Civil society and informal mechanisms of transitional justice: Filling the gap of accountability and acknowledgement for the 2008 electoral violence in Zimbabwe

By

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DECLARATION

I Chenai G. Munyaka declare that the dissertation which I hereby submit for the degree of Master of Arts (Political Science) at the University of Pretoria, is my own work and has not previously been submitted for a degree at this or other tertiary institution. Where secondary material is consulted, this has been acknowledged carefully and referenced in accordance with university regulations.

Signature …………………………….. Date…………………………………………..

Acknowledgements

Abstract

In the absence of an effective state led mechanism for dealing with issues of transitional justice in Zimbabwe following the violent 2008 elections, civil society organisations have sought some form of remedy for those affected by the violence through the engagement of state processes as well as through informal processes within communities affected by the violence. Through various advocacy and lobbying initiatives, civil society has sought to challenge impunity, push for the reform of state institutions that have perpetuated violence, as well as to push for effective and inclusive policies that will address the concerns arising from the aftermath of political violence. They have also sought to change and influence structures that have promoted violence particularly in communities that were most affected by the 2008 electoral violence. These roles have been played in an environment that has largely been described as not conducive to dealing with the concerns of transitional justice. This environment is characterised by the absence of a change in political dispensation, where those responsible for the violence have remained at the helm of the state and political power. The aim of this research was to describe and explore the informal mechanisms put in place by civil society organisations in Zimbabwe to deal with issues of accountability and acknowledgement with regards to the 2008 electoral violence. The research also aimed to examine the consequences of such approaches to post conflict justice on the relationship between the state and civil society and more broadly on the achievement of the goals of transitional justice. The research asked: How has civil society addressed the issues of transitional justice in relation to the 2008 electoral violence in Zimbabwe? More specifically, the research also asked: Why has civil society employed informal processes to deal with transitional justice relating to the 2008 electoral violence and what have been the consequences of civil society instituting informal transitional justice mechanisms without the support or involvement of the state? The research findings showed that civil society organisations have employed informal processes of transitional justice as a response to the lack of political will by the state to address the concerns of transitional justice. It also found that despite the importance of the role being played by civil society organisations in dealing with these concerns, this approach was not comprehensive both in terms of geographic spread and also due to the absence of authority by civil society to enforce accountability. This study concludes that the gap of transitional justice for the 2008 electoral violence in Zimbabwe is a consequence of the lack of political will by state actors to deal with the concerns arising from the aftermath of the violence as well as the failure to create an environment that allows for these concerns to be addressed. The study also concludes that the state remains the key actor in the transitional justice discourse and through cooperation with civil society actors, an effective and more comprehensive response to the concerns arising from the 2008 electoral violence as well as other epochs of violence witnessed in the country could be instituted.

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LIST OF ACRONYMS

CCSF-Church and Civil Society Forum

CIO- Central Intelligence Organisation

EFZ- Evangelical Fellowship of Zimbabwe

FO-Field Officer

GNU-Government of National Unity

GPA- Global Political Agreement

ICC- International Criminal Court

ICTY- International Criminal Tribunal for the Former Yugoslavia

JOC- Joint Operating Command

MDC- Movement for Democratic Change

NGO- Non-Governmental Organisation

NPRC- National Peace and Reconciliation Commission

NWTJ- National Working Group on Transitional Justice

ONHRI- Organ for National Healing, Reconciliation and Integration

SADC- Southern African Development Community

TRC-Truth and Reconciliation Commission

UN- United Nations

ZANU PF- Zimbabwe African National Union- Patriotic Front

ZHRC- Zimbabwe Human Rights Commission

ZHRNGOF- Zimbabwe Human Rights Non-Governmental Organisation Forum

ZNA- Zimbabwe National Army

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Chapter One

1.1   Introduction, research overview and identification of the research theme

Violence has been characteristic of Zimbabwe's electoral processes throughout its post-independence history. Although this violence has varied in its intensity and spatial distribution, a constant has been the lack of redress by the state for those affected. A distinguishing feature, however, of the state's response to the 2008 electoral violence and the political crisis that accompanied it, was the formation of the Organ on National Healing, Reconciliation and Integration (ONHRI) which was headed by representatives from the three political parties who were signatories to the Global Political Agreement (GPA) of 2008. The establishment of the ONHRI was in fulfillment of Article 7 of the GPA[1] which was signed by Zimbabwe African National Union Patriotic Front (ZANU PF) and the two formations of the Movement for Democratic Change (MDC) following an electoral impasse and political crisis. The impact of the work of ONHRI, however, has largely not been felt by the grassroots communities affected by violence due to the lack of political will to implement its programmes and the lack of adequate funding for the operations of the body (Mbire, 2011). Shortcomings of the state-instituted ONHRI left civil society with the task of filling in the gap of providing the much needed mechanisms of accountability and acknowledgement to those affected by the 2008 electoral violence and other phases of the country's violent past. Under the 2013 Constitution of Zimbabwe, the ONHRI has been replaced by the National Peace and Reconciliation Commission (NPRC), which is yet to start operating.

The 2008 political violence in Zimbabwe reached its peak following an electoral impasse between ZANU PF and the larger MDC formation. This was the first election since 1980 in which ZANU PF had lost its parliamentary majority and seats in some rural constituencies which had previously been bases of its popular support (Eppel, 2009). The electoral impasse resulted in

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[1] Article 7 of the Global Political Agreement states that parties to the agreement shall give consideration to the setting up a mechanism to advise on measures to be taken to achieve national cohesion and unity (Machakanja, 2010).

an election run-off which was preceded by a wave of retributive attacks largely targeting those constituencies in which MDC had won parliamentary and local government seats (Pigou, 2008). The violence was largely perpetrated by organised syndicates of ZANU PF supporters who worked with officers of the Zimbabwe National Army (ZNA), Central Intelligence Organisation (CIO) and other state security agencies under the command of the Joint Operating Command (JOC)[2] (Matyzak, 2008; Pigou, 2008). The violence was systematic and wide spread and was characterized by the abduction, torture, rape, killing and destruction of property belonging to those targeted (Eppel, 2009; Matyzak, 2008). Unlike other phases of violence that the country had experienced in the past, the attacks in 2008 were widely documented and publicised by civil society organisations, which also collected evidence of many of the violations. Through this publicity and documentation the issue of the country's legacy of violence came into consideration at the SADC brokered negotiations[3] that resulted in the signing of the GPA, hence, the formation of the ONHRI under the Government of National Unity (GNU).

Through the adaptation of retributive and restorative justice processes that in other countries have largely been the preserve of governments and international bodies, civil society organisations in Zimbabwe have sought acknowledgement and accountability for the 2008 electoral violence. These informal mechanisms include unofficial truth telling processes, memorialisation, cleansing rituals, community working groups that bring polarised groups together among other initiatives. Unofficial truth processes refer to initiatives by civil society organisations which, like official truth commissions, are based on the notion that by telling the truth about past human rights violations, communities can move towards stability and justice (Bickford, 2007). These unofficial truth process as asserted by Bickford (2007:994) are "geared towards the revealing of the truth about crimes committed in the past as a component of a broader strategy of accountability and justice … [and] these particular efforts are rooted in civil society- hosted and driven by human rights NGOs, victim groups, universities and other societal organisations and are not primarily state-based." These are some of the goals of transitional

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[2] Joint Operating Command (JOC) is the supreme organ for coordinating state security matters in Zimbabwe and is composed of heads of Zimbabwe's key security institutions (Eppel, 2009).

[3] This mediation process was a Southern African Development Community (SADC) intervention through a mediation initiative led by former South African President Thabo Mbeki and led to the brokering of the GPA on 15 September 2008. The GPA was entered into by ZANU PF, MDC-Tsvangirai (MDC-T) and a splinter formation of the MDC led by Arthur Mutambara. It led to the creation of an interim GNU and among its primary objectives, the GNU was to oversee the writing of a new constitution within its first 18 months and enable free and fair elections to take place thereafter (Eppel, 2009).

justice that have informed truth processes as well as other transitional justice mechanisms that have been instituted around the world.

Closely linked to truth telling is memorialisation, which is often based on the conceptions of truth by the community about the violence. However, the issue of memory of past violence is often contentious and requires a balance between state and societal forces (Jelin, 2007). Memorialisation, according to Barsalou and Baxter (2007:4), is a "concept encompassing a range of processes to remember and commemorate… [And] as a process [it] satisfies the desire to honour those who suffered or died during conflict and becomes a means of examining the past." Processes with the same goals have been carried out by civil society organisations in Zimbabwe in areas where people were killed during the 2008 electoral violence. However, there has been no balance between the state and society as the state has not been involved in many of these initiatives. These informal truth processes, memorialisation and traditional rituals, which do not involve the state are part of the work that is being done by civil society to seek some form of accountability and acknowledgement for victims of the 2008 electoral violence. However, apart from working in communities affected by the violence, civil society groups have been active in advocacy and lobbying initiatives which have sought to influence the formal processes of transitional justice put in place by the state as well as to push for the creation of institutions dealing with issues of redress for human rights violations.

 'Transitional justice' is a term that refers to a wide range of processes and mechanisms that underpin a society's attempts to come to terms with a legacy of past violent abuses (Machakanja, 2010). The need for accountability and acknowledgment for human rights crimes is at the center of this discourse and is becoming increasing recognised as an important step to building sustainable peace (Mbofana, 2011). In the Zimbabwean context, transitional justice has been discussed in response to the cycles of political violence that have characterized political contestation in the country. It is within this academic field of transitional justice that this research falls as it sought to understand how communities in Zimbabwe are attempting to deal with past human rights violations as well as the role that civil society was playing in an attempt to achieve this. Prior to the 2008 violence and in the absence of effective legal systems and political will to address past human rights violations, civil society organisations developed their own positions

on transitional justice in a symposium held in 2003 [4] (Morrel, 2003). These positions have influenced their efforts to fill the gap left by the ONHRI. Without the clout of the state to back them, civil society organisations have, however, been faced with intensified animosity between them and the state as a result of exposing and challenging the state's role in the violence. Despite this, as shown in this study civil society organisations have continued to engage the state on matters relating to transitional justice.

It was the overall aim of this study to explore how civil society organisations in Zimbabwe are filling the gap of post conflict justice outside the formal state structures in which transitional justice is normally practiced. It also sought to explore the challenges posed by this approach to transitional justice not only for the civil society organisations themselves, but also for those who were affected by the violence. The research also sought to explore the implications that civil society's approach in dealing with the electoral violence has had on the overall objectives of transitional justice including the non-recurrence of violent conflict. While transitional justice has largely been a state dominated field in terms of its implementation, the argument by authors such as Lundy (2009) that transitional justice without the buy in of the local communities is unlikely to lead to sustainable peace, has fed into the growing use of community based approaches by civil society (Lundy, 2009; Arriaza and Roht-Arriaza, 2008). These community based approaches in the Zimbabwean context have not had the buy-in of the state through the ONHRI or other institutions of the state and this has meant that there have been parallel initiatives and objectives pertaining to issues of transitional justice. This has led to tensions between the state and civil society based on mutual distrust and fighting for political space. The failure of the state to provide effective mechanisms of redress as well as the inability to find political solutions to conflict, has created a gap in terms of the need for post conflict justice in Zimbabwe (Iliff, 2010).

1.2   Formulation and demarcation of the research problem

The proposed research was located in the growing debate on the role of informal approaches to dealing with issues of transitional justice and the implications of these mechanisms for building

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[4] The symposium on "Civil Society and Justice in Zimbabwe" which was held in Johannesburg, South Africa from 11-13 August 2003 was an initiative by Zimbabwean civil society organisations to develop their own positions on how to provide redress for the human rights abuses of the past (Morrel, 2003).

sustainable peace in societies previously engulfed in conflict. Where formal processes of transitional justice cannot be implemented, there remains a gaping need for accountability and acknowledgement for those affected by violence. This need for acknowledgement and accountability remains a threat to peace in society as structures of violence have not been removed. The absence or ineffectiveness of formal mechanisms of providing accountability and acknowledgement has seen civil society in Zimbabwe taking on the role of providing alternative mechanisms outside the state to deal with issues of transitional justice emanating from the 2008 election violence.

Civil society has adapted, reinterpreted and applied norms and processes originally developed for state led democratic transitions, fusing them with those that have been applied in local and communal contexts in order to achieve the goals of transitional justice (Quinn, 2005; Rubin, 2014). However, as argued and shown in this research, civil society organisations have seldom introduced new processes to these communities; they have had to fit their agenda into the local practices and traditions that locals have practiced for many years in dealing with conflict and its aftermath. This approach has not come without consequences for the already strained relations between the state and civil society, with harassment and intimidation of members of civil society particularly those working in the field of human rights and transitional justice (Sisulu, Richard and Kibble, 2009). However, these are not the only consequences of 'instituting transitional justice against the state', as posited by Rubin (2014). The lack of resources within civil society to carry out these processes in all parts of the country, the issues of legitimacy and impartiality as well as the inability to reform state institutions that were at the center of the violence are just some of the challenges posed in filling the gap of transitional justice in Zimbabwe as shown in this study.

1.3 Justification and relevance

This research seeks to explore how civil society organisations in Zimbabwe have used informal mechanisms to deal with transitional justice issues of accountability and acknowledgement

emanating from the 2008 electoral violence, as well as the consequences of their approach. Studies in the field of transitional justice have largely focused their attention on processes led by states and international bodies in dealing with gross human rights violations emanating from periods of conflict or authoritarian rule (Backer, 2003). A few studies, including the work by Bickford (2007), have focused on informal processes by civil society to deal with issues of transitional justice and this research seeks to add to this sparse but growing literature. The Zimbabwean state has largely been opposed to transitional justice advocacy work by civil society, with negative implications such as the arrest and detention of members of civil society organisations (Mavhinga, 2014). It is relevant to the study of the field of post- conflict justice to explore the implications of these uneasy relations between the state and civil society on attaining accountability and acknowledgement for past human rights violations.

In any environment where the bulk of those responsible for perpetrating human rights violations are unlikely to be prosecuted because they still wield political power, transitional justice is often not an option. According to IIiff (2010:1), "Practitioners and theorists assume that transitional justice cannot proceed until the individuals most responsible for rights violations cease control of crucial state functions, including the police, military and judiciary." While this statement may hold true for formal processes of transitional justice, civil society organisations in Spain, Uganda and Zimbabwe have shown that through informal processes some form of accountability and acknowledgement is possible (IIiff, 2010; Quinn, 2005; Rubin, 2014). This research sought to provide an insight into this largely neglected territory of transitional justice while also seeking to explore the challenges that come with the adaptation of formal processes of transitional justice into the informal sphere.

1.4   Questions and objectives of the research

The objectives of the research were:

a) To describe and explore the informal mechanisms put in place by civil society organisations in Zimbabwe to deal with issues of accountability and acknowledgement with regards to the 2008 electoral violence.

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b) To examine the consequences such approaches to post conflict justice have on the relationship between the state and civil society and more broadly on the achievement of the goals of transitional justice.

c) To contribute to the literature on transitional justice, specifically with respect to informal processes.

To achieve these objectives, the research sought to answer the following question: How has civil society addressed the issue of transitional justice in relation to the 2008 electoral violence in Zimbabwe? In order to answer this question comprehensively, the following sub-questions were asked:

i) Why has civil society employed informal processes to deal with transitional justice relating to the 2008 electoral violence?

ii) What have been the consequences of civil society instituting informal transitional justice mechanisms without the support or involvement of the state?

It was the intention of this research to explore the contribution of informal processes of transitional justice that are instituted by civil society organisations in assisting communities in dealing with issues of accountability and acknowledgement stemming from the 2008 electoral violence. In addition, this research sought to investigate the assumption that without the involvement of the state, these processes cannot provide a comprehensive approach to building sustainable peace.

The study was limited to the Zimbabwe Human Rights Non-Governmental Organisation Forum (ZHRNGOF), its members, partners and affiliated organisations working in the field of human rights and transitional justice. Their work formed the empirical basis of the study. These organisations, Heal Zimbabwe Trust, Evangelical Fellowship of Zimbabwe (EFZ), Church and Civil Society Forum and the secretariat of the ZHRNGOF, have been involved in community projects on transitional justice and advocacy for state based mechanisms of accountability for the 2008 violence. The projects have been spread across the provinces that were most affected by the violence, including Mashonaland East and Central (Matyzak, 2008).

1.5   Defining central terms

1.5.1   Transitional justice

Transitional justice refers to a wide range of approaches and mechanisms that have been used by various states to deal with past human rights violations arising from periods of conflict or repression (Machakanja, 2010; Roht-Arriaza, 2006). It is an approach that seeks to address the legacies of violence as well as to move from conflict and violence towards a more peaceful dispensation. Transitional justice also deals with the concerns that arise in the aftermath of conflict and gross human rights violations including disquiets about whether to prosecute those responsible for the violence or not; as well as how to provide redress for the victims of the violations within the confines of human rights and humanitarian law (Roht-Arriaza, 2006). The overall goal of transitional justice is the non-recurrence of violence and conflict and it makes use of both judicial and non-judicial measures to deal with past gross human rights violations (Huyse and Salter et al, 2008). In the Zimbabwean context, transitional justice has been discussed in response to the cycles of political violence that have characterized political contestation in the country.

For the purposes of this study Roht-Arriaza's (2006:2) definition was used, which refers to transitional justice as "… a set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed at confronting and dealing with past violations of human rights and humanitarian law." This definition by Roht-Arriaza (2006) is selected because it recognises transitional justice as going beyond mechanisms and processes set out to deal with the past but embraces the concerns that arise in the aftermath of violent conflict, which this research also sought to capture in its use of the terms "issues" and "concerns" of transitional justice.

1.5.2   Electoral violence

According to Sisk (2008) electoral violence can be defined as

> "…Acts or threats of coercion, intimidation, or physical harm perpetrated to affect an electoral process or that arises in the context of electoral competition… Electoral violence is a sub-type of political violence in which actors employ coercion in an instrumental way to advance their interests or achieve specific political ends. Similarly,

societies prone to experiencing election-related violence are normally vulnerable to broader kinds of political violence..."

This definition by Sisk (2008) was used for the purposes of this study as it recognises electoral violence as being more than physical violence but extending to psychological violence in which the threat of violence is used to coerce people. This was the character of the 2008 electoral violence; it had both physical and psychological components.

1.5.3   Civil society organisations

There are various definitions and conceptualisations of the term and realm of civil society. However, this study did not go into these various conceptions. As also explained in Chapter Two, this study used the World Bank's definition of civil society which is "the wide array of non-governmental and not-for-profit organisations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil society organisations (CSOs) therefore refer to a wide of array of organisations: community groups, non-governmental organisations (NGOs), labor unions, indigenous groups, charitable organisations, faith-based organisations, professional associations, and foundations" (World Bank, 2014). In the Zimbabwean context this arena comprises various interests and characters. However, many of these interests have also steered into the political realm, a source of contention between civil society and the state, as will also be argued in following chapters.

1.5.4   Human rights violations

Just like the conception of civil society, there are a wide range and often complex definitions of human rights. Similarly, this study will not focus on these conceptions but working definition for the purposes of the study was drawn. According to the United Nations Office of the High Commissioner for Human Rights (U.N OHCHR), "human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status…These rights are all interrelated, interdependent and indivisible." These include the right to life, equality before the law; among others. These rights are based on international law and norms which guide their enforcement (Donnelly, 2013). Donnelly (2013:8) defines violations of rights as "a particular kind of injustice with a distinctive force and remedial logic." As is done in Chapter Four of this dissertation, the rights of victims of

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human rights violations to remedy were outlined with the expected remedial action based on human rights norms and international law given. The study also made use of the term gross human rights violations, a term which is used to refer to grave or serious violations of human rights including torture and murder. In the context of this study, human rights violations refer to the torture, murder, and destruction of property, beatings, abductions, disappearances, intimidation and harassment (Pigou, 2008) that was characteristic of the 2008 electoral violence as well as the denial of recourse for these crimes.

1.6   Research design

A qualitative research methodology was used to carry out the research. Thematic in-depth interviews with field officers from the selected organisations as well as independent experts in the field of transitional justice and human rights in Zimbabwe were carried out. For interviews with field officers, the ZHRNGOF was the starting point for the research and from there referrals were made to other organisations dealing with the issues of transitional justice. This technique was chosen because the targeted respondent group is usually unwilling to discuss their work with outsiders due to the security threats they often face from the state security agencies as well as due to uncertainty of how the information was used (Penrod et al, 2003; Babbie and Mouton, 1998). For this reason, data collected from field officers was presented anonymously. The names of independent experts were used with their consent because their opinions on the matters discussed have already been expressed in other public forums.

Chain referral sampling was also instituted to ensure that the researcher approaches the correct organisations and individuals who had knowledge on the subject manner (Penrod, et al, 2003). Respondents in the study included a lawyer who deals largely with the retributive aspects of justice, researchers who investigate and document human rights violations and are also involved in conducting community meetings in which issues of transitional justice are discussed. These were drawn from the ZHRNGOF, Heal Zimbabwe Trust, Evangelical Fellowship of Zimbabwe (EFZ) and the Church and Civil Society Forum (CCSF) and collectively were referred to in this research as Field Officers (FOs). Their contributions were presented under the codes FO1 to

FO5.The ZHRNGOF was selected as a starting point because it is one of the pioneering organisations in the transitional justice debate and it is a large coalition with up to twenty member organisations dealing with issues of human rights including transitional justice.

In-depth interviews with human rights activist Dewa Mavhinga, former human rights and transitional justice activist Tendai Chabvuta and former human rights lawyer Prosper Maguchu were also carried out. These in-depth interviews were carried out in order to balance the study in terms of perceptions by those outside of the civil society organisations that are doing the work on the ground. It also allowed the researcher to gain an insight into the perceptions and attitudes of outsiders towards the work of the organisations involved in implementing informal processes of transitional justice. An informal discussion was also held with one field officer who declined to participate in a formal interview; however the researcher still managed to gain valuable insights and information from this. Perceptions from this informal discussion are coded as FO5. To provide diverse view points on the subject that was under study as well as to provide some form of verification for some of the data obtained, secondary sources of data including academic literature and reports by civil society organisations was also used together with the data gathered in the empirical research. Through the mixing of data and methods, diverse viewpoints that shed light on the topic were obtained (Olsen, 2004). The fieldwork was carried out in Harare where the head offices of the respondent organisations are based between 3 and 17 November 2014. Interviews with the three experts were carried out through Skype between 5 December 2014 and 10 January 2015. Due to time constraints and limited resources as well as some difficulties in securing interviews with potential respondents, a total of seven interviews and one informal discussion were carried out; four with field officers from civil society organisations implementing informal mechanisms of transitional justice and three with independent experts and as highlighted earlier one informal discussion with a field officer. Hence, this research cannot be concluded to be a comprehensive assessment of the role of civil society in filling the gap of transitional justice in Zimbabwe. However, the organisations that were interviewed for the study are among the key players in transitional justice in Zimbabwe and hence are able to provide a strong overview of the work that is being done.

A limitation of this research design as also explained in Chapter Three of this dissertation was that it was not able to gather perceptions of community members who have been involved in

civil society initiatives towards transitional justice because the researcher was not able to participate in any of the community meetings that civil society organisations are involved with. Future studies in this area would benefit immensely from capturing these perspectives so as to have a more balanced view of the impact that civil society organisations are making in filling the gap of transitional justice in Zimbabwe.

1.7   Chapter outline

This dissertation is organised into six chapters.

Chapter One puts the subject under study into context, gives the objectives of the study as well as justification for the study. It also outlines the research methodology as well as a definition of the key terms used in the study.

Chapter Two provides a review and critical analysis of the literature on transitional justice, its theoretical basis and mechanisms. It also provides a brief interface between the formal and informal realms of transitional justice. A discussion on the role of civil society in transitional justice as well as the debate on transitional justice in Zimbabwe is also presented in this chapter.

In Chapter Three, the research design and research methods used in collecting both secondary and primary data for the study are presented. It covers the conceptual basis and justification for the use of a qualitative methodology as well as the limitations that were posed by this approach to the study.

Chapter Four, aims at understanding the gap of transitional justice in Zimbabwe against international law and norms as well as through an exploration of the concept of political will; the absence of which has been blamed for the state's failure to deal with the concerns of transitional justice as argued by Dzinesa (2012) and by some respondents in the study in Chapter Five.

In Chapter Five, the findings of the empirical study with civil society organisations and experts in the field as well as evidence found in the secondary sources are presented and analysed. Through thematic analysis, the main issues to come out of this work was highlighted. The chapter highlights civil society organisations' views and understandings of their work as well as the challenges they face in executing it.

Chapter Six ties together the dissertation as a whole and proffers recommendations for filling the gap of transitional justice in the future.

1.8 Summary of findings and conclusions of the research

The gap of transitional justice in Zimbabwe for the 2008 electoral violence is part of a long cycle of violence. The challenges of dealing with violations emanating from the 2008 electoral period are part of a historical precedent of failing to provide redress for victims of such violations. Despite the advances in international law which presses upon states the obligation to promote and protect human rights, the gap of transitional justice in Zimbabwe remains. The failure by the state to comply with its obligations under international law to provide redress for victims of gross violations human rights has extended this gap for the 2008 electoral violence

Through various advocacy and lobbying initiatives, civil society has sought to challenge impunity, push for the reform of state institutions that have perpetuated violence, as well as to push for effective and inclusive policies that will address the concerns arising from the aftermath of political violence. They have also sought to change and influence structures that have promoted violence particularly in communities that were most affected by the 2008 electoral violence. These roles have been played in an environment that has largely been described as not conducive to dealing with the concerns of transitional justice. This environment is characterised by the absence of a change in political dispensation, where those responsible for the violence have remained at the helm of the state and political power.

The study found that while the role being played by civil society in filling the gap of transitional justice is important, this work is not sufficient to comprehensively deal with the massive repercussion of the electoral violence. The study also found that not only was the relationship between the state and civil society an obstacle to pursuing issues of transitional justice, but the relationship among civil society actors themselves is a challenge. This relationship has been marred by competition for funding and political space which has influenced civil society initiatives in dealing with the concerns of transitional justice. This study concludes that the gap of transitional justice for the 2008 electoral violence in Zimbabwe is a consequence of the lack of political will by state actors to deal with the concerns arising from the aftermath of the violence

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as well as the failure by the state to create an enabling environment in which these concerns can be addressed. This environment is characterised by the absence of institutional reform, partisanship and polarisation among other factors that have made dealing with the past difficult. The study concludes that the state remains the key actor in the transitional justice discourse and through cooperation with civil society actors, an effective and more comprehensive response to the concerns arising from the 2008 electoral violence as well as other epochs of violence witnessed in the country could be instituted.

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Chapter Two: Literature Review

2.1   Introduction

This chapter reviews literature on the transitional justice theories of restorative and retributive justice on which transitional justice mechanisms such as prosecutions and truth commissions are based. It pursues an understanding of the goals and limitations of each theory as well as approaches based on these theories. This chapter also outlines the goals of transitional justice as a process and the matters it is concerned with following periods of gross violations of human rights. The distinction between the formal and informal realm of transitional justice is also given. This is in order to develop a clearer understanding of the mechanisms under study in this research project.

A review of some of the assumptions underlying transitional justice is also explored in section 2.2 titled 'Understanding the concerns of transitional justice'. This was done in order to understand the limitations of the theory and the practice of transitional justice as well as the changes that the field of transitional justice is undergoing in order to better respond to contemporary conflicts. The notion of transitional justice, as well as its formal and informal spheres was explored in section 2.3 titled 'Mechanisms of transitional justice: the formal versus the informal'. Civil society as well as its role in transitional justice was also discussed in this chapter in a section titled 'Civil society and transitional justice'. This was done in order to gain a better understanding of the role that civil society plays in transitional justice, as well as the work being done by civil society in Zimbabwe in the field of transitional justice.

The academic literature on transitional justice in Zimbabwe was also reviewed in this chapter in order to engage with the context based debates of the subject as well as draw parallels with other contexts in which transitional justice concerns existed. This chapter does not delve into the details of the issues of transitional justice in Zimbabwe and the gap left by formal processes that have set out to address them, as this was done in more detail in Chapter Four of this dissertation.

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The literature was reviewed in the following sections; Understanding the concerns of transitional justice; Mechanisms of transitional: the formal versus the informal; civil society and transitional justice and 'The transitional justice discussion in Zimbabwe'.

2.2   Understanding the concerns of transitional justice

Following periods of violent conflict and autocratic rule, states and communities have to contend with what to do about human rights violations that were committed. Various approaches have been used by many states to deal with the past and secure the future, including the application of retributive justice against the perpetrator and restorative justice for the victims. These approaches applied in post conflict societies have been referred to as transitional justice, a term that refers to a wide range of processes and mechanisms that support a society's attempts to come to terms with a legacy of past violent abuses (Machakanja, 2010). For the purposes of this study as referred to in Chapter One of this dissertation, Roht-Arriaza's (2006:2) definition was used, referring to transitional justice as "… a set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed at confronting and dealing with past violations of human rights and humanitarian law." This definition by Roht-Arriaza (2006) captures the essence of transitional justice as not only processes and mechanisms but also concerns that may arise following periods of strife, including accountability, acknowledgement and building peace. These concerns have however taken different priority in various post conflict societies according to their various needs. Transitional justice makes use of both judicial and non-judicial measures to deal with past human rights violations and these fall under both retributive and restorative justice mechanisms. Acknowledgement and accountability within the transitional justice realm fall broadly into restorative and retributive frameworks.

Accountability and acknowledgment for crimes against human rights is at the center of the transitional justice discourse and is increasingly being recognised as an important step to building sustainable peace (Mbofana, 2011; Sarkin, 2001). Acknowledgement, in theory, according to Quinn (2005:1) is how "individuals and societies must consciously engage in a process through which they may come to terms with, emotionally respond to, and actively remember and discuss the events of the past." This can be done through processes such as truth

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telling and memorialisation. Accountability is oriented towards being answerable and being held responsible for violations committed and within the retributive justice framework this would entail the establishment of guilt and the administering of penalties that are proportionate to the crime (Huyse and Salter et al, 2008; Lambourne, 2009; Amstutz, 2006). According to Huyse and Salter et al (2008:11), the overall goals of transitional justice are "Healing the wounds of the victims and survivors, repairing the social fabric and preventing the recurrence of deadly conflict." Hence, transitional justice is not only backward looking but also forward looking through its focus on non-recurrence of conflict and building peace. However, it is important to note, that the goals of transitional justice as well as its focus continue to evolve.

2.2.1   Retributive justice

Retributive justice is concerned with the establishment of the rule of law and ensuring that perpetrators are held accountable for their actions (Carey et al 2010). Retribution focuses on punishment and the imposition of penalties that are commensurate with the crime committed (Amstutz, 2006; Quinn, 2005; Van der Merwe et al, 2009). One of the aims of retributive justice is to ensure that those responsible for perpetrating human rights violations are individually brought to justice through criminal prosecutions. Based on the retributive model of justice, the international community has pursued prosecutions through *ad hoc* international criminal tribunals, an international criminal court and joint domestic/international courts and war crimes tribunals (Lambourne, 2009).   At the domestic level, prosecutions have also been pursued through the use of domestic courts and laws.

The question of whether or not to prosecute following mass violations of human rights is one of the key contentions states have to deal with in the aftermath of conflict. Such violations cannot be ignored or anger about them suppressed (Aukerman, 2002; Sullivan and Tifft, 2007).   In whatever manner the state chooses to deal with past violations of human rights, Bass (2000:310) contends that "Justice, of a sort, will be done; the only question is whether it will be finely tuned or crude." In the event that justice is not seen to have been done through the formal legal international or domestic processes, there is a risk of revenge attacks by the victims and the generation of other informal processes that may not necessarily be within the confines of the law. In arguing in support of retributive justice for past violations of human rights, Bass (2000) argues

that trials are the most effective way of dealing with collective crimes because they remove those who might threaten the stability of the new government, deter future violators and provide knowledge and truth about collective wrongdoing, which is essential for the social and political well-being of the community. Correspondingly, Stover and Weinstein (2004:12) assert that there is an assumption in the realm of post conflict justice that "Trials as national ritual or performance are conceptualized as critical to reconciliation because the catharsis of truth-telling, along with the inscribing of national memories, will lead to a decrease in suffering and a renewed commitment to reconciliation." Also in support of retribution, Aukerman (2002:45) affirms that "Prosecution can certainly satisfy a society's demand for retribution in reaction to massive human rights violations." These assumptions denote that without justice, post conflict societies are unable to reconcile and adequately move on and rebuild their lives. However, there is little empirical evidence in the form of studies, to support or refute these notions. They largely remain key assumptions and norms of contemporary post conflict peace building.

The above arguments put forward by Aukerman (2002) and Bass (2000) as well as Stover and Weinstein (2004) point toward the desire by victims of human rights violations to see perpetrators punished. However, due to a number of reasons, criminal prosecutions of those largely responsible for human rights violations are not always possible in a post conflict setting. This may be due to the limited capacity of the domestic legal system to deal with a large number of prosecutions, or mass opposition to such a process which may threaten the stability of the state (Bass, 2000). On the other hand, retribution through the formal systems of justice is not always sufficient for the victims, as affirmed by Haley (1996:3) who argues that "the state and its criminal justice system cannot stand in as a fictitious surrogate for real people who have been personally afflicted by a crime. The debts offenders owe are not to an abstract entity called 'the state' but to the victims and actual communities who argues that when an offence is committed." This argument depicts retributive justice as an inadequate measure of dealing with issues of past human rights violations as it has no direct implication on the welfare of the victims of the violence.

2.2.2   Restorative justice

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Repairing the damage done to the victims and attending to their needs rather than punishing the offender is at the center of the restorative justice paradigm and one of the concerns that post conflict societies are faced with. The needs of victims of crime include the truth about the crime and restitution for damages incurred. Mechanisms that have been set up in pursuit of restorative justice include truth commissions, the memorialisation of conflicts and the victims of those conflicts. Restorative justice suggests, as argued by Johnstone (2013:1) that, once the facts have been established about a crime, "priority should not be to punish the offender but to meet the victim's needs [and] … to ensure that the offender is fully aware of the damage that they have caused to people and of their liability to repair that damage." Restorative justice hence not only seeks acknowledgement for crimes committed but also seeks accountability.

According to Zehr (1995:85), restorative justice "… views crime as a violation of people and relationships. It creates obligations to make things right … [and] as such it involves the victim, the offender and the community in a search for solutions which promote repair, reconciliation and reassurance." Restorative justice mechanisms include processes of truth seeking, victim-offender mediation/conferencing, reparations for the victims and recognition of the violations committed against them. Restorative processes promote the values of healing, dialogue and reconciliation rather than punishment (Amstutz, 2006). Other authors on restorative justice such as Strang and Braithwaite (2001) outline restorative justice as being both a process as well as a set of values and argue that as a process, restorative justice brings together all stakeholders affected by the crime or harm while it promotes the ideals of healing and restoration as opposed to imposing punitive measures on the perpetrators.

Many advocates of the restorative justice model including Amstutz (2006), Villa-Vicencio (2006) and Zehr (2002), view the criminal justice model as an inadequate measure in dealing with violations of human rights and contend that the criminal justice model, neglects the needs of the victim while the harm done to the individual is assigned to the state. However, other writers on the subject including Clark (2007:8) do not completely reject retributive justice as a means of dealing with past human rights violations and argue that the "punishment of criminals is necessary but should be facilitated in ways that allow perpetrators and victims to rebuild relationships." This argument posed by Clark (2007), emphasises the importance of both

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accountability and acknowledgement in dealing with past human rights violations rather than instituting one or the other. Zehr (2002) argues that in the criminal justice model offenders are discouraged from acknowledging their crimes and are seldom given a chance to make amends for the wrong done. For these reasons, restorative justice can be argued to be the preferred model of justice particularly in post conflict situations in which the harm that has been done can have long standing negative implications on those harmed. For example, when the harm done has affected the victim's livelihood, a criminal conviction for the offender is not necessarily beneficial to the victim. Rather, some form of reparation could be seen as more useful to the violated.

While both notions of restorative and retributive justice have their critics as well as advocates and are often viewed as being on opposite sides of the field, it is important to note that both approaches to justice often complement each other and that restorative justice is not necessarily an alternative to punishment. These restorative measures are often seen as alternatives to punishment rather than alternative punishment (Daly, 1999).The sanctions posed through the institution of restorative justice should therefore be viewed as punishments and reprimands for the crime committed, while recognising and seeking to make amends for the wrong that has been done.

Having discussed the options that states may take to deal with issues of transitional justice following periods of gross human rights violations, it is important to note that issues and concerns of transitional justice do not only exist where there has been a change of regime or shift in political power as previously assumed in earlier writing on transitional justice. Such work includes Teitel (2003:69), who defines transitional justice as "the conception of justice associated with periods of political change, characterised by legal responses to confront the wrongdoings of repressive predecessor regimes." This notion of transitional justice is focused on predecessor and incoming regimes following periods of conflict. However, transitional justice mechanisms, especially in the contemporary conflict resolution realm are being set up following periods of conflict even without a change of government as in the case of Zimbabwe following the signing of the GPA. Transitional justice mechanisms are also being set up during ongoing conflicts, as in the case of the Northern Uganda conflict (Iversen, 2009). Hence, the conception

of transitional justice only taking place where a "democratic transition" has occurred is fast changing into a broader response of dealing with impunity for gross human rights violations.

Another major development in transitional justice is that mechanisms in post conflict and ongoing conflict scenarios including Zimbabwe and Uganda respectively are being set up by governments who are liable for some of the violations that these mechanisms seek to address. This raises the question of the independence and effectiveness of these mechanisms. Some authors however, including Bamu (2009) and Muvingi (2009) argue that in the case of Zimbabwe, in particular, instituting transitional justice mechanisms without a change in regime is not possible due to resistance from the political elite who are liable for many of the violations. The issues or concerns of transitional justice are centered on what to do about the offenders and those affected by the offence. Is acknowledgement of the harm done adequate for the victims or is the imposition of harsh penalties more desirable? There are varying answers to these questions depending on who is being asked as well as the context in which they are being asked. For some, peace is more important than the attainment of justice and for others justice is a pre-requisite for peace (Turyagenda, 2009). While transitional justice is increasingly becoming the norm for dealing with past gross violations of human rights, little is actually known of the impact it has on the lives of those who participate in these processes. It is therefore of importance to capture the perceptions of those who work closely with these individuals and communities such as civil society organisations, in order to gain a better understanding of the concerns of post conflict societies and the challenges associated with dealing with issues of transitional justice where there is no political will to do so.

2.3   Mechanisms of transitional justice: The formal versus the informal

In order to bring about acknowledgement and accountability, post conflict societies have engaged in a number of formal processes in order to deal with past violations of human rights. These include truth commissions, national memorials and commemorations which fall under the restorative justice paradigm as well as trials through the use of domestic and international laws. These mechanisms fall under formal mechanisms of transitional justice and as asserted by Quinn (2005:8) "are implemented by an organ of the state or by an international governing body. They

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are supported and funded by these bodies… [And] it is under the auspices of these bodies that they operate." This is in contrast to informal mechanisms of transitional justice which do not exist or operate with the patronage of the state or international governing bodies.

The terms informal mechanisms, traditional mechanisms and home-grown approaches to transitional justice have been used to refer to various community based approaches to dealing with past human rights violations. These terms have been used, at times interchangeably, and yet referring to the same or similar processes and goals. Quinn (2005) refers to 'customary mechanisms' of transitional justice, while Lundy (2009) uses the term 'home grown approaches' and Lundy and McGovern (2008) refer to grassroots approaches to transitional justice. These approaches are increasingly being promoted by international donor agencies and practitioners in post conflict reconstruction as a more inclusive and sustainable way to deal with issues of transitional justice (Lundy, 2009). Former United Nations (UN) Secretary General Kofi Anan in an August 2004 report on 'The rule of law and transitional justice in conflict and post-conflict societies' contends that "due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their often vital role and to do so in conformity with both international standards and local tradition (United Nations 2004:12)." There has been little consensus however, as to the conceptualization of these mechanisms and approaches. In other words there has been no clear determination of which processes fall under these categories and whether they should be completely independent or parallel to state initiatives of accountability and acknowledgement following conflict. This has meant that a wide net has been cast in the description and understanding of these terms particularly in the African setting where traditional approaches to justice have been adapted to fill the gap of dealing with transitional justice issues.

According to Lundy (2009:329) 'homegrown transitional justice' is "A process that has emerged within a particular society and which is different and unique to that place." This definition emphasizes uniqueness and some form of exclusivity in how processes are done; thereby excluding those processes that are community based but not necessarily unique to that particular community. Quinn (2005) focuses on traditional or customary approaches of bringing about accountability and acknowledgement and asserts that these are approaches that are rooted in

cultural and historic practices of a specific community. Such processes have been used around the world including the *Gacaca* courts in Rwanda and the *Mato Oput* ritual in Northern Uganda, but have been planned and encouraged by the state and international agencies (Quinn, 2005; Lundy, 2009; Andrieu, 2010). Both Lundy (2009) and Quinn (2005) assert the community as the source of these beliefs and practices that seek to deal with past violations of human rights. However, with the growing involvement of civil society organisations in the realm of post conflict justice, these processes and practices have ceased to be exclusively community and traditionally based. Aspects of the formal system of transitional justice have been adapted and imparted into these community and tradition based practices creating new processes set to deal with past violations of human rights. For the purposes of this study, the term 'informal practices of transitional justice' was used and will refer to a combination of processes adapted by civil society organisations from the formal realm of transitional justice, combined with local, community based or traditional practices to address issues of accountability and acknowledgement for past violations of human rights, without the involvement of the state.

From the definitions given by Quinn (2005) and Lundy (2009) and the working definition that was used for this study, it can be noted that informal processes of transitional justice vary in different contexts in terms of the processes involved and arise due to different concerns or issues of transitional justice. Both formal and informal processes of transitional justice develop as a result of the concerns and issues that arise in post conflict scenarios. However, informal processes often develop due to the inadequacy or absence of the formal processes of transitional justice and in most cases where the formal institutions are not seen as legitimate, the informal becomes parallel to the formal not only in policy, but also in process (Bickford, 2007). Andrieu (2010:546) argues that local based initiatives can promote participation and ownership of the transitional justice process but may not be appropriate for dealing with gross violations of human rights as "They can be patriarchal and oppressive for individuals, particularly women and minorities."

2.3.1 Truth telling

Knowing the facts about past human rights violations is important for post conflict societies. Truth commissions have sought to address this concern of transitional justice and have been established in different forms in various countries including Argentina, Chile, Uganda and South Africa. According to Quinn (2005:7), "The truth commission is a restorative institution intended to provide a forum in which a society can learn about the abuses of its collective past." Hayner (1994:600) defines truth commissions as "bodies set up to investigate a past history of violations of human rights in a particular country which can include violations by the military or other government forces or by armed opposition forces." Truth commissions can operate concurrently with other mechanisms of accountability for gross violations of human rights including prosecutions and seek to collect information and produce a collective account of what happened in the past. Hayner (1994:600) asserts that, "Such commissions are often referred to as serving "a 'cathartic' effect in society, as fulfilling the important step of formally acknowledging a silenced past." This view is also affirmed by Quinn (2005:7), who argues that truth commissions are especially important "where abuses have been government-sponsored and have therefore gone unrecorded in any official way." This official or formal acknowledgement of what happened is an important concern of transitional justice and paves way for other processes such as memorialisation and reconciliation of the communities affected by violence. Truth commissions are usually a temporary mechanism operating for a specific period and usually have a mandate of making recommendations to the state or sponsoring body on how to deal with the violations given the truth that has been learned about the past (Hayner, 1994; 1996).

In support of truth telling, Walker (2010:525) argues that, "politically implemented modes of truth telling, for, and by those who are victims and heirs of gross violation and injustice may with good reason be counted as a kind of reparations… [However] truth telling is not sufficient by itself as a form of reparations, and its meaning and force as a form of reparations is apt to be affected, perhaps determined, by whether other reparations are also offered or attempted…" Also of importance is how the truth is received by those affected by the violence and the society as a collective; there is need to balance between knowing the truth about past violations and moving forward peacefully (Delanty and Kumar, 2006). Other authors on the subject such as Rotberg

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and Thompson (2000) contend that truth can be incompatible with reconciliation and the peaceful transition of a society from conflict to peace. Delanty and Kumar (2006:221) also assert that "If truth recovery mostly discloses only partial truths…what it discloses can be selectively used... [And] may be used merely as a bludgeon with which to beat the other side, to criticize their position…" Therefore how each version of the truth will be used, can be an important determinant in whether peace will be sustained or not.

Where official or formal mechanisms of justice have been set up, the result may be what can be termed "victors truth"; a scenario whereby the nation's collective truth is determined by those wielding political power. Where there has been no change in regime, it may be those who are most culpable for the violations being investigated by the mechanism that also set it up. For example, truth telling mechanisms may be set up by the governments or political groups responsible for the violations in order to cover up their own involvement in the crimes committed (McEvoy and McGregor, 2008; Delanty and Kumar, 2006). This has been a concern for example of mechanisms set up by government in Uganda and Zimbabwe as highlighted earlier in this chapter (Turyagenda, 2009).

Informal truth telling mechanisms have also been set-up in various post conflict countries under the auspices of civil society organisations, either in response to the absence of formal mechanisms such as truth commissions or as a strategy by the state to influence the official account of what happened (Delanty and Kumar, 2006). Bickford (2007:994) uses the term 'unofficial truth projects' and defines these as "initiatives that emerge from civil society and resemble, either self-consciously or coincidentally, official truth commissions…rooted in civil society; hosted and driven by human rights NGOs, victim groups, universities, and other societal organisations and are not primarily state-based efforts." For the purposes of this study, this definition by Bickford (2007) was used to refer to informal truth telling mechanisms. The aim of unofficial truth projects according to Bickford (2007:994) is to "seek to elucidate, clarify, and acknowledge past human rights abuse or mass atrocity in order to contribute to democratic rule and peace for the long-term." Where informal truth telling mechanisms have been set up, the challenges of how the truth will be received and used becomes more prominent. Delanty and Kumar (2006:221), contend that informal mechanisms, because they are "mostly localised and focus on truth recovery in a particular neighbourhood and group…tend to be deliberately

partisan." There is the potential that undesirable consequences such as the escalation of tensions in already divided communities may manifest due to these informal truth telling processes. Without the authority and support of the state, civil society organisations may not be able to assist the communities to move forward peacefully.

2.3.2   Criminal Prosecution

Another formal mechanism that has been used by post conflict societies are criminal prosecutions which, as highlighted earlier, fall under the retributive justice model. These mechanisms have been in the form of ad-hoc international criminal tribunals such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993, the International Tribunal for Rwanda in 1994 among others; and also through the International Criminal Court (ICC) established in 2002 (Harvey, 2006). Prosecutions for past violations of human rights have also been carried out in domestic courts for example in Greece and Argentina in 1975 and 1983 respectively (Roehrig, 2002). Whether or not prosecutions can take place in a particular context, is determined by the desire of the victims for such a process to take place as well as the independence of the judiciary. It is also determined by the absence of powerful individuals or groups who can destabilize peace in opposition to the prosecutions. Lessa et al (2014) summarise these factors as "civil society demand, the absence of veto players, domestic judicial leadership and international pressure". Each factor alone however, cannot influence the outcome on whether or not to prosecute. For example, civil society pressure for prosecutions alone may not be enough to override powerful groups and individuals within the post conflict society who do not want the trials to proceed.

Where the formal system has failed to handle prosecutions due to being incapacitated by civil strife or due to the large number of those liable for gross violations of human rights during a conflict, informal mechanisms of retribution have been set up. One of the most extensively written on processes is the *gacaca* courts of Rwanda which were set up in response to the crimes of the 1994 genocide in the country. The lack of qualified personnel, infrastructure and funding as well as disregard for due process were some of the main challenges of post-genocide Rwanda's judicial system as it sought to prosecute those accused of taking part in the genocide

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(Sarkin, 2001; Daly, 2002). The inability of the formal system to deal with the huge number of cases associated with the genocide that were brought before them led to this community based form of trials.

Gacaca is rooted in a form of community based civil justice used to settle community disputes and was extended to criminal justice in order to deal with the crimes of genocide through an official policy by the government (Daly, 2002; Buckley-Zistel, 2005). This informal process of retributive justice while also having some goals of restorative justice such as community cohesion, has however been plagued with criticism for its failure to adhere to the principles of due process (Daly, 2002; Sarkin, 2001). The retributive justice process seeks to establish the rule of law, however, with informal processes of justice such as *gacaca* there is a danger that these principles are ignored and violated. Revenge rather than retribution may ensue. According to Buckley-Zistel (2005:9) "instead of reducing the number of the accused, emptying prisons and releasing the innocent…the confessions have led to a dramatic increase in new accusations." *Gacaca* therefore has been open to manipulation by locals seeking to settle scores with their neighbours thereby defeating one of the goals of this community based retribution, namely, community reconciliation.

2.3.3   Memorialisation

Memorialisation has also been another mechanism that states have used to formally acknowledge gross violations of the past in an attempt to move forward peacefully. According to Barsalou and Baxter (2007:1) "Memorialisation is a process that satisfies the desire to honor those who suffered or died during conflict and as a means to examine the past and address contemporary issues." At the formal level memorialisation can be in the form of museums and monuments as well as state sponsored commemorative events. Remembering the past is often contentious and requires a balance between state and societal forces (Jelin, 2007; Hamber and Ševčenko et al, 2010). As with truth telling, memorialisation can often be contentious becoming a question of 'whose truth; whose memory?' and the victors in a war or those wielding political power following autocratic rule often dictate which it will be.

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Writers on memorialisation including Jelin (2007), and Hamber and Ševčenko et al (2010), contend that memorialisation is an important move towards reconciliation for societies moving away from a violent past; however, it can also be a cause of further divisions depending on how it is used. Jelin (2007:140) argues that "The existence of different interpretations of the past implies that at any time and place, it is unthinkable to find one memory, a single vision and interpretation of the past shared by a whole society (whatever its scope and size)." Similarly, Hamber and Ševčenko et al (2010:398), claim that "memorialisation holds both risk and promise for societies in transition…This contestation can be used to undermine reconciliation within, between and among nations, and can be both helpful and harmful to victims of political violence, depending on how it is used." Therefore the official truth which shapes the official memory of a society previously plagued by violence and instability can become an important determinant in whether peace is sustainable or not.

Memorialisation, according to Barsalou and Baxter (2007:4), is a "concept encompassing a range of processes to remember and commemorate… [And] as a process [it] satisfies the desire to honour those who suffered or died during conflict and becomes a means of examining the past". Groups that have been excluded in the official narrative of the truth and hence, its commemoration may therefore contend that their suffering and pain has not been acknowledged and may create their own informal processes of memorialisation which tell their own narratives of truth and are independent from the state's processes. This is true of the Zimbabwean narrative of violence and patriotism and the determination of "heroism", which has been contested by various groups at different times of the country's political history (Bere and Maguchu, 2014c; Wilkins, 2013). This is discussed further in Chapter Five of this dissertation.

Whether accountability and acknowledgement is formal or informal, what is clear is that both are a huge concern of transitional justice. The timing of the mechanisms as well as how they are used have a bearing on whether the goals of transitional justice, including non-recurrence of conflict; are achieved. The absence of, or inadequacy of formal mechanisms, has influenced the growth of the informal mechanisms. However, without monitoring both formal and informal processes of transitional justice may do more harm than good.

2.4 Civil society and transitional justice

There are wide ranging definitions of the concept of civil society. These definitions stem from its functions and roles as well as its composition and relationship with the state. While it is not the aim of this study to dwell on the various conceptualisations of civil society, it is imperative to provide an understanding and working definition of this domain. For the purposes of this study the World Bank's definition was used; civil society being

> "The wide array of non-governmental and not-for-profit organisations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil society organisations therefore refer to a wide of array of organisations: community groups, non-governmental organisations (NGOs), labor unions, indigenous groups, charitable organisations, faith-based organisations, professional associations, and foundations" (World Bank, 2014).

Civil society can play an important part in building democracy and consolidating it, monitoring human rights, challenging the state's abuse of power, and providing alternative means outside the state for communities to raise their level of material development (Makumbe, 1998; Sachikonye, 1995).

Empirical study of the role of civil society is a largely neglected aspect of transitional justice literature. Even normative approaches have, according to Backer (2003:298), offered "fragmentary detail with little or no theoretical reflection". However, other work by writers such as Crocker (1998) offers some theoretical foundations to understanding the role of civil society in transitional justice. Crocker (1998) has described the role of civil society organisations in transitional justice as largely complimentary to the activities and mechanisms put in place by states and international agencies and rejects the notion of parallel transitional justice activities between the state and civil society. Data collection and monitoring, advocacy and representation, collaboration, facilitation as well as consultation are some of the roles of civil society identified in the work by Backer (2003) and Crocker (1998). According to Andrieu (2010:550), "Civil society's role in transitional justice is thus multidimensional. It can act as innovator, facilitator, temporary substitute, educator or critic… [They] often have greater legitimacy in local

communities, and may therefore be better able to win the cooperation of those who do not trust the government." The legitimacy of civil society organisations is especially important in the institution of informal transitional justice as it influences participation by the affected communities. The lack of legitimacy of informal civil society driven mechanisms of transitional justice and acceptance by the communities they work with may be due to concerns about leadership, funding or previous civil society initiatives that were deemed unsuccessful among other reasons.

In his work, Crocker (1998:502) identifies three models of civil society approaches to their respective functions; first, the anti-government approach which emphasizes civil society's freedom from state influence and domination; second, the associational approach which emphasizes non-profit and diversity of objectives within civil society and the third, a model that focuses on the communicative functions of civil society. The anti-government approach implies a civil society whose processes are parallel to those of the state and government, which would pose challenges in a transitional justice setting where the state should provide institutional and material resources for mechanisms of redress. This anti-government approach has also been defined by Andrieu (2010:549) as "the place where people and groups are free from government interference to pursue their own conceptions of good."

Crocker (1998:501) however critiques this approach to civil society in relation to transitional justice and argues that "it neglects the myriad ways in which government and non-governmental groups can work together and supplement each other's efforts…Government and civil society need not be at odds, and each can contribute to something important to democratization and transitional justice." In transitional justice, the anti-government approach to civil society has developed as a response to the absence of or inadequacy of the formal mechanisms of transitional justice, a scenario termed in Rubin (2014) as "transitional justice against the state." Another critic of the anti-state approach Sachikonye (1995:9), maintains that "Civil society does not exist independently from the state, there is an inter-penetration between the two…Civil society is situated in the rules and transactions which connect state and society". By virtue of being situated in a context with rules, the implication is that there are consequences for civil society when they do break them. The anti-state approach has largely been used by civil society organisations in the informal sphere of transitional justice in Zimbabwe and this is discussed

further in Chapter Five of this dissertation. Total disregard for the state by civil society would be detrimental to any transitional justice process as it may lead to strained relations between state and civil society. A highly antagonistic relationship between the state and civil society may lead to more time and resources being spent on thwarting the advocacy activities of civil society rather than dealing with the actual concerns of transitional justice such as setting up truth commissions or other mechanisms to deal with the past.

Under the associational approach which emphasises private and voluntary approach to civil society, the challenge in the implementation of transitional justice would be the prevalence of private group interests at the expense of others, for example collective revenge or forgetting, thereby limiting the scope of the process of transitional justice (Crocker,1998). The challenge of personal interest within civil society groups is also argued to be a major challenge in Africa as asserted by Pajibo (2007:293) "organisations are personalised around the founder (or founders) who usually serve as Executive Director or Chairman of the board." In such situations there often is very little room for divergent views and checks and balances may be ignored or nonexistent. This poses challenges where informal mechanisms of transitional justice are being implemented and may result in the abuse of some sectors of society. The third model which is concerned with the communicative activities of civil society promotes public conversation and supports the formation of public opinion. This is very important in transitional justice, as civil society is often the sphere in which the concerns of what happened in the past can be discussed and advocacy for something to be done undertaken. Civil society is also the place where public opinion about what should be done in order to deal with past violations of human rights can be gathered. According to Andrieu (2010:550) "Civil society groups are often the most vocal advocates of transitional justice, even though they are generally weak, disorganised and lacking in independence in post-conflict situations." Civil society therefore is an important platform for dealing with the concerns of transitional justice; its approach however determines whether it is successful or not in representing the interests of its constituencies.

While the work by Crocker (1998) provides a useful analysis of the roles of civil society in transitional justice as well as the interests that influence the manner in which they engage with issues of transitional justice, it fails to look at factors beyond the control of these organisations that impact on civil society's ability to participate and deal with issues of transitional justice.

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These factors include the political and legal environment in which they operate in which may have a negative or positive impact on their activities. Backer (2003:301) argues that the state's or international agency's choice in transitional justice approach or mechanisms influences the opportunities and need for civil society engagement. Some processes such as amnesties may not require input from those outside the structures of the state while others such as trials may require the submission of evidence that may have been collected by civil society organisations. Backer (2003) further asserts that processes by states and international agencies may not be the most effective in achieving the goals of transitional justice, thereby creating space for civil society actors to complement such efforts or to initiate parallel processes. There are however, questions about the processes of civil society, their accountability and political impartiality in implementing transitional justice programmes (Backer, 2003; Hearn, 2001). This has implications for the outcome of their participation in transitional justice initiatives, particularly in instances where they are parallel to those of the state. Backer (2003:311) argues that "civil society must neither be treated as a panacea, nor accepted without critical reflection". Some of the work on transitional justice and civil society, like the work by Backer (2003), questions the implications of parallel processes of transitional justice by the state and civil society, but does not go further into such analysis, leaving room for studies such as this one to enquire further on this.

2.5   The transitional justice discussion in Zimbabwe

Following the convening of the 2003 symposium on 'Civil society and justice in Zimbabwe' there has been thoughtful discussion on the prospects and options for post conflict justice in Zimbabwe in academic literature, including Machakanja (2010) who argues for restorative justice through reconciliation, and du Plessis and Ford (2009) who put forward the argument for a truth commission to deal with past violence in Zimbabwe. Chabvuta (2006) argues that these deliberations on transitional justice options for Zimbabwe were based on the assumption that a political transition would take place, which would allow another political party to take over from ZANU PF, thereby paving way for past human rights violations to be addressed. This proposition by Chabvuta (2006) is based on the notion of democratic transitions and transitional justice

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which posits that transitional justice cannot proceed while those most responsible for the violations still wield control over the state's coercive apparatus and is also concurred to by IIiff (2010). However, as highlighted earlier in this chapter, transitional justice has evolved and ceases to be the preserve of successor regimes dealing with the ills committed by a previous regime. Transitional justice issues are being dealt with during ongoing conflicts and governments that are responsible for gross violations of human rights are setting up mechanisms to deal with issues of transitional justice; despite their own involvement.

There has been consensus in the literature on transitional justice in Zimbabwe, for example Chabvuta (2006), Machakanja (2010), Eppel and Ndlela (2009) and du Plessis and Ford (2009), on the need for a process that deals with past human rights violations that have been characteristic of the country's political history. However, there has been no agreement as to what processes would be most appropriate. The discussion in this literature has largely focused on the most appropriate mechanism to dealing with past violations given the Zimbabwean context and justifying why these approaches would be most appropriate; in other words, what can and cannot be done in this unchanged "power matrix" that exists. For example, in their argument for a truth commission in Zimbabwe, Du Plessis and Ford (2009:4) assert that "the most obvious objective is to establish the truth about human rights abuses in Zimbabwe; that through an official truth body an accurate record of the country's past will be established, uncertain events clarified, and the silence and denial regarding human rights violations overcome." However, an opponent to truth commission process under largely unchanged political dispensation in Zimbabwe, Mashingaidze (2010:25), asserts that "a replication of [the South African Truth and Reconciliation Commission]…in Zimbabwe is impossible… because the major players …are beholden to political convenience and survival…" Similarly Bamu (2009) argues that, there can be no transitional justice without a change in regime. In skepticism of the 2009 negotiating process that culminated in the GNU, Bamu (2009) argues, "The current regime will remain in power and block meaningful efforts at accountability for past violations." Hence, the unchanged power dynamics in which government officials that are culpable of human rights violations remain in power has been a recurring aspect of the discussion on transitional justice in Zimbabwe.

Advocates of informal processes of transitional justice such as IIiff (2010) argue that where accountability through formal systems nationally or at the international level are out of reach, it is important to promote non-state locally based initiatives of dealing with issues of transitional justice. Similarly, Eppel and Raftopolous (2008) argue that, while a formal transitional justice process is not yet possible in Zimbabwe a lot of work can still be done by civil society in terms of advocating for accountability and participating in truth recovery. The contention by Eppel and Raftopolous (2008) of the impossibility of a formal process of transitional justice in Zimbabwe without a change in government however remains to be proved or disproved with the formation of the National Peace and Reconciliation Commission (NPRC); a replacement for the ONHRI. Established under section 252 (a) of the Zimbabwe Constitution, the mandate of the NPRC is broadly to ensure "post-conflict justice, healing and reconciliation" (Bere and Maguchu, 2014b). It remains to be seen whether this body will fill the gap of transitional justice in Zimbabwe. While the NPRC certainly meets the condition stipulated in Murray (2007) of being entrenched in the constitution, Bere and Maguchu (2014b) contend that its success "will largely depend on the caliber of the commissioners who will be appointed for the task." The independence of these individuals will determine whether the NPRC process is not merely for show but will address the issues of transitional justice arising from the past.

The state has had a dismal record of dealing with past human rights violations, including the Matebeleland massacres termed *Gukurahundi*[5] (1982-1987) in which there was no official form of accountability or proper form of acknowledgment by the state and the findings of the Chihambakwe commission of enquiry into the killings has never been released (Eppel and Raftopolous, 2008). This dismal record has also been part of the discussion on transitional justice in Zimbabwe including Eppel and Raftopolous (2008), Bosha (2014), Morreira (2014) who argue that the policy of letting "bygones be bygones" has been unsuccessful as issues surrounding past violence continue to resurface. According to Morreira (2014), "…in the ensuing years, Mugabe's insistence upon forgetting the past did not unfold as neatly as it was presented in his independence speech. Rather, the politics of remembrance and forgetting have been deeply

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[5] *Gukurahundi* is a Shona term that refers to the first rain of summer that washes away the chaff from the previous season. It refers to the killing of an estimated 10 000 people belonging to the Ndebele ethnic group by the state's Fifth Brigade allegedly to suppress dissident activities in the South of Zimbabwe during the early 1980s (Nyarota, 2006).

politicised and strategic in Zimbabwe." For other periods of violence both official and non-official amnesties have been established. Chabvuta (2006) cites official amnesties by the state which include the Clemency Order (1) of 1995 that officially pardoned those who perpetrated the politically motivated beatings and destruction of property during the violent 1995 elections; including those who had been convicted for these crimes. Clemency Order (1) of 2000 was also declared following the violent and disputed 2000 elections. These responses by the state have perpetuated impunity for state sponsored politically motivated violence hence, the recurrence of electoral and other forms of political violence in the country.

The gap of transitional justice in Zimbabwe has become wider over the years through new violations being committed with impunity, creating what Villa-Vicencio (2006) calls the "gap of injustice." A gap is a difference between "ideals and practice; image and reality" (Daly, 2003). The desire (ideal) for something to be done about human rights violations in Zimbabwe particularly those that took place during the 2008 electoral period has been expressed in many forums including the 2011 transitional justice survey carried out by the Zimbabwe Human Rights NGO Forum (ZHRNGOF)[6]. This desire has however not been met therefore leaving issues of accountability, acknowledgement and impunity unaddressed; hence, leaving a gap of injustice. It is however important to fully understand the nature of this gap as well as its implications in order to be able to fill it.

2.6   Conclusion

This chapter has presented the theories of restorative and retributive justice as they relate to accountability and acknowledgement for past gross human rights violations. A future secured by resolving the issues of the past is at the center of the transitional justice discourse. Through reviewing the theories of retributive and restorative justice under which the main transitional justice mechanisms fall, an understanding was gained of the goals of each of the mechanisms that fall under the respective approaches. While the restorative and retributive justice models of dealing with past violations of human rights are often viewed as divergent in terms of their

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[6] Transitional Justice National Survey – Peoples' Perceptions and Recommendations (2011) by the Zimbabwe Human Rights NGO Forum.

overall goals, it was argued by scholars such as Daly (1999) that this is not wholly accurate as restorative mechanisms also impose penalties on the offender just as with retributive justice. While the penalties imposed in restorative justice aim at repairing the damage caused by the offender to the individual and community harmed, retributive justice mechanisms aim at merely imposing punishment on the offender within the confines of the law.

Accountability and acknowledgements as key concepts in this research project have also been explained in this chapter. This has been done in order to give an understanding of the framework in which this research project was undertaken as well as well as to provide reflection on what the concerns or issues of transitional justice are in both ongoing and post conflict scenarios. The distinction between the formal and informal realms of transitional justice was also discussed in this chapter not only to distinguish between the two but also to give insight into how it has been done in other parts of the world, specifically in Rwanda.

The examination of the literature on civil society and transitional justice, in particular the work of Crocker (1998), shows that civil society's approach to its relationship with the state is an important determinant with regards to the role they play in transitional justice as well as the effect their work will have. On one hand, without regulation however civil society has the potential to be destructive rather than build peace and community cohesion as argued by Backer (2003). On the other hand a relationship in which the state and civil society cooperate and complement each other rather than antagonize each other is more productive and more helpful to the achievement of resolving the issues of transitional justice as argued by Crocker (1998).

 Key to the Zimbabwean debate on transitional justice is not only the roles of both the state and civil society in dealing with the past but also whether transitional justice is actually possible without a change in regime. While writers such as Eppel and Raftopolous (2008) and Bamu (2009) argue that formal processes of transitional justice are not yet possible in Zimbabwe without a change in regime, it remains to be seen whether institutions such as the NPRC will be able to effectively deal with issues of transitional justice emanating from the various epochs of political violence. As in the cases of Uganda and Zimbabwe, governments culpable for human rights violations can set up mechanisms to deal with issues of transitional justice. A genuine concern is whether these bodies can effectively and genuinely deal with the concerns of the victims or do they serve to protect the political interests of those who institute them.

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Chapter Three: Methodology

3.1   Introduction

This chapter outlines the approaches and research strategy and tools used in carrying out this research as well as the limitations and challenges faced by the researcher in using these methods. A qualitative research methodology was used to carry out the study. The study was undertaken within urban-based human rights civil society organisations in Zimbabwe working in the field of transitional justice. Structured in-depth interviews with field officers and other independent experts on transitional justice[7] were undertaken in order to gather the perceptions about informal processes of transitional justice practices carried out by civil society organisations in Zimbabwe.

This chapter will describe how qualitative research methodologies were used in this enquiry as well as the rationale for its selection by the researcher. The method of sampling as well as the motivation for its use will also be discussed in the chapter. Any issue of a political nature is often a sensitive topic of discussion in Zimbabwe even among the seemingly unfased and fearless civil society practitioners in the realm of human rights and democratisation. A discussion of the practical facets as well as challenges, including access to interviewees and their lack of willingness to discuss some of the pertinent issues of the study, will also be given. Finally, an outline of the research design is given at the end of the chapter. The discussions in this chapter are outlined under the following sub-headings; the research process: methods and considerations; sampling of respondents; and ethical considerations and experiences in the field.

3.2   The research process: methods and considerations

The concerns or issues of transitional justice in Zimbabwe, as in any part of the world dealing with past violations of human rights, are a complex topic. In order to unpack these complexities,

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[7] See interview schedule appendix 3.

qualitative methodologies were selected to carry out this study in order for the researcher to gain an in-depth perspective of the phenomenon under study as well as fully interact with and examine the multiple dimensions surrounding the topic. According to Morgan and Smircich (1993:491) "Qualitative research is an approach rather than a particular set of techniques and its appropriateness derives from the nature of the social phenomena to be explored." Similarly Hennink et al (2010:8) assert that qualitative research is "An umbrella term that covers a wide range of techniques and philosophies…it is an approach that allows you to examine people's experiences in detail, by using a specific set of research methods…" As an approach, qualitative research is inherently multi-method and these methods include respondent observations, group discussions, document/content analysis as well as in-depth interviews (Denzin and Lincoln, 2011; Hennink et al, 2010). Qualitative research makes use of the 'interpretive naturalistic' approach which seeks to study phenomena in their natural settings and aims at understanding phenomena based on the meanings people bring to them (Hennink et al 2011).

The empirical work for this study was carried out within civil society organisations in the Zimbabwean capital city Harare which work in the field of transitional justice between 3 and 17 November 2014. Interviews were carried out with field workers from the following organisations, ZHRNGOF Transitional Justice Unit, ZHRNGOF Public Interest Unit, Church and Civil Society Forum (CCSF), Evangelical Fellowship of Zimbabwe (EFZ). It was not possible to interview field officers from one of the key organisations dealing with issues of transitional justice in Zimbabwe; Heal Zimbabwe Trust. However, an informal discussion was held with one field officer who also offered research and activity reports about their work.

These organisations have their head offices in the capital but also work with partners from other organisations who work in various areas around the country. Interviews were scheduled a month in advance so as to avoid missing the field officers during periods in which they are carrying out their work with communities outside Harare. However, many of these appointments had to be rescheduled or cancelled due to the unavailability of the interviewees when the researcher arrived in Harare. Structured in-depth interviews which took approximately forty minutes each were used for the discussion with field officers. Structured in-depth interviews can be described as a conversation with a set purpose in which a guideline[8] for the conversation is prepared

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[8] See interview guides in appendices 1 and 2

beforehand (Legard et al, 2003). This method of collecting data was selected because it allows the researcher to interact with those who implement informal transitional justice programmes in a structured method allowing the researcher to focus the discussion on the particular issues the study seeks to investigate as opposed to having an unstructured discussion with the risk of deviating from the focus of the study. Structured in-depth interviews also allow the researcher to probe deeper into a respondent's answer and link it to contextual factors by probing for aspects such as beliefs and opinions (Legard et al, 2003).

Secondary sources of information were also used to feed into the study and these included reports by civil society organisations, newspaper articles, commentaries by some transitional justice practitioners in Zimbabwe as well as academic literature from the field. As argued by Denzin and Lincoln (2011:4) "…qualitative researchers deploy a wide-range of interconnected interpretive practices, hoping always to get a better understanding of the subject matter at hand…each practice makes the world visible in a different way." The aim of using both secondary and primary data was to gain a better understanding of the issues of transitional justice as well as informal mechanisms of transitional justice and to be better able to interpret the findings of the empirical work of the study. Secondary data was also used to fill in where primary data could not be obtained due to the unwillingness or unavailability of some of the selected interviewees.

The decision of how to approach a study depends upon what is asked, and this is determined by the setting or environment in which the research is to be carried out as well as what the researcher is able to do in that setting (Denzin and Lincoln, 2011). Apart from the numerous ethical considerations in dealing with victims of violence, in a political context where those who are largely responsible for these past violations are still able to inflict further harm or suppress the discussions around these issues, it is often quite challenging for a researcher to engage with those affected by the violence as well as those who work with them. This puts a limit on the data a researcher can access, determines what can be asked and also influences the geographical spread of a study. Due to the general fear and sensitivity surrounding the discussion of issues of transitional justice in the Zimbabwean context, the researcher opted to speak to civil society actors who are responsible for implementing informal mechanisms of transitional justice as opposed to the recipients of the programmes. Members of civil society were also selected for the

purposes of this study to ensure that the questions posed by the researcher were reliably and competently answered due to their knowledge and experience with the subject matter (Babbie and Mouton, 1998). Through documentation of their work, practitioners in the field are also able to provide more accurate data on statistics and dates (Babbie and Mouton, 1998). Independent experts and former practitioners in the field of transitional justice and human rights were also consulted through the use of a second set of questions, in order to gain a more balanced perspective of the subject under study rather than corroborate what the field officers discussed in their interviews. These individuals were former human rights lawyer Prosper Maguchu, former transitional justice and human rights activist Tendai Chabvuta and human rights activist Dewa Mavhinga of Human Rights Watch. This process of using different data sources as applied in this study is referred to as triangulation.

Denzin and Lincoln (2011:5) posit that "Triangulation is not a tool or strategy of validation but an alternative to validation…The combination of multiple methodological practices, empirical materials, perspectives and observers in a single study…[is] a strategy that adds rigor, breath complexity, richness, and depth to any enquiry." While the method used to collect data from civil society and the experts who are not working in the field in Zimbabwe is the same (structured in-depth interviews), their difference in context and experiences makes their perceptions different. The use of a different set of questions for the two groups also enhanced the research process. It was important therefore for this study to apply this form of triangulation together with the use of secondary sources of data. Triangulation, according to Flick (2004:178), refers to "the observation of the research issue from (at least) two different points … [often by] applying different methodological approaches…It combines data drawn from different sources, at different times, in different places or from different people."

Quantitative research methodologies have been viewed as superior to qualitative approaches due to their ability to eliminate the researcher's bias or subjectivity (Taylor and Trujillo, 2001). However, Denzin and Lincoln (2011:5) argue that "objective reality can never be captured. We know a thing only through its representations." Total objectivity in capturing issues of post conflict justice is always a challenge as it is difficult to separate feelings and emotions from the perceptions that are captured in the research process. This is a challenge not only for the researcher but also those from whom opinions and perceptions are being solicited. Civil society

in Zimbabwe has been at odds with the state from the late 1990s and it has largely created the perception of having taken on what Crocker (1999) asserts as the 'anti-state' approach to civil society processes. With the highly polarised state of political affairs in Zimbabwe (Mavhinga, 2014), even in those organisations that ought to be impartial, there is a tendency to pick sides thereby influencing the responses in the interview process. However as argued in Hennink et al (2010:9) it is the role of the qualitative researcher to apply methods that "seeks to embrace and understand the contextual influences on the research issues." Through understanding the context in which civil society organisations in Zimbabwe operate, the researcher was better able to interpret the responses given in the interviews.

3.3   Sampling of respondent organisations and the interview process

As already highlighted earlier in this chapter the empirical work for this study was carried out within organisations with a human rights and transitional justice focus as well as with other independent experts and former practitioners in the field. Purposive sampling was used to get the initial set of respondents. Purposive sampling is a technique in which according to Marshall (1996:523), "The researcher actively selects the most productive sample to answer the research question. This can involve developing a framework of the variables that might influence an individual's contribution… based on the researcher's practical knowledge of the research area, the available literature and evidence from the study itself."

Field officers who implement the various informal processes of transitional justice within communities, including unofficial truth projects or memorialisation, were selected for this study because they have the practical knowledge and experience of the phenomena under study and are best placed to answer the research questions as compared to say, support staff within the same organisation. Field officers also document their work within these communities making them competent to answer the factual questions of the research such as the number of people who have taken part in the informal process as well as dates or timelines for these activities. Other experts in the field who were also interviewed for the study were selected purposively for their knowledge on the phenomena under study, their experiences and interaction with similar

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processes through other studies as well as the work they have done in the field of transitional justice in Zimbabwe and other parts of the world.

While an initial set of organisations dealing with informal processes of transitional justice had been drawn prior to the fieldwork process, the researcher also asked for referrals to organisations in the same field following interviews with members of this initial set. This technique is referred to as snowball sampling. Snowball, according to Babbie and Mouton (1998:167) "refers to the process of accumulation as each located subject suggests other subjects". This technique is usually used where subjects of the targeted population group are difficult to locate or where the information to be collected is of a sensitive nature and there is a risk that respondents may be unwilling to participate in the study due to uncertainty of how the information will be used (Penrod et al, 2003; Babbie and Mouton, 1998). The often insecure environment in which human rights based organisations in Zimbabwe operate in due to clamp downs from the state (Mavhinga, 2014), has made these organisations very cautious of the information they share and with whom. Therefore, it was important for the researcher to get referrals from the organisations where a rapport had been established in order to enhance the chances of participation in the study.

3.4 Ethical considerations and experiences in the field

The empirical work for this study was carried out over a period of two weeks. The first batch of face to face interviews which were four in total, all with field officers from the mentioned organisations were done in Harare over a one week period and an additional four interviews were done on Skype over a period of two weeks. The ZHRNGOF was the starting point for the researcher and from there subsequent appointments were made. It was rather difficult for the researcher to secure all the requested interviews, even those that had previously agreed to participate before the researcher had travelled to Harare. One of the concerns raised by one of the respondents was that researchers from foreign institutions come to research on Zimbabwe and yet they never disseminate their findings to respondents and other stakeholders. The researcher

took note of this and hopes to disseminate the findings to the organisations and individuals who took part in the study.

Participation in this research was done on an entirely voluntary basis and anonymity of the individual field workers was kept and codes representing each of them were used in the final dissertation. Names of the independent experts and organisations represented by the fieldworkers were disclosed upon securing verbal consent from them. A consent form[9] was given to the respondents for signing prior to the in-depth interview process and verbal consent was acquired from interviewees who were interviewed through Skype. The purpose and uses of the research data was explained to the respondents prior to the interview process. Authorisation was also sought from the respective organisations to use data on their processes and mechanisms as well as to interview the practitioners in the field. Consent was also sought to audio record the interviews to enable the researcher to refer back to the interviews during data analysis and transcribing as well as to allow for storage of the data as required by the University of Pretoria. Respondents were however, given a choice on whether or not they want their interviews to be recorded. Where respondent did not want to be audio recorded, the researcher took extensive notes to capture the data, although it was sometimes difficult to fully capture all that had been said. The Skype interviews were done on the researcher's return to the University of Pretoria where access to an efficient internet connection was available which is required for the software to function.

The transcribed data or texts were explored through thematic analysis, in order to identify specific patterns in the data (Braun and Clarke, 2006). According to Braun and Clarke (2006:79), thematic analysis is "a method for identifying, analysing and reporting patterns (themes) within data." This method of qualitative data analysis was selected for this study because it offered the researcher greater potential to produce a detailed account of the data (Braun and Clarke, 2006). The transcribing of texts and analysis of data was done on the researcher's return to the University of Pretoria instead of shortly after the interviews as had been previously planned. This was due to the power cuts in Harare which made it very difficult to do any work during the evenings.

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[9] See interview schedule appendix 3

In carrying out this research one of the challenges the researcher faced in terms of the questions asked to the fieldworkers and experts, was the realisation that a more comprehensive assessment of the informal processes of justice could have been given by someone who had experienced violence as well as these processes first hand. This is especially in reference to measuring the effectiveness of informal mechanisms, their impact of the communities they take place in, as well as their contribution to building sustainable peace. Dealing with those who have been affected by violence is a very complex process as observed in Van der Merwe et al (2009:5), it "calls for very sensitive methodologies that do not harm (or further traumatise) those participating in this research." This researcher neither had the capacity nor resources to deal with the psychological and ethical concerns surrounding studies with trauma victims and hence, the effectiveness of the informal processes of transitional justice had to be measured from the perceptions of onlookers rather than those who actually experienced the trauma and participated in these informal transitional justice mechanisms. However, important analysis was given by both the experts on transitional justice as well as the practitioners on the ground. In particular, practitioners in the field gave an important perspective to the study due to their knowledge of both the theory and practice of transitional justice which is often lacking in the academic literature on the subject.

3.5   Conclusion

The methods chosen to carry out this research were picked for their potential to give the study depth as well as giving the researcher more flexibility in dealing with the complexities of the focus of the study. Through the use of structured in-depth interviews the researcher was able to capture a wider range of issues pertaining to the subject as compared to other methods such as questionnaires which would have limited the respondents. Structuring the in-depth interviews also limited room for diverging from the topic ensuring that both the researcher and the respondent stayed focused on the issues pertinent to the study. The structured in-depth interviews also helped the researcher to ask all the respondents in a particular category the same questions, enabling consistency with each target group as well as avoiding missing key questions. Working with referrals helped the research process as the researcher was able to

distinguish which organisations were engaged in transitional justice process before going to their offices. However, even after being referred by one organisation, an interview was not always guaranteed.

The researcher's inability to engage those who have been affected by violence as well as those who have taken part in civil society initiatives to deal with past violence was a major limitation of the study. Getting the perceptions of this group of individuals would have added depth to the study and a more substantive assessment of the impact that the work of civil society is having on the communities they are working with. However due to the lack of expertise and other resources to carryout research with victims of trauma, the researcher was unable to do so.

More than five years after the 2008 electoral violence the concerns of transitional justice surrounding that period remain pertinent but sensitive. Convincing Zimbabweans to speak freely about these concerns remains a challenge due to the fear of how information may be used. It was therefore challenging in some instances for the researcher to convince potential respondents to take part in the study. The negative attitude towards researchers from foreign institutions also contributed to how the researcher was received by some of the respondents. The onus is therefore on researchers to distribute their findings to stakeholders who have an interest in the final dissertation.

4

Chapter Four: The Gap of transitional justice for the 2008 electoral violence

4.1   Introduction

The identification of a gap entails that there is a disparity between the state of affairs on the ground and a perceived ideal or between 'what is' and 'what ought to be'. The gap of transitional justice in Zimbabwe for the 2008 electoral violence is not a unique phenomenon following periods of politically motivated violence in the country. Several gaps of transitional justice exist within the Zimbabwean polity emanating from politically motivated violence both in the post and pre-independence periods. Hence, this gap should be viewed in the context of a long history of 'injustice' brought about through official and unofficial means including blanket amnesties for the perpetrators of the violence.

 The provision of adequate remedies for gross violations of human rights is at the center of transitional justice discourse and where there is an absence or inadequacy of these remedies, the gaps of transitional justice exist.   According to Black's Law Dictionary (1996 cited in Antkowiak 2002:981), a remedy is "the enforcement of a right or the redress of an injury... that a party asks of a court." In transitional justice however, remedies can also be provided through non-judicial bodies. The right to remedies where a violation of human rights has occurred is recognised in all major human rights instruments including the Universal Declaration of Human Rights[10] which all United Nations (UN) member states are party to (Antkowiak, 2002). Mendez (1997:261) summarises these rights as "1. a right of the victim to see justice done; 2. a right to know the truth; 3. an entitlement to compensation and also to nonmonetary forms of restitution; and 4. a right to new, reorganised, and accountable institutions."

The rights outlined in Mendez (1997) correspond to obligations by the state to ensure that they are protected and promoted. States have obligations under international law to protect their

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[10]According to the United Nations Office of the High Commissioner for Human Rights (UN OHCHR), the Universal Declaration of Human Rights is a " Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217 A (III) (French) (Spanish) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected."

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citizens from crimes against humanity, and to provide redress where gross violations of human rights have been committed. As asserted in a report of the Office of the UN High Commissioner for Human Rights (2006:2), it is the "duty and obligation of the State to protect and guarantee human rights, to conduct effective investigations and to guarantee effective remedy and reparations." These rights and obligations are enshrined in international treaties and charters including the UN Charter and pillars of the international legal system which are international human rights law, international humanitarian law, international criminal law and international refugee law (UN, 2010).

Based on four pillars of transitional justice, set out in the mandate of the UN Special Rapporteur for Truth, Justice, Reparations and Guarantees for non-recurrence[11] this chapter explores 'What is' and 'what ought to have been' in the aftermath of the 2008 electoral violence. This is done in an attempt to identify and give insight into the various inconsistencies with regards to dealing with gross violations of human rights in Zimbabwe from the period under study. It is important to note that these pillars are not isolated concerns of transitional justice but linked to each other. Based on these pillars and the rights of the victims as well as the obligations of the state under international law, this chapter seeks to discuss the gap of transitional justice in Zimbabwe following the 2008 electoral violence. This is done in the sections on truth, justice, reparations, and guarantees of non-recurrence through institutional reform.

4.2   Truth

Focus by international bodies including the UN in terms of the right to truth has historically been on the missing and displaced particularly during the prominence of politically motivated disappearances linked to the South American political turmoil in the 1970s and 1980s (Mendez, 1997). This has however changed with the developments in international law to cover a wider range of gross violations of human rights. According to the Report of the Office of the United

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[11] According to the September 2012 'Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence', "The mandate of the Special Rapporteur, as established by the Human Rights Council in its resolution 18/7, is to deal with situations in which there have been gross violations of human rights and serious violations of international humanitarian law. The Council focused on measures intended to promote truth, justice, reparations and guarantees of non-recurrence and mentioned, specifically, individual prosecutions, reparations, truth-seeking, institutional reform and vetting of public employees and officials, or an appropriately conceived combination thereof" (Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, UN, 2012:4)

Nations High Commissioner for Human Rights (UN OHCHR) to the Economic and Social Council "The right to the truth implies knowing the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them" (UN, 2006:4). This definition of the right to truth covers the questions of 'who, where, what, how and why' of a human rights violation, an integral part in not only identifying those responsible for the violations but also their motives and the conditions under which the violations occurred. These details not only provide a fuller picture to the victims of the violation but also aid in legal processes where perpetrators of a violation are being brought to account. However, as highlighted in the 'Report of the independent expert to update the set of principles to combat impunity Diane Orentlicher', the right to truth is an inalienable right whether or not legal proceedings pertaining to the violation have been instituted (UN, 2005). Like with most crimes, details of gross violations of human rights are often hidden. Even where there are witnesses to the crimes, there are often many unanswered questions for the victims and their families. More so where the state has had a hand in the violations, there are often efforts to cover up the crimes and refute culpability. An inquiry into these violations is not only necessary in order for the right to truth to be satisfied, but it is also the obligation of states to investigate, and disclose to the victims and their families the nature as well as the circumstances of violations of human rights (Mendez, 1997).

In Zimbabwe, both in the pre and post-independence eras, the right to truth about gross violations of human rights has largely not been honoured or enforced by the state. This has fundamentally been due to the precedent set on the adoption of a policy of reconciliation and 'letting bygones be bygones' adopted by the then Prime Minister of the newly independent Zimbabwe, Robert Mugabe in 1980 (Morreira, 2014). It meant that violations committed by all parties to the war of liberation were not investigated and the official truth about what happened was largely determined by the 'victors' (victors' truth). The line of dealing with past violations adopted at independence became a norm following periods of human rights violations in the country for which the state was predominantly liable. These periods of violence include the *Gukurahundi* massacres in the Matebeleland and Midlands provinces in the early 1980s as well as electoral violence in the 1990s right through to the period under study.

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While the Chihambakwe Commission was set up to investigate the *Gukurahundi,* the findings have never been made public, therefore the full truth is still unknown about the massacres. Bosha (2014) argues "This suppression of information exacerbates victims' ignorance of the source and circumstance of their political injustice, particularly because they are left in the dark about why the *Gukurahundi* took place and where their loved ones that disappeared went to and why." Although the state seemingly obliged to investigating the violations in Matebeleland as required under international norms, without the disclosure of the findings of the enquiry, it remains a futile process as it did not fulfill the victims' right to truth. To date, the truth about the *Gukurahundi* remains untold at the official level. The main source of information about the massacres is an unofficial civil society fact gathering project by the Legal Resources Foundation (LRF) and the Catholic Commission for Justice and Peace (CCJP)[12]. At the official level *Gukurahundi* has only be acknowledged by President Robert Mugabe as "a time of madness" (Newzimbabwe.com, 9 July 2014), leaving a gap in the country's history and many unanswered questions not only among the victims and their families, but among the broader public.

While the 2008 electoral violence has been widely documented and reported on by civil society organisations and in the press as compared to other periods of politically motivated violence in Zimbabwe, there has been no official investigation into the violence and hence, no official truth or national narrative pertaining to the violence. The importance of truth has been revealed in studies such as the transitional justice national survey of 2011[13] carried out by the Zimbabwe Human Rights Non-Governmental Organisation Forum (ZHRNGOF) which showed that 22 per cent of the respondents believed that knowing the truth about the violations surrounding the 2008 elections as well as other periods of violence, was a priority for "national healing, reconciliation and integration."

The 'truth' in transitional justice discourse has largely focused on what is factual, what Morreira (2014) calls "factual truth-what happened when" as opposed to "moral truth-why a thing happened and who was responsible." This has meant that the truth in transitional justice has

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[12] The fact finding mission led to the release of a report titled 'Breaking the silence; building true peace: A report on the disturbance in Matebeleland and the Midlands 1980-1988' (Bickford, 2007).

[13] The ZHRNGOF conducted research between February and March 2011 to capture the recommendations and perceptions of individual Zimbabweans on transitional justice. 3 189 individuals were interviewed (ZHRNGOF, 2011).

largely been equipped for the legal justice system as opposed to restorative justice. In a context such as Zimbabwe where legal justice for violations of human rights is largely unattainable, factual truth alone will not suffice. Both factual and moral truths are necessary in providing a complete narrative of the violations that occurred during the 2008 electoral period. It can be argued then in light of the state's failure to carry out effective investigations following the 2008 electoral violence, that the right to truth for the victims and their families has been denied. The National Peace and Reconciliation Commission (NPRC) was established under the 2013 Zimbabwean Constitution seeking to facilitate reconciliation and truth telling and justice (EISA, 2014). Whether this broad mandate will be met remains to be seen once the commission is in operation. It is important for the truth to fill in the gaps and to answer the questions of the victims and/or their families.

4.3   Justice

The state has an obligation to prosecute perpetrators of gross violations of human rights under international and domestic law and this corresponds with the right of victims to effective remedies following periods of human rights violations. This obligation by the state links with the obligation to investigate violations of human rights which then enables the criminal justice system to provide legal remedy for such crimes. Retributive justice for crimes of gross violations of human rights has been a difficult task in Zimbabwe. This has largely been due to a combination of both *de facto* and *de jure* impunity. Impunity according to Redress Trust (2006:22) is "a concept wherein those that perpetuate human rights abuses are not held to account or are somehow held to be 'above the law'." Human Rights Watch (2011) defines *de facto* impunity as "impunity [which] takes place when the state fails to prosecute human rights abusers due to lack of capacity or political will… [And] *De jure* impunity occurs when laws or regulations providing immunity or amnesty extend and strengthen the impact of de facto impunity by limiting or making it impossible to prosecute a perpetrator for human rights abuses."

De jure impunity has been established in Zimbabwe through the passing of official amnesties following periods of politically motivated violence. Clemency Order No. 1 of April 18, 1988 was issued, for the crimes committed during the *Gukurahundi* (Human Rights Watch, 2011). Other official amnesties by the state following electoral violence which include the Clemency Order

(1) of 1995 that officially pardoned those who perpetrated the politically motivated beatings and destruction of property during the violent 1995 elections; including those who had been convicted for these crimes, as well as Clemency Order (1) of 2000 which was also declared following the violent and disputed 2000 elections (Chabvuta, 2006; Eppel, 2004). Following the 2008 electoral violence General Notice 85A/2008 Clemency Order No. 1 of 2008 covering the period between March 29 and June 16, 2008 was also passed (Human Rights Watch, 2011). It provided amnesty for violations such as torture and abductions and excluded murder, rape, and fraud. Despite the exclusion of murder, rape and fraud from the amnesty, very few cases were prosecuted largely due to inefficiencies within the justice sector and the lack of political will to do so. Human Rights Watch (2011) notes the following examples of the state's failure to investigate and prosecute gross human rights violations among a reported 200 politically motivated murders during the 2008 electoral violence: "Tonderai Ndira was abducted and killed by alleged ZANU-PF supporters in May 2008. His wife filed a police report but no action was taken by the police. Beta Chokururama, Godfrey Kauzani and Cain Nyevhe were abducted and killed on May 7, 2008, by suspected ZANU-PF supporters. Their relatives filed police complaints in the days after they were killed. No action was taken by the police." Official reprieves from prosecution for serious human rights violations over the years, have meant that state agents and other non-state actors acting with the acquiescence of the state in the various periods of violence were left unpunished for their crimes despite the state's obligations under international law.

De facto impunity in Zimbabwe following periods of human rights violations has largely been due to a lack of independence and credibility of the judicial system as well as the police. Morreira (2014) argues that "…the country's legal architecture has progressively been altered and disregarded over the last decade…partial application of the law, particularly as regards political violence, has occurred…" This partial application of the law has meant that the judicial system has become inaccessible to many victims of political violence particularly at the policing level at which the initial reports of violations are made. According to the ZHRNGOF (2012) partisan policing, lack of access to the police (due to distance) and the fact that the police themselves are chief among the perpetrators of organised violence and torture, are some of the major contributing factors to the challenge of impunity. Also reported by the ZHRNGOF (2012)

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following the 2008 electoral violence, is the harassment of some of their clients by the perpetrators of the violence as they tried to make police reports. There was also further intimidation without police protection for those that were able to report the violations, forcing them to withdraw the charges (ZHRNGOF, 2012). By virtue of having no official complaints made against the perpetrators of human rights violations, they cannot be prosecuted and punished under the criminal justice system. This therefore has left many victims of the 2008 electoral violence without any form of redress and some vulnerable to further violations.

As a result of both *de facto* and *de jure* impunity, many of the victims of the 2008 electoral violence continue to live in the same communities as the perpetrators of the violence (Human Rights Watch, 2011). The desire for accountability however, goes beyond the neighbour and perpetrator who still lives next door but extends to the politicians who are responsible for giving the commands for violence to take place. In a study carried out in Zimbabwe by Morreira (2014), some of the opinions that came from the people spoken to include this one; "We need a TRC here', 'we need to hear the truth like in South Africa but we must also prosecute'; 'we cannot let amnesty occur without some sort of reparation'; 'there is no justice without accountability of politicians." Such attitudes reveal that due to the perpetuation of impunity by the state over a long period, a gap of truth and retributive justice remains among many Zimbabweans. However, the form of accountability expressed in Morreira (2014) is largely unattainable due to the absence of an enabling environment both within the legal system and the unchanged power dynamics within the state. As aptly argued in Roht-Arriaza (1990:513), "Requiring states to investigate and prosecute the gravest human rights violations committed in their territory pulls together some of the thorniest strands of current human rights law." Essentially, the Zimbabwean state and government will not arraign itself neither will it allow those that acted with its acquiescence to be prosecuted. Impunity for human rights violations therefore, is not only a failure by the state to meet its obligations to prosecute crimes against human rights but it also denies the victims the right to see justice done.

4.4   Reparations

Under international human rights law, victims of gross violations of human rights are entitled to compensation as well as to nonmonetary forms of restitution and the state has an obligation to provide these reparations (Mendez, 1997). According to principle 31 of the UN updated set of principles for the protection and promotion of human rights through action to combat impunity as outlined in the 'Report of the independent expert to update the set of principles to combat impunity Diane Orentlicher ', "Any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the State to make reparation and the possibility for the victim to seek redress from the perpetrator" (UN, 2005:16). The possibility for the victim to seek redress includes through the criminal and civil justice systems of the state and reparation by the state includes truth for the victims as discussed earlier in this chapter, as well as material compensation for the violations suffered. According to David and Choi (2005:393), "Reparation, in common parlance, refers to financial and material compensation. However, many scholars and practitioners in the field of transitional justice use the term more generally to encompass not just a single act or mechanism but a process that has the purpose of relieving the suffering of and affording justice to victims by removing or redressing to the extent possible, the consequences of the wrongful acts and by preventing and deterring violations." Financial and material compensation is the focus of this section as the other categories of redress have been discussed in the other three sections of this chapter.

The Zimbabwean state has a poor record of providing material reparations for politically motivated violence. Apart from the controversial gratuities paid out to veterans of the war for independence in 1997, there has largely been an absence of restitution and compensation for gross violations of human rights in the country (Moore, 2003). This has been exacerbated by the lack of acknowledgement and accountability by the state for its role in the committing of gross violations of human rights over the past three decades including Gukurahundi, Operation Murambatsvina[14] and the various periods of electoral violence. The lack of reparations also extends to civil claims made against the state and individuals for human rights violations. Due to

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[14] "Operation Murambatsvina ('Operation Drive out Rubbish', though officially known as 'Operation Restore Order') was a government clean-up campaign aimed at removing shanty towns, slums, and illegal markets in Harare and other towns in Zimbabwe. The campaign started in May 2005 and continued for several months. More than 700,000 people were displaced …" (About African History, 2014).

the inaccessibility of the criminal justice system in terms of redress for the 2008 electoral violence, the civil justice system has been used largely with the assistance of local civil society organisations as an alternative for redress. While many victims have won claims against the state for violations such as torture and other forms of inhuman and degrading treatment, the state has defied the court rulings by not paying the victims what is due to them. According to Maguchu (2014), "There are hundreds of cases in which the government is refusing to honor civil remedies sounding in money (i.e. for financial compensation). Non settlement of civil debts by the government of Zimbabwe renders civil litigation against state institutions for delictual damages sounding in money amounts to a brutum fullmen (empty judgment) for the plaintiff." The failure by the state to honour judgments against it not only impacts on the rule of law and goes against international norms but also adversely affect the victims who are unable to get redress and also risk further violations and retribution.

The violations committed during the 2008 electoral violence included the violation of the right to property largely through arson and theft (Pigou, 2008) and this has left the victims in dire need of financial reparations in order to rebuild their homes and livelihoods. Those left with physical injuries emanating from the violence also need these financial reparations in order to pay for their medical bills and sustenance as some are no longer able to work. However, it is important to note that the loss (especially of life or limb) and suffering by victims of gross human rights violations cannot be assigned monetary value but are more of an acknowledgement of what they went through. As Carver (2000:52) asserts that"… the call for compensation payments … is not only (or even primarily) intended as restitution for the loss suffered, but more as a symbolic process of justice."

While there has been no political will by the state to honour judgments in favor of compensating victims of the 2008 electoral violence as well as other epochs of violence, it has to be acknowledged that the significant decline in the economy over more than a decade is a factor to consider. Chabvuta (2006:47) argues that "it is clear that Zimbabwe's economy has been in a downward spiral and that any efforts to give out money will cause further damage. Thus the kind of resentment that came with the awarding of war veterans gratuities by the Government in 1997 could be made worse this time." While this argument relates to a period prior to the 2008

electoral violence, it remains true in the current context. In most countries instituting material reparations for gross violations of human rights, the international community often plays an important role in funding these programs. However, there is need for a clear management structure for these programs to be successful (ZHRNGOF, 2013) and this requires political will to ensure compliance. It is also important to note that for any reparations programme for the 2008 electoral violence to take place, there is need for an official acknowledgement of the violations and preparedness to reveal the truth about what happened.

4.5   Guarantees of non-recurrence through institutional reform

Following periods of human rights violations, victims as well as society as a whole have "a right to new, reorganised, and accountable institutions" Mendez (1997). The state has an obligation to do this under international law in order to prevent the re-occurrence of human rights violations and strengthen the systems of accountability which are often compromised during periods of political turmoil. As outlined in the 'Report of the independent expert to update the set of principles to combat impunity Diane Orentlicher' Principle 36 of the UN guidelines to combat impunity states that "States must take all necessary measures, including legislative and administrative reforms, to ensure that public institutions are organised in a manner that ensures respect for the rule of law and protection of human rights" (UN, 2005:18). This includes removing from office those responsible for violations of human rights, vetting of those seeking appointment to public institutions, reforming the judicial and legal systems to ensure the rule of law, as well as re-training officers in these institutions in order to change attitudes and perceptions that have previously been perpetuated by human rights violations (Chitsike, 2012; Eppel and Raftopolous, 2008). According to Chitsike (2012:5) "Institutional reform… refers to the modification or redrafting of a country's legal framework and the reforming or rebuilding of its justice system (including institutions such as the judiciary, the police and prison services)."

In Zimbabwe institutional reform has proved to be a challenge not only following the violence of the period under study but for other periods as well. The lack of reform in Zimbabwe's institutions has been perpetuated by a culture of impunity. By rewarding and promoting those responsible for past gross human rights violations, the re-occurrence of violence has not been

curbed as seen by the involvement of the same actors in the different periods of violence. For example, at independence, Ken Flower the head of the Rhodesian Central Intelligence Organisation (CIO) despite his involvement in atrocities during the liberation war, was re-appointed to the same post and was later involved in the Matebeleland atrocities (Carver, 2000). Another prominent case is that of the now Commander of the Zimbabwe Air Force, Perence Shiri who was commander of the 5 Brigade responsible for the Gukurahundi massacres in the 1980s (Eppel and Raftopolous, 2008). Shiri was also part of the Joint Operating Command (JOC) which unleashed the 2008 electoral violence across many parts of the country. Principle 36 (a) of the UN guidelines to combat impunity states that "Public officials and employees who are personally responsible for gross violations of human rights, in particular those involved in military, security, police, intelligence and judicial sectors, shall not continue to serve in State institutions" (United Nations, 2005). The continued service and promotion of Flower and Shiri respectively clearly constitutes a violation of this norm. By keeping perpetrators of human rights violations in influential positions in institutions of the state, the culture of human rights violations continues and becomes institutionalised. It also sends a message to perpetrators of human rights violations will be rewarded in clear disregard of the victims and international norms.

Another challenge to the reform of institutions in Zimbabwe is the militarisation of these institutions through the appointment of retired army officers to the top post of many state institutions and parastatals. As argued by Eppel and Raftopolous (2008:12) "Much of the Zimbabwean bureaucracy has been militarised … with a vested interest in maintaining the status quo of impunity, in order to safeguard not just their freedom but also their excessive, corruptly gained wealth." Without civilian oversight of state institutions in Zimbabwe, reform is highly unlikely. The challenges to addressing issues of transitional justice including the lack of access to justice, truth and material reparation continue to be perpetuated. Even with the new constitution of 2013 and the legislative guarantees it provides through the formation of institutions such as the NPRC which seek to address issues of past human rights violations, without the political will and genuine reforms within state institutions, redress will remain a challenge.

4.6   Understanding the political gap of transitional justice in Zimbabwe

According to Tradeway and Hockwarter et al (2005:231), "Political will represents an actor's willingness to expend energy in pursuit of political goals and it is viewed as an essential precursor to engaging in political behavior." Hence, political will is what translates into practical action and implementation of policies and in the context of this study it is the translation of the norms and obligations discussed earlier in this chapter into policies and programmes for transitional justice. Brinkerhoff (2010) asserts that, "Though political-will can be expressed in spoken or written words (speeches, manifestos, legal documents…) it is only manifested by action." Therefore policy pronouncements without tangible action towards achieving the goals the policy seeks to achieve is futile. In this regard the gap of transitional justice in Zimbabwe can be viewed as being largely a consequence of the absence of political will.

The gap of transitional justice in Zimbabwe in terms of the lack of fulfillment of the norms and obligations that bind states following periods of gross human rights violations, have been argued by writers such as Dzinesa (2012) and Raftopolous (2008) to be a result of political patronage and privilege as well as a genuine fear of retribution by those implicated in perpetrating the violence. Dzinesa (2012:7) affirms that "There has been a glaring lack of political will among the governing parties to drive the process of transitional justice and reconciliation in Zimbabwe." This lack of political will can be assessed through the use of various components which show its presence or lack thereof. In order to do this, a disaggregation of the concept of political will into various components by Brinkerhoff (2010) is adapted in this section. Although Brinkerhoff's (2010) model was developed in order to measure governments' political will to deal with corruption, some of the set benchmarks also apply to transitional justice hence, the adaptation of these yardsticks for the purposes of this study. The components proposed by Brinkerhoff (2010) include government initiative; choice of policy/programme; mobilisation of stakeholders; public commitment and allocation of resources; application of credible sanctions and continuity of effort.

4.6.1 Government initiative

Government initiative as a component of political will is concerned with the source of impetus for initiatives for dealing with the 2008 electoral violence. Brinkerhoff (2010) argues that "Political will is suspect when the push for change comes totally from external actors. Some degree of initiative from country decision makers must exist…" The motivation by Zimbabwean state actors to deal with the concerns of transitional justice emanating from the 2008 electoral violence has been minimal. The push and demand for redress has come from non-state actors including civil society organisations, victims of the violence as well as members of the international community. While the formation of the Organ on National Healing, Reconciliation and Integration (ONHRI) could be regarded as an indication of political will to deal with the 2008 electoral violence, without the push of civil society and the MDC formations, this institution would not have been formed. Issues of redress for the 2008 violence formed part of the key demands for the signing of the Global Political Agreement (GPA) before the negotiation process began. This resulted in the inclusion of article 7 of the GPA in which ZANU PF and the two MDC formations committed that they,

> "Shall give consideration to the setting up of a mechanism to properly advise on what measures might be necessary and practicable to achieve national healing, cohesion and unity in respect of pre- and post-independence political conflicts' and 'will strive to create an environment of tolerance and respect among Zimbabweans and [ensure] that all citizens are treated with dignity and decency irrespective of age, gender, race, ethnicity, place of origin or political affiliation" (Government of Zimbabwe, 2008) .

While the commitment to article 7 can be gauged as a measure of the political will by the three parties to the GPA, this provision was less than satisfactory for some critics of the article including Machakanja (2010) and Dzinesa (2012). According to Dzinesa (2012:8) "Although Article 7 of the GPA acknowledges the culture of endemic violence and impunity in Zimbabwe, it is ambiguous in dealing with the fundamental issues of justice, reconciliation and human rights… the GPA is, perhaps predictably, muted about the issue of accountability for past atrocities." The language used in Article 7 of the GPA was also a source of criticism as it was non-committal to dealing with the key concerns of transitional justice that it was expected to address. Machakanja (2010:4) argues that "The critical key words of 'justice' and

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'reconciliation' are missing in the article. Whilst articles 7.1(a) and 7.1(b) do state that the 'government will ensure…,' this phrase evokes a sense of willingness but not commitment." The failure to commit to concrete strategies and to elaborate on the significant concerns of the 2008 electoral violence including justice for the victims was a clear sign of window dressing by the political elites.

Article 7 of the GPA and the subsequent formation of ONHRI can be viewed not as a measure of political will by state actors to deal with the electoral violence, but rather a response to calm the disquieted voices of the victims of the violence and civil society organisations representing them. In view of the fact that dealing with issues of past violence was one of the main demands by the MDC formations going into the negotiations, the outcome in terms of Article 7 of the GPA, had too many compromises and did not result in the addressing of the 2008 electoral violence.

The shortcomings or rather the non-committal stance of Article 7 of the GPA resulted in an ineffective mechanism being set up in the form of OHNRI. The lack of a basis in Article 7 to hold the state accountable for its failure to effectively deal with the aftermath of the 2008 electoral violence was key to the failings of ONHRI. Mashingaidze (2010:25) affirms that "This has resulted in many regarding it as a political gimmick to hoodwink a traumatised people-a national political placebo." Without committing to any concrete measures, state actors could then avoid dealing with many of the issues that needed to be addressed following the electoral violence, hiding behind the absence of a mandate to deal with, for example, issues of justice. Mbire (2011:22) notes that "The lack of clarity and properly defined mandate for ONHRI has greatly constrained its work in that ONHRI wields little power and has little room to maneuver in promoting national healing and reconciliation." The lack of clarity in terms of its mandate also meant that OHNRI could easily be vetoed by powerful state actors who were involved in the perpetration of the violence.

The provision for the establishment of the NPRC was made in the 2013 Zimbabwe Constitution and to date the body is still to be constituted. This has led to questions over the state's willingness to see the implementation of the body's mandate. Like the formation of the ONHRI, the formation of the NPRC may be argued to be the state's way to deal with the disquiets over the concerns of transitional justice.

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4.6.2   Mobilisation of stake-holders

This component involves the extent of engagement, consultation and mobilisation of stakeholders and can be assessed by looking at whether decision makers are reaching out to civil society and the private sector to advocate for the changes they seek to action (Brinkerhoff, 2010). Engagement, consultation and mobilisation by state actors on issues of transitional justice pertaining to the 2008 elections and other epochs of violence have been limited. Apart from the initial consultative meetings following the formation of ONHRI, state actors have had little constructive engagement with those affected by violence, their representatives in civil society and other stakeholders (Mbire, 2010).

The consultative processes for ONHRI can largely be viewed as a form of window dressing by the state towards complying with article 7 of the GPA. Not only was there no consensus among the three parties to the GPA as to the processes or strategies that would be employed to achieve national healing, reconciliation and integration, but the individual parties already had a position as to what would or would not be tolerated when they went into the consultative meetings (Mashingaidze, 2010). For example the ZANU PF representative in the ONHRI, Minister John Nkomo, when asked about impunity for war veterans during a consultative meeting responded angrily "What are you saying? The war veterans liberated this country. They liberated you from the hands of colonial rule, so why should we not think of them today…" (Mashingaidze 2010:25). Such responses to an attempt at engagement by a representative of a state body revealed the lack of incentive on the part of the state to impose sanctions on perpetrators of the 2008 electoral violence, a point which was significant among the demands of the victims of the violence and thereby reinforcing impunity for politically connected groups and individuals.

The state's failure to engage, mobilise and consult stakeholders in the dealing of violence emanating from the 2008 elections has resulted in the lack of consensus on how to deal with issues of transitional justice. There is a gap therefore, of what the victims need from a transitional justice process and what the state chooses to provide through the institutions such as OHNRI and the NPRC. The inability of the state to effectively engage stakeholders on issues of transitional justice, including the mechanisms they have set up such as ONHRI and the NPRC is an indication of the lack of commitment to addressing the issues that stakeholders need addressed. Without consensus between the state, the victims and their representatives as to what

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needs to be done to address issues of transitional justice in the aftermath of the 2008 electoral violence, the gap of transitional justice remains difficult to fill.

4.6.3   Public commitment and allocation of resources

This component of political will refers, as asserted by Brinkerhoff (2010), "To the extent that country decision makers reveal their policy preferences publicly and assign resources to achieve those announced policy and programme goals…" As highlighted in an earlier section of this chapter, political will can be expressed in written or spoken word, as well as in legally binding documents. The political rhetoric on issues of transitional justice in Zimbabwe has leaned towards reconciliation without truth and justice rather than retribution and accountability; largely it has been anti-transformation (Mashingaidze, 2010).   While the inclusion of article 7 of the GPA and subsequent formation of ONHRI was hailed by some authors including Sachikonye (2009), as an acknowledgement of wrongdoing and a sign of political will by the state to deal with issues of transitional justice emanating not only from the electoral violence but also from previous epochs of violence, this did not translate into action. For example in 2009 a presidential proclamation declared that,

> "In the spirit of the inter-party political agreement, I do hereby declare, set out and dedicate the 24th 25th and 26th of July as a period during which the nation may dedicate, our new spirit of nation-building, national healing, reconciliation and integration to inspire the country going ahead. To make sure Zimbabweans dedicate these days to measures necessary to ensure that the structures, agents and institutions that they control or liaise within and without Zimbabwe do not engage or support engagement in perpetration of violence or any other activities harmful to Zimbabwe" (Zinyama, 2012:142).

This proclamation gave the impression of commitment and willingness by the state leadership to ensure reforms at various levels that would ensure the non-recurrence of violence and an end to the violence that was ongoing. However, as was revealed by one respondent in this study later in Chapter Five, politically motivated violence continues to take place in many parts of the country, without the intervention of the state's security agents to stop it. State institutions that have been implicated in the 2008 electoral violence as well as other periods of violence in Zimbabwe have remained unreformed as discussed in section 4.4 of this chapter. The presidential proclamation in

2009 was criticised by authors such as Zinyama (2012:142) as "mere rhetoric" which was not representative of the conditions prevailing on the ground. The expression of political will without concrete action has been a stumbling block to filling the gap of transitional justice.

While the formation of the NPRC and the provision in the 2013 constitution may be viewed as an expression of political will by state actors through legally binding means, almost two years since the coming into force of the new constitution, the enabling legislation for NPRC is still to be passed; hence, it still has not been constituted. The lack of clarity as to where the resources to fund the NPRC as well as the length of time it has taken for state leadership to constitute and make the body operational is also arguably a sign of the lack of political will by state leaders. However, the issue of funding for the NPRC should not be viewed simply as a lack of will by the state but it also has to be examined from the perspective of "political can" which is defined by Malena (2009:8) as the capacity to implement.

The Zimbabwean state is heavily engrossed in external debt which it has been struggling to service, this has meant that the state has been unable to access funding from international monetary institutions to fund various sectors of the economy which have been on the decline over more than a decade (Newzimbabwe.com, 10 March 2015; African Economic Outlook, 2014). Therefore the failure by the state to provide a comprehensive outline of how the NPRC will be funded and what these funds will be spent on may be not a lack of political will but a lack of "political can". However, the lack of financial capacity to fund processes of the NPRC can be questioned in light of the state's perceived failure to prioritise the use of resources and allegations of corruption and misuse of public funds. For example, it was reported that over (USD) 2 million was spent on vehicles for senior members of the Central Intelligence Organisation (CIO) (Zimbabwe Independent Newspaper 9 January 2015). For ordinary citizens failing to access redress for violations against them and other social services including health care, this can be seen as an indication of the lack of political will to prioritise their needs. It can also be seen as rewarding the perpetrators of the violence, considering the CIO were implicated as perpetrators of the violence as captured in work such as Pigou (2008).

The naming of the NPRC as a public commitment to dealing with issues of transitional justice has also been critiqued by some civil society organisations such as the ZHRNGOF for reflecting the lack of political will by the state to address these concerns. At the draft stage of the 2013

constitution of Zimbabwe, the ZHRNGOF (2013:8) contended that the naming of the commission had grave omissions in terms of the expectations of the people they had spoken to in the 2011 national transitional justice survey, that is, truth and justice. In order to capture these expectations, it is the argument of the ZHRNGOF (2013) that the name of the NPRC should have included these two key terms as a sign of commitment to addressing the concerns of those affected by the violence. Hence, political will to effectively deal with issues of transitional justice through the NPRC was seen to be lacking by virtue of it not being explicitly capturing "truth and justice" in the name of the body.

4.6.4   Application of credible sanctions and choice of policy

According to Brinkerhoff (2010), "Well-crafted and enforced sanctions, both negative and positive, signal serious intent…Symbolic and/or selective enforcement points to half-hearted political will." As discussed earlier in this chapter, the lack of enforcement of sanctions has resulted in a culture of impunity, in which perpetrators of political violence are not brought to account for their crimes. This has been the case especially with high ranking officials within the state leadership and those considered loyal to keeping the state leaders in power (Eppel and Raftopolous, 2008). Positive sanctions or de-facto endorsements which benefited perpetrators of the violence including an official amnesty and elevation of those within the state leadership as reward for their part in the violence have been a significant set-back to the addressing of the concerns emanating from the electoral violence (Dzinesa, 2012; Eppel and Raftopolous, 2008; Mashingaidze, 2010).

Similarly Chitsike (2012:6) argues that "In Zimbabwe, institutional reform will have to include retraining of the security forces, as they have been implicated in the perpetration of violence and have failed to investigate cases of political violence." Hence, reform of state institutions is an important step to ensuring the application of credible sanctions for gross violations of human rights emanating from the 2008 elections. State initiatives to reform these institutions can be viewed as a positive sign of political will to deal with these concerns and the failure to do so as a sign of the lack of political will to create an environment that allows redress for the victims of the violence.

The choice of policy by the state to deal with issues of transitional justice is also an important indication of the state's willingness to provide redress for the victims of the 2008 electoral

violence. Brinkerhoff (2010) argues that a policy that is selected on the basis of assessment of cost and benefits against those of alternative options can be seen as an indication of political will by state actors to implement the chosen path. However, this is a difficult component to measure as the public is not often privy to these assessments by state actors.

As a choice of policy the NPRC, lacks consultative credibility and whether or not it has the most benefits as compared to other alternative policies cannot be established as the alternative options considered by the state were not made public. It is the argument of this research that transparency and engagement of stakeholders would be a more appropriate component to measure in assessing the willingness of the state to implement an effective policy. The time it has taken the state to implement its policy through an enabling legislation for the NPRC and making it operational can be seen as an indication of the lack of political will and political competence to do so as already presented in this chapter.

4.7   The political environment and transitional justice in Zimbabwe

The political, social and economic setting prevailing following the 2008 elections provided numerous challenges for transitional justice. Considering the demands of the victims of the electoral violence, Mashingaidze (2010: 24) contends that "For truth and justice to take place, there should be strong moral rejection of the former regime and a clear consensus that its system was bad and its agents guilty of moral wrongs." There was and there still is no consensus of what went wrong during the 2008 hence, there is no agreement on how to address the concerns for redress. The absence of reforms within state institutions and the imbalance of power following the signing of the GPA and the subsequent formation of the GNU did little to provide an environment where the demands of the victims of the electoral violence could be addressed (Mashingaidze, 2010). This scenario was aggravated following the end of the tenure of the GNU and a return to a ZANU PF parliamentary majority in 2013.

The absence of reform within the judiciary as well as the security services which were largely culpable for the violence made redress for the 2008 violence unlikely despite expressions of the will to do so by the parties to the GPA. Chigora and Guzura (2011:24) assert that, "The power-

sharing agreement which [set] up a coalition government for Zimbabwe [offered] little scope for dealing with past human rights abuses, denigrating the role of civil society and making only tentative mention of a mechanism to achieve national healing." The GPA provided a poor foundation for issues for transitional justice to be addressed as is often the case with power-sharing pacts in which the balance of power is heavily skewed towards the maintenance of the status quo. Wielenga and Bondo (2014:12) note that during mediation processes for peace agreements and political pacts, "there is often the lack of political will on the part of conflicting parties and the lack of agreement between local and external actors on the form transitional justice should take." This was the case in the negotiations that culminated in the signing of the GPA in Zimbabwe were issues of transitional justice were not prioritised at the negotiating table, making them difficult to pursue after the agreement had been signed.

Andrews (2008) argues that there is need for agitators for change to have access to as well as create space for reform and for there to be space for reform in the political system three critical elements should exist that is *acceptance, authority and ability*. *Acceptance* is a consensus on the need for reform, how it will be instituted and the monetary and social costs, while *authority* focuses on the presence of a legislative framework that allows challenging of convention and lastly *ability* which focuses the availability of skills to implement the specific programs for reform (Andrews, 2008). The MDC formations which had initially demanded redress for the victims of the electoral violence as a precondition to the signing of the GPA were not able to push for the reforms they sought once they were part of the state leadership. This is due to the absence of implementation mechanisms for the GPA (Matyszak, 2008). Krieger (2012:15) exemplifies how power within the GNU remained centered around President Mugabe during its tenure,

> "He controls the police, the security forces, and the intelligence agencies; signs all bills passed by the parliament before they can become law; chairs and chooses the cabinet; and can decide which Ministers are responsible for specific Acts of Parliament. He also has the power to proclaim martial law and public emergencies and can grant pardons. Reflecting its preservation of the status quo, the GPA did not require judicial and security sector reform, the disbandment of militia, and the repeal or even amendment of repressive laws all cornerstones of ZANU PF power prior to the formation of the IG

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[Inclusive Government]. As a result the opportunity for addressing the issues of transitional justice emanating from the 2008 electoral violence as well as other periods was not fully utilised."

Failure to explicitly state how issues of transitional justice would be dealt with as well as to make the provisions in article 7 of the GPA remained a sticking point for any efforts towards redress during the entire tenure of the GNU. With no enforcement mechanisms to hold parties to account in this regard, those that sought reform had limited space and support to see it through. As a result issues of transitional justice from the 2008 elections remained unresolved under the GNU. There was a lack of acceptance, authority and ability to create an environment in which transitional justice issues could be addressed.

The status quo was re-established in full in 2013 following the end of the tenure of the GNU and a return to a ZANU PF parliamentary majority. During this period, the new 2013 Zimbabwe constitution also came into force. Although the new constitution provided for the setting up of the NPRC, with a return to a ZANU PF majority in government, efforts to operationalise the body are likely to be frustrated. Essentially state officials who are culpable for the 2008 violence will not expose themselves to retribution; therefore, the return to ZANU PF majority in government does not present an enabling environment for issues of transitional justice to be addressed. Many of the challenges presented during the tenure of the GNU including the unequal balance of power are even more pronounced under the current dispensation. Space for reformers to push for institutional transformation and accountability for those responsible for the 2008 electoral violence as well as other epochs of violence, is significantly reduced. This also means that the enabling environment for political will to exist is also reduced (Brinkerhoff, 2010).

The type of transition that a political system undergoes is a key determinant in establishing an enabling environment to deal with past human rights violations. Negotiated political pacts as was the case in Zimbabwe following the signing of the GPA, present challenges for mechanisms such as prosecutions to take place due to the skewed balance of power that is often present in such settings. Prosecutions are likely to be blocked by those wielding political power who are culpable for human rights violations. The manner in which issues of transitional justice are dealt with is according to Huntington (1991) are determined almost completely by politics, the type of

democratisation process as well as the balance of power pre and post transition. Power was skewed in favour of ZANU PF during and after the negotiation process for the GPA and this made the push for justice for the victims of the electoral violence difficult. The state remained largely in the control of those who were responsible for perpetrating human rights violations.

Despite this lack of political will and challenges within the political environment, civil society actors have still engaged in processes to fill the gap of transitional justice. This approach comes with the recognition that the concerns of transitional justice still exist even where there has been no far-reaching change in the political system. The maintenance of the status quo brings major challenges to the implementation of transitional justice; however, some initiatives particularly those in the unofficial realms of the state can continue to take place to discourage impunity and possibly deter would be perpetrators of human rights violations.

4.8   Conclusion

The gap of transitional justice in Zimbabwe for the 2008 electoral violence is part of a long cycle of violence. The challenges of dealing with violations emanating from the 2008 electoral period are part of a historical precedent of failing to provide redress for victims of such violations. Despite the advances in international law which presses upon states the obligation to promote and protect human rights, the gap of transitional justice in Zimbabwe remains. The failure by the state to comply with its obligations under international law to provide redress for victims of gross violations human rights has extended this gap for the 2008 electoral violence.

From the discussion on the pillars of transitional justice, the obligations of states under international law and the rights of victims of gross violations of human rights given in this chapter, it can be seen that no one pillar is independent from the other. For instance, justice, material reparations and institutional reform are all dependent on the truth being told about the violations committed. Hence, the state's failure to comply with one obligation can impact on the fulfillment of other obligations and the protection of an even wider array of rights. Despite the challenges experienced by the victims of the 2008 electoral violence in seeking redress for gross violations of human rights, the desire among Zimbabweans to see some form of redress for the

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2008 electoral violence as well as other periods remains (Morreira, 2014). This desire is reflective of the gap of accountability and acknowledgement for human rights violations in Zimbabwe. However, the political conditions prevailing on the ground including the fact that there has been no change in government and a general maintenance of the status quo, has impacted on redress for the 2008 electoral violence through the perpetuation of impunity and secrecy about what happened in the past. On the one hand, the setting up of state led mechanisms such as the ONHRI and the NPRC by a state that is largely culpable for the violations that have occurred in the country's post-independence era violations, raises questions of whether these processes will fill or further enhance the gap of transitional justice. On the other hand, how will the ONHRI and the NPRC deal with the issue of official amnesties that have sought to block the truth and accountability for past gross human rights violations. These factors have influenced the development of alternative and informal processes of transitional justice in Zimbabwe.

The gap of transitional justice in Zimbabwe can be argued to be a consequence of the lack of political will to address the concerns emanating not only from the 2008 electoral violence but also from earlier epochs of violence including the Gukurahundi massacres. This lack of political will has perpetuated an environment that is not conducive for issues of transitional justice to be dealt with. Through its failure to consult and mobilise stake holders; provide resources and ensure effective sanctions for political violence the state can be seen as unwilling to engage with the concerns of transitional justice in an effective and sustainable manner as presented in this chapter. It was also presented in this chapter that the political environment in Zimbabwe was not conducive for issues of transitional justice to be effectively dealt with thereby perpetuating the gap of transitional justice. Without the necessary reforms of state institutions, impetus for addressing the concerns of transitional justice remain low as many of those liable for the 2008 electoral violence remain at the helm of these institutions.

Understanding the needs and concerns of transitional justice in each community before seeking to proffer solutions is important to a successful process; whether formal or informal. In other words, filling a gap requires knowledge of what the gap is in order to be able to effectively close that opening. Hence, understanding and dealing with the issues of transitional justice requires a

greater understanding of the concerns of the violated and the mechanisms that can be put in place to deal with these concerns in a manner that does not jeopardise the future.

Chapter Five: How civil society is filling the gap of transitional justice in Zimbabwe

5.1   Introduction

Following the signing of the Global Political Agreement (GPA) and its consummation through the inclusive government, discussion about issues of transitional justice for the 2008 electoral violence as well as other periods of violence experienced in the country gained prominence in both the civil society realm and academia. The state also joined in this discussion as pressure to deal with past human rights violations was exerted by civil society and the Movement for Democratic Change (MDC) formations. The Organ on National Healing Reconciliation and Integration (ONHRI) was set up under the GPA to deal with these concerns of transitional justice. However, the ONHRI for reasons described in earlier chapters, failed to make an impact, particularly among ordinary Zimbabweans who were most affected by the violence. This led to a civil society response in which various unofficial or informal approaches to seek some form of redress for the victims of the 2008 electoral violations were instituted. This chapter presents the findings from in-depth interviews carried out within four civil society organisations in Zimbabwe working in the field of transitional justice on how they have sought to fill the gap of transitional justice in Zimbabwe. These organisations are the Zimbabwe Human Rights Non-Governmental Organisation Forum (ZHRNGOF)'s transitional justice and public interest units, Heal Zimbabwe Trust (Heal Zimbabwe trust), Evangelical Fellowship of Zimbabwe (EFZ) and the Church and Civil Society Forum (CCSF). Mainly secondary data was collected from a fourth organisation, Heal Zimbabwe Trust, from which an interview could not be secured with a representative. However, a brief informal discussion was carried out in which some perceptions were gathered. Perceptions gathered from in-depth interviews with three former practitioners and experts on transitional justice and human rights in Zimbabwe are also presented in this chapter. Seven interviews in total were carried out[15].

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[15] See interview schedule appendix 3

This chapter focuses on how civil society organisations are filling the gap of transitional justice through various advocacy roles which involve engaging both the formal state structures as well as the informal community structures in section 5.1 to 5.4. These sections detail some of the initiatives and roles that civil society organisations have played in the field of transitional justice in Zimbabwe as shared by the field officers. Section 5.1 outlines the various advocacy and lobbying initiatives carried out by the respondent organisations and other stakeholders. Civil society's role in seeking accountability through litigation is presented in section 5.2 while civil society's various roles in communities affected by the 2008 violence is presented in section 5.3. Section 5.4 outlines the role being played by civil society organisations towards memorialisation while section 5.5 gives the respondents' perspectives on the National Peace and Reconciliation Commission (NPRC). Respondents' perspectives on the role being played by civil society in filling the gap of transitional justice is given in section 5.6 while section outlines the perspectives of the respondents on the challenges of dealing with the gap of transitional justice. Section 5.8 outlines respondents' perspectives on the future of transitional justice in Zimbabwe and section 5.9 concludes the chapter by tying together the findings presented in this chapter.

To protect their identities, the fieldworkers have been assigned a number and the acronym (FO) for Field Officers; hence they are referred to as FO1, FO2, FO3, FO4 and FO5. These are used to identify their different responses and perceptions. The actual names of experts in field who were interviewed for the study have been used with their consent.

5.2   How civil society is filling in the gap

In response to the aftermath of the 2008 electoral violence in which the state failed to effectively address the concerns of transitional justice emanating from this period, including accountability and acknowledgement, civil society organisations in Zimbabwe have stepped in to support individuals affected by the violence, as well as communities in which the violence occurred. They have also stepped up to campaign for state policy on transitional justice which can effectively deal with not only the concerns emanating from the 2008 violence, but other periods of violence as well. Civil society has done this through engagement of the formal state system as well as well as through informal mechanisms that have originated within the various communities they

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work with. Communities that civil society organisations have largely engaged with particularly in informal processes, are those that were most affected by the 2008 electoral violence. However, their work has also spread to other less affected communities as well as those that were affected by other significant epochs of violence including the *Gukurahundi*. Other engagements with victims of the 2008 electoral violence have been through walk in clients who have approached these organisations seeking legal and other assistance (Respondent FO1, 2014).

The activities of civil society organisations towards filling the transitional justice gap in Zimbabwe include trauma counseling of victims of the violence, memorialisation, providing civic education as well as training to state officials, facilitation of dialogue between aggrieved parties, lobbying and advocacy for transitional justice policy, providing legal aid to the victims as well as supporting community based initiatives among other initiatives. These initiatives are in response to some of the repercussions of the 2008 electoral violence including the loss of livelihoods, limbs and lives, as well as emotional and psychological damage suffered by the victims and their communities (Eppel and Raftopolous, 2008). These roles being played by civil society organisations resonate with the literature on the role of civil society in transitional justice reviewed in chapter two including Andrieu (2010:550) who identifies civil society as "innovator, facilitator, temporary substitute, educator or critic."

The formal state system has been engaged by civil society through litigation, training of judicial and law enforcement officials, as well as various advocacy and lobbying strategies which include presenting research findings and position papers to state institutions that are stakeholders in the transitional justice discussion in Zimbabwe (Respondent FO1, 2014). While the aim of civil society in engaging the formal state system is largely to influence policy on transitional justice, the aim of informal initiatives that have not been state sanctioned is to assist communities to deal with the impact of the violence and move on to a more peaceful dispensation. The informal mechanisms of transitional justice carried out by civil society organisations without the sanction or support of the state include memorialisation, providing support for rituals, mediating between victims and perpetrators of the violence, documenting human rights violations through interviews with victims, among other activities. These unofficial activities have not been a phenomenon unique to the 2008 electoral violence, but have also been carried out for other periods of violence experienced in the country. These include unofficial truth projects for the

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Gukurahundi massacres that happened in Matebeleland and Midlands provinces 1982-1987 including the report produced by the Catholic Commission on Justice and Peace and the Legal resources Foundation in 1997 (Bickford, 2007).

The following sub-sections will focus on the different roles civil society organisations have played in filling the gap of transitional justice in Zimbabwe through engaging both the formal and informal spheres, as shared by the respondents in the study.

5.2.1 The role of civil society in advocacy lobbying

Civil society organisations in Zimbabwe have played an important role in advocating and lobbying for issues of transitional justice from the 2008 electoral period as well as prior epochs of violence to be addressed. According to Reid (2000:1),

> "Advocacy" describes a wide range of individual and collective expression or action on a cause, idea, or policy…[And] Advocacy activities include public education and influencing public opinion; research for interpreting problems and suggesting preferred solutions; …public mobilizations; agenda setting and policy design; …policy implementation, monitoring, and feedback;…"

Many of these activities presented by Reid (2000) have been an integral part of the strategy of civil society actors in Zimbabwe towards pushing for issues of transitional justice to be addressed; with each activity eliciting a different response from state actors. Civil society has also played a role in lobbying for legislation creating institutions to deal with past human rights violations. Raffa (2000:1) asserts that "Direct lobbying is attempting to persuade legislators to enact or not enact a bill."

The environment of intimidation in which civil society organisations in Zimbabwe have been operating in as discussed in Chapter Four of this dissertation, has put them in a predicament over whether to engage the state in their work or not in (Kagoro, 2005; Sisulu, Richard and Kibble 2009). This has been the case particularly in the field of human rights in which the state has been a major perpetrator of these violations. Despite the challenges presented by operating in this environment, civil society organisations interviewed for this study revealed that they continued to engage state institutions and representatives on policy issues as well as through training

workshops and conferences in which they have invited them to participate in. As argued by Muvingi (2011:6) "Waiting for a post-conflict era could, therefore, prove indefinite. Rather than risk the perpetuation of impunity, civil society has risked engagement before radical political change." However, respondents said that the challenge with this form of engagement has been the absence of tangible results in terms of influencing policy although there has certainly been some breakthrough including the formation of the National Peace and Reconciliation Commission (NPRC).

5.2.1.1 Training and lobbying of state actors

Civil society organisations have advocated and lobbied for the creation of a state led mechanism that would deal with issues of transitional justice for the 2008 electoral violence as well as other periods prior to that. They have also campaigned for an end to impunity for politically motivated violence, the reform of state institutions including the judiciary, police and army in order to move away from a culture of violence and unaccountability for violence (Eppel and Raftopolous 2008; Chitsike, 2012). Respondent FO1 shared that,

> "We have invited magistrates, judges as well as representatives of the Organ on National Healing Reconciliation and Integration (ONHRI) to participate in our conferences and workshops. We have also invited members of parliament and councillors where we have had community meetings in their areas. They have been forthcoming and we have had good interaction with them except for when we have tried to engage parliamentary committees…they have not been very welcoming [Individual interview, 5 November 2014]."

The aim of this form of engagement with state officials and politicians is according to Brankovic (2010:9) a way in which "…organisations seek to influence policy by informing and pressuring officials, mostly in a non-confrontational and constructive manner…[And] involves developing relationships that members of an organisation or coalition have established with individuals in government and building new relationships." Apart from this official engagement with state institutions, lobbying can also be done in a more informal setting where civil society organisations seek to build relationships with various officials of the state who are more sympathetic to their cause (Brankovic, 2010). From the experiences shared by respondent FO1 above, it can be seen that this form of engagement requires cooperation from the parties that civil

society seeks to influence towards their cause. Without this cooperation and participation advocacy and lobbying efforts are futile.

Civil society organisations have approached these advocacy and lobbying initiatives as individual organisations or as coalitions and clusters of different organisations seeking to achieve the same goals. An example of a coalition based effort is noted by respondent FO1, in which he states that,

> "We [Zimbabwe Human Rights Non-Governmental Organisation Forum (ZHRNGOF)] have had a number of initiatives since the 2003 Symposium on transitional justice held in Johannesburg including the first and second 'International Conferences on Transitional Justice' held in 2012 and 2013 respectively. We have invited representatives of state bodies including the Organ on National Healing and Reconciliation (ONHRI) so that we may share perspectives on the direction policy should take and so that they also benefit from the expertise and experiences of both local and international civil society….because we invite people from other parts of the world who have grappled with the same problems to come and share with us how they did it [Individual Interview, 5 November 2014]."

While these conferences did not focus on the 2008 election violence exclusively, they discussed approaches and processes that could be used by stakeholders in the transitional justice dialogue in Zimbabwe to ensure redress for victims of the various periods of violence experienced in the country. Another example of a coalition based effort for transitional justice was shared by respondent FO2 the CCSF has been involved in

> "High level engagements with policy makers and other groups such as churches; engaging the state through traditional leaders and ONHRI as well as through the constitution making process that culminated in the 2013 constitution [Individual interview, 6 November 2014]."

Such coalition based efforts as highlighted by respondent FO2 above ensure the pulling together of resources including expertise and finances departing from the assertion by Andrieu (2010) as presented in Chapter Two of this dissertation that civil society is generally disorganised and weak in the aftermath of conflict.

Civil society has largely been portrayed particularly in state media as having taken an anti-state and antagonistic approach in dealing with issues of human rights and transitional justice as noted by Dewa Mavhinga in an article for the Zimbabwe Independent (Zimbabwe Independent, 23 May 2014), in which he writes about the misperceptions about civil society in Zimbabwe. However, engagement of the state through the ONHRI, legislature and the judiciary among other state institutions is taking place through training workshops, conferences as well as the oral presentation of various reports to parliamentary portfolio committees as shared by the respondents to this study. As has been largely documented in the media and academic writing including Sisulu, Richard and Kibble (2009), this relationship is not always amicable as shown by the harassment and unlawful arrests and detention and in some cases disappearances of civil society activists as a means to intimidate them as discussed in Chapter Four of this dissertation.

Despite these challenges in the operating environment for some civil society organisations, engagement with the state has continued. According to Sisulu, Richard and Kibble (2009), though the benefits of such engagement with the state may not be palpable it remains important to ensure that the state does not claim ignorance about issues of human rights in the country.

5.2.1.2   *Public education and influencing public opinion*

The role of civil society as an educator has not only been limited to state actors but to communities that have been affected by violence whom they engage with either through visits to their localities or as they come into these organisations as clients seeking legal aid for where politically motivated violence has been suffered. Respondent FO1 shared that,

> "This information dissemination is usually carried out through fliers and monthly bulletins discussing issues of transitional justice and human rights which are translated into the two main vernacular languages (Shona and Ndebele) as well as community workshops in which issues of transitional justice are discussed. For instance, we recently had one on the National Peace and Reconciliation Commission which was meant to make people aware of the new provisions in the constitution as well as to make them aware of the processes that are happening with regards to the setting up of this body [Individual interview, 5 November 2014]."

This role of providing information is in line with the role of civil society as an educator put forward by Andrieu (2010) as discussed in Chapter Two of this dissertation. This role is important in order to ensure that the public is aware of the options for redress that are available to them particularly where the state has failed to make this information available to all citizens.

When asked about the importance and relevance of disseminating such information and providing civic education, respondent FO2 argues that,

> "We have to keep people in the picture, tell them what is happening. The Zimbabwean government thrives on the ignorance of the masses so if we do not tell them that there is an NPRC or what it does, they will remain in the dark. We also have to create a safe space for people to discuss these issues without fearing that they will be arrested or attacked for their views [Individual interview, 6 November 2014]."

The sentiments shared by FO2 above corresponded with the views of the other three field officers who concurred that there was a gap of information about issues of transitional justice as the state has not embarked on a process of civic education for its processes including the National Peace and Reconciliation Commission (NPRC). By educating the public about issues relating to the NPRC, civil society organisations also play the role of a temporary substitute for the state which has the duty to play this role.

The creation of what respondent FO2 termed "a safe space" for the discussion of issues of transitional justice is in line with the associational approach to civil society which is presented by Crocker (1998) as a model to the operations of civil society in which public conversation and public opinion are supported and has been one of the roles that civil society organisations have played. Respondent FO2 shared that as they do their work,

> "The state largely does not interfere with the meetings we have in the communities, interference usually comes from a few gate keepers in these communities who believe that issues of transitional justice are opposition party issues and therefore have no space in their communities. The challenge, of course, will be to see the state take on board what people in the communities are saying [Individual interview, 6 November 2014]."

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Field officers concurringly noted that contrary to the perception among ordinary Zimbabweans that issues of transitional justice cannot be discussed in any forum without retribution from the state; there was seldom interference with community meetings held by civil society organisations.

5.2.1.3   *Research for interpreting problems and suggesting preferred solutions*

The lack of engagement between state actors and victims of the 2008 electoral violence as well as other periods of violence was presented by all respondents in the study as a stumbling block to the creation of an effective national programme to deal with issues of transitional justice. Respondent FO2 argued that,

> "The state has a wrong perception of what the people want, that is why they do not want to engage the people, they are scared of letting the victims speak out because they think they want trials and other forms of retribution. That is also the reason they do not want the term transitional justice to be used because they think it means retribution. The ONHRI has said they will not use the term because it is from civil society and it will open up old wounds [Individual interview, 6 November 2014]."

Both field officers and the independent experts on transitional justice in Zimbabwe who were interviewed for this study, concurred in their argument that, without extensive consultation with the victims of the violence, the state would continue to impose remedies that suited them or that were based on various assumptions and perceptions, rather than what the victims wanted. To fill this gap civil society organisations have taken on the role of enablers of some form of engagement between the state and victims of the violence through research aimed at capturing and understanding public perceptions on transitional justice. Respondent FO2 shared that this was largely achieved through

> "…. capturing their perceptions and attitudes about issues of transitional justice and then presenting them to the state through reports and briefs to parliament as part of our advocacy work. We also often ask these politicians to attend meetings we hold within their communities so that they can hear for themselves what the people have to say and hopefully take it to parliament for discussion with other law makers. We have also done a national survey on transitional justice gathering people's perceptions on transitional

justice and we have shared the final report with government institutions including the Ministry of Justice, parliament and ONHRI [Individual interview, 6 November 2014]."

Through the presentation of the victims' perceptions about how issues of transitional justice should be addressed civil society organisations ensure that the state cannot claim that they do not know how victims of the violence want the process to proceed an argument put forward by Sisulu, Richard and Kibble (2009) as highlighted earlier in this chapter.

However, this engagement has largely been one sided as state actors have seldom responded to the issues raised by the victims through their representatives in civil society as noted by respondent FO1,

> "The state's 'engagement' as you put it, with the victims of violence has largely been initiated by civil society which has sought to rope in state institutions and actors into the various initiatives they have set up to deal with the aftermath of the electoral violence. This has meant that state institutions have largely not called upon us as civil society organisations to input into their processes [Individual interview, 5 November 2014]."

As put forward by Brinkerhoff's (2010) model on political will and presented in Chapter Four of this dissertation, there is need for state actors to take some measure of initiative towards dealing with matters. The lack of initiative to engage victims and stakeholders by the Zimbabwean state therefore shows an absence of commitment by state actors to creating conditions and mechanisms that will effectively deal with the concerns of transitional justice for the 2008 electoral violence.

Respondent FO1 notes that ten groups of victims/survivors of the 2008 electoral violence as well as other periods of violence have also been engaged by the ZHRNGOF in all the country's provinces in a bid to gather their expectations which were to be presented to key human rights institutions including the Human Rights Commission, parliament and representatives of the NPRC. Other civil society organisations have also been involved in various consultations with survivors of the 2008 electoral violence as a means to capture what they would want to see in a national transitional justice process as well as what FO1 termed a "temperature check" before entering into some of the communities that were greatly affected by the violence to discuss issues of political violence. Respondent FO1 notes that

"This is a sensitive area [discussion of issues of transitional justice]; we have to do a temperature check. We ask the survivors to tell their stories, what they feel, their experiences, fears and hopes for the future. We do not record these sessions. The aim of all this is to allow the survivors to step back from the conflict and reflect on it. We do this in the presence of trained counselors who then do a debriefing session. We then present our findings in terms of recommendations from the survivors to state institutions such as parliament and ONHRI…. [Individual interview, 5 November 2014]"

Consultations with victims and survivors of the 2008 electoral violence and other periods of violence led to the writing of a civil society draft bill for the NPRC, with the aim of presenting it to parliament as noted by respondents FO4 and FO1 and this is a means of ensuring that the victims of the electoral violence participate in state led processes. While civil society has pushed for the inclusion of the voices of the victims in national policy, this form of participation is often ignored. Malena (2009:4) argues that "Although participatory governance practices offer important concrete benefits for citizens and state actors alike, initiatives that aim to improve public access to information, strengthen citizen voices and enhance citizen participation in governance processes are often faced with 'political wont'." This has been the main challenge in filling the gap of transitional justice in Zimbabwe as expressed by all respondents in the study who attributed the gap of transitional justice in Zimbabwe largely to the lack of political will to deal with issues of past human rights violations.

The absence of the citizens' voices has been blamed for the ineffectiveness as well as the lack of support for ONHRI, for example, which failed to make an impact in terms of the execution of its mandate. Human rights activist Dewa Mavhinga in an interview for this study notes that "The failure by the state to take onboard recommendations made by civil society is a major challenge to the effectiveness of state led transitional justice mechanisms [Individual interview, 10 January 2015]." Respondent FO1 noted that one of the concerns that were raised by relatives of deceased victims of the electoral violence was the need to have a process that would allow them to remember and honour those who were killed in the violence and civil society organisations have sought to address this through various processes of memorialisation as discussed in the next section.

5.2.1.4 Agenda setting and monitoring of policy implementation

Civil society organisations have been at the forefront of campaigning for the inclusion of the NPRC in the 2013 Zimbabwe Constitution by putting it on the agenda of the national consultative meetings that were held during the drafting of the new constitution. Respondent FO1 shared that,

> "We have been active in advocating for transitional justice policy in the new constitution and now we have been involved in victim and public consultations for the draft bill of the National Peace and Reconciliation Commission (NPRC)…We will also be monitoring all the processes relating to transitional justice through the National Working Group on Transitional Justice (NWTJ) which currently consists of 46 organisations [Individual interview, 5 November 2014]."

Civil society has however not always been given this opportunity to put issues of transitional justice on the national agenda nor to set the agenda as to how matters should proceed. The barring of civil society from the GPA negotiations was expressed by Dewa Mavhinga a human rights activist, as a missed opportunity to put the issues of transitional justice on the agenda; he argued that,

> "The opportunity to put transitional justice at the center of the national agenda was missed by the politicians who were party to the negotiations for the Global Political Agreement (GPA). The political actors shut out civil society organisations and the MDC's demands for redress for the victims of the electoral violence as a condition for accepting the GPA all fell by the way-side [Individual interview, 10 January 2015]."

Although Raftopolous (2013: XX) concurringly highlights the shutting out of civil society from the GPA negotiation process, he differs with Dewa Mavhinga on the implications it had and posits that "The result was an extremely ambivalent approach to the GPA sometimes resulting in the loss of opportunities to open up more political space during the period." From these divergent analogies given above it can be drawn that the relationship between the state and civil society has played an important role in shaping the manner in which the transitional justice agenda in the country has been shaped and opportunities to better deal with issues of transitional justice have been missed on both sides.

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Field officers interviewed for the study concurred in their view that the major challenge to their interaction with the state has been the lack of implementation of the recommendations made by the victims as well as their representatives in civil society. Respondent FO1 argued that,

> "The negative attitudes of political parties towards issues of transitional justice are the main challenge because this is what informs policies. State actors listen to what we [civil society] have to say about the need to deal with the 2008 violence and other periods of past human rights violations, but they do not act [Individual interview, 5 November 2014]. "

As argued earlier in this chapter, the success of advocacy and lobbying initiatives by civil society organisations is dependent on the cooperation of the individuals and institutions they seek to influence. From the discussion and perceptions by respondents FO1 and FO2 it can be seen that without the buy-in of those targeted by the advocacy and lobbying work on transitional justice in Zimbabwe has not necessarily had the desired impact. Engaging state representatives through meetings, conferences and workshops often means that civil society organisations have to involve officials who are already receptive to the issues being advocated for or junior officials who have no influence over policy issues (Brankovic, 2009). However, human rights activist Dewa Mavhinga asks

> "How can we engage in meaningful discussions or engagement when we are staring into the face of the perpetrators [Individual interview, 10 January 2015]?"

Similarly, respondent FO2 argues that,

> "The people responsible for the violence have captured the state and they will not create institutions that will bite them [Individual interview, 6 November 2014]."

Respondents in the study concurred that the fact that the same regime that is culpable for the human rights violations that took place in the 2008 electoral period are still in power was highlighted as a major challenge for an effective transitional justice process in Zimbabwe. These perceptions agree with the arguments put forward in literature such as Bamu (2009) and Muvingi (2009) who argue that transitional justice in Zimbabwe will not be possible without a change in political dispensation. However other literature such as Eppel and Raftopolous (2008) argue that

while some processes such as accountability through prosecutions may not be possible without a change in government, other processes particularly those led by civil society are still possible. The latter perception appears to be the stance of most civil society organisations in the field of transitional justice in Zimbabwe which have continued to seek some form of redress for victims of the 2008 elections despite challenges within the political environment which include the absence of a change in political leadership.

Despite these challenges, it can be seen from the discussions above that engagement between the state and civil society organisations continues to take place and at times producing positive results as in the case of the establishment of the NPRC. As argued by respondent FO1,

> "Our advocacy work pushed the state to include the NPRC in the new constitution. Had it not been for this consistent work, an institution such as the NPRC would not have seen the light of day. We will continue with our hard work in pushing for this body to be constituted and for it to operate effectively and independently [Individual interview, 5 November 2014]."

The sentiments shared by respondent FO1 regarding the role of civil society in monitoring the implementation of policy are in line with civil society's role in advocacy as highlighted by Reid (2000) and show civil society's role in advocacy is a continuous process which does not end with the passing of a bill or policy. Ensuring that checks and balances are present in the implementation phase is also an important role of civil society.

5.2.1.5 *Unofficial Truth Projects*

As part of their advocacy and lobbying strategy, civil society organisations have embarked on what Bickford (2007) as shown in Chapter Two of this dissertation calls "unofficial truth project". To fill the gap of truth, unofficial truth projects for the 2008 electoral violence by civil society organisations have taken the form of extensive documentation of the individual cases of violence and torture that was carried out during the period under study. Some of these reports also proffered recommendations for the state in dealing with the aftermath of the violence

Documentation by civil society organisations has come in the form of weekly or monthly reports detailing various incidents of violence from different parts of the country and as shared by respondent FO2,

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"Incidents were captured during field visits when we went to affected areas after the violence had occurred because during the actual violence we could not access these areas but the incidents we captured as the violence was actually happening were captured from walk in clients who came to seek refuge from the violence. As you know they came mainly from the rural areas to the cities where incidents of violence were not as bad [Individual Interview, 6 November 2014]."

Examples of such documentation were the Monthly Political Violence reports produced by the ZHRNGOF and the Food Monitoring reports by the Zimbabwe Peace Project (ZPP) among others by various organisations.

Respondent FO1 noted that

"The documentation of individual cases at the time of the violence was mainly for the purposes of monitoring the situation and keeping detailed record of what was happening as well as creating awareness both locally and outside the country of what was happening [Individual Interview, 5 November 2014] ."

This approach to advocacy highlighted by respondent FO1 was an important source of information particularly because other public sources of information were either under the control or threat of the state making access to information difficult (United States Department of State, 2008 Human Rights Report: Zimbabwe). This has meant that truth telling has not been deferred for institutional reform or a change in political dispensation; it has been a sustained process that will also be useful for future transitional justice projects in the country.

The documented human rights violations and the presentation of these findings were also used in the aftermath to seek redress for the victims. In the context of seeking redress for the crimes of this period, these reports have become an important account of the violations and in some cases fulfilling the principles of truth telling by answering questions such as 'who, why, when and how' as discussed in the previous chapter in light of the state's obligation to investigate human rights violations and the rights of victims to truth.

However, this form of advocacy has not been well received by the state particularly where it has been done at regional and international forums such as the African Commission on Human and People's Rights (ACHPR). As stated by respondent FO1

> "The state's approach has been to ignore these submissions. However, at the height of the political crisis they were not too pleased with us and accused civil society of pushing for regime change and tarnishing the image of the country [Individual interview, 5 November 2014]."

The state's association of civil society organisations with the 'regime change agenda', as well as with the opposition MDC can be inferred from the sentiments of respondent FO1 as a major challenge in its advocacy and lobby work towards the addressing of issues of past human rights violations. Civil society has struggled to disassociate itself from the tag of being pro-opposition and this has caused state representatives including those in the afore mentioned instance, to dismiss genuine concerns of human rights violations as well as redress for these violations. Expressions of civil society as anti-state have been made by various state representatives in the media as well as at international forums. A case in point is cited by Bere and Maguchu (2014a) in which Minister Patrick Chinamasa before the United Nations Human Rights Council on 10 October 2011 in Geneva said "…Zimbabwe has more than 2500 NGOs who are paid to throw stones… these organisations [are] responsible for spreading falsehoods about Zimbabwe."

 Former human rights lawyer Prosper Maguchu argues that

> "These are not unfounded allegations. Civil society actors have caused this. You saw what happened after the signing of the Global Political Agreement (GPA), the number of civil society members that jumped ship to join government on an MDC ticket was amazing…This only served to confirm what the government has been saying all along…It then becomes difficult to have a meaningful discussion without this coming up [Individual interview, 12 December 2014]."

Concurringly, human rights activist Dewa Mavhinga in an article titled 'Zim civil society misunderstood' highlights the crossing of the floor from civil society to opposition politics by some actors as fuelling tensions between the state and civil society (Mavhinga, 2014). Muzondidya (2011:29) similar to Prosper Maguchu and Dewa Mavhinga asserts that "Most

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NGOs have sided with the opposition MDC and have doubled as office bearers in both the MDC and their civic society organisations." By the same token the lack of separation between the state and ZANU PF was also posed by respondents in the study as challenges for advocacy around issues of transitional justice. In the words of respondent FO4,

> "You see, ZANU PF is the state and the state is ZANU PF, you can't distinguish between the two; and that's where our challenge lies as much as we bring up all these other issues [Individual interview, 9 November 2014]."

The partisan nature of both state and civil society has been presented by respondents in the study as a challenge in the transitional justice discussion in Zimbabwe as the independence of both spheres has been compromised by allegiances and control by political parties. Respondent FO3 asserts that

> "There is a need to clarify the roles of both civil society and the state. There is need to separate them from partisan politics and instill principles of objectivity. The state should play its role in protecting the rule of law and the constitution, but rather we see one party controlling the state and now you cannot separate the state and the party [Individual interview, 8 November 2014]."

Dewa Mavhinga in his article (Zimbabwe Independent, 23 May 2014) similarly alludes to the need for civil society actors to realise that they can still be relevant without partisan allegiances. From the arguments and discussion above it can concurringly be inferred that there is need for both civil society and the state to step away from partisan influences in order for the concerns of transitional justice for the 2008 electoral violence to be effectively dealt with.

Human rights activist Dewa Mavhinga however laments the lack of momentum in civil society to use this important information gathered through unofficial truth projects and argues that,

> "It is not enough because of the gap of acknowledgement by the state and the failure to take on board the recommendations of civil society and other stakeholders. There are steps that remain missing. The push for accountability remains the missing link. What will they do with that body of evidence? So far it has not been used [Individual interview, 10 January 2015]."

Contrary to these perceptions that information gathered through unofficial truth projects has been unused for the purposes of accountability, litigation for the 2008 electoral violence is ongoing as is discussed in a later section of this chapter. Also differing to the sentiments expressed above by Dewa Mavhinga, Eppel and Raftopolous (2008) argue that this form of accountability is not yet possible under Zimbabwe's current dispensation, particularly for high ranking officials who were responsible for the electoral violence.

The assertion by human rights activist Dewa Mavhinga above can be interpreted as a call for civil society to call for prosecutions without waiting for a political transformation. Contrary to this notion former human rights lawyer Prosper Maguchu cautions against calling for prosecutions at this point and argues that,

> "Calling for prosecutions without a political transformation would be a futile process for civil society as state actors responsible for the violations would never allow them to take place. There is also the risk that once civil society starts calling for prosecutions, the gains that they have made in engaging the state and pushing for the formation of the NPRC and Human Rights Council (HRC) will all be lost. The state may simply decide to shut the space that had been opened to discuss issues of transitional justice once civil society tries to go after them [Individual interview, 12 December 2014]."

While many organisations including the ZHRNGOF documented these violations with the intention of seeking redress through litigation as well as providing a record of the violations, some organisations lacked a clear vision of what was to be done with this information as put forward by respondent FO2

> "After the electoral violence, there was a proliferation of non-governmental organisations (NGOs) seeking to document the violations that had taken place. There was funding for this from the funding partners and everyone wanted to be relevant and seen to be doing something during the crisis. There was no proper training for many of these people on how to document the violations and more importantly many had no idea of what then to do with this information after it had been collected. We then saw many weekly or monthly reports coming out from everywhere, and we do not even know whether these cases are true or not [Individual interview, 6 November 2015]."

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The sentiments expressed by respondent FO2 illustrate how apart from painting unofficial truth processes through documentation as being a means of securing funding by various NGOs, it also points to the polarisation within civil society in Zimbabwe itself not only on the basis of strategy but also in terms of competition for resources and space for advocacy among other issues. This polarisation was also attributed to by Saki and Katema (2011) as well as Muzondidya (2011) to concerns such as differences in ideologies and approaches of the different organisations on how to engage the state, power struggles within and among organisations as well as the lack of accountability within these organisations.

It is these differences in principle and methodology that has seen some civil society organisations including ZHRNGOF advocate for prosecutions of violators of human rights while others like the EFZ, for example, have as stated by respondent FO4 concentrated on "the healing of the individual through prayer and fellowship, because the state will not provide for this" [Individual interview, 9 November 2014]. These differences in perceptions and methods have also led to the labeling of some organisations by their counterparts on civil society as not "being part of the transitional justice movement." The researcher observed in informal discussions with some of the field officers there was a line between 'them' and 'us' in this regard as well as a perception by older more established organisations that the work being done by the smaller and emerging organisations was not as important nor did it fit into their precepts of transitional justice.

5.3   Civil society's role in seeking accountability through litigation

Given the state of the lack of independence of the criminal justice system as discussed in Chapter Four of this study, civil society organisations have sought accountability through civil litigation. This has been done by organisations including the ZHRNGOF and Zimbabwe Lawyers for Human Rights (ZLHR). As noted by respondent FO3,

> "The state has a monopoly over the criminal justice system and we use civil law to bring perpetrators of human rights violations to book. We usually sue for shock, pain and suffering as well as assault, loss or damage to property and humiliation of the victim caused by the perpetrator. Summons are issued to claim damages [Individual interview 8 November 2014]."

The aim of civil litigation for cases of violence committed during the 2008 elections was highlighted by respondent FO3, has been

"To compel the state to compensate victims of state sponsored violence. It has also been used to seek redress for human rights violations perpetrated by individuals with the acquiescence of the state and we have also used civil litigation to challenge impunity for the 2008 violence We [ZHRNGOF] have a portfolio of over 1000 cases before the courts currently and these emanated from the 2008 electoral violence as well as other periods of violence [Individual interview, 8 November 2014]."

Respondent FO3 further shared that

"At the international level, we have also filed communications or complaints through African Commission on Human and Peoples' Rights which operates under the auspices of the African Union, but this has only been limited to very few cases [Individual interview, 8 November 2014]."

From what was shared by respondent FO3 above, it can be seen that civil society efforts in seeking accountability for the 2008 electoral violence as well as advocacy has not been limited to state institutions within the country's boarders but has extended to regional institutions. Contrary to perceptions expressed by human rights activist Dewa Mavhinga, the discussion above also shows that there is significant push for accountability by civil society actors. The size of the portfolio of the ZHRNGOF as highlighted by respondent FO3 indicates commitment by civil society to bring perpetrators of the 2008 violence to account.

This approach to seeking accountability for the 2008 electoral violence has in some instances elicited a violent and confrontational response from the state in which human rights lawyers have been harassed and intimidated (ZHRNGOF, 2012). It has also been largely ignored by the state as seen in the large number of cases against it in which it has failed to pay the various claims awarded to victims of state sponsored violence as noted by former human rights lawyer Prosper Maguchu who also puts forward that,

"Zimbabwean civil society needs to re-look their strategy of getting redress from the state through civil litigation. It has clearly not worked and has given victims false hope only to

be disappointed when the state has not paid up. When it comes to suing ordinary individuals however, it is still an important approach [Individual interview, 12 December 2014]."

Similarly Sisulu, Richard and Kibble (2009:7) argue that "This…. [Is] perhaps [a] constraint in Zimbabwe's civil society…overemphasis on (and to extent dominance by) legal solutions and reforms in an environment of impunity." The absence of institutional reform particularly within the judicial system, pursuing litigation for the purposes of accountability and acknowledgement for the 2008 electoral violence has presented a challenge for filling the gap of transitional justice in Zimbabwe. Eppel and Raftopolous (2008) argue for the pursuance of transitional justice options that are feasible, given the political environment including truth recovery and seeking accountability through community based mechanisms as opposed to the state centered judicial system.

Former human rights lawyer Prosper Maguchu further argued that,

> "In the current environment, there is need for civil society to be tactical in their approach and pursue restorative justice processes to which the state will be more receptive. Civil society needs to avoid antagonizing the state otherwise no concessions towards issues of transitional justice will be made. It will only make them want to hang on to power even more so as to avoid retribution [Individual interview, 12 December 2014]."

The perceptions posed by Prosper Maguchu above points to the presence of powerful actors who are able to block not only prosecutions, but other transitional justice processes. This is in line with the argument in the literature reviewed in Chapter Two of this dissertation including Lessa et al (2014) who posit that prosecutions can only take place in the absence of strong veto players. In the Zimbabwean context such veto players who will block their prosecutions for culpability in the 2008 electoral violence exist at the helm of the state. Prosecutions of ordinary or low ranking individuals under the current political conditions will be the best form of accountability civil society actors can achieve.

While the state has not honoured judgments to pay claims against it and criminal prosecution particularly for high ranking political figures has not been possible, public interest litigation has had greater impact at the community level. Public interest litigation is in Black's Law Dictionary

(1990 cited in Jaichand, 2004:127) defined as "a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have a pecuniary interest or some interest by which their legal rights or liabilities are affected". According to respondent F03,

> "Public interest litigation has had impact on the communities in which victims of the 2008 violence reside. We have had feedback to say some of the perpetrators have fled the area after summonses have been issued. They have done this in fear and realising that they are not immune to prosecution for politically motivated violence as is often the perception of perpetrators in many of these communities. In some areas where violence was ongoing, we have had reports that the institution of litigation brought some form of sanity and peace as it made perpetrators aware that someone was taking stock and watching what was happening. It is also a form of recognition for the victims and an acknowledgement that they have been violated and the impunity enjoyed by the perpetrators thus far is being challenged [Individual interview, 8 November 2014]."

While the state's property cannot be attached for filing to settle claims made against it through civil litigation as highlighted above, individuals can have their property attached by the courts. A case in point is when the "Deputy Sheriff for Mount Darwin took 14 cattle and 10 goats belonging to some of the 13 ruling party activists fingered in the [2008] violence, to be used as compensation for their victims. This followed a default judgment passed by High Court Judge Garainesu Mawadze in December last year, following applications filed by three of the victims" (Daily Newspaper, 15 March 2015). On the one hand, this can be viewed as a case in which the state has upheld the rule of law and in which redress for human rights violations have been effectively executed. On the other hand it can be seen that only those who are not high ranking within state structures are being punished for the 2008 electoral violence while those who are well up the political ladder continue to enjoy impunity. It should also be noted that the case reported in the Daily Newspaper is only one of very few cases in which judgments have been effectively enforced by officers of the court as argued in Chapter Four.

Poverty among many of the perpetrators of the violence was cited by respondent FO3 as being a major challenge for accessing redress for the victims and notes that,

"Some of the perpetrators have nothing to their names so it is difficult to recover large amounts such as USD$4 000.00 from such a person. We have pushed for attachment of the little property they have as well as civil imprisonment, but at the end of the day it does not pay the damages to the victims who have been awarded [Individual interview, 8 November 2014]."

Although the property attached may not cover the amount of the claims awarded, the loss of scarce possessions by the perpetrators can be viewed as adequate retribution and deterrent in committing such crimes.

While perpetrators of the violence have struggled to pay claims against them, former human rights lawyer Prosper Maguchu notes that

"There was often an exaggeration of claims by the victims especially for loss of property. This was done in anticipation of being awarded a larger claim than was due to them. Hence, some of the victims of the violence have sought to manipulate the system and gain more than what they lost materially during the violence [Individual interview, 12 December 2014]."

The exaggeration of claims noted above can also be seen to be a consequence of the high expectations with which many of the victims view civil society processes as also highlighted later in this chapter by respondent FO2.

Respondent FO3 observed that

"Civil litigation is the preserve of the rich and it sometimes takes three years to fianalise a matter. Many of our clients come from marginalized areas and it easy to lose contact with them because they cannot afford to keep coming here to check on the progress of their matter [Individual interview, 8 November 2014]."

Concurringly, Brankovic (2011:12) argues that, "While these court cases can result in change bringing a form of redress to victims, raising public awareness about an issue and thus pressure on government and creating a precedent that might foster accountability and transparency in the future they are generally expensive, slow, and time-consuming processes". The observations of respondent FO3 point to the challenge of having an urban based civil society which is difficult to

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access. Muzondidya (2011) argues that this urban based civil society is also elitist and detached from rural communities and their struggles despite claiming to represent their interests.

Civil society organisations have also had to rely on their funding partners to fund these processes, another source of contention between them and the state. This tension is due to the fact that most of civil society's funding partners are of European or 'Western' origin and the state has declared many of these countries its enemies following the fallout from the land reform programme (Bere and Maguchu, 2014a). Without this funding, many of the cases that have gone before the courts and those still within the system would not be heard. Funding from the donor community is therefore critical to this form of advocacy.

Apart from the challenges and critics, civil litigation remains an important strategy in bringing accountability through challenging impunity and acknowledging the violations suffered by the victims as well.

5.4 Civil society's role in communities affected by the 2008 electoral violence

Communities around the world have processes in which they engage in to resolve conflict and provide redress for those whose rights have been violated. Following the 2008 electoral violence in which many people especially in rural villages were subjected to gross human rights violations, these community based approaches have become increasingly important in addressing the concerns of transitional justice including accountability and acknowledgement of the violations. This is due to the unavailability, inaccessibility and partiality of state driven initiatives for redress. Civil society has been involved particularly in rural communities where they have acted as facilitators of dialogue between victims and perpetrators, educated communities about state led processes dealing with issues of transitional justice; provided material support where it has been required. These roles have been in support of processes such as traditional cleansing rituals, memorialisation and community meetings aimed at addressing issues of the 2008 violence. These roles have been done with the support and permission of the traditional leadership which has jurisdiction over these communities.

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Although his organisation is not directly involved in processes such as the performing of rituals, mediation and memorialisation, respondent FO2 shared information about work being done by his colleagues in other organisations in which he has occasionally participated in through coalition based efforts. Respondent FO2 noted that his organisation has largely been involved in civic education and notes that,

> "These civil society organisations have not introduced new initiatives in these communities but have simply acted as facilitators and in some cases provided material resources where they are needed. They have also taken the opportunity to integrate their work into these activities through community education and offering mediation support [Individual interview, 6 November 2014]."

Iliff (2010), writing about grassroots approaches to transitional justice in Zimbabwe argues that civil society has opted for this route in seeking redress for the violations in 2008 due to the political detachment that these community based approaches present. However, this argument by Iliff (2010) may not necessarily be true in the highly politically polarised environment in Zimbabwe from which traditional processes can hardly be separated.

Civil society organisations in Zimbabwe including Heal Zimbabwe Trust have engaged with local communities and their leaders to promote these tradition and community based approaches as a means of addressing the issues of transitional justice arising from the electoral violence which continue to plague many communities. Respondent FO2 also said that,

> "These processes are what we call 'transitional justice for everyday' because they seek to deal with day to day implications of violence. After the violence ended, the victims and perpetrators still had to live in the same community, sharing the same water source and other public spaces… which is not easy especially for the victims as they may continue living in fear of further attacks [Individual interview, 6 November 2014].

The concerns put forward by respondent FO2 resonate with literature on restorative justice including Zehr (1995) who argues for the promotion of repair reassurance for the victims. Non-recurrence of violence is one of the main goals of transitional justice and dealing with the structures that perpetuate violence may be an important step towards ensuring this goal is achieved.

5.4.1   Civil society's role in traditional processes

The activities that have been carried out in the communities to deal with the electoral violence include *nhimbe* (Community weeding ceremonies), cleansing ceremonies for the spilling of blood, paying compensation stipulated by traditional leaders, among other practices that vary from region to region (Respondent FO5, 2014; Benyera, 2014). Heal Zimbabwe Trust as a civil society organisation has been involved in the process of holding *nhimbe* and cleansing ceremonies as well as other processes in various parts of the country that were affected by the 2008 electoral violence.

Nhimbe was traditionally practised among Zimbabwean communities whereby members of the community would come together as a collective to work in one individual's field or any other work that could be done by a collective (Ncube, 2014). It was a process that was meant to encourage unity among community members and placed emphasis on all members of the collective needing each other in order to prosper or move forward (Benyera, 2014; Ncube, 2014). *Nhimbe* or weeding ceremonies are community gatherings in which members of the same community come together to work, for example, in a field belonging to one community member and taking time in between this work to discuss challenges being faced in the community such as feuds between different families (Benyera, 2014; Holleman, 1952).

In an informal discussion with respondent FO5 who declined to participate in a structured interview, it was noted that in most cases where *nhimbe* have been held under the auspices of Heal Zimbabwe Trust, it is the perpetrators of violence and their families who have approached them to ask for facilitation of dialogue with those they had offended or harmed. Heal Zimbabwe Trust would then approach the traditional leadership of the area to lead this process as well as to make them aware of what was going on in their area of jurisdiction (Informal discussion, 9 November 2014). The *nhimbe* process seeks to reconcile the perpetrators and the victims through truth telling which is initiated by a family friend *(sahwira)* who probes and asks questions about the violation in question (Benyera, 2014:210).

The Director of Heal Zimbabwe Trust, Rashid Mahiya, notes that "such programmes like nhimbes/ilima, whereby people help one another to plough or harvest fields, in what has helped

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recreate the culture of dependency on each other, which is synonymous with Zimbabwean rural communities" (The Zimbabwean, 18 August 2014).

Heal Zimbabwe Trust as well as the traditional leaders have taken the opportunity to raise issues about political violence and educate the communities of its implications on their community while also giving those affected by the 2008 violence and other periods to come forward and speak about it (Kubatana, 2011). According to Kubatana (2011), during *nhimbes* held in collaboration with Heal Zimbabwe Trust, traditional leaders make use of the mini breaks to speak to the community about violence and its effects as well as emphasise the traditional values of unity and the sacredness of human life. This has largely brought about community acknowledgement rather than individual acknowledgement as is done in traditional courts.

However, civil society organisations are largely not involved in the latter processes which also bring to the fore accountability for crimes committed. These traditional processes also encompass truth telling at the community level, thereby creating a community or local narrative of the violence. Traditional courts often have both restorative and retributive components and traditional leaders have the unique ability to expend both forms of justice. The literature on the theory of transitional justice reviewed in this dissertation in Chapter Two indicates a legalistic and retributive bias towards transitional justice while subordinating restorative forms of justice. However, practitioners of transitional justice including the ZHRNGOF acknowledge the importance of restorative justice processes, particularly in an environment such as Zimbabwe where formal processes of justice have largely been inaccessible to victims of politically motivated violence.

According to respondent FO5,

> "In addition to holding *nhimbe,* Heal Zimbabwe Trust has also been involved in the facilitation of cleansing rituals for those who were involved in the electoral violence as well as the communities that were affected by the violence. Such rituals are based on religious and cultural beliefs in the African traditional religion [Informal discussion, 9 November 2014]."

The emphasis on the importance of collective responsibility is also made in various cultural rituals in other parts of the African continent including the *Mato Oput in* Uganda among the

Acholi people (Nabudere and Luutu, 2008). These rituals, as described by respondent FO5 are carried out to;

> "Appease ancestral spirits of the dead as well as those of the collective community for the spilling of blood and for the life that was lost. The spirit mediums of the area are the ones who perform the ritual and spill traditional beer on the ground while calling upon the spirits of the clan of the person who was killed in the violence. All members of the community regardless of political affiliation attend this ceremony as called upon by the local traditional leadership…it all ends with the sharing of a meal which we [Heal Zimbabwe Trust] usually make available [Informal discussion, 9 November 2014]."

The appeasing of the ancestors stems from the belief of the sacredness of human life which is also recognised in various African cultures (Nabudere and Luutu, 2008). This process described by respondent FO5 is in line with the restorative justice paradigm which emphasizes the values of community and healing and dialogue as described by Amstutz (2006) and highlighted in Chapter Two of this dissertation. These processes capture the beliefs and day to day practices of the community thereby having more potential of being accepted by the community compared to processes that are imposed from outside.

Respondent FO5 also noted that,

> "During these ceremonies, representatives from Heal Zimbabwe Trust as well as the traditional leaders take time at the end of the ceremony to talk about issues of political violence and discourage such violence. Traditional leaders also talk about the importance of unity in the community in line with their traditional way encourage traditional values of peace [Informal discussion, 9 November 2014]."

Such processes largely fill the gap of acknowledging that wrong was done and push towards the non-recurrence of violence in the future. Where the ritual is performed for the community and not necessarily initiated by the perpetrators of the violence, this serves as an acknowledgement by the community of what happened rather than acknowledgement from the individual perpetrators of the violence of the wrong that was done.

5.4.1.1 Civil society perspectives on the challenges with engaging the traditional system of resolving conflict

Respondent FO1 noted that,

> "Traditional leaders in some communities have been criticized as lacking political independence despite this being provided for in the legislation that sets up their offices and this has challenges for dealing with impunity and maintaining peace in these places [Individual interview, 5 November 2014."

Traditional leaders are recognised under the Zimbabwean constitution as the custodians of traditional practices and according to the ZHRNGOF (2012:8) "The Traditional Leaders Act, …should be appointed in terms of African Customary Law, designates the President as the official responsible for the appointment of chiefs… [And] the Minister of Local Government and National Housing is responsible for the appointment of Headman…" Their appointment by officials of the state has meant that their independence has been compromised through cooption into political party structures and activities. In dealing with issues of political violence, this has implications for the judgments given in traditional courts which may become biased.

Where civil society has sought to engage communities affected by the 2008 electoral violence, they have also met resistance from some traditional leaders as put forward by respondent FO1,

> "Traditional leadership in these communities is very powerful they are able to block activities on transitional justice including meetings to educate the people in their areas about this. People are also skeptical about participating in activities that have not been sanctioned by the traditional leadership as this can lead to fines or other forms of harassment from the traditional leaders… [And] when you want to do activities that involve rituals, you basically cannot do them without the sanction and participation of the traditional leaders; otherwise they become illegitimate in the eyes of the community [Individual interview, 5 November 2014]."

The legitimacy provided by the sanction of the traditional leaders as well as their participation in the activities in which civil society organisations are involved in is an important step to dealing with issues of past violence. Without the legitimacy provided by these chiefs and village heads, the work of civil society may not only fail to be accepted by the communities they seek to work

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with, but it also fails in changing the power dynamics that often perpetuate the structures of violence that exist in these communities.

Respondent F04 noted that the

"issue of legitimacy is not only a concern with civil society organisations coming into various rural communities, but some people within these villages have trouble accepting the legitimacy of their traditional leaders themselves as custodians of African customary law due to the abuse of their offices [Individual interview, 9 November 2014]."

Similarly respondent FO1 noted that when engaging the traditional systems, one of the main challenges has come,

"Where traditional leaders have been implicated as perpetrators of violence…They are not receptive to us coming into their communities and have treated us with great suspicion [Individual interview, 5 November 2014]."

During the 2008 electoral violence as well as other periods, traditional leaders in some parts of the country were accused of intimidating and harassing members of their communities in an attempt to influence voting patterns, while those who were seen as politically neutral were also subjected to the same by some members of their communities who were more politically influential at the time (ZHRNGOF, 2012). Respondent FO2 argued that,

"There is often little awareness when we go into these communities to hold awareness workshops, that traditional leaders have also been victims of political violence particularly those who have been accused of being MDC supporters. Although these are cases in the minority, they also exist and we find that these individuals are more receptive to our work when we go there [Individual interview, 6 November 2014]."

Both scenarios described by respondents FO1 and FO4 above have implications on how transitional justice initiatives by civil society are received by the traditional leaders.

Despite some of these challenges, field officers interviewed for this study all concurred that their programmes were generally well received in the communities they work with and experienced challenges with only a few leaders who dismissed their work.

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5.4.2 Civil society's role in working with survivors and bringing polarised groups together

Bringing victims and perpetrators as well as previously warring parties together in an effort to bring about peace and non-recurrence of political violence is one of the initiatives that civil society organisations have undertaken to deal with the 2008 electoral violence. According to respondent FO2,

> "The aim of these initiatives is to try and prevent the recurrence of violence by making communities aware of the negative implications of violence as well as providing them with a platform to talk about their differences and hopefully resolve them [Individual interview, 6 November 2014]."

Aiken (2008:14) argues that "The onset of violence has a powerful polarisation effect, broadening schisms between already disconnected groups and increasing the likelihood of continued violence." The difference in political patronage in the case of the 2008 political violence may have been used as a 'smoke-screen' in many of the attacks where underlying tensions between individuals or groups within the community may have fuelled them. The non-recurrence of violence and building sustainable peace is the main goal of these initiatives that bring victims and perpetrators together. Non-recurrence of violence is an important concern in conflict resolution and transitional justice theory and practice and is the "ultimate goal" of transitional justice processes (Aiken, 2008).

As stated by respondent FO1,

> "We have had activities such as the 'peace games' in which youth from the two main rival political parties have been involved. The ZHRNGOF was involved in organizing the games and the youth competed against each other in sporting activities such as soccer as a means of defusing the tensions among the groups and creating space for dialogue [Individual interview, 5 November 2014."

Similarly respondent FO2 shared that the Church and Civil Society Forum (CCSF) has been involved in creating space for dialogue in polarised communities through their community mobilisation cluster aims to "promote sustained dialogue and bring people who are polarised together to discuss divisive issues [Individual interview, 6 November 2014]."

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Heal Zimbabwe Trust has also reportedly started projects in some provinces in the country called Gardens of Peace, which bring together women from the two main political parties in Zimbabwe, ZANU PF and MDC, to work on a garden project while giving them an opportunity to interact and discuss issues affecting them including political violence (Voice of America, 6 October 2014). In an interview with the Zimbabwean newspaper, the director of Heal Zimbabwe Trust, advanced that,

> "Our aim is to bring communities together, after they were left miles apart by the violent campaigns of the past and we have done that by reaching out to even the perpetrators, who are themselves victims of unemployment and manipulation by politicians" (The Zimbabwean, 18 August, 2014).

The perceptions captured in the interviews above emphasis the diffusing of divisions different groups may have, concurring with the argument put forward by Aiken (2008) as highlighted earlier in this chapter that there is need to deal with these dividing which often divide groups into "them and us."

5.5   The role of civil society in memorialization

Memorialisation is an important part of confronting violence and moving from a violent past towards a more sustained peace (Ševčenko and Naidu, 2010). Respondent FO5 shared that,

> "Heal Zimbabwe Trust has been involved in what we call the 'Public Memorialisation project' in which we have erected tombstones and helped with the organizing of memorial services for those who were killed during the 2008 electoral violence. The memorial services are often done in partnership with other faith based organisations [Informal discussion, 9 November 2014]."

Between 2010 and 2011, Heal Zimbabwe Trust was involved in the holding of 100 memorial services in Mashonaland Central (Muzarabani, Chiweshe, Chaona and Mazowe); Midlands (Gokwe Gumunyu); Manicaland (Headlands, Rusape and Buhera); Masvingo (Zaka, Mwenezi); Mashonaland East (Mutoko and Murehwa) as well as Harare and laid 100 tombstones in the

process (Heal Zimbabwe Trust Public Memorialisation project, 2013). To support these initiatives, on one hand as shared by respondent FO4,

> "The Evangelical Fellowship of Zimbabwe (EFZ) has also assisted with "pastoral care" in which our members and ministers of religion have held memorial services for those who were killed in the violence and provided counseling and prayer for their families. We do this because we believe in the healing of the spirit and healing the individual to allow them to move forward [Individual interview, 9 November 2014]."

On the other hand, Heal Zimbabwe Trust argues that the laying of the tombstones on the graves of those who died in the 2008 electoral violence, is in line with the state's commitment to "promote tolerance, non-violence and dialogue" (MISA, 15 September 2010).

Respondent FO5 told the researcher that,

> "Many of those killed during the 2008 electoral violence were not given proper burial or were buried after their bodies had already started to decompose because it was often not possible for their families to hold proper funeral wakes or memorial services as is the practice in most Zimbabwean communities. This is because during the violence the perpetrators threatened them and in some cases prevented them from claiming the bodies of their relatives from where they had been killed or where the bodies had been just been dumped by the killers [Informal discussion, 9 November 2014]."

Having been prevented from mourning in accordance with their beliefs and values may have had implications on the ability of the relatives of the victims in reaching closure following such traumatic events.

Machakanja (2010:14), who argues that,

> "Taking cognisance of the cultural context of the Zimbabwean setting, memorialisation of the past is important. This would require physical reminders in the form of monuments, ceremonies, memorials or other ritual occasions aimed at contributing to the acknowledgement as well as the setting of a general ethos of healing."

This argument by Machakanja (2010) concurs with the work being done by civil society organisations including Heal Zimbabwe Trust and EFZ towards memorialisation for the 2008 electoral violence. This contribution to acknowledgement is an important step towards filling the gap of transitional justice in the country.

However, memorialisation does not always bring about sustained peace and harmony within a society as put forward by former human rights lawyer Prosper Maguchu who argues that,

> "The death of these MDC activists and supporters made them heroes among their communities and party and even among civil society organisations… you find there is some kind of hero worship when you speak about these 'fallen comrades in the struggle of democracy'. We go back to the same argument we have been having for years about ZANU PF, the heroes acre and the conferment of hero status…*atinoti gamba ndiani, asiri ndiani* (who then is a hero and who is not). The history textbooks in our schools have a biased account of ZANU PF as heroes and liberators without acknowledging other parties who were involved in bringing independence….it is more of propaganda than a history lesson….So if there is a change of government we will see history being re-written to benefit whoever is in power and the cycle of abuse continues... they will also want vengeance and the same heroes' status being accorded to the perpetrators now [Individual interview, 12 December 2014]."

Like truth, memorialisation may be a source of conflict in future between or among groups that believe in a different account of history. The sentiments expressed by former human rights lawyer Prosper Maguchu point to the creation of different narratives of truth and history through these civil society based initiatives of memorialisation. Aiken (2008:16) asserts that, "these collective memories of past violence inevitably reframe in an antagonistic and exclusionary [manner]." The majority of those killed during the 2008 electoral violence were members and supporters of the MDC and its other formations and this as concurred by respondents FO2 and FO4, has largely created a narrative of victimhood among members of the party, even those who themselves were perpetrators of the violence. This leads to biased versions of the violence in which one group justifies their acts of violence while focusing on the misdeeds of the other group in perpetrating the violence (Aiken, 2008).

The neutral role of civil society in a politically polarised environment such as Zimbabwe then comes into question as many of these memorialisation processes also turn into glorification and hero-worship of those who died thereby creating a split historical account among the different political parties just as has been with the history of the liberation war and ZANU PF's narrative. The media as well as reports by NGOs reviewed in this study portray the perpetration of violence as largely being one sided and amplifies the MDC as only victims. While it cannot be denied that the majority of cases of violence were perpetrated by ZANU PF groups in acquiescence with the state, little is documented of the retaliatory attacks by members of the MDC, thereby giving an incomplete version of the events surrounding the 2008 electoral violence.

5.6 Civil society and experts' perspectives on the National Peace and Reconciliation Commission (NPRC)

From the interviews carried out for the purposes of this study, it emerged that there is general skepticism of the NPRC in terms of whether it will be able to fulfill its mandate independently and effectively. This uncertainty emanates from distrust of state processes which have failed to comprehensively deal with the concerns of transitional justice, not only for the 2008 electoral violence but also for other periods of violence. Respondent FO2 contended that,

> "The state cannot be trusted to spearhead transitional justice processes in the country. We saw what they did with the Zimbabwe Human Rights Council; the enabling legislation stripped it of all its powers that were provided for by the Constitution and clearly the same may be done to the NPRC. That is why there is need for a shadow process in the form of the National Transitional Justice Working Group which will mirror the NPRC [Individual interview, 6 November 2014]."

While it is important for civil society to monitor and continue to put pressure on the state to ensure the effective operation of the NPRC, distrust of the state's commitment to the NPRC process may have detrimental implications. Former human rights lawyer Prosper Maguchu contended that there is a risk that instead of supporting the NPRC technically and in other respects, civil society may then concentrate on opposing and criticising its processes, thereby

undermining the potential benefits that such an institution could bring towards resolving the challenges arising from the aftermath of the electoral violence. Similarly, Mishler and Rose (1997:419) argue that "Trust in civil institutions does not diminish democracy but completes it, enhancing the effectiveness of political institutions, creating…social separation of powers, which checks the emergence of an overly strong state."

The time it has taken the state to operationalise the NPRC was expressed as a major concern by all respondents interviewed in the study. The provision for the creation of the NPRC was done in 2013 in the new constitution of Zimbabwe, however to date; the commission is still not operational. Human rights activist Dewa Mavhinga argues that,

> "The resistance by the state to operationalise the NPRC is resistance to accountability and justice; the state is not eager to open up the past. Even if they do operationalise the NPRC, it will become a lame duck, an ineffective organ; because of the make-up of the current regime [Individual interview, 10 January 2015]."

The concerns over the absence of a shift in political dispensation is also highlighted earlier in this chapter and captured in literature such as Bamu (2009) and Muvingi (2009) who argue that transitional justice in Zimbabwe will not be possible without a change in governance.

Concerns over how the NPRC would be financed were also expressed given the state's failure to adequately fund the operations of the Human Rights Commission another institution for which civil society advocated and lobbied for. Former human rights and transitional justice activist Tendai Chabvuta maintained that,

> "We have no idea how this body will be financed, it has not yet been made clear. If the Human Rights Commission's poor state of affairs is anything to go by, we are likely to see the NPRC fall into the same trap of not being able to fulfill its mandate due to lack of funding [Individual interview, 5 December 2014]."

The Human Rights Commission as noted by its chairperson in 2014 was yet to be fully operational four years after its formation due to lack of funding from the state (NewZimbabwe.com, 6 July 2014). This has contributed to skepticism of whether the NPRC will also be adequately funded.

Former human rights and transitional justice activist Tendai Chabvuta and former human rights lawyer Prosper Maguchu concurringly argue that the NPRC tends only to focus on civil and political rights while neglecting the numerous violations of economic, social and cultural rights that were rampant during the period of the 2008 electoral crisis and beyond. Tendai Chabvuta advances that "Many people were affected by social and economic rights violations which were at the center of this electoral crisis. This needs to be reflected in the NPRC draft bill [Individual Interview, 5 December 2014]."

Respondent FO4 suggests that,

"Although the NPRC looks good on paper, you can be assured that many people will be disappointed by it, particularly those who want some form of retribution for the violence; it just won't happen. We cannot expect that this institution will deal with all the problems of past human rights violations that the country is faced with. We have to look to other stakeholders to provide alternatives, especially the churches and other civil society actors. It is a starting point, but let us not place all our hope in the NPRC [Individual interview, 9 November 2014]."

Similarly, Murray (2007:190) asserts that "It is clear that [such an institution] cannot be the panacea for all society's ills. There must be realistic expectations placed on what such a body can achieve and it must be seen in the context of the political, economic and social situation in which it is created." While the NPRC provides some hope that some issues of transitional justice will be addressed for the 2008 elections, there needs to be some pragmatism in relation to what the commission can and cannot do due to restrictions placed on it by the mandate it will be given, the political, social and economic environment among other factors.

The constitution of the NPRC's commissioners was also expressed by the respondents as a determining factor on its independence or lack thereof. However, former human rights and transitional justice activist Tendai Chabvuta argues that,

"Before looking at who will constitute the NPRC it is important to look at the process that led to it coming into being… We need to ask whether there is consensus between the government, affected citizens and those who represent the aggrieved…There is need to check whether there is political will and whether the government is capable of delivering

what is promised in the institutions set up to address transitional justice issues in Zimbabwe…what issues are being tackled by the institution besides violence. Sadly, if this test was used the NPRC would be found to be an inadequate mechanism from a civil society perspective and it would even fail international standards of setting up such bodies [Individual interview, 5 December 2014]."

Murray (2007:195) argues that "The process should also be [a] 'transparent process that also involves both the legislature and civil society' and this requires 'wide consultation and include[s] a process for public nomination of candidates." Prior to the establishment of the body, consultation on what Zimbabweans would want to see in an NPRC were largely done by civil society organisations and presented to the state representatives responsible for the process. As alluded to earlier in this chapter, whether these recommendations will be incorporated into the draft bill of the NPRC remains to be seen.

Victims of violence have also expressed dismay at the length of time it has taken the state to operationalise the body. A case in point is one in which Nelson Mtetwa, a victim of the 2008 political violence, is quoted as saying "[The] people tasked to put the NPRC in place did not understand the cost of violence…If the role to set up the commission had been given to victims of political violence, the commission would have been operationalised just a few months after the adoption of the new Constitution (Newsday, 12 June 2015)." This view from Mtetwa shows distrust of the sincerity of the state in coming up with the NPRC, a view also expressed by respondent FO4.

5.7 Respondent perspectives on the role of civil society in filling the gap of transitional justice

When asked their views on the impact of their processes and activities on filling the gap of transitional justice, field officers working in the field of transitional justice who were interviewed for this study tended to have a more optimistic view of the significance that their work was having in the communities they work with as compared to the independent experts who also participated in this study. Field officers also shared some of the feedback they have received

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from the communities they work with. All the field officers interviewed for the study acknowledged that while the initiatives they were carrying out were important, they were not comprehensive enough to deal with the diverse issues of transitional justice that arose from the 2008 elections and other periods of violence. Respondent FO1 said,

"Communities have been receptive of the programmes we have to offer, but this has been only limited to small core groups. The work we are doing is largely meant to keep the issues of transitional justice on the national agenda until the environment becomes suitable for a more comprehensive exercise [Individual interview, 5 November 2014]."

Similarly human rights activist Dewa Mavhinga argues that "The current work of civil society is important, pending a more comprehensive state led process. The best we can hope for is that all this work will not go to waste and can be used when a new regime comes into power [Individual interview, 10 January 2014]."

The comprehensiveness and ability of a national transitional justice project to deal with the diverse concerns that exist in the aftermath of violent conflict is an important factor to consider in coming up with a transitional justice strategy (Machakanja, 2010). The work of civil society organisations has not been comprehensive not only in its geographical spread but also due to limits imposed by the factors such as the state's monopoly of resources that are key to transitional justice including the justice system and force. Former human rights lawyer Prosper Maguchu contends that,

"While civil society organisations may be argued to be laying the foundation for future work if and when there is a change in government, I think many of these processes will have to be redone. There will be need to reproduce a national narrative of truth and memory, as the current exercises are creating only localised histories of the violence [Individual Interview, 12 December 2014]."

When asked how victims of the violence as well as other communities they have worked with view civil society initiatives, field officers noted that despite these challenges rendered by the lack of extensiveness of civil society work on transitional justice, field officers said they received positive reviews from the communities they work with including suggestions for other projects that they could facilitate in the area. Respondent FO1 for example notes that

"The Peace Games we held in Buhera west were actually suggested by community members who approached us to facilitate and help with funding. We have also had suggestions for a national survivor's convention in order to capture the views of the survivors and take them forward to parliament and other key institutions so that they can be included in the draft NPRC bill [Individual interview, 5 November 2014]."

The unresolved concerns of transitional justice emanating from periods prior to the 2008 elections that have not been addressed have had negative implications on the perception of the work being done by civil society organisations in some regions, as gathered from field officers interviewed for this study. The unresolved transitional justice issues stemming from the *Gukurahundi* massacres was noted by three of the field workers as a sticking-point when it comes to working with communities within the Matebeleland region and other regions affected by the crisis. Respondent FO1 notes that

 "In Bulawayo, the perception is that NGOs that come from Harare should stay away from the province. They think they are being used for fundraising purposes; to show the funding partners that the work being done is inclusive of all regions. We have to work extra hard to convince them that the issues of transitional justice are a national issue and it would benefit them if their concerns are amplified at the national level rather than kept at the village level [Individual interview, 5 November 2014]."

While these regions were largely unscathed by the 2008 electoral violence, the work by civil society organisations to educate communities about transitional justice has largely been met with distrust and a sense that these organisations are only acting because it was the Shona speaking majority of the population that had been affected by the violence as noted by respondents FO1 and FO2.

The perception that civil society organisations from Harare are working in Bulawayo to attract more donor funding was highlighted respondents FO1 and FO2 as also being fuelled by Bulawayo based organisations as a means of protecting their territory in terms of funding opportunities for work being done in a particular region. However, respondent FO1 contends that,

"Tribalism is still a major dividing factor within the country and is often very pronounced when we try to do our work in Matebeleland where there is a perception that we as Harare based civil society are now only talking about redress and transitional justice because the 2008 electoral violence which affected mainly Shona speaking communities and we care more about it because the victims were Shonas. There is an incident…I think it was 2009 when we held a community meeting in Tsholotsho and one respondent asked us "Where were you when we [the Ndebele population] were being killed, we did not see you here and now you come so your funders say you are doing a good job and give you more money to drive big cars."… This is caused on one hand by some NGOs who want to become gate keepers in certain regions and want to speak on behalf of the people without consulting them." [Individual interview, 6 November 2014]."

On the matter of tribalism, similar to respondent FO2 Muzondidya and Ndlovu-Gatsheni (2007:275) argue although that "Zimbabwe has since the days of the Gukurahundi war (1982-1986) not experienced serious ethnic-based wars or political instability, there is serious ethnic polarisation in the country and ethnicity remains one of the challenges to the survival of both the state and the country." From this discussion above it can be argued that the non-resolution of the issues of transitional justice emanating from the *Gukurahundi* remains a major challenge not only for civil society organisations seeking to work in the Matebeleland region, but also for building sustainable peace in the country.

The state has had a major role to play in this disaffection as it continues to fail to tell the truth at the official level about the massacres and through the denial of the survivors and relatives of those who were killed the opportunity to commemorate or speak about it. For example, it is reported that on 24 January 2015 police officers stormed and disrupted a meeting at Stanley Hall in Bulawayo to pray for the victims of *Gukurahundi* (Southern Eye, 16 February 2015). Such incidents tend to fuel anger and resentment not only at the actual perpetrators of the violence or the state that is responsible for barring the commemorations but also towards groups of people associated with them either through religion, race, culture or ethnicity; the 'others versus self' (Aiken,2008), thereby risking the occurrence future conflict. The state has also failed to deal with issues of social and economic development in marginalized Matebeleland province or what Muzondidya and Ndlovu-Gatsheni (2007:275) term the "the political economy of ethnicity" an

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aspect which is also argued by Murambadoro (2014) to be a major cause of disquiet among people in the region. It is the argument of this paper that the coming in of civil society organisations particularly from the more developed northern and Shona speaking regions to discuss issues of transitional justice in a region where access to social and other amenities are not easily accessible may not be well received as this is not a priority to many of these communities. Further, noting that a period of over twenty years has passed without redress for the violations committed during Gukurahundi, many of these communities would rightly be skeptical about the motives of civil society organisations in discussing issues of transitional justice with them.

According to respondent FO4,

> "There is often an expectation that the work we do will come with some material benefit, which in most cases it does not. This has left some communities disappointed with our work and not willing to engage us in the future [Individual interview, 9 November 2014]."

Civil society organisations are often viewed as having the capacity to provide recourse for victims of violence who are often in dire need of material support. Expectations of material recourse as highlighted earlier in this chapter often lead to the exaggeration of claims by some of the victims who have the opportunity to have their cases heard in court. This is one of the challenges that civil society actors are often faced with in the practice of transitional justice as the provision of material recourse and reparations are seen to be the duty and obligation of the state. Civil society often does not have the resources to carry out such initiatives. Concurringly, respondent FO1 also noted that,

> "There is a sense of hope that is often created when we go into these communities. Some expect us to provide or facilitate compensation once we have documented their violations or expect to see the perpetrators being arrested which we cannot do as civil society organisations [Individual interview, 5 November 2014]."

Managing these expectations becomes one of the major challenges for civil society organisations in working with communities as disappointment with civil society processes may bring such unofficial processes to a halt if recipients view them as unbeneficial.

5.8 Respondent perspectives on challenges to filling the gap of transitional justice in Zimbabwe

From the interviews and discussions held for this study it was gathered that the gap of transitional justice in Zimbabwe is largely viewed by members of civil society as well as the three experts who were interviewed as being a consequence of the lack of 'political will' by state actors to deal with issues of past politically motivated violence. This position by the respondents in the study concurs with the arguments put forward in the discussion in the previous chapter and literature such as Dzinesa (2012).

Respondent FO4 argues that,

> "It [transitional justice] is not on their [ZANU PF] agenda and those who speak about it are deemed to be enemies of the party and the state. Without initiative at the party level from which national policies start, issues of transitional justice continue to be addressed in a piece-meal manner with no real commitment by state actors to deal with these concerns [Individual interview, 9 November 2014]."

The perceptions of respondent FO4 indicate a lack of impetus for transitional justice concerns at the bottom of the policy making ladder, thereby affecting what is done at state level particularly in the case of Zimbabwe where there is no clear separation between the state and the ruling party.

The lack of consensus among stake holders in the transitional justice discussion in Zimbabwe was also stressed by respondents as another challenge to the development of an effective transitional justice mechanism in the country.

Respondent FO2 notes that,

> "The state does not agree with our use of the term transitional justice. The Organ on National Healing Reconciliation and Integration (ONHRI) refused to operationalise the term saying it is a term within civil society [Individual interview, 6 November 2014]."

Field officers interviewed for the study also affirmed the lack of consensus between the state and the victims of the violence as discussed earlier in this chapter, this has largely been a consequence of the state's failure to implement the recommendations of the victims as presented to them by civil society.

Space for reformers to push for institutional transformation and accountability for those responsible for the 2008 electoral violence as well as other epochs of violence, is currently limited in Zimbabwe. This means that the structures and personalities responsible for the violence remain present in the system. Respondent FO3 argues that,

> "Zimbabwe is in a tricky position at the moment, we are trying to deal with past human rights violations and at the same time new violations are being committed every day. We as civil society cannot sit back and wait for a change in the political system where we will see institutional reform or regime change. We have to send out a clear message to the perpetrators that someone is watching and they can be punished for these crimes. The fact that the perpetrators of human rights violations in these villages know that someone is watching is a deterrent in itself [Individual interview, 8 November 2014]."

These challenges as well as those highlighted in earlier sections make filling the gap of transitional justice in Zimbabwe difficult, particularly for civil society organisations. However, the fact that civil society initiatives discussed in this chapter do continue to happen, is an indication that political space to deal with some concerns of transitional justice does exist albeit with certain limitations.

5.9   Respondent perspectives on the future of transitional justice in Zimbabwe

The dominant perspective among respondents in the study was that the state was an indispensible entity in steering transitional justice processes due to its access to resources and control over coercive power. The role of the state in leading transitional processes is not only derived from its obligations under international law to deal with issues of past violence. It also stems from its ability to access and mobilise resources for such processes as well as dealing with negative consequences including violence that may arise from trying to deal with issues of transitional

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justice. Despite not trusting the state to effectively deal with the concerns of accountability and acknowledgement for the 2008 electoral violence, civil society actors interviewed for this study were aware of the limitations they had and areas which required state involvement and leadership. Respondent FO2 argued that,

> "Civil society cannot walk the road alone. When it comes to dealing with issues of past violence which have moral, political, social and economic implications, there is need for the state to lead. The state needs to take a leading role because only it can straddle a common narrative of truth about the past which civil society cannot do [Individual interview, 6 November 2014]."

There were also views that while the processes by civil society organisations were important and beneficial to the communities they worked with, they were still piece-meal approaches to a wider problem that was too big for civil society alone to deal with in the absence of state authority. However, respondent FO1 argued to the contrary and puts forward that,

> "Transitional justice in Zimbabwe will go on with or without the state. The state may slow down the process [of dealing with the past] but it will not stop it. There is momentum for transitional justice; it rests on what strategy stakeholders will take. We are ready to move forward with or without the state. We have to be cognisant that there has been very little progress in matters that require the state to act, for example, with regards to prosecutions. Therefore the best approach would be a strategy in which stakeholders of these issues have some control [Individual interview, 6 November 2014]."

The argument put forward by respondent FO1 while initially seeming to dismiss the role of the state in transitional justice, recognizes the limitations of civil society in carrying out a comprehensive approach which may include retributive processes such as prosecutions. The state has a monopoly not only on such processes, but on violence as well. It is therefore the argument of this researcher that the Zimbabwean state is able to shut down civil society processes towards transitional justice if it deems them a threat to its hold on power and control. Hence, transitional justice without the sanction or participation of the state is only possible where the state affords political space for it to happen.

The challenge of accessing resources to fund the activities of civil society was also highlighted during the interviews. Respondent FO2 argued that,

> "The challenge of sustainability when it comes to civil society projects should always be a consideration when it comes to this question. There are challenges with funding for these projects as well as allegations of looting within these organisations which is also a threat to the continued funding of these projects [Individual interview, 6 November 2014]."

Without proper funding, the informal or unofficial projects of civil society will not continue. Field officers noted that the reliance of civil society organisations on external funding aggravates the fragmentary approach to addressing issues of transitional justice as they are then incapable of expanding their projects more comprehensively. There is also a tendency within civil society not only in Zimbabwe but in others parts of the world to "follow the money" as is noted by Pajibo (2007:293). When donor funding runs out for transitional justice issues, there is a risk of civil society organisations abandoning the work they are doing to pursue programmes with better prospects of funding. 'Following the money has also according to respondent FO2 led to a number of human rights based organisations claiming to be doing transitional justice projects "…to attract donor funding even though they are not equipped with the capacity to do so [Individual interview, 6 November 2014]." The absence of proper accountability for donor funds within civil society organisations is also a risk for sustained funding of these projects. The lack of proper structures of accountability within civil society organisations and the rise of personal interests poses a threat to the sustainability of civil society organisations and their work (Pajibo, 2007).

The state and civil society have divergent yet complimentary roles to play in dealing with issues of transitional justice for the 2008 electoral violence and beyond. From the discussion in this chapter it can be seen that it is important that both spheres perform their roles effectively to ensure some form of acknowledgement and accountability for the victims. As put forward by Backer (2003), civil society cannot be viewed as the remedy for addressing issues of transitional justice for the 2008 electoral violence and other periods without a critical review of the work being done and how it is done.

5.10 Conclusion

From the discussion in this chapter it was gathered that civil society organisations have played an important role in advocacy and lobbying initiatives for the issues of transitional justice for the 2008 electoral violence. These advocacy roles can be divided into two broad categories; that is, advocacy and lobbying with the aim of influencing state policy; and advocacy with the aim of influencing community level dynamics that perpetuate the culture of violence. The various roles and activities as broken down by Reid (2000) were highlighted and include research for problem solving and influencing of policy, civic and state education as well as monitoring of state policies dealing with issues of transitional justice, among others. At the community advocacy level, civil society has played roles in memorialisation as well as the holding of ritual ceremonies in accordance with the beliefs of the people in a particular area.

From the discussion and perceptions presented in this chapter, it was gathered that despite the portrayal of state and civil society relations in Zimbabwe as only incompatible and combative, there was significant engagement between the two parties on issues of transitional justice. This was gathered through the outline given by field officers of respondent organisations, of the activities that civil society has engaged in towards attaining some form of accountability and acknowledgment for the victims of the 2008 electoral violence. However, it was highlighted by all field workers who participated in the study that apart from the formation of the NPRC, there has been very little tangible evidence of this engagement as the state has largely failed to take on board recommendations by civil society and the victims of the violence.

Despite the engagement between state and civil society actors, it was shown from the perceptions of the respondents in the study, that there was significant distrust of state processes as well as the willingness of the state to effectively apply their own policies. The state's perceptions of civil society actors were also captured in reviews of statements by state officials. These perceptions on either side can be inferred to have influenced the manner in which both the state and civil society have approached issues of transitional justice for the 2008 electoral violence. Civil society's mistrust of state led initiatives was also expressed through their perceptions on the NPRC which showed skepticism over whether the body would be able to effectively and

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independently institute its mandate due to the continued control of state institutions by those culpable for the 2008 electoral violence as well as other epochs of violence.

While it was recognised in the discussion in this chapter that the role civil society was playing in filling the gap of transitional justice was important, most of the respondents were of the view that the state still had an indispensable role to play in dealing with the concerns of transitional justice. The state's ability to charter a more comprehensive and cohesive approach to addressing the concerns emanating from the 2008 electoral violence, were among the reasons noted for the state's indispensability. However, as gathered from the various presentations made by the respondents in the study, the state's role needs to be in consensus with what the victims of the violence need and want from a process that deals with the concerns of transitional justice. Without this agreement, the gap of transitional justice for the 2008 electoral violence will remain unfilled.

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Chapter Six: Conclusion

6.1   Introduction

The state's failure to deal with the concerns emanating from the 2008 electoral violence has left a gap of truth, impunity, reparation and the risk of a resurge of similar violence in the future. This failure by the state to address the issues of transitional justice including accountability and acknowledgement for the 2008 electoral violence, has given rise to civil society driven initiatives that have sought to influence policy at the official state level as well as deal with the day to day concerns of the victims at the community level. This study sought to find out the various roles that civil society organisations in Zimbabwe have played in filling the gap that has been left by the state as well as to examine the consequences that these various roles and approaches have had on filling the gap of transitional justice in Zimbabwe.

As identified in Chapter Four of this dissertation, the gap of transitional justice in Zimbabwe emanates from the state's failure to comply with its obligations under international law to prosecute, investigate and reform state institutions that are culpable for committing human rights violations as well as perpetuating impunity for these crimes. The absence of the state in resolving issues of transitional justice emanating from the 2008 electoral violence has meant that civil society has had to step in as "a temporary substitute" as coined by Andrieu (2010). However, there is awareness among most civil society organisations working in the field of transitional justice that these civil society driven processes are not a panacea to resolving the issues of transitional justice for the 2008 elections hence, the continued engagement of state actors who remain the key actor in addressing these concerns.

The literature on transitional justice as presented in Chapter Two of this dissertation including Teitel (2003), has traditionally focused on post conflict justice where there has been a shift in political leadership. However, more contemporary studies of post conflict scenarios including Iversen (2009) show that the same concerns of accountability and acknowledgement for human rights violations do exist even where there has not been a change in government. This realization

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has given rise to the setting up of mechanisms to deal with the concerns of transitional justice by the same state actors who have largely been responsible for these violations as seen in the case of Zimbabwe, as also alluded to in Chapter Two. The independence and impartiality of these state sanctioned mechanisms in the absence of a change in regime has been of concern as highlighted in Chapters Two and Five of this dissertation in the Zimbabwean context. The willingness of state actors who are responsible for the violence to deal with these issues given the personal cost to them was also questioned in Chapter Four and Chapter Five of this dissertation and it was comprehended that without political will from the state actors, issues of transitional justice would not be dealt with. This study also looked at some of these challenges that come with seeking to deal with issues of transitional justice without a political transition.

The role being played by civil society organisations in seeking some form of accountability and acknowledgement for the victims of the 2008 electoral violence comprises of various advocacy and lobbying initiatives which, as referred to earlier in this chapter, aim at making an impact on official policy and others at the community level. Some of these initiatives have involved the engagement of the state, while others have not had any state involvement, particularly at the community level. The engagement of the state through advocacy and lobbying initiatives has had varying responses from the state including violence and silence. This has contributed to the often antagonistic relations between the state and civil society organisations as was presented in Chapter Five and civil society perceptions of the state which were also presented in Chapter Five.

6.2   The gap in relation to rights and obligations in the aftermath of violence

In order to understand why unofficial civil society initiatives of transitional justice had emerged, this study compared the situation prevailing in the aftermath of the electoral violence to what should have been. As highlighted in Chapter Four, it sought to compare what is; versus what ought to be. Hence, the study pursued the identification of the gap of transitional justice in Zimbabwe while also seeking to explain the reason for the existence of this gap.

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The gap of transitional justice in Zimbabwe was presented in this dissertation, as seen in Chapter Four as a consequence of the state's failure to meet its obligations under international law as well as failure to comply with international norms of dealing with human rights violations emanating from the 2008 electoral violence. These norms and obligations are set and recognised in all major international human rights instruments including the Universal Declaration of Human Rights. With these obligations rendered upon states, rights to redress are also conferred to victims of such violations as summarised by Mendez (1997) and presented in Chapter Four, these include the right to see justice done; to know the truth; entitlement to compensation and the right to recognised and accountable institutions. These rights correspond with the state's obligations to ensure that these rights are enforced.

An analysis of how the state has fared in meeting its obligations under international law and protecting the rights of the victims was done in Chapter Four. This was done through not only focusing on the 2008 electoral violence, but other epochs of violence as well including the state's reaction to the *Gukurahundi* massacres in Matebeleland. This comparison with other periods of violence was meant to give a clearer perspective of the state's poor history of dealing with past human rights violations as referred to in Chapter Two of this dissertation. It was inferred from this analysis in Chapter Four that the state's failure to carryout official investigations for the violations committed during the 2008 electoral violence was a denial of the victims' right to knowing the complete truth including who participated and the circumstances in which the violations occurred, as stipulated in the 2006 Report of the Office of the United Nations High Commissioner for Human Rights to the Economic and Social Council (UN, 2006). Thereby perpetuating the gap of information for what happened during the 2008 electoral violence. To fill this gap, civil society organisations have been involved in the documentation of these violations through their unofficial truth projects as presented in Chapter Five. These unofficial truth projects sought to create a record of the violations; to create awareness both locally and internationally of the violations that occurred and for use in future projects including prosecutions.

The state has an obligation to prosecute perpetrators of gross human rights violations. However, through *de facto* and *de jure* impunity there have been very few criminal prosecutions of

perpetrators of human rights violations (Human Rights Watch, 2011). *De jure* impunity which occurs when there are limitations that make it impossible to prosecute perpetrators of human rights violations has been established by the state for the 2008 electoral violence through General Notice 85A/2008 Clemency Order No.1 of 2008. It covered crimes such as torture and abduction but excluded murder and rape (Human Rights Watch, 2011). *De facto* impunity, which occurs due to lack of capacity or political will by the state to prosecute perpetrators of human rights violations, is also a cause for the state's failure to prosecute and this was also concurred to respondents in the study in Chapter Five wherein they expressed that the state was unwilling to create institutions that would haunt them in the future. Civil society organisations have sought to fill this gap through instituting civil claims against the perpetrators as a means of fighting impunity as highlighted by one respondent in Chapter Five of this dissertation. This form of litigation has also been used in the public interest as also described in Chapter Five by one respondent, by sending a message to would be perpetrators of violence that they can be punished for politically motivated violence.

The right to reparation by victims of gross violations of human rights through compensation as well as other non-monetary forms of restitution is provided for under international law, with the state being obliged to provide these reparations as argued in Mendez (1997) and presented in Chapter Four of this dissertation. Reparation, as argued in Chapter Four of this study are largely symbolic and the loss and suffering by victims of violence cannot be quantified as argued by Carver (2000) apart from where this loss was also material. From the preview of how the state has dealt with previous epochs of violence, it was noted in this study that the state has had a poor record of honouring the right of victims to reparations, particularly monetary compensation, apart from the controversial payments made in 1997 to veterans of the liberation struggle. In reaction to the lack of reparations for the victims of the 2008 electoral violence, civil society organisations including the Zimbabwe Human Rights Non-Governmental Organisation Forum (ZHRNGOF) have instituted civil claims against the state as well as individual perpetrators, to claim for damages as referred to by respondent to the study and presented in Chapter Five. These civil suits have also been used to challenge impunity as also alluded to earlier in this chapter.

The challenge for civil society in filling this gap as presented in chapters four and five has been that even where court judgments compelling the state to pay claims against it have been made by the courts, the state has not honoured these judgments resulting in empty judgments as asserted by Maguchu (2014). The inability of the courts to attach the state's property perpetuates this challenge. Where civil claims have been made against individual perpetrators, it was highlighted in Chapter Five that poverty among most of them was a challenge as the property attached from them was often not sufficient to cover the claims against them. However, in line with the argument by Carver (2000), that reparation are largely symbolic, this research argues that the attachment of property even when it does not cover the amount of the claim is a sufficient means of sending a message to would be perpetrators as well as an important way of fighting impunity.

The absence of institutional reform within state has been argued to be one of the key reasons for the perpetuation of state sponsored violence as noted by Eppel and Raftopolous (2008). This is based on the argument that institutional reform is necessary to ensure the non-recurrence of violence as put forward by Eppel and Raftopolous (2008) as well as Chitsike (2012). These institutions, which include the judiciary and the security forces as argued by Chitsike (2012), require retraining in order to change attitudes about the use of violence as well as the consequences of violence. There is also need to remove from public office, perpetrators of violence as argued in Chapter Four. In the Zimbabwean context, perpetrators of violence have none the less been rewarded as exemplified by cases of Ken Flower the former head of intelligence in the Rhodesian government and Perence Shiri the commander of the Five Brigade as discussed in Chapter Four and noted by Carver (2000) and Eppel and Raftopolous (2008) respectively. These officials have been appointed to state institutions despite being culpable for previous epochs of violence and thus going against Principle 36 (a) of the UN guidelines to combat impunity which states that officials responsible for human rights violations are not be reappointed to any state institution (UN, 2005). Apart from providing education through workshops and conferences, civil society has largely been unable to make much influence in this regard as many of their recommendations regarding institutional and policy reform have not been taken on board by the state. The state's reluctance to implement civil society recommendations was concurring expressed by all respondents in the study as presented in Chapter Five.

The judiciary as well as the state security sector in Zimbabwe has been dogged by partiality which has largely been a result of the absence of the separation of the state and ZANU PF as argued in Chapter Five of this dissertation. It is the argument of this researcher that institutional reform without a separation between party and state is unlikely in Zimbabwe as state institutions will continue to be run on patronage. Despite these challenges, by seeking to enforce the rights of victims of the 2008 electoral in line with the demands of international laws and standards, civil society organisations have become in a way norm enforcers of international human rights albeit with a fusion of other practices as well as norms as seen in their involvement at the community level.

6.3 The gap of transitional justice in Zimbabwe and the absence of an enabling environment

While the gap of transitional justice was presented as a consequence of the state's failure to meet its obligations under international law as well as failure to honour the rights of victims of the electoral violence, it was also presented in chapter four as well as five that this gap is also a consequence of the absence of political will among state actors. This lack of political will was presented in the same chapters, to be a consequence of the absence of an enabling environment for transitional justice to take place. Features of this un-conducive environment for a state led transitional justice process to take place as highlighted by Dzinesa (2012) and Eppel and Raftopolous (2008) include the continued presence at the helm of political power of the same regime that was culpable for the 2008 electoral violence; unreformed state institutions including the judiciary and security agencies that have been responsible for perpetuating violence and impunity; among other factors.

The disaggregated components of political will as presented in a model by Brinkerhoff (2010) were adapted for this study in order to help explain and illustrate political will or lack thereof by the state in dealing with the concerns of the 2008 electoral violence. The components used by Brinkerhoff (2010) include government initiative, choice of policy/programme, mobilization of stakeholders, public commitment and allocation of resources, application of credible sanctions and continuity of effort. It was inferred from the benchmarks presented by the model that the state lacked political will to deal with the concerns of transitional justice due to its failure to

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effectively consult and mobilise stakeholders in transitional justice towards resolving the issues of transitional justice for the electoral violence. The point that the impetus for a transitional justice process came only from civil society and opposition parties was also concluded to be a sign of the lack of political will by the state to deal with the concerns of transitional justice as set in Brinkerhoff's (2010) model. The state's pronouncements towards resolving the concerns of the aftermath of the violence were described by authors such as Zinyama (2012) as mere speech-making. This view was also concurred by respondents in the study as presented in Chapter Five. Failure to fund the Zimbabwe Human Rights Council was also presented in chapters four and five to be a sign of the state's unwillingness to commit resources towards addressing concerns related to violence and redress. Having highlighted impunity as one of the major challenges to filling the gap of transitional justice, the lack of credible sanctions for perpetrators of the 2008 electoral violence was also inferred to be a sign of the lack of political will.

The political environment, in which redress has been sought for the 2008 electoral violence, has largely not been conducive. As presented in Chapter Four and Chapter Five of this dissertation, where the perpetrators of violence remain in control of the coercive and other apparatus of the state, dealing with issues of transitional justice becomes a challenge. This was also concurred by Bamu (2009) and Muvingi (2009) as also presented in chapter two if this dissertation, who argue that without a change in political dispensation, transitional justice is not possible. Similarly, in the representations made in the empirical work in Chapter Five, it was the opinion of all respondents that the state would not create institutions that would attack its actors or bring them to account. It was noted in Chapter Four that the pillars of transitional justice as presented in the mandate of the United Nations Special Rapporteur covering truth, justice, reparations and guarantees for non-recurrence are intertwined. Telling the truth about the violations is a form of acknowledgement and with acknowledgement comes demands of accountability. It is therefore inconsiderable for many state actors who have been implicated in the electoral violence to make any concessions that could lead to retribution for them. Eppel and Raftopolous (2008) as well as some of the respondents interviewed in the study, as presented in Chapter Five, concurred in their perceptions that state actors largely feared retribution for their part in the violence and that a culture of impunity had been created around them. It is therefore unlikely that state actors would open themselves up to account for or acknowledge their part in the 2008 electoral violence.

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In light of these challenges in the political environment, the informal mechanisms of transitional justice put in place by civil society organisations have been set up in response as well as part of the growing norm of post conflict justice as referred to in chapter two.

6.4 Reflections the role being played by civil society in filling the gap

Through their various advocacy and lobbying projects civil society actors have played important roles as educators, facilitators as well as critics of existing policy or the absence thereof (Andrieu, 2010). Also referred to in Chapter Five are civil society's advocacy activities as cited and adapted from Reid (2000) which include, research for problem solving and influencing of policy, civic and state education as well as monitoring of state policies dealing with issues of transitional justice, among others. It was learnt during this study as presented in Chapter Five that the aim of these initiatives has largely been to influence policy at the official level as well as to shift the dynamics that have perpetuated violence in various communities. Through interviews and informal discussion with field officers from Zimbabwe Human Rights Non-Governmental Organisation Forum (ZHRNGOF), Church and Civil Society Forum (CCSF), Heal Zimbabwe Trust and Evangelical Fellowship of Zimbabwe (EFZ) who are working to seek some form of redress for the 2008 electoral violence; the various activities of ways in which civil society is filling the gap were learnt. Field officers also shared the various challenges they face given the political environment in which they operate.

At the policy level, it was presented in chapters four and five that civil society has had minimal impact due to the lack of political will by the state to take on board the recommendations of civil society as well as the people they represent. Although they have managed to push and campaign for the formation of institutions such as the Zimbabwe Human Rights Commission and the National Peace and Reconciliation Commission (NPRC), civil society's 'victories' have been overshadowed by the failure of the state to fund and operationalise these institutions. Like the Organ on National Healing Reconciliation (ONHRI), state institutions have been argued by some writers including Dzinesa (2012) to be a form of window dressing by the state. It is clear as argued in Chapter Five of this dissertation that the work of civil society is not done when a

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policy is made. Monitoring the implementation of that policy becomes a key role of civil society. This is the role that civil society actors in Zimbabwe including organisations that participated in the study have set out to do for the NPRC through the National Transitional Justice Working Group (NTJWG).

The goals of transitional justice as highlighted by Huyse and Salter et al (2008) and presented in Chapter Two of this dissertation are, to heal the offends committed against the victims of violence as well as mending society and ensuring the non-recurrence of violence and conflict. These goals while not explicitly spelt out by all fieldworkers who participated in the study can be reflected in the initiatives that they have been involved in particularly at the community level where shifting the undercurrents that propagate violence. While influencing policy at the formal level has been a challenge due to the conditions prevailing in the political arena, civil society organisations have supported local initiatives by communities seeking to deal with the aftermath of the electoral violence. Before embarking on this study, the researcher had assumed that these community based initiatives were led by civil society. However in discussions with respondents in the study, it emerged that many of these community based initiatives in rural areas affected by the 2008 electoral violence in fact originated from the traditions and systems of traditional leadership within these communities as was presented in Chapter Five.

The local based initiatives discussed in Chapter Five include *nhimbe,* cleansing ceremonies as well as memorialisation for the deceased victims in a bid to confront the day to day concerns of the aftermath of the violence; what one respondent in the study termed "transitional justice for everyday" which concurs with the goal of restoring the social fabric as argued by Huyse and Salter et al (2008). The role of civil society in these initiatives has largely been to provide material support such as food for the gatherings as well as acting as facilitators of dialogue among the various parties to the conflict. Civil society has also used these platforms to discourage the use of violence and to educate communities affected by violence about state led processes such as the NPRC. As highlighted in Chapter Five, the state has largely not performed its role in educating the public about processes such as the NPRC and civil society is filling this gap in information during these community led initiatives.

From the information shared by field officers of the various activities they have been carrying out, it was learnt that civil society's activities in filling in the gap of transitional justice in Zimbabwe are in line with the roles of civil society in transitional justice as espoused in literature such as Andrieu (2010) and Crocker (1998). However, a major difference with the literature is the operating environment in which civil society in Zimbabwe is operating. While this literature presents the role of civil society in a context of a political transition; in the Zimbabwean context the state still remains in the control of individuals who are accused of perpetrating human rights violations. Hence, the manner in which these roles are performed differs from where the influence of veto powers is limited, as opposed to where a culture of violence and impunity is still well entrenched as argued by Eppel and Raftopolous (2008).

While the Zimbabwean state and civil society have largely been portrayed as antagonistic in their relations, during the study, it was learnt that civil society has played an active role in engaging state actors. This has been done through training on transitional justice and invitations to conferences on transitional justice. Other forms of engagement have been through presentation of research findings with the aim to influence policy on transitional justice. The challenge of this engagement has been to see tangible reforms and implementation of civil society's recommendations, as highlighted earlier in this chapter. The examination of the literature on civil society and transitional justice, in particular the work of Crocker (1998), as presented in chapter two, shows that civil society's approach to its relationship with the state is an important determinant with regards to the role they play in transitional justice as well as the implication their work will have. Engagement with the state therefore as argued in Chapter Five is important so that there is continuous dialogue on transitional justice issues and impetus for these concerns to be addressed.

In a politically polarised environment like Zimbabwe, civil society without regulation can further divisions and conflict as also highlighted in the work by Backer (2003). As argued by some respondents in the study in Chapter Five, there is risk that the work being done by civil society in communities is perpetuating a narrative of victimhood among those affected by the violence; rather than healing rifts caused by political polarisation, they may increase divisions. For this reason, it is important at some point for consensus to be reached by all stakeholders in

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transitional justice in Zimbabwe on how to deal with the aftermath of the violence in a manner that promotes sustainable peace.

6.5 Conclusion

This research project sought to identify and explain civil society driven responses to the aftermath of the 2008 electoral violence in Zimbabwe. It also sought to understand why these civil society initiatives have emerged as well as the challenges of implementing these unofficial mechanisms in the current political environment in Zimbabwe. The aim of this research project was to describe and explore the informal mechanisms put in place by civil society organisations in Zimbabwe to deal with issues of accountability and acknowledgement with regards to the 2008 electoral violence. This was achieved through the input of field officers who undertake the work of advocacy and lobbying, memorialisation, seeking accountability through litigation and working with communities affected by the 2008 electoral violence. The research also aimed to examine the consequences such approaches to post conflict justice have on the relationship between the state and civil society and more broadly on the achievement of the goals of transitional justice. This was also achieved through the capturing of the insights of field officers as well as independent experts on the subject.

The research found that while the work being carried out by civil society organisations towards filling the gap of transitional justice in Zimbabwe was important, it however cannot comprehensively deal with the concerns emanating from the aftermath of the violence. There is need for an effective state led mechanism that will deal with reforming and uprooting the structures that have perpetuated violence and impunity not only for the 2008 electoral violence but other epochs of violence as well. This has not happened in the current Zimbabwean context to the lack of political will by state actors to take the necessary steps towards addressing the concerns emanating from the 2008 electoral violence as has been argued in this dissertation. The absence of a change in political dispensation has led to the maintaining of the status quo in which those largely responsible for human rights violations remain in power and therefore shielded from accountability for the 2008 violence. This has made the pursuit of accountability and

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acknowledgement by civil society a difficult task which will remain so until there is political will to reform or destroy structures that perpetuate violence and impunity.

As long as the state and its apparatus remain under the control and influence of those responsible for perpetrating the violence for which redress is sought; the gap of transitional justice remains unfilled.   However, it is important for civil society organisations to continue to challenge impunity and other factors that maintain violence as well as lay the groundwork for future transitional justice processes. While civil society organisations are important actors in transitional justice, this study found that they can also contribute to conflict by illuminating divisions among antagonist parties. Hence, the role of civil society needs to be monitored and continuously re-evaluated. It is also important for civil society to continuously evaluate the contribution of their various roles in the field of transitional. There is need to question whether these processes are promoting a culture of peace or whether they encourage violence. From this study it can be noted that the work of civil society in Zimbabwe can easily go against the goals of transitional justice by creating a narrative of victim hood and promoting further divisions on political party lines. It is therefore crucial for the work of civil society in such a politically polarised environment such as Zimbabwe to remain objective and politically neutral.

In a more suitable political environment, there is potential for the state and civil society working in liaison to fill the gap of transitional justice not only for the 2008 electoral violence, but also for other periods of violence. While not all periods can be dealt with in the same manner, acknowledgment would be an important first step towards dealing with the concerns of transitional justice.

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Appendices

Appendix 1.

Interview Guide (Field Officers)

1. Please describe the activities that your organization has been carrying out towards the achievement of some form of accountability and acknowledgement for the 2008 electoral violence?

2. Which areas/constituencies have you been working in and why have you chosen/focused on these particular areas?

3. Please explain why these particular activities have been selected? (Link to the goals of transitional justice such as non-recurrence and restoring human dignity as well as accountability and acknowledgement).

4. What role (if any) has the state played in the implementation of these initiatives? If none, have there been efforts to involve the state in any of your projects?

5. What has been the response of the communities you work with to these activities (including community leaders and those affected by the violence; (have they been receptive/ shunned participation in the activities)?

6. What has been the response of the state and government officials to these activities? (Official and unofficial responses).

7. What has been the response of the perpetrators of the violence to the work you are doing in the communities? (Particularly those who still reside in the community are known to the community).

8. What are some of the challenges you have faced in implementing the activities you have mentioned (including lack of independence i.e. pressure from funding partners to carry out the programmes in a particular manner; lack of understanding of the community traditions and culture and religious beliefs; lack of expertise (for example mediation skills to resolve some of the issues that arise when perpetrator meets victim).

9. What mechanisms has your organization put in place to evaluate the impact of the activities you are implementing on the communities you are working with?

10. In your view what impact has the work of your organization had on the communities you work with?

11. In your view, why is acknowledgement and accountability for the 2008 electoral violence important?

12. What is your opinion on the Organ on National Healing Reconciliation and Integration (ONHRI)? Is it an adequate measure for addressing issues of transitional justice in Zimbabwe? Please explain your answer.

13. What is your opinion on the still to be constituted National Peace and Reconciliation Commission? Based on its mandate do you think it will be an adequate means of dealing with past human rights violations?

14. There are several civil society organisations dealing with issues of transitional justice in Zimbabwe, in your view are these organisations well equipped to fill the gap created by the absence of concrete measures by the state to deal with past human rights violations?

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15. In your opinion can parallel initiatives by civil society be an adequate measure to deal with issues of transitional justice if they do not have the support of the government?

Appendix 2

Interview Guide (Human Rights and Transitional justice experts)

1. In your opinion who should be responsible for addressing issues of transitional justice in Zimbabwe (civil society/the state)?

2. What is your opinion on the Organ on National Healing Reconciliation and Integration (ONHRI) and the soon to be constituted National Peace and Reconciliation Commission that will replace it? Is it an adequate measure for addressing issues of transitional justice in Zimbabwe?

3. Do you think the still to be constituted National Peace and Reconciliation Commission will be better equipped in dealing with issues of transitional justice in Zimbabwe as compared to how the ONHRI fared? Please explain your answer.

4. Which mechanisms do you think would be most effective in the current context in Zimbabwe and why?

5. What are your views on the current informal mechanisms of dealing with past human rights violations that are being implemented by civil society including i) informal truth telling processes ii)Unofficial memorialization and iii) ritualization?

6. How in your opinion has the relationship between civil society and the state impacted on the addressing of transitional justice issues in Zimbabwe, particularly those emanating from the 2008 electoral violence?

7. In your view what would be the impact of merging or rather complementing the informal activities of civil society with state led initiatives such as the ONHRI in order to deal with past violations of human rights?

Appendix 3

Name or Reference used in dissertation	Organisation	Date of interview	Type of interview
FO1	Zimbabwe Human Rights NGO Forum (ZHRNGOF)	5 November 2014	In-depth
FO2	Church and Civil Society Forum (CCSF)	6 November 2014	In-depth
FO3	Zimbabwe Human Rights NGO Forum (ZHRNGOF)	8 November 2014	In-depth
FO4	Evangelical fellowship of Zimbabwe (EFZ)	9 November 2014	In-depth
FO5	Heal Zimbabwe Trust	9 November 2014	Informal discussion
Tendai Chabvuta	Former human rights and transitional justice	5 December 2014	In-depth

	activist in Zimbabwe		
Prosper Maguchu	Former human rights lawyer in Zimbabwe	12 December 2014	In-depth
Dewa Mavhinga	Human rights activist	10 January 2015	In-depth

Appendix 4

UNIVERSITEIT VAN PRETORIA
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TO WHOM IT MAY CONCERN

RESEARCH PROJECT: *Civil Society and informal mechanisms of transitional justice: Filling the gap of accountability and acknowledgement for the 2008 electoral violence in Zimbabwe*.

It is the intention of this research to explore the contribution of informal processes of transitional justice that are instituted by civil society organisations in assisting communities in dealing with issues of accountability and acknowledgement stemming from the 2008 electoral violence. In addition, this research seeks to investigate the assumption that without the involvement of the state, these processes cannot provide a comprehensive approach to building sustainable peace.

The objectives of the proposed research are:

a) To describe and explore the informal mechanisms put in place by civil society organisations in Zimbabwe to deal with issues of accountability and acknowledgement with regards to the 2008 electoral violence.
b) To examine the consequences such approaches to post conflict justice have on the relationship between the state and civil society and more broadly on the achievement of the goals of transitional justice.
c) To contribute to the literature on transitional justice, specifically with respect to informal processes.

Data for this research will be obtained through a month-long fieldwork process. The data will be gathered using qualitative case-study research techniques. A triangulation approach will be adopted for this research (i.e. validating data through cross reference from two or more sources) in the form of secondary material and in-depth interviews. Audio devices will also be used to enhance data capturing where permission has been obtained from the interviewees as well as notes taken by the researcher during the interview process. A proposed timeline for the research is as follows: Literature study (August-September 2014), fieldwork research (October-November 2014) and writing of the thesis and completion (March/April 2014).

My name is Chenai G Matshaka, I am a postgraduate student (nr. 13301927, MA Political Science) in the Department of Political Sciences at the University of Pretoria and I am conducting field research on the above topic. Permission to conduct the field research has been granted by the University of Pretoria and

_____.
My research findings will eventually appear in my dissertation and in journal articles.

Will you please participate in my research project by joining in the discussions and interviews?
I will do my utmost to ensure your confidentiality in all my written reports by using either code names or pseudonyms. I do not expect you to divulge any information that might compromise you or your organization in any way. All information will be treated as confidential and you may

withdraw from discussions or interviews at any time without any consequences. My aim, objectives and research methods are summarized above. I will provide you, upon request, with any additional information on my research project and answer any questions about my studies, my research methods, and myself. You are welcome to request a copy of my research and I am willing to make suggested changes to those parts that involve your contribution until my research is submitted to the department for examination. All the information gathered will be stored safely at the University of Pretoria, Department of Political Sciences for a minimum of 15 years. You may also contact me at the following telephone number: +27719413322. My supervisor is Prof. Laurie Nathan who is a professor in the Department of Political Sciences at the University of Pretoria and he may be contacted on e-mail laurie.nathan@up.ac.za or Tel: 27 12 420 2464.

I, the undersigned, have read the above and I understand the nature and objectives of the research
Project of _____ as well as my potential role in it and I understand that the research findings will eventually be placed in the public domain.
I voluntarily consent to participate in all discussions, to give my expert opinion and to provide details about my life history, keeping in mind that I have the right to withdraw from the project at any stage.
I also grant the researcher the right to use my contribution to the research project in completing this project as well as other projects that may emerge from it in future.

Full name of participant	Signature of the researcher	Signature of participant	Date

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Appendix 5

26 September 2014

Dear Dr Spies

Project:	**Civil society and informal mechanisms of transitional justice. Filling the gap of accountability and acknowledgement for the 2008 electoral violence in Zimbabwe**
Researcher:	**C G Matshaka**
Supervisor:	**Prof Laurie Nathan**
Department:	**Political Sciences**
Reference numbers:	**13301927**

Thank you for the application that was submitted for ethical consideration.

I am pleased to inform you that the above application was **approved** by the **Research Ethics Committee** on 25 September 2014. Data collection may therefore commence.

Please note that this approval is based on the assumption that the research will be carried out along the lines laid out in the proposal. Should the actual research depart significantly from the proposed research, it will be necessary to apply for a new research approval and ethical clearance.

The Committee requests you to convey this approval to the researcher.

We wish you success with the project.

Sincerely

Prof Karen Harris
Acting Chair: Research Ethics Committee
Faculty of Humanities
UNIVERSITY OF PRETORIA
e-mail:Karen.harris@up.ac.za