Overall litigation, whether in the form of prosecution or civil litigation, is an approach to transitional justice that remains very costly and often may not meet the needs of the victims.

Conclusion

As this paper has shown, documenting violence, trauma, and human rights violations is key to any transitional justice process. These

documentation processes have been critical to advocating for the concerns of transitional justice to be heard, not only in Zimbabwe but across the world. Civil society groups have been critical to this work due to their access to communities as well as their training and skills in this respect. In other words, they have been key because they have known what to document and why. While this paper did not go into the mechanics and methods of the documentation processes by each of the civil society organisations interacted with during the study, it focused on their reflections about the implications of their documentation work for transitional justice and how they have worked towards achieving the goals of transitional justice even under a difficult environment of a shrinking civic space and increased state repression.

The documentation work done by civil society has been towards advocacy and lobbying with the aim of influencing state policy on transitional justice and advocacy with the aim of influencing community-level dynamics that perpetuate the culture of violence. It has also focused, as this paper has outlined, towards gathering truthful accounts of the electoral violence from the victims, as well as some form of accountability for the human rights violations and trauma perpetrated with the acquiescence of the state. While these processes have faced challenges including the failure of the state to comply with judgements, the failure of individual perpetrators to pay damages, competition, and a lack of coordination and training among some civil society actors, as well as challenges of civil society legitimacy, they remain a key step towards transitional justice in Zimbabwe.

Despite the numerous challenges of documenting violence and human rights violations, this paper concludes that it is absolutely crucial for these processes to constantly be done as they not only present important evidentiary and historical references but are a source of victims' voices that may otherwise be lost. Without training and resources for this work, efforts towards accountability may be foiled. This will be detrimental for the transitional justice project across the world.

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