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THE MORAL DILEMMA OF AMNESTY: THE DIALECTIC OF *UBUNTU* JUSTICE IN ZIMBABWE

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A research report submitted to the Faculty of Humanities, University of Witswatersrand, in fulfillment of requirements for the degree of Master of Arts (by coursework and research report)

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Abstract

This research report answers the question, "would *ubuntu* obligate the peoples of Zimbabwe to agree to amnesty for Mr. Robert Mugabe as a means to restore community harmony?" Seen as an ideal social ethic and foundation of African philosophy, *ubuntu* values community harmony and commands respect for the dignity of humanity. In response to the question posed, I argue that *ubuntu* justice would say the peoples of Zimbabwe should *not* offer amnesty to Mr. Mugabe -- that amnesty would demonstrate neither respect for human dignity nor promote community solidarity and harmony -- unless he acknowledges wrongdoing, apologizes and offers reparations. In this case, *ubuntu* would see offering amnesty as permissible but not obligatory. I also claim that Mr. Mugabe, a victim himself prior to 1980 Independence, is called by *ubuntu* to lead a national healing process both to restore his own dignity and the harmony of his society.

DECLARATION

I, Kathlena M. Walther Bouma, declare that this research report is my own unaided work. It is submitted for the degree of Master of Humanities in the Philosophy Department in the University of the Witswatersrand, Johannesburg. It has not been submitted before for any other degree or examination in any other university.

Signed: Kathlena M. Walther Bouma

25 day of Feb 2010

This research report is dedicated to the Most Reverend Desmond Mpilo Tutu,
the much revered Nelson Rolihlahla Mandela

and
all people high and low
trying
and sometimes dying
to keep *ubuntu* hope alive.

The Moral Dilemma of Amnesty: The Dialectic of *Ubuntu* Justice in Zimbabwe

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The Moral Dilemma of Amnesty: The Dialectic of *Ubuntu* Justice in Zimbabwe

By Kathlena M. Walther Bouma

1. Introduction.

Broadly stated, this research report addresses the question: "what would *ubuntu* say about offering amnesty to individuals who have harmed their own community?" Specifically, would *ubuntu* obligate the Zimbabwean people to agree to amnesty for Mr. Robert Gabriel Mugabe as a means to restore community harmony? A more challenging way to frame the question is this: from an *ubuntu* perspective, should the people of Zimbabwe offer amnesty to Mr. Mugabe in hopes of restoring a community harmony and solidarity that, in his individual capacity, he himself has played a significant role in destroying?

Deconstructing the notion of *ubuntu* justice in Zimbabwe reveals challenging contradictions within an African philosophy asserted in most literature to value community solidarity and harmony over individual sovereignty and rights, and restorative rather than retributive responses to wrongdoing.[1] Part of the complex moral dilemma resides in the question: how does *ubuntu* define the community within which harmony and solidarity are said to be of fundamental importance? My research report will address this complicating factor to a certain extent, but for purposes of this argument I have defined as appropriate adjudicators of *ubuntu* justice one specific *ubuntu* community -- the Ndebele and Shona-speaking peoples of the Republic of Zimbabwe who have shared a national identity for more than 100 years.

In the following pages, I will argue that *ubuntu* would say the Zimbabwean people should not consider offering amnesty to Mr. Mugabe -- that amnesty would demonstrate neither respect for human dignity nor promote community solidarity and harmony -- unless he acknowledges wrongdoing, apologizes and pays a form of reparation to his victims. I will argue that previous unconditional amnesties in Zimbabwe's history have, in fact, had the effect not of reconciliation or restorative justice but actually harmed the fabric of community by creating a culture of impunity that has put at risk its very survival.

I will begin with a somewhat extensive contextual history of Zimbabwe and actions taken by Mr. Mugabe seen by many as punishable offences against his own community of fellow Zimbabweans. In this respect I will clarify what I see as a difference between human rights violations and offences against *ubuntu.*
I will then build my argument by defining key concepts -- specifically, *ubuntu*, community, and justice. From there, I will bring together the various premises flowing from these definitions and present my argument about what *ubuntu* would say the Zimbabwean people should do. I will close by mentioning a few possible objections to my argument, and finally will discuss the implications of this argument with respect to both the current situation in Zimbabwe and future studies of *ubuntu* justice.

2. Historical context.

A case analysis of *ubuntu* justice and the moral dilemma of amnesty for Mr. Mugabe must take into consideration the historical context of his actions in a nation known for its complexities: a culture of both political violence and tolerance, amnesty and

respect for human rights, pseudo-reconciliation and underlying anger. In the 1890s British colonial settlers arbitrarily drew the boundaries of the land that Mr. Mugabe eventually came to rule in 1980. The British South Africa Company called the area Rhodesia in 1895, a name finally recognized by the British government in 1898.

Enclosed within Zimbabwe's borders are two main ethnic groups: a Zulu-speaking people (Ndebele) and Shona-speaking peoples (which includes several sub-groups with linguistic similarities – the umbrella name "Shona" is also a British creation)[2] as well as several other smaller groups in border areas. As around 3,000 European settlers streamed into the area in the late 1890s (especially when the Union Jack was planted by the British in 1896), both Ndebele- and Shona-speaking peoples were forced to migrate away from traditional homes located on fertile land. It was at this time that ethnically diverse Bantu peoples in the area -- who in the past had fought over land, cattle and related issues -- became, in some respects, a community of peoples forced to provide cheap labour to the mining sector. It is at this time amongst both Shona and Ndebele peoples, that the stirrings of nationalist liberation and aspirations for an independent Zimbabwe began.

One should not conclude that colonial national boundaries created a sense of deep and shared national identity amongst the Ndebele and Shona-speaking inhabitants of the area. Unresolved grievances related to past political, economic and cultural conflicts embedded an undercurrent of mistrust that continues to impact Zimbabwean politics today. However, prior to Independence, as exploitation and land pillage afflicted all non-whites in varying degrees, the Bantu peoples in the area became bonded to an

extent into a nationalist liberation community by a common foe, namely the racist regime of Ian Smith.

Mr. Mugabe came to power fighting against racist oppression in a vicious bush war that began in 1966. Although largely a war against racist colonial settlers, the civil war, known as "the Second Chimurenga," was more complex than simply a united black community fighting against the white community for freedom and land. The war involved protracted liberation struggles often pitting members of the black community against others within the same community, including perceived agents thought to be aligned with Zimbabwean or South African government forces, as well as others involved in Cold War politics. Internal strife resulted in a situation where black nationalist forces in some cases victimized their own communities -- commanding loyalty, searching out collaborators and violently enforcing community solidarity. Some might conclude that this division was the work of government forces attempting to weaken the unifying spirit of *ubuntu* by dividing and sowing mistrust within black communities. Whatever the actual causes, even within black communities, guerilla tactics disrupted unity and divided people of common identity against one another.[3] "We were always afraid of the police, of the secret service, of the government, of anybody in power, even the chiefs in the countryside because they were no longer members of the people; they were members of the state,"[4] said Zimbabwean writer, Chenjerai Hove in an interview.

The British-brokered Lancaster House talks in 1979 finally resulted in a cease fire, elections, majority rule, and a transitional Constitution that gave blanket amnesty to all combatants, continued white representation in parliament (20 seats) and protected

white private property rights. In other words, under the terms of the political settlement, much of the land the victorious liberation movement had fought for would remain under white control for at least the next 10 years. The Lancaster House Constitution included amnesty for all crimes, abuses, violations, and acts of torture committed by either side during the liberation struggle. Although the 1979-1980 amnesties were seen primarily to benefit Rhodesian government security forces, they also pardoned crimes committed by the nation's two liberation armies, ZIPRA and ZANLA. The Amnesty Ordinance 3 of 1979 and the Amnesty (General Pardon) Ordinance 12 of 1980 ensured that no prosecution could take place against government, security or guerilla forces.[5]

On the night of his election, 4 March 1980 -- notwithstanding the fruits of his liberation movement victory being postponed -- Mr. Mugabe stood before the citizens of the re-named nation of Zimbabwe as its first freely-elected Prime Minister and said:

> I urge you whether you are black or white, to join me in a pledge to forget our grim past, forgive others and forget, join hands in a new amity, and together, as Zimbabweans trample upon racialism, tribalism and regionalism, and work hard to reconstruct and rehabilitate our society. . .[6]

Years later, Archbishop Desmond Tutu lauded Prime Minister Mugabe's reconciliatory approach saying that "after one of the most bruising bush wars, Robert Mugabe, on the night of his election victory in 1980, amazed everybody by talking

about reconciliation, rehabilitation and reconstruction." Tutu called this "*ubuntu* at work."[7]

Unfortunately, Mr. Mugabe (and many of his nationalist movement colleagues) often tended to carry out many actions at odds with *ubuntu*. As he sought to consolidate his personal power, both prior to and after Independence, many of Mr. Mugabe's real and perceived opponents died mysteriously (often in car incidents) or were politically sidelined. These sometimes fatal power struggles, arguably resulted from his individual interests surpassing his respect for either the dignity of fellow human beings or community harmony.

On a larger scale, the 1982-1987 *Gukurahundi*[8] massacres were seen by most to be incompatible with *ubuntu* values. Concerned about ambitions of the PF ZAPU political opposition led by Joshua Nkomo, and claiming that dissidents[9] were set to destabilize the newly independent nation, Mr. Mugabe assigned the North Korean-trained 5 Brigade to police the Matabeleland and Midlands provinces, a military operation he defended saying it was a justified action in a counter-insurgency war. Outside of normal army command structures, the 5 Brigade was answerable directly to Mr. Mugabe. This government-orchestrated effort to root out some 300 dissidents resulted in the death of more than 20,000 Ndebele-speaking civilians and the torture of thousands more. These atrocities occurred during the height of the Cold War at a time when residents in Ndebele-speaking parts of Zimbabwe were believed by some, rightly or wrongly, to be aligned with the Soviet Union whereas residents in Mr. Mugabe's Shona-speaking areas were seen to be more closely aligned with Chinese Maoists.

A Unity Accord signed in December 1987 ended the deadly strife between the nation's two political forces, ZANU and PF ZAPU, effectively collapsing the country's only major opposition party into one party, ZANU-PF. This was followed in April 1988 by another blanket amnesty pardoning all 5 Brigade members responsible for the killing and torture of civilians, as well as pardoning Zimbabwean dissidents for an estimated 300 murders.[10] (Foreign nationals were not included in the amnesty).

Some 13 years later, on 6 October 2000, President Mugabe issued a clemency order granting amnesty to all persons seen to be liable for criminal prosecution (whose guilt or innocence had not been determined) for any politically motivated crime committed during the period 1 January 2000 to 31 July 2000 (except for certain crimes characterized as "grave"). According to Amnesty International, this amnesty protected perpetrators of human rights abuses (torture, assaults, kidnapping and abductions) in connection with the 12-13 February 2000 constitutional referendum and the 24-25 June 2000 parliamentary elections in which a new, five-month old opposition party, Movement for Democratic Change, won a historic number of seats in the National Assembly (57).

In the past decade, the Zimbabwean community has continued to suffer harms attributed to the leadership of Mr. Mugabe, including the displacement of hundreds of thousands of black farm workers during the fast-track land reform of 2000-2002, the forced homelessness of hundreds of thousands of poor people in Operation *Murambatsvina*[11] in 2005, and state-sponsored murder and torture of thousands of

political opposition members and their supporters in each of the country's elections, especially since 2000. Zimbabwe has also suffered from the mass emigration of millions of citizens who fled their homes to escape political and economic hardship, dire food shortages, and declining education and health care. The most badly affected members of the community continue to be the young, the sick, the elderly and the rural poor.

Just who is responsible for Zimbabwe's dismal state of affairs is a subject of extensive debate and disagreement. Many see the flawed Lancaster House settlement as laying the groundwork for today's crisis. According to Ibbo Mandaza, even almost 30 years ago, Mr. Mugabe expressed concern: "Yes, even as I signed the document I was not a happy man at all. I felt we had been cheated to some extent . . . that we had signed a deal which would to some extent rob us of the victory we had hoped to have achieved in the field."[12] Similarly, Joanne Ruocco writes: "The Lancaster House Constitution did not so much bring peace, as it brought a hazy and damaging silence."[13]

While many attribute Zimbabwe's crisis to the flawed political settlement, others point to the ill intent and betrayal of Western powers, especially British political leaders who were seen to have reneged on their promise to fund Zimbabwe's land reform programme. Still others, including a majority of Zimbabweans, believe Mr. Mugabe himself is most responsible for hurting the community that was once called the "jewel of Africa."[14] Although the point may remain debatable for some time, for purposes of this report, I will work from the assumption that Mr. Mugabe has indeed perpetrated punishable crimes against his own community, the peoples of Zimbabwe.

This is not to say he is the only one who has carried out harmful actions, including Western powers, but the scope of my paper is limited to him. Zimbabwe is a tragedy involving many historic wrongdoers but the fact that many others are also culpable cannot justify Mr. Mugabe's gross violations of both human rights and *ubuntu.*

3. *Ubuntu*, community, and justice.

The successful articulation of my premises and argument requires that I take some time defining my philosophical interpretation and the historical and in some cases anthropological context of three key concepts: "*ubuntu,*" "community," and "justice."

3.1 Ubuntu

I will start from the premise that *ubuntu* does exist as an ideal social ethic and foundation of African philosophy, though it is worth noting that many African politicians, business leaders, and intellectuals whom I consulted said they had no idea what *ubuntu* meant philosophically, or whether or not their actions were intuitively guided by it. In defining my understanding of *ubuntu,* I have focused mostly on texts written by African philosophers and particularly citizens of Zimbabwe and South Africa. Although many eminent philosophers have written about *ubuntu,* I have, for the most part, narrowed my argument to reflect the views of African writers, thinkers and practitioners. In unpacking *ubuntu* as a communitarian African philosophy as applied to the question of amnesty for Mr. Mugabe, it seems more appropriate to highlight local perspectives. I have also provided a brief background in this section on leadership responsibilities in an *ubuntu* context. It is important to note, however, that with respect to the sensitive topic of justice for a controversial fallen hero such as Mr.

Mugabe, any inferences or interpretations of *ubuntu* as applied to this case analysis are mine alone.

Very few Zimbabwean philosophers appear to have written on *ubuntu*. However, I believe the first known academic text on *ubuntu* was published in Harare in 1980 by Stanlake and Thompson Samkange of Zimbabwe. In their book, *Hunhuism or Ubuntuism: A Zimbabwe Indigenous Political Philosophy,*[15] they describe three maxims. The first, which mirrors nearly all philosophical interpretations of *ubuntu,* is: "To be human is to affirm one's humanity by recognizing the humanity of others and, on that basis, establish respectful human relations with them." Samkange and Samkange's second maxim says that if faced with a choice, the value of preservation of life is more important than seeking wealth. Finally, they note that "deeply embedded in traditional African philosophy" is a principle that the power and status of the king comes from the will of the people under him.

Samkange and Samkange define *munhu* in Shona and *umuntu* in Ndebele/Zulu as "a person, a human being, or humanness."[16] The usual understanding of *ubuntu* is the Zulu maxim "*umuntu ngumuntu ngabantu*" ("a person is a person through other people"). However, the Shona proverbial saying "*kugara kunzwana*" (living together is impossible without mutual respect and understanding) also captures the almost seamless *ubuntu* intersections of individual and communal well-being.

Fellow Zimbabwean scholar, Tarisayi A. Chimuka, claims in his article, "The Ethics of Shona Culture," that good conduct in Shona society is defined as that which promotes the well-being of the community.[17] According to Chimuka:

> Shona virtues considered fundamental for community life can be put into numerous broad categories: *kunzwanana* (mutual understanding), *kugarisana* (peaceful co-existence), *kuwadzana* (fellowship), *hushamwari* (friendship) . . .and *mushandirapamwe* (cooperation). The function of these was to facilitate conduct in the community.[18]

Unpacking the etymology of ubu-ntu, Magobe B. Ramose, reveals *ubuntu* as both a noun and a verb, understood as an imperative commandment to act in a way that respects others:

> Although the English language does not exhaust the meaning of this maxim or aphorism, it may nonetheless be construed to mean that to be a human be-ing is to affirm one's humanity by recognizing the humanity of others and on that basis establish human relations with them. . . .(It) is simultaneously a gerund and a gerundive since the latter is implied in the imperative, *ngabantu*. In other words, be-ing human is not enough. One is enjoined, yes commanded as it were, to actually become a human be-ing.[19]

While Ramose claims that individuals have an obligation to act respectfully toward others in order to be judged as truly human in the *ubuntu* context, Justice Dr. Yvonne Mokgoro of South Africa's Constitutional Court describes "the significance of group solidarity on survival issues so central to the survival of our communities."[20] She further states that *ubuntu* "in its fundamental sense. . .denotes humanity and morality."[21] According to Lesiba Teffo:

> the ideal of *ubuntu/botho* is the common spiritual ideal by which all black people south of the Sahara give meaning to life and reality. This concept is usually described as the spiritual foundation of African societies. In the Gospel of Matthew (22:29), the commandment is: 'You shall love your neighbour as yourelf'.[22]

Teffo defines the norms and values that most typify *ubuntu* African humanism as "justice; respect for person and property; tolerance; compassion with and sensitivity to the aged, the handicapped and less privileged; clear-cut sex and marriage controls; unwavering obedience to adults, parents, seniors and authority; courtesy, reliability, honesty and loyalty."[23]

"Ubuntu" has different meanings to different people. One Zimbabwean interviewed summed it up as "tolerance." Another as "a kind heart." A Zimbabwean business leader[24] explained: "if you have *unhu*, it means you are cultured, dignified. If a moral leader in the West does something wrong, unethical you might say 'that behaviour does not become him'. We on the other hand in our culture might think (though probably not say), 'that is not *unhu'*."

Referring to the duties of an individual in a society rooted in *ubuntu*, South Africa's Constitutional Court Chief Justice Pius Langa notes:

> [*Ubuntu*] recognises a person's status as a human being, entitled to unconditional respect, dignity, value and acceptance from the members of the

> community such person happens to be part of (sic). It *also entails the converse, however*. The person has a corresponding duty to give the same respect, dignity, value and acceptance to each member of that community. More importantly, it regulates the exercise of rights by the emphasis it lays on sharing and co-responsibility and the mutual enjoyment of rights by all.[25]

Tutu is perhaps the best known proponent of *ubuntu.* He explains that "a person with *ubuntu* . . . does not feel threatened that others are able and good, for he or she . . . belongs to a greater whole and is diminished when others are humiliated or diminished, when others are tortured or oppressed, or treated as if they were less than who they are."[26] With respect to justice, Tutu's interpretation of *ubuntu* emphasizes restorative justice, highlighting acknowledgment of wrongdoing and forgiveness as starting points for both individual and national reconciliation and healing.

Finally, Nelson Mandela claims that "*Ubuntu* is a simple, big idea. It asserts that the common ground of our humanity is greater and more enduring than the differences that divide us."[27] While Mandela may consider it to be a "simple, big idea," I have actually not discovered *ubuntu* to be so simple. I have instead found it a moral philosophy with interpretations that pull in at least a few different directions. As Reuel Khoza writes: "the philosophy has multiple dimensions encompassing the moral, philosophical, rational, psychological and social."[28] What seems a shared core of all *ubuntu's* varied discourse, however, is the belief that upholding the strength and solidarity of the community is a higher order value than protecting the sovereign rights of the individual.

Whether one interprets *ubuntu* as "*Izandla ziyagezana*" ("one hand washes another", Swazi) or "*rintiho rinwe a ri nusi hove*" ("one finger cannot pick up a grain", Tsonga) or "*akukho qili linoku zikhoth'emhlana*" ("no genius is so clever that he can lick his own back", Xhosa), Reuel Khoza writes, "all are manifestations of a belief system where the collective supersedes the individual."[29]

3.1.1 Leadership responsibilities in an ubuntu community

As the senior member of the dominant clan of the chiefdom, the chief in Shona society was traditionally called *baba* (father) or *baba mukuru* (great father) and was said to refer to his people as his children.[30] Michael Bourdillion writes, "the chief is traditionally the guardian of the fundamental values of *rupenyu* (life) and *simba* (strength, vitality, well being). . .(and) responsible for the prosperity of his people and particularly for the land and its produce."[31] I would argue that while literature linking Shona and *ubuntu* leadership obligations is not explicit, it follows that a leader would understand his positive duty to respect and protect the dignity of his community (individually and as a family and as a group) and his negative duty not to disrespect and harm the people from whom his power derives. Although in Zimbabwe today, the political power of the chiefs is greatly diminished, even when Bourdillion wrote in 1988, he noted that in Shona-speaking Zimbabwe, the ruling party ZANU-PF network (which Mr. Mugabe continues to lead) had taken over the consultative role of the traditional chief. I thus think it is fair to apply transcendent leadership obligations to Mr. Mugabe. Khoza writes:

> The notion of leading by being in front of the group – not above it – is widely implanted in African culture. . .the Xhosa say *ukukhokela* – to go in front; the

Setswana phrase is *goeta pele* – to visit, go first; in Tshivenda it is *horanga phanda* – to steer in front; in isiZulu they say *ukuhola* or *ukuqamba indlela* – to pave the way; and in Xitsonga *kurhangela* – setting the pace, directing."[32]

Khoza notes of South African *ubuntu* icons Mandela and Tutu as well as Walter Sisulu: "The qualities of these men defy easy categorization. They reflect faith in humanity and a willingness to sacrifice their own on behalf of others."[33]

In summary, my understanding of *ubuntu* is that it is based in an ineffable faith in humanity, that above all it values harmonious and dignified human relationships and that it commands one to live as a human being who treats others with respect. This is so both because respect for humanity is an independent value of *ubuntu* and because mutual respect is an instrumental value as a means to promote the harmony, strength and survival of the community.[34] My understanding of *ubuntu* leadership is that, whether as President, chief, or *baba mukuru*, Mr. Mugabe, as an individual at the front of his people, has a special duty to uphold the *ubuntu* values just mentioned. This naturally includes not harming one's own community, or leading them into harm's way.

3.2 Community

Some claim that *ubuntu's* "community" should be broadly defined as all Bantu-speaking peoples or at least those resident in the Southern African region. Others say that *ubuntu* communities are more appropriately defined as village-based, not even expanding to urban areas with similar linguistic and ethnic backgrounds.

For purposes of my argument, as mentioned earlier, I have confined the relevant *ubuntu* community to the Bantu-speaking peoples of Zimbabwe, 80 per cent who are Shona-speaking and 15 per cent who are Ndebele-speaking.[35] It is well known that the Southern African Development Community (SADC) and African Union (AU) leadership have been tasked with addressing the sovereign issue of the leadership crisis in Zimbabwe. I would argue, however, that, while they do represent an array of Bantu-speaking and *ubuntu*-rooted peoples, the appropriate adjudicators of *ubuntu* justice reside (or formerly resided) within Zimbabwean borders – peoples who share a national identity and where most harm has occurred.

3.3 Justice

In this section I will explain my understanding of *ubuntu* justice. First, I will describe a traditional Shona dialogue- and consensus-building judicial process that I propose constitutes a micro-example of a healing process applicable in most respects at the national level in Zimbabwe. I will then discuss in some depth the complexities of retributive justice and restorative justice which the people of Zimbabwe may want to consider when deciding if or under what circumstances they should offer amnesty to Mr. Mugabe as a means to restore community harmony.

To recap once more, the dilemma of *ubuntu* justice in Zimbabwe is this: if the ideal conduct of Mr. Mugabe's community is underpinned by *ubuntu* (and if his actions do not uphold *ubuntu* values at all) what then does *ubuntu* say his *ubuntu* community is permitted or obligated to do? While *ubuntu* literature is unclear about appropriate responses to *ubuntu* offenses, international human rights law is unequivocally clear: a significant number of Mr. Mugabe's offenses cited earlier are human rights abuses, as

defined by the United Nations and international statutes, and quite simply, he must stop these actions or face possible international sanction.

This paper, however, specifically focuses on violations of *ubuntu and what his own community should do.* Is there a difference and does it matter? Yes and no. For example, if Mr. Mugabe brutally attacks civilian Zimbabweans, his own people, this is an indisputably clear violation of both human rights and *ubuntu.* However, if he attacks a perceived foreign agent seen to be threatening the survival of his community, this is possibly a human rights violation (depending, of course, on the nature of the attack), but not necessarily an *ubuntu* offense if this is an action to try to protect his community from harm. This is obviously a complicated issue that has no real bearing on my argument. The point is, human rights and *ubuntu* overlap significantly, but not 100 percent.

What is important from an *ubuntu* perspective, and what makes Mr. Mugabe's wrongdoing particularly significant, is that he has committed human rights abuses against his own people. His actions constitute a notable *ubuntu* offense because harm was directed not against foreign agents, or foreign citizens, or on foreign soil perhaps in a time of war (although all this may also be true), but rather against his own community in his own country.

3.3.1 Traditional ubuntu justice processes

I acknowledge that the following anthropological background envisages a specific sort of community, of a considerably smaller (village) scale than the multi-lingual and multi-cultural community that comprises the nation of Zimbabwe. I also acknowledge

that in modern Zimbabwean society, the state has largely taken over the role of adjudication of justice from traditional processes at the village level. However, the point I will make relates to an ideal notion of how an *ubuntu* society might tackle the question of *ubuntu* justice as a community of people, a majority of whom shares Shona cultural background (but with significant and disenfranchised minorities). I realize that some may make take issue with this point but it is not within the scope of my argument to juxtapose Shona and Ndebele justice traditions. Realising that Zimbabwe is a modern state, I have chosen for research purposes to try to look at the difficult issue of justice for Mr. Mugabe from within his own *ubuntu* milieu where his values were formed, which is a rural Shona village. Mr. Mugabe is also a member of the Roman Catholic community so I will later bring in a more religious perspective to the question posed at the outset.

Describing local justice processes, Zimbabwean professor, Dr. Mandivamba Rukuni, writes:

> . . .Afrikan (sic) society was crafted over centuries so that it is fully self-contained and functional at the local level. This means that all issues important in life are dealt with at the family and community level. As a result, all the major ingredients of a rich society such as religion, education, politics and governance, peace and conflict resolution, are dealt with first and foremost within the family and then within the community. Only after they have been addressed at this level, you (sic) start worrying about governments and all these higher level institutions.[36]

Rukuni explains that in traditional villages it is the responsibility of the headman to bring a perceived victimizer to justice. The "*Dare*" (pronounced DA-ray) is the ancient traditional way Shona-speaking communities conduct discussions, build consensus, resolve conflicts and administer justice. The details of the *Dare* process vary depending on the sub-group of Shona-speaking people. The way it generally works, however, is the leader of the community (or family or village or chief) invites participation of all affected parties and, in some cases, experts to explain the evidence or issues. Nearly always, the verdict is reached by consensus, before the head of the family, community or chief announces the decision and passes judgment. Punishment for major crimes such as murder, for example, may include huge fines and social stigma (also of the family and community). Such a criminal can apparently only re-establish his reputation after years of demonstrating "*unhu*" or "*ubuntu*".[37]

Samkange and Samkange, Chimuka, Ramose and Rukuni all seem to claim that Zimbabwe's traditional conflict resolution process, the *Dare*, is implicitly based on the African traditional philosophy of *hunhuism/ubuntuism.* It then follows that, on the question of *ubuntu* justice for Mr. Mugabe, it would be the duty of Zimbabweans to consult among themselves, reach consensus and decide the appropriate actions required to uphold *ubuntu* values and/or punish or confront those who do not.

3.3.2 Retributive justice

Retributivist theory basically says that a crime is a violation of law and state, and that justice requires the state to determine blame and apportion pain (punishment). The central focus is that offenders get what they "deserve." Retributive justice tends to focus on the crime more than the criminal or victim as persons, and on punishment

rather than rehabilitation. Operative questions tend to be: "What laws were broken? Who did it? What do they deserve?"[38]

Seen to be a major proponent of restorative justice yet recognizing the complexity of the challenge, South Africa's Truth and Reconciliation Commission (TRC) Chairman Tutu, asks in his biography:

> Can it ever be right for someone who has committed the most gruesome atrocities to be allowed to get off scot-free, simply by confessing what he or she has done? Are the critics right: was (South Africa's) truth and reconciliation process immoral?. . .So is amnesty being given at the cost of justice being done? This is not a frivolous question, but a very serious issue that challenges the integrity of the whole Truth and Reconciliation process.[39]

Indeed few Southern African philosophers seem to have tackled the very serious and politically complex issue of the permissibility of retributive justice. Much more is available on *ubuntu's* preferred path of restorative justice. However, in the judgment on the permissibility of the death penalty in South Africa, Justice Tholakele Hope Madala writes:

> Punishment is a means to an end, not an end in itself—that end being the reformation of the criminal as a person, so that the person may, at a certain stage, become a normal law-abiding and useful member of the community once again. The person and the personality of the offender are the point of focus rather than the crime, although the crime is, however, not forgotten. And

> in terms of this theory of punishment and as a necessary consequence of its application, the offender has to be imprisoned for a long period for the purpose of rehabilitation. . .This, in my view, accords fully with the concept of *ubuntu*.[40]

Interestingly, many Shona traditionalists believe that "ancestors might invoke punishment in protection of such people (victims) should members of society neglect or ill-treat them"[41] and that an act such as murder "received ancestral punishment of the whole lineage in the form of the avenging spirit (*ngozi*).[42] The issue of *ngozi* will be discussed in later pages.

Although generally claiming that *ubuntu* "both demonstrates and instructs us toward restorative justice,"[43] Dirk J. Louw asserts it would be "wrong to assume that a restorative, harmonious settlement of criminal cases would always be reached in traditional African communities."[44] He quotes intercultural philosopher and anthropologist, Wim Van Binsbergen who says that *ubuntu* "is not infinitely accommodating, not without boundaries."[45] I will discuss my perception of those boundaries in later pages.

When a retributive response *is* decided upon, the literature indicates that punishment must be carried out in a spirit of *ubuntu* reciprocity. In other words, while punishment is permissible under some circumstances, it would not be permissible to prescribe a retributive form of justice that is disrespectful, inhumane or degrading, according to South Africa's constitutional court. This means that even if Mr. Mugabe believes he

has legitimate claims to punish, his retributive response needs to respect *ubuntu* boundaries.

In the absence of more literature on this fraught topic, I conclude that the issue of when (and what form of) retribution is allowable in an *ubuntu* community is not well understood, and is not within the scope of this paper to address. As Louw points out: "...when such settlements failed or when settlements were dishonoured, restorative practices often made way for retributive measures, like blood feuds between kin groups or the 'taking up of the spear' (that is, killing him/her) – which was deemed to be the victim's right amongst, for example, the Nuer of Sudan."[46]

3.3.3 Restorative justice

Restorative justice sees crime as a violation of people and relationships. It says that violations create obligations and that solutions involve victims, offenders and community in an effort to put things right. The needs of victims and the responsibilities of offenders for repairing harm are centrally important. Operative questions are: "Who has been hurt? What are their needs? Whose obligations are these? What is at stake in the situation? What is the appropriate process to involve stakeholders in an effort to put things right?" Restorative justice sees offenders as victims, too, but requires that they take responsibility for their actions. Ideally, it puts key decisions into the hands of those most affected, aiming to make the outcome more healing and more transformative. The underlying hope is that this type of process will repair the harms done, restore relationships, encourage mutual respect and reduce the likelihood of future offenses. When the process is complete, both victims and

offenders are meant to feel a sense of closure. What is ultimately decided will affect how restorative the process actually is.[47]

According to Bourdillion, historically the Shona peoples have a traditional means for coping with "crimes against community" but this is subordinated to their desire for social harmony.[48] Indeed all literature seems to indicate that restoration of community harmony is of fundamental importance in *ubuntu*-rooted societies. This approach is clearly in line with restorative justice thinking.

A relatively new concept, restorative justice, made headlines during South Africa's TRC hearings during which its most well known proponent, TRC Chairman Tutu, emphasized the importance of healing and rehabilitation of *both* victims and perpetrators: "Here the central concern is not retribution or punishment but, in the spirit of *ubuntu*, the healing of breaches, the redressing of imbalances, the restoration of broken relationships, he wrote."[49] Daniel Bell makes a similar claim saying,

> the concept of restorative justice also blunts a certain 'legalism' found in retributive justice systems that threatens to reduce the concept of justice to one of contentiousness between aggrieved parties. It reminds us that justice is not simply found in the rule of law but in human, social and moral practices that create a civil society where all people have equal claim to human dignity and accept responsibility for the well-being of all its citizens.[50]

He notes specifically that restorative justice means "wrongdoers taking responsibility for their crimes."[51]

In the *ubuntu* context, a restorative justice process such as South Africa's TRC would invite all parties to share their stories and perspectives in a community *Dare* of sorts. In this process, I claim that public acknowledgement of wrongdoing (usually with the victim present, if possible) is both necessary and obligatory. Acknowledgement is of instrumental significance because it is driven by the fundamental *ubuntu* obligation to create, restore and/or preserve community harmony. Without acknowledgement of wrongdoing, it is seen as unlikely that individual healing or community harmony will result. Acknowledgement itself does not appear to be an independent *ubuntu* value but rather instrumentally essential in any effective process to restore balance and dignity to a wounded *ubuntu* society.

3.3.3.1 *Apology and repentance*

The obligation to apologize in an *ubuntu* context seems somewhat less certain in most literature. And, while forgiveness by victims is often promoted as ideal path toward healing and harmony, it is never an obligation. Pumla Gobodo-Madikizela tells of her experience interviewing one of apartheid's chief killers, Eugene de Kock, while he was still in prison after his TRC testimony. In the testimony he had described in great detail the killing of three black policemen who were sent on a false mission in a car in which explosives had been secretly planted. He wanted to apologise to the widows of the policemen, but to do so in private. The widows' lawyer agreed to the meeting. A few days later, Gobodo-Madikizela met the Ms. Pearl Faku and Ms. Doreen Mgoduka. "I was profoundly touched by him," Mrs. Faku said of her meeting with de Kock. Gobodo-Madikizela writes:

> Both women felt that de Kock had communicated to them something he felt deeply and had acknowledged their pain. 'I couldn't control my tears. I could hear him but I was overwhelmed by emotion, and I was just nodding, as a way of saying yes, I forgive you. I hope that when he sees our tears, he knows that they are not only tears for our husbands, but tears for him as well. . . .I would like to hold him by the hand, and show him that there is a future, and that he can still change'. [52]

Gobodo-Madikizela concludes that the widow's response (which I would call a manifestation of the spirit of *ubuntu*) was an "extraordinary expression – an act – of empathy," as the widows shed tears both for their husbands' murders and for "the loss of de Kock's moral humanity."[53]

Gobodo-Madikizela, who herself served on the TRC, tries to come to terms with the role of remorse and forgiveness – the steps beyond acknowledgment that the TRC did not require. The dilemma of *ubuntu* justice is implicit in the questions she seems to be asking herself:

> If showing compassion to our enemies is something that our bodies recoil from, what should our attitude be to their cries for mercy, the cries that tell us their hearts are breaking, and that they are willing to renounce the past and their role in it? How can we transcend hate if the goal is to transform human relationships in a society with a past marked by violence between groups?[54]

In *ubuntu* literature, it seems that while apology and repentence are seen to be ideal ways to transform human relationships, they are not always practically possible. Interestingly, however, regardless of whether a victimizer utters an actual apology or expresses remorse, some form of reparation is seen to be essential. Quoting South Africa's Final TRC Report, Tutu states, "Without adequate reparation and rehabilitation measures, there can be no healing and reconciliation, either at an individual or a community level."[55]

On 1 October 2009, Zimbabwe's Catholic Bishops' Conference made a plea reminiscent of Tutu's prayers during the painful TRC process. While it is noted that Tutu rarely mentioned *ubuntu* in the course of the TRC, he firmly asserts that it was implicit in the entire process. Similarly, I would argue the Zimbabwe Catholic Bishops' Conference Pastoral Letter on National Reconciliation and Healing has a very strong though implicit *ubuntu* message:

> . . .we appeal to the perpetrators of these atrocities, accomplices, and instigators of violence to acknowledge the evil deeds and in conscience to own up and make restitution as Zacchaeus did (Luke 19,8). . .Finally, we appeal to the victims of any of the evil acts in our country, the offended, to forgive. It is not easy. Do not expect total compensation. . .Forgiveness does not mean that you submit to injustice or let people walk all over you or that you do not stand up for your rights. Nor does it mean that forgiveness should be one-sided. The person who causes the hurt should help bring forgiveness into being by saying, 'I was wrong, I am sorry I should not have done that, forgive me'.[56]

Although perhaps some may claim that this approach emanates more from a theological than an *ubuntu* bias, I would respond that so did Tutu's during the TRC, and no one complained about the nuances of his reasoning at that time. In my view, this pastoral letter is a clear Zimbabwean example of an appeal to restorative justice and *ubuntu* values as a means to restore community harmony and also the dignity of both perpetrators and victims.

3.3.3.2 Amnesty

Amnesty may be defined as a pardon for wrongdoing, especially for those who have committed political crimes.[57] While it may be an instrumental option in restorative justice processes, I have found no *ubuntu* or restorative justice literature claiming that amnesty without acknowledgement for wrongdoing is permissible for whatever reason whatsoever, even if recommended to stop a civil war, for example, as political opponent Joshua Nkomo did with the 1987 Unity Accords. To date, Mr. Mugabe has not publicly acknowledged his wrongdoing, nor does research indicate he has apologized to any of his victims. Instead, he is known to have called his recent onslaught against political opposition and remaining white farmers, the "Third Chimurenga." This being the case, one would be forgiven then for wondering what the point is of writing about amnesty for Mr. Mugabe. But bear with me as I look both backward and forward.

South Africa's TRC in the mid 1990s was authorized to give amnesty on an individual basis to persons found to have committed serious human rights violations, provided they had committed acts for political motives and *fully disclosed them to the commission.* Reparations were also to be provided to qualified victims by the state,

although sadly, this did not happen as promised. While many victimizers received immediate amnesty if qualifications were met, the victims were forced to wait for reparations, in some cases in vain, because of alleged South African government budget shortfalls. "Their resulting anger was understandable," Tutu said, indicating that the TRC had not done enough to warn people about the price to be paid for stability in South Africa. "Amnesty is going to cause people a lot of heartbreak,"[58] he said.

Did the "heartbreak" of amnesty become a path to community harmony in South Africa? Possibly, at least for the short- and medium-term. Indeed many analysts claim South Africa's emphasis on *ubuntu* as the reason the political transition in 1994 was a peaceful "miracle" rather than a bloodbath. However, it is in my own mind debatable whether the decision to offer amnesty, particularly to apartheid security operatives, emanated directly from a conscious adherence to an *ubuntu* ethic. Perhaps it was rather a pragmatic political decision combining *ubuntu*, Christian theology and notions of restorative justice. Perhaps it was seen as the only path to a peaceful transition.

I mention the example of the TRC process in South Africa because it is often seen as an ideal model of *ubuntu* in action. This may be true, and if we look at it in that way, what is instructive and relevant, thus worth repeating, is that while amnesty was seen as permissible, the victimizers in South Africa *had to acknowledge their wrongdoing to qualify for amnesty.*

In Zimbabwe's troubled past, perhaps unconditional amnesty was seen by some, in the early days at least, as a path to community harmony. But was it? Without requiring the restorative steps of acknowledgement and reparation legislatively required in South Africa's TRC amnesties, unconditional amnesty in Zimbabwe sowed sinister seeds of community destruction. Ruocco writes:

> . . .amnesty determined the national climate of the newly formed Zimbabwe. Not only were those individuals guilty of torture pardoned for their crimes, many remained within the country and assumed powerful positions in the Zimbabwean army and secret services. On a general level, amnesty destroyed accountability, thus fostering fear and violence; however, it also acted very literally to perpetrate violence. Many of the human rights violators that remained in power went on to commit even grosser violations.[59]

Referring to President Mugabe's October 2000 clemency order in connection with human rights abuses committed in connection with Zimbabwe's February 2000 constitutional referendum and June 2000 parliamentary elections, Amnesty International issued a statement that is long but very relevant:

> There must be a prompt, thorough, impartial and independent investigation of all serious human rights abuses which occurred before the elections in Zimbabwe this year and those responsible must be brought to justice. This pardon represents a lost chance for justice and the possibility of breaking the cycle of impunity that has riddled Zimbabwe. By failing to tackle impunity for gross human rights abuses, the order provides no deterrent either to continuing

> human rights abuses or contempt for international human rights law. . . Zimbabwe has had a disturbing pattern of impunity going back to the Rhodesian government when Ian Smith was Prime Minister. Amnesty International calls for repeal of this clemency order, as it did with respect to the amnesty given at independence to officials of Ian Smith's government in the 1970s, and the amnesty for the perpetrators of the Midlands and Matabeleland atrocities in the 1980s. Amnesty International fears that this amnesty will only fuel new human rights abuses, like the previous ones have done. There can be no true reconciliation or an environment in which human rights can develop, if the truth about the gross human rights abuses which have occurred in Zimbabwe is not established and if those responsible for them fail to be held accountable.[60]

As the Zimbabwe Catholic Bishops' Pastoral Letter laments nine years later: "This makes the challenges of healing, reconciliation, justice and peace in Zimbabwe very complex as it becomes necessary to deal with the present hurts and wounds as well as trace the wounds of the past."[61]

One may rightly ask what is the relevance of discussing the failures of unconditional amnesty when I have already argued that *ubuntu* would not allow it in the first place. This to say, if without acknowledgment of wrongdoing, amnesty is unequivocally wrong, what is the point? I raise the issue, however, for two reasons. First, it was the specific question I asked when I selected this research topic two years ago so I feel obligated to address it, even if in some cases the question has been overtaken by events. Second, one must be careful not to be pragmatically tempted to look for

convenient interpretations of *ubuntu* to justify what is actually a purely political decision, which amnesty generally is. Perhaps also, it is simply worth highlighting for the record – in view of current unresolved circumstances -- that historically, unconditional amnesty has tended to lead to the opposite of *ubuntu* harmony.

4. Argument: the peoples of Zimbabwe should not agree to amnesty for Mr. Mugabe without specific conditions

Mr. Mugabe remains a leader both revered as a liberator of his people and reviled as a murderer who has presided over the destruction of the lives of many of the same people he once liberated. In reality, the question of appropriate justice in this situation has been overlaid with nostalgic memories of his hero status and a deeply bonding sense of kinship amongst some in the greater community of African leaders who repeatedly demand an African solution to this situation. One might attribute their preferred approach to *ubuntu* in the survival sense that Justice Mokgoro referred to it. Indeed many SADC and AU leaders, including Mr. Mugabe, worked both together and individually to end a racist and violent colonial history. In so doing, their courageous actions led in most cases to greater opportunity for African peoples to pursue lives embodying the *ubuntu* values of respect and human dignity. As African leaders, they are now being called upon to solve a tragic problem where one of their formerly highly-esteemed community members has betrayed the values for which together they often fought against common external enemies. Their task is difficult. Indeed, as already evident in my case analysis, the question of *ubuntu* justice involves a complex dialectic with sometimes murky moral intersections of *ubuntu* principle and political pragmatism, individual dignity and community harmony, historical respect and disempowering, traumatizing fear.

Stepping back again to the broader question: "what would *ubuntu* say about offering amnesty to individuals who have harmed their own community?" let us consider the following scenario:

> A leader of an African community underpinned by *ubuntu* values takes actions that result in the death of political opponents, death of thousands of his community through violence, and death of thousands more through sickness and starvation. Emigration of millions of citizens separates families and weakens communities as well as causing harm to nearby countries to which they have fled. For years, this leader creates a divisive climate of fear, presiding over policies that force hundreds of thousands of people into poverty, homelessness and joblessness. At least once, this leader is soundly rejected by his community in Presidential elections but refuses to respect its decision to choose a new leader. Despite entreaties by respected African peers, this leader resolutely refuses to respect the wish of a majority of his community to please retire. Despite political agreements crafted by his African colleagues as a path to reconciliation in the spirit of *ubuntu*, he continues to harm his community and break promises to both his regional peers and his followers.

In this scenario, under what circumstances would a restorative justice approach be permissible, according to *ubuntu*? As noted, *ubuntu* literature indicates that the value of community harmony, solidarity and survival is paramount. I would thus conclude that if amnesty, as a form of restorative justice, would definitely lead to these results,

then it *may* be seen to be permissible from an *ubuntu* perspective. But under which conditions (or some combination thereof: acknowledgement, apology, reparations) would amnesty be permissible? Answers to this, at least in *ubuntu* literature, are vague.

It seem that restorative justice takes different forms, with conditions perhaps not always fully compatible with *ubuntu.* My understanding though is that restorative justice always requires acknowledgement of wrongdoing. Without this step, the process of restoration has not even begun. Looking at the specific case analysis of Zimbabwe, has unconditional amnesty ever really led to harmony? Not beyond the very short-term. In fact, would *ubuntu* ever say unconditional amnesty was permissible? One of the greatest proponents of restorative justice, Tutu, would say no.

Although said to be underpinned by a faith in humanity, *ubuntu* does not rely on faith alone. It says community members have reciprocal duties to each other and in particular must a) demonstrate respect for the individual dignity of human beings, b) put community well being before individual well being, and c) underscore the importance of community solidarity and harmony for survival.

Taking this definition step by step, it is clear that Mr. Mugabe has committed *ubuntu* offenses. For purposes of review: first, he has repeatedly disrespected his fellow human beings within his own community, often violently; second, he continues to impose his individual power notwithstanding the will of the majority of the people in his community as expressed in elections which he definitively lost in 2008; and third and most important in an *ubuntu* context, he has divided and weakened his

community culturally, politically and economically, causing great harm at all three levels. In short, if one is "commanded," as Ramose says, to manifest the spirit of *ubuntu*, then one must conclude that Mr. Mugabe has intransigently disobeyed this commandment.

This being the case, and while it is clear that *ubuntu* literature focuses on a restorative approach, how does it play out in reality? Whose obligation is it to start to the restorative process? The situation is volatile, and just as in South Africa during its transition in the 1990s, Zimbabweans must continue to live side by side with people who perpetrated grave human rights abuses against them. It may seem self evident or perhaps naïve, but just as Mr. Mandela demonstrated amazingly forgiving leadership upon his release from prison, I would argue that to save his community from catastrophe, Mr. Mugabe has a similarly transcendent obligation. At a time of crisis (even of his own making) Mr. Mugabe has a duty to lead -- not just to uphold *ubuntu* values -- but to lead his people away from the abyss and forward toward a healing sense of shared humanity.

Although it's been more than two decades since chieftainships were separated from government administration, the model of the chief as upholder of the values and prosperity of his community is still relevant. As a lead editorial in *The Herald*, Zimbabwe's state newspaper, noted on 2 November 2009:

> Every nation has founding values and ethos that all in leadership are expected to uphold and defend and these values constitute the bedrock of the

nationhood the leadership pledges allegiance to when taking the oath of office. Zimbabwe is no exception.[62]

In the distant past, Mr. Mugabe, may well have demonstrated supererogatory respect for the founding values and ethos of *ubuntu*. Today, however, instead of upholding a culture of dignity, harmony and respect, he continues to foment a culture of fear, division, and disrespect. I would claim this culture undermines not only his community in general, but also his own self-respect, whether as President, chief, *baba* or human be-ing.

While I have already argued that amnesty for Mr. Mugabe without acknowledgment, apology and reparation is not permissible, the more difficult question is: what if Mr. Mugabe does decide to do just this -- acknowledge wrongdoing, apologize and offer reparations? Would *ubuntu* then obligate the Zimbabwean people to forgive him and agree to amnesty?

All indications in *ubuntu* literature are that the answer is no. Neither amnesty nor forgiveness is a mandatory act in an *ubuntu* context, even if the victimizer has attempted to make amends. However, in reality, such an act would undoubtedly inspire forgiveness and healing, and likely also go a long way to restore Mr. Mugabe's own lost sense of dignity. Just as in 1980 when Mr. Mugabe encouraged a policy of mutual forgiveness, (implying his own forgiveness of those who tormented him for the first 56 years of his life) the victims of his excesses could decide the same. In a consensus-driven, truth, justice and reconciliation process involving all parties –

the people of Zimbabwe could agree that the former liberation icon may retire in peace.

It is understood that, without any doubt, Mr. Mugabe is a victim, too. While this in no way justifies his subsequent harmful actions, Mr. Mugabe is a victim who most likely genuinely believed, at least in 1979, that his touching and groundbreaking example of forward-looking forgiveness (only recently called "restorative justice") was the best way to heal and rebuild a very wounded society. While Mr. Mugabe's advice to "forget our grim past" was a noble gesture at Independence, it is now clear that the ongoing legacy of unacknowledged hurts, untold truths and unresolved wrongdoing have left a jagged sense of indignation and anger amongst Zimbabweans of all language groups, with many traditionalists believing that the current crisis is caused by roving spirits. Unavenged *ngozi*, it is believed by some, will remain angry and destabilizing until the truth is told and justice is done. One writer to Prime Minister Morgan Tsvangirai's online blog puts the situation in another way: "if history repeats itself again we are doomed."[63]

History not repeating itself requires a national healing and reconciliation process which, in fact, has been launched by the Zimbabwean government as part of the current power-sharing arrangement between Mr. Mugabe, Mr. Tsvangirai and Mr. Arthur Mutambara, the three signator's of the September 2009 power-sharing agreement brokered by South Africa. This framework is meant to be a restorative process, beginning with story-telling as a means to community healing. Progress, however, has been significantly slowed by a few key victimizers thought to be saying Zimbabweans must again "forgive and forget" and move forward in order to ensure

community harmony rather than civil war. To this one could cite in response Sir Richard Goldstone who writes:

> Some countries simply forget the past and attempt to induce a national amnesia in its people. Of course that is bound to fail – the victims do not, indeed cannot, forget. And their unanswered calls for retribution develop into hate and invariably that hate is directed collectively at the group from which the perpetrators came.[64]

Instead of contributing to community harmony, Mr. Mugabe's mistaken advice to "forget" the past, combined with serial amnesties (1979, 1988, 2000) has led to anger amongst victims, arrogance amongst victimizers, and most dire -- in some cases violent retribution. One could say that taking into account the historic failure of amnesty to introduce genuine reconciliation is a consequentialist consideration. Perhaps it is. It is nevertheless a question worth asking if the fundamental value of *ubuntu* is to uphold community solidarity, harmony and survival. For more than a century, deep wounds have festered, poisoning human relationships, political stability and hopes for the future. Reconciliation has not occurred nor harms gone away simply because people were told to be forward looking, let go of pain and be forgiving. People know they have been treated with disrespect. They know that for decades, gross human rights violations have occurred and gone unpunished. Most (though perhaps not all) know this lack of justice is morally wrong, whether in an *ubuntu* context or simply as a community of people who believe their dignity and trust has been betrayed.

In South Africa it is perhaps too early to know the effects on the *ubuntu* community of partial justice delivered by the TRC process. In Zimbabwe, however, there is an overwhelming sense that justice has not been done and that the culture of impunity, created in part by the amnesties of the past, has contributed to the deterioration of the country at all levels. Indeed any actual decision about amnesty would have repercussions that could possibly lead to national reconciliation but, without sufficient conditions, could indeed perpetuate a destructive culture of impunity.

Some believe Zimbabwe's culture of impunity would end only with retributive justice as a deterrent. It's uncertain if this would be so. Mr. Mugabe is only one of many *ubuntu* offenders, albeit a symbolically very important one. What would his *ubuntu*-offending colleagues do if he were granted amnesty (after acknowledgment, apology and reparations)? Would they stop their destructive actions? I believe this would be key in determining whether restorative justice was sufficient to transform a culture of impunity into a culture of human dignity. Would other *ubuntu*-offenders also "repent" and decide to uphold the *ubuntu* values of human dignity and mutual respect for which they once fought a bruising liberation war? It seems unlikely. They would probably instead argue that pursuing justice through truth-telling would endanger fragile community harmony at a time that all long for unity, stability and peace. It is a difficult dilemma and in studying their options, the people of Zimbabwe will need to find an individual dignity-respect/social harmony balance that upholds their best understanding of *ubuntu.* My own understanding of *ubuntu,* however, leads me to believe that without acknowledgement of wrongdoing, apology and some type of reparations, if only symbolic, amnesty would be unequivocally wrong.

For amnesty to be permissible, I agree with the guidance of the Zimbabwe Catholic Bishops' Conference: "the person who causes the hurt should help bring forgiveness into being by saying, 'I was wrong, I am sorry I should not have done that, forgive me' (sic)."[65] If Mr. Mugabe were to say "I am sorry," as a member of both the *ubuntu* community of Zimbabwe and the Roman Catholic community, this would profoundly manifest the spirit of *ubuntu* as well as be a demonstration of repentance definitely obligatory in his Christian faith and arguably obligatory within effective restorative justice processes.

To take this one step further, Mr. Mugabe's community of victims would then have to consensually agree to *accept* his apology and decide upon reasonable reparations, thus restoring their own dignity as well as Mr. Mugabe's. In my view, only then would amnesty lead to both a restoration of Mr. Mugabe's own diminished human dignity and that of his violated community. Only then would I argue that amnesty could restore, "reconcile, reconstruct and rehabilitate"[66] the wounds of a deeply traumatized Zimbabwean society. In summary, then and only then would amnesty for Mr. Mugabe, in my view, be unequivocally *permissible* action in an *ubuntu* context.

5. Critical discussion of objections.

Ubuntu is a complicated topic that pulls in many directions. Inevitably, many insightful *ubuntu* experts, and perhaps Mr. Mugabe himself, will disagree with components of my argument. I have thought of six possible objections but there may be many more: 1) Mr. Mugabe may perceive "disrespect" inherent in my research question itself, given his own victimhood prior to his becoming national leader; 2) my strict conditions for permissible amnesty may not be seen to be legitimized in other

ubuntu literature; 3) I have not sufficiently addressed the potential permissibility and potential healing properties of retributive justice; 4) I have not taken into sufficient account the fact that forgiveness could in some cases be disrespectful and thereby wrong; 5) I have not convincingly shown that *ubuntu* exists at all, and 6) I am wrong – I have made an inaccurate premise: Mr. Mugabe has already sufficiently acknowledged wrongdoing with apology implicit in words in a recent interview and in actions through his participation in the country's current power-sharing arrangement.

First, is my research question disrespectful? Mr. Mugabe himself might object saying a focus only on him and not the colonial settlers of Rhodesia who stole land and perpetrated racist atrocities, especially before Independence, demonstrates lack of understanding of the indignities and lack of respect he and millions of others experienced for a century. I acknowledge that in this report, an important part of the story is definitely not told. However, I would reply that this objection is a straw man. Whether or not Mr. Mugabe was also a victim in no way excuses his repeated violation of both human rights and *ubuntu* values. I would further respond that although he endured unknowable pain and anguish, his historical oppressors are not a community seen to be rooted in *ubuntu*. I have thus not considered it appropriate to analyse to what extent *ubuntu* values and justice apply to non-*ubuntu* actors. My paper specific addresses *ubuntu obligations within and amongst ubuntu-rooted peoples*. My conclusion should in no way to seen to infer that Mr. Mugabe alone has offended *ubuntu* values. I would repeat, however, that whatever harms colonialist settlers caused to happen against Mr. Mugabe, he, on the other hand, perpetrated harm on his *own* community -- not as a colonialist settler, external force or racist opponent,

but as their own leader. In summary, no reading of *ubuntu* claims that one's own victimhood excuses victimization of others, although time and again, this is what Mr. Mugabe cites to explain his actions.

Second, is my understanding of strict conditions for amnesty for Mr. Mugabe underpinned by *ubuntu* literature? Some may argue that *ubuntu* would not require acknowledgement, apology and reparation – that what is seen as one of the beacons of *ubuntu* justice in action, South Africa's TRC process, did not require apologies. How could this be? I must respond that not requiring an apology was not *ubuntu* in action, but political pragmatism. Tutu had no choice. Strict requirements for apology could have derailed the whole process leading to potential disaster for the fragile transition. It had nothing to do with *ubuntu*. While I understand why the TRC focused on encouraging forgiveness (the more Christian component), it seems to me that the greater focus in an *ubuntu* context would first have been on encouraging apology. All this said, there is a critical difference between South Africa and Zimbabwe: in South Africa, a majority of the violent victimizers were not members of the *ubuntu* community, and therefore not bound by its value system. However, in Zimbabwe they are. Was South Africa then really a beacon of *ubuntu* justice? No, I would claim it wasn't. It was rather a courageous, forward-looking, flawed experiment in balancing hope and hatred, forgiveness and arrogance, truth and justice, an uncertain future and a grim past. A tightrope walk that against many odds had a largely harmonious outcome.

Third, have I sufficiently addressed retributive justice as a permissible option in *ubuntu* thinking? No, I have not, but I will say in mitigation that that was not in the

scope of my paper which specifically focused on the permissibility of amnesty. I will nevertheless address some pertinent topics. Many Zimbabwean human rights activists say that Mr. Mugabe has knowingly committed heinous acts, effectively harming millions of lives and therefore must be punished as the only means to condemn and discourage future destructive actions, including the culture of impunity. They do not believe *ubuntu* asks people to passively endure injustice for the sake of community harmony, that justice must be done or it will unleash a less controlled form of retribution. Some believe retributive justice is the only way Mr. Mugabe's own dignity can be restored. While restorative justice seems to say that, after a punishment period, he could thereafter then fully rejoin his community, I am not sure what the proponents of retributive justice would say about that. The view that after punishment he could then return to his community "restored" does seem in line with *ubuntu* thinking, however. It remains a complicated issue.

Augustine Shutte notes ". . .there is a negative side to life. And *ubuntu* can be manifested in relation to this. . .*Ubuntu* can take more aggressive forms such as anger and defiance in the face of injustice. It can express itself as a readiness to take life for the sake of life."[67] Yes, bloody retribution definitely happens in *ubuntu* societies. We see it all over the news, year after year. To this reality, Tutu reminds (indeed has been known to go to war zones to prayerfully plea): "If I undermine your humanity, I dehumanize myself. You must do what you can to maintain this great harmony, which is perpetually undermined by resentment, anger, desire for vengeance. That's why African jurisprudence is restorative rather than retributive."[68] In short, a whole separate paper needs to be written on the topic of when retributive justice is either permissible or obligatory in an *ubuntu* context.

Fourth, even if not seen as mandatory in restorative justice processes, forgiveness is often seen as an ideal path to individual and societal healing. However, some argue this is wrong, that forgiveness in some cases actually demonstrates disrespect for the dignity of humanity, especially the spirits of the dead victims. Margaret Urban Walker asks if one "can make sense of the idea that these astonishing acts of forgiveness, or any act of forgiveness, might be *wrong*, either at a time, or for all time?"[69] She quotes Gobodo-Madikizela who after her tenure at the TRC pondered whether some wrongs are unforgivable: "There is a desire to draw the line and say, 'Where you have been, I cannot follow you. Your actions can never be regarded as part of what it means to be human.'"[70] (She came out on the side of forgiveness). While no restorative justice process can demand that victims forgive unconditionally, Tutu encouraged it. However, as a result of my research, I have concluded that Tutu's magnanimous spirit with respect to forgiveness was rooted more in his Christian faith than in *ubuntu*. The link between this and whether South Africa's TRC was a genuinely restorative process is a subject worth exploring but I will leave it here for now.

Fifth, what about all the wars in Africa? Does *ubuntu* exist at all? Or is it rather an idealized notion that may, at some point in history, have characterized rural African culture but which was then subsumed by the arrival of colonial and missionary influences to become more "Westernized", for lack of a better word? Indeed knowledgeable cultural analysts such as Wim van Binsbergen imply *ubuntu* is a "social technology" cleverly resurrected/recreated from the kind and hospitable traditions of pre-colonial rural African culture by non-*ubuntu* actors in an ultimately

exploitative way in order to invent a philosophically-underpinned alternative to retributive justice that might prove useful for certain oppressive people in the event their time came to face justice.

To this I would say that I, too, initially had reservations about whether *ubuntu* lived primarily in the minds of very lofty pillars of morality such as Tutu and Mandela and possibly amongst academics and politicians, trying to make more of *ubuntu* than is really there. While I don't intend to disagree with Tutu and Mandela, I concede it's a valid question. However, in the course of my research, asking person after person what came to mind when they heard the word *ubuntu* or *unhu*, I came to understand that consciousness of *ubuntu* does exist amongst the Africans with whom I spoke -- as an ineffable and almost inexpressible spirit of innate morality. As one young Ndebele student said, "it's like you know the law isn't always moral but *ubuntu* always is, does that make sense? It's tolerance, respect and a kind heart but the words in English, I don't think they exist."

Sixth, and respectfully giving him the final word, Mr. Mugabe might claim, for example, that his comment to writer Heidi Holland in an interview for her book, *Dinner with Mugabe,* constitutes an acknowledgement of wrongdoing and that apology was implicit in his expression of regret. Asked about his concern about the specter of international justice and, in particular, if he wanted to record his regret for the *Gukurahundi* massacres, Mr. Mugabe responded:

> No, there is no regret about the fact that we had to defend the country. But the excess, where it happened, yes. Any death that should not have occurred is a

> cause for regret, and wherever people suffered. But the figures don't make sense because they don't represent the truth.[71]

Asked if he had any political regrets, he replied:

> No, no regrets. You go into a fight. It's a fight against colonialism. You make sacrifices. And naturally, when people die you regret the deaths of the people. And that's why we created Heroes Acre in order to remember those whose deaths should not have occurred. Yes, we are sorry that there are those who have died, but other regrets, I don't know. We might have regrets where we've had a policy that we've had to revise. Or failures in our programmes because some people have not implemented them faithfully and honestly. Yes, you regret those failures. Failures in government are regretted, especially when they are because of corruption or inefficiency, incompetence or neglect. Sure, we regret.[72]

I would agree that these comments are a good start, but in short, not enough. In any case, these comments were made to an author for a book most Zimbabweans will never read. Even if they did, these comments do not represent an acknowledgment and apology that would serve to restore the human dignity of those victims still alive, nor show respect to the families of those who have died.[73]

6. Conclusions and implications.

For purposes of analyzing the complicated dialectic of *ubuntu* justice, I have chosen a difficult case analysis, questioning the morality of amnesty for a contemporary leader

about whom there are greatly mixed feelings. Thoughtful people in Zimbabwe, the African continent and the international community all have different opinions about his culpability and appropriate approaches to end the ongoing crisis. This paper is not intended to suggest an actual way forward. It is a philosophical argument that, in an *ubuntu* context, the people of Zimbabwe should impose specific conditions if they are to agree to amnesty for a person such as Mr. Mugabe. It is not meant as either a personal attack or a policy recommendation.

In closing it is worth reviewing the questions seen to underpin restorative justice processes as outlined by Zehr[74] -- Who has been hurt? What are their needs? Whose obligations are these? What is at stake in the situation? What is the appropriate process to involve stakeholders in an effort to put things right?

This paper has shown that the people of Zimbabwe are the primary victims, but that Mr. Mugabe and most all of his liberation movement colleagues are also victims of human rights abuses. The needs of the people of Zimbabwe and Mr. Mugabe differ less than one might imagine. For healing to occur and harmony to be restored, stories of wrongdoing and victimhood need to be told and heard. Victimizers need to free themselves and victims do as well. I believe it is the obligation of Mr. Mugabe as community leader to launch this process, and the responsibility of the people of Zimbabwe to hold him accountable and make sure community harmony is restored.

If the community consensually agrees amnesty for Mr. Mugabe is indeed worthy of consideration in order to restore community harmony, several options are available:

1. if it leads to community harmony Mr. Mugabe should be offered unconditional amnesty; (completely impermissible in my view).
2. if (and only if?) he acknowledges wrongdoing Mr. Mugabe should be offered amnesty;
3. if (and only if?) he acknowledges wrongdoing and apologizes should Mr. Mugabe be offered amnesty;
4. if (and only if?) he acknowledges wrongdoing, apologizes and pays reparations should Mr. Mugabe be offered amnesty; (my argument) and
5. if and only if he acknowledges wrongdoing and pays reparations, should Mr. Mugabe be offered amnesty.

Given the harms suffered, one doesn't know what the people of Zimbabwe might consider as *sufficient* conditions for amnesty, but all literature on restorative justice claims that, at very least, acknowledgement of wrongdoing is a *necessary and mandatory* condition for it. This gesture alone begins a healing process, though it is not, in my view enough. However, Tutu's successor, former Archbishop Njongonkulu Winston Ndugane, writes, "once an African detects a that a person means well, and that there is a readiness to move away from the wrongs of the past, there is a willingness to move forward to a future that seeks to enhance the well-being of humanity."[75] Perhaps, then, it would be seen to be enough. But I would claim that evidence indicates otherwise.

Finally, I would argue that *ubuntu* calls for Mr. Mugabe to lead the way toward harmony and healing by delivering a defining new speech, perhaps early next year on

the 30th anniversary of his historic 4 March 1980 reconciliation speech, but ideally long before then. Among his words he could say:

> Whether you are ZANU PF or MDC, young or old, within Zimbabwe or in the diaspora, the time for justice and healing is now. The time for truth is now. The time to restore harmony in our wounded society is now. While we are commanded by circumstance to look forward with compassion, we must also find the courage and humility to look backward with regret. My fellow Zimbabweans, do not misunderstand me when I say that now is not the time to forgive, because my brothers and sisters, we don't yet know what to forgive. The time for forgiveness may come, we pray it does, but we must first launch ourselves onto a painful trajectory of truth-telling -- not as a vengeful knife into the soul of fallible humans who have betrayed your trust, among whom I will count myself, but truth-telling as a path to restored respect, dignity and harmony. My fellow Zimbabweans never never never again shall I say we should forget our grim past. That was a mistake. Some of you may recall that 30 years ago today, I asked all of you to 'forgive others and forget'. I asked you to 'join hands in a new amity'. I said that together, as Zimbabweans we must 'trample upon racialism, tribalism and regionalism, and work hard to reconstruct and rehabilitate our society'.[76] Today I stand before you to say -- we have failed, and above all, I have failed, as your leader in my duties to protect our country and uphold our values. For that and my many harmful actions that I will reveal in the days to come, I am deeply sorry.

. . .

[1] For purposes of my argument, I will generally use the word *ubuntu* (Zulu/Ndebele) as opposed to *unhu* (Shona), or *botho* (Sotho), except if using a direct quotation that utilizes other translations. The words are seen to have identical meanings in all Bantu languages. My understanding is that *Unhu* is sometimes spelled *hunhu*, depending on the Shona dialect. For purposes of consistency, I have chosen to use the former except in direct quotations.

[2] Although often mistakenly thought to be a homogenous ethnic group, the Shona-speaking peoples within the borders of modern Zimbabwe include the Manyika, Karanga, Korekore, Zezuru, and Tavara sub-groups. The dialects spoken by the Ndau and Kalanga groups are more linguistically distinct though still associated with Shona history.

[3] Joanna Ruocco, "Forgiving or Forgetting? Impunity and Organized Violence in Zimbabwe," student paper, Brown University School for International Training, 10 May 2000, p. 12.

[4] Chenjerai Hove interview in Ruocco, op. cit., p. 18.

[5] Ruocco, op. cit., citing amnesty details noted in *Breaking the Silence, Building True Peace in Zimbabwe*, Catholic Commission for Justice and Peace in Zimbabwe (CCJP) and the Legal Resources Foundation (LRF), p. 25.

[6] Prime Minister-elect Robert Mugabe, speech on the night of his election, 4 March 1980. I found a scanned original Government of Zimbabwe version of his speech on the internet at adamwelz.wordpress.com. Welz apparently found an old original in a Cape Town bookshop and posted it to his site on 4 June 2009.

[7] Archbishop Desmond Tutu, *No Future Without Forgiveness*, (London: Random House, 1999) p. 36.

[8] *Gukurahundi* is a Shona word that refers to the early rain of summer that washes away the chaff left from the previous season. Civilians in Matabeleland interpreted it in ethnic terms believing the Shona saw Ndebele people as the "rubbish that had to be washed away". Mugabe gave this name to 5 Brigade at their passing-out parade in December 1982. Description by Shari Eppel in *Zimbabwe: Injustice and Political Reconciliation*, (Cape Town: South Africa, Institute for Justice and Reconciliation, 2004) p. 59.

[9] Zimbabwe's Defence Minister Emmerson Mnangagwa at the time (and now) estimated the number of dissidents to be about 300 at their peak. According to official Zimbabwean government figures, they are thought to have murdered between 150-400 people during the 1980s, depending on the government source. (*Breaking the Silence*, CCJP and LRF, p. 167, (op. cit) in Eppel, op. cit., p. 60.

[10] Ibid., p. 61.

[11] Conducted in May 2005 and translated as "clear out the filth," Operation *Murambatsvina* was a government initiative to bulldoze large sections of Zimbabwe's informal sector, destroying homes and livelihoods with no advance warning. An estimated 650,000-700,000 people were directly victimized and an addition 1.7 million hurt by its economic effects. *Report of the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina,* Anna Kajumalo Tibaijuka, United Nations Special Envoy on Human Settlements, United Nations Report (2005). About *Murambatsvina*, Khoza (op. cit). commented, "This is not how African humanism would have governments behave."

[12] Prime Minister Robert Mugabe quoted by Ibbo Mandaza, in "Reconciliation and Social Justice in Southern African: The Zimbabwe Experience," in Makgoba, Malegapuru William, ed., *African Renaissance, The New Struggle*, (South Africa, Mafube/Tafelburg) 1999, p. 90.
[13] Ruocco, op. cit., p. 17.
[14] Characterisation is attributed to former Tanzanian President Julius Nyerere.
[15] I could never find this book but I read excerpts in the *New World Encyclopedia.* http://www.newworldencyclopedia.org/entry/Ubuntu_(philosophy) and a few other articles.
[16] Tarisayi A. Chimuka, "Ethics Among the Shona," Department of Religious Studies, Classics and Philosophy, University of Zimbabwe, *Zambezia* (2001) XXVIII (i), p. 16 who footnotes his source as Samkange, Stanlake and Samkange, Thompson, *Hunhuism or Ubuntuism: A Zimbabwe Indigenous Political Philosophy,* (Harare, Zimbabwe: Graham Publishing) 1980, p. 38. (I could never find Samkanges' book myself). Note that in Shona the equivalent word to the maxim attributed to, "a person is a person because of other people" is *munhu munhu nekuda kwevanhu.*
[17] Ibid,. p. 21.
[18] Ibid., p. 18.
[19] Mogobe B. Ramose, *African Philosophy Through Ubuntu*, (Avondale, Harare: Mond Books, 1999) p. 52.
[20] Justice Yvonne Mokgoro, The Constitutional Court of the Republic of South Africa, Case No. CCT/3/94, in the matter of *The State versus T Makwanyane and M Mchunu.* Heard 15-17 February 1995. Delivered on 6 June 1995, p. 7.
[21]Ibid.
[22] Lesiba Teffo, "Moral Renewal and African Experience(s)," in Makgoba, op. cit., p. 153-154.
[23] Teffo, op. cit., p.154.
[24] Private conversation with a Shona-speaking business leader who prefers to remain anonymous.
[25] Chief Justice Pius Langa, op. cit., Case No. CCT/3/94, in the matter of *The State versus T Makwanyane and M Mchunu,* p. 7.
[26] Tutu, op. cit., p. 31.
[27] Nelson Mandela, forward to Khoza, Reuel J., *Let Africa Lead: African transformational leadership for 21st Century Business*, (South Africa: Vezubuntu Publishing, 2006) xxv.
[28] Ibid., xxii.
[29] Ibid., xx-xxi and p. 5.
[30] Ibid., p. 113-118.
[31] Michael Bourdillion, *The Shona Peoples*, (Gweru, Zimbabwe: Mambo Press) 1988, revised 1998, p. 111.
[32] Khoza, op.cit., p. 20.
[33] Ibid., p. 51.
[34] Some philosophers underscore a traditional religious aspect of *ubuntu* which enjoins that right action involves honouring the community's ancestral spirits. There is not enough literature on this topic for me to opine on the relevance to my argument although I believe it is important and will mention it again later in my argument.
[35] Some would argue that whites of Rhodesian/Zimbabwean descent who have lived in the area for over 100 years should also be defined as amongst the *ubuntu* community in question.

[36] Mandivamba Rukuni, *Being Afrikan, Rediscovering the Traditional Unhu-Ubuntu-Botho Pathways of Being Human*, (Arcadia, South Africa: Mandala Publishers) 2007, p. 40.
[37] Wikipedia: http://en.wikipedia.org/wiki/Ubuntu_(ideology). This is their interpretation but I've read it nowhere else.
[38] Howard Zehr, *Little Book of Restorative Justice*, (Intercourse, Pennsylvania: Good Books), 2002. Series is a cooperative effort between Center for Justice and Peacebuilding of Eastern Mennonite University and Good Books. These are his questions. He is seen by some as a "guru" of restorative justice.
[39] Tutu, op. cit., p. 47-48.
[40] Justice Tholakele Hope Madala, op. cit., CCT/3/94, *The State vs. T Makwanyane and M Mchunu*, p. 4 [242].
[41] Wilbert Z. Sadomba, "Philosophical Battles of Zimbabwe's Land Occupations: Indigenous African peasant, vs European agragrian capitalist, jurisprudence," (University of Johannesburg, 2001) p. 3 (possibly unpublished).
[42] Ibid., p. 4.
[43] Dirk J. Louw, "The African concept of *ubuntu* and restorative justice," in D. Sullivan & L. Tifft (Eds), *Handbook of Restorative Justice*: A Global Perspective, (New York: Routeledge), 2006, p. 162.
[44] Ibid., p. 164.
[45] Wim Van Binsbergen, "*Ubuntu* and the globalization of Southern African thought and society," *Quest: An African Journal of Philosophy*, XV(1-2), 2001, p. 55.
[46] Quote attributed to Hoebel, E.A. and Weaver, T., *Anthropology and the Human Experience*, Fifth Edition, (New York: McGraw-Hill), 1979, p. 497, from article by Louw, op. cit.
[47] Zehr, op. cit., Conceptual thoughts and questions in this section are drawn from his *Little Book of Restorative Justice* but my copy is actually in Zimbabwe so I can't note actual page numbers.
[48] Bourdillon, op. cit., p. 137.
[49] Tutu, op. cit., p. 51.
[50] Daniel H. Bell, *Rethinking Justice, Restoring Our Humanity*, (Plymouth, UK: Lexington Books), 2007, p. 56.
[51] Ibid., p 101.
[52] Pumla Gobodo-Madikizela, *A Human Being Died That Night: Forgiving Apartheid's Chief Killer*, (UK: Portobello Books) 2006, p 14-15.
[53] Ibid.
[54] Ibid., p. 15
[55] Tutu, op. cit., p. 55, quoting TRC report.
[56] Zimbabwe Catholic Bishops' Conference, "Pastoral Letter on National Healing and Reconciliation, God Can Heal The Wounds of the Afflicted," 1 October 2009, p. 8.
[57] *Encarta World English Dictionary* on line. (URL to follow)
[58] Tutu, quoted in Lyn S. Graybill, *Truth and Reconciliation in South Africa: Miracle or Model*, (London: Lynne Rienner Publishers 2002) p. 64.
[59] Ruocco, op. cit., quoting *Breaking the Silence*, p. 18.
[60] Amnesty International Press Statement, 12 October 2000.
[61] Zimbabwe Catholic Bishops' Conference, op. cit., p. 2.
[62] Editorial, *The Herald*, (Zimbabwe government newspaper editorial) 2 November 2009.

[63] Siyabonge, blogwriter in Prime Minister Tsvangirai website People's Forum, input entitled "justice for all," (sic) 6 November 2009. www.zimbabweprimeminister.org
[64] Sir Richard Goldstone, quoted in *Between Vengeance and Forgiveness*, Minow, Martha (Boston: Beacon Press) 1998.
[65] Zimbabwe Catholic Bishops' Conference, op. cit., p. 8.
[66] Prime Minister Mugabe's election night speech, op. cit., 4 March 1980.
[67] Augustine Shutte, *Philosophy for Africa,* (Marquette: Marquette University Press) 1995, p. 32.
[68] Tutu, quoted in Shutte, Ibid.
[69] Margaret Urban Walker, *Moral Repair: Constructing Moral Relations after Wrongdoing*, (Cambridge: Cambridge University Press) 2006, p. 176.
[70] Ibid., p. 177-178.
[71] Heidi Holland, *Dinner With Mugabe, The untold story of a freedom fighter who became a tyrant,* (Johannesburg, South Africa: Penguin Books) 2008, p. 242.
[72] Ibid., p. 242-243.
[73] If Mr. Mugabe has ever made comments in this respect, then I stand corrected. All research indicates he remains unrepentant and unapologetic.
[74] Zehr, op.cit.
[75] Former Archbishop Njongonkulu Ndugane quoted in Graybill, op.cit., p. 33.
[76]Quoted portions are by Prime Minister-elect Robert Mugabe from his 4 March 1980 speech, op. cit.

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