



ASSER PRESS

International Criminal Justice Series

Volume 24

# Transitional Justice and Socio-Economic Rights in Zimbabwe

Prosper Maguchu



Springer

# **International Criminal Justice Series**

Volume 24

## **Series Editors**

Gerhard Werle, Berlin, Germany

Moritz Vormbaum, Münster, Germany

## **Series Information**

The *International Criminal Justice Series* aims to create a platform for publications covering the entire field of international criminal justice. It, therefore, deals with issues relating, among others, to:

- the work of international criminal courts and tribunals;
- transitional justice approaches in different countries;
- international anti-corruption and anti-money laundering initiatives;
- the history of international criminal law.

It is peer-reviewed and seeks to publish high-quality works emanating from excellent scholars.

## **Editorial Office**

Prof. Dr. Gerhard Werle  
Humboldt-Universität zu Berlin  
Faculty of Law  
Unter den Linden 6,  
10099 Berlin, Germany  
[gerhard.werle@rewi.hu-berlin.de](mailto:gerhard.werle@rewi.hu-berlin.de)  
[vormbaum@uni-muenster.de](mailto:vormbaum@uni-muenster.de)

More information about this series at <http://www.springer.com/series/13470>

Prosper Maguchu

# Transitional Justice and Socio-Economic Rights in Zimbabwe



ASSER PRESS



Springer

Prosper Maguchu  
Centre for the Politics of Transnational Law  
Vrije Universiteit Amsterdam  
Amsterdam, The Netherlands

ISSN 2352-6718                      ISSN 2352-6726 (electronic)  
International Criminal Justice Series  
ISBN 978-94-6265-322-1              ISBN 978-94-6265-323-8 (eBook)  
<https://doi.org/10.1007/978-94-6265-323-8>

Published by T.M.C. ASSER PRESS, The Hague, The Netherlands [www.asserpress.nl](http://www.asserpress.nl)  
Produced and distributed for T.M.C. ASSER PRESS by Springer-Verlag Berlin Heidelberg

© T.M.C. ASSER PRESS and the author 2019

No part of this work may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, microfilming, recording or otherwise, without written permission from the Publisher, with the exception of any material supplied specifically for the purpose of being entered and executed on a computer system, for exclusive use by the purchaser of the work.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

This T.M.C. ASSER PRESS imprint is published by the registered company Springer-Verlag GmbH, DE part of Springer Nature.  
The registered company address is: Heidelberger Platz 3, 14197 Berlin, Germany

# Preface

The parameters of transitional justice, as an interdisciplinary field, are expanding. For instance, while it started off conservatively by focusing on judicial and non-judicial measures implemented in order to redress legacies of physical human rights abuses, it has evolved to address socio-economic violations and related issues such as large-scale corruption. Despite this widened remit, which continues to expand, it remains problematic to locate, let alone address, corruption within transitional justice as originally conceived. This is largely due to the lack of a comprehensive framework to unite the fields of anti-corruption and transitional justice. This book therefore seeks to investigate the specific ways in which transitional justice mechanisms should be used to address corruption.

To that end, it examines to what extent cases of corruption in Zimbabwe amount to human rights violations under the transitional justice framework. In doing so, it seeks to identify where crimes of corruption should be situated within theoretical and legal frameworks and to explore ways in which they can be practically addressed at the policy level in the context of Zimbabwe's transition to democracy. Through an analysis of the text of the law and of practice, the book demonstrates how Zimbabwe's official transitional justice processes can engage with socio-economic issues, in particular corruption, and how this has precipitated conflict. It will also examine emerging legal actions and practices by the newly installed government and the ways in which this new regime is attempting to address the issue, and consider whether such efforts are underpinned by a coherent legal position rooted in international law and best practice.

This book will contribute to the ongoing academic inquiry into an appropriate legal framework for addressing corruption in the transitional justice and human rights discourses. It also seeks to undertake an intra- and cross-regional comparative analysis, for example by examining how the 'fourth wave' of democratisation in the Middle East and North Africa (MENA) region has reinvigorated the search for the link between corruption and transitional justice. The book concludes that in cases

where corruption has achieved the status of a human rights violation under international law, it can and should be addressed by transitional justice mechanisms and processes.

Amsterdam, The Netherlands

Prosper Maguchu

# Acknowledgements

I have met a number of people who have greatly assisted me on my journey from the practice of law to academia, and it would be an injustice not to mention them either explicitly or implicitly.

I am indebted to the Catholic Academic Association Service for funding my doctoral studies. My particular gratitude goes to Dr. Hermann Weber, Dr. Marko Kuhn and Simone Saure and the administrative team as well as the national committee in Zimbabwe. I would like to thank Dr. Siegfried Karl of the *Katholische Hochschulgemeinde Gießen* for his spiritual support and Prof. Franz Reimer for his direct and indirect guidance while I was writing this book.

I owe my deepest gratitude to my former supervisor Prof. Thilo Maruhn for his help and guidance. I am also deeply indebted to my mentor Prof. Ben Chigara for sharing his pearls of wisdom with me during the course of this research, and to my friend Prof. Sven Simon, who acted as a *de facto* assistant supervisor and helped to shape the content of this book. He also helped me to develop a good work ethic and his passion for “perfectionism” has had a lasting effect. I would also like to express my deepest gratitude to Ulrike Rein and Susanne Seitz, who were always there for me.

In developing the ideas presented here, I received helpful input from my colleagues at the University of Giessen, Fransiska Asmin, Collins Mbuayang, Kangnikoe Bado, Daniel Behailu, Wisdom Momodu, Joscha Mueller and Eric Che Muma, who were part of the review committee that constantly gave useful feedback on the project. I would also like to thank my former colleagues from the Zimbabwe Human Rights NGO Forum for their support, even if they may not necessarily agree with the interpretations and/or conclusions of my research.

I would also like to express my gratitude to Antony Reeler, Arthur Gwagwa, Arnold Tsunga, Cait Houlbrook, Dr. Godfrey Maringira, Blessing Taona Denhere and Scott Stevens for their editorial assistance and comments on an earlier version of the manuscript, although any errors are my own and should not tarnish the reputations of these esteemed persons.



In addition, a very special thanks to Prof. Moritz Vormbaum for his extensive advice and guidance as I was preparing for the publication of this book. I have greatly benefited from being an alumnus of the South African-German Centre for Transnational Criminal Justice.

I gratefully acknowledge the support and generosity of the Scholars at Risk Network and the Foundation for Refugee Students, who provided funding, insight and expertise that greatly assisted in the later stages of my research and without which the book could not have been published. I have greatly benefited from my hosts in the Department of Transboundary Legal Studies at the University of Groningen, where I was a visiting researcher. The support, encouragement and feedback I received from my colleagues and my supervisor Prof. Marcel Brus were invaluable. I would also like to thank my professional editor Andrew Godfrey, whose services I highly recommend.

Most importantly, I would like to thank my family in the broadest meaning of the word, and especially my wife Esther for her love and support.

Amsterdam, The Netherlands

Prosper Maguchu

# Contents

<b>1</b>	<b>The Linkages Between Corruption and Transitional Justice</b> . . . . .	1
1.1	General Introduction and Background . . . . .	2
1.2	Definition and Discussion of Terms . . . . .	5
1.2.1	Transitional Justice . . . . .	5
1.2.2	Socio-economic Rights . . . . .	9
1.2.3	Corruption . . . . .	11
1.3	Accountability Mechanisms . . . . .	14
1.3.1	Truth Commissions and Corruption . . . . .	14
1.3.2	Prosecutions and Corruption . . . . .	16
1.3.3	Amnesties and Corruption . . . . .	18
1.3.4	Reparations and Corruption . . . . .	21
1.3.5	Institutional Reforms and Corruption . . . . .	22
1.4	Conclusion . . . . .	23
	References . . . . .	24
<b>2</b>	<b>Understanding Corruption and Human Rights</b> . . . . .	27
2.1	Introduction . . . . .	28
2.2	Preliminary Considerations . . . . .	29
2.2.1	Is Freedom from Corruption a Human Right? . . . . .	29
2.2.2	Is Corruption a Human Rights Violation? . . . . .	30
2.2.3	What Links Corruption to Transitional Justice? . . . . .	31
2.2.4	What Is the Distinction Between Socio-economic Rights and Issues? . . . . .	32
2.3	Overview of Corruption and Human Rights Methodologies . . . . .	33
2.3.1	Doctrinal-Research-Based Studies . . . . .	34
2.3.2	Empirical-Research-Based Studies . . . . .	36
2.3.3	Normative-Research-Based Studies . . . . .	37
2.4	Corruption and Specific Human Rights vis-à-vis the Right to Health . . . . .	38

2.4.1	Background . . . . .	39
2.4.2	Normative Content . . . . .	39
2.4.3	State Obligations and Violations . . . . .	40
2.5	Towards a Framework . . . . .	47
2.5.1	Step One: Analyse the Situation . . . . .	47
2.5.2	Step Two: Identify the Human Rights Obligations Being Violated . . . . .	48
2.5.3	Step Three: Determine the Causal Link . . . . .	48
2.5.4	Step Four: Attribution . . . . .	49
2.6	Conclusion . . . . .	50
	References . . . . .	50
<b>3</b>	<b>The Phenomenon of Corruption and Socio-economic Rights in Zimbabwe . . . . .</b>	<b>53</b>
3.1	Introduction . . . . .	54
3.2	Corruption . . . . .	54
3.2.1	Typology . . . . .	54
3.2.2	Legislative Framework . . . . .	57
3.2.3	Policy Framework . . . . .	61
3.2.4	Judicial Framework . . . . .	65
3.2.5	Compliance and Ranking . . . . .	65
3.3	Socio-economic Rights . . . . .	67
3.3.1	Typology . . . . .	67
3.3.2	Legislative Framework . . . . .	67
3.3.3	Policy Framework . . . . .	69
3.3.4	Judicial Framework . . . . .	70
3.3.5	Compliance and Ranking . . . . .	71
3.4	Corruption and Socio-economic Rights Violations: The Cholera Outbreak . . . . .	71
3.4.1	Hypothesis One: Politicisation . . . . .	72
3.4.2	Hypothesis Two: Cronyism . . . . .	73
3.4.3	Hypothesis Three: Prebendalism . . . . .	74
3.4.4	Hypothesis Four: Rent Seeking . . . . .	75
3.4.5	Hypothesis Five: Patrimonialism . . . . .	76
3.5	Conclusion . . . . .	77
	References . . . . .	78
<b>4</b>	<b>Revisiting Methods of Addressing Past Corruption and Human Rights Violations in Zimbabwe . . . . .</b>	<b>81</b>
4.1	Introduction . . . . .	82
4.2	First Phase: The Post UDI Period (1965–1979) . . . . .	82
4.2.1	Background . . . . .	82
4.2.2	Accountability Mechanisms . . . . .	84
4.2.3	Subsequent Developments . . . . .	85

4.3	Second Phase: Anti-Dissident Period (1981–1988) . . . . .	86
4.3.1	Background . . . . .	86
4.3.2	Accountability Mechanisms . . . . .	87
4.3.3	Subsequent Developments . . . . .	87
4.4	Third Phase: The Post-One-Party-State Period (1990–1995) . . . . .	88
4.4.1	Background . . . . .	88
4.4.2	Accountability Mechanisms . . . . .	89
4.4.3	Subsequent Developments . . . . .	89
4.5	Fourth Phase: State-Sponsored Violence Post-Mugabe (1998–2017). . . . .	89
4.5.1	Background . . . . .	89
4.5.2	Accountability Mechanisms . . . . .	90
4.5.3	Subsequent Developments . . . . .	92
4.6	Conclusion . . . . .	92
	References . . . . .	93
<b>5</b>	<b>Rethinking Ways of Dealing with Corruption Under Transitional Justice in Zimbabwe . . . . .</b>	<b>95</b>
5.1	Introduction . . . . .	96
5.2	The Civil Society and Justice in Zimbabwe Symposium . . . . .	97
5.2.1	Background . . . . .	97
5.2.2	Legal Basis . . . . .	99
5.2.3	Mandate . . . . .	99
5.2.4	Findings . . . . .	100
5.2.5	Special Remarks . . . . .	100
5.3	The Organ on National Healing, Integration and Reconciliation . . . . .	100
5.3.1	Background . . . . .	101
5.3.2	Legal Basis . . . . .	101
5.3.3	Mandate . . . . .	101
5.3.4	Findings . . . . .	102
5.3.5	Special Remarks . . . . .	103
5.4	The ILO Inquiry on Truth, Reconciliation and Justice in Zimbabwe . . . . .	103
5.4.1	Background . . . . .	104
5.4.2	Legal Basis . . . . .	104
5.4.3	Mandate . . . . .	104
5.4.4	Findings . . . . .	105
5.4.5	Special Remarks . . . . .	105
5.5	The National Peace and Reconciliation Commission . . . . .	106
5.5.1	Background . . . . .	106
5.5.2	Legal Basis . . . . .	106
5.5.3	Mandate . . . . .	106

5.5.4	Findings . . . . .	108
5.5.5	Special Remarks . . . . .	108
5.6	The National Transitional Justice Working Group of Zimbabwe . . . . .	109
5.6.1	Background . . . . .	109
5.6.2	Legal Basis . . . . .	109
5.6.3	Mandate . . . . .	110
5.6.4	Findings . . . . .	110
5.6.5	Special Remarks . . . . .	111
5.7	Universal Jurisdiction . . . . .	111
5.7.1	Background . . . . .	112
5.7.2	Legal Basis . . . . .	113
5.7.3	Mandate . . . . .	114
5.7.4	Findings . . . . .	114
5.7.5	Special Remarks . . . . .	114
5.8	Conclusion . . . . .	118
	References . . . . .	119
<b>6</b>	<b>Zimbabwe in a Comparative Perspective . . . . .</b>	<b>121</b>
6.1	Introduction . . . . .	122
6.2	Sub-Saharan Africa . . . . .	122
6.2.1	Background . . . . .	122
6.2.2	Law . . . . .	123
6.2.3	Practice . . . . .	124
6.3	Latin America . . . . .	129
6.3.1	Background . . . . .	129
6.3.2	Law . . . . .	130
6.3.3	Practice . . . . .	131
6.4	Asia . . . . .	132
6.4.1	Background . . . . .	132
6.4.2	Law . . . . .	133
6.4.3	Practice . . . . .	133
6.5	Central and Eastern Europe and the Former Soviet Union . . . . .	135
6.5.1	Background . . . . .	135
6.5.2	Law . . . . .	135
6.5.3	Practice . . . . .	136
6.6	Middle East and North Africa . . . . .	137
6.6.1	Background . . . . .	137
6.6.2	Law . . . . .	137
6.6.3	Practice . . . . .	138
6.7	Conclusion . . . . .	140
	References . . . . .	140

**7 Conclusion** ..... 143

    7.1 Introduction ..... 144

    7.2 Findings ..... 145

        7.2.1 Can Transitional Justice Mechanisms Address Corruption? ..... 145

        7.2.2 Is Corruption a Human Rights Violation? ..... 146

        7.2.3 Did Zimbabwe Violate Socio-economic Rights Through Corruption? ..... 147

        7.2.4 Should Transitional Justice in Zimbabwe Address Corruption? ..... 147

    7.3 Challenges ..... 148

        7.3.1 Broad Mandate ..... 148

        7.3.2 Pursuing Transitional Justice Without ‘Transition’ ..... 149

        7.3.3 Polarised Environment ..... 150

        7.3.4 Methodology ..... 151

        7.3.5 Framing Reparations ..... 151

    7.4 Recommendations ..... 152

        7.4.1 Recommendation One: Inclusivity ..... 152

        7.4.2 Recommendation Two: Consultation ..... 153

        7.4.3 Recommendation Three: Comprehensive Approach ..... 153

        7.4.4 Recommendation Four: Synergies ..... 153

        7.4.5 Recommendation Five: Strengthen Anti-Corruption Mechanisms ..... 153

    7.5 Final Conclusion ..... 154

    References ..... 155

**Table of Cases** ..... 157

**Table of Legislation** ..... 159

**Bibliography** ..... 163

**Index** ..... 173

# Chapter 1

## The Linkages Between Corruption and Transitional Justice



*If corruption has acquired the status of a grievance even leading to regime change and social conflicts then it should certainly be dealt with in the transition period as part of the post revolution and peacebuilding reforms.*

Andrieu Kora (Kora 2012, p. 537)

### Contents

1.1 General Introduction and Background.....	2
1.2 Definition and Discussion of Terms.....	5
1.2.1 Transitional Justice.....	5
1.2.2 Socio-economic Rights.....	9
1.2.3 Corruption.....	11
1.3 Accountability Mechanisms.....	14
1.3.1 Truth Commissions and Corruption.....	14
1.3.2 Prosecutions and Corruption.....	16
1.3.3 Amnesties and Corruption.....	18
1.3.4 Reparations and Corruption.....	21
1.3.5 Institutional Reforms and Corruption.....	22
1.4 Conclusion.....	23
References.....	24

**Abstract** This chapter demystifies the key aspects of addressing corruption within the context of transitional justice. It examines and illustrates how various transitional justice mechanisms have been used to address the violation of socio-economic rights resulting from acts of corruption. It also discusses the possible impediments to the pursuit of accountability for human rights violations attributable to corruption.

**Keywords** Corruption • transition • justice • accountability mechanisms • socio-economic rights

## 1.1 General Introduction and Background

The field of transitional justice traditionally focused exclusively on addressing civil and political rights violations.<sup>1</sup> Its mechanisms were all skewed in favour of addressing these rights while paying scant attention to socio-economic rights. Accordingly, with the intersection of transitional justice and socio-economic rights, it has become imperative to extend its boundaries to closely related socio-economic issues, such as economic policies,<sup>2</sup> structural violence,<sup>3</sup> odious debts<sup>4</sup> and, significantly, economic crimes such as corruption, when they are identified with the root causes of the conflict.<sup>5</sup>

In August 2003 Zimbabwean civil society organisations convened in Johannesburg, South Africa, to discuss options for transitional justice. They recommended creating a special commission to deal with economic crimes such as corruption, asset stripping and debts incurred by previous governments that may be connected to human rights abuses.<sup>6</sup> The symposium was a departure from conventional transitional justice practice and discourse in Zimbabwe, which had mainly focused on civil and political rights violations.

Similarly, the need to forge links between corruption and transitional justice at the international level prompted two leading think tanks on human rights and anti-corruption, Freedom House and Transparency International, to convene a conference in Berlin, Germany, in October 2013.<sup>7</sup> The two-day dialogue brought together human rights lawyers and activists, investigative journalists, anti-corruption and financial experts, economists, members of truth commissions (TCs) and academics, among others. The conference sought to answer the question ‘What transitional justice and anti-corruption tools can be used in pre and post-transition settings to build and maintain legitimacy, fight impunity and corruption, provide redress for human rights violations and secure justice?’<sup>8</sup>

The participants of the Berlin conference recommended adopting resolutions such as, designing ‘transitional justice processes and anti-corruption initiatives for countries in transition that jointly uncover, link, make accountable, and repair past human rights abuses including socio-economic injustices caused by grand corruption’.<sup>9</sup> Moreover, the Berlin conference report concluded with a discussion of a new possible frontier for transitional justice—addressing corruption. It highlighted the

---

<sup>1</sup> Mani 2008, pp. 253–264; Miller 2008, p. 266.

<sup>2</sup> Hecht and Michalowski 2012, pp. 3–4.

<sup>3</sup> Laplante 2008. See by way of contrast McGill 2017, pp. 79–101.

<sup>4</sup> Sharp 2014, pp. 47–60, 56.

<sup>5</sup> Cavallaro and Albuja 2008.

<sup>6</sup> Morrell and Pigou 2004.

<sup>7</sup> Pesek 2014, p. 1.

<sup>8</sup> Pesek 2014, p. 2.

<sup>9</sup> Pesek 2014, p. 2.



need for ‘a comprehensive and complimentary [*sic*] strategy between transitional justice and anti-corruption fields’,<sup>10</sup> and claimed that this alliance will ‘improve a transitional country’s chances to achieve accountability, truth, repair, reconciliation and non-repetition’.<sup>11</sup>

Such recommendations predate the Berlin conference; scholars and practitioners in the field of transitional justice have long been calling for engagement with corruption, particularly in situations where it had a major impact on a conflict. There is wisdom in the words of Ruben Carranza, who lamented the lack of anti-corruption measures in transitional justice mechanisms in his article ‘Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?’:

The prevailing assumption seems to be that truth commissions, human rights trials and reparations programs are meant to engage mainly, if not exclusively, with civil and political rights violations that involve either physical integrity or personal freedom, and not with violations of economic and social rights, including such crimes as large-scale corruption and despoliation. To a growing number of transitional justice advocates, particularly those who work in or come from impoverished post-conflict or post-dictatorship countries, this traditional view is inadequate. It ignores the experience of developing countries abused by dictators or warlords who have been both brutal and corrupt. It perpetuates an impunity gap by focusing on a narrow range of human rights violations while leaving accountability for economic crimes to ineffective domestic institutions or to a still evolving international legal system that deals with corruption.<sup>12</sup>

This preliminary study laid the foundation for a nuanced international debate on engagement with corruption within transitional justice even before the Berlin conference.

There have been numerous publications arguing for the need to include corruption within transitional justice, though for reasons of space only a limited number of examples can be given here.<sup>13</sup> Almost every article that has been written on the subject includes a section on how corruption relates to human rights. As noted by Lisa Hecht and Sabine Michalowski, ‘acts of massive corruption will translate as an almost inevitable consequence for human rights violations. That is they satisfy the thresholds of human rights violation in themselves; and [...] their investigation is a practical necessity especially in transition processes’.<sup>14</sup> Several authors have questioned the usefulness of such an approach. For instance, Leonard Ghione has argued that if corruption is to be included in the transitional justice debate ‘it should be taken out of the “human rights corner”’.<sup>15</sup>

---

<sup>10</sup> Pesek 2014, p. 2.

<sup>11</sup> Pesek 2014, p. 2.

<sup>12</sup> Carranza 2008, p. 310.

<sup>13</sup> See Human Rights Council 2012, p. 15, para 50; see also Seligson 2002; Hayner and Bosire 2003; Cavallaro and Albuja 2008; Sharp 2012.

<sup>14</sup> Hecht and Michalowski 2012, p. 2.

<sup>15</sup> Ghione 2012.

A broader perspective has been adopted by Carranza, albeit inconclusively that:

Whether the engagement with corruption is founded on the premise that corruption is a human rights violation, or on the theory that economic crimes are part of an indivisible system of crimes committed by the same set of perpetrators or regime, the mechanisms used in transitional justice can in fact be applied.<sup>16</sup>

Together, these studies illustrate the dilemma that practitioners face in trying to make the case that transitional justice should tackle corruption.

What is more, even those scholars who agree that transitional justice should deal with corruption as a human rights violation still face the challenge of showing the connections between the two concepts. Isabel Robinson notes that ‘even if the linkages between corruption and human rights are loud and clear, this does not automatically equate with a finding that transitional justice processes should address corruption’.<sup>17</sup> She further adds: ‘Indeed the traditional domain of transitional justice has been a focus on human rights violations, not linkages.’<sup>18</sup> In view of what has been mentioned so far, one might suppose that the lack of a theoretical framework would mean that it is still unclear how transitional justice can engage with corruption, which in turn would lead one to expect that this would not yet have been attempted.

But despite the lack of consensus on this question at the level of theory, at the level of practice a few countries have attempted to incorporate corruption into transitional justice structures. Documented cases from a handful of pioneering countries, such as Chad, Sierra Leone and more recently Kenya, Tunisia, Egypt and Morocco, have steadily built up into a growing body of literature.

However, this practice also has a number of serious drawbacks. Attempts to incorporate corruption into transitional justice processes without a sound theoretical framework raise significant questions. The central problematic feature of engagement with corruption within transitional justice is that ‘it raises complex questions about the normative foundation of transitional justice: what is it; what was it; what can and should it be?’<sup>19</sup>

Consequently, in the absence of a strong intellectual basis and universal consensus regarding the inclusion of corruption in transitional justice, the official theory, policy and practice of transitional justice remains, on the whole, restricted to dealing only with violations of civil and political rights. This is clearly illustrated in the transitional justice processes that are currently taking place in Zimbabwe. These exclusively focus on addressing a selection of gross civil and political rights violations, such as torture, enforced disappearances and politically motivated killings,<sup>20</sup> while turning a blind eye to the socio-economic rights violations perpetrated

---

<sup>16</sup> Carranza 2008, pp. 329–330.

<sup>17</sup> Robinson 2015, p. 6.

<sup>18</sup> Robinson 2015, p. 6.

<sup>19</sup> Robinson 2015, p. 1.

<sup>20</sup> Constitution of Zimbabwe Act Amendment (No. 20) 2013, s252.

through massive corruption, which have crippled the country and eventually led to the end of Robert Mugabe's 37-year rule.

Hence, the purpose of this book is to provide a theoretical and normative framework for how transitional justice should engage with corruption. It follows a case study design, with in-depth analysis of how Zimbabwe should explore ways to mainstream corruption into transitional justice processes. The findings are intended to make an important contribution to the current quest for transitional justice in Zimbabwe and to the understanding of the relationship between corruption, human rights and transitional justice.

## 1.2 Definition and Discussion of Terms

### 1.2.1 *Transitional Justice*

In the literature, 'so far, there is no single theory of transitional justice, and the term does not have a concrete meaning'.<sup>21</sup> It is important to note from the outset that in practice, transitional justice processes can take place in some cases without defining the concept of transitional justice as such. As Clara Sandoval Villalba argues, it is common for states to engage in reparations programmes without acknowledging, or taking legal responsibility for, the human rights abuses or crimes that were committed, and instead act as if they are helping victims to move forward.<sup>22</sup>

This is certainly true in the case of Zimbabwe, where some forms of transitional justice were implemented after the liberation struggle of 1965 to 1979 without any acknowledgment of abuses. Examples such as the granting of amnesties to the members of the Rhodesian security forces and the guerrillas, the demobilisation of the former guerrillas and the payment of compensation to a selected group of victims of human rights violations committed during the struggle for independence may be regarded by some as transitional justice mechanisms.

In the same vein, it can be argued that other late entrants such as the Global Political Agreement (GPA) of 2009 represented yet another transition, though many would instead see this as a peace treaty intended to create a transition. It might also be argued that the Unity Accord of 1987 was also a transition, but again some would argue that this was merely a peace accord leading to a government of national unity of some kind.<sup>23</sup> This is because the 1987 Unity Accord and the 2009 GPA were not victim-driven or victim-focused mechanisms, but rather elite-oriented power-sharing agreements.

Returning to the issue of defining transitional justice: a mapping exercise carried out by the African Transitional Justice Research Network (ATJRN) reported that

---

<sup>21</sup> Arthur 2009, p. 359.

<sup>22</sup> Villalba 2011.

<sup>23</sup> See in general Reeler et al. 2017.