

The New Zimbabwean Government's War on Corruption: A Lesson for Anti-Corruption and Transitional Justice Scholars and Practitioners?

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ABSTRACT

There is ample academic writing and practical examples extending the principles of transitional justice to corruption. However, very little has been written on how a society's existing anti-corruption mechanisms may be utilised in a manner compatible with the wider transitional justice processes. In Zimbabwe, the new government is taking a more rigorous approach towards anti-corruption than towards the protection of human rights, which is apparent in its pursuing corruption crimes but not crimes which violate physical integrity, such as torture, disappearances and killings. Using Zimbabwe as an example, this paper proposes ways in which transitional authorities could rely on anti-corruption mechanisms, yet go beyond them by addressing endemic corruption under the broader transitional justice mechanisms. This synchronisation will ensure that corruption is not addressed in a silo but as part of a wider redress of gross human rights violations. Such an articulation is all the more important given that societies perceived to be highly corrupt also tend to be those with poor human rights records. Moreover, the new government has acknowledged the endemic nature of corruption and has relied on the need to address it to justify the military intervention — a ground that resonated across society and appeared to legitimise the intervention. If, therefore, the new government's anti-corruption campaign is

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to be trusted to end impunity with respect to physical abuses, it has to be consistent with, and grounded in, relevant domestic and international law.

1 INTRODUCTION

On 15 November 2017, the Zimbabwe Defence Forces (ZDF) intervened in Zimbabwe's political processes to stop the take-over of President Robert Mugabe's constitutional functions by those around him (the "G40 faction"). The intervention ultimately led to the resignation of President Mugabe as head of state.¹ In intervening, the military raised concerns about the high levels of corruption embedded in President Mugabe's patronage-based political system. In one of its earliest policy pronouncements, the new government promised to address the "scourge of corruption".² This paper suggests that this anti-corruption posture represents a significant policy shift, which is viewed widely as an important step towards fighting impunity.

However, civil society, which has served as the watchdog for Zimbabwe's democratic transition for many years, is not ready to close the book on the Robert Mugabe regime and still is seeking justice for its human rights violations. Civil society activists are calling for a comprehensive transitional justice process which addresses both physical crimes, such as torture, enforced disappearances and mass killings, as well as economic crimes, such as corruption and money laundering. Consequently, when civil society and government speak about post-Mugabe accountability, they often speak past each other.

The primary aim of this paper is to investigate whether there could be an opportunity to use the anti-corruption mechanisms in Zimbabwe to address human rights violations. This question is especially relevant given that the relationship between a state's human rights record and the extent of corruption in its government can be a simple one of mutual reinforcement.³ Moreover, the need to restore the rule of law, which includes addressing corruption, permeates all the grounds upon which the military justified its intervention. The paper also aims to lay bare the limitations of the current anti-corruption mechanisms. This is

1 This paper was completed before the death of Robert Mugabe on 6 September 2019. Thus, references to him in the text must be read against this fact.

2 See video footage of Retired Major SB Moyo, former spokesperson of the ZDF, speaking during the military intervention on Zimbabwe Broadcasting Corporation Television, 17 November 2017.

3 Carranza R (2008) "Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?" 2(3) *International Journal of Transitional Justice* 310–330 at 320 & 311.

significant if the fight against corruption is to deal effectively with cases of grand corruption and take seriously calls to incorporate broad transitional justice policy.

To that end, this paper explores how anti-corruption mechanisms could be a viable avenue to secure redress for past human rights abuses. It hopes to add to the existing body of knowledge in both fields by examining the nexus between transitional justice and anti-corruption. It argues that it is more effective to go beyond the conventional anti-corruption field in order to tackle entrenched political corruption. It further argues that a conjunction of anti-corruption and transitional justice can provide a solution for transitional societies seeking justice for a range of injustices that cut across the civil, political, social and economic realms. By examining case studies from elsewhere, the paper explores how Zimbabwe can synchronise its anti-corruption efforts with the wider transitional justice discourse to achieve favourable results.

Certain authors believe that the fight against corruption can be neither neutral nor technical, but must be part of the greater struggle between those who benefit from the *status quo* and those who seek democratic change.⁴ However, as Githongo has pointed out, experiences from other African countries indicate that networks of corrupt officials may disintegrate following a change of administration but tend to regroup within two years, and that major changes are possible during this period.⁵ This latter notion of a window of opportunity after a new government comes into office is supported in the scholarly literature.⁶ It might be thought that the logic of the argument is that new leaders will be less tied to existing patron-client networks and more inclined to reform than their predecessors.⁷ We argue, however, that this is both necessary and valuable in order to gain political legitimacy.

The legacy of corruption and its links to human rights violations in Zimbabwe are highlighted in §2. In §3, a critical examination is undertaken of the ongoing war on corruption by looking at the prosecution and repression of corruption in both the pre-military intervention and the post-military intervention periods. This leads to an assessment, in §4, of how transitional justice initiatives may be integrated into the anti-corruption discourse. The role which the

4 See Saxer M (2014) "Fighting Corruption in Transformation Societies" Friedrich Ebert Stiftung at 17, available at <https://library.fes.de/pdf-files/bueros/thailand/10744.pdf> (visited 29 August 2019).

5 Cited in Lawson L (2009) "The Politics of Anti-Corruption Reform in Africa" 47(1) *Journal of Modern African Studies* 73-100 at 78.

6 See Lawson (2009) at 78 and the authors cited by her.

7 Lawson (2009) at 78.

international community can play to ensure that this synchronisation is effective is discussed in §5. In §6, which concludes the paper, scholars and practitioners are challenged not to forgo the opportunity to test the potential for a coalescence of anti-corruption and transitional justice in a country which has set itself on that path accidentally.

2 ZIMBABWE'S LEGACY OF CORRUPTION

It is important to understand why corruption has prompted a collective national grievance in Zimbabwe. The collective nature of the corruption grievance contributed to an improved civil-military relationship, which became a rallying point for the 2017 military intervention. So deep was the sense of national revulsion against corruption that it reconciled a highly polarised society, especially as regards the trust it engendered between the civilian authorities and the military, which traditionally had been complicit in human rights violations and had propped up the brutality of Mugabe's 37-year-old regime.⁸ Zimbabwe's legacy of corruption is shocking, even by its own statutory definition, which limits corruption to the criminal abuse of duty by a public officer.⁹

Observers have offered different estimates of the economic costs of corruption to Zimbabwe since the attainment of majority rule. An opposition legislator, Eddie Cross, who has dedicated lots of time to documenting, naming and shaming corruption, puts the figure at \$60 billion.¹⁰ Moss's scientific studies put the lost revenues at a staggering \$96 billion.¹¹ According to Transparency International Zimbabwe, the country loses \$1 billion annually to corruption.¹² In 2016, Robert Mugabe made the stunning admission that corruption in the diamond mining

8 See Rupiya MR (2013) "Who Wields the Command and Control Authority for the Zimbabwean Security Sector: 2008-2013" in Rupiya MR (ed) *Zimbabwe's Military: Examining its Veto Power in the Transition to Democracy, 2008-2013* Johannesburg: APPRI at 8.

9 Section 174 of the Criminal Law (Codification and Reform) Act of 2005. See also generally Maguchu PM (2018) "The Law is Just the Law: Analysing the Definition of Corruption in Zimbabwe" 25(2) *Journal of Financial Crime* 354-361.

10 Cross E (8 January 2018) "The Cost of the Mugabe Era" *Zimbabwe Independent*, available at <https://www.theindependent.co.zw/2018/01/08/cost-mugabe-era/> (visited 29 August 2019).

11 Moss T (3 March 2014) "How Misrule Has Cost Zimbabwe \$96 billion ... and Counting" Center for Global Development, available at <https://www.cgdev.org/blog/how-misrule-has-cost-zimbabwe-96-billion-and-counting> (visited 29 August 2019).

12 *Zimbabwe Today* (4 October 2016) "Zimbabwe Losing \$1 Billion a Year to Corruption: Transparency International", available at <https://zimbabwe-today.com/zimbabwe-losing-1-billion-year-corruption-transparency-international/> (visited 29 August 2019).

sector stood at \$15 billion.¹³

Corruption also has undermined human rights in Zimbabwe. For instance, voter fraud in the 2008 elections resulted in mayhem which left approximately 200 dead, and several thousand internally displaced, tortured and homeless.¹⁴ In the same, year corruption in the capital's water management system led directly to a cholera outbreak in the city, killing 4 282 people and leaving hundreds of thousands ill.¹⁵ Similarly, institutionalised corruption in state-owned enterprises (exacerbated by their monopoly of essential goods and services provision) created an environment that made it increasingly difficult for socio-economic rights to be realised.¹⁶

Meanwhile, Mugabe's policies, premised on his highly controversial "100 percent" indigenisation programme,¹⁷ saw many of his political associates and relatives amassing enormous wealth. Pillaging of natural resources, embezzlement, cronyism and nepotism became a norm, as Mugabe, his wife, children and in-laws spent millions of dollars on properties, cars, clothes and jewellery.¹⁸ Mugabe owns 21 farms, in violation of his one-man-one-farm policy and of the Constitution of Zimbabwe which theoretically limits new farmers to one farm per person.¹⁹ After the military intervention, his daughter abandoned a project for a sprawling mansion she had started on land designated for a public school.²⁰ At the time of writing, the Zimbabwe Republic Police (ZRP) is investigating former first lady, Grace

13 *The ZN* (4 March 2016) "Zimbabwean President Mugabe Announces \$15 Billion in Diamonds Looted", available at <http://www.thezimbabwenewsline.com/business-15566-zimbabwean-president-mugabe-announces-15-billion-in-diamonds-looted.html> (visited 29 August 2019).

14 US Bureau of Democracy, Human Rights and Labor (2008) "Country Reports on Human Rights Practices Report: Zimbabwe", available at <https://2009-2017.state.gov/j/drl/rls/hrrpt/2008/af/119032.htm> (visited 30 August 2019).

15 See Ahmed S *et al* (2011) "The 2008 Cholera Epidemic in Zimbabwe: Experience of the ICDDR, B Team in the Field" 29(5) *Journal of Health, Population and Nutrition* 541–546.

16 Chêne M (2015) "Zimbabwe: Overview of Corruption in the Health and Education Sectors and in Local Governments" *U4 Anti-Corruption Resource Centre* at 6, available at <https://www.u4.no/publications/zimbabwe-overview-of-corruption-in-the-health-and-education-sectors-and-in-local-governments> (visited 30 August 2019).

17 Authorised by the Indigenisation and Economic Empowerment Act 14 of 2007. The Act requires foreign-owned companies to offer at least 51 percent of their shares to indigenous Zimbabweans.

18 See Cascais A (23 November 2017) "Zimbabwe ex-President Robert Mugabe's Stolen Fortune" *DW*.

19 See Section 289(c) of the Constitution of Zimbabwe.

20 Thornycroft P (2 December 2017) "Robert Mugabe's Daughter Used State Land Intended for a School for her Elaborate, Chinese-Built Mansion" *The Telegraph*.

Mugabe, for smuggling ivory worth millions out of Zimbabwe to clients in the Far East.²¹

Corruption under Mugabe cannot be confined to acts of commission or omission that are defined as breaking the criminal law. Corruption extended to non-criminal and even non-legal actions or omissions which had detrimental effects upon the social, economic and political aspects of the lives of many Zimbabweans. There are many acts which manifestly were corrupt but were deemed not to be crimes, although they were in violation of alternative normative orders. For example, the customary law of the Shona people in Zimbabwe defines corruption as *huwori* (decay), which is a much broader term than the narrow definition of corruption contained in the criminal code.²² It was on the strength of that narrow definition that, in 2014, the Prosecutor-General refused to prosecute senior managers of state enterprises who were awarding themselves grotesque salaries of up to US\$500 000 per month, explaining that although it was distasteful there was nothing criminal in the act itself.²³ Shona customary law likely would have condemned it as *huwori*.

Moreover, corruption became a matter of survival as citizens and even foreigners visiting Zimbabwe were forced to be corrupt in order to secure access to services.²⁴ Because of the rampant corruption in the delivery of essential services, users were forced to pay a cut to officials as the only means to obtain services and goods.²⁵ Low-level government officials would go for months without salaries, forcing them to demand bribes from the intended beneficiaries of services. Corruption became a way of life under Mugabe's rule.²⁶ It is unsurprising, therefore, that corruption became the elephant in the room during the latter days of Mugabe's administration, which eventually led to an unlikely alliance between the citizenry and the army to remove him from office.

21 *Al Jazeera* (24 March 2018) "Zimbabwe Investigates Grace Mugabe for Illegal Ivory Smuggling", available at <https://www.aljazeera.com/news/2018/03/zimbabwe-investigates-grace-mugabe-illegal-ivory-smuggling-180324095145029.html> (visited 30 August 2019).

22 See Maguchu (2018) at 356-359.

23 Sibanda T (11 March 2014) "Top Earners did not Break any Laws, says Tomana" *Nehanda Radio*, available at <https://nehandaradio.com/2014/03/11/top-earners-break-laws-says-tomana/> (visited 12 September 2019).

24 Transparency International Zimbabwe (2015) "Young People and Corruption in Zimbabwe: Baseline Survey Report" at 3.

25 Transparency International Zimbabwe (2015) at 7.

26 Transparency International Zimbabwe (2015) at 8.

3 PROSECUTION AND REPRESSION OF CORRUPTION IN ZIMBABWE

Since Zimbabwe is a member of various international and regional treaties, it has international obligations to prosecute and repress corruption as identified in these instruments.²⁷ Thus, the government of Zimbabwe could be in violation of its obligations under these instruments if it allows corruption to flourish under its watch.²⁸ Be that as it may, prosecuting corruption in Zimbabwe was a failure, as it is in many countries. Corruption, at the political level in particular, is difficult to prosecute because:

Too often, the perpetrators of Grand Corruption are able to use their illicit wealth and power to distort and evade domestic justice. As a result, the worst perpetrators of corruption can be the least likely to be called to account.²⁹

As will be discussed below, prosecution of political corruption is tied to the politics of the day, even in established democracies where, despite judicial independence, "power-holders can stop and divert investigations on political corruption".³⁰ This is true also for Zimbabwe, where prosecution of corruption at the grand and political levels was subject to the whims of politicians.

3.1 Pre-Military Intervention Period

Although Mugabe had implemented some measures ostensibly to address corruption within his party and the state,³¹ they were mere tokenism, as he never had a genuine interest in prosecuting corruption. On the contrary, his policies allowed corruption to flourish.³² The token measures he implemented neither were transparent nor subject to independent judicial or administrative review but were

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- 27 These are the UN Convention against Corruption, the AU Convention on Preventing and Combating Corruption, the SADC Protocol against Corruption and the African Charter on Democracy, Elections and Governance.
- 28 Peters A (2018) "Corruption as a Violation of International Human Rights" 29(4) *European Journal of International Law* 1251–1287 at 1260.
- 29 Maharaj A (22 November 2013) "Prosecuting Grand Corruption as an International Crime", available at <https://uncaccoalition.org/prosecuting-corruption-as-an-international-crime/> (visited 30 August 2019).
- 30 Rossetti C (2010) "The Prosecution of Political Corruption: France, Italy and the USA — A Comparative View" 13(2) *Innovation: The European Journal of Social Science Research* 169–181 at 169.
- 31 Blair D (9 December 2014) "Robert Mugabe Sacks his Deputy in Zimbabwe Cabinet Purge" *The Telegraph*.
- 32 Yamamoto K (9 April 2014) "Mugabe Fighting Corruption, Forget It" *The New Zimbabwean*; Langa V (4 June 2017) "How Double-Faced Mugabe is Breeding Endemic Corruption" *The Standard*.

the doings of Mugabe and, presumably, his wife.³³ With the benefit of hindsight, it can be seen that this was a process motivated by personal greed, with the ultimate aim of consolidating and maintaining a stranglehold on power struggles within the ZANU-PF party. To the extent that the processes were not anchored in the principles of the rule of law, they did not address the issue and advanced political patronage instead.

Throughout Mugabe's nearly four decades in power, no successful prosecution of corruption against a senior political figure was recorded.³⁴ Moreover, a quick glance at the fight against corruption during the pre-military intervention period shows that it lacked the institutional backing and political will to achieve any meaningful impact. In order to ensure the objectivity of the process, the president should have empowered the ZRP and the Zimbabwe Anti-Corruption Commission (ZACC), the two main institutions tasked with curbing corruption through the legal process. Also, Mugabe's anti-corruption interventions amounted to serious affronts to the rule of law — such as due process, the presumption of innocence and the *audi alteram partem* rule — as government officials accused of corruption were dismissed summarily at political rallies without any hearing.³⁵

This approach engendered a flawed system of fighting corruption, which is subject to the whims and caprices of the dominant political party and not grounded in the rule of law.³⁶ The history of postcolonial Zimbabwe is littered with a plethora of unresolved corrupt practices and abuse of public and state funds by public officials, the majority of them from the ruling elites. Zimbabwe lacked a system which ensured that those who were caught were sanctioned appropriately. The pre-military intervention anti-graft campaign was directed by the party itself, sidelining the state apparatus constitutionally charged with that mandate.

33 Anti-Corruption Trust of Southern Africa (2012) "Corruption Cases: Lest We Forget: Bad Leadership Examples for Accountability, Transparency and Integrity in Zimbabwe" at 16, available at https://www.thezimbabwean.co/wp-content/uploads/2017/10/actsa_corruption_cases_in-zim_120913.pdf. (visited 30 August 2019).

34 See *S v Shava* 1989 (2) ZLR 107 (H), which concerned the only senior politician who was arrested, tried and sentenced for corruption. However, he was pardoned by Mugabe after spending a single night in prison and was re-assigned as Zimbabwe's ambassador to China.

35 See, for example, Staff Writer (9 December 2014) "Zimbabwe's Mugabe sacks Vice-President Joice Mujuru over 'plot'" *BBC News*, available at <https://www.bbc.com/news/world-africa-30400178> (visited 14 September 2019).

36 At the time of writing, a directive has been issued from the Office of the President of Zimbabwe establishing a Special Anti-Corruption Unit housed in the Office of the President and Cabinet to improve efficiency in the fight against all forms of graft and to strengthen the effectiveness of national mechanisms for the prevention of corruption. Although commendable, the President does not have the legal authority to set up a prosecuting body.

3.2 Post-Military Intervention Period

The recently installed government led by Emmerson Mnangagwa has employed numerous top-down accountability mechanisms and reforms to address and reduce the corruption that flourished under Mugabe's rule. These measures are considered in discrete sections below. It needs to be noted, though, that at this juncture, the concern of the government is not only to deal with corruption but also to give legitimacy to the military intervention which was carried out ostensibly to root out criminality in the government.

In a study of the impact of corruption upon anti-corruption reforms in Africa, Lawson observes that those called upon to make the structural changes necessary to limit opportunities for corruption are the very actors who benefit from the *status quo*. She makes two noteworthy points. Firstly, "where the ruling party is relatively cohesive, implementation can be expected to be lax and powerful individuals to be insulated from scrutiny".³⁷ Secondly, where there is competition amongst big men within the state, anti-corruption policies can be expected to be instrumentalised by the president to purge those perceived as a threat while reinforcing the personal loyalty of others.³⁸ Interestingly, Lawson, concludes that, given these realities, analysis of individual elite interests and contextual factors suggests that, over the longer term, anti-corruption reform may succeed in some cases despite being instrumentalised.³⁹

Since coming to office, President Emmerson Mnangagwa has been urging Zimbabweans constantly to bury the past about human rights abuses. It may be argued that the new administration is not interested in addressing past human rights abuses.⁴⁰ This is illuminated by the new President taking a vigorous approach to fighting corruption, including corruption committed decades ago, while paying lip-service to demands for human rights accountability. New policies are being churned out to redress corruption whilst scant attention is being paid to calls to redress human rights abuses committed during the Mugabe era.

On the one hand, the new mechanisms being employed to fight corruption mirror transitional justice accountability measures as traditionally adopted to address human rights violations associated with post-conflict or authoritarian

37 Lawson (2009) at 74.

38 Lawson (2009) at 74.

39 Lawson (2009) at 75.

40 Address by President Emmerson Mnangagwa to Zanu-PF supporters at Nyamhunga Stadium in Kariba, 28 March 2018. See <http://www.zbc.co.zw/lie-blog-pres-ed-kariba-rally/> (visited 31 August 2019).

regimes.⁴¹ On the other hand, transitional justice is being rewritten, to address issues of corruption which has been identified as a grievance on a par with human rights atrocities.⁴² What lessons could the events unfolding in Zimbabwe offer to scholars and practitioners in the field, in particular regarding the calls to widen the remit of transitional justice to address corruption? We briefly discuss some of the mechanisms that have been implemented below.

3.2.1 Prosecutions

Within hours of the military intervention, arrests started of ex-ministers, such as the former Finance Minister, Ignatius Chombo, whose name is synonymous with the corruption of the Mugabe regime. To date, many senior government officials have been arrested on several charges, but mainly corruption. Some of them are facing multiple charges, still being updated, in relation to their various portfolios. All the cases deal with corruption committed during the Mugabe administration, with some of them dating back two decades. Interestingly, some of them were cold cases which Mugabe had quashed, as he had the final say on the prosecution of his cabinet ministers.⁴³

However, there is a vehement backlash against these charges, which are being condemned as politically motivated. Initially, the arrests were carried out by the military personnel, as policing services had been suspended. Suspects were held *incommunicado* in undisclosed locations, which raised human rights concerns.⁴⁴ Most of those arrested so far are politicians, senior civil servants and business executives perceived to be members of the G40 faction, leading many to believe that the new administration is targeting its political opponents using selective prosecution.⁴⁵

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- 41 For an empirical definition of transitional justice accountability mechanisms, see Stan L & Nedelsky N (eds) (2013) *Encyclopedia of Transitional Justice Vol 1* Cambridge: Cambridge University Press at 6.
- 42 See generally Andrieu K (2012) "Dealing With a "New" Grievance: Should Anticorruption be Part of the Transitional Justice Agenda?" 11(4) *Journal of Human Rights* 537-557.
- 43 *Zimbabwe Situation* (14 March 2012) "Mugabe Protects Corrupt Officials, Says Former Minister", available at https://www.zimbabwesituation.com/news/zimsit_mugabe-protects-corrupt-officials-says-former-minister/ (visited 12 September 2019).
- 44 Amnesty International (22 February 2012) *Amnesty International Report 2017/18 — Zimbabwe*, available at <https://www.refworld.org/docid/5a99382b1a.html> (visited 12 September 2019).
- 45 See, for example, Kairiza T (26 January 2018) "Anti-Graft Drive should not Target Political Opponents" *Zimbabwe Independent*, available at <https://www.theindependent.co.zw/2018/01/26/anti-graft-drive-not-target-political-opponents/> (visited 12 September 2019).

Moreover, well-heeled suspects are employing different measures to delay or frustrate trials, including appealing to higher courts. As a result, most of those arrested are currently at liberty on relaxed bail conditions, pending trial. A few who have been convicted are also on bail pending appeal. Others, such as the former Minister of Tertiary Education, Jonathan Moyo — set to stand trial for embezzling \$400 000 meant for manpower development — and former cabinet ministers, Saviour Kasukuwere, Walter Mzembi and Patrick Zhuwao — each facing several corruption charges — have fled to neighbouring countries.⁴⁶

Defence lawyers (ironically, most of them pro-democracy activists and members of opposition parties) representing corruption suspects already are seeking to have the matters dismissed for lack of evidence as trials are continuously postponed.⁴⁷ What is more, the National Prosecuting Authority lacks the funds and expertise to deal with complicated corruption cases. The cases have generated far more headlines than convictions, and the acquittal of the former Energy Minister, Samuel Undenge, on one of the corruption charges he is facing has reduced public confidence in the system.⁴⁸

3.2.2 Amnesties

The new administration has issued an executive order on amnesties, in order to entice former regime officials and business people who have externalised funds from the country to negotiate a deal with the Reserve Bank of Zimbabwe which would free them from prosecution if they returned the funds.⁴⁹ At the end of the moratorium of three months — and an extra two weeks — the government

46 Manayiti O (24 December 2017) "Mnangagwa Guns for Mugabe Allies" *The Standard*, available at <https://www.thestandard.co.zw/2017/12/24/mnangagwa-guns-mugabe-allies/> (visited 12 September 2019).

47 See, for example, *Zimbabwe Situation* (19 July 2019) "Supa Seeks Case Dismissal", available at <https://www.zimbabwesituation.com/news/supa-seeks-case-dismissal/> (visited 12 September 2019).

48 Whiz L (10 December 2018) "Former Energy Minister Samuel Undenge Acquitted in \$5,6m Chivayo Payout" *ZimLive.com*, available at <https://www.zimlive.com/2018/12/10/former-energy-minister-samuel-undenge-acquitted-in-56m-chivayo-payout/> (visited 12 September 2019).

49 The Presidential Powers (Temporary) Measures (Amendment of Exchange Control Act) Regulations SI 145 of 2017 offered amnesty in respect of the repatriation of foreign currency and assets that were externalised by commission or omission or under the liberalised Exchange Control Framework. The amnesty expired on the 28 February 2018. See Press Statement (20 December 2017) by Dr JP Mangudya, Governor of the Reserve Bank of Zimbabwe "Administrative Arrangements for the Repatriation of Expatriated Foreign Exchange and Assets", available at <https://www.rbz.co.zw/documents/publications/press/press-statement---exchange-control-amnesty---20-december-2017.pdf> (visited 30 August 2019).

released a list of the externalisers.⁵⁰ Although the list contains more than 1 800 culprits, including once untouchable state-owned enterprises and churches, it has been criticised for leaving out people in the new administration who are alleged to have externalised a lot of money.⁵¹ The list contains mostly companies, suggesting that the whole system, rather than individuals, bears the blame. The new administration's anti-corruption fight is rooted in attracting foreign investment, a strategy that contradicts what Zimbabweans want, namely, accountability by those who benefited from years of corruption under Mugabe.

Moreover, the legal definition of the terms used in this context are not accurate: there is confusion between externalisation and illicit financial flows.⁵² The amnesties can be an incentive to offenders only if there is a real and imminent threat of being prosecuted under the criminal law. However, without a clear law, and without enough state resources to carry out forensic investigations, to engage experts and to persuade foreign jurisdictions of their anti-corruption drive, these amnesties will remain hollow promises.

Robert Mugabe and his immediate family members were reported to have been offered immunity from prosecution as part of a deal that led to his resignation, although the ZACC continuously receives pressure from the public to investigate Grace Mugabe on various corruption cases.⁵³ Regrettably, the deal between Mugabe and the military has not been made public. It is too early to say how long the amnesty will be respected. At the time of writing, information on Mugabe's underhand dealings is trickling out. Mugabe slowly is returning to the political limelight by sponsoring a new political party as revenge for the military intervention, which he insists was a *coup*.⁵⁴

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- 50 Mudzingwa F (19 March 2018) "President Emmerson Mnangagwa's List of Looters and Externalisers is out" *The Financial Gazette*.
- 51 Phiri G (20 March 2018) "Mnangagwa's Forex Looters List a Big Joke" *Daily News*.
- 52 Kuwaza K (9 March 2018) "Externalisation: Legal Instruments Needed to Enforce, Clarify Amnesty" *Zimbabwean Independent*.
- 53 SABC (27 February 2018) "Call to arrest Grace Mugabe", available at <http://web.sabc.co.za/sabc/home/channelafrica/news/details?id=f30e5e2c-af82-4172-9279-dcea63378391&title=Call%20to%20arrest%20Grace%20Mugabe> (visited 12 September 2019).
- 54 Dzirutwe D (5 March 2018) "Mugabe Acolyte Forms New Zimbabwe Political Party to Challenge Mnangagwa" *Reuters*, available at <https://www.reuters.com/article/us-zimbabwe-politics/mugabe-acolyte-forms-new-zimbabwe-political-party-to-challenge-mnangagwa-idUSKBN1GH2J5> (visited 12 September 2019).

3.2.3 Truth Inquiries

Mugabe notoriously refused to authorise setting up commissions of inquiry into grand corruption that besieged the country. When occasionally he did relent, he abused his authority to handpick the commissioners; and the reports were submitted to him only and were made public years later, thereby rendering the entire process laughable.⁵⁵ The new administration has an improved anti-corruption vigour and has made it conducive for the parliamentary portfolio committees to carry out public inquiries into issues of transparency and corruption.

Parliamentary portfolio committees have authority to summon people to parliament to answer questions under oath.⁵⁶ They audit the government and are an important part of fighting corruption. Notably, members of the public are allowed to attend their meetings. The Parliamentary Portfolio Committee on Mines and Energy and the Parliamentary Portfolio Committee on Public Accounts thus far have brought into the public domain some cases of corruption that previously had been allowed to flourish undeterred.⁵⁷ The public enquiries being carried out by the portfolio committees since the new administration came into power resemble a truth enquiry into public corruption, which is a *volte face* considering that Mugabe once defended his ministers as clean.

Despite their effectiveness in making public cases of corruption that were swept under the carpet during Mugabe's administration, the parliamentary committees constitute a soft approach in that they do not have prosecutorial authority and cannot take any action against suspects. In a laughable incident, a serving cabinet minister refused to answer questions about his involvement in corruption before the Parliamentary Committee on Mines and Energy and no action has been taken against him.⁵⁸ At the time of writing, the Committee is trying in vain to obtain testimony from Robert Mugabe.⁵⁹

3.2.4 Institutional Reforms

The new administration has used various institutional reforms in an attempt to redress the systemic corruption of the previous administration. These reforms include strengthening of the mechanisms and processes to fight corruption. The ZACC, which under Mugabe's presidency spent years without commissioners, has

55 See Chivara I (27 September 2013) "Willowgate Report Shows Zim Car-Scandal Whitewash" *Mail & Guardian*.

56 Section 299 of the Constitution of Zimbabwe.

57 Makamure J (16 February 2018) "Mines Portfolio Committee Flexes its Muscle on Graft" *Newsday*.

58 Murwira Z (23 February 2018) "Mpofu Refuses to Give Evidence before Parly" *The Herald*.

59 *SABC News* (9 May 2018) "Mugabe to Testify on Zim Diamond Corruption".

been reinforced and, for the first time, is exercising its authority to effect arrests through the ZRP.⁶⁰ President Emmerson Mnangagwa recently discharged all ZACC commissioners and shortlisted potential replacements, including former legislators from opposition parties and independent scholars.⁶¹

The administration has opened Specialised Economic Crimes Courts (SECCs) — an idea it claimed had been introduced to the erstwhile government by President Emmerson Mnangagwa when he was Justice Minister, but which simply was not implemented. In these new SECCs corruption cases will be prioritised.⁶² The SECCs started off on a high note and recorded convictions in several high-profile cases, but most of these successes have been confined to the capital. Available statistics show that, by December 2018, the SECCs had recorded a total of 52 cases, of which 23 were deliberated upon and completed, while 29 remained pending and were at various stages of trial.⁶³

The new administration has reinstated the Auditor-General, who was sacked after she had uncovered numerous cases of corruption in government during Robert Mugabe's presidency.⁶⁴ It also has reinstated the former Prosecutor-General, who was removed from office unconstitutionally by Robert Mugabe.⁶⁵ It has purged senior officials who turned a blind eye on corruption, including the Commissioner-General of the ZRP and other senior police officers, and has reassigned some officials.⁶⁶ The ZRP, according to statistics, was the most corrupt institution in the country.⁶⁷ It has been indicated that more purges are underway in government departments and state enterprises.⁶⁸

60 Section 254 of the Constitution of Zimbabwe.

61 Staff Reporter (6 June 2019) "Zimbabwe's Mnangagwa Considers Opposition Officials for Anti-Corruption Body" *The Zimbabwe Mail*, available at <https://www.thezimbabwemail.com/zimbabwe/zimbabwes-mnangagwa-considers-opposition-officials-for-anti-corruption-body/> (visited 12 September 2019).

62 Judicial Service Commission (15 January 2018) "Press Statement on the Opening of the Legal Year", available at <http://www.veritaszim.net/node/2311> (visited 12 September 2019).

63 Towindo L & Bwititi K (4 August 2019) "Anti-Corruption Courts Handle 39 Cases" *Sunday Mail*, available at <https://www.sundaymail.co.zw/anti-corruption-courts-handle-39-cases> (visited 12 September 2019).

64 Member of Parliament Patrick Chinamasa Moves Forward a Motion to Reappoint Mildred Chari as the Auditor General during a Parliamentary Session on December 19, 2017. See National Assembly Hansard 9 January 2017, Volume 44: Number 28 at 6.

65 Government Gazette General Notice No 642 of 2017 (27 October 2017).

66 A copy of the letter of dismissal is on file with author.

67 Transparency International Zimbabwe (2015) at 6.

68 Kanambura A (5 July 2019) "Mnangagwa Intensifies Rivals Purges" *Zimbabwe Independent*, available at <https://www.theindependent.co.zw/2019/07/05/mnangagwa-intensifies-rivals-purges/> (visited 12 September 2019).

The new administration is adopting measures compatible with the international law and best practice on the prevention of corruption. For instance, it is implementing certain Financial Action Task Force (FATF) recommendations on combating money laundering;⁶⁹ enforcing optional provisions of the United Nations Convention against Corruption (UNCAC) by making it compulsory for senior government officials to declare their assets, as well as adopting optional crimes such as illicit enrichment;⁷⁰ and signing the African Charter on Democracy, Elections and Governance (ACDEG). The ACDEG is important both as an anti-corruption charter and as the cornerstone of the AU transitional justice legal framework.

Regrettably, most of the reform measures have been taken in haste without legal backing, and remain mere political statements or, at best, statements of intent. What is more, some measures violate the Constitution, such as the establishment of a Special Anti-Corruption Unit in the President's office which bypasses the ZACC. This paper suggests that without due process, these measures may be viewed as partisan and meant to punish political opponents aligned to the ousted Robert Mugabe. At the time of writing, the ZACC's record has lost its lustre, largely because of the apparent political selectivity in its operations. Its initial caseload reflected its intention to focus on political opponents believed to be linked to a rival faction, the G40. Notably, the list was dominated by the President's adversaries and included none of his close allies, omitting even the handful of his loyalists publicly accused of corruption in the past.⁷¹

3.2.5 Asset Recovery

The new administration has ordered the SECCs to forfeit corruptly acquired wealth as a separate measure to combat corruption.⁷² The sentencing process at the new courts will include forfeiture of assets upon conviction.⁷³ Additionally, forfeiture of assets can take place where there is no conviction, given that Zimbabwean law provides for non-conviction based forfeiture of assets in cases of money

69 Money Laundering and Proceeds of Crime (Amendment) Bill HB4, 2018.

70 Regrettably, the law has not been made public yet. It is referred to only in an order from the President's office.

71 The list may be downloaded from *Pindula News* (19 March 2018) as "Download (PDF): Looters List Released by President Emmerson Mnangagwa", available at <https://news.pindula.co.zw/2018/03/19/download-pdf-looters-list-released-by-president-emmerson-mnangagwa/> (visited 12 September 2019).

72 Nemukuyu D (30 March 2018) "Corrupt People to Lose Assets — Chief Justice Opens Special Court" *The Chronicle*.

73 Regrettably, the court rules for the SECCs are not available to the public yet.

laundering.⁷⁴ Consequently, the anti-corruption courts will also have jurisdiction to grant seizure and forfeiture orders.

Although it can deter corruption, remediate victims and secure non-recurrence, the status of asset recovery in transitional justice remains nebulous.⁷⁵ It has been acknowledged that asset recovery can be a way to ameliorate the challenges of funding transitional justice.⁷⁶ For instance, in Peru, assets recovered from Alberto Fujimori were used to fund the truth commission and later to pay reparations. And in the Philippines, a third of the assets recovered from the Marcos family was used to fund the reparations programme.⁷⁷ Similarly, civic societies in Zimbabwe can lobby for recovered assets to go into human rights programmes in affected communities. The efforts that followed the Arab Spring were promising in transitional justice.⁷⁸

The asset recovery programme to repatriate externalised funds following the amnesty has not sired confidence in the nation. It suffers from inherent weaknesses in that “it is administrated through state-to-state processes, that are opaque and inaccessible to the public in general, and victims in particular”.⁷⁹ There is a risk that without public accountability and with the old-guard in power, recovered assets may be looted and not assist in reparations or the rebuilding of the nation. As Carranza notes:

The point is that once you specify how assets that are recovered will be spent and the public understands that they will be specifically spent for victims of human rights violations, I think you can generate enough backing and enough public support for that objective than if you just say those assets will just go back to the treasury or go back to the government, because then everyone will be concerned about how those assets could be lost again through corruption. Money that has been repatriated from

74 See section 79 of the Money Laundering and Proceeds of Crime Act 4 of 2013.

75 See Lasslett K (15 May 2017) “Victims of Corruption: Applied Principles for Asset Recovery”, available at <http://statecrime.org/state-crime-research/victims-of-corruption-applied-principles-for-asset-recovery/> (visited 31 August 2019).

76 Carranza R (2008) “Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?” 2(3) *International Journal of Transitional Justice* 310–330 at 320.

77 Carranza (2008) at 320.

78 See the Arab Forum on Asset Recovery (AFAR), an initiative in support of asset recovery efforts by Arab countries in transition.

79 Lasslett (15 May 2017).

externalised funds has not been dealt with openly.⁸⁰

The new administration has reported an amount of \$591 million being returned, which is less than half the funds believed to be held abroad. It is about a quarter of the Zimbabwean annual budget and its repatriation ought to have seen some changes in the cash crisis and other serious financial challenges which Zimbabwe currently is facing.

Returning stolen assets through a series of opaque channels does not benefit the citizens. The reason is that there are no guarantees that, once returned, the money will not fall into corrupt hands again. An emerging set of principles, known as the GFAR Principles for the Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases, have been developed for governing the restitution process. They aim to ensure that assets are returned in an inclusive, accountable and transparent manner that benefits victim populations rather than corrupt officials.⁸¹

However, it is noteworthy that after all these years of corrupt practices being swept under the carpet in Zimbabwe, suddenly the new administration, which still is populated by about half of the old-guard, is energetic about fighting corruption. Most citizens are skeptical about the government's declared aims to cleanse the civil service of corrupt elements. Under Mugabe's regime, there was no political will to curb corruption. The military intervention has ushered in some sort of political will. However, it also needs to galvanise public will in order to be successful in its anti-corruption endeavours.

4 COULD TRANSITIONAL JUSTICE BE A PANACEA?

A quick discussion of the term "transitional justice" may be a good starting point to advance the central argument of this paper. The term has been used to refer to mechanisms and processes adopted to redress human rights violations in post-conflict or post-authoritarian societies. This is the characterisation of transitional justice coined by, amongst others, Teitel in her path-breaking book *Transitional*

80 Carranza R (20 June 2013) "Asset Recovery, Reconciliation and Economic Truth Commissions in Transitional Egypt — An Interview with Ruben Carranza" *Egyptian Initiative for Personal Rights: The Blog*, available at <https://eipr.org/en/blog/mohamed-el-shewy/2013/06/asset-recovery-reconciliation-and-economic-truth-commissions> (visited 12 September 2019).

81 They set out ten principles which establish a global benchmark for the return of assets. See GFAR (December 2017) "Global Forum on Asset Recovery Communique" *Stolen Asset Recovery Initiative*, available at https://star.worldbank.org/sites/star/files/20171206_gfar_communique.pdf (visited 31 August 2019).

Justice.⁸² The definition was adapted by the International Center for Transitional Justice (ICTJ), as follows:

Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take place over many decades.⁸³

However, the report of the United Nations Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence reflects a healthy dose of pragmatism when it comes to defining transitional justice. It is a treasure trove of points that can support the claims made in this paper. In particular, the report points out that transitional justice mechanisms have been transferred progressively from their “place of origin” in post-authoritarian settings to post-conflict contexts, and even to settings in which conflict is ongoing or in which there has been no transition of which to speak.⁸⁴ What is more, the report illuminates claims that issues relating to economic rights occupy in these transitions: claims against corruption and in favour of economic opportunities have been raised to the same level as claims for the redress of violations of civil and political rights.⁸⁵ These two findings of the report are worthy of further explanation.

Firstly, pre-transitional justice fast is becoming a key requisite in countries where there has been partial or no regime change. Places such as Zimbabwe where, by and large, transition has not yet come or is still underway, are unlikely to countenance robust justice or truth-telling processes. This reality does not — and should not — prevent scholars and practitioners from formulating *ex ante* mechanisms and processes. Pre-transitional mechanisms can take multiple forms, including documentation efforts initiated by NGOs.

82 Teitel RG (2000) *Transitional Justice* Oxford: Oxford University Press.

83 ICTJ (2009) “What is Transitional Justice?”, available at <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf> (visited 31 August 2019).

84 Human Rights Council (HRC) (2015) “Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Pablo de Greiff” A/HRC/30/42 at 5-6, paras III(A) 15-16, available at <https://www.ohchr.org/Documents/Issues/Truth/A-HRC-30-42.pdf> (visited 31 August 2019).

85 HRC (2015) at 5-6, paras III(A) 15-16.

Secondly, corruption also fast is becoming an important area in transitional justice discourse. To a growing number of transitional justice advocates, especially those working in developing countries, corruption can be a human rights violation in and of itself. Therefore, it is imperative that transitional justice deals with corruption. Discussing the linkages between corruption and transitional justice is beyond this paper. Suffice it to say, as will be seen below, that the latest transitional justice initiatives have heeded this call and have included corruption in their mandate.

However, although, the idea is gaining credence and momentum that transitional justice may and should address corruption, less is known about whether, following a regime change, anti-corruption mechanisms can be used to investigate, document and redress human rights violations. This matter is all the more relevant today, when there is much wider acceptance that corruption may be a cause of human rights violations.⁸⁶ As Transparency International states:

A corrupt government which rejects both transparency and accountability is not likely to be a respecter of human rights. Therefore, the campaign to contain corruption and the movement for the promotion and protection of human rights are not disparate processes. They are inextricably linked and interdependent.⁸⁷

This is regrettable given, as Nye observes, that one of the charges usually levelled against the previous regime by the leaders of a *coup* in a less developed country, is corruption.⁸⁸

The similarities between the mechanisms and processes used to deal with corruption by the new Zimbabwean administration and the traditional transitional justice methods are undeniable. A *caveat* is in order here: transitional justice as a field does not have a monopoly over prosecutions, amnesties, truth enquiries, or institutional reforms. Rather, as the ICTJ succinctly states, transitional justice as a discipline simply emphasises these approaches.⁸⁹ Furthermore, these approaches can be used innovatively:

86 See generally Peters (2018).

87 Cited in Carranza (2008) at 311.

88 Nye JS (1967) "Corruption and Political Development: A Cost-Benefit Analysis" 61(2) *American Political Science Review* 417-27 at 417.

89 See the ICTJ "What is Transitional Justice?", available at <https://www.ictj.org/about/transitional-justice> (visited 12 September 2019).

For example, truth commissions and fact-finding commissions of inquiry have looked into issues of endemic corruption of prior regimes in a way that did not occur in similar bodies twenty years ago.⁹⁰

The focus on the link between the field of transitional justice and corruption was accelerated by the publication of the 2008 special issue of the *International Journal of Transitional Justice*.⁹¹

At a Johannesburg Symposium in 2003, Zimbabwean civil society organisations had made recommendations for the creation of a special commission to deal with economic crimes such as corruption, asset stripping and debts incurred by previous governments in connection with human rights abuses.⁹² Surprisingly, the same civil society organisations are not investing attention in the current events unfolding to reveal a pattern of human rights abuses fuelled by corruption. When the issue does arise, it is discussed from the perspective of a human rights driven process that is securing the rights of those accused of corruption.⁹³

Clearly, the dynamics of the links between corruption and violation of human rights during the Robert Mugabe regime has not been drawn. In the same vein, civil society has been calling for transitional justice focusing on physical human rights abuses pertaining to allegations of genocide in the 1980s. This article does not intend to denigrate efforts to uncover the infringements of civil and political rights under the previous administration. On the contrary, we argue that regarding corruption charges from a human rights perspective under transitional justice mechanisms may make it possible to redress other forms of human rights abuses, which the new administration so far has been avoiding. As Carranza observes, such an approach has the potential of uncovering the whole truth:

The Commission for Reception, Truth and Reconciliation (CAVR) in East Timor addressed famine and forced displacement. By holding hearings on

90 See the ICTJ "What is Transitional Justice?", available at <https://www.ictj.org/about/transitional-justice> (visited 12 September 2019).

91 See the editorial by Mani R (2008) "Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development" 2(3) *International Journal of Transitional Justice* 253–265. See also the following seminal articles in the same volume: Miller Z "Effects of Invisibility: In Search of the 'Economic' in Transitional Justice" 266–291; Carranza R "Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?" 310–330; Laplante LJ "Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework" 331–355.

92 See Morrell P & Pigou P (eds) (2004) *Civil Society and Justice in Zimbabwe: Proceedings of a Symposium held in Johannesburg, 11-13 August 2003*.

93 On the link between corruption and human rights see Gathii JT (2009) "Defining the Relationship Between Human Rights and Corruption" 31 *University of Pennsylvania Journal of International Law* 125-202 at 125.

these economic rights violations, CAVR was able to establish that, of the estimated 102,800 victims who died during the Indonesian occupation, approximately 84,200 died of hunger and illness rather than being killed outright or forcibly disappeared. More important, it established a far more truthful account of the Indonesian occupation than it would have had it limited itself to physical integrity violations tied to civil and political rights.⁹⁴

A recent study by Cohen notes that:

For transitional justice actors to not take the opportunity to address political and institutional root causes of violence in a transitional setting is to deny justice sought by victims of corruption, and potentially lay the ground work for further conflict.⁹⁵

In a similar way, actors should make full use of measures designed to deal with corruption that may assist in addressing the root causes of human rights violations, especially in settings where human rights violations and corruption are intertwined.

Zimbabwe ought to join other countries that have adopted transitional justice measures to address political corruption following the fall of a regime. Countries such as Chad, Nigeria, Ghana, Sierra Leone, Liberia, Kenya and, recently, countries in the Middle East and North Africa following the wave of democratisation known as the Arab Spring, have pursued the corruption-transitional justice nexus.⁹⁶ Zimbabwe is the latest country where a dictator has fallen on allegations of corruption, presenting transitional justice scholars and practitioners with the opportunity of going beyond mere talking of the alliance between corruption and human rights violations and to lobby for its full and official adoption.

The only way forward is for the new administration in Zimbabwe to engage with civil society in a genuine and fully consultative process and agree on a framework to tackle corruption. Civil society played a significant role in exposing corruption and human rights abuses under the Mugabe regime. Citizens played a crucial role in supporting the ZDF to remove Mugabe and give the military intervention a popular face. Equally important, the new government should engage the international community, which possibly can help with funding and expertise and provide extra eyes to watch and assist the government if and when its anti-corruption initiatives veer to the extra-legal.

94 Carranza (2008) at 320.

95 Cohen J (2017) "Addressing Corruption through Justice-Sensitive Security Sector Reform" *ICTJ: Studies on Transitional Justice in Context* at 17.

96 See Aboueldahab N (2017) "Transitional Justice Policy in Authoritarian Contexts: The Case of Egypt" *Brookings Doha Center* at 3.

5 INTERNATIONAL ASSISTANCE

What can be achieved with regard to fighting impunity will depend on the credibility of the ongoing war against corruption, which has become a symbol of the new Zimbabwean administration. Whether the administration has a genuine commitment to fighting corruption remains to be seen. However, even instrumentalised anti-corruption measures can have unintended consequences, resulting in their going beyond the limits placed on them by political actors and achieving genuine reforms.⁹⁷ The international community can play a significant role to foster the required credibility.

To date, the new government has been working single-handedly, with little or no assistance from the international community. This is the case despite the fact that international organisations, such as the UN and the EU, as well as individual governments have been working with civil society to root out corruption. Moreover, other international organisations, such as Human Rights Watch and Global Witness, have brought to light cases of corruption individually and as part of human rights violations under Robert Mugabe's regime. These organisations can give support to local civil society organisations working on links between corruption and human rights violations.

Although the government of Zimbabwe has not collaborated with the international community, it has received funding for anti-corruption initiatives. For instance, the SECCs were established with funding from the EU and the International Commission of Jurists. The international community can assist to ensure that the Zimbabwean anti-corruption mechanisms are in compliance with international law and practice. They can assist also with technical know-how and training of anti-corruption personnel. More importantly, the international community can assist the reformed institutions with funding to insulate them from government interference and ensure their independence.

6 CONCLUSION

Zimbabwe's path-breaking efforts to address decades of corruption committed during the Mugabe era illustrate clearly the need for a combination of anti-corruption and transitional justice efforts. It is still too early to assess the effectiveness of the new administration's anti-corruption approach. However, the use of accountability mechanisms by the new administration to repress cases of massive political corruption committed in the past demonstrates the opportunities for grand corruption to be included in the transitional justice structures.

97 Lawson (2009) at 76.

If we are correct, the current conjuncture could be an opportunity for scholars and practitioners of transitional justice and anti-corruption in Zimbabwe and elsewhere to go beyond the traditional rhetoric of the need to include corruption in transitional justice. Ample work already has been done to draw attention to the significance of the issue. What is lacking is concrete action to assist transitional states to tackle corruption committed in the past. For Zimbabwe to take precedence in this regard, civil society must fight a two-front war simultaneously, to address the many challenges facing the anti-corruption mechanisms and to use the available information to make linkages to human rights violations.

Opportunities to implement comprehensive transitional justice in Zimbabwe have been missed before. Moreover, a clean break in politics as occurred in the early stages of democratisation in Eastern Europe, the former USSR and Latin America now are rare. The field already has acknowledged that the process can be applied in pre-transition, where there is no political transition or a transition from one neo-liberal regime to another, or even where conflict is ongoing.⁹⁸ If the Zimbabwean processes are aided by civil society and the international community, they will offer useful comparative matter for scholars and practitioners interested in the specific linkages between anti-corruption and transitional justice.

98 Sharp D (2014) "Emancipating Transitional Justice from the Bonds of the Paradigmatic Transition" 9(1) *International Journal of Transitional Justice* 150-169 at 150-151.