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Decolonising the Zimbabwean Penal Framework: Lessons from *Kutanda Botso* and *Kuripa Ngozi*

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Abstract

This article proposes a decolonised penal framework for Zimbabwe rooted in Ubuntu/Hunhu*, inspired by two VaShona customary practices:* kutanda botso*, a ritual of offender self-shaming, and* kuripa ngozi*, reparations for murder. The article argues that Zimbabwe's current sentencing system, including the advances made under Statutory Instrument 146 of 2023, Criminal Procedure (Sentencing Guidelines) Regulations, 2023, and the Prisons and Correctional Services Act [Chapter 7: 21], remains fundamentally colonial because it neglects relational justice in favour of an individualistic approach that balances retributive and utilitarian goals based on Roman-Dutch and English law. Using a historical–legal perspective, the study traces this Western-centric perspective back to the 1891 adoption of the law of the Cape of Good Hope colony and demonstrates its ongoing influence on Zimbabwe's contemporary criminal justice system. The article then situates* Ubuntu/Hunhu *within a broader discussion of what a theory of punishment based on relational personhood involves. In this context, the article explores whether practices like ostracism, compensation and ridicule should be regarded as evidence of an absence of punishment or as alternative forms of punishment rooted in a different ontology altogether. Through case studies of* kutanda botso *and* kuripa ngozi*, the article contends that traditional criminal justice practices based on* Ubuntu/Hunhu *do not promote reconciliation without accountability (punishment) but instead see punishment as an essential step towards healing fractured relationships and reintegrating offenders into society. The article concludes by examining how insights from these practices could inform offender reintegration efforts under parole in Zimbabwe.*

Keywords

Zimbabwe, penal code, kutanda botso, kuripa ngozi, decolonisation, reintegration.

1. Introduction

The introduction of Statutory Instrument 146 of 2023, Criminal Procedure (Sentencing Guidelines) Regulations, 2023,[1] represents significant progress towards standardising the sentencing process in Zimbabwe. In a sense, the guidelines have standardised the common

1 Supplement to the Zimbabwean Government Gazette Extraordinary, dated 8 August 2023.

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law requirement that judicial officers consider the nature of the offence, the offender, and the interests of society before imposing a sentence.[2] Furthermore, the introduction of the Prisons and Correctional Services Act [Chapter 7: 21] (PCSA)[3] signals a shift towards a penal framework that, while conscious of the need to punish an offender, is equally aware of the offender's eventual release into society in certain circumstances. The PCSA introduces several rehabilitation initiatives, including establishing a State Parole Board, to facilitate the early release of prisoners considered suitable for reintegration into society.[4] This represents a significant shift in the penal framework, moving from a primarily punishment-focused approach to one that prioritises restoration and the reintegration of offenders into the community.

This article has strong restorative justice undertones and proposes a decolonial penal framework that fosters reconciliatory dialogue between the offender, the victim(s) and the affected community to facilitate offender reintegration in Zimbabwe. This approach is heavily influenced by the principles of *Ubuntu/Hunhu* as a foundational philosophical approach, alongside *kutanda botso* (an offender self-shaming ritual),[5] and *kuripa ngozi* (reparations for murder),[6] two distinctive customary practices of the VaShona of Zimbabwe, which serve as a conceptual basis for post-conflict offender–victim–community dialogue. I argue that while existing penal practices are commendable for ensuring just and proportionate punishment for offenders and for preparing them for eventual reintegration into society through rehabilitative mechanisms, these processes have largely been shaped by a Western-centric perspective.[7] The predominant focus has been on retributive justice, emphasising the penalty the offender deserves in relation to their crime, as well as utilitarian aspects that aim to protect society by incapacitating the offender, deterring potential criminals, and rehabilitating the offender in anticipation of their eventual release.[8] This is done within an individualistic framework that treats the offender and the victim(s) as separate entities, unlike the *Ubuntu/Hunhu* framework, which views them as members of a pre-existing relationship that is worth saving.[9] This contrast highlights contradictions

2 *S v Shariwa* (CRB SHU 343 of 2002) [2003] ZWBHC 37 at 2–4.

3 Promulgated on 25 August 2023.

4 Prisons and Correctional Services Act [Chapter 7: 21] ss 122–123.

5 Rwafa, U, Mushore, W & Vhutuza, E 'Towards Peace, Healing and Reconciliation in Zimbabwe: Theatricalising Political Violence Through Rituals (2011)' (2017) 5(2) *Imbizo* 23–38; Chivasa, N 'The Kutanda Botso Ritual as a Means of Preventing Femicide Targeting Biological Mothers in Shona Communities' (2021) 22(1) *Journal of International Women's Studies* 473.

6 Chivasa, N 'Kuripa Ngozi as a Conflict Resolution Model in Shona Communities of Zimbabwe: A Conceptual Analysis' (2019) 11(2) *Critical African Studies* 159–172; Nyamanhindi, C 'Occupying the Blind Spot: The Role of Kuripa Mgozi in Transitional Justice in Zimbabwe: The Case of Hwesa Clan' (2020) 10(12) *International Journal of Scientific and Research Publications* 220.

7 Goredema, C 'Criminal Justice and the Truth in Zimbabwe: A Necessary Introspection?' (1998) 15 *Zimbabwean Law Review* 18.

8 Statutory Instrument 146 of 2023 (note 1) s 6; *S v Munakamwe* (121 of 2023) [2023] ZWSC 60 at 7; *S v Blessed Sixpence and Others (Sentencing Guidelines Judgment)* (567 of 2023) [2023] ZWHHC 450 at 7.

9 Mokgoro, Y 'Ubuntu and the Law in South Africa' (1998) 1(1) *Potchefstroom Electronic Law Journal* 16.

between the normative structure of the Zimbabwean penal system and the VaShona and Zimbabweans' normative understanding of punishment.

To advance the argument, I first employ a historical–legal approach, revisiting the history of Zimbabwe's penal framework to better understand why it is dominated by Western-centric thought. I engage in a comparative theoretical analysis of Western-centric theories of punishment and their influence on the Zimbabwean penal system, in contrast with *Ubuntu/Hunhu* as a framework of justice fundamental to Zimbabweans' customary living law and socio-economic and political history. While there has been extensive discussion of *Ubuntu/Hunhu* as a theory of justice, there has been a notable lack of decolonial discourse on *Ubuntu/Hunhu* as a theory of punishment. This emphasises the relevance of this article. In articulating *Ubuntu/Hunhu* as a theory of punishment, I challenge scholars such as Ilze Keevy, who assert that punishment is foreign in traditional African *Ubuntu/Hunhu*-based societies because they lack custodial punishment similar to Western penal philosophies. My rebuttal is grounded in the understanding that such claims overlook the socio-economic context in which practices such as ostracism, compensation, ridicule, and being publicly deemed a 'non-person' originated, and that they have historically served both punitive and reconciliatory purposes.[10] Furthermore, they are idealistic, as they ignore the plethora of traditional African societies that went as far as practising punitive practices such as the death penalty within an *Ubuntu/Hunhu* framework. Although the punitive aspect may be significantly diminished within today's industrialised capitalist framework, the reconciliatory dimension remains highly pertinent and can effectively augment existing penal practices that predominantly focus on punishment.

Using *kutanda botso* and *kuripa ngozi* as case studies, the article argues that the notion that traditional African societies prioritise reconciliation over punishment is misguided. Instead, punishment is seen as a necessary step toward healing damaged relationships and, when possible, facilitating the eventual reintegration of offenders.[11] The article concludes by discussing the role of penitence through dialogue among offenders, victims, and the community, drawing on kutanda botso and kuripa ngozi as models for post-conviction healing, particularly in the context of offender reintegration through parole. The article contends that Zimbabwe's penal system remains structurally colonial because it excludes relational concepts of justice. By integrating *Ubuntu*-based practices, influenced by *kutanda botso* and *kuripa ngozi*, punishment can be transformed into a reconciliatory process while still maintaining proportionality.

Zimbabwe is a heterogeneous society with many different socio-cultural identities. However, *kutanda botso* and *kuripa ngozi* serve as strong examples of how traditional justice systems can be integrated into the broader discussion on penal reform. Consequently, this discussion reimagines the decolonisation of penal systems as incorporating traditional justice practices alongside existing penal practices.[12]

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10 Ibid.

11 Mokgoro (note 9) 16.

12 Lubaale, E 'The Legal Pluralism as a Lens Through Which to Understand the Role and Place of TJMs in International Criminal Justice' (2020) 52(2) *The Journal of Legal Pluralism and Unofficial Law* 193.

2. A criminal justice system borne of colonisation

Zimbabwe's current criminal justice system is predominantly shaped by its colonial heritage from Southern Rhodesia. Dube contends that Zimbabwe's modern legal framework, based on Roman-Dutch and English law, dates back to colonisation beginning in 1891.[13] To put it more succinctly, upon colonising the country, the British High Commissioner declared on 10 June 1891 that the laws in effect would be those of the colony of the Cape of Good Hope,[14] which was, in turn, a blend of Roman-Dutch and English law.[15] Goredema observes that the unfortunate reality of post-colonial English law systems, such as Zimbabwe, is a compromised legal framework that either meets the needs of its colonial predecessors or mimics the previous status quo.[16] The author narrows this down to the history of the Zimbabwean criminal justice system. He observes that the imposition of Roman-Dutch and English law undermined the indigenous justice systems that existed concurrently.[17] He quotes Lord Denning: 'I know something of English law. But what is African law?'[18] Goredema argues that the colonial justice system was preferred over the indigenous justice system that was familiar to the colonised natives.[19] Where African customary law was applied, it was strictly reserved for civil cases involving natives, thereby excluding criminal law.[20] The result was the co-existence of two legal systems, with one, namely the imported Roman-Dutch and English cocktail from the Cape of Good Hope, being perceived as more legitimate than the other.[21]

Karekwaivanane observes that it was not until 1969 that the Rhodesian government began to seriously consider formally incorporating African customary law into the nation's legal framework, which included granting chiefs limited criminal jurisdiction.[22] This move was not motivated by good faith, but rather by a strategy of indirect rule.[23] Cloaked in the

13 Dube, B 'Roman-Dutch and English Common Law: The Indispensable Law in Zimbabwe' (2014) 5(4) *Afro Asian Journal of Social Sciences* 2, 4–5. See also Du Plessis, J 'The Promises and Pitfalls of Mixed Legal Systems: The South African and Scottish Experiences' (1998) 9(3) *Stellenbosch Law Review* 338 for a discussion on the adoption of Roman-Dutch and English law in the Cape of Good Hope and the interplay between mixed systems.

14 Dube ibid 3.

15 Ibid.

16 Goredema (note 7) 18–20; Diala, A C 'Our Laws Are Better Than Yours: The Future of Legal Pluralism in South Africa' (2019) 26 *Revista General de Derecho Publico Comparado* 20.

17 Goredema ibid 18-20.

18 Lord Denning 'Foreword' (1957) *Journal of African Law* 1.

19 Goredema (note 7) 18.

20 Magan, H *The Criminal Law of Rhodesia* (unpublished PhD Thesis, University of London, 1972) 68–69.

21 Goredema (note 7) 18; Magan ibid 74. This reality reflects Peter Ekeh's thesis on the two publics. On one side is the primordial public, based on traditional obligations and kinship ties, and considered morally legitimate. On the other side is the civic public, structured by a colonial framework that requires citizens to fulfil their obligations to the state. See Eken, P 'Colonialism and the Two Publics in Africa: A Theoretical Statement' (1975) 17(1) *Comparative Studies in Society and History* 91.

22 Karekwaivanane, GH *The Struggle over State Power in Zimbabwe: Law and Politics since 1950* (Cambridge University Press 2017) 47.

23 Ibid. For a discussion on indirect rule in sub-Saharan Africa, see Mamdani, M 'Indirect Rule, Civil Society and Ethnicity: The African Dilemma' (1996) 23(1/2) *Social Justice* 145.

guise of 'justice that aligns with the norms of their society', the policy's true intent was to empower chiefs to enforce unfavourable government policies.[24]

Notably, scepticism about applying customary law in criminal cases persists even in post-independence Zimbabwe.[25] Firstly, section 3(1)*(a)* of the Customary Law and Local Courts Act [Chapter 7: 05] (CLLCA)[26] reserves the application of customary law to only civil cases where it is evident that the parties involved have consented to its application. This provision explicitly excludes the use of customary law in criminal cases. *S v Matyenyika and Another* aptly illustrates this point.[27] In this instance, two cousins were convicted of incest in violation of customary law by the Magistrates' Court. Malaba J (as he then was) held:

> Customary law is therefore not the appropriate test to apply in deciding whether the crime of incest has been committed or not … Customary law should therefore not have influenced the prosecution in deciding whether to charge the accused with the crime of incest, nor should it have influenced the magistrates in deciding that the crime had been committed by the accused.[28]

This statement by Malaba J further affirms the exclusion of customary law from criminal matters. Furthermore, as noted by Makarau JA, the enactment of the Criminal Law (Codification and Reform) Act [Chapter 9:23] (CLA) signifies the codification of Zimbabwe's criminal law, which is influenced by Roman-Dutch principles.[29] Section 3(1) of the CLA explicitly states that the criminal law in effect in the Cape of Good Hope, as of 10 June 1891, is no longer applicable in Zimbabwe. However, the following provision permits the application of Roman-Dutch principles to the extent they aid in interpreting the CLA.[30] Subsection (2) is clear that the codification of Zimbabwean criminal law does not prevent courts from seeking guidance from relevant judicial decisions and legal writings related to the criminal law mentioned in the preceding subsection (1).[31] Therefore, a comprehensive interpretation of section 3 of the CLA affirms the notion that Zimbabwean criminal law, although statutory, remains largely influenced by Roman-Dutch law.

As previously discussed, emphasis on the CLA should not be misconstrued as suggesting that the impact of Roman-Dutch law is confined solely to substantive criminal law. On the contrary, it extends to the procedural elements of Zimbabwean criminal law as well. Specifically relevant to this paper's focus, Goredema notes that the Rhodesian criminal procedure, from which the current system originated, was significantly shaped by the laws of the Cape Colony, thereby affirming the influence of Roman-Dutch and English

24 Karakwaivanane (note 22) 47, citing the Robinson Commission Report, Working Party 'C Chiefs Courts, 13 March 1962, NAZ SC827/1/19 para 7.
25 Madhuku, L *An Introduction to Zimbabwean Law* (Weaver Press 2010) 27.
26 Parts I, III, IV, V, VI and VII commenced on 12 February 1992; Part II commenced on 1 November 1997.
27 *S v Matyenyika and Another* 1996 (2) ZLR 536 (H) at 540B–F.
28 Ibid.
29 *S v Madzokere and 3 Others* (71 of 2021) [2021] ZWSC 71 (4 June 2021) at 6–7.
30 Criminal Law (Codification and Reform) Act [Chapter 9:23] s 3(2).
31 Ibid s 3(1)–(2).

legal principles.[32] Prosecutions, arrests and bail were enacted along English lines.[33] In fact, barring a few amendments, Zimbabwe still adheres to the Criminal Procedure and Evidence Act [Chapter 9: 07][34] promulgated in 1927 under British colonial rule.[35] This observation reinforces my point that customary law remains largely invisible within the Zimbabwean criminal justice framework. The structure born of colonialism continues to shape our understanding of punishment from a legal standpoint today. While commentators like Goredema critique the Zimbabwean criminal justice system as being foreign and advocate for a more radical indigenisation of justice, I propose a synthesis approach. This is because, although the Zimbabwean criminal justice system is undeniably a product of colonial heritage, it has also become an essential component of the criminal justice landscape. It is the system through which Zimbabwean citizens and others residing in the country experience formal criminal accountability. It has been so for about a century. Therefore, rather than claiming normative superiority between the two systems, a synthesis approach is favoured over Goredema's more radical indigenisation.

This tension is part and parcel of a wider debate on legal pluralism in post-colonial jurisdictions. Scholars such as Diala, for instance, have questioned whether formally recognising customary law within a broader state-centred architecture necessarily subordinates it to the coloniser's own hierarchy of legitimacy.[36] In fact, Diala goes further, quoting Snyder to affirm that 'the foundations of customary law in Africa lie partly in the development of capitalism and its expansion from Europe during the colonial era'.[37] The author cautions against over-romanticising the pre-colonial past because the socio-economic and political context is vastly different.[38]

Therefore, any meaningful law reform that seeks to draw from African customary law must be mindful of its current, lived, modernised context. A synthesis approach is therefore favoured. This approach is best understood as an attempt to occupy a contested middle ground between an inherited colonial system of laws and the incorporation of African traditional practices that yearn for proper legal recognition. This article therefore addresses what that 'proper legal recognition' ought to look like. As will be shown later, reforms to the Zimbabwean penal framework have largely been motivated by the need for a criminal justice system tailored to Zimbabweans, even though this ousts the application of customary law. Simultaneously, approaches such as *kutanda bosto* (self-shaming) and *kuripa ngozi* (reparations for murder), which are integral to the lived socio-cultural

32 Goredema (note 7) 20.
33 Magan (note 20) 150.
34 Commenced 1 June 1927.
35 Here is a list of some of the post-independence amendments to the Criminal Procedure and Evidence Act [Chapter 9: 07]: amended by the National Prosecuting Authority Amendment Act, 2020 (Act 7 of 2020), amended by the Cyber and Data Protection Act 2021 [Chapter 12: 07], amended by the Criminal Laws Amendment (Protection of Children and Young Persons) Act, 2024 (Act 1 of 2024), amended by the Death Penalty Abolition Act, 2024 [Chapter 9: 26].
36 Diala, C A & Kangwa, B 'Rethinking the Interface Between Customary Law and Constitutionalism in Sub-Saharan Africa' (2019) *De Jure* 200; Snyder, F 'Customary Law and the Economy' (1984) *Journal of African Law* 34.
37 Diala & Kangwa ibid.
38 Ibid.

realities of the VaShona people of Zimbabwe, cannot be overlooked.[39] Decolonising the Zimbabwean penal system should balance normative understandings of punishment rooted in the colonial past with those that reflect customary law traditions. Ultimately, the article argues that Zimbabwe's penal system remains structurally colonial to the extent that it excludes relational conceptions of justice; integrating *Ubuntu/Hunhu*-based practices can transform punishment into a reconciliatory process without abandoning proportionality.

3. A discussion of the current Zimbabwean penal system

Sentencing in Zimbabwe is fundamentally the subject of judicial discretion, generally determined by the trial court.[40] Appellate courts typically intervene in sentencing matters only when the lower court has clearly misdirected itself in exercising its sentencing discretion.[41] The current framework for sentencing in Zimbabwe is shaped by legislation, delegated legislation in the form of statutory instruments, and case law. This framework largely adheres to a Western-centric theoretical foundation that seeks to balance the retributive and utilitarian theories of justice.[42] What remains lacking is a structured rehabilitative dialogue informed by indigenous practices such as *kutanda botso* and *kuripa kgozi*, as will be considered later.

While case law significantly contributes to establishing sentencing precedents, the recently enacted Criminal Procedure (Sentencing Guidelines) Regulations provide essential guidelines that courts must consider when determining a sentence. As emphasised by Chilimbe J, these guidelines encapsulate the evolution of sentencing jurisprudence articulated by the higher courts over the years.[43] Manthonsi JA offers a clear and definitive outline of the Western-centric theoretical framework that Zimbabwe employs in its sentencing practices, as illustrated in *S v Munakamwe*[44] In this case, the learned judge states:

> The starting point is to make the general observation that the objective of sentencing is to correct, rehabilitate and punish convicted offenders in a just and proportionate manner. While reformation and rehabilitation of offenders is a relevant consideration, retribution is still part of the sentencing policy of this jurisdiction. In other words, the sentencing court must always bear in mind that sentencing is also aimed at ensuring that the offender faces a sentence that is in equal measure to the harm he or she has caused. Anything short of that will bring the criminal justice system into disrepute.[45]

Mutevedzi J goes a step further and states that while theories of punishment are all equally important, retribution remains a cornerstone of criminal law:[46]

39 Chavasa (note 5) 475; Rwafa et al (note 5) 27–28; Chavasa (note 6) 160.
40 *S v Mupaya* (107 of 2024) [2024] ZWHHC 107 para 9.
41 *Muhomba v The State* SC 57-13 at 9; *S v Mupaya* (107 of 2024) [2024] ZWHHC 107 para 9; *S v Mkombo* HB-140-10 at 3; *S v Chiweshe* 1996 (1) ZLR 425 (H) at 429D; *S v Ramushu and Others* SC 25-93.
42 Criminal Procedure (Sentencing Guidelines) Regulations, 2023, s 6(1)*(a)–(e)*.
43 *S v Mupaya* (107 of 2024) [2024] ZWHHC 107 para 11.
44 *S v Munakamwe* (121 of 2023) [2023] ZWSC 60 at 7.
45 Ibid.
46 *S v Blessed Sixpence and Others* (Sentencing Guidelines Judgment) HH 567-23 at 7.

> In sentencing, a court ought to always bear in mind that one of the primary purposes of the criminal law is retribution. That the purpose of punishment must be blended with all the others to come up with a sentence which serves the interests of all.[47]

These excerpts highlight that the Zimbabwean sentencing framework seeks to balance retributive and utilitarian considerations. The triad in *S v Shariwa* is instructive; it holds that, when sentencing, a court must balance the nature of the offence, the offender's circumstances, and the interests of society.[48] It emphasises retribution as a key aspect of sentencing, while also considering other factors, such as rehabilitation.[49]

3.1 Retributive considerations in Zimbabwean sentencing jurisprudence

Retribution, as a theory of punishment, asserts that punishment is justified when it is deserved.[50] While retributive and utilitarian considerations have arguably always co-existed, the former has traditionally formed the primary basis of Western-centric criminal punishment.[51] Although Alschuler writes in the context of the United States of America, he quotes the English jurist Sir William Blackstone: 'punishments are … only inflicted for abuse of that free will which God has given to man', noting that, prior to the 19th and 20th centuries, criminal punishment was generally backwards-looking.[52] The retributive theory of punishment comprises two sub-theories: just deserts and commensurate deserts. The theory of just deserts argues that a just punishment must be proportional to the crime committed.[53] In contrast, the commensurate deserts theory also considers the offender's blameworthiness in relation to the crime while maintaining the importance of proportionality.[54] Zimbabwean jurisprudence generally seems to favour commensurate deserts. The focus is not solely on the nature of the crime itself, but on the surrounding circumstances. *S v Felistas Mpofu*[55] is a case in point; here, Mutevedzi J observed that although the accused was found guilty of murdering her newborn child, she had endured numerous hardships due to her pregnancy. These included losing her job, being abandoned

47 Ibid.

48 *S v Shariwa* (CRB SHU 343 of 2002) [2003] ZWBHC 37 at 2–4; *S v Edson Ndou* 2025 ZWBHC 17 at 4. *S v Shariwa*, like many other Zimbabwean cases, was heavily influenced by South African sentencing jurisprudence. An argument can be made that reliance on South African jurisprudence became standard practice in Zimbabwean law. This may be because, like Zimbabwe, South Africa was also governed by the law of the Cape of Good Hope, a blend of Roman-Dutch and English law. Some of the South African cases that influenced *S v Shariwa* are: *S v Sparks* 1972 (3) SA 396 (A) at 410H; *S v Zinn* 1969 (2) 537 (A) at 540G; *S v Rabie* 1975 (4) SA 855 (A) at 862F; *S v V* 1972 (3) SA 611 (A) at 614; *S v Fags* 1980 (4) SA 102 (C) at 104B.

49 *S v Blessed Sixpence and Others* (Sentencing Guidelines Judgment) HH 567-23 at 7.

50 Bronsteen, J, Buccafusco, C & Masur, J S 'Retribution and the Experience of Punishment' (2010) 98(5) *California Law Review* 1467.

51 Alschuler, WA 'The Changing Purpose of Criminal Punishment: A Retrospective on the Past Century and Some Thoughts about the Next' (2003) 20 *The University of Chicago Law Review* 2.

52 Ibid; Blackstone, W *Commentaries on the Laws of England: Book the Fourth (1769)* (Lonang Institute 2005) 15.

53 Van de Haag, E 'Punishment: Desert and Crime Control' (1987) 85 *Michigan Law Review* 1250.

54 Von Hirsch, A 'Commensurability and Crime Prevention: Evaluating Formal Sentencing Structures and Their Rationale' (1983) 74(1) *Journal of Criminal Law and Criminology* 211.

55 *S v Felistas Mpofu* HB-72/25 (unreported) para 14.

by the child's father, and facing destitution after being largely neglected by her relatives. Consequently, these circumstances mitigated her level of blameworthiness.[56]

Evidently, the application of retributive justice within the Zimbabwean sentencing framework is notably individualistic. The focus is largely on the offence and the offender. This contrasts sharply with the communitarian-based conceptualisation of punishment inherent in *Ubuntu/Hunhu*-based systems such as *kutanda botso* and *kuripa ngozi*, as shown later. While retribution serves as society's exprecourtof outrage at the crime, the sentencing process still maintains an exchange, though asymmetrical, between the court, represented by the judge, and the offender.[57] It is less a dialogue between equals and more a judicially mediated pronouncement to which the offender can only respond through mitigation.

It would be disingenuous to overlook that the sentencing framework allows victim impact statements, which assist the sentencing judge in arriving at a proportionate sentence.[58] This approach enables the court to evaluate the extent of the victim's suffering, thereby working to restore their dignity. Although incorporating victims into the sentencing process gives them a more active role, the focus remains predominantly on punishing the offender rather than restoring the relationship between the offender and the victims.[59] Essentially, retributive theory is not victim-centric; it primarily emphasises punishment. Any references to the victim are secondary in determining a just punishment for the offender. This perspective aligns with the principle of proportionality, which demands that the punishment must be commensurate with the crime.

3.2 Utilitarian considerations in Zimbabwean sentencing jurisprudence

Utilitarian considerations in sentencing in Zimbabwe serve as a necessary counterbalance to retributive justice, as previously noted. Unlike retributivism, utilitarianism is premised on the principle that punishment is justified only to the extent that it benefits society.[60] In his commentary on Jeremy Bentham's utilitarianism, Mulgan argues that punishment is an evil that ought to be admitted because it promises to prevent a greater evil.[61] Under utilitarianism, punishment is justified if it deters crime, incapacitates the offender or seeks to rehabilitate the offender. Alongside retributivism discussed above, these three considerations inform Zimbabwean sentencing jurisprudence.

Punishment is justified if it deters persons from committing crimes. Goliath notes that this perspective is grounded in rational-choice theory, which posits that potential offenders weigh the severity of the punishment and the likelihood of being caught before engaging in criminal behaviour.[62] Put differently, punishment is warranted to the extent that it dissuades

56 Ibid.

57 In Francis Bacon '4. Revenge' in *Essays by Francis Bacon 1597–1628* (Jonathan Bennett 2023) 7, the author calls retributive justice 'a kind of wild justice' and cautions that 'the more man's nature runs to it, the more the law ought to weed it out'.

58 *S v Blessed Sixpence and Others* (Sentencing Guidelines Judgment) HH 567-23 at 11–14.

59 Ibid.

60 Mulgan, T *Understanding Utilitarianism* (Acumen, 2007) 16–17.

61 Ibid; Hanafy, H 'Bentham: Punishment and the Utilitarian Use of Persons as Means' (2021) *Journal of Bentham Studies* 1.

62 Goliath, A 'A Short Critique of Minimum Sentences' (2022) *Obiter* 783.

potential offenders from committing offences.[63] In *S v Ndou*,[64] the deceased was fatally struck by a stone during a confrontation with the accused. Nduna J reasoned that the punishment imposed must convey a clear message to the community: even if a perpetrator attempts to evade justice, they will eventually be apprehended and held to account for their actions.[65] The learned judge emphasised that individuals who engage in violence must be deterred and made to understand that their actions can lead to lengthy prison sentences upon their conviction.[66] Citing Van Zyl Smit, Goliath notes that the certainty of punishment, rather than its severity, has a deterrent effect.[67] Deterrence, as mentioned above, rests on the assumption that criminals always consider the risks of their actions. This overlooks the reality that criminals do not generally commit crimes with being caught in mind.

Incapacitation justifies punishment to the extent that it prevents the offender from continuing to commit the offence for which they have been convicted.[68] Goliath observes that the incapacitation argument is based on the assumption that the criminal justice system can identify and incapacitate the most dangerous offenders, thereby preventing them from committing further violent crimes.[69] Charewa J in *S v Banda; S v Chakamoga*,[70] a joint review from the Magistrates' Court that concerned the statutory rape of two minors, heavily criticised the court *a quo* for imposing a sentence of 24 months, with 12 months suspended for five years, leaving an effective 12 months. Although the ratio decidendi does not expressly mention incapacitation, it remains evident. The learned judge reasoned that the courts are obliged to protect children's rights.[71] While emphasising the need for harsher punishments to deter offenders, the judge also highlighted the importance of preventing these sexual predators from exploiting children.[72] A notable hurdle with the incapacitation argument is that it presumes the criminal justice system can identify the most dangerous offenders.[73] While there may be some weight to this argument, especially in the context of habitual offenders, *S v Banda* and *S v Chakamoga* point to a different reality. To borrow the words of Charewa J, 'the reasoning of the magistrate for sentencing purposes, *based on current practice*, can hardly be faulted'.[74] This means that up until this point in time, statutory rape attracted lenient sentences. Such offenders were not viewed as dangerous enough to warrant an incapacitation-based sentence.

The last utilitarian justification for punishment is rehabilitation, which holds that punishment is warranted to the extent it rehabilitates incarcerated individuals.[75] This leads

63 *S v Ndou* [2025] ZWHB 19 at 5–6, citing *S v Loggenberg* 2012 (1) SACR 462 (GSJ) para 6.
64 Ibid at 1.
65 Ibid at 6.
66 Ibid.
67 Goliath (note 62) 783; *S v Makwanyane* 1995 (3) SA 391 (CC) para 122.
68 Goliath ibid at 786.
69 Ibid.
70 *S v Banda; S v Chakamoga* (CRB GVE 644 of 2015; CRB MHW 450 of 2015; HH 47 of 2016) [2016] ZWHHC 47 at 3–6.
71 Ibid at 3–4.
72 Ibid at 3.
73 Ibid.
74 Ibid at 1.
75 Goliath (note 62) at 787.

to the question: Do Zimbabwean prisons effectively rehabilitate offenders? An assessment by Davira et al[76] provides valuable insights. They observe that rehabilitation and reintegration of offenders is a relatively recent sentencing objective, introduced in Zimbabwe in 2005.[77] Traditionally, custodial sentences were guided by retributivist considerations, dating back to the colonial era in Rhodesia.[78] However, Zimbabwe's introduction of rehabilitation and reintegration practices aligns with its international obligations.[79] While international obligations serve as an important reference point, they do not constitute the sole source on approaches to offender reintegration. Zimbabwe's customary practices, such as *kutanda botso* and *kuripa ngozi*, offer complementary perspectives worth exploring.[80]

Presently, the Prisons and Correctional Services Act [Chapter 7:21] mandates the state to implement, as far as practicable, rehabilitation programmes and meaningful activities that contribute to the successful reintegration of prisoners into society as law-abiding citizens. Such programmes include academic programmes, vocational training programmes and psychosocial support.[81] While this initiative is commendable for its aim of enhancing prisoners' lives and reducing recidivism, it is contended that it remains primarily individualistic, focusing on the offender's preparation for reintegration rather than society's readiness to accept them. Even on the issue of parole, the key question is whether the offender has been sufficiently rehabilitated, often overlooking the community's role in this process.[82] This approach neglects the essential dialogue between offenders and the receiving community, which is a critical aspect of *Ubuntu/Hunhu*-based practices. Furthermore, the framework for offender rehabilitation and reintegration faces significant challenges, including chronic underfunding, overcrowding and a lack of qualified personnel.[83]

The above suggests that each traditional sentencing objective, although legitimate, has inherent limitations. Jurisprudence has also shown the judiciary's attempt to balance

76 Davira, T, Mazorodze, W, Mabiza, HJ, Nciizah, E & Gudyani, S 'An Analysis on the Effectiveness of Rehabilitation and Reintegration Programs in Zimbabwean Prison Services: A Case of Midlands Correctional Centres' (2025) 6(1) *African Social Sciences and Humanities Journal* 186. See also the Constitution of Zimbabwe Amendment (No. 20) of 2013, s 227(1)*(a)*; Prisons and Correctional Services Act [Chapter 7: 21] ss 122–123.

77 Davira et al (note 76) 186.

78 Davira et al (note 76) at 186–187.

79 Ibid at 190. See, for instance, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) General Assembly Resolution 70/175, annex, adopted on 17 December 2015; and the Ouagadougou Declaration and Plan of Action on Accelerating Prisons' and Penal Reforms in Africa, adopted on 20 September 2002. See also Second Session-Tenth Parliament, First Report on the Joint Portfolio Committee on Justice, Legal and Parliamentary Affairs and Thematic Committee on Human Rights on the State of Prisons in Zimbabwe 2025 <https://www.veritaszim.net/sites/veritas_d/files/State_of_Prisons_-%20Final%20Report.pdf> accessed 12 July 2026.

80 For a discussion on traditional justice mechanisms complementing international obligations, see Lubaale (note 14) 186, 194.

81 Ibid at 190–192.

82 Prisons and Correctional Services Act [Chapter 7: 21] ss 140–146.

83 Goliath (note 62) at 787.

retributive with utilitarian considerations when passing sentences.[84] However, in some circumstances, retribution may outweigh utilitarian considerations, or *vice versa*. Another noticeable characteristic in the traditional sentencing considerations is that they are heavily individualistic. The focus is squarely on determining the most appropriate punishment for the offender, either through a retributivist or a utilitarian lens. When the penal system aims for rehabilitation, it focuses on improving the offender as an individual with minimal participation from the affected community. This either looks to inherited colonial penal practices or the fulfilment of international obligations but seldom looks inward to existing customary practices that may inform penal reform. I do not aim to propose an alternative to the existing penal framework. Instead, my goal is to establish a complementary framework that draws on Shona traditional practices, specifically *kutanda botso* and *kuripa ngozi*, to promote *Ubuntu/Hunhu*-based reintegration practices.

4. *Ubuntu* as a theory of punishment

While there has been significant academic discussion of *Ubuntu/Hunhu* as a philosophical framework, the concept of *Ubuntu/Hunhu* as a theory of punishment remains relatively underexplored.[85] Nortje's paper on decolonising the South African sentencing framework through *Ubuntu* offers valuable insights.[86] Drawing on Ramose's earlier definition, the author characterises colonisation as the arbitrary replacement of the experiences and knowledge of the indigenous conquered peoples with the colonisers' unilaterally defined notions of experience, knowledge and truth.[87] Given this definition, it seems reasonable to conclude that the Zimbabwean penal system remains predominantly colonial in nature. As previously noted, the system largely upholds its colonial architecture, heavily influenced by Roman-Dutch and English legal traditions, while overlooking the inclusion of customary law within its criminal justice framework.[88]

Decolonisation is therefore the process by which colonialism is dismantled, encompassing social, political, psychological and economic dimensions.[89] This process can be pursued through both military action and diplomatic negotiations, as colonised peoples fight for self-governing autonomy.[90] It also involves the quest for economic control

84 For instance, *S v Shamba and Another* (419 of 2023) [2023] ZWHHC 348 (12 July 2023) leans heavily on retributive justice, while *S v Banda; S v Chakamoga* (CRB GVE 644 of 2015; CRB MHW 450 of 2015; HH 47 of 2016) [2016] ZWHHC 47 lean more towards utilitarianism.

85 A noteworthy contribution on this is Nortje, W 'Decolonising the South African Criminal Procedure: Towards a Critical Approach to the Use of *uBuntu* in Sentencing' (2024) 27 *Potchefstroom Electronic Law Journal* 1. See also Goredema (note 7). Another notable exception is Chando, A 'Law, Justice and Decoloniality in Petina Gappah's Works: An Ubuntu Perspective' (2024) *African Identities* 1.

86 Nortje ibid.

87 Ibid 4–5. See also Ramose, M B 'In Memoriam: Sovereignty and the "New" South Africa' (2007) 16(2) *Griffith Law Review* 313; Wa Thiong'o *Decolonising the Mind: The Politics of Language in African Literature* (Zimbabwe Publishing House, 1987) 16.

88 Dube (note 13) 4–5; Goredema (note 7) 18; Magan (note 20) 74; Criminal Law (Codification and Reform) Act [Chapter 9:23] s 3(2); *S v Matyenyika and Another* 1996 (2) ZLR 536 (H) at 540B–F.

89 Nortje (note 85) 5–6.

90 Ibid.

by previously colonised populations.[91] Decolonisation can also be seen in education, as a shift from a colonial curriculum that perpetuated, in the case of Zimbabwe, Western ideologies, to an African curriculum that reflects indigenous norms and epistemologies.[92] In this article, decolonisation refers to transforming the existing penal framework, largely colonial in its architecture, into one influenced by Zimbabwean customary law practices. As Goredema articulates, this new criminal law must align with the 'cultural orientation of the indigenous people of the country', based on *Ubuntu/Hunhu*, thereby integrating Zimbabwean customary law as a key component of the broader discussion on law reform.[93]

The following question arises: what does a theory of punishment rooted in *Ubuntu/Hunhu* entail, and what insights can we gain from traditional justice practices, such as *kutanda botso* and *kuripa ngozi*, to assist in the constructive decolonisation of the Zimbabwean penal system? I will refrain from engaging in an extensive philosophical discussion about the definition of *Ubuntu/Hunhu*, as a rich body of scholarly literature already exists on the subject, with far greater depth than this article permits. For this discussion, however, *Ubuntu/Hunhu* will refer to a relational philosophy that holds that personhood is shaped through communal bonds.[94] Mokgoro traces this understanding of *Ubuntu/Hunhu* to Bantu aphorisms, such as '*motho ke motho ka batho ba bangwe*', a Setswana phrase that translates to 'people live through the help of others', and '*a botho ba gago e nne batho seshabeng*', which means 'let your welfare be the welfare of the nation'.[95] Central maxims include the ChiShona '*munhu munhu nekuda kwevanhu*', the IsiZulu '*umuntu ngumuntu ngabantu*', both translating roughly to 'a human being is a human being because of other human beings' and the ChiShona '*ndiri nekuti tiri*', which captures this relational ontology in its most condensed form: 'I am because we are'.[96]

Among the VaShona, the emphasis placed on *ukama* (kinship) is particularly pronounced.[97] Proverbs such as '*chawawana idya nehama mutorwa ane hanganwa*' and '*ukama igasva hunozadziswa nekudya*', which translate to 'what you find, eat with your kin; outsiders will forget' and 'a relationship is incomplete without sharing food with your kin', respectively,[98] highlight the strong loyalty expected within the family unit. Kinship in VaShona culture is defined quite broadly. One is considered kin not only through blood relations but also by sharing the same rural district or village (*kumusha*), belonging to the

91 Ibid.

92 Hlatshwayo, MN & Alexander, I '"We've been Taught to Understand that We don't have Anything to Contribute towards Knowledge": Exploring Academics' Understanding of Decolonisation Curricula in Higher Education' (2017) *Journal of Education* 52; Kipkoech, R 'Decolonising Kenya's Legal System: The Role of Legal Education, Philosophical Foundations, and Constitutional Interpretation' (2024) 3 *Kabarak Law Review* 157.

93 Goredema (note 7) 41.

94 Mokgoro (note 9) 16.

95 Mokgoro, Y 'Ubuntu and the Law in South Africa' (1998) 4(15) *Buffalo Human Rights Law Review* 17; Nortje (note 85) 9.

96 Mugumbate, JR, Mupedziswa, R, Twikirize, M, Mthethwa, E, Detsa, AA & Oyinlola, O 'Understanding Ubuntu and its Education in Africa and Other Regions of the World' (2024) 43 *Social Work Education* 1124.

97 Ibid.

98 Chimhundu, H 'Shumo, Tsumo and Socialisation' (1980) 4(1) *Zambezia* 43.

same totem (*mutupo*) or through friendship (*usahwira*).[99] The sanctity of these kinship bonds is further emphasised by the proverb '*kubaya, tange hama, vatorwa vakutye*', which means 'if you choose to stab someone, stab your kin, so outsiders will fear you'.[100] This reflects the understanding that betraying one's own kin constitutes a moral and spiritual transgression of the highest order. As a general rule, no sane person would dare violate such sacred relationships. The significance of maintaining these communal bonds becomes clearer in later discussions of *kuripa ngozi* and *kutanda botso*.

Keevy highlights a significant challenge to the *Ubuntu* framework regarding punishment.[101] The author contends that punishment, whether custodial or retributive, is not inherent in African indigenous justice systems, which tend to focus on 'the restoration of the balance upset by an unjust act' and the maintenance of equilibrium between the community and the spirit world.[102] Citing Chinua Achebe's account of African prisoners in the colonial era performing menial labour for the white commissioner, men of title 'grieved by the indignity' of tasks far beneath their station, Keevy draws a pointed contrast between Western criminal justice systems, which she characterises as centred on individual rights and punishment, and African legal systems, which prioritise group rights, duties, consensus and reconciliation.[103] On Keevy's account, the guilty party in African customary criminal proceedings suffers not imprisonment but ostracism and social degradation as a 'non-person' until the offence is purged and their communal standing is restored.[104] This is not the absence of punishment but punishment conceived through a different ontology.

I, however, fundamentally disagree with Keevy's characterisation of African customary law as 'ancient' and insufficiently adapted to contemporary constitutionalism and international human rights standards.[105] While it is true that African customary law has remained largely underdeveloped as a formal legal system, this underdevelopment is itself a consequence of colonialism, which actively dismantled and delegitimised African traditional justice frameworks in favour of transplanted European models.[106] A more illuminating analytical question in this regard would be: had colonialism not intervened, what trajectory would African justice systems have followed? Dismissing their current state as evidence of inherent inadequacy mistakes a historical wound for a structural deficiency. It must be stressed that the Western rights-based conceptions of justice that Keevy treats as a normative reference point are themselves the product of centuries of philosophical and legal refinement.[107] This is a developmental process from which African

99 Hungwe, J P & Ndofirepi, A P 'Centering Ukama Ethic (Relatedness) in the Covid-19 Pandemic "New Normal" in African Higher Education' (2021) 10(5) *International Journal of Higher Education* 114.
100 Fortune, G 'Form and Imagery in Shona Proverbs' (1975–6) 4(2) *Zambezia* 37.
101 Keevy (note 11) 61–62.
102 Ibid.
103 Ibid.
104 Ibid.
105 Ibid.
106 Goredema (note 7) 18–20.
107 See Part 3.

societies were forcibly excluded. Even so, some aspects of contemporary Roman-Dutch and English law have not been immune to scrutiny.[108]

Ubuntu/Hunhu must not be treated as a relic, but rather as a living philosophical tradition assessed within its proper socio-cultural, political, and economic context on its own epistemological terms. I agree with thinkers such as Ndumiso Dladla about pushing back against this misconstruction of *Ubuntu/Hunhu*. Dladla directly challenges Preag's account of *Ubuntu*, in which he characterises forgiveness as an almost metaphysical precondition of personhood rather than a moral choice.[109] Dladla dismisses, and rightfully so, this construction as an 'imaginary theory of forgivism', arguing that Preag fails to account for any actual anthropological evidence of a Bantu ethical practice substantiating his claim.[110] Applying this to the use of *Ubuntu/Hunhu* in the post-conflict and/or transitional justice context reveals a particular danger in over-romanticising *Ubuntu's* reconciliatory aspects. Using the Truth and Reconciliation Commission (TRC) as a case study, Dladla argues that the TRC's forgiveness-oriented *Ubuntu* lacks genuine philosophical justification.[111] A juxtaposition that captures Dladla's sentiments, and with which I concur, is that while international criminal tribunals have increasingly emphasised individual criminal accountability for gross human rights violations, South Africa, having endured unjust wars of colonisation, chose a path of conditional amnesty through the TRC.[112] The TRC's *Ubuntu*, threaded through the interim Constitution's post-amble and the Promotion of National Unity and Reconciliation Act 34 of 1995,[113] made forgiveness almost an obligatory response for the victims. It was less an articulation of an African legal or philosophical concept and more a political device designed to manage transition; this point is reinforced by its disappearance from the South African Constitution, 1996.[114]

Zimbabwe's own record on post-conflict reconciliation reinforces my scepticism, particularly regarding the Gukurahundi atrocities of the 1980s, in which the Fifth Brigade killed an estimated 20,000 people in the Matabeleland and Midlands provinces.[115] As Gibson Ncube observes, successive ZANU-PF governments have refused genuine

108 See Moshoeshoe, B & Ntaole, M 'What's in a Name? Dismantling Patriarchy, Advancing Equality and Reclaiming Identity in *Jordaan v Minister of Home Affairs*' (2026) 26 *African Human Rights Law Journal* 46.

109 Dladla, N 'Not Yet Ubuntu: A Philosophical Essay on the History of Government and the Abuse of Ubuntu in Conqueror-South Africa' in Iye, M A & Holl, F C A (eds) *Beyond Mimicry: The Potential of African Endogenous Governance Systems* (Walter de Gruyter, 2024) 169–172.

110 Ibid 168–170. See Peag, L *African Philosophy and the Quest for Autonomy: A Philosophical Investigation* (Rodopi 2000) 269–270.

111 Dladla (note 111) 172. See also Dladla's critique of *Ubuntu* and the right to conquest in post-apartheid South Africa in Dladla, N *Here is a Table: A Philosophical Essay on the History of Race in South Africa* (Sun Media, 2020) 45–46.

112 Ibid; Ramose (note 89) 320–321.

113 Promulgated on 26 July 1995, *Government Gazette* No. 16579.

114 Himonga et al (note 9) 370–371.

115 Malunga, S 'A History of Atrocity: Patterns, Perpetrators and Prospects for Accountability for International Crimes in Zimbabwe' in Lubaale, EC & Dyani-Mhango, N (eds) *National Accountability for International Crimes in Africa* (Palgrave Macmillan 2022) 528; Karekwaivanane (note 22) 193-194.

reconciliatory engagement, preferring silence and, at most, gestures such as the 1988 Unity Accord, which never amounted to genuine acknowledgement or accountability.[116] Ncube argues that genuine reconciliation, grounded in mutual truth-telling and mutual recognition of humanity, was never implemented.[117] Likhwa Ncube's appraisal of the National Peace and Reconciliation Commission (NPRC) extends this critique from an institutional dimension. Although framed as 'victim-centred', in practice the Commission subordinated victims' justice to the state's own 'forgiveness' and 'national cohesion' agenda.[118] This echoes my reservations about reconciliatory dialogue that is not complemented by criminal accountability. In his inaugural speech, Emmerson Mnangagwa, the President of Zimbabwe, urged Zimbabweans to 'let bygones be bygones'.[119] This followed the recent Constitutional Amendment No. 3 of 2026, which effectively disbanded the NPRC.[120] This raises the question of whether the NPRC was ever intended to deliver any meaningful accountability. Zimbabwe's experience, therefore, is illustrative, perhaps more starkly than South Africa's, of how invocations of *Ubuntu/Hunhu* in the context of transitional justice risk functioning as a mere tool of political management rather than an authentic commitment to restore justice.

The goal of this paper is to ensure that the conceptualisation of *Ubuntu/Hunhu* as a theory of punishment is not conflated with the perspectives of thinkers such as Keevy and Preag. In the analysis of *kutanda botso* and *kuripa ngozi* that follows, it will be illustrated how *Ubuntu/Hunhu* as a theory of punishment strikes a balance between reconciliation and punishment. So far, a detailed breakdown of Zimbabwe's ongoing reliance on a colonial penal framework has been provided, and *Ubuntu* as a theory of punishment has been contextualised. The conversation now turns to *kutanda botso* and *kuripa ngozi* with a view to exploring the elements of this theory in full. The discussion will conclude with recommendations on how the current penal framework can learn from *kutanda botso* and *kuripa ngozi*.

5. *Kutanda botso* and *kuripa ngozi*: Lessons from two traditional justice practices of the VaShona

Having established *Ubuntu/Hunhu* as a relational theory of punishment that balances accountability and reconciliation, the focus now turns to the two case studies that anchor this argument: *kutanda bosto*, an offender self-shaming ritual performed in response to filial abuse of a mother, and *kuripa ngozi*, a compensatory practice that responds to the avenging spirit of a murder victim. Both these practices must not be taken to be museum pieces of a vanished VaShona past; rather, they remain practised and contested in VaShona communities, which is precisely what makes them useful for a decolonial penal framework.

116 Ncube, G 'The Role Ubuntu Could Have Played in Restorative Justice in Zimbabwe' in Mukuni, J & Tlou, J (eds) *Understanding Ubuntu for Enhancing Intercultural Communications* (IGI Global 2021) 133–138.

117 Ibid 131–138.

118 Ncube, L 'Critical Appraisal of the National Peace and Reconciliation Commission on Gukurahundi' (2024) 23(1) *Artha-Journal of Social Sciences* 43.

119 Ncube (note 118) 136–137.

120 Constitution of Zimbabwe Amendment No. 3 of 2026, s 27.

The discussion examines each practice in turn, considering its procedure, its underlying cosmology and the form of accountability that it imposes on the offender, before drawing out what each contributes to, and what each cautions against, in any attempt to integrate *Ubuntu/Hunhu*-based practices into Zimbabwe's statutory penal framework.

I do not propose the wholesale incorporation of *kutanda botso* and *kuripa ngozi* into a constitutional, rights-based criminal justice system, such as Zimbabwe's. Some of their historical aspects, especially in *kuripa ngozi*, are clearly incompatible with the rights of women and girls and have rightly been outlawed.[121] The focus, however, is on analysing the underlying theory of punishment embedded within these practices, specifically that accountability and reconciliation are not mutually exclusive goals to be traded off against each other. Instead, they are logically and sequentially connected. This study ultimately asks what a sentencing and reintegration framework would look like if it took this link between accountability and reconciliation seriously.

5.1 Kutanda botso: The self-shaming ritual

Kutanda botso, a self-shaming ritual which can be loosely translated as 'wandering' or 'roaming in penitence', is a customary justice practice undertaken by an adult son or daughter who has verbally abused, assaulted, neglected, or, in the most severe of cases, caused the death of their biological mother.[122] Embedded in the ChiShona adage, '*Amai havarohwe unoita ngozi yausingafi wakapedza*', which Chivasa translates to 'do not scold, beat or kill your mother as you will suffer the consequences of an avenging spirit',[123] the ritual responds to a foundational social norm of the VaShona, namely that a person is sacrosanct.[124] Violating this norm not only leads to social censure but also spiritual retribution in the form of an aggrieved maternal spirit.[125] Where the mother is deceased at the time of the transgression, or dies before reconciliation is achieved, the offender is understood to be pursued by her spirit until the wrong is ritually addressed.[126] Museka and Manyonganise comment on the spiritualisation of suffering or divine retribution as follows:

> … *kutanda botso*, the core of this article, function as an antidote to spiritualised suffering. Spiritualisation of suffering through belief systems, such as *kutanda botso*, can be perceived as a religio-cultural tradition aimed at protecting some of the most vulnerable members (mothers) within a family setup. The ritual, therefore, contradicts the dominant African patriarchal ideologies that place women in a precarious position, increasing their susceptibility to intimate and non-intimate physical, psycho-social and emotional abuse.

121 Chivasa (note 6) 167.
122 Chivasa (note 5) 476.
123 Ibid 479–481. See also Tatira, L & Tatira, S 'Shona Traditional Religion, Cultural Beliefs, Gender and Sustainable Development in Zimbabwe' in Marevesa, T, Mwale, N, Chireshe, E, Chitando, E & Nyawo, S (eds) *Religion, Gender and Sustainable Development in East and Southern Africa* (Palgrave Macmillan 2024) 105 at 111–112.
124 Chivasa ibid; Tatira & Tatira ibid.
125 Ibid.
126 Chivasa, N 'Kutanda Botso Ritual as a Means of Preventing Non-Intimate Femicide Targeting Biological Mothers in Shona Communities of Zimbabwe' (2020) 7(4) *Violence and Gender* 178.

> In intimate relationships, the suffering motif that forms the nerve centre of the *kutanda botso* religio-cultural ritual serves to protect and safeguard mothers (especially when they are old, frail and defenceless) against all forms of abuse from their children. Extreme and life-threatening suffering (be it physical, psycho-social or emotional) usually invokes and precedes the ritual performance of *kutanda botso*. In light of these observations, this article explores not only the suffering motif but also the suffering-related therapeutic function of the *kutanda botso* ritual.[127]

To this end, divine retribution manifests in two ways: first, it postulates an instance where the transgressor may be tormented by the spirit of the deceased mother.[128] This takes the form of a subjective psycho-spiritual torment that only the transgressor can experience. Secondly, this torment can manifest physically through a series of misfortunes that befall the offender.[129] There is no fixed list as to what such misfortune entails.

The procedural elements of the *kutanda botso* ritual are quite instructive for present purposes. The offender must dress in a manner that visibly marks them as penitent, typically by wearing tattered garments.[130] Afterwards, they leave their homestead to wander from village to village, at times for an extended period, begging for food and openly confessing the nature of their transgression to whomever they encounter.[131] Relatives and friends of the offender brew traditional beer over days as part of the cleansing rite that eventually permits the offender's reintegration.[132] Traditional songs such as '*Handina mwana anoita rombe*' are sung, reminding the offender that after completing the ritual, they will be forgiven and welcomed back into society.[133] The wandering phase ends only once the offender has performed sufficient penitential begging and the family, through the elders or a spirit medium, is satisfied that the offender's standing can now be restored.[134]

For purposes of articulating an *Ubuntu/Hunhu*-based theory of punishment, *kutanda botso* is neither purely private nor purely state-administered. Rather, it is communal. The offender's shame is performed before, and witnessed by, the community into which the offender must eventually be reintegrated. In his ethnographic account of the ritual in contemporary VaShona communities, Chivasa describes it as a recognised deterrent against femicide and the abuse of mothers precisely because the punishment is public.[135] This sharply contrasts with custodial sentences that remove the offender entirely from the community's view. Wandering and begging are not symbolic decoration; they are punishment. The cosmology of the VaShona understands spiritual retribution and

127 Museka, G & Manyonganise M 'Kutanda Botso [Self-shaming]: A Suffering-Related Therapeutic Ritual in Shona Society' (2025) *HTS Teologiese Studies/Theological Studies* 2; Chivasa (note 5) 478; Chivasa (note 128) 178. See also Tatira & Tatira (note 123) 111–112.
128 Museka & Manyonganise ibid.
129 Ibid.
130 Rwafa et al (note 5) 33.
131 Ibid; Chivasa (note 5) 479.
132 Rwafa et al (note 5) 33.
133 Ibid.
134 Ibid 34; Museka & Manyonganise (note 127) 6; Chivasa (note 5) 479.
135 Chivasa (note 126) 178-180.

the eventual undertaking of *kutanda botso* as the underlying precondition for, not an alternative to, eventual forgiveness.

At this point I depart from Keevy's characterisation of African customary practices as evidence of an absence of punishment. *Kutanda botso* is a structured, time-bound, and visibly painful process that an offender must undergo to restore, *inter alia*, their social standing. The offender is punished (through suffering and loss of status), held accountable (through public confessions) and rehabilitated (through a structured pathway to reintegration).

It is worth emphasising the interplay between *kutanda botso* and victim involvement since this is the precise point where, as argued in Part 3, the Zimbabwean retributive framework is weakest. The mother, whether living or deceased, is not a passive beneficiary of a punishment handed down by a third-party adjudicator; she, or her spirit through a medium, is understood to be an active party whose appeasement is the condition for the ritual's completion. This contrasts with the victim impact statement procedure under the Sentencing Guidelines, which, however well-intentioned, structurally positions the victim as a source of information for the sentencing court rather than as a party to whom the offender owes a direct and dischargeable obligation.[136] Under *kutanda botso*, the offender's sentence is not complete until the aggrieved party or her representative is satisfied that there has been genuine appeasement.[137] By contrast, the Zimbabwean penal system treats the sentence as complete once the court-prescribed term has been served, regardless of whether the relationship between the offender and the victim has been addressed in any way.

None of this suggests that *kutanda botso* is without difficulty as a model for formal law. I am aware that the ritual operates within a cosmology of ancestral spirits and avenging maternal anger that a secular constitutional order cannot, and arguably should not, formally adopt as a basis for criminal liability.[138] My argument is not that the spiritual content of *kutanda botso* should be incorporated into sentencing law, but that its structural insight, namely that punishment and reintegration are stages of a single reconciliatory process rather than separate and sequential goals, can be incorporated without requiring the state to adjudicate on the existence or anger of ancestral spirits.

5.2 *Kuripa ngozi*: Reparations for murder

If *kutanda botso*, as articulated above, addresses harm within the family, *kuripa ngozi* addresses the gravest kind of harm between families: murder. It draws from a belief among the VaShona that a person who is unjustly murdered does not simply cease to exist but instead becomes *ngozi*, an avenging spirit that haunts the perpetrator and the perpetrator's entire family lineage, until such time as the wrong is acknowledged and compensated.[139] *Kuripa ngozi* includes misfortune, illness and indiscriminate death being visited upon the offender's relatives.[140] Recently, in the infamous *S v Shamba* case,[141]

136 *S v Blessed Sixpence and Others* (Sentencing Guidelines Judgment) HH 567-23 at 11–14.
137 Chivasa (note 5) 479; Chivasa (note 128) 178–179.
138 *S v Shamba* (419 of 2023) [2023] ZWHHC 348 (12 July 2023) at 13.
139 Chivasa (note 126) 177–180; Chivasa (note 6) 160–163; Nyamanhindi (note 6) 223–225; Rwafa et al (note 5) 27–28.
140 Museka & Manyonganise (note 127) 2; Tatira & Tatira (note 123) 111–112.
141 *S v Shamba* (419 of 2023) [2023] ZWHHC 348 (12 July 2023) at 13.

involving the gruesome murder of seven-year-old Tapiwa Makore, counsel for the 1st and 2nd accused submitted in mitigation that the court ought not to impose the death penalty because, as VaShona, the accused would inevitably suffer the consequences of *ngozi*.[142] Mutevedzi J rejected this submission, describing *ngozi* as an 'urban legend' with no place in mitigating an offender's sentence.[143] Mutevedzi J's sentiments indicate the very problem this contribution seeks to address: the systematic exclusion of customary justice norms in favour of a colonial default position. An alternative response may have been more jurisprudentially enlightening. Especially given the foregoing discussion of spiritual retribution, the court itself could have been conceived as the temporal and/or physical manifestation of *ngozi*. Put differently, Mutevedzi J's imposition of the death penalty could be understood not as opposing *ngozi*, but as one means by which its retributive force is realised within the secular legal order. Whether this interpretation is accepted or not, *ngozi* nevertheless reveals a profound departure from the individualistic conception of criminal liability that underpins our modern criminal justice landscape, as discussed in Part 3. Where culpability and punishment ordinarily attach only to the convicted offender, *ngozi* collectivises responsibility by extending the consequences of wrongdoing to the wider family lineage until the underlying wrong is acknowledged and redressed.

The procedural architecture of *kuripa ngozi*, as documented in Nyamanhindi's ethnographic account of the *Hwesa* clan of Manicaland, illustrates how seriously the practice is treated as structured dispute resolution rather than spontaneous vengeance among VaShona.[144] The victim's family approaches the *Dare*, a customary court convened by the local headman and, in the *Hwesa* case, constituted by seven *makurukota* (elders) selected for their lived experience and their *Hunhu*, in this instance, their reputation for upright character.[145] When the perpetrator's identity is disputed or unknown, a *svikiro*, spirit medium, may be consulted to identify the responsible party; the perpetrator's family is then formally approached and informed that compensation is sought.[146] Thereafter, the *Dare* mediates between the two families on the terms of compensation.[147] Traditionally, compensation is rendered in cattle. However, it is increasingly shifting to money as an alternative or complement.[148] Documented settlements show awards as substantial as 35 head of cattle alongside a cash payment, reflecting the gravity with which the practice treats the taking of a life.[149]

Three features of this process directly relate to this article's contribution. First, *kuripa ngozi* is explicitly based on truth-telling, not to be conflated with the TRC version discussed above: the process cannot proceed, and the spirit cannot be appeased, without an acknowledgement of wrongdoing by the offender's family.[150] This is not a plea-bargained

142 Ibid.
143 Ibid.
144 Nyamanhindi (note 6).
145 Ibid 224.
146 Ibid.
147 Ibid 225.
148 Ibid.
149 Ibid 224.
150 Ibid 223.

admission made to expedite a case; it is a necessary precondition without which the entire reconciliation framework collapses, since an unacknowledged vengeful spirit is, under the VaShona understanding, a spirit that cannot be appeased. Second, the victim's family is not just a spectator to proceedings conducted by the state on their behalf, as is the complainant under Zimbabwe's prosecutorial system, but a direct party that negotiates, through the *Dare*, the specific terms on which it will regard the wrong as resolved. Third, and most importantly for this argument, compensation goes directly to the victim's family rather than to the state as a fine, or to no one in the case of a custodial sentence, which, although proportionate to the offence, fails to compensate those who suffered the loss.

Nyamanhindi's account of the Hwesa *Dare's* use of *kuripa ngozi* to resolve killings arising from the 2008 presidential run-off political violence is a particularly striking illustration of the practice's contemporary relevance, since it demonstrates that *kuripa ngozi* has continued to function as a transitional justice mechanism for politically motivated killings that the formal mechanisms of the state, including the NRC, have been unable or unwilling to resolve.[151] Chivasa notes that *kuripa ngozi's* capacity to survive colonialism rests on its ability to meet its community's needs.[152] Where the formal apparatus of transitional justice in Zimbabwe has, on this account, been largely silent on traditional reconciliatory mechanisms, *kuripa ngozi* has arguably remained the only forum in which some bereaved families have obtained any acknowledgement of wrongdoing at all.

5.3 The gender and romanticisation limits

It would be intellectually dishonest and inconsistent with the spirit of decolonial scholarship invoked in Part 4 to present *kuripa ngozi* without confronting its most troubling historical features. In some communities and during some periods, there were cases where the bereaved family was compensated with a virgin girl from the lineage of the perpetrator, who would be given in marriage or otherwise pledged to a male relative of the deceased as a replacement for the life that was lost.[153]

This is not a stray *caveat* to be noted and then set aside. Rather, it goes to the root of the methodological caution flagged at the beginning of this article. Decolonisation, as presented, is not an instruction to romanticise every feature of pre-colonial practice merely because it is indigenous. It is an instruction to dismantle the unilateral imposition of colonial norms and practices, using our own customary practices as points of reference. This does not mean that we do not question these practices. In fact, where merited, they must be interrogated.

The practice of *kuripa ngozi* must be understood as a living legal tradition that evolves with time. While acknowledging that the development of African customary law in Zimbabwe has largely been secondary and often neglected, the criminalisation of *kuripa ngozi's* more coercive features should be viewed not as a mere colonial imposition warranting resistance, but as a legitimate development of customary practices.[154] Drawing

151 Ibid 224.
152 Chivasa (note 6) 165.
153 Ibid 167.
154 See, for example, the Domestic Violence Act [Chapter 5: 16] s 3(I)(1)(iii).

on scholars like Dladla and Goredema, I am aware of the argument that contemporary discourse on human rights and constitutional law is fundamentally at odds with the principles of African customary law when properly interpreted, primarily because both frameworks are rooted in distinct worldviews. However, as previously articulated, the current Zimbabwean penal framework, however colonial, remains part of the Zimbabwean jurisdiction. I seek to answer how African indigenous justice systems can complement, not replace, the existing penal framework.

The practice of *kuripa ngozi* should not be understood merely as a historical compensation mechanism, but rather in light of its underlying theoretical rationale: murder disrupts a relationship between two families and a community; this disruption persists and causes ongoing harm until it is acknowledged and addressed; and compensation flowing directly to the bereaved, alongside truth-telling by the offender's family, is what then permits the relationship, and by extension the community, to be restored. This is a sharply different model of accountability from the retributive deserts theories discussed in Part 3, which ask only what the offender deserves in proportion to their offence, without asking what needs to be done to repair the disrupted social fabric, taking into account what is owed to society as a whole and to the victim's family in particular.

5.4 Lessons for the existing Zimbabwean penal framework

From these two case studies, three lessons emerge that directly bear on the existing offender reintegration architecture under the PSCA, discussed in Part 2. First, both practices insist on the direct participation of the affected community, not merely the victim in the narrow individual sense, in determining when an offender has been sufficiently held to account to be reintegrated into the community. The State Parole Board currently assesses suitability for early release based on institutional conduct, the risk of recidivism and the offender's personal circumstances.[155] No formal reference is made to the views of the affected family or community on whether reconciliation has, in fact, occurred. A parole process informed by the structural insight of *kutanda botso* and *kuripa ngozi* would build, analogous to the *Dare's* mediation, a stage at which, subject to the consent of the participants, the victim's family or, in cases without a direct surviving victim, a community representative could speak to whether the offender's release would be received as a restoration of the relationship disturbed by the offence, rather than a mere expiry of a term of imprisonment.

Second, both practices show that visible, witnessed accountability, rather than concealment within a custodial institution, allows a community to extend trust to a returning offender. This is not to say that imprisonment is any less valuable. The current rehabilitation regime in Zimbabwean prisons, whatever its academic and vocational merits, occurs largely outside the view of the community to which the offender will return, with the result that reintegration in the affected community is often experienced as imposed, rather than earned. A formal pre-release dialogue, modelled on the public and communal conceptualisation of *kutanda botso*, would allow the offender to demonstrate accountability to, rather than merely report it to, the community responsible for the offender's reintegration.

155 Prisons and Correctional Services Act [Chapter 7: 23] ss 140–146.

Lastly, and more concretely, *kuripa ngozi's* insistence that compensation must flow directly to the bereaved offers a template for incorporating restorative components into the existing criminal justice system without necessarily displacing custodial punishment. The two can complement each other. Just as the *Dare* negotiates a compensation award as a condition of restoration, a Zimbabwean court or parole board could be empowered to require an offender, as a condition of early release, to partake in a structured rehabilitative dialogue with the victim's family, should they consent, addressing what acknowledgement and, where appropriate, reparation the family regards as necessary before reintegration can be complete. This need not displace the proportional analysis that Zimbabwean sentencing law rightly demands; it supplements that analysis by adding a relational dimension that the current framework, for all its recent reforms, continues to omit.

Sections of the PSCA, which govern the State Parole Board's assessment of suitability for early release, could be amended to include a further consideration to those already listed: documented evidence that the offender has participated or has made a genuine and recorded attempt to participate in a structured rehabilitative dialogue with either the victim's family or an appropriate community representative.[156] Such dialogue should be carried out under the guidance of an accredited mediator with the required expertise. This would formalise the relational dimension that makes up *kutanda botso* and *kuripa ngozi* without displacing the Board's existing criteria of institutional conduct, risk of recidivism and personal circumstances.[157]

As noted in my discussion of the TRC above, a serious risk inherent in any restorative process is that a victim or their family may be pressured, whether by the offender, the community or the offender's family, to invest in a swift resolution where there is no genuine reconciliation. This risk is further heightened by the victim's family's own economic vulnerabilities, which contrast sharply with those of the offender. The *Dare* system highlighted above is itself not immune to this risk. This is especially likely where compensation is negotiated between families of unequal social standing. Any statutory rehabilitative dialogue that draws from *kutanda botso* and *kuripa ngozi* must remain alive to these realities. Safeguards must be put in place to ensure that participation is genuinely voluntary and revocable at any stage. Mediators should be trained to identify any signs of coercion. Further, a victim's family's refusal to participate must not carry any adverse consequences for the offender's parole prospects. This ensures that consent from both parties is real, not nominal. Consent, therefore, should not be assumed merely because the dialogue takes place; instead, it must be actively protected as a condition precedent for the process to retain the integrity that distinguishes rehabilitative dialogue from coerced forgiveness.

6. Conclusion

This article has argued that Zimbabwe's current penal system remains fundamentally colonial. This is especially clear from a historical analysis of the country's penal system from colonial times to the present, which has largely retained its Roman-Dutch and English

156 Ibid.
157 Ibid.

influences, originating from the Cape of Good Hope. This framework intentionally neglects relational concepts of justice shaped by Zimbabwe's customary laws in its understanding of punishment. The article has contended that *Ubuntu/Hunhu* constitutes a legitimate theory of punishment on its own. It balances accountability and reconciliation, recognising them as sequential stages of a single process rather than as competing trade-offs. The proposed amendment of the PCSA to formalise reconciliatory dialogue during parole evaluations aligns with the principles of *Ubuntu/Hunhu* justice. It aims for a synthesis rather than a replacement. Provided that the safeguards against coercion and power imbalances, as mentioned above, are genuinely upheld, I believe Zimbabwe's penal system can gain an additional relational dimension that attends to both the needs of offenders reintegrating into the community and the needs of the community welcoming them.

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