

From ‘Defending Sovereignty’ to ‘Fighting Corruption’: The Political Place of Law in Zimbabwe after November 2017

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In this article, I examine the shifting language of debates over law and justice in Zimbabwe in the run-up to, and following, the November 2017 coup. I argue that the rhetoric ZANU-PF drew upon to secure its authority and negotiate legitimacy through law, shifted from a focus of ‘sovereignty’ and ‘protection’, to one of battling ‘corruption’ and ‘criminality’. At the same time, there remained a consistency in practices of repression, where the legal system was used to target a select part of the country’s population, those opposed to ZANU-PF and its vision for the future. I focus on debates of succession within the judiciary and the battle for succession of the ZANU-PF presidency that motivated the events of November 2017 on one hand, and on a discussion of corruption charges and the aftermath of the August 1 2018 violence on the other. I show that the complex and at times competing understandings of how the Zimbabwean state ought to function more broadly, and relate to law more specifically, were not radically altered by the coup.

On 29 January 2019, over a hundred lawyers took to the streets of Harare, Zimbabwe’s capital, to deliver a petition to the Judicial Services Commission (JSC). Dressed in their black robes and carrying placards with slogans such as ‘no to militarization of magistracy’, ‘no to judicial capture’, and ‘justice not malice’, legal practitioners were calling for the restoration of the rule of law, the safeguarding of the constitution, and a free judiciary in the country. The lawyers’ march came at the end of a turbulent month, during which President Emmerson Mnangagwa, his ruling Zimbabwe African National Union-Patriotic Front (ZANU-PF) party, and the Zimbabwe Defence Forces (ZDF) and Zimbabwe Republic Police (ZRP) relied on heavily repressive measures to deter thousands of protesters from contesting rising fuel prices in the context of the country’s dramatically failing economy. The measures taken against protesters included the use of tear-gas, beatings, and live ammunition in crowds, nocturnal raids on the homes of suspected opposition supporters, and the arrest and detention of hundreds of people.

Given the scale of arrests, lawyers could not attend all court hearings. In many of such cases, individuals were swiftly convicted and handed lengthy and disproportionate prison sentences (Allison, 2019). As prominent human rights lawyer, Beatrice Mtetwa, observed however, there was a sense among lawyers that even when they were present at the trial proceedings, their cases were misconducted as magistrates consistently denied bail without the

prosecutor stating their grounds. Magistrates and prosecutors, it seemed, were following ‘orders from above’ rather than examining the merits of the case at law. This led to a fear that, by playing their part in the trial, lawyers were assisting ZANU-PF’s efforts to cast a veneer of legitimacy to their actions by ‘sanitizing a process that is not going the way it is supposed to be’ (transcribed by author from footage of the protest on Twitter; also see Laiton, 2019).

Beatrice Mtetwa’s expression surprised me, as in the research I have conducted since 2010 with human rights lawyers who defend political activists, student leaders, and civic activists from ZANU-PF’s repressive tactics, such a sentiment had not been uttered before. In fact, precisely this question about decisions to practice law in Zimbabwe was what had interested me – why did human rights lawyers, and their clients, continue to engage with a legal system that intended to sideline and silence them? Elsewhere, I have argued that, contrary to scholarship on the place of law in post-colonial repressive or authoritarian regimes, lawyers’ commitment, and the manner in which they performed this commitment during trial proceedings, depended not merely on an understanding of law as inherently double-edged, allowing for repression and resistance to co-exist (Verheul, *forthcoming*). It also, and importantly, required the judiciary to *work* in such a manner that, occasionally, justice was seen to be done. In other words, Zimbabwean legal professionals subscribed to E.P. Thompson’s (1975) seminal conclusion that law’s legitimacy stems from the possibility of justice.

Possibilities of justice emerged in the space created by public contestations over the role of law within Zimbabwean society, debates that have a long history (Alexander, 2010, 2011; Karekwaivanane, 2017), and that, particularly after 2000, encapsulated questions of human rights and sovereignty (Verheul, 2020).

After 2000, these debates were in part predicated on a fragile understanding that, despite high levels of political interference throughout the judicial system, judicial officials acted in line with their views on what constituted ‘professional’ behavior (Verheul, 2013). These professional standards ensured that, for example, in the trials of civil society and opposition activists, when prosecutors argued their cases on political rather than legal grounds, certain magistrates ‘scolded’ them. Similarly, overtly political judgements were publicly critiqued for ‘embarrassing the court’. When, in January 2019, magistrates were unwilling or unable to demand explanations when prosecutors simply stated that the accused must remain in remand prison without making a case, the ‘embarrassment’ attached to blatant political interference, and the possibility of justice that accompanied this, was suspended, placing defense lawyers in a position to ask themselves whether it was worth engaging with a justice system that would, on no occasion, *work* for them.

In other ways, Mtetwa's statement was no surprise at all. While the judiciary had been under public attack ever since the invasion by war veterans of the Supreme Court in 2000, the dynamics of the November 2017 coup both highlighted and further facilitated a shift from the top-down political appointments of high-ranking judges to incorporating an increased number of personnel with military backgrounds among the judiciary's lower ranks. With fewer statutory safeguards in place to protect the Magistrates' courts from interference, this process of militarization threatened to subvert the bureaucratic and rule-bound dimensions of the judiciary (for a detailed discussion of the impact of militarization within the prison service, see Alexander, 2013). Contradiction and contestation remained, however, as members of ZANU-PF continued to rely on judicial processes, the Zimbabwe National Army (ZNA) made references to the constitution and the law, and, despite Mtetwa's statement, human rights lawyers and activists persisted in their efforts to call the government to account through rule-based means, increasingly finding that the spaces for justice that had characterized Zimbabwe's judiciary could now be found not in the magistrates', but in the High and Supreme courts.

In addition, against the backdrop of the persisting and worsening economic crisis in the country, the ideological debates within ZANU-PF, and between the party, the judiciary, and political opponents, over who and what law ought to protect began to shift. In early 2000, the protection of Zimbabwe's sovereignty from 'neo-colonialism' and 'Western imperialism' was central to the understandings of law and 'justice' promoted by ZANU-PF. After 2017, however, these debates were displaced with a focus on 'fighting corruption' and 'dealing with criminals'.

In this article, I demonstrate that while both understandings were mobilized to justify political interference in the judiciary, the impact they had on the place of law was different. In order to do this, I first ask how the judiciary was situated in the events of November 2017. I then examine how the growing factionalism between Emmerson Mnangagwa's Lacoste and Grace Mugabe's Generation 40 (G40) sections of ZANU-PF – two factions viewed as representing the interests of the 'old guard' and the 'younger generations' respectively, and which were battling for power during the November coup – already shaped debates within the judiciary over the appointment of the Chief Justice in late 2016, and the Prosecutor General in late 2018. These appointments, I argue, coincided with an increased 'splitterization' within the judiciary in terms of performing 'professionalism' on the one hand, and 'loyalty' on the other. I conclude that while the language of debates over law and justice shifted, there was a consistency in practices of repression on the part of ZANU-PF.

A Judicious Coup?

In this section, I trace how General Chiwenga's statement on 13 November not only set the scene for the events that removed then President Robert Mugabe from office, it foreshadowed the central yet contradictory role that law and the judiciary would continue to play in Zimbabwean politics between November 2017 and November 2019. To avoid the actions of the military being dismissed or delegitimized as a coup, the key actors in this carefully orchestrated change in power played up the legality of their actions on two fronts. On the one hand, highlighting the necessity of their actions in order to 'protect' the nation from 'criminals' within its own government. On the other, they drew in the judiciary to rule that these actions, and later Mnangagwa's presidency, did not contravene the country's constitution, and were carried out with the goal of 'fighting corruption' and obstructing criminal abuse of office in mind.

On 13 November 2017, General Constantino Chiwenga opened the ZDF's press conference by quoting a section of the Constitution's preamble that paid tribute to those who had fought in Zimbabwe's liberation struggle, and had worked for the country's progress. Through this opening quote, General Chiwenga reflected one of the central motivations for the looming November Coup, namely the army generals' concerns that the ruling party (ZANU-PF), was turning its back on liberation struggle values and actors (Tendi, 2019). To safeguard 'the revolution' and to protect their 'beloved country' from instability and infighting within ZANU-PF, the ZDF was willing to take 'drastic' and 'corrective measures' (transcribed by author from *YouTube*).

In expressing his commitment to protect ZANU-PF and Zimbabwe from 'counter-revolutionary infiltrators' intending to return the country to its colonial past, General Chiwenga also performed a commitment to the Constitution as establishing the legality of this protection. Invoking Section 212, he argued that the ZDF were mandated 'to protect Zimbabwe, its people, its national security and interests, and its territorial integrity, and to uphold this constitution.' With dramatic flair that was absent in the rest of his statement, General Chiwenga paused, gripped the constitution that was laid out next to him, and held it up for the cameras. General Chiwenga then continued, and concluded:

Comrades and friends, ladies and gentlemen, we remain committed to protecting our legacy, and those bent on hijacking the revolution will not be allowed to do so. Further, we must understand that the freedoms that we enjoy today were as a result of supreme sacrifice by some of our countrymen and women, and this must not be taken for granted. Let us remove this air of

uncertainty and allow Zimbabweans to enjoy their freedoms and rights as enshrined in the national Constitution (transcribed by author from *YouTube*).

The following day, ZDF tanks appeared on the streets of Harare. General Chiwenga had launched Operation Restore Legacy, an Operation aimed to ‘rescue the values and the ethos of the liberation struggle’. President Robert Mugabe was confined to his home, while the homes of the Minister of Local Government Saviour Kasukuwere, the Minister of Education Jonathan Moyo and the Finance Minister Ignatius Chombo were raided. Chombo was allegedly taken into custody by unidentified state agents, while Kasukuwere and Moyo both fled the country in the days that followed. The army took control of the government-owned Zimbabwe Broadcasting Corporation (ZBC), and disarmed and contained members of the Zimbabwe Republic Police (ZRP) and Central Intelligence Organization (CIO) (Tendi, 2019).

Early on the morning of 15 November, Major General Sibusiso Moyo appeared in ZBC to give a statement which echoed General Chiwenga’s comments from two days previously. Major General Moyo explained that the actions of ZDF were intended to ‘pacify a degenerating social, political and economic situation’, and vowed that the ‘criminals around’ President Mugabe would be brought ‘to justice’. Once this was done, ‘normalcy’ would return. For the judiciary, he explained that that this would ‘ensure that as an independent arm of the state, you are able to exercise your independent authority without fear of being obstructed as has been the case with this group of individuals’ (in Tendi, 2019, 46-47).

The days that followed were marked by the uncertainty of whether President Mugabe would resign. As talks continued between top ZANU-PF leaders and army officials, as well as SADC envoys and church mediators, President Mugabe made a public appearance on 17 November, attending a graduation ceremony at the Zimbabwe Open University, of which he was the Chancellor. The following day, mass public protests were organized across Zimbabwe, and primarily in Harare, protests that, for the first time in almost twenty years were not characterized by police brutality and arbitrary arrests. At the ZANU-PF Central Committee Meeting on 19 November, the party adopted several resolutions which reinforced the rhetoric that the ZDF actions were aimed against the ‘criminals’ within the G40 faction.

Reading out the resolutions, ZANU-PF’s secretary of Legal Affairs Patrick Chinamasa expressed gratitude to ZDF and congratulated the Zimbabwean people for participating in Saturday’s march. The party had nullified Emmerson Mnangagwa’s expulsion from ZANU-PF, and restored him to a member of the Central Committee, an action that further applied to other members who had been suspended or expelled from the party ‘on the basis of fabricated

allegations by the G40 cabal for the protection of criminals' (Chinamasa, 2017). Mnangagwa was nominated as interim President of the party, while Robert Mugabe was recalled from the position of President and First Secretary of ZANU-PF. The party further called on him to resign as President of Zimbabwe, issuing 20 November as the deadline for his resignation.¹

On the evening of 19 November, a press conference was organized at President Mugabe's residence, with the expectation that he would resign. No resignation took place, however, and by 21 November, discussions were taking place within parliament to examine the constitutionality of impeaching Mugabe. Parliament did not have long to debate the legality of impeachment, however, as Mugabe resigned in the early evening. As Speaker of Parliament Jacob Mudenda read out the letter of resignation, Zimbabwe's 'soft coup' (Beardsworth et al., 2019) came to an end.

In line with the ZANU-PF government's pattern of legalizing politically contentious actions after the fact, on 24 November, High Court Judge, Justice Chiweshe ruled that the ZDF actions in arresting Mugabe were constitutional. Made by consent, the ruling did not directly influence the outcome of the coup. The ruling did read, however, that the actions of the ZDF 'ensure[d] that non-elected individuals do not exercise executive functions' (Sibanda and Chikoma v. Mugabe and others, 2017). While he did not explicitly name her, Justice Chiweshe was particularly referring to Grace Mugabe, thus not only legalizing Mugabe's resignation, but legitimating the ZDF and Lacoste faction's justifications for the coup. At the same time, Justice Chiweshe ruled in a second case that Mugabe's dismissal of Mnangagwa's as Vice President on 6 November was null and void (Mnangagwa v Mugabe, 2017), allowing for Mnangagwa to be sworn in as interim president on 24 November.

From General Chiwenga's statement on 13 November, to Judge President Chiweshe's rulings on 24 November, references to law and justice, and debates over legality and independence were central components of the coup. Beardsworth, Cheeseman and Tinhu (2019) have argued that this was mainly for the benefit of allowing Zimbabwe to open itself up to the international business community. Indeed, the dominant slogan Mnangagwa promoted was 'Zimbabwe is open for business.' These statements were, however, not all for show. They are also demonstrative of the ways in which law intersects with the workings of governance and authority within the Zimbabwean state to bring ZANU-PF opponents in line. While in 2000, much of these debates had centered on the question of safeguarding sovereignty (Verheul,

¹ Reflecting the increased militarization of public institutions, the resolution also stated: 'we should place war veterans in strategic positions in the party and Government as long as they have the requisite qualifications' (Chinamasa, 2019).

2020), the legality of the coup was predicated on protecting the country from ‘corrupt’ ‘criminals’.

This shift in rhetoric had been festering underneath the judicial service prior to the events of November 2017, as ZANU-PF factionalism increasingly crept into processes of judicial appointments. Below, I show that as rhetoric shifted, so did the justification of key political appointments to the judiciary, specifically the position of the Chief Justice and Prosecutor General.

ZANU-PF Factionalism and the Shifting Justification of Political Appointments

Law has played a central role in ZANU-PF’s efforts to maintain authority and generate legitimacy since 2000. In part, this was possible because then President Robert Mugabe played a central role in appointing members of the judiciary, including the Chief Justice. These appointments were made in consultation with the Judicial Services Commission (JSC), a commission whose members were also appointed by the President, undermining perceptions of the JSC’s independence. As a result, changes to the composition of the JSC, and the President’s role in appointing members of the judiciary were included in both the rejected 2000 constitution, and Zimbabwe’s new constitution, which came into force in 2013. The 2013 constitution broadened the composition and powers of the JSC, and ensured that appointments were governed by more diverse measures, although the majority of the commissioners continued to be appointed by the executive. Most importantly, the new constitution introduced measures to promote transparency and accountability to the JSC’s role in the appointment of judges to the Bench. As Manyater and Fombad (2014, 106) point out, ‘unlike the old commission whose selection processes were shrouded in secrecy, the judicial selection procedures for the new Judicial Service Commission have been constitutionally entrenched.’

Specifically, the new constitution of 2013 introduced Section 180, which placed the appointment of the Chief Justice under the JSC. The Commission was tasked with advertising the position, receiving nominations from the public and the President, and conducting public interviews. Following the interviews, the JSC would draw up a shortlist of 3 nominees, from which the President would select and appoint a candidate. If the President deemed that none of the nominees were suitable, then a new short list of nominees could be requested from the JSC. For many commentators, this section in particular was a substantial improvement upon the earlier constitution, under which appointments were ‘opaque’ and held a high degree of ‘Presidential influence’ (Matyszak, 2013).

Appointing a New Chief Justice

The Presidents' hand in appointing Zimbabwe's Chief Justice particularly played up after 2000. Between Independence in 1980 and 2001, Zimbabwe had four Chief Justices: John Fieldsend, Telford Georges, Enoch Dumbutshena, and Antony Gubbay, whose appointments and transitions were fairly smooth. The transition from Chief Justice Gubbay to Godfrey Chidyausiku in 2001, however, was highly contentious. It occurred following the invasion of the Supreme Court, during which war veterans threatened the Chief Justice's life against the backdrop of ongoing disputes between the government, commercial farmers and the courts regarding the legality of the Fast Track Land Reform Process (FTLRP). Chief Justice Gubbay was forced into retirement in March 2001, and Justice Chidyausiku was appointed in his place. A ZANU-PF MP and lawyer at independence, Chidyausiku met the government's call for 'judges who are part and parcel of the country's liberation struggle', and who demonstrated support both for ZANU-PF and the FTLRP (Mutsaka, 2001). While he met the government's criteria, members of the legal profession expressed concerns, with approximately 200 lawyers questioning his appointment in a letter to the JSC, which remained unanswered (Magaisa 2017).

With Chief Justice Chidyausiku at its helm, the judiciary experienced fifteen turbulent years. It saw the increased incorporation of pro-Mugabe judges to the Bench (ABA, 2004; IBA, 2001), the violent and contested elections of 2008, which led to the formation of the Government of National Unity (GNU), incorporating the two factions of the opposition party the Movement for Democratic Change (MDC) into the ZANU-PF government, and ZANU-PF's electoral victory in 2013 following the implementation of Zimbabwe's new constitution. Chidyausiku was coming up to retirement in February 2017, however, and in line with Section 180 of the new constitution, by mid-2016 the JSC began preparing to nominate new candidates for the post. The question of succession was on the mind of ZANU-PF officials as well, as the party was increasingly splitting between support for Emmerson Mnangagwa and Lacoste on the one hand, or G40 and Grace Mugabe on the other. The appointment of the next Chief Justice was contentious in this context.

In October 2016, the JSC called for the nomination of candidates for the position of Chief Justice. Then Chief Justice Chidyausiku reached out by letter to the Executive to voice his concerns over the appointment procedures. As Chief Justice, he was head of the JSC, and would thus be directly involved in the appointment of his successor (Munyoro, 2017). He did not receive a response to his letter, and concluded that the Executive accepted the procedures despite the potential conflict of interests. The JSC thus went ahead to schedule public

interviews with the four nominated candidates for 12 December 2016. Shortly before the public interviews, Chief Justice Chidyausiku received a letter informing him of an Executive order to stop the selection process. The Chief Justice responded that, in order to comply with the Constitution, the interviews had to go ahead.

The process was disrupted, however, when Romeo Zibani, a law student at the University of Zimbabwe (UZ) applied to the High Court to stop the interviews in December 2016. He argued that, as the Chief Justice was the head to the JSC, Section 180 contradicted its intention to promote transparency and accountability, instead creating ‘the possibility of biased decisions [that] could be seen as being incestuous’ (Hofisi and Feltoe, 2016, 3). The Section was thus unconstitutional, and should be amended. Then Minister of Justice, Emmerson Mnangagwa was listed as one of the respondents in the case. In his affidavit, Mnangagwa argued that the government planned to amend Section 180, reverting back to the pre-2013 procedures that would allow the President to choose the Chief Justice without public interviews. In an urgent chamber application, High Court Justice Charles Hungwe granted Zibani’s application, and ordered the JSC to stop the interviews (Zibani v Judicial Service Commission and others, 2016). Justice Hungwe’s decision was critiqued, as lawyers argued that the judgement was ‘palpably wrong’ and had ‘dangerous implications’ (Hofisi and Feltoe, 2016, 4) because it pitted judicial independence and accountability against each other. In his commentary on the judgement, Alex Magaisa (2016) concluded that it read ‘more like a mangled political treatise on the supremacy of Executive intentions over the Constitution.’

These critiques were somewhat surprising, as within the legal community, Justice Hungwe was generally viewed as a professional, competent judge. In this instance, however, the appointment of a successor to Chief Justice Chidyausiku was highly politicized in light of growing factionalism within ZANU-PF over the succession of the presidency. Two of the potential candidates, Justice George Chiweshe and Justice Rita Makarau were linked to the main Lacoste and G40 factions respectively. This was a political fight over the control of the judiciary, animated by factionalism with ZANU-PF. As a former liberation fighter who had fought for the welfare of war veterans in the 1990s, and whose family was Karanga like Mnangagwa’s and came from a neighboring district, Justice Hungwe too was placed on the side of Mnangagwa’s Lacoste faction (Mohloboli et al., 2020).

The JSC appealed Justice Hungwe’s decision, and proceeded with the public interviews of Justices Luke Malaba, Rita Makarau and Paddington Garwe. Justice George Chiweshe, while invited, did not attend the interviews. Despite his absence, Justice Chiweshe – who would legitimize the coup less than a year later – ‘became a butt of jokes at the interview venue’, as

it was revealed that Chiweshe had only delivered five judgments in a four-year period. Contrasted with, for example, Justice Malaba's 50 judgements in the same period, those observing the interviews joked that Chiweshe's low output was the result of his application of 'meticulous verification' in his cases. As head of the Zimbabwe Electoral Commission during the 2008 elections, Chiweshe had 'popularised terms such as "meticulous verification" while trying to justify an inordinate five-week hold-up of presidential election results' (Chakwana, 2016). Such jokes demonstrated that the practice of 'embarrassment' was not only deployed against prosecutors but spread to the gallery of the courtroom.

Jokes aside, on appeal the Supreme Court ruled that the JSC had acted lawfully, following the procedures set out in Section 180, rather than anticipating Mnangagwa's proposed amendment, as this amendment should not affect the provisions until it has passed. In his 'spirited' judgement, Justice Patel criticized Zibani's 'contemptuous' behavior towards the courts in the run-up to the appeal, further demonstrating some of the tactics of 'embarrassment' as Zibani's motivations for bringing the case appeared political, rather than legal (Mnyama, 2018; Zhangazha, 2017d). As a result, Patel's judgement was taken as evidence of a renewed commitment among the higher level judiciary to uphold the law and safeguard the constitution. While Zibani persisted, applying to the Constitutional Court and later initiating procedures to challenge the appointment of retired Supreme Court judge Vernanda Ziyambi to the panel of judges assessing the appeal to Justice Hungwe's ruling, he later withdrew this application and the matter came to a close (Zhangazha, 2018b).

Against this backdrop of debate, Justice Luke Malaba, who had scored highest during the public interviews, was sworn in as Chief Justice in March 2017. The question then turned to who should take up the Deputy Chief Justice post that Justice Malaba vacated. The position was left vacant for a full year, as the amendment Mnangagwa had mentioned was passed to limit the involvement of the JSC and place the appointment of the Chief Justice, Deputy Chief Justice and High Court Judge President more directly back in the hands of the president. Justice Rita Makarau who had come into second place after Malaba in the interviews was initially lined up for the role, but lost out because of her close ties to the G40 faction. In March 2018, Elizabeth Gwaunza, a Supreme Court judge, was appointed Deputy Chief Justice (Zhangazha, 2018a).

Much like the battle over the Chief Justice position, the succession struggle over the Prosecutor General position, head of the National Prosecution Authority (NPA) and necessarily politically aligned, was also marked by factionalism in the run-up to the coup.

Prosecution Services

In early 2017, Johannes Tomana was fired as Prosecutor General, and accused of misconduct and incompetence. To replace Tomana, the JSC organized public interviews. None of the top-three candidates received the score of 70 or above that they needed to pass. Then President Mugabe nevertheless selected and appointed Ray Goba in September 2017. In October, Goba was dismissed from his position. There has been some debate over Goba's appointment, in part because like all the candidates, he had fallen short of the necessary score, and in part because of Goba's personal history, as he had an earlier conviction for the obstruction of justice in Namibia, relating to a traffic case. The matter did come up during his public interview, and Goba's opponents argued that it demonstrated he was not a 'fit and proper person' who could 'satisfy the raft of ethical and professional attributes' required of a legal practitioner (Zhangazha, 2017c). Goba was dismissed without being heard by a tribunal, raising concerns about judicial independence as proper procedures had not been followed. Goba's dismissal was further held up as evidence of how 'factional and succession wars [are] ripping ZANU-PF apart' (*Daily News*, 2017).

Following Goba's dismissal, the post of Prosecutor General remained unfilled. Only in January 2019, after he won the August 2018 elections and had secured the Presidency, did Mnangagwa appoint Kumbirai Hodzi. Hodzi had come 6th on the list that the JSC drew up following their interviews. President Mnangagwa openly rejected the three shortlisted nominees. Calvin Mantsebo, who topped the list, worked as director of intelligence, investigations and prosecution at the Anti-Corruption Commission of Sierra Leone, but Mnangagwa argued that he was too 'unknown', and thus too unpredictable. The two candidates that followed Mantsebo, former student activist Tinomudaishe Chinyoka, and former Law Society of Zimbabwe (LSZ) president Misheck Hogwe, were also dismissed for not being the 'right' political fit (Ncube, 2019). Hodzi, on the other hand, was supported by Virginia Mabiza, permanent secretary to the Ministry of Justice, who had close ties to President Mnangagwa.

The political interests that guided Hodzi's appointment aside, the government justified his appointment primarily through a rhetoric centred around the fight against corruption. Specifically, rather than bringing in earlier concerns regarding Goba's personal history in Namibia, once Hodzi was appointed, Goba's dismissal was framed as resulting from the fact that he was not working hard enough to try high-profile corruption cases. *The Herald*, Zimbabwe's main state-owned newspaper, for example, concluded that:

The NPA has been under fire for failing to prosecute high-profile cases. When Mr Hodzi took

over from Advocate Ray Goba who was suspended on allegations of failing to prosecute big cases among other charges, he directed the prosecution of at least five high-profile figures on corruption charges (Ruwende and Machakaire, 2019).

Similarly, when opening the 2018 Legal Year, newly appointed Chief Justice Malaba drew attention to President Mnangagwa's commitment to 'fighting the scrooge of corruption' (Nemukuyu and Chiyangwa, 2018), outlining the special 'anti-graft' courts and committees that were set up to focus exclusively on corruption cases. Within the judiciary, for example, corruption would be fought through the Judicial Ethics Advisory Committee (JEAC) that fell under the JSC, while the Zimbabwe Anti-Corruption Commission (ZACC) and the 'anti-graft' courts aimed to tackle corruption across all state institutions.

Speaking in June 2019, however, Chief Justice Malaba reflected that an increased number of courts and committees alone was not sufficient to tackle corruption:

Establishing more courts is not the solid solution. I don't think at the moment it is the problem that we have. We must simply just act; you don't continue seeking solutions by creating more and more anti-corruption courts because there are already many anti-corruption cases (Taruvinga, 2019).

The delays in corruption cases were especially evident in the high-profile cases that had started during, or immediately following, November 2017. One often-cited example is the case of Ignatius Chombo, which I discuss below.

Chombo's Corruption Charges

Ignatius Chombo entered Zimbabwean politics in 2000 as Minister of Local Government, a position he held until 2015 when he was moved first to the Ministry of Home Affairs, and then to the Ministry of Finance and Economic Development in October 2017. Associated with Grace Mugabe and the G40 faction within ZANU-PF, Chombo was arrested during the coup, and appeared in the Magistrates Courts of Harare on charges of corruption on 25 November 2017 (Sithole-Matarise, 2017). In court, his lawyer, Lovemore Madhuku recounted how masked gunmen took Chombo from his home on 15 November, detaining and beating him until he was admitted to the hospital on 19 November. Released from hospital on 23 November, Chombo was arrested and taken into police custody the next day before appearing before Magistrate Elisha Singalo (Marima, 2017). Marking him out as one of the 'criminals around [Mugabe]',

state prosecutor Edmore Nyazamba – infamous for following ‘orders from above’ – charged Chombo with three counts of corruption concerning the forging of property lease documents, criminal abuse of duty, and defrauding the Reserve Bank of Zimbabwe (RBZ) by misallocating funds from the Crops and Livestock Support Facility (Manayiti, 2019). Magistrate Singalo denied bail on the grounds that releasing Chombo was ‘likely to cause an outcry from the public’ (*IOL*, 2017). This reasoning not only signaled how the political mood in Zimbabwe was understood, it also worked to demonstrate that these prosecutions were about getting the public on side.

Although Chombo appeared before the court in November 2017, two years on, his case had not been concluded. In many ways, his experience with the courts echoed the tactics ZANU-PF had deployed against its political opponents in the MDC, particularly in the decade preceding the coup (for details on these tactics, see Verheul, *forthcoming*). After initially being denied bail, for example, Chombo was briefly released only to be re-arrested when reporting at the police station as part of his bail conditions. The prosecution further continuously altered his charges, dragging out the number of times Chombo had to appear in court, with all the inconveniences such appearances brought with them. As the case dragged on, public criticism mounted that rather than representing a genuine effort to clamp down on corruption, Chombo’s prosecution was another in a long line of political persecutions:

It is politics, the objective has been achieved: disrupt G40 and scatter it all over. It explains why the cases are failing. It was and will remain politics. There is no political will by the new administration to follow through the high expectations which were there when they came into office (Rusero, quoted in Mambo, 2018).

Illustrative of the observation that, following the coup, there has been a reversal of where justice *works* in Zimbabwe, Chombo was able to find some relief not in the Magistrates’ but in the High Court. On the grounds that the High Court first needed to determine whether Chombo’s rights were violated during his alleged abduction 9 days prior to appearing before the courts in November 2017, Chombo was granted a stay of prosecution by Justice Charles Hungwe in July 2018 (Laiton, 2018). Nevertheless, Chombo’s application for a permanent stay of prosecution was denied in November 2019.

In terms of the corruption trials that took place following November 2017, Chombo’s experience was far from unique. During his first court appearances, Chombo emerged alongside Kudzanai Chipanga, head of ZANU-PF’s youth league who stood charged with

corruption and slander, and Innocent Hamandishe, youth wing deputy leader, who was held on similar charges. Bail was denied to all three (Marima, 2017). In addition, high-profile corruption cases involving other key members of Mugabe's cabinet remain unresolved as of November 2019. These cases included the prosecution of Jason Machaya, former Midlands Provincial Affairs Minister, Walter Mzembi, former Minister of Tourism, Samuel Udenge, former Minister of Energy and Power Development, Franciz Gudyanga, former Permanent Secretary of the Ministry of Mines and Walter Chidhakwa, former Minister of Mines (ACT-SA, 2019).

Between November 2017 and August 2018, there was hope of a 'new era' under Mnangagwa. This hope was not fully misplaced, and early steps taken by the Mnangagwa administration pointed towards positive changes. In March 2018, for example, all inmates on deathrow had their sentences commuted, a move applauded by international human rights groups such as Amnesty International (2018). At the same time, as discussed above, repressive tactics previously used against civil society were now applied to members of the G40 faction under the banner of fighting corruption. This signaled that while the government's leadership changed, several of its key practices of maintaining 'peace' and 'order' had not.

Following the coup, ZANU-PF's repressive practices persisted in a new institutional landscape, however. As the many-pronged approach to tackling corruption illustrates, the judiciary was increasingly 'splinterized' so that specific parts of it could come under relevant government control. In this manner, special courts were also set up to tackle cases of political violence ahead of the 2018 elections. Civil society organizations expressed the hope that these courts would reduce instances of violence in the run-up to the first Presidential elections in which Robert Mugabe had not stood as ZANU-PF's candidate (Ndlovu, 2018). In the country's long history of violent elections, the 2018 polls were surprisingly peaceful. It was shortly after the elections, however, that the Mnangagwa regime resorted to its trusted practices on a large scale again. Below, I discuss the consistencies in the political role of the judiciary that sparked the January 2019 lawyers' protest, before concluding how the situation has progressed since then.

Changing Language, Consistent Practice

A first consistency relates to the splinterization of the judiciary: despite establishing more arenas of control within this institution, any legal questions that could reflect negatively on the government were moved to external arenas such that ZANU-PF could maintain control over not only the outcome, but the narrative of what this arena sought to legitimate. This was

evident, for example, in the formation of the Commission of Inquiry into the 1st of August Violence.

When Emmerson Mnangagwa, who had long been Mugabe's right-hand man in many campaigns of repressing political opposition and dissent, took over the Presidency in November 2017, he vowed to organize speedy elections to legitimize his position. On 30 July 2018, harmonized parliamentary and presidential elections took place, under the eye of election observers from SADC, COMESA, the African Union, the EU, and the US. Despite the political opposition, MDC-Alliance's, early confidence of electoral success, ZANU-PF won a two-third majority in parliament. The results of the presidential race, seen to be a close race between ZANU-PF's Emmerson Mnangagwa and the MDC-Alliance leader Nelson Chamisa, were slower to be released. Among some Zimbabwean citizens, this delay was read as indicative that they would experience yet another stolen election, creating what Violet Gonda has termed 'an atmosphere of distrust' in Harare, Zimbabwe's capital (Gonda, 2018).

On 1 August 2018, this distrust translated into protests, during which some participants threw rocks, destroyed windows and street signs, and burnt vehicles. In video footage recorded on the day, members of the Police Support Unit, and soldiers, can be seen firing shots, both into the air and into the crowds, as well as beating, whipping, and kicking individuals out on the streets (Gonda, 2018). At the end of the day, 6 people lost their lives, with over 20 others injured by gunshots, and many more as a result of beatings.

On 3 August, Mnangagwa was declared president by 50.8% of the vote, and announced that he would set up a Commission of Inquiry, stating:

There is no place for violence in our society and allegations of further incidents concern us all. Any claim supported by evidence will be examined and investigations are underway as we seek truth and justice. We have much to learn from this seminal week in our history (*The Herald*, 2018).

Sworn in on 19 September 2018, the Commission led by former South African President, Kgalema Motlanthe was charged with scrutinizing the events of 1 August. Further tasked to make 'suitable recommendations' in line with their findings, the Commission set to work, calling for written testimonies, and running public hearings between 16 October and 27 November in Harare, Bulawayo, Gweru, and Mutare (*Veritas*, 2018). Many of the hearings were broadcast by Zimbabwe Broadcasting Company (ZBC), live streamed on social media sites such as Facebook, reported on in the independent media, and subjected to commentary on

Twitter.

The two main narratives that would dominate the Commission of Inquiry into these events took shape before the Commission itself was established. On 1 August, in a televised statement, Emmerson Mnangagwa said: ‘we hold the opposition MDC Alliance and its whole leadership responsible for this disturbance of national peace, which was meant to disrupt the electoral process.’ For ZANU-PF, the Commission would serve as a site to claim that the police and army had no responsibility, they were responding to chaos on the ground that was instigated by the MDC Alliance or a third force (Mugabe and Share, 2018). At the same time, ZANU-PF argued that forming the Commission was, however, a commendable move away from past policies and politics.

Civil society members and opposition leaders, in turn, highlighted how the security forces’ reaction to the protest was ‘unjustified’ and ‘unnecessary’, how Mnangagwa had pre-empted the commission’s conclusions, and how ‘Zimbabwe’s history is littered with useless Commissions whose reports were never seen. The Commission is certainly doomed’ (Mashaya, 2018). Rather than celebrating the formation of the Commission, they pushed ZANU-PF to examine the ‘perturbing’ evidence that the army was not a ‘professional body of integrity’, as such a body would ‘take a stand and accept responsibility for the commission of such heinous deeds’ (CiZC, 2018).

Within the commission, this story was told through lengthy, historically situated testimonies. In particular, witnesses emphasized that, in order to adequately investigate the events of August 1st, the Commission needed to approach this not as a singular incidence of violence, but as one in a long chain of instances that underlie ZANU-PF as a violent system. Tendai Biti, for example, spoke before the Commission for almost three hours, arguing that ‘if justice has to be done [for the events of 1 August], it must be connected to the events that have happened in our history’ (Motlanthe Commission, 2018, 1144), a history defined by brutal violence perpetrated by a brutal state. After a short-lived period of optimism following the coup, Mnangagwa’s ‘new dispensation’ had shown that it fit in this pattern of violence.

ZANU-PF’s narratives in the commission also foreshadowed that, having dealt with the G40 ‘criminals’, the government would turn its attention again on members of civil society and the political opposition, who were increasingly cast as the new ‘criminals’ that Zimbabwean society ought to be protected from. This was especially so as the country’s ‘open for business’ mantra failed to deliver economic growth, and food and fuel became scarcer, and pricier. As people took to the streets to protest against these conditions in January 2019, we see a second consistency in the ruling party’s practices: a reliance on blanket arrests and the denial of bail

of protesting individuals.

While the lawyers' protest described at the opening of this article challenged these practices, particularly their large scale, the government also remained consistent in acting as if it was oblivious to such expressions of discontent. As 2019 progressed, both legal and extra-legal measures were increasingly used against activists. In February 2019, for example, Bustop TV comedian Samantha Kureya was arrested on a public nuisance charge after she performed a skit wearing a police uniform. She was targeted again in August, but this time she was abducted and tortured by unknown state agents (Greig, 2019). Such activities spread after November 2019. While beyond the remit of this article in the context of this Special Issue, it is particularly interesting to note that journalist Hopewell Chin'ono was arrested in July of 2020 after working to expose extensive corruption within President Mnangagwa's government in relation to acquiring much-needed medical supplies during the COVID-19 pandemic (for a reflection on this case in November 2020, see Neugeboren, 2020) . While tackling corruption and exposing 'criminals' was central to Mnangagwa's framing of Zimbabwe's 'new dawn', corruption could only be confronted in cases where it did not taint the current government.

Conclusion

Through a focus on debates of succession within the judiciary, and the battle for succession of the ZANU-PF presidency that motivated the events of November 2017, this article has examined how the understandings of law articulated, and drawn upon by ZANU-PF to secure its authority and negotiate legitimacy, increasingly built on a rhetoric not of 'sovereignty' and 'protection', but of battling 'corruption' and 'criminality' within the state. Despite these shifting repertoires, in practice the regime continued to rely on deep-rooted and well-established tactics to target its uses of law against a select part of the country's population, those opposed to ZANU-PF and its vision for the future. Legal practitioners, who have long played an important role in navigating what law means within Zimbabwean politics, have expressed concern at their continued engagement in such political cases. Despite this new shifting rhetoric, and human rights lawyers' fresh doubts on how to best respond to the new regime, the balance between law's capacity to both uphold and challenge the state's authority remains consistent over the past twenty years, as the multitude, complex and at times competing understandings of how the Zimbabwean state ought to function more broadly, and relate to law more specifically, were not radically altered by the coup.

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