Electoral Conflict and Justice: The Case of Zimbabwe

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Abstract
In recent years, Africa has faced a new form of conflict arising from disputed elections. Incumbents have refused to vacate office after apparently losing elections, triggering violent conflict. Regional organisations have invested considerable political energy to manage these conflicts. Post-electoral conflict accords (PECAs) resulting in power-sharing have been the favoured modus vivendi with regional mediators. However, little attention has been paid to the crucial issue of justice in the management of these disputes. Like most conflicts, electoral conflict centres on perceived injustice in the electoral process. Therefore, in order to manage these conflicts in an effective way, justice must be acknowledged in both procedural and substantive content. This article focuses on management of electoral conflict in Zimbabwe. It argues that the protracted post-electoral conflict in Zimbabwe can be explained, to a large extent, through failure to acknowledge procedural, distributive and retributive justice concerns.

Keywords
power-sharing; electoral conflict; regional interventions; procedural justice; distributive justice; retributive justice

Introduction
As Hegtvedt and Cook point out, despite the significance of justice and conflict for each other, there has been little research and theorizing on the relationship of the two concepts.¹ This is particularly the case with extant research on electoral conflict management and power-sharing accords witnessed in Africa. A substantial body of literature has examined the influence of justice principles on the processes of interpersonal,² organisational,³ and international⁴ negotiation. But

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little research has been devoted to the role of justice in the implementation of negotiated agreements.\(^5\) In this article, I do not make any rigid distinction between power-sharing and peace agreements. One of the primary motivations for regional and sub-regional interventions in the conflict in Zimbabwe was to establish peace following pre and post-electoral violence.\(^6\) Hence, peace was a key motivational factor.

The focal point of this article is, however, justice. At their core, all hot social conflicts are conflicts of justice.\(^7\) The underlying claim here is that electoral conflict is a justice conflict. The primary assertion of the article is that in order to settle conflicts in a constructive and sustainable way, justice must be sufficiently acknowledged within the conflict management procedure, on the content as well as on the procedural level.\(^8\) While there may be other inherent factors, the interveners in Zimbabwe's post electoral conflict failed to foster procedural, distributive (substantive) and retributive justice. Claiming for justice is an important reason why conflicts persist.\(^9\) The protracted conflict in Zimbabwe can be attributed to failure to recognize the significance of justice principles. The inclination towards PECAs appears to be based on immediate pacifism. However, this ‘antidote’ for electoral conflict has proved detached from the critical concerns about process fairness in conflict management, compromising the prospects for the desired objective of lasting peace.

While there may be significant disagreement over which situations are appropriate for the use of the concept of justice, justice is commonly divided into at least two categories: procedural and substantive justice.\(^10\) The distinction between procedural and substantive justice is explained as the justice or fairness of procedure and justice or fairness of its outcome.\(^11\) Insights into procedural justice as well as insights into the prevalence of justice dilemmas and knowledge on how to deal with justice dilemmas are helpful in settling social conflicts.\(^12\) Procedural justice is defined herein more broadly as the fairness of a dispute management system.


\(^6\) See for example AU Assembly/AU/Res.1 (XI) Resolution on Zimbabwe, 1 July 2008 in Sharm El-Sheikh, Egypt which encouraged the disputants to ‘dialogue with a view to promoting peace, stability, democracy, and the reconciliation of the Zimbabwean people.’


\(^12\) Montada, supra note 9, at pp. 557–558.
Substantive (or outcome-oriented) theories of justice, by contrast, draw on the characterization of the inherent properties of just outcomes. I use substantive justice and distributive justice interchangeably. As Shapcott points out, substantive justice refers to the equality of outcomes and the distribution of wealth and power; that is, distributive justice. Values indicating qualities of outcomes are defined as substantive. Substantive values come in theoretically quite distinct kinds: examples would include the idea of utility underlying utilitarian conceptions of the good, as well as that of equality of opportunity.

However, the distinction between proceduralism and substantivism is overstated: ‘neither advocates of substantivism nor defenders of proceduralism can fail to be interested, in some meaningful way, in procedures or outcomes.’ So procedural and substantive justice are connected, not separate. This article attempts to, first, analyse electoral conflict management in Zimbabwe within the context of both procedural and substantive justice. I then examine approaches to post-settlement justice in light of egregious violations during the conflict. Existing research on issues of justice following rule-breaking has largely focused on the role of punishment, in an area that is called retributive justice research. According to the notion of retributive justice, an offender, having violated rules or laws, deserves to be punished and, for justice to be re-established, has to be punished in proportion to the severity of the wrongdoing. This domain of research commonly addresses issues of how and why people want to punish offenders, and it has been found that justice is a prime motivation.

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16) Ibid.
18) Rawls, supra note 11, at p. 421.
The relationship between peace and post-accord justice is well explored. A dominant perception is that peace is contingent upon recognition of justice. The disregard of this causal relationship in Zimbabwe seemed to have nurtured the notion of impunity; that violence was politically efficacious and could be perpetrated without consequences.

The article is organised as follows. The first section provides background to the electoral conflict in Zimbabwe. The second section examines regional intervention, in particular, approaches of the African Union (AU) and the Southern African Development Community (SADC) as bodies expected to dispense justice in the conflict. These approaches will be examined within the context of procedural and distributive justice. The last section discusses post-settlement period from the purview of retributive justice.

1. Background

The electoral conflict in Zimbabwe and its management present a poignant case for analysis of the importance of justice in the management of an emerging problem of electoral conflict. This is a particularly significant area of attention considering that power sharing has gained favour among regional actors as a modal tool for managing post-electoral conflict. The apparent success of the post-electoral conflict accord (PECA) in Kenya, a year before, appears to have influenced regional mediators to use the formula as a template for the post-electoral conflict arrangement Zimbabwe. The subsequent power-sharing in Zimbabwe was borne out of similar political circumstances. The structure and substance of the accords are almost similar as were the affairs which created them.

The conflict in Zimbabwe arose after, for the first time since independence in 1980, President Robert Mugabe’s ruling ZANU PF party lost its parliamentary majority. But the main trigger came after the results of the presidential race, announced over a month later amid mounting tensions, indicated that Morgan Tsvangirai (Movement for Democratic Change (MDC)) had received more votes than the incumbent, Mugabe, but the opposition leader had failed to gain the 50 percent needed to avoid a runoff. Days before the runoff, in late June 2008, Tsvangirai pulled out of the race citing widespread political violence and the absence of conditions for a free and fair election. Mugabe stood unchallenged and was declared the winner, but many observer missions concluded that the poll did

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not reflect the will of the people. In response to the crisis, regional actors quickly prescribed power-sharing between the disputants as the panacea.

As I seek to demonstrate, the apparent success of the Kenyan case presented false hopes about the PECA as a replicable and acceptable model to every electoral conflict situation. According to the power-sharing school of thought, cooperation in a coalition is expected to usher in a plethora of benefits – tolerance, increased trust, the development of a democratic culture and societal stability if not peace.23 However, the prolonged conflict in Zimbabwe proved otherwise. The subsequent rejection of the PECA in the Cote d’Ivoire electoral dispute demonstrated that, as a conflict management model, it might finally be losing traction as a formula for resolving disputed electoral contests in Africa. This is mainly because post-electoral conflict power sharing, as it is has been conceived by regional players thus far, largely neglects justice principles.

Regional intervention in Zimbabwe’s political problems began after the public beating, arrest and torture of opposition and civic leaders on 11 March 2007 and the brutal attacks on MDC structures that followed thereafter.24 A combination of international pressure and growing concern in SADC led to an Extraordinary SADC Heads of State summit in Tanzania at the end of March 2007, at which South African President, Thabo Mbeki was given the mandate to facilitate discussion between the two major political parties in Zimbabwe, ZANU PF and the MDC.25 Mbeki’s objective was to seal a pact that would result in a generally acceptable election process in Zimbabwe. In order to achieve this objective, it was intended that the dialogue would: endorse the decision to hold parliamentary and Presidential elections in 2008; take steps to ensure that all concerned parties accept the results of the elections as being truly representative of the will of the people and agree on the measures that all political parties, and other social forces, must implement and respect to create the climate for such acceptance.26

Mbeki’s intervention culminated into the holding of relatively peaceful Parliamentary elections,27 although incidents of violence and intimidation occurred. The relative calm was shattered after the presidential election stalemate. Military officers were issuing threats that Mugabe would not be dislodged from power through an electoral process. Major-General Engelbert Rugeje stated: ‘This coun-

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try came through the bullet, not the pencil. Therefore, it will not go by your X of the pencil.’ Rugeje also promised some villagers that on his return after the vote, ‘the helicopter will be full of bullets.’

At one of his election rallies, Mugabe warned: ‘We fought for this country, and a lot of blood was shed. We are not going to give up our country because of a mere X. How can a ballpoint fight with a gun?’ A week before polling day, Mugabe declared that ‘only God’ could dislodge him from office and that the MDC ‘will never be allowed to rule this country – never ever.’ ‘Only God who appointed me will remove me – not the MDC, not the British.’

This authoritarian rhetoric, after Mugabe secured fewer votes than Tsvangirai in the presidential election, seemed to indicate he and his military backers regretted conceding to holding a relatively free election which had, for the first time, posed the most serious threat to his lengthy hold on power. The long delay in the release of the results had prompted an emergency meeting of SADC in Lusaka on 12 April 2008. Mbeki, who had adopted a secretive approach dubbed ‘quiet diplomacy’, astonishingly claimed there was no electoral crisis in Zimbabwe. Referring to the delay in the release of the election results, Mbeki stated: ‘I wouldn’t describe that as a crisis. It’s a normal electoral process in Zimbabwe. We have to wait for ZEC (Zimbabwe Electoral Commission) to release (the results.)’

It is worth pointing out that, to the contrary, Zimbabwe had not experienced a lengthy delay in releasing election results in the past. To the MDC, the delay in releasing results by the government-appointed ZEC was, therefore, curious and could only be explained by what Schedler termed ‘electoral authoritarianism.’

Under electoral authoritarian rule, elections are broadly inclusive as well as pluralistic as opposition parties are allowed to run; they are minimally competitive, that is, opposition parties, while denied victory, are allowed to win votes and seats. The withholding of the presidential election results for about six

30) See ‘Only God can oust me, Mugabe declares’ AFP, 21 June 2008.
32) A Schedler (ed.), Electoral Authoritarianism: The Dynamics of Unfree Competition (Boulder, CO: Lynne Rienner Publishers, 2006) The appointment of the chairman of ZEC is made by the President after consultation with the Judicial Service Commission (JSC). But the recommendation of the JSC is not binding on the President who must however inform the Senate if he appoints someone other than the person recommended by the JSC (Section 61 (1) (b) of the Constitution). The six other members – of whom at least three must be women – are also appointed by the President.
33) Schedler, ibid.
weeks would only spawn suspicions of fiddling, creating serious tension in the country. When the official results were eventually announced on 2 May 2008, the count gave Tsvangirai 47.9% against Mugabe’s 43.2%. Another candidate, Simba Makoni secured 8.3% of the vote. The results of the election meant Tsvangirai and Mugabe had to go for a second round runoff since neither had secured more than 50% as stipulated by the Zimbabwe Electoral Act.³⁴

The predicament which faces electoral authoritarian regimes ‘is an unexpected electoral outcome that poses a threat to non-democratic rule’³⁵ – the ‘stunning elections’ phenomenon – in which a new opposition inflicts a surprising defeat on the non-democratic regime.³⁶ While the result had not elevated Tsvangirai to presidency, Mugabe, who had expressed confident he would easily beat his rival, was stunned. The response to his ‘stunning’ defeat was a wave of violence by his ZANU PF supporters before the proposed run-off.

In light of the violence, some observers recommended the postponement of the presidential election because the situation on the ground was undisputedly not conducive to a free, fair and credible election.³⁷ Human rights violations during the period were documented in reports compiled by African and non-African observer missions. The SADC Election Observer Mission (SEOM) noted the prevalence of political violence, which “led to the internal displacement of persons and impacted negatively on the full participation of citizens in the political process and freedom of association.”³⁸ Amnesty International reported 180 deaths, concluding that, although difficult to quantify, 28 000 had fled from their homes.³⁹

On 22 June 2008, Tsvangirai announced publicly that he was withdrawing from the run-off election, citing the escalation of political violence and intimidation as reasons. Tsvangirai’s formal letter of withdrawal was submitted on 24 June 2008. Soon after, Tsvangirai sought refuge in the Dutch Embassy in Harare. Mugabe went ahead to stand alone in the election, claiming 85 percent of the vote. In less than 48 hours after the closure of the polls, Mugabe was announced

³⁴ See Zimbabwe Electoral Act (Chapter 2:13) Section 110 (3): ‘Where two or more candidates for president are nominated, and after a poll taken in terms of subsection (2), no candidate receives a majority of the total number of valid votes cast, a second election shall be held within twenty one days after the previous election in accordance with this Act.’
winner and sworn-in to office on the same day (29 June 2008). The election was condemned as flawed by regional observers, and the international community refused to recognise the result.

2. Post-electoral Conflict: Regional Intervention

In the wake of this dispute, the main objective of this article is to first examine the essential structural and normative traits of procedural and substantive justice in the management of electoral conflict in Zimbabwe. This part of the article proceeds to assess approaches to retributive justice following violations during the conflict. Regional and sub-regional organisations are custodians of norms and therefore implementers of justice principles in managing conflict. Justice is vital to the management of conflict. This is because, in general, conflicts arise because of perceived injustices. As Montada notes, all hot conflicts are in the end conflicts about justice – and claiming for justice is an important reason why conflicts persist. Electoral conflict is a justice conflict. In this case, the perceived injustices arose from the unfair conduct of the presidential election and the run-off. The intimidation and delay in releasing the presidential election result, and the violence before the runoff created strong sentiments of an unjust electoral process and environment.

Notions of injustice are based on the perception of entitlements being violated. In Africa, these entitlements have since been codified within now-established normative frameworks. Notably, a raft of electoral entitlements is now firmly embedded within the normative architectures of both the AU and SADC. These include the African Charter on Human and Peoples’ Rights (ACHPR) and the 1999 Algiers Declaration on Unconstitutional Changes of Government, the 2000 Lome Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government, African Charter on Elections, Democracy and

42) Montada, supra note 9.
44) African Charter on Human and Peoples’ Rights (ACHPR): Adopted by the Eighteenth Assembly of Heads of State and Government of the Organization of African Unity (OAU) at Nairobi in July 1981, entered into force on 21 October 1986, ILM 21 (1982). The ACHPR in Article 13 (1) states: ‘Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.’
46) Declaration on the Framework for an OAU Response to Unconstitutional Changes in Government...
Governance — creating the sense that justice that took into account the will of the people had taken root.

However, regardless of Zimbabwe’s commitments to these norms and its pioneer status in adopting some of the SADC Principles and Guidelines Governing the Conduct of Democratic Elections, the process leading up to the presidential run-off elections held on 27 June 2008 did not conform to these norms. The ‘environment impinged on the credibility of the electoral process. The elections did not represent the will of the people of Zimbabwe.’ The Pan African Parliament (PAP) observers also stated: ‘in view of the above the Mission concluded that the atmosphere prevailing in the country, at the time, did not give rise to the conduct of free, fair and credible elections.’ They recommended that conditions be put in place for the holding of free, fair and credible elections as soon as possible in line with the AU Declaration on the Principles Governing Democratic Elections and the SADC Guidelines on Elections. Given these unanimous findings on the unjust electoral process – notably by African observers as well-focus would naturally be placed on interveners’ approaches to right the injustice.

2.1. Approaches of the AU and SADC

Africa is a host to a number of regional organizations that have assumed the responsibility to ensure peace and stability in their region, in addition to other political and economic objectives. These organisations have the proximity, and at the same time the sense of balance that allows them to politically define the nature of the conflict. The AU epitomises the African normative order and frame of reference for continental legal order. In other words, it is charged with dispensing justice particularly in cases of conflict. As I have pointed out, in order to settle conflicts in a constructive and sustainable way, justice must be sufficiently acknowledged within the conflict management procedure, at the substantive as well as on the procedural level.

For Hampshire, in order to have procedural justice, two criteria must be met: first, it is necessary that contrary claims are heard (audi alteram partem). Secondly,
procedural justice requires institutions to resolve conflicts. Given the unjust electoral processes in the presidential election in Zimbabwe, it is critical to examine approaches of the regional institutions as the dispensers of justice. An institution that is concerned with justice and yet fails to resolve either actual or potential conflicts among people reduces justice to an ancillary or metaphorical role.

The AU met in Sharm El-Sheikh, Egypt in the immediate aftermath of the conflict in Zimbabwe. In spite of the overwhelming evidence on unjust electoral process, even from its own PAP observers, the AU ‘called upon political leaders of Zimbabwe to enter into negotiations to establish a Government of National Unity under SADC facilitation.’ It was apparent the main motive, from the wording of the AU resolution, was for Mugabe and Tsvangirai to honour their commitment ‘to initiate dialogue with a view to promoting peace, stability, democracy, and the reconciliation of the Zimbabwean people.’ In other words, the concern centred on immediate pacifism, and not implementation of procedures that would ensure justice for the parties.

2.1.1. Procedural Justice
A key component highlighted by Tyler and Lind in procedural justice is using facts to make decisions, which indicates neutrality. With little attention paid to the PAP findings and the lack of investigative intent by regional actors, it was clear the management and outcome of the conflict would not be determined by factual findings. This meant the AU could not operationalize its declarations on unconstitutional changes of government. An unconstitutional change in government can occur in four different situations. These instances are as follows: A military coup d’état against a democratically elected government; (2) intervention by mercenaries, such as foreign elements toppling the government on behalf of local actors; (3) civil war, that is, replacement by armed dissident groups and/or rebel movements; (4) refusal by incumbent government to relinquish power to the winning party following a free, fair and regular election.

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54) AU Assembly/AU/Res.1 (XI) Resolution on Zimbabwe, 1 July 2008 in Sharm El-Sheikh, Egypt.
55) Ibid.
the contrary, they secure a rational consensus because they are just. As pointed out, electoral democracy now suffuses Africa’s normative frameworks consented to by parties on the continent. On the national level, Zimbabwe’s Electoral Court, legally mandated with procedural concern of dealing with election petitions, played no part. Hence, all institutions (national and regional) charged with dispensing procedural justice failed to do so or were simply ignored.

The power-sharing proposition – the preferred ‘solution’ in the end – appears to conform to the Rawlsian concept of perfect proceduralism. According to Rawls, perfect procedural justice describes a case where there is procedure-independent criterion for just outcomes. Accordingly, procedures are devised to attain a particular state of affairs that is already envisaged and pursued as just; the definition of a procedure to achieve a given outcome is accompanied by the guarantee of its actual realisation. Power-sharing is, accordingly, a predetermined outcome designed to achieve ‘peace’ and appeasement through apportionment of positions of power within a government.

But Rawls’ concept of perfect proceduralism has been contested. Ceva, for instance, points out that perfect (and imperfect models) of proceduralism concede too much to substantive (outcome-based) approaches in their envisaging what a just state of affairs consists of before the definition of a just procedure. Similarly, Rosenfeld argues that perfect (and imperfect proceduralism) are not genuine concepts of proceduralism but substantive theories. In his words, perfect proceduralism is substantivism (outcome-oriented) in a ‘procedural garb.’ Therefore, the ‘perfect’ account of procedural justice does not seem to qualify as a genuine procedural theory. With this in mind, it can be soundly argued that the AU and SADC’s predetermined power-sharing recommendation did not constitute procedural justice.

Procedural neutrality requires that decisions be made “in an unbiased manner based on facts and rules, and not on personal opinions or preferences.” If we accept that perfect procedure is not a theory of justice, then the process to reach the predetermined outcome by the AU cannot be considered to be just. Nonethe-

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59) Section 161 (1) of the Electoral Act established an Electoral Court ‘for the purpose of hearing and determining election petitions and other matters in terms of this Act.’
61) Ibid.
64) Ibid.
65) Ceva, supra note 62.
less, the AU mandated SADC to facilitate dialogue. Mbeki was endorsed to continue as facilitator or mediator. The principal negotiators were named as Mugabe, Tsvangirai and Arthur Mutambara, of a smaller faction of the MDC which had secured a few parliamentary seats.

Mediation is a vehicle for procedural justice. However, with a prescription of power-sharing already given, the AU and SADC approaches would fall short, at least, on the level of procedural justice. Some factors rendered the prospect of procedural justice difficult. The relationship between Tsvangirai and Mbeki had for long been one of distrust, and Tsvangirai made his suspicions of Mbeki known on several occasions. Lind and Tyler proposed that procedures are evaluated according to three criteria: the trustworthiness of the authorities enacting the procedures; the neutrality of those authorities, and information emanating from the procedure about the individuals' standing in the group. Disputants want to be treated fairly as the conflict is managed, and they want to have a voice in its management. If these are denied, the disputant-disputant conflict might be replaced with a disputant-manager conflict.

It is apparent that trust did not exist between Mbeki and Tsvangirai. Mbeki claimed in an interview well after the negotiations that Tsvangirai would, during talks, consult the US ambassador to Zimbabwe; this, came to the knowledge of Mbeki because Zimbabwe’s Central Intelligence Organisation (CIO) tapped the phone Tsvangirai was using. Because of this and his ANC’s ties with Mugabe’s ZANU PF, Mbeki was generally considered as biased. Tsvangirai compared Mbeki’s role as facilitator in the inter-party talks to that of a referee “who throws away the whistle and joins the other team. We knew we had to respect each other but Mbeki had a deep dislike of me.” While some researchers value neutrality as key, others regard bias as necessary. Zartman, for instance, argued that “mediators need not be impartial, but they must deliver the side to which they are perceived to be close.” Jabri asserts that while, traditionally, the role of the mediator has been conceived as an impartial outsider, bias and influence may be effective in moving parties towards compromise as opposed to continued conflict.

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agreement was reached, it was in favour of Mugabe and ZANU PF. As will be discovered, this biased approach to mediation only planted seeds for extended conflict, rendering claims of the effectiveness of bias unsustainable.

Another consideration of procedural justice is the inclusion of primary stakeholders in the management of a conflict. It would appear the management of disputes arising from elections – themselves citizen activities through voting – has thus far failed to accommodate citizen participation. In other words, citizens, also the supposed beneficiaries of the peace after conflict, do not play significant roles. As Mehler notes, a characteristic of power-sharing talks is that they exclude those they are purported to benefit: citizens.73 The conflict between realpolitik and justice seldom takes a visible form: often the decision to pursue realpolitik strategies occurs during secret negotiations or through processes meant to obfuscate the truth and manipulate public perceptions.74 Settlements often entail face-to-face and secret meetings and consultations, which are so frequent and intense that they so often engender conspiratorial camaraderie among sworn enemies.75 In negotiations, the small circle of leaders must have considerable autonomy from cadre and mass pressures.76 Mbeki’s ‘quiet diplomacy’ arguably denoted this elitist inclination and a disjuncture with citizens. The approach exemplified the exclusionary nature – at least from the point of view of the electorate – of the process.

The point is that, determining how inclusive or exclusionary a political settlement is, cannot be understood simply by examining the extent of participation in the bargaining process, or at appointments in the offices of the state. It requires an analysis of the distribution of rights and entitlements across groups and classes in society on which the settlement is based.77 The fundamental question is whether citizens are stakeholders with any entitlements and rights in electoral conflict management. It appears incontrovertible that the electorate, as determinants of power-holders and have the right to vote, holds a stake in conflict arising from their inputs. A key consideration in justice is whether consideration is made of the participation of those whom decisions affect. It is axiomatic that national governance directly affects citizens within any given society.

Deutsch notes “fair procedures yield good information for use in decision-making processes as well as a voice in the processes for those affected by them, and

74) Bassiouini, supra note 22.
76) Ibid., p. 56.
considerate treatment as the procedure is being implemented."

Similarly, the findings of Lind, Kanfer and Early showed a voice effect: subjects judged a procedure to be fair when they were allowed a voice. Discursive problem-solving should give all those concerned equal opportunities and powers to have a say on how social life should be arranged and how its norms should be justified. Kin-gwell speaks of ‘dialogic justice’ which creates conversational spaces to discuss principles of justice. Based on these postulations, it is plausible to argue that when electoral violation occurs, members of society (as the voters) ought to be party to remedial processes because they are interested parties directly affected by outcomes. This obviously does not entail inclusion of every voter but groups which represent them. The International Socialist Organisation, for example, described the inter-party deal in Zimbabwe as fashioned between “bourgeois elites” that have fundamental interests in common. Non-state actors, including NGOs, trade unions, churches, private sector, academia, students’ movements and other stakeholders were not actively involved in the negotiation process. They therefore, as a result, felt marginalized.

The labour movement, Zimbabwe Congress of Trade Unions (ZCTU) warned: ‘A Government of National Unity is a subversion of our National Constitution and only a Transitional Authority should be put in place with a mandate to take Zimbabwe to fresh, free and fair elections that will hopefully not be disputed by parties.’ It resolved to treat the deal as a ‘temporary stop gap measure because it denies Zimbabweans the right to choose a government of their choice through a democratic process.’ Rawls correctly notes that in order to be just, a society must examine who has rights or equal moral standing. But as applied to power-sharing examined here, his ‘perfect procedure’ of justice, however, rules out any other possibilities, including a re-run, which would afford the right to (re)vote. It cannot, therefore, be considered to serve procedural justice. Having concluded that the mediated negotiations in Zimbabwe failed to meet the precepts of proce-

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84) Statement by the Zimbabwe Congress of Trades Unions, Harare, 16 September 2008.
86) Rawls, supra note 11, at p. 3.
dural justice because of a favoured outcome, was fact-averse and exclusive in nature, the prospect of some justice rested in the just distribution of power.

2.2. Distributive Justice

Justice is highly relevant in all phases of conflict. The management of conflict, or the process of turning conflict into order, can follow a number of different forms. The range of potential agreements and the shape of the final outcome are determined in large part by underlying notions of fairness or justice. The neglect of justice principles portends future conflict. Substantive or distributive justice attempts to avert conflict through fair distribution. It generally refers to the equality of outcomes.

Philosophical discussions on justice, however, tend to emphasise the distributions of material goods and ignore institutional issues of decision-making structure. Theories of distributive justice can and should be applied to social organisation. Substantive values come in theoretically quite distinct kinds: examples would include the idea of utility underlying utilitarian conceptions of the good, as well as that of equality of opportunity. Hence, distributive issues and theories of justice seek to take into account issues beyond materialism, encompassing ‘goods’ such as power, opportunity and all aspects on institutional organisation. Miller, for instance, argues that benefits of distributive justice should include intangible benefits. According to Galston, issues of justice involve non-material goods such as authority and honour. Rawls, in articulating his concept of the ‘basic structure’, considers the subject of justice as the way in which major social institutions distribute rights and duties.

With this thinking in mind, I consider distributive justice here within the context of non-material ‘goods’ such as power and political office. The contention here is that the extent that principles of distributive justice are included in peace agreements, the chances for durable agreements are thus improved. Access to

91) Ceva and Calder, supra note 15.
92) Young, supra note 90, at p. 8.
95) Rawls supra note 60, at p. 7.
96) Druckman and Albin, supra note 5.
positions of political power is vital as it provides groups with visible recognition, a ‘say’ in decision-making and control over government resources.97

One distribution tenet that has received considerable attention from justice researchers is the equity rule.98 This rule states that the outcomes one receives should depend upon the proportionality of one’s own inputs and the inputs of the relevant other. Let us recall that the delayed official results announced on 2 May 2008 gave Tsvangirai 47.9% against Mugabe’s 43.2%. The subsequent one-man runoff received no recognition. Because presidential results were contested, the tallies of parliamentary votes (popular vote) were subsequently adopted as the benchmark and formula for the allocation of executive power. ZANU PF MPs had more in terms of the popular vote, meaning Mugabe would secure the top executive post. The distributive formula appeared rather a flawed and unjust modus operandi for the distribution of executive power.

Going by initial presidential results, Tsvangirai had secured more votes than Mugabe in the presidential election. However, the agreed power distribution formula allowed them to claim the collective votes meant for others: MPs. This arrangement was based on the presumption that voters who cast votes for Parliamentarians had subsequently endorsed the leaders of those parties. However, voters particularise individual choices at different levels during elections. For instance, voters may choose a constituency representative and not the leader of his party. It is not unheard of that voters in parliamentary elections would vote for a presidential candidate of a different party. This seems to have been confirmed in the case of Mugabe when his ‘relevant other’ – party’s Parliamentary candidates – appeared to have secretly campaigned against him, a development acknowledged by media supportive of him.99 Still, the votes that the dissenting Parliamentary aspirants amassed were, in the end, used to prop up Mugabe.

In short, Mugabe may have been awarded votes he did not deserve. Therefore, basing the distributive formula on the parliamentary tallies could not be said to be just. This arrangement also propelled Mutambara, leader of the smaller MDC,

99) It has been reported by both the private and ZANU PF-controlled media that ZANU PF MPs keen to see Mugabe’s departure called on voters to vote for them but not Mugabe in the presidential election. This campaign was dubbed ‘bhora musango’ loosely translated as ‘kick the ball off the field or pitch’. See for example an article by the deputy editor of the ZANU PF-controlled Herald newspaper, Caesar Zvayi, ‘Conference must deal with electile dysfunction’, 6 December 2011, http://www.herald.co.zw/index.php?option=com_content&view=article&id=28495:conference-must-deal-with-electile-dysfunction&catid=58:zvayi&Itemid=159 (accessed 4 December 2011); see also ‘Mugabe’s huge gamble’ The Daily News, 15 December 2011, http://www.dailynews.co.zw/index.php/news/53-top-story/6011–mugabes-huge-gamble.html, (accessed 20 December 2011).
from obscurity into the office of deputy prime minister, after he had lost in the parliamentary elections. Not an aspiring presidential candidate in the election, he was parachuted to the post on the basis of the tally of his MDC’s 10 Parliamentary seats. As is clear, the outcomes with regards to executive office were grossly disproportionate to individual ‘inputs.’

Whereas the South African mediators had crafted a compromise that attempted to allocate executive authority of an inclusive government between the President, Prime Minister and cabinet, Tsvangirai saw the compromise as allowing Mugabe to retain too much power as the Head of State. For Tsvangirai and his party, any agreement needed to reflect both the parliamentary and presidential outcomes (not overall tallies) of the March elections, effectively installing Tsvangirai as interim head of state until a new presidential election could take place under a constitutional reform process endorsed by a referendum. Tsvangirai had more votes and MPs than Mugabe and ZANU PF. Tsvangirai’s proposal did not seem outrageous given the equity rule.

In ZANU PF’s view, however, Tsvangirai asked too much of the March elections. The MDC leader eventually capitulated. He, Mugabe, and Mutambara signed a power-sharing agreement on 15 September 2008, bizarrely known as the Global Political Agreement (GPA). This, as already pointed out, was the preference of AU to be implemented through SADC mediation, although the MDC remained aggrieved. Cohen notes that the authorisation of a structure for the allocation of power may increase actors’ acceptance of an unjust structure. SADC subsequently presided over the allocation of power.

In the end, the ‘popular vote’ formula produced an unjust scenario where the perceived loser of the initial election – which was considered free and fair – retained the highest post in government. As will be demonstrated, this distributive anomaly was a recipe for extended attrition. The signing of the Zimbabwe power-sharing agreement did not result in the immediate formation of a government but only ushered in a fresh round of controversies requiring regular regional and sub-regional intercessions. A dispute emerged over the distribution of ministries, in particular the key Home Affairs portfolio which the MDC wanted to control. The MDC was demanding the removal of the Reserve Bank governor

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101) See Zimbabwe’s Global Political Agreement (GPA), http://www.zimfa.gov.zw/index.php?option=com_docman&task=doc_details&gid=12&Itemid=91. It has not been clear why it is termed ‘global’ compared to Kenya’s, for example, which was called the ‘national’ accord (as reflected in the National Accord and Reconciliation Act of 2008) While I use the term ‘power-sharing’ liberally, experiences may later demonstrate lack of real sharing of power.

and the Attorney-General – staunch Mugabe loyalists – and appointment of MDC nominee for deputy agriculture minister, Roy Bennet.\footnote{MDC official Roy Bennett was acquitted in May 2010 after a High Court judge ruled the state had failed to link him to an alleged plot to assassinate Mugabe. In March 2011, the Supreme Court dismissed the state’s application to appeal the acquittal. Mugabe had made his acquittal a condition for appointment to government but still refused to do so after he was cleared by the courts.}

In the subsequent months, several summits of the SADC Organ for Politics Defence and Security Troika (hereafter the SADC Troika) and heads of government were held to try to foster formation of a coalition government. The reality is in the following months, an exceptional amount of political energy had to be repetitiously invested in the production of accommodation. Judging from these subsequent events, Water’s assertion that the more power-sharing is built into a peace agreement, the less international commitment (in this case regional) is needed to guarantee it, proved rather optimistic.\footnote{B Walter, ‘The critical barrier to civil war’ (1997) 51 International Organization 3, at pp. 335–64.}

On 20 October 2008, SADC Troika met again in Mbabane to review the political situation in the region, focusing specifically on Zimbabwe, the DRC and Lesotho. Tsvangirai did not attend the meeting, allegedly because he did not have a proper travel document. The Extra-ordinary meeting of the SADC Troika subsequently held in Harare on 27–28 October 2008\footnote{See Communique of the Extra-ordinary Summit of the SADC Troika, Harare, Zimbabwe: 27–28 October.} failed to resolve the Zimbabwe impasse and recommended a full SADC Summit meeting; this was held on 9 November 2008 in Sandton, Johannesburg. It resolved that a unity government be formed forthwith and that the contested Ministry of Home Affairs be co-shared between ZANU PF and the main MDC. Tsvangirai’s party rejected the proposal and appealed for both the AU and the UN to intervene.\footnote{S Badza, ‘Zimbabwe’s 2008 Harmonized Elections: Regional & International Reaction’ in Masunungure (ed.), supra note 28.}

Under power-sharing deal, the smaller MDC and Tsvangirai’s MDC would have deputy prime ministers. In January 2009, the Extraordinary Summit of the SADC in Pretoria, resolved that the Prime Minister and the Deputy Prime Ministers be sworn in by 11 February 2009 and Ministers and Deputy Ministers on 13 February 2009, which would conclude the process of the formation of the Inclusive Government; and that contested appointments of the Reserve Bank Governor and the Attorney General be dealt with by the Inclusive Government after its formation as well as the formula for the distribution of the Provincial Governors.\footnote{See Communique of the Extraordinary Summit of the SADC Heads of State and Government; Presidential Guest House, Pretoria, 26–27 January 2009.}

Subsequently, a new government was appointed on 13 February 2009. But Mbeki and SADC had only left a poisoned chalice. Left to their own devices, the disputants rendered the oft-used term “government of national unity” a tragic misnomer. Mugabe dug his heels in on the issue of the Reserve Bank Governor...
and Attorney-General whom he refused to replace. While it had been agreed that each party would be entitled to appoint a Governor in the province in which it won Parliamentary elections (a formula 5-4-1 was reached on the distribution of provincial governors’ posts between ZANU PF, Tsvangirai’s main MDC with MDC faction led by Mutambara securing the one post), Mugabe refused to appoint MDC governors.

Unresolved issues of justice perpetuate a conflict and contribute to impasses in negotiation. A number of studies confirm Homans’s postulation that individuals who receive rewards that are lower than expected are likely to be angry. In frustration with unresolved matters and alleged new violations of the agreement, the main MDC in August 2009 suspended cooperation with ZANU PF in the cabinet and council of ministers. This did not come as surprise because, to the MDC, the ‘distributive injustices’ had left Mugabe and ZANU PF with power to act with unilateral contempt. The MDC returned to government after three weeks on the assurance of intervention from the new SADC mediator, Jacob Zuma, and after the November SADC Troika summit set 6 December 2009 as the deadline for implementing the agreement’s remaining elements.

However, instead of addressing the outstanding matters, Mugabe made further unilateral appointments. In March 2010, he appointed the Public Service Commission when the GPA clearly says that all Service Commissions must be appointed in consultation with the Prime Minister. On 20 May 2010, he arbitrarily swore in five new judges to the Supreme and High Courts. On 24 July 2010, he appointed six ambassadors without consultation. Tsvangirai wrote to the countries of posting asking them not recognise them. Mugabe eventually appointed five MDC ambassadors.

The MDC, despite winning more Parliamentary seats and its leader securing more votes than Mugabe, was evidently reduced to a junior partner in the government, controlling less influential portfolios. According to Lindemann, the inclusiveness of the elite bargain can be measured by the extent to which positions of political, economic and military power are shared between contending social groups. Of these key portfolios, the MDC only secured the Ministry of Finance. ZANU PF managed to retain exclusive control over the coercive instruments of state, including the security, intelligence, and judicial services, as well as the polit-

108 Druckman and Albin, supra note 5.
ically strategic ministries responsible for land, agriculture, and local government. MDC failed to obtain a Deputy Minister’s post in the key Ministry of Defence. And, under intense pressure on an issue that threatened to derail the entire settlement, MDC was also forced by the South African negotiators to accept co-leadership with ZANU PF of the Ministry of Home Affairs, which controls the police.  

As Bratton and Masunungure summarise it, the roots of the Zimbabwe’s post-electoral crisis lay in Mugabe’s unwillingness to share power, and resistance to political reform by senior military elements in the dominant coalition. The failure to assume significant control of the state security apparatus – Mugabe’s primary pillar of support – meant the MDC would remain vulnerable. In 2011, a senior military officer – later promoted – repeated threats they would not accept anyone other than Mugabe as leader of the country, branding Tsvangirai a ‘security threat.’ Despite having an MDC co-minister in charge of the police (Home Affairs), the Zimbabwe Republic Police (ZRP), whose head had made public his support for ZANU PF, still routinely blocked MDC rallies; the police were also failing or reluctant to protect MDC supporters from attacks by ZANU PF members. In the end, the power-sharing agreement failed to justly redress the pre-existing power asymmetries. At the level of distributive justice, the PECA had failed to achieve substantive justice. The critical clusters of power remained in the hands of ZANU PF.

According to Section 20.1.1 of the GPA, which gave birth to Zimbabwe’s coalition government, executive authority of the government “shall vest in, and be shared among the president, the prime minister and the cabinet, as provided for in this constitution and legislation.” But this was not reflected during the tenure of the power-sharing government. In essence, the ‘power-sharing’ accord did not eventuate in the sharing of real power but the allocation of some governmental ‘roles’ to the MDC. A role does not entail possession of power but mere functionality in a collective act. This distributional asymmetry generated frictional relations. Druckman and Albin found that distributive justice

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114) Ibid.
moderates the relationship between conflict environments and outcomes: when principles of justice are central to an agreement, the negative effects of difficult conflict environments are reduced; when principles are not central, the negative effects of difficulty are heightened.117

It is therefore not surprising that the coalition government experienced debilitating disharmony during its tenure.

The AU and SADC invested an extraordinary amount of energy into the extended crisis, which was – I argue – of their own making, at least in terms failure to address justice issues. In an effort to seal a deal, the mediators were irresolute in applying justice principles and papered over fundamental disagreements, the most important of which was the exact division of authority between the President and Prime Minister.118 On 31 March 2011, the SADC Troika met in Livingstone, Zambia to consider the political and security situation in the region, with particular attention to Madagascar and Zimbabwe. In response to an internal report tabled by Zuma, the new SADC facilitator on Zimbabwe, the Troika issued its strongest statement then on the deteriorating situation, suggesting that the organisation may be prepared to act more vigorously and directly to move the reform process back on track.119

It was common knowledge that ZANU PF in concert with state security agents was the main perpetrator of violence. Mugabe’s ZANU PF was particularly infuriated by the unprecedented criticism by the summit which, among other issues, ordered ‘an immediate end of violence, intimidation, hate speech, harassment, and any other form of action that contradicts the letter and spirit of GPA;’ and also the implementation of ‘all the provisions of the GPA and create a conducive environment for peace, security, and free political activity.’120 These conclusions were tacit references to ZANU PF. The assertions contradicted ZANU PF claims that the political environment was conducive to the holding of elections. Two other summits were held in South Africa and Angola without achieving much progress in Zimbabwe’s drawn-out dispute. This scenario led to the MDC, on a number of occasions, threatening to withdraw from the power-sharing government.121

As already pointed out, an institution that is concerned with justice and yet fails to resolve either actual or potential conflicts among people reduces justice to an ancillary or metaphorical role.122 By way of comparison, the approach of the Economic Community of West African States (ECOWAS) to the electoral crisis in Cote d’Ivoire was radically different. Laurent Gbagbo’s refusal to accept defeat

117) Druckman and Albin, supra note 5, at p. 1137.
118) Bratton and Masunungure, supra note 113.
120) Ibid.
at the hands of Alassane Ouattara in the 2010 election plunged the country into a new political crisis which, within a few months, assumed the form of a genuine civil war. In response, ECOWAS was assertive and robust in its approach. Whereas SADC sought to paper over justice principles, ECOWAS stated that in order to protect the legitimacy of the electoral process, it endorsed the results declared by the electoral commission and certified by the Special Representative of Secretary General of the United Nations in accordance with Resolution 1765 of the United Nations Security Council. In this regard, the Heads of State and Government recognized Ouattara as President-elect of Côte d’Ivoire.

Further, ECOWAS warned incumbent Gbagbo if he did not step down, the bloc would take other measures, including the legitimate use of force. Gbagbo was later militarily ejected from power by Ivoirians and foreign troops based in the country. Unlike SADC and the AU, ECOWAS resolutely opposed to power-sharing. While affirming Ouattara as the winner, the AU’s Peace and Security Council recommended the setting up of a National Union and Reconciliation Government as part of what it called ‘the overall political solution.’ However, ECOWAS’ then acting president, Nigerian leader Goodluck Jonathan, warned against efforts to cut a deal, as in Kenya or Zimbabwe. ‘We’ve seen that these governments of national unity... it doesn’t really work... Elections have been declared, somebody has won, so he has to hand over.’

Advocates of power-sharing contend that government by many is more legitimate than mere majority rule. It is further claimed that such settlements tame politics by generating tacitly accommodative and overtly restrained practices among competing political elites. Proponents of power-sharing contend that by neutralizing violent conflict and opening the political process, it serves a public good and makes an essential contribution to any transition to lasting peace. As Jarstad’s study shows – in contrast to previous research which has suggested that power-sharing is a tool for ending violence, events in Zimbabwe showed that conflict often continues after an agreement has been signed, even if it includes...
provisions for power-sharing.\textsuperscript{129} This is particularly the case when justice concerns are not addressed.

\section*{2.3. Retributive Justice}

This disregard for justice was also evident in the post-settlement era in Zimbabwe. The period between the ‘stunning election’\textsuperscript{130} result and proposed run-off had been characterised by widespread violence, perpetrated mainly by Mugabe’s supporters. The Zimbabwe Association of Doctors for Human Rights (ZADHR) reported that “without exception, victims treated by our members have identified the perpetrators either as war veterans, armed security force members or ZANU PF youth militia or varying combinations of the three.”\textsuperscript{131} Figures released by the MDC suggested more than 200 were killed while 200 000 were displaced; some sought refuge at MDC offices in the capital Harare which were later raided by the police. Amnesty International, however, reported 180 had been killed instead, stating that although difficult to quantify, 28 000 had fled from their homes.\textsuperscript{132} The PAP Mission visited aggrieved families; obtaining official post-mortem reports and attended the funeral of one victim. Hence, the intervention in Zimbabwe was motivated partly by the desire to establish peace after the wave of post-electoral violence.

A perception exists that lasting peace can be achieved if we acknowledge justice. Pope John Paul VI coined the often-quoted refrain, ‘if you want peace, work for justice,’ and Catholic Bishops in the Third World took it a little further, declaring that ‘there can be no peace without justice.’\textsuperscript{133} Civil rights leader Martin Luther King accentuated this perception. Annan also stated, after the International Criminal Tribunal for Rwanda delivered the first-ever judgment on the crime of genocide by an international court: ‘…there can be no healing without peace; there can be no peace without justice; and there can be no justice without respect for human rights and rule of law.’\textsuperscript{134} But in Zimbabwe the concept of peace appeared to equate only to the immediate cessation of violence. While the

\textsuperscript{134} See UN webpage for the International Criminal Tribunal for Rwanda: http://65.18.216.88/default.htm.
so-called GPA hints at retributive justice, no visible efforts were made to implement it.

Retributive justice essentially refers to the repair of justice through unilateral imposition of punishment. According to the notion of retributive justice, an offender, having violated rules or laws, deserves to be punished and, for justice to be re-established, has to be punished in proportion to the severity of the wrongdoing.135 This domain of research commonly addresses issues of how and why people want to punish offenders, and it has been found that justice is a prime motivation.136 Article 18 of the GPA calls on the police to investigate crimes committed particularly in the run-up to the presidential runoff, mandating the Attorney-General to prosecute. This provision does not seem to have been forcefully activated. In addition, the GPA called for the establishment of an Organ on National Healing and Reconciliation.137 While the organ was indeed formed, it did not appear to have been given a clear mandate.138 Despite a declaration by Tsvangirai as Prime Minister that ‘national healing cannot occur without justice and justice must be done, as well as be seen to be done,’139 the organ was not clearly empowered to facilitate retributive justice. Article 7 which established the organ was vague on the steps that need to be taken in setting up structures of transitional justice during the interim period.140 It appeared that the formation of this organ was, in fact, a calculated diversion from holding violators to account; its emphasis would be to ‘reconcile’ and ‘heal’ without justice.

The main problem rested on the fact that no independent structures were put in place to dispense post-accord justice. The national healing organ was headed by MDC and ZANU PF officials. It was unlikely that ZANU PF, the chief perpetrators of violence and violations, would resolutely press for justice against themselves. In the end, the issue of retributive justice was virtually kicked into the tall grass as priority was placed on preventing future violence. Furthermore, the GPA’s internal enforcement mechanism, the Joint Monitoring and Implementation Committee (JOMIC), was structurally weak. Its leadership was also made up of members of the various political parties. It did not have a mandate for retributive justice. In addition, Zimbabwe’s disempowered and persecuted civil society,141

137) Article VII of the GPA: Equality, National Healing, Cohesion and Unity.
138) See ‘National healing has no clear mandate – Holland’ (The Zimbabwe Independent, 6 May 2010) http://www.theindependent.co.zw/local/26405-national-healing-has-no-clear-mandate--holland.html.
139) Address by the Prime Minister Morgan Tsvangirai on the occasion of the National Dedication Programme towards Healing, Reconciliation and Integration, Harare, July 24, 2009.
140) Supra note 137.
141) Persecution of civil society actors is frequent. A prominent case involved the abduction of human rights activist and director of the Zimbabwe Peace Project, Jestina Mukoko in December 2008. Her organization compiles incidents of human rights violations. Upon release by his abductors (state security agents) after three weeks, she was charged with recruiting people for military training to try to overthrow
side-lined during power-sharing negotiations, could not exert sufficient pressure for prosecutions. The post-accord approach, averse to accountability, could best be described as managerialist or realpolitik. As Bassiouni points out, ‘realpolitik involves the pursuit of political settlements unencumbered by moral and ethical limitations. As such, the approach often runs directly counter to the interests of justice, particularly as understood from the perspective of victims of violations.’

Yet retributive justice can cause deterrence and extinguish notions of impunity. As Wippman observes, “for many [proponents of retributive justice], deterrence is the most important justification [for pursuing retributive justice], and the most important goal.” The effects of the absence of retributive justice in Zimbabwe manifested through the resurgence of violence in 2010 – fuelled mainly by rhetoric of impending elections. Such acts were likely to continue, defeating the objective of lasting peace. The most striking irony came when, outside parliament, ZANU PF supporters attacked MDC MPs who were pushing for a broader remit for a Human Rights Commission. The commission was intended to investigate violence and human right violations in Zimbabwe. No arrests were made although attacks occurred in full view of the police. These regular violent flare-ups led the political leaders to convene a ‘peace indaba’ and consider joint ‘peace rallies.’ It was evident that perpetrators of violence, especially ZANU PF members and officials, believed they could commit or foment violence without facing justice.

Contrast this with Kenya: Annan handed the names of at least 10 alleged masterminds of the electoral violence in Kenya to the International Criminal Court after Kenya failed to establish its own tribunal. Unlike in Zimbabwe, civil society in Kenya actively agitated for retributive justice. Besides condemning the vio-
lence, organizations such as the Kenya National Human Rights Commission, the Centre for Multiparty Democracy, the Kenyan Section of the International Commission of Jurists and the African Centre for Open Governance took it upon themselves to press for the prosecution of masterminds of the violence amidst open reluctance by politicians. The ICC judges authorized chief prosecutor Luis Moreno-Ocampo to investigate Kenya’s post-election violence. In making his case, Moreno-Ocampo heavily relied on reports by civil society. According to Ndugu, ‘the rise of civil society as the unofficial opposition in Kenya may appear as a temporary stop gap measure following the events of 2007–2008, but it in fact highlights the country’s maturing democracy.’ The contribution of non-state actors indicated an empowered civil society in Kenya. While Kenya sought deferral of prosecutions, the intent in the mediatory approach to seek justice demonstrably contradicted the nurturing of impunity that seemed to incentivise violence in Zimbabwe. At the time of writing, it is fair to state that political or ethnic violence was not a pernicious problem during the transitional period as it was in Zimbabwe.

Conclusion

Post-electoral conflict power-sharing appears to have emerged as a favoured formula for the management of electoral conflict. Current research on electoral conflict has, however, ignored the critical issue of justice at all levels of the management of these conflicts. This article attempts to examine the approaches of AU and SADC and the essential structural and normative traits of procedural, substantive and retributive justice in the management electoral of conflict in Zimbabwe. The foundational claim is that electoral conflict is a justice conflict. The conflict arises from perceptions of injustice. In the case of Zimbabwe, these notions were generated by violations of electoral normative entitlements of free and fair elections.

The primary assertion of the article is that in order to settle conflicts in a constructive and sustainable way, justice must be sufficiently acknowledged within the conflict management procedure, on the content as well as on the procedural level. The argument is that post-electoral power-sharing in Africa, as presently couched, does not take into account justice principles. It is characterised by a cavalier notion of pacifism. This trend portends extended conflict, rather than long-term peace, as the Zimbabwe case study demonstrates. Regional actors

147) A Ndugu, ‘Civil Society vs the Kenyan State: Kenyan civil society may be the locus through which the state can be countered’ (Think Africa Press, 20 May 2011) http://thinkafricapress.com/kenya/civil-society-vs-kenyan-state.
148) Ibid.
excluded voters, key stakeholders in any election, and reached a predetermined outcome without consideration of facts – fundamental components of procedural justice. The regional mediators also ignored distributive justice concerns. The distributive anomalies resulted in the perceived loser of an election retaining the highest seat in government, maintaining control and abuse of coercive instruments of the state. On the other hand, the perceived winner was reduced to a junior partner and remained susceptible to depredations of the ‘loser.’ The failure to fashion out fair conflict management processes and reconfigure the power asymmetry were the primary causes of protracted conflict in Zimbabwe. Like in any other conflict, regional interventions need to place justice concerns at the centre of electoral conflict management. Recognition of justice is critical in future interventions in post-electoral conflict in Africa if regional actors are to manage such conflicts in a fair and sustainable way. The failure to assert retributive justice also fuelled extended conflict: it incentivised the utility of violence, with impunity, as a viable tool for political ends.