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Transnational Human Rights and Local Moralities: the Circulation of Rights Discourses in Zimbabwe and South Africa

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Thesis Presented for the Degree of

DOCTOR OF PHILOSOPHY

in the Department of Social Anthropology

School of African & Gender Studies, Anthropology and Linguistics

UNIVERSITY OF CAPE TOWN

February 2013

The financial assistance of the National Research Foundation (NRF) and the David and Elaine Potter Foundation towards this research is hereby acknowledged. Opinions expressed and conclusions arrived at, are those of the author and are not necessarily to be attributed to the NRF or the David and Elaine Potter Foundation.

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This research would not have been possible without the assistance of several organisations and individuals. I wish to thank the Research and Advocacy Unit; the Tree Of Life; Zimbabwe Lawyers for Human Rights; the Doors of Hope; People Against Suffering, Oppression and Poverty; the International Organisation for Migration (Musina Office); and the Musina Legal Advice Bureau. I also wish to thank all participants who gave of their time and their stories; without these organisations and individuals I would have no thesis to present and a much less rich set of life experiences and friendships.

For their support during the long processes of fieldwork and writing up I wish to thank Jess Auerbach, Tendai Bhiza, David Burgsdorff, Richard Calland, Gillian Charles, Rebecca Chennells, Bertha Chiguvare, Kuda Chitsike, Sally Frankental, Imke Gooskens, Braam Hanekom, Daniel Hargrove, Mohamed Hassan, Patricia Henderson, Ginny, Peter and Andrew Iliff, Rita Kesselring, Fungai Maisva, Jacob Matakanye, Langton Miriyoga, Anthony Muteti, Barnabas Muvhuti, Rory Pilosof, Efua Prah, Tony, Bev and Kate Reeler, Anna Versfeld and Rodwell White.

My supervisor, Prof. Fiona Ross, has given deeply and generously of her thoughts, time, and empathy over the course of this project. Fiona, I cannot thank you enough for all of it.

Finally, with love and thanks to my mother, father and sister for their unwavering support; and of course to James who has borne the brunt of pre-dawn writing sessions and other erratic behavior with kindness, generosity and love, and who stimulates my thinking every day.

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Abstract

The international legal framework of human rights may present itself as universal, but rights are enacted, practiced, and debated in local contexts which influence how, and for what purposes, ideas of rights are used. Anthropological approaches to the study of human rights by theorists such as Englund (2006), Goodale (2006a; 2006b; 2009a), Merry (2005, 2006), and Wilson (2003; 2006) assert the need to study rights in practice, arguing that detailed ethnographic examination of local contexts can show the ways in which supposedly universal ideals become localised. In this multi-sited ethnographic study, based upon anthropological fieldwork conducted in Harare, Zimbabwe and Musina and Cape Town, South Africa in 2010 and 2011, I use the contemporary political and economic context of Zimbabwe, and the resultant movement of Zimbabweans to South Africa, as a case study through which to explore the ways in which the global framework of human rights is locally interpreted, constituted and contested. I argue that whilst the assumed universality of rights is important to its global and local legitimacy (the fact that it purportedly applies to everyone, regardless, gives it moral capital), it is also because ideas of rights are flexible enough that they are open to interpretation and allow for local ideas of morality and personhood to insert themselves that they are able to be considered valid in very disparate contexts. Nonetheless, such localisation occurs within the terms of rights discourse itself, and is therefore limited. Drawing on a series of case studies – the debates over the encoding of rights in the new Zimbabwean constitution; the multiple repertoires of justice at play in contemporary Harare; the construction of rights reports in Zimbabwe and their subsequent global circulation; the failures of rights to be enacted for women crossing the border between Zimbabwe and South Africa; and the mistranslations that occur when Zimbabweans use a language of rights as a means of seeking asylum in South Africa - I consider the entanglements (Mbembe, 2001; Nuttal, 2009) of legal and moral notions at play when ideas of rights are invoked. I also consider the entanglements of past and present in postcolonial Africa, where local notions of temporality can differ to the linear model of time employed in rights discourses. An examination of rights as praxis in this context reveals the advantages and disadvantages of using a language of rights in a post-colonial context.

List of Abbreviations and Acronyms

ACHPR	African Charter on Human and People's Rights (also called the Banjul Charter)
ANC	African National Congress, South Africa's leading political party
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CCJP	Catholic Commission for Justice and Peace
COPAC	The Constitutional Parliamentary Committee, set up under Article VI of the GPA.
GNU	Government of National Unity
GPA	Global Party Agreement, also known as the Interparty Political Agreement, signed by ZANU-PF and the two MDCs in September 2008.
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTJ	International Centre for Transitional Justice
IDASA	Institute for Democracy in Africa
IOM	International Organisation for Migration
LOMA	Law and Order Maintenance Act
MDC-M	Movement for Democratic Change (Mutambara faction).
MDC-T	Movement for Democratic Change (Tsvangirai faction).
MSF	Médecins Sans Frontières
NCA	National Constitutional Assembly
NGO	Non-Governmental Organisation
OAU	Organisation of African Unity
ONHRI	Organ on National Healing, Reconciliation and Integration
PASSOP	People Against Suffering, Oppression and Poverty
POSA	Public Order and Security Act (2002)
RAU	The Research and Advocacy Unit

RSDO	Refugee Status Determination Officer
SADC	Southern African Development Community
STOPVAW	Stop Violence Against Women
TRC	Truth and Reconciliation Commission (South Africa)
UCT	The University of Cape Town
UDHR	Universal Declaration of Human Rights
UNHCR	United Nations High Commission for Refugees
UN OHCHR	United Nations Office for the High Commission of Human Rights
USAID	United States Agency for International Development
WOZA	Women of Zimbabwe Arise
WCoZ	Women's Coalition of Zimbabwe
ZANU-PF	Zimbabwe African National Union – Patriotic Front
ZBC	Zimbabwe Broadcasting Commission
ZCC	Zimbabwe Council of Churches
ZDP	Zimbabwean Dispensation Project
ZLHR	Zimbabwe Lawyers for Human Rights

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Chapter One.

Researching Rights: Introduction and Research Methodology

'Rights, Not Wrongs': An Introduction

There are no "neutral" words and forms- words and forms that belong to "no one"; language (is) shot through with intentions and accents...All words have the "taste" of a profession, a genre, a tendency, a party, a particular work, a particular person, a generation, an age group, the day and hour. Each word tastes of the context and contexts in which it has lived its socially charged life; all words and forms are populated by intentions (Bhaktin, 1981: 293).

In 2007, I attended a protest held at the Home Affairs Refugee Centre in central Cape Town. My research at the time was focused on Zimbabwean undocumented migration to South Africa (Morreira, 2009) and, as such, I was present when a group of Zimbabweans began the process of writing on banners provided by an activist group before the protest. A group of ten interlocutors clustered around an old sheet which was placed on the pavement outside the gates of the Centre, with one man brandishing a paintbrush and a tin of red paint. He squatted down, dipped the brush in paint, held it over the sheet...and then hesitated. "What do I write?" he asked, "What are we saying to these people?"

There was a moment of silence, followed by a plethora of answers – "We are tired of waiting for an appointment"; "We are not animals that must wait in the rain for them to let us inside"; "We want to be allowed to stay here because things are so bad at home"; "We are tired of being illegal when we have done nothing wrong"; "We want to say that we are suffering, here and at home"; "We have had enough of Mugabe and Mbeki";¹ and "We would not be here if we could make a living at home." The man looked at his companions and said, "But I can't write all those things on a banner. It must be catchy, quick – but it must say why we are here." A pause whilst people tried to think of something catchy, something 'quick' – and then one man said "Just write, 'We want human rights, not human wrongs', or 'No rights in Zimbabwe, no rights in South Africa.'" Everyone in the group nodded approvingly and the two banners were made. A language of human rights, it seemed, was able to speak across disparate intentions – to provide, if you will, a summarizing symbol (Ortner, 1973) that could encompass suffering, tiredness, illegality,

¹ Robert Mugabe is the President of Zimbabwe and of the Zimbabwe African National Union – Patriotic Front (*ZANU-PF*), which was the ruling party in Zimbabwe from independence in 1980 up to the advent of a power-sharing deal struck with the opposition party the Movement for Democratic Change (MDC), in 2009. Thabo Mbeki was President of the African National Congress (ANC) and of South Africa at the time of the protest.

personhood, politics, economics and morality (both 'here' and 'at home'), and 'quickly' transpose these to the powerful realm of legal language.

That brief moment outside Home Affairs seemed to me to provide a window into the entanglements (Mbembe, 2001; Nuttall, 2009) at play when the notion of human rights is called upon. Throughout my fieldwork, 'human rights' (or just 'rights') were invoked again and again, in contexts as diverse as the christening of a child or the personal recounting of a life history marred by political violence. In the mouths of interlocutors, the phrase 'human rights' came to take on a tangible force, and seemed to carry enormous symbolic capital (Bourdieu, 1986; 1992); Englund and Nyamnjoh (2004:31) argue that the "rhetoric of rights" has become common to the postcolonial African lexicon.² I have chosen to reproduce this vignette here as the issues it raised led to this doctoral dissertation. The conversation between protesters points to academic debates around human rights as legal practice and as popular discourse, raises issues of local and transnational politics and economics, evokes the domains of citizenship and personhood, and highlights the (contemporary) primacy of the law as a means to resist marginality (cf. Comaroff and Comaroff, 2007; Robins, 2008). These issues constitute some of the theoretical points of departure of this dissertation. In the course of fieldwork, it became clear that discourses of human rights were central to Zimbabwean migrants' experiences of movement, and that migrants' notions of what constituted their human rights, or an infringement of those rights, differed from those fixed in legal categories. The contradiction between the comparatively 'fixed'³ definitions of rights within a legal framework, and the malleable use of rights as discourse and practice within varied local contexts was therefore apparent. 'Human rights', far from representing a fixed set of laws that outline the basic rights of individuals, was an extremely malleable concept and one that, for migrants, shifted daily according to circumstance. In this dissertation I consider such contextualised uses of rights in Zimbabwe and South Africa.

A Note on Terminology: Rights discourse, the local and the global

The presence of rights talk in interlocutors' daily lives can be linked to both the political and economic conditions in Zimbabwe and South Africa, and to the growing global emphasis on human rights. Wilson (2006:77) has noted that "human rights became, in the second half of the 20th Century, a political value with global ambitions, analogous to political meta-narratives such

² Nyamnjoh (2004), Kanyongolo (2004), Johnson and Jacobs (2004) and Halsteen (2004), for example, consider the surfacing of the rhetoric of rights in Botswana, Malawi, South Africa and Uganda respectively.

³ Whilst legal definitions are obviously social constructs, and do shift over time, they do so more slowly than popular rights talk, and cannot simultaneously stand for a number of ideas as they do outside of courtrooms and statutes.

as “liberal democracy” or “socialism.” In South Africa, ideas of human and civil rights form the backbone of the Constitution: adopted in 1996, this rights-based document is one of the most protective of the human rights of its citizens in the world (or, in neo-liberal terminology, one of the world’s most ‘progressive’). In this dissertation, I take as a theoretical foundation that such ideas of human rights can usefully be examined as a set of discourses, in that the meta-narrative of rights constructs particular systems of language and thought with accompanying sets of rights-based courses of action and institutions. Such systems may differ slightly in varied local contexts, as is shown ethnographically throughout this dissertation; nonetheless, all are governed by a particular means of making sense of the world. In *The Order of Discourse* (1970) Foucault argued that all knowledge is composed of rules, systems and procedures: together, these produce the conceptual terrains by which we are able to comprehend, and act upon, the world. Stuart Hall’s summarization is useful here:

Discourse, Foucault argues, constructs the topic. It defines and produces the objects of our knowledge. It governs the way that a topic can be meaningfully talked about and reasoned about. It also influences how ideas are put into practice and used to regulate the conduct of others. (Hall, 2001a [1997]:72)

Rights discourses, then, reflect both language and practices; they are a way of speaking about the world as well as a “process through which social reality comes into being” (Escobar, 1997:85). Indeed, the idea of discourse is useful in that it breaks down the distinction between language and practice, in that language itself *is* a practice. Throughout this dissertation, then, when referring to rights practice or rights praxis I invoke the broad realm of both talk *and* other forms of behavioral action; when a distinction between talking about rights and enacting those rights has been necessary, I refer to ‘rights talk’ and ‘the performance of rights’ respectively. Both talk and performance form part of the discourses of rights.

Discourses such as human rights circulate globally (Inda and Rosaldo, 2008); as such they form one of the “ideoscapes”⁴ (Appadurai, 1996:31) that characterise our world. Appadurai’s characterisation of human rights as a key ‘ideoscape’ of globalisation reflects that ‘rights’ is one of a globally prevalent and circulating “chain of ideas, terms and images” (cf. Robins, 2008) that is invoked in diverse local contexts. Such circulation is not necessarily even (Tsing, 2000), but nonetheless the local contexts of Zimbabwe, and of South Africa are, like any other, globally

⁴ Appadurai (1996:34) characterises ideoscapes as “concatenations of images...they are often directly political and frequently have to do with the ideologies of state power or a piece of it. These ideoscapes are composed of elements of the Enlightenment worldview, which consists of a chain of ideas, terms and images, including *freedom, welfare, rights, sovereignty, representation*, and the master term *democracy*.”

inflected and globally informed. At times in this dissertation it has therefore been heuristically necessary to separate the local and the global for the purposes of analysis; as such I refer to the ways in which global ideas of rights and justice play out in (and move between) local contexts. At other times it has been pertinent to complicate this distinction, examining the entanglements of the local and the global and how systems of power are implicated in the construction of both. Merry argues that the terms 'local' and 'global' tend to carry assumed meanings, where "local tends to stand for a lack of mobility, wealth, education, and cosmopolitanism" (Merry, 2006:39) whilst global reflects the opposite. In using 'local' I do not intend to bring to mind such associations; rather, I approach the term from an anthropological perspective which, unlike much of the academic consideration of globalisation, is concerned not with the macro scope of such processes but rather with "how globalizing processes exist in the context of, and must come to terms with, the realities of particular societies, with their accumulated – that is to say, historical – cultures and ways of life." (Inda and Rosaldo, 2008:7). 'Local' in my usage, then, should not imply Merry's marginality, but rather represents the immediate and complicated localities in which global processes happen, "the experiences of people living in specific localities when more and more of their everyday lives are contingent upon globally extensive processes." (ibid.)

It is also worth noting, as Merry (2006) does, that all global ideas are circulating locals, in that they originate in a particular locality. In the case of rights the fact that this locality is posited as broadly 'Western' has led to accusations of imperialism, particularly given the emphasis within rights discourse on their purported universality. I discuss this in further detail below; for our purposes here suffice to say that there is a distinction to be made between the idea of rights as a related set of globalised discourses, which refers to the global circulation of rights and the processes by which rights discourses move; and the idea of rights as universal, which originates *within* rights discourse and assumes an applicability across varied contexts that has been heavily critiqued (Eriksen, 1997; Wilson, 1997; Englund, 2004; 2006; Mamdani, 2000; Nyamnjoh, 2004).

A Brief Historicisation

The opening vignette showed rights talk to be the mode of expression chosen by Zimbabwean protestors as a means of speaking about political and economic conditions within Zimbabwe and South Africa. Zimbabwe's contemporary situation has its roots in complex colonial and post-colonial histories and events, and the extensive literatures devoted to the state of affairs in

Zimbabwe are beyond the scope of this introduction, though they are woven throughout the thesis as a whole. Suffice to say here that the emergence of rights talk as a mode of expression in Zimbabwe has its underpinnings in this long history, which encompasses pre-colonial political systems (see Bhebhe and Ranger, 2001; Ndlovu-Gatsheni, 2008); colonization and British settlement in the 1880s (see Raftopoulos and Mlambo, 2009); and a period of colonial rule until 1980 which saw the introduction and violent maintenance of British (and subsequently Rhodesian) political and legal structures (Ranger, 2001; Ndlovu-Gatsheni, 2001; Ncube, 2001; Raftopoulos and Mlambo, 2009). In the 1970s the country underwent a violent struggle against Rhodesian rule which eventuated in independence in 1980, followed by a period of post-colonial nation building and economic successes that occurred in the 1980s under President Robert Mugabe's ruling party, ZANU-PF⁵ (Raftopoulos, 2004). For all its successes, however, the 1980s was also a period of internal political violence, with the advent of *Gukurahundi*, a state-based systematic program of violence against the Ndebele population, ostensibly in response to the actions of dissidents but in reality an operation that targeted civilians and ex-soldiers alike (CCJP, 1997). Thus, although Raftopoulos (2004:2) rightly categorises the 1980s as "the years of restoration and hope" across some parts of the country, in others they were years of violence and dissatisfaction with the ruling party. In the 1990s such dissatisfaction grew more widespread: the 1990s saw a period of increasing economic decline, the implementation of an International Monetary Fund (IMF) directed structural adjustment program and the beginnings of widespread frustration with the postcolonial system of governance (Bhebhe and Ranger, 2001). In 1996, an international conference on democracy and human rights in Zimbabwe was held in Harare in response to just such dissatisfaction with the state of democracy in Zimbabwe (Bhebhe and Ranger, 2001). By the late 1990s economic and political conditions had worsened considerably, and in 1999 Zimbabwe underwent a spectacular economic collapse, which occurred hand in hand with a decline in democratic freedoms and a corresponding increase in political violence against citizens (Hammar and Raftopoulos, 2003; Kamete, 2008; Orner and Holmes, 2010; Murithi and Mawadza, 2011). An opposition party to the ZANU(PF) government, the Movement for Democratic Change (MDC) emerged out of the country's trade unions in 1999, with limited electoral success but a wide urban support base. Violations of political rights became increasingly common – flawed electoral processes, state control of the judiciary and the media, and frequent violence against the opposition party members and supporters are just

⁵ Zanu(PF) stands for the Zimbabwe African National Union (Patriotic Front). A full list of acronyms used in this dissertation is provided at the beginning.

some of the critiques that have been leveled by rights organizations at the Mugabe regime (for example, see Human Rights Watch, 2006). Further, the increase in violence included a deepening of structural violence⁶ (see Morreira, 2010a; cf Farmer, 1996; Kleinman, 1997) to the point that, in 2007 and 2008, the undocumented migrants with whom I worked were trying (largely unsuccessfully) to use human rights discourse to argue that the economic situation was dire enough to warrant refugee status for Zimbabweans in South Africa (Morreira, 2010b). State institutions and infrastructure deteriorated to the extent that in 2004 Hough and Du Plessis categorized Zimbabwe as a failed state. The invocation of rights discourses by the Zimbabwean migrants present at that protest in 2007, then, occurred in response to the political and economic decline of the post-2000 period, but also reflected a much longer history of shifting political institutions and the transnational flow of people and ideas. As Hall (2001b: 213) notes, a series of complex temporal connections are at play in what we characterize as the ‘postcolony’, such that “the post-colonial’ does not signal a simple before/after chronological succession...rather [it] marks the passage from one [set of] historical power configurations or conjunctures to another.”

Some things have changed as regards Zimbabwe and South Africa since that windy afternoon in 2007. South Africa has seen the inauguration of a new president, Jacob Zuma, and the previous incumbent, Thabo Mbeki, has largely disappeared from the South African, but not the wider African, political scene. Mbeki was integral to the development and implementation of South Africa’s policy of ‘quiet diplomacy’ toward the Zimbabwean government (see Hough and Du Plessis, 2004), which had angered many Zimbabweans for its seeming ineffectuality at creating any positive change for Zimbabwe – hence the comment above that “We have had enough of Mugabe *and* Mbeki.” Zimbabwe’s main opposition party to ZANU(PF), the MDC, had fractured into two factions in 2005⁷, following political in-fighting, which complicated quiet diplomacy negotiations and weakened the opposition’s political position. In addition to changes at the level of party politics, the social landscape of South Africa has been altered by the advent of country wide episodes of xenophobic violence in 2008 (see Steinberg, 2008; Hassim et al, 2008), which

⁶ The idea of structural violence stems from the work of Johan Galtung (1969) and refers to the social and economic forces or institutions that constrain or harm individuals by preventing them from meeting their basic needs. The term was popularized in anthropology by Paul Farmer in his 1996 examination of healthcare in Haiti, in which the poor are unable to access basic services. In Zimbabwe, structural violence has its roots in colonial/Rhodesian social and economic structures, which limited the availability of basic services such as healthcare, education and access to the economy to non-whites, and gave the black majority fewer rights than the white minority. In postcolonial Zimbabwe, structural violence against the poor has continued, and the rights of citizens have declined since the late 1990s (Harold-Barry, 2004).

⁷ These two factions are known as MDC-T (MDC-Tsvangirai) and MDC-M (MDC Mutambara) after the respective leaders of each faction at the time of the split. MDC-M has subsequently, and confusingly, become known as MDC

left 62 people dead, hundreds injured, and tens of thousands displaced from their homes (Worby et al, 2008). The violence was directed at *amakwerekwere*, a derogatory term for “people who were identified as not properly belonging to the South African nation.” (Worby et al, 2008:7).

Shortly after the outbreaks of violence, whilst many of those affected were still resident in temporary camps and shelters across South Africa, neighbouring Zimbabwe held both parliamentary and presidential elections in 2008, leading to a hope amongst the Zimbabweans with whom I worked that they would be able to leave the uncertain place that South Africa had become to return to a safer and more economically stable Zimbabwe. This was not to be: although the MDC gained a majority in parliament for the first time, Mugabe re-gained the presidency following a run-off election from which MDC leader Morgan Tsvangirai withdrew because of violence against his supporters. The 2008 elections are locally, and to some extent internationally, perceived to be the most deeply flawed Zimbabwean elections to date (International Crisis Group, 2008; Masunungure, 2009). Despite fears of xenophobic violence, most of my interlocutors⁸ remained in South Africa.

In early 2009, a power sharing deal was brokered between ZANU(PF) and the MDC with the signing of the Global Political Agreement (GPA) which saw Mugabe retain the Presidency and control of the National Security Council, whilst Tsvangirai assumed the post of Prime Minister and control over the Council of Ministers. Few of my interlocutors, however, felt the situation changed enough at this point to warrant a return to Zimbabwe. Rather, they feared that the only impact of power-sharing would be the loss of a viable opposition to ZANU-PF as the MDCs ‘sold out’ to the ZANU(PF) dispensation. Even though the signing of the GNU led to improved economic stability over time, the majority of these interlocutors remained in South Africa. At the time I began doctoral field research in 2010, MDC-T leader Morgan Tsvangirai had just “disengaged” from the unity government following the (re)arrest of an MDC MP (New African, 2009), belying fears of the loss of MDC ‘morality’, but effectively showing that, even under the new dispensation, power still lay with ZANU(PF). Tsvangirai subsequently “re-engaged”, but the three parties coexist in fraught and frosty conditions, and the frequent incidences of political infighting have shown the Government of National Unity (GNU) to be largely a misnomer. This is discussed in detail in the following chapter where I consider the

⁸ Where possible, I use ‘interlocutor’ rather than ‘informant’ to refer to research participants as the word better reflects the interactions and negotiations that occur during the research relationship, in which participants and anthropologist together construct particular kinds of knowledge. Devisch (cited in Olukoshi and Nyamnjoh, 2011:16) refers to this relationship as ideally one of “mutually enriching co-implication”. For further discussion, see Morreira 2012b.

public debates surrounding the (still unfinished) process of writing a new Constitution under the GNU.

Writing in 2012, journalist Mary Ndlovu characterised the situation as one of “political paralysis” which “has brought economic stagnation and a continuation of social desperation” (Ndlovu, 2012); Iliff (SSRC, 2012) characterizes Zimbabwe under the GNU as undergoing an “existential crisis beneath [a] thin veneer of normality.” In a similar vein, but drawing on a different cosmological foundation, the Zimbabwe Council of Churches deemed the situation serious enough to be categorized as a “moral crisis bedeviling Zimbabwe.” (ZCC, 2009).⁹ Throughout my research, structural and physical violence remained common, both for Zimbabweans at home and for Zimbabwean migrants in South Africa. The political conditions in Zimbabwe are discussed in more detail in the following chapter of this thesis; suffice to say here that it is in such a political and economic context that notions of human rights have become increasingly relevant and mobilised. Thinking through the uses of rights in such a context, as recounted to me by interlocutors, led me to this doctoral project. Focusing on Zimbabwe, South Africa and the relationship between the two, I set out to explore how rights discourses were being mobilised by individuals and organisations in the region in light of the current politico-economic situation in Zimbabwe.

Theoretical points of departure

The vignette with which I opened serves to illustrate the malleability of human rights within popular discourse. What, then, *are* ‘human rights’? On one level, the answer, whilst not simple, is at least easily definable – human rights constitute the minimum set of conditions in which people, by the simple virtue of *being* people, are entitled to live their lives. As much of human life is composed of relationships, these rights include guidelines for how people should treat one another, and how states should treat their citizens, and, as such, human rights also constitute a normative moral guide for social behaviour (albeit one based in a particular Western philosophical and ethical tradition) which has been encoded in national and international law. In Africa, for example, ‘human rights’ are those things which have been written, in legal terminology or ‘legalese’, into the African Charter on Human and People’s Rights (ACHPR) as adopted by the Organisation of African Unity (OAU) in 1981 (Akokpari and Zimble, 2008), and to which, as African Union members, Zimbabwe and South Africa are signatory. South Africa and Zimbabwe also each have a constitutionally encoded Bill of Rights. How many people, however, are well versed in such legal documents? Legal charters reflect a domain of a specific

⁹ Ideas of morality surfaced frequently throughout fieldwork.

sector of the elite – yet ‘human rights’ as a phrase is one which is drawn upon by many more diverse sectors of the populace, from other elites to, as the above example shows, the deeply marginalised. Notions of ‘human rights’, then, have to reflect more than that which is encoded in Charters- beyond this legal discourse lies a realm of rights that is truly “socially charged” (Bhaktin, 1981:293), a realm that is, to mix my theorists and borrow a phrase from Richard Wilson (2006; cf. Appadurai, 1986), immersed in the social life of words.

Firstly, however, it is necessary to historicise the legal discourse of rights. Although international human rights were first legally codified following World War II, the notion of rights as inherent and inalienable can be traced back further, to the political changes wrought during the Haitian and French Revolutions (Stearns, 2012; Scully and Paton, 2005), the slow abolition of the Atlantic slave trade and the recognition of slaves as rights-bearing persons (Scully and Paton, 2005; Martinez 2012), and to ideas of the inherent dignity of humanity as put forward in the work of Western philosophers such as Immanuel Kant (Rosen, 2012) . The international human rights architecture as it exists today in the Universal Declaration of Human Rights can be broken down into four categories, or generations, each of which reflects, in the ‘inalienable’ rights it encodes, the historical moment from which it originated. The rights promulgated following World War II, later colloquially known as first generation rights, were mainly concerned with political rights, and the basic security of persons (Messer 1993; Robertson, 2006). Ideas of what constitute rights are thus closely linked, like any ideology, to context: the violent politics of World War II led to the creation of a category of rights that allowed for basic political freedoms for all individuals. Second generation rights, as Messer notes, carried the influence of socialism in that they are concerned with socioeconomic factors: rights in this conceptualisation include ideas around working conditions, rights to a standard of living that ensures health, rights to education, and special rights for women and children. Though these rights exist at the same level as first generation rights on paper, they are harder to implement, and the international jurisprudence of rights law reflects a greater emphasis on the protection of first generation rights. This is partly due to legal precedent: it is easier to prosecute for rights violations where prosecutions have occurred before. It is also difficult to prove responsibility for violation of these rights. Second generation rights, then, are not as pervasive as first generation. Englund (2006), in his ethnographic study of rights in Malawi, highlights the prevalence of hierarchies of rights within both state and civic discourse which place political freedoms above social and economic ones. He argues that to assume some types of rights take precedence over others is erroneous, and that “rather than deciding which set of rights should come first, we should replace abstract

considerations with empirical investigations into the actual situations of rights and wrongs”¹⁰ (Englund, 2006:27).

Third generation rights grew out of the post-colonial world order: African nations in particular emphasised the need for “solidarity or development rights to peace, a more equitable socioeconomic order, and a sustainable environment” (Messer, 1993: 223). Third generation rights encompass a broad spectrum (such as the right to self-determination, the right to economic and social development, the right to environmental resources and a healthy environment and the rights of indigenous persons) and have been characterised as aspirational ‘soft law’ in comparison to first and second generation rights (Twiss, 2004), in that they are expressed mainly in documents which are only slowly gaining international recognition and endorsement. It is worth noting that the rights in this final generation shift the emphasis away from the rights of the individual to that of the group, given that in Zimbabwean political rhetoric the sovereignty of the nation has been accorded greater importance than the freedoms of first generation, individual political rights (see Chapter Two).

For many years, anthropology limited its involvement in human rights issues to that of providing ‘expertise’ in legal wrangles over indigenous rights. The most common reason given for anthropology’s initial lack of involvement in human rights is, unsurprisingly, the conception that anthropology, as a culturally relative discipline, could not condone the universalism of ideas of basic human rights.¹¹ This argument, however, as Merry (2003) contends, relies upon an idea of culture as static and homogenous, and does not take into account power differentials within any one society or group. Preis (1996) has argued along similar lines to Merry that, if culture is not a “homogenous, integral and coherent unity”(Preis, 1996:289) then from where does one position oneself in order to make culturally relative judgements? If one views culture, as Hannerz (1992:266) does, as “a network of perspectives, or as an ongoing debate”, then calls to cultural relativism as an ‘objection’ to studying supposedly universal rights become less feasible. Culture is neither fixed nor homogenous and, as humans are resourceful, ideas such as human rights are utilised by people in order to shift relations of power. Gender provides a particularly pertinent example here, in that international rights discourses have often been mobilised by women to resist patriarchy (Merry, 2006; Scully, 2011). This is significant to largely patriarchal Zimbabwe –

¹⁰ This slippage between rights as entitlement (the legal rights of a person or a citizen); and rights as moral (right versus wrong) is common to human rights discourse and is explored in more detail in Chapters 3 and 4.

¹¹ See Messer (1996) for further discussion of this point. Though Messer raises other interesting issues with regard to the relationship between anthropology and human rights, the idea of relativism versus universalism is most pertinent to this discussion, and shall thus be the focus.

as McFadden (2000) argues, patriarchy in Zimbabwe predates colonialism, (though it was exacerbated by the colonial system [Barnes, 1999]) and has continued into the postcolonial period. Ranchod-Nilsson (2006:49) has outlined what she refers to as “the swinging pendulum” of progress with regards to gender equality in Zimbabwe, and comments that although on the surface there are times when it appears that progress is being made, the underlying order remains the same. Women are playing a central role in political struggles in Zimbabwe and have made use of rights discourse in various ways (Essof, 2006; RAU, 2010), including attempts to contest patriarchy, as explored in Chapters 3 and 4.

As Preis (1996), Merry (2003), Messer (1993) and Wilson (2006) note, therefore, debates around relativism with regard to human rights draw on a contested and increasingly academically outdated notion of culture. In Preis’ (1996:289) words, “In a world of increased mobility and intensification of cultural flows between centres and peripheries, the question is, of course, whether this theoretical perspective still reflects the reality of culture, let alone that of human rights.” Whether an idea of culture as homogenous *ever* reflected the reality is debatable, but certainly globalization and increased transnational flows have contributed to a diversification of meaning-making. Thus, as Ortner (1984) has argued with regard to culture, there is a need in the study of human rights to move to the ways in which it is embedded in practice, and how power affects meaning making, or, conversely, the ways in which accepted meanings affect power or marginality. Goodale (2006a) has noted that anthropology is well positioned to consider how human rights discourse “captures the constellation of philosophical, practical, and phenomenological dimensions through which universal rights, believed to be entailed by a common human nature, are enacted, debated, practiced, violated, envisioned and experienced” (Goodale, 2006a:490).

Anthropological studies that have examined rights as practice have furthered this debate by using ethnographic examples to show how supposedly universal rights (where universality, as Abu-Loghud (2010) argues, presumes uniformity and neutrality across disparate contexts) become somewhat localised as they unfold and surface in varied ways in different contexts. The claims to a neutral, uniform universality that are made within the discourse can be seen to be erroneous: Merry (2006) has shown that international documents which claim universality were negotiated in particular social settings such that “the very instruments of a putatively universal international law are themselves part of a located culture, with its own transnational social spaces, rather than

existing above any particular social world.”(Abu-Lughod, 2010:77). Englund (2006), in his ethnographic study of ideas of rights and freedom in Malawi, draws on Tsing’s model of ‘friction’ (2005) to argue that universals only ever emerge through ‘frictional encounters’ and are better conceived of as “engaged universals” in order to highlight the fact that “universality in the abstract remains a chimera...universalism is situational.” (Englund, 2006:26). At times the theoretical moves made against universalism have resulted in an outright dismissal of the relevance of rights as a form of meaning-making: Abu-Lughod, for example, argues that neither universality nor cultural relativism as its foil provide sufficient means of analysing the practice of power in daily life. Rather than using a model of universal rights and/or their absence, she argues that anthropology is better served by returning to models of kinship which allow for recognition of the complexities of human life as “power-laden, productive, social and ambivalent.”(Abu-Lughod, 2010:69). Nonetheless, the model of rights retains global relevance: as with any ideology, the “political meta-narrative” (Wilson, 2006:77) of human rights discourse is entangled in international *and* local fields of power, and universality may be evoked as a means of justifying the sorts of interventions required by a rights-based ideology.

Although rights talk and performance may be gaining ground globally, then, this is not to say they are evoked in the same ways in all contexts: for example, Werbner (1996) has examined the rise and localisation of rights discourses in Zimbabwe in the 1990s in response to the publicisation of the atrocities of Gukurahundi, a campaign of violence carried out against the Ndebele by the Zimbabwean state in the 1980s that left 20 000 people dead. Werbner distinguishes between two discourses of rights: the first a version of social contract theory “reflected in the rhetoric of civic culture and citizens rights” (Werbner, 1996: 99), and the second a notion of moral partnership which is enduring and encompasses both the living and the dead (cf. Bhebhe and Ranger, 1995), and which differs greatly to rights as legally encoded. He argues that the succession of violent encounters in Zimbabwean history was seen as creating a moral debt to the living, to the dead, to God, and to the land itself,¹² which, in the 1990s, came to be spoken of through the language of human rights.¹³ He argues that the legal, ‘universal’ discourse of rights came to incorporate local cosmologies and ways of understanding the world.

¹² David Lan’s 1985 *Guns and Rain: Guerrillas and Spirit Mediums in Zimbabwe* provides a detailed ethnographic examination of these relationships during the liberation war.

¹³ This conceptualisation of morality echoes Veena Das’ (2010) argument that moral wakefulness occurs at the interstices of the human and the non-human.

Werbner's emphasis on the present as composed of echoes of the happenings of the past brings to mind Mbembe's (2001) postulate around the entanglements of time in the postcolony. Mbembe (2001: 16) argues that time in postcolonial Africa is not linear, but "an interlocking of presents, pasts and futures that retain their depths of other presents, pasts and futures, each age bearing, altering and maintaining the previous ones." At least as regards rights and moral debt in Zimbabwe, this claim rings true, in that the happenings of the present, and the ways in which rights are invoked, are seen to be entangled with the violent happenings of the past, for which a moral debt is still outstanding. Similarly, in exploring modes of temporality at play in Sierra Leone, Michael Jackson cites Oakeshott who argues that "there are not two worlds – the world of past happenings and the world of our present knowledge of those past events – there is only one world, and it is the world of present experience." (Oakeshott, 1933, in Jackson, 2005:355). It is my argument in this thesis that in postcolonial Africa, local notions of temporality can differ to the linear model of time employed in rights discourses. Differences in temporal models can have wide-reaching implications: as I argue in Chapter Three, such a disjuncture can act to limit the possibilities of localisation of international rights discourse. Although recent anthropological approaches to human rights emphasise localisation, it is also important that we recognise the limits of this. In contemporary Zimbabwe, although global rights discourse is invoked as one means of addressing the entanglements of the past in the present, it is not the only form of justice at play.

A return to Werbner's first discourse of rights shows the link between human rights and modernist notions of citizenship: human rights discourse is entwined with other endeavours of modernity. Englund (2006:26) argues that "the idea of entitlement [to rights] presupposes membership in a political society" (cf Geertz, 1983) and, further, that the failure of many postcolonial state apparatuses complicates the entitlements of citizenship in these contexts. In the present context of Zimbabwe, this is particularly pertinent. Cheater, writing in 1998, argued that, following the inclusiveness that occurred with the coming of majority rule at independence in 1980, the Zimbabwean state's notions of citizenship progressively narrowed, drawing on a patrilineal model of citizenship that limited both who was eligible to the entitlements of citizenship, and what those entitlements were. Ten years on, Vambe (2008:3) argued that events such as Operation Murambatsvina¹⁴ "forced the people of Zimbabwe to rethink the very notion of citizen and subject" in light of the state's disregard for the usual benefits of citizenship. I have argued elsewhere (Morreira, 2009) that some urban Zimbabweans have questioned whether they

¹⁴ Murambatsvina (lit. 'drive out the filth') was a campaign of violent forced removals conducted against (mainly) urban Zimbabweans following the 2005 elections. See Ncube, 2005; Morreira 2010b; Vambe, 2008

can even consider themselves citizens at all. Furthermore, whilst Murambatsvina provides an example of spectacular, episode-specific violence against citizens, the continual erosion of basic services in Zimbabwe also constitutes a shift in the basic prerogatives available to Zimbabwean people.

State disregard of the entitlements of citizenship leads to a surge in “rights talk” (Mamdani, 2000) among individuals and among civic organisations in opposition to the state. On an individual level, then, this raises questions about the interplay between discourses of rights and the creation and maintenance of subjective political identities. For civic organisations, recourse to the international legal framework of rights is a logical option where local moralities are being discounted. Such “lawfare” (Comaroff and Comaroff, 2007:144) works both ways – as civic organisations use international law to protest against power, so can the state pass internal laws to enforce power and act against its citizens. In 2002, the Public Law and Security Act (POSA) was passed in Zimbabwe. The Act was based upon the colonial Law and Order Maintenance Act (LOMA), used by the Rhodesian government to counter African nationalist movements; and later used by the Zimbabwean state to institute a state of emergency in Matabeleland in the early 1980s during Gukurahundi (see CCJP, 1997). LOMA was repealed in 1990; only to resurface under a new name, and with extended powers, in 2002. Indeed, the state need not even introduce *new* laws to validate violence against the population - Operation Murambatsvina, for example, was justified by recourse to urban planning laws (Kamete, 2008). “In Zimbabwe,” the Comaroffs note, “[lawfare] has mutated into a necropolitics with a rising body count” (ibid:141, cf. Mbembe, 2003).¹⁵

Comaroff and Comaroff (2007:141) argue that “the fetishism of the law” has become a common feature of the postcolony, such that “a ‘culture of legality’ seems to be infusing everyday life” (ibid:142; also see Robins, 2008). As Werbner’s example shows, and as is argued by Robins (2008), the language of the law is not confined to state and civic elites, but is also drawn upon by the marginalised. A language of rights carries social and moral capital – or, in South African Constitutional Court Judge Albie Sachs (2009:57) words, “concepts such as the rule of law, fundamental rights and the independence of the judiciary occupy distinctive, hallowed spaces from which powerfully attractive energies radiate”. The realm of the legal, as the Comaroffs

¹⁵ The idea of ‘necropolitics’ is based upon Mbembe’s (2003:11) controversial assertion that “the ultimate expression of sovereignty resides, to a large degree, in the power and the capacity to dictate who may live and who must die.”

(2007:141) argue, constitutes a frequent frame of reference in postcolonial Africa “even when both its spirit and its letter are violated, offended, distended, purloined.”¹⁶

In addition to the complexities of gender, citizenship, subjectivity, sovereignty and the realm of law, human rights discourse is, inevitably, caught up in the economics of the neo-liberal world order. Human rights discourses can be compared to development discourses, then, in that “the fact is that most NGOs and human rights projects depend on complex transnational links for their material and political survival.” (Englund, 2006:8). Englund argues, in a similar vein to anthropological critiques of development discourse (see, for example, Ferguson, 1990), that the spoken goals of rights discourses may be very different to the actual effects of such “transnational governance” (Englund, 2006:8; cf. Foucault, 1991). Indeed, one of Englund’s main arguments is that an analysis of rights as practice in Malawi reveals how the discourse *disempowers*¹⁷, particularly with regard to struggles against poverty and structural violence.

For all of the seductiveness of ideas of rights, then, without empirical research it is hard to know what work rights discourse is *actually* doing. Goodale (2009) argues that rights discourse carries with it the tensions and contradictions of Habermas’s “unfinished project of modernity” (in Goodale, 2009:16), in that we do not yet know how to judge it and so it can be simultaneously critiqued and embraced by ourselves and by our interlocutors. Wilson (2006:77) has argued that there is a need within the field of human rights for an academic viewpoint that “mesh[es] an awareness of social theory with an attention to empirical specificity.” Ethnography, he maintains, is particularly well suited to this purpose. Rights talk and the performance of rights are relational and situational and, as such, there is value in localised studies that focus on rights implementation and resistance from the perspectives of varied social groups and actors. It is such a study that I present here.

Method: Accessing discourses of rights

Points of departure: Research aim and central question.

¹⁶ Using notions of ‘rights’ outside the realm of the legal, however, does not involve the same process of translation as does using rights within a legal framework. Merry (2005) has noted the difficulties of translating experiences of violation into legal language. Centrally, this hinges on the sorts of knowledge and evidence that are considered ‘truth’. As Hastrup (2003) shows, there is a difficulty in translating subjective, and possibly unspeakable (see Scarry, 1985; Ross, 2003a; 2003b), experiences into legal categories. See Chapter Five.

¹⁷ The issue of translation is also central to Englund’s analysis of disempowerment.

It is impossible to understand what is going on anywhere without paying attention to the power dynamics that shape inequality everywhere. (Bourgois, 2006: x-xi).

The aim of research was to provide a contextualised ethnographic response to one fundamental query: how was the globalised ideology of human rights playing out in the contexts of urban Zimbabwe, and the urban Zimbabwean diaspora in South Africa? Phillippe Bourgois' above words raise an issue central to the task of devising a research methodology: the importance of finding a means to access and assess the relationship between Bourgois' 'anywhere' - the small-scale, local spaces where I was able to engage in face to face research - and his 'everywhere' - the larger scale, broader processes of modernity that affected such spaces and can result in multiple, alternative modernities (Gaonkar, 2001), and multiple, alternative discourses of rights (cf. Goodale and Starr, 2002).

Research was influenced by three intersecting factors: the previous empirical work I had done on Zimbabwean migration to South Africa and with Zimbabweans 'at home' (Morreira 2009; 2010a; 2010b); my own experiences as a Zimbabwean in South Africa, and as an active participant in the politicised arena of activism around Zimbabwean politics and South African immigration policy; and finally my exposure to the literature, (anthropological, legal, and historical) that I had read. In varied ways these three factors made it clear to me that legal and popular discourses of human rights were entangled in a variety of (sometimes seemingly incommensurate) fields. However, it also seemed that the very "ideological promiscuity" (Wilson, 2006:78) of rights talk was what made it such a pertinent and exciting field of enquiry as regards postcolonial Southern Africa and relations between the local and the global. In order to unpack the over-arching research question above, then, I entered the field with a further set of questions:

1. Were rights discourses being used in Zimbabwe, and if so, in what ways? Were international, so-called 'universal' human rights ideals being localised and, if so, in what ways?
2. In what ways did discourses of rights circulate within the Southern African region and beyond?
3. How were people's subjective experiences translated into legal categories, and what was lost or gained in this process?

These questions were intentionally broad, with the aim of allowing for a balance between research guided by myself, and research guided by happenings in the field itself. As Nader

(2002:193) has noted of the employment of ethnographic methods in anthropologies of law, “We need to prepare for the unexpected and we need to be flexible in order to do so.” Flexibility, however, does not preclude planning, and I structured my fieldwork plans, before entering the field, in order that I might access something so broad as ‘rights discourse’, while keeping a close eye on the everyday contexts in which it arose. In the following section, I unpack the methods I used and present the basic demographic details of interlocutors in the different contexts in which I gathered data,¹⁸ whilst also discussing some of the wider methodological issues raised by the process of fieldwork – namely, my positionality and the ethical relationship between objective scholarship and engaged (‘activist’) research; and the difficulties of gathering data about the articulations of rights at local, regional and global levels.

Whilst this thesis is far from autoethnographic, my own positionality has of course been central to the work that I have been able to do – before exploring how I conducted research, therefore, it is pertinent to provide some background in order that the reader might situate myself in relation to the project I undertook. My personal and political positioning was relevant to the research I undertook from first inception through to the writing up of this dissertation. I am a white woman who has been resident in South Africa for the last decade. Although I grew up in Zimbabwe and call myself Zimbabwean, my citizenship is now South African. I have returned at least once a year to Zimbabwe, however, and have maintained my Zimbabwean residency permit. The history of my ‘Zimbabwean-ness’ – as a member of the first post-independence urban generation of Zimbabweans, white and black, who (astonishingly) were taken by surprise at the vehemence of racial and political debates in the 1990s as we were taught little Zimbabwean history at school and were unaware of the intricacies of the past; as a high-school student in Harare in the late 1990s who was an appalled witness to the multiple violences of 1999 and beyond, which led me to seek out those untold histories of colonial and post-colonial violence in Rhodesia/Zimbabwe; as family member of a group of liberal white and black Zimbabweans who have been involved in activism against violence in the post-2000 era; as, in short, a product of the joys, tensions, despairs and ambiguities of life in Southern Africa - is deeply interwoven into this text. Indeed, the ways in which I delineated and defined ‘the field’ before and during research, and the questions with which I entered it, were informed by my personal, political and academic history.

¹⁸ Where a particular chapter has called for more detailed methodological discussion or demographic data than I provide here, I do so in the relevant chapter itself.

Similarly, my position in South Africa - as a member of a politicised diasporic community; as an active participant in protest against the South African state's neutral position on Mugabe's Zimbabwe and the resultant flow of Zimbabwean refugees;¹⁹ as an individual subject to the pull and longing for home that one feels from a distance (which I tried to assuage on those yearly trips to Zimbabwe, bearing foreign currency, mealie meal, rice, DVDs, car parts and clothing for family, friends and 'interlocutors'); as a bearer of South African citizenship and Zimbabwean residency; as, in short, a postcolonial African - has influenced the topic I chose, the questions I asked and, ultimately, the research I was able to do and the stories and analysis I have written. Let me turn, then, to a description and discussion of the research process itself.

Researching Rights

The central problem for the legal ethnographer in these circumstances is how to track the global-national-regional-local articulations associated with globalization by re-envisioning the research site as multi-leveled and multi-dimensional (Goodale, 2002:53).

The emphasis in this research project on the varied manifestations of rights discourse has required a flexible methodology. I was influenced by the excellent advice provided in Mark Goodale and June Starr's edited volume *Practicing Ethnography in Law* (2002), from which I took three main points: remain loyal to the process of seeking answers to research questions rather than loyal to any one particular method of answering them; design methods in such a way as to allow yourself to take an active role in the phenomena being studied (in other words - participate as well as observe); and, centrally, maintain awareness of the fact that investigating legal phenomena requires an awareness of the relationship between the local and the global.

Goodale (2002) in a reflexive consideration of the ethnographic research he undertook on the arrival of ideas of human rights to rural Bolivia, argues that research of this kind explores "a shifting set of normative practices and ideas that form a network that is mostly invisible"(Goodale, 2002:64). Even before fully conceptualising this project, it was clear to me that any consideration of rights in the Zimbabwean context could not be undertaken from any one field-site or locality, precisely because of the fact that any such legalities are part of much

¹⁹ As I explore in Chapter Four of this dissertation, and as I have shown in my previous work (Morreira, 2009; 2010a), the South African state's categorisation of Zimbabwean immigrants as economic migrants rather than as political refugees has been an area of contention. I am thus conscious that my terming my interlocutors 'refugees' reflects my political positioning, and am content for it to do so.

wider networks which stretch across both time and space. The presence of such networks, furthermore, ensured that research needed to not only incorporate multiple sites, but to try to account for the spaces *between* sites. The research methods I used were designed in the hopes of exploring how rights discourses emerged in the particular localities of Harare, Cape Town and Musina, as well as surfacing Goodale's 'invisible networks' or, in Hannerz's terms, tracing the "translocal linkages"(Hannerz, 1998:247) at play. The following sections explore the methods used.

Text- Based Methods

It was essential to the project to historically situate ideas of rights as a means of tracing how the globally powerful ideas of Bourgois's 'everywhere' were threaded through the 'anywhere' localities in which I worked. Furthermore, an awareness of the historically constituted nature of such discourses also acted as a reminder to maintain an awareness of their fluidity within the present, bringing to mind Falk Moore's (1994:362) assertion that anthropologists need to be wakeful to the moment of fieldwork "as both being and becoming." Falk Moore (ibid) reminds us that "fieldwork is a witnessing of current history, history in the process of being produced." Methods, therefore, need to be designed in such a way as to incorporate temporality, in order to trace the growth of 'current history' out of the happenings, and imaginings, of the past, and to give credence to the power of imagined futures.

Library-based research methods are essential as regards the former of these two aims. Textually, the past can be accessed by drawing on the work of others, using literature based methods to situate the present and thereby to understand the temporal entanglements at play in any one historical moment. Anthropological discussions of method often narrow 'the field' in which fieldwork takes place to the physical location(s) into which we immerse ourselves (Gupta and Ferguson, 1997). My contention here is that, particularly with regard to discourse, but probably for most topics, 'the field' is also composed of textual histories (and of the transnational, electronic networks via which texts, data and ideas move – see below). The fieldwork I undertook for this project included an exploration of diverse literature on the ways in which ideas of rights emerged through historical processes in South Africa and Zimbabwe (including analysis of Shona metaphysical philosophy as regards the construction of the person – see Chapter Five); and in international rights jurisprudence. Textual sources are, of course, useful for far more than historically situating discourses. I have also read widely around ideas of legalism, transnationalism, translation, subjectivities and migration, and this literature is woven

throughout the thesis. Further, in order to explore how governments and non-governmental organisations operationalised rights, I reviewed publicly available pamphlets, documents and speeches as produced by such bodies. I have also draw upon Zimbabwean novels, plays, poetry and music, produced from within Zimbabwe and by Zimbabweans in the diaspora, for insight into how discourses were popularly used. All texts are referenced; and where they are used as analytic data (such as, for example, in Chapter Two where I analyse a text produced by a community publishing initiative; or Chapter Four where I trace the global movement, via mailing lists and websites, of a set of human rights reports) the positions from which they are written are made clear in the text.

Text is, of course, not confined to that which has been formally published. The rise of new technologies has provided a means for rapid and extensive transnational dialogue, and rights discourse has proliferated in the non-territorialised spaces of the Internet. I have been able to utilise data drawn from various internet-based spaces: those that are public-domain such as blogs and more formal articles, and the comments they elicit; as well as private domain spaces such as Facebook and chat-rooms. Where data is drawn from private settings, I have permission to use it; for public domain material, while permission is not needed, I have nevertheless sought it where possible. In all instances except for formal articles, I have kept interlocuters anonymous. Email communication has also been an essential component of research: conversations I have had with NGO staff, lawyers, policy makers, refugees, political activists and academics have informed my thinking in much the same way that real-time informal conversations or formal interviews have done. Furthermore, such communications have provided key insight into the spaces between sites, and the ways in which transnational networks function and are maintained, and allow for the (uneven) flow of rights discourses between people and places.

Methods of everyday life

Anthropological techniques such as participant observation allow for insight into the ways in which discourses form part of daily life; it is for this reason that Goodale and Starr assert that “deep and thick ethnography is one of the best routes we have in comprehending the complexity of law and legal processes” (Goodale and Starr, 2002:8). Let us turn, then, to the pragmatics of immersion. My research was multi-sited: as Marcus (1995) argued, shifting the unit of study away from a bounded geographical region or ‘a people’ allows for ethnography to trace movement. During the course of research I have physically followed individual people and things (texts;

money; goods) across geographical borders, and have attempted to trace those things which were more nebulous, such as metaphors and modes of thought. For the purposes of clarity, I have divided my fieldwork into the following three geographical and temporal sections in order to outline how I was able to, in Goodale's terms, "follow the legal ideas where they lead" (2002:64). It is worth bearing in mind, however, that the places are closely interconnected and that throughout fieldwork (and, indeed, throughout my daily life now, even though I have, in theory, 'left' the field)²⁰ I was deeply involved in places from which I was geographically absent, through the telephone, internet and media.

a) Learning the Legal: Fieldwork in South Africa

During the first phase of fieldwork I undertook anthropology 'at home' on the very campus at which I was registered as a doctoral student. During the first semester of 2010, I took a post-graduate course on international and South African human rights law through the Law Faculty at UCT. I consider this part of fieldwork as it enabled access not only to the specificities of which legal discourse consists (and indeed, involved learning the language of 'legalese'), but also to the ways in which legal discourses were transmitted and debated through teaching. The course convenor and my classmates were aware that I was present as anthropologist and student. In addition to the academic content of the course, and to participant observation within classes, I also interviewed my fellow students (who included three Zimbabweans, one of whom became a primary informant throughout my research) for their perspectives on human rights law. I also interviewed a lawyer from the UCT Legal Aid Clinic, which provides assistance to asylum seekers, with the aim of exploring a practising lawyer's perspective on legal rights and how clients used such ideas.

During the same time period, I undertook participant observation in Cape Town that allowed access to the ways in which legal discourses were enacted. Since 2007, when the organisation was formed, I have been involved intermittently with the activist organisation People Against Suffering, Oppression and Poverty (PASSOP) which organised the protest with which I opened this chapter. At the organisation's request, I use their name in this thesis, though I do not use the names of staff members who requested anonymity. PASSOP is a registered non-profit organisation with a mandate to, in their own words, "protect and promote the rights of all

²⁰ As with many anthropologists, the end of a particular research project has not meant the end of my involvement with interlocutors. I am still in contact with many of the organisations and people with whom I spent time during this project; indeed, I have argued elsewhere (Morreira, 2012b) that a continued relationship with interlocutors allows for both deeper anthropology and a more ethical research relationship.

refugees, asylum seekers and immigrants in South Africa.” (see www.passop.co.za/about-us/background). Whilst the organisation was originally predominantly involved with Zimbabwean migrant communities, it has subsequently expanded its remit to include other nationalities. The strong working relationship I have had with PASSOP since 2007 helped enormously in gaining access to the field. Further, it has been possible for me to trace the shifts in rights discourses over a period of time that saw distinct changes in South African policy regarding the position of Zimbabwean migrants in the country.

In sum, then, for the period before I went to Zimbabwe (as mentioned below), and then again for three months upon my return, I was part of the daily life of the organisation and was able, through participant observation, to gain an insider view on the work done by a rights advocacy group. As Falk Moore notes, immersion and observation allow for access to non-solicited events:

Unlike many forms of dialogic interview material, the most significant events are not generated by, nor elicited by the inquiries of the anthropologist. They frequently have a kind of purity as spontaneous local information. The action or reaction is locally constituted and locally produced (Falk Moore, 1994:365).

Observation within PASSOP allowed access to many such examples of ‘spontaneous local information’ (which, as regarded rights, was often informed by international information). Furthermore, my time in the office allowed for numerous informal conversations, in addition to the formal interviews which I undertook with staff members, volunteers and clients. This section of fieldwork allowed for deep immersion into rights advocacy in South Africa, and for access to the workings of rights discourse. Being situated within the organisation positioned me within a particular politics, in that PASSOP has been outspoken against both the Zimbabwean and the South African states where they have not fulfilled the rights of citizens; nonetheless, the organisation retains a strong working relationship with both governments, and being affiliated with it assisted my access to spaces such as Home Affairs. In addition, my position as a member of PASSOP assisted greatly in accessing Zimbabwean migrants, who hold the organisation in high regard because of the advocacy and practical work it has done on issues relevant to their lives. In addition to participant observation, I conducted formal in-depth interviews with nineteen people involved in rights or migration work and with twenty-five Zimbabwean migrants. I also was able to utilise quantitative data collected from a total of 456 respondents as part of a survey I conducted with PASSOP and the Solidarity Peace Trust at a refugee camp in

De Doorns, some one hundred kilometres from Cape Town. For a breakdown of the basic demographics of interlocutors in the Western Cape, see Appendix A.

There is a need here for an ethical discussion as regards my role as anthropologist and activist. Firstly, it is worth noting that throughout my involvement with PASSOP the organisation has known me as an anthropologist, as I first became involved with them during my Masters research. I had full permission to carry out research, and they have requested that I use their name in published and unpublished work. During fieldwork, I made it clear on first meeting migrants that I was also engaged in research. Anyone who did not wish to be involved would have been excluded from my sample (I would, of course, still engage with them as a member of PASSOP), and could decide to opt out at any point, though this did not happen. I kept interlocutors identities hidden throughout the research, including fieldnotes, where this was requested.

Beyond issues of permission, however, lies an anthropological debate around the ethics of activism and scholarship. PASSOP is an activist organisation that espouses a particular political point of view: one which endorses the ideals of global rights discourses, and pushes for local government to uphold those ideals. To some extent, the changes in PASSOP's aims and role over the last few years have moved them away from overt political activism towards a more individualised advocacy, but the organisation nonetheless self-identifies as an activist one. In the past, the emphasis on neutrality and anthropology as science meant that participation in activism was viewed as too subjective. However, shifts in the discipline have recognised the role of subjectivity in any field of enquiry, and thus Hale and Gordon (in Angel-Ajani, 2004: 135) argue that

We need not choose between first rate scholarship, on the one hand, and carefully considered political engagement on the other. To the contrary, we contend that activist research can enhance the empirical breadth and theoretical sophistication – as well as the practical usefulness- of the knowledge that we produce as anthropologists.

The idea of *participant* observation is redundant if naïve notions of objectivity restrict us to observation without involvement. Anthropological methods allow access to the workings of power and as such are a useful tool for writing and acting against inequality. Further, it was methodologically necessary to be fully involved in the organisation with which I worked, and this included a particular activist positioning – and included arguments with others where I did not agree with the stance being taken. The ethics of scholarship (as of life) should thus, in my

opinion, lie with considered engagement rather than inaction. This ethical stance also guided the research I undertook in Harare.

b) Shifting the Site: Fieldwork in Harare, Zimbabwe

In mid 2010 I moved to Harare, Zimbabwe, where for three months I worked with two organisations. The first, the Research and Advocacy Unit (RAU), conducts research in Zimbabwe for the purposes of policy change; as such it engages in research within the three main areas of governance, gender, and displacements, and makes use of a legal framework of rights in so doing. The work done by RAU has also focused upon the documentation of instances of political violence within Zimbabwe. Here I was able to undertake participant observation that explored the workings of a Zimbabwean rights advocacy organisation and the processes of collecting legal data, including how people's subjective experiences were translated into evidence. I also conducted interviews with the staff of the organisation, focusing on their aims in doing the work they do, their viewpoints on human rights internationally and locally, and their opinions of the role of rights discourse in the current crisis.

The second organisation with which I worked in Harare, the Tree of Life, is concerned more with people's subjectivities than with the legal framework of rights. This organisation works with individuals who have experienced political violence, particularly torture, and utilises a hybridised therapeutic model, based on 'healing circles', that is concerned with moving beyond ideas of victimhood and rebuilding a sense of community following trauma. Though I did attend a healing circle, for ethical reasons, I have not drawn upon individual narratives that occurred during this process. Instead, I draw mainly upon interview data with staff members (see Chapter Three). Given the public nature of the work they do, both RAU and the Tree of Life gave permission that the names of their organisations be used in this thesis; as with PASSOP I have changed the names of those staff members who requested anonymity.

Through these two organisations I was able to make connections with other rights groups in Harare, and with individuals whose paths had crossed, in one way or another, with the world of rights advocacy. In addition to participant observation in the above spaces, then, I also draw on formal interviews with legal and non-legal staff from a variety of NGOs, and with Zimbabweans who were not working in the field of rights but who were linked to rights organisations (for example, by attending a healing workshop; or reporting a case of political violence). For further

breakdown of interview demographics see Appendix A. I also draw upon numerous informal interviews and conversations as encountered in my daily life in Harare, as well as general observation of daily life in Harare.

The Zimbabwean component of research also raises ethical matters. Ethically, the focus in both organisations on violation through physical violence raises issues around the witnessing of violence. This is something that I have struggled with: because of a sense that on one level my work can be read as mining people's very personal experiences of horror for academic gain, and because of the very real effects on my personal wellbeing of working closely with the trauma of others. However, I do feel that there was a methodological imperative that I encounter, through narrative or otherwise, the violences of life in Zimbabwe. On the one hand, this is because of what Ross describes as "the extraordinary power of violence in making social categories visible and marking them in everyday practice" (2005:101), as insight into the workings of power and inequality is necessary in order to *shift* inequalities. On the other, I feel that to ignore violence is tantamount to condoning it, as so poignantly expressed by Das:

I try to defend a picture of anthropological knowledge in relation to suffering as that which is wakeful to violence wherever it occurs in the weave of life; and the body of the anthropological text as that which refuses complicity with violence by opening itself to the pain of the other. (Das, 2003:297).

The ethical question then became one of my responsibilities as witness, not only in Zimbabwe but also throughout fieldwork. These ranged from keeping interlocutors identities unknowable where they wished it to wider concerns of ethnographic authority. Angel-Ajani (2004: 135) has argued that "the figure of witness becomes a powerful means through which to authorize and legitimize the painful and often devastating histories which we as anthropologists are allowed to hear" but this seems to me to be a double edged sword: on the one hand, witnessing of this sort allows stories to be told, but on the other there lies the danger of speaking over and for the people for whom one is witness. I can only hope that I have found the sensitivity and imagination to listen to stories with empathy, and to retell them with, rather than for, my interlocutors.

c) **A return to South Africa: border lands and political papers**

The final section of fieldwork entailed a return to South Africa, following the geographical route taken by many Zimbabwean migrants through the border post at Beitbridge, and then spending time at the International Organisation for Migration (IOM) offices in Musina, South Africa. Whilst in Musina, I also spent time with migrants queuing for their first encounter with Home Affairs; toured the border fence and bridge with IOM staff; interviewed newly arrived women and men at two shelters for migrants; interviewed staff members from a number of organisations in Musina working with Zimbabwean migration; and attended various meetings concerned with migrant's rights – particularly as regards healthcare. Again, informant demographics for this section of research, which constitutes the backbone of Chapter Four, can be viewed in Appendix A.

Returning to Cape Town, I contacted former interlocutors again in order to follow up on their attempts to legalise their presence in South Africa. While I was in Zimbabwe, South Africa had implemented a special dispensation for Zimbabwean migrants who could prove they were working; I thus spent more time in the (now extremely lengthy queues) at Home Affairs in Wynberg, and conducted migration history interviews with ten migrants (see Table Two in Appendix A, Zimbabwean migrants in the Western Cape).

Moving Forward

Drawing on the data gathered as discussed above, I argue in this dissertation that while discourses of human rights may be presented as universal, rights are enacted, practiced, envisioned, and debated in local contexts (cf Goodale, 2002; Wilson, 2003; 2006)- and these local contexts influence how, and for what purposes, ideas of rights are used. Discourses of rights are situational; the ethnographic analysis of rights talk and performance in Zimbabwe and South Africa that I present here develops existing knowledge in that it provides a contextualised examination of the situationality of rights in this postcolonial African setting. I build upon existing anthropological approaches to the study of human rights as outlined above and developed throughout the dissertation (Goodale, 2002, 2006a, 2006b, 2009a, 2009b; Wilson 2003; 2006; Merry 2005, 2006; Messer, 1993) to demonstrate that although the universality of rights is important to its global and local legitimacy and moral and symbolic capital (Bourdieu, 1994), it is also because ideas of rights are sufficiently flexible to allow for local ideas of morality and personhood that they are able to be considered valid in disparate contexts. The international

framework of rights allows for local interpretations to be hung upon it – to some extent. (As discussed above, and as elaborated in Chapters Three and Five, localisation is partial: where local notions of time or personhood, for example, differ to the models employed in rights discourse, the possibilities of localisation may be limited). These interpretations exist at the legal level, in terms of rights jurisprudence in local and international contexts, but they are also interpreted by civic organisations and advocacy groups, and by individuals operating largely outside of the legal field, such that rights have ‘social lives’ beyond the strictly legal realm (Wilson and Mitchell, 2003). This flexibility leads to what Wilson (2006:78) has termed the “ideological promiscuity” of rights talk – discourses of rights intersect with, among others, notions of citizenship; morality; personhood; modernity and justice. These different elements become important in different contexts. I argue that it is this ability of rights discourse to encompass varied ideologies and moralities, and to re-present them under the symbolically powerful banner of ‘human rights’, that makes rights talk such a prevalent language. This provides both an opportunity, in that it allows a powerful position from which to speak, and a danger, in that diverse modes of thought have to be presented within the terms of the discourse itself. I therefore develop existing academic ideas about the localisation of such discourses to argue that such localisation has its limits.

In this thesis, I use the contemporary political impasse and economic uncertainty in Zimbabwe, and the resultant movement by Zimbabweans to South Africa as a case study through which to explore how the legal framework of rights is locally interpreted, constituted and contested; and how such interpretations travel. I explore the ways in which local moral notions are (mis)translated into discourses of rights and consider the entanglements (Mbembe, 2001; Nuttall, 2009) of legal and moral notions at play when ideas of rights are invoked. Chapter Two provides an ethnographic examination of the public debates around the writing of a new Constitution in Zimbabwe as a means of tracing the discursive formations of ‘rights talk’, and the difficulties of legally encoding such talk; whilst Chapter Three explores the various modes of justice at play in contemporary Harare, where global ideas of rights are just one amongst a number of repertoires being mobilised to deal with political violence and the resultant so-called ‘culture of impunity’ as regards political crimes. In Chapter Four I trace the development of a set of human right reports from the early stages of research within Zimbabwe through to their global dissemination; I compare this relatively easy dissemination to the difficulties experienced by Zimbabwean women as they attempt to physically cross the border into South Africa, showing that rights talk travels more easily than do the bearers of such rights. In Chapter Five I present a final ethnographic case study in which I examine the use of discourses of rights by Zimbabwean migrants to South

Africa as they attempt to access legal status, arguing that migrants employ a different concept of personhood to that used within rights discourse, which is not accepted as valid by the state. Any potential for the localisation of rights discourses here is therefore seen to be constrained by unequal power relations. Chapter Six draws together these multi-sited ethnographic explorations to argue that whilst rights have emerged as a dominant discourse of our time, such a discourse is neither evenly applicable across cultural contexts nor easily localised. An examination of rights talk as praxis in this context reveals the advantages and disadvantages of using a language of rights in a post-colonial context. Theoretically, therefore, the thesis develops ideas of entanglement and applies the model to the temporal, moral and legal dimensions of rights discourses. I argue that such a model allows for better insight into the complexities of the use of rights in post-colonial Africa than do ideas of localisation or vernacularisation.

University of Cape Town

Chapter Two.

‘Panel-beating the law’²¹: The articulations of rights in Zimbabwean Constitutional dialogue

Legal texts and legal talk: an introduction

In the vignette with which I opened this thesis, a protestor stood poised with a paintbrush over a blank expanse of white fabric, and asked of his peers, “What do I write?” This is a question that is familiar to us all when faced with the naked page. His answer, found in conversation with the group, was to use the umbrella term ‘human rights’ as shorthand for the diverse issues they wished to express at the protest. While thinking through the ways in which to structure this thesis, I found myself exploring the inverse of the problem – faced with a mound of data on the many ways in which ideas of ‘human rights’, ‘justice’ and, more broadly, ‘law’ were used in Harare, Musina and Cape Town, what should I write in order to explore what lay behind these umbrella terms? How might I begin to trace the nebulous discursive formations of ‘rights talk’ in the Zimbabwean context, which encompassed ideas of dignity, democracy and freedom; of personhood and moral ethics; and of proper versus improper laws and which were situationally shaped by position, politics and power?

When I first began my doctoral fieldwork in Cape Town in 2010, I spent most of my time in two starkly different spaces. Both were legal fields: the first, a class in human rights law in the Faculty of Law at the University of Cape Town, and the second a paralegal clinic run by PASSOP out of the back of a coffee shop in Mowbray (at that time, PASSOP did not have the funding for office space, but had managed to strike a deal with the café owner.) One of the first things taught in the rights class was that human rights, as encoded in international statutes, had four basic characteristics: they were something that all people were born with (in other words, they were inherent); they applied to everyone (ie they were universal); they were something that could not be taken away (inalienable); and they were so strongly interconnected as to be indivisible.²² The contrast between this language and the realities I encountered daily in the paralegal clinic was

²¹ This quote, taken from an interview with Amelia, a magistrate in Zimbabwe, describes her take on the Constitution writing process, where the law is seen to be reshaped rather than entirely re-formulated.

²² As the law course progressed, it became clear that such reductionist language served as a heuristic device for the purposes of teaching, and that the realities of law in action were acknowledged as far more complex; nonetheless, such a simplistic presentation of rights was prevalent whenever I encountered the law being taught, be it by university lecturers to Masters level students or by the staff of NGOs in Zimbabwe and South Africa to their clients.

marked.²³ Such a reductionist language of rights obscured rather than reflected the realities I encountered in another setting: the contextual ways in which ideas of rights were called upon; strategically mobilized; refused; and debated in the daily happenings of a paralegal clinic that catered to the legal needs of documented and undocumented immigrants to South Africa. In beginning to write my thesis, then, I knew that I must find ways to demonstrate ethnographically the disjuncture between the performance of law as encountered in the field and the varied ways in which rights were discursively expressed by interlocutors (in other words, to explore ethnographically the differences between the ‘doing’ of law and the ‘speaking’ of law); while also acknowledging the ways that various of the discursive tropes of rights discourses (such as rights as inherent, and inalienable, but also some of the less openly articulated ideas, such as the entanglement of notions of dignity and freedom in human rights) *were* reflected in rights performance.²⁴

One of the difficulties of ethnographically examining transnational discourses and flows is that there is not necessarily any one obvious topical (or even geographical) place to begin. I have chosen to start with the actual and attempted inscriptions of ideas of rights onto legal documents, but I may as easily have begun with Zimbabwean asylum seekers’ interactions with the above paralegal clinic and with the South African Department of Home Affairs; or how Zimbabwean women imaginatively engaged, through interaction with local NGOs, in ideas of national transitional justice; or, indeed, with one of many other ethnographic instances and moments. All are linked by the common thread of rights talk and the (attempted) performance of rights law, and all exist in some relation to each other: in other words, all are part of a network of transnational discourses of rights.

²³ Some months after writing this I read a description in (South African constitutional Court Judge) Albie Sachs’ *The Strange Alchemy of Life and Law* of the disjunctures he experienced while studying at UCT in the Apartheid era between “the beautiful abstraction of norms” (2011:2) he heard from his professors and the “expressive eyes and mouths of desperately poor [black] people incandescent with determination to give all their energies, even their lives, for justice and freedom” (ibid). Democracy brought some changes to this dissonance between South African worlds (though poverty remained), but for immigrants to South Africa the disjunctures seem not dissimilar to those encountered in the present. In some ways, then, the figure of the immigrant in present day South Africa echoes the figure of the black man or woman in Apartheid South Africa, with papers instead of pass laws and international borders instead of Bantustans (see Chapter Five)

²⁴ As was explored in Chapter One, when referring to rights practice or rights praxis I invoke the realm of both talk and other forms of behavioral action; when a distinction between talking about rights and enacting those rights has been necessary, I refer to ‘rights talk’ and ‘the performance of rights’ respectively. In keeping with a Foucauldian view of discourse (Foucault, 1972; Hall, 2001), then, I assume that discourses of rights consist of both talk and enactment.

My argument here rests upon the theoretical underpinnings that I laid out in the introduction: namely, that supposedly universal notions of human rights emerge in local contexts and that rights, as Englund's (2006:26) puts it, can better be thought of as "engaged universals" as "universality in the abstract remains a chimera...universalism is situational." Further, I begin with the assumption that there is a need in anthropological engagement with human rights to move away from debates of relativism versus universalism and toward an examination of the ways in which human rights discourse is embedded in practice. I argue that notions of supposedly inherent human rights are "are enacted, debated, practiced, violated, envisioned and experienced" (Goodale, 2006a:490) in global and in local contexts, and exist within situationally shifting nexuses of power. Methodologically, then,

The legal ethnographer assumes that "the field" does not denote primarily a bounded location in space ...but rather a set of relationships which are linked by common interests. This means that the ethnographer must follow the legal ideas where they lead, and they often lead to unexpected places (Goodale, 2002: 64).

In this chapter, I explore one direction in which the legal ideas led, showing the constellation of ideas that are embedded in rights-based texts, talk and action. On the one hand, then, this chapter entails an analysis of a standard ethnographic object of knowledge, in that I examine the public dialogues and debates surrounding the writing of a new Zimbabwean Constitution that occurred in Zimbabwe during my residence there in 2010 (and which are still ongoing and unresolved, in that by January 2013 a final version of the Constitution has not been decided upon). The example demonstrates how human rights are open to (political and politicized) interpretation and contestation, both during the processes of 'fixing' them via legal procedures and after they have been formally encoded. The 'finished' versions of legal documents such as Constitutions and statutes emerge from and are enacted within fields of power. As such decisions and documents do not appear in a vacuum, "legalities must be conceptualised as both fluid and unstable, a shifting set of normative practices and ideas that form a network that is mostly invisible" (Goodale, 2002:64). On the other hand, this chapter is also an attempt to make more tangible, through the Constitution-writing case study, the partly visible regional and global networks of ideas and discourse that underpins rights praxis.

Case Study 1: Constituting the Constitution

It is not enough that bread has returned to our shelves. Our hearts are also starving for a people-driven Constitution. We demand a living Constitution that will give us bread and roses too! Just like the thorns on a rose, love comes with pain, we must be willing to fight through the pain to get our new Constitution. Demand your Rose - stand up for love. Shine Zimbabwe Shine!

(Valentine's Day Pamphlets handed out to journalists at the state-owned newspaper *The Herald* by members of Women of Zimbabwe Arise (WOZA), February 14 2010)²⁵

You're of Zimbabwe
Please put in your input
Unless your hand moves
Your mouth won't eat

Towards a homely home
All shall shun dire deeds.
Our Constitution should shine like chrome,
As captivating as beads.

(Stanzas 3 and 11 of a poem attributed to 'The Giant' which opens the booklet, *A People's Guide to Constitutional Debate*, Africa Community Publishing and Development Trust, 2009a.)

In mid to late September 2008, two items dominated the South African news media. The first was the signing, in Zimbabwe, of a political agreement that sought to bring the impasse that had existed in Zimbabwean politics since the elections in March of that year to a close; the second was the fall from power of the man who brokered the deal, then-President of South Africa, Thabo Mbeki. In the very last days of his Presidency in September 2008, Mbeki saw the culmination of the heavily criticised policy of 'quiet diplomacy'²⁶ with which South Africa had approached political instability in Zimbabwe since 2000. The continual instability and increasing violence within Zimbabwean politics and the effects of the rapid economic collapse of the Zimbabwean economy on other economies on the region had caused political difficulty for Mbeki throughout his second term as President. By September 2008, however, it appeared that quiet diplomacy had at last produced a tangible result.

²⁵ The slogan 'bread and roses' is historically linked to the labour movement; drawn from a poem by James Oppenheim that was used during a textile strike in Massachusetts in 1912, it has subsequently been used all over the world to call for both fair wages ('bread') and decent working conditions ('roses') (Watson, 2005).

²⁶ The policy was spear-headed by Mbeki, and resulted in the South African state according legitimacy on a number of occasions to increasingly undemocratic electoral processes in Zimbabwe (see Bond, 2005). For reasons such as this, international commentators called Mbeki's actions "unconscionable" (*The Economist*, April 17 2008) while political opponents in the Democratic Alliance questioned Mbeki's "curious silence" (Peta, 2007) on the Zimbabwean issue, and local commentators positioned Mbeki's stance on Zimbabwe as the "low moral ground" and as his "moral blind-spot" (Cape Business News, 2005). Interestingly, many participants in my research also viewed South Africa's stance on Zimbabwe as a *moral* (as well as political) issue.

On 11 September Mbeki, as the SADC appointed mediator of talks between the three political parties in Zimbabwe, brought to a close a protracted process of negotiations. On September 15th, to much regional and international media attention, ZANU(PF) and the two Movement for Democratic Change factions (MDC-T[svangirai] and MDC-M[utambara], signed the Global Political Agreement (GPA). Provisions within this agreement ushered in a new 'inclusive government', which saw Mugabe retain the Presidency and control of the National Security Council, whilst Tsvangirai assumed the post of Prime Minister and control over the Council of Ministers. At almost the same moment that Mbeki's negotiations in Zimbabwe culminated in the GPA, however, his position in South Africa politics underwent a rapid shift. Five days after the signing of the GPA, on the 20th of September, Mbeki resigned from the Presidency following being recalled by the ANC's National Executive Commission for supposed political interference in the corruption trial of (then Deputy-President, now President of South Africa), Jacob Zuma. Mbeki retained his position as Facilitator of the dialogue between the political parties in Zimbabwe, a crucial role, as, although the deal had been signed, negotiations over the implementation of the GPA were far from over.

The signing of the GPA did not bring political wrangling in Zimbabwe to a close. The photograph of Mugabe and Tsvangirai shaking hands, with a smiling Mbeki looking on (see Appendix A), which circulated in international and local media, was not the harbinger of political harmony that it appeared to be. The Zimbabweans I encountered in my daily life as anthropologist, activist and Zimbabwean, greeted the power sharing deal with suspicion; moreover, neither political side was satisfied with the concessions that had been made. President Mugabe reportedly referred to the deal as "a humiliation" (BBC News, 18 September 2008) whilst MDC supporters I interviewed were angered by Mugabe's retention of the Presidency, and viewed the acceptance of the deal by Tsvangirai and Mutambara as an inappropriate legitimisation of ZANU-PF's position, given the violence of the electoral process in 2008. Many Zimbabweans in Cape Town considered the power sharing deal to be largely illusionary, with most of the 'real' power still lying, for good or ill, in ZANU-PF hands. Civil society organisations and representatives tended to agree with this assessment - Zimbabwean human rights lawyer Derek Matysak wrote that "the agreement left Mugabe's powers largely unfettered and intact, though under a restructured form of government" and further that "it admits scanty hope for the return of the rule of law and democracy in Zimbabwe" (Matysak, 2010:15).

Nonetheless, the signing of the GPA caused a fundamental shift in the Zimbabwean political landscape, and, over time, led to changes in the daily lives of Zimbabweans. The most obvious

example of this was the legalisation of the use of foreign currency in Zimbabwe in early 2009, which led to the discontinuation of the Zimbabwe Dollar. This put an end to hyperinflation rates which were estimated at “6.5 quindecillion novemdecillion percent a year – or 65 followed by 107 zeros” (Hanke, 2008) by December 2008, a rate that meant that prices doubled every 24 hours (ibid). ‘Dollarisation’ brought a multitude of immediately obvious daily improvements, such as the availability of food, but the changes in the political landscape of Zimbabwe were not as apparent. For our purposes here, one provision of the GPA is particularly important in this regard – Article VI, which stipulated the creation of a new Zimbabwean Constitution. Before moving to an analysis of Article VI and its implementation, however, it is necessary to briefly step back in time to the late 1990s, to explore the political conditions which foreshadowed the Constitution making debates that (re)occurred a decade later.

Constitution-making in Zimbabwe: earlier attempts

As it stands at present, Zimbabwe’s Constitution was written and signed as part of the Lancaster House Agreement which brought an end to the liberation war in the late 1970s. The Lancaster House Constitution, a document that was formulated with the main aim of transferring power from a colonial to a postcolonial government, has undergone nineteen amendments since its inception, and is considered to have many weaknesses. Critiques take two main forms. Firstly, it is considered to be a colonial document, drafted in London to end a war, and neither a reflection of the legal needs of independent Zimbabwe, nor a reflection of the symbolic needs of the postcolonial nation. These critiques are largely shared across Zimbabwe’s present political divisions. The second major critique, however, has predominantly been levelled by NGOs and ZANU(PF)’s political opposition. It is directed at the numerous Constitutional Amendments that have taken place since 1979, which have had the main effect of consolidating presidential and state powers and weakening Zimbabwe’s democratic architecture.²⁷

Given these critiques, it is not surprising that there have been attempts to do away with the Lancaster House Constitution in the past, and that the Constitutional debates that I witnessed in 2010 are not the first in recent Zimbabwean history. In 1997, the National Constitutional Assembly (NCA) was formed by numerous non-governmental actors, in response to the use of

²⁷ For example, Amendment No. 7 (Act 23 of 1987) replaced the system of Ceremonial President and Prime Minister with an Executive Presidency; while Amendment No. 9 (Act 31 of 1989) replaced bi-cameral legislature with a single house of Parliament, to which the Executive President could appoint Ministers without public consultation. Amendment No. 11 (Act 30 of 1990) instated capital punishment, and in so doing reversed a Constitutional Court ruling; Amendment No. 13 (Act 9 of 1993) reversed a further Constitutional Court ruling that a delay in the enforcement of capital punishment constituted inhumane and degrading treatment; and Amendments 11 (Act 30 of 1990), 16 and 17 had the combined effect of removing the acquisition of land by the state from the jurisdiction of the courts, thus curtailing the independence of the judiciary.

Constitutional Amendments to concentrate political power in the hands of the President. The NCA was (and is) composed of a very broad array of political groups, incorporating “individual Zimbabwean citizens and civil organisations, including labour movements, student and youth groups, women’s groups, churches, business groups and human rights organisations” (NCA 2007:1). The common thread that united these diverse positions was a concern with the weakening of democratic processes in Zimbabwe. The endorsement of the democratic ideal by Mugabe’s civil and political opposition is worth noting, given the entanglement of ideas of human rights with those of democracy and freedom, as I explore further below. The NCA’s aim was to initiate a nation-wide conversation about the democratic weaknesses of the Lancaster House Amended Constitution, and to advocate for Constitutional reform.

By 1999, it seemed that the NCA’s push for Constitutional reform had been successful, and that changes were on the cards – but not in the way that they had been envisioned by the NCA. In May 1999, the ZANU(PF) government formed the Constitutional Commission in order to begin a process of drafting a new Constitution (BBC News, 1999; NCA, 2009). At the inauguration of the Constitutional Commission, President Mugabe argued that “every sovereign people is entitled to give birth to its own Constitution” (reported in BBC World News, 19 November 1999). Critics of the state, however, were wary of the Constitutional Commission.

Although the NCA and the state were in agreement that reform was necessary, this was as far as their agreement went – as far as the actual content of reform was concerned, the state and civil society were greatly opposed. By late 1999, the ZANU-PF government had drafted a new Constitution, which was presented to the nation via a national referendum in early 2000. The NCA, having been the advocate for Constitutional reform, now found itself in the ironic position of advocating that people vote *against* the new Constitution. The NCA’s ‘Vote No campaign’ (as it has become known) and the subsequent Constitutional referendum in 2000 was a pivotal point in Zimbabwean politics, as the ZANU-PF government-endorsed Constitution was rejected by 54.7 percent of voters (Electoral Institute for the Sustainability of Democracy in Africa, 2000). This was the first time in ZANU-PF history that the aims of the party had been thwarted by voters (Taundi, 2009). ZANU-PF would not allow this invincibility to be breached again until the power-sharing deal was struck a decade later²⁸ - at which point the issue of the Constitution re-emerged as central to the ongoing struggle between ZANU-PF and its opposition.

²⁸ And even then, much of the deal happened on the party’s own terms – see Matysak and Reeler, 2011.

In the decade between that referendum and my fieldwork in 2010, the Zimbabwean political landscape was marked by violence and discord, while the economy underwent a profound decline. It was in the context of this historicised politico-scape that the Constitution writing process emerged once more – and it is in the context of such power saturated and politicised fields that the rights of Zimbabweans are (still, in 2013) in the process of being Constitutionally encoded. The power struggles that solidified during the ‘Vote No campaign’ have resonated throughout Zimbabwean politics since, and could be seen to surface once more during the process of 2010. Players in these politicised fields made strategic use of international discourses. Gluck and Tsing (2009) argue that words do work in the world, “whether organizing, mobilizing, inspiring, excluding, suppressing or covering up” (Gluck, 2009:3) when they “become embedded in social and political practices” (ibid). Let us turn, then, to 2010’s Constitution-making debates in order to examine how ideas and words such as ‘the people’, democracy, freedom, rights and dignity were called upon; and to explore the contextualised processes of attempting to inscribe or to prevent the inscription of such concepts into national law.

Article VI:

Under Article VI of the GPA, the inclusive government was charged with writing a new Constitution. It is in the context of Article VI’s assertion that “the process of making this Constitution *must be “owned and driven by the people”*” (emphasis mine) that the vehement and, at times, violent debates around the writing of a new Constitution began. An excerpt from Article VI immediately reveals the globally recognisable terminology of rights and democracy – with one notable exception, which is italicised below:

ARTICLE VI CONSTITUTION

6. Constitution

Acknowledging that it is the fundamental right and duty of the Zimbabwean people to make a Constitution by themselves and for themselves;

Aware that the process of making this Constitution must be owned and driven by the people and must be inclusive and democratic;

Recognising that the current Constitution of Zimbabwe made at the Lancaster House Conference, London (1979) was primarily to transfer power from the colonial authority to the people of Zimbabwe;

Acknowledging the draft Constitution the Parties signed and agreed to in Kariba on the 30th of September 2007, annexed hereto as “Annexure B”;

Determined to create conditions for our people to write a Constitution for themselves;
and

Mindful of the need to ensure that the new Constitution deepens our democratic values and principles and the protection of the equality of all citizens, particularly the enhancement of full citizenship and equality of women.

The parties hereby agree...

(Excerpt from the Interparty Political Agreement [‘Global Party Agreement’], 2008, italics mine)

It is clear from this excerpt that the GPA process was one that was driven by a democratising agenda, and, indeed, this is unsurprising given the strong position of the democratic ideal within global politics, and SADC’s subscription to democracy as a political model. Tucked within the democratically correct language of ‘fundamental rights and duties’; ‘inclusive processes’, ‘protection of equality’, ‘full citizenship’ and a ‘people driven process’, however, was a clause on the Kariba Draft Constitution. The clause made notions of democratic inclusivity suspect, as it referred to an already-written version of a new Constitution (based largely upon the version rejected in the referendum of 2000) that the three parties had all endorsed a year prior to the GPA, in September 2007. The writing of the Kariba Draft occurred behind closed doors; its mention in the GPA led to immediate public suspicion that the ‘people-driven process’ of composing a new Constitution was nothing more than a semblance of a democratic consultative process, and that the final version presented to ‘the people’ would resemble the Kariba Draft, with all of its shortcomings.

I shall return to a closer consideration of the actual legal content of the Kariba Draft below; for our purposes here, it suffices to note that from the moment the Constitution-making process became public knowledge in Zimbabwe, it was marked by suspicion and debate. During fieldwork in 2010, Tarisai,²⁹ a female rights advocacy campaigner, shrugged off my questions about the Constitution-writing process with the comment, “What does it matter? They’ll just give us the Kariba draft at the end of the day, and then we’ll have to campaign again to reject it.” Her assertion that the Kariba Draft would be pushed through by the state was commonplace; and her

²⁹ As elsewhere, names are changed. I have called this interlocutor Tarisai as it translates from Shona as ‘here it is’/ ‘look at this’ or ‘everybody see this’ and Tarisai was determined, at considerable emotional cost to herself, to expose the use of rape as a political weapon in Zimbabwe.

lackadaisical words belie the tone in which she spoke them, which was more despairing than resigned. What's more, the Kariba Draft was endorsed by ZANU-PF *and* the two MDCs – civil society and the political opposition were no longer as closely aligned as they were during the Constitution-making struggles of the late 1990s. Many rights activists like Tarisai felt that the MDC had 'sold out' against their ostensibly democratic ideals. The tension between a version of the Constitution that was 'owned and driven by the people' and a state-driven, 'clandestine' version (NCA, 2009:2) informed the public debates of 2010.

The general public was deeply invested in these debates, as evidenced in the many conversations that I had on the topic in Harare, as well as letters to newspapers, call-ins on radio stations, and debate on websites and social media. A Constitution that is not yet written holds ambivalence as an imagined document – in a political power struggle such as has unfolded in Zimbabwe over the last decade, the Constitution could prove enormously valuable to either side of the political divide. A version of the Constitution such as the one pushed for by the NCA, civil society and rights advocacy groups would enable the legal foundations that they sought to begin to dismantle state autocratic control and put in place a thorough rights architecture; a version of the Constitution that was close to the Kariba Draft would work to further entrench the powers of the state (and thereby, in the terminology of rights talk, to limit political freedom), – a state which now included ZANU-PF and the MDC, the old power and its opposition. Alex Magaisa, a Zimbabwean living in the diaspora, began a blog post on the politics of Constitution-making in Zimbabwe with the line "the waters of Lake Kariba are both beautiful and treacherous" (Magaisa, 2009:1). He goes on to argue that

A Constitution should ideally outlive present-day politics; indeed, it should outlive political actors of the day. It is an enduring document between the governors and the governed – not just the present but also future generations. It is an embodiment of the nation's values, ideals and aspirations (ibid.)

I will return to the symbolic work that the Constitution is being made to do for 'the nation' below; what is of relevance here is Magaisa's awareness that the Constitution was being forged within a specific set of political circumstances, and his assertion that these should not play a role in the shape the Constitution comes to take. It is my argument in this chapter that documents of as much legal importance as Constitutions are *always* created in politicised conditions, and that the rights that are afforded by Constitutions, for all that they come to be presented as naturalised and inevitable once they are encoded, reflect the moment in which they are made.

The struggle over Constitution-making was one in which the stakes were extremely high – the law may be a social construct but it is one with very real effects, be they limiting or liberatory. A member of Zimbabwe Lawyers for Human Rights (ZLHR) commented in an interview that

In some ways this is the most important thing that is happening here [in Zimbabwe]. At the moment we're trying to get the law as it stands enforced, and sometimes we win and sometimes we fail. But if our Constitution is re-written so that it's harder for us to make those legal claims, then we've really lost.

The last ten years in Zimbabwe have seen, in addition to outright political and economic violence, the frequent eruption of what Comaroff and Comaroff (2007:144) describe as “lawfare”. ZLHR and others organisations have made consistent use of the courts where state actions have been illegal (for examples of this, see any edition of *The Legal Monitor*, available at www.zlhr.org.zw). Though ZLHR's legal cases have had their successes, lawfare works both ways, and, given the Amendments to the present Constitution in Zimbabwe, the odds are often stacked in favour of the state. In this context, then, what the new national Constitution might look like matters considerably.

Article VI did not limit itself to stipulating that a new Constitution must be written, as quoted above, but also outlined the conditions under which this should occur. Although members of civil society were wary of the validity of the public consultation process, given the existence of the Kariba Draft, there was nonetheless a legal imperative upon the transitional government to set up a Select Constitutional Parliamentary Committee, and to begin a process of public consultation over what to include in the new Constitution. This cumbersomely named Committee quickly became known by the acronym COPAC, while the democratising terminology used in the GPA was shortened in everyday speech to a ‘people-driven Constitution’, and the consultation process became known as ‘outreach.’ In discussing the COPAC process as I encountered it in 2010, I make use of the local terms. I now turn to an examination of this process of consultation, and the controversies to which it gave rise. As explored below, debates over the COPAC outreach were extensive; for reasons of expediency I have narrowed my focus here to two threads of the debate that underlie, or were interwoven into, the social construction of rights in Zimbabwe, and that are themselves key tropes of global rights discourses: namely, the surfacing throughout the COPAC process of ideas of democracy and freedom.³⁰ The first, democracy, is of course more than just an idea, but also a political form. Whilst I have already been able to explore some of the power struggles regarding that form in

³⁰ I have also briefly pointed to a third key trope of rights discourses, that of dignity, but return to this in Chapter Five.

this chapter thus far, throughout the COPAC process ‘democracy’ also constituted a discursive field, and it is to an examination of the rhetorical use of democracy that I now turn.

On ‘being heard’:³¹ Constructions of the people’s voice and democracy in the COPAC process

Almost two years after the signing of the GPA, COPAC began its process of public consultation with ‘the people’. This ‘outreach program’ consisted of teams of COPAC members travelling around the country and holding public meetings at which Zimbabweans were expected to comment on what they thought should or should not be included in the Constitution. There were thus a number of assumptions, all of which were predicated on an imagined relationship between ‘the people’, democracy and voice: firstly, that people would *want* to speak at such meetings (in other words, would have enough of an interest in the Constitution-making process to want to attend); secondly, that people would be informed enough in the practicalities of legal documents to be *able* to speak in terms that the formal structure could ‘hear’ at such meetings; and thirdly that people, given the political context of Zimbabwe and the extensive silencing of the population that has occurred historically (such as during Gukurahundi in the 1980s - see CCJP, 1997) as well as more recently, would be *willing* to speak freely at such meetings. Even before these considerations of acts of speaking publically, however, my own experiences led me to question the most basic (and, as such, initially unstated) assumption of the COPAC process: that ‘the people’ would be *allowed* to attend the meetings at all. For example, I was advised by an NGO with which I was working not to attend on the grounds that I was white and would attract the wrong kind of political attention. This was the experience of some others: when the outreach process eventually came to the capital city, a black attendee was assaulted by “three war veterans and some ZANU PF youth” (ZZICOMP, 2010) when he tried to defend the right to attend of a white couple who had been excluded. The process was not entirely closed to white people – personal communication with various white activists across the country showed their presence at meetings. Nonetheless, my inability to access Constitutional outreach meetings left me wondering who else was excluded, and, further, what other disjunctures were occurring between the rights-based and democratic language in which the COPAC process was represented, and the reality of its implementation.

The public language of the COPAC teams immediately reveals the rhetoric of democracy and public engagement: on billboards and in newspapers the COPAC logo was followed by the

³¹ ‘Be heard: take part in the Constitution Making Process’ was one of the slogans used by COPAC to advertise their campaign.

phrase ‘Ensuring a People-Driven Constitution’, whilst COPAC advertisements urged Zimbabweans to ‘Be Heard: Take Part in the Constitution Making Process’; reminded us that ‘It is everyone’s duty to participate in the Constitution Making Process’; and showed pictures of children next to the words ‘I am Taking Part in the Constitution Making Process – Children and youth, have your say!’

This emphasis on the importance of public participation was not limited to state rhetoric: it was also a central element of rights talk as used by civil society and activist groups. For example, a non-governmental group, the Africa Community Publishing and Development Trust, published a book entitled *A People’s Guide to Constitutional Debate* in 2009. A central theme running through this text is the idea that Zimbabwean citizens³² should have the right, as enacted through public speech, to take part in the Constitution-writing process. Thus, the authors assert that “citizens are the builders of a democratic country called home” (page 15) and argue for the necessity of “transforming the passive masses into active citizens” (page 25) and, beneath an illustration of five people writing upon a large open book inscribed with the words ‘Constitution of Zimbabwe’ comment that “no one should think and choose for us. As citizens we have the right to write our views for a democratic Constitution” (page 29). Further, the authors assert that “A Constitution only becomes owned and legitimate (respected and accepted) in the eyes of the people if they participated in its making” (page 33) and that “one of the main purposes of a democratic Constitution is to protect citizens’ human rights” (page 83).

The text also drew upon a collation of Shona and Ndebele proverbs to emphasise the authors’ political viewpoint within local idioms: in Ndebele, *Abaleleya bawuswa ngaba khangeleyo* (page 25 - the sleepy are awakened by the awake) and *umuzi ngumuzi ngombetho* (Page 30 - a home is a home because of its laws) were drawn upon in order to emphasise the importance of public participation and the rule of law; whilst the Shona proverb *simba rebove riri mumvura* (literal translation: the power of the fish is in the water) was evoked as a means of expressing “the trust

³² In the language of civil society, as well as the language of COPAC, citizens and ‘the people’ were used interchangeably; in this inclusive shorthand, ‘the people’ were also deemed to be anyone living in Zimbabwe, and (ex)Zimbabweans in the diaspora. However, the various versions of the Constitution take different stances on who should be categorised as citizen, with the current Constitution and the Kariba Draft providing a more narrow definition than the NCA draft. Where the current Constitution and Kariba Draft limit citizenship by birth to only those born in the country whose parents are also Zimbabwean citizens; the NCA draft allows children born outside the country to Zimbabwean citizens, and those born in the country regardless of parental citizenship, to access citizenship. Further, the current Constitution and Kariba Draft prohibit dual citizenship, while the NCA version allows it. All three versions, however, are silent on the issue of migrant workers. Who ‘the people’ of Zimbabwe might be, then, is still up for debate.

and mutual relationship between leaders and people” (pg 55), though the same proverb had earlier been translated as “Full participation is only realised in your country” (page 14).

In both state and civil society discourse, then, the role of ‘the people’ in writing the Constitution and deciding upon their rights was emphasised. This notion of public engagement is rooted in ideas of participatory democracy and reflects in the human rights architecture that is often attendant to democracy as political form: freedom of speech, for example, and a free and fair electoral process. The reality of the process, of course, means that Constitutions will in actuality be written by a very small elite, the few who have access to both the legal language and knowledge that a Constitution requires, and who have political access to the document writing process itself. In the Zimbabwean Constitutional debates, however, the attempts to encode rights unfolded within strategic use of the language of participatory democracy by the state *and* by its opponents. Given the ways in which the state has, in the last decade, instituted legal forms which expressly work to inhibit such public engagement (such as the Public Order and Security Act/POSA),³³ it is unsurprising, however, that state rhetoric of public consultation was viewed with suspicion by the civil sectors and by Zimbabweans.

In 2010, then, the public debates about the Constitution centred on the validity of the outreach process. Could ‘the people’ be said to be engaging in the COPAC process? For all that the state and civil society spoke in the language of rights and democracy, how effective was outreach at accessing people’s views, and was the state even interested in those views? Throughout the implementation of COPAC’s outreach process, this topic was hotly debated. My experiences of the inaccessibility of the COPAC process were not unique. From the beginning, COPAC’s public consultation process was marked by controversy over the degree of openness it afforded, with COPAC members insisting it was open and democratic, whilst their critics argued that only people who were sympathetic to ZANU-PF were allowed to speak, and further that they had been told beforehand exactly what they were allowed to say. Both sides used the language of democracy and referenced ‘the people’, and ‘the people’s voice’; and both positions were argued and reiterated in numerous forums, formal and informal - from articles, letters and smses

³³ Passed in 2002, this extensive piece of legislation stemmed from the Smith regime’s Colonial Law and Order Maintenance Act (LOMA) which was used against the nationalist parties during the struggle for independence. Amongst other terms, POSA prohibited public gatherings without police notification, curtailing the actions of trade unions and the political opposition.

published in newspapers, to call in shows on the radio, from conversations in bars to electronic commentary via the NGO and activist community (e)mailing lists.³⁴

When I asked interlocutors who argued against the validity of the outreach process why such an elaborate (and expensive) outreach process would be undertaken if there was no intention of recording the views of the people who attended, they all had a similar answer. Tarisai, for example, looked at me as though I was, at the very least, deeply naïve. “Come, Shannon,” she said,

You’ve seen the elections we have here. Why do we go through such a process all the time then, when we know it is rigged, or violent, or whatever? That’s expensive too. *But you have to look like democracy is happening because then you can claim legitimacy.* Money on cars and salaries and meetings is well spent if you come out of it with a Constitution that is based on the people, and if *you can then talk about the rights laid down by the people themselves* (Interview with Tarisai, 2010: emphasis mine).

In this reading of the process, performing democracy was the name of the game, and COPAC’s political sentiment viewed as purely rhetorical.

The view held by Tarisai and others was not held by all other non-state actors – first hand evidence, as well as hearsay, from general members of the Zimbabwean public that spoke to both positions was frequently presented in various media forms. On one radio show ‘Norbert from Chirundu’ stated that he was disallowed from speaking because he was viewed as unsympathetic to ‘the party’ (Norbert, nobody’s fool, didn’t actually name *which* party, though that he meant ZANU-PF was clear enough from the political position he took); while ‘George from Kadoma’ said he was moved to call in to the radio show following his experiences as it was obviously a ‘free and fair’³⁵ consultation “where every man was able to speak.”

³⁴ A sense of the extent of public concern with the process can be given by one example: the website Sokwanele, which gives as its mission statement “campaigning non-violently for freedom and democracy in Zimbabwe”, devoted its home page entirely to the Constitution for a period of 2011, with its other concerns (including the ‘ZIG Watch’ which collects any and all media concerned with the Inclusive Government in its entirety) moved to tabs along the top of the page. Sokwanele has amassed a hugely extensive archive of the Constitutional outreach process, which they present in the manner of a daily timeline with links to published articles from a variety of forums. This timeline is the best example I have seen of presenting in a coherent manner the truly staggering numbers of articles that have resulted from the outreach process over the last two years- the links number in the thousands and serve to illustrate how much people have had to say about the process (see www.sokwanele.com).

³⁵ Thus invoking the democratic language of the electoral process.

This quote is of course the perfect moment to refer to the gendered dimensions of the consultation process, and to some of the gendered assumptions within the debates as to who the ostensible ‘people’ whose voices were being democratically accessed actually were. As with much of Zimbabwean politics, Constitutional Outreach was a male-dominated arena – whoever ‘the people’ were, then, in much of the public discourse it appeared that they were male. Where I conducted interviews about the Constitutional process, these gendered assumptions sometimes occurred hand in hand with mention of the need to better encode ‘women’s rights’; at other times, even such ambivalence to the role of women did not arise, with interlocutors asserting that there was danger in allowing women too much power and ‘too many rights’.³⁶ Many of the activists I worked with were women who were personally aware of the gendered nature of much of Zimbabwean public participation and aware of the limits upon how women could engage, as they themselves had struggled against the ostracism that accompanied involvement in political spaces. It is common in Zimbabwe to encounter derogatory metaphors such as “Tsvangirai’s whores” being used of female politicians, political activists and, indeed, even women who speak about political issues. Given this context, it is unsurprising that a newspaper article on an outreach meeting in rural Murehwa reported the women present to have responded to a question on whether the Constitution should make 50% female representation in political bodies mandatory with a cry of “*Aiwa hatidi!*” (No, we don’t want it!) (NewsDay, 20 August 2010). This was reported as reflecting the ignorance of the women concerned and did not consider the stigma attached to women’s political involvement, and the complexity of processes of speaking publically in Zimbabwe, both of which provide better explanations for the women’s expressed lack of desire to enforce female political contribution. Although the rhetoric of participatory democracy was invoked throughout the COPAC process, then, the complexities of people’s positions within society and the ways this might influence what they could or could not say, or what they did or did not want, largely went without problematisation or acknowledgement. As Ross has noted of the expectations placed upon public voice in the TRC (Truth and Reconciliation) process in South Africa, “ ‘women’ are considered to be the problem, rather than the institutions and processes that do not admit different experiences, that protect power from direct speech, or that do not admit the complexity of speech and silence” (Ross, 2010:90).

Divisions over the definition of ‘the people’ extended beyond gender: a vehement area of debate, on a national and transnational scale, centred around the Constitutional encoding of citizenship –

³⁶ Since independence, women’s rights in Zimbabwe have been characterised by “state-led progress on women’s issues followed by a period of back-sliding on earlier commitments.” (Ranchod-Nilsson, 2006:49). For an overview of the steady legislative erosion of women’s rights since 1980, and how women’s organisations have challenged this, see Essof, 2006.

in other words, around who, by Constitutional law, could lay claim to being Zimbabwean, and to the rights attendant upon that, and who could not. Civil society and Zimbabweans contributing to the debate from outside the country were often in agreement in asserting that members of the diaspora should be part of the consultation process whereas COPAC initially excluded them. Given that movement out of Zimbabwe was considered by many such people to have been politically motivated, it is unsurprising that their exclusion resulted in a public outcry. This outcry was vehement enough to result in COPAC allowing the Zimbabwe Exiles Forum to submit their own version of the Constitution as part of the outreach process: in this version, dual citizenship is legalised.

Although key players were divided as to whether it reflected reality or performance, notions of participatory democracy were invoked throughout the consultation process. As Gluck, in her introduction to *Words in Motion: Towards a Global Lexicon* (Gluck and Tsing, 2009), which traces the emergence and global movement of particular terms, notes, “Important words like “democracy” ... and “rights” travel the globe and appear in many local and national inflections” (Gluck, 2009:4). It has been possible here to examine the use of such terms in one specific context and thereby examine one manifestation of the social and political life of words in postcolonial Southern Africa. I have chosen to highlight this thread of the debate to illustrate the entangled (and historically informed) rhetoric of rights and democracy that were called upon in attempts to formally encode ‘new’ Zimbabwean law – and the possibilities and limitations placed by political context upon that law. Rights talk during the COPAC process also utilised another key trope of global discourses of rights, however, which, unlike democracy, did not stem from a definite type of government and political form, but was much more nebulous: I refer here to notions of freedom. Whilst the above discussion was located in the debates over the implementation of COPAC outreach, therefore, in examining recourse to ideas of freedom I am able to focus on the content of that process.

“Fundamental rights and freedoms” versus “sovereign Zimbabwe for Zimbabweans”: competing discourses in Constitutional debates

Every sovereign people is entitled to give birth to its own Constitution (Robert Mugabe, reported in BBC World News, 19 November 1999).

We have fought for our land, we have fought for our sovereignty, small as we are we have won our independence and we are prepared to shed our blood.... So, Blair, keep your England, and let me keep my Zimbabwe.

(Robert Mugabe, Speech at the Earth Summit in Johannesburg, 2002).

Let us be frank – freedom remains absent in Zimbabwe. Human rights remain violated in Zimbabwe, even under Tsvangirai. Mugabe says Zimbabwe for Zimbabweans... but Zimbabweans are all still struggling for their political freedom.

(Interview with Marcus, 53 year old Shona man, who had considered himself a ZANU-PF supporter up until 2002)

We used to call my generation, you know, those of us born after 1980, the ‘born-frees.’ But now... we might have been born free but we did not stay that way for long. If anything real is to change, we need the Constitution to ensure political freedom, freedom of assembly, freedom of media. And then we need to make sure that the Constitution is obeyed.

(Interview with Nyasha, a 29 year old Shona woman)

In postcolonial contexts, ‘freedom’ is often used in relation to political independence from the coloniser, and to freedom from colonial rule;³⁷ it is in this sense that Nyasha and her age cohort were termed the ‘born-frees’, and it is in this sense that President Mugabe drew on claims of autochthony to assert Zimbabwean sovereignty and independence. George and Nyasha’s quotes above are illustrative, however, of many Zimbabweans in 2010 in that, regardless of their own autochthony or Zimbabwe’s sovereignty and independence, they considered freedom to be limited. Angered by elaborate state-held Independence Day celebrations in 2011, Zimbabwean Dominic Mhiripiri wrote, in a blog entitled *Amid lack of freedom, Zimbabwe reaches independence milestone*,

In the aftermath of a decade-long economic crisis, gross human rights abuses, and more recently, a coalition government that is at best a cinema of childish and inconsequential drama from grown men and women — little remains for the average Zimbabweans to celebrate about independence.

For the generation of those Zimbabweans who danced and sang Independence night away in 1980, the “gains” of freedom they were promised — land, access to capital, full employment, education and health — have either been confined into the circles of a tiny elite, or simply, eroded away by the economic crisis. Either way, they cannot partake of the supposed fruits of liberation. (Mhiripiri, 2011:1).

Mhiripiri posits two distinct points in Zimbabwean history from which to consider ideas of freedom – the freedom gained in 1980, following the liberation struggle (the Second Chimurenga is most commonly translated into English in these terms – as a struggle for liberation, a struggle

³⁷ This use of freedom has its roots in the nationalist ideologies of African independence movements, and can be seen in the central political texts of that era, such as Kwame Nkrumah’s *Speak of Freedom* (1961), Julius Nyerere’s *Essays on Socialism* (1968); and Leopold Senghor’s *On African Socialism* (1964).

for freedom); and the freedoms, or lack thereof, that he observes in 2011. Mhiripiri's position is not unusual; the data I gathered during fieldwork showed a sharp division between two competing notions of freedom that were at play in Zimbabwean politics at the time. Freedom was considered either to refer to the political and economic freedoms associated with democracy and neo-liberal capitalism; or to refer to freedom from colonisation (with a concomitant rhetorical return of the land to 'the people') and freedom from 'Western'³⁸ influence. Both of these options place freedom firmly in the realm of politics; beyond this, however, they tended to diverge.

This division was not unfamiliar to me, in that the competing notions of freedom drawn on by my interlocutors as they debated the Constitution reflect the political rift that has unfolded in Zimbabwean politics since independence, which culminated in the signing of the GPA and the introduction of the current government. The rift has been described by Raftopoulos (2004:17) as the development of "a severe break...between the discourse and politics of the liberation struggle and that of the civic struggles for democratisation in the post-colonial period." In the post- 2000 period, the rift widened, as is reflected in the following description of the candidates in a Zimbabwean by-election: "Pfebve, 32, represents the new politics of democracy, while Manyika, 46, epitomises the old politics of the liberation struggle" (*The Daily News*, 24 July 2001; quoted in Raftopoulos, 2004:17). 'Old' and 'new' politics reflect positioning rather than any one moment in time, as both political viewpoints still operate (and conflict with each other) in 'transitional'³⁹ Zimbabwe (and we see the imposition of a linear model of temporal time that does not reflect the realities of temporalities at work in postcolonial Africa; cf. Mbembe, 2001). Given the entanglement of ideas of freedom in human rights discourse, in this section I draw on examples to unpack the contextual and contradictory calls made upon freedom as Zimbabweans discussed the new Constitution.

George and Nyasha's comments illustrate one way of viewing freedom, one based upon the ideals of a rights-based democracy. Freedom, used in this manner, refers to the "fundamental freedoms" that are central to the rights-based ideal as articulated through the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political

³⁸ Mugabe's rhetoric has positioned Zimbabwe against what he broadly characterises as 'the West' – as exemplified by Britain, America, and any other nation-state that has criticised his political stance and the happenings in Zimbabwe. In using this term, then, I am not assuming that there necessarily is any such monolith as 'the West' but am rather invoking the rhetoric of the Zimbabwean state.

³⁹ Whether Zimbabwe can be said to be in transition or not is debatable, as is what it might be transitioning towards. Academic voices throughout Murithi and Mawadza's 2011 edited volume *Zimbabwe in Transition: A View from Within* are divided as to what transition might even mean in the context of Zimbabwe, let alone whether or not it is happening.

Rights (ICCPR). Here, the freedom *to* act in particular ways replaces freedom *from* colonisation as used in the ‘old politics’ of the liberation struggle. In rights terminology these freedoms are Freedom of Association;⁴⁰ Freedom of Religion, Belief and Opinion⁴¹; Freedom of Assembly, Demonstration and Petition;⁴² and Freedom of Expression.⁴³ Such political freedoms (aside from freedom of religious belief) have become progressively constrained in Zimbabwe in the last decade as the state tightened its hold on legal, media and electoral institutions in response to political opposition, through acts such as the Public Order and Security Act (POSA), even though they are protected under the Lancaster House Constitution (albeit partially and poorly, in comparison to, for example, the South African Bill of Rights).

Throughout the Constitution-making dialogue in 2010, then, rights-talk often referred to a Bill of Rights that would strengthen and protect political freedoms. An sms sent to a local newspaper read, “COPAC must hear that we want to meet as MDC members without harassment” which can be translated into rights-based terminology as a call on the right to Freedom of Assembly and the right to Freedom of Association; while a guest at a meal I attended argued that “We need to be able to better protect freedom of press than we were able to do with Lancaster House,” (Freedom of Expression); and an online comment after a news story which described one of the many arrests of WOZA members after a public protest read ‘As Zimbabweans we must stand together with WOZA to protect our right to protest against an inhumane government’ – or, in other words, to protect Freedom of Assembly.⁴⁴

Such notions of political freedom form one of the central threads of international rights discourses. Englund (2006), however, has argued that there is a danger where rights come to stand *only* for such freedoms. In a chapter devoted to the processes of translating rights talk into local languages and idioms, he argues that this is exactly what has occurred through the (politicised) processes of translation in Malawi and Zambia and that “activists, politicians, journalists, and others spearheading the translation have taken their particular interest in democratization as a universal concern. They have, accordingly, translated rights as freedoms, with a particular emphasis on political and civil liberties” (Englund:2006:48). Again, here we see

⁴⁰ Protected by Article 20(1) of the UDHR and Article 22 of the ICCPR.

⁴¹ Art. 18 of the UDHR and Art. 18 of the ICCPR

⁴² Art. 20(1) of the UDHR and Art. 21 of the ICCPR

⁴³ Art. 19 of the UDHR and Art.19 of the ICCPR.

⁴⁴ In the case of this particular arrest, ZLHR were able to successfully use the Lancaster House Constitution to argue against the charges of ‘intentionally engaging in a disorderly or riotous conduct as defined in section 41(a) of the Criminal Law Codification and Reform Act’ by arguing the activists’ arrest infringed on their right to freedom of expression and freedom of assembly. A news article reported that “this argument rendered the Prosecutor D. Ndebele dumb and he had no option but to withdraw the charges before plea and record this in the docket.” (see <http://www.thezimbabwean.co.uk/human-rights/51880/victory-for-woza-members.html>) Such is the power of Constitutional law where it is upheld.

an emphasis upon the freedom *to* act in particular ways, rather than one upon ideas of freedom *from*: from colonisation, as seen above, but also from want, as encoded in socioeconomic rights. Within rights discourse, then, particular forms of freedom have gained prominence in particular contexts, such that political rights come to take precedent over other forms.⁴⁵ The relationship between discourses of rights and discourses of democracy can be seen again here; as well as the prevailing emphasis within rights discourses on first generation political and civil rights at the expense of socioeconomic rights, for all that such rights were presented in law classes as ‘indivisible’. Englund goes on to argue that, through such constrictive acts of translation, “human rights discourse ...can be deprived of its democratizing potential and made to serve particular interests in society.” (ibid.) In the context of Zimbabwean political dialogue, however, even without such narrow acts of translation there lay a further impediment to the ‘democratizing potential’ of rights discourse: that of an opposing view of freedom which draws on notions of autochthony⁴⁶ and authenticity to place the rhetoric of national liberation ahead of any (individual) rights based considerations. The following example serves to illustrate.

At the beginning of the COPAC consultation process, long before outreach teams had come to Harare, I attended a public event where I was witness to a tense conversation between two members of the audience. The event was held in a restaurant in the city centre, which served food and drinks and often had live entertainment. This place was well known for its ‘political’ nature – in that, throughout the media crackdown and public silencing of the last decade, it had showcased artists and held events that spoke against state oppression. That evening, which was not presented as political per se, a singer had seated herself at the small stage at the front of the room and, accompanied by an acoustic guitar, sung Bob Marley’s well-known *Redemption Song*. This moving song includes the lyrics ‘How long shall they kill our prophets while we stand aside and look?’ and has as one refrain ‘Won’t you help to sing these songs of freedom?’

I could not help but hear the song in terms of the Zimbabwean political situation, and the (politically active) people whom I was with viewed it in the same way. In such ways were artists able to speak about the state without breaking any laws. A few days prior to this occasion, human rights activist Farai Magawu had been arrested on charges of supplying false information

⁴⁵ I return to a consideration of the different emphasis accorded to political and socioeconomic rights in Chapter Five where I examine the notions of violation at work in Zimbabwean applications for refugee status.

⁴⁶ I use autochthony (‘of the soil’) deliberately here in that ZANU-PF rhetoric has, in the last 15 years, made use of an imagined relationship to land as a political and rhetorical tool. Seen most strongly during the land invasions, where rhetoric went hand in hand with violent action, calls upon land as a marker of belonging and identity have surfaced frequently since. Geschiere (2009) has argued that moments of economic and political change and uncertainty influenced the similar invocations of a primordial autochthony that have occurred in the otherwise very different contexts of Cameroon and the Netherlands. As such, he categorizes autochthony as the flip-side of globalization.

on the happenings in the Marange Diamond fields in the Chiadzwa district in Zimbabwe; Magawu was the director of an NGO which documented conditions in the area. Magawu's arrest was, at this point in time, a widespread topic of conversation amongst the political activists I knew, and this, in combination with Bob Marley's lyrics, led to a conversation at our table about the state of freedom of expression in Zimbabwe. That this was not necessarily a wise topic to speak about publically says a great deal, but the reputation of the restaurant as a safe political space, (and no doubt the beer it served) loosened tongues, and the conversation became loud enough for a man at a nearby table to overhear. He swung his chair around and interrupted our conversation with the words, "Are you saying Zimbabwe is not free?" The man at our table who had been speaking replied (rather bravely, I thought) "I am saying we can't just talk about anything in this country without fear of consequences."

"But there are some things that should not be said, and if they are said then it is only right that there are consequences," replied his interlocutor, "That doesn't mean we are not free."

"Fine," replied the activist, "but there are also things that *should* be said. Look at Farai Magawu."

"Magawu? But he is a liar. Of course there must be consequences for liars. This has nothing to do with freedom. Zimbabwe was brought to freedom in 1980; we are free still. Magawu is a Western puppet spreading lies, but we know that Zimbabwe must never be a colony again."⁴⁷

If it had not been obvious already, reference to 'Western puppets' and the oft-quoted 'Zimbabwe must never be a colony again' made the man's political solidarities as a ZANU-PF supporter clear to us all. The activist placated the man, backed down from the conversation, and, soon after, we left. This incident served to highlight, however, a different idea of freedom that was called upon in Zimbabwean politics, where freedom stood for political independence (and a concomitant possession of 'the land'), and independence from outside interference, which was usually posited as 'colonial' or 'Western.' In this vein, at a speech to Zanu-PF congress in 2003 whilst the Commonwealth was deliberating on whether to exclude Zimbabwe, Mugabe stated that

If the choice was made for us, one for us to lose our sovereignty and become a member of the Commonwealth or to remain with our sovereignty and lose

⁴⁷ Here he was referencing a statement attributed to both Mugabe and to Jonathan Moyo (one of the core architects of POSA) during the latter's tenure as Minister of Information.

membership of the Commonwealth, then I would say, then let the Commonwealth go. What is it to us? Our people are overjoyed, the land is ours. We are now the rulers and owners of Zimbabwe (Mugabe, 2003).

In this view of freedom as sovereignty, notions of human rights and fundamental freedoms are presented as Western constructs that are not relevant to Zimbabweans. Further, the very language in which such freedoms are articulated has also been turned against leaders of 'the West':

Let Mr. Bush read history correctly. Let him realise that both personally and in his representative capacity as the current President of the United States, he stands for this "civilisation" which occupied, which colonised, which incarcerated, which killed. He has much to atone for and very little to lecture us on the Universal Declaration of Human Rights. His hands drip with innocent blood of many nationalities.

And

Mr Bush, Mr. Blair and now Mr Brown's sense of human rights precludes our people's right to their God-given resources, which in their view must be controlled by their kith and kin. I am termed dictator because I have rejected this supremacist view and frustrated the neo-colonialists.

(Both quotes from a speech given by Mugabe to the United Nations General Assembly on 26 September 2007)

In this version of freedom, people like Farai Magawu who speak publically about people's suffering, and about the violence perpetrated by the state, are described as 'puppets of the West' in that they are defying the political party that brought them access to their national 'God-given resources' through national liberation. Such rhetoric does not reflect the realities of access to livelihoods or land in present day Zimbabwe, which are still deeply uneven and biased in favour of state elites (see Murithi and Mawadza, 2011), but rather works to shut down alternative viewpoints on Zimbabwean politics, historically and presently.

Curiously, given the emphasis within Zanu-PF rhetoric on such language of authenticity and anti-Western sentiment, I never came across a Zanu-PF critique of Constitution-writing in itself. I say curiously as, to my mind, within the terms of Mugabe's rhetoric a Constitution as a legal document should be viewed as 'Western'. In a speech to school children following the 2008 Independence Day celebrations, Mugabe explicitly censured such postcolonial 'borrowing':

You must also know the history of the struggle. Freedom did not come on a silver plate. Zimbabwe was once usurped by imperialists who seized it like robbers, but we got it back and we are proud to be Zimbabweans, not

Rhodesians, Africans, not British. We have our own cultures. *We can borrow from other cultures, but not British.* We must remain black and be proud to be black and hence our children should inherit a culture of being proud to be African (Mugabe, cited in *The Herald*, 18 April, 2008. Emphasis mine).

The fact that Constitution-writing, (in other words, the writing of a document immersed in the legal and moral norms of ‘the West’) was endorsed by Zanu-PF and not disparaged serves to illustrate that Mugabe’s anti-Western rhetoric is just that: rhetoric. Where ‘British’ or ‘Western’ forms suit the regime, (as a Constitution based on the Kariba Draft would do) they are not challenged; where such forms challenge the state, such as in the articulation, by Zimbabweans, of (supposedly) fundamental freedoms, then they are vilified as colonial intrusions into sovereign Zimbabwe.

This version of freedom is informed by political context and works to justify political oppression through its rhetorical calls to sovereignty and an independent nationhood. Essentialising language such as that evoked by the man we encountered in a restaurant in Harare, and by the President of the country himself, limits an understanding of the complexities involved where rights discourses surface in postcolonial contexts, and the political forms of such contexts.

In considering the tendency to autocracy, or what he terms *commandement*, in postcolonial states, Mbembe (2001) attempts to account for such complexity through his assertion that

Postcolonial African regimes have not invented what they know of government from scratch. Their knowledge is the product of several cultures, heritages, and traditions of which the features have become entangled over time, to the point where something has emerged that has the look of “custom” without being fully reducible to it, and partakes of “modernity” without fully being a part of it (Mbembe, 2001: 25).

It is within contexts such as these that some of the prevalent ideas of modernity – such as rights and freedoms - are articulated in opposition to the state, and it is within such contexts that attempts are being made to re-shape the Zimbabwean Constitution by a plethora of players. To return then to the starting point of this chapter, in a context such as this the idea of rights as inherent, inalienable, universal and indivisible can be seen to obscure the deeply politicised nature of rights praxis, and the situationality of calls upon rights.

As far as rights are concerned, then, the language of freedom was largely called upon as a means of invoking political rights –or, in terms of generations of rights law, those rights that fall under the banner of first generation rights. Unlike Englund’s critique of the narrow translation of rights in the Malawian and Zambian context, however, such political rights were not the only sorts of right that were called into being during Constitutional dialogue. The following quote, from a

chapter on services and institutions in *A People's Guide to Constitutional Debate*, summons another sort of freedom: "services should nurture and protect, and enable citizens to live with freedom from want." The idea of 'freedom from want' is closer to the socio-economic rights that Englund found missing in translations of rights by NGOs in Malawi and Zambia. Indeed, the Mhiripiri quote used earlier in this section classified the "gains" of freedom that people had expected in 1980 in socioeconomic terms: "land, access to capital, full employment, education and health" (Mhiripiri:2011:1.) Socioeconomic rights were in no way absent from Constitutional debates – the severity of economic decline in Zimbabwe has ensured that socioeconomic factors become central to most public political dialogue. In Zimbabwe, however, socioeconomic conditions were not usually spoken of in terms of freedom, but in terms of another of the key tropes of international discourses of rights: dignity. I will return to this in Chapter Five, where I consider how immigrants in South Africa saw (socioeconomic) dignity as integral to their understanding of human rights, and a violation of those rights.

Conclusion: Rights and democratic performance

When I returned to Cape Town from Harare in late August 2010, the COPAC process had not yet reached the capital city. I followed the media reports about Constitutional Outreach, which over time painted a more and more depressing picture, with increasing episodes of physical violence at COPAC meetings (The Zimbabwean, 16 August 2010); reports of the abandonment of the process in some provinces due to administrative problems and political in-fighting (Guma, 2010); reports of donors withdrawing funding as the process extended beyond the deadlines set out in Article VI of the GPA (NewsDay, 31 August 2010); and reports of ZANU-PF youth militia bases being set up ahead of outreach meetings (MDC Today, 31 August 2010). In the end, COPAC found enough money to complete the process across the country; as I have previously mentioned, however, the final set of meetings in Harare was marred by considerable violence. The outreach process was completed by the end of 2010 – but this did not resolve debates as to the sincerity of the enterprise. In 2011, further political arguments broke out between ZANU-PF and the MDC as to the methods of data analysis that should be used to distill 'the people's voice' from the data gathered at outreach meetings. By May 2011 the Crisis in Zimbabwe Coalition, a body composed of various non-governmental organisations, reported on a methodological debate between ZANU-PF and the MDCs with the claim that "this is a directionless process meant to make the inclusive government appear busy" (Crisis in Zimbabwe Coalition, 18 May 2011: 1).

In 2011 I sent an email to a Zimbabwean legal academic asking him for his thoughts on the COPAC process. I received this reply:

Dear Ms Shannon Morreira,

I think that we may not see a phenomenal drift in the human rights architecture of the country for two or three reasons. Firstly, this Constitution writing process carried a highly politicised agenda and undertone. The tagging of the Constitution as a political power transfer or consolidation instrument by the tussling political parties undermined, if not completely gave no chance and relevance to, the participation of civil society and the posing of civil rights issues for the Constitution. Secondly, this opportunity came when civil society had been forced to recede from rights advocacy after the violent onslaught of the 2008 elections. The voice for human rights issues in this Constitution could thus not be as eloquent as many of us had hoped. Thirdly, what we have seen of the data from the process provides evidence of little achievement, and an article recently published in the Herald echoed the same based on anecdotal evidence. Overall, my view is that Zimbabwe will not see any meaningful change in the Bill Of Rights of the new Constitution, this not having been at the top of the political agenda, and civil society having been paralysed by the 2008 election and too weak to provide a voice for civil rights.

Yours in solidarity,
George Phiri⁴⁸

The chapter has demonstrated the extent of public discussion over the new Constitution and the enormous amounts of time and effort put by a ‘weakened’ civil society into attempts to mobilise the political will to include a rights-based agenda in the Constitutional dialogues. George Phiri’s email, and subsequent commentary on the (still unfinished) Constitution writing process suggest that this time and effort had very little real effect. In May 2011, Munjodzi Mutandiri, the South African Regional Co-ordinator of the NCA stated that “The NCA and its allies firmly believe that the COPAC process is not a people driven process and should be rejected during a NO vote at referendum. Our desperation to move forward as a country must not drive us into a pit of uncertainty” (Mutandiri, 2011:1). In February 2012, more than three years after the signing of the GPA and two years after COPAC outreach began, the first draft version of the new Constitution was unofficially leaked to the public, along with reports of Mugabe’s refusal to endorse this version as it limited Presidential powers (Pambazuka News, February 20, 2012). In July 2012 the Constitution was officially released by COPAC to widespread dissatisfaction from all parties; by late 2012 the Constitution had still not been finalised to the point of release for a national

⁴⁸ Name changed.

referendum. The Constitutional debate is thus still not resolved; and most Zimbabweans are still uncertain as to the outcome of a process that was supposedly driven by themselves.

I have presented this extended case study here to demonstrate three interconnected points: firstly, that the global legal language of rights discourse that presents rights as inherent, universal, inalienable and indivisible is one that obscures the very real effects of power and politics in rights praxis; and secondly that rights discourses are entangled within global political forms such as democracy, which use tropes such as freedom and dignity that reflect particular (historically constituted) ways of imagining politics and persons. I pursue this theme further later in the thesis. Finally, I have used the Zimbabwean Constitutional debates to demonstrate that global ideas of rights unfold in local contexts that are highly charged. The politicized nature of those contexts affects how rights discourse is used, abused, enacted, allowed or disallowed and affects whether or not supposedly inalienable rights come to be encoded at all. In the next chapter I build on these foundations in order to further ethnographically explore the (limited) localization of supposedly universal ideas of rights in Zimbabwe.

Chapter Three

Justice in a time of impunity: on re-making social worlds through trees, transitional justice and ancestral spirits.

Introduction: The localisation of rights and its limits

Reports about avenging spirits that are terrorising a Zanu PF terror militia in Buhera have sparked a fierce debate about the existence of *ngozi* in African communities. In bars, kombis, homes and workplaces, several Zimbabweans last week reflected on the subject that has set tongues wagging in Buhera. In Harare, the rumour mill was awash with reports suggesting a prominent war veteran was among those who had been hard hit by *ngozi*. The former freedom fighter, who cannot be named for fear of criminal defamation, is said to be distributing cheap “zhing zhong” sandals to villagers in Buhera as a way of appeasing those affected by a violent campaign he led for Zanu PF during the run up to the March 2008 elections.

(Excerpt from an article by published in *The Standard*, May 23 2010)

Avenging spirits, reparation for acts of political violence via cheap Chinese (“zhing-zhong”) sandals, and fear of criminal defamation on the part of the journalist: the above excerpt from an article published in a Sunday newspaper (Marwizi, 2010) captures some of the diversities and limitations of the repertoires of justice available in contemporary Zimbabwe. When this news story was brought to me by Tinashe, an informant in Epworth, a high density settlement on the outskirts of Harare, he did so in order to show me that *ngozi* were real, legitimised by their appearance in print. The article described *ngozi* as “the avenging spirits” of individuals who had died, most commonly via “the shedding of blood”. “*Ngozi* have always been around,” Tinashe told me, “but we did not hear of them as often as we do now.” When read with a background of local knowledge, then, the article also raises the spectre of the failures of the formal legal justice system, and the rise of what interlocutors called, in everyday talk, “the culture of impunity” in Zimbabwe.⁴⁹ In Tinashe’s view, the politics of the legal justice system in Zimbabwe went a long way towards explaining why *ngozi* were, in his words, “on the rise”:

It used to be that you could go to the police if a terrible thing happened, and maybe something happened, some arrest made. But today that is not a possibility, not here in Epworth. Where it says there in the paper about criminal defamation, that is only because the person they’re speaking of is a high up man, a war vet. The police and the law are only for those guys now. If you have political violence against you, you can’t report it. Nothing

⁴⁹Although interlocutors characterised the culture of impunity here as a feature of the present moment, similar conversations around impunity and the failures of justice in Zimbabwe occurred in the 1980s and 1990s – see Bhebhe and Ranger, 1995; Reeler, 1998; Werbner, 1998.

will be done, or you will be further targeted for your insolence. But at elections it isn't just property damaged and people injured: people die. And the dead must have justice, so they become *ngozi* and they torment those who killed them. When there were police we didn't need *ngozi* so much. Now there is impunity in Zimbabwe, we are hearing again about the existence of *ngozi*. Because there is no impunity from *ngozi*: the crime will be paid for.

In times of impunity, then, justice finds another way. On the face of it, the calls made upon the ancestral world by interlocutors in Epworth contrasted strongly with other spaces in which I spent my time: in the world of Zimbabwean NGOs and rights activism, for example, the 'culture of impunity' was seen as something to be challenged through legal interventions and the mechanisms of transitional justice in order that the rule of law might 'return' to Zimbabwe, and people, including those who gave orders, be held accountable for their crimes. Both had at root, however, a similar goal: the repair of social relationships in the wake of widespread violence. In this chapter, following a contextual introduction to the state of the legal justice system in Zimbabwe, I draw on three case studies to examine how ideas of justice and restoration, on national and on more intimate scales, were envisioned by my interlocutors in Harare. In the first, I explore the surfacing of the model of transitional justice, an increasingly globally prevalent form of post-conflict resolution, in governmental and non-governmental interventions in Zimbabwe. In the second and third, I consider two models of social restoration as I encountered them in Epworth: the justice of the ancestral spirit world that is meted out through the actions of *ngozi* and the subsequent actions of those affected by it; and the model used by local civic organisation The Tree of Life in the "healing circles" they held with Epworth inhabitants.

Though these three examples may seem to encompass separate spaces and separate modes of thought, all three exist within the same town, and, in some cases, involved the same individuals. Although one could apply the theoretical model of legal pluralism – the existence of plural legal systems in one area - (Channock, 1985; Merry, 1988) to the multiple valences at play here, I argue that the idea of entanglement (Mbembe, 2001; Nuttall, 2009) provides a more useful model. I draw on these examples to consider the stance, prevalent within anthropological literature on human rights,⁵⁰ that universal discourses of human rights become localised or 'vernacularized' (Merry, 2006: 44; Shaw and Waldorf, 2010) in the day-to-day spaces in which they unfold. Sally Engle Merry's (2006) influential analytical framework for studying the use of human rights discourses in different contexts examined the ways in which local intermediaries such as NGOs and social activists convert global ideas of rights into forms that are understandable to local audiences, and local ideas into forms that are legible to global rights organisations. She argues

⁵⁰ See, for example, Sally Engle Merry (2006); Speed and Collier (2000); Speed (2002); Inda and Rosaldo (2008); Cowan et al, 2006.

that through these acts of translation ideas of human rights become “remade in the vernacular” (Merry, 2006: 39) as they are adapted to local institutions and forms of meaning making. Merry theorises vernacularization as occurring in one of two forms: either through replication, where the global discourse entirely sets the terms, or through hybridisation whereby local structures are merged with global ideas of rights. Shaw and Waldorf’s 2010 volume draws on a similar idea of cultural translation: entitled *Localizing Transitional Justice*, the volume traces how ordinary people respond to transitional justice mechanisms which import global ideas into local settings. In the first case study of this chapter, I track a process of supposed ‘localisation’ in order to argue that there are distinct limitations to the ways in which rights discourses are altered in the process. While the models of vernacularisation presented by Merry posit movement from the global to the local *and* the local to the global, I argue that although there is an insertion of global discourses into the local, we see little movement of local ideas into global discourses. This is in keeping with Shaw and Waldorf’s (2010:4) argument that, although there has been a recent emphasis within transitional justice on the need to localise justice mechanisms, “such adaptation tends to be conceptualised in ways that do not modify the foundational assumptions of transitional justice.”

Rights discourse is therefore flexible enough to allow for the translation of rights norms into local cultural idioms;⁵¹ this is one of the reasons that it has been able to become such a prevalent global model. It does not necessarily allow, however, for the incorporation of local knowledge into the broader global discourse. It is the very ability of rights discourse to encompass varied ideologies and moralities and re-present them under the symbolically powerful banner of ‘human rights’ that has made rights talk one of the most prevalent forms of resistance to political oppression in contemporary Zimbabwe; and one of the key “political metanarratives” of our time (Wilson, 2007:77). As regards ideas of national justice, however, there are other models at play in Zimbabwe; some of which have been co-opted by transitional justice discourses and some of which have not. In addition to there being a limitation to the ways in which rights discourses (encompassing both talk and performance) are localised, there are also limitations to the discourses’ usefulness: at times, other sorts of social restitution matter more.

The ‘culture of impunity’ in Zimbabwe

⁵¹ This is particularly the case in discourses of transitional justice.

Many, many women in my district were raped during the 2008 election violence. Some of them are in my family. People also lost their homes, their belongings, even their crops. But I do not see anything about it in my courtroom because the police were told that they could not respond to political issues. Any political violence issues were off limits to the police, so they have not reached us in the Magistrates Court. If they had come into my court, I would not know what to do...because to prosecute would be very dangerous to me.

(Interview with Amelia, a Magistrate in a small town in Zimbabwe)

Viewed from a distance, the Zimbabwean legal system appears to protect citizens' rights and uphold the rule of law. Inherited from colonial Rhodesia,⁵² it is a system of Constitutional supremacy, meaning that the Lancaster House Constitution (see Chapter Two) is the Supreme Law and the parent act of any other Legislation. On paper, the Constitution and the legal system protect rule of law principles, including the independence of the Judiciary and a non-partisan police force. Further, in terms of international legal obligations, Zimbabwe has ratified the African Charter on Human and People's Rights (Banjul Charter) and the International Covenant on Civil and Political Rights (ICCPR), which obliges the state to respect due process (the legal requirement that the state respects the rights owed to persons). In reality, however, amendments to the Constitution since 1980 have consolidated state powers in the hands of the President (see Chapter Two), and the legal architecture has progressively been altered and disregarded, resulting in an erosion of the rule of law. Following the signing of the GPA in 2008, Human Rights Watch (2008:1) summarised the state of the legal system in Zimbabwe as follows:

Over the last decade, ZANU-PF has progressively and systematically compromised the independence and impartiality of Zimbabwe's judiciary and public prosecutors, and instilled one-sided partisanship into the police. Since 2000 it has purged the judiciary, packed the courts with ZANU-PF supporters and handed out "gifts" of land and goods to ensure the judges' loyalty. It has provided instructions to prosecutors to keep opposition members in jail for as long as possible. It has transformed Zimbabwe's police force into an openly partisan and unaccountable arm of ZANU-PF.

⁵² The legal system consists of the Legislature, with Legislative authority vested in the President and in a bicameral Parliament; case law/precedent; customary law and common law. The justice system is comprised of the Supreme Court, the High Court, the Administrative Court and the Magistrates' Courts; and the Office of the Attorney General and public prosecutors. The judiciary consists of the Chief Justice, judges of the Supreme Court and judges of the High Court. At the level of law enforcement, the Zimbabwe Republic Police (ZRP), headed by a Commissioner, is provided for under Article 93 of the Constitution for the purposes of internal security and the maintenance of law and order (see Saki et al, 2011; Human Rights Watch, 2008).

The decline in the rule of law was generally described as ‘the culture of impunity’ in Zimbabwe, terminology which is drawn from the globally circulating languages of rights and transitional justice.⁵³ Amelia’s words above provide just one example of how political impunity played out in day to day life; and throughout fieldwork interlocutors brought up examples of an elitist police and legal justice system. Such partial application of the law, particularly as regarded political violence, has occurred in a context where widespread political violence has marked the (colonial and postcolonial) state – though the culture of impunity to which interlocutors referred was spoken of as a phenomenon of the last decade or so, any conversation about unresolved political crimes could bring up incidents stretching beyond living memory through to the present –from the hanging of *Mbuya* Nehanda in 1898,⁵⁴ through the liberation war in the 1970s and Gukurahundi in the 1980s, to the 2008 elections.

I will return to a consideration of this temporal relationship below. What is of concern here is that although unresolved violence has a long history, many of the Zimbabweans with whom I worked were most concerned about the post-2000 period – not surprising as this most recent period has seen a marked increase in political and structural violence that has had profound effects upon daily life. Interlocutors argued that one element of this was that political crimes could be carried out without fear of legal reprisal. This is supported by the wealth of reports released by academics and rights organisations in Zimbabwe (see Zimbabwe Human Rights NGO Forum, 2001; Feltoe, 2003 and 2004; Kaulemu, 2010; Sachikonye, 2011.) In December 2012, Sokwanele, a rights advocacy group, released a report summarising the findings of a four year monitoring project that assessed the implementation of the GPA in that period (Sokwanele, 2012) – it found that breaches against Article XI of the GPA, the article concerned with the rule of law, had been the most prevalent, with a total of 4,672 breaches over four years. The authors concluded that “the rule *of* law in Zimbabwe has been replaced with rule *by* law. Instead of government power being subject to the law, Zimbabwe has become a police state in which government both invokes the law - and has created law - to justify excessive use of government force” (Sokwanele, 2012:9).

It is thus generally accepted in the literature on Zimbabwe that the rule of law has been considerably eroded under the ZANU-PF dispensation. This literature tends to focus on the

⁵³ Gluck and Tsing (2009:1) characterize such circulating global terms as “words in motion”.

⁵⁴ *Mbuya* Nehanda (lit: Grandmother Nehanda) or Nehanda Charwe Nyakasikana (1840-1898) is an iconic figure of the struggle against colonialism. A spirit medium, she channeled the ancestral spirit/*mbondoro* Nehanda, and inspired rebellion against the British colonists. She was hanged by the British in 1898.

political and legal ramifications of the decline of the rule of law. However, there is more at stake. An example serves to illustrate: in 2007, interlocutors in Cape Town had explained to me that their move to South Africa had been motivated by a number of reasons. That people's motivations for migrating were political and economic⁵⁵ was not surprising to me. I was surprised, however, by the third sort of reason that people gave: that of a spiritual motivation. "I could not pray from inside Zimbabwe," one man told me, "the country is now so tainted by so many crimes and so much blood that has not been accounted for that Mwari (God) and the ancestors cannot hear you. So it is better to be here." A culture of political impunity had effects beyond the legal, then, effects so powerful so as to severely interrupt the relationships between this world and the world of (traditional and, to some extent, Christian) spirituality, at least for some interlocutors.

State-based justice and reconciliation

When the GPA was signed in 2008, it attempted to account for the erosion of the rule of law through Article XI, in which the Parties agreed that it was the duty of all politicians and political parties to respect and uphold the Constitution, and to adhere to the principles of the rule of law. In addition, Article VII also provided for a mechanism "to advise on what measures might be necessary and practicable to achieving national healing, cohesion and unity." The Organ on National Healing, Reconciliation and Integration (ONHRI) resulted from this provision.

The ONHRI, with its emphasis on national healing and reconciliation is modelled on ideas of transitional justice. The field of transitional justice is relatively new, historically speaking, in that it is less than twenty years old – but has quickly gained international prominence such that Waldorf and Shaw (2010:3) argue that "transitional justice has grown over the last twenty years into a normalized and globalized form of intervention following civil war and political oppression." The model is a redemptive one, predicated upon an assumed relationship between the truth, narrative, and (national as well as individual) healing (see Ignatieff, 1996; Ross, 2003a); and upon a linear temporality such that "the harms of the past may be repaired in order to produce a future characterized by non-recurrence of violence, the rule of law, and a culture of human rights." (Waldorf and Shaw, 2010:4). The future is also anticipated to be democratic. The aims of transitional justice are implemented through a set of legal and restorative mechanisms,

⁵⁵ Though I categorise these reasons as economic here for reasons of expediency, their underlying cause can be said to be political, in that hyperinflation and economic collapse was the result of political decision making on the part of ZANU-PF: see Chapter Five.

such as free and fair elections, truth commissions, prosecutions of war crimes, public memorials, and acts of reparations. Within Zimbabwe, as is probably the case throughout the Southern African region, the best known restorative model is that of the Truth and Reconciliation Commission (TRC) used in neighbouring South Africa beginning in 1996, which provided individual amnesty for political crimes on the basis of ‘full disclosure’. Gready (2011: 1) has argued that it was the South African TRC that ushered in what he terms “the era of transitional justice.”

Although the discourse is new, its global symbolic capital is such that it tends to be presented by its proponents as the ‘obvious’ response to political conflict – in Zimbabwe, at least, the great majority of people to whom I spoke (ranging from political actors, civil servants, and members of civil society, who carry some political power, to street vendors, teachers, and the unemployed, who carry little) were clear that there was a need for a response modelled upon transitional justice mechanisms. “We need a TRC here,” “we need to hear the truth like in South Africa but we must also prosecute”; “we cannot let amnesty occur without some sort of reparation”; “there is no justice without accountability of politicians” and “we will need special commissions for women because they have experienced violence differently,” are just some of the comments I recorded in everyday interactions. In the Zimbabwean context, however, reconciliation as it is imagined through the discourses and processes of rights-based transitional justice is only one quite recent arm of a longer history of ideas of justice and reconciliation. Justice mechanisms under customary law rely heavily upon the payment of reparations between the injured party and the perpetrator. Such processes are small-scale, however. Reconciliation on a national scale, on the other hand, previously surfaced following the end of the liberation war or Second Chimurenga. An alternative genealogy of ideas of national reconciliation in Zimbabwe could take as its starting point President Robert Mugabe’s address to the nation on the eve of Independence in 1980. Unlike transitional justice discourse, which lays an emphasis upon bringing the violations of the past into the public eye, in this speech Mugabe advocated starting anew, without carrying over memories from the past:

Independence will bestow on us a new personality, a new sovereignty, a new future and perspective, and *indeed a new history and a new past*. Tomorrow we are being born again; born again not as individuals but collectively as a people, nay, as a viable nation of Zimbabweans. Tomorrow is thus our birthday, the birth of a great Zimbabwe, and the birth of its nation.

Tomorrow we shall cease to be men and women of the past and become men and women of the future. It's tomorrow then, not yesterday, which bears our destiny.

As we become a new people we are called to be constructive, progressive and forever forward looking, for we cannot afford to be men of yesterday, backward-looking, retrogressive and destructive. Our new nation requires of every one of us to be a new man, with a new mind, a new heart and a new spirit.

(Robert Mugabe's speech to the nation on the eve of independence, 17 April 1980. Emphasis mine.)

In this philosophy, the happenings of the past do not belong in the present or in the future; unlike in ideas of transitional justice, the past should not be brought to light but forgotten or left behind. There is a different imagining of temporality at work here than in transitional justice models, and both differ from traditional Shona and Ndebele cosmology, as explored below, where the presence of the ancestors in the daily world ensures an entanglement of what modernist narratives of time would consider to be the past in the present.⁵⁶ Similarly, the attitudes and prejudices carried by people should alter:

Our new mind must have a new vision and our new hearts a new love that spurns hate, and a new spirit that must unite and not divide. This to me is the human essence that must form the core of our political change and national independence.

Henceforth, you and I must strive to adapt ourselves, intellectually and spiritually to the reality of our political change and relate to each other as brothers bound one to another by a bond of national comradeship.⁵⁷

If yesterday I fought as an enemy, today you have become a friend and ally with the same national interest, loyalty, rights and duties as myself. If yesterday you hated me, today you cannot avoid the love that binds you to me and me to you.

Though Mugabe lays an emphasis upon a national unity, comradeship and love, this is not seen as being brought about through a process of surfacing the past and coming to terms with it, as in the case of transitional justice. Rather, one 'strives to adapt' within the present. 'Forgiveness' goes hand in hand with forgetting, rather than with remembering, in this viewpoint:

⁵⁶ Mugabe's version of national reconciliation as displayed here is a modernist one, from which the 'traditional' means of reconciliation are excluded. It is for reasons such as this that Mugabe's refusal to visit rain shrines to conduct cleansing ceremonies for the land and the people in the wake of the liberation war was criticised by spiritual leaders (see Lan, 1985).

⁵⁷ As Anderson (1983) has noted, nations are imagined communities, whilst Chatterjee (1987) has explored the gendering of such imagined nations. The masculine bias in the above quote shows a clear gendering of the nationalist discourse in Zimbabwe – I comment further on the gendered dimensions of the Zimbabwean political situation in Chapter Four.

Is it not folly, therefore, that in these circumstances anybody should seek to revive the wounds and grievances of the past? The wrongs of the past must now stand forgiven and forgotten.

It is worth noting that ‘the nation’ figures here as the medium through which such forgiveness and forgetting can occur. In neighbouring South Africa during the TRC, ‘the nation’ was perceived as being unable to come into being without truth and reconciliation: here, ‘the nation’ is already imagined as present and as constituting the grounds for commonality.

The insistence of interlocutors in Harare⁵⁸ that a process of national justice, based upon international models, should take place should be viewed in light of this earlier branch in Zimbabwe’s post-conflict reconciliation lineage. In the ensuing years, Mugabe’s insistence upon forgetting the past did not, in reality, unfold as neatly as in his independence speech. Rather, the politics of remembrance and forgetting have been deeply politicised and strategic. By 2000, for example, Zanu-PF revived and publicised the atrocities of the Rhodesian past for political means, in order to justify the illegal occupation of white-owned commercial farmland; whilst simultaneously refusing to acknowledge the atrocities committed by the (state sponsored) Fifth Brigade in Matabeleland and the Midlands in the 1980s. Forgetting was not as clean cut as it was presented to be.⁵⁹

Unlike Mugabe’s earlier model, then, the ONHRI takes as its main stance the viewpoints of transitional justice discourses as outlined above. This was indubitably influenced by the fact that the GPA was signed under international pressure, and orchestrated by Thabo Mbeki, the ex-President of the country that carried out the TRC. Given this, one might think that such an Organ⁶⁰ would be expected to incorporate the legal and spiritual as referred to above. Indeed, transitional justice discourses, with their emphasis on forgiveness, truth and healing (Ignatieff, 1996), tend to draw upon the law and upon spirituality. In Southern Africa, Archbishop Desmond Tutu has been particularly influential in this regard. Whilst I was resident in Zimbabwe in 2010, however, very few interlocutors had even heard of the Organ of National Healing and Reconciliation; those who had were people who worked in the field of rights and

⁵⁸ This shows a particular geographical positioning vis a vis the past— in Matabeleland, post-independence politics unfolded slightly differently, in that ZANU, not the Ndebele supported ZAPU, came to power. Although ZAPU politician Joshua Nkomo was made Deputy President in the 1980s, there was little acknowledgment beyond this of the role Matabeleland played in liberation.

⁵⁹ Nor has the process of citizenship been as simple as it is presented in this speech, and many Zimbabweans (those of white descent, or Mozambican descent; or Ndebele descent, for example) do not feel they bear the same “national interest, loyalty, rights and duties,” as do others.

⁶⁰ A somewhat disturbing moniker in light of the masculinisation of Zimbabwean political discourse.

transitional justice and they tended to consider it largely ineffectual and irrelevant. As with the Constitution, it was within the mandate of the ONHRI to begin a process of public consultation in order to establish the ‘necessary measures for national healing’ as outlined in the GPA; unlike the Constitution writing process, however, this did not lead to a widespread campaign. In keeping with this, research conducted by the Zimbabwe Human Rights NGO Forum in 2011 showed 74% of the 3491 respondents from across the country never to have heard of the ONHRI; of the 26% that had heard of it, only 34% rated it as performing well (Zimbabwe Human Rights NGO Forum, 2011). A study conducted on the ONHRI’s lack of success to date (Mbire, 2011) concluded that it has been limited by a number of factors. Firstly, there was no clear legal mandate within the GPA as to how the ONHRI was to be constituted, or what its precise functions were. Secondly (as with the rest of the outcomes of the GPA), the ONHRI is composed of members of all three major political parties in Zimbabwe, which ensured that the process was deeply politicised and led to in-fighting and polarisation. Finally, the political will (and attendant economic impetus) behind the ONHRI was limited: from 2008 onward, the Inclusive Government was faced with enormous socioeconomic and political challenges, and as such the more immediately pragmatic issues (such as rebuilding industry and the healthcare sector) were given priority, whilst processes of ‘national healing’ fell by the wayside. Although Zimbabwe has been perceived as ‘in transition’ since the signing of the GPA, it is unclear what the country is transitioning from, or what it is transitioning to (Murithi and Mawadza, 2011; Morreira, 2012a). The particular set of historical circumstances at play in Zimbabwe, which has maintained at the very least a façade of democracy since independence (see Chapter Two), ensures that the country fits uneasily within the conventional transitional justice paradigm which imagines transition to a democratic state: given that technically – in law if not fact – Zimbabwe has been a democratic state from 1980.⁶¹ State-based interventions have done little so far to challenge the erosion of the rule of law and the rise of impunity for political crimes, and to put into practice any actions towards the goals of ‘national healing, cohesion and unity.’

NGOs and the transitional justice paradigm

In the absence of state-based processes of justice and reparation, it is unsurprising that local NGOs have made attempts to fill the gap. As with state-based responses, this has also occurred in the context of the effects of Mugabe’s assertion in 1980 that remembering can be

⁶¹ The idea of ‘transition’ within transitional justice discourse invokes a linear temporality based on an assumed progression from one particular form to another: in the case of transitional justice discourse, the ideal political form that nation-states should transition to is that of democracy, with attendant moral adherence to international human rights standards. The small word ‘transition’ is thus freighted with a great many assumptions.

“retrogressive and destructive”. In Zimbabwean politics since 1980 the tendency has been for violence to be disregarded. Yet, “There is a line between forgetting, and silencing,” the director of a local NGO told me. “And what has occurred in Zimbabwe is silencing.” The most obvious and terrible example of this is Gukurahundi in the 1980s, where thousands of Ndebele citizens were massacred as ‘dissidents’ by the state-sponsored Fifth Brigade, a special wing of the military that reported directly to the President. The full extent of the violence was only unveiled in the late 1990s through the work of an NGO, the Catholic Commission for Justice and Peace, which published its findings in a report entitled *Breaking the Silence* (CCJP, 1997). In contrast to Mugabe’s 1980 avocation of forgetting, then, NGOs and civil society (such as the CCJP, Zimbabwe Lawyers for Human Rights, the Solidarity Peace Trust, the Zimbabwe Human Rights NGO Forum – the list goes on) have emphasised the necessity for truth-telling and (legal) accountability. In this section, I explore the work being done by one such NGO to imagine a process of national justice, unpacking how global ideas of transitional justice materialised throughout the process.

Case Study: the transitional justice model

Each Monday morning for eight weeks, I drove across central Harare, through chaotic traffic that stopped and started as motorists negotiated their way through multi-laned intersections with non-operational traffic lights. At each street corner, and at times in the centre of the road, men stood selling airtime vouchers and newspapers. My destination was removed from the turmoil of central town, tucked down a quiet side street scattered with speed humps to slow down passing traffic. I was headed to a state-sponsored ‘Woman’s Centre’ which was acting as the venue for a series of eight focus groups being run by a local⁶² rights advocacy NGO, the Research and Advocacy Unit (RAU), that were aimed at deepening an understanding of the relationship between women and politics. Though the questions asked during the day-long focus group were extensive, for my purposes here those that focused upon processes of ‘transition’ and ‘reconciliation’ are most important. In focus group after focus group, the NGO raised questions around processes of justice and accountability, and the female respondents spoke in great detail about the ways in which they imagined a post-conflict Zimbabwe. Though Zimbabwe was still embroiled in political and economic crisis at the time, NGOs and ordinary citizens were looking to the future, and using the globalised norms of transitional justice to think through how a national process of ‘reconciliation’ might begin.

⁶² The Research and Advocacy Unit is directed and staffed by Zimbabweans. Given the public nature of the work they do, the NGO did not request anonymity or the use of a pseudonym in this thesis.

That the NGO was drawing upon a model of transitional justice was immediately apparent from the questions asked of the groups. On the focus group interview schedule that facilitators worked from, sections were devoted to ‘Special Commissions and Processes,’ (‘Do you know what a truth commission is?, ‘What kind of commission would you like to see in Zimbabwe?’, ‘How should commissions be formed?’); ‘Truth-telling’ (‘Is there a need to tell the truth about violence in Zimbabwe? ‘Which time periods should we cover?; ‘What are the major obstacles to truth-telling?’); ‘Accountability,’ (‘What does accountability mean to you?’ ‘Should a person found to have been involved in political violence be removed from their political position?’ ‘Should perpetrators of violence be able to hold public office?’ ‘Should there be a process to identify and remove violators of human rights from public service?’ ‘Should perpetrators be pardoned?’) and ‘Compensation’ (‘Should people be compensated for their losses?’ ‘Who should compensate them?’). Such questions led to broad and diverse debate in the focus groups; in this case study I wish to narrow down to three threads through which to consider the interplay of the local and the global in imaginaries of justice: ideas of truth-telling; ideas of temporality; and ideas of legal accountability. Though I have separated them here for purposes of analysis, these three threads are of course entwined, as the above questions show.

When I first started attending the focus group sessions, I went armed with a scattering of chiShona from my school days in Zimbabwe, and a Shona to English dictionary that I had borrowed from a friend. Focus groups were usually bilingual, with English and chiShona being spoken interchangeably, and I found myself able to follow the majority of the conversations. However, on that first day there was one word that kept coming up again and again that I did not know, and couldn’t find in my dictionary because the relevant page was missing – the dictionary I had was old and well-paged. That word was *chokwadi* – truth, as I learned when I asked the woman I sat next to during the morning tea break. As can be seen from the above questions, issues of truth-telling were considered central by the NGO. This can be read in relation to the silencings within Zimbabwe; but is also a key component of rights discourses.

In answer to the first question asked of truth-telling (do we need to tell the truth in Zimbabwe?), respondents invariably answered yes. What does it mean ‘to tell the truth’, however? In chiShona, *chokwadi* translates as both truth and as certainty; therefore a question which asks, in chiShona, if there is a need for truth about violence in Zimbabwe is also asking if there is a need for certainty around the events of the past. On the one hand, this maps well onto transitional

justice discourses which, being rooted in the law, are concerned with establishing a certain, authoritative version of events. On the other hand, though, it raises a weakness within transitional justice. Ignatieff (1996) argues that

One should distinguish between factual truth and moral truth, between narratives that tell what happened and narratives that attempt to explain why things happened and who is responsible. Truth commissions were more successful at promoting the first than the second.

For people with whom I worked, and Shona-speaking Zimbabweans more generally, *chokwadi's* linking of truth and certainty raised the expectation of establishing a moral truth, a certainty about the happenings of the past that is more than factual. As Englund (2006) notes, issues of translation are at the heart of much of the contextual application of human rights discourse; in the Zimbabwean context as in others, then, the 'truth' that is assumed in transitional justice discourse could differ from the truth that is assumed by people accessing and using that discourse.

Furthermore, processes of truth making, as with all knowledge (Foucault, 1972), are imbued with power. Focus groups tackled such issues: in what sort of a forum might the creation of truth be possible, and how do we ensure that truth is truthful? Whose truth is it, anyway – particularly in a context where ZANU(PF) strategies of maintaining power have written what Muponde describes as “a virulent, narrowed down version of Zimbabwean history, oversimplified and made rigid” (Muponde, 2004:276)? Focus group debates covered such material, (albeit not in such academic terms) and it was in response to these uncertainties that focus group facilitators guided participants towards the models of transitional justice. Did they know what a Truth Commission was? facilitators asked. How about a Truth and Reconciliation Commission? Or a Truth, Justice and Reconciliation Commission? Focus group participants frequently did know of truth commissions broadly, if not down to the differences between the three models. The South African Truth and Reconciliation Commission, after all, happened just across the border and had been widely broadcast in media Zimbabweans used. When facilitators explained the subtle differences between the three models – with the first constituting a forum for establishing narratives about instances of violence; the second providing amnesty in return for a truthful telling; and the third asking for both truth and reparative punishment of some kind, be it through a jail sentence, reparations or community service – the majority of participants opted for the need for a Truth, Justice and Reconciliation Commission.

Within this model, the creation of truth was held as central to processes of national transition. The emphasis upon a Truth, *Justice* and Reconciliation Commission raises a further thread that is central to the transitional justice model as it was being applied in Zimbabwe: that of accountability. “Look across the border [to South Africa],” one participant said. “There, there is so much crime and violence and fighting, against their own people and in xenophobia. That is because after Apartheid there was no justice. It is not possible to forgive and move on unless there is justice, unless people are seen to have paid for what they did to others. Truth, *justice* and reconciliation. That is what we want.” The women emphasized truth-telling and legal accountability, rejecting the TRC with its amnesty provisions.

This raises two points. Firstly, as in the South African case, it highlights the trend within transitional justice to link truth-telling to ideas of forgiveness and, through this, to healing and reconciliation on a national scale. But, as Ignatieff asks, “Can a nation or contending parts of it be reconciled to their past, as individuals can, by replacing myth with fact and lies with truth?” (Ignatieff, 1996:3) In the model of transitional justice generated during focus groups, it could not. Secondly, then, it brings us to the idea of legal accountability as central to an imagined process of national ‘transition’. Furthermore, legal accountability was overtly linked to ideas of reconciliation: in one woman’s words, “There’s no peace in Zimbabwe because perpetrators are not being convicted and so there’s no reconciliation. How can we have peace and national unity without having convictions?” Thus, although the model propagated in workshops questioned ideas of national unity on the basis of truth-telling, it did not reject the possibilities of national unity per se. Rather, the legal mechanisms of transitional justice were seen as a means of bringing this about. As in Mugabe’s speech, this is another instance where the nation is figured as already present and in need of ‘repair’: unlike in the South African case where the TRC was used as an imaginative means of building a new nation.

The final thread of rights and transitional justice discourse that I wish to emphasise here is the model of time that is at play in the tropes explored thus far. In the focus groups, as in conventional ideas of transitional justice, the facilitators drew upon a linear model of time where, although the violence of the past is seen to inform the present, this is viewed as an anomaly which can be ‘fixed’ by a process of national healing and/or justice. For example, questions asked in focus groups such as, “How must we deal with the events of the past in order to move forward?” assume the intrusions of the past into the present are interfering with an imagined future. One aim of reconciliation, then, is to prevent the interference of such a past in the

present. Although there was debate in focus groups as to where ‘the past’ should begin and end in processes of national justice (did one include the liberation war? Gukurahundi? Or did one focus on the events of the ‘post-2000’ period – and even then, all of it, or only the most recent elections?), the emphasis was clearly on a linear model of time.

Mbembe (2001), however, argues that time in postcolonial Africa is not experienced as linear, but is better conceived of as entangled, “an interlocking of presents, pasts and futures that retain their depths of other presents, pasts and futures, each age bearing, altering and maintaining the previous ones.” (Mbembe, 2001: 16; cf. Cole, 2001). Mbembe’s model of time is partially similar to that of transitional justice discourse, in that it emphasises the overlaps between past and present; it differs, however, in that the relationship between the past and the present is not theorised as linear, but as multiple and simultaneous. Furthermore, *dis*continuities and reversals are given more emphasis than in transitional justice discourse, which is predicated upon the assumed continuation of the harms of the past into the present. In this reading of time, the past, the future and the present operate simultaneously, and it is not seen as ‘out of place’ for the ‘past’ to exist in the ‘present’, or rather, temporality is not necessarily or inevitably differentiated in everyday life.

This view of time is echoed in Shona cosmology, where the social world is composed of individuals both living and dead and ancestors play a central role in the maintenance of familial and social relationships (Bourdillon, 1987; Gelfand, 1970). In such a worldview it is perfectly normal for one to maintain a relationship with people who, in a chronological model of time, should be firmly situated in the past. Although it was clear from conversations conducted in different settings that many of the participants, and some of the facilitators, viewed ancestors as relevant, such a model was not applied to discussions of transitional justice in Zimbabwe.

This case study can be read as an example of the social life of rights in action. It shows that although there has been a recent emphasis within transitional justice on the need to localise justice mechanisms, the comparative global symbolic (and attendant economic) capital of rights talk ensures that Zimbabwean NGOs, like the state, largely operate within the constraints of the global norm. Any localisation or vernacularisation that occurs, then, occurs in a top down direction and within the terms of the dominant discourse. This can be advantageous: rights models are globally powerful, and as such give NGOs leverage that they would not otherwise have. Furthermore, such interventions as the RAU focus groups allow for individuals to exercise

agency in engaging with political and legal ideas. Unlike in Merry's (2006) model, however, the case study shows no opportunity for local ideas to influence broader global discourses of rights. Furthermore, there is a danger in limiting justice to particular repertoires, particularly given that the state is still not actually implementing any process of nationwide (transitional) justice. Let us turn to two further case studies in order to explore other ways in which social restitution and justice is being imagined and (unlike transitional justice) actually enacted in contemporary Zimbabwe.

Responses to political violence in Epworth

Welcome to my community. I think it is one of the most violated against communities. There have been all sorts of evils. People have disappeared. There are stories that they have been thrown into the dam up there, alive, weighed with stones so they drown. Did you see the dam? I should have shown you when we were driving in. We have had rape here, beatings, people's houses being burnt. There are many disabled people here now. All the violence is started by politicians. They come here and make the violence happen. But the people remain.

Tinashe's description of Epworth.

The Tree of Life

The first time I met Robert and Elias was at the annual meeting of The Tree of Life, an organisation founded to assist victims of torture in rebuilding their lives and their communities after violence. The meeting was held in a spacious garden in suburban Harare. Members had come from across the country, and, seated in a large circle under a jacaranda tree, they spoke one by one, passing a stone between them to signify whose moment it was to speak as they shared information about what had been happening in their areas. Most of the people present had been tortured at some point in their lives: this was a hard reality to come to terms with in the sunshine of a suburban garden on a Harare winter morning. Of the fifty or so people present, ten were the Tree of Life "guardians", individuals who assist with the running of the organisation, whilst the rest were people who had been to a Tree of Life workshop in the past and who had now become facilitators of workshops in their own towns and villages. The news they shared was often grim – it was two years after the violence of the 2008 elections, but most speakers still referred to it. The general mood was not sombre, however, and many speakers shared good news: local successes as chiefs or headmen agreed to attend workshops, or the youth militia⁶³ in an area were

⁶³ Formed in 2002, the ZANU-PF youth militia undergo training at camps across the country before being deployed, and are notorious for inflicting violence on local populations (Mashingaidze, 2010).

persuaded that workshops could continue, or the crops had been good that year and it seemed that food security was assured for a time.

Bev Reeler, one of the organisation's founders, introduced me to Robert after the circle was over. Robert and I stood on the yellowing lawn (winter is the dry season in Harare) and had a cup of tea together, speaking about Zimbabwe, my research and the Tree of Life. When I told him that I had recently been observing cases at the Magistrate's Court in Harare, he shook his head. "Justice is hard to find in Zimbabwe – if you want to see it come to our neighbourhood, or to a workshop, not to the court. This organisation brings peace to people", he told me. "You must come to Epworth and talk with the people there about what we are doing." He called over his friend Elias, and together they invited me to come and visit them in Epworth to spend some time talking about the Tree of Life and seeing how things were done in Epworth. A week or so later I picked up Elias from Parirenyatwa Hospital in central Harare, where he was attending a course, and we drove together to his home.

Originally a Methodist Mission, Epworth experienced an influx of migrants in the 1970s and was transferred to the Ministry of Local Government in 1983. Today, Epworth is a high density suburb composed of a mixture of formal housing and informal *magada* (shacks), with a little over around 100 000 (mostly poor) inhabitants (Census 2002; McGreal, 2008). It is a place of scarce resources, with ensuing tensions and rivalries between inhabitants who arrived as part of different waves of migration. The urban poor in Epworth, like their counterparts across the country, have been vulnerable to interference and violence at the hands of the post-colonial state.⁶⁴ In the 1980s the various urban 'clean-up' campaigns that were initiated in response to the perceived unruliness of urban informality (Kamete, 2008) affected Epworth; in 1991, people were again displaced as the Harare City Council prepared for a visit by Britain's Queen Elizabeth II (Musiyiwa, 2008).

In both the 2000 and the 2005 elections, the majority of voters in Epworth voted in favour of the MDC (Musiyiwa, 2008), as it became apparent country-wide that ZANU-PF had lost its hold on urban areas to the MDC and was supported by a largely rural constituency. ZANU-PF has sought to reassert and consolidate its control by increasingly coercive means. In 2005, in Epworth as elsewhere, Operation Murambatsvina resulted in widespread displacement and the loss of homes and livelihoods (Vambe, 2008; Musiyiwa, 2008; Morreira, 2010) which were locally

⁶⁴ Epworth's status as a Methodist Mission under the British and Rhodesian dispensations partially protected its inhabitants from the violences of the colonial state.

perceived as a punishment for voting for the MDC. Three years later, in the 2008 elections, Tsvangirai and the MDC again won by a large majority in Epworth. This was followed by a severe backlash of violence in the area that saw three deaths, more than two hundred abductions, and many cases of torture and destruction of property (McGreal, 2008). The political violence occurred against the backdrop of the already existing divisions over land ownership and belonging. Thus, when I asked Amelia (the wife of Tinashe, the informant with whose views on *ngozi* I opened this chapter) to tell me about politics in Epworth she answered with a litany of violence, counting on her fingers as she spoke: “In Epworth we’ve had police, bulldozers, green bombers, killing, abduction, falanga,⁶⁵ rape. Not just from the outside, people who know each other too.” The inhabitants of Epworth, then, are no strangers to political violence, to the extent that a question about politics elicits a reply about the harms they inflict.

As Elias and I drove down the Chiremba Road towards the suburb in 2010, the multiple forms of violence of the last five years were not far from my mind. When we encountered a police roadblock I wondered if I would be allowed to continue, but we were waved through with a smile by the ZRP official. Urban spaces can be traversed differently at different points in time: in an election year, I would not have gained access so easily as urban spaces are more closely controlled by the state.⁶⁶ Epworth’s setting is beautiful: it is situated in a place of rounded balancing granite rocks, with large weathered boulders scattered along the Chiremba Road and throughout the suburb. The rocks are coloured by lichen and, in recent years, some have been covered in the conflicting painted slogans of politics: ‘ZANU-PF *mbava*’ (Zanu-PF thieves); ‘MDC 2005’; ‘the fist’ (a reference to Mugabe’s 2008 election slogan, ‘Vote for the Fist’). The area’s beauty is literally inscribed with political conflict. The rocks of Epworth act as more than political billboards, however. Epworth is unique amongst the suburbs of Harare in that it is the home to a number of rock formations with deep religious significance. *Domboramwari* (‘The Rock of God’) is the largest physical feature in the area, and has been considered sacred since precolonial times; whilst *Domboremaziso* (‘The Rock of Eyes’, so named because it is shaped like a head with many eyes which weep when rain falls) and the surrounding caves are significant spaces of prayer. The rocks have most significance within traditional cosmology, but spaces around them are also vied for by the *vapostori* (an Apostolic sect whose church meetings are always held outdoors), and Christian churches have been built around significant rock

⁶⁵ Falanga is a form of torture in which the soles of the feet are beaten. It has been utilised extensively in Zimbabwe.

⁶⁶ It was while I was writing up my fieldnotes in Epworth that I realized that I, like my interlocutors, was using ‘elections’ as shorthand for political violence. This raises an interesting ambiguity: ‘elections’ refers to both the possibilities of democracy and to the fierce opposition to that.

formations. Following Murambatsvina, people whose houses had been destroyed congregated at *Domboremvari* to pray about what they should do next (Musiyiwa, 2010).

It is, furthermore, a place of poverty, with the balancing rocks acting as backdrop to deeply rutted roads, (which became less and less formal as Elias directed me along them toward his home), and tightly packed houses and *magada*. Children said hello as we went slowly past; one shouted out, “Murungu!” (“white person!”), and I laughed. Elias pretended not to have heard. People went about their lives in the winter dry season as we drove – washing clothes, watching over cooking fires, tending dusty vegetable gardens, and walking between places. After negotiating our way past a man on a bicycle carrying a pallet packed with loaves of bread, we turned down a final dirt track and entered Elias’s yard. Here, his friend Robert was waiting to greet me and take me inside. Seated on comfortable armchairs, surrounded by family photographs, we began to talk about the Tree of Life.

The Tree of Life was started by a small group of Zimbabweans in South Africa in 2003, with the first workshops held with victims of political violence and torture who had migrated across the border to South Africa. The initial model was adapted from a pre-existing “empowerment workshop” which “was developed from traditional ways of dealing with difficult issues in communities, notably amongst the Native Americans, and shares common features with many similar circle processes” (Reeler et al, 2009:182).⁶⁷ The Tree of Life model subsequently travelled back to Zimbabwe in 2004 as its proponents felt it safe enough to return home as political violence and police intimidation subsided. Although the organisation has grown in the subsequent years, it remains small, with a core of ‘guardians’ who founded the organisation, or who have subsequently been asked by the organisation to be involved, and a series of facilitators, all of whom have survived some form of organized violence.

Elias and Robert had both been participants in workshops and had subsequently become facilitators. This is a key element of the model, which aims at the ‘empowerment’ of individuals who have had their autonomy and control, including over their own bodies, wrested from them

⁶⁷ Similar processes have emerged in other contexts: Kayser (2005) has examined one such in post-TRC South Africa; Forcier (2010) presents an ethnographic study of a similar process in Rwanda; and Curling (2005) has examined a Namibian workshop from the point of view of clinical psychology. The model studied by Forcier was strongly influenced by Healing of the Memories (HoM) workshops run in South Africa and studied by Kayser. HoM was a civil society response to the TRC and its premises have become part of the process of vernacularising transitional justice paradigms.

during experiences of politically motivated torture, violence and rape; or who have been responsible for acts of violence towards others. The organisation works with people who have experienced political violence or torture from different standpoints, be it as victim (“although we do not like to use the word victim,” Robert told me) or perpetrator.⁶⁸ Facilitators find participants locally, working carefully and slowly in order to connect and build trust with others in their areas who have been affected by violence. Though participants usually come from the same area, the model values residential workshops, where the participants are able to live together for three days, removed from the spaces in which they experienced violence.

Robert attended his first workshop in 2009. Initially, the attraction of the workshop was the fact that he would receive food for the three days that he was there. “At first I did not want to go – I was sick of these organisations coming in and out, saying they will change things in Epworth and they don’t.” He was encouraged to attend by his mother and other older women who had been to a workshop and was persuaded to go only upon hearing that he would be given food: “that was when there was no food in Harare and everyone was very hungry. I’m glad now I was hungry, because I went to that first workshop and saw that it was very different to any other NGOs.” Initially, he was struck by the fact that the workshop was held out of town “where I was able to be in nature, in a very quiet place with a lot of trees. I felt at home.” Like the workshops that Robert now facilitates himself, the workshop consisted of a series of ‘circles’ held over the three days. Each circle is modelled upon the Shona *dare*, a (traditionally male) space of consultation and conflict resolution “where everyone sits face to face and equal, and we are all able to speak.” In Tree of Life, the patriarchal element is removed, and the equality extended to women. Thus, though predicated upon (in the words of a Tree of Life guardian) “traditional modes of addressing conflict”, a key aim of the workshops is to alter some of the “traditional” power relationships within communities, and the circle is one way of doing this. Participants are guided by facilitators to set their own rules at the beginning of the first circle, and are encouraged to use a talking piece – a stone - which is passed around the circle so that each participant has equal chance to speak should they wish to.

The process uses the tree as metaphor for human lives and human relationships. Early circles, where participants get to know one another, centre on discussion of the tree’s roots, where participants place themselves in the world in terms of their kinship, describing their ancestral and

⁶⁸ The binary of ‘victim’ and ‘perpetrator’, which stems from rights discourse and the terminology associated with clinical psychology, was recognized as too simplistic by many of the Zimbabweans with whom I worked: despite this, however, it was frequently invoked.

totemic⁶⁹ histories to other participants. This can be a powerful way of building *communitas* as, in Elias's words, "we can see that even though we think we are from different places, underneath we have much in common. So that's how we weave relationships. You realise that this person you thought was just your neighbour is actually your mother, is actually the same totem as you." In a Zimbabwe that has increasingly questioned the 'authenticity' and right to belong of various categories of the population, a discussion of roots can also have powerful individual effects: in Robert's case, "My mother is Mozambican, and my father Malawian. But when we were in the circle I began to feel at home again, that I am a citizen again. I found out that Zimbabwe is built up of a lot of people whose ancestors are not from here." One need not have a totem to feel this sense of *communitas* – in a circle I attended, I was able, as a white Zimbabwean, to find historical connections with the other (Shona and Ndebele) participants and experienced first-hand the relief of having a group acknowledge that my Zimbabwean-ness was of as much relevance as anyone else's. Further, one need not be Zimbabwean – a conversation with a foreign visitor showed that he too had been placed in a web of connected social relationships via diasporic connections. In Epworth, where political violence has followed the fracture lines caused by tensions over who has rightful access to the land, the building of a shared sense of kinship can have powerful effects on local relationships.

As the workshop progresses, the circles move on from ancestral roots to the trunk of people's lives. Circles devoted to the trunk discuss participants' childhoods, as a further means of sharing stories and building trust. Following this is the most difficult part of the process: the trauma circle, where participants relate their life histories, with an emphasis upon experiences of harm. Elias explained that participants begin by going

to sit under a tree and write, draw and narrate their stories alone. Then they bring them, and come and narrate their histories to you. We must be sure that what people say won't be heard in the community. Because if it's heard in the community there won't be any healing. It would be another trauma. As a facilitator, and as a participant, you must listen attentively, be there. Let people cry to let out the bitterness within themselves. These stories of trauma have to be done in one sitting, even if it takes up to midnight for everyone to tell their stories. We all need to be able to speak. Afterwards, people often like to pray.

Participants begin this process alone, and end it as part of a group. Emphasis is placed upon the value of narrative as a means of addressing trauma and upon attentive listening. Although forgiveness is an aim that facilitators are striving for, Robert emphasized that "we never mention

⁶⁹ Kinship groupings at the level of clan share totems: members of the same totem are assumed to be descended from a common ancestor.

the word. People must come to it on their own, or not come to it at all. You cannot push someone to forgive.”

He continued,

In the next circle, the next day, we ask everyone to tell us what they think of by the word power. Then we make a list, and get them to split it into the negatives and positives of power. The shapes of triangle and circle show the different kinds of power. This always comes from the people themselves that these are the shapes that work well for power. The circle shows power to be shared within the group or community. But people also see that within the power circle there needs to be a triangle. For example, if you are a parent and your child doesn't want to go to school you need to have the power to make him. So, sometimes you need a triangle. So, even though we share equal ideas, there have to be people who collect those ideas and implement them. This is what we want people to understand about power when they leave. We all have power, we all have a say but we are also all part of communities, and we must work with each other, sometimes in circles, sometimes in triangles, but always together.

The model is clearly predicated upon building social relationships as a means of overcoming violence and violation.

In the final circle of the workshop, participants explore and discuss the last aspect of their trees: the fruits and leaves. These refer to the gifts they have in life, and what abilities they have to offer the world and others. In Elias's words, “people often mention the gifts in their hands and brain. A gift is what you need within you to produce things. People make drawings of their fruits and leaves, so the drawings resemble people's lives, their abilities. Sometimes the drawings are very strange! But when people explain them you understand.” The workshops close with participants going and finding a tree that is representative of a new life. He continued,

People bring a leaf or bark from the tree and start a narration about their experience. Then, you find something to do with the pieces of tree that have witnessed. We decide as a group to bury them, or burn them, or put them in a river. People usually decide to bury them – it is best to make them compost like this. We bury them together as a group in silence. After the workshop, we encourage people to go home and to put into practice what they have learnt, and to share it. We want change to happen from the very bottom, in people's homes. That's what I mean when I say empowerment.

The model reflects the structure of ritual as uncovered in classic anthropological analyses of rites of passage and other ritual processes (van Gennep, 1960; Turner, 1969), with participants

removed from their usual social context to a liminal space where the ordinary is temporarily suspended. Following rituals of reincorporation, participants leave the workshops having undergone a social transition: in this case, to an 'empowered' state. This model was clearly effective for participants in terms of their subjective understandings of violence.⁷⁰ However, Robert noted that,

What we are doing here is not justice, and for some people that makes it hard to forgive. The people in circles are also saying that if we are to forgive these people, they need to pass through the legal system and be punished.⁷¹ But the legal system is malfunctioning. There is no transitional justice. So, for now, we must try to get people to forgive themselves before they try to forgive someone else. To stop blaming themselves for the things that happened. So, while we wait for those systems to be put into place, we are doing something here. On a grassroots level, we are building community systems, building the roads, building together. We are showing people how to practice democracy in your own homes, and it will spill from there to the neighbours. And one day there will be legal systems in place again, and justice on that level will operate too.

Robert's differentiation between the work being done by the Tree of Life and the work of justice is key to an understanding of the model and its efficacy. The Tree of Life is concerned with making and remaking social relationships, and with doing away with ideas of victimhood in order to remake individual lives, not with justice. It differs from discourses of transitional justice, then, in two important ways. Firstly, it steps away from the binary construction of victim and perpetrator that has characterised much of international transitional justice precedent thus far. Clarke (2007) has argued that the discursive and legal creation of victimhood reduces people to a state of 'bare life' (Agamben, 1998) rather than acknowledging their roles as political actors. The Tree of Life process, which placed people within a web of social relationships and emphasised the power they held as individuals and communities, shifts people from bare life. Secondly, it places emphasis on the immediate (psychosocial) needs of the people it works with rather than on legal matters, although as Robert points out, this does not preclude a desire for prosecutions. Weinstein et al (2010:47) have argued that a weakness of transitional justice has been its tendency to "lose sight of its goals in favour of developing and maintaining an international system of criminal law over and above what might be the needs and the desires of the victims of abuse." It

⁷⁰ In 2009, the Tree of Life carried out research into the effectiveness of the method using pre- and post- psychiatric screening measuring depression and anxiety, and a self-reported response on the effectiveness of the workshop. The study, although small, found that 36% of the sample showed clinical improvement; and 56% reported coping better (Reeler; Chitsike; Maizva and Reeler, 2009).

⁷¹ Cf. the RAU workshops as described above, where legal accountability was also emphasized.

is worth noting, however, that in this example as in the RAU focus groups, legal justice was also considered a priority.

The Tree of Life model draws widely upon a variety of repertoires of social and individual healing. The language used by these two practitioners of the Tree of Life model moved between local idioms of conflict resolution (such as the role of the *dare*); metaphors of nature which drew on a mixture of local cosmology (such as the role of totems) and the new ideas of the Tree of Life model (with trees bearing witness to trauma, and the symbolic burning or burial of leaves); psychological ideas of healing;⁷² and a globally inflected language of violation, democracy and transitional justice.

There is a pluralism of ways of making meaning at work in the organisation's model, and in the ways it is taken on and adapted by its facilitators and by participants. Let us pause a moment here to consider some of the theoretical lenses that could be brought to bear upon such multiplicity. Ideas of *legal* pluralism (Merry, 1998) are clearly inadequate as a means of analysis here: for one thing, the majority of the ideas at play are clearly not legal. Bhabha's (1994) concept of hybridity (which is drawn on by Merry (2006) in her analysis of vernacularisation) could also be brought to bear upon the above case study in that it emphasises the outcomes of interplay between the local and the global, does not seem adequate either. The metaphor of hybridity implies a purity of 'local' and 'outside' contexts that is not convincing in that 'local'/'global' or 'insider'/'outsider' spaces are always hybrid; there is no one earlier point in time at which a 'pure' version existed, though the metaphor requires one. Hybridity thus draws upon the very essentialist categories it seeks to subvert (Englund, 2004); further, there is no room in this conceptualisation for the work that is done by structures of power in creating the hybrid local. A third option in the genealogy of multiplicity I am presenting here is the idea of polyphony (Bhaktin, 1984; Clifford, 1988). This seems more useful, in that multiple voices/points of view are woven into the Tree of Life model itself, and into the ways it is used. Furthermore, Bhaktin's polyphony, as developed in *Problems of Dostoevsky's Poetics* does not aim to describe a unified singularity: unlike Bhabha's new hybrid whole, polyphony allows for conflict, ambiguity and

⁷² There is also an emphasis upon extending that healing from individuals to families, and from families to communities. Transitional justice models also link narration and ideas of social healing but in this model it is occurring on a smaller scale, in face to face settings aimed at restoring relationships on a more intimate scale than that which is afforded by nation-wide truth commissions.

unevenness. This seems a better way of unpacking the emergence of various modes of thought, from human rights to totems, in The Tree of Life model. Indeed, as with the idea of entanglement as discussed below, polyphony seems a useful model for examining the surfacing of global discourses of human rights in local contexts more generally.

Polyphony is not the only useful theoretical lens we can apply: the concept of entanglement, as used by Achille Mbembe (2001) and Sarah Nuttall (2009) is also helpful here as a means of analysing the pluralities of meaning making at play in the case study. Mbembe uses entanglement as a means of theorising the state of the African postcolony, which he characterises as composed of “multiple *durées* made up of discontinuities, reversals, inertias and swings that overlay one another, interpenetrate one another, and envelop one another: an entanglement.”(Mbembe, 2001: 14). I have already considered Mbembe’s model elsewhere in light of the ideas of temporality as they exist in rights discourses and in postcolonial settings; here I wish to highlight the ideas of *discontinuity*, *overlay*, *interpenetration* and *envelopment* as a means of viewing the relationships between the multiple cosmological, psychological and legal threads that the above case study raises. Nuttall’s (2009) use of entanglement differs to Mbembe’s: situated in post-Apartheid South Africa, Nuttall’s analysis centres on the definition of entanglement as an uneasy intimacy (“even if it was resisted, or ignored, or uninvited” [2009:1]) which we can use to analyse the intersections of sites such as identity, space and history in understanding race in South Africa.⁷³ The Tree of Life provides a case study of the complex entanglements at play in small-scale, ‘local’ settings. Further, in keeping with Goodale’s (2006) critique, such an analysis of the Tree of Life model can be seen to complicate the simplistic distinctions made between local, national, regional and global levels, as, whilst it could be defined as a distinctly local phenomenon, it is inflected with circulating national, regional and global ideas, and, although distinctly local, it bears remarkable resemblance to focus group interventions elsewhere on the Continent (see Curling 2005; Kayser 2005; Forcier 2010). Further, notions of discontinuity, overlay, interpenetration and envelopment can be expanded beyond the Tree of Life case study to be seen in the surfacing of rights discourses in everyday life more generally: as is explored in subsequent chapters, however, such entanglements are not always as benevolent as they are in the Tree of Life. I will return to such theoretical considerations in later chapters.

⁷³ Whilst the intimate entanglement of ideas at play in the Tree of Life example is not one of resistance and unease, this is not always the case. I return to Nuttall’s stance on uneasy entanglements in Chapter Five in considering the (mis)translations of violations that occur in Zimbabwean asylum seeking cases.

The Tree of Life incorporated multiple modes of meaning making. The diversity of ways of making sense of political violence that emerged during the time I spent with Robert and Elias was not yet exhausted, however. At the very end of our first long conversation, Elias turned to me and said, “And of course, whilst we wait for the legal system to come back to Zimbabwe, we are not seeing justice coming from the top. Justice *must* come from the top, or else it is pointless. But that is not how *ngozi* work: they come for the one who did the crime, or for his family: but not the one who caused the crime.” Here, another model of justice was at play. Before returning to ideas of transitional justice, let us turn to a consideration of the role played by ancestral spirits.

The justice meted out by *ngozi*

Although it was Elias who first mentioned the existence of *ngozi* in Epworth to me, I came to understand the role of these ancestral spirits better through conversations held with another Epworth resident, Tinashe. It was Tinashe who brought me the newspaper article about *ngozi* in Buhera with which I opened this chapter. I was introduced to Tinashe as someone who had first-hand experience of *ngozi*; the story he told me serves as a case study of justice as it played out beyond the legal realm.

In the Shona worldview, as is the case across Southern Africa, the social world is composed of both living persons and the ancestors. Ancestral spirits encompass both clan spirits (*Mbondoro*), originating from the founders of clans or chiefdoms (and thus of political significance), and family spirits (*Vadzimu*; sing. *Mudzimu*): an individual’s deceased parents and grandparents (and thus of more immediate kinship significance) (Gelfand, 1970). Gelfand (1970) has argued that a key role of the ancestors lies in their creation of the ethical person – one who has the quality of *Unhu*, which can loosely be translated as decency or goodness. *Vadzimu* play the greatest role in this (as indeed they did in life). The *Mbondoro* continue to care for the territories they once ruled, and the people within them, and in return those same people maintain the *Mbondoro* through remembrance and ritual. The *vadzimu* keep their descendents on the straight and narrow, as to go against moral norms would constitute an affront to the *vadzimu*, and social relations between people and their *vadzimu* are also maintained through a lifelong cycle of rituals, which are closely linked to the land that is inhabited by the living and the dead.

Such then are the (ideal) relationships between the inhabitants of the social world – but there are also categories of spirit that result from a serious ethical transgression against that social world. *Ngozi* is the overarching term for spirits who return after death to haunt those who committed a

serious violation against them. According to Tirivangani (in Marwizi, 2010), archetypical *ngozi* result from a sanguine crime, where blood has been shed (such as murder); but *ngozi* can also result from a breach of marriage that results in suicide; from crimes by children against their parents; and from an incomplete marital or financial transaction where one side fails to fulfil obligations. In such cases, *ngozi* can return after death to harass the person, and/or the families of the person, who wronged them, causing serious misfortunes, or madness and mental torment (Mupinda, 1997). Unlike in law, which where the emphasis is placed on the individual (be it as 'victim' or 'perpetrator'), the fact that *ngozi* may affect the direct perpetrator of a crime *or his family* shows the social unit to be located here at the level of the kinship group. Retribution can thus be visited on a child for harms inflicted on others by his parents: *ngozi* do not provide a benign form of justice. In order to appease *ngozi*, reparations, mediated by diviners, must be made to the family of the deceased or wronged person/s.

Tinashe's family had been affected by political violence in 2008. His younger brother was involved in campaigning for the MDC in the run up to the 2008 elections; and when the area voted in favour of the MDC, his brother Patrick was abducted from his home in the ensuing backlash. For three days they did not know his brother's whereabouts; on the fourth day his badly beaten body was discovered abandoned near a dam in the area (the same dam mentioned in the quote with which I opened the description of Epworth). The police removed Patrick's body to the local mortuary. Tinashe is convinced he knows the identity of his brother's killers: "I could tell them exactly which man came and took my brother from the house; it was _____ and he was accompanied by that woman who is involved in politics here." Tinashe imparted this information to the police but nothing ever came of it and, as far as he is aware, no investigation was ever carried out. Initially, the family did not wish to inter Patrick's body until some acknowledgment of responsibility for his death had been made by the people who had abducted him; or until it was clear the police were investigating the family's accusations. However, neither occurred, and the local mortuary insisted upon the family removing Patrick's remains. The family conducted a Christian burial but were also intending, after the requisite amount of time had passed, to conduct the traditional ceremony of *kurova guva*, which aims to guide the deceased back to his family's land in order that he may take his place among the *vadzimu*.

Some seven months later, before *kurova guva* was due to take place, the man who Tinashe was sure had abducted Patrick from the family home began experiencing problems, as did his family members. First, his car broke down. Then, his wife's rape crop failed even though the

neighbouring crops were fine and there was water available. Next, his older brother lost his job. At this point, people in the neighbourhood began to talk about *ngozi*. In Tinashe's words, "it's possible for the spirit to bother the living" as Patrick's *kurova guva* ceremony had not yet been performed. When, a few weeks later, another man who was known to have been involved in the political violence was killed in a minibus taxi accident, "then we knew that there was a restless spirit." It was "well known" within the area that the man had been involved in political violence which had seen more than one death and, as such, local consensus decided that an *ngozi* was definitely at work. Given that more than one person had died during political violence, moreover, it was impossible to know if there was only one or many *ngozi*; or, if only one, whose spirit was aggrieved. "So, the only thing for this man to do was to come to the families of all of us, and pay compensation. But he refused." The man maintained that *ngozi* were superstition not reality. By 2010, Tinashe's family had performed *kurova guva* but were unsure whether the spirit had been settled or not. Tinashe emphasised, furthermore, that "we are still waiting for him to make amends." Tinashe said that he was "comforted" by the knowledge that the man had been harassed by "ngozi" and thus not been entirely immune to ramifications, "but obviously it would be better if he would admit his responsibility so we can do the right rituals, and so that we can send him to prison." Again, as in the previous case studies, a diversity of justice repertoires are at play – and again, questions of legal impunity are raised.

In such cases, then, particularly as regards blood crimes, legal justice alone is considered necessary but inadequate: while a jail sentence should be part of the response to murder, this alone cannot repair the harm that has been done. In Tinashe's words, "even if they had gone to prison, they need to make amends before the *ngozi* will stop to torment them." In the newspaper article with which I opened this chapter, Augustine Tirivangana, (who was approached as a local expert as he had written a PhD on the *ngozi* theme in Zimbabwean literature), argued that, "the idea of *ngozi* is not to punish but to build bridges. The key value of Africans is peace. If someone pays for the *ngozi*, they would have restored the peace in the community."

A key element in the model of justice at work here is the way in which harm is perceived. Whereas in rights discourse violations are linked to individuals, in this model harm has been inflicted on the family group. In Tirivangana's terms⁷⁴ (2010:1) life is "the fundamental intangible asset" which is a gift from Mwari (god) and belongs to the family group, not just to an

⁷⁴ This quote is taken from a second article about *ngozi* which followed a week later and was written by Tirivangana himself (Tirivangana, 2010).

individual. Therefore, “a deprivation of material or immaterial possessions of any member of the group is a deprivation to all the members. This is the context in which *ngozi* should be understood.” (Tirivangana, 2010:1). As in the Tree of Life example, then, social restitution here is viewed in terms of a repair of damaged relationships, not only between people but also between people and the spirits (themselves considered alive and able to exert influence on the mundane world) who have the power to animate relationships.

Of particular relevance, however, is that Tirivangana uses a language of rights in his explanation of *ngozi*: “the spirit of the departed *has the right* to approach the offending family for compensation.” (emphasis mine). Other experts approached in the media debate that followed the article about *ngozi* in Buhera also framed it in legal terms, with University of Zimbabwe lecturer Vimbai Chivura defining *ngozi* as “a crime that demands restitution” (Marwizi, 2010), and local historian Pathisa Nyathi, (drawing parallels between *ngozi* and the Ndebele *uzimu*,) stating that, “in Matabeleland, death will result around the family, until the *perpetrator* realises that he or she has to pay for the crime” (ibid; emphasis mine). Rights, crime, restitution and perpetrators: these terms, drawn from globalised legal discourses, thus surfaced in a debate around spirit possession. Here, legal terminology is applied to a kind of justice that has its roots in an entirely different metaphysics and cosmology.

The entanglement of legal and spiritual ideas of justice has been carried further, however. In 2010, a second case of *ngozi* made it to the newspapers (‘High drama as *Ngozi* fears grip Gokwe’; Sifile, 2010). Here, a family in Gokwe refused to bury the body of their son who was killed in 2009, allegedly after being removed by the sons of two prominent Zanu-PF members, who took him away in a Zanu-PF branded vehicle. The family of the deceased would not perform traditional rites of burial until the families of the accused killers admitted to the crime (Sifile, 2010). According to the article, the father of the murdered boy demanded an apology, an explanation and that the families of the accused murderers seek forgiveness. Until then, his deceased son would continue to help “sort them out” through his actions as an *ngozi*. Although he originally refused to admit any responsibility, after the *ngozi* had been active for some time the father of one of the accused paid 35 head of cattle and 15 000 US Dollars in compensation (Dube, 2011). This was in addition to the case (most unusually) actually being brought to court, where the four accused were found guilty of murder in 2011.

The media upheld the “Gokwe saga” as a “test case” (Sifiel, 2010) for the ONHRI, which I earlier argued was modelled upon transitional justice mechanisms. As was earlier noted, there has been a move in transitional justice over the last decade to “localise justice mechanisms” (Shaw and Waldorf, 2010:4); in keeping with this it was reported in the media that “The Organ said the process of healing would be done according to everyone’s customs and beliefs.” (Sifile, 2010). *Ngozi*, however, have one very serious flaw as a means of implementing some of the wider aims of transitional justice: they only influence the direct perpetrator of a crime or his/her family, not the persons or political parties who may have instigated such crimes.

Nonetheless, in 2011, following the legal *and* compensatory outcome, a newspaper report framed the case as “a template to address the problematic issue of political violence and impunity” (Dube, 2011). The fact that compensation was paid is central here; throughout the focus groups run by the NGO above, issues of reparation through compensation were raised time and again. ‘Justice’ here can be seen to be multi-layered, drawing on a diversity of repertoires: legal (court cases, and transitional justice mechanisms); spiritual (the angered *ngozi* is appeased and is able to take his place as a *madzimu*) and customary (through compensation). As a template, then, the case in Gokwe is called upon as it encompasses a wide range of entangled justicial discourses. Using *ngozi* as a template, however, means that the ‘culture of impunity’ with which I opened this chapter is not really resolved: in Phatisa Nyathi’s words, “the sender is very safe and the one who spilt the blood suffers” (quoted in Dube, 2011). (Given that the family members of ‘the one who spilt blood’ may suffer too, ‘the one’ here is composite and collective.) In the justice meted out by *ngozi*, the powerful elite who instigated crimes and gave the orders remain untouched. In a context such as this, then, the template seems inadequate, and NGOs calls for nationwide legal commissions, as outlined in the case study above, resume importance.

Conclusion: Entanglements of justice

Can ‘justice’ ever be complete? There is, of course, no ‘perfect’ justice: the three case studies above all deal with justice in intersecting but different ways, none of which is absolute. It is thus unsurprising that people draw upon as wide an array of repertoires as are available: legal pluralism through customary, national and international law; cosmological justice through the work of the spirits; and traditional compensatory mechanisms are all invoked. Three in depth case studies may seem too much for a single chapter, but all were at play in Zimbabwe and it was not possible to speak about justice without incorporating all three intertwined examples. Such a rich repertoire of practices and meanings cannot easily be separated into binaries of ‘tradition’

versus 'modernity', or 'Western' versus 'African'- and neither should they be. An examination of rights as praxis in this context shows the futility of such binaries, and highlights the importance of a historicized understanding of local contexts to processes of post-conflict justice.

As Wilson (2006:78) notes, rights discourses "do not provide the basis for a fully worked out moral or political philosophy. This must be formulated elsewhere and then brought to discussions of rights." Thus, local forms of cosmology and meaning making are brought into conversation with the more globally powerful discourse of rights. Though global ideas of rights can be brought to local cosmologies and ideologies and situationally incorporated, however, there is little movement in the other direction. These processes are imbued with power; as Cowan (2006) has argued human rights discourses can simultaneously be enabling and constraining. The above ethnographic analysis of ideas of justice in action reveals the dangers as well as the possibilities offered where ideas of justice are embedded in local and global systems of meaning.

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Chapter Four.

Kinds of Mobility: Rights Reports and Rights Bearing Persons

Introduction: global connections and disconnections

In the introduction to *The Anthropology of Globalisation* (2002), Inda and Rosaldo note that the world today is characterized by “complex mobilities” such that we can view globalisation as “an intensification of global interconnectedness” (2002:2). They caution, however, that the processes of interconnection are not necessarily smooth: even in a world of increasing mobility and flow of information, people and things, some things move with more ease than others and “not every person and every place participates equally in the circuits of interconnection that traverse the globe.” (ibid:4). Human rights discourses follow (and constitute some of) these global circuits, and could be said to form one of the key ideologies of our time: as such, Appadurai (1996) conceptualises rights as one of the key ideoscapes of a globalised world, whilst Goodale (2009:16) frames globalised discourses of rights, along with those of development, as one of the central “dilemmas of modernity”.⁷⁵ I have explored some of the complexities using the concept of entanglement. Now I examine the fractures of global circuits through an ethnographic exploration of the contrast between the mobility of rights texts and the mobility of the bearers of rights, the people, focusing particularly on women. Following a conceptual introduction, I trace two rights-based texts from their origins in Zimbabwe through to their national and international dissemination. I then turn to an examination of the movement of people through an ethnography of the border between Zimbabwe and South Africa, showing that persons move with much greater difficulty, and at great risk to their physical safety. I argue that rights discourses have a greater impact at the discursive level than they do on the actual experiences of many Zimbabwean migrants as they cross from one country to another.

Women and rights in Zimbabwe

My focus here is on texts representing women’s rights and on the movement of women across borders in order to explore the gendered nature of rights in practice. Ranchod-Nilsson (2006:49) has outlined what she refers to as “the swinging pendulum” of progress with regards to gender

⁷⁵ He conceptualizes it as a ‘dilemma’ as people must mediate between the dangers and opportunities of such potentially hegemonic yet also potentially liberatory discourses, whilst the social theorist must further mediate between academic critiques of such discourses and the enthusiasm with which they may be embraced by interlocutors.

equality in Zimbabwe. During colonialism African women had few rights even in comparison with African men (Schmidt, 1990), and even poorer protection in comparison with the rights of Europeans. At independence in 1980 Zimbabwe maintained a dual system of customary and common law inherited from the colonial government. The implementation of the Legal Age of Majority Act (1982) gave majority status to women of 18 and above regardless of race (Stewart et al, 1990), increasing women's legal equality. (Previously women had been considered perpetual minors.) Similarly, in 1991 Zimbabwe signed the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) without reservations, thus agreeing to provisions which specified that women and men were equal before the law (Sisterhood Is Global Institute, 1999). Nonetheless, the retention of customary law has at times worked against gender equality: women married under (more patriarchal) customary law, for example, had fewer rights within marriage than did women married under common law. Even where the law does protect women, it is often not implemented due to lack of knowledge and/or lack of political will (Essof, 2005).

Thus, a rights framework may not even be the most useful or relevant approach to the needs of Zimbabwean women. Nonetheless, women's groups within Zimbabwe continue to use local law and international rights ideas and instruments (as seen in the work done by WOZA and WCoZ⁷⁶), emphasising that in Zimbabwe at present the rights of women stand on shaky ground (Feltoe, 2002; Ranchod-Nilsson, 2006; Tamale, 2008; McFadden, 2000). Essof (2005:29) argues that despite the "terrain of women's mobilising in Zimbabwe [being] both rich and deep" such movements face an "increasingly hostile political environment." (2005:40). Rights discourse has provided a useful tool which carries a global validity as a means of promoting the needs of women in the face of such an environment.

In this chapter I maintain a gendered focus for two reasons. Firstly, the emphasis on transnational mobility allows for an examination of the effects of movement between two differently gendered legal systems in Zimbabwe and South Africa and, indeed, of whether and how legal systems affect women's experiences of movement in practice. Secondly, the textual record of rights reports emerging from Zimbabwe reflects a bias in favour of discussions of violations against political rights which do not take gender differentiations into account; the particular example of research, resulting in two rights reports, that I draw on in this chapter was

⁷⁶ Women of Zimbabwe Arise; and the Women's Coalition of Zimbabwe respectively.

done in response to this trend and deliberately aimed to access women's experiences. As such, it allows for an examination both of agency within the constraints of the dominant rights discourse, in that the NGOs are able to write to fill gaps, and an examination of the ways in which women's experiences are nonetheless framed within the terms of rights discourse, and thus turned into data which is then used in a rights report.

Kinds of mobility

By way of introduction, consider the following three vignettes:

Snapshot One: It is a muggy Wednesday morning in January 2011, and I am travelling in the backseat of a white 4 by 4 vehicle, my body covered in a filmy layer of sweat and dust. My companions are three staff members of the International Organisation for Migration (IOM), two of whom are permanently based in the Musina office, on the border between Zimbabwe and South Africa, and the third of whom is visiting from Johannesburg. We turn off from a tarred road onto a dirt track that initially runs alongside a second hand car dealership and scrapyard, but that then turns away from the outskirts of town into the surrounding bush, heading north towards the Limpopo River, the border between Zimbabwe and South Africa. The road straightens to run parallel to the river, and we see what it is we have come here to see today: a seemingly unending stretch of a double layered fence (locally known as 'the fence') which runs as far as I can see in either direction, blocking off no-man's land from South Africa. Beyond it lies the Limpopo, the geographical and political border with Zimbabwe. This fence seems strange to me in its very physicality, bringing home that the edges of the modern nation-state are not only metaphorical: here lies an actual fence, which cuts off one country from another. IOM travels along here often to 'monitor'⁷⁷ this barrier; other patrols are conducted by border officials, the police and occasionally by members of the army. We do not have to travel for long along the road before we come across a physical reminder of the permeability of borders: a hole is raggedly cut into the wire of the fence furthest from us, then there is a path through the dusty space between the two fences, ending in a corresponding hole in the fence closest to us. Lying next to this hole is an abandoned woman's shoe. I stare at the fence. I stare at the holes. I stare at the shoe. This is how my Zimbabwean country(wo)men cross into South Africa, which

⁷⁷ I discuss the construction of such terms as 'monitor' within rights discourse below.

is also my country. I belong in both worlds, legally, whilst they do not. I stare at the fence. Gloria Anzaldúa's words on the Mexico/US border enter my mind, unbidden: "the border is an open wound, *una herida abierta*" (Anzaldúa, 2007:25).

Snapshot Two: I am at a braai in Cape Town in 2005, and the man seated across from me has been telling a story about how he had work with a rights advocacy NGO in Harare a few years previously. It is a grey day; all the people present are Zimbabweans, all wearing warm clothes, all still unused to Cape Town's winters, even though some of us have been here for five years. The man pulls his sleeves down over his hands as he tells his story, as he describes being given a pen in the first days of flash drives: "a pen that wasn't really a pen, a pen that made me feel like a spy"; a pen that doubled as a miniature portable hard drive. Leaving Zimbabwe to come to South Africa to attend university he had carried the pen on his person, carried it from the offices where he worked into his car, along the winding roads past Masvingo and to Beitbridge, and then across the border (did he use it to fill in the forms? I did not ask), carried his pen filled with data, with information on violence and violation, with names, dates and places. When he arrived in Johannesburg he dropped off his pen at the offices of a South African rights organisation, having served as an information mule, carrying data from one country to another. We listen to the story, and shake our heads at the necessity of smuggling out information from our homeland to this our new country.

Snapshot Three: It is five years later, late in 2010. I am in Harare, and the electricity has just gone off again. I hear a frustrated muttering from the workstation next to me; the final version of a report is being written and is shortly due to be sent out on numerous electronic mailing lists. The office in which I am spending the afternoon is only temporarily impeded, however: the secretary rises from her desk and goes outside to start the generator. The rest of us take advantage of the break in power supply to go and stand in the sunshine outside for a few minutes. We talk about the report; it has been a few weeks in the writing, and is based on research a few months in the making. "It will be done by tomorrow," Tarisai⁷⁸ says confidently. "And then we can send it out to everyone. Then we can let everyone know even more about the goings on in the 2008 elections, about the ways it affected women. Women are always left out of these

⁷⁸ Tarisai was introduced in Chapter Two: employed by a rights advocacy organization, she is a Shona woman with a law degree and a fierce moral compass as concerns the rights of Zimbabwean women.

stories.” The generator roars into life and we turn to go back inside. I think to myself, there’s no more need for smuggling flash-drives across the border. Now we just send a report out via email. Now information about human rights in Zimbabwe is always on the move; now there are reports upon reports upon reports out there. A mushrooming of rights reports in Zimbabwe, circulating around the world. Where do they go to? What do they do?

What can these snapshots tell us about rights and mobility? The first tells us that people are on the move, and that governmental and non-governmental institutions are responding to that movement. Border officials and NGOs ‘monitored’ the fence; in Musina itself (the closest South African town to the Zimbabwe border) many international and local NGOs have sprung up as a result of, or shifted their mandates in light of, the increased movement of Zimbabweans across the border. At a meeting of the Migrants Health Forum that I attended in Musina in 2011 for example, local government representatives attended from the South African Departments of Labour; Safety, Security and Liason; Home Affairs, and Health and Service Delivery; whilst representatives from international NGOs such as Médecins Sans Frontières⁷⁹, Save the Children, the UNHCR⁸⁰, and USAID⁸¹ were present, as well as from a local NGO, the Musina Legal Advice Office. The meeting was attended by thirty-four people and took place in the Civic Centre’s biggest conference room: migration from Zimbabwe could perhaps be said to drive a rights and aid ‘industry’ in Musina.

Over the last fifteen years, migration out of Zimbabwe has reached exceedingly high proportions, such that one informant commented, “Bob Marley’s Exodus should be our national anthem”, whilst another identified transnationalism as a central element of ‘being Zimbabwean’ (“To be a Zimbabwean is to live in a different country to your sister or your brother or your father or your grandmother; or all of them.”). Official statistics are hard to come by due to the extent of illegal movement; even so Zimbabwe has shifted from its historic position of having a migration profile mixed between origin and destination to being primarily one of origin (ZIMSTAT and IOM, 2010) – a place from which, statistically speaking, people leave rather than one to which they go. For example, statistics gathered by the Zimbabwean National Statistic Agency showed that in 2003 643 people immigrated *to* Zimbabwe, and in 2007, 752 people (ibid: 34). The official statistics of Zimbabwean emigration (which severely under-represent the

⁷⁹ MSF, or Doctors without Borders

⁸⁰ The United Nations High Commission for Refugees

⁸¹ The United States Agency for International Development

numbers of people who leave without documentation) are nearly ten times greater per year: in 2003, 8426 people legally emigrated, and in 2005, 11 058 (ibid: 36). South Africa is the primary destination country even for these legal migrants, followed by Botswana, though migration further afield to the United Kingdom, America and even Australia is also common for those with greater resources (ibid). Many more migrants leave the country without documentation, however, and are not captured in official Zimbabwean statistics. Asked about the numbers of people coming across the border, an official from IOM in Musina shook his head and said, “I don’t know what to tell you. What will you use them for?” I explained that it would be for background in my thesis, to give a sense of the movement across the border. He replied, “I am wary of giving numbers. We don’t know what the numbers are: DHA⁸² says to me, show me your statistics, but these statistics are not tangible, we cannot take them and say, here they are. I can tell you that last week 6000 people came in legally in one day, and that 4000 people went out; but I can’t tell you how many came illegally. I can tell you that of those who came illegally, 150 to 300 a day go to the Home Affairs offices in Musina (to try to get legal papers), but I cannot tell you more than that.”⁸³ In 2010, the Forced Migration Studies Program estimated that there were between 1 and 1.5 million Zimbabweans in South Africa, with Zimbabweans making up the largest group of international migrants in the country (FMSP, 2010). The organisation also emphasised, however, that the illegal nature of much of the migration into South Africa ensures that “there are no reliable statistics regarding cross border migration” (ibid:2).

The first snapshot shows us both the permeability and the impermeability of borders: they are crossed, but not without effort. Movement is considered problematic, and attempts are made to prevent it – the legal border post entails a lengthy bureaucratic process that is not open to everyone (given the difficulty and expense of, firstly, accessing passports in Zimbabwe [Musarandega, 2009] and secondly, accessing a visa to enter South Africa) and ‘the fence’ is patrolled. The physicality of the border stands in stark contrast to the electronic documents, which bypass such physical barriers with greater ease. The pen stands as reminder that it was not always possible for documents to be moved without greater effort. Increases in technology, and the advent of improved internet connectivity in Zimbabwe, however, have subsequently facilitated the movement of words and numbers into and out of the country. Although I have been unable to find statistical data on the number of rights reports to be disseminated from

⁸² The (South African) Department of Home Affairs

⁸³ These numbers are meaningful, in that they provide enough of a contextual background for my purposes; to Home Affairs, however, IOM’s statistics are inadequate – as they are too fluid, too irregular, and too much of an estimation. I will return to the primacy of numbers within bureaucratic and rights discourses later in this chapter.

Zimbabwe in any given year, it would appear that over the last decade such reports have proliferated, as a result both of the increasing dominance of the rights paradigm globally and of the deteriorating socioeconomic and political conditions in Zimbabwe. A google search for ‘Zimbabwe Human Rights Reports’ today results in about 20 million hits, and whilst these are of course not all actual reports, it gives an idea of the prevalence of the terminology. A scan of the first few pages of hits shows that documents about human rights in Zimbabwe originate from international organisations such as Amnesty International or Human Rights Watch, and from local organisations such as the Zimbabwe Human Rights NGO Forum (a coalition of nineteen local rights organisations), ZimRights, and Zimbabwe Lawyers for Human Rights. A quantitative survey of my email inbox over the last twelve months shows an average of two new reports a month, and ten media articles about human rights in Zimbabwe per month: further, although I subscribe to a few mailing lists I know that I do not receive all the rights reports to emerge from Zimbabwe or about Zimbabwe by any stretch. The language of rights is thus speaking very loudly from Zimbabwe indeed.

What these snapshots tell us then is that both documents and people are moving in and out of Zimbabwe and, further, that the movement of texts is not as controlled as that of people: rights reports do not need wire cutters or passports to traverse between two countries and to move even further beyond (although they are required to fit into a particular format in order to be circulated and read.) In considering the movement of discourses of rights between Zimbabwe and South Africa, then, a dichotomy emerges: whilst ideas of rights can circulate relatively easily between the two countries, crossing back and forth across the border in the form of electronic documents between institutions and between individuals, it is harder for people to move, and to enact their rights during that movement. It is therefore necessary that anthropological engagements with movement and migration situate ethnographic analyses in the construction and mobility of texts and technologies - what sorts of texts travel, and where do they go to? - as well as in the mobility of persons: in addition to multiple sites of study, there is also a need for multiple units of study in addressing the lived effects of “global interconnectedness” (Inda and Rosaldo, 2002:2). It is such an analysis I present here.

Mobile texts: the construction and movement of human rights reports

Although texts may move with greater ease than people, the contents of such texts are created within the terms of rights discourse and they therefore circulate a particular form of representation. Foucault (1991: 194) argues that

We must cease once and for all to describe the effects of power in [only] negative terms: it 'excludes,' it 'represses,' it 'censors,' it 'abstracts,' it 'masks,' it 'conceals.' In fact, power produces; it produces reality; it produces domains of knowledge and rituals of truth.

One of the ways in which power produces reality is through discursive practices, characterised by the "delimitation of a field of objects, the definition of a legitimate perspective for the agent of knowledge, and the fixing of norms for the elaboration of concepts and theories" (Foucault, 1977:199). Rights reports constitute one kind of discursive practice, and are one way in which knowledge is produced as legitimate. Constructed within the terms of the discourse, which "governs the way that a topic can be meaningfully talked about and reasoned about" (Hall, 2001a [1997]:72), rights reports constitute a particular domain of knowledge, a way of knowing the political, economic and social situation in Zimbabwe that follows certain structures and rules and which may differ to other ways of knowing. As I've already demonstrated, 'human rights' can encompass a variety of positions, so an examination of the similarities in structure of right reports is not to deny the multiple positions organisations and authors could take within the bounds of the discourse (cf. Wilson and Brown, 2009).

The discursive framework of rights documents is, as I have shown in Chapter One, driven by an emphasis on the individualised, political rights of persons. Reports are predicated upon the collection of data, usually about situations where rights are being denied or violated. The feminist historian Joan Scott (1991) has considered the process by which people's 'experiences' become 'data', arguing that locating the object of study in events and social reality obscures the broader discursive systems at work that shape how that reality is perceived and constructed. Within rights discourse, 'experiences' are accessed in very particular ways: unlike the feminist historiography which Scott discusses, which encourages accessing women's 'experiences' as broadly as possible, rights reports are mainly concerned with those elements of social life that fall within a legal category of violation (as I will discuss below), such that the discursive practices are even more constraining than they are in the texts Scott critiques.

Right reports about women constitute a sub-section of the discursive framework of rights, and one in which women are considered a particularly vulnerable population. A United States based NGO concerned with women's rights globally, Stop Violence Against Women (STOPVAW) offers the following description of the role of documentation:

Investigation and documentation of women's human rights violations⁸⁴ (sometimes referred to as 'fact-finding') is one of the most commonly used and important advocacy tools in the promotion of human rights. In order to be effective, it is vital that the information gathered in the documenting process be accurate, valid and as timely as possible. The documentation of human rights abuses serves many functions, from putting pressure on government institutions to improve their response to violations of women's rights, to bringing public awareness to serious human rights violations, which have typically remained hidden, to forming the basis of a needs-assessment for future work. (STOPVAW/The Advocates for Human Rights website: no page numbers available)

This quote brings together some of the key elements of those rights reports that are intended not only for use in a court of law but also for circulation among governments, other organisations and the general public. Firstly, the translation of investigation and documentation into “fact-finding” reveals a particular conceptual understanding of research as revealing a knowable truth, in that one is establishing accurate and valid knowledge. This leads to an emphasis upon the collation of statistical or numeric data (Dudai, 2009) which I will discuss in more detail below. Secondly, the STOPVAW quote shows knowledge to focus on rights violations and abuses, not rights adherence: the emphasis is upon gathering and presenting knowledge of harm, spoken of as ‘violation’ and ‘abuse’, terms which carry connotations of violence, and which reflect specifically structured legal categories. Violations are legally encoded classifications – such as violations against bodily integrity, or the infliction of gender based violence; or violations against the right to equality before the law (Robertson, 2006) – and documentation is therefore geared towards accessing information about such pre-established categories. Finally, the quote reveals the intended social life of such reports, which start off in the field through investigation and end in broad circulation to international organisations, government institutions and the public in order to surface violations “which have typically remained hidden.” Rights reports, then, are presented in a particular way and with particular aims in mind (Wilson, 1997).

⁸⁴ Note the use of language here: ‘women’s human rights violations’ is intended to mean violations against women as can be seen from the emphasis later in the paragraph; the phrasing however is ambiguous and could be read as violations enacted *by* women. The fact that the authors do not feel the ambiguity worth correcting or clarifying reflects the emphasis within the discourse on women as victim.

Data and Temporality

The knowledge presented in rights reports is often established through a particular form of data collection known as “monitoring.” The United Nations Office for the High Commission of Human Rights defines “monitoring” as:

A broad term describing the *active collection, verification and immediate use of* information to address human rights problems. Human rights monitoring includes gathering information about incidents, observing events (elections, trials, demonstrations, etc.), visiting sites such as places of detention and refugee camps, discussions with Government authorities to obtain information and to pursue remedies and other immediate follow-up. (UN OHCHR, 2001:9; emphasis in the original)

In the same report, ‘fact finding’ is defined as

a process of drawing conclusions of fact from monitoring activities. Hence, “fact-finding” is necessarily a narrower term than “monitoring”. Fact-finding entails a great deal of *information gathering* in order to *establish and verify* the facts surrounding an alleged *human rights violation*. Moreover, fact-finding means *pursuing reliability* through the use of generally accepted procedures and by establishing a reputation for fairness and impartiality.

(UN OHCHR, 2001:9); emphasis in the original)

The emphasis here is on factual knowledge that is perceived as impartial, verifiable and reliable. Often, this knowledge is numeric: the information gathered during monitoring is collated into a statistical format. Dudai (2009), in his analysis of the construction of rights reports, has argued that statistics are considered the best way to collect and disseminate objective and neutral information. Neutrality is highly regarded. Rights methodology, then, as with much of Western thought, is based upon an ideology in which the numeric is central: as the IOM staff member commented above, if statistics cannot be provided then organisations find themselves unable to be heard. This is particularly the case as concerns reports intended for strictly legal audiences (Dudai, 2009) but also occurs in those reports intended for broader circulation.

The sorts of large numbers gathered in big surveys provide information that is considered to be more accurate and valid than smaller scale, or less quantitative, research. Hastrup (1993) argues that such ‘hard facts’ often constitute the discursive basis of engagements with human hardship and suffering: presenting numeric data provides ‘objective’ facts about human experiences that

otherwise seem too subjective for serious study. Hastrup has elsewhere argued (Hastrup, 2001) that the removal of subjectivity is a key component of legal language, such that “its appeal to reason is based on a view of the disengaged mind and of instrumental modes of thought” (Hastrup, 2001:25). Of course, as Dudai (2009) argues, the removal of subjective language from rights reports does not remove subjectivity; furthermore, the presentation of rights reports as neutral obscures the fact that they too are specific kinds of narrative constructions. The numeric, however, is accorded emphasis within rights discourse. Emphasis on numbers and statistics is not confined to rights reports: as Guyer et al (2010:36) note, “anthropologists are seeing numbers as insurgently prominent in people’s descriptions, imaginations and efforts to influence their social worlds in the 21st century.” Guyer et al refer to the “number regimes” (ibid:37) by which social worlds come to be ordered: as Nelson (2010) shows in the same volume, rights discourse constitutes one of many such regimes. For example, the process of tallying the effects of the civil war in Guatemala was accorded central importance at the end of the war as a means of identifying rights violations for the purposes of reparation and legal accountability: despite what Nelson (2010:88) refers to as “the slipperiness of counting”. Although Nelson shows that the process of identifying the numbers of rights violations that occurred during the war was complex and far from neutral (and possibly far from accurate), the numbers to come out of the Commission for Historical Clarification came to take on the status of facts “cited in almost every analysis of Guatemala.” (ibid:88). Furthermore, these numerically established ‘facts’ resulted in the Guatemalan state being found guilty of genocide under international law. Within rights discourses, then, numbers carry weight and can have real consequences.

One day Tarisai said of a piece of research the rights advocacy organisation she worked for had just completed, “It was good to get those numbers, to do that survey. We must base it in facts, so that we can get the information out there. We need to know on a broad scale what is happening to women across Zimbabwe; if we have that data then we have something very solid to say.” Numbers here were read as more factual than words or subjective experiences: in Tarisai’s terms, they were more ‘solid’ than other sorts of data. In Tarisai’s estimation, numbers were doing a particular kind of work – they provided a ‘broadness’ and ‘scale’ which the rights organisation could then use to confidently disseminate information. As is seen in Nelson (2010) and Guyer et al’s (2010) analyses of the roles of the numeric, then, quantification is viewed as essential to the process of producing fact and producing knowledge. The numeric produces a particular way of comprehending the world, which, while it may render subjectivities invisible, as Hastrup (1993; 2003) argues, simultaneously renders certain kinds of facts visible (Nelson, 2010).

Tarisai's comments on broadness and scale were not the end of our conversation, however. She followed her endorsement of numbers by saying "But those stats were not enough. We need to know why those numbers are happening, why there's so much violence against women, and how they are dealing with it. We need to know what is *actually happening*, you know?" (emphasis mine). Numbers, then are not all that matter: for all that they present a particular kind of truth and one that carries weight and the authority of supposed validity, they do not necessarily tell us everything that is "actually happening." Similarly, when I carried out interviews for Human Rights Watch in 2007, the brief I was given in conversation with a consultant (who had flown to South Africa for one week to conduct research on Zimbabwean migrants) firstly required that I "get the demographic stuff, as we need that to make our argument". "The demographic stuff" constituted data on people's age, gender, educational level, immigration status and employment in South Africa, and, importantly, numeric data on whether political violence had been experienced, and if so what sort, when and on how many occasions, and whether medical treatment had been necessary and had been received. Here we see the gathering of information that can be statistically collated in terms of already preconceived categories of violation. The verbal brief I was given also required, however, that I "get some stories, because we need those stories to make our argument convincing, and to carry our numbers across." In the view of a Human Rights Watch consultant and Tarisai, then, numbers had primacy, but elements of narrative and personalised stories were also needed to give the numbers a different sort of valence.

It is worth pausing here to consider these different typologies of fact-making and value. The inclusion of personalised narratives in rights reports draws in a value that is very different to the capital accorded to neutrality within the discourse. The difference seems to be one of scale and intensity. Numbers are essential for producing convincing legal arguments, but emotion also has a valence and weight. Audiences have a quick response to the numeric; there is also clearly a place for emotion in rights work, however. Though the *scale* of harm matters in rights reporting, the examples above suggest is that the *intensity* of that harm can only be 'fully' told through the inclusion of more personalised narratives. The emotional charge of those narratives carries a force or value in itself that causes a response in the audience. Wilson and Brown (2009:1) argue that "the mobilization of empathy" through narratives of suffering is a central element in why some humanitarian crises are ignored whilst others incite national or international emergency responses. Wilson and Brown argue that, unlike human rights law which is based in (supposedly

neutral) legal categories, humanitarianism's wider agenda allows for the inclusion of a different, more moral and emotive tone to the work it does. The instructions given to me by Human Rights Watch and Tarisai's emphasis on stories suggest that where rights documents are prepared for global circulation amongst other organisations, governments or individuals, and not only for presentation in court, such an emotive register is also apparent and important. However, as Dudai (2009:225) notes, the inclusion of first person narratives in human rights reports occurs "to support the organization's factual and legal claims, not the other way around." The terms of inclusion are thus driven by rights organisations legal interpretations. Scott (1991:776) argues that "evidence only counts as evidence and is only recognized as such in relation to a potential narrative." In the case of rights reports, this potential narrative is determined by legal categories and arguments.

A second structural pressure which influences the textual construction of reports is that of temporality: the documentation work done by rights organisations must be produced as quickly as possible in order for knowledge to be considered relevant within the rights field. The United Nations OCHCR Training Manual on Human Rights Monitoring quoted above emphasises the "immediate use" (UN OCHCR, 2001:9) of information gathered; whilst the STOPVAW quote above emphasises that rights reports be 'as timely as possible.' Where organisations are involved in monitoring the rights situations within a particular place, reports may be expected to be sent from the field office to the main branch as often as once a week detailing the violations that have been monitored in the time that has elapsed since the last report. This emphasis on timeousness reflects an attention to detail that is located in the legal discourse's thorough documentation of the facts; but it also reflects the moral urgency that can at times be seen to lie behind rights work. Chido, a rights advocacy worker I interviewed in Harare thus argued that,

We need to be gathering information all the time, and then we need to write it up and circulate it quickly, because these are big issues we're dealing with. If the youth militia is raping women, that information must be collated and shared as quickly as possible. We need to get it out there; we have a responsibility to do so.

The pressure to get information 'out there' was one I commonly encountered amongst rights practitioners in Zimbabwe. This was driven in part by the constraints at work within the country, where internal legal systems were often inadequate as a means of securing rights or securing convictions for violations against rights (see Chapter Three). In such a context, a global audience was seen as a more effective means of campaigning for rights than a local one. In getting the information 'out there' Zimbabwean rights organisations attempted to mobilise international

support from what Slaughter (2007:116) refers to as an “imagined community of readers and rights holders”. Whether these attempts are effective or not is beyond our concerns here; suffice to say at this point that reports are composed with particular imagined audiences in mind, and are driven by a sense of moral urgency and responsibility.

Urgency, however, has draw backs: such intense time constraints limit what sort of information one can gather. The pressures of time constraints in combination with the need to fit into a legal framework work against analytic categories arising from the field itself, ensuring instead that the terms of the legal discourse dictate what is seen or not seen, counted or not counted, during rights monitoring. Human rights discourse is a legal one; in order that reports might be relevant, they need to prove that they are presenting data worthy of attention and advocacy. As such, the data that are focused upon within the structured short term temporality of the discourse tend to be those that carry legal precedent. The data collected thus generally centre on first generation political rights and incidents of political violence at the expense of second generation rights and structural violence (see Chapter One). This external bias, in combination with the emphasis upon presenting numerical data, effectively excludes some kinds of analysis.

The rights practitioners I interviewed knew the limitations of this and found it frustrating. One commented,

Sometimes it seems we have all this information that is being wasted, that we don't have time to go back to. You gather information, analyse it, and write it up, and then it's done – but you know there is so much more you could have done with it. You also know that that is people's lives that you have sent off so quickly into the world, and then you don't think about it again. It has been done. And that makes us all uncomfortable, so sometimes you're able to do a longer term project, and then you feel that you are producing something a little less short-lived, a little more detailed.

The discomfort described here links to the emotional valences I describe above: rights work is emotionally difficult for fieldworkers, who speak to the human beings behind the numbers and who have a sense of the personalised stories that lie behind the data. Although time pressures and extant legal categories work against the inclusion of detail, practitioners felt a need to include more of that emotive detail where they could and, at times, were able to do so, as I describe in the case study below.

Case Study: The Social Life of Reports on Zimbabwean Women

An example serves to illustrate the above points. The pair of reports which I am using here were produced by the NGO with which I spent most time in Zimbabwe – the Research and Advocacy Unit (RAU) - in conjunction with IDASA [the Institute for Democracy in Africa], and the International Center for Transitional Justice [ICTJ] and The Women’s Coalition of Zimbabwe [WCoZ]. Already we can see transnational ties and linkages: RAU is based in Harare and is staffed by Zimbabweans; WCoZ is a national umbrella body of Zimbabwean women’s organisations; IDASA is a South African organisation and the ICTJ is an international organisation with its head office in New York. All four organisations have connections with the world of human rights advocacy: RAU and WCoZ are both members of the Zimbabwe Human Rights NGO Forum, and WCoZ states on its website that “its central role is to provide a focal point for activism on women and girl’s rights” (WCoZ, 2012); IDASA’s mandated commitment to ‘building sustainable democracies’ entails a support of the rights agenda (IDASA website, 2012), and the ICTJ describes itself as “dedicated to pursuing accountability for mass atrocity and human rights abuse” (ICTJ website, 2012).

The two reports analysed here are entitled, ‘Women, Politics and the Zimbabwe Crisis’ (RAU et al, 2010a) and ‘When the going gets tough, the man gets going!?: Zimbabwean Women’s Views on Politics, Governance, Political Violence, and Transitional Justice’ (RAU et al, 2010b). I present them together as the reports were released within a few months of one another, and are based upon two related sets of research: firstly, a large scale survey that set out to access women’s views on politics in Zimbabwe and secondly a follow up set of focus groups carried out to gather qualitative data to speak to the quantitative findings of the survey which resulted in the second report. Both reports were largely written by RAU staff,⁸⁵ while the research process that led to the final report was funded by the other organisations.

The RAU women’s reports began their social life in a quantitative study. The survey incorporated 2158 respondents, and was carried out across the country, in urban and rural areas. The questionnaire comprised over 100 questions and was administered by women trained by the rights organisations running the survey, who were identified by member organisations of WCoZ from across the country. Each interviewer administered 50 questionnaires in their local area with the cases selected from every tenth household. The questionnaire followed conventional format,

⁸⁵ Although I attended the focus groups, I was not involved in the report writing.

with a mixture of yes/no, and multiple choice questions designed at eliciting quantitative data about the relationship between women and politics in Zimbabwe. Questions ranged from the demographic (age, education level, home language) through the informative (such as what years women had voted in election; whether they had ever been involved in political violence), through to those designed to elicit opinions (for example: 'Sometimes it is acceptable for violence to be used in politics: Strongly Agree; Agree; Neither Agree nor Disagree; Disagree; Strongly Disagree').

The study was followed up some months later by a set of qualitative focus groups. Each focus group, while aiming to solicit women's opinions, nonetheless followed a strict schedule based on the statistical findings of the survey. Sections of the day-long groups were allocated to a discussion of the findings with regard to the numbers of women affected by political violence, for example, or the numbers of women who had voted in different presidential and parliamentary elections. Qualitative responses were sought within the terms of rights discourse itself, and there was little room for conversations to extend beyond it. Even where conversations did extend, transcriptions were taken by RAU staff and such information was often excluded from the final versions of data gathered at each session. The notes I had from focus groups thus sometimes differed from those of the organisation. Nonetheless, the work carried out by RAU was unusual in that in that focus groups were so extensive and carried out over such a long period, with an aim not of getting quotable quotes to scatter through a report, but rather of eliciting a much deeper understanding of the political situation as it affected women in Zimbabwe.

The elicitation of quantitative data and of complementary qualitative data that nonetheless fits within categories to emerge from the quantitative is at the heart of an ideology of 'fact-finding', and such an ideology was reflected in the reports themselves. In both reports, these quantitative facts formed the core of the documents, with the statistical findings being presented in order to show that women experienced violence and violation as a result of the political situation in Zimbabwe – and that their experiences have differed to that of men. For example, fifty two per cent of the women interviewed stated they had been victims of political violence; two per cent reported being raped; three per cent reported that a family member had been raped; and sixteen per cent reported that someone in the community had been raped (RAU et al, 2010a:3). In both reports, furthermore, physical violations against women took centre stage, as the above statistics show. In the first report in particular, *Women, Politics and the Zimbabwean Crisis*, (RAU et al,

2010a), which was based upon the survey, violence was central. In this report, six tables of data concerned with demographics (geographical distribution; age; marital status; education; religion and ethnic affiliation) were presented, followed by a further fifteen tables of data concerned with four broad categories of elections, violations, peace and the transitional government. All four categories devoted some space to statistical consideration of violence. Of the fifteen tables presented across the categories, five were concerned entirely with data on incidents of political violence, including politically motivated rape, and another three addressed violence in some way (such as a single column within a table on the Inclusive Government's ability to deliver being devoted to personal security). More than half of the fifteen data tables concerned physical violations against women (see Appendix D for examples of tables).

The core of the first report lay in numeric data, providing the necessary scale; the second, although still based upon the numbers presented in the first, drew in more qualitative commentary and in so doing produced intensity. Instead of being structured around tables of numeric data, the report was based upon quotations that spoke to that data. For example, in response to 52% of women in the survey stating they had been victims of violence, focus group attendees were asked both for their opinions on this statistic, and for their own definitions of violence. The quotes reproduced in the report invoke both a depth of understanding that is missing from the bare numbers, and an emotional valence. For example:

Everything was centred on women. Say if my husband was involved in politics even if I wasn't I was affected in a certain way because if they came and didn't find my husband I ended up being raped. And if my son or my daughter, my mother or even my grandmother was involved I ended up being victimised. So the whole politics was centred on women.

(Quoted in RAU et al, 2010b:11)

And

Assault is physical when a woman is hit with a closed fist and raped whereas torture can also be emotional abuse, where women are made to live under fear of the perpetrators. For example they are told to avail themselves or something will be done to them. Torture is also a planned attack on the emotions of women.

(ibid)

Aside from providing emotionally haunting images of closed fists and political rape, the quotes also illustrate one of the dangers of relying upon the collation of data in terms of predefined categories: what respondents understand the categories to mean may not be the same as legal

definitions. 'Torture' in the second quote refers to emotional abuse and fear; this is a different definition than that used in the UN Convention Against Torture.⁸⁶

The emotivity invoked in the report was not limited to the narratives of respondents: the report also drew in the subjective emotional response of Munashe Makaronda, a young woman who, although not a staff member of the organisation, attended some of the focus groups and transcribed conversations. The report opens with a poem she wrote about the relationship between men, women and politics in Zimbabwe after listening to women speak at focus groups. The title of the report, *When the going gets tough, the man gets going*, is drawn from her poem:

...Because of you...
Many of us have lost our pride and dignity because of you
Many of us have lost all we had because of you
Families have been destroyed because of you
Hearts have been broken because of you
Lives have ended because of you
Yet you still continue to say that you're needed
Needed for what?
More destruction?
More heartbreak?
You're the one who says your job is to take care of women
Yet you're the first one to run when problems surface
When the going gets tough the man gets going!
Because of you, my child has no future
Because of you, my sister has AIDS
Because of you, my mother is scarred for life,
And because of you
I cannot bear to look at my own reflection in the mirror

(Munashe Makaronda, cited in RAU et al, 2010:2)

This text is a far cry from the bare numbers presented in data tables. It illustrates a different means of presenting of information about rights violations.

The social life of rights reports begins with knowledge being ordered in such structured ways.

⁸⁶ "Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."(UN Convention Against Torture, 1984:Article 1)

Koptyoff (1986) argues that commodities are not only materially produced as things, but are “culturally marked” as being a certain kind of thing; the process of structuring rights report outlined above is another form of cultural production, where reports are marked in recognisable ways such that they are, in Foucauldian terms, recognised as emanating from a “legitimate perspective”(Foucault, 1977:199) within the discourse. Koptyoff (1986:64) further argued that things can be followed via their “cultural biographies”. The idea of a cultural biography is centred on the chain of events that a material object follows during its social lifetime, from production through to its eventual end. Cultural biographies begin when objects are produced, before they circulate, and it is this process that I have traced so far. Once produced and legitimised, however, Zimbabwean rights reports are distributed: as Chido noted above, the information has to ‘get out there.’ It is to this aspect of the texts’ social lives that I now turn.

Circuits of distribution

Much of the work here is about information: we share the stories of what is happening here [in Zimbabwe], the evidence of violations this week, the outcomes of court cases that week, with our colleagues at home and in other parts of the world. We get information on violators out, and we store it outside of Zimbabwe. And we look to other parts of the world for inspiration, for jurisprudence, for ideas. There is communication back and forth, back and forth. Like everyone else much of our day is spent on email.

Interview with a Zimbabwean human rights lawyer.

Reports can be considered through a similar lens as was applied to commodities in Appadurai’s (ed) *The Social life of Things*, in that the conduits of exchange and circulation are based in the political realm:

Focusing on the forms or functions of exchange makes it possible to argue that what creates the link between exchange and value is politics, construed broadly. This argument... justifies the conceit that commodities, like persons, have social lives (Appadurai 1986:3).

As Wilson and Brown (2009) note, information is presented in reports as a means of transforming knowledge about a particular situation into humanitarian or political action. The value of reports is accessed through movement; to be effective in bringing about political action, reports must circulate among other rights institutions, state-based institutions (both locally and nationally), academics, legal practitioners and the general public. Although nation-states may ratify international rights treaties, there is often a gap between policy and practice. Hafner-Burton and Tsutsui (2005) argue that in the face of this gap, civil society organisations play an

important role in pushing for the realisation of rights. Their quantitative study, which utilised time-series analyses of human rights practices from 1976 to 1999 and is based on data drawn from around the globe, examined whether state linkages to NGOs affected human rights behaviour. Hafner-Burton and Tsustui found that while the ratification of treaties did not automatically translate into government adherence to human rights norms,

linkage to global civil society improves human rights practices. Even though treaties often do not directly contribute to improvement in practice, the norms codified in these treaties are spread through NGOs that strategically leverage the human rights legal regime to pressure governments to change their human rights behavior (Hafner-Burton and Tsustui, 2005:1399).

This is the kind of result that rights organisations hope for in producing knowledge about the situation of rights adherence or violation ‘on the ground.’ Once reports are written, the finished products need to circulate in order for them to spread information and potentially bring about change; in the Zimbabwean case, informants continually stressed the necessity of reports moving both internally and across national borders. The following quote from a rights NGO practitioner in Zimbabwe illustrates,

We have to get this both to the government, and outside the country. Internally, it’s important that the state cannot say they don’t know what is happening at somewhere like a youth militia camp, for example. We make sure they know; we make sure everyone knows that this camp is being run by the police or the army or whatever. Because there must be accountability. We know this country...we have a history here of politicians pretending that they knew nothing, that they didn’t give the orders, that this or that atrocity had nothing to do with state structures.

So that’s one thing. But the state is not enough. They’re not making any changes any time soon, the violence is continuing. So we need pressure to come from outside also: from SADC countries and from further afield. So reports are sent to other governments and to the people who are involved in mediating Zimbabwe’s political crisis; and to international organisations. And slowly, slowly, the pressure builds. It’s like the end of Apartheid: for that to happen, people had to fight the system from inside the country. But there also had to be international pressure. It’s not enough to have one or the other. You need both.

As the second vignette with which I opened this chapter showed, the movement of data and written reports out of Zimbabwe used to be difficult, involving the covert physical movement of actual documents or electronic storage devices out of the country, such that in 2002 a friend smuggled electronic documents out of the country in a flashdrive disguised as a pen. Informants

indicated that at that point in time, providing information generated by local NGOs to the state could have resulted in their (illegal) detention. In the build up to the 2005 and 2008 elections, the state went so far as to ban NGOs from operating (Ndlovu, 2012). Although the state justified this as a means of preventing Western infiltration, the action was widely understood by rights activists to be an attempt to maintain control of the country and silence opposition to state policy and violence. Political conditions under the GPA, however, worked to ensure that organisations were able to overtly publish their findings inside and out of the country when I conducted fieldwork in 2010, and even to present their findings to government officials when relevant.

Nonetheless, sharing reports around the country still carried some challenges. At the focus groups, for example, the women who attended were given copies of *Women, Politics and the Zimbabwean Crisis*, which most took back with them to their areas of origin (both rural and urban). The organisers of the focus groups, however, were legitimately concerned that carrying such reports might be dangerous to the women. By carrying information about state violence, there was a possibility they could be targeted by state or non-state actors (the police or ‘party supporters’ for example) in their home towns or as they travelled. Each separate focus group discussed the likelihood of this, and at all of those that I was present at, most women decided nonetheless that taking copies was worth it. Women emphasised that information such as this was important to take back to their communities: in one focus group participant’s words, “People have not seen numbers like this before. They do not know that this is happening everywhere; it would be good for them to see it on paper like this.”⁸⁷ Furthermore, their decisions were based on a nuanced analysis of political conditions as they stood at that point in time: one woman commented, “this would not be a good thing to carry in an election year, but for now I think it is safe, politics is not so bad at the moment.”

Sharing reports and findings with the general Zimbabwean public can still be complicated, then, but the advent of new technologies has worked to ensure that sharing it with international and national organisations and individuals with internet access has become much simpler than previously. Rights organisations in Zimbabwe today circulate their work electronically, and reports can immediately become available in numerous different spaces. The RAU reports on women became mobile as soon as they were complete, initially circulated amongst RAU’s

⁸⁷ The statistical data collected by rights group thus carried relevance for the women, even without the inclusion of more qualitative data: such numerical data does carry weight.

contacts via email. This mailing list goes out to over 400 addresses: the majority are those of local organisations (both governmental and non-governmental), but reports are also sent to, in the words of a RAU staff member, “international governments, international organisations, regional organisations, and a large number of individuals.” RAU reports are also increasingly picked up by the local media, with Zimbabwean newspapers *The Independent* and *The Zimbabwean* reporting on RAU’s findings. In addition to circulation via mailing lists, reports are available on the organisation’s website for downloading. The organisation’s data on the number of ‘hits’ (i.e. the number of times material was accessed) in 2012 on each of the two reports discussed here are as follows (previous data was not available):

Table 1: Number of hits of two rights reports, 2012.

Report Title	No. of hits: May	No of hits: July	No. of hits: Aug	No. of hits: Sept	No. of hits: Oct	Total hits from available data 2012
<i>Women, Politics and the Zimbabwe Crisis</i>	64	110	180	459	940	1753
<i>“When the going gets tough the man gets going!”</i>	648	696	759	864	949	3916

Data here is from 2012: reports continue to be mobile and to circulate after they are first written and released. Over a period of six months, more than two years after it was released, the first, statistics based report was accessed 1753 times, whilst the second, statistical and qualitative report was accessed 3916 times. Despite the apparent value of numbers, it is the qualitative material that is most frequently accessed. Each month the number of hits rises: this may be due to the fact that RAU’s website is fairly new and is becoming increasingly well-known as a source of information on the Zimbabwean politico-legal situation. Interestingly, the organisation has also started writing about rights using a different type of textual format, blogs.⁸⁸ RAU’s blogs are written by staff members and provide more personal reflections on various issues concerning

⁸⁸Blogs, shortened from weblog, refer to often personal online journal entries intended for public consumption.

Zimbabwean politics and governance, allowing rights advocacy workers to move beyond the conventional bounds of the discourse if they wish.

In such ways do the reports generated by organisations such as RAU travel with the aim of bringing about political change, rights adherence, and accountability. Words and numbers about the Zimbabwean situation are mobile. Goodale (2009b:91) has noted that “what was important about the rise of transnational rights networks was the fact that they interconnected both above and below the radar of a (formal) international human rights system”: in other words, that the social life of rights exists beyond international courts and treaties in other, less formally legal spaces, such as those provided by rights monitoring and advocacy organisations. Civil society plays a large role in the institutional structure of rights discourses. Goodale draws on Eleanor Roosevelt, an early proponent of rights, who envisioned “a curious grapevine” of rights that would allow for information to “seep in even when governments are not so anxious for it” (Roosevelt, in Goodale, 2009b:93). Rights talk and texts traverse this ‘curious grapevine’, allowing for the movement of rights discourses around the globe. Such movement is one of the products of globalisation, as is the increasing movement of people around the world. National borders, however, are less easily permeable for people than they are for texts: it is to this that I now turn.

Mobile persons

To be a Zimbabwean is to live in a different country to your sister or your brother or your father or your grandmother; or all of them. In a different country to your closest friends. I don’t think there is a town in the world where you wouldn’t find a Zimbabwean connection. We are everywhere, we are stretched across the world. There is no family that does not have someone outside the country supporting them. Politics has made us into world travellers, but it hasn’t been easy. *You can’t just step from one place to another.*

Excerpt from an interview with Tsitsi, a 24 year old Shona woman.

Emphasis mine.

The South African town of Musina is the country’s most Northern; situated a few kilometres away from the Limpopo River and the border post between Zimbabwe and South Africa, it is hot in summer, warm in winter, and dry and dusty for most of the year; a town whose potholed streets and baobab trees are witness to a steady stream of traffic between the two countries. The main street features a mixture of low-end national food and clothing chain stores such as

Shoprite Checkers and Pep, and smaller local businesses selling food, bags, and clothing advertised at ‘discount’ prices. On the first morning of my most recent visit,⁸⁹ in January 2011, the town was already busy at 8 am, and the heat was steadily rising. People loaded Zimbabwean cars with goods from wholesale shops, whilst buses arrived from the border and stopped to refuel before continuing along the N1 towards Johannesburg. As I watched from the coffee shop where I was beginning my day, a middle aged white man arrived in a Toyota Hilux and parked temporarily on the side of the road outside a hardware store. Four black men jumped into the back of his truck, settling themselves in amongst sacks of fertilizer. “I need 5 today,” the white man said, “can you call someone to come?” One of the other men called out in chiShona, and within seconds a fifth day labourer had arrived and they set off down the road away from the town, towards the surrounding farmland.

On a Tuesday morning in January, then, Musina, which lies in the Vhembe district of Limpopo province (one of the poorer provinces in South Africa) was a bustling centre of trade and movement. The most active section of the main street, however, was not busy as a result of trade or labour: rather, the activity occurred outside the Department of Home Affairs building which houses the Musina Refugee Reception Office. Here, a long queue populated entirely by black men, women and children wound its way out of the property onto the street and around the corner, while the traffic island opposite the building had been colonized by a series of white tents bearing the *Médicins Sans Frontières*⁹⁰ (MSF) logo.

Even a few minutes of observation showed Musina to be a space of transnational movement and migration: a place of flow but also of blockage, a place of mobility and of attempts at state control over that mobility. I was in Musina in order to continue my fieldwork on how ideas of human rights were being mobilised in response to the Zimbabwean political and economic situation; as advocated by George Marcus’s seminal review of the rise of multi-sited ethnography

⁸⁹ As a Zimbabwean living and working in South Africa, I have traversed the Musina/Beitbridge border numerous times in my life. Five of these visits have occurred while I have been engaged in ethnographic work on Zimbabwean migration; two during my Masters degree, and three during my PhD. On all except the last of these occasions, however, I have merely passed through the border posts— not necessarily a rapid process, as queues and procedures have taken me up to 12 hours in some cases, but not exactly long term research. In January 2011 however I spent a week in Musina, based at the International Organisation for Migration (IOM) office (as described in Chapter One) conducting interviews with migrants and with NGO staff in the town, and engaged in participant observation in NGOs (IOM, Musina Legal Advice Office; Migrants Health Forum) and migrant shelters. Data in this chapter is drawn from this and from previous visits to the border, as well as from interviews with migrants in Cape Town who had travelled across the Limpopo.

⁹⁰ *Médicins Sans Frontières*, or *Doctors Without Borders*, is an international medical humanitarian foundation that provides non-partisan medical care in more than 60 countries globally, usually under conditions of conflict or man-made or natural disasters. MSF began running an operation of mobile clinics in Musina in 2007, in response to the “specific health needs of Zimbabweans in South Africa” (MSF, 2009:3) and has not yet left.

(Marcus, 1995), I was following the people. As I drank my coffee on my first morning in Musina, my cell phone beeped to indicate the arrival of a new email in my inbox. It was the latest report from the Zimbabwe Human Rights NGO Forum, a piece detailing the current state of the GPA and how various legal provisions had been violated over the preceding six months. I glanced from cell phone to the queue of asylum seekers, aware that I was experiencing a visible manifestation of one of the paradoxes of globalisation: whilst words move across national borders with increasing ease,⁹¹ people struggle.

In January 2011, there were many other Zimbabweans newly arrived in South Africa who were not in the queue for Home Affairs— who, having crossed illegally, had decided to press on to other parts of the country and either seek asylum or simply remain in the country without documentation. Zimbabweans who arrived in the country after 31 December 2010 were too late to apply for the Special Dispensation Process which had been in place for the previous six months, although a moratorium on deportations of Zimbabweans was still in place.⁹² Nonetheless, the borderlands between Southern Zimbabwe and Northern South Africa remained busy: both the official bridge across the country and the unofficial trails through the bush on either side of the Limpopo saw a lot of traffic as Zimbabweans sought a different life in South Africa. Migration from Zimbabwe continued even with the slight improvements that Zimbabwe has seen under the Inclusive Government; as noted above, it is estimated that around 1 – 1.5 million Zimbabweans are resident in South Africa (FMSP, 2010). Regardless of how one crosses the border, the movement of people is usually controlled in some way: either by the slow bureaucracy of legal travel, which dictates where, when and how persons may move between the two spaces, or by the extra-legal but nonetheless structured standards of the variety of ‘industries’ that have grown up as a means of circumventing South Africa’s immigration laws (Vigneswaran, 2007). These frequently used illegal routes often bypass the official border; in addition to considering the borders themselves, then, this ethnographic analysis is located in the areas of bush on either side of the Limpopo River. This is the borderland: a liminal space neither Zimbabwe nor South Africa, a *de facto* no man’s land that extends beyond *de jure* no man’s land boundaries. Whilst the borders’ legal boundaries are clear cut, the subjectively experienced borderlands have different boundaries. This borderland, spoken of as “the bush”, is far removed

⁹¹ Such as was seen during the so-called 2011 ‘facebook revolutions’ in Egypt and Tunisia

⁹² In April 2009 the South African state undertook to ‘regularise’ the position of the very high numbers of undocumented Zimbabweans in the country by placing a moratorium on deportations, and implementing a nationwide procedure, the Zimbabwean Documentation Process (ZDP) which aimed to allow Zimbabweans to apply for Special Dispensation Permits to work, study and conduct business in South Africa (Passop, 2011). Prior to the implementation of this moratorium in April 2009, around 200 000 Zimbabweans were being deported from South Africa per year (IRIN, 2011).

from the norms of daily life –removed from those most basic norms of access to food, shelter and sleep; removed from technological norms such as (for some) electricity and cell phone communication; and, ultimately, often removed from the norms of moral or legal behaviour, in that they are spaces both of illegality through the very act of mobility, and, often, spaces of violence. Before considering an ethnographic case study of women traversing these borderlands, a brief examination of the national and transnational legal apparatus that are supposed to be at work in such spaces is necessary.

Women and Law in the Borderlands

The legal framework of rights that apply to Zimbabwean women crossing the border is complex. Laws pertaining to women exist at international and national levels. There are international provisions concerned with the security of persons, and that are specifically concerned with women, that apply to women in both Zimbabwe and South Africa, and to women traversing the national legal systems of Zimbabwe and South Africa.⁹³ Rights instruments on this level are intended to be guidelines for the behaviour of the state towards its citizens, and are generally far removed from everyday knowledge of women seeking entry into South Africa. International treaties bear little relevance to women's lived experiences in the borderlands, where (in)equality is formulated not in terms of the law but in terms of the complex lived negotiations of movement through the bush.

In addition, both Zimbabwean and South African laws are applicable at different points in the journey. On Zimbabwean soil, the laws of the country apply: in theory, these include freedom of movement, speech and association, although in reality these freedoms have increasingly become constrained in Zimbabwe with the implementation of the Public Order and Security Act (POSA) (see Chapter One). Women's rights, including the right to bodily integrity and to freedom from sexual harm are also protected– the Sexual Offences Act (2001), for example, finds liable any person who engages in non-consensual sexual acts, including acts committed within marriage. As seen in Chapter Three, however, politically motivated rape during the 2008 elections was common and largely not prosecuted (see RAU and ZADHR, 2010). Marital rape is infrequently reported to the authorities and, regardless of the law, such reports are often considered

⁹³ Both countries have endorsed the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Both Zimbabwe and South Africa have been critiqued for their partial implementation of CEDAW. (Zimbabwe Women Lawyer's Association, 2012; The Commission for Gender Equality, 2010.)

‘invalid’.⁹⁴ There is a considerable gap between the laws applicable to women and the implementation of such laws.

Once on South African soil, Zimbabweans, regardless of their legal status in the country, are protected by the South African Constitution, which is applicable to all people within the country regardless of citizenship. This guarantees the rights to life, dignity, equality before the law, administrative justice, basic education, basic health care, and labour rights. South African rights law encodes equal rights and places an emphasis on the protection of (male and female) bodies from violence more explicitly than does Zimbabwean law. The right to freedom from violence is an innovation in the 1996 Bill of Rights. Beyond these basic rights, however, the rights of migrants may be differentiated from those of South African citizens. Polzer (2010:4) notes that

There are debates within South African policy making and jurisprudence over the extent to which various categories of non-citizens are entitled to other rights. With notable exceptions, few non-citizens are entitled to social grants, public housing, or other direct state support.

Finally, in traversing between Zimbabwean and South Africa, immigration law applies to women. Zimbabwean passport holders are able to enter the country without a visa as long as their visit is less than 90 days long (Department of Home Affairs website, 2012). To access a work or study permit, Zimbabweans must apply at the South African High Commission in Harare, providing stringent documentation of their available funds, health background, and letters of acceptance from institutions of study or employers. The 2002 Immigration Act provides no permits for job seekers (Polzer, 2010). The Zimbabwean Dispensation Project (ZDP) as described above offered another avenue to legalisation until December 2010; this, too, however, was reliant upon an applicant already having a job in South Africa (Passop, 2011). Finally, the Refugee Act of 1998 “has a policy of self-settlement and self-sufficiency for asylum seekers and refugees, including the right to work and the right to access public health care and education services” (Polzer, 2010: 4); accessing refugee status begins with an application for asylum, which results in the routine generation of a temporary asylum seeking permit, followed by a series of interviews after which refugee status is either granted or denied (see Chapter Five for a detailed discussion of the process of application). The rights of refugees are also outlined in a 1951 United Nations

⁹⁴ The Zimbabwean newspaper *Newsday* thus cites legal practitioner, Retlaw Matorwa as “question[ing] the rationality of marital rape ‘in a situation where the central tenet of marriage is sex’ ” (Newsday editorial, July 9, 2010)

Convention and the African Union's Convention on Refugees, both of which South Africa has signed.

Movement in Practice

There are multiple legal dimensions at play when women move between Zimbabwe and South Africa. A consideration of women's actual experiences of movement, however, highlights the gap between law and implementation and allows insight into the combined effects of patriarchy and illegality on mobile women. The realities of lack of access to passports within Zimbabwe (see Musarandega, 2009), and the difficulties of accessing visas for those who did have passports, ensured that many of the migrants (both male and female) that I interviewed in Musina and in the Western Cape had been unable to enter the country through official channels. Once here, most interlocutors who were without passports began the process of seeking asylum, for which a passport was not necessary. Others who did have passports and entered on 90 day visas remained in the country illegally, or sought a ZDP permit, which required a passport or travel documents.

The tables below are drawn from the material provided in Appendix A. In the following section I draw on data from interviews conducted in the Western Cape and in Musina. I provide the details of both sets of participants here. I have not collated this into one table as the migrants interviewed in Musina were newly arrived and as such most were undocumented; a few had received a temporary Asylum Seeking Permit. This was different to migrants who had travelled as far as the Western Cape, who had been in the country for longer and mostly had documentation of some kind. Further, there are differences in employment patterns between newly arrived and more settled migrants. It is thus useful to consider the demographics separately:

Table 2: Zimbabwean Migrants – In-depth interviews conducted (Western Cape)(n= 35)

Gender	Age (av.)	Time in SA (av.)	Legal Status*				Employment Status*		
			U	AS	R	ZDP	F	I	U
Men (n= 15)	29	3 years 10 months	1	8	1	5	5	9	1
Women (n= 20)	27	4 years 2 months	2	12	2	4	9	6	5

Legal Status and Employment Status: *U= undocumented; AS = asylum seeking permit; R = refugee permit; ZDP = Zimbabwean Dispensation Project permit. F = formally employed; I = informally employed; U = unemployed.

An Asylum Seeking Permit does not insure that the holder will be granted asylum or the right to stay in South Africa; it is a temporary permit routinely generated upon application. A refugee permit is permanent; the holder may stay in the country indefinitely. ZDP permits allow the bearer to work in South Africa for a maximum of four years.

Table 3: Zimbabwean migrants – In-depth Interviews Conducted (Musina) (n = 10)

Gender	Age (av.)	Time in SA (av)	Legal Status*				Employment status		
			U	AS	R	ZDP	F	I	U
Men (n= 4)	32	1 month	3	1	0	0	0	1	3
Women (n= 6)	25	3 weeks	5	1	0	0	0	2	4

The above tables show newly arrived migrants in Musina to either be undocumented or to have received a temporary asylum seeking permit from the Musina Refugee Reception Office; none had received refugee status or a ZDP work permit. The majority were undocumented; though the sample is very small, this reflects the length of time migrants had been in the country, which did not allow for time to access Home Affairs. Recent large scale research conducted by a team of researchers at the African Centre for Migration and Cities suggests that Zimbabwean migrants spend their time in Musina awaiting asylum seeker documentation; ergo, many are

undocumented for the duration of their stay (Elphick and Amit, 2012). The very small sample of migrants I interviewed thus reflects a larger trend.

Most migrants in the Western Cape had been able to access documentation of some kind, although again for the majority this was a temporary asylum seeking permit routinely generated on application.⁹⁵ Newly arrived migrants in Musina were mainly unemployed; all but two of the migrants I interviewed did not intend to stay in Musina but were awaiting documents before moving to bigger cities in search of work. Those who intended to stay in Musina were informal sector cross-border traders who intended to return to Zimbabwe immediately having bought the necessary goods. Again, these trends reflect the findings generated by the African Centre for Migration and Cities team (ibid).

The tables below indicate the avenues by which informants interviewed in the Western Cape and Musina entered South Africa. Again, I separate the two regions here as the Musina data reflected entirely illegal entry whilst the Western Cape data did not. This is most likely due to Musina interviews being conducted at shelters in the town: migrants who had entered legally would have already moved on.

Table 4: Modes of entry of Zimbabwean migrants interviewed in the Western Cape (n =35)

Gender	Modes of Entry			
	Work study visa granted	90 day visa		Unofficial entry
		Within legal limit	Outstayed legal limit	
Men (n= 15)	0	1	4	10
Women (n= 20)	0	2	4	14

⁹⁵ The ramifications of this with regards to the use of rights discourses are discussed further in Chapter Five

Table 5: Modes of Entry of Zimbabwean Migrants Interviewed in Musina

Gender	Modes of Entry			
	Work study visa granted	90 day visa		Unofficial entry
		Within legal limit	Outstayed legal limit	
Men (n=4)	0	0	0	4
Women (n=6)	0	0	0	6

Table 4 shows only six of twenty-five respondents to have entered the country legally, while Table 5 shows no legal entries. The majority of people I interviewed thus did not enter the country via official routes, coming instead through ‘the bush’ surrounding Beitbridge/Musina.⁹⁶ This finding is also in keeping with the trends presented in the African Centre for Migration and Cities report (ibid.) Numbers, however, as discussed above, can only tell part of the story: let us turn to three case studies in order to further examine movement.

Rutendo and Anna’s stories, and an account of an absence of voice

When I first arrived in Musina, I was taken on a tour of the town by IOM. One of the places to which we went was a women’s shelter that catered largely to newly arrived migrants while they waited for their documents to be processed or attempted to find work and save enough money to move on to other parts of the country. It was here that I met Rutendo, with whose story I begin. I present her migration history in detail as a description of the life events that had eventuated in our meeting in Musina allow for an unpacking of the gap between women’s experiences and the legal rights they are supposedly afforded: furthermore, while Rutendo’s story is of course unique, elements of it echo the experiences of other Zimbabwean women with whom I spent time, and speak to the findings on the prevalence of violence during cross-border migration between Zimbabwe and South Africa presented by the Forced Migration Studies Program (2009; 2010) and Elphick and Amit (2012). Rutendo’s story thus stands as an ethnographic illustration, based in a register of intensity, of the wider scale of the illegality,

⁹⁶ Or, in the case of nine migrants interviewed in the Western Cape, via other illegal routes through Botswana.

uncertainty and danger experienced by women when crossing the Zimbabwe/South Africa border.

Rutendo was 22 years old when we met in 2011. She had spent most of her childhood in a rural area of Zimbabwe, attending school up until 2001, when, at the age of twelve she completed Grade Five (two years short of the end of primary school). In 2001 money had become too scarce for Rutendo to attend school: the family found the funds to send her two brothers but withdrew her and her older sister. She stayed at home with her mother for a time, working with her on their plot of land: they managed to grow enough vegetables and maize for subsistence, and sold their maize surplus each year. Her father had worked in town since she was a small child. He would return to the area where they lived at least once a year, but spent most of his time as a migrant labourer elsewhere in Zimbabwe. In 2002, following a change in the family's circumstances, her mother went to town to visit her father:

When she came back she said that he had said I must go to town to find work. So I went on a bus to Masvingo where he worked. He found me a job as a maid for this man and his wife there. At first it was hard: I didn't know how to do the things I was supposed to, cleaning and ironing and those things. But it was easy to learn. And I knew how to cook sadza so that was easy. I stayed there for four years, until I was 17. I sent most of the money I earned to my family so that my brothers could go to school. Things got very tight at that time...there was inflation and shortages all the time.⁹⁷ Sometimes my salary meant nothing by the time my father tried to pay things; sometimes there was no cash to pay me so I didn't get paid. But it was better to have a job so I stayed.

When I was in Masvingo I met a man...he was also working in the same area, and I liked him, you know? He worked as a gardener but he also did things on the side, selling things here and there, so he had extra money. He would buy me things, nice food, nice things. Times were very hard, then. There was not much food around. I knew he already had a wife and a child living elsewhere, but for a while I thought about being a small house.⁹⁸ It was necessary at that time, you know? It was very hard to be alone and have enough food. In the end though he didn't have enough for two wives. So that was the end of that.

⁹⁷ The economic crisis in Zimbabwe resulted in a period of hyperinflation (Hanke, 2008). In combination with the collapse of commercial farming and other industries, this resulted in widespread shortages of food, goods and even cash money. In 2009, with the signing of the GPA, the Zimbabwe dollar was discontinued and hyperinflation came to an end, though shortages remained.

⁹⁸ Chingandu (2007:1) defines small houses as "a form of concurrent relationship in which a person is having regular sexual relations with another person, while at the same time continuing to have sex with their current primary sexual partner. In this case the primary sexual partner is the legal wife or the partner they live with, even though not legally married. In the simplest terms a small house is defined by many Zimbabweans as an informal, long-term, secret sexual relationship with another woman who is not a man's legal wife, carried on in a house that is a smaller version of the man's own home in another residential suburb."

Rutendo lost her domestic work job in late 2006: the family for whom she worked could no longer afford her salary. As she had been a live-in employee, she also lost her accommodation. She tried for a time to find formal work in Masvingo, but ended up, like the majority of Zimbabweans, working in the informal economy, buying and re-selling small items such as sugar, oil, or vegetables for small profits.⁹⁹

So, yes, that was from 2006. It was after *Murambatsvina*¹⁰⁰ but still we had to be careful...the police could come and confiscate your goods, that happened a lot. It was a way for them to make money. At that time there was very little in the shops, but Masvingo is not that far from the border, only a few hours by bus. So a lot of women were doing crossings to buy things and then bringing them back...I bought from those people and then sold things on. By 2007 and 2008, things got very, very tight though. The country was crazy – no food, no water, no electricity, no jobs. Nobody had money for the things I was selling. That was when people started doing desperate things, crime, or selling sex, you know? People had to survive. And then 2008 was elections, so it started to get worrying with politics. Rallies and ZANU-PF youths and all of that. I had to go to some rallies; I had a [ZANU-PF] party card because it was safe that way, especially when I went to see my family, I had to have a card then. Otherwise they could accuse you of being a sellout or MDC and arrest you or beat you. So I was quite lucky because I was never hassled during elections, but other people were.

In 2008, Rutendo decided to cross to South Africa for the first time. Once again, her younger brother's education was a motivating factor:

By then Batsirai was writing ZJC and I wanted him to go on to O level.¹⁰¹ But I was making no money, my father was making no money. We needed forex [foreign currency], it was the only way. So I thought to go to South Africa. I got a bus to Beitbridge that first time with some other women I knew. I thought they were all cross-border traders, but then when we got to Beitbridge two of them went to talk to the truck drivers and I realized they were prostitutes. I was very afraid that all of the women I was with were prostitutes, that I wasn't with people who knew how to trade goods across. But it was only that two. The other women showed me who to pay to go across...that first time, I was bit frightened but not too much. I didn't know enough to be frightened. And we were fine, we walked all night but we made it across. I had some money saved to buy things and I got sadza, because everyone needs that food. We did it together with the other women, and paid a man to take it back across in his truck. The business had worked. So I stayed at home for a while after that and then came back...I became a cross border trader.

⁹⁹ Formal unemployment levels stood at 70% by 2004 (Solidarity Peace Trust, 2004), a figure which increased over the ensuing years (Jones, 2010). In 1999, even before the worst of the economic meltdown, Zimbabwe's informal economy stood at 59.4% of the GDP (Schneider, 2002:5).

¹⁰⁰ See Chapter One

¹⁰¹ ZJC refers to the Zimbabwe Junior Certificate, written at the end of the second year of high school, whilst O(rdinary) level exams occur at the end of four years of high school education.

Although Masvingo is the closest large city to the Beitbridge border, it is still a lengthy journey of approximately 250 kilometres. In order to travel this distance, Rutendo had to save enough money for a bus ticket at a time when the value of money deteriorated daily and when petrol was only intermittently available. Becoming a cross border trader, then, was no simple task. Although the particular set of economic pressures at work for Rutendo were specific to the period of hyperinflation, cross border trading has a longer history in Zimbabwe: it is work that is usually undertaken by women and is used to supplement family incomes (IOM, 2010). The first time Rutendo crossed she had done so illegally: the majority of traders she knew, however, used the formal border system. In order to do so, she knew she would need a passport. Between 2008 and 2011, Rutendo continued her work as an (illegal) cross border trader whilst waiting for her passport application to be processed in Zimbabwe:

So, the money I made from trading went on three things: food, transport and a place to stay for me; school for my brothers; and so, so much of it to the passport office. I needed to pay this guy for forms, that guy to hand the forms in, this other guy to make sure they were processed. It took a long, long time and cost a lot of money. But now I have my passport! Now this last time I came across legally! But it was too late for the business permit I wanted, so I am applying for asylum. But I really wanted to be able to get a ZDP permit.

The long delays in accessing documentation within Zimbabwe meant that Rutendo had missed the deadline for the Special Dispensation Project of 31 December 2010 – by only ten days or so. During the long wait for a passport, she continued to cross the border illegally multiple times. Her experiences provide an insight into the hazards women face in crossing the border:

There were lots of times that were not as easy as that first one. You know, you have to pay people to take you across if you go illegally, or else you will probably be robbed. Whilst I went across the border in the past, I was robbed a few times, even when I was travelling with men I had paid. It is especially hard to be a woman and go across, because you are not just afraid of losing your money but also of whether you will be hurt or raped. These things happen all of the time. It is a frightening place to be in, you usually cross at night and you have to deal with the river, the bush, and the other people: guards, or *guma gumas* or *malayitshas*.¹⁰² It is not safe. Definitely not safe for women. Look around this shelter: most of these women here have just come across for the first time. I can tell because of the shock in their faces. Some of these women have seen things while crossing that they did not expect...some of these women have had things happen to them that they will never forget. But if you have no passport or no visa and you need

¹⁰² *Malayitshas* and *guma gumas* are terms for people who are paid to facilitate crossings. As Rutendo's words attest they are not generally trusted.

to be here because there's no food, or money, or you need to get to a hospital and there's no medicine in Zimbabwe, what else must you do? You cross, by yourself or with your children. And you just put up with whatever happens to you. Because there isn't another thing for you to do.

Whilst narrating this part of her story, Rutendo gestured towards the main building of the shelter where several women were sitting on benches, waiting and talking, whiling away the day. One woman in particular was on both of our minds: a young woman whose faded clothing and unstyled hair showed her to be from a rural region in Zimbabwe, who had sat silently on her section of bench when I was introduced to the women in the room as a researcher. Whilst the rest of us had shared conversation, and some women had volunteered to speak to me privately about their life histories, this woman had remained silent. Across her forehead and into her hairline was a deep cut that was slowly healing – “It looks to me like a panga,” Rutendo had later said, meaning she thought the wound had been inflicted by a bladed farm implement similar to a machete. The woman sat hunched over, separating herself from the others in the shelter. I spoke to the manager of the shelter about her: she had been taken to the local clinic and treated for the wound on her head. What about counselling, I asked? Yes: she was going back for counselling in a few days. “But there is not much you can do,” said the manager, “we see this a lot. It is heartbreaking. But it just takes time. She will be okay. It just takes time.”

It seemed to me that such words were said for my comfort, and for the manager's own. We could not know exactly what had happened, or what it would ‘take’ for the woman to recover from what she had experienced when crossing the border. Rutendo and I both suspected she had been raped; the manager did not put this into words but the emotional tenor of her reaction to the woman suggested she thought the same. Other women in the shelter whom I interviewed also gestured to the experiences of the silent woman in the same way, though they too, like the manager, were oblique and did not use the word rape. Instead they said that they thought “it” had happened to her, or that they imagined she had been “treated badly when she crossed”. I interpreted this as referring not to the visible panga wound, which needed no act of imagining, but to less visible sexual violation. In the introduction to their collected volume *Hope Deferred: Narratives of Zimbabwean Lives*, which draws together a number of life stories told by Zimbabweans in their own words, Orner and Holmes (2010:23) note that,

The reader is invited to be aware of silences and omissions. To take responsibility for a bombing, to endure the shame of being raped, to admit that you weren't able to support your family – sometimes these things are too difficult to talk about directly. Zimbabwean English makes greater use of a general “you”, than,

for instance, American English does. *You take money for sex*, for example, can be a way to discuss something that “I” can’t quite own up to.

Although the women in the shelter and I thought we recognised the effects of rape in the woman’s withdrawal and silence, we did not name it. The very act of not naming, however, meant that we knew we were not talking about a beating or a robbery when we imagined what had happened to the silent woman. If that had been what we meant, we would have said it out loud. Rape was not named in a legal setting either: although the law recognises rape as a crime, in this instance it was not reported to any state or legal representatives. When I asked if the wounded woman had been to see the police in Musina to report a crime, the manager shook her head. “What we see here is if you try to report a crime from crossing the border, the police here say, that happened in Zimbabwe, we can’t do anything. We can go to the police station but nothing ever happens. That border is no man’s land. So why make that lady tell her story to some man at the police station, when she cannot even tell it to us?” In the manager’s opinion, there would be no point to such an act, only further cruelty.

Even for categories the law recognises, then, women’s experiences of violation may remain unspoken or the police may be considered ineffectual. I return to this below in considering the high incidence of sexual violence during border crossings versus the low rate of reportage of such crimes (Elphick and Amit, 2012). At this juncture, however, the figure of the silent woman left me wondering about those elements of experience that the law does not recognise that could also result in withdrawal and silence: severe homesickness, perhaps, or grief over the loss of kin. The legal framework cannot capture or account for violation of that kind. Border crossings, then, open people to many kinds of experiences which may be incommensurate with the laws intended to protect the vulnerable. The realities of the complex, lived negotiations of movement across the bush do not map easily onto the documents, statutes and acts that apply to such movement; nor are they translated well by the numbers and statistics about violation that form the backbone of rights reports. The emotional tenor of the experience of merely *watching* a wounded woman retreat from the world could not be captured on a data table and has proven very difficult to capture in words; whilst the subjective experience of the woman herself cannot be captured even in narrative. Translating experiences of violation into legal or other language is no simple task (Hastrup, 2001).

Before further unpacking the disjunctures between law and experience, let me turn to a final case study. I interviewed Anna in Cape Town nearly a year after she had entered the country illegally near Musina. I present the story in her own words as she told it to me.

The way I crossed...I don't think it was the best or the quickest. What happened was this. We arrived by bus to the Beitbridge garage quite late at night. There were some guys waiting there, the *guma gumas*, to take people across. I paid about half of the money I had with me to them. They took us in an old truck away from Beitbridge, but still in Zimbabwe, to some place in the middle of nowhere. It was just bush. There were maybe ten of us with them, some men but mostly women. We walked from the road into the bush in the dark: it was very quiet and frightening... I'm from town! I don't know the bush well! So we were avoiding thorns and walking silently. They threatened that if we made noise we would be found. After some time we reached the river, it was the dry season so we could swim across but of course there are still crocodiles, so that was also very frightening. But we made it across. By then it was almost morning, so we had to go fast fast through the bush on the other side to South Africa. Then the *guma gumas* went back across the river and we waited in the bush during the day for it to get dark again to travel at night. It was really, really hot. We had some water and food still. I saw that day that I didn't have any signal on my phone. I thought, you're in the bush now, in South Africa now. You have left Zimbabwe. Then that night we start to walk again, but soon some guys caught up with us. Everyone scattered and ran into the bush, but one woman who was carrying her baby couldn't run fast enough. They caught her and took all her money and possessions. Then they found some of the others of us who were hiding...they stole my money from me, took the trousers and shoes from some other guy who was with us. After they left we kept moving.

We travelled like that through the bush for three days...it was so hot in the day and cold at night; we were so dirty and hungry and thirsty. We had split up then, so it was me and another woman travelling together. We were lost. We were trying to head for a farm where her brother was working and we thought we could find work. In the bush, it is like you are removed from reality. Our hair was wild, our clothes were dirty and torn. Then we ran into some men...I think maybe we had been walking in circles because they say the thieves are close to the border but we had been walking for three days, three nights. We had nothing to give them, our stuff had already been stolen. But they were very violent towards us. They...you know. Both of us. We were raped.

After that, I just wanted to get to a town. To get away from the bush and to find a clinic. There was a village there, we were given food and water and they showed us how to get to the road to Musina. I didn't care about being illegal then: I didn't even know Zimbabweans weren't being deported, that was how little I knew before I crossed. We probably didn't need to hide in the bush for so long. We probably could have gone straight to Home Affairs in Musina once we were over the river. Anyway, I got back there to Musina. I went to the clinic and they treated me. I tried to go to the police but they said there was nothing they could do. They took a statement, and one from the clinic. But nothing ever happened. The other lady didn't come with me, she went to her brother. I don't know what

happened to her. I stayed in Musina for a while and then my uncle sent money for me to come to Cape Town.

Anna was working as a cleaner in a restaurant kitchen in Cape Town when I interviewed her; she had applied for refugee status but had not yet been called for an interview with a Refugee Status Determination Officer (see Chapter Five) and so had a temporary asylum seeking permit. She said that she was applying for refugee status on the grounds that she had experienced political violence in Zimbabwe, “but what happened to me there was loss of property. It was when I left, when I was crossing, that the worst thing happened to me. That’s what I am trying very hard to forget every day, not politics in Zimbabwe. I didn’t know that it would be so hard to come here. Maybe I should have stayed at home. But I am here now, so this is just the way it is.”

The disjuncture between law and experience

Rutendo’s narrative, the figure of the silent woman and Anna’s quiet resignation allow insight into the multiple failures of law in everyday life: insight into, in other words, the realities of the lived effects of patriarchy, violence and lack of access to documentation versus rights laws’ emphases on equality, security of the person, sexual rights, and the rights of the citizen. Rights laws constitute an ideal: in this instance, they are ideals that were seldom lived up to. For example, in Rutendo’s education history we see the dual effects of the structural violences of poverty and patriarchy. Unable to afford to send all their children to school, her parents and Rutendo herself chose to support her brothers, regardless of CEDAW’s idealised protection of the right to equal access to education. Instead of continuing her education, Rutendo entered the labour market at the (illegal) age of 13. As she grew older, patriarchy and poverty could be seen to impact upon the sexual choices she made, regardless of the sexual rights to which she could, in theory, lay claim. Women around her turned to prostitution in an increasingly constrained economic climate; Rutendo herself saw the economic advantages of being a ‘small house’. As the tensions of party politics impacted upon her daily life she took to carrying around a ZANU-PF party card in order that she might safely visit her family in the rural areas, despite her ostensible right to make unconstrained political choices. And despite her desire to carry out her cross border trade legally, she was unable to access a passport for almost four years, even with frequent bribes to officials. Rutendo’s case makes clear the structural inequalities that lie behind migration.

As regards border crossing itself, the above case studies again tell similar stories: of theft and violence; disorientation in crossing; and a lack of the usual order of daily life.¹⁰³ Bodies fill with adrenalin as one walks through the bush at night, or swims across a river. Clothing and hair begin to look and feel different; hunger and thirst take priority over other thoughts; technology stops working. Pangas might wound heads; and, after all other “stuff” has been taken by robbers, sexual and bodily integrity may be taken too. In the borderlands the right to shelter, food or healthcare cannot be accessed. And nor can the right to freedom from violence and to bodily integrity. Instead, women are deeply vulnerable.

The few stories I present here stand as examples of a wider trend. The narratives of border crossing presented by Orner and Holmes (2010) tell a similar story of disorientation and removal from the norms of everyday life. For example, after escaping from a Musina military base where he was held after being arrested for being in the country illegally, Oscar described his condition:

I was definitely looking like a border jumper. When I left home, I had this huge Afro. It was combed and had gel in it, but after four days my hair was full of grass. I didn't care anymore. When you leave, you think the travel is not going to be a problem: just bribe a few police officers, take one bus ride and then another until you get where you're going. But then you are in the wild bush and you have nothing: no phone, no food. Life is basic. All of a sudden you don't care much what people think about you. You just think about the next place where you are going to get food, get water.

(in Orner and Holmes, 2010: 371)

Further, the data collated by multiple researchers in Musina for Elphick and Amit's comprehensive 2012 report on sexual and gender-based violence (SGBV) show high incidences of violence against women that echo the stories told to me. Medicins Sans Frontiers (MSF) in Musina reported dealing with 20 to 30 cases of rape a month in 2012; over the course of 2010 they reported 253 cases, an average of 21 a month (Elphick and Amit, 2012:81). In addition to these cases, the Thuthuzela Care Centre in Musina reported another 134 cases of rape between July 2011 and July 2012 (ibid). The researchers stress that there is no doubt that these statistics do not capture the full extent of rape that occurs in border crossings. Elphick and Amit's research further indicated that

¹⁰³ I have argued elsewhere that political and economic decline in Zimbabwe impacted upon the shape of the everyday, such that the 'usual order' was at times disrupted (Morreira, 2010b; cf. Jones, 2010). Even against this background of uncertainty, however, interview material indicated that border crossings constituted a deeply disorienting experience.

Migrants who cross informally into South Africa have to traverse a poorly monitored 'bush' area between Zimbabwe and South Africa that is more than 20 kilometres wide and stretches along either side of the Limpopo River. Incidents of SGBV are common along this route. Criminal gangs or '*amagumagumas*' target migrants traveling both with and without smugglers or guides. They also sometimes pose as guides promising to show the way into South Africa for a fee, and then rob, assault, and sometime rape their clients once inside the bush.

The SGBV attacks include threats of sexual violence, gang rape, or compelled rape between companions or even family members. Pregnant woman are not spared from these sexual attacks. In some cases, children and partners have been forced to watch the rape of a relative or spouse. In addition, men are forced to rape sisters, mothers, or other family members, or face being raped by the *amagumagumas* if they do not comply.

(Elphick and Amit, 2012:78-9).

The area of 'bush' that constitutes the borderlands can thus be viewed as a liminal zone (Turner, 1969), which lies betwixt and between places whilst being neither one thing nor another, a space of violence, where the ordinary is suspended and where the usual moralities and laws do not apply. This is accentuated by the fact that such areas also constitute, at least in the eyes of local police, legal gray zones. The words of the shelter manager above were echoed in an interview I conducted with a researcher from the Forced Migration Studies Program who was in Musina examining sexual violence, who stated that

I've found out there is no point for women to take these issues to the police here. The police say it was your countrymen who did it, who robbed you or raped you; or they say can you prove it happened in South Africa not Zimbabwe? They say it is outside our jurisdiction.

Elphick and Amit (ibid) make the same point, and emphasise that this is another reason why such crimes have a low reportage rate. Violations thus remain unspoken or, if spoken, remain unprosecuted. Thus, although legally at least the rights of women are protected regardless of whether they are in Zimbabwe, South Africa or somewhere in between, in reality such rights cannot be accessed.

Conclusion: Legal Fictions

There is thus a deep disjuncture between rights law and the lived realities of women's experiences: it is for reasons such as this that rights advocacy organisations have become so vocal and have made use of the global language of rights as a means of protesting inequalities. Whilst the gap between rights law and implementation exists outside of the borderlands, in

borderlands we see an extreme example of the failures of the legal system to protect women. Beyond the borders the gaps between law as written, and the actual exercising of that law, are also often pronounced; this is particularly obvious in the case of women's rights, where activists struggle to transform rights from law to experience. In the borderlands between Zimbabwe and South Africa, then, we see an example of a space in which the legal rights that are assumed by law to be attendant upon individual persons fall away, a space in which harms and violations are regularly inflicted upon women such that notions of the right to bodily integrity and the security of the person are revealed as fictions. I use fiction here as Clifford (1988:15) does, as "something made, something fashioned": as a means of highlighting that laws are social constructions which can only carry meaning as long as they are believed, respected and endorsed by others.

There may be borderlands at the centres of nation-states as well as the margins, and laws can be seen to be fictional in other spaces too: for example, as seen in the normalisation of political rape of women described in the previous chapter; or indeed the prevalence of violence against women in Zimbabwe and South Africa generally. It is possible to have limited access to law in all kinds of places, even right outside Home Affairs offices, as was seen when Zimbabwean migrant Adonis Musati starved to death whilst queueing for asylum seeker papers in Cape Town in 2007 (BBC News, 2007; Morreira, 2009). As an activist interviewed by Shereen Essof in her research on women's rights movements in Zimbabwe commented,

It seems a pity that 15 to 20 years after the existence of some of these organisations, we still peddle the falsity that the answer lies in the law. You can demand from the state laws from A to Z but it will not work, we've seen it. Our battle is in fact not with the law per se, our struggle is with patriarchy.
(Quoted in Essof, 2005:36)

It is not enough, then, to have laws that protect women, men or all citizens: 'rights' can exist on paper whilst not existing in daily life.

Rights reports, too, can be read as fictions, for all that they are based in 'fact-finding': they are structured in particular ways, aimed at particular audiences, and based upon particular kinds of categorisation and data collection. Such constructions travel from Zimbabwe, following transnational circuits and moving between people, organisation and governments along Eleanor Roosevelt's "curious grapevine" (in Goodale, 2009b:93). For the women with whom I worked, it often seemed as though rights had more of a reality on paper than they did in daily life: as one

(university educated) Ndebele informant commented, “Human rights? Sexual rights? I am an African woman. Those rights don’t necessarily apply.” Rights, then, have more impact in the discursive realm that they do in daily life: as such, they constitute a valuable tool for advocacy and change, but are not lived, at least for Zimbabwean women. Whilst rights discourses move transnationally, it is much harder for the supposed bearers of such rights to do the same. Papers circulate, but not the papers that women need to cross borders legally and thus protect themselves from harm. The complexities of globalisation are differently reflected in the two parts of this chapter; an examination of both opens a window into the complex and uneven mobilities that globalisation entails. In the following chapter, I further follow the social life of rights, considering the ways in which rights are mobilised, debated, enacted and denied once Zimbabweans have crossed the border and are living in South Africa.

University of Cape Town

Chapter Five.¹⁰⁴

Personhood and Rights: Zimbabwean Migrants in South Africa

Introduction: Post-colonial Legalities in a Time of Migration

In this chapter I consider the use of law and ideas of human and civil rights by Zimbabweans living in, yet still seeking secure legal residence,¹⁰⁵ in South Africa. As noted in Chapter One, ideas of law and legality have become increasingly prevalent within the postcolonial state: Comaroff and Comaroff (2007:142) argue that “a ‘culture’ of legality” has become a common feature of the postcolony, whilst Robins (2008b:185) has argued that ‘rights’ has become a “notable keyword in South African political discourse” across social classes. On one level this is unsurprising, given that notions of legality lie at the heart of the modern state, where relationships between people and the state are mediated through laws, and through the civil rights and responsibilities attendant upon such laws. Law, however, is not the only form of meaning making that people draw upon: it is worth examining, then, under what circumstances ‘the law’, or language that invokes legal relationships such as rights, becomes the relevant medium for negotiating one’s position, attempting to resolve difference, addressing perceived wrongs, or seeking security of place. It is also worth examining the limitations of a public discourse which emphasizes rights over other forms of political meaning making: as Robins, drawing on ANC MP Ben Turok notes, “the limited, legalistic formulation” (Turok, 2005, in Robins, 2008b:185) of civil rights discourse may be “incompatible with radical politics and the structural transformation of highly unequal societies” (Robins, 2008b:185; cf. Ross, 2003c).

The legal mediation of relationships between people and the state is further complicated when considering immigration: where ‘outsiders’ to a country attempt to lay claim to it, they need to do so by following the correct avenues created by the state, in order that they ultimately might fit into a recognised legal and/or bureaucratic category (cf. Scott, 1998; Merry and Goodale, 2007), or they need to accept a status of illegality. In this chapter I am concerned with those migrants who were not able to access a South African work permit before arrival: specifically, those who applied for asylum seeking papers with the ultimate view to accessing refugee status. Comaroff and Comaroff (2004:200) have conceptualised law as it unfolds in postcolonial Southern Africa

¹⁰⁴ Excerpts of an earlier version of this chapter have been published previously in the *Anthropology Matters* online journal (Morreira, 2011). The material presented here has been substantially revised.

¹⁰⁵ Such persons may be illegally resident in the country, or may be temporarily legally resident and seeking more permanent legal status: asylum seeking papers, for example, whilst giving a person legal status in the country, have a time limit.

as “a dialectic-in-motion, a historical process that pivots on the horns of a contradiction”, where the contradiction reflects the tensions between ideas of equal citizenship and ideas of legal respect for difference. In the case of immigration law and non-citizens’ relationships with the South African state, the contradictions at work are more complex as I demonstrate through an ethnographic consideration of the contextual use of rights discourse as used by migrants.

Invoking Unhu: Personhood and Human Rights in Zimbabwean Asylum Seeking in South Africa

The Legal Framework

Let us begin with a consideration of the process of seeking asylum and refugee status as undertaken by those of my interlocutors who were unable or unwilling to take the ZDP¹⁰⁶ route, whether due to timing, a lack of the necessary documentation or employment status; or whether due to a political desire to be recognized as a refugee who had been displaced by the Zimbabwean state, not a ‘special’ type of voluntary economic migrant eligible for a ‘special’ dispensation. Apart from the brief window afforded by the ZDP in 2010, for most Zimbabwean migrants the only available avenue to legality within South Africa has been via a process of accessing asylum seeking papers, which in turn give migrants the possibility of gaining refugee status. As discussed in the previous chapter, other alternatives were rarely open to Zimbabweans: work permits were very difficult to get, and reliant upon the Zimbabwean applicant having a passport, and having a job lined up in South Africa before arrival. The great majority of Zimbabwean migrants to enter the country since 2000 have done so without a work permit (Bloch, 2008; FMSP, 2010; Elphick and Amit, 2012). In this chapter I consider the use of discourses of rights by Zimbabweans attempting to move from illegal to legal status, or from temporarily legal asylum seeking status to permanently legal refugee status, via the process of seeking political asylum on the grounds that conditions in Zimbabwe warranted their displacement from the country.

This has not been easy for the majority of applicants. When I first began research into Zimbabwean migration in 2007, the Refugee Reception Centres across South Africa were unable

¹⁰⁶ As noted in Chapter Four, the temporary Zimbabwean Dispensation Project aimed to regularize undocumented Zimbabwean migrancy by allowing Zimbabweans to apply for Special Dispensation Permits to work in South Africa. To apply for a ZDP permit, one needed a passport and a letter from an employer; this cut off the option from many migrants. Permits were issued for a maximum of 4 years, and a ZDP permit holder would be considered an economic migrant and had to give up asylum seeking papers they might held (Passop, 2011). Refugee status, on the other hand, is permanent and based on political asylum status (see below).

to keep up with the number of applicants (FMSP, 2009b), to the extent that in Cape Town potential applicants slept outside of the offices for weeks at a time whilst queuing for an appointment (Morreira, 2009; 2010). Once in the building, the chances of success were still very slim: for example, the statistics available from 2009 show that in that year Home Affairs received 223,324 new applications for refugee status. Of these, 4,567 were approved, 46,055 were rejected and 172,702 were added to the backlog of unprocessed cases (FMSP, 2009a).

In the case of migration out of Zimbabwe, the combination of political and socioeconomic conditions that led to what Betts and Kaytaz (2009:1) refer to as “the Zimbabwean exodus” have sat uneasily with the limited legal categories which are available to undocumented migrants. Essentially, these categories are either that of asylum seeker with the aim to access refugee status who, due to the international and national conventions endorsed by South Africa, has a right to reside in South Africa, or that of the economic migrant who has no such claim and should thus (apart from during a period from 2009 to 2011 when a moratorium on deportation of Zimbabweans was in place) be deported back to their country of origin. Such categorization rests upon whether migrants are considered by the South African state to have been forcibly displaced or voluntarily mobile (Elphick and Amit, 2012; Morreira, 2010). The effects of falling between legal categories can be extensive - as Elphick and Amit (2012:7), note

While a number of Zimbabweans are fleeing the effects of the economic crisis—including economic deprivation and food scarcity—these effects cannot easily be divorced from the underlying political causes, making it hard to distinctly categorise them as either economic migrants or as asylum seekers. South Africa, however, categorises most migrants who do not fall unequivocally into the category of refugees as economic migrants. Since legal avenues of migration for economic migrants— particularly those who are relatively unskilled—are highly restricted, many Zimbabwean migrants are left with no means to regularise their status in South Africa.

In South Africa, refugee status is closely based upon international refugee instruments and norms; indeed, the South African Refugee Act reproduces exactly the definition of refugee as found in the UN Convention on Refugee Rights (Khan, Chennells and Heaney, 2009). In the terms of the Refugee Act, a person is eligible for refugee status if that person:

3. (a) Owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his

or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or

(b) Owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere.

(South African Refugee Act of 1998)

In order to apply for refugee status people must follow a convoluted series of legal, bureaucratised procedures: initially, the applicant reports to a Home Affairs Refugee Reception Office¹⁰⁷ as soon as possible upon arrival in the country, where he/she fills in an Eligibility Determination Form with the assistance of a Refugee Reception Officer. After capturing such information as deemed necessary (name, age, fingerprints, dependents, reasons for applying for asylum and photocopies of any documents that might act as supporting evidence for a claim, such as medical records or political party membership cards), the applicant is issued with an Asylum Seeker Permit, often referred to as “a Section 22” after the Section of the Refugee Act that determines such documentation. All applicants receive Asylum Seeker Permits, which are temporary; if they expire before the date on which the applicant has been granted a status determination interview (the next stage of the process), another visit to the Refugee Reception Office is needed to extend the permit.

At the status determination interview, also called the second interview, the burden of proof rests with applicants who must convince the Refugee Status Determination Officer (RSDO) that they fulfill the criteria of the Refugee Act, again supplying as much supporting evidence as possible. Following this interview, one of five outcomes is possible: the claim can be approved and Refugee Status granted; the claim can be rejected as Manifestly Unfounded, Fraudulent or Abusive; or the claim can be rejected as Unfounded. An application is deemed Fraudulent if false information has been supplied and Abusive if there is evidence the applicant has applied before under another name or is fleeing criminal prosecution in another country for anything other than asserting their human rights. A Manifestly Unfounded rejection is issued if the RSDO determines that the applicant’s claim does not fit the criteria of the Refugee Act; most commonly this is due to a decision that the applicant is “an economic migrant who only came to South

¹⁰⁷ The number of Refugee Reception Offices in the country has been steadily lessening as the state attempts to centralise the process. When I began research, there were Offices in Musina, Durban, Cape Town, Port Elizabeth, and Pretoria; this has now shrunk to Pretoria, Musina and Durban – despite court orders to re-open the Offices in Port Elizabeth and Cape Town (Chennells, 2012)

Africa to seek a better life” (CORMSA, 2012:3). An Unfounded rejection occurs for similar reasons to a Manifestly Unfounded rejection, but with less strong evidence against the applicant.

A rejection does not necessarily mean the end of the road for applicants as there is a process of appeal. Upon issuing a Manifestly Unfounded rejection, the RSDO is obliged to provide the applicant with reasons for their rejection within five days, and to inform the applicant that they have the right to appeal to the Standing Committee on Refugee Affairs. Such an appeal must be written and be lodged within fourteen days: it is then reviewed by the Standing Committee who reach a decision as to whether the RSDO reached the right or wrong conclusion. Upon receiving an Unfounded rejection, applicants are informed they either have to leave the country within 30 days or appeal to the Refugee Appeal Board, an independent tribunal, providing evidence to challenge the RSDO’s decision. If any appeal is rejected, applicants need to approach a lawyer to take the matter to the High Court, or leave the country.

This convoluted process of applying for asylum is predicated on an examination of individuals’ migration histories and the motivations behind their movement, which need to be political rather than economic. Refugee status is also reliant on the applicant not returning to their country of origin due to a ‘well-founded fear of persecution’. Although Zimbabwe has experienced periods of intense political violence and persecution on political grounds became more common over the last decade¹⁰⁸ (though, as Sachikonye [2011] shows, it also existed prior to this in independent Zimbabwe and colonial Rhodesia) Zimbabwean migrants often move for a combination of reasons, and often wish to return home for short intervals.¹⁰⁹ The research I have carried out since 2007 indicates that the extreme decline in the Zimbabwean economy was *always* a relevant factor in interlocutors’ migration histories, though overtly political violence might also have been present. This emphasis upon socioeconomic factors for migration means that Zimbabwean applicants usually do not fulfill the criteria necessary for refugee status.

Nonetheless, as I will discuss below, interlocutors vehemently asserted that socioeconomic factors for movement constituted a violation of their basic rights and were grounds for seeking asylum, regardless of the fact that this was not in accordance with the Refugee Act. The Refugee Act, as based on international UN instruments, uses a narrow definition of rights and violation: internationally, human rights charters recognise both political and socio-economic rights. Though the different generations of rights (as described in Chapter One) are recognized as

¹⁰⁸ Hammar and Raftopoulos, 2002; Hough and Du Plessis, 2004; Kamete, 2008; Taundi, 2009; Sachikonye, 2011.

¹⁰⁹ I will return to the importance of being able to go home occasionally when discussing how interlocutors translated local notions of personhood and dignity into a language of human rights.

equally important in comprehensive rights documents such as the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the South African Constitution, this is not carried through to the more specific Refugee Act. This is partly because it is more difficult to prove direct responsibility for a violation of socioeconomic rights, and there is not the same legal precedent as there is for political violation; but also because many countries such as South Africa are not necessarily able to secure the socioeconomic rights of their citizens. Most states do not accept socioeconomic reasons as valid for refugee status.

Academic and policy debates in the field of rights law have emphasised the necessity of a holistic approach to rights, which does away with different ‘generations’ and recognises that all rights are intertwined and dependent upon one another (Haas, 2008; Deng, 2005). In other words, the enjoyment of one right will often depend on the enjoyment of others: for example, a woman is much more likely to be able to fulfill her (political) rights to freedom of expression if she has been able to access a (socioeconomic) right to basic education. At the level of asylum seeking, however, a violation against economic rights and a violation against civil or political rights still carry different legal entitlements. The binaries at work in South African and international refugee law do not adequately map onto the complex realities of migration histories. In terms of these binaries, a person is considered either displaced or mobile; having moved because of either a political violation or an economic motivation, with the end result that they are considered to be either a refugee or an economic migrant. The binary structure this establishes is depicted below:

Political Violation:	Economic Motivation
Forcibly Displaced:	Voluntarily Mobile
Refugee:	Economic Migrant

The inadequacy of these binaries is becoming increasingly recognized in Southern Africa and beyond, particularly as concerns the case of Zimbabweans. For example, a 2009 newspaper report carried the headline, “Zimbabweans test the definition of refugee,” going on to argue that

The “humanitarian nature” of the mass movement of Zimbabweans to neighbouring Southern African countries has blurred the distinction between a “refugee” and an “economic migrant” because such people fit neither category perfectly and fall between the cracks (Irin News, 15 December 2009).

Zimbabweans migrants sit uncomfortably at the interstices of legal categories. As Zimbabwean migration increased from 2008 following the violent elections of that year and the continued and

rapid decline of the economy, Zimbabweans' precarious position became increasingly obvious. A report by the UNHCR released in 2009 conceded that

The case (of Zimbabwean migration) poses a particular challenge for the international refugee protection regime because the majority of people leaving fall neither within the legal definition of a 'refugee' nor are they voluntary, economic migrants. Rather, they fall within a broader category of 'survival migration', fleeing an existential threat to which they have no domestic remedy. The reasons for their flight have mainly been a combination of state collapse, livelihood failure, and environmental disaster (Betts and Kaytaz, 2009:1).

The category of 'survival migration' is a new one to rights discourse: this emergent term has been developed most prominently in the work of Alexander Betts (Betts and Kaytaz, 2009; Betts, 2010). Betts, a former UN High Commissioner for Refugees employee now situated at the University of Oxford, argues that the narrow focus within refugee rights discourse on providing protection to persons who have suffered from individualized political persecution or violence is no longer adequate. Betts (2010: 361) argues that in recent years "a range of new drivers of external displacement—particularly related to the interaction of environmental change, livelihood collapse, and state fragility—have emerged that fall outside the framework of the (modern refugee) regime". Betts use of the word 'regime' to describe the refugee rights framework is worth noting here, as it highlights the intertwined institutional, legal and discursive elements of the discourse (those elements of both rights talk and rights performance which I outlined in Chapter One)¹¹⁰, which, in combination, create and constitute a particular domain of knowledge (Foucault, 1970). Drawing on case studies of the state responses to the migration patterns of persons from the DRC to Angola and Tanzania; from Somalia to Yemen and Kenya; and from Zimbabwe to South Africa and Botswana, Betts argues that state responses to these unusual (from the perspective of the refugee rights regime) cases have largely been ad hoc. One such example is seen in the temporary Zimbabwean Dispensation Project which briefly created a new category as a means of regularizing the many Zimbabwean migrants who did not fall into categories recognizable by the state. Ad hoc state responses are due to the fact that at the level of national and international refugee institutions, the narrow framework reliant upon particular sorts of violation is still used. Instead, Betts argues that there is a need for "regime stretching" (Betts, 2010:361) which allows for the inclusion of new categories such as that of survival migration within refugee law. In other words, the formal discourse needs to expand.

¹¹⁰ As noted in Chapter One, throughout this dissertation, when referring to rights practice or rights praxis I invoke the broad realm of both talk and other forms of behavioral action; when a distinction between talking about rights and enacting those rights has been necessary, I refer to 'rights talk' and 'the performance of rights' respectively. Both talk and performance form part of the discourses of rights.

The surfacing of such a debate within refugee rights discourse reflects the inadequacy of current categories, and is exciting in that it shows the potential for the emergence of new possibilities within rights law. However, within international and national refugee law as it stands, category shifts and “regime stretching” (ibid) have not occurred. In Southern Africa, academic commentators have noted that the law as it stands in the countries that neighbor Zimbabwe is not adequate to “irregular” (FMSP, 2009a: 42) Zimbabwean migration. The Zimbabweans I encountered during fieldwork thus had to negotiate this interstitial position between legal categories. As such, Zimbabwean migrants traverse a difficult line that can easily result in their remaining undocumented and without rights or protection in South Africa.

In *Seeing Like a State* (1999) James Scott argues that the modern state operates upon ideals of centralized authority; one result of this is that the state seeks to render the complexity of society “legible”, which requires disregarding the particular and the contextually dependent for that which fits into recognised bureaucratic categories (Scott, 1999:26).¹¹¹ The following case studies serve to illustrate the disjuncture between migrants’ particularised histories and their motivation for movement, and that which is legible to the South African state.

Case Studies: ‘I Had Nothing to Show Them But My Story’

I first met Chenai, a 26 year old Shona woman from a small town in central Zimbabwe, in Cape Town in early 2010, at the paralegal clinic in which I was working at the time. This small, badly funded clinic provided free legal advice to refugees and asylum seekers. Chenai came to see us because she had received a letter telling her that her application for asylum had been rejected as Unfounded, and she had thirty days to appeal or to leave the country. We met because she had tried to find a way to fit her migration history, which had elements of both political and economic motivations for crossing the border, into the bureaucratic framework of asylum seeking – and failed. Her story of migration and displacement is a good place to begin a conversation about how individual experiences become ordered within various domains of knowledge, and the ways in which rights discourse was drawn upon by migrants in their attempts to gain refugee status.

In January 2008, Chenai gave birth to her first child, a daughter whom she named Rumbidzai. She was newly married, and living with her in-laws in a town in central Zimbabwe while her

¹¹¹ Though Betts (2009; 2010) would see those categories expanded as the regime is stretched, his formulation still relies upon this framework of using categories legible to the state – though the discourse may stretch, its terms do not change entirely.

husband David looked for work in Harare, a five-hour bus ride away. Economically, things were extremely difficult and the family often went hungry. In Chenai's words,

At that point there was little food; we were eating *sadzwa*¹¹² once day when things were good and making relish from the rape we grew or sometimes from wild food we gathered. We never had meat; we often didn't have *sadzwa* either. It was a very hungry time.

In addition to hunger, the family was caught in the growing tensions of the pre-election period. In mid-March, Chenai was walking home from a nearby house where she had gone to fetch water – municipal water had not been available for weeks and so the neighbourhood relied on the one property that had a borehole. As she was carrying a heavy load, she had left her baby at home with her mother-in-law. On her way home, Chenai encountered a group of young men who were chanting election songs. They forced her to walk with them to a rally that was being held a few kilometres away. Chenai asked them if she could go home to drop off the water first, but

They made me pour it out on the road. I wanted to go back to get my child, so then I said that is why I really want to go back. They said I was lying so I wouldn't go to the rally – so they did not let me go home.

Chenai was held at the rally for close to six hours, having to sing and dance in praise of ZANU-PF in order not to draw attention to herself. "But you know," she said to me,

I did not care at all about politics. I just wanted to get home to my baby, who I knew was very hungry and who needed me to feed her. There was nothing there (at home) to give her instead of my milk; I knew there wasn't even water because I had taken the container with me when I left.

Chenai leaked breast milk onto her shirt at the rally, and was deeply embarrassed. Her breasts, engorged to feed a child, were also extremely painful. An older woman lent her a jersey to cover herself but could do nothing to help with the pain. Eventually, the rally was over and Chenai could go home to a hysterically hungry Rumbidzai. Chenai remained in Zimbabwe over the election period and for the rest of the year, but when her husband suggested they try to move to South Africa she agreed, "because the politics in Zimbabwe nearly killed my child of hunger, and kept me from going to her when I needed to." David left first, and Chenai followed a few months later. Her movement across the border was motivated by politics and by a failing

¹¹² Sadza refers to maize meal, a Zimbabwean (and Southern African, though under other names) staple. During hyperinflation food was often unavailable for purchase even if money was available, and many Zimbabweans were reliant upon such food as they could grow (see Morreira, 2009, Chapter Three, for an analysis of an urban household's survival techniques in 2007).

economy, reasons that she and her husband thought might grant them asylum in South Africa. Unlike many women, Chenai crossed the border without incident.

In 2007, when I first started working with newly arrived Zimbabwean migrants, most of my interlocutors expected that upon telling their stories to representatives of the South African state, they would be granted refugee status. In the words of one informant, Simba, “we thought they would see that if we stayed at home we would be suffering too much, that we might even die.” In most cases, ‘suffering’¹¹³ was shorthand for socioeconomic, not political, conditions – nonetheless, interlocutors conceptualized such suffering as, again in Simba’s words, “going against my human rights.” (See below for a further consideration of what interlocutors took to constitute their rights). By the time of Chenai’s arrival in South Africa in late 2008, however, it was obvious to Zimbabweans that getting refugee status was not so easy. Zimbabwean migrants’ perceptions of socioeconomic “suffering” or “violations” as a means of securing legal access to South Africa were shown on many occasions to be erroneous. The tables below illustrate how informants were categorized (or not) by the South African state at different points in time during research; the samples drawn upon here do not include respondents who had work permits or ZDP permits, focusing instead on those making use of the asylum/refugee system.

Table 6: Male Migrants’ Legal Status in South Africa, 2007 (n = 33)

	Attempt made to apply for asylum		Legal status*		
	Yes	No	U	AS	R
No. of informants (%)	29 (88%)	4 (12%)	28 (85%)	5 (15%)	0 (0%)

*Legal status: U= undocumented; AS= asylum seeker permit; R = refugee permit.

Table 6a: Reason for Undocumented Status (n = 28)

Reason	Did not attempt to legalise	Unable to get an appointment	Refugee status denied
No. of informants	4 (14%)	19 (68%)	5 (18%)

¹¹³ Cf. Auerbach (2010) for a discussion of currencies of suffering in Mozambican refugee camps.

Table 7: Female Migrants' status in South Africa: 2007 (n= 17)

	Attempt made to apply for asylum		Legal status*		
	Yes	No	U	AS	R
No. of informants (%)	14 (82%)	3 (18%)	14 (82%)	2 (12%)	1 (6%)

*Legal status: U= undocumented; AS= asylum seeker permit; R = refugee permit.

Table 7b: Reason for Undocumented Status (n = 14)

Reason	Did not attempt to legalise	Unable to get an appointment	Refugee status denied
No. of informants (%)	3 (21%)	7 (50%)	4 (28%)

As can be seen, in 2007 the majority of migrants were undocumented, and only one of the sample of 50 had been granted refugee status. The high incidence of undocumented status reflect conditions within Home Affairs: although 88% of men and 82% of women had attempted to legalise their status by beginning an asylum application, they had not been able to do so. The data from 2007 reflect a point in time at which conditions at Refugee Reception Centres were such that visits to Home Affairs might not result in an appointment (and the concomitant issuing of an asylum seeking permit) for many months. Migrants' attempts to apply for asylum and mobilise rights were thus often foiled by structural constraints even before they ever met a state official. Migrants thus tended to remain undocumented for long periods: 68% of men and 50% of women who had attempted to get an appointment failed.

Of those that had applied, 15% of men and 12% of women had asylum-seeking papers. 28% of women and 18% of men had moved beyond the asylum seeking phase of the process and had been refused refugee status following their status determination interviews, thus returning them

to the category of undocumented migrants. As these participants were interviewed in South Africa, they had remained in the country illegally rather than return to Zimbabwe.

Data from 2010 shows some changes from 2007; nonetheless, it also shows the difficulty of being granted permanent refugee status. As can be seen in the tables below, by 2010 fewer migrants were undocumented due to an inability to access Home Affairs: by far the majority were on asylum seeking papers and had not yet gone for their second appointment, or, if they had, had not yet received the result of that appointment. Of those that had entered this phase of the process, however, nearly all men were rejected; the data for women showed a slightly higher likelihood of being granted refugee status than that of men. Data here includes that gathered from a large-scale survey carried out with PASSOP and the Solidarity Peace Trust in De Doorns in 2010 (see Chapter Two).

Table 8: Male Migrants' Status in South Africa, 2010 (n =232)

	Attempt made to apply for asylum		Legal status*		
	Yes	No	U	AS	R
No. of informants (%)	231 (99.6%)	1 (0.4%)	22 (10%)	200 (86%)	10 (4%)

*Legal status: U= undocumented; AS= asylum seeker permit; R = refugee permit.

Table 8a: Reason for Undocumented Status (n = 22)

Reason	Did not attempt to legalise	Unable to get an appointment	Refugee status denied
No. of informants (%)	1 (5%)	0 (0%)	21 (95%)

The above data show that of those 31 men that had obtained interviews to have their refugee status determined and received the results,¹¹⁴ more than two-thirds were unsuccessful. I will return to this when collating the success of migrants across all categories below.

¹¹⁴ The figure of 31 is determined by adding those participants who had received refugee status as reflected in Table 8 to those who had had refugee status application refused, as seen in Table 8b.

Table 9: Female Migrants' Status in South Africa (n = 240)

	Attempt made to apply for asylum		Legal status*		
	Yes	No	U	AS	R
No. of informants (%)	238 (99%)	2 (1%)	17 (7%)	213 (89%)	10 (4%)

*Legal status: U= undocumented; AS= asylum seeker permit; R = refugee permit.

Table 9a: Reason for Undocumented Status (n = 17)

Reason	Did not attempt to legalise	Unable to get an appointment	Refugee status denied
No. of informants (%)	2 (12%)	0 (0%)	15 (88%)

For the 25 women¹¹⁵ who had obtained refugee status interviews and received the results, 10 (40%) were successful and 15 (60%) unsuccessful.

Data collated from all the tables above shows that, out of 522 migrants, 66 had gone for a refugee status determination interview. Of those 66, 28 (42%) had been granted refugee status; and 38 (58%) were denied it. Of the total number of migrants who attempted to begin the asylum seeking process (511 out of 522 migrants), only 28 (5%) had been granted refugee status at the time of fieldwork. Furthermore, it is worth emphasizing that as data was gathered in South Africa, it does not reflect the numbers of refugee applications that failed that resulted in migrants being deported or returning to Zimbabwe. It is clearly not easy for Zimbabweans in South Africa to access refugee status.

Framing Harm: Speaking to the State

Given the difficulties of refugee applications as illustrated in the numeric data above, the migrants I interviewed had quickly learned that it was not enough to expect that officials would 'see' the dangers of remaining in Zimbabwe through the sorts of empathetic solidarities that statements such as Simba's above hinge upon. The ways in which the state rendered people's experiences 'legible' (Scott, 1999) was different to their own interpretations of such experiences, which needed to be ordered in such a way that narratives reflected the categories that the law accepted as legitimate.

¹¹⁵ This figure is determined by adding those who had received refugee status as reflected in Table 9 to those who had had refugee status application refused, as seen in Table 9b.

Queues at Refugee Reception Centres were long, and rumours about what was the best thing to say to officials reverberated along them. Interlocutors' emphasised in interviews that they learnt what to say from others whilst waiting for an appointment to fill in an application form, and from conversations with other migrants in their home areas before visiting Home Affairs. One interlocutor told me that he

learned that it's better not to talk about the economy, you should provide proof of politics. But if you don't have that, you can try to say you were starving and going to die of hunger if you returned. But then someone else would say, no, it's better to say you are ill and there was no medicine.

In another woman's words,

They told me that I mustn't say I am looking for work even though I was, even though I needed that work to keep my family going. I must say something about politics, and then I must provide evidence. I had been beaten once, so I told that story. But I had no evidence; what evidence is there? There was no point in going to a clinic after the beating, so I did not go. I had nothing to show them but my story.

Another informant told me that he had learnt in the queue that applications were being granted on the grounds that homosexuality was illegal in Zimbabwe, "so I swallowed my pride and told them, I am a gay man and they will put me in prison for that if I return." He was not in fact homosexual; in the country in order to find work to send money home to his wife and two children, he asserted that "I felt okay about lying, because my reason for being there was an honest one, it was just one they would not accept. But I had to be allowed to stay somehow."

To return to my original case study: Chenai had drawn on both political and socioeconomic factors – her fear and suffering during the election rally and the fact that the family were unable to survive economically and had existed in conditions of continual hunger – in the hope that this would satisfy the stringent application criteria. Chenai's story exemplifies how political and socioeconomic factors are entangled – it was, after all, a socioeconomic issue, the absence of water, that put her in the path of political danger. Chenai's claim was rejected as unfounded, however, on the grounds that her life was not deemed to be endangered were she to return to Zimbabwe.

Her husband, David, who had applied for asylum before Chenai's arrival in South Africa, had also had his application rejected as unfounded. In his interview with a Refugee Reception Officer, he had emphasised that he was unable to earn enough money to feed and clothe himself,

his wife and his child, and that he could not afford basic medications if one of the family were to get ill –

I said to him, even if I was to find five jobs with inflation as it is I would still be a starving billionaire. But how can I find even one job with unemployment above 80 percent? But to him that wasn't enough violation of my rights. I got a letter saying my application was unfounded.

Despite David's emphasis that being able to maintain his family constituted, in his opinion, a basic right, both Chenai and her husband were deemed economic migrants, not refugees. In a legal setting, this type of naming is extremely powerful. As I have argued elsewhere (Morreira, 2010), asylum seekers' livelihoods rest on whether they are categorised by the state as 'displaced' or as economically 'mobile', as refugees or illegal immigrants.

The emphasis on socioeconomic factors in Chenai and David's narratives was not unusual in the migration histories I collected from informants. Indeed, quantitative data from the in-depth interviews conducted with 35 migrants in Cape Town showed socioeconomic factors to be central in male and female migrants' reasons for movement *and* in their understandings of what constituted their human rights. The below table shows migrants' legal status in the country and the reasons given for movement:

Table 10: Reasons for Migration

Gender	Legal Status*				Reasons for Migration		
	U	AS	R	ZDP	Only socio-economic	Only political	Socio-eco and political
Men (n= 15)	1 (7%)	8 (53%)	1 (7%)	5 (33%)	8 (53%)	0 (0%)	7 (47%)
Women (n= 20)	2 (10%)	12 (60%)	2 (10%)	4 (20%)	12 (60%)	0 (0%)	8 (40%)

*U= undocumented; AS = temporary asylum seeking permit (Section 22); R = refugee permit; ZDP = Zimbabwean Dispensation Permit.

Although some of the migrants were on ZDP permits at the time of interviewing, all but two had applied for asylum at some point and had presented their migration histories to the state. Interview data on migrants' reasons for movement revealed that *all* migrants considered

socioeconomic conditions within Zimbabwe to have influenced their migration. Of these, eight out of fifteen men cited socioeconomic factors, with the remaining seven citing both socioeconomic and political factors. Twelve out of twenty women cited socioeconomic factors as the only reason for movement, with the remaining eight women citing socioeconomic and political factors. Although almost all have documentation of some sort, for the majority this was the routinely generated Section 22 asylum seeking permit: as described above, the chances of movement from this temporary, uncertain category to that of refugee are fairly slim. Although the state recognised informants as applicants, then, it is unlikely that it would recognise those who provided migration histories that cited socioeconomic reasons for movement as violated against, and therefore as eligible for refugee status.

Following an open ended interview question which asked people to describe what they understood to constitute their human rights the following categories emerged as relevant: the right to vote without intimidation; freedom from intimidation or arrest for political reasons; freedom from political violence or torture; access to education, clean water, healthcare and documentation (such as passports or national identity documents); access to work; and, of particular interest to our purposes here, the ability to fulfill family obligations and rituals. By familial obligations, informants meant that they should be able to feed, clothe, shelter and care for their families, as well as maintain important relationships with kin (living and dead: see Chapter Three) via necessary rituals, such as the payment of ilobolo (bridewealth), or the correct burial procedures. I will return to this point below.

A follow up survey which asked the same set of interlocutors to rate the definitions of rights which emerged from interviews as very important; somewhat important, or not important revealed the following:

Table 11: Importance of Categories of Rights (as Self-Defined by Migrants)

Definition of Human Rights to Emerge From Interviews	Percentage of Responses Rating Definitions As:		
	V. Important	Somewhat Important	Not Important
Access to work	100	0	0
Freedom from political violence or torture	90	10	0
Ability to fulfil family obligations and rituals	80	20	0
Freedom from intimidation or arrest	80	20	0
The right to vote without intimidation	78	22	0
Access to healthcare	68	32	0
Access to education	65	35	0
Access to documentation	47	44	9
Access to water	45	55	0

From these figures it can be seen that access to work was considered by *all* respondents, male and female, to be a very important right. This idea of rights was recently endorsed by Zimbabwean Deputy Prime Minister, Hon. Thokozani Khupe, who, when addressing the audience at the International Human Rights Day Commemorations organized by the Zimbabwe Human Rights Association (ZIMRIGHTS) in Harare in December 2012, asserted that,

Decent employment is a human right. Everyone has a right to have a job and a decent salary. Once the right to employment is realized, it also ensures that other rights such as entitlement to food, shelter, health and clean water can also be easily enjoyed. (Reported by Crisis in Zimbabwe Coalition, 10 December 2012)

In terms of the Refugee Act, however, this socioeconomic idea of rights is not legally relevant. Freedom from political violence, which followed closely behind access to work in interlocutors ratings, with 90 percent considering it very important, *is* in keeping with the definitions of rights that underlie the Refugee Act. This was followed by the ability to fulfill family obligations, which 80 percent of interlocutors considered to be a very important human right. Again, this category is not one that exists within conventional rights law, but was one that was central to interlocutors understanding of human rights, as I explore further below.

The above case studies and tables demonstrate that interlocutors translated experiences of “suffering” into a language of human rights violations; that the things that they considered a violation did not map easily onto the South African state’s definition of a violation of human rights; and finally that in an official state setting, rights talk alone does not carry enough weight to secure refugee status. Narratives of rights have to fit within the ‘correct’ categories of violation, and within a strictly policed domain of knowledge, and need to provide evidence that the state recognizes as valid. Though socio-economic rights such as the right to health and education are protected by human rights charters and recognised in international law, a violation of these rights is not viewed in the same light as political violations, and such violations do not form grounds for refugee status. Ideas such as familial obligations are not recognized in *any* rights charters. Scott (1999) argues that the state is only able to relate to citizens within the bounds of the categories it has created, and that bureaucrats are not legitimately able to recognise anything outside of these closely specified boundaries due to the constraints of what is officially legible. As Kihato (2004:280) phrases it, “anything not in the required format cannot be understood by the state.”

Akhil Gupta, in his 2012 ethnography *Red Tape: Bureaucracy, Structural Violence and Poverty in India*, has argued that the modern state normalises structural violence, such that the effects of extreme poverty – death, illness, malnutrition, lack of access to education or to adequate livelihoods – are not perceived by the state as violations, but as part of the normal order of things. Gupta’s theoretical conceptualisation of poverty is applicable to much of post-colonial Africa, where even though socioeconomic rights may exist on paper, poverty is frequent and normalized, such that those rights are seldom realized. In terms of South African refugee law, poverty can be seen to be normalized through the absence of recognition of extreme socioeconomic deprivation as a rights violation.

Refugee Law and Evidence

David and Chenai were unsuccessful on the basis of their claim. Let us consider a second case study in which the claim was legible to the state, but where the evidence provided was not: sometimes, even where people’s migration histories “should have ticked all the right boxes and got them a refugee permit without question”, (in the words of a lawyer I interviewed who worked in a refugee legal aid clinic), refugee status was denied on the basis of insufficient evidence. I met Amos early in 2010 when he came to the legal aid clinic after having received a letter informing him that his application had been rejected as unfounded. Amos had been a ward councillor for the opposition MDC in an urban district of Zimbabwe, and had fled from political

violence following the 2008 elections. Upon being interviewed by a Refugee Reception Officer, he was asked for written proof that he was a ward councillor, which he did not have. When Amos received his rejection letter, it stated that the burden of proof rested with the applicant, and that he had failed to provide such proof.

From the macro level position of the South African state it makes sense that evidence is needed before the state can know the 'truth' of a claim. Asad (2004:285) conceptualizes this relationship between state and individual as one of 'organized suspicion':

Suspicion (like doubt) occupies the space between the law and its application. In that sense, all judicial and policing systems of the modern state presuppose organized suspicion, incorporate margins of uncertainty...Suspicion seeks to penetrate a mask to the unpleasant reality behind it...the investigation ends when suspicion is put to rest – when a "reasonable" person comes to a conclusion, one way or another, on probable evidence. Suspicion opposes and undermines trust. (Asad, 2004:285).

From the subjective position of asylum seeker, relating to the state from the position of suspect, the need to provide evidence which they may not have can be deeply disempowering. Amos, who was well educated and erudite, was able to articulate this in ways that other asylum seekers did not, using legal discourses to criticise the system –

They talk here in South Africa of their amazing constitution, and of the right to dignity, but what dignity is it to treat me like a liar after I have run away? Where is the dignity in making me provide a paper like a child taking a sick note to school?

I will return to a consideration of ideas of dignity below. In addition, however, Amos was further incensed as his rejection letter went on to outline the unity agreement in Zimbabwe, saying that the country was now stable. But, he said, he had heard from a friend the previous week that things were still dangerous –

There were further beatings in my same ward last week. I ran away because of those people. And those people are still running around. Myself, I have no faith even in the police officers, those ones were the ones who were torturing, arresting. I have no faith in the power sharing. It is still the same. I suffered there from 1999, and if I hadn't gone I would still be suffering now.

This personal knowledge, however, did not bear the same weight as official knowledge within the region about the general Zimbabwean situation. The generalist knowledge about Zimbabwean 'transition'¹¹⁶ under the GPA possessed by the South African state was accorded

¹¹⁶ As noted in Chapter Three, the use of the moniker 'transitional' (which, in transitional justice discourse, implies movement from a non-democratic to a democratic state, with the concomitant acceptance of a 'culture' of human

more value than the particularity of knowledge possessed by Amos, who was able to pinpoint precisely what was happening in the local context to which he would return – down to the individual offending police officers. Amos was unbelievably angry as he read out the section of letter dealing with political stability. “They want my evidence that I am MDC,” he raged, “well, I want their evidence that Zimbabwe is stable. I reject *that* claim as unfounded.”

I have found it impossible to forget Amos’s anger. His words highlight the hierarchies of power present as migrants negotiate the bureaucratic frameworks needed to legally access South Africa. Though the South African state has the power to demand evidence for Amos’s claim, he cannot ask for their evidence regarding the political stability of Zimbabwe in return. Amos’s words starkly illuminate the interstices between official, legal ways of knowing and the personal migration histories that asylum seekers carry with them. In Foucauldian terms, therefore, we must recognize

that power and knowledge directly imply one another; that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time, power relations (Foucault, 1977:27).

In addition to the ways in which power is constituted in terms of the law, applicants’ chances are affected by the incorrect application of that law. A report released by the African Centre for Migration and Cities (previously the FMSP) in 2012 argues that there is a persistent bias against the applicant within refugee status determination interviews in South Africa, regardless of the strength of their claim (Amit, 2012). Entitled *All Roads Lead to Rejection*, the researchers identified consistent “errors of law” on the part of RSDOs, particularly as regarded “inaccurate assessment of country conditions”, and “misapplying the concepts of persecution, social group and well-founded fear” (Amit, 2012:10). Although Amos challenged his rejection with the assistance of Passop, he was once more unsuccessful on the grounds that Zimbabwe was in a period of political transition and it was safe for him to return, despite the particular knowledge of conditions in his home area that he provided. He has not gone back, preferring to live illegally in South Africa until after the next set of Zimbabwean elections when he will reconsider whether he can safely return.

rights) can be misleading in the context of Zimbabwe – at the very least it is deeply uncertain what Zimbabwe is transitioning to (Murithi and Mawadza, 2011)

Although being categorised as an illegal immigrant essentially meant that he was in constant violation of South African law just by being present in the country, Amos did not consider his illegality to be immoral. ‘Illegal’, then, need not be subjectively experienced as the same as ‘immoral’. Like other undocumented migrants I interviewed who had become undocumented due to a rejection of refugee status, Amos preferred to place moral failures in the hands of the South Africa state. In his words, “I am here for valid reasons. It is the process that is not valid, but as of now there is nothing I can do about that. There are enough battles to fight in Zimbabwe; I cannot fight this one too. I should be allowed to stay here, so I will.” Migrants thus held that South Africa had a *moral* obligation to provide sanctuary. Chenai, too, argued that her presence in South Africa was motivated by a violation against basic rights, even if these violations were not accepted as such by the South African state; and the interlocutors quoted above who lied on their applications to Home Affairs on the advice of other Zimbabweans in the queue did so in order to bypass what they viewed as an imperfect system. When I asked if it was wrong to lie, they argued that in this context it was not, as the lie was motivated by a failure of recognition on the part of the South African state. Where refugee status *had* been secured, the moral obligation was seen as having been fulfilled: for example, Nyasha,¹¹⁷ a 35 year old woman, said of her refugee status:

It was only right that they gave me this paper; I had to flee Zimbabwe so they had to look after me, that is what neighbours do, what brothers do. I cannot go home now, I have lost my home there. South Africa must look after us Zimbabweans as our homes have been broken. We looked after South Africans during Apartheid, now our brothers must look after us.

The understanding of South Africa’s moral obligation presented here invokes a set of relationships that differ to the actual, legal relationship between the South African state and asylum seekers: ones based on metaphors of care, neighbourliness, kinship and prior obligation as a result of (largely imaginary) shared political histories between the two countries. There was a very clear sense of right and wrong in migrants’ discussions of the duties of the South African state towards Zimbabwean immigrants: turning away applicants was seen as the wrong thing to do as it denied the reality of violence in Zimbabwe, and it violated the principles of kin and neighbourliness on which the state should be acting. Legally, of course, the South African state

¹¹⁷ Nyasha received a refugee permit on the basis of being a past victim of political violence, (for which she was able to provide medical evidence from clinics in Zimbabwe and South Africa), that had left her permanently blind in one eye, and left her husband dead. Nyasha’s position as the widow of a fairly prominent MDC supporter was held to constitute an endangerment to her life should she return to Zimbabwe.

had no such obligations; from a purely rights-based moral standpoint the South African state fulfilled all necessary requirements towards migrants by following the Refugee Act. This was the point of view presented by a Home Affairs official I interviewed:

We have put in place all the mechanisms that are needed to apply for asylum. Zimbabweans get a fair hearing, we follow the law to the letter. But most of them are not refugees, so we cannot give them status. There is nothing else we can do; if we have done everything the law requires us to do then we have done the right thing.

Clearly, the 'right thing' differs according to point of view. State laws pertaining to migration, therefore, were not considered to be coterminous with morality by Zimbabwean asylum seekers. Although both rights law and interlocutors' interpretations of that law were based on moral ideas of rights and violations, the definitions they used were not the same. The state and asylum seekers both drew on a language of rights; where they referred to violation, however, they meant very different things.

Anna Tsing (2005:xi) argues that the creation of such "zones of awkward engagement" is one of the effects of a globalised world, where power-laden interactions across difference involve multiple translations such that "words (may) mean something different across a divide, even where people agree to speak." She refers to such episodes as instances of "cultural friction" (ibid); such misunderstandings occur within existing systems of power; as such, they carry the potential to limit possibilities as well as provide a means of resistance. Sarah Nuttall's (2009) understanding of entanglement as an instance of uneasy intimacy is also useful here: though different legal and moral systems were entangled where violations were called upon, this entanglement was an uncomfortable one. In what follows I consider *why* such friction and mistranslation occurred where Zimbabwean migrants spoke of socioeconomic difficulties in Zimbabwe in the language of human rights. I argue that there is more to how claims are made by Zimbabwean asylum seekers than is raised by the conventional dichotomy between socioeconomic versus political rights. We can better understand the tensions Zimbabweans seeking asylum in South Africa place upon conventional rights law if we locate our analysis outside of rights discourse and examine Southern African conceptualisations of personhood. It is here that we can begin to understand the uneasy relationships between Zimbabweans and the South African state, in that ideas about personhood allow us to understand the gap between a localised version of rights discourse that is based upon ideas of what constitutes a person and proper relations between persons as understood by Zimbabwean migrants, and the official version held

by the South African state, which essentially replicates international refugee rights norms and categories. Examining ideas of Southern African sociality reveals particular ideas about the social construction of moral persons (cf. Nyamnjoh and Englund, 2004) that underpin migrants' ideas of rights and violation. Ironically, given their illegibility to RSDOs, these ideas are very close to the notions of *ubuntu* which have gained symbolic capital in South Africa since democracy, and which have begun to be reflected in South African jurisprudence (Cornell and Muvangua, 2012; Sachs, 2009) but are not applied in immigration law. It is to this that I now turn.

Immigrants' knowledge of harm: what constitutes the rights of a person?

One day in 2008, George, a Zimbabwean newly arrived in South Africa, said to me, "If I am here to prevent my family from starving, how am I different to someone here running away from imprisonment or torture by ZANU-PF? I am also running away from ZANU. I am also fulfilling my rights if I am trying to keep my family." When I used this quote in my Masters thesis (Morreira, 2010:110), I left out the final sentence of it, as it seemed extraneous. It was only later, after many more conversations with Zimbabweans about ideas of human rights that I came to fully understand what he was telling me, and the importance of the sentence I had discarded from my finished product. "I am also fulfilling my rights if I am trying to keep my family" points to a central way in which Zimbabweans translated local cultural norms of sociality into the internationally recognized language of human rights: that of the importance of family relations to what it means to be human, to be a social person, in both Shona and Ndebele contexts.

Consider the following set of responses to an interview question in which I asked interlocutors to explain to me what they understood their human rights to be:

"I have the right to keep myself and my family safe and well."

"My human rights are the things that I have because I am a human...like, I should have the right to a home, to a husband who is able to care for me and my children, to be able to go to church and to pray."

"I think human rights are many things: to be healthy or to go to a clinic if you are sick and there is medicine there. You must send your children to school, that is their right, so that they can get an education and then they can care for you when you are older. You must be able to get work, to get food. You must be able to care for your family."

"Human rights mean that you are able to live your life with dignity. What do I mean by dignity? It is to be able to work hard for fair wages, to look after your family, big and small. Rights are also about being able to vote for who you want to; to talk about what you want to. But for me the most important is to be able to live your life decently and properly."

Sociality was central to migrants' understandings of rights. Their responses show how people broadened definitions of human rights beyond political rights, to incorporate what they considered the key elements of living a 'proper' or 'dignified' life¹¹⁸, including the maintenance of family relations across the generations. The responses point to local ideas of personhood.

The anthropological concept of personhood refers to the ways in which social persons are created in different societal contexts. Conklin and Morgan (1996) argue that "Euro-American" personhood is based on the social construction of individualism, and that

Western ideologies of personhood prize egocentrism, self-containment, self-reliance, and social autonomy. This individualistic emphasis is evident in key values such as privacy, personal freedom, independence, and economic self-interest. (Conklin and Morgan, 1996:664)

Human rights as presented in law rest on an idea of an autonomous individual (Messer, 1993). Individualism, however, is not only means by which social groups have made sense of what it means to be a person. Indeed, Comaroff and Comaroff (2001:267; emphasis in the original), argue that " 'the *autonomous* person', that familiar trope of European bourgeois modernity, is a Eurocentric idea." In the historical context of the social life of the Southern Tswana in the late colonial period, in which they base their ethnographic analysis,

Personhood was everywhere seen to be an intrinsically social construction. This in two senses: first, nobody existed or could be known except in relation and with reference to, even as part of, a wide array of significant others; and, second, the identity of each and every one was forged, cumulatively, by an infinite, ongoing series of practical activities (ibid:268).

There is no one natural way, then, of being a person: we inhabit social worlds and construct ideas of what it means to be a person within the context of those social worlds. No one social context constructs the person as either fully dividual/relational or fully individual, but rather all ways of being in the world lie somewhere along a continuum between the individual and the shared (Comaroff and Comaroff, 2001; Lamb, 1997; LiPuma, 1998; Nyamnjoh, 2004). Further, it is worth remembering that

Formalized notions of personhood are not to be construed as descriptive of a static, preordained, social world; they are instrumentalities which people

¹¹⁸ Ideas of socioeconomic decency and dignity are of course not limited to migrants, or to discussions of human rights. Ross's 2009 ethnography *Raw Life, New Hope*, which details the experiences of a community in the Western Cape as they access formal housing, highlights the importance of *ordentlikeheid* (decency) to the construction of everyday life.

actively use in constructing and reconstructing a world which adjusts values and goals inherited from the past to the problems and exigencies which comprise their social existence in the here and now (Jackson and Karp 1990:28).

The ‘problems and exigencies’ facing Zimbabwean migrants required them to leave families and homes in Zimbabwe, and access the correct documentation to be able to stay in South Africa. Although social persons are constructed differently in different contexts, human rights discourses contain at heart the idea that such rights apply to all ‘humans’, universally. What happens, however, where people encounter rights discourse and use its language, but with a different idea of what it means to be a human? Might ‘human rights’ be assumed to refer to something different in such a case – might we in fact encounter an instance of Tsing’s (2005:xi) friction, “where words mean something different across a divide”, even where the words being used are exactly the same? Englund (2006) highlights the dangers of translation at work in the fields of human rights: in Malawi, he argues, rights have been translated into local languages with an emphasis upon freedoms that has the end result of limiting the liberatory potential of such ideas, such that rights discourse constrains the poor rather than offering a means of resistance to structural violence. My argument here, however, concerns a mistranslation across ways of being in the world, rather than a mistranslation across languages. To my interlocutors, personhood was relational, and to be human was to be enmeshed in a web of social relationships. A violation against human rights, then, was anything that damaged or limited their ability to properly partake in those social relationships: such as an economic crisis so severe that ordinary sociality could not be maintained.

The literature on personhood amongst the Shona emphasises social relationships. Mawere (2010:270), for example, argues that personhood “is defined by reference to other members of the same community, both the living and the living dead” whilst Chimuka (2001:31) argues that “since life is a shared enterprise...one’s humanity is affirmed as one affirms the humanity of others.” In the Shona context, as is the case throughout Southern Africa, one is not a person without the intricate connections one holds to other people: to be human is to maintain relationships through, for example, caring for family members, or paying bridewealth (Bourdillon, 1987; Mutambirwa, 1989; Engelke, 1999). This view of personhood is not limited to Zimbabwe (indeed, there is a tendency in philosophical texts to generalize across Africa, hence Mbiti (1969:145) argues that the dictum “I am because we are and since we are therefore I am” sums up “African personhood” whilst Mawere (2010:270) refers to “personhood in the African context”) – yet the maintenance of relationships is not something international law would claim

as a basic right¹¹⁹ (cf. Nyamnjoh, 2004). These sorts of relationships, however, *were* taken by my interlocutors as an inherent right of the person, and to be prevented from fulfilling them by political *or* economic reasons was translated into the weighty realm of legalese as an infringement of human rights. Interlocutors also justified the fact that they wished to be able to go home occasionally on these grounds, contrary to the expectations of refugee law that a refugee does not return to their country of origin: being able to go home and then return to South Africa was integral to maintaining familial ties and, as such, was also viewed as a basic right.

Further Friction: *Unhu*, *Ubuntu* and *Dignity*

In order to delve more deeply into the worldview underlying such (mis)translations, it is necessary to explore the Shona concept of *Unbu/Hunbu*, which was variously translated to me as decency, dignity, good manners, and character. A perusal of Shona philosophy shows that ideas of personhood are closely entwined with the construction of an ethical being (Mawere, 2010; Chimuka, 2001; Gelfand, 1970). The ethical Shona person is constructed in relation to the social world, which is composed of both living persons and ancestors (as is the case across Southern Africa). As explored in Chapter Three, for example, one of the roles of the *vadzimu* is to ensure that their descendants behave in a moral manner, as to oppose the moral order constitutes an affront against the *vadzimu* which carries dangers for individuals and communities. Gelfand (1970) and Chimuka (2001) argue that the ethical person is one who embodies what they transcribe as *unbu* (Gelfand) and *hunbu* (Chimuka). Chimuka translates *hunbu* variously as humanity (2001:27); commendable character (ibid: 26) and, drawing on Ramose (1999), as “the ontological, epistemological and moral fountain of African philosophy”(Chimuka, 2001:29). Gelfand’s translations are perhaps less encompassing, but nonetheless also varied: he describes *unbu* as a quality, such that “a good man (is) one whom the Shona say has *unbu* – a man of good behavior, respectful to others, pleasant and honest.” (Gelfand,1970:1). The *Standard Shona Dictionary* interestingly defines *unbu* as “Good manners; Culture.” The Shona word for person is *munhu* (plural: *vanhu*): a cultured/ socialized person, then, is not just a biological being but one who has learnt the values of *unbu*. It is this idea of humanity that interlocutors drew on when they insisted that deteriorating socioeconomic conditions in Zimbabwe, which interrupted relationships, were a violation of *human* rights.

¹¹⁹ Engelke (1999), in a discussion of rights and homosexuality in Zimbabwe, notes that ideas of human rights at play in Zimbabwe in the late 1990s also drew upon ideas of the rights of the social person. Interestingly, Engelke shows how, in the context of homosexuality, the importance of social relationships as the bedrock of a shared humanity was used as an argument *against* basic rights in 1990s Zimbabwe: homosexuals, in the arguments presented by the state, did not fulfil their familial obligations as they did not have ‘proper’ marriage or relationships and as such homosexuality should not be legal. Once again, the situationality of rights talk is apparent.

Conceptually, *unbu* is very similar to the South African moral concept of *Ubuntu*, which has recently (re)surfaced in the South African popular imagination, and in some legal jurisprudence. Indeed, Samkange and Samkange's 1980 treatise *Hunbuisim or Ubuntuism: a Zimbabwe Indigenous Political Philosophy*' holds the two concepts as identical. Similarly, Chimuka (2001) cites Ramose's (1999) arguments around *ubuntu* in order to argue that "*Ubuntu (Hunbu)* philosophy [constitutes] the basis of ontology and epistemology for the Bantu-speaking people, of which the Shona is part." (Chimuka, 2001:29). Some Shona philosophers at least, then, hold *unbuisim* and *ubuntu* as mutually translatable. That the ideas are closely interlinked seems undeniable: consider the definition of *ubuntu* as invoked by Justice Yvonne Makgoro in a case where the South African Constitutional Court declared capital punishment to be in conflict with the Bill of Rights:

Generally, *ubuntu* translates as 'humaneness'. In its most fundamental sense, it translates as personhood and 'morality'. Metaphorically, it expresses itself in *umuntu ngumuntu ngabantu*, describing the significance of group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity, in its fundamental sense it denotes humanity and morality. Its spirit emphasizes a respect for human dignity, marking a shift from confrontation to conciliation. (Mokgoro, J., cited in Sachs 2009:106).

The similar idea of personhood at work in ideas of *ubuntu* and *unbu* raises interesting implications, given the failure of refugee law to recognize the ideas of personhood at play in migrants' calls upon human rights, despite the use of *ubuntu* in some South African jurisprudence.¹²⁰ *Ubuntu* has most frequently surfaced at the level of Constitutional Law, making its first appearance in a case considered under the Interim Constitution, the Makwanyane case, where the Interim Constitutional Court drew on ideas of *ubuntu* in finding capital punishment to be unconstitutional (cited in Sachs, 2009). *Ubuntu* has subsequently been called upon in Constitutional cases concerning restorative justice, amnesty, reconciliation, customary law and the right to culture (Cornell and Mavangua, 2012) –most pertinently for our purposes here, however, it has been prominent in cases concerning socioeconomic rights (ibid). What we see here, then, is a localization of law at the *constitutional* level, which is not applied at the level of the Refugee Act, where international norms still hold sway and where particular categories, based in a Euromodern understanding of the autonomous person, are all that is legible to the state. The relationship between the local and the global here, then, is one that is imbued with power; South

¹²⁰ Nyamnjoh (2004) has noted similar contradictions at work in Botswana which - despite the coexistence of "what may be termed its impressive record at institutionalizing liberal democracy" (2004:36) and of a communal rather than individual concept of personhood - continues to draw more closely upon the global, individualized notion of rights rather than expanding its rights framework to include local ideas.

African law carries an entanglement of philosophical and legal traditions which surface differently at different points in the country's legal architecture.

Though there are multiple systems of meaning making at work in the above translations, there is one English word that arises in all of them: dignity. The idea of dignity forms one of the epistemological foundations of South African Constitutional law, and is also a key trope of rights discourse. Furthermore, an examination of the meanings allocated to *unhu* and *ubuntu* above show that both draw upon this same word in their translations into English. Engelke (1999:301), for example, directly translates one into the other, stating that, "the Shona word for 'human dignity' or 'humanity' in the most general sense in *unhu*", whilst the quote from Justice Mokgoro cited above notes of *ubuntu* that "Its spirit emphasizes a respect for human dignity" (in Sachs, 2009:106). Dignity is also central to human rights: indeed, it is the first article in the UNDHR:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. (UNDHR, Article 1)

Francis Deng (2005), in a discussion of human rights in the African context, uses the idea of dignity as a means of justifying the claims to universality made in international rights discourses: arguing that "the more profound roots of the claim to universality lie in the fact that human rights reflect the universal quest for human dignity" (Deng, 2005:499). That human beings have dignity, then, seems to be one point on which multiple discourses and modes of thought converge: what is meant, however, by dignity when it is invoked? A justification of the universality of rights through the calls to dignity such as is made by Deng would imply that the concept carries the same meaning in different geographical, temporal and philosophical locations. Could this possibly be the case? Does 'dignity' mean the same thing in rights charters as it does in South African Constitutional decisions or in migrants' perceptions of *unhu*, or South African perceptions of *Ubuntu*? It is my argument that the occurrence of ideas of dignity in these varied modes of thought and meaning making does not reflect a convergence of meaning, but rather reflects that the term is broad enough to encompass multiple interpretations and valences, and is also open to instances of friction.

Let us begin with the European history of the term. Rosen (2012) has traced the rise of the concept of dignity in European thought, from its roots in the Roman era writings of Cicero, where dignity arises as a human characteristic ("at issue is ...what position human beings as a whole occupy in the order of the universe"[Rosen:2012:12]) through the Enlightenment thinking of Pico della Mirandola who links dignity to autonomy and man's ability to think for himself; to

the use of the concept within the Catholic Church where St Thomas Aquinas conceives of dignity as “the intrinsic value of a thing that is in its proper place in the hierarchy of God’s creation, as revealed by Scripture and by natural law” (ibid:17). It is with the writings of Kant, however, that dignity as used in law today comes to the forefront: Rosen (ibid:19) argues that “the concept only played a small role in political theory until the time of that thinker on whose giant shoulders the modern theory of human rights rests, Immanuel Kant”. The particular version of dignity that emerges in rights law today is based on this conceptualization: a secular, egalitarian view of dignity as something intrinsic, incomparable and unconditional that is limited to humans as “only human beings (so far as we know) are capable of acting morally and feeling the force of morality’s claims.” (ibid:23-24). Dignity in this conceptualisation is a moral concept, and is linked to the autonomous, individual person who is capable of making moral decisions: as such, it is an inherent characteristic of all people. In contrast to earlier European definitions of dignity as the province only of the upper classes (Rosen, 2010), Kantian dignity is inclusive. It is this idea of dignity which becomes codified in rights law. Dignity here, then, is located firmly in the realm of the individual and is concerned with that individual’s ability to make moral decisions.

Ideas of *Ubuntu* and *unhu*, however, for all that they are also invoke dignity, are essentially social and relational: where dignity surfaces in such definitions it is not confined to an individual agent. Engelke (1999:301) defines *unhu* as *both* human dignity and humanity, whilst the definitions of dignity given by interlocutors above also show dignity to be relational: as quoted above: “Human rights mean that you are able to live your life with dignity. What do I mean by dignity? It is to be able to work hard for fair wages, *to look after your family, big and small.*” (emphasis mine). In these conceptualisations, furthermore, dignity is closely aligned to socioeconomic conditions within which social relations are played out. Emmanuel, an Ndebele immigrant in Cape Town commented that,

One of the things that this situation in Zimbabwe has done is to take away people’s dignity...we cannot live with dignity when there is no food for our families, no schooling, no healthcare. At one point no one even had money for coffins, so even if you died you did it without dignity. Imagine that! Not being able to bury your brother or your uncle properly! That is not right, not right at all.

Theresa, a Zimbabwean studying law at UCT, had this to say:

At the end of the day what is *ubuntu*? It is about living with dignity, treating others with dignity. Zimbabweans have a similar concept to *ubuntu* – *ubunhu* – but at home it’s certainly not law. It’s part of daily life. I would like to see it in the Constitution at home, though. That would be something.

Where dignity invokes morality in these conceptualisations, it is a socioeconomic morality: dignity involves being able to work for fair wages, for example. In South African popular discourse, dignity is also often located in the socioeconomic realm. Consider the following excerpts from a talk given by a South African, Lindela Figlan, at the Anarchist Bookfair in London (which was sent to me by a staff member of Passop after I had asked him to think about and share with me what dignity meant to him). I have quoted at length as it so beautifully expresses the convergence and multiple valences of ideas of dignity at work in South African popular thought; the emphases are mine in order to highlight those elements of most pertinence to the discussion here.

Money does not buy dignity because *to be a person with dignity you must recognise the dignity of others*. No person is a complete person on their own, that is without others. In isiZulu we say “umuntu ungumuntu ngabantu”. This means that a person is a person because of other people. Rich people are always demanding that other people show respect to them just because they are rich. They are always forcing us to show respect to them. The politicians are the same. But there is no dignity in forcing other people to show respect to you. *There is dignity in respecting the humanity of others and in being respected back.*

As poor people we do not live in dignified conditions. In fact when it rains we live like pigs in the mud. Our shacks are always burning. We do not have toilets. We are disrespected by politicians and, when we have work, we are disrespected at work. Security guards and domestic workers are often treated as if we are not fully human. Sometimes we are also disrespected by NGOs, academics and other people that think that they have a right to lead the struggles of the poor and who get very angry when we explain that for us solidarity must be based on talking to us and not for us and thinking and deciding with us and not for us.

But *poor as we are we achieve our own dignity*. Some people achieve dignity in their churches. Some achieve dignity through culture, in something like a choir. And *we achieve dignity in the togetherness* of our struggle. Our struggle is a space of dignity. Here we can express our suffering, we can think together and we can support each other. Our struggle is also a tool to fight for a world in which our dignity, and the dignity of all people, is recognised. Our struggle gives us dignity now and it also aims to *create a world in which land, wealth and political power are shared amongst the people*. (Figlan, 2012. Online: No page numbers available)

The ideas of dignity used by Zimbabwean interlocutors, and used by Figlan, are similar: dignity is achieved through togetherness; through access to decent socioeconomic conditions, and the ability to fulfill rituals such as burial in the ‘proper’ way; to be dignified is to be treated with respect by those around you. In other words, dignity is situational, not intrinsic. This is a far cry from dignity as “intrinsic, incomparable and unconditional” as it appears in the Kantian philosophical roots of rights law (Rosen:31).

Dignity as it exists in international law today carries a very different history from ideas of *ubuntu* and *unbu*: one that is based in the individual, not the relational, person. Nonetheless, dignity has become the rallying point for an endorsement of the ‘localization’ of rights discourses (see Chapter Three): it is in this sense that Deng (2005) argues that African systems of thought, particularly as regards dignity and relational personhood, can be used to enrich ideas of human rights. Deng (2005:502) asserts that

(There is a) call for a constructive dialogue aimed at a comprehensive approach to human rights...the challenge for humanity is to enrich and not impoverish human dignity as an overriding value for all mankind.

Further, he argues that drawing in socioeconomic rights through an ‘African’ understanding of dignity, is one means by which such an enrichment could occur. Deng (2005:502) argues that, historically, in “African traditional systems,”

Rights tended to emphasise cooperative support in the social and economic spheres of life. With the centralization of power in the modern state system, the need to protect individuals and groups against human rights abuses became urgent. This gave rise to the high profile given to civil and political rights. But the modern nation state is also called upon to cater to the welfare of citizens in the social and economic spheres. Drawing a sharp distinction between these sets of rights can therefore be misleading. (ibid)

Nonetheless, despite the South African state’s attempts to encode local ideas such as *ubuntu* (Cornell and Muyangua, 2012), it is exactly such a sharp distinction that is drawn in the Refugee Act. Direct translations between *unbu*, *ubuntu* and dignity provide room for further frictional encounters. Dignity may exist at the level of Constitutional law, but where asylum seekers invoke dignity in their relationships with the state it is not a concept that can be heard. Not only is a call upon dignity an inadequate means of seeking security of place, but dignity itself is often absent from the relationship between asylum seeker and state. As Moses put it, “where is the dignity in making me produce a paper like a child producing a sick note for school?” or, in Emmanuel’s words, “I have no dignity here. I am made illegal because I am seeking a better life.”

Conclusion: Law and Power in the Postcolony

The above case study of the use of ideas of rights by Zimbabwean migrants shows that whilst ‘human rights’ has emerged as a dominant discourse, it is neither evenly applicable across all

contexts, nor easily localized. Zimbabwean migrants are drawing upon a particular moral cosmology that is partially reflected in South African law, but not as it applies to them. The inclusion of what Ramose (1999:49) posits as “*ubuntu*... the wellspring flowing with African ontology and epistemology” in some aspects of South African law, then, is not legible to the state as concerns refugees. Here, international definitions, based on ‘Western’ ontology and epistemologies, still carry the power. The emergence of multiple systems of meaning making in South African law is limited.

When rights language emerged as the relevant medium for negotiating experience for asylum-seekers, “words mean something different across a divide, even where people agree to speak.” (Tsing, 2005:xi). Attempts made by Zimbabweans to use a language of rights to try to seek security of place were ineffective, as the categories being drawn upon did not match those that were legible to the state. As Tsing (2009:13) has noted in a later publication, when words and concepts are tracked from their emergence in the “powerful countries of the global North” through to their dissemination in the global South, it is possible to see how terms may solidify, such that “words are like swords, sometimes becoming so rigid that the words and the practices of power can hardly be separated.” (ibid.) The categories provided by rights law have solidified in South Africa: despite the fact that the South African state has put considerable effort into ‘localising’ post-colonial and post-apartheid law to include ideas such as *Ubuntu*, at the level of asylum seeking such localization is hard to find. On one hand, this internationalism gives rights discourse its legitimacy: human rights apply to everyone, all of the time, regardless of cultural, political or economic background, and regardless of age, or gender, or sexuality. On the other hand, universalizing language can limit the availability of rights to those whose notions of rights are different to such a formulation. The ‘universal’ nature of rights does not unfold so simply when we examine the invocation of rights in practice.

Goodale (2006a) has noted that, within the terms of global rights discourses, universal rights are “believed to be entailed by a common human nature” (Goodale, 2006a:490). The ethnographic considerations of the uses of rights in this chapter show this underlying assumption to be one that is deeply problematic, when we consider that the very construction of that human nature, or of what it means to be a person, is complexly social.

Chapter Six

Conclusion: The Situationality of Rights

The great value of human rights is that it implies a set of norms whose legitimacy depends on nothing more complicated than the simple fact of common humanness. Political entities (like the nation state) will come and go, but the fact of common humanness, if true, both preexists these entities and will remain after they are gone. That is the real genius of the idea of human rights. It is also its greatest weakness, since it is when such a noble (if essentially speculative) idea is *converted into the language of social and political practice* – as it must necessarily be – that all the problems begin. (Goodale, 2009b:98; emphasis mine)

Can ‘the common humanness’ that lies at the heart of discourses of human rights be conceived of as a ‘simple fact’? In other words, can the assumption of universal applicability that gives rights discourse a great deal of its global symbolic capital (Bourdieu, 1986; 1992) be conceived of as clear-cut, or even as accurate? Further, can the set of norms that underlie rights discourses exist without political entities such as the nation-state, as Goodale rightly argues the discourse assumes?¹²¹ The ethnographic examples and case studies presented in this dissertation illustrate that this is not the case: although rights discourse is predicated upon an assumed universality and common humanness, this ‘simple fact’ is revealed as deeply complex, politicised and power-saturated when one examines the invocation and attempted enactments of rights in the practices of daily life. For example, if personhood is not conceived of in the same way, everywhere, then what idea of humanness is upheld as the ‘common’ one? What happens when the laws that are supposed to apply to all persons are in actuality enacted in particular ways that are influenced by political considerations or gendered power imbalances? Rights are social constructions that are used in complexly social environments. As such, they are always political. Pre-existing (and shifting) social categories, modes of thought, and political and moral systems are relevant to understanding the enactment of rights discourses. Nonetheless, as Nyamnjoh (2004:33) argues,

Popular and ideological representations of liberal democracy treat its promise of rights and empowerment for the individual as a *fait accompli*. The tendency is to minimize the power of society, social structures and communal and cultural solidarities.

¹²¹ Such as where, for example, human rights are conceptualized as inalienable and inherent: here, the role of the state in realizing rights is obfuscated.

Where a global discourse minimizes the role of social structures in determining its form, and in so doing runs the risk of being naturalized, the value of detailed ethnographic work in tracing its social production becomes apparent. At the opening of the dissertation I outlined a series of questions about the use of ideas of rights in postcolonial Southern Africa with which I had entered the field. Firstly, were rights discourses being used, and if so, in what ways and under what circumstances? Secondly, were international concepts of human rights being localised and, if so, how? How did discourses of rights circulate? Finally, how were people's subjective experiences translated into legal categories that reflected the rights paradigm, and what were the effects of translation? An ethnographic exploration of these questions (and through them of the social and political practice of rights), such as has been presented here, allows for deeper insight into the complex realities of the 'noble idea' of universally shared human rights. In this concluding chapter I draw together the ethnographic and theoretical threads of this dissertation, which has examined the unfolding of human rights discourses within the social realities of daily life in Zimbabwe and South Africa, in order to illustrate the complexities of the emergence of rights in local contexts. Anthropological approaches to the study of human rights by theorists such as Englund (2006), Goodale (2006a; 2006b; 2009a), Merry (2005, 2006), and Wilson (2003; 2006) have asserted the need to study rights in practice, arguing that detailed ethnographic examination of local contexts can show how supposedly universal ideals become localised. This thesis furthers these debates by arguing that it is because globalized ideas of rights are, at least as they are used popularly, flexible enough that they are open to interpretation that they are able to be considered valid in very disparate contexts. Nonetheless, what localisation occurs does so within the terms of rights discourse itself, and is therefore limited, particularly at the level of actual law as compared to the level of popular talk about rights. The use of a theory of entanglement, based on the work of Nuttall (2009) and Mbembe (2001), which considers the uneasy intimacies that unfold where rights ideas overlay, interpenetrate and envelop other forms of cosmological and moral knowledge, has allowed for insight into the complexities of the localization of global ideas of rights.

Rights and Law in Postcolonial Zimbabwe

Postcolonial African regimes have not invented what they know of government from scratch. Their knowledge is the product of several cultures, heritages, and traditions of which the features have become entangled over time, to the point where something has emerged that has the look of "custom" without being fully reducible to it, and partakes of "modernity" without fully being a part of it (Mbembe, 2001: 25).

'The post-colonial' does not signal a simple before/after chronological succession. The movement from colonization to post-colonial times does not imply that the problems of colonialism have been resolved, or replaced by some conflict-free era. Rather, the 'post-colonial' marks the passage from one historical power configuration or conjuncture to another¹²² (Hall, 2001: 213).

The quotes reveal some of the complexities that emerge when examining the emergence of global ideas of rights within postcolonial contexts. Both are concerned with temporality, and the emergence of historicized patterns of power in the present; both too assume complexity and the enfolding of varied modes of thought and regimes of power in postcolonial contexts. The ethnographic arguments presented in this dissertation have shown that the law (as formally encoded *and* as popularly and discursively invoked) provides a particularly rich site for exploring these entanglements. Through examining law as it is encoded, or in the process of being encoded, as compared to law as it is subsequently enacted or rhetorically invoked, I have been able to contextually examine the multiple interrelationships between local contexts and global discourses, ideologies and precedents. Let us examine, then, what this dissertation has demonstrated with regard to how the idea of rights was “converted into the language of social and political practice” (Goodale, 2009b:98).

The detailed case study presented in Chapter Two of the public debates surrounding the writing of the Zimbabwean Constitution demonstrated how human rights, rather than being inalienable, inherent, universal and indivisible (as they are simplistically presented in the terms of the global discourse), were in fact open to political and politicized interpretation and contestation. The ‘finished’ versions of legal documents such as Constitutions and statutes emerge from and are enacted within fields of power, and in their turn become constituted as fields of power. The prevalence of a reductionist language of inalienability and inherence within rights discourse obscures more than it reveals: though such terminology is invoked as a means of asserting the universal applicability of rights, it can be dangerous if taken at face value, in that it hides the workings of power in practice. The complexly negotiated process of Constitutional Outreach in Zimbabwe, and the gap between the rhetoric of a ‘a people-driven process’ versus the realities of the implementation of the process show that the rights that are afforded by documents such as

¹²² I would amend this conceptualization to the plural: there is no single, all-encompassing historical power configuration at play in postcolonial Zimbabwe and post-apartheid South Africa, but rather interacting sets of power configurations and conjunctures.

Constitutions, for all that they come to be presented as naturalised once encoded, reflect the moment in which they are made.

In Zimbabwe, where such a moment was locally perceived as an instance of democratic performance rather than ‘actual’ democracy in progress, the enormous symbolic, legal and political capital attached to a Constitution carries dangers: Constitutions can as easily limit freedoms as they can support them. In assessing informants’ views of democracy as performance in Zimbabwe, Comaroff and Comaroff’s analysis of law as fetish in the postcolony comes to mind:

Many postcolonies make a fetish of the law, of its way and means. Even where those ways and means are mocked, mimicked, suspended or sequestered, they are often central to the everyday life of authority and citizenship, to the interaction of states and subjects, to the enactments, displacements and seizures of power (Comaroff and Comaroff, 2007:134).

In the Zimbabwean example, such an analysis rings true. Rights-based Constitutions are upheld within global transitional justice discourses as central to processes of democratization and the growth of a ‘culture’ of human rights: yet to informants the process of creating a Zimbabwean Constitution was one of mimicry rather than substance. To return to the first and broadest question with which I entered the field then – were discourses of human rights being used in Zimbabwe and if so, in what ways? – here is one answer. Discourses of rights were invoked by multiple players within a political power struggle, who all drew upon the global lexicon of rights and democratic participation as a means of attempting to encode a Constitution that reflected their political interests. This case study also provides a contextualized answer to another of my questions – how are people’s relationships to the state configured by the use of rights? In the (still unfinished) Constitution-writing process in Zimbabwe, we see the combative and protracted setting-in-place of a legal framework that will guide what the state accords to citizens (as well as who can and cannot lay claim to that citizenship), and the responsibilities citizens carry towards others. The contentious nature of the Constitution-writing debates encountered in the field reflected the significance of the process.

The Constitutional study provides just one (albeit complex) example of how discourses of rights emerged during fieldwork in Zimbabwe. A consideration of the multiple repertoires of justice being invoked in Harare in 2010 revealed further uses of ideas of rights, and also allowed an ethnographic consideration of the second of my broad questions: were such ideas of rights being

localized or vernacularized (Merry, 2006) within Zimbabwe, as anthropological literature on rights (Merry, 2006; Werbner, 1996; Wilson, 1997; Shaw and Waldorf, 2010) would suggest, and if so, how? Ideas of justice as I examined them in Harare were called upon in light of the failures of the formal legal system to prosecute for political crimes, which lead to a rise of what people, drawing on the global legal lexicon, called a 'culture of impunity' in Zimbabwe. This culture of impunity was not all-encompassing, however: fieldwork outside of the realm of the formal, state-based legal system revealed intersecting and overlapping justice repertoires at work. As Howell (1997:11) argues, then, "within any one society two or more moral discursive practices may coexist and be made operational according to context."

Some of these 'moral, discursive practices' of justice were based upon global rights ideologies, such as the work being done by a local NGO which drew upon the paradigm of transitional justice as a means of imagining justice mechanisms in a post-conflict Zimbabwe. This case study allowed for an examination of the vernacularisation of global transitional justice norms, which emphasise making justice and rights locally relevant, and presenting justice within the terms of local moral systems. Nonetheless, the case study illustrated that the comparative global symbolic (and attendant economic) capital of the rights paradigm ensured that Zimbabwean NGOs largely operated within the constraints of the global norm. Any localisation or vernacularisation that occurred, then, occurred within the terms of the dominant discourse. This is in keeping with Shaw and Waldorf's (2010) argument that despite an emphasis within transitional justice discourses on the need to localize, any such adaptation that occurs does so in ways that maintain rather than interrogate the discursive foundations. Again, the effect of global power disparities in constituting the terms of rights discourses is clear.

Other moral systems of justice, however, not based in and modeled upon the rights paradigm, showed, in the absence of the imposition of the global model of rights, more complex interactions between the local and the global. The Tree of Life, for example, although originating from an international model of 'healing circles', was distinctly local in that the model had been adapted to Zimbabwean circumstances by Zimbabweans, and drew upon local repertoires of social and individual healing. The language used by its practitioners moved between local idioms of conflict resolution; metaphors of nature which drew on a mixture of local cosmology and the global symbolism of healing circles; globally circulating Western psychological ideas of healing; *and* a globally inflected language of violation, democracy and transitional justice. Rights were drawn in here, then, as a single set of possibilities amongst many.

Both of these case studies show that rather than using ‘vernacularisation’ to study the practice of rights in the postcolony, ‘entanglement,’ which Mbembe (2001) characterises as composed of discontinuity, overlay, interpenetration and envelopment, and Nuttall (2009) depicts as a situation of confrontational mutuality, or uneasy intimacy, is more appropriate. Such a model allows for a better examination of the workings of power in the supposed localisation of discourses of rights, and allows for an examination of when such entanglements are not benign but dangerous – such as is seen when Zimbabwean migrants to South Africa attempt to make use of rights law in their interactions with the state. Before returning to this example, however, let us turn to the next question with which I entered the field: how do such entangled interpenetrations of legal and moral ideas travel and circulate in the Southern African region and beyond?

Rights and Law on the Move

Words are always in motion, and as they move across space and time, they inscribe the arcs of our past and present. (We can) consider the relation between words and worlds by tracing the social and political life of words – specific words in specific places at specific times – with an eye to their practical and public effect...Words do work in the world, whether organizing, mobilising, inspiring, excluding, suppressing, or covering up...they cross cultural borders and become embedded in social and political practices, changing their impact and meaning as they go (Gluck, 2009:3).

The globe shrinks for those who own it; for the displaced or the dispossessed, the migrant or refugee, no distance is more awesome than the few feet across borders or frontier (Bhabha, 1992:88).

Rights discourses travel; indeed, Goodale (2009b: 93) asserts that “the eventual transnationality of human rights was implicit in the creation of the postwar human rights system itself”, in that the 1948 Universal Declaration of Human Rights aimed to transgress the nation-state’s political boundaries by putting a rights architecture based outside of individual states in place. Goodale (ibid) refers to this as the “basic philosophical transnationalism” of human rights; such a transnationalism has been reflected in the spread of rights discourses around the globe, where ‘discourse’ is composed both of particular systems of language and thought and of accompanying sets of rights-based courses of action and institutions (Foucault, 1972).

How can we trace the movement of rights discourse? The emergence of multi-sited ethnography and the shifts that have occurred in anthropology with regard to unit of study (Marcus, 1995) allow for a nuanced consideration of the movement of rights discourses in practice. Following the discourse, however, as Marcus recommends, entails more than an ethnography based in multiple sites: we also need to conduct ethnographies of interconnection that examine movement *between* sites. In this project, the spaces of new technologies provided one useful avenue by which to do so; the collation of migration histories, and participant observation at central nodes of movement such as state borders provided others. Tsing (2009:14) suggests that in following “words in motion” the scholar must find a “concrete trajectory”; similarly I found that focusing on the movement of specific texts and specific persons allowed for access to the complex and uneven mobilities that characterize the globalizing world. I thus followed the trajectories of documents and persons out of Zimbabwe. The contrast between the relative ease with which texts travelled versus the difficulties women encountered in their attempts to mobilize rights and cross borders showed rights discourses to have a greater impact at the discursive level than they did for people in actual, everyday life. Tsing notes that the (post)modern world contains numerous “projects of imagining and making globality” (Tsing, 2000:329): while human rights discourse constitutes one of these projects, we need to remember that so too does academic discourse, particularly given the emphasis within social science upon an understanding of the world as increasingly globalizing. As scholars, then, in invoking and examining the relationships between the local and the global, we need to take into account what elements of that world we are examining, and what characterizes the flows and blockages we find. The ethnographic analysis presented in Chapter Four shows us that processes of globalization are uneven and can look very different depending upon our unit of study, and the methodological and analytic starting points we choose. Returning to Nyamnjoh’s (2004:33) critique of popular representations of rights that present them as a *fait accompli* which disregards socio-political realities, then, we can see the value of ethnographic work in uncovering the contestations and refusals of rights in practice and their uneven application and movement across physical and electronic spaces; but we must also maintain awareness of the positionality that we as social scientists bring to the work we do.

Rights, Categories and Moral Relationships

The final ethnographic example presented in this dissertation allowed further examination of the use of rights in configuring relationships between individuals and the state. It also allowed

examination of the relationship between subjective experiences and legal categories. This chapter considered the experiences of persons who had already moved: Zimbabwean migrants who had crossed the border into South Africa and were now actively using rights discourse in their attempts to gain refugee status in South Africa. Again, the relationship between the local and the global emerged as key: international rights instruments impacted upon South African refugee law, and that law in turn delineated the possibilities open to migrants and to the state. However, 'local' understandings also emerged as central: during fieldwork, the gap between the law as popularly understood by migrants and the law as it existed on paper and was enacted by the South African state became obvious. 'Human rights', then, do not mean the same thing to all people in all contexts – despite the rhetorical insistence on a basic shared humanness and rights' universal applicability. The differences between Zimbabwean migrants' definitions of violation and those encoded in South African refugee law were situated in differing understandings of personhood; what it means to be human then, is not always a "simple fact" (Goodale, 2009b:38).

Howell (1997:4) notes that there are multiple overlapping moral domains from which people might operate and "conflicts of premises and values may emerge at the meeting of different moral orders such as, for example, between a modern Western one based on principles of democracy and human rights and Hinduism based on a hierarchical caste system." (Howell, 1997:4). A process of translation is required in order for people to speak across those domains, be it translation from one language to another or, even more complexly, translation across different ways of seeing and inhabiting the social world (Okazaki 2003). As Englund (2006) has argued, issues of translation lie at the heart of human rights practice, as the discourse moves across the globe and is inserted into numerous diverse contexts and spaces. He shows, and my work confirms, that this process is not a simple one. Zimbabwean migrants' attempts to use a language of rights to try to seek security of place were often ineffective as the categories of violation they drew on to describe their reasons for seeking asylum did not match those that were encoded in South African law. However, rights terminology was still appealing to migrants: when used popularly, outside of the legal realm, the discourse proved flexible enough to incorporate multiple translations; it was only in bringing those translations to bear upon formal rights law that disparities were revealed.

Nyamnjoh (2004:35) argues that that "African societies, through widely shared (even if sometimes contested) ideas of personhood and belonging, could make a contribution towards enriching the current rhetoric of rights": I argue that, at least in terms of popular rhetorical uses,

Zimbabwean migrants are attempting to do so. Nonetheless, *formal* rights law as it stands does not (yet?) provide the room for such enrichment. There is thus a need for a social science (such as is presented by Nyamnjoh (2004), and is presented in this thesis) which accesses “marginalized ‘ways of conceiving of human dignity and value’” (Nyamnjoh, *ibid*, citing Englund, 2000:580 - 81)- as is seen in the uneven conversation between Zimbabwean notions of personhood and South African and international refugee law. In ways like as this we can work against the naturalization of the categories that underlie globally circulating discourses of human rights to show the power dynamics at play in their construction. This is necessary in order that we might make clear the socially constructed nature of such laws and, in so doing, provide potential academic impetus to enrich the rhetoric of rights.

Coda: the entanglements of the local and the global

The international legal framework of human rights may present itself as universal, but rights are enacted, practiced, and debated in local contexts which influence how, and for what purposes, ideas of rights are used. Whilst the assumed universality of rights is important to its global and local legitimacy, it is also because popular ideas of rights are flexible enough and sufficiently open to interpretation to allow for local ideas to be expressed in their terms that they may be considered valid by players in disparate contexts. Nonetheless, localisation occurs within the terms of rights discourse itself, and is therefore limited, particularly as regards formal law. The arguments presented in this dissertation have illustrated that the entanglements of the local and the global in formal and informal rights discourses can provide for sites of rich polyvalence and cultural ingenuity; they can also, however, be less benign.

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Appendix A: Basic demographics

A: Informants in Western Cape

Table A1: Practitioners in the field of migration and/or human rights (n= 19)

Type of Practitioner	Gender		Nationality		
	M	F	Zimbabwe	SA	Overseas*
Fully Qualified Lawyers (n=3)	1	2	0	3	0
Practising Paralegals (n=5)	4	1	3	0	2
Dept of Home Affairs Official (n=1)	1	0	0	1	0
Human Rights Law Students (n=4)	1	3	3	1	0
Rights advocacy/NGO workers (n = 6)	4	1	4	0	2

* The category 'overseas' incorporates informants from the USA; UK and Europe who were working in SA during my fieldwork.

Table A2: Zimbabwean Migrants – In-depth interviews conducted (n= 35)

Gender	Age (av.)	Legal Status*				Employment Status		
		U	AS	R	ZDP	Formal	Inform-al	Unemp-loyed.
Men (n= 15)	29	1	8	1	5	5	9	1
Women (n= 20)	27	2	12	2	4	9	6	5

*U= undocumented; AS = asylum seeking permit; R = refugee permit; ZDP = Zimbabwean Dispensation Permit.

Table A3 – Zimbabwean Migrants: Survey conducted with Passop/Solidarity Peace Trust in De Doorns (n =456)

Gender	Mode Age Range	Legal Status				Employment*	
		U	AS	R	ZDP	Formal	Unemployed.
Men (n = 226)	20-29	21	192	9	4	204	18
Women (n = 230)	30-39	8	201	15	4	209	4

*This survey was conducted amongst migrant farm workers in De Doorns; employment figures are thus high. The category of informal work was not used in this survey.

B: Informant demographics: Harare

The below tables represent the basic demographics of informants with whom I carried out in-depth interviews; as with South African data, the casual conversations of fieldwork have been excluded from this table due to the difficulties of collecting categorical information in such circumstances.

Table A4: NGO Practitioners (n=18)

Type of Practitioner		Gender		Race & Nationality ¹²³			
		M	F	Black Zim.	White Zim.	Black foreign	White foreign
Development/Aid workers (n=3)		0	3	0	0	0	3
Rights advocacy workers (n = 15)	Tertiary education (legal) (n=9)	5	4	4	4	0	1
	Tertiary education (non-legal field) (n=5)	2	3	4	1		
	No tertiary education (n=8)	3	5	8	0	0	0

¹²³ Nationality here reflects self-identification by informants, due to the increasing restrictions placed upon citizenship that have occurred in the last decade (see Chapter 2) which has seen many people who consider themselves Zimbabwean, and have been resident in the country for most of their lives, refused renewal of their documentation.

Table A5: Basic demographics of informants not working in the field of human rights (n=15)

Gender	No.	Race	No.	Ethnicity	No.	Place of residence	No.
Male	4	Black	15	Shona	9	Urban	12
Female	11	White	0	Ndebele	6	Rural	3
Total	15	Total	15	Total	15	Total	15

C. Informant demographics Musina**Table A6: NGO staff (n = 5)**

Gender	No.	Nationality	No.	Race	No.
Male	3	S.A.	3	Black	4
Female	2	Zim	1	White	1
		Overseas	1		
Total	5	Total	5	Total	5

Table A7: Zimbabwean migrants – In-depth Interviews Conducted (Musina) (n = 10)

Gender	Age (av.)	Time in SA (av)	Legal Status*				Employment status*		
			U	A S	R	ZDP	F	I	U
Men (n= 4)	32	1 month	3	1	0	0	0	1	3
Women (n= 6)	25	3 weeks	4	2	0	0	0	2	4

*U= undocumented; AS = asylum seeking permit; R = refugee permit; ZDP = Zimbabwean Dispensation Permit. F = Formal employment; I = informal employment; U = unemployed.

Appendix B: Excerpts from Rights Reports

Excerpts of data tables reflecting political violence against women presented in:

Research and Advocacy Unit (RAU) et al. 2010. *Women, politics and the Zimbabwe crisis*. Harare: Report produced by IDASA, the International Centre for Transitional Justice (ICTJ), RAU and the Women's Coalition of Zimbabwe (WCoZ)

1. **Table 7: Reasons for Women not Voting in Elections** (page 9 in RAU et al, 2010)

Year	Long queues	Intimidation	Violence	No ID	Not on the voters' roll	Other
1980	0.8%	0.3%	0.1%	17%	2%	13%
1985	0.7%	0.4%	0.1%	16%	2%	13%
1990	0.7%	0.4%	0.1%	16%	3%	14%
1995	0.9%	0.5%	0.1%	13%	3%	16%
1996	1%	0.8%	0.2%	11%	4%	15%
2000	1%	2%	0.8%	8%	4%	17%
2002	1%	2%	1%	5%	4%	13%
2005	0.8%	2%	1%	4%	3%	12%
2008	0.3%	2%	2%	2%	3%	11%

2. **Table 9: Women's Experience of Violence during Election since 1980** (page 9 in RAU et al. 2010).

Year	Number (%)
1980	0.1%
1985	0.3%
1990	0.3%
1995	0.2%
1996	1%
2000	9%
2002	20%
2005	19%
2008	62%

3. **Table 14. Experiences of violence** (page 11 in RAU et al. 2010).

Form of Violence	By officials (eg police)	By non-officials (eg war- vets, militias)	Don't know who
Abduction	2%	5%	1%
Arbitrary arrest	6%	2%	0%
Arson	1%	6%	1%
Assault	8%	20%	1%
Forced disappearance	2%	4%	1%
Indecent assault	2%	5%	1%
Property destruction	3%	16%	1%
Rape	2%	2%	1%
Sexual violence	1%	3%	0%
Threats	15%	30%	2%
Torture	9%	17%	1%
Other	2%	3%	1%

4. **Table 15: Reported Rape** (page 11 in RAU et al, 2010)

	Rape by official	Rape by non-official	Rape by unidentified
Personally raped	2%	2%	1%
Family member raped	3%	7%	1%
Community member raped	6%	16%	2%