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TRANSITIONAL JUSTICE AND RECONCILIATION IN ZIMBABWE: A CASE STUDY ON TRADITION-BASED APPROACHES IN TWO LOCAL COMMUNITIES

By

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I dedicate this work to the people in Buhera and Mudzi districts, as well as many other Zimbabweans who are waiting for justice to be served.

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DECLARATION

I, **Ruth Ratidzai Murambadoro**, declare that this thesis is my own unaided work, both in conception and execution. It is being submitted for the degree of Doctor of Philosophy in the Department of Political Sciences at the University of Pretoria, South Africa. It has not been submitted before for any degree or examination at this or any other university.

Ruth Ratidzai Murambadoro

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ABSTRACT

Transitional justice and reconciliation are nebulous concepts and pose a lot of challenges for conflict stricken communities in Africa. Firstly, justice is inherently a political concept whose conceptualisation and application is highly contested. Secondly, the application of legal recourse through transitional justice processes has developed contending approaches and policies, which range from Western-centred legal frameworks (focusing on the state) to broader African justice processes that seek to rebuild relationships between community members. Thirdly, the institutionalisation of transitional justice has facilitated the diversification of its goals and processes for implementation.

Critical scholars propose that where official processes of transitional justice and reconciliation at the national or international level are out of reach for the local communities, it is important to promote the local, unofficial processes that exist. In this research, this aspect was explored in relation to the case of Zimbabwe where the Western-inspired government-led initiatives for transitional justice and reconciliation have inhibited the local population from acquiring justice. Making use of a qualitative ethnographic case study research method in Buhera and Mudzi districts, the research examined how the local communities resolve the conflicts that occur in their place of location, as well as how the context in which these experiences happen influence their understanding of justice.

The research established that various people hold varying meanings of what would count for justice to be served. Therefore, a one-size-fits-all approach to transitional justice and reconciliation is not adequate. An enabling environment that accommodates various views of justice is required for transitional justice to work.

KEYWORDS: Transitional justice, reconciliation, decolonial lens, tradition-based justice, violence, peacebuilding, Buhera district, Mudzi district, Zimbabwe.

LIST OF ACRONYMS

AGP- General Peace Agreement

ATR- African Traditional Religion

AU- African Union

AUTJ- African Union Transitional Justice Framework

CCJP- Catholic Commission for Justice and Peace

CCJPZ- Catholic Commission for Justice and Peace Zimbabwe

CCR- Committee for Reparations and Rehabilitation

CIO- Central Intelligence Organisation

CODESRIA- Council for the Development of Social Science Research in Africa

DDR- Disarmament, demobilisation and reintegration

EU- European Union

FARG- Fund for Neediest Survivors of Genocide in Rwanda

FRELIMO- *Frente de Libertação de Moçambique* (Front for Liberation of Mozambican)

GOVINN- Centre for the Study of Governance Innovation

GPA- Global Political Agreement

ICC- International Criminal Court

ICJ- International Court of Justice

ICRC- International Committee of the Red Cross

ICTR- International Criminal Tribunal for Rwanda

ICTY- International Criminal Tribunal for the Former Yugoslavia

IDP- Internally Displaced Persons

IMT- International Military Tribunal

IOM- International Organisation for Migration

KKA- Ker Kwaro Acholi

LRA- Lord's Resistance Army

LRF- Legal Resources Foundation

MDC- Movement for Democratic Change

MDC-M- Movement for Democratic Change- Mutambara

MDC-N- Movement for Democratic Change-Ncube

MDC-T- Movement for Democratic Change-Tsvangirai

NGO- Non-Governmental Organisation

NPRC- National Peace and Reconciliation Commission

NTJWG- National Transitional Justice Working Group

ONUMOZ- United Nations Operation in Mozambique

RAR- Rhodesian African Rifles

RENAMO- Resistência Nacional Moçambicana (National Resistance of Mozambique)

RPF- Rwandan Patriotic Front

SADC- Southern African Development Community

SCSL- Special Court for Sierra Leone

SSR- Security sector reform

TRC- Truth and Reconciliation Commission

UANC- United African National Congress

UK- United Kingdom

UN- United Nations

UNHCR- United Nations High Commissioner for Refugees

UNSC- United Nations Security Council

USA- United States of America

ZANLA- Zimbabwe African National Liberation Army

ZANU-PF- Zimbabwe African National Union-Patriotic Front

ZAPU- Zimbabwe African People's Union

ZINATHA- Zimbabwe National Traditional Healers Association

ZIPRA- Zimbabwe People's Revolutionary Army

ZNA- Zimbabwe National Army

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CHAPTER 1: INTRODUCTION

1.1 An overview of the research

This research follows the growing debate in the peacebuilding discourse that top-down or official processes of transitional justice and reconciliation whether implemented by the government or international governing bodies, go so far but are not sufficient. Mobilizing the practices of justice emerging from within communities - which in this thesis will be referred to as tradition-based justice - is argued to help the conflict stricken communities better manage the aftermath of conflict. They are argued to be helpful not only because these practices for resolving conflicts are familiar to the local community but also because they are systematic, long standing and allow for ownership of the process. This research was, therefore, developed in response to the growing perception that existing, government-led initiatives for transitional justice and reconciliation in Zimbabwe have proven inadequate to building social harmony[1] among conflict stricken communities, and that tradition-based approaches are gaining widespread appeal, despite the lack of empirical evidence concerning their efficacy.

The focus of the research was to develop an understanding of justice processes followed during transitions[2] by the local community rather than on the state-led processes from a state-centric perspective. The original contribution of this research to this growing debate is an understanding of how the tradition-based justice system provides an avenue for redress to community members in Buhera and Mudzi districts, who were affected by politically motivated violence[3], and the implications of these local practices for the national transitional justice and reconciliation project underway in Zimbabwe.

[1] The term social harmony is a social phenomenon that describes the experience of being at peace with self and the social world in which people exist (Gelfand 1973, Nyathi 2015).

[2] The term transition here is used to refer to the ongoing processes of change in the socio-political, economic, cosmological and ecological lives of people in post-colonial states (Olonisakin *et al.* 2016).

[3] 'Politically motivated violence' here refers to the violent attacks experienced by the people in Buhera and Mudzi districts, which stem from contestations between the ruling Zimbabwe African National Union-Patriotic Front (ZANU-PF) party and opposition Movement for Democratic Change-Tsvangirai (MDC-T) for electoral support. These attacks include murder, torture, rape, bodily mutilations, unlawful arrest, destruction of property, fear and intimidation, among others (*Human Rights Watch* 2008, *Solidarity Peace Trust* 2008). But

This timely research was conducted during a period when Zimbabwe has entered a new phase in its national transitional justice and reconciliation project, and where internationally there is a growing interest in tradition-based justice systems. Under the new constitution of Zimbabwe adopted in 2013, the National Peace and Reconciliation Commission (NPRC) was established to attend to demands for justice by Zimbabweans who have encountered various experiences of violence over the decades (Bere and Maguchu 2014). The NPRC has a pre-determined lifespan of ten years, which commenced in 2013 when the new constitution was adopted. At the time of writing this thesis, the NPRC has passed almost five years of its ten-year time frame and little work has been done in terms of giving citizens access to justice. The government spent almost three of these five years screening candidates suitable to serve as commissioners and another two years were spent on deliberations around the policy framework that would guide the functions of the commission (Bere Maguchu 2014, *NTJWG* 2016). This delay in setting up the commission to provide justice for victims of violence, seemingly suggests that there continues to be a deadlock pertaining to processes of transitional justice and reconciliation in Zimbabwe.

Transitional justice and reconciliation form part of the peacebuilding process and are intended to address past injustices within conflict stricken communities. This research is hesitant to adopt existing transitional justice definitions because they reflect a liberal, Eurocentric-North American understanding of justice and instead offer the following definition of transitional justice which will be further discussed in section 1.5.3. Transitional justice refers to processes of redress in periods of disruption that reflect diverse practices of justice, which enable the society to transform incidents of past injustices into an environment that fosters social harmony. I adopted the above definition because this research is situated in the emerging discourse on transitional justice which is informed by the decolonial lens.[4]

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beyond 'subjective' violence (crime and terror), to draw from Zizek's (2008) three forms of violence, it also includes objective (hate-speech, discrimination) and systemic violence (the effects of economic and political systems) as will be apparent in the discussion of the findings in Chapter Five.

[4] The decolonial lens refers to a perspective, standpoint or worldview that challenges the superiority of the Eurocentric-North-American perspective and how it perpetuates coloniality (long-standing patterns of power, systems and practices fostered through colonialism) in post-colonial societies (Madlingozi 2015, Ndlovu-Gatsheni 2016).

Hence, the perspectives on transitional justice discussed in this thesis bring to the fore the views of the local community and not that of dominant global actors.

The term reconciliation refers to restoring broken relationships among the community by transforming violence into peace, hatred into mutual respect and divisions into co-existence (Lederach 1997). Reconciliation is an on-going process that facilitates the rebuilding of harmonious relations among conflicting parties (Bloomfield 2006). These two concepts transitional justice and reconciliation guide the arguments of this study, although the way they have been defined and framed in the literature will be critiqued. Although this thesis attempts to move beyond the perspectives of Lederach and Bloomfield, their focus on the relationships of the community in transition is important to this research.

The South African Truth and Reconciliation Commission (TRC) has become a model for transitional justice and reconciliation for many countries going through a transition and similar truth commissions have been implemented in various countries across the globe, including in Liberia, Peru and Sierra Leone (Brounéus 2008). Zimbabwe, which is a neighbour to South Africa, has a history of unaddressed injustices spreading over decades, making the need for an effective transitional justice and reconciliation process necessary (Chiromba 2015). Brounéus (2008) argues that the risk of relapse into conflict where the past has not been addressed makes transitional justice and reconciliation processes a major concern for conflict stricken countries and the global community. More knowledge is, therefore, required to understand the best ways of dealing with past injustices (such as experienced by the local people in Zimbabwe) and to prevent further conflict.

Critical scholars[5] propose that where official processes of transitional justice and reconciliation at the national or international level are out of reach for the local community, it is important to promote the local, unofficial processes that exist (Huyse and Salter 2008). An official process to transitional justice and reconciliation is commissioned by the government or an international legal body and funded by these entities, for example the National Peace

[5] Critical scholars are thinkers who are grounded in non-Western scholarship and challenge the Eurocentric-North American worldview such as Benyera (2014), Clark (2010b), Igreja (2012), Madlingozi (2015), Nabudere (2011) and Ndlovu-Gatsheni 2016, among others. This pool of scholars feed the emerging discourse on context-based African perspectives to transitional justice and reconciliation in post-colonial Africa.

and Reconciliation Commission (NPRC) mentioned above (*NTJWG* 2016). These processes are highly technocratic and guided by codified legal frameworks such as international laws, human rights law and humanitarian law. On the contrary, non-state officiated processes emanate from the traditions and customary practices of the local community that operate without the patronage of the government or international legal bodies and are not bound to meet international legal standards (Benyera 2014a, Huyse and Salter 2008).

The approach to transitional justice and reconciliation that draws from the conflict resolution practices of the local community has many terms, such as tradition-based, informal, and home-grown. As will be discussed later, the study made use of the term 'tradition-based' to refer to justice processes that are specific to local communities and used by the local people to resolve conflicts that arise within their localities (Quinn 2007). The focus of these practices is often to resolve conflicts at the micro-level rather than the macro level, and they are informed by oral tradition (Baines 2007). The case of the *gacaca* justice system in Rwanda, the Acholi rituals in Uganda and the *magamba* spirits in Mozambique are examples of tradition-based justice practices that have been used in other parts of the continent (Branch 2014, Clark 2010a, Igreja and Dias-Lambranca 2008).

It is within this scope of tradition-based approaches to transitional justice and reconciliation that this research fell as it examined how local communities in Zimbabwe are attempting to deal with past injustices, albeit outside the arena of the formal legal system, and whether these local practices have anything to offer to the broader transitional justice and reconciliation project in Zimbabwe. The research question that guided this study was: What processes for justice are present in the local communities and how can they contribute to the broader transitional justice and reconciliation project in Zimbabwe? The findings of this study provide insight on local justice processes and recommendations that could guide transitional justice and reconciliation processes suitable for community members in Buhera and Mudzi districts

1.2 Aim and objectives

The main aim of this research was to examine the avenues for justice available to community members affected by violence in Buhera and Mudzi districts, and to determine how they function in relation to meeting the expectations of the local community. A lesser aim was to

establish in what ways, if any, the local processes of justice can contribute to the national transitional justice and reconciliation project in Zimbabwe.

The specific research objectives ensuing from this broad aim are to:

- Determine the nature of violence experienced by community members in Buhera and Mudzi districts.
- Investigate the underlying assumptions and narratives of transitional justice and reconciliation among local communities in the two districts.
- Explore existing practices for resolving conflict available to the local people, and how they function.
- Identify the processes followed by the local community, community leaders and government to facilitate transitional justice and reconciliation at the community level.
- Establish the relationship between existing transitional justice and reconciliation processes (i.e. official vs unofficial) in Zimbabwe.

1.3 Justification and relevance

Preceding doctoral research that has looked at non-state officiated initiatives to transitional justice and reconciliation in Zimbabwe include the work by Everisto Benyera (2014a) and Dumisani Ngwenya (2014), who conducted fieldwork in the Midlands Province and Matabeleland North Province, respectively. Their work established that people-driven justice processes, though not immune to challenges, provide redress and are able to foster social harmony among conflict stricken communities. Building on their findings, this study explored the justice processes that exist in Buhera and Mudzi districts to understand how the local people deal with the violence that occurs in their communities. McEvoy and McConnachie (2013) posit that to become effective, processes of justice need to be informed by the perspectives of those who live in the affected communities. Sharp (2014) adds that the conceptual framework to study African realities cannot be located outside the context of Africa. Hence, this study brings out context-based findings that contribute to the growing body of knowledge on the efficacy of justice processes available to local communities in Zimbabwe.

Buhera and Mudzi districts were purposively selected in this study because they have made headlines on reports about violence associated with the post-2000 election cycles which led to the 2008 political impasse (*Human Rights Watch 2008*, *Solidarity Peace Trust* 2008). Buhera district is a rural community located in Manicaland Province and is home to the leader of the opposition MDC-T party, Morgan Tsvangirai and other ZANU-PF cadres, which has rendered the district a hot spot for electoral violence[6] since the emergence of the Movement for Democratic Change (MDC)[7] in 1999 (*Human Rights Watch* 2008). Mudzi district is also a rural community found in Mashonaland East province and was a hot spot for the post-March 2008 electoral violence locally named Operation *Makavhoterapapi* (Where did you put your vote?) (*Solidarity Peace Trust* 2008).

The violent conflicts occurring in Buhera and Mudzi districts mostly stem from contestations between community members who support different political parties. The common community structure in rural areas of Zimbabwe (including Buhera and Mudzi districts) is formed out of family/clan population groupings that have settled within the same area. These family/clan groupings are identified using totems and these totems denote the ancestral clan name, which is used by the people to identify the branch within the family tree they belong to. A totem also carries the moral values, customs and traditions (*Tsika nemagariro* or *Imikhuba lenhlalo*) that guide families in conducting their day-to-day activities, including social behaviour such as greetings. Clan names have been carried over generations and maintained through inter-clan marriages and traditional leadership. In many cases, one community would be comprised of people belonging to the same clan, but affiliated with different political parties. Where this occurs, some family members have fallen victim to violence because another family member 'sold out' information to the opponent, usually the ruling ZANU-PF party, about the political standing of other family members. The resulting

[6] Electoral violence refers to harm or threat of harm to a person or their property related to the election, the electoral process or the period of elections (Wielenga *et al.* 2015).

[7] The Movement for Democratic Change (MDC) as a political party was established in 1999 but political infightings led to the split of the party in 2005. The two factions that emerged are MDC-Tsvangirai led by the founding leader of the MDC, Morgan Tsvangirai and MDC-Mutambara (MDC-M) which was led by Prof. Arthur Mutambara who has now been replaced by Welshman Ncube (giving the party the acronym MDC-N). The MDC-T has remained the largest group of the MDC fraternities.

impact of politically motivated violence on the local community, this thesis discusses, violates the social contract[8] that binds people to live in harmony.

As such, the social spaces of the local people have been invaded by incidents occurring at the national level, relating to the contestations between the ruling ZANU-PF party and the opposition MDC-T, for electoral support. Contemporary politics in Zimbabwe is centred around elections, and holding regular elections has become a form of constitutive power that legitimises the elected government. Consequently, from the time of independence in 1980, Zimbabwe has held ten cycles of elections (presidential and parliamentary), and most of these elections were marred by politically motivated violence of varying degrees (for example murder, torture, bodily mutilations, rape, abductions and unlawful arrest) (Sachikonye 2011; Raftapolous & Eppel 2008). Those most affected by politically motivated violence are the rural population, which make up 60% of Zimbabwe's total population (about 13.1 million people as of the last Census in 2012) (Sachikonye 2011, *Zimbabwe National Statistics Agency* 2012). The rural population remains the major source for electoral support to political parties, especially the ruling ZANU-PF party. Hence, Zimbabwe has been regarded as a country in crisis due to the growing reports of injustices associated with elections and, various global and local actors have been calling out for a process that could bring an end to the cycle of violence that prevails (Chiromba 2015).

Westendorf (2015) states that transitional justice is the primary arena in which global actors engage with the socio-political dynamics of violence to foster peace and prevent further conflict. Transitional justice is acclaimed for enabling peace because it attends to the legacy of past injustices by holding to account perpetrators of injustices. This attribute of transitional justice has created hope among many actors in the global community that 'global order may become rooted in justice rather than anarchy, economic gain, or politico-military power,' (Call 2004: 104). Nonetheless, the key debates in peacebuilding are whether transitional justice serves to promote democracy or reconciliation? Does it facilitate the re-establishment of the rule of law, institutional reform or a human rights culture? Do transitional justice processes largely provide a symbolic function in that political leaders make use of the process to offer public acknowledgement, or to mark a turning point in the history of the state and

[8] The term social contract is used to describe the binding agreement that informs how local people relate with each other and manage their everyday life (Nyathi 2015).

symbolic break from the past? Does transitional justice provide a political function, by facilitating the reconstruction of the state, or is it more personal, in that it envisages to restore relationships between conflicting parties?

Whatever its intended outcome, the mainstream literature and processes of transitional justice have come under increasing criticism from around the globe. The global transitional justice project has been criticised for its hypocrisy, double standards, lack of local legitimacy, lack of broad, local participation, insensitivity to local needs, its 'technical' approach, its state-centrism, its elite-focus, and its attempt to fit one framework to many contexts (Mac Ginty and Richmond 2007, Sharp 2014). Much of this critique centres around the fact the liberal peacebuilding framework which informs this project fails to meet the justice needs of, or has any positive lasting result for, large portions of African societies (Leebaw 2008, Olsen *et al.* 2010).

Critical scholars posit that what safeguards humanity is not human rights or international laws pursued by liberal peacebuilding thinkers and practitioners, but the human beings themselves through an array of relationships and a social contract that enables them to co-exist (Ellis and Ter Haar 2004). Resultantly, the essence of laws that regulate human interaction does not lie in the technical or technocratic processes of justice, but in the supremacy of certain ethical convictions and rules of decency, as well as the psychosocial and spiritual embodiment of the community (Bhebe and Ranger 2001, Cobbah 1987). It is this understanding of justice that led this study to explore how conflict stricken communities in Zimbabwe retain social harmony. A focus on Buhera and Mudzi districts enabled the researcher to (i) establish the extent of the gap created by the inefficiencies of government-led transitional justice and reconciliation processes, (ii) explore avenues for redress offered by the tradition-based justice system present within the local community, and (iii) establish the best practices for addressing the past that meets the expectations and needs of affected parties. Through this inquiry, the research sought to explore and understand African perspectives of justice and position the voice of local Zimbabwean communities within the larger context of transitional justice and reconciliation.

1.4 Formulation and demarcation of the research problem

This study is situated in the contemporary peacebuilding debate, and argues that tradition-based justice processes provide leverage for conflicting parties in Mudzi and Buhera districts to manage conflict sustainably. The central question driving this research is: What are the justice processes used by the local people in Buhera and Mudzi districts? And in what ways, if any, can they contribute to transitional justice and reconciliation? The specific research questions ensuing from this broad question are:

1. What forms of violence have been experienced by the people in Buhera and Mudzi districts? This question established the nature of violence encountered by the local people and the impact it has on their well-being.

2. What are the underlying assumptions and narratives of transitional justice and reconciliation among local communities in Zimbabwe? This question examined the perceptions of transitional justice and reconciliation held by the research participants.

3. What are the existing practices for conflict resolution among the local communities in the two districts, and how do they function? This question investigated the avenues for redress available to the local community, their composition and functionality.

4. How do community members, the government and community leaders facilitate transitional justice and reconciliation processes at the community level? This question examined the role played by stakeholders such as the local community, government and traditional leaders in administering transitional justice and reconciliation.

5. What is the relationship between existing transitional justice and reconciliation processes (i.e. official vs unofficial) in Zimbabwe since 2000? This question explored the similarities and differences between the formal and informal justice processes employed for transitional justice and reconciliation in the local community.

Three delimitations were used to guide the focus and scope of the study and these are conceptual, temporal and geographical. In terms of conceptual delimitations, a decolonial lens was adopted to develop an understanding of transitional justice and reconciliation suitable to post-colonial societies, drawing from the work of Benyera (2014a), Branch (2014), Madlingozi (2015), Ndlovu-Gatsheni (2016) and Sharp (2014), among others. The framework offered by these critical scholars allowed for an exploration of the varying perspectives of transitional justice and reconciliation, and the identification of the most suitable standpoint to describe the processes of justice observed in Buhera and Mudzi districts. This research drew on historical analyses of the conflicts occurring in Zimbabwe by examining literature from scholars such as Dzinesa (2006), Eppel (2006), Gelfand (1973), Machakanja (2010), Mashingaidze (2005, 2010), Mlambo (2013, 2014), Ndlovu-Gatsheni (2012, 2013) and Raftopoulos (2009), among others. More so, government documents, civil society reports, accredited journals and credible media sources were used to augment the literature that covers the history of Zimbabwe.

With regards to temporal delimitation, the research focused on the incidents of violence associated with the elections that occurred between 2000 and 2017. The year 2000 coincides with the first multi-party elections that involved the opposition MDC party and the subsequent elections that have all been marred with high volumes of injustices against supporters of the opposition and human rights defenders across the country (*Human Rights Watch* 2008). Surveillance and intimidation have become the modus operandi of the ruling ZANU-PF party as a way of remaining in power, and reports of election rigging have been recorded for all elections since the year 2000 (Ndlovu-Gatsheni 2012). Much of the violence has affected the rural communities (Buhera and Mudzi districts included), because they are the major stronghold for the ruling ZANU-PF party. More so, for many years the ruling ZANU-PF party had been dominant in the rural areas and the emergence of the MDC party in 1999 (which is the biggest opposition party) became a threat to its hegemony.

Focusing on the conflicts that have accompanied the emergence of the opposition MDC party, enabled this research to situate the experiences of the local communities in Buhera and Mudzi districts, and to establish from the perspectives of the people how to address the impact of election-related violence. These two districts have been reported as hot spots for politically motivated violence and the violence has become cyclical because Zimbabwe holds

elections every five years (*Solidarity Peace Trust* 2008). Lastly, the geographical delimitation has been confined to Buhera and Mudzi districts because of the high volume of reports of violence against suspected sympathisers and supporters of the MDC party, which has been linked to political figures from the ruling ZANU-PF party and their allies (*Solidarity Peace Trust* 2008).

1.5 Defining the central concepts

The key concepts used in this research that need to be defined are violence, peacebuilding, transitional justice, reconciliation and tradition-based justice. The following sections provide an overview of these concepts to indicate how they have been applied in the research. A full literature review is offered in Chapters Two and Three.

1.5.1 Violence

The term violence has been described by Galtung (1969) as any act or behaviour involving physical force, oppression or discrimination, which affects the well-being of people in society. Violence can affect the physical and psychological well-being of a person (such as instilling fear, anxiety and bodily injury), or inhibit people from accessing basic material needs (for example food and medical care), as well as non-material needs (such as happiness, peace and self-actualisation).

The literature provides varying ways to classify the above occurrences of violence, but three categories are mostly used, namely, structural, cultural and direct violence (Galtung 1969). Direct violence refers to physical inflictions on the human self by acts of another human being (Galtung 1964). These acts are often intentional and can lead to injury or death. On the contrary, structural violence refers to institutionalised discriminatory practices of society that harm, disadvantage or perpetuate the oppression of others (Galtung 1969). If unaddressed, structural violence becomes systemic and subtle, making it difficult for the disadvantaged persons to fulfil their held aspirations. Cultural violence emanates from the values, norms, practices or traditions followed by people, which foster hatred, discrimination and divisions within the society (Confortini 2006, Galtung 1969). Arguably, cultural violence can become a stimulant that legitimates the use of direct or structural violence.

These three forms of violence encapsulate the narratives on occurrences of violence that the research participants shared. Making use of vernacular words such as *mhirizhonga* (disorder), *bvongamupopoto* (disruptive behaviour) and *ingcukaca* (tensions), these terms deepened the above understandings of violence by contextualising the ways in which violence has affected the relations of people in the community. The research participants highlighted that politically motivated violence has destroyed the social fabric (inner essence of humanity) of the community. Hence, the term injustice was understood in this research to describe a violation of human dignity because it resonates with the local understandings of how violence erodes social harmony. Human dignity represents the foundation of humanity as epitomised in the African philosophy of *Ubuntu* or *hunhu*, roughly translated as 'I am because you are', which grounds human beings to be respectful, tolerant and mindful of how their actions affect the well-being of others (Nyathi 2015). The well-being of people within their community fosters social harmony (the experience of being at peace with self and the social world in which people exist).

1.5.2 Peacebuilding

Peacebuilding is an activity of fostering non-violence, justice and stability to a conflict stricken community. It involves creating an enabling environment that allows for conflicting parties to engage with one another and develop practices to resolve conflict amicably (Sooka 2009, Westendorf 2015). However, peace is an elusive concept that easily loses meaning when people try to establish what it is or is not. Existing peacebuilding literature identifies two categories of peace: positive peace and negative peace. Sooka (2009) points out that negative peace exists when there is an absence of direct violence and is secured by putting an end to the immediate source of violence. Negative peace offers immediate relief to conflict in that an external actor stops the conflicting parties from engaging in physical altercations, but is not necessarily able to establish durable solutions that prevent further conflict.

On the contrary, positive peace involves putting in place processes that enable conflicting parties to develop a desirable relationship that allows them to resolve their disputes through peaceful means (Westendorf 2015). Positive peace offers long-term relief to conflict in that it instils practices and processes that transform the negative attitudes, behaviours and perceptions which harbour conflict (Brounéus 2008). It also includes the psychosocial attributes of the community such as fostering relations that nurture the social contract, which

enables people to live in harmony (Brounéus 2008). The research explored three spheres of peacebuilding proposed by Westendorf (2015), namely, security, governance and transitional justice.

The security sphere of the peacebuilding process addresses the immediate threat to peace that arises when there is full out war or armed parties in conflict (Westendorf 2015). Governance in peacebuilding develops systems of representation, institutions and legislature to ensure for a structured government system that protects the citizens and create an enabling environment for the people to fulfil their held aspirations (Westendorf 2015). Security and governance spheres of the peacebuilding process are often criticised for being more concerned with the organisational structure of the state and, resultantly overlooking the social, economic and political issues that harbour conflict. Transitional justice is the third sphere of peacebuilding, which attempts to address the shortcomings of both security and governance. It facilitates redress for victims of conflict by holding to account perpetrators of injustices (Westendorf 2015). The focus on providing redress to victims of conflict through transitional justice allows this research to establish how conflict stricken communities in Zimbabwe can foster social harmony.

1.5.3 Transitional justice

The concept of transitional justice is highly contested because various scholars, actors and practitioners attach different meanings to it (Boraine 2009, Fischer 2011). For Roht-Arriaza (2006: 02), transitional justice is a "set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed at dealing with past violations of human rights and humanitarian law." Branch (2014: 610) defines transitional justice as a discourse, set of practices and institutions that facilitate political remedy for past injustices through present justice. Arthur (2009: 324) describes transitional justice as a 'field' comprised of 'an international web of individuals and institutions, whose internal coherence is held together by common concepts, practical aims and distinctive claims for legitimacy' that are demonstrated in attempts to address violations associated with political change. More so, Bell (2009: 06) proposes that transitional justice is a 'label or cloak that aims to rationalise a set of diverse bargains in relation to the past, as an integrated endeavour, to obscure the quite different normative, moral and political implications of the bargains.'

Transitional justice is largely seen to function in conditions of a failed state, rogue state, civil war, insurgency, authoritarian rule or gross human rights violations, providing redress and establishing a democratic dispensation (Bosire 2006, Sandoval 2011). Mainstream literature identifies criminal prosecutions, truth commissions, reparations and institutional reform as the measures that can be used to address past injustices (Lederach 1997). These measures are guided by international laws and standards, particularly, human rights law, humanitarian law and international criminal law, which fall under the liberal peacebuilding framework (Bell 2009).

Significantly, the research participants were unable to provide the local meaning of the concept of transitional justice. They offered definitions for the term justice, using the words *kuenzanisa* (creating a balance), *kunzwana nhunha* (listening to troubling issues) and *lunganisa* (making things equal). In rendering *kuenzanisa* or *kunzwana nhunha*, the people engage in deliberations that allow conflicting parties to reflect on the impact of the injustice and they work together to foster social harmony. Thus, *kuenzanisa* or *lunganisa* retains an equilibrium between the conflicting parties because an injustice is understood as 'deviant behaviour' that destroys the essence of another human being. The balance mentioned by the participants is synonymous to a 'modicum of normality' (a position of sustainable peace and co-existence), described in the work of Sarkin (2008).

From the above understandings of justice, I developed my own definition of transitional justice to reflect on the perspectives of the research participants. As mentioned earlier, transitional justice refers to processes of redress in periods of disruption that reflect diverse practices of justice which enable the society to transform incidents of past injustices into an environment that fosters social harmony. This definition is informed by the understanding that the politically motivated violence occurring in Buhera and Mudzi districts has eroded the social contract that binds people to live in harmony. The social contract is a binding agreement that informs how local people relate with each other and manage their everyday life (Nyathi 2015). It emanates from the moral values, practices and code of conduct (*Tsika Nemagariro*/ *Imikhuba lenhlalo*) bestowed upon each member of the family/clan, which inhibit people from committing any actions that violate social harmony. Hence, where politically motivated violence has occurred the local communities indicated that they require processes of redress that can rebuild the social fabric (inner essence of humanity) of the

community. They have an array of practices they use to render justice (examined in section 7.5) and these fall outside the mainstream transitional justice framework.

1.5.4 Reconciliation

There are many debates about the concept of reconciliation relating to how it can facilitate peacebuilding, and different meanings have been brought forward. According to the definitions of Bloomfield (2006), Brounéus (2003), Lederach (1997) and Sarkin (2008), it is suggested that reconciliation is both a process and a desired end goal. Boraine (2006) adds that reconciliation can begin at different points in the transition of a country, for example at the negotiation table or after holding an election. However, it is not so much about where or when it begins but how the process transforms the lives of the ordinary people. Reconciliation is seen, therefore, as an ongoing process that seeks to address the legacies of past injustices, especially among communities where oppression and divisions have been deep and entrenched (Lederach 1997). It focuses on transforming the negative attitudes and behaviours that have become common modalities of life in a conflict stricken community (Brounéus 2003).

Sarkin (2008) suggests that reconciliation in simple terms describes a process of coming together and formulating methods and practices that make way for conflict stricken communities to return to a 'modicum of normality' (a position of sustainable peace and co-existence) even though its inhabitants might have been subjected to inhumane actions. Arguably, reconciliation rebuilds the community by transforming the underlying issues that harbour conflict (Lederach 1997). Brounéus (2003:11) defines reconciliation as "a societal process that involves the mutual acknowledgement of past sufferings and the changing of destructive attitudes and behaviours into constructive relationships towards sustainable peace." The local words for reconciliation used by the research participants were *yananiso* (bringing back together), *kugadzirisana* (fixing things), *kutaurirana* (engaging in dialogue) and *nokubuyisana* (making amends or restoring things). These words encapsulate the idea of an engagement that enables conflicting parties to deliberate on issues affecting them, which fosters social harmony.

1.5.5 Tradition-based justice

There are different approaches to transitional justice and reconciliation, but they all fall under two main umbrella terms, official or unofficial. A third form termed hybrid is used in cases where aspects of the former two approaches are combined into one model (Huyse and Salter 2008). As mentioned earlier, official processes of transitional justice and reconciliation are constituted by a national government or international legal body to deal with gross human rights violations (Quinn 2007). The constituting body is responsible for the operations of the established entity by providing the required resources and an enabling environment. Official processes of transitional justice and reconciliation mostly follow a retributive justice model (apprehending perpetrators) rather than a restorative justice one (reconciling broken relations) and are guided by international laws. These processes include criminal prosecutions, truth commissions, reparations and institutional reform.

On the contrary, unofficial processes of transitional justice and reconciliation refer to the people-driven justice processes that are informed by customs, traditions and practices of the local community. Varying terms are used to describe these justice processes, including 'tradition-based', 'home-grown' and informal processes, among others. These terms are often used interchangeably and to mean different approaches, but they refer to justice processes that operate without the patronage of national governments or international legal bodies. Lundy (2009) uses the term 'homegrown' to refer to processes that emerge within the community and are unique to that place. Informal processes of transitional justice, often combine some elements of formal justice with customary laws, but operate in a less structured manner (Quinn 2007). The term 'tradition-based' as it is applied in this research, refers to justice processes that are rooted in the socio-cultural and historical practices of the specific community (Huyse and Salter 2008). They form part of the broader indigenous African legal customs and are associated with rituals and ceremonies inherent in customary practices of a community (Benyera 2014a).

1.6 Research design

An ethnographic case study method was used to gather the data that informs this research. The ethnographic case study as it pertains to this research examined various understandings of transitional justice and reconciliation (single phenomenon) held by the community

members in Buhera and Mudzi districts to gain deeper knowledge on how to address the violence they have encountered since the year 2000. Fieldwork data was collected in Zimbabwe between 2015 and 2017 using multiple research techniques, namely, surveys, semi-structured in-depth interviews, focus group discussions and participant observation.

The survey (see Appendix A) was conducted for a book project funded by the Council for the Development of Social Science Research in Africa (CODESRIA). This research collaboration involved eight scholars affiliated with the Centre for the Study of Governance Innovation (GovInn) at the University of Pretoria, who were researching tradition-based practices of justice in various parts of Africa. In this project, I contributed a book chapter on tradition-based justice practices in Zimbabwe, drawing from the survey I conducted in 2015, involving 305 participants from three districts, namely, Buhera, Bubi (Inyathi)[9] and Mudzi. This project related research informed this thesis research on the feasibility of the study and allowed for the exploration of the avenues of justice available to the local communities in Zimbabwe. The survey research led to the revision of the geographical delimitations of this thesis, from studying the above three districts to just two (Buhera and Mudzi), due to logistical constraints experienced while conducting research in Bubi (Inyathi).

Thirty-six semi-structured interviews (see Appendix B) were conducted and five of these interviews were done alongside the survey in 2015, while the other 31 interviews were conducted over nine months in 2016. Interview respondents included 18 community members (ten from Buhera district and eight from Mudzi district), a Zimbabwean high court judge who has served in the African Union (AU) Peace and Security Council, a civil society representative working on transitional justice, 12 chiefs (five from Mudzi district and seven from Buhera district) and four government officials from the office of the district administrator (DA) (two from each district). Moreover, four focus group discussions (see Appendix C) were conducted in the two districts involving traditional leaders and community members as two separate cohorts. Only participants in these two stratums were invited to take

[9] Since independence the names Bubi and Inyathi were used interchangeably in official records to refer to this district after the two areas were amalgamated into one district. In recent years Bubi has been the more commonly used name in government documents, for example the Census in 2012, but for the research participants Inyathi was the popular name (*Zimbabwe National Statistics Agency* 2012). Therefore, the two names have been maintained in this study.

part in the focus group discussions because: (i) they provided a sizeable number to formulate a focus group discussion, (ii) they were comprised of a homogenous group, (iii) they were located within reach of each other which made it more feasible to gather them in one convenient location at the same time.

I took part as a participant observer in a community meeting (involving 45-60 attendees) organised by one of the local chiefs to deliberate on disputes reported by the community members. In 2016 and 2017 a series of public hearings on the National Peace and Reconciliation Commission (NPRC) bill were held by the government in various parts of the country, and I also attended some of the hearings as a participant observer together with the research assistants. These public meetings were attended by over 200 people and enriched the research with information on the perceptions of transitional justice and reconciliation held by the broader Zimbabwean community.

The fieldwork data was triangulated using secondary data sets obtained from archival records, including academic journals, books, newspaper articles, government publications and reports by local civil societies working on transitional justice and reconciliation. In some cases, audio recordings of the deliberations were made with the permission of the respondents, to enhance data capturing, as well as cross examination of the data at a later stage.

A combination of stratified purposive sampling and snowball sampling was used to identify the research participants. Firstly, the stratums were drawn using the following categories: traditional leaders, community members, judge, civil society and government officials. Secondly, a combination of purposive sampling and snowball sampling were used to select research respondents for each stratum. These two sampling approaches were adopted because the research examined a highly politicised topic and there is still a lot of censorship in Zimbabwe around gathering information due to government policies such as the Access to Information and Protection of Privacy Act (AIPPA) and the Public Order and Security Act (POSA). These policies have restricted people's free engagement in public gatherings or private interactions with unfamiliar persons, due to fear of being monitored by government security agents. Hence, conducting the research through referrals enabled me to establish a degree of trust with the research participants.

The community members that participated in the study were limited to victims and witnesses of the electoral violence that has occurred in these districts because it was difficult to locate the alleged perpetrators, due to the sensitivity of the research. The traditional leadership structure in Zimbabwe is comprised of chiefs, village heads and headmen, however, this research mainly focused on the chiefs because that enabled me to observe the customs, practices and traditions of each clan without stretching the sample too wide. The high court judge offered insight on views of the judiciary in relation to international laws and the national framework for transitional justice, while the civil society representative served as a convenor because he was familiar to the local communities, which assisted me to conduct the research timeously.

Permission to conduct the research was granted by the District Administrator (DA) officials in Buhera and Mudzi districts. The research respondents also had to give consent before participating and pseudonyms were used to protect their identity. Most of the research participants were conversant in Shona with a few Ndebele speakers, however, the research questions were translated to Shona and Ndebele for the interviews and focus group discussions to allow people to converse in their preferred language. Multi-lingual research assistants were recruited during fieldwork to ensure for respondents to engage with people who understood and could speak their language.

A qualitative ethnographic case study method allowed for cross-sectional examination of the processes of justice employed by the local community. I immersed myself into the community and took part in some activities (for example taking part in the chief's court hearing or *dare*) that inform the lived experiences of the local people. This encounter with the local community provided rich data about the lived experiences of the local people, information that enriched this research to uncover deeper meanings and significance of the various constructions of social life held by the research participants in relation to the research questions. Hence, the research falls under the interpretivist paradigm because it employed non-statistical research techniques to gather perceptions of justice among local communities in Zimbabwe (Buhera and Mudzi districts) that have encountered various episodes of violence. Thematic content analysis and descriptive statistics were used to interpret and analyse the data gathered during fieldwork. The data sets were presented using themes, tables and summaries.

A limitation of the ethnographic case study research method is that one runs the risk of becoming emotionally invested in the subject, which can inhibit objectivity (McNabb 2004). I addressed the likelihood of encountering this problem by sticking to the research guidelines set in the interview and focus group schedules. More so, I conducted debriefing sessions with the research assistants while in the field and with my main supervisor after each field trip, which enabled me to reflect on the research process. I also wrote in my diary the research experiences I encountered while in the field and shared with my peers and colleagues during personal meetings, seminars and workshops, which enabled me to reflect on the influence of the field experience on my well-being and intellectual focus.

The main advantage of using the ethnographic case study method is that it allows for the adoption of multiple research techniques, in this case, surveys, semi-structured in-depth interviews, focus group discussions, participant observation and secondary data were used to triangulate the research data.

This research made use of non-statistical data sets and a sample of 305 survey participants, 36 interviewees and about 45-60 attendees at the chief's court (*dare*), which brings the total to a little over 400 research participants. This limits the ability of this research to be used to make inferences to the broader Zimbabwean community. However, taking part in the community meeting at the chief's court and the public hearings of the NPRC bill, which drew large crowds, provided the thesis with room to make limited generalisations. Overall, the purpose of this research was to gain in-depth understanding on the complex phenomenon of transitional justice and reconciliation, information that is crucial for developing knowledge on the best practices for addressing past injustices encountered by the local communities. Thus, this research paves the way for future comparative research to be conducted to establish broader understandings and methods to coordinate transitional justice and reconciliation processes among conflict stricken communities in Zimbabwe and elsewhere.

1.7 Research structure

This thesis is organised into eight chapters. This first chapter has introduced and contextualised the research question to give a clear outline of the scope and focus of the research. Definitions of the key concepts and methodology of the research were also provided.

Chapter Two, *Unpacking Transitional Justice and Reconciliation: A Theoretical Framework*, examined the mainstream transitional justice literature highlighting the gaps it presents to understanding peacebuilding in post-colonial Africa. This chapter situated the research within the global debates around peacebuilding, transitional justice and reconciliation and identified the various stakeholders involved.

Chapter Three, *Understanding Tradition-based Justice Systems and Transitional Justice through a Decolonial lens*, explored the emerging discourse that feeds the African perspectives on transitional justice and reconciliation. This chapter engaged with literature from critical scholars championing for context-based transitional justice and reconciliation processes and explored how African customs, traditions and practices have been employed for transitional justice. Here the *gacaca* justice system in Rwanda, *magamba* spirits in Mozambique and Acholi rituals in Uganda were examined as case studies to allow for cross examination with the research findings on practices followed by local communities in Zimbabwe.

Chapter Four, *The Research Story*, describes the ethnographic case study research method used in this research. This chapter explored in depth, the various research techniques, sampling methods and data analyses techniques employed to gather data from local communities in Zimbabwe (i.e. Bubi/Inyathi, Buhera and Mudzi districts). It also highlighted the successes, challenges and limitations of the research.

Chapter Five, *Zimbabwe's Socio-Political Landscape and Justice Processes in Historical Context*, explored literature on the socio-political history of Zimbabwe beginning with the colonial era until the present day to establish its impact on avenues for justice available to the Zimbabwean population. This chapter analysed the transitions that have occurred to the local population since the introduction of the Westphalian state-system, to situate the complex challenges faced by post-colonial societies in rendering justice.

Chapter Six, *Dynamics of Violence in Buhera and Mudzi districts*, explored the nature of violence experienced by community members of Buhera and Mudzi districts, and established the persons responsible for orchestrating violence as well as the impact it has had on the

people. This chapter analysed the local understandings of violence to situate the context and depth of injustices incurred by the people, as well as the dynamics of stakeholders involved.

Chapter Seven, *Understanding Justice and Justice Processes through the lens of the Local Community*, analysed the avenues for justice available to community members in Buhera and Mudzi districts to identify the processes and stakeholders best suited to administer redress for the violence incurred by the people. The understandings of justice presented in this chapter were cross referenced with the literature review conducted in Chapters Two and Three, to highlight congruence, differences and the gaps in views relating to transitional justice and reconciliation.

In Chapter Eight, the research concludes by drawing upon the findings of the preceding chapters in relation to the broad focus of the research. This chapter recaps the scholarly debates, findings and limitations of the research to situate the contributions it makes to scholarship on transitional justice and reconciliation. Drawing from the research findings, recommendations concerning transitional justice and reconciliation in Zimbabwe and other post-colonial societies were considered.

CHAPTER 2: UNPACKING TRANSITIONAL JUSTICE AND RECONCILIATION: A THEORETICAL FRAMEWORK

2.1 Introduction

Over the years, various communities that encountered war or conflict have sought justice guided by varying laws, values and standards of the concerned parties at a particular moment. Examples can be made of the Henry Wirz Trial (1865), the Turkish Military Tribunal (1919-1920), allied-run Nuremberg Trials (1945-1949) and, recently, the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993, the Truth and Reconciliation Commission (TRC) in South Africa (1997) and the international Criminal Court (ICC) in 2003 (Call 2004, Huyse 1995). In Zimbabwe, the government established various mechanisms to respond to its gruesome past in the form of *Chihambakwe* and *Dumbutshena* Commissions of Inquiry (in 1983 and 1984 respectively), as well as the National Peace and Reconciliation Commission (NPRC) established in 2013.

An underlying endeavour of the pursuit for justice in the above examples has been to attain accountability grounded on varying guidelines of the concerned parties. Over time this pursuit for justice has led to the development of the concept of transitional justice, which is highly contested as various entities attach varying meanings to it. For Sandoval (2011), literature on transitional justice became popular following the now widely circulated edited volume by Neil Kritz (1995), titled, *Transitional justice: How Emerging Democracies Reckon with Former Regimes*. This book was written at a time when the global community was grappling with challenges of governance, legitimacy, democracy and human rights. The focus of the global actors was to devise a means to account for past injustices and restore the dignity of victims, survivors and their relatives (Sandoval 2011).

Bosire (2006), Call (2004) and Teitel (2000) describe transitional justice as a distinctive form of justice employed by communities transitioning from either repressive rule or violent conflict to deal with impunity and promote reconciliation. Within this framing of transitional justice, impunity on one hand is broadly understood as exemption from punishment or freedom from the injurious consequences of an action (Leebaw 2008, Olsen *et al.* 2010). On the other hand, reconciliation is a contested concept within the peacebuilding discourse. The pundits in this subject and its practitioners have nevertheless agreed that reconciliation is both

a goal and process that brings people together to re-establish a 'modicum of normality' (a position of durable peace and coexistence) whenever it has been compromised (Lederach 1997, Sarkin 2008). Villa-Vicencio (2007) describes reconciliation as an engagement that turns the impossible into reality, driven by the desire to stretch the limits of pain and recognising that people are incomplete if they remain alienated from one another. Reconciliation thus encourages the creation of a future that enables people to engage with each other in the development of a society that regards all people as equal based on human dignity, mutual respect and social justice (Villa-Vicencio 2007).

Posner and Vermeule (2003: 05) have taken this forward in their argument that it is the retroactive capacity of transitional justice that allows it to be reconciliatory because it is both backward and forward looking. As backward looking, transitional justice facilitates the acquisition of truth about the past, compensation for victims, retribution for perpetrators, as well as restoration of resources taking from those who wrongfully acquired them. Transitional justice is also forward looking in that it enables conflict stricken communities to: (a) revitalise lost traditions and discard dysfunctional institutions, (b) develop the means to safeguard against the political, social and economic influence of former officials that could impede transformation; and (c) establish constitutional precedents that may deter future violations (Posner and Vermeule 2003: 05).

It is therefore possible to argue that the main debates in transitional justice centre around, firstly, retaining a balance between retributive and restorative justice. Secondly, how to design transitional justice processes with regards to following either a liberal justice or traditional justice model and possibly a hybrid which combines the two. Thirdly, how to validate the legitimacy of the transitional justice process, whether it should be locally owned or be accredited in accordance with international norms and regulations.

The concept of transitional justice has varying definitions which are informed by the actors, context and expected outcomes of the peace process. Branch (2014: 610) sees transitional justice as a discourse, set of practices and institutions that facilitate political remedy for past injustices through present justice. Moreover, he sees transitional justice as a political instrument that is employed to establish or re-establish a new order for conflict stricken societies that leads to liberal peace (Branch 2014). Transitional justice is largely seen to function in conditions of a failed state, rogue state, civil war, insurgency, authoritarian rule or

gross human rights violations, providing redress and establishing a democratic dispensation (Bosire 2006, Sandoval 2011). The mainstream measures of attaining transitional justice are criminal prosecutions, truth commissions, reparations and institutional reform (Lederach 1997). These measures are guided by international laws and standards, particularly, human rights law, humanitarian law and international criminal law, which fall under the liberal peacebuilding framework (Bell 2009).

What remains problematic is the use of what some scholars refer to as 'the liberal peacebuilding framework' to attain political goals which do not serve the interests and values of conflict stricken communities (Mac Ginty and Richmond 2007). This chapter feeds into this debate by examining the literature that informs the liberal peacebuilding framework, and transitional justice within this framework. In the following sections, I explore three spheres of peacebuilding -security, governance and transitional justice-, key moments that shaped transitional justice, mainstream mechanisms of transitional justice, the link between transitional justice and reconciliation, and the challenges of the liberal transitional justice framework in contemporary Africa before offering a conclusion.

2.2 Three spheres of peacebuilding

Peacebuilding is a discourse, field and practice that encompasses a wide range of activities that seek to restore peace, justice and order to a conflict stricken community (Westendorf 2015). An underlying assumption of peacebuilding is that intra-state conflicts emanate from the breakdown of state institutions, which can be fixed by building or rebuilding the collapsed institutions. This exercise of building or rebuilding the broken institutions involves a range of technocratic processes that fall under the sphere of security building, governance building and transitional justice (Westendorf 2015).

Before expanding on the three spheres of peacebuilding, it is important for this study to examine the element of peace in peacebuilding. Existing peacebuilding literature, building on the work of Galtung (1964), identifies two categories of peace: positive peace and negative peace. Galtung (1964) established these two categories of peace during a period when the

peace discourse focused on direct violence[10] and scholarship was dominated by the North Americans. The work of Galtung (1969) expanded on direct violence by coining structural violence[11], and these two understandings of violence paved the way for broader definitions of peace. He provided a perspective for understanding the nature of peace that prevails in society, which he explained in two forms of negative and positive peace. Sooka (2009) points out that negative peace exists when there is an absence of direct violence and is secured by putting an end to the immediate source of violence. The redress measures on effects of direct violence often seek to uproot the immediate threat to human beings and society, and this narrow focus has been identified as a shortcoming of negative peace. Negative peace has been criticised for failing to address the underlying issues that harbour conflict and providing a lasting solution that ensures the conflict does not re-emerge. On the contrary, positive peace addresses conflict by bringing together the conflicting parties to establish a working relationship that enables them to address the root causes of the conflict. It is believed that positive peace promotes a lasting transformation of the conflict because conflict stricken communities are not necessarily broken communities that need fixing, but, rather communities undergoing a complex and contested process of socio-economic and political change (Westendorf 2015).

These two dichotomies of peace have contributed to the evolution of the peacebuilding discourse. Since 1964, Galtung's views on peace and violence have influenced peace research to shift from a focus on direct violence and its elimination to a broader agenda of structural violence, including notions of cosmology, culture and ecology. This shift was informed by an understanding that the discipline and practice of peace had been dominated by the Global North actors and serving the interests of powerful states. Galtung (1990) challenged the dominance of the Global North actors in peacebuilding by championing for peace processes that reflect the social cosmologies of the world. His work summed up three forms of violence that occur in societies, namely, direct violence, structural violence and cultural violence[12], two of which have been explained earlier. From this typology, negative peace is understood

[10] Direct violence refers to physical inflictions on the human self by acts of another human being (Galtung 1964).

[11] Structural violence refers to institutionalised discriminatory practices of society that harm, disadvantage or perpetuate the oppression of others (Galtung 1969).

[12] Cultural violence occurs when symbolic spheres of human existence (such as values, norms and practices) are used to legitimise direct or structural violence (Confortini 2006).

as the absence of direct violence, while positive peace exists when there is a long-standing remedy that dissolves the underlying causes of conflict.

Henceforth, peacebuilding is understood as processes that transform conflict stricken communities along the realms of negative and positive peace. More so, the three spheres of peacebuilding that exist are security, governance and transitional justice, which are explained in detail in the following section.

2.2.1 Security as a sphere of peacebuilding

The security sphere of the peacebuilding process addresses the imminent threat to peace, which emanates from the presence of armed parties and full out war (Westendorf 2015). In this instance, conditions for peace are facilitated largely by engaging in programs like disarmament, demobilisation and reintegration (DDR) and security sector reform (SSR). The DDR program involves collecting, documenting, and disposing arms and ammunition gathered by combatants and civilians during the conflict. It facilitates the discharge of active combatants from armed forces or groups into ex-combatants, who are non-hostile civilians that can be integrated into the social, political and economic structures of the society (UN Department of Peacekeeping Operations 2010). Security sector reform deals with state institutions that provide security functions such as the police, military, intelligence services and judiciary by instilling conditions that make them less hostile to civilians (Sandoval 2011). In the sphere of transitional justice, security sector reform falls under the institutional reform mechanism which is examined in section 2.4.4 of this chapter. Both DDR and SSR are vital elements of peacebuilding that help to ascertain the consolidation of peace, stability and prevent the resurgence of conflict.

Using the example of the Lancaster House Agreement signed in 1979 by the Patriotic Front, the United African National Congress (UANC) and the Rhodesian Front, to end the 14-year old protracted war in Zimbabwe, two aspects of this agreement dealing with the military and insurgents addressed the security element of peacebuilding (Dzinesa 2006). The Lancaster House Agreement stipulated six resolutions, namely, that: (1) the independent state of Zimbabwe was to be established through universal suffrage, (2) it would build the Zimbabwe National Army (ZNA), (3) it would develop a new democratic constitution, (4) its armed parties were to disarm and the displaced population were to be reintegrated through the

United Nations High Commissioner for Refugees (UNHCR) led program, (5) the land question would be resolved over a ten-year period through a 'willing-buyer willing seller' program, and (6) new elections were to be held with the supervision of the Commonwealth (Dzinesa 2006, Mlambo 2014).

The DDR initiatives stipulated in the Lancaster House peace agreement were facilitated by the Commonwealth Monitoring Force led by the United Kingdom (UK) and the UNHCR. The foreign led demobilisation and reintegration programs faced structural and political challenges in their attempt to integrate the military formations[13] that had been established during the liberation struggle (Dzinesa 2006). Resultantly, the expected successes of elections and demilitarisation programs in post-independent Zimbabwe soon faced impediments due to limitation of resources and sheer size of military formations (Dzinesa 2006: 354).

Dzinesa (2006) points out that prior to the DDR program of 1981-83, a demilitarisation initiative involving a smaller number of military persons had been rolled out in late 1980. It involved screening 'unfit' military personnel, which, consequently fuelled tensions between the ZANU PF-led government and the opposition ZAPU on allegations of partisan appointments (Dzinesa 2006). This resulted to a small-scale war in early 1981 involving the ZIPRA, ZANLA and the Zimbabwe National Army (ZNA), which is known as the *Entumbane* Uprisings. Over 200 fighters were killed in this conflict and many other casualties were reported (CCJPZ 1997). The government resolved the conflict by deploying the Rhodesian African Rifles (RAR), a white-officered military division in the ZNA, which overpowered ZIPRA and ZANLA. Even though a full-scale war was averted by the ZNA forces, the deployment of white-led ex-Rhodesian troops by a black-led government entrenched further mistrusts between the liberation movements, particularly ZAPU and ZANU-PF. Scholars like Dzinesa (2006) and Mashingaidze (2010) who have studied this unfolding, have attributed the outbreak of *Gukurahundi*[14] (1981-87) in the aftermath of *Entumbane* Uprisings to the mistrusts between the liberation movements.

[13] The three main military formations involved in the DDR program in Zimbabwe were, the Zimbabwe People's Revolutionary Army (ZIPRA) a wing of the Zimbabwe African People's Union (ZAPU), the Zimbabwe African National Liberation Army (ZANLA) a wing of ZANU PF and the Rhodesian Army (Dzinesa 2006).

[14] Gukurahundi is a Shona term used to refer to the killings and torture of over 20 000 people and the displacement of thousands of people in the Midlands and Matabeleland area in Zimbabwe in the early 1980s. The *Gukurahundi* massacres were initiated by clashes in 1980 at *Entumbane* demobilisation camp in Bulawayo between the former Zimbabwe African National Liberation Army (ZANLA), the military wing of ZANU, and ex-ZIPRA combatants, the military wing of ZAPU (CCJPZ 1997).

Westendorf (2015) argues that the main challenge with the security sphere of peacebuilding is that the everyday drivers of insecurity in post-conflict societies are often overlooked by such technocratic processes. Technocratic security building processes are not able to address the violent political culture or alleviate the socio-economic and political circumstances that often give incentives for individuals to pursue violence. Westendorf (2015) further argues that technocratic peace processes are easily manipulated and hijacked by the elite which often fuels worse conditions of insecurity, as elaborated in the case of Zimbabwe above.

2.2.2 Governance as a sphere of peacebuilding

The governance building element of peacebuilding deals with restructuring state infrastructure. Westendorf (2015) points out that establishing a system of representation, development of new laws or constitution and developing institutional capacity are the essential components in governance. These aspects of governance are informed by the liberal peacebuilding framework and provide the base on which a new democratic dispensation can be birthed among conflict stricken communities. Hence, elections and developing a new constitution often happen after signing the peace settlement, which is why a draft of the new constitution of Zimbabwe was developed during the Lancaster House deliberations in 1979 and elections held in March 1980. More so, the subsequent political agreements signed to resolve other conflicts in Zimbabwe, namely, the Unity Accord in 1987 and the Global Political Agreement in 2008 (examined in Chapter 5 of this study), were both followed by a round of elections (Mashingaidze 2010, Mlambo 2013).

Wielenga *et al*. (2015) point out that holding regular elections has become a form of constitutive power used to legitimise post-colonial states, but there is lack of evidence to support that elections contribute to consolidating peace. Madlingozi (2015) points out that transposing practices of democracy valued by Global North actors through peace processes in their former colonies has pacified Global South communities, resulting in the re-capturing of Africans into the global matrix of coloniality[15] (this is explored in the next chapter). Sharp

[15] Coloniality refers to long-standing patterns of power that emanate from the colonial era, which continue to preserve the colonial culture, power relations and production of knowledge beyond the strict limits of colonial administrations (Ndlovu-Gatsheni 2013).

(2014: 179) regards this transfer of Western norms, values and practices for peace through governance structures as the modern-day *mission civilisatrice*. The resulting peace dispensation reinforces the hierarchies within the global political society, undermine the values and customs of the affected communities and perpetuate degradation of humanity (Madlingozi 2015).

Scholars such as Westendorf (2015) hold that the ability of the elected government to sustain peace lies with having both political support and social contract with the populace. However, the social contract is often between the people within the community and not the people and the government, because the interests of the government, seemingly, lie in preserving state power and not the needs of the people (Benyera 2014a, Gelfand 1973, Ndlovu-Gatsheni 2016). Arguably, the state is superficial and intangible to the local population, but the community is more visible because it is built from the relations that people share. Many post-conflict societies are, therefore, unable to see the peace process through due to contestations for power and antagonism between political parties competing for positions in government, which ends up fuelling a violent political culture (Ndlovu-Gatsheni 2016). Hence, the governance building processes in post-colonial societies would be successful if they consider the social, political and economic dynamics, as well as offer solutions that permeate the existing power structures.

2.2.3 Transitional justice as a sphere of peacebuilding

Security and governance spheres of the peacebuilding process have largely been criticised for being more concerned with the organisational structure of the new state and overlooking the social, economic and political dynamics. Transitional justice is the third sphere of peacebuilding, which attempts to address the shortcomings of both security and governance building. It is acclaimed for contributing to the reconstruction of the society through processes that hold to account perpetrators of injustices and prevent further violence.

As will be elaborated throughout section 2.3 of this chapter, most literature associates the first phase of transitional justice with the Nuremberg trials, whereby actors in the Global North used an international legal response to conflict. This legalist approach was founded on liberal ideals of justice and established the international norms and standards against which past injustices of state actors could be judged (Teitel 2003). The centrality of transitional justice to

peacebuilding processes was further cemented by the institutionalisation of legal edifices such as the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court (ICC) (Westendorf 2015). Institutionalised transitional justice enabled Global North actors to broaden their goals and methods of implementing peace.

In terms of goals, the Global North actors moved away from using a largely judicial process that seeks to apprehend or pardon perpetrators of injustices, to a justice model that encourages state-building (Bosire 2006). Similarly, the methods of justice shifted from an emphasis on retribution towards restoring broken relations and fostering co-existence (Huyse and Salter 2008). Resultantly, transitional justice transformed into a process that can address past injustices and simultaneously lay a foundation for forward-looking interventions. As a sphere of peacebuilding, transitional justice has two dimensions that of backward-looking and forward-looking. More so, it can provide two outcomes to the conflict situation, namely, short-term or long-term relief. The short-term relief deals with providing explanations and redress for past injustices, whilst long-term relief addresses the development of judicial processes that enable conflicting parties to resolve their differences amicably and timeously (Westendorf 2015). These two outcomes are not necessarily in contradiction and can be pursued simultaneously.

When implementing transitional justice, conflict stricken communities often grapple with two realities, namely, the need to acquire justice and putting in place the necessary measures for rebuilding broken relationships while maintaining order (Boraine 2006). Transitional justice addresses the legacies of past injustices by challenging aspects of the community that facilitated conflict (Huyse and Salter 2008). It is attained by repairing the relationships and structures in the community that entrenched the divisions, mistrusts and hatred which promoted inhumane conduct. Two main forms of justice that have been used in transitional justice are retributive justice (to punish the perpetrator) and restorative justice (to rebuild relations of the conflicting parties).

Retributive justice focuses on holding perpetrators of injustices to account and establishing the rule of law, a process that follows criminal prosecutions by either a national or international legal body (Brounéus 2008). It mostly draws from provisions set by international laws, such as the Geneva Conventions, Conventions on Genocide and Rome Statutes (Anderlini *et al*. 2004). The rights provided by these statutes include: “1. a right of

the victim to see justice done; 2. a right to know the truth; 3. an entitlement to compensation and to non-monetary forms of restitution; and 4. a right to new, reorganised, and accountable institutions," (Mendez 1997: 261). These rights assign a duty to the government of ensuring that they are observed and protected. They are therefore a significant component of international treaties and charters, including the UN Charter, and inform the pillars of both international and domestic legal systems (Anderlini *et al*. 2004).

Pursuing transitional justice through a retributive approach would involve ensuring that perpetrators receive punishment or a penalty that measures up to the offence committed. National governments and international legal bodies dealing with transitional justice, such as the Special Court for Sierra Leone (SCSL) and the International Criminal Court (ICC), among others, fall under the retributive justice model (Brounéus 2008). Retributive justice has its shortfalls, one being that prosecuting the individuals largely responsible for committing injustices is not always possible (Boraine 2009). This may arise from the lack of capacity on the part of the government to deal with large volumes of cases or unwillingness to go through the process for fear of unravelling truths that may threaten the stability of the state (Villa-Vicencio 2007). Furthermore, retributive justice through domestic courts often regards an injustice as an offence against the state and this creates a tendency to prosecute offenders following the provisions of the domestic legal system, which may not be commensurate with international measures. More so, domestic legal systems may preserve the interests of the state and enforce punishment based on state measures which often deviates attention from the desires of the victim to setting precedence in law (Anderlini *et al*. 2004). As such, it can be difficult for some victims to move forward when they still hold that the perpetrator owes them a lot more than what has been ruled by the courts (Villa-Vicencio 2007).

Restorative justice focuses on repairing the damaged relationships among the community rather than just apprehending offenders (Fischer 2011, Johnstone 2013). As argued by Zehr (1995), restorative justice regards injustices as a violation of people and their relations, rather than a violation of the laws of the state. It sets an obligation on the offender to make things right. This involves reaching out to the victim and the community in search for solutions that will promote healing, reconciliation and reassurance that the past will not recur. Johnstone (2013) adds that the priority of restorative justice is to ensure that offenders are fully aware of the impact of their actions on others and that they are liable for repairing the damage. This

prevents further dehumanisation in that both the wronged party and the offender are brought together in a safe environment to deliberate on issues affecting them and collectively establish a way forward (Anderlini *et al.* 2004). Methods used in restorative justice include *nhimbe* (community working groups), *dare* (community assembly) and family caucus (Benyera 2014a).

It is important to highlight that both retributive and restorative justice complement each other and are not necessarily in conflict. Boraine (2009), for example, suggests that transitional justice would be more effective when it encompasses retributive and restorative justice because there is often a need to gain some level of punitive justice for the injurious harm incurred, as well as instil social harmony in the affected communities.

2.3 The moments that shaped transitional justice

Various scholars trace the genealogy of transitional justice to varying episodes of global history. Notable moments are the Nuremberg Trials of 1945, the end of dictatorship in Latin America, the breakaway of Eastern European states from 1974, the Aspen Institute Conference of 1988 and the aforementioned publication by Neil Kritz in 1995 (Arthur 2009, Teitel 2003). Considering the existing literature that has worked on the genealogy of the concept of transitional justice, such an endeavour is beyond the scope of this research, hence, the focus will be on identifying crucial moments in global history where various forms and instruments of justice were pursued as avenues for peacebuilding. Though they can be further subdivided, the three moments that this chapter highlights are the humanitarian work of Henry Dunant and the allied-run Nuremberg trials (1945-49), the Third Wave of Democratisation (1974-1990) and the Post-Cold War era. These have been purposively selected for their contribution to the establishment of binding international treaties, conventions and laws and their application in peacebuilding. This section considers the deliberations by various scholars regarding these three moments to establish their contribution to the body of knowledge that informs the transitional justice discourse.

2.3.1 Henry Dunant, the Nuremburg trials and the birth of international laws

Prior to the Cold War era, the conflicts that affected the global community were typically between nation-states (inter-state) with high numbers of deaths and casualties on both

civilians and soldiers, which led to the development of public international laws to combat the effects and outbreak of conflict. Drawing from incidents that occurred at the 1859 battlefield at Solferino, Italy, the Nobel Peace prize winner Henry Dunant published a book titled *A Memory of Solferino*, which challenged global actors to devise a plan to manage war casualties on civilians and soldiers (Huyse 1995). His plan led to the establishment of the International Committee for Relief of the Wounded, which later became the International Committee of the Red Cross (ICRC) and Red Crescent (Bugnion 2012).

In October 1863, the committee organised an international conference which was attended by 39 delegates from 16 nations and resulted in the adoption of various resolutions that laid the foundation for the 1864 Geneva Convention (Huyse 1995). The Geneva Convention of 1864 was the first legal document among a series of treaties that were adopted or signed by various state actors as commitment to uphold humane rules of war (Bugnion 2012). It defined the rights of wartime prisoners and civilians in war tone areas, and set conditions on states to protect the sick or injured during war. The Geneva Convention of 1864 set out the parameters to ameliorate the effects of war on soldiers and civilians and has been significantly revised in the 1906 and 1929 versions and, subsequently, the First Geneva Convention of 1949 and its additional Protocols of 1977 and 2005 (Bugnion 2012, Huyse 1995). The Geneva Conventions are the basis of international humanitarian law, which is the body of international law that regulates the conduct of warring parties and seeks to limit the effects of conflict (Mallette-Piasecki 2012). The Conventions and their Protocols contain strict rules on how the regulations are applied, as well as how to address any breach.

The controversial Trial of Henry Wirz in 1865 is a significant court proceeding where laws of war set in the Geneva Convention of 1864 were put into practice (Rutman 1960). Henry Wirz was a commandant at the Confederate prison in Andersonville, Georgia, United States of America (USA), who was accused of killing and injuring prisoners of war during the American Civil War (1861-1865). A trial to prosecute his acts of injuring and killing large numbers of federal prisoners was heard by the military tribunal which found him guilty of contravening laws and customs of war (Rutman 1960). The military tribunal sentenced him to death by hanging as his actions were regarded a threat to humankind. A noticeable feature in the ruling against Wirz, is the exercise of overly punitive justice, which served to deter others.

Moreover, the contributions of Henry Dunant to international laws did not end with the 1864 Geneva Convention; they extend to the work he did with the French Red Cross after moving to Paris when his business collapsed in 1867 (Bugnion 2012). While in Paris, Dunant received support from the emperor Napoleon III who used his experience with the Red Cross in Geneva to establish the French Red Cross. When France was defeated in the war of 1870-71, Napoleon III went into exile in England but maintained his support for the ideas of Dunant. This support resulted in the establishment of the *Alliance Universelle de l'ordre et de civilisation*, an institution backed by Napoleon III that assisted victims from the siege of Paris and the French civil war (1870-71) (De Pourtalès and Durand 1975). Through this institution, Dunant organised a conference in England in 1872, which deliberated on the need for an international convention on the handling of prisoners of war and the resolution of inter-state disputes through a court of arbitration rather than war (De Pourtalès and Durand 1975, Huyse 1995). Dunant's ideas were instrumental in shaping the discussions that took place during the international conferences held in Brussels (1874) and The Hague (in 1899 and 1907) (De Pourtales and Durand 1975, Huyse 1995).

The Brussels Declaration of 1874 was the result of a conference attended by 15 European states invited by Czar Alexander II of Russia to examine the Russian-led proposal on international laws and customs of war (De Pourtalès and Durand 1975). Unfortunately, the proposal did not gain support of all states; however, it laid the foundation for the codification of the laws of war. A parallel organisation, the Institute of International Law, which had been founded in 1873 by the Belgian lawyer Gustave Rolin-Jacquemyns comprising of lawyers working on rules of international law, took a leading role in revising the Brussels Declaration, resulting in the Manual of the Laws and Customs of War at Oxford in 1880 (Schindler and Toman 2004). A follow-up conference to the Brussels Declaration was held at The Hague in 1899 under the invitation of Mikhail Nikolayevich Muravyov, the Russian minister of foreign affairs. The conference, attended by 26 states, discussed: (1) the limitations on the expansion of armed forces and reduction of the deployment of new armaments, (2) application of the Geneva Convention of 1864, and (3) revising the Brussels Declaration of 1874 (Schindler and Toman 2004). The conference failed to meet its primary objective, namely, that of limiting armaments, but succeeded in adopting 'conventions defining the conditions of a state of belligerency and other customs relating to war on land and sea' (De Pourtalès and Durand 1975, Schindler and Toman 2004).

Three more declarations were adopted relating to the prohibition of using asphyxiating gases, use of dum dums and projectiles. More importantly, the member states adopted a Convention of the Pacific Settlement of International Disputes, which resulted in the establishment of the Permanent Court of Arbitration in 1899 (Schindler and Toman 2004). The establishment of the Permanent Court of Arbitration institutionalised law and the practice of arbitration, obviating the need to set up ad hoc tribunals to mitigate international disputes (Quataert 2012). Among the cases that were entertained by the Permanent Court of Arbitration is the *Carthage and Manouba* cases (1913), the *Timor Frontiers* (1914) and sovereignty of the *Island of Palmas* (1928) (Quataert 2012).

The Hague Convention of 1907 was attended by 44 states and resulted in the adoption of several conventions on various matters, such as the rights and duties of neutral powers and persons in war on land and sea (Quataert 2012). Another significant result of the convention was the unanimous agreement of the states to the principle of compulsory arbitration and the resolution to manage international problems through conferencing every eight years (Quataert 2012). The next conference scheduled for 1915 did not take place due to the outbreak of World War I, however, it elevated the need to coordinate relations among states through an organised establishment, the League of Nations (set up in early 1920), which drew from the fourteen points of former American president, Woodrow Wilson (Quataert 2012). The League provided a platform for states to resolve their disputes through peaceful means and its task was to ensure non-recurrence of the First World War (Quataert 2012). In 1920 a review of Article 14 of the Covenant of the League, which gives the Council the responsibility to establish a permanent international judicial tribunal, led to the adoption of the Statute of the Permanent Court of International Justice, which became the International Court of Justice (ICJ) in 1945 after the establishment of the United Nations (Quataert 2012). Neither the existence of the Permanent Court of Arbitration nor the International Court of Justice deterred the outbreak of World War II and other grievous atrocities such as the 'Dirty War' in Argentina (1976) and Rwanda genocide (1994) (Fletcher *et al.* 2009).

However, in a bid to set precedence for the injustices that were committed against European Jews in Germany and other neighbouring states, the allied leaders (Great Britain, USA and the Soviet Union) signed a joint declaration in 1945 which led to the establishment of the Nuremberg Military Tribunal (1945-1949) (Teitel 2003). The Nuremberg trials were set up to acknowledge the unlawful killings of European Jews and to prosecute those responsible for

committing or collaborating in the crimes (Teitel 2003). Taking the initial form of a series of 13 trials and subsequent trials, the tribunal prosecuted alleged perpetrators drawing from the First Geneva Convention of 1945 and other pre-existing international laws (Penrose 2016). The Nuremberg trial proceedings necessitated the establishment of an international military tribunal (first of its kind) to try major war criminals who committed atrocities in Germany (Penrose 2016). Amongst those who stood trial were Nazi party officials and high-ranking military officers, German industrialists, lawyers and doctors, indicted on charges of crimes against peace and crimes against humanity (Teitel 2003).

The setting up of the Nuremberg Trials faced a lot of legal and procedural challenges as there had not been a previous international tribunal to deal with war criminals. There had been however, earlier prosecutions of war crimes, such as the Henry Wirz Trial (1865) and the Turkish Military Tribunal (1919-1920), but these were held at the domestic level (McCormack 1997). On the contrary, the Nuremberg trials drew from laws and procedures of various states that had been refined to form the London Charter of International Military Tribunal (IMT), issued on the 8th of August 1945 (Heller 2011). The charter listed three categories of crime, which included the conspiracy to commit or actual participation in crimes of peace, war crimes and crimes against humanity (Heller 2011, Penrose 2016). The crimes against humanity refer to 'murder, extermination, enslavement, deportation or persecutions on political, racial, or religious grounds,' (Heller 2011). Per the Statute of the International Criminal Court (ICC), war crimes refer to, *inter alia*, 'grave breaches of the Geneva Conventions and other serious violations of the laws and customs applicable in international armed conflict and in conflicts "not of an international character" listed in the Rome Statute' (Heller 2011). The acts of violation covered under war crimes include murder, mutilations, rape, sexual slavery and recruiting child soldiers among others (Penrose 2016). Crimes of peace are regarded as the conspiracy or engagement in, 'planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances' (Heller 2011).

Through the Nuremburg trials, the allied powers managed to establish standards for conduct when addressing mass atrocities which culminated in the United Nations Genocide Convention (1948), the Universal Declaration of Human Rights (1948) and the First Geneva Convention on the Laws and Customs of War (1949) (Heller 2011). Call (2004) and Sandoval (2011) point out that the Nuremberg trials epitomise a huge milestone in the

development of international laws and it is from their ability to set universal jurisdiction that the liberal framework of justice became a precursor for accountability, peace and reconciliation. Teitel (2003) argues that the Nuremberg trials were, however, overtaken by the overzealous interests of the Allied powers who ended up using the trials to accentuate their dominance. She adds that the trials were reduced to a form of victor's justice in that harsh sentences (for example death penalty) were given for crimes committed by Germans who were targeted on grounds of their nationality, while there was leniency (in the form of pardon) over crimes committed by the soldiers of the Allied powers. Sharp (2014) holds that the extension of the trials to resolve other inter-state conflicts was averted because of the threat to global peace and stability that would result from exercising similar harsh sentences.

2.3.2 Third wave of democratisation and the peace versus justice dilemma

The third wave of democratization describes a period in the global political community between 1974 and 1990, whereby over 60 countries in Europe, Latin America, Asia and Africa underwent some form of transition from outright authoritarianism to a democratic dispensation (Huntington 1991). Though the concept of transitional justice did not exist, the advocacy work of human rights practitioners in this era was assimilated into the global transitional justice framework.

The global transitional justice framework is premised on international laws as both the yardstick for addressing direct violence (emanating from either oppressive regime or civil wars) and surety for establishing a new social order protected by the rule of law (Lundy and McGovern 2008). Picking up on the international laws prior to and after the Nuremburg trials, less punitive tribunals (examined in section 2.4.1 of this chapter) were established in this period, to facilitate the reconstruction of societies anchored on the rule of law (Grodsky 2009). Thus, the prosecution of human rights criminals following international laws such as the Convention on the Prevention and Punishment of the Crime of Genocide (1948) and the Convention Against Torture (1984), among others, ensured a shift away from repression to establishing democratic governments (Lundy and McGovern 2008).

There remained however, several uncertainties that are encapsulated in the peace versus justice dilemma. Grodsky (2009) explains that the peace versus justice dilemma derives from a combination of limited capabilities and the fear that punitive measures such as used for the

Nuremberg trials would engender political instability among young democracies. This view was supported by the idea that, firstly, many young democracies did not have the capacity and expertise of running the state and, therefore, required the services of former state actors some of which would be apprehended if criminal prosecutions continued (Grodsky 2009). Secondly, in cases where mass volumes of people had been affected and many more people would be implicated for commissioning or collaborating in criminal acts, the state either did not have the capacity to hold trials for all persons or feared that continuing with trials might ignite a resurgence (Sandoval 2011).

For example, following the transition of Argentina from military rule to democracy in 1983, the former regime used its influence to control the pace and form of trials held in the country to account for past injustices (Domingo 2012). Criminal prosecutions in Argentina faced resistance from some of the top military officials, resulting in the adoption of amnesty (or purge) laws, such as the Full Stop Law and Due Obedience Law in 1986 and 1987, respectively, which halted criminal prosecutions for the next 18 years (Filippini 2009, Sottas 2008). These purge laws were used to grant full amnesty, whereby perpetrators of human rights violations were granted official pardon without trial for the offences they committed. This meant that seeking justice or taking perpetrators to court was no longer possible. The use of amnesty laws in conjunction with criminal tribunals provided a balance between peace and justice, a compromise that was adopted by many countries in Eastern Europe and Latin America as a necessity to avoid further instability (Fletcher *et al.* 2009).

During the same period Zimbabwe gained independence in 1980 and opted for political amnesties in place of holding perpetrators of violence to account (Mashingaidze 2005). Scholars like Benyera (2014a) and Kim (2013) have explained that during this period political stability was often prioritised because the democratic transitions that occurred took the form of one of three processes, namely, transformation, replacement and transplacement. Benyera (2014a) and Huntington (1991) explain that transformation is change that occurs when soft-liners in the regime take the lead in bringing about democracy, whereas replacement occurs when radicals in the opposition take the lead and the authoritarian regime collapses or is overthrown. Transplacement emerges when democratisation is driven by the joint action of the incumbent regime and the opposition (Huntington 1991). Negotiations are a common feature of transplacement transitions because persuasion between reformers in the

authoritarian regime and moderates in the opposition encourages collaboration to transform the status quo (Kim 2013).

Benyera (2014a) and Kim (2013) state that the fourth process of transition can result from a negotiated settlement that involves an external actor or third party. Here the third party to a negotiation often wields power over the conflicting parties, changing the bargaining structure from dyadic to triadic (Benyera 2014a). For example, the transitions that occurred in Zimbabwe largely resulted from negotiations between the incumbent government and the opposition party but also involved a third actor, such as the Global Political Agreement in 2008 which was brokered through the President Thabo Mbeki-led SADC intervention (Mashingaidze 2010). As such, Benyera (2014a) categorises Zimbabwe as a country that has undergone a negotiated transplacement transition. Furthermore, Eppel and Raftopoulos (2008) argue that, since the transitional period in Zimbabwe has not yielded historical accountability for past injustices, the country has experienced a pseudo transition. Muvingi (2009) believes that the existence of the ruling party ZANU-PF makes it futile to envisage transitional justice in Zimbabwe in the absence of radical political transformation.

In this research, the term transition has been defined as the ongoing processes of change in the socio-political, economic, cosmological and ecological lives of people in post-colonial states (Olonisakin *et al.* 2016). This understanding draws from emerging debates situated in decolonial thinking which recognise that many states in Africa are in a continual process of uprooting the legacy of colonialism (Olonisakin *et al.*2016).

2.3.3 Transitional justice in the post-Cold War era: a call to end impunity

Since the fall of the Berlin Wall in 1990, the trend of conflicts in the global community has shifted from inter-state to intrastate and virtually all these conflicts have attracted the direct political, economic and military intervention of other states or multinational organisations (Huyse 1995, Leebaw 2008). More so, around the late 1980s, various advocates of international laws had noticed the shortcomings of amnesties in ascertaining fair trials and delivering truth for victims (Arthur 2009). Huyse (1995) adds that the fear of confronting past atrocities using criminal prosecutions no longer held water, therefore, establishing truth commissions (examined later in section 2.4.2 of this chapter) was considered a ‘third way’ of balancing criminal prosecutions and blanket amnesties (Grodsky 2009).

Bosire (2006: 06) points out that the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 gave new impetus to the transitional justice framework. She argues that the call to end impunity transcended from being an exception to the norm. Sottas (2008: 371) supports this view by stating that transitional justice became all-encompassing by aiming to 'restore the dignity of victims, establish trust among divided communities and to strengthen the rule of law without endorsing practices that amount to total or partial impunity.' Hence, Arthur (2009: 324) describes transitional justice as a 'field' comprised of 'an international web of individuals and institutions, whose internal coherence is held together by common concepts, practical aims and distinctive claims for legitimacy' that are demonstrated in attempts to address violations associated with political change. On the contrary, Bell (2009: 06) proposes that transitional justice is a 'label or cloak that aims to rationalise a set of diverse bargains in relation to the past, as an integrated endeavour, to obscure the quite different normative, moral and political implications of the bargains.' For Sandoval (2011: 03), whether transitional justice is treated as a field or not, its processes largely imply a set of approaches that deal with past injustices deriving from international laws.

Posner and Vermeule (2003: 02) point out that the broadening of the transitional justice framework appropriated the development of transitional justice as a distinct field that cuts across jurisprudence, comparative politics and political theory. In addition, Bosire (2006) and Call (2004) highlight the creation of the international tribunals for the former Yugoslavia and Rwanda, the Truth and Reconciliation Commission in South Africa and the permanent International Criminal Court among other national/international 'hybrid' courts as innovative mechanisms that led transitional justice processes to evolve. For Call (2004), these mechanisms made unprecedented changes to the highly-esteemed sovereignty of states. He argues that 'globalisation and new norms converged to create a robust international sub-regime' that threatened the hegemony of rogue governments and made it possible to prosecute once-powerful state actors, thereby making tyrants cautious of committing human rights violations (Call 2004: 102). For example, in 2003 the parliament of Argentina abolished the purge laws that had been implemented in 1986 and 1987 citing the fact that they were unconstitutional (Sottas 2008). By repealing these amnesty laws, the government opened the opportunity for victims to seek legal recourse (Sottas 2008).

This has created the understanding that global order may become rooted in justice rather than anarchy, economic gain or politico-military power (Call 2004). Nonetheless, the key debates in peacebuilding are whether transitional justice serves to promote democracy or reconciliation? Does it facilitate the re-establishment of a society anchored on the rule of law, institutional reform and a human rights culture? Do transitional justice processes serve a symbolic function (in that political actors can use the process to offer public acknowledgement) or to mark a turning point where the society take a symbolic break from the past? Could transitional justice provide a political function which serves to instil national cohesion and nation building, or it is more personal, in that it seeks to restore relations between conflicting parties?

Whatever its intended outcome, the liberal peacebuilding framework continues to dominate transitional justice processes, and it has been increasingly criticised around the globe. It has been criticised for its hypocrisy, double standards, lack of local legitimacy, lack of broad local participation, insensitivity to needs of the local people, its technocratic approach, elitism and attempt to fit one framework to many contexts (Mac Ginty and Richmond 2007, Sharp 2014). Much of this critique centres around the fact that the liberal peacebuilding framework is unable to meet the justice needs of various people, or offer lasting solutions to large portions of African societies (Igreja 2010, Leebaw 2008, Olsen *et al.* 2010).

2.4 Mainstream mechanisms of transitional justice

There are four main mechanisms of transitional justice employed through the liberal peacebuilding framework. These are criminal prosecutions, truth commissions, reparations and institutional reform.

2.4.1 Criminal prosecutions

The main assumption in the liberal peacebuilding framework is that alleged perpetrators of injustices must stand trial, and if found guilty, they should receive punishment commensurate to the offence committed. Sandoval (2011: 04) points out that this view draws from three arguments: (i) that international laws oblige all state actors to investigate, prosecute and punish perpetrators, (ii) that adequate reparation per international law regards bringing

perpetrators to account, and (iii) that accountability for past atrocities ensures for non-recurrence.

Criminal prosecutions involve identifying the injustices that have occurred, establishing the perpetrator and advancing corrective measures to make the perpetrator accountable for the unlawful actions (Westendorf 2015). It is a component of retributive justice in that it serves as a deterrent measure in the community and makes perpetrators accountable by either serving a jail term or paying compensation (Bosire 2006). Sentencing an offender is presumed to provide deterrence in that other community members have proof for the implications of conducting undesirable actions. The main benefit of this process for proponents of the liberal peacebuilding framework is that it offers an opportunity for victims to be at par with their offenders. It also reduces the chance for community members to turn to vigilante justice (Anderlini *et al*. 2004).

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 and the International Tribunal for Rwanda (ICTR) in 1994 which is examined in section 3.4.1 of the following chapter (Call 2004). The International Criminal Court (ICC) is the more recent international permanent court that tries human rights violations. It was instituted by the Rome Statutes, an international treaty signed in 2002, which obviated the need to erect international ad hoc tribunals (Call 2004). Overall, international courts are formal, they follow a strict set of procedures and are adjudicated by a high calibre of legal experts. Consequently, they have been criticised for being incompatible with local demands of justice, for serving in limited time frames and being susceptible to interference from governments sponsoring the resources needed to run the court, usually the Global North actors (Call 2004). Sharp (2014) argues that criminal prosecutions conducted by international governing bodies mainly focus on determining the wrongful acts of high profile figures, and this often diverts attention from the needs of other people in conflict stricken communities.

In some cases, criminal prosecutions for human rights violations have been conducted by domestic courts, for example in Argentina the purge laws issued in the 1980s were revoked by the National Supreme Court in 2005, and this gave room for justice to be pursued through the national courts (Filippini 2009). Sottas (2008) holds the view that the success of criminal prosecutions at the domestic level are determined by the political will of government actors to

conduct trials, the independence of the judiciary and an enabling environment for victims to come forward. However, in many post-colonial societies in Africa these conditions do not exist. Call (2004) further states that criminalising the process of transitional justice can jeopardise the process, especially where confessions are concealed to get a lighter sentence.

Villa-Vicencio (2007) points out that truth and justice are often difficult to attain when transitional societies pursue a criminal procedure because the trade-off for justice can manipulate individual accounts of truth about the past. In some countries, full or partial amnesties have been offered in exchange for truth, for example the 1997 Truth and Reconciliation Commission (TRC) in South Africa (Boraine 2006). This approach often compromises the accounts of truth that emerge, thereby engendering re-victimisation of victims, especially when the trial involves hostile parties (Anderlini *et al.* 2004, Villa-Vicencio 2004). Moreover, court proceedings are usually long, lasting for many months or years and lawyers often get entangled in procedural arguments, which can undermine the urgency to resolve the matter (Anderlini *et al.* 2004).

Since independence, Zimbabwe has acceded to ten international treaties that relate to human rights law, humanitarian law and criminal law, including the four 1949 Geneva Conventions, Protocols I and II of 1977, The Hague Convention, and the Genocide Convention of 1948 (Bhebe and Ranger 2001). It is, therefore, bound by these treaties and customs of law not to commit the acclaimed violations. Even though Zimbabwe is not party to the Rome Statute, international law still recognises individual criminal responsibility for crimes against humanity, war crimes, genocide and aggression (Sandoval 2011). Thus, the government still has an obligation to fulfil regarding ascertaining justice for all human rights violations stipulated by international law.

Hence, various scholars have proposed that where the formal system of justice is incapacitated, either due to polarisation or sheer volumes of cases to try, informal justice processes could provide the alternative avenue for justice (Call 2004, Huyse and Salter 2008, Quinn 2007). An example has been made of the *gacaca* courts in Rwanda which were set up in response to the high volume of crimes perpetrated during the 1994 genocide (Domingo 2012). As examined in the next chapter, the lack of qualified personnel, poor infrastructure and limited funding as well as delays of the Arusha trials, among others, set in motion the need to adopt the tradition-based justice system in Rwanda (Clark 2008). The *gacaca* justice

system offered easy access, an appealing environment and familiar procedures to the local people (Clark 2008). Some scholars have criticised the *gacaca* justice system for not meeting the standards and norms of international laws, but Domingo (2012) and Morril (2004) maintain that it offered complementary judicial proceedings to the state-run peace process. Tradition-based justice processes, such as the *gacaca* courts, have been employed in other parts of Africa, for example, Uganda and Mozambique, serving this research with the task to establish if similar avenues exist in Zimbabwe, and whether they have something to offer to the state-led initiatives (Huyse and Salter 2008).

2.4.2 Truth commissions

Truth commissions are established on the basis that victims of past injustices and their communities require to know the truth about what occurred (Hamber and Kibble 1999). The commission is set up to provide a platform on which different accounts about the past are shared and an accurate record of events is ascertained. Roht-Arriaza (2006) points out that most atrocities occur in secrecy and are often denied because of a lack of information. It is therefore, crucial that people are made aware of what happened and who was responsible. These views are supported by international laws, for example, articles 32, 33 and 34 of Protocol I of the Geneva Conventions, which give families of missing persons the right to know what happened to their loved ones and obliges responsible parties to comply (Bugnion 2012). Nonetheless, Sandoval (2011) argues that though the right to know the truth is guaranteed under international laws, it remains unclear as to, 'who its right-holder it is' to solicit the truth. She alludes that it is not clear whether the right lies with the individual or community and what the scope of this right is, as well as how states should uphold the legally binding international obligations to provide victims the truth.

Truth commissions are formal legal bodies set up to investigate past violations of human rights related to incidents that occurred in the state (Hayner 2010). Domingo (2012) adds that truth commissions fulfil four objectives, the first of which is establishing factual truth about the past incidents. Secondly, commissions gather and verify information, create a historical record of events, and provide a basis for further investigations (Hamber and Kibble 1999). This provides for an official record of the causes and impact of the atrocities incurred, which enable states to plan on institutional reform initiatives that can foster non-recurrence (Domingo 2012). Thirdly, information gathered can provide evidence for the purposes of

reparations or criminal prosecutions and for vetting people before taking public office (Domingo 2012). Fourthly, the report of a truth commission can be used to forge official acknowledgement about the past and to establish a historical narrative, which can be therapeutic to a broader audience, fostering healing and reconciliation (Domingo 2012, Hamber and Kibble 1999).

Hence, truth commissions have been established in different forms in various countries including Argentina, Chile, Uganda and South Africa (Call 2004). They have become increasingly attractive in the post-Cold War era due to their ability to inquire into any matter of major public concern (Hamber and Kibble 1999). Truth commissions can operate jointly or parallel to other mechanisms of transitional justice, for example prosecutions, as they search for information required by victims to foster a collective account about the past (Sandoval 2011). When the political environment is not conducive to holding trials, the information gathered by truth commissions and other non-state actors (for example humanitarian agencies) can also serve as evidence for future trials (Domingo 2012). This feature of truth commissions has inspired the truth-telling initiatives championed by various civil society organisations in Zimbabwe, for example, the Legal Resources Foundation (LRF) and the Catholic Commission for Peace and Justice (CCJP) (CCJPZ 1997). The LRF and CCJP conducted research in the early 1990s that produced a documented report -*Breaking the Silence: A Detailed Report of Horrific 20 000 Gukurahundi Killings in Zimbabwe in 1980s*- which provides a detailed account of how injustices were committed by government security agents and ZIPRA ex-combatants on the civilians in the Midlands and Matabeleland Provinces (CCJPZ 1997). The government of Zimbabwe has never acknowledged the findings of the report.

Some scholars have argued that soliciting for truth is highly difficult because various people hold varying meanings of what counts for truth (Boraine 2009, Hamber and Kibble 1999). Hence, four categories of truth - forensic truth (factual), personal truth (individual narrative), social truth (public dialogue) and healing or reconciliatory truth (national narrative)- are often used to capture the main ideas about the concept (Boraine 2009). Forensic truth is evidence that can be measured, and here experts and scientific methods are often employed to give rigour to the findings. Personal truth is the story carried by the individual, which accounts the experiences one had, including during the incident and afterwards. Social truth is information available to the public, often simulated in social dialogues, but bearing an impact on how

people relate with their social world. Reconciliatory or healing truth in some literature is referred to as restorative truth, is the broader narrative that is developed to shape the socio-political conscience of a nation (Boraine 2009, Hamber and Kibble 1999). These forms of truth are difficult to attain through truth commissions because the personal expectations of people may be out of reach and at the same time a commission works on a stipulated time-frame (Hamber and Kibble 1999). This was the case in South Africa with the 1997 Truth and Reconciliation Commission (TRC) which faced the challenge of failing to provide adequate truth for some members of the society (Boraine 2009).

Villa-Vicencio (2004) points out that truth commissions alone may have a negative impact on the community, especially when other forms of redress are required. De Greiff (2008a) explains that truth telling is not sufficient because people may require the offender to take responsibility for their actions by making reparations for the harm incurred. This could bring challenges on the people, if the compensation is not rendered. More so, some accounts of truth may tear relations among the community members because the information provided could either fail to satisfy the expectations of the affected party or it deepens the scar. Villa-Vicencio (2007) suggests that special interventions are required for communities to move on once the truth has been revealed because some truth may be detrimental to peace and stability.

Domingo (2012) believes that political context has a huge bearing on the outcome of truth-telling initiatives because often the process may be compromised when public officials are likely to be implicated. This occurs when the process is guided by political elites, thereby producing what literature terms victors' truth (a narrative of the winning or dominant actor) (Sandoval 2011). More so, where a change in regime has not occurred, some governments may set up a commission to pretend to be doing something, yet they do not publicise the findings to conceal their own involvement in the crimes committed (McEvoy and McConnachie 2013, Sharp 2014). This has been a major concern raised by the civil society actors in Zimbabwe, that although the government of Zimbabwe set up the *Chihambakwe* and *Dumbutshena* Commissions of Inquiry in the early 1980s, none of the findings have been made public (Eppel and Raftopoulos 2008). Some Zimbabweans have resorted to civil-society driven initiatives, for example the *Tree of Life* and folklore, in a bid to preserve their history and have records about the past which can be used at a later stage when the political environment is conducive to hold trials (Benyera 2014b).

2.4.3 Reparations

Transitional justice holds an underlying assumption that past injustices often leave physical, psychological and socio-economic burdens on the affected persons and communities, which need to be redressed through financial or material compensation (Sandoval 2011). Sandoval (2011) adds that this assumption is drawn from international law, particularly regarding the breach of international obligations to obviate the perpetration of injustices (by omission or commission), thereby rendering the state liable to provide reparations. As such, if a state is involved in the commission of human rights violations, for example the Matabeleland massacres and post-2000 electoral violence in Zimbabwe, it becomes liable under international law to provide reparations for victims (Machakanja 2010).

Reparations as described by Sandoval (2011) can take the form of monetary or material compensation that satisfies the needs of the victim, to initiate rehabilitation and set guarantees for non-recurrence. In addition, De Greiff (2008a) and Bosire (2006) state that, among other things, reparations guarantee the restoration of liberty, dignity and any other quantifiable physical and material resources that may have been lost or damaged in the past. Thus, reparations fulfil three things: (i) provide recognition of victims as members of the community who deserve fair treatment, (ii) serves a symbolic value in that restitution permeates the imbalance created by the effects of violence, and (iii) fosters social solidarity when the whole community shows empathy to victims (Bosire 2006).

Varying forms of reparations have been employed alongside other transitional justice processes, for example, the Committee for Reparations and Rehabilitation (CCR) in South Africa set up rehabilitation programs that assisted people who took part in the TRC proceedings (Hamber and Kibble 1999). Nonetheless, reparation programs often encounter a lot of challenges that result from a lack of resources, political interferences and failure to meet the expectations of victims. The 2010 SA Reconciliation Barometer produced by Lefko-Everett *et al.* (2010) established that while some victims of the apartheid era appreciated some form of compensation for the injustices incurred, many victims held that no form of compensation would equate to the suffering they encountered. It adds that most victims prefer to see their offender suffer the same way they did, and this is often met through long jail term sentences or death sentence rather than amnesty or compensation. As such, it can be difficult

for some victims to move forward when they still hold that the perpetrator owes them a lot more than they have received through reparations program.

2.4.4 Institutional reform

Transforming institutions of the state culpable of assisting or failing to prevent the commission of injustices is a crucial component of transitional justice that links it to the security and governance spheres of peacebuilding mentioned earlier. Failing to transform the institutions that harbour injustices leaves room for violence to perpetuate and become deeply entrenched (Sottas 2008). Sandoval (2011) holds that institutional reform enables people to build trust in the government and ensures for guarantees of non-repetition. As mentioned earlier, state institutions that often undergo reform are the police, military, intelligence services, judiciary, as well as any other non-state structures with security functions (Sandoval 2011).

Mayer-Rieckh and Duthie (2009) describe institutional reform as a mechanism of transitional justice that seeks to transform the culture and structures of the society implicated in the atrocities and to rebuild state institutions anchored on the rule of law. Sandoval (2011) adds that vetting, which refers to assessing the integrity of all persons before appointment for public office, is one aspect of institutional reform that has been used in some parts of the world, for example, Colombia. Vetting enables states to prevent perpetrators of violence, especially public officials, from walking free or to continue benefitting from public resources.

On the contrary, Sandoval (2011) challenges that institutional reform is often difficult to conduct due to several technical and procedural constraints. Firstly, transitional justice is often pursued during periods where the political situation is volatile making it more likely that disagreements regarding the process may degenerate into conflict (Bosire 2006). For example, when the incumbent political leaders fear being removed from power through vetting they block all avenues for institutional reform. Secondly, often security sector personnel implicated in human rights atrocities have strong ties to the government and this can result to the process being politicised and superficially conducted (Bosire 2006). Thirdly, in some instances, international actors have interfered in the process through capacity building initiatives forged on standards that are foreign to the receiving society. External interferences may impede local capacity and generate institutions that lack local ownership

(Sandoval 2011). When this occurs, the benefits that could be gained from institutional reform are often reduced or deferred indefinitely.

2.5 The link between transitional justice and reconciliation

Many postcolonial states (including Zimbabwe) that embarked on transitional justice in the post-Cold War era, treated reconciliation as a central component of the peacebuilding process (Bosire 2006: 27). Hayner (2010) argues that including the notion of reconciliation in peacebuilding processes has caused some global actors to assume that reconciliation is integral or even the primary reason for implementing transitional justice, which is not the case. She adds that following the example of the TRC in South Africa, several states have implemented varying forms of reconciliation commissions without fully grasping the purpose and implications of the concept. As with the concept of transitional justice, the dominant understandings of reconciliation are heavily embedded in the liberal peacebuilding discourse. For example, Bloomfield (2006) considers reconciliation as a 'system' that mitigates the differences among conflicting parties to prevent recourse to violence. Other scholars associate the concept with notions of healing, forgiveness, pardon, co-existence and the restoration of relationships (Bosire 2006, Lederach 1997).

In its narrow sense, reconciliation is regarded as co-existence, 'the condition under which citizens can trust each other as citizens again' (Bosire 2006: 27, Wielenga *et al.* 2015). On the contrary, the broad definition of reconciliation prescribes the engagement of conflicting parties as humans-in-relation, restoration of broken relationships, accountability, as well as cooperation among community members in developing a future that supports the well-being of all (Lederach 1997, Wielenga *et al.* 2015). Furthermore, a distinction can be made between national and interpersonal reconciliation. National reconciliation refers to the processes that are facilitated by the government or other state actors that aim to foster civic trust, unity and national healing (Bosire 2006: 28). In contrast, interpersonal reconciliation focuses on restoring broken relations among individuals who are either intra or inter-communal, through apology, healing and forgiveness (Wielenga *et al.* 2015). While the research is interested in both national and interpersonal reconciliation, focus will be given to establish the impact of transitional justice on interpersonal reconciliation because interpersonal relations form the social and cultural fabrics (soft infrastructure) of the community but are often neglected in favour of the physical infrastructure and state institutions (Brounéus 2003).

Bloomfield (2006) and Lederach (1997), regard reconciliation as both a process and desired end goal that works to repair broken relations among divided communities. Boraine (2009) adds that reconciliation can begin at different points in the transition of a country, for example, at the negotiation table or after holding an election. However, it is not so much about where or when it begins but how the process transforms the lives of ordinary people. Reconciliation is an ongoing process that seeks to address the legacies of past injustices, especially among communities where oppression and divisions have been deep and entrenched (Lederach 1997). Its focus on transforming the negative attitudes and behaviours that have become common modalities of life in a conflict stricken community fulfils two aspects of transitional justice (Boraine 2009). Firstly, it addresses the root causes of conflict, and secondly, ensures the establishment of durable peace.

Sarkin (2008) points out that reconciliation in simple terms describes a process of coming together and formulating methods and practices that make way for conflict stricken communities to return to a 'modicum of normality' (a position of durable peace and coexistence) even though its inhabitants might have been subjected to inhumane incidents. Reconciliation moves beyond the generalization that something went wrong in the past and develops a foundation for a political, social and economic project to create a re-imagined future based on principles of justice, equality and respect for mutual co-existence (Boraine 2009). This captures the views of Posner and Vermeule (2003: 05) that transitional justice has reconciliatory elements because it is both backward and forward looking, as was mentioned earlier. Thus, transitional justice mechanisms tend to incorporate goals and processes related to reconciliation, through their focus on rebuilding the community by transforming the underlying issues that harbour conflict (Lederach 1997).

Arguably, there is often a challenge with associating the concepts reconciliation and transitional justice because they both carry multidimensional and contested meanings which influence the processes that ensue (Bosire 2006: 27). De Greiff (2008b) argues that the term reconciliation bears strong moral connotations that demand the leadership of such initiatives to command a good moral standing with the community, for example, in South Africa's TRC this was provided by leaders such as Archbishop Desmond Tutu and the then president Nelson Mandela. Such uncompromised and trust-inspiring leaders are hard to find in most African countries that have adopted a truth and reconciliation model for transitional justice

(for example, the National Peace and Reconciliation Commission in Zimbabwe), consequently reducing the credibility of state-led initiatives (De Greiff 2008b, HZT and ZIMCET 2016).

More so, Borer (2004) links reconciliation with socio-economic development, especially the need to redress socio-economic disparities by propagating equitable distribution of resources and transforming any other avenues that foster inequalities. This idea is supported by the former president of the World Bank, James Wolfensohn, who recommends that reconciliation processes must include an economic component in order 'to put flesh to the rhetorical bones' (Bosire 2006: 28). Borer (2004) and Bosire (2006) concur with this view, but maintain that socio-economic development cannot be ascertained by a policy on reconciliation alone.

Although the literature often describes the difficulties of defining reconciliation, the fluidity of the concept gives leverage for this research to identify the processes that can facilitate a positive change in the attitudes and behaviours of a conflict stricken community. The focus of this research is to develop an understanding of how conflict stricken communities deal with the effects of violence drawing from context-specific, people-driven solutions. Brounéus' (2003:11) definition of reconciliation as "a societal process that involves the mutual acknowledgement of past sufferings and the changing of destructive attitudes and behaviours into constructive relationships towards durable peace," befits the scope of this research. The emphasis on engaging the whole community to address the past and transforming the underlying issues that stir conflict provides a desirable scope for this research. As mentioned earlier, transitional justice in this research is defined as processes of redress in periods of disruption that reflect diverse practices of justice, which enable the society to transform incidents of past injustices into an environment that fosters social harmony. The research seeks to establish how justice as understood by the local communities contributes to transforming the social, political and economic dynamics of conflict, as well as facilitate the establishment of durable peace.

2.6 The challenges of employing the liberal peacebuilding framework to transitional justice processes in contemporary Africa

Critical scholars such as Ndlovu-Gatsheni (2016) and Olsen *et al.* (2010) have grappled with the question of what the intended outcome or impact of transitional justice would be,

especially in Africa. This stems from the understanding that transitional justice has not been able to address the legacy of colonialism in Africa.

Within the liberal perspective, transitional justice has been centred on upholding human rights enshrined in international laws. Human rights are regarded as universal and absolute privileges common to all humankind. This interpretation of human rights enshrined in international laws has largely been informed by the work of scholars such as John Locke and Thomas Hobbes, which promoted the universalisation of human rights (Cobbah 1987). From this understanding, human beings are said to be driven by natural passion for security and survival and simultaneously hold the right to obtain all their desires. This natural right is regarded as the inherent liberty of each human being which they use to preserve their lives and can only surrender some of the rights except for the right to life, in a social contract between the government and the citizens, which gives the government the responsibility to protect the people and govern the state on their behalf (Cobbah 1987).

The human rights discourse presents the idea that through the social contract between the government and the people, all human beings are equal, and they have inalienable rights, which cannot be taken away (Cobbah 1987). The society that emerges therefore is built on the understanding that rights are individualistic because every human being exercises his/her rights by electing a government that will preserve the individual's rights (Cobbah 1987). This goes further to prescribe that conflict stricken communities are reconstructed through making human rights enforceable through laws from which individuals can protect themselves against authoritarian regimes, discrimination and oppressive practices (Cobbah 2014). Hence, transitional justice serves as a medium of change whereby the state holds to account perpetrators who violated human rights to ensure that the society that emerges is anchored on the rule of law. Moreover, justice serves as precedence and deterrent for future human rights offenders. An example of transitional justice processes in Africa that followed this model is the 1997 Truth and Reconciliation Commission in South Africa (Madlingozi 2015, Ndlovu-Gatsheni 2016).

The Marxist perspective takes the human rights debate as a point of departure in critiquing transitional justice tools such as criminal tribunals for Rwanda, Sierra Leone and the ICC indictments in Kenya and Uganda, which have largely been led by Global North actors (Baines 2005, Clark 2010a). In the Marxist perspective, human rights are regarded as a

euphemism of the mighty in society in that they are there to serve the interests of the stronger, the ruling elite or those in control of the means of production (Cobbah 1987). This perspective draws from the scholarly work of Karl Marx and Engel Friedrich among others who hold the view that legal institutions of the state are superstructures built upon discriminatory economic endeavours of the ruling elite in society (Cobbah 1987).

In this case, rights of the people are amenable to the socio-political and economic power of those who control the means of production. It is therefore impossible, to achieve human rights - particularly in the Global South - until the capitalist system and by extension the Westphalian state structures have been abolished (Shamuyarira 1972). Shamuyarira (1972) argues that "colonialism brought capitalism to Africa and simultaneously integrated Africa in the global capitalist system." From the Marxist perspective, the post-colonial state in Africa is a by-product of colonialism and in that context, it is difficult to embrace the liberal perspective of human rights in a context where the fundamental rights of Africans have been compromised (Cobbah 1987). Additionally, Madlingozi (2015) argues that when the Global North actors lead transitional justice processes in Africa, it paves the way for the dominance of solutions founded on Eurocentric-North-American values and norms. Arguably, the African state that emerges is constituted on Western democratic principles which are not necessarily commensurate with the local value-system (Cobbah 2014).

Critical scholars posit that this transplanting of liberal perspectives of human rights serves to guard against the underlying and (now on-going) demand for rights outside of the political and civil rights offered by the Global North actors (Cobbah 2014, Madlingozi 2015). They argue that the liberal human rights discourse was imposed on the African society by colonial powers to protect the private property and metropolitan investments of the settlers against possible nationalisation and redistribution (Cobbah 2014). Critical scholars further state that the Global North actors, for example the UK which took part in the Lancaster House Conference, did not prioritise transitional justice at the time African states were granted independence because that would have threatened economic privileges of the colonial regime and their beneficiaries (Cobbah 1987). This view feeds into the growing debates on the disparities surrounding property and land ownership in Africa, with the examples of Namibia, South Africa and Zimbabwe (Moyo 2007). Therefore, the trans-nationalisation or universalisation of the Western perspective of human rights through Western-informed

transitional justice processes is a disguised effort to renew Western cultural imperialism (Madlingozi 2015).

Furthermore, critical scholars argue that there are no consolidated democracies that have been forged in Africa through the liberal peacebuilding framework. What they see instead, are continual cycles of conflict, often at differing degrees of intensity, but stemming from the same ongoing, unresolved crises of coloniality, as will be discussed further in the next chapter (Madlingozi 2015, Ndlovu-Gatsheni 2016). Hence, they argue that transitional justice, understood within the liberal peacebuilding framework is inadequate because it is not aligned with the decolonial project being conducted by post-colonial societies, especially in Africa. The debates raised by critical scholars on aligning transitional justice with the decolonial project are examined in the next chapter.

2.7 Conclusion

In this chapter, I explored the debates that contributed to the establishment of the concept of transitional justice by mapping global political incidents that had an impact on the international legal framework. Situating transitional justice as the third sphere of peacebuilding (the others being security and governance), the chapter established that it is the primary avenue used by global actors to address the socio-political dynamics of conflict to establish a new political order within a democratic dispensation. Transitional justice is, therefore, highly regarded in peacebuilding for its contribution to state reconstruction through processes that hold to account perpetrators of injustices and prevent further violence. To achieve this, transitional justice as imagined within the liberal peacebuilding framework prescribes a wide range of mechanisms that include criminal prosecutions, truth commissions, reparations and institutional reform. However, international laws that guide these mechanisms are riddled with controversy.

The arguments raised include that there is an overbearing demand by global actors to resort to a Western legal perspective of justice that is often incompatible with the values of local people and capacity of state institutions in times of transition. Equally controversial is the assumption that transitional justice is a state-centred approach built around the belief that a consistent response should be to establish a new society anchored on the rule of law.

The emerging debates on transitional justice in the Global South posit that the liberal peacebuilding framework is inadequate because it is not aligned with the decolonial project underway in post-colonial societies. In the following chapter, the study examines the African understanding of justice to broaden the understanding of how local communities may develop context-based transitional justice processes.

CHAPTER 3: UNDERSTANDING TRADITION-BASED JUSTICE SYSTEMS AND TRANSITIONAL JUSTICE THROUGH A DECOLONIAL LENS

3.1 Introduction

In the previous chapter I explored the history of the development of the concept and field of transitional justice. It was discussed that transitional justice is understood as a set of judicial and non-judicial processes that can be implemented by different societies to address the legacies of violence and conflict (Bell 2009). The previous chapter examined the various measures used to address injustices which include criminal prosecutions, truth commissions, reparations and institutional reform. Two key findings from Chapter Two are: (i) the mainstream discourse on transitional justice leans towards a legal orientation that is anchored on human rights and liberal democracy. Secondly, the emerging discourse posited by critical scholars suggests that the concept of transitional justice has evolved, and should now be applied to societies in transition more broadly and be concerned with the restoration of human dignity and social harmony rather than just accountability within a liberal human rights framework (Huyse 2008). The latter view feeds into the scope of this chapter.

This chapter proposes that, since transitional justice is being employed to establish a new political order in post-colonial societies, it needs to be concerned with dismantling coloniality as well (Madlingozi 2015). But to date there has never been any transitional justice processes that took an interest in the colonial and decolonial project. Where actors from the Global North are interested in establishing a liberal democratic political order, African actors are in many cases interested in 'finishing' the project of liberation and emancipation from the Global North. These two purposes work in opposition to one another: the one is trying to establish 'democracy' while the other is trying to destroy coloniality. An additional complication is that African governments have often become extensions of the colonial order – they have become an extension of the colonial authorities, colonising their own people (as described by Mamdani 1996 in 'Citizen and subject').

Critical scholars[16] such as Benyera (2014a), Branch (2014), Madlingozi (2015), Ndlovu-Gatsheni (2016) and Sharp (2014) raise the argument that transitional justice needs to be tailored to suit the context in which it is applied for it to work efficiently. In the African region, both the African Union (AU) and the Southern African Development Community (SADC) have been working on policies related to transitional justice to inform the processes that ought to occur on the continent (Wachira 2016). From the draft policy of the AU, namely the AU Transitional Justice Framework (AUTJ), this regional body emphasises that transitional justice ought to be anchored on African understandings of justice, which raises the growing need to address knowledge gaps in the African context (Wachira 2016: 06). At the global level, both the United Nations (UN) and European Union (EU) have supported the view of establishing transitional justice processes that incorporate justice processes exercised by communities in the Global South, especially Africa (Wachira 2016).

The entry point of this study is, therefore, to develop an understanding of the justice that occurs during transitions at the local level and not the state level or a state-centric perspective. This shift in focus allows this research to align itself with the decolonial project, which recognises that peacebuilding efforts in post-colonial Africa have been failing because they focus on the state and not the people (Madlingozi 2015). As such, the resulting justice processes that have occurred are state-centred and not people-driven. Often when the term 'local community' is used some scholars assume that this refers to a spatial level that is separated from the national, international and global community, and one that is marked by the absence of modernity (Shaw *et al.* 2010). In this study, the local is understood as a standpoint based in locality but not bound by it (Sharp 2014, Shaw *et al.* 2010). It is a shifted centre that provides a vantage point from which people can recognise the community as a site of knowledge, informed by the experiences of the local population (McEvoy and McConnachie 2013, Sharp 2014). The study seeks to develop an understanding of the context-based processes of justice that encapsulate how the local community relates with the processes of redress available to them.

Various scholars use different terms to describe the justice processes followed by local communities, for example informal justice systems, indigenous, unofficial, alternative dispute

[16] The terms critical scholars, decolonial scholars and African perspectives are used in literature interchangeable and often synonymously to refer to non-Western scholarship that challenges the Eurocentric-North American worldview (Mamdani 1996, Ndlovu-Gatsheni 2016, Nabudere 2011).

resolution mechanisms and tradition-based (Huyse 2008, Lundy 2009, Quinn 2007). In the literature, these terms are often used interchangeably, and they refer to the same or similar processes which are used to resolve conflicts at the community level. Other scholars have described the term 'alternative dispute resolution mechanisms' as processes that do not only involve tradition-based practices of conflict resolution, but also include other systems outside the formal justice realm which are not necessarily tradition-based (Huyse 2008). The study makes use of the term 'tradition-based' to refer to justice processes that are specific to local communities and used by the local people to resolve conflicts that arise within their localities (Quinn 2007). The focus of these practices is often to resolve conflicts at the micro-level rather than the macro level (Baines 2007).

In this chapter, I explore the African perspectives of justice building on the views of decolonial scholars, especially that of Everisto Benyera (2014a), Sabelo Gatsheni-Ndlovu (2016), Tshepo Madlingozi (2015) and Joanna Quinn (2007) who have used African perspectives to critically assess the relevance of transitional justice as imagined within the liberal peacebuilding framework in Africa. I explore the argument that the limitation with this transitional justice framework is that it is not grounded in African understanding of justice and local processes of redress. Madlingozi (2015) in "*Transitional Justice as Epistemicide: On Steve Biko's Pluralist Coexistence 'After' Conflict,"* states that the 'global transitional justice project' suffers from fundamental problems that are rooted in the global matrix of coloniality.

Coloniality is the long-standing pattern of power that emanates from colonialism, which continues to preserve the colonial culture, power relations and production of knowledge beyond the strict limits of colonial administrations (Ndlovu-Gatsheni 2013). Colonialism refers to political and economic relations whereby the sovereignty of a nation or people is determined by the power of another entity that has control over it (Maldonado-Torres 2007: 243). Critical scholars argue that one of the assumptions underlying colonialism is that the Western perspective is the superior view from which all human beings relate their social world (Gordon 1995). In the literature, the terms Western worldview, Western-view, Eurocentric and Euro-North American are often used interchangeably and synonymously to refer to a perspective, standpoint or view that is informed by beliefs, values, practices and customs of theorists and actors in the Global North (Mignolo 2011). For decolonial scholars, this Western-view embodies the underlying structures of coloniality that subdue the

perspectives of non-Western societies (Mignolo 2011, Ndlovu-Gatsheni 2013). Therefore, critical scholars would posit that the root of injustices in the contemporary African society is colonialism expressed through avenues of coloniality, namely, being, power and knowledge, examined below (Ndlovu-Gatsheni 2013).

In the following sections I focus on five things: firstly, I provide a description of the decolonial lens making use of three avenues of coloniality, being, knowledge and power. Secondly, I discuss how the African perspectives inform the emerging discourse of transitional justice in African societies. Thirdly, I discuss tradition-based practices in three case studies, namely Rwanda, Uganda and Mozambique to examine how they contribute to African understandings of justice. Fourthly, I examine the challenges of tradition-based justice systems. Lastly, I offer a conclusion.

3.2 Understanding the decolonial lens

In the recent decades, most transitional justice initiatives have been conducted in the Global South and have largely been pioneered or implemented in collaboration with actors in the Global North. Consequently, transitional justice is increasingly being seen, in the critical literature, as a form of constitutive power used by actors in the Global North to legitimise the emerging states and transfer new norms and values (Branch 2014, Madlingozi 2015). Critical scholars argue that the consequence of adopting Western-framed peacebuilding initiatives when resolving conflicts in Africa is that the processes are increasingly pacifying African communities, aiding in the re-capture of Africans into the global matrix of coloniality (Madlingozi 2015: 04, Ndlovu-Gatsheni 2016).

Three avenues of coloniality, namely, coloniality of being, knowledge and power, inform the above criticisms raised by decolonial thinkers in relation to transitional justice. Coloniality of being is propagated through racial profiling, classification and hierarchisation of human beings, while coloniality of power is extended through imperial institutions, control of the economy and use of force and sophisticated technologies to dominate other populations (Quijano 2000, 2007). Coloniality of knowledge operates through the universalisation of Euro-North American-centric perspectives (Quijano 2000, 2007). In the following sections I provide a description of the above avenues of coloniality.

3.2.1 Coloniality of power

At the core of coloniality of power is an imbalance of power that affects all aspects of social existence, including sexuality, authority, subjectivity, politics, economy, spirituality, language and race (Quijano 2000). Critical scholars argue that coloniality of power for the contemporary African society goes back to the colonial era and emanates from the capitalist system that was introduced to the African society through colonialism (Mamdani 2015). It is established through a network of relations of exploitation, domination, and control of the means of production in ways that dehumanise, engender socio-economic disparities and prejudice some members of the society (Quijano 2007, Mamdani 1996). These disparities in society are arguably constructed by the global capitalist system which is regulating various aspects of the contemporary society. In postcolonial Africa, there are two attributes of coloniality of power that can be observed, which are minimal juridical freedom and the asymmetric global power structure.

Decolonial scholars argue that when colonial states attained political independence they did not manage to dismantle the structures of colonialism (Quijano 2007). They only gained minimal juridical freedom because liberation movements only ascended to political office, but they remained without the political and economic power needed to position themselves and participate in the global political arena (Ndlovu-Gatsheni 2013). Moreover, due to continued dependency on colonial administrators, post-colonial states have not been able to offset the asymmetric global power structure which enables actors in the Global North to subvert those in the Global South (Ndlovu-Gatsheni 2013). Critical scholars see this lack of political and economic power as grounds on which actors from the Global North have been able to interfere and dictate peacebuilding initiatives used to resolve conflicts in Africa and many countries in the Global South (Mamdani 2015). Mostly, this has been observed in the dominance of France, the United Kingdom, America, Belgium, the UN, the EU and foreign aid agencies in peacebuilding operations occurring in Africa (Benyera 2014a, Branch 2014). Decolonial scholars argue that much of the issues that flare conflict in Africa derive from colonial legacy and when actors from the Global North intervene to address surfacing issues and not the root causes of conflict, it becomes a new form of colonialism or new imperialism (Madlingozi 2015).

3.2.2 Coloniality of knowledge

Coloniality of knowledge refers to the use of Euro-North American perspectives to denote the modes of knowing, of producing knowledge and value-system that governs the world (de Sousa Santos 2007). Critical scholars posit that Eurocentric knowledge has enabled the Global North actors to deposit their value-system on non-Western societies through programmes and activities conducted by Western governments, western aid agencies and international non-governmental organisations in the Global South (Mignolo 2011). On the contrary, the process of decolonising knowledge entails shifting from a Western-centred value-system to a non-Western perspective which embraces local understandings (Nabudere 2011).

The decolonial lens as it applies to transitional justice challenges the confinement of transitional justice processes to a Euro-North American understanding of justice (Ndlovu-Gatsheni 2016). For example, the Guidance Note of the Secretary-General of the United Nations describes transitional justice as both judicial and non-judicial processes and mechanisms of redressing conflict that include criminal prosecutions, truth-telling, reparations, institutional reform and national consultations (United Nations 2010). This transitional justice framework goes on to indicate that any of the above mechanisms can be used collectively, however, the justice process must conform to international legal standards and obligations. Branch (2007) elaborates that this prescription to subscribe to international legal standards presumes that (i) international law is absolute, (ii) it assumes that justice is best realised by conducting criminal prosecutions and that, (iii) liberal-leaning initiatives for justice are best suited to transform a conflict stricken society towards a democratic dispensation. Critical scholars argue that when such Western perspectives are applied to transitional justice processes in Africa they give way to the spread of liberal fundamentalism. More so, there is limited evidence to suggest that liberal norms and values enable post-colonial states in Africa to break away from the cycle of violence that prevails, which is mostly rooted in the legacy of colonialism.

3.2.3 Coloniality of being

The coloniality of being refers to the physical and psychological predicament faced by colonised people (Ndlovu-Gatsheni 2013). Coloniality is observed in the classification of

human beings using ideas of race that put some people as superior beings to others (Maldonado-Torres 2007). Mignolo (2011) elaborates that through colonialism the Global North actors, namely Portugal, Belgium, France and Britain fabricated the idea of a European race and subsequently white race that is superior to non-white population groups. The race categories that ensued have created structural disparities among the society which are often concealed through noxious values (Gordon 1995).

Decolonial scholars posit that the transitional justice framework which has largely been shaped by the Eurocentric-North American perspective has the danger of perpetuating 'coloniality of being' in that it prioritises a legal approach that emphasises universal human rights and international laws to respond to the needs of conflict stricken communities in Africa (Madlingozi 2015). Moreover, the liberal peacebuilding framework emphasises technocratic justice processes that often target high-level perpetrators or a high threshold of atrocities (for example the International Criminal Court), which has been seen to be a challenge for injustices that do not fit these categories (Branch 2007). Critical scholars believe that the ensuing justice processes already commit injustice to those who do not fit the threshold of the liberal peacebuilding framework (Madlingozi 2015).

3.3 African perspectives of justice and the emerging discourse on transitional justice

The African perspectives which resonate with the decolonial thinking examined earlier, hold that the project of liberating and emancipating African people that commenced during the war of liberation, is far from complete (Ndlovu-Gatsheni 2016). Hence, Madlingozi (2015) has condemned the use of the Truth and Reconciliation Commission in South Africa by stating that addressing apartheid without addressing the colonial question has limited the ability of the South African society to transition from all past injustices. He elaborates that this compromise was orchestrated by the desire of some political elites to quickly assimilate the liberal democratic dispensation, which consequently suppressed what the greater society needs to progress. He adds that transformation requires broadening the understanding of rights and accommodating the values held by various population groups (Madlingozi 2015).

Critical scholars situate the African perspectives of justice in the argument that it is undeniable that local populations across the globe have been transformed by the influence of the European capitalist expansion, colonialism, evangelism, imperialism and now

globalisation (Boege 2011: 437). These encounters have made it impossible to differentiate between the Western 'modern' lifestyle and the local livelihood of population groups in Africa. Rather a porous process of assimilation, articulation and transformation has enabled the local population to adapt to their contemporary world in a manner that presents a new form of existence peculiar to each community (Boege 2011). It would be misleading to over homogenise the African population, but the critical scholars maintain that the conceptualisation of human beings in the African context, emphasises values of cooperation, social harmony, respect, interconnectedness and collective responsibility (Benyera 2014b, Boege 2011).

From the critical scholars, what can be observed as an underlying thread in the African community is the understanding that human values are built on the reciprocal recognition of humanity and that rights are correlative with duties (Benyera 2014a, Setiloane 1978). It is therefore problematic to divest people from their culture, history and being just to make way for the modelling of the society in the Western perspective of human rights (Cobbah 1987). Critical scholars even argue that it is unimaginable that African people would be able to respond to their natural passions and wishes outside the realm of their social world (which is made up of the physical and metaphysical realms) (Cobbah 1987, Setiloane 1978). Thus, the critical scholars hold that rights and obligations knit together the community in ascending order which includes the individual, the extended family and the whole society.

In the African setting particularly sub-Saharan Africa, a community is often made up of people who belong to the same ancestral family or bloodline and a village chief or family elder serves as a representative of the community (Boege 2011, Gelfand 1973). These community leaders represent the community in the physical realm, but there is a metaphysical realm which is the backbone of the community, comprised of the ancestral family (Gelfand 1973). The ancestral family are spirit beings of the departed members of the community, who form a generational pattern of communities that preceded the current living community. The ancestral community (living dead) serves as a protector and guardian of the 'living living' (the people in the physical realm) and intercedes for the people to God, who is the creator of all beings, be it in the physical or metaphysical realm (Gelfand 1973, Nyathi 2015).

Critical scholars add that spirituality[17] informs the worldview of many African people and their understanding of reality is shaped by both the physical and metaphysical realms (Nyathi 2015). The physical realm is a sphere of existence occupied by living persons (the 'living-living') and the metaphysical realm is occupied by the 'living dead' and 'unborn living' (Gelfand 1973, Nyathi 2015). The 'unborn living' (spirit of a person yet to exist in the physical realm) are future beings whose existence depends on the ability of the 'living-living' and 'living dead', to create a conducive environment. The living-living (spirit of the living person) are custodians of the physical realm and the living dead (spirit of deceased persons) oversee the metaphysical realm but both entities have an interdependent relationship that transcends to the unborn living (Gelfand 1973, Nyathi 2015).

This transcendental reduplication of the physical world in the metaphysical is arguably, a fundamental component of life that brings social harmony to African communities (Ellis and Ter Haar 2004, Lan 2006). Resultantly, human dignity is built on the principle of reciprocal recognition of human beings as entities within a cosmological community that have duties and responsibilities to both the physical and metaphysical social world (Setiloane 1978). Human dignity is deeper than human rights in that it beholds the essence of one's being, and without dignity, one's sense of being would have lost meaning (Setiloane 1978). This understanding of human dignity encapsulates the fundamental values of African humanity captured in the African philosophy of *ubuntu* (Setiloane 1978).

Ubuntu is both a moral code and analytical lens of understanding humankind in African societies. As a moral code *ubuntu* ascribes value on human beings by emphasising human dignity as integral to wholeness or oneness of all life, and locates the individual human within the larger community (Nabudere 2011, Setiloane 1978). *Ubuntu* is also an analytical lens that identifies human beings as interdependent entities that strive to bring the best in society by respecting and valuing the essence of life that all beings possess (Benyera 2014b). In the event of conflict, the notion of *ubuntu* can assist to reconcile and transform the community in that the exercise of upholding human dignity preserves the chain of communication that exists among the cosmological community, made up of the 'living-living', 'living dead' and 'unborn living' (Benyera 2014a, Nabudere 2011). These overlapping spheres of human

[17] Spirituality is used to refer to the belief in the powers of the universe and this universe is made up of a network of actors that exist in the physical and metaphysical realm who all embody a spiritual component that guides their relations as entities in the universe.

existence run through the tradition-based practices observed in Rwanda, Mozambique and Uganda examined below.

It is important in many African communities to maintain social harmony between the 'living-living', 'living dead' and 'unborn living', because that guarantees the progress of their constituency (Gelfand 1973, Nyathi 2015). As such, when conflict occurs among African communities the process of redress ensures that the cosmic relation between the physical and metaphysical realm is preserved for it to be successful. *Ubuntu* enables African communities to deal with conflict in a positive manner drawing on the humanistic and spiritual values shared by communities from generation to generation (Nabudere 2011). The key values of *ubuntu* include reciprocity, responsibility, restraint, restitution, respect for humanity, acknowledgement, social harmony, interconnectedness and unity (Benyera 2014b). These aspects are argued to be representative of values shared by many African communities and have been appropriated in various practices of resolving conflicts at the local level (Benyera 2014b). These practices observed by African communities are what emerging scholars have termed tradition-based, informal, home-grown, indigenous, unofficial and alternative dispute resolution mechanisms (Huyse and Salter 2008, Lundy 2009, Quinn 2007).

Critical scholars hold that when local practices are used to address disruptions to social harmony the process allows for collective involvement in resolving the wrongdoing (Gelfand 1973, Nyathi 2015). This occurs through discussions that allow the affected parties to reflect upon the causes and consequences of a conflict. More so, a spiritual dimension exists in local practices of justice mostly due to the centrality of the spiritual agency in all human spheres (Nyathi 2015, Setiloane 1978). Calling of ancestors or appeasing spirit agents embodies the spiritual dimension of many tradition-based justice processes in Africa (Nyathi 2015, Setiloane 1978). Gelfand (1973) observed the prevalence of ancestral worshipping in Zimbabwe among the African population residing in both urban and rural areas. He indicated that this phenomenon is more prevalent in the rural areas where the local communities even have sacred places of worship which they use to communicate with their ancestral family (Gelfand 1973). Traditional healers, diviners, herbalists, spiritual seers and prophets often play an important role in resolving conflicts and addressing injustices. These local actors are respected by the local community which gives legitimacy to the process that ensues. However, in other African communities, for example Ethiopia, the observance of African Traditional Religion (ATR) has been subdued by the influence of other religions such as

Christianity, Judaism and Islam, which have demonised worship and communication with African ancestors (Boege 2011).

Nonetheless, critical scholars posit that what safeguards humanity in most African communities is not human rights or the rule of law, but the human beings themselves through an array of relationships and a social contract that binds the people within the physical and metaphysical realms (Ellis and Ter Haar 2004). Resultantly, the essence of laws that regulate human interaction does not lie in the technical and technocratic processes of the formal legal system, but in the supremacy of certain ethical convictions, rules of decency, and the psychosocial and spiritual embodiment of the community (Bhebe and Ranger 2001, Cobbah 1987). It this understanding of justice that feeds the focus of this study in exploring how conflict stricken communities in Zimbabwe retain human dignity. In the following section, I examine how other African communities, namely, Mozambique, Rwanda and Uganda, have employed African perspectives of justice for transitional justice.

3.4 Understanding tradition-based justice systems and how they are applied for transitional justice in parts of Africa

As mentioned earlier, this study makes use of the term tradition-based justice which does not imply old or unconventional, rather it refers to justice processes that are embedded in the values, practices and customs of the local community (Boege 2011). Moreover, the term tradition-based justice as it is used in this study refers to redress acquired through local practices that are specific to a given community and have become their accustomed way of addressing different facets of their life. As argued by Boege (2011) and De Sousa Santos (2007) the tradition-based justice system is not the opposite of modern or formal justice but rather exists within an alternative modernity that resonates with many African societies.

Tradition-based justice is often used to resolve a wide array of conflicts from the family level to the broader community level, which makes it an intricate component of the everyday experiences of the local community (Penal Reform International 2001). Tradition-based practices are evolutionary in nature because they are informed by the socio-cultural, economic, political and ecological processes that make up the lived experiences of a community over time (Penal Reform International 2001). Thus, tradition-based practices are not static, rather they evolve with time adapting to the changes within the society, making

them a crucial component of the people which sustains their existence (Boege 2011). Tradition-based justice is mostly applied to micro or local level issues, and this study explores how local practices facilitate justice at the community level.

A study of this nature is preceded by the work of critical scholars such as Everisto Benyera (2014a), Adam Branch (2007, 2014), Phil Clark (2010b) and Victor Igreja (2010, 2012) who conducted research on tradition-based practices in Mozambique, Uganda, Rwanda and Zimbabwe respectively. Since this study explores the phenomenon of tradition-based justice in Zimbabwe, looking at Buhera and Mudzi districts, this section examines other cases where tradition-based practices were used to acquire justice, in Mozambique, Uganda and Rwanda. There are other countries in Africa where considerations to use tradition-based practices for transitional justice have been made, for example Sierra Leone and Burundi, but their implementation has not been tangible (Huyse and Salter 2008, Quinn 2007). Hence, Mozambique, Uganda and Rwanda are key examples to shed light on how tradition-based justice can be used for transitional justice because the local practices were implemented to address injustices incurred by the local communities.

A historical background of the conflicts that occurred in Mozambique, Rwanda and Uganda will not be provided in this study because a lot has been written about it, including by Branch (2007, 2014), Clark (2010b) and Igreja (2010). The focus of this section is to examine how tradition-based practices were employed. In Mozambique, the use of the tradition-based practice of the *magamba* spirits was inspired by the local communities after the failure of the government to provide measures to deal with the past. In Uganda, the government revoked its invitation to have the ICC oversee the trial of perpetrators of its decade's long conflict in favour of local practices such as the *mato oput* ritual. The *gacaca* courts in Rwanda were used to fast-track trials for over 120 000 perpetrators of the 1994 Rwandan genocide that left about one million people dead and many others wounded and displaced (Huyse and Salter 2008). In all three cases, the key values of *ubuntu* are present in the tradition-based practices used, such as social harmony, interconnectedness, reciprocity, unity, responsibility and restitution.

3.4.1. The *Gacaca* justice system

The aftermath of the Rwandan genocide presented challenges for the state-led justice system to prosecute over 120 000 offenders who had committed atrocities during the 1994 massacres (Clark 2010b). The state-courts only had about 15 judges who could not oversee the trials of all alleged genocide perpetrators (Clark 2010b). Also, a challenge for the state was the lack of infrastructure to hold prisoners waiting for trial and it became apparent that in accordance with international obligations, the state was unable to proceed with criminal prosecutions (Evans and Ellis 2005). A report submitted to the UN Security Council (UNSC) in September 1994 by a Commission of Experts which had been set up to assess the impact of the Rwandan conflict, concluded that the massacres constituted gross violation of international humanitarian laws (Batamuliza 2009, Cruvellier 2010). Moreover, the commission established that the nature of the massacres constituted acts of genocide. Approximately a million people, mainly Tutsis, were massacred, many women and girls were intentionally raped and infected with HIV and other people were forced to flee to neighbouring countries for refuge (Batamuliza 2009).

In response to the report of the Commission of Experts and at the request of the Rwandan government, the UN Security Council through Resolution 955, established the International Criminal Tribunal for Rwanda (ICTR) in November 1994 to facilitate transitional justice (Batamuliza 2009). The mandate of the ICTR was to: (i) prosecute persons responsible for the genocide and other serious violations of international humanitarian law, (ii) facilitate the process of national reconciliation in Rwanda and, (iii) establish peace in the Great Lakes region (Batamuliza 2009). Batamuliza (2009) points out that in 2001 the government of Rwanda voted against the UNSC Resolution 955, citing the limited mandate of the ICTR to only try the 1994 sub-period and not preceding incidents that had contributed to the genocide. Du Bois (1997) adds that the government challenged the tribunal's requirement that convicted persons would serve their sentence outside Rwanda. More so, the tribunal did not have adequate infrastructure as it had to share resources with the ICTY which was housed in The Hague, Netherlands, whilst the ICTR itself was in Arusha, Tanzania which was still far for the Rwandans it was supposed to serve (Batamuliza 2009, Du Bois 1997).

Consequently, the ICTR has been criticised for being slow, expensive and detached from the Rwandan community (since it was being held in Arusha), which led the affected parties to

suffer from alienation (Clark 2010b, Wielenga 2014). Between 1994 and 2007 the ICTR had spent more than one billion US$ on its court proceedings which indicted 90 high level perpetrators of the genocide, made 72 arrests and completed 33 cases, 18 of which were convicted and five were acquitted (Dieng 2011). Batamuliza (2009) argues that the ICTR only made strides with regards to advancing the international criminal justice framework and prosecuting some high-level genocide perpetrators but fell short on administering justice to the greater population of Rwanda.

The *gacaca* justice system was revived in 2001 by the government of Rwanda against the backdrop of failures of the international criminal tribunal and limitations of the national justice system to address the genocide (Clark 2010b). Vandeginste (1998) adds that the then Vice President Paul Kagame had previously stated to the media in 1998 that it was costing the government about US$ 20 million to keep prisoners awaiting trial in jail. The *gacaca* justice system was therefore, adopted to expedite the process by bringing justice to the local communities that had experienced violence. The *gacaca* courts post-1994 genocide was established through a law passed in parliament which enacted the creation of 11 000 community courts staffed with over 260 000 lay judges who could try low-level suspects (and later high-level suspects) for murder, manslaughter, assault and other offences committed during the genocide (Clark 2010b). This law gave the community courts authority to try criminal offences of which in many contemporary African states such offences are adjudicated by the formal justice system.

The literal meaning of *gacaca* is ‘on the grass’, and in precolonial times the gacaca justice system was a community meeting done on the grass whereby Rwandans would gather to discuss and resolve conflicts within the community (Morrill 2004: 03). During the *gacaca* court proceedings the conflicting parties would present their case to an assembly of *inyangamugayo*, which means elders in the community with a leadership role and authority to preside over trials (Morrill 2004). The offender would stand before the assembly and a ruling for the offences committed would be determined by the assembly. Sentencing of an offender was often in the form of paying compensation to the affected parties or doing manual work (Morrill 2004, Waldorf 2010). When an offender struggled to pay compensation, often the family/clan would step in and assist because the interconnectedness of the family system encouraged the sharing of responsibilities (Waldorf 2010). Doing so also enabled the broader community to (i) acknowledge the offence, (ii) show remorse and solidarity to the offended

party and (iii) offer a lesson to all on what is acceptable behaviour for their community (Waldorf 2010). Thus, the well-being of the family/clan relied on an interconnected network of relations with others such that an offence by one member of the family could be a potential threat to the whole family. The *gacaca* justice system seems to have some similarities with Zimbabwe's *dare* (court), which will be discussed later in Chapter 7, which is a gathering held under a tree in the compound of a traditional leader (HZT and ZIMCET 2016).

The use of the *gacaca* justice system to address the genocide offered an African understanding of transitional justice in three ways (Clark 2010b). Firstly, it proved that tradition-based justice mechanisms are relevant to the contemporary African society and can be scaled up to provide transitional justice. Secondly, the justice system encouraged local participation and local ownership because each community across Rwanda tried its own community members for their actions during the genocide. Thirdly, the *gacaca* courts managed to hold to account both high level and low-level perpetrators and bystanders, and offered sentences that were, arguably, acceptable to most of the affected people (Clark 2010b). *Gacaca* trials offered significantly reduced sentences of 5-30 years including community service and restitution (Wielenga 2014). Wielenga (2014) argues that the gacaca justice system had some retributive characteristics in part, due to being compelled to operate according to international legal standards. This was evident in the fact that offenders stood alone before the community and judges, and that punishment was meted out by the judges rather than in negotiation with offenders and their families. The sentencing of perpetrators to participate in the *Travaux d'Intérêt Général* (TIG) programme held within it both retributive and restorative elements- it involved community service, but it also treated offenders, to some degree, as prisoners. In a period of 10 years (2001-2010) the *gacaca* courts managed to clear the judicial backlog as well as, arguably, offer Rwandans justice, acknowledgement, truth and a platform for democratic participation (Clark 2010b).

Human rights defenders for example Amnesty International, have opposed the use of *gacaca* courts for trying the genocide on grounds that it fell short of international legal standards of fairness (Clark 2010b, Morrill 2004). Clark (2010b) argues that such criticism shows (i) legal rigidity considering the unprecedented challenges that were faced by the Rwandan society post-genocide, and (ii) limited understanding of the aims of the community courts- encouraging local participation and ownership. More of the challenges of the *gacaca* justice system are examined in section 3.5.1.

3.4.2 *Magamba* spirits

When the General Peace Agreement (AGP) was signed between the conflicting parties, the Front for Liberation of Mozambican (Frente de Libertação de Moçambique, or FRELIMO) led by Chissano and the National Resistance of Mozambique (Resistência Nacional Moçambicana, or RENAMO) led by Dhlakama on 4 October 1992, it resolved the civil war by offering three things (Hirsch 2009, Igreja 2015). Firstly, a blanket amnesty for injustices that occurred prior and post-independence (Hirsch 2009). Secondly, it forged a unity government in which both parties pledged to cooperate in establishing a new democratic state and resolving conflict by peaceful means (Hirsch 2009, Igreja 2015). Thirdly, the conflicting parties committed to disarm, demobilise and reintegrate (DDR) their armed forces into one civilian army (Hirsch 2009). The United Nations (UN) assisted the DDR program by establishing one of the largest peace missions, the United Nations Operation in Mozambique (ONUMOZ), which had a budget of US$331 million and more than 8,000 peacekeeping troops (Cohen 2001, Vines 2013). Over US$1bn was spent by foreign donors who sponsored the democratic transition of Mozambique after the end of the civil war (Cohen 2001). Wielenga *et al*. (2015) point out that justice was considered inimical to the peacebuilding process and was therefore replaced with a discourse of national reconciliation that was expressed through 'amnesia' ('forgetting' the past) and silence.

Consequently, the experiences of about a million-people that perished in the war, the over 1.7 million displaced persons who ended up in neighbouring countries and many other atrocities (such as rape, murder and starvation), were never addressed (Nordstrom 1997). The leader of RENAMO Afonso Dhlakama in a speech he shared after the signing of the AGP on 4 October 1992, indicated the need to acknowledge the victims of the civil war (Dhlakama 1992 in Igreja and Dias-Lambranca 2008: 64-65). Despite this bold reference to the past, the unity government did not make a deliberate effort to address the injustices that occurred. About 10 days after the signing of the AGP, the government adopted Law No 15/92 which granted unconditional amnesty to perpetrators of injustices that occurred between 1979 and 1992, effectively shutting the door on reconciliation and justice (Igreja and Dias-Lambranca 2008: 65-66). A former editor of the AIM news agency, Fernando Lima who was interviewed by Hirsch (2009) holds the view that the high level of illiteracy among the local population in Mozambique could have contributed to their inability to understand the specific terms of the

AGP. He believes that the government managed to manipulate the whole population to embrace the AGP because the end of the war gave short-term relief.

Igreja (2015) adds that the AGP brought about immense socio-political changes, but failed to deliver a policy or program that could assist the Mozambican population to move on, particularly those in Gorongosa and central-northern Mozambique who were most affected by the civil war. The victims were encouraged to forgive and forget in bid to foster national cohesion and political stability. The immediate effects of the silencing of the past by the government was that victims and perpetrators were left to live together in communities where horrendous atrocities had occurred (Thompson 2016). This created some feelings of resentment and revenge among community members which gave rise to the emergence of *magamba* spirits- manifestation of the spirit of an aggrieved deceased person (Igreja and Racin 2013, Thompson 2016).

The *gamba* or *magamba* [plural] spirits have been part of the belief system of communities in the Gorongosa district, an area located in the central region of Mozambique, and were referred to in addressing injustices that occurred during the civil war (Igreja 2012). *Magamba* spirits is a phenomenon associated with the manifestation of a spirit of a deceased person who is aggrieved, and is often referred to when communities are facing misfortunes and disharmony (Igreja and Dias-Lambranca 2008). In relation to the Mozambican civil war, the *gamba* spirit that manifested was typically the spirit of a male soldier who suffered and died in the war (Thompson 2016). During the civil war, some of the local population are believed to have used pieces of corpses of deceased soldiers to make medicines to protect themselves against enemies (Igreja 2008). This practice of using remains of deceased persons was part of the belief that if one partakes the remains they become immune to death and even extreme suffering (Igreja 2008). As such, the manifestation of *gamba* spirit occurred in the form of an avenging spirit of the deceased soldier that possessed another person in the physical realm and demanded redress for the injustices incurred (Igreja 2012).

Thompson (2016) argues that in many parts of Mozambique the local people believe that the undignified death of an individual (including improper handling of remains) requires redress through rituals. Honwana (1997) adds that a perpetrator of an injustice commits unacceptable human conduct that violates one's dignity and destabilise the social harmony that exist between the physical and metaphysical realms. Thus, inhumane conduct is regarded as

‘pollution’ to both the physical and metaphysical realms, which potentially contaminates the family/clan and community at large. Therefore, throughout generations people in this community have used various tradition-based practices to ‘disinfect’ the ‘polluted’ party, family or community of any acts that create ‘social pollution’ (Honwana 1997).

When the *gamba* spirits started to manifest, it was a sign to the local communities that there were issues disrupting the cosmological harmony in their community. Challenges faced by the local community included feelings of guilt for husbands of women who were sexually assaulted during the war, shame and stigma for rape victims and marital problems which in some instances had led to divorce (Igreja *et al.* 2008). These disruptions were unbearable to the affected families and could not be resolved without addressing past injustices. A key feature of the *magamba* spirits phenomenon is the use of spiritual agents who assist the survivors to make sense of the injustices that occurred, and the encounter is played out through a family member possessed with the *gamba* spirit (Honwana 1997, Igreja *et al*. 2008). The individual who gets possessed by the spirit is related to either the family of the offender or the deceased party, and the unknown spirit acts out its demand through this person (Igreja 2008). This manifestation of avenging spirits is popular among many societies in sub-Saharan Africa (as examined in Chapter 7 of this research, *ngozi*, is an example of a deceased person’s spirit manifestation found in Zimbabwe) and denotes a local form of post-conflict justice (Benyera 2014b, Nyathi 2015).

According to Igreja (2012) the possession of another person by the *gamba* spirit provides the deceased person an avenue through which the avenging spirit discloses the aetiology of the affliction, indict those who are responsible for committing injustices as well as demand the desired redress. There is also a *gamba* healer who is a local person (either male or female) with spiritual powers and authority to engage with the spirit of the deceased and assist the families involved in the dispute to resolve their issues (Igreja *et al.* 2008, Thompson 2016). Igreja *et al.* (2008) posit that when the *gamba* spirit manifests it presses the subject (the one possessed with the *gamba* spirit) into subordination and the subject assumes a psychic form like a trance. The deceased party takes over by speaking and enacting the violent experiences that led to his death and the other parties (families involved in resolving the dispute) would be listening and acknowledging the narrative (Igreja *et al.* 2006). During this enactment, the offending party is afforded an opportunity to address the issues raised by the *gamba* spirit and often resolve the matter by inquiring from the spirit the corrective measures that would please

the deceased. In some instances, the deceased requested a bride to be offered as a wife and produce children in the family of the deceased (Igreja *et al.* 2006). Other measures of redress included a cleansing ceremony and restitution through livestock.

Spiritual agents as evident in *magamba* spirits, play a role in making sense of violent wartime experiences (Thompson 2016). Healing for the one possessed with the *gamba* spirit was facilitated by *magamba* healers who coordinated ritual ceremonies that assisted the involved families to address the demands of the deceased (Igreja *et al*. 2006). Thompson (2016) points out that *magamba* spirits are, arguably, an avenue of redress that has been used to advance transitional justice by the local communities in Mozambique. The manifestation of the *magamba* spirits created an avenue through which alienated families could engage and work together to address war-related issues (Igreja *et al.* 2008, Thompson 2016). *Magamba* spirits enabled broken communities to perform healing ceremonies that addressed aspects of their past and became the foundation for building their collective future (Igreja and Dias-Lambranca 2008). Igreja *et al*. (2008) and Thompson (2016) strongly believe that *magamba* spirits provided a holistic approach to addressing past injustices in Mozambique because they encompassed truth-telling, acknowledgement, a healing process, restorative justice and reconciliation.

3.4.3 Acholi rituals

Following the Juba peace talks, the government of Uganda and the Lord's Resistance Army (LRA) signed an agreement on accountability and reconciliation in July 2006 which put an end to the long standing civil war in northern Uganda (Baines 2007). About 1.8 million people were displaced, thousands were murdered or died from ailments and starvation in refugee camps, and many others incurred injustices such as rape, abductions, maiming and sexual enslavement (Baines 2007, Burke 2016). Many human rights defenders saw the Juba peace agreement as an opportunity for the Ugandan government to embark on transitional justice processes that would ensure for the sustainable resolution of the conflict (Finnström 2010).

In 2003, the government of Uganda had requested the International Criminal Court (ICC) to investigate the atrocities committed by the LRA rebels which became one of the first cases that the court attended to after its establishment (Branch 2014). Arguably, Luis Moreno-

Ocampo the then chief prosecutor of the ICC had initially invited President Museveni to file a case with the court which enabled the ICC to intervene in the Uganda conflict (Clark 2008). By late 2005 warrants of arrest had been issued by the ICC on five LRA leaders and the court was soon criticised for interfering with the mediation efforts that had been underway (Branch 2007, Lundy 2009). Branch (2007) points out that when the ICC was invited to intervene in Uganda, the government requested that the investigations not be extended to offences committed by the Ugandan army, a move that raised many criticisms for the government and the ICC. Various scholars have challenged why the ICC did not investigate the crimes committed by the Ugandan army and the justification offered by the court has been that those acts did not match up to the court's threshold (Branch 2007, 2014, Finnström 2010).

Given the controversies surrounding the ICC, the government of Uganda turned to local proceedings of redress by adopting traditional Acholi rituals[18] as a crucial component of its national reconciliation policy (Allen and MacDonald 2013). President Museveni revoked his invitation to the International Criminal Court (ICC) in favour of tradition-based justice processes because, arguably, the people of Northern Uganda preferred the use of local practices over the ICC (Bangura (2008). The preference for the tradition-based justice system was informed by the need for a holistic process that could attend to the psychosocial and spiritual needs of the affected community, which could not be offered by the ICC trials (Bangura 2008, Paine 2014). Furthermore, the tradition-based practices have a proven record of resolving local conflicts amicably, for example the *gomo tong* ritual (which means bending of spears), which succeeded in 1986 to end the war between the Acholi and people of the West Nile (Finnström 2010).

The ICC and human rights defenders have challenged the use of tradition-based justice processes in Northern Uganda citing that, (i) they do not offer criminal prosecutions for human rights abuses, (ii) fall short in establishing deterrence, (iii) gender bias and (iv) gerontocracy (Branch 2014). On the contrary, the Ugandan government and some local community members supported the use of tradition-based justice processes because of the possibility that local practices would promote social harmony and reconciliation (Branch 2014). More so, given the lack of credibility of international legal bodies such as the ICC, it

[18] The term ritual in this thesis refers to an established ceremonial act or spiritual activity followed by a particular group of people for various aspects of their life (Peachey 2012).

is palatable that local processes would be preferred by African governments instead of the international process (Branch 2007). The trial proceedings of the ICC took long to conclude and in the process, became expensive for the affected parties to follow through because it is based in The Hague, Netherlands (Branch 2014). The ICC only offers retributive justice in that convicted suspects were sentenced to prison terms which did not offer other economic, social and cultural requirements of justice needed for the community to move on (Finnström 2010).

As observed with the *magamba* spirits in Mozambique, the people of Uganda also believe that the undignified death or suffering of people may cause disruption to the well-being of a family/clan and even the community (Honwana 1997, Peachey 2012). Tradition-based rituals are often used to repair the damage caused by injustices and, among the Acholi of Northern Uganda, various practices exist. Throughout generations, rituals form a crucial component in the remedy of patrilineal clan feuds because the local communities subscribe to the notion of being entities that exist within a cosmological community, made up of the 'living-living', 'living dead' and 'unborn living' (Peachey 2012). *Culo kwo* which refers to paying for an unreconciled killing is a ritual that is conducted where a person has been unlawfully killed (Finnström 2010). This ritual involves many family members and takes place after weeks, months or even years of negotiations and investigations from which a perpetrator owns up for his/her responsibility in the murder (Finnström 2010). Proceedings of this ritual incorporate restitution in the form of cattle (just like the case of *ngozi* in Zimbabwe), which can be used by relatives of the deceased to pay for the bride wealth of a family member (Benyera 2014b, Finnström 2010). Any children born out of a marriage arrangement where the bride wealth emanates from the ritual proceedings, are regarded as offspring of the deceased (Finnström 2010). Finnström (2010) argues that this act has a symbolic value among the local community in that it cements reconciliation on a wider societal level that brings harmony to entities in the present, past and future.

Mato oput is another ritual used in resolving conflicts which literally means drinking the root of the oput tree (Baines 2007, Lundy 2009). This ritual is conducted after the payment of compensation in cases of disputes, homicides and unnatural death (Finnström 2010). The root of the oput tree is used for this ritual because its bitter taste serves to encourage the local community not to use violence when faced with difficulties (Finnström 2010). During the ritual, the family of the conflicting parties are brought together and put in adjacent huts joined

by a straight path (Peachey 2012). Representatives of the family/clan or community would then emulate the incidents that caused the dispute before local elders or a chief (*rwodi moo*), who have the responsibility of resolving the conflict (Baines 2005, Peachey 2012). Once the elders have declared an end to the fighting, each side of the conflicting parties brings forth a sheep which is slaughtered, and its blood is mixed with the shredded bark of the oput root and parts of large intestines from the sheep (Peachey 2012). The conflicting parties are given the blood mixture to drink followed by a feast in which the slaughtered sheep is cooked and shared among the people (Peachey 2012). *Mato oput* has been widely used by the local population of Northern Uganda because it encompasses acknowledgement of harm, negotiations, compensation and a ceremonial celebration which promotes reconciliation (Peachey 2012). Hence, this possibly influenced the adoption of Acholi rituals by the Ugandan government to address the injustices that occurred in Northern Uganda.

Mato oput was used alongside other tradition-based practices such as *nyono tong gweno* (stepping on the egg), a ritual that is used to reintegrate community members that were in exile and *moyo piny*, a ritual that involves offering livestock and cleansing ceremony to appease the angry spirit of the deceased (Clark 2010a). Clark (2010a) argues that the Acholi rituals were important to resolving the conflict in Northern Uganda because they facilitated the integration of internally displaced persons (IDPs), reintegrated ex-rebel fighters and fostered social harmony. Many of the victims of this conflict were Acholi people, hence, some scholars believe that conducting rituals that uphold the cultural values of the affected parties enabled the process to fulfil the psycho-social and spiritual requirements they needed to move forward (Baines 2005, Clark 2010a).

Clark (2010a) elaborates that the Acholi people believe that places were unlawful killings have occurred become haunted by angry spirits (*cen*) of the deceased. Cleansing ceremonies such as *moyo piny* are therefore crucial in that they 'disinfect' the community of the bad aura that comes from *cen*. Hence, the process of reintegrating Acholi IDPs in areas where mass killings and violence had occurred could not be successful unless the cleansing ceremonies were conducted. The Acholi also believe that when a person has been away for long and encounter bad spirits or participated in violent actions, this person becomes possessed by a bad aura, which can potentially 'pollute' their community (Peachey 2012). When this person comes back, they must go through *nyono tong gweno* (stepping on the egg) before they are integrated with the rest of the community. *Nyono tong gweno* was used to cleanse returnees

of any bad aura they may have acquired while in exile and this was useful for reintegrating returning IDPs and LRA ex-rebels, of which an estimated 12 000 people participated in the communal *nyono tong gweno* ceremonies (Clark 2010a, Peachey 2012).

3.5 Challenges of the tradition-based justice system

As examined in the previous section, tradition-based justice systems provide means by which conflict stricken communities come to terms with their past. Some of the advantages of the tradition-based justice processes include: (i) they work in varying situations of the transition phase, (ii) they have credibility at the micro level, (iii) they are flexible in that they are not bound by time, (iv) they allow for inclusive participation, (v) they attend to the psycho-social and spiritual dimension of the conflict and, (vi) they are informed by the value systems of the people concerned (Boege 2011, Clark 2010b, Huyse 2008, Igreja *et al.* 2008).

On the contrary, most criticisms raised against the tradition-based justice system are from a Western perspective, which prioritises a conception of justice within a human rights framework (Huyse 2008, Clark 2010b). A dominant perception from the Western perspective is that the rules, norms and values that guide tradition-based justice systems are not coherent, they are unwritten and do not have sufficient procedural safeguards (Clark 2010b). More so, tradition-based justice systems are argued to be lacking the capacity to uphold international laws with regards to prosecuting crimes such as genocide, war crimes and gross human rights violations (Clark 2010b). Critical scholars such as Boege (2011), Clark (2010b) and Huyse (2008) move away from the Eurocentric-North-American perspective of justice and offer shortcomings of the tradition-based justice system that emanates from observing the contradictions that exist among different value-systems within the African perspectives of justice. The shortcomings of the tradition-based justice system they identify relate to the issues of ethnicity, religion, gender bias, political interference, scale of injustices, limitation of material resources to perform rituals or ceremonies, erosion of social contract and division among communities.

The issue of ethnicity relates to the matter already acknowledged by this study that the African population is not homogenous and tradition-based justice systems tend to be culture-specific (Boege 2011). This makes it challenging to determine the justice process to follow when dealing with societies that have multiplicities of cultures and ethnic diversity. It could

be difficult to determine which practice to follow when the concerned parties do not subscribe to the same tradition-based practices (Boege 2011). In terms of religion, the study has already noted that in some African countries, like Ethiopia, local attributes of spirituality have been greatly influenced by other religions such as Islam and Christianity, which has made some local people to shun away from tradition-based practices (Boege 2011, Huyse 2008). Gender bias is another aspect that affects tradition-based justice systems in that most of the processes are male-dominated which creates challenges for women and children when power relations are asymmetric in favour of the men (Boege 2011). Further research is needed to understand gender dynamics in African societies.

The issue of political interference often stems from the structural composition of the society, considering that many African countries have bureaucratic systems that co-opt traditional leadership into the state system. The co-opting of traditional leadership emerged from the parallel governing system that was created during the colonial era, when the colonial administrators superimposed a Westphalian state system onto the traditional governing systems followed by local communities (Lerhe 2005, Mlambo 2014). The Westphalian state model is comprised of a national government that controls the central administration of the state and often subdue the local governing structures (decentralised community level leadership forged through clan or ancestral lineage) (Lerhe 2005). These parallel systems have continued to exist in the post-independence era, with the national governing structure highly visible in the urban areas, whereas the local governing structure administers the rural population groups (Lerhe 2005). Most African countries constitutionally recognise these two governing structures, but the national government has control over the means of production, national resources and monopoly on violence, which enables it to interfere and manipulate local governing structures (Lerhe 2005). In this case, the tradition-based justice systems are often penetrated by political influences of the ruling elite at the national level because the national government has overall power in the running of the state and the people within. Resultantly, justice processes at the local level would be shaped to uphold the interests of the national government, which may include protecting certain crimes or actors from being held accountable (Branch 2014).

More so, some scholars have argued that tradition-based justice systems operate at the community level and are applied to injustices that occur on a small-scale (Boege 2011, Huyse 2008). The application of these justice processes to injustices that involve high volumes of

victims, survivors and perpetrators has not been fully tested except in the case of Rwanda with the *gacaca* courts, which makes some scholars to question the practicalities of implementing them on a larger-scale (Clark 2010b, Huyse 2008). Furthermore, the conflict stricken communities are often comprised of people suffering from a myriad of socio-economic constraints, for example they have been displaced, they are refugees, there is lack of trust and shortage of material resources (Huyse 2008). These constraints can make it challenging to implement tradition-based practices, such as rituals and ceremonies because the parties may not have the necessary resources to participate. In the following section, I use the above criticisms to discuss the challenges of the *gacaca* justice system, the *magamba* spirits and the Acholi rituals which were presented in the previous section.

3.5.1 Rwandan gacaca justice system

In the case of Rwanda, the *gacaca* courts presented various challenges for the local population, including reports of corruption, dissolution of local identities, political interference, the promotion of victor's justice and lack of support for survivors (Clark 2010b). Two contradicting criticisms were levelled against the *gacaca* courts: on the one hand, they were critiqued for not meeting international legal standards, and on the other they were critiqued for losing their tradition-based identity in their attempt to meet those very legal standards (Clark 2010b, Wielenga 2014). What emerged was a hybrid which lost some of the benefits of both justice systems.

There have been reports of acts of corruption involving traditional leaders who were bribed to offer a lenient penalty, which created doubts about the legitimacy of the local authorities (Wielenga 2014). There were also reports of coercion whereby an offender was forced to accept responsibility because the larger audience was biased towards the narrative of the victim and would not be flexible to adopt a balanced narrative of events (Clark 2010b). In this case, some alleged perpetrators ended up being held accountable for offences they did not commit.

Also, the *gacaca* courts only put on trial alleged *genocidaires* and did not address reports of injustices that were committed by the Batutsi-led Rwandan Patriotic Front (RPF) (Wielenga 2014). This was necessitated by the fact that the RPF members were now serving in the new government and they ended up being exempted from standing trial because the focus of

justice pursued by the government was on alleged *genocidaires*. Consequently, the *gacaca* courts have been accused of promoting victor's justice because government officials were not held accountable and only alleged *genocidaires* we put on trial (Wielenga 2014). Other problems with the *gacaca* courts resulted from the process being hijacked by the government to attain political goals, which resultantly led to the co-option of community leaders to maintain the interests of the government (Wielenga 2014). This co-option relates to the previous issue of the justice system being used to prosecute one side whereas the conflict involved multiple parties who committed injustices of varying degrees.

Resultantly, the *gacaca* court hearings seem to have promoted a single narrative of the Rwandan genocide. Another challenge facing Rwandans stems from the fact that the government has made incitement of ethnic divisionism punishable by law article 13 of the 2003 Constitution, which forbids the local population to self-identify along ethnic lines (Evans and Ellis 2005, Lerhe 2005). This has been seen by some scholars as an erasure of memory and people's history, of which, whilst it helps to forge a new identity, it potentially alienates other members of the society that do not hold similar views to the government (Evans and Ellis 2005). Lerhe (2005) posits that the RPF government has created the impression that the genocide was stirred by ethnicity and ethnic nationalism, yet it was driven by a small number of corrupt political elites (the *Akazu*) who used ethnicity to champion their self-serving political interests.

Moreover, the *gacaca* court hearings that were championed by the RPF government were used country-wide even among communities that contested their legitimacy, which led some scholars to challenge the use of an avenue that does not accommodate all people (Morrill 2004, Waldorf 2010). Though the Hutu and Tutsi people are quite homogenous, Huyse (2008) argues that the legitimacy of the *gacaca* courts among the Hutu was contested because of differing political views. Hence, the targeting of *genocidaires* made the justice process unfavourable to the Hutu people because most of the accusations were levelled against the Hutus and the acts of Tutsis were overlooked.

Furthermore, the lack of socio-economic support for survivors of the genocide, many of whom were women and children, has created challenges for the citizens to begin the process of rebuilding their lives. In many instances, the *gacaca* courts did not provide psychological support to victims of trauma who had to stand and testify, subsequently leading to the re-

traumatisation of survivors (Wielenga 2014). Wielenga (2014) points out that when efforts to address past injustices in Rwanda commenced the government gave the impression that the justice process would provide restitution to victims of the conflict through its compensation fund. However, the Fund for Neediest Survivors of Genocide in Rwanda (FARG) which was established by Law No. 02/98 of 22/01/1998 to aid survivors of the genocide covering the period 1 October 1990 to 31 December 1994, never managed to fulfil its mandate (Mugiraneza 2014). This law was subsequently amended by law No. 69/2008 of 30/12/2008, and later replaced by law No. 81/2013 of 11/9/2013, which indicated that the support and help programmes for victims would not be equated to financial compensation (Mugiraneza 2014). Mugiraneza (2014) and Wielenga (2014) posit that the failure to provide financial assistance to victims who need monetary compensation, poses a lot of challenges on their ability to thrive after the conflict.

Mugiraneza (2014) holds that the government may have failed to offer compensation for two reasons: practical constraints and political constraints. Firstly, practical constraints emerge from the lack of financial resources to afford offering compensation to all survivors of the conflict given that the violence was spread countrywide. Secondly, political constraints emerge from the fact the post-1994 justice process presented a single narrative of the Rwandan conflict of which offering compensation to Tutsi survivors potentially creates challenges for social cohesion at the community level (Mugiraneza 2014). Even more, at the international level several calls for the United Nations to amend the International Criminal Tribunal for Rwanda (ICTR) statute to enable victims to claim reparations have been blocked (Mugiraneza 2014).

3.5.2 Mozambique magamba spirits

Various scholars have raised concerns about the shortcomings of this practice. Thompson (2016) posits that women and children were also unlawfully killed and suffered during the civil war but the *magamba* spirits seemingly demanded justice for the male soldiers. Consequently, the form of justice that was administered through rituals related to the *magamba* spirits turned out to be male dominated thereby reinforcing gender bias in a society that still suffers from patriarchy. It is still unknown as to why mostly male soldiers manifested as a *gamba* spirit as well as why the spirit mainly possessed women. However, it

is believed that the spirits that manifested where male soldiers who had died under inhuman conditions and their remains had not been buried properly (Thompson 2016).

The manifestation of *magamba* spirits created problems for some of the women that were used as compensation to appease the avenging spirit (Thompson 2016, Igreja *et al.* 2008). A woman who was offered to the spirit of the deceased was often not given the room to give consent to the process, therefore, it seems to have occurred through coercion (Igreja 2014). This raises concerns among human rights defenders who believe that the individual should have freedom of choice and when that privilege is suppressed for the greater good of the community it becomes an infringement of one's rights. More so, some women who were offered as a wife of the *magamba* spirits were reported to have challenges with getting married or maintaining a relationship which also presents a challenge on the well-being of the individual (Igreja 2014). Since this practice relies on women as an offering to address an injustice, it also presents a challenge of gender bias in a society that is already marred with inequalities along gender lines (Thompson 2016).

3.5.3 Ugandan rituals

In 2000, the Acholi traditional institution Ker Kwaro Acholi (KKA) was revived by the government with the assistance of some civil society groups and donor agencies in a context where the conflict had almost eroded the traditional structures (Paine 2014). Many Acholi leaders had died during the conflict and others were internally displaced or had fled into neighbouring countries creating a vacuum for local leadership (Branch 2014). Branch (2014) argues that the KKA is not reflective of the traditional form of leadership that the Acholi people followed prior to the conflict because it is largely being forged on perceptions of foreign experts with the assistance of Acholi academics and elites. Paine (2014) adds that the KKA is an ambiguous entity that is providing a new power base from which the political landscape of the Acholiland is being imagined. Its revival has created an avenue for patriarchal dominance because most of the men that were appointed as the *Rwodi* (traditional leader) hold untransformed views around gender roles of people in society (Baines 2005, Paine 2014). More so, the institutionalisation of the KKA has created an avenue for clan rivalry and political contestation due to the lucrative benefits that well-placed individuals have obtained through the institution. This has been fuelled by the high volumes of funds

channelled into Northern Uganda as developmental aid by donor agencies who are promoting peacebuilding in the region (Paine 2014).

Critical scholars argue that a turn to the tradition-based justice system gave the Ugandan government an escape point from pursuing justice through the ICC, to addressing injustices through an institution (the KKA) they could manipulate and control internally (Branch 2014, Huyse 2008). Consequently, the members of the Ugandan army and government officials have still not participated in the rituals or taken responsibility for their actions due to their positions in public office (Baines 2005). Arguably, commanders of the LRA have also refrained from taking part in the rituals, citing the government's lack of participation in the process (Baines 2005, Clark 2010a).

Branch (2014) and Huyse (2008) further state that the conflict in Northern Uganda spilled-over into neighbouring countries and when the Acholi rituals were revived they were being applied to returning ex-combatants and child soldiers who had spent a reasonable period outside Uganda, and adopted other practices. This created tensions between the returnees and those who had remained in Northern Uganda over differences in perceptions and approaches to tradition. There were also reports of coercion from local elders who forced child soldiers and ex-combatants to take part in *nyono tong gweno* (stepping on the egg), before they are reintegrated into the community (Branch 2014).

Clark (2010a) adds that rituals such as *mato oput* were originally used for micro-level disputes (within families), which made it difficult to extrapolate the ritual for large scale injustices such as occurred in Northern Uganda. In some instance, the perpetrator was unknown and in other the perpetrator would not aware of the victim's identity. More so, exercising the Acholi rituals, such as *mato oput*, *moyo piny*, *nyono tong gweno* among Christian communities in Uganda was difficult because some of the people regard the belief in African spirituality to be heathen (Baines 2005).

Despite the challenges of tradition-based justice systems examined in Uganda, Rwanda and Mozambique above, these practices are gaining prominence for their ability to work in varying predicaments facing conflict stricken communities. Finnström (2010) believes that though violent conflicts require a national response, there is something about people's everyday concerns and how they seek direction in life, which can be facilitated through

tradition-based justice systems. Tradition-based justice systems hold weight among local communities for their flexibility, ability to offer inclusive participation and to address the psychosocial and spiritual wounds of the community. This feeds into the focus of this research as it explores how tradition-based justice processes facilitate social harmony among local communities in Buhera and Mudzi districts.

3.6 Conclusion

In this chapter, I explored the debate raised by critical scholars, that the concept of transitional justice has evolved, and is being applied to societies in transitions more broadly. Transitional justice is becoming increasingly concerned with the restoration of human dignity and social harmony rather than just accountability within a human rights framework. This debate counters the global transitional justice framework that was explored in Chapter Two of this study. Through a decolonial lens I discussed the limitations of the global transitional justice framework, especially that liberal peacebuilding initiatives are increasingly alienating African communities and failing to offer justice that meets the expectations of the affected people.

I explored the African perspectives of justice to situate how transitional justice has been perceived in Africa. A community in the African setting consists of the individual, the extended family and the ancestral family, who have close knit relations that transcend from generation to generation. Spirituality informs the way many Africans view their reality and this reality comprises of both the physical and metaphysical world. Arguably, the transcendental reduplication of the physical world in the metaphysical realm forms a fundamental component of life that brings social harmony to African communities. As such, when conflict occurs the process of redress which includes tradition-based rituals, ceremonies and restitution among others, ensures that human dignity and social harmony between entities in the physical and metaphysical realm is retained. Human dignity derives from the spirit of *ubuntu* (wholeness or oneness) and strengthens the local value system which is anchored on the principle of reciprocal recognition. Moreover, the rights of the people are correlative with duties and responsibilities. *Ubuntu* in practice enables African communities to deal with conflict in a positive manner drawing on the humanistic values shared by the community from generation to generation. Key values of *ubuntu* are reciprocity, responsibility, restraint, restitution, respect for humanity, acknowledgement, social harmony, interconnectedness and

unity. These values are argued to be present in many tradition-based justice processes used by local communities in Africa.

Considering this understanding of justice in Africa, the chapter examined the Acholi rituals in Uganda, *magamba* spirits in Mozambique and the *gacaca* justice system in Rwanda as examples of tradition-based justice systems that have been employed for transitional justice on the continent. All three cases were crucial to the study because in Rwanda the *gacaca* justice system expedited the transitional justice process, in Uganda the Acholi rituals enabled various actors in the conflict to be reintegrated into the community, and the *magamba* spirits point out to the necessity of a deeply holistic intervention to conflict for victims suffering from trauma.

Drawing from the African perspectives on justice, the point of departure of this chapter was to understand the ethical convictions, rules of decency and the psychosocial embodiment of the community and how that influences justice processes that occur during transitions in Africa. A focus on the local level and not the state level was adopted for this study to ascertain how transitional justice processes in Africa can reflect understandings of justice held by the affected communities. Hence, the local community was treated as a 'shifted centre', a vantage point and site of knowledge which is informed by experiences of the local population. This approach aligned the chapter with understandings of justice that reflect the decolonial turn that is emerging in post-colonial societies in Africa. The following chapter provides detail on the fieldwork research that feeds this thesis.

CHAPTER 4: THE RESEARCH STORY

4.1 Introduction

This research is situated in the interpretivist paradigm but uses mixed research techniques borrowing from qualitative and quantitative approaches (examined later in Section 4.4) to gather perceptions of justice among local communities in Zimbabwe (namely Buhera and Mudzi districts) that have experienced various episodes of violence. The purpose of this research is to gain rich and deeper knowledge about the complex processes of justice among conflict stricken communities, information that is crucial to developing knowledge on best practices for addressing past injustices in Zimbabwe and elsewhere.

The ethnographic case study research method is commonly used to conduct research in the discipline of Political Science (McNabb 2004). The subject selected for the study is often a typical example that represents some underlying points or problems that the researcher intends to address. Van Evera (1997) explains the five scenarios where the case study method is used, which are: (i) to establish a theory, (ii) to test a theory that already exists, (iii) to identify a previous condition linked to the phenomenon under study, (iv) to establish the relative importance of the subjects involved in the phenomenon, and (v) to establish the fundamental importance of the case with regards to other potential examples. Case study research can be conducted making use of a single-case study where one group or phenomenon is studied or a multi-case study, which uses two or more groups. In this study, a single phenomenon, transitional justice and reconciliation, was examined using the lived experiences of community members in Buhera and Mudzi districts, who have encountered violence associated with various cycles of elections since the year 2000.

Buhera district is a rural community located in Manicaland Province and is home to the leader of the opposition party MDC, Morgan Tsvangirai and other ZANU-PF cadres, which has rendered the district a hot spot for electoral violence since the emergence of the MDC in 1999 (*Human Rights Watch* 2008). Mudzi district is also a rural community found in Mashonaland East Province and was a hot spot for the post-March 2008 electoral violence locally named Operation *Makavhoterapapi* (Where did you put your vote?) (*Solidarity Peace Trust* 2008). Focusing on these two communities enabled the researcher to (i) establish the extent of the gap created by the inefficiencies of government-led transitional justice and

reconciliation processes, (ii) explore avenues for redress offered by the tradition-based justice system present within the local community, and (iii) establish the best practices for addressing the past that meets the expectations of affected parties.

The fieldwork on which this research is based was conducted in Zimbabwe between 2015 and 2017, beginning with the administration of a survey questionnaire to 305 participants drawn from three communities, namely Buhera, Bubi (Inyathi) and Mudzi districts. The survey served to inform the research on the feasibility of the study and the availability of information about tradition-based practices of resolving conflict among local communities in Zimbabwe. Following the survey, I refined the scope of the study from examining three communities to only two, Buhera and Mudzi, as these proved to be more accessible in terms of logistics than the Bubi (Inyathi) district. In the second year of the study, full-scale fieldwork research included attending as a participant observer, the government-led public hearings on the National Peace and Reconciliation Commission, in-depth interviews with 36 key-informants, four focus group discussions and one ad hoc community meeting. In 2017, follow-up meetings with some of the key-informants were conducted and the research assistants attended the second round of the NPRC public hearings.

During the fieldwork research conducted in 2016, data collection was spread-out over 9 months (April to December), involving multiple visits to the research sites and, staying for a period of between one week and two months. The fieldwork was conducted in this manner because the research topic touches on a highly-politicised issue in Zimbabwe. One had to be cautious of where to stay, the duration of the stay, preservation of the data collected and the overall security of both research participants and the research team. Three research assistants were recruited for the fieldwork component of the study to assist with administering the survey questionnaire and other logistical elements of the research. Multiple research techniques in the form of surveys, in-depth interviews, focus group discussions, participant observation and secondary data sources were used to triangulate the data and strengthen the study.

4.2 Understandings of scientific research in various disciplines

Neuman (2003) describes scientific research as the art of finding answers to questions about the natural world. To establish answers to questions about the natural world a researcher

develops a logical pattern (methodology) of gathering scientific evidence. Neuman (2003) further states that the conduct of scientific research began in the natural sciences discipline whereby researchers developed scientific evidence on questions about the natural world by conducting innumerable, systematic and repetitive empirical observations. Seale (2011) adds that the fundamental assumption of the natural sciences discipline is that knowledge about the natural world should be drawn from vigorous, replicable and quantifiable observations. As such, natural science researchers study the natural world using validated scientific procedures (statistical procedures) that eradicate the influence, values and perceptions of the researcher on the evidence gathered. This understanding of gathering scientific knowledge fits into the positivist/naturalist paradigm which deploys a quantitative research approach to collect and convert data into numerical values that enable statistical analysis (Silverman 2016).

On the contrary, social science scholars such as Yin (2016), Creswell (2007) and Silverman (2016) argue that the natural world is a social construct and a researcher cannot only study social phenomenon through detached observations. They argue further that the purpose of scientific research is for the researcher to be immersed in the study and observe, record, analyse and uncover the deeper meanings and significance of human behaviour and experiences. This understanding of developing scientific knowledge about the natural world fits into the interpretivist paradigm which deploys a qualitative research approach to gain a rich and deeper understanding of people's experience. Interpretivists argue that social phenomenon are subjective realities that emanate from the construction and interpretations people make of their daily encounters. The researcher is therefore privileged to examine the variant constructions of social life that people produce and formulate them into theory or theories that explain the social world (McNabb 2004). It is against this backdrop that the formulation of knowledge in social science disciplines (for example politics, sociology, and anthropology) differs from the scientific research methodology developed by the natural science discipline (for example chemistry, physics and biology).

Silverman 2016 points out that since the 1970s a paradigm shift on research methodologies has pushed researchers to concede that subjective qualitative research methods can augment positivist research methods. The premise of this thinking is that both naturalist and interpretivist research approaches have a function in understanding the social world. The goal should not be determining which of the two approaches is more scientific than the other but rather one should select an approach that brings the best strategy for studying a phenomenon

(De Vaus 2001). De Vaus (2001) further states that a notable difference between the research conducted by naturalists and interpretivists is found in their research design. He defines research design as the logical structure that guides the research project, for example qualitative (mainly used by interpretivists) and quantitative (mainly used by naturalists) designs (De Vaus 2001). Quantitative research uses statistical measurements to collect data and deduce scientific theory about social phenomenon. On the contrary, qualitative research tends to be inductive (though all research has an element of deductive reasoning) and uses non-statistical measurements to collect data and understandings about the social phenomena (Silverman 2016).

The purpose of this research is to gain rich and deeper knowledge about the complex processes of justice among conflict stricken communities, information that is crucial to developing knowledge on best practices for addressing past injustices in Zimbabwe and elsewhere. Hence, this research is situated in the interpretivist paradigm and uses mixed research techniques borrowing from qualitative and quantitative approaches.

4.3 Rationale for the selection of Mudzi and Buhera districts

The initial proposal for this research intended to use three communities to explore the phenomenon of tradition-based approaches for justice in Zimbabwe. A feasibility study was conducted between April and August 2015, while partaking fieldwork for the CODESRIA book project as explained earlier. Conducting the pilot study enabled me to assess potential challenges on the selected research sites resulting in the delimitation of the research area to two communities, Mudzi and Buhera districts, due to the logistical constraints that were presented by the third community.

Buhera and Mudzi districts were purposively selected in this study because they have made headlines on reports about inhuman atrocities associated with the post-2000 electoral violence which led to the 2008 political impasse (*Human Rights Watch* 2008, *Solidarity Peace Trust* 2008). Simultaneously, the research timeline was adjusted to focus on the post-2000 era because this period coincides with the emergence of the opposition MDC party, which has shaped significantly the current political crisis. In the same period, the civil society groups were more involved in bringing to the fore the injustices incurred by the general populace, therefore, adjusting the research timeline ensured that the data gathered could be

triangulated through primary and secondary sources. Given that the political crisis is still on-going and the efforts of the government in addressing the past injustices have been ineffective, this research is very timely. It is timely because it coincided with the appointing of the National Peace and Reconciliation Commission (NPRC) commissioners (December 2015) and the development of the NPRC Bill (early 2016), which gave momentum to the socio-political trajectory of Zimbabwe, with regards to addressing past injustices.

Moreover, Buhera and Mudzi districts are familiar territories in that I have either lived there or have close family ties with some locals, making it more feasible to penetrate and blend with the local people. Buhera district is my rural home where I spent a considerable time during childhood and I have several relatives who reside in Mudzi and Buhera districts. As an outsider-insider working on a highly politicised matter, it is essential to be familiar with the local community because it makes building trust much better. I refer to myself as an outsider-insider in that I have spent several years away from these communities but have maintained ties with various relatives still residing in the area.

Gaining the trust of the research participants is crucial when working in highly politicised communities like Zimbabwe because allows one to engage with the respondents with much ease. Therefore, in using the ethnographic case study research method, being an outsider-insider mitigated the challenges faced by other researchers who are strangers to the communities they are researching on. The following sub-sections give descriptions of Buhera and Mudzi districts.

4.3.1 Buhera district

The Buhera district falls under the Manicaland Province with a total population of 254 878 people (*Zimbabwe National Statistics Agency* 2012). Murambinda and Birchenough are the growth point centres that service the local population. Electricity and tap water is mostly found in the growth point area and, much of the population relies on firewood for cooking, candle for lighting and fetch water from wells, boreholes or nearby flowing streams. Apart from government owned properties and commercial properties in the growth point area, many houses that provide shelter for residents in this district are made up of brick or mud walls with thatched, zinc or asbestos roofing. Since many of the rural homes do not have running water, the local people use pit or blare toilets for sanitary purposes.

The population composition of Buhera district comprises of about eight clans that fall under chief Nyashanu, chief Makumbe, chief Chitsunge, chief Chamutsa, chief Chimombe, chief Gwebu, chief Nerutanga and chief Chitauro. The Hera ethnic group of the Shona people make up much of the population in Buhera South and vaNjanja are the other main group in the north. The vaHera Shona group are led by Chief Nyashanu who belongs to the Museyamwa totem or clan and vaNjanja fall under Chief Makumbe who belongs to the Sinyoro totem or clan. Other ethnic groups in the area include vaZezuru, maNdau and maNdebele. Chinjanja (a sub-dialect of Zezuru), chiZezuru and chiNdau are the main Shona dialects spoken by most people, except for isiNdebele in the Gwebo village. This Ndebele-speaking population group reported that they migrated from the Matabeleland region during the colonial area, after they had been disposed of their land with the enactment of the Land Appointment Act 1930. The research participants in Buhera district reported that possibly due to inter-clan marriages and infusion of cultures between the members of the Gwebo village and the other Shona groups in the district, their communities have not had any ethno-linguistic related conflicts. Overall the community members in Buhera district have close knit clan ties such that a whole village would be comprised of families that share at least the same totem or clan name.

Buhera district is accessible via the Chivhu-Murambinda highway, a road network that advances into Mutare (the border town with Mozambique in Manicaland province), creating a corridor for goods and people to commute across the country and beyond. For example, the route is often used by cross border commuters travelling between Malawi and South Africa, who cross through Zimbabwe and enter Mozambique via the Mutare border post. As reported by the research participants, at the height of the post-March 2008 electoral violence, some of the affected families managed to flee into Mozambique and South Africa due to the proximity of these neighbouring countries. However, the inner roads are mostly dust roads making access to some remote areas difficult with the modern means of transport. For example, the main road that connects Murambinda and Birchenough bridge area is not tarred and full of potholes making travelling between the two areas difficult without off-road/specialised vehicles. The community members often walk on foot or cattle drawn cart for long distances to get to the nearest route for buses and cars.

Being home to the leader of the opposition party MDC, Morgan Tsvangirai, many of the community members that live close to his homestead were attacked on suspicion of being supporters or sympathisers of the opposition party. This relates to the above explanation that a village may be made up of family members that share the same totem, such that if suspicions arise regarding a member of the family, the whole family or village would be painted in the same light. The research participants also indicated that Buhera district is home to some high level political figures who belong to the ruling ZANU-PF party, for example Joseph Chinotimba and the former Reserve Bank governor Gideon Gono, which creates competition for support. Since the emergence of the opposition MDC in 1999, the district has become a hot spot for electoral violence. The prevalence of issues that stir conflict and reports of incidents of violence in this area provided a futile ground to gather rich and deeper knowledge on the lived experiences of people in conflict stricken communities and how they resolve their disputes.

4.3.2 Mudzi district

Mudzi district has a total population of 133 252 people and has three main ethnic groups; maBudya, maTonga and maToko who all fall under the Shona population group (*Zimbabwe National Statistics Agency* 2012). Located in Mashonaland East Province, Mudzi district is less than 10km to the Zimbabwe-Mozambique border along the Mozambique's Tete Corridor. A small population group in the Mudzi district, belonging to Chief Goronga, shares ancestral heritage with the Cuchamano community which is found along the same border area on the side of Mozambique. Mudzi district is largely rural, but the border post Nyamapanda and growth point area Kotwa are peri-urban centres that provide residents an urban lifestyle. These two peri-urban areas have electricity and tap water, while communities in the periphery rely on firewood for cooking, candles for lighting and borehole or stream water for drinking and personal hygiene. Like Buhera district, the rural homes of the local people are constructed using mud and sticks or homemade bricks for walls and zinc, asbestos or thatching is used for roofing. More so, these rural residents rely on the pit toilet for their sanitation.

The villages in the Mudzi communal land fall under six chiefs, namely chief Chikwizo, chief Mukota, chief Nyakuchena, chief Nyamukoho, chief Chimukoko and chief Goronga. Like Buhera district, the chieftaincy system is hereditary, passed from brother to brother

(patrilineal) within the same clan, except for the Chief Chimukoko's clan which is matrilineal and appoints female leaders that are selected by the *vadzimu* (ancestral spirits). Chief Chimukoko is the only female chief in the area and possibly the oldest living female chief in Zimbabwe; her reign began in the early 1970s when she was a teenager. More so, chief Goronga's clan is another unique group in the district because the jurisdiction of the chief extends to the Magaso clan in Cuchamano Mozambique. These two communities share the same totem and belong to the same ancestral family, *Nzou* (elephant) clan, but they have been superficially separated due to the existence of border demarcations between Zimbabwe and Mozambique established by colonial rulers. Nonetheless, the two communities have maintained socio-economic and to some extent political relations which enables a chief on the Zimbabwean side who belongs to the upper house to have some level of influence on the activities on the other side.

As a border district that links Zimbabwe and Mozambique, the road network between Zimbabwe and Mozambique along the Tete Corridor is in good condition, better than the highway in Buhera district explained above. However, the inner roads which connect the various villages within the district are very poor, mostly gravel and often difficult to navigate without an off-road or specialised vehicle. For example, one of the routes that goes to chief Nyakuchena's area has a bridge that collapsed over five years ago and the research participants indicated that, during the rainy season, pupils that attend school on either side of the Mudzi river are forced to stay at home as it will be too dangerous to crossover.

According to the *Solidarity Peace Trust* (2008) report, Mudzi district was the starting point for the March and June 2008 electoral violence that plunged the country into a political impasse. Previously the district had been a ZANU-PF stronghold with little tolerance for opposition parties, but the post 2000 economic crunch gave leeway for the opposition MDC party to make strides in swinging the electorate to its favour in the March 2008 elections (*Human Rights Watch* 2008). Although ZANU-PF retained 54% of the electorates' vote, the failure to get an outright majority was considered a betrayal of the party (*Solidarity Peace Trust* 2008). Several people were displaced when war veterans, state security agents and ZANU-PF youth militias sanctioned by the ruling party, torched their homes and injured many others during the Operation *Makavhoterapapi* (Where did you put your vote?) campaign as it is locally named (*Human Rights Watch* 2008, *Zimbabwe Independent* 2008).

Other people fled into Mozambique, taking advantage of family relations with relatives in the neighbouring country and the proximity of the area. Acts of violence included body mutilations, physical assault, burning of houses and livestock and murder, which were regarded as acts to cleanse the community by canning people for repentance (*Human Rights Watch* 2008). The late ZANU-PF Mudzi West member of parliament, Acqualinah Katsande, is one of the public figures that has been implicated for orchestrating violence and even caused the death of activist Cephas Magura, but she and her co-accused were never made to account for their actions by the formal justice system (Langa 2015).

The violence that was observed in the post-March 2008 elections has left some of the community members shaken as there continues to be fears of electoral violence and suspicions of surveillance by state security agents. Mudzi is also home to the 2.2 Battalion Military base, from where soldiers are reported to have been commissioned to intimidate community members in the post-March 2008 elections. The alleged involvement of soldiers in intimidating and attacking the local community has seemingly eroded people's trust in government institutions.

There have also been reports of human trafficking in the Mudzi district. Some research respondents shared that in the early 2000s the International Organisation for Migration (IOM) used to have a station at the Nyamapanda border post where they would receive refugees, most of whom came from the Horn of Africa (Mwase 2014). Once assessed by the IOM officials at Nyamapanda border post, the refugees would be transferred to Tongogara House in Harare, a government facility designated for refugees. However, some refugees are reported to have absconded from presenting themselves to the IOM to avoid being transferred to Tongogara House where it is believed it would take them longer to get documentation that allows them to settle in the country. More so, due to shortage of funding the IOM station is no longer operating. As such, some refugees are now entering the country illegally, mostly with the assistance of smuggling operatives who then recruit them into menial jobs such as illegal mining and sex work. This operation has created challenges for some illegal emigrants as they are often abused by their employers who make them work for minimum or no wage and it is reported that some women among the emigrants have been abused in their line of work. At the time of the research, consultations on means to manage the issue of human trafficking had been occurring among government officials, traditional leaders, the police, the military and civil society groups.

The issue of landmines was also shared by research participants, especially those who live along the boundary area of Zimbabwe and Mozambique. On the Zimbabwean side, this area falls under chief Mukota and chief Goronga and on the Mozambican side it falls under chief Magaso. Research participants shared that some people and animals have been killed and others maimed because of explosions from landmines. The government officials in Mudzi district indicated their awareness of the issue, and have since independence been working on demining the boundary zones, but the process has been derailed due to lack of funding and machinery needed to identify and exhume the landmines. These landmines were planted during the Second Chimurenga around 1976-77 by the Smith regime and continues to be a threat on the livestock and lives of community members who may exhume the explosives by mistake while tilling the land or activate them while walking in the forest in search of firewood or grazing land (Rupiya 1998). The dynamics of the Mudzi district also provided rich data to understand the lived experiences of populations living in conflict stricken communities and how they address their conflicts at the local level.

4.4 Ethnographic case study research method

Ethnography is often associated with studies in anthropology, particularly social and cultural anthropology and the focus of ethnographic research is to examine how communities relate with their social world (Yin 2016). McNabb (2004) adds that ethnographic research studies a community or group by examining their social system and cultural heritage. The researcher is usually an outsider who spends a lot of time in the field staying with the respondents to get an understanding of their lived experiences (Yin 2016). As mentioned in section 4.3 of this chapter, I was an outsider-insider conducting research in Mudzi and Buhera districts to establish the lived experiences of conflict stricken communities and the justice processes used by the locals to mitigate conflict. Creswell (2007) and Yin (2016) explain that ethnography assumes that human behaviour is intentional and observable and ethnographic research tries to understand the perceptions and attitudes that inform people's actions. Using the ethnographic case study method in this research enabled me to engage with the local community and observe their lived experiences in an unobtrusive manner.

The ethnographic case study research method was used in conjunction with multiple research techniques -surveys, semi-structured in-depth interviews, focus group discussions and

participant observations- to explore the phenomenon of transitional justice and reconciliation within the local communities of Mudzi and Buhera districts in Zimbabwe. At the micro level, a survey questionnaire, semi-structured in-depth interviews, participant observations and focus group discussions served as primary sources of data. At the macro level, journal articles, books, newspaper articles, reports of civil society organisations and archival records were used to gather the secondary data. This approach was plausible for this study because it allowed me to optimise on key sources of data whilst engaging with communities under surveillance by state security agents.

I managed to administer 305 survey questionnaires, conduct 36 in-depth interviews and four focus group discussions, and attend a community meeting at the chief's court (*dare*), bringing the total participants of this research to just over 400 people. The period in which the fieldwork for this study was conducted coincided with government-led public hearings on the NPRC Bill. The first hearings were conducted in April 2016 and a follow-up session was conducted in March 2017 during which the government solicited the public's view on the mandate and functions of the Peace Commission. In 2016, I managed to attend the hearings held in Chinhoyi and Harare while the research assistants attended meetings in Marondera and Mutare. During the follow-up sessions held in 2017, the research assistants attended hearings held in Marondera, Bulawayo, Mutare and Harare. Taking part in these public meetings enriched the study with information on perceptions of justice held by various members of the society, as the hearings drew large crowds of people from various backgrounds. The population dynamics of attendees to these meetings included government officials, traditional leaders, civil society representatives, religious leaders, journalists, community members and academics.

4.4.1 Survey questionnaire

A survey questionnaire (see Appendix A) was administered between June and August 2015 using the cluster sampling and convenient sampling techniques. The survey questionnaire was developed for a Codesria-sponsored book project on 'Justice during transition' as was mentioned in section 1.6. This book project used a cross-national comparative methodology to explore the hypothesis that tradition-based mechanisms are the preferred mechanisms to meet justice needs in African societies during periods of transition.

In Zimbabwe, a selection of three communities, namely, Buhera, Bubi (Inyathi) and Mudzi districts were used for the survey. The descriptions of Buhera and Mudzi districts have been provided in sections 4.3.1 and 4.3.2 above. Bubi (Inyathi) district is a rural community found in the Matabeleland North Province with a total population of 61 883 people (*Zimbabwe National Statistics Agency* 2012). Unlike Buhera and Mudzi districts, in Bubi (Inyathi) district the whole community is led by one chief. The existing chief is a descendant of the Ndebele people who emigrated from South Africa with King Mzilikazi around the 1830s. Most of the population belongs to the Ndebele ethnic group though there are pockets of the baTonga and soShangane people. A few of the baTonga speaking people in the area are migrants who were displaced from the Zambezi river catchment area during the construction of the Kariba dam wall in the 1950s (Guvamombe 2014).

Familiarity with the local leaders and a civil society representative working in the three districts enabled me to access the community members with much ease given the research topic deals with highly politicised issues in Zimbabwe. Furthermore, these three districts were purposefully chosen because they represent several cultural population groupings in Zimbabwe, namely, amaNdebele, Karanga, Zezuru, maRembe, maBudya, baTonga and soShangane who have experienced various forms of conflict involving the government (Ranger 1967, Mlambo 2013). Focusing on these communities enabled this research to establish the practices for justice used by the local population which provides useful information on the transitional justice and reconciliation processes available to post-colonial societies.

A combination of cluster sampling and convenient sampling was used with the surveys which enabled this research to include a variety of population groups without straining the research budget. A small N sample of 300 participants was pre-determined for the survey in the three districts of Zimbabwe (Buhera, Mudzi and Bubi/Inyathi districts) because this exploratory study was concerned with establishing the attitude of the local community towards various aspects of transitional justice and reconciliation reflected in the survey questionnaire (see Appendix A). Furthermore, an equal number of respondents was allocated for each district by dividing the three districts into the sample size of 300, which meant that each district had a target of 100 respondents.

To select respondents from Mudzi and Buhera districts, the communities were clustered using the highest unit in the hierarchy of traditional leaders in each district. Unlike using the formal ward demarcations, this study used the chieftaincy demarcations to apportion the local community into sampling groups. This approach was adopted because the two districts are communal areas with sparsely dispersed homesteads making it difficult to sample diverse population groups unless they are clustered along their clan settlement pattern. Rural communities are arranged along a clan system whereby family members of similar clan ties are often settled in one location. Furthermore, the formal ward demarcations create many constituencies which are difficult to cluster for a small sampling size that was used in this study. Following the ward demarcations would have stretched the sample too thin which created a challenge for the study. Moreover, the ward demarcations were excluded in this study to avoid politicising the sample given that at the ward level it is easier to identify political affiliations of the community and this aspect could have victimised some participants.

In Buhera district, chiefs are the highest unit in the hierarchy of traditional leaders. Clustering (selecting respondent in a homogenous group) was determined by identifying the clan groupings represented in the district and then dividing the number of chiefs (eight chiefs) into the sample quota for Buhera (100 respondents). A sample size of 12 respondents was demarcated for each chieftaincy, and the research participants were randomly selected using convenience sampling (selecting respondents within proximity). Similarly, Mudzi district has six chiefs and a total of six clusters were drawn comprising of 16 respondents per chieftaincy.

Bubi (Inyathi) district has one chief who is assisted by 50 village headmen locally known as *Umlisa* or *Usobhuku*. Clustering the survey respondents in accordance with the number of population groups represented by the village headmen was going to stretch the sample size too thin making it difficult to draw some analysis. More so, considering my previous encounter with state security agents while conducting research in Matabeleland (in the Nkayi district which is neighbour to Bubi/Inyathi district), I partnered with a local civil society organisation working in the area to assist in administering the survey questionnaire. In my encounter with the police intelligence while conducting research in Nkayi district (April 2014), I was made to understand that surveillance in the Matabeleland region is high because the government does not want people to gather information about the *Gukurahundi* massacres. Conducting research on justice processes in a district that has community

members who encountered violence during *Gukurahundi* meant that I was working on a contentious issue which needed one to be cautious.

The partnership with a local civil society organisation was forged through relations I had with a member of the organisation, whom I had also worked with during the fieldwork for my Masters studies. During the time of my fieldwork in 2015, this local civil society organisation had scheduled workshops to educate the local communities about the National Peace and Reconciliation Commission and this presented me with an opportunity to collaborate with the organisation to do data collection. I was invited by a representative of the organisation to take part in the workshop proceedings and the survey became a component of the workshop. The organisation organised two such workshops in two locations within the district and informed the workshop attendees about a survey that was underway. Each workshop had about 120 participants and the surveys were administered to at most 50 participants for each workshop using convenient sampling (selecting respondents within proximity). Convenient sampling allowed the researcher to engage with respondents that were taking part in the workshops, while ensuring that members of the same family do not take the survey.

A total of 305 participants from the three districts completed the survey questionnaire as shown in Table 1.

Table 1: Demographics of survey respondents

	Frequency	**Percentage**
Gender		
Male	135	44,3%
Female	170	55,7%
Age group		
18-35 years	68	22,3%
36-50 years	120	39,3%
51-64 years	86	28,2%
65 and older	31	10,2%
Location of interview (district)		
Buhera	101	33,1%
Bubi (Inyathi)	102	33,4%
Mudzi	102	33,4%
Total number of respondents: 305		

As observed in Table 1 above, female respondents constituted 55.7% of the total number of participants in all three communities and this corresponds with the high female to male population ratio that exists in Zimbabwe. There was a lower number of respondents in the age group 18-35 years because they were reported to have emigrated to bigger cities or neighbouring countries in search of greener pastures as the rural communities in Zimbabwe suffer from high levels of poverty. More so, the low number of respondents in the age group 65 years and older corresponds with the life expectancy of the Zimbabwean population which is 59 and 62 years for males and females respectively (*Zimbabwe National Statistics Agency* 2012). Furthermore, the availability of more respondents in the age categories 36-50 years and 51-64 years, accounts for the growing number of unemployed people in the rural areas which has been a trend since the collapse of Zimbabwe's economy in the late 1990s.

Through the survey, the research explored processes of justice used by local communities in different contexts as possible explanation to account for the existence or absence of peace. The survey provided descriptive statistics which enabled the researcher to probe further through qualitative research techniques, deeper information about aspects of transitional justice and reconciliation in relation to broader research questions. As mentioned above, a follow-up fieldwork study was conducted using semi structured in-depth interviews, focus group discussions and participant observations in Buhera and Mudzi districts for logistical purposes.

4.4.2 Interviews, Focus groups and Observations

A triangulation approach is often used to ensure for research credibility when conducting ethnographic case studies. In this research, semi-structured in-depth interviews, participant observations and focus group discussions were used as primary sources of data. More so, journal articles, books, newspaper articles, reports of civil society organisation and archival records provided the secondary data.

Semi-structured in-depth interviews are guided discussions facilitated by an interviewer who uses a set of key questions to solicit information from respondents in relation to the study (Yin 2016). Interviews are useful in qualitative research because they provide the interviewer an opportunity to examine the attitude and values of the respondent in relation to the research questions (Silverman 2016). Furthermore, semi-structured in-depth interviews allow the

interviewer to gain deeper knowledge on the views of the interviewee and to reflect on how the respondent interprets the research questions, narrates the incidents and the gestures used to express feelings (Silverman 2016). Thus, interviews enable the interviewer to explore the voice and experiences of the interviewee through an interaction about the research questions.

A total of 36 semi-structured in-depth interviews (see Appendix B) were conducted and five of these interviews were done alongside the survey in 2015 while the other 31 interviews were conducted over nine months in 2016. Interviewees included 18 community members (ten from Buhera district and eight from Mudzi district), a Zimbabwean high court judge who has served in the AU Peace and Security Council, a civil society representative working on transitional justice, 12 chiefs (five from Mudzi district and seven from Buhera district) and four government officials from the office of the district administrator (DA) (two from each district). The interview meetings ranged from about 60 to 90 minutes with some breaks in between. I recorded the interview discussions mostly as notes, and used audio recordings where interviewees were comfortable to have their voice recorded.

A combination of stratified purposive sampling (the target is intentionally selected) and snowball sampling (selecting through referrals) methods were used to identify the research participants. Firstly, the stratums were drawn using the categories: traditional leaders, community members, judge, civil society and government officials. Secondly, a combination of purposive sampling and snowball sampling were used to select research respondents for each stratum. Silverman (2016) points out that purposive sampling can be useful for securing an appointment with a target respondent that is difficult to get through to. Hence, purposive sampling was employed to secure an appointment with the high court judge, a civil society representative and officials from the office of the DA because their work schedules require one to come through at an appointed time. More so, Silverman (2016) states that snowballing is a useful technique when conducting a study in which the target respondents are not easily accessible. Given the sensitivity of the research topic, I made use of snowballing to because it would have been difficult to get through to respondents without a referral.

The government officials from the office of the DA were purposively selected to gather an overview on the issues that affect the communities under study and to establish the processes they use to resolve them. More so, the high court judge was purposively selected to establish the views of the judiciary on the international and national frameworks for transitional

justice. This judge also worked closely with the government during the 2008 mediation process and was involved in the development of the policy framework that established the Organ for National Healing, Reconciliation and Integration (ONHRI) and its subsequent replacement the National Peace and Reconciliation Commission (NPRC). The civil society representative served as a convenor in the study because he is familiar with the local communities, which made access to research participant more feasible and timely. This civil society representative also provided access to documented reports of incidents of injustices that have been recorded by his organisation, serving the research with secondary data that was used to augment the fieldwork findings. The snowball sampling technique was used in identifying respondents at the community level because it is the most feasible approach to source out participants when dealing with communities under security surveillance.

Focus group discussions provide insight on the perceptions, beliefs and opinions of a group of people in relation to the research questions (Silverman 2016). Research respondents selected to take part in a focus group discussion are usually identified as people sharing something in common which enables discussions in a group setting (Wilkinson 2016). In most cases, focus group discussions are conducted in an informal meeting setting, which allows participants to interact and share ideas about a topic or set of issues (Wilkinson 2016). This informal engagement is often guided by a scheduled set of questions and a moderator that stirs the deliberations of participants to remain focused on the business of the meeting. Usually the proceedings of the meeting are recorded through note-taking and audio/visual devices and the data is then transcribed for data analyses (Wilkinson 2016).

In this research, four focus group discussions were conducted in the two districts involving traditional leaders and community members as two separate cohorts. Only participants in these two groups were invited to take part in the focus group discussions because: (i) they provided a sizeable number to formulate a focus group discussion, (ii) they make up a homogenous group, and (iii) are located within reach of each other which made it more feasible to gather them in one convenient location at the same time. During the interviews, participants from the traditional leaders and community member strata were invited to indicate their interest in taking part in a focus group discussion. Resultantly, a total of four groups with 6-9 people and mixed gender were developed. The focus group discussions were structured as informal meetings that lasted about an hour and a focus group schedule

(Appendix C) was used to guide the debates. I moderated the focus group discussions and ensured that the participants kept their discussions to the focus of the meeting.

Focus group discussions provided a platform for research participants to engage with the research questions and share with others their views on the subject under study. The challenge with using focus group discussions is that some respondents may be silenced by the more vocal participants. I invited the group participants to establish some rules to guide their deliberations and shared the focus group guide at the beginning of the session. This enabled the research participants to keep to the agenda of the meeting and to strictly adhered to the scheduled time frame.

Participant observations were used in this research to record the proceedings of the public hearings on the NPRC bill conducted by the parliament and a community meeting in Mudzi district. In April 2016 and March 2017, the Zimbabwean parliament hosted a series of public hearings to solicit the views of the citizens on the draft bill of the National Peace and Reconciliation Commission. This bill was initially gazetted on the 18th of December 2015, amidst pressure from the civil society for the government to provide a policy framework to enable the Peace Commission to be instituted (*NTJWG* 2016). As discussed in Chapter 5 of this study, the NPRC bill was marred with controversies because various sections of the bill were rendered unconstitutional (*NTJWG* 2016). The parliament organised public hearings to provide the local population with an opportunity to participate in framing the policy document that would guide the activities of the Peace Commission. About 200 to 400 members of the public attended each hearing on the NPRC bill. Observing the public hearings in Bulawayo, Chinhoyi, Harare, Marondera and Mutare provided this research with deeper knowledge on the perceptions of the broader Zimbabwean community relating to issues of transitional justice and reconciliation. Audio devices were used to capture the issues raised by local members and this information served to validate the views shared by the research participants from Buhera and Mudzi districts.

During the fieldwork, I also participated in a community meeting organised by a local chief in Mudzi to deliberate on disputes reported by the community members. At this meeting l took part as a participant observer who documented the meeting proceedings at the *dare* (chief's court). Meetings of this nature are open to all members of the community and take part in an open space that allows for bigger crowds to participate. About 45-60 community

members came through for this meeting and some people contributed (through comments, questions and testimonies) to the deliberations on matters before the chief. Taking part in the community meeting afforded me the opportunity to document the lived experiences of the community members that use the local justice system. More so, I engaged with the community members that were present at the meeting, an encounter that provided deeper understanding on how the local communities relate with the tradition-based justice system.

About a month of my fieldwork time was spent reading and conducting desktop research in the National Archives in Harare. At the National Archives, I gained access to various records, namely newspaper articles, government documents and books, with information that provided accounts on the socio-political history of Zimbabwe. I incorporated the notes taken from these archival sources in this study to augment information gathered through the other research methods. Therefore, a combination of primary and secondary data sets allowed for cross examination, validation and reliability assessment of the research results.

4.5 Data analysis

Thematic content analysis and descriptive statistics were used to interpret and analyse data collected during fieldwork. Thematic content analysis is a tool for analysis that provides a descriptive presentation of qualitative data sets. The qualitative data sets are analysed by identifying the recurring patterns within data and grouping them into themes (Yin 2016). These themes are patterns of thought that capture the perceptions of research participants on various phenomena in relation to the research questions (see Appendix B and C). In this study, qualitative data was gathered using semi structured in-depth interviews, focus group discussions, participants observation and secondary data sources. The in-person engagements were recorded either using personal notes or audio devices and data was transcribed and codified after fieldwork, producing a document of responses given by research participants.

In terms of thematic content analysis, the transcribed data was coded using the group the respondents participated in. These are, government officials, community members, high court judge, civil society representative, traditional leaders and public hearings. From these groups, the recurring themes were established by identifying the common words used by respondents in responding to key questions of the research. Two broad themes that emerged from transcribed data are, '*Dynamics of violence in Buhera and Mudzi districts*' and,

'*Understanding justice and justice processes through the lens of the local community*'. These two themes feed Chapters 6 and 7 of the study. The secondary data sources provided a historical analysis of the conflicts that have occurred in Zimbabwe, which has been presented in Chapter 5 under the theme '*Zimbabwe's socio-political landscape and justice processes in historical context'*.

Descriptive statistics describe quantitatively the phenomena presented in the research questions that were given to research participants (Yin 2016). It provides summaries about the sample in relation to the unit being measured. Data results are presented through numerical values, graphs or tables which are accompanied by a summary about the sample and the measure (Yin 2016). As discussed in section 4.4.1 of this chapter, quantitative data was gathered using the survey questionnaire (see Appendix A) which was administered to 305 research participants in three local communities in Zimbabwe. The responses of research participants on the survey were captured in Microsoft Excel and summarised descriptively using the statistical software SPSS. The survey data results are presented as percentages using tables and summaries.

4.6 Ethical considerations and challenges

Permission to conduct research for this study was granted by the relevant authorities, which included the District Administrators (DA) in Mudzi and Buhera districts and the University of Pretoria (see Appendix D, E and F). This research followed ethical practices that relate to being sensitive to gender, political affiliation and culture, as well as the voluntary participant of respondents. The study was conducted in a transparent manner and I ensured that all the research procedures did not infringe any ethical concerns of the research participants.

Only adult members (over 18 years of age) of the community took part in the study and participants were requested to give consent (see Appendix G) before participating. A formal consent form was included in the study, and the researcher gave participants information about the purpose of the research (see Appendix H), how the research is conducted (for example the use of semi-structured in-depth interviews and focus groups discussions), how the information will be stored, and the method in which the information will be disseminated (it is for academic purposes). However, some participants did not prefer to sign any document because of the anxiety surrounding informed consent forms. Here they explained to me how

such documents can unintentionally infringe their choice to remain anonymous because of other incidents where researchers were arrested by state security agents and documents with people's details were confiscated. When these documents are confiscated by the state security agents, the participants become vulnerable as the handwritings on the paper can be used to link back to the respondents involved in the study. More so, the civil society representative informed me of how signing documents is associated with political programs and often community members are hesitant to sign because of the fear that their actions can be politicised.

I resolved this matter by arranging with the participants who preferred not to have any signed material, to give a verbal consent. Given that the research dealt with a highly-politicised subject in Zimbabwe and I was working in communities under surveillance by state security agents, this provision was made to ensure that the participation of the local people does not pose any threat to their lives. Some researchers (including those in the civil society) who have worked in highly polarised communities have used this approach before to ensure that there is no signed material that can be linked back to the identities of the participants (Strydom 2011). Strydom (2011) argues that each researcher can use his/her discretion to determine how the ethical concerns regarding acquiring consent from research participants is managed. What remains important is that the participants are fully aware of the research and their involvement in the study is voluntary, and this was insured for before respondents took part in the study.

Research participants took part in the research willingly and I kept an opening for participants to withdraw from the study at any point. Research respondents could skip any questions they deemed unsuitable and government officials had the leeway to waiver their titles and participate in their own capacity and not the office they hold.

All the materials gathered during the study is only used for academic purposes. Where appropriate, technical devices such as camera and audio recording machines were used to collect data, but with the consent of the research participants. All gathered material shall be stored in a lockable safe in the Department of Political Sciences at the University of Pretoria for a minimum of 15 years and any access to these materials would be warranted by the relevant university authorities.

4.7 Limitations of the study

A qualitative ethnographic case study research method allowed for a cross-sectional examination of the practices for addressing injustices among community members in Buhera and Mudzi districts. I stayed among the local communities and took part in some of their daily activities. This encounter with the local community provides rich and deeper understanding about the people and how they perceive their lived experiences in relation to the research questions. A limitation of this method is that one runs a risk of becoming emotionally involved with the subject under study which can cloud judgement (McNaab 2004). I addressed this challenge by sticking to the research guidelines set in the interview and focus group schedules. More so, I conducted debriefing sessions with the research assistants while in the field and with my main supervisor after each field trip, which enabled me to reflect on the research process. I also wrote in my diary the research experiences I encountered while in the field and shared with my peers and colleagues during personal meetings, seminars and workshops, which enabled me to reflect on the influence of the field experience on my well-being and intellectual focus.

The community members that participated in the study were limited to victims and witnesses of the electoral violence that has occurred in these districts because it was difficult to locate the alleged perpetrators, due to the sensitivity of the research. The traditional leadership structure in Zimbabwe is comprised of chiefs, village heads and headmen, however, the research mainly focused on the chiefs because a limited scoped made it feasible to observe the customs, practices and traditions of each clan.

More so, most of the research participants were conversant in Shona with a few Ndebele speakers, however, the research questions were translated to Shona and Ndebele before the interviews and focus group discussions to allow people to converse in their preferred language. Multi-lingual research assistants were recruited during fieldwork to ensure for respondents to engage with people who understood and could speak their language.

An ethnographic case study research design does not require large volumes of participants to collect the required information. The sample size of interviewees was limited to 36 participants and survey respondents were 305 people who represented various stratums that were key to the focus of the study. The advantage of conducting this study following a

qualitative research design is that it provides deeper knowledge on the subject though a few resourceful people are involved. The aim of qualitative research is to establish the varying constructions of social life that people produce and develop them into theory or theories that explain the social world (McNabb 2004).

Another benefit of the ethnographic case study method to this research is that multiple research techniques could be employed for data gathering, such as semi-structured in-depth interviews, focus group discussions, participant observation and archival records. However, this approach is often criticised for its use of a single-case which limits the ability of the research to make generalisations on the phenomenon under study. Houghton *et al.* (2013) suggests that this challenge can be addressed by incorporating various research techniques which augment the data gathered by the other methods. Thus, the findings from the survey, interviews and focus group discussions provide non-probabilistic data, however, the use of community meetings and public hearings provides the study with room to make a limited degree of generalisations.

4.8 Conclusion

This research used an interpretivist approach and it is the research design within which this study falls. The ethnographic case study method was adopted in this research to gain deeper knowledge about the lived experiences of the communities under study in relation to the research questions. I spent several weeks over a period of nine months residing with the local communities and used semi-structured in-depth interviews, focus group discussions and participant observation as research techniques to draw meanings of life from the lived experiences of the research participants. This approached allowed for rich data to be collected, information that provides deeper knowledge about transitional justice and reconciliation from the perspectives of the local communities.

During fieldwork, several logistical challenges emerged related to moving around remotely located communities, which made it difficult to work with large sample sizes. Some research participants had reservations regarding signing the informed consent form and I had to accept verbal consent to ensure for confidentiality of the engagements and anonymity of any personal information about research participants. These provisions necessitated trust building

and safety of all research parties given that the study was conducted in communities under surveillance by state security agents.

The use of multiple research techniques (surveys, semi-structured in-depth interviews, participant observation, focus group discussions and archival records) corroborated the findings of this study. The unique contribution of this study is evidence-based findings on the lived experiences of conflict stricken communities and their perceptions on how to address the past. These findings are presented in the following chapters, beginning with a historical analysis of Zimbabwe's socio-political landscape.

CHAPTER 5: ZIMBABWE'S SOCIO-POLITICAL LANDSCAPE AND JUSTICE PROCESSES IN HISTORICAL CONTEXT

5.1 Introduction

In this chapter, I explored literature on the socio-political history of Zimbabwe, beginning with the colonial era until the present day, to establish its impact on avenues for justice available to the Zimbabwean population. An exploration of Zimbabwe's socio-political history enabled the study to establish how the introduction of the Westphalian state-system and accompanying principles has created complex challenges in rendering justice to conflict stricken communities.

For many decades in Zimbabwe, a lot of people have been subjected to politically-motivated and government-sanctioned violence resulting in multiple and recurring injustices. From the British mediated Lancaster House Agreement in 1979, to the minimalist Unity Accord of 1987 and the recent SADC-mediated Global Political Agreement (GPA) of 2008, efforts to address past injustices were constantly eroded by the failure of the government to implement effective measures of redress (Machakanja 2010). The newly appointed Prime Minister, Robert Mugabe in 1980 announced at his inaugural ceremony that the past had been forgiven and forgotten (Mashingaidze 2005). The absence of action against perpetrators of violence during the colonial era, arguably, paved the way for the government not to address injustices of the pre-independence and post-independence era.

Consequently, a combination of presidential amnesties and impunity have quelled the quest for justice by the over 30 000 victims of the liberation struggle (1965-79), the 20 000 civilians who perished during the 1980s Matabeleland massacres (also known as *Gukurahundi*), the hundreds of white farmers who were dispositioned through vigilante-style farm invasions since 2000 and many more who disappeared, were tortured, raped or dehumanised at the hands of the government and its security agents (Mashingaidze 2005, Mlambo 2014, Musiiwa 2015). Resultantly, a culture of impunity has been implanted in the political architecture of the Mugabe regime, which makes the government-led processes inadequate and unreliable avenues for addressing the past (Eppel and Raftopoulos 2008).

As Machakanja (2010) argues, the failure of the government of Zimbabwe to set up effective mechanisms to address past injustices is a grievous shortcoming that continues to stifle the country's progress in rebuilding the social fabric among affected communities. Chiromba (2015) adds that freedom, justice, peace and reconciliation are the most pressing matters that the government of Zimbabwe needs to attend to urgently. He acknowledges that the government-led processes for transitional justice and reconciliation, such as the National Peace and Reconciliation Commission (NPRC), are necessary mechanisms that provide legitimacy to the efforts of the government in relation to addressing past injustices. However, he maintains that if these mechanisms fail to meet the needs of affected communities, they further dehumanise the aggrieved.

Taking into consideration the historical context that influences the challenges facing post-colonial Zimbabwe regarding transitional justice and reconciliation, this chapter examines accounts of injustices that have been documented and the various avenues that have been followed to address the past by both the public officials and individuals at large. It asks the questions: In the absence of state action in terms of addressing past injustices, are there other avenues for justice available to the people? If yes, have these been effective?

In the following sections I firstly examine the colonial legacy and its role in disrupting the justice processes available to the local population. Secondly, I discuss the post-colonial state and the vacuum for justice that ensued after attaining independence in 1980. Thirdly, I elaborate on the avenues available for addressing injustices through the formal legal system in post-colonial Zimbabwe, as well as beyond its borders. Fourthly, I examine the emerging evidence on the use of tradition-based practices for transitional justice and reconciliation in Zimbabwe, followed by the conclusion.

The literature analysed in this chapter point to three things, firstly, the disconnect between views of both public officials and the general populace with regards to the injustices that have occurred. Secondly, it points to some fieldwork findings that the black Zimbabwean community still has strong ties with its ancestral heritage and follows some tradition-based practices that were used by their forefathers. Thirdly, the feasibility of tradition-based practices as avenues for addressing past injustices.

5.2 Colonialism and the disruption of justice processes available to Zimbabweans

Writings on the colonial history of Zimbabwe include the work of Alois Mlambo (2014), Ndlovu-Gatsheni (2009), Brian Raftopoulos (2009) and Terrence Ranger (1967, 2004), among others. Mlambo (2014: 30) writes that, 'British colonisation of Zimbabwe was part of the nineteenth century European expansionism in which European countries imposed political and economic control over territories in various parts of the globe.' Prior to the expansion of British rule to Zimbabwe around 1890, the people exercised their sovereign rule through a traditional institution of leadership and monarchies, for example the Rozvi and Munhumutapa empires (Ndlovu-Gatsheni 2009).

This traditional institution of leadership was largely represented by the hierarchy of representatives including family elders, village elders and the chief in the physical realm. Within this society, the people's way of being was guided by two realms of the physical and metaphysical. The metaphysical realm is a sphere of the ancestral family who play an intermediary role on behalf of the 'living living', the 'living dead' and the 'unborn living' (Benyera 2014b). Gelfand (1973) explains that Zimbabweans like other African communities believe in the existence of an invisible world (metaphysical) that is distinct but not separate from the visible world (physical). Spirituality and reverence of ancestors who inhabit the metaphysical realm is a fundamental component of life that brings social harmony among the people (Nyathi 2015). As argued by Ellis and Ter Haar (2004), prior to colonial rule, the local people practiced traditional or customary law and resolved conflicts by consulting with their traditional leaders as well as the metaphysical realm, a custom that is embodied in the tradition-based practices that still exist today.

When the British settlers manipulated King Lobengula (leader of the Ndebele ethnic group) into signing the Rudd Concession in 1888, black Zimbabweans lost control of their territory and all its resources (Zvobgo 2009). This treaty became the first among many others that were implemented by the British colonialists to govern Rhodesia and the surrounding territories under the Federation of Rhodesia and Nyasaland; made up of Southern Rhodesia

(now Zimbabwe)[19], Northern Rhodesia (present day Zambia) and Nyasaland (present day Malawi) (Mlambo 2014: 74). The consequences of colonialism in Zimbabwe were therefore, the dispossession of the indigenous population, advent of Christianity, establishment of a western governing system and diffusion of Western modernity.

To strengthen the British expansionism that was incepted by acquiring the Rudd Concession, the businessman and politician Cecil John Rhodes and his accomplices obtained the Royal Charter (1890) for his British South Africa Company (BSAC) (Mlambo 2014). Through the charter, the British South Africa Company established a semi-permanent governing structure to manage Southern Rhodesia on behalf of Britain until the 1922 referendum which established a new government (Mlambo 2014). The 1922 referendum emerged from the elections of the Legislative Council in 1920 whereby the white settlers had the choice to retain the colony under the BSAC government, to join the Union of South Africa or establish its own government (Mlambo 2014). The settlers voted in favour of self-government under British tutelage until the adoption of the Unilateral Declaration of Independence (UDI) in 1965, which gave the Smith regime full privilege to rule Rhodesia as an independent sovereign state (Mlambo 2009, Saki and Chiware 2007). Thus, the Royal Charter gave the British settlers legislative, administrative and judicial powers, which enabled the BSAC government (including subsequent regimes) to establish formal laws that, in some instances, co-opted or eroded the pre-existing customary laws. For example, a high court was established in Salisbury (present day Harare) in 1894 to preside over disputes and a court of appeals, the Cape Supreme Court, was in the Cape of Good Hope, South Africa. Henceforth, the laws that were administered in Rhodesia (and now in Zimbabwe) were derived from British (English Law) and Roman-Dutch Law (Saki and Chiware 2007).

The British governing system was highly selective, racially based, hierarchical and centralised (Raftopoulos and Mlambo 2009). Only the white minority group and a small group of the literate black middle class (to some extent), enjoyed the same rights and privileges reserved for the white population (Zvobgo 2009). In the event of a dispute, access to the formal courts was determined by one's ability to pay the court fees, acquire a lawyer

[19] The country went through various name changes. It was, originally called Southern Rhodesia until the Unilateral Declaration of Independence in 1965 when it became Rhodesia. In 1980, it became Zimbabwe (Mlambo 2014).

and converse in English, the main medium of communication in the national court house (Bhebe and Ranger 2001). Laws were constantly developed to preserve the interests of the white population without consulting the other population groups. For example, the Unlawful Organisations Act (1959), the Preventive Detention Act (1959) and the Law and Order Maintenance Act (1960), banned the activities of liberation movements, and prohibited the indigenous population to protest white rule (Mlambo 2014, Zvobgo 2009). Thousands of people were detained, brutally attacked by the Rhodesian government security forces and sentenced to long imprisonment terms for challenging the white regime (Mlambo 2014).

Mlambo (2014: 46) argues that the British colonial rule disrupted the independence of the black majority population and their ability to freely exercise their customs and belief systems. Furthermore, the white settlers disrespected the traditional institution of leadership followed by the indigenous population to the extent that they often dehumanised the traditional leaders in front of their communities (Ranger 1967). The black people did not easily concede to colonial rule. For example, King Lobengula organised his army to fight against the British settlers in a war of resistance in 1893, commonly known as the Anglo-Ndebele War (Ranger 1967). Unfortunately, the Ndebele warriors were defeated by the Rhodesian military which used the more advanced maxim guns than the primitive bow and arrows of the warriors (Mlambo 2014: 45). The defeat of King Lobengula led to the end of the Ndebele monarchy and cemented British rule which took over control of territories inhabited by both the Ndebele and Shona populations.

In accordance with British jurisprudence regarding property ownership and rights, the local populations were dispossessed of their land and transformed overnight into squatters and labourers who provided cheap labour to the colonial settlers. These harsh conditions catalysed the development of African resistance, which united the various local population groups to fight colonial rule in what became the First *Chimurenga* or *Umvukela* between 1896 and 1897 (Mlambo 2014). The British-led mediation talks that occurred during the Lancaster House Conference in 1979, involving the Patriotic Front, represented by Joshua Nkomo and Robert Mugabe, and the Rhodesian government represented by Ian Smith and Bishop Abel Muzorewa, brought an end to the protracted war (Second Chimurenga) fought between 1965 and 1979 (Mlambo 2014). The conflicting parties signed the Lancaster House Agreement, a deal that provided for: (i) the holding of open elections allowing all citizens to

vote, (ii) a new Constitution upholding universal suffrage, and (iii) a ceasefire between armed groups (Mashingaidze 2010).

Even though colonial rule had an impact on the livelihood, practices and being of the black Zimbabwean population, there is growing evidence that the traditional institution of leadership, as well as customs and practices of the people did not all disappear but rather metamorphosed to suit the times (Gelfand 1973). Although Gelfand (1973) was writing in the early 1970s, many of his findings can be corroborated by observations from the field during this study, particularly that black Zimbabweans maintain strong ties with their ancestral heritage and follow some tradition-based practices observed by their forefathers. Nyathi (2015) also acknowledges that black Zimbabweans have high regard for maintaining close family ties within their communities. This element of unity assists the community to share their space in harmony, to step in for one another and to treat each other with fairness.

Black people in local communities of Zimbabwe belong to a larger ancestral family from where they draw a family name, and in matters affecting the clan, for example murder or physical abuse, they turn to the spirit of the founder of the clan known as *mhondoro,* to stand as the adjudicator (Gelfand 1973). Ellis and Ter Haar (2004) and Nyathi (2015) add that the metaphysical realm reconstitutes individuals as moral agents who have predetermined responsibilities to the community in the cosmological sense. This cosmological worldview held by many Zimbabweans, leads them consciously or unconsciously, to adapt their lives to retain the harmony required between the physical and metaphysical realms (Nyathi 2015). Arguably, retaining the balance between these two realms enables the people to preserve human dignity and social harmony.

This could explain why in 2011, the government of Zimbabwe opted for tradition-based practices in handling the exhumation of over 600 bodies discovered in mass graves at Chibondo Mine[20] in Mt Darwin (Amnesty International 2011). The government denied forensic experts access to conduct the exhumations and to carry out DNA profiling, opting rather for handpicked African Traditional Religion (ATR) leaders to consult with the spirit

[20] The mass graves at Chibondo Mine were believed to be remains of people that were killed during the liberation struggle, however, some of the bodies were found with material objects that suggest the people died after independence (Shaw and Gotora 2011).

mediums and perform rituals to identify the deceased. By using tradition-based practices, the government promoted African justice processes and side-lined technocratic procedures offered by forensic experts. Thus, the government emphasised the relevance of tradition-based practices to the body politic of the post-independence Zimbabwean society. Shaw and Gotora (2011), among others, have challenged the actions of the government in handling the Chibondo mass graves because the timing of the exhumations and the so-called 'inappropriate' handling of remains (seemingly referring to the use of spirit mediums) suggests that the procedure was conducted to champion a political agenda of the ruling party ahead of the 2013 elections.

However, this incident reveals (i) the feasibility of rituals as avenues for addressing past injustices in accordance with the culture and traditions of the local people in Zimbabwe, (ii) awareness on the part of the government of Zimbabwe of the contribution tradition-based practices might be able to make towards meeting justice needs of the people, and (iii) the politicisation of government-led initiatives to addressing past injustices.

5.3 Post-colonial Zimbabwe and the transcending justice vacuum

The repeated denunciations made by public officials, such as President Robert Mugabe and his Vice President Phelekezela Mphoko, regarding past injustices in Zimbabwe, are contributing factors to the vacuum existing in the formal justice system. While delivering his official speech at the state-funded funeral for the late vice president Joshua Nkomo in 1999, President Robert Mugabe announced that the Matabeleland massacres that forced the two parties ZAPU and ZANU-PF to sign a Unity Accord in 1987 were a result of a 'moment of madness' which his government experienced (Mashingaidze 2010). His utterances triggered many debates in the country, with many scholars and victims of the violence challenging the government to explain who was 'mad' at the time of the massacres and whether the madness has been treated (Ndlovu and Dube 2013).

This chapter presents the position of the government and the general citizens on the incidents of violence that have occurred in Zimbabwe. The afflicted citizens have remained angry and resentful of the government for concealing the past by adopting amnesty provisions that protected perpetrators of violence from being held accountable (Eppel 2006). On the part of

the government, the ruling ZANU-PF party presents the idea that the state has monopoly of violence which guarantees its authority to use force in defence of the state (Ranger 2004).

Hence, one can deduct from President Mugabe's speech at Nkomo's funeral that the government's stance on the Matabeleland massacres lacks a sense of remorse for the violence that occurred. As such, the government has constantly avoided calls to justice for *Gukurahundi* that are premised on criminal prosecutions, citing the potential threat to political stability, but more so, probably because that would have undermined the hegemony of the ruling party. Rather, the violence was concealed through a political agreement, the Unity Accord, signed in 1987 between ZAPU and ZANU-PF, which led to the amalgamation of the two parties into one party (Raftopoulos and Mlambo 2009).

The animosity between the general populace and the government has been exacerbated by other proclamations made by Vice President Phelekezela Mphoko in recent years. The Vice President has labelled the Matabeleland massacres a 'Western conspiracy', suggesting that external actors are responsible for the injustices that occurred in the 1980s (Sasa 2015). This narrative of the vice president fits into what literature has termed victor's truth in that the government presents the image of being a victim of circumstances beyond its control. Raftopoulos and Mlambo (2009) have argued that, since independence, the ruling ZANU-PF party has thrived on a discourse of a violently imposed national 'unity' to control opposition parties. This control was asserted through territorial control and monopolisation of the means of violence, and the outcome was the brutal massacre of thousands of civilians during *Gukurahundi*, which paved way for the ruling party to submerge the opposition and gain control of the whole country (Raftopoulos and Mlambo 2009).

The *Gukurahundi* massacres presented early signs that the new state had underlying issues that need to be addressed (Ngwenya and Harris 2016). The government established the *Chihambakwe* and *Dumbutshena* Commissions of Inquiry (in 1981 and 1983, respectively), as judicial mechanisms to investigate the violence that occurred, but their findings have never been made public (Eppel 2006, Mashingaidze 2005). As with the liberation struggle, a combination of presidential amnesties and impunity has subdued the quest for justice needed by victims, their families and the community. According to a 1997 report by the Catholic Commission for Justice, Peace in Zimbabwe and Legal Resources Foundation, over 20 000 civilians perished during the 1980s Matabeleland massacres, thousands were either internally

displaced or evaded to neighbouring countries, maimed, tortured, raped and dehumanised; at the hands of government security forces and the rebelling ex-combatants of ZAPU's military wing, the Zimbabwe People's Revolutionary Army (ZIPRA) (CCJPZ 1997). The conflicting political parties in this civil war, ZANU-PF and ZAPU, resolved their differences by signing a political agreement, the Unity Accord in 1987, thereby creating a de facto one-party state (Mashingaidze 2005, Ndlovu-Gatsheni 2009). No further action to address the massacres has been taken to date.

The government has often used political reconciliation of the elites to defend the hegemony of the ruling ZANU-PF party at the expense of attending to the needs of the general populace regarding past injustices (Mashingaidze 2005). For example, though before Mugabe's appointment as the new Prime Minster of Zimbabwe in 1980, he had spoken out against human rights violations. Particularly, in an interview cast with the BBC news prior to the Lancaster House Conference of 1979, Mugabe emphasised the need to hold perpetrators of violence to account; but once in power, he unreservedly granted unrestrained pardon to all perpetrators of violence (Dawson 2011, Mashingaidze 2005). This act of the Prime Minister instantly secured political reconciliation between the Smith regime and the liberation movements, though it was superficial (Mashingaidze 2005). Through this action, the ruling ZANU-PF party implanted a culture of impunity which continues to prohibit affected parties, including many who were tortured, injured, abducted, disappeared, raped, murdered or disposed during the liberation war, from attaining justice (Mlambo 2014). Sweeping the past under the carpet has instigated further conflict and violence especially in election periods as disputes among the political rivals over unresolved issues, some of which date back to colonial history, continue to weaken reconciliation at both national and community levels (Raftopoulos 2009).

All these aggressive actions of the ZANU-PF led government have made the country's political, economic and social environment unfavourable to both the local population and global community. An opposition party, the Movement for Democratic Change (MDC) led by Morgan Tsvangirai, emerged in 1999 to challenge the country's de facto one-party-state and forced the government to open to a multi-party democratic society (Mlambo 2014). The opening of political spaces has occurred at great cost to those championing for change. Since the first multi-party elections that involved the opposition MDC in 2000, high volumes of injustices against supporters of the opposition and human rights activists have been recorded

across the country (Raftopoulos and Mlambo 2009, Sachikonye 2011). Restrictive statutes, such as the Public Order and Security Act (2002), derived from the Law and Order Maintenance Act (1960) used by the colonial regime, have prohibited citizens from holding public gatherings, and the Access to Information and Protection of Privacy Act (2002) is used to monitor print and electronic media in the country (Sachikonye 2011).

Surveillance and intimidation have become the modus operandi of the ruling ZANU-PF party to remain in power and reports of election rigging have been recorded for all elections since the year 2000 (Ndlovu-Gatsheni 2012). Many people have been unlawfully detained, tortured, others raped, disappeared, abducted or had their properties destroyed, resulting to internal displacements or forced migration to neighbouring countries and further abroad for protection and economic relief (Raftopoulos 2009, Sachikonye 2011). For example, in Buhera district, the murder of Tsvangirai's aide Tichaona Chiminya and his companion Talent Mabika through a petrol bomb on the 14th of April 2000 under a ZANU-PF and CIO operation led by Joseph Mwale, has left a deep wound among the community (Guma 2009). One of the survivors of this gruesome incident, Sanderson Makombe was interviewed by Nehanda Radio on the 28th of May 2009 and stated that he was still disturbed that Joseph Mwale had remained employed by the government despite the strong evidence presented in court for his involvement in electoral violence (Guma 2009). Consequently, perpetrators of violence such as Mwale identified in Buhera district, have been protected by government through amnesty proclamations such as the Clemency Order (1) of 2000 (Chabvuta 2006, Guma 2009).

According to the *Solidarity Peace Trust* (2008), Mudzi district was the starting point for the March and June 2008 electoral violence that plunged the country into a political impasse. Previously the district had been a ZANU-PF stronghold with little tolerance for opposition parties, but the post 2000 economic crunch gave leeway for the opposition MDC party to make strides in swinging the electorate to its favour (*Human Rights Watch* 2008). Although ZANU-PF got an overall 54% of the electorates' vote in this district, the failure to retain outright majority was considered by some members of the community loyal to the ruling ZANU-PF, an act of betrayal (*Solidarity Peace Trust* 2008). Several people were left homeless as war veterans and ZANU-PF youth militias sanctioned by the ruling party, torched their homes and injured many others during the Operation *Makavhotera Papi* (Where did you put your vote?) campaign as it was locally branded (*Human Rights Watch* 2008,

Zimbabwe Independent 2008). Acts of violence included body mutilations, physical assault, burning of houses and livestock and murder, which were regarded as acts to cleanse the community by caning people to make them repent (*Human Rights Watch* 2008).

Many Zimbabweans, therefore, live in fear of their government and have become apolitical to be spared from the dehumanising actions of government security agents (Raftopoulos and Mlambo 2009). However, the abduction and disappearance of human rights activist Itai Dzamara in March 2015, economic hardships and the announcement made by Finance Minister Chinamasa in early 2016 of re-introducing bond notes in bid to cushion the liquidity crisis, sparked a public outcry through citizen movements (Mhofu 2016). A Zimbabwean pastor, Evan Mawarire, launched 'This Flag', a citizen's movement in April 2016, which challenged the government to address the deteriorating socio-economic conditions and injustices suffered by the citizens over the past decades (*Business Day Live* 2016). Many urban Zimbabweans participated in peaceful protests, organised through social media (mainly WhatsApp, Facebook, and Twitter) by the citizen's movement, acts that showed the escalation of the Zimbabwean crisis (Mushonga 2016). The government responded to the demands for justice and good governance made by the local population by implementing unconstitutional restrictive policies that monitor public activities and prosecute any citizen who contravenes the legislation.

Consequently, Pastor Evan Mawarire and many other citizens were arrested and detained on allegations of inciting violence and attempting to overthrow the government (Mavhunga *et al.* 2016). At the time of writing, the political situation in Zimbabwe remained volatile and likely to intensify due to factions within the ruling ZANU-PF party and antagonism between the ruling party and the opposition. Since Zimbabwe's independence Mugabe has been president and over the years, his party has failed to put in place a succession plan; such that the president's old age, socio-economic hardships and recurring injustices pose a huge threat for the ZANU-PF party to retain power in the 2018 elections.

Judging from the past experiences where the ruling ZANU-PF party has been accused of using intimidation and rigging to win elections and the lack of concerted effort among the opposition parties; without proper actions to address the underlying issues, it is more likely that the 2018 elections in Zimbabwe will degenerate into conflict. Kovacs (2012) and Rupiya (2011) argue that the fear of losing power and access to control state resources influences the

ZANU-PF-led government to run the country as a military operation, whereby intimidation and fear is canvassed to silence any voices that challenge its authority. Machakanja (2010) adds that prospects of transforming the past injustices could be facilitated by effective transitional justice and reconciliation processes, of which all government-led efforts thus far have undermined avenues for justice.

5.4 Avenues for justice through the formal justice system in post-colonial Zimbabwe

5.4.1 The role of the formal justice system in addressing past injustices

The Constitution of Zimbabwe (2013) recognises that there are two parallel legal systems in Zimbabwe, which fall under the categories of the superior (formal justice system) and inferior courts (informal/tradition-based justice system). The formal justice system has superior legal standing to the informal justice system because, the former courts have unlimited jurisdiction. These courts can prosecute both civil and criminal matters, as well as exercise disciplinary action against public officials (Constitution of Zimbabwe 2013). The formal justice system is comprised of the Magistrates' Court, the High Court, Supreme Court and the Constitutional Court. A professional judge presides over these courts, which are very procedural and formal because legal representation is required during a court hearing and the Anglo-Roman-Dutch laws are used to reach a verdict.

According to the Constitution of Zimbabwe (2013), the inferior courts mostly refer to the tradition-based justice systems (often chaired by traditional authorities) and they have limited legal jurisdiction because they can only attend to civil disputes, and are guided by customary laws. The setting of these courts is very informal and there is no legal representation required for the people accessing justice through these courts. Customary laws are derived from the long-standing, dynamic customs and practices of the black people in Zimbabwe. As mentioned in section 5.2, the divide between the formal and informal justice systems was created during the colonial era when the British settlers superimposed a Western governing system onto the tradition-based governing systems that existed among the local population in Zimbabwe (Mlambo 2014). This division has been maintained even after independence, with the formal justice system being more prevalent in urban areas and the informal justice system is mainly used by the rural population (Saki and Chiware 2007). In this section, the focus is on the formal justice system or superior courts.

Where disputes addressed by the inferior courts have not been fully resolved, the matter can be referred to the Magistrates' Court or High Court for appeal (Redress Trust 2004). The Magistrates' Court and High Court attend to civil and criminal cases and both have power to hear a case for the first time (original jurisdiction) or to entertain appeals (Constitution of Zimbabwe 2013). Zimbabwe's justice system does not have a separate Constitutional Court, per se, instead the Supreme Court judges have dual roles of hearing appeals and attending to constitutional matters (Constitution of Zimbabwe 2013). Furthermore, the laws that guide the superior courts are mainly uncodified, except for Criminal Law. This means that the laws applied in these courts do not come from a single source, but derive from various sources with varying origins. The common sources of law are the legislature, precedent/case law, common law and the constitution (Saki and Chiware 2007).

Precedent or case law draws from past decisions of superior courts (Saki and Chiware 2007). Thus, case law guides the court to reach a verdict drawing from previous decisions involving a similar case. However, in many instances where case law has been applied in post-colonial Zimbabwe, the preceding decisions have been derived from precedents set through the Anglo-Roman-Dutch Laws applied by the colonial rulers (Saki and Chiware 2007). As such, court decisions made by the formal justice system in post-independent Zimbabwe seemingly continue to be influenced by precepts from the colonial administration.

Common law derives from the English Law and Roman Dutch Law that was used by the British settlers to govern the country during the colonial period (Saki and Chiware 2007). Since the British settlers first established a Supreme Court in the Cape of Good Hope (in Cape Town, South Africa) and then set up the High Court in Salisbury (present day Harare), the influence of the English and Roman Dutch Laws inherited from South Africa resulted in the Anglo-Roman-Dutch Laws being transplanted to Zimbabwe (Saki and Chiware 2007). Even now, minimal adjustments have been made to the original Anglo-Roman-Dutch laws, apart from the recent codification of Criminal Law, which abolished the Roman-Dutch Criminal law (Saki and Chiware 2007).

The justice system in Zimbabwe is secured by provisions of the constitution which ascribe the protection of the Bill of Rights to be ensured by the judiciary and the courts. The constitution is the supreme law of the land. All other laws, as explained above, are

subordinate to the constitution and operate *intra vires* the constitution or within reasonable constitutional provisions. Legislative authority is vested in the president and parliament, both of which can confer powers on any legal document to create binding laws (Constitution of Zimbabwe 2013). The latest constitution of Zimbabwe was adopted in 2013 after consultations facilitated by the coalition government and the civil society, in a process that formed the road map to resolve the political impasse that ravaged the country since independence (*NTJWG* 2016, *Zimbabwe Human Rights NGO Forum* 2014).

Within the constitution, provisions for independent commissions that attend to various issues in the country are stipulated under Chapter 12 (Constitution of Zimbabwe 2013). As prescribed in Chapter 12 of the Constitution; the Zimbabwe Anti-Corruption Commission (ZACC), Zimbabwe Electoral Commission (ZEC), Zimbabwe Human Rights Commission (ZHRC), Zimbabwe Gender Commission, Zimbabwe Media Commission and the National Peace and Reconciliation Commission (NPRC), were set up to protect human rights, promote democracy, healing, civic trust and cohesion (Constitution of Zimbabwe 2013). All these independent commissions have been implemented in the state, but however, the monolithic political architecture of the government of Zimbabwe has made it difficult for the commissions to function in accordance with the constitutional provisions (*Zimbabwe Human Rights NGO Forum* 2016). Hence, it was crucial that the parliament reviews the National Peace and Reconciliation Bill that had been developed by the executive in early 2016 (as discussed in the next section), to ensure that the legal provisions guiding the bill are constitutional.

There remains a disparity between the formal justice system in Zimbabwe and provisions set by the international justice system because domestic laws take precedence over international laws and treaties (Redress Trust 2004). Zimbabwe has only ratified or acceded to ten international treaties that relate to human rights law, humanitarian law and criminal law, for example, the four 1949 Geneva Conventions, The Hague Convention and the Genocide Convention 1948, among others (Redress Trust 2004). It is also a signatory to the African Charter on Human and Peoples' Rights adopted by the African Union in 1981 but has not yet acceded to the Convention Against Torture and the 1998 Rome Statute of the International Criminal Court (Redress Trust 2004).

Consequently, in many cases the judicial system of Zimbabwe has been unable to issue investigations and prosecute perpetrators of crimes covered under international laws. Instead, amnesty provisions mastered from colonial legal practices have been adopted by the government, thereby compromising the ability of the judiciary to safeguard the rights and privileges of the citizenry. Even the police, a crucial entity in facilitating investigations and criminal proceedings, have equally become complacent (*Zimbabwe Human Rights NGO Forum* 2014).

5.4.2 The use of ad hoc commissions to supplement the formal judiciary system in postcolonial Zimbabwe

The national policy framework regarding dealing with past injustices that has been championed by the government of Zimbabwe can be described as despotic, incoherent and superficial. In response to the injustices of the liberation struggle, the government did not develop any formal policy because the then Prime Minister, Robert Mugabe, resolved to the 'let bygones be bygones,' political stance (Eppel and Raftopoulos 2008). Consultations with the affected parties were never undertaken before the government granted forgiveness to perpetrators. Moreover, no room was left for individuals to pursue legal recourse because of the amnesty provision, Clemency Order 1980 (Mashingaidze 2010).

As mentioned earlier, during the Matabeleland massacres, the government commissioned the *Chihambakwe* and *Dumbutshena* Commissions of Inquiry, but their findings remain unknown (CCJPZ 1997, Mashingaidze 2005). Further amnesties were offered through the Clemency Order of 1988 (CCJPZ 1997). Similarly, acts of violence that were committed during the fast-track farm invasions and electoral violence since the year 2000 were concealed under amnesty provisions, such as the Clemency Orders of 2000 and 2008 (*Solidarity Peace Trust* 2008).

Fortunately for Zimbabweans, the Global Political Agreement (GPA) that was signed between the ruling ZANU-PF party and two factions of the opposition party, the MDC, in September 2008, provides a new avenue for the past injustices to be addressed through government-backed judicial processes (Machakanja 2010). Article 7 of the GPA mandated the new coalition government to set up a mechanism that would advise the government on the possible and practical means to deal with past injustices. The coalition government

established the Organ for National Healing, Reconciliation and Integration (ONHRI or the Organ) in 2009 to work out a road map for the country to deal with its past (Mashingaidze 2010). The Organ failed to settle past injustices mainly due to a lack of political will from the ruling party ZANU-PF which constantly disrupted meetings set to deliberate on matters of justice (Machakanja 2010). Machakanja (2010) and Mashingaidze (2010) are of the view that the ruling party ZANU-PF jeopardised the works of the Organ to avoid being implicated in the injustices which the process is meant to address.

The Organ was disbanded after the 2013 elections and, as per the revised Constitution of Zimbabwe (2013), it has been replaced by the National Peace and Reconciliation Commission (NPRC) which falls under Chapter 12 Independent Commissions (Ndlovu and Chidza 2016). As prescribed by the Constitution of Zimbabwe (2013: 118-119), the NPRC is an independent commission which has been established to exist for a period of 10 years fulfilling the following functions:

a. "to ensure post-conflict justice, healing and reconciliation;
b. to develop and implement programmes to promote healing, unity and cohesion in Zimbabwe and the peaceful resolution of disputes;
c. to bring about national reconciliation by encouraging people to tell the truth about the past and facilitating the making of amends and the provision of justice;
d. to develop procedures and institutions at a national level to facilitate dialogue among political parties, communities, organisations and other groups, to prevent conflicts and disputes arising in the future;
e. to develop programmes to ensure that persons subjected to persecution, torture and other forms of abuse receive rehabilitative treatment and support;
f. to receive and consider complaints from the public and to take such action regarding the complaints as it considers appropriate;
g. to develop mechanisms for early detection of areas of potential conflicts and disputes, and to take appropriate preventative measures;
h. to do anything incidental to the prevention of conflict and the promotion of peace;
i. to conciliate and mediate disputes among communities, organisation, groups and individuals; and

j. to recommend legislation to ensure that assistance including documentation, is rendered to persons affected by conflicts pandemics or other circumstances," (Constitution of Zimbabwe 2013).

However, the NPRC Bill that was gazetted by the executive on the 18th of December 2015 to enact the work of the commission has created doubts among the Zimbabwean society regarding the commitment of the government to addressing the past (*Zimbabwe Human Rights NGO Forum* 2016). While section 252 of the Constitution prescribed the above functions of the NPRC, clause 6 of the NPRC Bill reduces the functions of the commission to investigating disputes and making recommendations (*NTJWG* 2016). More so, the NPRC Bill gives the executive unrestrained power to interfere in investigations of the commission and this provision contravenes constitutional requirements (Reeler 2016).

Various civil society organisations and the public have rejected the Bill, citing the fact that its failure to follow the provisions of the constitution in terms of section 235 (which stipulates the independence of such commissions) and sections 251, 252 and 253 (which relates to roles and functions of the NPRC) renders the bill unconstitutional and unsuitable (*Zimbabwe Human Rights NGO Forum* 2016). A report of the National Transitional Justice Working Group (NTJWG), which reviewed the NPRC Bill, has labelled it a lame and whimsical tool that satisfies the views of insensitive politicians (*NTJWG* 2016).

Considering the above shortcomings of the NPRC Bill and the fact that it fails to provide clarity on the mandate of the commission, the policy framework for transitional justice and reconciliation in Zimbabwe remains oblique. In 2016, the parliament voted against the bill following the public consultations it had conducted across the country in April of the same year (*New Zimbabwe* 2016). During the public consultations on the NPRC Bill some of the meetings were adjourned early due to disruptions from members of the ruling party ZANU-PF that came in wearing party regalia, chanted party slogans and sang demeaning songs, as well as intimated other members of the public who disputed the bill (Mhlanga 2016). These actions of disrupting government events were prohibited, but no action was taken by the government or the ruling party to condemn and put the disruptions to an end. Therefore, the lack of contingency measures to mitigate effects of past injustices and expedite the development of an effective policy framework creates further delays for victims to obtain redress through the formal avenues for justice.

5.5 Avenues for justice beyond the borders of Zimbabwe

Regional actors such as the African Union (AU), the Southern African Development Community (SADC) and South Africa have played a role in providing access to justice for various victims of injustices in Zimbabwe. In 2012, the AU, through its African Commission on Human Rights, made a ruling on the pending case of human rights abuses committed by the Zimbabwean government security agents against human rights activist Gabriel Shumba (Viljoen and Adebe 2014). The African Commission ruled that the government of Zimbabwe had violated Article 5 of the African Charter, which prohibits the commission of crimes of torture and ill-treatment (Redress 2013). The Commission found that the beatings, torture and unlawful arrest of Gabriel Shumba in 2003 by state security agents constituted human rights violations that member states of the AU should not engage in. As such, the Commission ordered the government of Zimbabwe to compensate Gabriel Shumba for all the suffering he incurred.

However, the Zimbabwean government has contested the ruling, but this case serves as an example for other victims of injustice to challenge their governments. Bell (2013) argues that it is unlikely that any recourse will be attained through the African Commission because the effectiveness of this body relies on the cooperation of member states. Many African heads of states have consistently acted in solidarity with President Robert Mugabe and the acts of violence committed under his leadership have either been ignored or treated as necessary means to defend the sovereignty of the post-colonial state (Redress 2013).

Perpetual violence has also been observed in the vigilante-style invasion of farms owned by white people since the year 2000. Previously, the Lancaster House Agreement had secured a deal to preserve the land acquired by the white population during the colonial era and ensured that the Zimbabwean government would adhere to the provision through the British-sponsored ‘willing-buyer willing-seller’ program over a ten-year period from 1980 (Mashingaidze 2005). The military interventions in the Matabeleland massacres (1980-87) and the war in the Democratic Republic of Congo (1999), periodic droughts, the International Monetary Fund (IMF) engineered Economic Structural Adjustment Programme (ESAP) (1990-92) and the unbudgeted pay outs to appease war veterans (1997-98), plunged the country into economic crisis by the end of 1990s (Raftopoulos 2009, Sachikonye 2011). Consequently, Britain’s withdrawal from funding the ‘willing-buyer willing seller’ program

in the late 1990s, loss of voter confidence during the referendum in 2000 and the threat of losing elections to the opposition in 2000 led the ruling party ZANU-PF to mount attacks on white farmers and to divert responsibility of its failures by blaming the Global North actors, especially Britain (Mlambo 2013, Rupiya 2011).

Hundreds of white farmers were displaced from their land, others were brutally attacked, and their properties were torched, leaving deep wounds and a sense of resentment between the white farmers and some black people who assisted the ruling party ZANU-PF (Sachikonye 2011). These acts of vengeance contradicted the government's reconciliation position at independence, that of forgiving the white settlers. Furthermore, they inhibited reconciliation between the black and white populations in Zimbabwe and created divisions among the black population, especially the majority that did not support the farm invasions (Ndlovu-Gatsheni 2012, Sachikonye 2011).

Many white farmers moved to Mozambique, Malawi, Zambia, South Africa and Nigeria where they were well received and have managed to resume their agricultural activities, boosting the economies of their host countries, while Zimbabwe collapsed to the point of continuously importing food and depending on external food donations (Sachikonye 2011). Moreover, a few of the farmers individually tried to challenge the actions of the government through the national courts, but to no avail. About 77 farmers took their case to the regional body, the Southern African Development Community (SADC), as the domestic courts could not provide a fair trial (Bell 2013).

The pioneer applicant to the SADC Tribunal, the late Mike Campbell, a commercial farmer who owned the Mount Carmel Farm, filed a case in 2007 with the tribunal challenging the illegal repossession of his farm by the government of Zimbabwe (Bell 2013). The tribunal agreed to handle the case, holding that the regional body SADC has jurisdiction to resolve disputes that relate to human rights, democracy and rule of law, which are binding principles for all its member states (Bell 2013). Considering that the plaintiff had been denied the right to a fair hearing before the domestic courts, the tribunal had to intervene and remedy the inability and unwillingness of domestic courts to provide a fair trial. This ground-breaking case brought to the fore the capability of sub-regional bodies in Africa to serve as avenues for legal recourse. However, the tribunal has long been disbanded and its verdict against the government of Zimbabwe remains unfulfilled (Bell 2013).

The displaced commercial farmers also took their case to the South African High Court which reinstated the ruling made by the SADC Tribunal and ordered the government of Zimbabwe to pay R200 000 in legal fees (Bell 2013). The High Court also ruled that the Cape Town property owned by the government of Zimbabwe would be auctioned to raise some funds for compensating the farmers. Hence, the role played by the SADC Tribunal and the South African High court in providing access to justice for the victims of the land invasions, as well as the African Commission ruling on Gabriel Shumba's case, show how, even outside Zimbabwe, there are avenues for justice. However, these avenues continue to be limited because of political interferences and lack of political will.

5.6 A turn to tradition-based justice systems in the absence of an enabling legal framework to deal with past injustices

Studies on transitional justice and reconciliation processes in Zimbabwe have largely focused on technocratic interventions led by the government and advocacy work by civil society organisations (Eppel 2006, Machakanja 2010). A few studies, including the work by Benyera (2014a), have focused on tradition-based practices employed by the local people to deal with injustices incurred over the years, and this study adds to this sparse but growing literature. This view also develops from the understanding that the formal judiciary system in Zimbabwe has been inadequate because it is premised on Common Law (non-statutory or unwritten Anglo-Roman-Dutch Law), Legislature and Case Law (precedent), which all derive from governing systems that were set up by colonial rulers (Saki and Chiware 2007). Thus, the tradition-based justice system is an underexplored avenue for redress, yet it seems to offer justice that is commensurate with local traditions, customs and values that constitute ethos of life of the local population (Saki and Chiware 2007).

As indicated earlier, the government of Zimbabwe has used tradition-based practices to address injustices in the country, with the example of the exhumations at Chibondo mass graves in Mt Darwin (Amnesty International 2011). Despite the politicisation of tradition-based practices employed in resolving the Chibondo mass graves, interest in these practices is growing because the country and its people still subscribe to tradition-based and customary justice systems capable of handling injustices, especially those that occur at the community level. As argued in the 2016 policy brief developed by the Heal Zimbabwe Trust (HZT) and

Zimbabwe Civic Education Trust (ZIMCET), Zimbabweans are accustomed to indigenous traditions and customary justice systems which have enabled them to mitigate various injustices throughout the pre-colonial, colonial and postcolonial era (HZT and ZIMCET 2016).

An example where tradition-based practices have been used by individuals is the resolution of the politically motivated murder case of Moses Chokuda who died in March 2009 (Benyera 2014a). Moses Chokuda was an MDC-T activist from Gokwe, a rural community in Midlands Province in Zimbabwe, who was falsely accused of theft and brutally murdered by four ZANU-PF supporters, and one of them Farai Machaya was the son of the Midlands Governor Jason Machaya (Benyera 2014a). The murder of Moses is believed to be politically motivated because the late was actively involved in rallying for the opposition MDC-T during the 2008 elections and possibly fell prey to attacks as means to intimidate the rest of the community from supporting the opposition. The deceased's remains could not be buried for over two years because his spirit demanded justice, of which the perpetrators took responsibility for their actions by upholding customary procedures of redress (*The Standard* 2011).

The murder of Moses had been reported to the police and the formal justice system was working on the case, but the late is said to have fought for redress through the tradition-based practice of *ngozi* or avenging spirit, which is like the *magamba* spirits observed in Mozambique in section 3.5.2 of this study (*The Standard* 2011). The four accused are reported to have been tormented by the spirit of Moses and people in Gokwe are said to have lived in fear due to the bad omen coming from the deceased's avenging spirit (Benyera 2014a). The Zimbabwean historian Pathisa Nyathi, in a newspaper interview addressing the issue of *ngozi* (avenging spirits) in the Chokuda murder case, pointed out that the tradition-based justice system worked because in the Zimbabwean African tradition, conflicts are resolved by re-establishing the lost social harmony between conflicting parties. This means that the conflicting parties are brought together and engage until they come up with a resolution that satisfies the needs of the individuals and collective community (*The Standard* 2011).

It is believed under the *ngozi* practice of justice that the untimely death of a person violates their dignity, and there is need for the offender to acknowledge and atone for the inhuman

actions and, without this atonement the spirit of the deceased would return to fight for justice (Benyera 2014a, *The Standard* 2011). This practice also emphasises the importance of the spiritual and mystical in tradition-based practices to resolving conflict, which enables the attainment of accountability both at the individual and community level. As such, even if the formal system would give a prison sentence to the murderer (like the 18 years given to the murderers of Chokuda by the High Court in 2011), it remains pertinent that the accused or his family make amends in terms of the demands of the deceased (*The Standard* 2011). This explains why the father of one of the accused, Jason Machaya, took it upon himself to pay compensation of at least 20 heads of cattle and US$15 000 to appease the avenging spirit of the late Chokuda (*The Standard* 2011). Professor Gordon Chavunduka who heads the Zimbabwe National Traditional Healers Association (ZINATHA) welcomed the publicity surrounding the Chokuda murder case by stating that it highlighted the necessity of tradition-based justice systems in fostering healing, reconciliation and justice among black Zimbabwean communities (*The Standard* 2011).

As examined in Chapter 7 of this study, the tradition-based processes of redress incorporate rituals and restitution to balance out the requirements for retributive and restorative justice, a phenomenon that is not attainable through the formal justice system. Tradition-based practices, such as the *ngozi* practice in Zimbabwe, are a huge component of the everyday lived experiences of black Zimbabweans and, they provide binding solutions that are ensured for by processes that govern both the physical and metaphysical realm. This practice has been challenged for its contradiction with other human rights as enshrined in the constitution, for example the requirement to offer a virgin woman as compensation for murder to the aggrieved family (Benyera 2014a). A recent case where a girl was used as compensation to appease the avenging spirit (*ngozi*) occurred in Nyanga district in Manicaland Province, where an old man used his underage granddaughter to pay for the murder that had been committed by a member of his family (Zhakata 2016). This arrangement was organised between the families involved in the conflict and had occurred without the knowledge of the local traditional authorities. When the matter was discovered the involved parties were reported to the police and a criminal case was opened with the courts for the unlawful use of a female person under the age of 18 years in marital arrangements (Zhakata 2016).

Culture is not static, as has been seen in the fact that communities in Zimbabwe have been able to replace the use of a girl child as compensation to appease the avenging spirit with

cattle, in the murder case of Moses Chokuda (*The Standard* 2011). More so, traditional authorities are well versed with the provisions of the constitution relating to the rights of victims and perpetrators, making it unlikely that redress given through the tradition-based justice system will be *ultra vires* the constitution (HZT and ZIMCET 2016). The tradition-based justice system provides an avenue through which the local community renews and reconstruct the intra-personal, family and community relationships (Ellis and Ter Haar 2004: 57).

Rituals are used in good times as a way of celebrating the successes of life and soliciting guidance and, in bad times to regain social harmony. As such, rituals allow the people in the present to engage with their past and to inform the future, a process that allows for catharsis, expiation and renewal of the community. Thus, in African thought and belief systems, the metaphysical being within the cosmological community is never separated from the physical being, yet the formal judiciary processes treat people as single entities that can be isolated from the various realms that inform their being.

5.7 Conclusion

The context of the Zimbabwean conflict was examined in the frame of the state being in a continual process of transition. From the war of liberation, to the Matabeleland massacres, the fast-tracked land reform and the post-2000 electoral violence, these occurrences were examined as cycles of violence that shape the transitions that Zimbabweans have undergone.

In relation to transitional justice, I examined the debates that have shaped the justice processes followed during these transitions. At the national level, the government's efforts have been largely despotic, incoherent and superficial. The repeated proclamations by public officials denouncing government's responsibility for the past injustices has further dehumanised the aggrieved parties. In many instances, the government has not consulted the affected parties before granting amnesty to the perpetrators. Worse still, most avenues for legal recourse through the formal justice processes, such as the *Chihambakwe* and *Dumbutshena* Commissions as well as the Organ for National Healing, Reconciliation and Integration (ONHRI), have been stifled by the government making use of presidential amnesties. The National Peace and Reconciliation Commission (NPRC) which was formed in 2013 to replace the Organ (ONHRI), seems to be a potential avenue that the government has

created to address the past. However, weaknesses of this commission are already being seen, including the delays in its implementation, lack of enabling policy and conducive environment.

At the regional or international level, prospects for justice through regional bodies such as SADC and AU, as well as judicial systems of neighbouring African countries have all failed due to political interferences and lack of political will. Zimbabwe selectively employs international laws and it is not party to the Rome Statutes which constituted the International Criminal Court, creating challenges for the global actors to employ this legal edifice in Zimbabwe.

The tradition-based justice system seems to offer redress as some local members have made use of tradition-based practices to attain justice. For example, the murder case of Moses Chokuda in Gokwe which resulted in the emergence of an avenging spirit (*ngozi*) that needed appeasement, shows that a combination of restitution and tradition-based rituals have enabled conflicting parties to engage with their past. Through the tradition-based practice of *ngozi* the aggrieved family managed to get acknowledgement, apology and compensation as well as retain the dignity of their loved one who had been unlawfully murdered. It seems that this tradition-based justice practice offered catharsis, expiation and retained social harmony to the community which had been affected by conflict. The next chapter provides an analysis of the local perceptions of violence and its impact on community members in Mudzi and Buhera districts.

CHAPTER 6: DYNAMICS OF VIOLENCE IN BUHERA AND MUDZI DISTRICTS

6.1. Introduction

This chapter explores the nature of violence experienced by community members of Buhera and Mudzi districts, and establishes who is responsible for orchestrating the violence and the impact of the violence on the local community. It provides context on the depth of injustices incurred and socio-political dynamics of stakeholders involved in the communities under study.

As elaborated in Chapter 4 of this study, the research findings presented in this chapter and the next, are drawn from the surveys, semi-structured in-depth interviews conducted with key informants, focus group discussions, and participant observations at the public hearings of the National Peace and Reconciliation Commission (NPRC) Bill and the chief's court. Thematic content analysis and descriptive statistics have been used to develop the recurring themes from the narratives of the lived experiences of the research participants. The names of all research participants have been omitted in the data analysis process to protect their identity and ensure consistency. Only age, gender and location (for example 45-year-old female, Mudzi district) will be used when referring to community members, while the judge and civil society representative will be identified as the High Court Judge and CSO representative, respectively. Government officials and traditional leaders will be identified with the short-form of their titles, GOV and Chief, and given a number (for example GOV_1 or Chief_1), following the sequence in which they were interviewed during fieldwork. More so, participants who attended the public hearings of the NPRC Bill will be identified using the acronym NPRC-Hearing and given a number (for example NPRC-Hearing_1), to indicate the sequence in which the recordings of the hearings were transcribed.

Many research participants from Buhera and Mudzi districts described the *nyonga nyonga* (conflict) facing their community by narrating the various forms of politically motivated violence they have experienced. Violence was described using terms such as *mhirizhonga* (disorder), *bvongamupopoto* (disruptive behaviour) and *ingcukaca* (tensions) among others, expressions that deepen the understandings of violence discussed in literature, such as structural, cultural and direct violence, examined in Chapter 1. The local terms of violence were framed by research participants from the understanding that politically motivated

violence is destroying the social fabric (inner essence of humanity) of the community. Both Buhera and Mudzi districts are rural communities occupied by people from the black population group. Many of the people in the two districts subscribe to the African values of cooperation, social harmony, respect, interconnectedness and collective responsibility discussed in section 3.3 of this study. These values denote the code of human conduct acceptable to the community to uphold the dignity of each community member. However, political party contestations are said to have resulted in divisions and violence within family groupings, which led to the defamation of human dignity that community members are expected to preserve.

Much of the violence has occurred between 2000 and 2008 with fewer incidents being reported in the last election held in 2013. The years 2002 and 2008 had the highest reports of incidents of violence and many research participants reported fleeing their homesteads for long periods of time (three to nine months) and a few others relocating permanently (mostly to neighbouring countries, such as Botswana, Mozambique and South Africa), to preserve their lives. One mother reported that,

> One of my sons left home in 2008 and has not returned. I have heard stories that he is in South Africa and in a few incidents, he has called or sent text messages to inform me that he is alive. I understand things are not easy for him there and have encouraged him to come back home but he refuses. He is still traumatised by the murder of his brother who was tortured and killed by ZANU-PF people (46-year-old female, Mudzi district).

This woman shared that the violence that occurred during the post-March 2008 elections cost her the lives of two of her sons. One was killed by alleged ZANU-PF people and the other one has been in exile without prospects of coming back home.

Research participants elaborated that most of the violence they incurred has been committed by members from within the same community. In instances where external actors have been involved in terrorizing the local community, such as the Central Intelligence Organisation

(CIO) and military operatives, the Border Gezi youth militias[21] and war veterans, an internal member of the community was arguably involved, as an informant providing details on the whereabouts and activities of the targeted person. Experiences of violence reported include murder, torture, arson, abduction, unlawful arrest, prolonged detention, body mutilation, beatings, rape, sexual assault and intimidation, which have left deep physical, socioeconomic and psychological wounds among the community. The woman above also stated that,

> My son was 20 years old when he was murdered during the post-March 2008 electoral violence. His attackers included young men he had trained with in the Border Gezi youth military program, who threw a petrol bomb in the car while he was driving with his friend at the Kotwa shopping centre. The two young men managed to escape, but the attackers went after my son and abducted him. His body was discovered after 3 days lying on the side of the road covered in a pool of blood. I have been told that some passers-by who first saw his remains had put branches of trees to cover him. His body had been brutally attacked including bullet wounds shot at close range (46-year-old female, Mudzi district).

This narrative of violence was shared by a mourning mother still grappling to come to terms with the death of her son who was accused of being a sympathiser of the MDC[22] opposition party. In her narration, she believes that her son was an entrepreneur trying to make a living through hiring out his vehicle to community members commuting across the district. Prior to the March 2008 elections, his vehicle had been hired by members of both the ruling ZANU PF party and the opposition MDC, but when the election results came, and MDC had won seats in constituencies that were previously ZANU-PF strongholds, some members of the ZANU-PF party are said to have conducted a witch hunt of suspected supporters and enablers of the electoral loss.

[21] Border Gezi youth militias are school leavers who went through the national youth service training program conducted by the government. The national youth service is intended to groom the youth, instil discipline and impart the nation's values to foster patriotism. However, those who have taken part in this programme are accused of being indoctrinated with the ZANU-PF political agenda and used as foot soldiers of the party during election periods (Latham 2002).

[22] Many research participants treated MDC-T as the MDC because Morgan Tsvangirai was the founding leader of the MDC. Thus, whenever they stated MDC it was assumed to be referring to Tsvangira's party.

Research results relating to violence in these two districts point to three issues; firstly, that much of the violence is influenced by political divisions and competition for electoral support. Consequently, violence is cyclical and has varying levels of intensity, but runs concurrent with the periodic 5-year elections held in Zimbabwe. Secondly, the lack of a legal framework to deal with politically motivated violence has subjected many community members to long-suffering without recourse. One woman reported that,

> We have perpetrators of injustices since pre-independence to date and nothing much has happened to hold them to account, (NPRC-Hearing_29).

Many research participants expressed a sense of disappointment in the judicial system because several incidents of politically motivated violence have been stifled by some political figures who may be implicated. Thirdly, this vacuum exacerbates fear and anxiety among the local community as they have no guarantee to cushion them from future occurrences. The following sections unpack the nature of violence that has occurred, who is responsible for the violent acts and its impact on the local community, followed by a conclusion.

6.2. Nature of violence

The term violence came up strongly in the narrative of experiences that the research participants had encountered over several years. The Ndebele and Shona vernacular words for violence expressed by research participants include *udlame* or *mhirizhonga* (violence, instability or disorder), *ukuxabana* or *bopoto* (quarrelling), *kurwisana* (fighting), *ingcukaca* or *makakatanwa* (tensions), *bvongamupopoto* (disruptive behaviour), *bvonga bvonga* (chaos), nyonganiso (chaos or disruptions) and z*howe zhowe* (chaos). These expressions were used to capture how political divisions and competition for electoral support have destabilised the peaceful co-existence of people in the community. One man shared that,

> When it is election time we evacuate our homesteads and camp in the mountains because the community will not be safe for us. The village becomes very tense, for example in 2008, we went through troubling times *nekuda kwenyaya dzematongerwo enyika* (due to the political party contestations that were happening in the country), (63-year-old-male, Buhera district).

Violence in Buhera and Mudzi districts has manifested as contestations between ZANU-PF and MDC-T political parties, which has mutated and infiltrated the family/clan structures at the community level. The community structure in rural areas of Zimbabwe is formed out of family/clan population groupings that have settled within the same area. These family/clan groupings are identified using totems and the totem represents the ancestral clan name, which enables the people to identify the family branch that one belongs to. For example, the *Dziva* totem is a clan name common among people who originally settled in Chipinge (a district in Manicaland Province which shares a boundary with Mozambique), and moved from other parts of Africa where they had settlements along the ocean (speculatively the Indian Ocean). Each clan gives reverence to the entity they named themselves after, for example the *Dziva* clan, respects waterbodies and cannot consume any water-living organism. The *Dziva* people use the sub-titles *Save, Musikavanhu, Nyika, Pakuru, Sambiri, Musaigwa,* and *Ganda* to refer to their clan name, a practice that has been used even before the colonial era to identify persons. Other totems found among the African people in Zimbabwe are; *Nzou* (elephant), *Shumba* (lion), *Moyo* (heart), *Gumbo* (bull's leg), *Ngoma* (*drum*), *Nhari*, *Shava*, *Nyathi* (buffalo), *Soko* (monkey), *Mbizi* (zebra), *Mbeva* (mouse), *Mhara*, *Tembo,* and *Gwai* (lamb), among others (Kwayedza 2014).

A totem carries the moral values and norms (*Tsika nemagariro* or *Imikhuba lenhlalo*) that guide families in choosing local leaders (the eldest member would usually be appointed along patrilineal lines), marriage, as well as many other day-to-day social activities, including social behaviour such as greetings. In the case of marriage, the offspring from the union adopts the patrilineal clan name. Clan names have been carried over generations and maintained through inter-clan marriages and the traditional leadership institution, comprised of the village head, headman and chief. The traditional authorities are custodians of the family/clan name and vanguard of the clan's heritage and inheritance, including land, mineral resources and nature. Even in the present-day political space, clan names are used by political leaders to promote their lineage, for example the Vice President Emmerson Mnangagwa's totem is *Shumba* (lion), President Robert Mugabe is *Gushungo*, and opposition MDC-T leader Morgan Tsvangirai is *Dziva*.

As examined in Chapter 4 of this study, Chief Nyashanu who belongs to the *Museyamwa* clan or totem, leads the largest group among the African population in Buhera district, followed

by Chief Makumbe who is of the *Sinyoro* clan or totem. Other clan groupings found in Buhera district are *Dziva*, *Murozvi*, *Nyathi* and *Moyo*. ChiZezuru and chiNjanja are the main dialects spoken in the district with small pockets of isiNdebele within the Gwebo community. On a political level, the ruling ZANU-PF party has been represented in the district through public figures such as war veteran and member of parliament Joseph Chinotimba (who belongs to the *Moyo* totem), former Governor of Manicaland Province Kenneth Manyonda (who is a *Save*) and the former Governor of the Reserve Bank, Dr. Gideon Gono (who belongs to the *Chikonamombe* totem). Similarly, the opposition MDC-T has found a support base in Buhera district through patronage of family members related to the party's leader Morgan Tsvangirai (belonging to the *Save* clan), and he belongs to Chief Nerutanga's chieftancy.

In Mudzi district, chiBudya, Tonga and chiToko are the three main dialects spoken by the community members. The main clan is *Soko* and the subsidiary clans are *Nzou*, *Gwai* and *Tembo*. At the political level, the former Governor of Mashonaland East Province, Ray Kaukonde of the *Nzou* clan, once represented the ruling Zanu-PF party, but recently moved to the Zimbabwe People's First (ZimPF) party which broke away from the ruling party in 2014 (Chidza 2017).

Research participants illustrated the infiltration of political feuds into the family/clan setting making use of the Manyonda and Tsvangirai families in Buhera district who both belong to the *Dziva* totem under Chief Nerutanga. These two families support different political parties, with many of the Manyonda's belonging to ZANU-PF and the Tsvangirai's affiliated with the MDC. Within the Buhera district, the *Dziva* clan is represented through the Chief Nerutanga chieftaincy. There have been recent feuds over the appointment of a chief to lead the clan because the family members could not agree on the appointment of a chief that was affiliated with the MDC party. Some research participants shared that chieftaincy in this family is appointed by rotation between two households (*dzimba*), stemming from the ancestral tree, which are Bowora and Mavhirima. When it was the turn for the Tsvangirai household to take the chieftaincy, they were denied the opportunity on allegations that a member of the Bowora household from which they belong to, could not be counted among those eligible for appointment.

It was explained that within this *Dziva* ancestral family, their ancestors practised polygamous marriage but the children from *imba huru* (first wife) and their descendants are given priority when leadership appointments are being made. As such, the Tsvangirai family, is said to have descended from an ancestor of the *imba diki* (second wife), and cannot supersede those from the first wife. These allegations have been refuted by those from the Tsvangirai family who believe that the Manyonda family has conspired to block the process to make way for another family member that would be loyal to the ruling ZANU-PF party. A lot of animosity remains between the two families because of the accusations levelled against each other.

I followed up these allegations with the District Administrators (DA) office in Buhera to understand how traditional authorities are appointed. Officials at the DA's office informed me that the selection of local leaders is determined within families and the DA monitors the process on behalf of the government, but stands in like an election observer. Once the family has decided on a chief, the name is submitted to the Presidency office and the president comes through to officiate the appointment of the elected leader. This explanation suggested that there is minimal political interference that occurs in the selection process.

On the contrary, the research participants maintained that a traditional leader was not only appointed to be a custodian of the clan but also to serve the interests of the ruling government. The interference of national politics in family/clan settings in the post-colonial era in Zimbabwe is not a new phenomenon. As examined in the previous chapter, its roots can be traced to the colonial era whereby, the colonial rulers dismantled traditional leadership structures and handpicked leaders whom they saw would advance their political interests (Mlambo 2014). The current government treats traditional leaders as civil servants and gives them a monthly salary, as a token for the services they render to the local community. During a focus group meeting with the traditional leaders in Mudzi district, interviewees pointed out that, on top of the monthly salary that chiefs get, there are other benefits they receive from the government. These include electrification of the chief's homestead, access to government donations, a car, tractor and building of a road network that links the chief's compound to the main road. These incentives in a poor rural community give prestige to a chosen leader and, in return, the chief is used to build patronage towards a certain party among community members.

Both Buhera and Mudzi districts are poverty stricken communities and a large portion of their population relies on government support and donor aid due to the harsh weather conditions that inhibit agricultural activities (the main source of livelihood). The research participants reported that their socio-economic conditions play a role in determining who they give support to represent them in government, because they heavily depend on external support. Seemingly, political participation and patronage among the rural electorate has been an avenue to escape poverty. Hence, before the rise of the opposition MDC-T party led by Morgan Tsvangirai in the late 1990s, the ruling ZANU-PF party enjoyed dominance in these rural communities because of its ability to channel state resources in the form of food hand-outs and monetary bribes to garner support of the disadvantaged and struggling electorate.

However, this changed with the emergence of the opposition MDC-T, which came with huge donor funding that enabled it to penetrate and offer support to struggling rural communities. The MDC-T party was established in a decade of economic hardships that had brewed a series of protests by university students, journalists and the workers union against the government (Sachikonye 2011). The MDC-T party gained political support for speaking out to the government about the socio-economic hardships citizens were facing due to the implementation of policies such as the World Bank's Economic Structural Adjustment Programmes (ESAP) that had led to huge job cuts and paralyses of state parastatals (Sachikonye 2011). The MDC-T blamed the economic downturn of the country on government's maladministration of state resources, corruption, cronyism and military intervention in the Democratic Republic of Congo (DRC) (Sachikonye 2011).

Among the rural community, especially in Buhera district, the MDC-T was arguably, able to garner support through family alliances along the *Save* clan. When Tsvangirai formed his party, those in Buhera district who live close to his homestead became targets because of the family relations they share with the leader of the MDC-T. One interviewee stated that,

> It should not be a crime in this country for one to choose a political party to support because our constitution recognises the state as a multi-party democracy. However, when you look within a family/clan, siblings and relatives will not be in good relations due to political party contestations. Some might belong to ZANU-PF and others MDC, such that when it comes to elections those belonging to ZANU-PF are used by their party leaders to

> divulge information about who in their family is supporting the opposition. Those affiliated with the opposition are then hunted down and dealt with (63-year-old male, Buhera district).

Another participant stated that,

> The police would arrest people who were listed on the wanted people's list and submit them to the soldiers who had set up a military base here to discipline MDC-T supporters, (51-year-old-female, Buhera district).

Several research participants in Buhera district who come from the same village or neighbouring villages to Morgan Tsvangirai's homestead mentioned that they had been attacked because of the ties they have with the Tsvangirai family. The research participants further suggested that the victimization of community members was conducted systematically, making use of underground informants and insiders who spied on the people. This links to the earlier point mentioned in section 6.1 of this chapter that, violence has been orchestrated with the helping hand of a community member well acquainted with the targeted person. More so, violence has destroyed the social fabric of the community which ensures for social harmony among community members.

6.3 Who is responsible for orchestrating violence?

Since the inception of the MDC-T party, the ruling ZANU-PF party has accused it of being an agent of the Western states, particularly Britain and the USA, established to destabilise the country. This stems from views of some members of the ZANU-PF party, who champion the idea that the Western states have been interfering in Zimbabwe's politics to inhibit the government from addressing socio-economic imbalances left by colonial rulers. One participant reported that,

> The white people are very good at using black people to achieve their interests. When they took our land, they used force to evict our people, but when we did the same they call it human rights violation. Hence, we saw the birth of a party, the MDC, which was specifically formed by the British and the Americans using some of our people who allowed themselves to be used

> and abused by the West. It was heavily funded and at the same time non-governmental organisations (NGOs) sprung up and worked hand and glove with the MDC to ensure that the people are mobilised against the ruling government (High Court Judge).

From the above statement, the socio-economic imbalances facing Zimbabwe are largely centred on the land question. Arguably, when the government began addressing the need to redistribute land beyond the 'willing-buyer-willing-seller' programme that had been adopted at Lancaster House in 1980, it received a lot of backlash from Western states. The Western states (particularly Britain) stand accused of stealing the natural resources of Zimbabwe and this was more rampant during the colonial era where repressive policies were used to side-line the black majority population. In the previous chapter, I examined how the politico-economic endeavours of Cecil John Rhodes and the British South African Company (BSAC) necessitated foreign control of Zimbabwe and its resources (Mlambo 2014). Starting with the Royal Charter of 1890, Rhodes and his accomplices obtained jurisdiction over Zimbabwe which they named Rhodesia after Cecil John Rhodes. The occupation of Zimbabwe by Rhodes and his accomplices permeated the disruption of tradition-based governing structures by shifting political power from the black population to a centralised Western government (Saki and Chiware 2007). The subsequent referendum in 1922 and then the Unilateral Declaration of Independence (UDI) in 1965 gave the white settlers privileges to rule Rhodesia until Lancaster House mediation talks forced the white-led minority government to step down (Mlambo 2014).

Various scholars have argued that colonial rule subjected many people in Zimbabwe to injustices that are yet to be addressed. They include forced disappearances, torture, discrimination, unlawful detention, starvation, land dispossession and confiscation of livestock without compensation (Mlambo 2014, Ranger 1967). One government official stated that,

> Political participation and appointment to public office during much of the colonial era was a privilege reserved for the white minority. One needed to own a certain amount of wealth, of which the colonial administrators made it difficult for most of the black people to acquire wealth. People were separated

> according to skin colour and many of the good jobs, schools and public facilities were out of reach for the black population (GOV_2).

Another participant added that,

> Some of my relatives joined the liberation struggle because of the way black people were treated by the Smith regime. *Masoja aSmith* (Smith's military) often came to our villages with their big guns and terrorised the community to divulge information about the guerrillas (liberation fighters). Here in Mudzi, a lot of landmines were planted along the Zimbabwe-Mozambique boundary to deter people from crisscrossing, because the guerrillas had managed to establish military bases in Mozambique and Zambia. Those landmines are still here and restrict us from moving across the district for fear of detonating them, (Chief_5).

Scholarly work on the Zimbabwe-Mozambique boundary indicate that landmines planted by the Smith regime around 1970s are still a life-threatening feature among transboundary communities in Mudzi district (Daimon 2016, Rupiya 1998). Daimon (2016) describes the Zimbabwe-Mozambique boundary as a geometric border that was developed from an agreement between Britain and Portugal in 1891, when they partitioned territories to occupy in Southern Africa. The boundary area covers about 1231 km and there are four official border posts, namely, Machipanda/Forbes, Espungabera/Mount Selinda, Mukumbura and Nyamapanda (Daimon 2016). The colonial map partitioned homogenous Shona ethnic communities that were located along the Zimbabwe-Mozambique boundary, which lead to people belonging to one family being divided between the two states. For example, during fieldwork I learned that the Magaso and Goronga families that reside along the Mozambique Tete Corridor in the Mudzi district belong to the same *Nzou* (elephant) clan, but have been divided between two countries, Mozambique and Zimbabwe.

While acknowledging the injustices committed by colonial rulers, some research participants, especially those who attended the NPRC public hearings, stated that it is not enough for the government to shift blame onto the Global North actors. Scholars such as Raftopoulos and Mlambo (2009) and Ranger (2004) have argued that the government's narrative of the political crisis in Zimbabwe is giving an obscured image of the underlying issues affecting

the country. Raftopoulos (2009) believes that the challenge facing the country emanates from the lack of social contract between the ruling government and the citizens. For many years the ruling ZANU-PF party had thrived on the idea that the country was birthed from the efforts of liberation fighters, which gave its party the credentials to oversee national politics (Ndlovu-Gatsheni 2009). This narrative created a 'quasi-nationalism' ideology in that, the ruling ZANU-PF party presented itself as the main liberation movement that brought freedom and democracy to the black majority population that was previously suppressed by colonial rule (Raftopoulos and Mlambo 2009). Hence, as a national liberation movement, the ZANU-PF party has positioned itself as the bearer of the national narrative that would shape the history of the new independent state (Ndlovu-Gatsheni 2009). But this minimalist narrative of the history about Zimbabweans (the ZANU-PF story), faces the challenge of treating narratives of other actors and their contribution to liberating the local people from colonial rule, unfit truths about the country's past.

The emergence of the opposition MDC party in the late 1990s, which challenged the ruling ZANU-PF party narrative, created tensions between the incumbent government and opposition. The resulting effects were seen in the refinement of the government's narrative into a discourse of 'patriotic history', in which those opposing the ruling party were labelled traitors and sell-outs, whilst those in support of the party were regarded as true citizens (Ranger 2004). Ranger (2004) argues that the categorisation of people into 'authentic' citizens and 'sell-outs' has created the challenge for the government to develop an inclusive society. Seemingly, the opposition parties have the support of actors in the Global North and human rights defenders, and by implication, the people who oppose the ruling party are regarded as 'sell-outs' and 'puppets' of the Western governments trying to topple a 'legitimate' government.

Resultantly, the government has moved away from the reconciliatory narrative it carried at independence, in which the Prime Minister Robert Mugabe forgave the British settlers and encouraged all parties to work together to build the new Zimbabwe. Moreover, it adopted a Look East Policy in 2003, by aligning itself with socialist-inclined governments, especially China, which enabled the government to move away from upholding liberal democratic principles (Sachikonye 2011). The Look East policy is a political stance that the government took to counter political and economic sanctions that were imposed by Western governments, in response to the political fall-out that accompanied the 2002 elections (Raftopoulos 2009).

The imposition of sanctions worsened the economic situation in Zimbabwe, leading the government to accuse both the opposition MDC party and Western governments of engineering the political crisis that prevails (Sachikonye 2011).

The disturbing scenario with the government-sanctioned politically motivated violence observed in post-independent Zimbabwe is that, political leaders, particularly of the ruling ZANU-PF party, are attacking fellow black people (Mashingaidze 2010, Rupiya 2011). More so, the ruling ZANU-PF party has been accused of using state resources to enrich a few political elites at the expense of the public. The Willowgate saga (1988)[23], the War Victims Compensation Fund scandal (1995)[24] and the looting of Marange Diamond Fields[25] since 2006, are examples of how political elites in Zimbabwe have amassed wealth for personal gain; subsequently, impeding the economic transformation that was fought for during the liberation struggle (Mswelanto 2013).

The disparities in livelihood between government officials and the general populace suggest that wealth comes from political power (Kovacs 2012). Musewe (2014) has described these disparities by labelling the ruling government a predatory regime, which refers to an entity

[23] The Willowgate Scandal refers to the mass buying and selling of vehicles by public officials who had been given priority to secure business cars from the Willowvale Mazda Motor Industries (WMMI). During this period, the government had approved a legislature that enabled government officials to acquire vehicles from the WMMI at discounted rates, on grounds that the car was used for official business. However, some government officials misused this provision and acquired more vehicles for resale at a profit (*The Financial Gazette* 2016).

[24] In 1994 the government set up a War Victims Compensation Fund to provide monetary compensation to people who were injured in the battlefield during the liberation struggle (1965-79). This program was high-jacked by public officials from the ZANU-PF party, for example the former chairman of the War Veterans Association Chenjerai Hunzvi, who exaggerated his state of injuries to solicit more funds. Several political figures have been implicated in this scandal, but none of them has been prosecuted (*The Financial Gazette* 2016).

[25] When former MDC-T Secretary General Tendai Biti was Minister of Finance in the Government of National Unity (GNU) 2008-2013, he made constant requests to the Minister of Mines Orbert Mpofu to provide the Reserve Bank with revenue collected from the Marange Diamond Fields in Manicaland Province, without success. In February 2016, President Robert Mugabe announced that the country had lost revenue from the diamond mines worth more than US$15 billion, but no public figure has been held to account for the missing funds (Saunders 2016, *The Financial Gazette* 2016).

that is extractive and growth impeding. This entity is propelled by a 'predatory coalition' between political leaders and the supporting structures of the government, such as the military, police, intelligence services, judiciary and other government allies in business, who benefit from plundering resources of the state without regards for the greater population (Kovacs 2012, Musewe 2014, Rupiya 2011). Furthermore, this government turns to its monopoly of violence to control the population along party and/or ethnic lines. This relates to what the people in Buhera and Mudzi districts stated as political party contestations between the ruling ZANU-PF party and opposition MDC-T, which have infiltrated the family structure in their communities. There has been reports of arbitrary arrests, detention, torture, forced disappearances and murder of innocent civilians and presumed opponents of the ZANU-PF regime.

The black-on-black violence is being orchestrated by political leaders who continuously promise to work towards establishing an inclusive state that upholds the dignity of all humanity, regardless of race, gender and political affiliation (Mashingaidze 2010, Rupiya 2011). Mashingaidze (2010) stresses that the Lancaster House Agreement in 1979, the Unity Accord of 1987, and the recent Global Political Agreement (GPA) signed in 2008 have become little more than rhetoric, because political leaders are not taking any action to avert further victimization of the electorate. One interviewee stated:

> The sad thing about Zimbabwe is that our Constitution gives us so many rights and privileges, for example freedom of speech. However, the current political dispensation makes it seem like there is no freedom after the speech, (NPRC-Hearing_37).

This relates to how the ruling government has put so many restrictive policies to police the activities of citizens. The ruling ZANU-PF party has reacted harshly against the opposition party MDC-T, which has been calling for institutional, political and economic reform. A popular trend has been to adopt and re-engineer restrictive legislature that had been used during the colonial era, such as the Law Order and Maintenance Act (LOMA) of 1960. A replacement of the LOMA statute in the current government has been the introduction of the Access to Information and Protection of Privacy Act (AIPPA) and the Public Order and Security Act (POSA) in 2002 (Raftopoulos 2009).

Sachikonye (2011) argues that, the re-engineering of LOMA has enabled the government to censor and criminalise engagements of local communities. As examined in the previous chapter, the POSA statute, has been used to prevent civilians, opposition political actors and the civil society from holding public gatherings and to freely deliberate on political issues in the country. Whilst AIPPA has censored the media, particularly between 2002 and 2008, such that citizens could not get any news criticizing current affairs in the country from privately owned local media houses (Raftopoulos 2009). Failure to comply with the above statutes is regarded as a criminal offence punishable with penalties such as fines and imprisonment.

A 52-year-old man from Buhera stated that,

> I was locked up for a whole month in prison without trial. My family did not know where I was because the CIOs had abducted me from my house, beat me up and thrown me in prison, to die from my wounds. The prison wardens used to give me pap mixed with cement in attempt to quicken my death, but I never ate their food. My comrades who had managed to track me down are the ones that ended up arranging meals for me until my release.

From the above narrative, this individual faced injustice at the hands of the CIO operatives, prison wardens and the judicial system. The CIOs abducted him and beat him up because he was a footman for the MDC party and had been active in mobilizing support for the opposition. While there is no legal framework that prohibits people from political participation, the ruling ZANU-PF party has often been accused of using state security agents to intimidate the rural electorate. As a division of the police force, the CIOs have played a role by orchestrating injustices such as unlawful detention, beatings, torture and intimidation. These injustices are argued to have been committed at the sanction of the ruling ZANU-PF party, to stifle opposition. As narrated by one widow in Buhera district,

> My husband was sold out by his own blood brother in 2008. His brother divulged information to *masoja emaguta* (a government sanctioned military operative led by Svosve), who had been hunting down community members suspected of supporting the opposition MDC. When the soldiers came to our house at night, they were accompanied by policemen and ZANU-PF youths who reside in this village (48-year-old-female, Buhera district).

The above narrative reiterates the view that injustices in the rural areas were perpetrated by external actors who worked with some local community members. Here a blood brother turned against another sibling, an act the wife of the deceased man has explained was fuelled by the political divisions between the two siblings because they supported rival parties (MDC and ZANU-PF). Resultantly, contestations of the two main political parties in Zimbabwe have created tensions among the local community, especially within families and between neighbours, as people are separated in choosing to support the MDC-T or ZANU-PF.

It was also reported that the police officials often worked together with military operatives and, a 'military' base had been set up in Buhera district, serving as a detention point to terrorise wanted persons. On the contrary, in Mudzi district there already existed the Command 1 Military Battalion, a military base that was established during the colonial era to provide security to the Smith regime along the Zimbabwe-Mozambique boundary. As explained by officials at the District Administration office, in the post-colonial era this military base has remained functional protecting the state from the spill-over of conflict, as the Zimbabwe-Mozambique border is a volatile region due to the uncertainties in the political processes in Mozambique.

The military officers at this base have also been used to protect wildlife and mineral resources in this region, as well as other security matters such as distributing food aid to remote areas, demining landmines and policing human trafficking which is quite significant in this area. Several research participants from Mudzi district stated however that, during the post-March 2008 elections the military base became a detention camp as those accused of supporting the MDC were often taken in and disciplined for their 'deviant behaviour'. The disciplining of so-called defectors is what has been explained in Chapter 4 of this study as the infamous Operation *Makavhotera Papi* (Where did you put your vote?) campaign (*Human Rights Watch* 2008).

The ZANU-PF youths were often used as foot soldiers to monitor the movements of wanted persons and, this information was then given to either the police or military depending on whom of the two was doing rounds in an area. Some of the abducted persons were released back into their village after being tortured but others were sent to jail for several weeks without trial. Being sent to prison was described as a grooming process where another

government operative (prison wardens) further torments the detainee, to solicit information about certain things. Consequently, prison wardens have been implicated for orchestrating the brutalization of political detainees, usually through refusing them family visits, depriving them food and medical attention in the case of those who would have been injured or suffering from chronic illnesses. The 48-year-old widow from Buhera district further stated that,

> I used to bring food for my husband who was in prison because *vaisamupa kudya kwakakwana* (they were not offering him appropriate meals). He had already been suffering from a chronic illness (diabetes), but his unlawful detention subjected him to long periods without medication and a balanced meal, which he needed to maintain a good health (48-year-old female, Buhera district).

The formal judicial system was mentioned to be highly unfavourable to the rural population because many of the arrested persons could not afford legal representation. The above widow went on to elaborate that,

> One day I cried out to the police officer who used to see me when I visited my husband. I asked him why it is that my husband's offence has not been explained so that l may know how to get him out? [He advised me to find a lawyer and take the matter to the magistrate's court, his docket will be deliberated there]. I managed to secure a pro-bono state lawyer from Harare with the help of comrades in the party. But still, I needed to raise money to hire a car to bring the Magistrate Judge to the court from his home, to deliberate on my husband's case. I secured the funds by selling a cow from our kraal (48-year-old female Buhera district).

This process of being unlawfully detained and having to spend money to bring a judge to the court to deliberate on a matter prolonged the time spent by some detainees in prison. Within the Constitution of Zimbabwe (2013), the police are not allowed to detain someone longer than 48 hours without providing evidence of a case it has against an individual. However, several people have fallen victim through the judicial system without any recourse. Research respondents explained that this occurs because, in some instances, the arrested persons are

not aware of their rights as citizens, while others are victimised by the system because of rogue police officers who constantly change the charge they have on the detained party.

During the public hearings of the NPRC Bill in April 2016, one participant described how politicians are also responsible for manufacturing political violence. He said,

> The two main political parties in Zimbabwe, ZANU-PF and MDC-T, have political slogans that teach political opponents to be intolerant. ZANU-PF's slogan says *pasi nanhingi* (bring down the individual), which can mean bring that person down six feet under [to the grave]. Similarly, MDC-T goes by the slogan; *isa musoro mudenga, batanidza, rovera pasi* (take it up by the head and slam on the floor). These are directives to do violence (NPRC-Hearing_33).

Reports recorded by civil society organisations on encounters of electoral violence since independence amount to over 200 000 civilians across the country (including Buhera and Mudzi districts) (Sachikonye 2011). Several research participants indicated that the ruling ZANU-PF party was responsible for most incidents of the violence reported in their communities. There were also collaborators who worked with or for ZANU-PF in orchestrating violence such as state security agents, soldiers, war veterans, Border Gezi youth militias and a few political figures, for example Joseph Chinotimba who is a current member of parliament representing a constituency in Buhera district. On the side of the opposition MDC party, much of the violence has been committed by the youths who are argued to have targeted some members of the ruling ZANU-PF party in acts of revenge.

Traditional leaders have also been accused of enabling the victimization of community members by providing information to state-security agents conducting head hunts. Several research participants reported that their names are registered with the village head, a practice that was introduced during the colonial era to keep count of the population sizes and names of members in each community. It was reported that traditional leaders were used by political leaders to mobilise people within their constituencies and the name registers were used to police community members that abstained from political activities. For example, when councillors wanted to organise political rallies they would entice traditional leaders to mobilise community members. During elections, the traditional leaders were accused of

policing their community members to vote for certain candidates, especially of the ruling ZANU-PF party, which created fear among those who either had no interest in elections or preferred to support the opposition.

Another form of injustice committed by the traditional leaders that was reported by research participants is, denying community members suspected of supporting the opposition MDC, access to donations brought by relief agencies. The traditional leaders are responsible for assisting the government and donor agencies in distributing donations to communities in famine and drought prone regions (such as Buhera and Mudzi districts). This responsibility is stipulated in the Traditional Leaders Act (Chapter 29:17) and often the traditional leaders are consulted by government officials or donor agencies to mobilise their communities when aid distributions are underway.

Eppel (2009) has observed that some traditional leaders connive with government officials from the ruling ZANU-PF party and distribute aid (for example maize seed, fertiliser and food handouts) along party lines, to those who are pro-ZANU-PF, instead of benefitting the whole community. Sachikonye (2011) adds that competition for access to resources remains prevalent in many rural communities in Zimbabwe (including Buhera and Mudzi districts) due to the polarisation of the socio-political life of the community by the ZANU-PF party. This often fuel feuds among community members because much of the population is living in poverty and rely on aid.

Hence, both the ruling ZANU-PF party and opposition MDC have been accused by research participants of using donations to draw crowds during their rallies, and this also creates challenges for traditional leaders as they are duty bound to assist in the distribution of donations. Arguably, traditional leaders have been caught in the middle of political party contestations, because of the role they play in coordinating the distribution of donations brought by political parties and donor agencies. In many instances, political leaders (especially of the ruling ZANU-PF party) have misappropriated aid to gain political leverage among disadvantaged communities during election periods. Consequently, some community members continue to suffer because some of the stakeholders in charge of administering relief programs have self-serving ambitions.

6.4 Impact of violence on the local community

In the previous section, I provided details of who the research participants identified as being responsible for the violence faced by their community. Varying views were shared by government officials, community members, chiefs and the public, some of which contradicted, illustrating the competing narratives that people hold about their past. Underlying these narratives is the sense of breakdown of the moral code and social trust that binds people to live together in harmony. In this section, I discuss the impact of the acts of violence experienced by the local communities.

Research participants expressed displeasure in how political divisions and competition for electoral support have side-lined people's customs and traditions which in chiShona is called *Tsika nemagariro,* while in isiNdebele its *Imikhuba lenhlalo.* Many of the customs and traditions held by the research participants have been practiced by their clan for generations and passed down through oral tradition. These customs and traditions are set by the people themselves and derive from the myths, taboos and moral responsibilities that the community shares. They encapsulate the essence of African humanity captured in the African philosophy of *ubuntu,* which denotes that the wholeness of human life derives from reciprocating respect for the shared values of the community (Nabudere 2011).

The purpose of customs and traditions is to safeguard humanity through an array of relational expectations, affirmations and responsibilities that bind the people to respect each other and value human dignity (Ellis and Ter Haar 2004). In this setting, individuals owe their existence to others in their community and are bound to exercise restraint on any actions, thoughts and behaviour that brings harm on others. One traditional leader reported that,

> I think that our people have moved away from *chivanhu chedu* (our ethos) because many are no longer afraid to hurt another, for political gains. *Patsika dzedu* (in our customs and traditions) it is not permissible to take part in actions that destroy the dignity of another. *Unhu chaihwo hwaparara muvanhu* (the moral code has been destroyed), (Chief_1).

The above narrative captures the sense of breakdown of the moral code that was shared by all research participants regardless of their political standing. Several victims of violence

expressed concern over the erosion of moral ethos among people in leadership, who many in the local community look up to. One participant stated that,

> I have been told that the death of my son was a well-planned plot involving public figures from the ruling ZANU-PF party. Initially they had humiliated him at a community meeting that was held at the Resource Centre in Kotwa and we thought that was all. But clearly, they did not value his life, hence they came back and finished him off. Considering that my son was still a young man *asati akuziva zveupenyu* (without much knowledge about life), they should have allowed him time to change, instead of killing him, (46-year-old female Mudzi district).

The participant elaborated that the death of her son at the hands of political leaders left a deep wound in her heart, which has been difficult to amend. She agonised over how political figures have disregarded the moral codes of the society by dictating the fate of individuals who threaten their political standing. In this narrative, it was the murder of a young man, which goes against the people's belief in the sacredness of human life. The research participants also reported that some missing persons in their communities may have been abducted and thrown into the dams to die, such as the Tsanzaguru dam in Rusape and Ruti dam in Buhera. One man stated that,

> *Nzizi dzedu nemadhamu haasisina kuchena nekuti masoja akakandiramo vanhu vavaive vapamba vakauraya. Dunhu rino rinotoda kuchenurwa kuti zvigotifambira zvakanaka* (This community needs cleansing because our rivers and dams are polluted from the dead bodies of people that were killed and dumped by soldiers) (49-year-old male Buhera district).

The improper handling of people's remains as narrated above constitutes what literature describes as social pollution (Honwana 1997). The term social pollution refers to disruption of social harmony that can arise from cultural and moral decay (Honwana 1997). Here it captures what the local communities felt as a hovering bad aura within the metaphysical realm, which disrupts the cosmic balance between entities in the physical and metaphysical realms (Honwana 1997). It resonates with the sense of spiritual contamination experienced by people in Gorongosa district, Mozambique, as observed in section 3.4.2 of this study.

As examined in Chapter 3 of this study, among African communities' human life is sacred because people are spirit beings that exist in the physical and metaphysical realms (Gelfand 1973, Nyathi 2015). Within the physical and metaphysical realms, life exists in the form of the 'living-living', 'living dead' and 'unborn living', and people are transcendental beings (Ellis and Ter Haar 2004, Nyathi 2015). The 'living-living' (spirit of the living person) exists in the physical form of a living human being, while the 'living dead' (spirit of deceased persons) exists in the metaphysical form as ancestors of each family who protect and provide nourishment to the living persons and the unborn beings (Gelfand 1973, Nyathi 2015). The 'unborn living' (spirit of a person yet to exist in the physical realm) are future beings whose existence depends on the ability of the living-living and living dead, to preserve the generational inheritance within the physical world (Nyathi 2015).

When an injustice occurs such as the murder narrated above, within the life worlds of those participating in this study, it is understood as not only hurting the physical body but going deeper within and destroying the spirit being. Death of the 'living-living' is a rite of passage into the sphere of the 'living-dead', and this process of departure among many African communities in Zimbabwe ought to happen through natural means for the deceased's spirit to transcend into the other world (Benyera 2014a, Nyathi 2015). Hence, where a person has played a hand in troubling the spirit of another, resulting in death, the deceased departs with an angered spirit, which cannot be accommodated among the 'living dead'.

Moreover, the grieving family also suffers as they will have been robbed of the physical life of a loved one whom they shared with, valuable memories and experiences. Even more, the failure of the deceased's spirit to transcend into the realm of the 'living dead', robs the family of a spiritual guide among the 'living dead' (Nyathi 2015). The realm of the 'living dead' was described by research participants as a tranquil atmosphere embodying peace, harmony and unity. Benyera (2014b) writes that in the Zimbabwean African culture, an undignified death is shameful to the ancestral community because the deceased carries a burdened spirit. Such a spirit remains in limbo because it would have departed from the realm of the living, yet unacceptable among the 'living dead' (Nyathi 2015).

Benyera (2014b) adds that the family of the deceased remains aggrieved because they would have been robbed the opportunity for their loved one to look after them, as a guardian among the 'living dead'. This emanates from the understanding that the 'living dead' are guardians

of the clan responsible for protecting and guiding the family through various aspects of their life. The 46-year-old woman above also narrated that her son was the breadwinner in her family such that his untimely death has brought emotional pain and economic loss. She stated that,

> The death of my son deeply pains me because he left behind a wife who was 17-years-old and an infant that was 2-months-old. *Aive muchengeti wemhuri yake, kana neniwo, uye vanun'una vake, sezvo baba vake anova murume wangu vakashaya muna 2005* (he had been the breadwinner of this household since the death of his father, my husband in 2005), (46-year-old-female, Mudzi district).

Emotional pain and economic loss were recurring effects in the experiences of violence that research participants narrated during fieldwork. Emotional pain was expressed through statements such as, *ndichine bundu mumoyo mangu* (my heart is grieved), *ndakasara nemavanga* (I was left with scars), *ndakaungudza zvakanyanya sendarashika njere* (I grieved like one who has lost their mind), *ndakabatwa senhapwa* (I was treated like a slave), *ndakatambudzwa* (I was tormented), *zvakanditambudza* (it paralysed me) and *zvichiri kundishungurudza* (it still bothers me). These expressions of emotional pain illustrate the psychosocial impact that violence leaves among community members. A woman whose husband was 'sold out' by her brother in Buhera district, described that the two families are no longer relating well because trust was broken. She shared that,

> *Hazvigashirike kuti mwana wameko wawakasiyirana naye zamu anokupandukira kudaro achiziva kuti vanhu ivavo vakakubata vanokuparadza* (it is difficult to accept that one sibling would turn against the other and sell you out to people who will destroy you), (48-year-old female, Buhera district).

She believes that jealous and greed made her husband's brother forget the values they share as a family. Another man stated that,

> In this community, it is difficult to trust anybody because some people are easily persuaded into harming others, especially where political leaders offer them money or food, (53-year-old male, Buhera district).

From the above narrative, it can be observed that some political leaders have infiltrated the community by offering incentives to people who offer information about the political standing of their family members. Family in this context was described to consist of immediate siblings, blood relatives, in-laws and out-laws, who collectively make up the community. The consequence of political interferences in these family settings is that it destroys the social contract and the mutual respect that binds people together, considering that most people are settled along clan lines. One old man shared that despite his old age the youth militias and soldiers abducted and tormented him,

> *Mhirizhonga yakaitika muno pana 2008 yakanga isina basa nemhumhu kana zera remunhu. Vakomana vemayouths nemasoja vakandibata kwakunondirovera kuna Ruti uko. Ndakatyoka gumbo zvokuti nanhasi handichagoni kufamba zvakanaka* (The violence that occurred in 2008 affected people of all stature, including the old. The youths and soldiers abducted and took me to Ruti dam, where they beat me up. My leg fractured from the beatings and I am now disabled), (72-year-old male, Buhera district).

The above narrative captures some of the visible scars that research participants shared which resulted from the violence they incurred. Injustices such as torture, rape, beatings and physical assault leave both physical and psychosocial wounds that can torment the affected person for longer periods than the time it took for the incident to occur. A member of the civil society who was interviewed in the study shared that their organisation and a few others in Zimbabwe have been dealing with many victims, survivors and perpetrators of violence. Each narrative of violence shared by the people they work with shows that violence leaves deep wounds that alter how people relate with each other in the community. In some instances, violence creates the urge to revenge and this often fuels cyclical violence. Other people harbour anxiety and fear which can force them to shy away and inhibit their free interaction with others in the community.

With regards to economic loss, the research participants used expressions such as, *vakaparadza danga rangu* (they destroyed my kraal), *takarasikirwa nepfuma yehupenyu* (we lost our wealth), and *takarasikirwa nemuriritiri wedu* (we lost the breadwinner). These expressions illustrate that the livelihoods of people were affected by the violence that

occurred in their community. Some lost the economically active members of their family, for example the 46-year-old widow examined above, lost her son who was the breadwinner. This same woman lost another son who fled the community and went to South Africa (explained in section 6.1 of this chapter) and, she has not seen him since 2008. She is an unemployed widow because the various opportunities for employment she has pursued have turned out unsuccessful due to the stigma associated with the shameful death of her son. She has been refused employment on allegations that she is also an MDC supporter, which stems from how her son was accused of working with the opposition. Her case is devastating because she still has other children and a grandchild that needs financial support to carry them through their daily needs.

Another example on loss of income was shared by research participants who were left disabled by the wounds they incurred. In Mudzi district, some people experienced body mutilations whereby their arms were cut off, leaving them without parts of their hands. These wounded people find it difficult to conduct the daily activities they used to do before, such as ploughing, brushing teeth or feeding themselves. In both Buhera and Mudzi district, some people experienced beatings that left them paralysed or needing an aide. Some of the disabled people require regular medical check-ups, which put a strain of their finances as most cannot afford to pay off the costs or to get advanced treatment that improves their conditions. One man said that,

> Some people have permanent hospital bills and do regular hospital trips for treatment of ailments that developed when they were hiding in the bush, or the torture they went through. All these visits need money to pay for medical expenses, (72-year-old male, Buhera district).

Some research participants shared that their homes were destroyed, and livestock stolen by the people who attacked them. Such loss of wealth has worsened the living conditions of the affected persons, considering that most people in the rural areas use their livestock for different socio-economic activities. Livestock in the form of cattle, goat, sheep and hen are often used for social activities such as rituals, marriage (as part of the *lobola* or bride price), ceremonies (for example funeral) and celebrations (for example weddings). Cattle is also used for agricultural and domestic activities, for example cattle drawn plough, enables the people to till their farms, while cow dung provides manure and is also used to polish the

house floors. Livestock is also used for trade, for example when people do not have money they can exchange a goat, lamb or hen for food supplies and clothing. In some cases, the rural people have sold their livestock to raise money to pay for goods and services such as sending their children to school or the hiring of a vehicle to transport a judge to the Magistrate's court, as narrated by one of the research participants.

In early 2017, the national government also acknowledged livestock as a form of trading commodity by allowing people in the rural areas to use goat, hen or sheep to pay for tuition in schools. The Minister of Primary and Secondary Education Dr. Lazarus Dokora stated that schools need to be flexible and accept various forms of payment because the country is facing a financial crisis that is restricting the flow of cash (Gwata 2017). Livestock is also used for food providing meat and milk for the families, while the animal hide is used as seating matts. Hence, the loss of livestock creates a lot of challenges for people in the rural areas because they are robbed of a resource that has great value in their day-to-day livelihood.

6.5 Conclusion

This chapter provided a context in which to understand the injustices experienced by people in Buhera and Mudzi districts and the socio-political dynamics of the stakeholders involved. This enabled this research to establish the form in which violence has occurred, the actors involved and the impact it has had on the local people. Violence in the vernacular language of the communities under study refers to *mhirizhonga* (disorder), *bvongamupopoto* (disruptive behaviour) and *ingcukaca* (tensions) among others. These terms denote a sense of breakdown of the social fabric of the community, which has occurred due to acts of misconduct that undermine the dignity of other people.

The community structure in these two districts consists of family/clan population groupings that have settled within the same area. These family/clan groupings are identified using totems and the totems are their ancestral clan name, which enables them to identify the family branch they belong to. Each clan has moral values and norms (*Tsika nemagariro* or *Imikhuba lenhlalo*) that bind the family and instil harmony. Families have been divided by choosing to support one party. Consequently, some siblings have been accused of assisting their party to abuse family members who belong to the other party.

Research participants reported that their communities have been subjected to politically motivated violence at the hands of security agents sanctioned by the ruling ZANU-PF party. This violence has been stirred by the rise of the MDC-T party, which is the major opposition party in Zimbabwe. The ruling ZANU-PF party and its accomplices (Border Gezi youth militias, ZANU-PF youths, the military, CIO operatives, war veterans, and the judiciary) were accused of using violence to intimidate the community and disciplining those suspected of supporting the opposition. This policing of the local community has been conducted with the help of internal family members because the people are settled along clan lines and in one family, siblings might belong to different parties.

The political party contestations and competition for electoral support occurring in Buhera and Mudzi districts, have left devastating wounds among the populace, which cut deep into the essence of their humanity. Humanity among the African people in Zimbabwe is commensurate with the African philosophy of *ubuntu*, in that the individuals owe their existence to others in their community and are bound to exercise restraint on any actions, thoughts and behaviour that brings harm on others. Through local customs and traditions (*Tsika nemagariro* or *Imikhuba lenhlalo*), the people are expected to respect each other and uphold the dignity of all humankind. Several victims of violence have expressed concern over the erosion of moral ethos that bind people in their community.

Politically motivated violence has left psychosocial wounds on the affected parties, which take much longer to heal. It has altered the living conditions of the people as some have lost an income, are disabled or lost wealth, which makes it difficult to carry on with life. The well-being of people has been disrupted because politically motivated and government sanctioned violence is destroying the social fabric that binds the community to live in harmony. The following chapter examines the avenues for justice that were discussed by the research participants and how they may contribute to bringing social harmony among conflict stricken communities.

CHAPTER 7: UNDERSTANDING JUSTICE AND JUSTICE PROCESSES THROUGH THE LENS OF THE LOCAL COMMUNITY

7.1 Introduction

The conflict faced by people in Buhera and Mudzi districts was described as *nyonga nyonga*, which stems from contestations between community members who support different political parties. The social space of the local communities has been affected by events in the national arena due to competition between the ruling ZANU-PF party and the opposition MDC-T, for electoral support. In the contemporary Zimbabwean society, holding regular elections has become a form of constitutive power that legitimises the governing body of the state. Since independence in 1980, Zimbabwe has held ten cycles of elections (parliamentary and presidential), most of which have occurred with varying intensity of violence at the community level.

Relationships among community members have been strained due to political divisions and infighting. The social fabric that binds the communities has been damaged through grave acts such as murder, torture, rape, unlawful detentions and abductions, among others, as were reported by the research participants. This study sought from the local communities the avenues for justice they deemed viable and whether they have something to offer in understanding how transitional justice and reconciliation processes may be facilitated in Zimbabwe. What emerged from most of the responses is the view that justice should be an internal process. One man stated that,

> Us Zimbabweans if we are left to do things our way, we are good by ourselves and have our own means of dealing with our issues. Remember it is not in our nature to kill each other, *panoita nyaya yengozika nokuti upenyu chinhu chakakosha kumunhu wese* (that will bring a case of the avenging spirit because life is a precious thing for everyone). I cannot just treat another anyhow (High Court Judge).

These words were expressed to affirm that transitional justice processes in Zimbabwe need to be administered by the Zimbabwean people in accordance with their customs and traditions and not Western norms. The High Court Judge went on to argue that,

> If some people among us would like to chat and dance to the tune of the Western actors (referring to following prescriptions of the Rome Statutes), we will not have transitional justice, forget it.

This view was affirmed by several participants from Buhera and Mudzi districts, and a few others who took part in the public hearings of the National Peace and Reconciliation Commission. On the one side, were the civil society and human rights defenders championing that transitional justice processes in Zimbabwe need to meet international standards. On the other side, were ordinary citizens seeking for justice that is tangible and meaningful to their ways of life. There were also government officials who argued that international standards are Western practices being pushed upon an African society which already has its own way of doing things. As such, the NPRC and other past initiatives of the government have been undertaken to please the international community, in that the government appears to be doing something about its past, yet its efforts are ill-fated.

Hence, this chapter presents the varying voices of the local community on their understanding of justice and how they envisage to address the past injustices incurred, considering the avenues and forms of justice familiar to them. In the following sections, I begin by offering the definition of justice that was discussed by research respondents, followed by the discussion on avenues for justice available to the community, and then the nature of justice required by the people and its challenges. Lastly, I offer a conclusion. The implications of these findings on transitional justice and reconciliation in Zimbabwe will be discussed in the following chapter.

7.2 Defining transitional justice and reconciliation in local terms

What was frequently mentioned in the responses of the participants in Buhera and Mudzi districts to the questions about transitional justice and reconciliation in Zimbabwe, is the lack of local words that appropriately translate to the concept transitional justice. However, they gave local meanings of the term justice which include words like *kuenzanisa* (creating a balance or making equal), *kunzwana nhunha* (listening to troubling issues), *lunganisa* (making things right or equal) and *kuringanisa* (making amends or creating a balance). The concept reconciliation was translated as *yananiso* (bringing back together), *kugadzirisana*

(fixing things), *kutaurirana* (engaging in dialogue) and *nokubuyisana* (making amends or restoring things). The above expressions of justice and reconciliation have connotations of restorative justice (rebuilding relations of conflicting parties) in that, they ascribe responsibility to the conflicting parties to work together and come up with amicable solutions.

As examined in Chapter 2, restorative justice focuses on re-instilling social harmony and trust among conflicting parties, rather than just apprehending offenders following laws of the state (Fischer 2011, Johnstone 2013). Zehr (1995) regards an injustice as a violation of the human essence (intrinsic being) and, therefore, sees justice as the opportunity for an offender to make things right by restoring human dignity where it has been defiled. Johnstone (2013) adds that restorative justice enlightens the offender on the impact of his/her actions on others and that he/she is liable for repairing the damage. Hence, to make things right the offender reaches out to the affected party, often with the assistance of other community members, and they deliberate on solutions that would meet the needs of the wounded person.

In working together, people listen to the issues that have affected the other and seek for means to amend the imbalance that occurs when an injustice has been committed. This prevents further victimisation of the affected people because the conflicting parties are brought together in a safe environment that allows for open dialogue on the matters affecting them (Anderlini *et al.* 2004). It is argued that repairing relations of the conflicting parties and meeting the needs of the wounded person gives greater chance for the injustice not to recur (Anderlini *et al.* 2004).

The above local words for justice and reconciliation were stated in the context of the conflict being understood as an internal dispute (within the community) because the violence that people experienced has been orchestrated by people familiar to them. Violence has occurred among family members and, has been committed by family members who worked with external people, such as the government-sanctioned security agents examined in the previous chapter. More so, the local people reported that violence had destroyed the social fabric (essence of humanity) of the community, such that many people are no longer on talking terms and they do not trust each other. This breakdown of relations among family members is arguably a deadly feature in their community because it speaks to the core values of the

people, namely, cooperation, social harmony, respect, interconnectedness and collective responsibility.

People in Buhera and Mudzi districts subscribe to the understanding that *kuti munhu unzi munhu, vanhu* (a person is a being because of other people), which reinforces the relevance of *Ubuntu* as a fundamental value of the community. As discussed in Chapter 3, the African philosophy of *Ubuntu* denotes a moral status of wholeness or oneness of life, and locates the individual human being within the larger community (Nabudere 2011, Setiloane 1978). Using *Ubuntu* as an analytical lens it provides the understanding of human beings as interdependent entities, hence meanings of justice such as *kuenzanisa* (creating a balance), *kunzwana nhunha* (listening to troubling issues) and *lunganisa* (making things equal), shared by the respondents, describe the collective responsibility that people have in their community.

In rendering *kuenzanisa* or *kunzwana nhunha*, the collaborative efforts of the family/community lighten the burden on the affected parties and often empower the individuals. Moreover, *kuenzanisa* or *lunganisa* retains an equilibrium between the conflicting parties because an injustice is understood as 'deviant behaviour' that destroys the essence of another human being. The balance mentioned by the participants is synonymous to a 'modicum of normality' (a position of sustainable peace and co-existence), described in the work of Sarkin (2008). Furthermore, in *kunzwana nhunha*, the community showers the affected party with empathy, which is a crucial component in the justice process because it gives public acknowledgement of the harm done and re-affirms the dignity of the persons involved.

Hunhu/*Ubuntu* (the ethical code) is central to the essence of humanity among the local community, in that even those accused of wrong doing, are still seen as human beings though they have deviated from the moral codes of the community. Hence, the justice pursued seeks to acknowledge the wrongs done and, to make the offender aware of the impact his/her actions have on others. Once an offender has become aware, he/she is expected to take responsibility by reaching out to the affected party and ask for forgiveness as well as pay any compensation that may be required. This element of creating space for these deliberations to occur and then offering compensation for the harm incurred fosters social harmony.

More so, compensation stands as a form of retribution to the offender in that one parts with either material or financial resources to appease the wounded party. Among the local people, compensation is a punitive measure of their justice process and it is offered to improve the well-being of the affected party. This can be understood as their way of balancing retributive and restorative justice, without incarcerating the offender. Incarceration is not well supported among the local people because of the economic and social burden that comes with having to look after the family of the prisoned offender. The injustices that have occurred involve people within the same community, some are even siblings, which means that when someone is sent to jail, the other family members would end up taking over the family responsibilities of the imprisoned party.

Furthermore, given that much of the violence was conducted by local members, and the alleged perpetrators worked in groups, if people are to be sent to prison there is a chance that the state prisons do not have capacity to hold all prisoners. This may create a burden of overcrowding such as occurred in Rwanda after the genocide. Even so, imprisoning offenders may create a financial strain on state resources given that the country's economy has not been performing well for many decades. President Mugabe recently (early 2016) pardoned over 2000 prisoners across the country in effort to decongest the prisons, which already indicates that the state does not have resources to sustain many prisoners (Chigogo and Rori 2016).

Hence, spiritual agency is central to how community members relate with one another in peaceful and difficult times. Among the local community, restoration of social harmony is not only done to repair relations between the living beings (spirit of the living persons), but extends to the bigger community made up of the 'living dead' (spirit of deceased persons) and 'unborn living' (spirit of a person yet to exist in the physical realm). This stems from the understanding that a living being is a spirit being, who belongs to a cosmological community made up of the physical and metaphysical realms. Within each realm are living entities bound by an interdependent relationship that connects those existing in the physical world and the metaphysical. As such, when violence occurs, the justice rendered seeks to repair the damage that occurs to entities in both the physical and metaphysical realm. This captures the humanistic and spiritual values of *Ubuntu* that were described earlier in Chapter 3 that, *Ubuntu* is both reconciliatory and transitory. It preserves social harmony between the 'living-living', the 'living dead' and 'unborn living' in all circumstances (Nabudere 2011).

7.3 Avenues for justice

As presented in Table 1 (see section 4.4.1), a total of 305 respondents took the survey questionnaire, and 203 of these participants were community members from Buhera and Mudzi districts. In their response to the survey question on the avenue for justice they consult to resolve conflict (see Table 2 below), most of the respondents selected the tradition-based justice system as their preferred avenue for justice. The traditional leaders in the study reported that often people are not aware of how the formal justice system works and the matters it attends to. The community members opt to resolve their conflicts at the chief's court because the court is located within proximity, the judgement is reached through consultation with all parties and there is room for negotiation.

Table 2: If there is a dispute who would you go to?

	Male	**Female**	**18-35 years**	**36-50 years**	**51-64 years**	**65 and older**	**Buhera**	**Inyathi**	**Mudzi**	**% of total respondents**
Government/court	9,6%	12,9%	26,5%	10,8%	3,5%	3,2%	20,8%	4,9%	8,8%	11,5%
Traditional system	53,3%	56,5%	42,6%	49,2%	64,0%	80,6%	34,7%	59,8%	70,6%	55,1%
Both	37,0%	30,6%	30,9%	40,0%	32,6%	16,1%	44,6%	35,3%	20,6%	33,4%

From Table 2 above, it can be observed that 20.8% of the respondents in Buhera district chose the formal justice system, while 34.7% picked the tradition-based justice system and another 44.6% selected both the formal and tradition-based justice systems. On the contrary, in Mudzi district only 8.8% of the participants selected the formal justice system and 70.6% selected the tradition-based justice system, while another 20.6 % picked both the formal and tradition-based justice systems. The disparity in responses given by the research participants can be understood to reflect the depth of divisions among community members that has resulted from political interferences occurring in the past years. In Buhera district, some traditional leaders, government officials and the police have been implicated in the injustices incurred by the people, and this possibly contributes to the lower rating in the selections for both the tradition-based and the formal justice systems.

The previous chapter described how the succession process in the Nerutanga chieftaincy has brought divisions among the Manyonda and Tsvangirai families, with the latter accusing the former of using political patronage to block the Tsvangirai family from being appointed to lead the clan. Research respondents also reported of how family relations were scarred when some family members chose to support the opposition MDC-T, which despised other members who have allegiance to the ruling ZANU-PF party. In the following sub-sections, I elaborate on the tradition-based and formal justice systems as avenues of justice, drawing on the discussions made with the research participants.

7.3.1 The tradition-based justice system

The existence and use of the tradition-based justice system to resolve conflicts among community members in Zimbabwe has a historical narrative that dates to the pre-colonial era. Various scholars, including Bhebe and Ranger (2001) and Gelfand (1973), have examined the political history of tradition-based justice systems in Zimbabwe, but this chapter concentrates on the colonial and post-colonial period in examining how this justice system has evolved. During the colonial era, when the BSAC government introduced the formal justice system which made use of Anglo-Roman-Dutch Laws, the tradition-based justice system remained in use among the African rural population due to the ease of access to traditional authorities and affordable court fees (Saki and Chiware 2007). More so, most of the rural population had low literacy levels and limited proficiency in the English language (the then main language that was used in the formal courts), which both disadvantaged them and made the formal courts unappealing (Heal Zimbabwe Trust (HZT) and Zimbabwe Civic Education Trust (ZIMEC) 2016).

After independence, the proliferation of three official languages (English, Shona and Ndebele) enabled the previously marginalised population groups to access the formal justice system to resolve their conflicts (Saki and Chiware 2007). Nonetheless, a larger portion of the black population in rural areas, who make up over 60% of Zimbabwe's total population, remained without access to the formal courts, mainly due to: (i) exorbitant legal fees, (ii) formal courts are usually located far from the area of residence of many rural people, and (iii) the cases take long to conclude making it expensive and time consuming for the rural people to follow through with the court process (Bhebe and Ranger 2001, HZT and ZIMCET 2016).

The rural populace (including people in Buhera and Mudzi districts), has been left to rely on the tradition-based justice system, which the interviewees described as a three-tier court (*dare*) made up of the family court, village court and the chief's court. The village court and chief's courts, are usually located at/close to the residence of the village head, headman or chief.

These traditional institutions are recognised by the government through the Traditional Leaders Act (Chapter 29:17) and customary law (Chapter 7: 05), and they are categorised as inferior courts because they can only preside over civil disputes at the community level (Constitution of Zimbabwe 2013). This means that the tradition-based justice system has limited jurisdiction, it only applies to matters enforceable under customary laws, and these are cases of a civil nature. Nonetheless, both the chief's court and the village court can issue lenient and harsh penalties to remedy local conflicts. For example, in the case of infidelity, the offender may be charged to pay a goat or cow as compensation to the affected party.

In terms of composition, the community members appointed to chieftainship in the two districts are mostly men because their succession practice is hereditary along patrilineal lines, except for a few instances where women are appointed (an example is Chief Chimukoko in Mudzi district). Women are usually appointed as assessors or village heads which are subordinate positions to the role of the chief. Thus, the tradition-based justice system has a gender bias towards men, a shortcoming that can be seen to promote patriarchy within the community. However, the Constitution of Zimbabwe (2013) stipulates that the proceedings of the local courts need to be gender sensitive and uphold all provisions of the constitution, a measure this chapter argues, already guards against patriarchal and masculine dominance at community levels. Further research is needed to fully understand the gender dynamics at the community level.

In the survey questionnaire, the respondents were asked to indicate the actors in their community they consult with in resolving a dispute (see Table 3 below). In table 3 below, most respondents indicated family/friend (43.3%) as the first port of assistance they report to when resolving a dispute. Second to family/friend, they selected the community mediators (42.6%), followed by the chief (38.4%) and then church/religious leaders (14.8%). An explanation of these results can be drawn from the reports that community members have strong clan or family ties such that, intuitively, they consult other family members, before

they take the matter outside. The research respondents added that when an issue arises, it is not treated as a matter for the individual, but rather it draws the attention of the whole family and greater community.

Table 3: To whom would you turn to resolve the dispute?

Category of actors	First choice	Second choice	Third choice	Fourth choice
Chief	10,8%	26,9%	38,4%	11,8%
Community mediators	27,5%	42,6%	15,4%	1,0%
Church/religious leader	13,8%	17,4%	13,1%	14,8%
Family/friend	43,3%	7,5%	9,5%	14,1%
Other	-	-	-	-

****NB**: Results are given as a percentage for each category of actors in order of the preferred choice of contact.*

Family was described as biological siblings (same parents), blood relatives, close relatives, in-laws, out-laws and the extended family. Within the family setting, respondents explained that the family court (bottom tier) attends to issues such as infidelity, *gupuro* (divorce), incest, domestic violence, quarrels and petty theft. A family caucus (*musangano*) is often called by the elders of the family and the disputing parties are given the platform to share their grievances. The family elders usually provide counselling in cases of infidelity, *gupuro* (divorce), domestic violence and quarrels. Issues of petty theft and incest often require stringent measures, such as punishing the perpetrator through beatings, making them pay compensation or reporting them to the police (in rare cases).

The community mediators (*madzisahwira*) were described as people with a good standing in the community, who are consulted to mediate a dispute. *Madzisahwira* are also seen as confidants because they often have some form of relationship with the conflicting parties, and exhibit high moral values and good knowledge of the customs and traditions of the people. Their depth of knowledge and experience in resolving various issues within their community makes them influential players in repairing relations. One woman reported that,

> Some local NGOs have come through and taught us about human rights and elections, which has made us aware of the effects of

> electoral violence. We then choose among ourselves community peacemakers *vanobatsira kuti panenge pakuda kuita mhirizhonga vagopindira vachipa dzidziso muvanhu* (who have the task of mediating incidents of violence and providing guidance) (56-year-old female, Mudzi district).

The village court and chief's court make up the middle and upper tier (respectively) of the tradition-based justice system. The *dare* (court assembly) is usually conducted under a tree, a feature that resembles diversity (the many tree branches), unity (connected by one trunk) and harmony of the community. Some chiefs have managed to build infrastructure for their courts (for example chief Nyamukoho in Mudzi district) and others make use of community halls especially when there is bad weather to sit under the tree.

The village court is presided over by a headman or village head who is appointed by the chief. Both the headman and village head provide an administrative role to the chief. They preside over issues that the family court has failed to resolve and serve as a port of appeal for disputes handled by the bottom tier. Cases addressed by the village head or headman, include livestock theft, incest, infidelity, land disputes and reckless grazing (for example leaving cattle to graze in another person's field).

The chief's court serves as an appeal's court on matters that the subordinate local courts would have failed to resolve. In addition to hearing the matters addressed by the other lower courts, the chief oversees protecting the heritage of the community and territory. This involves safeguarding the community by ensuring non-interference from neighbouring communities, for example shifting of boundaries and immoral behaviour. Moreover, the chief has authority to refer some cases to the superior courts or the disputed parties can request the chief to send them off with a letter of appeal, this is usually to the Magistrates' court.

The traditional leaders reported that when a person has been wronged, the matter is reported to either the village head, headman or chief through *mupurisa wamambo* (the court messenger) who presents the matter to the traditional authorities. The respective traditional authority who receives the report, would then send the *nhume* (court's messenger) with a summons to call the accused party to court for the matter to be deliberated. When presenting a case to the village court or chief's court, both the complainant and accused bring *muromo*

or *mapeto* (a small token). The token can be a hen or the equivalent in currency (about US$5), which the court council can use to get food during the court proceedings to avoid taking frequent meal breaks. In other cases, the money can be given to members of the chief's council to pay for any transport costs incurred, especially those who would have come from afar. Once the matter has been resolved the complainant is given back the token he/she offered to the court at the beginning of the hearing. Even though the people are expected to pay a token to present their case at the local court, the token is not strictly enforced because the traditional leaders do not like discouraging community members who have nothing to offer from approaching the court.

At each court hearing, the conflicting parties stand for themselves and *zvapupu* (witnesses) are often called to give testimonies. When resolving a dispute brought to the court, the traditional leaders are often supported by *indunas* or *machinda* (counsel advisors) who are appointed based on their knowledge of the heritage, customs and values of the community as well as reputable experience in resolving local conflicts. The traditional authorities do not have any written laws that they follow; it is based on oral tradition. However, there are few guidelines on the jurisdiction and procedures of the traditional courts which are stipulated in the Traditional Leaders Act (Chapter 29:17) and Customary Law and Local Courts Act (Chapter 7:05).

During the *dare* (court hearing), the role of traditional authorities is *kuenzanisa vanhu* (establishing an equilibrium between the conflicting parties) and *kuyananisa* (reconciling). One traditional leader stated that,

> *Mambo aripo kurangaridza vanhu mudare kuti nyangwe vanhu matadzirana sei mese muchiri vanhu. Munhu haarasi hunhu nokuda kwekuti ane chigumbu* (the chief is there to remind the people that even though they have hurt each other, they are still human beings. A person cannot throw away his/her dignity because of anger) (Chief_6).

Interviewees emphasised that restoring social harmony and dignity of the people are crucial aspects of the tradition-based justice system. One man reported that,

> People come back reconciled because *mambo* (chief) *anonyaradza hana dzedu* (he consoles our hearts) by dealing with things in the open and in consultation with all the parties involved. The chief *vanoita kuti tigarisane nekuti vanoenzanisa vanhu* (promotes harmony in the community by reconciling people), (67-year- old male, Buhera).

Respondents reported that the social fabric needs to be preserved even in ugly circumstances of violence and harm because *munhu haarasi hunhu nokuda kwechigumbu* (one should not lose moral ethos even in anger). These sentiments reinforce the values of *Ubuntu* discussed earlier in section 7.2. Therefore, during a court hearing, the traditional authorities also counsel the conflicting parties as a way of building relations that enable the people to live together in harmony.

Other key stakeholders that the research participants identified to have played a crucial role in resolving disputes in their community is the church/religious leaders. *Mapositori* or the white garment churches, which combine some elements of Western Christianity with the African Traditional Religion, have also been providing an alternative for people burdened with spiritually related challenges. These African apostolic churches have *maporofita* (white garment prophets) who are gifted with spiritual powers to exorcise spiritual manifestations. For example, *ngozi* (avenging spirit) and misfortunes that relate to one's bad conduct or the bad conduct of a member of the family, are common matters for which the white garment prophets pray for a resolution.

During the fieldwork, the researcher attended a court hearing (*dare*) where a man was asking for reparations (*muripo*) because the white garment prophet had prophesied about the issue of infidelity involving his wife. The man's wife was present at the hearing together with the co-accused, who both acknowledged their actions and asked the court for pardon. The chief ruled that the wife and her accomplice pay compensation (in the form of three bulls and a goat) for defiling a marriage and, local elders were tasked to counsel the married parties to help them work through their marriage since they did not want to divorce.

7.3.2 The formal justice system

The survey results indicated that many local people in Buhera and Mudzi districts do not prefer to make use of the formal justice system. This finding exposed the displeasure that the rural population has with the judicial system in Zimbabwe. One man in Buhera district reported how he had spent several weeks in prison without standing trial because the police officers constantly changed the charge levelled against him. Another woman in the same district related how she had to sell her cattle to raise money to pay for the vehicle hired to bring a judge to the Magistrate's court to rule on the unlawful detention of her husband. This woman elaborated that the prolonged incarceration of her husband affected his health and led to his untimely death shortly after leaving prison. In Mudzi district, the mother of a young man who was murdered by alleged ZANU-PF operatives, narrated that the murder file of her son had gone cold because the police have not been able to apprehend the perpetrators, even though they are known to be still residing in the district.

As examined in Chapter 5, the national courts in Zimbabwe comprise of the Magistrates' Court, High Court, Supreme Court and the Constitutional Court. A professional judge presides over these courts, which are very procedural and formal because legal representation is required during a court hearing and the Anglo-Roman-Dutch laws are used to reach a verdict. Constitutionally, the national courts are regarded as an independent arm of the government, responsible for protecting and rendering justice to all citizens. However, over the decades, the efficiency of the formal judicial system has been compromised by political interference. For example, the judiciary has failed to bring to account those accused of abducting the MDC-T activist Itai Dzamara, who was abducted in March 2015 (Amnesty International 2015).

Another man, called Sanderson Makombe who survived the petrol bombing of a car driven by MDC-T activists Tichaona Chiminya and his companion Talent Mabika in Buhera district on 14 April 2000, reported that he is still disturbed that his attackers have not been held to account (Guma 2009). Responding to an interview with Nehanda Radio on the 28th of May 2009, Makombe stated that a CIO operative called Joseph Mwale was responsible for the attacks but has been protected by the government which continues to employ him, and he has, subsequently, ignored court summons (Guma 2009). For Makombe justice is a two-way process where lesser crimes could go through reconciliation and forgiveness, but the higher

crimes, those that have a higher culpability, should be tried through the formal courts or the tradition-based justice system (Guma 2009).

During the fieldwork, a few respondents supported the view that the formal courts should administer justice for victims of politically motivated violence. Those who needed the formal courts to intervene substantiated that some of the incidents that occurred are prosecutable under the laws of the state. However, there was a push towards having the National Peace and Reconciliation Commission (NPRC) being used to administer such justice because the formal courts are not devoid of political interference.

At a public hearing of the NPRC Bill in Chinhoyi in April 2016, a government official explained that the commission has been set to promote *runyararo* (peace) and reconciliation among communities affected by violence. Here the local words for reconciliation used by the official were *kuregererana* (forgiving each other), *kukanganwirana* (letting go of the past) and *kugarisana* (living together), which he mentioned would enable people to move past the disruptions that have occurred in the country. What can be observed from the above view of the government official, is a difference in thought on how the local communities define reconciliation and the meaning held by the government. The local people defined reconciliation as *yananiso* (bringing back together), *kugadzirisana* (fixing things), *kutaurirana* (engaging in dialogue) and *nokubuyisana* (making amends or restoring things), terms which explain that the conflicting parties work together to find solutions. On the contrary, the words *kuregererana* (forgiving each other), *kukanganwirana* (letting go of the past) and *kugarisana* (living together) describe a process that is less involving and leading towards amnesia. One could draw that the government is still stuck on its approach of letting go the past without deliberating on what transpired.

Another government official during the public hearings of the NPRC Bill in Harare in April 2016 described the functions of the commission by stating that,

> The constitution states that the commission shall ensure for post-conflict healing and reconciliation, as well as develop means to remove patterns or roots of conflict in the country, such as political parties and ethnic tensions (NPRC-Hearing_2).

Many people who attended the public hearings appreciated the establishment of the commission and the functions it had with regards to addressing past injustices in Zimbabwe. However, they cited several problems that would make the commission less effective in administering the justice that people required. A representative of a local civil society stated that,

> There is need for the bill to indicate how victims and witnesses will be protected when they come through to the commission, (NPRC-Hearing_3).

The protection of victims and witnesses explained above was suggested in the context that it is a requirement in accordance with the Rome Statutes that needs to be met by the courts when bringing through victims and witnesses to testify. What also came out of the public hearings is the description that the NPRC needs to be designed to meet international standards and regulations, particularly upholding international laws, humanitarian law and human rights law. Such prescriptions for the commission were shared by attendees who were representing the civil society, particularly human rights defenders who even suggested the South African Truth and Reconciliation Commission as a yardstick on which the works of the commission could be determined.

More so, while the NPRC bill acknowledges that tradition-based justice systems would need to be accommodated in the workings of the commission, there is no evidence of any efforts being made by the government to make the legislature amenable to tradition-based justice practices (such as examined in section 7.4.1). This raises some challenges among the local community, particularly those who may prefer to use tradition-based practices and local notions of justice. In the descriptions of justice given by the people in Buhera and Mudzi districts, namely, *kuenzanisa* (creating a balance or making equal), *kunzwana nhunha* (listening to troubling issues), *lunganisa* (making things right or equal) and *kuringanisa* (which means making amends or creating a balance), there is a lack of human rights sentiments. The expectations of the local people regarding justice differ from the expectations that were pushed for by some civil society representatives as stated above.

How the local communities envisioned justice is that violence has destroyed the social fabric (essence of humanity) of the community, such that many people are no longer on talking terms and they do not trust each other. This breakdown of relations among family members is arguably a deadly feature in their community because it tramples on the core values of the

people, namely, cooperation, social harmony, respect, interconnectedness and collective responsibility. As such, it is upon these values of the people that understandings of justice may be framed so that the process retains social harmony and dignity of both the offender and wronged party.

Another participant rejected the bill citing that it was silent on compensation and reparations. He argued that,

> People who lost their relatives, homes and livestock during the liberation war and other conflicts should be paid, (NPRC-Hearing_18).

The issue of compensation has not been addressed by the government in the current framework of the commission, yet many participants stated that they would need to be compensated for the losses and injuries incurred. Given that the NPRC is operating at the national level, it seems that the government has ignored the question about reparations because of economic and political reasons. Economically, the country is facing huge financial challenges, which means it would be difficult to provide any monetary compensation. As examined in section 6.3 on the War Victims Compensation Fund scandal, the previous attempt of the government to compensate war victims plunged the country's economy into a crisis from which it has not yet recovered.

More so, as the government has constantly denied playing a role in orchestrating violence, it is challenging for it to compensate victims who have not been injured by the state or in line of duty for the state. Even though various people have taken the government to court for violating their rights, such as the white farmers who ended up at the SADC Tribunal and Gabriel Shumba who went to the African Commission on Human Rights, the rulings of both courts have been ignored by the government and no compensation has been offered to the wronged parties (Bell 2013, Viljoen and Adebe 2014). This could suggest that the government avoided compensating these victims to avoid setting a precedent for other victims to come through and demand restitution.

One young man asked the government officials to make provisions for the commission to have offices at the provincial and district level so that more citizens across the country can participate. Currently the NPRC is housed in Harare and when the public hearings were

conducted, they only took place in urban areas, which excluded many of the rural population from participating. Many respondents in Buhera and Mudzi districts stated that they were not familiar with the work of the commission and how it would benefit their community. These sentiments highlighted that the NPRC lacks local ownership because it appears to be a project of the political elites and a few urban residents. Seemingly, the commission has failed to garner the confidence of the people, which is crucial for such a peacebuilding project to succeed in instilling peace and reconciliation among the local communities.

A suggestion to change the name of the commission from National Peace and Reconciliation to National Truth, Peace and Reconciliation was made by one participant who argued that it is difficult for the people to reconcile if there is no truth telling. This view raised the question of what the name given to a commission prescribes. It was evident throughout the views raised by people who attended the public hearings that the name of the commission did not give enough meaning to the justice they desire for. The expectations that people had were to get the truth, apology, acknowledgement, compensation, closure and accountability among others. These expectations resonate with the views that were shared by respondents in Buhera and Mudzi districts, which will be examined in the following section.

7.4 What counts as justice to the local community?

The aspects of justice that the respondents desire to experience are *kuregererana/ uxolo* (forgiveness), *kuwirirana* (mutual understanding), *kuvimbisika* (honesty), *kubvuma mhosva/ukuvuma* (acknowledgement), *kuvandutsa moyo* (change of heart), *chokwadi /iqiniso* (truth), *kukumbira ruregerero/ ukuxolisa* (apology) and *inhlawulo/ muripo* (compensation). One respondent indicated that justice should take a restorative approach rather than a punitive approach because,

> *Kana vanhu vatadzirana chikuru kuti nyaya yavo itaurwe chokwadi chobatika then akatadza anofanira kubvuma mhosva yake*. Also, the offender needs to own up and *okumbira ruregerero*. *Akatadzirwa kana ari anoda kuripirwa odoma chaanenge achida. Ukaona munhu aripa mhosva yake kureva kuti ari kupa ruremekedzo kune waakatadzira* (When people have had a dispute, it is important for the matter to be deliberated so that the offender can own up to the wrongs committed. Also, the offender needs to apologise. If the offended

> party needs to be compensated for the harm done, he/she should also mention what they need. When the offender pays up the required compensation, it is an indication of respect to the wronged person), (Chief_8).

The local people emphasised the need to transform the behaviour of the offender, that is why they prefer to make the offender take responsibility for their offence, for example compensating with livestock or apologising, rather than sending them away to serve a sentence which mainly makes one accountable to the state and not necessarily the community that is disturbed by the dispute. Another research participant narrated that,

> *Dare rinotipa runyararo rwakatonyanyisa kupinda mapurisa. Tikapinda mudare rashe tinoyanana zvakanyanyisa pane kuti ndiendeswe kujeri. Ndichidzoka panoita kamweya kekufungirana kanova kasingazoperi muupenyu*, (the tradition-based justice system gives us a lot of peace than the police. If we take our matter to the traditional court, we come back reconciled than being sent to jail. When one is sent away to prison it strains relations of people and create mistrusts, which can be difficult to resolve), (39-year-old female, Mudzi district).

The above sentiments were affirmed by an interviewee in Buhera district who said,

> *Ndinogona kusimuka pano ndikanomhan'ara nyaya yangu kupolice munhu obvisiswa fine which goes to the state, but you will see kuti muhana mangu hamuna kunyaradzwa. Tadzoka panenge pasina kuwirirana kwavakika, vanhu vanenge vatove neruvengo* (I can report my issue to the police and the offender gets fined, but that money goes to the state. My heart remains disturbed. Even when we come back there is no relationship established, we can hate each other even more), (63-year-old male, Buhera district).

Open dialogue, truth, apology, forgiveness, acknowledgement, mutual understanding, compensation, honesty and change of heart are aspects of justice fundamental to the core values of the local community. These are linked to, how the court proceedings within the tradition-based justice system are conducted and the moral code that binds the community which in chiShona they call *Tsika nemagariro* while in isiNdebele its *Imikhuba lenhlalo*.

During a court proceeding when the perpetrator takes the stand, he/she is supposed to show remorse for the claims being levelled and offer an apology, which is a gesture that the person is remorseful. Also, apology is symbolic in that there is a sense of admission of guilt and, when that has taken place, it becomes easier to identify the wrong that has occurred and deliberate on the way forward. An apology paves the way for the wronged party to *nyevenutsa moyo* (the softening of the heart), consequently enabling the conflicting parties to begin to relate better and even appear to be *vanhu vakavandutswa mwoyo* (people with a changed heart), particularly once the court hearing is completed.

Relating to the aspect of *tsika nemagariro*/*imikhuba lenhlalo* (customary values and norms), an apology is a crucial gesture that can repair the broken relationships. It is a natural expectation that when you offend someone, there is need to apologise so that people can start to relate with each other again. Thus, the underlying assumption is that an offence breaks the social contract that binds people to live in social harmony. When one offers an apology, it is an act of humbleness and respect for the human dignity that has been violated during the conflict.

Forgiveness is a reciprocal act to an apology in some cases. In other instances, it is fundamental in that it enables the mediators to the conflict to assist conflicting parties to begin discussing the issues that caused the conflict. More so, forgiveness is internal and symbolic. Forgiveness sets the aggrieved free from the pain and heartache, possibly contributing to *kunyevenutsa moyo* (softening the heart) and, simultaneously it sets the perpetrator free from spiritual bondage because when one has *nyevenutsa moyo* (softened their heart), the ancestors are also able to revoke their vengeance. When one has been forgiven they are expected to also change in behaviour (*kushanduka pamaitiro*), and the offended party is encouraged not to hold the past against the perpetrator or have a grudge (*kuchengeta chigumbu*). This means that forgiveness enables the *kuvandutswa kwemoyo yevanhu* (change people's hearts). One local chief stated that,

> If the offended party remains resentful towards the offender or even commit acts of discrimination in revenge, the chief can also charge that person for being disrespectful to the ruling of the court, (Chief_3).

Compensation is about pleasing the aggrieved. In this case, the affected party determines the reparations needed to let go and begin to rebuild his/her life. It also has a restraining element or is retributive in that the perpetrator sacrifices something to make amends for the wrong committed. This is also seen as the procedure for retaining the balance (*kuyananisa vanhu zvakaringana*).

Soliciting the truth about what transpired was reported to be vital in assisting the affected community to get closure. A respondent demanded that,

> *Kuti nyaya iyi igadzirisike ndinoda kuziva chokwadi chekuti zvakafamba sei, uye kuti vakamuurayirei* (for this matter to be resolved I need to know what happened and why they killed him), (46-year-old female, Mudzi district).

The above demand was made against the backdrop that this woman has reported the murder of her son to the police, but the case has not been heard before the national courts. The police have not had a breakthrough in their investigations which enables them to proceed with a court hearing. Yet, this woman's son was murdered in 2008. Given the number of years that have passed without any leads, the file of this murder now sits as a cold case.

Literature identifies various forms of truth, including forensic truth (factual and measurable), personal truth (one's narrative or account of things), social truth (narrative established through interaction), and healing or reconciliatory truth (public knowledge or national narrative) (Boraine 2009, Hamber and Kibble 1999). Each of these forms of truth determines how people understand what has occurred to them. From the interactions, I had with the local community, truth was explained as getting information on the questions they have. This information is for personal closure and not necessarily evidence to be used before the court of law or to establish a national narrative.

Given that the violence that occurred has been committed by people within the same community, some of whom are family members, the truth that is desired, therefore, is information that enables the divided families to rebuild relations. The research participants described that if the offender opens to them how things turned out the way they did, they would be able to share their experiences on how it affected them. This suggests that the dialogue process of establishing what transpired will enable the conflicting parties to

understand how they have both been affected by the incident. It resonates with the notion of justice mentioned earlier that the people want to *kunzwana nhunha* (listening to troubling issues). Brounéus (2008) believes that acquiring details on what has happened to a loved one can have therapeutic benefits to individuals and the community because it gives people information that allows them to process the trauma and burden they may be experiencing. Villa-Vicencio (2007) adds that truth can assist in creating the space for open dialogue on issues, after which communities can acknowledge or deny realities of what occurred.

Another feature that several respondents presented is the need for therapy. Therapy can occur through professional therapists or counselling from other community members. A 46-year-old widow in Mudzi district narrated that when her son was murdered, many people in her community failed to attend the funeral. The community members were unable to mourn with her family because government security agents were monitoring the movements of people in the area. Since her son had been murdered for supporting the opposition MDC-T, any person in this community who was seen interacting with the family of the deceased, would also be accused of being a member of the opposition. This means that the sharing of burden and collective empathy that community members often present to others going through difficult times was not done for this family. More so, this woman reported that she could not get counselling from a professional therapist because the hospital close to her homestead does not have experts who could attend to her trauma.

Furthermore, the research participants indicated that they wish to find their loved ones who have disappeared due to the violence that occurred. They stated that even if the person may have died, like those thrown in Ruti or Tsanzaguru dams, their remains need to be brought back to the family for proper burial and closure. It remains difficult for the family to deal with the emotional toll of not knowing what happened to their loved ones. More so, in their customs they are supposed to *kugova nhumbi dzomufi* (distribute any material possessions of someone who has passed away), but without a proper burial of the person's remains, the people cannot proceed with this procedure. Seeing the material possessions of a missing person deteriorate adds more pain to the affected families because they may do well if they inherit the things, but they are stuck. Hence, some people believe that their pain of losing a loved will be addressed if they are able to locate the remains.

7.5 Practices of justice available to the local community

During the interviews and focus group discussions some participants indicated that fellow community members had made use of tradition-based practices to address injustices in the absence of national transitional justice processes. *Nyaradzo* (memorial), *kuripira ngozi* (appeasing avenging spirit), *nhimbe/ilima* (community working groups), *kubvunzira* or *gata* (inquiry), *magadziro/umbuyiso* (ceremony to bring back the spirit of the deceased), *chigarisaro* and *pfiramate pasi* (compensation for rape), *svukamaronda* (compensation for bodily injuries) and *chenura* (a cleansing ceremony) were mentioned as the key local practices adopted by the local communities to obtain justice.

7.5.1 Nyaradzo

Nyaradzo is a memorial ceremony that is done a few weeks after burial, to commemorate and remember the life of the deceased. During this ceremony friends, family, relatives and community members join the bereaved family to pay their respect to the deceased and to console the grieving family. In Buhera and Mudzi districts, several memorial ceremonies were conducted in the aftermath of the 2008 electoral violence, largely coordinated by civil society organisations, for example Heal Zimbabwe and the traditional leaders (Benyera 2014a). The memorial ceremonies were widely attended because many people in the community had not been able to observe the burials of the departed due to the political tensions that clouded the post-2008 elections. Hence, the *nyaradzo* was an avenue for the local people to talk about the past and iron out issues, especially where allegations of the cause of death were being levelled against fellow community members. In this instance, prior to the ceremony, the aggrieved family were involved in mediation talks with the alleged perpetrators and apology, forgiveness and compensations occurred, which enabled the community members and even family members to rebuild relationships (Benyera 2014a). Benyera (2014a) observed that though the confessions that occurred during the *nyaradzo* were done publicly and the events were attended by the local police, no arrests were made.

7.5.2 Magadziro/Umbuyiso

Linked to *nyaradzo* is the *magadziro* or *umbuyiso* ceremony which is usually done one rainy season from the time the deceased has been buried. In Christian families, they unveil a

tombstone while families practicing tradition-based customs perform *magadziro* or *umbuyiso*. *Magadziro/umbuyiso* is a traditional ceremony in which the spirit of the deceased is welcomed back into the family as a guardian among the ancestral community. Here a goat or sheep is used as an offering during the ceremony which involves brewing of traditional beer and all-night celebrations (*pungwe*). Before the ceremony commences, the animal is brought into the compound and tied to a tree. The whole family and relatives gather about the tree and the selected family representative will lead the ceremony by pouring traditional beer on the animal and the ground for the ancestors to drink. They also make use of *bute* (snuff) which they sprinkle on the ground as they chant to the ancestors, moving about the compound, to welcome the spirit of the deceased. The rest of the attendants will be singing, dancing and chanting praise to the ancestors. It is expected that once the spirit of the deceased has descended (*wasvika mumusha*), the animal bows down and one of the family members gets into a trance. When this occurs, the deceased's spirit will address the gathering through the host (*homwe*), an act that symbolises the return of the spirit being as a guardian that will remain in the compound protecting and providing for the family. Hence, it is important for one to have a dignified death because as spiritual beings, death is a transition from one realm (living-living) to another (living dead).

7.5.3 Chenura

When the death of a person has been orchestrated by another person, *chenura* is required to cleanse the deceased from the bad aura that surrounds unlawful killing. The local chiefs mentioned that they must first report the murder to the police and allow criminal proceedings to occur. But, in accordance with their local customs, *chenura* (cleansing) should also be done to disinfect the community from the bad aura associated with the unlawful killing of a person. This cleansing ritual and ceremony involves the slaughtering of an animal (cattle, goat or lamb) and smearing of the animal's blood mixed with traditional herbs at the spot where the person died. Here the perpetrator or the family of the perpetrator is expected by the local chief to offer an animal to the ancestors of the land (*masvikiro enzvimbo*) and to ask for forgiveness for polluting the environment. The animal is slaughtered according to custom and the blood of the bull is poured to the ground as the *homwe* (host to the spirit medium) chants to the ancestors asking for forgiveness. This is followed by *pungwe* (celebration ceremony) in which community members gather all night to sing, dance and share in traditional beer and eat the meat from the slaughtered bull. Part of that meat is also put in a traditional plate and

placed *mumba mesvikiro* (the hut of the ancestral spirit) together with traditional beer for the ancestors to feast. One woman from Mudzi district said:

> My heart is not settled because the family has not been able to visit the place where my son was murdered in 2008. His spirit has not been brought back into the family (*magadziro* ceremony) because we are not able to go to the spot where he was murdered, and the perpetrators have not yet cleansed his spirit. Even the local leaders are afraid to initiate the process because my son was murdered by ZANU PF militias who had been given orders by high ranking political figures. The police are the ones who found his body and they took it to the mortuary before we could identify the spot where he died and do our customary rituals. It pains me that my son's life was cut short in a gruesome manner, but even in death his spirit has not rested (46-year-old female, Mudzi district).

The 46-year-old woman above who lost her son in the electoral violence that occurred in 2008, explained that her family had failed to conduct *chenura* at the scene where her son was killed because the murder of her son was a politicised ordeal. She reported that her son's spirit has remained in limbo and there have been reports from community members that the deceased is tormenting some people who pass through the place where he died. This suggests that the community is being haunted by the bad aura that surrounds the unlawful killing of her son. *Chenura* in this instance is required because it disinfects the social environment from the bad aura of an aggrieved spirit of the deceased. The locals believe that *chenura* enables the spirit of the deceased to join the ancestral family and come back into their lives (during the *magadziro* ceremony), in the form of a guardian that provides various services to the clan. This practice facilitates psychosocial and spiritual healing for the affected communities.

The white garment prophets can also be used to do *chenura* (cleansing) and here these religious leaders make use of livestock such as hens, cattle, goats and sheep, which they slaughter as an offering to the spiritual realm. The white garment prophet takes the blood of the sacrificed animal back to the family holding the cleansing ceremony and, uses it to wash the people, which often marks their freedom from spiritual bondage. In other instances, the animal is taken to the mountains, or bush and incense burning or *bute* (snuff) is thrown to the ground as chants or prayers are made before letting the animal loose to wander the world

(*kupepereka nenyika*). This act symbolises the detachment of spiritual burden. What can be observed from the above is a striking similarity of procedures and materials used by both the African apostolic religious leaders and the African traditional religious leaders, for example *homwe* (host of the spirit medium) or *n'anga* (traditional healer).

Chenura, as a ritual, is also used to cleanse the social environment when there has been an accidental death of a person. The local communities believe that when a person is accidentally killed in the public space, their spirit often remains at the spot where the accident occurred because the sudden death leaves the spirit of the deceased in limbo. For this *chenura,* an African Traditional Healer is used, whereby the healer makes use of traditional herbs and *bute* (snuff) to call upon the spirit of the deceased. As described by the research participants, the traditional healer burns traditional herbs at the scene of the accident and puts snuff on the ground, which enables the healer to calm the spirit of the deceased and guide it back to the place where the body remains were buried. Many people in Zimbabwe bury the remains of their loved ones at their rural homesteads and a few others use the public cemetery. Thus, *chenura* is done to take the spirit of the deceased to the rural homestead so that it finds a place of rest in the grave where the body of the person was buried. Also, in the case where the grave is in a public cemetery, the spirit of the deceased is carried to the cemetery to join with the remains of the dead person.

The above *chenura* ritual can also be conducted for the public, to exorcise accident scenes from the bad aura that emerges in cases of unnatural death, for example bus accident or stampede in the stadium. The use of traditional healers to conduct the *chenura* ritual in public spaces has been observed at the national level, whereby the government and traditional leaders have participated in cleansing popular accident (black) spots on the national roads. One such cleansing ritual was conducted in 2013 at a black spot where many people had perished in traffic accidents along the Masvingo-Beitbridge Highway near the Ngundu Growth Point (Maponga 2013). Another public cleansing ritual was conducted by traditional healers at the Harare National Sports Stadium following a 9 July 2000 stampede. This stampede occurred during a World Cup qualifying soccer match between Zimbabwe and South Africa. It was caused by the over-reaction of police officers who threw teargas canisters to disperse fans who had been throwing plastic bottles on to the field. The stadium was filled with nearly 60 000 people and when the police fired teargas, it created commotion

as people were fleeing the stadium, resulting in the death of 13 fans and injury of many others (Meldrum 2000).

At a focus group meeting with community members in Buhera district, they described that some people who were killed in the violence that has been occurring in their community are reported to have been thrown into the Ruti and Tsanzaguru dams. They explained that the dumping of the remains of people in water bodies has polluted their social environment, therefore, *chenura* is required to cleanse these dams from the bad aura that currently prevails.

7.5.4 Nhimbe/ilima

Nhimbe or *ilima* is a traditional practice used by rural communities to pool together resources and labour in assisting a needy community member (Benyera 2014a). It serves as a food security practice that facilitates better yields for subsistence farmers in that, community members would assist each other through ploughing across all fields during the harvest season. This practice has been adopted by civil society organisations to promote peacebuilding in the rural areas. In peacebuilding, *nhimbe/ilima* was used to start peace community gardens whereby conflicting parties were brought together through a mediator (*sahwira*) and worked closely to resolve their issues (Benyera 2014a). The research participants in Buhera district indicated that civil society organisations, such as ZimRights and Heal Zimbabwe have been involved in mediating issues among local members who were affected by the post-2008 electoral violence. The mediation efforts involved gardening projects in which people were invited to talk about the past and the victims had an opportunity to ask questions. During the session, an offender often apologised and asked for forgiveness. When a consensus was reached, the conflicting parties would strengthen their reconciliation by working together in the field and managing the peace garden. They would also share the proceeds from the garden. The *nhimbe* also enabled community members to incorporate other tradition-based practices such as *chenura, nyaradzo, magadziro and kuripira ngozi.*

7.5.5 Chigarisano, Pfiramate pasi and Svukamaronda

Chigariso (living in harmony) and *pfiramate pasi* (spit on the floor) refers to livestock offered to compensate a victim of rape. The local words for rape are *chibaro* or *kubhinyiwa*

and *iganyavu* or *ikudhlangula*, and here the traditional leaders indicated that this offence is a criminal matter. When someone has been raped, the local people or traditional authorities are expected to report the matter to the police and the issue is resolved at the Magistrate's Court following the applicable criminal laws. However, within the customs of the local people, a rapist is a *nhubu* (ill-mannered person) that has committed a formidable offence, which destroys the dignity of the victim and pollutes the social environment. A cleansing ritual will be required to disinfect the social environment and another cleansing ceremony should be done to wash away the bad aura surrounding the rape victim. Also, the offender must compensate the victim in accordance with the demands made; usually the compensation offered is some cattle which they call *chigarisano,* which is accompanied by a goat which they call *pfiramate pasi*.

The offering of livestock is a punitive measure to deter the offender from engaging in such activities again. *Svukamaropa* or *Chusamaronda* (cleaning the wounds) is another form of compensation that was discussed by the research participants. This compensation comes in the form of a beast that is offered when a person has inflicted injurious harm on another. The payment of this beast is usually determined after a hearing at the traditional courts.

7.5.6 Kubvunzira/gata

Kubvunzira or *gata* (inquiry) as understood by the local community is a consultation process to obtain the truth about unclear circumstances. It involves gathering the truth by consulting with a *homwe* or *svikiro* (spirit medium) that enquires from ancestral spirits answers and solutions to issues in the community. In other instances, the local communities have consulted *maporofita* (white garment prophets) who are religious prophets from the African Apostolic churches with the spiritual gifting of communicating with ancestors, angels and God.

Research participants acknowledged that some of their family members have consulted with both the white garment prophets and traditional healers to establish the whereabouts of their loved ones, especially those that disappeared without a trace. There were reports also that *kubvunzira* was used by some perpetrators of violence to establish the whereabouts of the people that had been affected by their actions. In this instance, the perpetrator would not remember the identities of victims or would be unable to locate the homestead (*kumusha*) of

the victim. By consulting from religious leaders, the perpetrator is advised on how to find the relatives of the victim and the procedures to follow to amend things.

However, there has been rumours that some white garment prophets and traditional healers have been used to cast bad spells on other community members. This has been reportedly used by both victims and offenders, whereby the victim would ask the prophet or traditional healer to cast a bad spell on the offender until justice has been served. Some offenders are said to have asked for protection from the white garment prophets or traditional healer against bad spirits tormenting them.

7.5.7 Kuripira ngozi

Kuripira ngozi (appeasing the avenging spirit) is a ritual that is done to offer compensation and appeasement to the spirit of the deceased in the case of murder. This tradition-based practice was observed in both Mudzi and Buhera districts, as many of the respondents explained their knowledge of other community members who had been affected by *ngozi* (avenging spirit). During a focus group meeting with traditional leaders in Mudzi district, the practice of *ngozi* was described as follows,

> If a person experiences an unlawful death, the spirit of the deceased comes back to haunt those accused of causing the death. This spirit *unonogara munhu* (occupies the body of another person) within the family of the accused and speaks out its demands, which should be met for the tormenting to stop. At times, the spirit can start off by causing misfortunes and strange ordeals to the family of the accused and people usually go *kunobvunzira* (consulting with spiritual/traditional healers) so that they get a way to address the occurrences. During these consultations, the spirit of the deceased often makes its demands known and, it usually requires an appeasement. *Pachinyakare* (in the olden days) the spirit would demand a wife as compensation, but we have long moved from that method of appeasement. Nowadays we use livestock and money to appease the spirit and, we do a cleansing ritual, (Chief_4).

Benyera (2014b) elaborates on this tradition-based practice by noting that in the Zimbabwean African culture an undignified death is shameful to the ancestral community because the

deceased cannot assume the ancestral responsibility of protecting and blessing the family. He adds that the family of the deceased remains aggrieved because they have been robbed of the opportunity for their loved one to look after them. Eppel (2006) and Nyathi (2015) further state that death in the Zimbabwean African culture is a rite of passage that one ought to enter in accordance with traditions and practices of one's ancestral family. Nyathi (2015) adds that the African people in Zimbabwe are devoted to maintaining the harmonious continuation of the cosmological community (physical and metaphysical realms) because that is the essence of their humanity, which guarantees the existence and expansion of their lineage. It is against this backdrop that the practice of appeasing avenging spirits has become a popular phenomenon of resolving conflict among the local communities.

This practice of justice has even been used when people died due to politically motivated violence such as examined earlier in Chapter 5 on the avenging spirit of Moses Chokuda who was murdered in 2008 in Gokwe, Midlands Province. Benyera (2014a) has reported on other incidents where the practice of appeasing the avenging spirit (*ngozi*) was used by some community members in Buhera district and, his accounts were confirmed by the local chiefs during the focus group meeting. In Mudzi district, there has not been any reported incidents where the practice was used to address the politically related violence, however the occurrence of avenging spirits has been observed. This was confirmed by the 46-year-old woman mentioned earlier who spoke about how her son's spirit has been reported to be roaming the community, and one of the accused has since died with others said to be *vanhu vakupenga* (suffering from mental disorders).

Benyera (2014a) argues that there are some social and economic benefits in using the *ngozi* practice among the local communities. For example, once an offender has accepted responsibility for the harm done, he/she is usually given time to raise the resources required to appease the spirit of the deceased. Following this practice, the offender is not sent to jail but remains within the community working towards raising the resources needed for compensation. As such, the offender can remain looking after his/her own family because sending someone to jail often adds burden on the community. Usually when one has been sent to jail the relatives are left to look after the family of the offender, which can be burdensome financially, as many of the people are living on limited economic resources.

More so, as examined earlier, the local communities are of the view that sending someone to jail strains relations of the people because the formal courts do not promote reconciliation, rather they apprehend criminals. Therefore, Benyera (2014a) sees *ngozi* as an economically affordable method of restoring both the physical and psychosocial well-being of the perpetrators and affected parties. This stems from the understanding that once a plan for restitution has been made or compensation has been offered, an equilibrium among the conflicting parties is fostered. The balance is forged in that the spirit of the deceased gets calm and can join the 'living dead'. Resultantly, social harmony is established between the physical and metaphysical realms. Moreover, the family of the deceased have tangible resources to use for their upkeep. For example, the 46-year-old woman from Mudzi district reported on how the death of her son has brought financial and emotional burden on her family. Her son was the breadwinner and he left behind a wife and infant baby, whom she has had to look after, but she is struggling because of a lack of employment.

Moreover, giving compensation to meet the demand of the aggrieved person constitutes retributive justice among the local communities because the perpetrator parts with some financial or material resources. Since the livestock is the common material resource used for compensation, the offender is often restrained from committing a similar offence again because of the socio-economic strain of one's well-being that comes with giving away livestock.

It remains evident that the contemporary Zimbabwean society, particularly people in the rural areas, have maintained strong ties with their ancestral heritage and the tradition-based practices observed by their forefathers. People belong to a larger tribal family from where individuals derive a family name (for example *Save, Shumba*) and follow certain customs and traditions to retain social harmony between entities in the physical and metaphysical realms (Gelfand 1973, Nyathi 2015). Thus, many Zimbabweans consciously or unconsciously move between the physical and metaphysical realm, and their existence derives from keeping the relationship of entities in the two realms in harmony.

From the above understandings of justice, I developed my own definition of transitional justice to reflect on the perspectives of the research participants. As mentioned earlier, transitional justice refers to processes of redress in periods of disruption that reflect diverse practices of justice which enable the society to transform incidents of past injustices into an

environment that fosters social harmony. This definition is informed by the understanding that where politically motivated violence has occurred the local communities indicated that they require processes of redress that can rebuild the social fabric (inner essence of humanity) of the community.

7.6 Challenges of justice practices administered within the local community

Most of the research participants make use of the tradition-based justice system and follow traditional practices as the means of rendering justice. In this section l present the problems identified by the respondents in relation to the tradition-based justice system, which are: limited legal jurisdiction, political interference by public officials, conflict with Christianity, power contestations and lack of material resources.

For both political and administrative purposes, the tradition-based justice system and traditional authorities are linked to the national governing system through the office of the District Administrator (DA). This practice was introduced by British settlers during the colonial era, who used the office of the DA to monitor the activities of the black population in Zimbabwe (Bhebe and Ranger 2001). Thus, the governing system administered by the British settlers co-opted the tradition-based justice system by making the Anglo-Roman-Dutch law superior to customary law (Saki and Chiware 2007). Even today, the informal justice system continues to be inferior to the Anglo-Roman-Dutch laws as traditional leaders have limited legal jurisdiction. Unlike in Rwanda, where the national government passed a legislature that allowed for the Gacaca courts to be used in rendering justice for victims of the 1994 genocide (examined in section 3.5.1), the local courts in Zimbabwe are confined to deal with civil disputes only. This appears to be a challenge for community members in Buhera and Mudzi districts, who despite preferring the traditional courts, would not be able to resolve the incidents of violence they experienced through local courts (for example murder, arson, rape, abduction, forced disappearance), because they are regarded as criminal offence prosecutable through the superior courts.

Some participants indicated that family feuds have occurred due to contestations for power because the government gives a salary and other economic resources to the upper tiers of the traditional authorities (village head, headman and chief). Those appointed to lead the clan are therefore, entitled to benefits which make them appear to be well off than others in these poor

communities. The incentives from government are believed to be an avenue through which some political leaders, especially of the ruling ZANU-PF party, have bribed traditional leaders to pressure them to make their community members vote for a certain party. It was noted that some traditional leaders have been implicated in acts of violence or selling out their community members which compromises their legitimacy, especially in the Buhera district. However, this challenge was reported to be a shortcoming of individual leaders and, not a problem of the traditional leadership institution per se.

A few participants mentioned the burden of balancing African cultural practices with Christianity because the advent of Christianity has labelled ancestral worship and African culture as paganism. This has meant that local people feel more open to conduct cultural rituals while in their villages than in urban areas. However, other participants saw this ability to exist in the Christian and African spiritual realm as a positive attribute of their humanity in that they can use both spiritual systems to bring about good in society.

Several research participants indicated that the practice of *ngozi* can create challenges for some families, often when the offence was committed by someone who is no longer alive. The avenging spirit would require compensation for the offence to be offered by the living relatives, which can pose a socio-economic burden for the living relatives considering that they are not the perpetrators of the violence.

The respondents stated that in the olden days there were incidents where the appeasing of the avenging spirit required an offering of a young woman. This exchange of a human being to compensate for an offense had many implications on the individual that is used to appease the avenging spirits. For example, it became difficult for *mukadzi wengozi* (the spirit's wife) to find another husband. Hence, this created challenges when an individual wished to get married outside the family of the deceased because she is already a wife of a spirit. It was reported that if *mukadzi wengozi* got married to someone else and, the avenging spirit is not given another wife, the lady who was offered initially would face problems in the other marriage. The challenges included failing to conceive or being abusive to the new husband because the avenging spirit would be grieved from her abandonment of the responsibilities she has in the family of the deceased. This phenomenon was also observed in the case of Mozambique with the manifestation of the *magamba* spirits in the Gorongosa district (Igreja *et al.* 2008).

Constitutionally, this exercise of using a human being for cultural rituals is forbidden in Zimbabwe and the traditional leaders indicated that they have been educating their community members to find other means to resolve the issue of *ngozi*. This has led to the development of a new phenomenon whereby in place of a human being the locals plead with the avenging spirit to accept livestock in the form of cattle. The research respondents indicated that culture is not static, and they have been able to modify their practice of *ngozi*.

The researcher observed that the traditional leadership institution is dominated by male leaders, particularly at the upper level of chiefs, apart from one female chief found in Mudzi district. This gives the impression that the tradition-based justice system is prone to discrimination against women, as they seem not to be fully represented within the echelons of power. During the court hearing (*dare*) the researcher observed that the chief's council has a few female representatives who serve as advisors to the chief. The presence of women in the chief's council has been facilitated by the constitutional provisions found in the new Constitution of Zimbabwe 2013. More so, women seem to have a more visible role at the family courts, which is often the first port of contact and most commonly used avenue (as stated in section 7.3.1) in resolving disputes at the community level. At the family court, when a woman is standing in as *vatete* (aunt) or *baba* (figurative father) they have a prestigious position which gives them the authority to challenge and discipline all members of the family regardless of their gender.

7.7 Conclusion

This chapter established that there was consensus among various respondents who took part in the study that justice needs to be conducted through internal processes. What differed, however, were the meanings of justice that the people had. For community members in Buhera and Mudzi districts, justice is *kuenzanisa* (creating a balance or making equal), *kunzwana nhunha* (listening to troubling issues), *lunganisa* (making things right or equal) and *kuringanisa* (making amends or creating a balance). This means that people listen to the issues that have affected others and seek for ways to amend the imbalance that occurs when an injustice has been committed. The emphasis of this approach is to repair social harmony and not to exercise criminal prosecution.

On the contrary, some people who attended the public hearings of the National Peace and Reconciliation Commission, described that justice should be done in accordance with international legal norms set in the Rome Statutes. This approach suggests that some criminal prosecutions are expected to occur particularly for injustices that are scheduled in international laws, humanitarian law and human rights law. The government officials, however, see justice as forgiving each other, letting go and living together. The above accounts of justice show that there is no coherence in the thoughts shared by the participants and this potentially has challenges for the people, if the transitional justice framework fails to accommodate these views.

The chapter examined the avenues for justice available to the local community. It emerged that the tradition-based justice system which comprises of three tiers (family court, village court and chief's court), is the preferred avenue for justice among the local people as opposed to the formal justice system, particularly the national judiciary. This choice was substantiated by the views that the local courts are easily accessible, cost effective and efficient because the matter is resolved within reasonable time. Moreover, the persons appointed in these courts are familiar to the community members; they speak the same language and make rulings in accordance with the customs and traditions of the people. In terms of customs and traditions the people identified various tradition-based practices that can be used to resolve different injustices, including the *chigarisaro* and *pfiramate pasi* (compensation for rape), *sukamaronda* (compensation) and *chenura* (a cleansing ceremony). Whereas accessing the national courts was argued to be too costly, time consuming and requiring people to acquire legal representation, of which many in the rural area cannot afford. Even the National Peace and Reconciliation Commission was viewed with scepticism because of the previous records of how the government has established commissions which turned out to be lip service.

A few challenges with the tradition-based justice system were raised relating to gender bias as more man are appointed in the traditional leadership structure, limited legal jurisdiction, political interference by public officials, conflicts with Christianity, power contestations and lack of material resources. With the change in power dynamics between the traditional leaders and modern governments that were instrumented by colonialism and sustained by political interference, the institution of traditional leadership has been compromised and their legitimacy has come into question. Some of these criticisms relate to the conduct of certain traditional leaders and not the traditional leadership institution per se. Relating to the

perceived conflict between Christian values and cultural values of the local people, it became apparent that their ability to exist in the Christian and African spiritual realms was a positive attribute of their humanity in that they can use both spiritual systems to bring ‘good’ in society.

In conclusion, this research established that where politically motivated violence has occurred the local communities indicated that they require processes of redress that can rebuild the social fabric (inner essence of humanity) of the community. From this expectation of the local communities, I developed my own definition of transitional justice to reflect on the perspectives of the research participants. Transitional justice in this research refers to processes of redress in periods of disruption that reflect diverse practices of justice which enable the society to transform incidents of past injustices into an environment that fosters social harmony. Hence, should an enabling environment prevail in Zimbabwe the evidence suggests that the tradition-based justice system does offer plausible resolutions to the local population. As with the fieldwork findings above, tradition-based practices are still widely used by the local community and remain a key source of redress for many people in Zimbabwe, particularly in rural communities. The following chapter offers some conclusions on the findings made in this study and their implications on transitional justice and reconciliation in Zimbabwe.

CHAPTER 8: CONCLUSION AND RECOMMENDATIONS

8.1 Introduction

What are the justice processes used by the local people in Buhera and Mudzi districts? And in what ways, if any, can they contribute to transitional justice and reconciliation? This research explored the above question to understand the justice processes followed during transitions by local communities in Zimbabwe specifically, but also in Africa in general. Studies of this nature are still limited on the continent, yet there has been a growing interest among scholars, governmental bodies and practitioners working on peacebuilding in Africa, to establish transitional justice and reconciliation processes anchored on African understandings of justice. Two streams of thought, namely, the Western perspective and African perspectives were used to explore transitional justice and reconciliation processes that exist in the global community and how they relate to the justice processes occurring at the local level in Zimbabwe. Empirical data and secondary data were triangulated to derive information that responds to the research question.

This chapter looks at five things. Firstly, it provides an outline of the main arguments that were presented in each chapter of the thesis. Secondly, it discusses the main conclusions of the study looking at how findings responded to the research questions. Thirdly, it highlights the theoretical and methodological contributions the study brings to the body of knowledge. Fourthly, it offers some recommendations for further research and lastly a conclusion.

8.2 Overview of preceding chapters

This research is comprised of eight chapters. The introductory chapter outlined the research overview, aim and objectives, the relevance of the study and rationale for choosing Buhera and Mudzi districts as research areas. More so, it contextualised the research question, scope and focus of the research, as well as definitions of key concepts, the research design and structure of the thesis.

The Second Chapter explored the debates that contributed to the establishment of the concept of transitional justice and situated transitional justice as the third sphere of peacebuilding (the others being security and governance). The chapter established that transitional justice is the

primary avenue used by global actors to address the socio-political dynamics of a conflict. Transitional justice is highly regarded in peacebuilding for its contribution to state reconstruction through processes that hold to account perpetrators of injustices and prevent further violence. This is achieved using mechanisms such as criminal prosecutions, truth commissions, reparations and institutional reform, which fall under the liberal peacebuilding framework and are guided by international laws. The chapter also highlighted the limitations of the liberal peacebuilding framework which include a lack of local legitimacy, insensitivity to local needs, its 'technical' approach, its state-centrism, its elite-focus, and its attempt to fit one framework to many contexts.

In Chapter Three, the research examined the debate raised by critical scholars, that the concept of transitional justice has evolved, and is being applied to societies in transitions more broadly. Transitional justice is now concerned with the restoration of human dignity and social harmony than just accountability within a liberal peacebuilding framework. This debate countered the global transitional justice project that was explored in Chapter Two. The chapter employed a decolonial lens and highlighted that the main limitation of the liberal peacebuilding framework is that, Western-framed peacebuilding initiatives are increasingly pacifying African communities aiding to the alienation of local communities from justice processes. A focus on the local level and not the state level was adopted for this chapter to ascertain how the new efforts on transitional justice in Africa can be anchored on African understandings of justice. Critical scholars who inform the African perspectives point out that what gives substance to the laws that regulate human interaction is not the technical and technocratic processes of the formal legal system, but the supremacy of certain ethical convictions, rules of decency, and the psychosocial embodiment of the community because the social contract is between people within the community and not people and the state. This chapter examined the Acholi rituals in Uganda, *magamba* spirits in Mozambique and the *gacaca* justice system in Rwanda as examples of tradition-based justice systems that have been employed for transitional justice on the continent. All three cases were crucial to the study because in Rwanda the *gacaca* justice system expedited the transitional justice process, in Uganda the Acholi rituals enabled some conflicting parties to be reintegrated into the community, and the *magamba* spirits pointed out the necessity of a deeply holistic intervention to conflict for victims suffering from trauma. Nonetheless, the limitations of these tradition-based justice systems include that they suffer from gender bias, political interference and ethno-cultural sensitivities which potentially jeopardise their efficacy.

Chapter Four, discussed the three-year research journey that facilitated the collection of data relevant to this study. This research is situated in the interpretivist paradigm and uses the ethnographic case study method, which allowed for cross-sectional examination of the processes of justice employed by the local community. The chapter discussed the research techniques I used to collect data, namely, surveys, semi-structured in-depth interviews, focus group discussions, and participant observation. A combination of stratified purposive sampling and snowball sampling was used to identify the research participants. A limitation of the ethnographic case study research method is that one runs the risk of becoming emotionally invested in the subject, which can cloud objectivity. This challenge was addressed by sticking to the research guidelines set in the interview and focus group schedules. An ethnographic case study research design does not require large volumes of participants to collect the required information. The sample size of interviewees was limited to 36 participants and survey respondents were 305 people who represented various stratums that were key to the focus of the study. The advantage of conducting this study following a qualitative research design is that it provides deeper knowledge on the subject though a few resourceful people are involved.

The Fifth Chapter analysed the debates that have shaped the framework of transitional justice processes followed in Zimbabwe. At the national level, the government's efforts have been largely despotic, incoherent and superficial. Similarly, at the global level, prospects for justice through regional bodies such as SADC and AU, as well as judicial systems of neighbouring African countries have all failed due to political interferences and lack of political will. However, at the community level, the tradition-based justice system seems to be offering redress to the local community, as some community members, for example the Chokuda family have made use of tradition-based practices to attain justice.

The Sixth Chapter analysed the empirical data gathered during the fieldwork. It established that the people in Buhera and Mudzi districts have been subjected to politically motivated violence at the hands of security agents sanctioned by the ruling ZANU-PF party. This violence emerged since the rise of the MDC-T party, which is the major opposition party in Zimbabwe. The violent attacks against community members were conducted with the help of internal family members because the people are settled along clan lines and in one family siblings might belong to different parties. The political party contestations and competition

for electoral support occurring in Buhera and Mudzi districts have left devastating wounds among the community, which cut deep into the essence of their humanity. Through local customs and traditions (*Tsika nemagariro* or *Imikhuba lenhlalo*), the people are expected to respect each other and uphold the dignity of all humankind. Several community members expressed concern over the erosion of their moral ethos and the social contract that binds people to live in social harmony, because of political interferences.

Chapter Seven, established that there was consensus among the respondents who took part in the study that justice to address the violence that occurred in Zimbabwe needs to be conducted through internal processes. What differed was the meanings of justice that the people held. The chapter also examined the avenues for justice available to the local community. It came out that the tradition-based justice system which comprises of three tiers (family court, village court and chief's court), is the preferred avenue for justice among the local people as opposed to the formal justice system. A few challenges with the tradition-based justice system were raised with regards to gender bias, limited legal jurisdiction, political interference, conflict with Christianity, power contestations and lack of material resources. The fieldwork findings highlighted that tradition-based practices are still widely used by the local community and remain a key source of redress for many people in Zimbabwe, particularly in rural communities. The following section attends to the main conclusions of the thesis.

8.3 Main conclusions

The sub-sections below present conclusions based on the five secondary questions that guided the study as identified in section 1.4. The answers to these secondary questions helped in reaching the final conclusions.

8.3.1 What forms of violence have been experienced by the people in Buhera and Mudzi districts?

To understand this question, the research was guided by Galtung's (1969) categories of violence, namely, direct, structural and cultural violence (examined in Chapter 2). Violence in Buhera and Mudzi districts has manifested as contestations between ZANU-PF and MDC-T political parties, which has mutated and infiltrated the family/clan structures at the

community level. The local words for violence expressed by the research participants include *udlame* or *mhirizhonga* (violence, instability or disorder), *ukuxabana* or *bopoto* (quarrelling), *kurwisana* (fighting), *ingcukaca* or *makakatanwa* (tensions), *bvongamupopoto* (disruptive behaviour), *bvonga bvonga* (chaos), nyonganiso (chaos or disruptions) and z*howe zhowe* (chaos). The above expressions deepen the conceptualisation of violence discussed in literature in that they capture the idea that politically motivated violence is destroying the social fabric (inner essence of humanity) of the community.

The acts of violence identified by the respondents include beatings, murder, torture, destruction of property, bodily mutilations, stigmatisation, discrimination, rape, unlawful arrest and deprivation of material needs, which fit into the three classifications of violence identified in literature. However, the respondents described that the violence occurring in their communities had far reaching effects in that it erodes the social fabric that makes life valuable in society. Both Buhera and Mudzi districts are rural communities and the community members belong to the African population group. The local people subscribe to the African philosophy of *Ubuntu* which upholds values of cooperation, social harmony, respect, interconnectedness and collective responsibility. These values denote the code of human conduct acceptable to the community because the people are bound by a social contract that requires them to uphold the dignity of each community member. Unfortunately, political party contestations are said to have facilitated divisions and violence within family groupings, resulting in the defamation of the human dignity that community members are expected to preserve.

Therefore, the research established that political divisions and competition for electoral support has eroded people's customs and traditions which in chiShona is called *Tsika nemagariro,* while in isiNdebele its *Imikhuba lenhlalo*. The purpose of customs and traditions is to safeguard humanity through an array of relational expectations, affirmations and responsibilities that bind the people to respect each other and value human dignity. In this setting, people owe their existence to others in their community and are bound to exercise restraint on any actions, thoughts and behaviour that brings harm on others. More so, human life is sacred because people are spirit beings that exist in the physical and metaphysical realms (Nyathi 2015). Within the physical and metaphysical realms, life exists in the form of the 'living-living', 'living dead' and 'unborn living', and people are transcendental beings (Ellis and Ter Haar 2004). The 'living-living' (spirit of the living person) exist in the physical

form of a living human being, while the 'living dead' (spirit of deceased persons) appear in the metaphysical form as ancestors of each family, and this spirit being protects and provides nourishment to the living persons and the unborn beings (Gelfand 1973, Nyathi 2015).

Furthermore, the 'unborn living' (spirit of a person yet to exist in the physical realm) are future beings. The local people subscribe to the idea that they exist as cosmological beings and their ability to live in harmony, lies in them being able to maintain the balance of relations between entities in the physical and metaphysical realms. As such, violence does not only affect the physical beings but rather disrupts the cosmic relations that exist between the living persons, the living dead and future generation. Henceforth, the research participants identified the nature of violence in Buhera and Mudzi districts as deviant behaviour that disrupts relations among people in the community and their way of life, leading to the erosion of the social contract that binds people to live in harmony.

8.3.2 What are the underlying assumptions and narratives of transitional justice and reconciliation among local communities in Zimbabwe?

To develop a local understanding of the concepts transitional justice and reconciliation, the research explored from respondents in Buhera and Mudzi districts their definitions of these terms in their local languages. The respondents could not find local words that appropriately translate to the concept transitional justice. Instead, they gave varying meanings for the term justice, which include *kuenzanisa* (creating a balance or making equal), *kunzwana nhunha* (listening to troubling issues), *lunganisa* (making things right or equal) and *kuringanisa* (making amends or creating a balance). The concept reconciliation was defined as *yananiso* (bringing back together), *kugadzirisana* (fixing things), *kutaurirana* (engaging in dialogue) and *nokubuyisana* (making amends or restoring things).

These expressions of justice and reconciliation have connotations of restorative justice in that there is an emphasis on rebuilding relations of conflicting parties. People in Buhera and Mudzi districts subscribe to the understanding that *kuti munhu unzi munhu, vanhu* (a person is a being because of other people), which resonates with the values of the African philosophy of *Ubuntu*. *Hunhu*/*Ubuntu* (the ethical code) is central to the essence of humanity among the local community. It denotes a moral status of wholeness or oneness of life, and

locates the individual human being within the larger community (Nabudere 2011, Nyathi 2015).

Ubuntu as an analytical lens provides the understanding of human beings as interdependent entities, in that meanings of justice shared by the respondents- *kuenzanisa* (creating a balance), *kunzwana nhunha* (listening to troubling issues) and *lunganisa* (making things equal), - describe the collective responsibility that people have in their community. In rendering *kuenzanisa* or *kunzwana nhunha*, the collaborative efforts of the family/community lighten the burden on the affected parties and often empower the individuals. Moreover, *kuenzanisa* or *lunganisa* retains an equilibrium between the conflicting parties because an injustice is understood as 'deviant behaviour' that destroys the essence of another human being. The balance mentioned by the participants resonates with the 'modicum of normality' (a position of sustainable peace and co-existence), described in the work of Sarkin (2008).

Spiritual agency is also central to how community members relate with one another in peaceful and difficult times. Among the local community, restoration of social harmony is not only done to repair relations between the living beings (spirit of the living persons), but extends to the bigger community made up of the 'living dead' (spirit of deceased persons) and 'unborn living' (spirit of a person yet to exist in the physical realm). Therefore, justice is rendered to repair the damage that occurs to entities in both the physical and metaphysical realms.

The aspects of justice required by the respondents are *kuregererana/ uxolo* (forgiveness), *kuwirirana* (mutual understanding), *kuvimbisika* (honesty), *kubvuma mhosva/ukuvuma* (acknowledgement), *kuvandutsa moyo* (change of heart), *chokwadi /iqiniso* (truth), *kukumbira ruregerero/ ukuxolisa* (apology) and *inhlawulo/ muripo* (compensation). The research participants indicated that, in their way of life, it is a natural expectation that when one has offended someone, they need to apologise so that people can start to relate with each other again. Here, the underlying assumption is that an offence breaks the social contract that binds people to live in harmony. Hence, when the offender apologises, it is considered an act of humbleness and respect for the dignity that has been violated.

Forgiveness is a reciprocal act to an apology in some cases, but in other instances, it is fundamental in that, it enables the mediators to the conflict to assist conflicting parties to

begin discussing the issues that caused the conflict. Forgiveness sets the aggrieved free from the pain and heartache, possibly contributing to *kunyevenutsa moyo* (softening the heart). Simultaneously, forgiveness can set the perpetrator free from spiritual bondage because when one has *nyevenutsa moyo* (softened their heart), the ancestors are also able to revoke their vengeance. When one has been forgiven they are expected to also change in behaviour (*kushanduka pamaitiro*), and the offended party is encouraged not to hold the past against the perpetrator or to have a grudge (*kuchengeta chigumbu*).

Soliciting the truth about what transpired enables the people to get closure. In literature, truth has been classified as forensic truth (factual and measurable), personal truth (one's narrative or account of things), social or dialogue truth (narrative established through interaction), and healing or reconciliatory truth (public knowledge or national narrative) (Boraine 2009, Hamber and Kibble 1999). Truth for the local people refers to getting information on the questions they have. This information is for personal closure and not necessarily evidence to be used before the court of law or to establish a national narrative.

The nature of the violence that has occurred in the two districts is that, violent attacks were committed by people within the same community, or internal members working with external actors. The truth that is desired, therefore, is information that creates room for dialogue among the conflicting parties so that they may be able to rebuild relations. The research participants described that, if the offender opens to them about how things turned out the way they did, they would be able to share their experiences on how it affected them. This suggests that the dialogue process of establishing what transpired would enable the conflicting parties to understand how they have both been affected by the incident. It resonates with the argument brought forward by Villa-Vicencio (2007) that, truth (personal accounts) can assist in creating the space for open dialogue on issues, after which communities can acknowledge or deny realities of what occurred.

Compensation is about pleasing the aggrieved. In this case the affected party determines the reparation they need, to let go and begin to rebuild their life. It also has a restraining element or is retributive in that, the perpetrator sacrifices something to make amends for the wrong committed. This is also seen as the procedure of retaining the balance (*kuyananisa vanhu zvakaringana*). Hence, justice is about accounting for wrongdoings by giving appropriate redress that brings social harmony among conflicting parties.

Therefore, the perceptions of transitional justice and reconciliation shared by the responds suggest that they require an approach to justice that can rebuild relations among conflicting parties and offer a corrective measure that restores any losses (material or financial) incurred by the affected party. Hence, transitional justice in this research refers to processes of redress in periods of disruption that reflect diverse practices of justice which enable the society to transform incidents of past injustices into an environment that fosters social harmony.

8.3.3 What are the existing practices for conflict resolution among the local communities in the two districts, and how do they function?

The research participants indicated that some community members had made use of tradition-based practices to address the violence they incurred because the government-led initiatives are intangible in their communities. The tradition-based justice processes followed by the local communities include *nyaradzo* (memorial), *kuripira ngozi* (appeasing avenging spirit), *nhimbe/ilima* (community working groups), *kubvunzira* or *gata* (inquiry), *magadziro/umbuyiso* (ceremony to bring back the spirit of the deceased), *chigarisaro* and *pfiramate pasi* (compensation for rape), *svukamaronda* (compensation) and *chenura* (a cleansing ceremony).

Nyaradzo is a memorial ceremony that is done a few weeks after burial, to commemorate and remember the life of the deceased. During this ceremony friends, family, relatives and community members join the bereaved family to pay their respect to the deceased and to console them. *Chenura* is a cleansing ceremony performed to cleanse the community or deceased person from the bad aura that surrounds unlawful killing or accidental death. *Chenura* is valued because it disinfects the social environment from the bad aura of an aggrieved spirit of the deceased. The local people believe that *chenura* enables the spirit of the deceased to join the ancestral family and come back into their lives (during the *magadziro* ceremony), in the form of a guardian that provides various services to the clan. The practice facilitates psychosocial and spiritual healing for the affected communities.

Magadziro/umbuyiso is a traditional ceremony in which the spirit of the deceased is welcomed back into the family as a guardian among the ancestral community. Christian families conduct the unveiling of the tombstone. *Nhimbe* or *ilima* is a traditional practice used

by rural communities to pool together resources and labour in assisting a needy community member (Benyera 2014a). The practice was adopted for resolving conflicts in the community through the establishment of peace community gardens. Here, the conflicting parties are brought together through a mediator (*sahwira*) and works collectively to resolve their issues (Benyera 2014a). The mediation process incorporates a gardening project, in which people are invited to talk about the past and the victims get an opportunity to ask questions. During the mediation session, an offender often apologises and asks for forgiveness. When a consensus has been reached, the conflicting parties would strengthen their reconciliation by working together in the field and managing the peace garden.

Chigariso (living in harmony) and *pfiramate pasi* (spit on the floor) are forms of compensation, usually livestock, offered to a victim of rape. Compensation is provided by the offender or the family thereof, and accompanied by cleansing rituals, one for the victim and another for the community. Rape is regarded as a defamation of human dignity in that it violates the personhood (both in the physical and metaphysical form) of the victim. The offender must compensate the victim in accordance with the demands made, usually the livestock used is a cattle (*chigarisano*) and a goat (*pfiramate pasi*). The offering of livestock is a punitive measure to deter the offender from engaging in such activities again. More so, cleansing rituals are conducted to disinfect the social environment and wash off on the victim, the bad aura that surrounds rape. Another form of compensation that was identified by the respondents is *svukamaropa* or *chusamaronda* (cleaning the wounds). This compensation comes in the form of a beast that is offered when a person has inflicted injurious harm on another.

Kubvunzira or *gata* (inquiry) as understood by the local community is a consultation process to obtain the truth about unclear circumstances. It involves gathering the truth by consulting with a *homwe* or *svikiro* (spirit medium) that enquires from ancestral spirits, answers and solutions to issues in the community. In other instances, the local communities have consulted *maporofita* (white garment prophets) who are religious prophets within the African Apostolic churches with spiritual gifting of communicating with ancestors, angels and God. Some research participants reported knowing relatives who have consulted with both the white garment prophets and traditional healers to establish the whereabouts of their loved ones, especially those that disappeared without a trace. There were also reports that

kubvunzira was used by some perpetrators of violence to establish the whereabouts of the people that had been affected by their actions.

Kuripira ngozi (appeasing the avenging spirit) is a ritual that is done to offer compensation and appeasement to the spirit of the deceased in the case of murder. There are social and economic benefits in using the *ngozi* practice among the local communities (Benyera 2014a). It is alleged that once an offender has accepted responsibility for the harm done, he/she is usually given time to raise the resources required to appease the spirit of the deceased. Since traditional practices do not include incarceration, the offender remains within the community working towards raising the resources needed for compensation. The offender can continue looking after his/her family, which lightens the burden on the community that comes with sending someone to jail. Usually when one has been sent to jail the relatives are left to look after his/her family, which can be burdensome financially, as many of the people are living on limited economic resources. More so, sending someone to jail potentially strains relations of the people because the formal courts seemingly do not offer a platform that fosters reconciliation, rather they convict and sentence criminals.

Many of the customs and traditions held by the respondents have been practiced by their clans for generations and passed down through oral tradition. These customs and traditions are set by the people themselves and derive from the myths, taboos and moral responsibilities that the community shares. They form part of the broader African legal customs and are associated with the rituals and ceremonies inherent in customary practices of a community (Benyera 2014a). Hence, the local justice processes can combine rituals, ceremonies and reparations to balance out the requirements for retributive and restorative justice, a phenomenon that is not attainable through the formal justice system. Traditional practices, such as the *ngozi*, *nyaradzo*, *chenura*, and *magadziro/ umbuyiso*, among others, are a huge component of the everyday lived experiences of black Zimbabweans and they provide binding solutions that are ensured for by processes that govern both the physical and metaphysical realm.

8.3.4 How do community members, the government and community leaders facilitate transitional justice and reconciliation processes at the community level?

A response to this question was initiated through the survey questions that asked respondents to identify whom they consult when there is a dispute. Most of the respondents selected the tradition-based justice system as their preferred avenue for justice because they are familiar with the justice process. The local courts are located within the community and coordinated by people they know. The actors involved at the community level are the family, community mediators (*sahwira*), religious leaders, village head, headman and chief. Much of the role played by these actors is resolving interpersonal disputes among the community members.

The family elders provide counselling in cases of infidelity, *gupuro* (divorce), domestic violence and quarrels. The community mediators (*madzisahwira*) have the role of standing between conflicting parties and facilitating dialogue to enable the people to deliberate on the issues affecting them. Their depth of knowledge and experience in resolving various issues within their community makes them influential players in repairing relations. Church/religious leaders, especially *maporofita* (white garment prophets), are involved in exorcising people burdened with spiritually related challenges. They have been involved in administering cleansing rituals associated with the practice of *chenura* and *ngozi*.

Both the headman and village head provide an administrative role to the chief. They preside over issues that the family court has failed to resolve and serve as a port for appeals. Cases addressed by the village head or headman, include livestock theft, incest, infidelity, land disputes and reckless grazing (for example leaving cattle to graze in another person's field). The chief's court serves as the last port of appeal on matters that the other community actors have failed to resolve. During *dare* (court hearing), the role of traditional authorities such as the chief is *kuenzanisa vanhu* (establishing an equilibrium between the conflicting parties) and *kuyananisa* (reconciling). The research respondents added that when an issue arises, it is not treated as a matter for the individual but rather draws the attention of the whole family and greater community.

On the contrary, the ruling ZANU-PF party and its accomplices (the Border Gezi youth militias, the military, CIO operative, war veterans, and the judiciary) were accused of using violence to intimidate the community and to punish those suspected of supporting the opposition. This policing of the local community has eroded trust of the people in the government and the state institutions responsible for administering justice. Many people who attended the public hearings on the National Peace and Reconciliation Commission (NPRC)

appreciated the establishment of the commission and the functions it had with regards to addressing past injustices in Zimbabwe. However, there was limited interest in using the commission as an avenue for justice because the previous government-led initiatives are not devoid of political interference.

8.3.5 What is the relationship between existing transitional justice and reconciliation processes (i.e. official vs unofficial) in Zimbabwe?

The formal and tradition-based justice systems in Zimbabwe are recognised in the constitution as parallel legal systems (Constitution of Zimbabwe 2013). The formal justice system has superior legal standing to the tradition-based justice system because, the national courts have unlimited jurisdiction over civil and criminal matters. The formal justice system is comprised of the Magistrates' Court, High Court, Supreme Court and the Constitutional Court. A professional judge presides over these courts, which are very procedural and formal because legal representation is required during a court hearing and the Anglo Roman-Dutch laws are used to reach a verdict.

On the contrary, the tradition-based justice system has limited jurisdiction, it only applies to matters enforceable under customary laws, and these are cases of a civil nature. The tradition-based justice system is presided over by traditional chiefs, headmen and village head who are linked to the formal governing system through the office of the District Administrator (DA). The traditional leadership institution and traditional courts are mostly found in the rural areas. Traditional authorities do not have any written laws that they follow because the justice system is anchored on oral tradition. There are a few guidelines on the jurisdiction and procedures of the local courts which are stipulated in the Traditional Leaders Act (Chapter 29:17) and Customary Law and Local Courts Act (Chapter 7:05). Tradition-based justice processes combine rituals, ceremonies and reparations, a phenomenon that is not attainable through the formal justice system.

The legal separation between the formal and tradition-based justice systems was instituted during the colonial era, when the BSAC-led government superimposed the Westphalian governing system on the traditional leadership institution that existed among the black Zimbabwean population (Mlambo 2014). During the colonial era, the British settlers established a formal judicial system that was guided by Anglo-Roman-Dutch laws (Bhebe

and Ranger 2001). This British governing system was highly selective, racially based, hierarchical and centralised. Laws of the state were constantly developed to preserve the interests of the white population without consulting the local people.

In the post-colonial era, the formal justice system in Zimbabwe is still guided by the laws that were established by colonial rulers (Anglo-Roman-Dutch laws) and the government has often adopted restrictive policies that were used by the British settlers. For example, the Law Order and Maintenance Act (LOMA) of 1960 was replaced with the Public Order and Security Act (POSA) in 2002 and the government has also used amnesty provisions to pardon past injustices without legal recourse. Thus, the formal judicial system in post-colonial Zimbabwe has remained predominantly inclined towards the Eurocentric-North American perspective in terms of the legal framework, structure, procedures and the medium of instruction. It is more pronounced in the urban areas whereas the tradition-based justice system is reserved for the rural population.

Moreover, the national courts have been unable to prosecute alleged perpetrators of violence because of amnesty provisions, such as the Clemency Orders of 2000 and 2008, which were passed by the government (Machakanja 2010, Sachikonye 2011, *Solidarity Peace Trust* 2008). Even the police were reported to be complacent because they have failed to conduct investigations that could facilitate criminal proceedings in the national courts. The NPRC seems to be a new avenue that the Zimbabwean people may use to obtain justice. It is recognised in the Constitution and has a ten-year time frame that began in 2013 to address past injustices, as well as put in place strategies to prevent further violence. The commission has been framed within the formal legal framework and the NPRC bill does not provide an outline on how the tradition-based justice system will be appropriated. At the national level, the priority is on the formal legal framework, whereas the local communities prefer the tradition-based justice processes. This suggests that the national legal framework for transitional justice and reconciliation in Zimbabwe, continues to be disjointed and one-dimensional.

8.4 Reflections on the primary research question

The following sub-sections present what I believe to be the contributions that this research offers to the body of knowledge on peacebuilding in Zimbabwe and beyond. The reflections

are based on the main research question that guided the research, that is: What are the justice processes used by the local people in Buhera and Mudzi districts? And in what ways, if any, can they contribute to transitional justice and reconciliation?

8.4.1 Theoretical contribution

Transitional justice and reconciliation are nebulous concepts and pose a lot of challenges for conflict stricken communities in Africa. Firstly, justice is inherently a political concept whose conceptualisation and application is highly contested. Secondly, the application of legal recourse through transitional justice processes has developed contending approaches and policy, which range from Western-centred legal frameworks (focusing on the state and the citizen) to broader African justice processes that seek to rebuild relationships between community members. Thirdly, the institutionalisation of transitional justice has facilitated the diversification of its goals and medium for implementation (for example criminal tribunals and truth commissions) (Leebaw 2008, Teitel 2000, Westendorf 2015).

Within the peacebuilding discourse, transitional justice is the primary arena in which global actors engage with the socio-political dynamics of conflict to establish a new political order that prevents further conflict (Westendorf 2015). It is acclaimed for enabling the reconstruction of society by offering present justice for unaddressed past injustices. More so, it can be noted that since transitional justice is concerned with establishing a new political order, it could also be concerned with dismantling coloniality. But to date there has never been any liberal peacebuilding initiative that took interest in the colonial and decolonial project. Where actors from the Global North are interested in establishing a liberal democratic political order, African actors are in many cases interested in 'finishing' the project of liberation and emancipation from the Global North. So, these two purposes are working in opposition to one another. The one is trying to establish 'democracy' while the other is trying to destroy coloniality.

An additional complication is that African governments have often become extensions of the colonial order – they have become an extension of the colonial authorities, colonising their own people (as described by Mamdani 1996 in 'Citizen and subject'). So, global actors and African governments have different expectations; but African governments and their citizens also have different expectations. African governments seemingly want to hold onto power

and keep their people 'subjected' to them, whereas the local people require social harmony. Therefore, the decolonial project is coming primarily from the people, and not the African governments per se because justice for the local community is about rebuilding relations between entities in the physical and metaphysical realms, while the government is concerned with reconciliation of political parties.

Madlingozi (2015) writes that the liberal peacebuilding framework is a form of coloniality in that its claims of justice intentionally or unintentionally deny Africans all attributes of their humanity. For example, Roht-Arriaza (2006: 02) defines 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 dealing with past violations of human rights and humanitarian law." This conception of transitional justice serves to protect victims against mainly human rights violations, whereas emerging discourse on transitional justice proposes that the process should address serious and systematic violations of both human rights and other non-codified injustices (Benyera 2014a, Sandoval 2011). There is growing evidence that the mainstream literature on transitional justice has often intentionally or unintentionally side-lined other value systems of justice, outside the legal realm of human rights. Call (2004) mentions international legal institutions such as the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court (ICC) in the case of Rwanda and Uganda respectively, as examples of legal bodies that overshadowed the voice of local communities because they were deployed to uphold international legal standards.

Critical scholars, recognise that many African states are in a continual process of transition (Olonisakin *et al.*2016). The term transition describes an ongoing process of change in the socio-political, economic, cosmological and ecological lives of entities in post-colonial states (Olonisakin *et al.* 2016). They further argue that there are no consolidated democracies that have been forged in Africa through the liberal peacebuilding initiatives, what they see instead, are continual cycles of conflict, often at differing degrees of intensity, but stemming from the same ongoing, unresolved crises of coloniality (Madlingozi 2015). The latter view of critical scholars fed the scope of this research in answering the main research question stated above.

This research broadens the understanding of transitional justice to provide meaning to justice processes that could meet the expectations of conflicting parties in post-colonial societies,

especially at the community level. It provides three contributions with regards to the definition of transitional justice, justice process and legal implications.

Firstly, the research established that there is no local term to describe the concept of transitional justice, rather the various respondents hold varying understandings of justice. For community members in Buhera and Mudzi districts, justice is *kuenzanisa* (creating a balance or making equal), *kunzwana nhunha* (listening to troubling issues), *lunganisa* (making things right or equal) and *kuringanisa* (making amends or creating a balance). The above words for justice stem from the understanding that the injustices experienced by the local people have been internal and orchestrated by people familiar to them, some of them working with external actors. Justice means that people come together and listen to issues that have affected others, and work collectively to amend the damage violence causes to the relations and social harmony of people within the community. This understanding of justice resonates with the fundamental values of the community, namely, cooperation, social harmony, respect, interconnectedness and collective responsibility.

These values fit into the African philosophy of *Ubuntu* which denotes a moral status of wholeness or oneness of life, and locates the individual human being within the larger community (Nabudere 2011, Setiloane 1978). The local people see themselves as spirit beings that exist in three forms, that is, as living beings (spirit of the living persons), the 'living dead' (spirit of deceased persons) and 'unborn living' (spirit of a person yet to exist in the physical realm). These three forms of life constitute the cosmological community that makes up the social world in which people live either in the physical or metaphysical realm. Justice in these communities is rendered to repair the damage that occurs to entities in both the physical and metaphysical realms.

On the contrary, some people (mostly members of the civil society) who attended the public hearings of the National Peace and Reconciliation Commission (NPRC), described that justice should be done in accordance with international legal standards set in the Rome Statutes. This approach suggests that the intent of justice is to hold perpetrators to account to the satisfaction of the international legal system. The government officials, however, see justice as forgiving each other, letting go of the past (amnesia) and living together.

The above accounts of justice show that there is no coherence in the thoughts shared by the various stakeholders and this potentially has challenges for the people, if the guiding definition of transitional justice fails to accommodate the varying value systems that prevail. Hence, this research established that transitional justice can be understood as processes of redress in periods of disruption that reflect diverse practices of justice which enable the society to transform incidents of past injustices into an environment that fosters social harmony.

Secondly, the research established that there are various justice processes that can be employed for transitional justice in post-colonial societies. As mentioned above, some civil society groups require criminal proceedings that are commensurate with international legal standards and procedures. Criminal proceedings fall under the retributive justice model and there is vast literature that has examined the advantages and disadvantages of this model. In terms of advantages, formal legal proceedings follow a set of guidelines which are stipulated in law, for example the Anglo-Roman-Dutch laws in the case of Zimbabwe (Bhebe and Ranger 2001). These formal laws provide consistency, rigour, fair trial, deterrence and responsibility on the governing state bodies to uphold the rights of the people. More so, the court hearing is adjudicated by legal professionals who have the clout to apply the laws and statutes of the state. However, this formal justice system is compromised by the fact that the laws and procedures that guide the system are based on a Western legal framework that was developed by Western actors and imposed on Zimbabweans during the colonial era. Consequently, the values and norms that inform the formal legal system are detached from the way of life of the local people, especially the rural population in Zimbabwe.

The local community prefer the tradition-based justice system because it uses customs, traditions and practices commensurate with their way of life. The actors involved in facilitating justice are located within the community, namely, family members, community mediators (*madzisahwira*), religious leaders, village head, headman and the chief. Much of the role played by these actors is resolving interpersonal disputes among the community members. The practices followed by the local communities include *nyaradzo* (memorial), *kuripira ngozi* (appeasing avenging spirit), *nhimbe/ilima* (community working groups), *kubvunzira* or *gata* (inquiry), *magadziro/umbuyiso* (ceremony to bring back the spirit of the deceased), *chigarisaro* and *pfiramate pasi* (compensation for rape), *svukamaronda* (compensation for bodily injuries) and *chenura* (a cleansing ceremony).

Since transitional justice employs justice in the present to address the past, there is room for the local people to achieve justice through tradition-based practices. The tradition-based justice system combines rituals, ceremonies and reparations, a phenomenon that is not attainable through the formal justice system. As stated earlier, life among the local people exists in three forms of the 'living living', the 'living dead' and 'unborn future', the tradition-based justice system allows for redress to be fostered within the framing of the social world of the local communities. Thus, in using tradition-based practices, the 'living living' can engage with their past and inform the future, and this process provides catharsis, expiation and restoration of social harmony.

However, there are a few challenges with the tradition-based justice system in Zimbabwe, namely, it has limited legal jurisdiction, political interference by public officials, it conflicts with Christianity, there were reports of power contestations among community members and lack of material resources to use for reparations. The tradition-based justice system in Zimbabwe is constitutionally limited to attend to civil disputes. Given that the violence that has been occurring in Buhera and Mudzi districts largely fits into criminal schedules addressed by the formal courts, it would be difficult to employ tradition-based practices without an enabling legislature. Some traditional authorities have been implicated in acts of violence as 'sell-outs' who gave information to political actors. This seemingly discredits the credentials of traditional authorities as actors who can facilitate justice processes, but would not necessarily nullify the values, customs and practices of the tradition-based system. Hence, further research on the credibility of traditional authorities as role players in the justice process is required.

Among the black Zimbabwean population, there are some people who have moved away from the practice of African Traditional Religion (ATR) to the other religious practices, such as Christianity and Islam. For these people with a religious shift, it often becomes difficult for them to participate in traditional practices, for example *magadziro or umbuyiso* (ceremony to bring back the spirit of the deceased) because in the Christianity religion, people's lives are separated by death. This means that they do not believe that a relationship between the living persons and the dead exists. Nonetheless, the literature observed that this perceived shift presents itself as a variation of life lived mostly by the urban dwellers and not the rural population. Drawing from the work of Gelfand (1973), he observed that the phenomenon of

ancestral worshipping is more prevalent in the rural areas where the local communities even have sacred places of worship which they use to communicate with their ancestral family. More research would be required to fully understand the prevalence of this phenomenon.

Lastly, the research considered the legal implications of conceptualising transitional justice in the African perspectives. This stems from the understanding that different people in society ascribe to varying value systems which have a bearing on how they relate with justice processes available to them. In the case of the local community, justice is anchored on the values of cooperation, social harmony, respect, interconnectedness and collective responsibility. These values operate differently from the international legal standards and regulations that inform the formal justice system, but both legal systems work towards rendering justice. There is a need therefore, to create an enabling environment that would allow for different value systems on justice to be implemented in the pursuit of transitional justice.

8.4.2 Methodological contribution

The entry point of this research was the community level and not the state level because the study explored the justice processes available to community members in Buhera and Mudzi districts in Zimbabwe. This research sought to understand how the local communities resolve the conflicts that occur in their place of location, as well as how the context in which these experiences happen influence the ensuing understandings of justice.

Much of the existing literature on peacebuilding processes provides a state-centred perspective, and this scholarship assumes that the local people have a relationship with the state in which they exist. Yet, the state is often superficial and intangible to local communities in post-colonial societies because their settlement patterns and way of life is built on relations between people within the community and not the state. Focusing on the state -which is a social construct that was superimposed by the colonial settlers who created boundaries without taking into cognisance the settlement patterns of the local people- perpetuates coloniality in that it takes away the context of the people being studied (Daimon 2016, Nabudere 2011). Therefore, the term local was operationalised in this research as a standpoint that is based in locality but not bound by it (Sharp 2014, Shaw *et al.* 2010). It is a shifted centre that provides a vantage point from which people can recognise the community

as a site of knowledge, informed by the experiences of the local population (McEvoy and McConnachie 2013).

A qualitative ethnographic case study research approach was adopted because it allowed for a cross-sectional examination of the practices for addressing injustices among community members in Buhera and Mudzi districts. In this research, I spent time living with the local communities and taking part in some of the activities that inform the lived experiences of the local people. This encounter with the local community provides rich and deeper understandings of the social world and how the local people perceive their lived experiences in relation to the research questions. A limitation of this method is that one runs the risk of becoming emotionally invested with the subject under study, which can cloud judgement (McNaab 2004). This challenge was addressed by sticking to the research guidelines set in the interview and focus group schedules. More so, I conducted debriefing sessions with the research assistants while in the field and with my main supervisor after each field trip, which enabled me to reflect on the research process. I also wrote in my diary the research experiences I encountered while in the field and shared with my peers and colleagues during personal meetings, seminars and workshops, which enabled me to reflect on the influence of the field experience on my well-being and intellectual focus.

I exercised selection bias in choosing Mudzi and Buhera districts as sites for the study because the research topic was working on a highly politicised matter in Zimbabwe. The ruling government in Zimbabwe has put very strict measures with regards to access to information, especially about the socio-political events that have a bearing on the government. Mudzi and Buhera districts have been recorded as hot spots for electoral violence (*Human Rights Watch* 2008, *Solidarity Peace Trust* 2008), hence penetrating these communities requires caution and strategic alliances that allow one to relate with the local people without being monitored by state security agents or getting into crossfire. Though this research was conducted with permission from the relevant government authorities, the research permission letters did not give any guarantees that state security agents would not interfere in the study during fieldwork.

It is also extremely difficult to penetrate these two districts as a ‘stranger’ because of the overbearing polarisation that has been cemented by state security agents. However, as an outsider-insider I managed to penetrate the community making use of the existing relations I

share with the local people. I have referred to myself as an outsider-insider because Buhera is my rural home and I have several relatives in both districts, but I am currently not residing in these areas because of academic commitments. I have remained connected with some people in these communities through various social media platforms. Therefore, being an outsider-insider mitigated the challenge often faced when conducting an ethnographic case study research as a stranger to the communities under study. A potential challenge of being an outsider-insider is that one may become subjective and less objective, but this problem was mitigated by using multiple research techniques and secondary data sources to validate the reliability of the primary data. This research provides evidence-based accounts on the lived experiences of the local people, which captures deeper meanings that people give to their social world. This research approach, therefore, gives context to the ideas shared by the local people.

Moreover, as a clan member, community member and Zimbabwean-born, I could situate myself to understand the context in which the lived experiences of the local people are constructed. Much of the research on peacebuilding and more specifically transitional justice in Africa, has been conducted by Western scholars who applied a Eurocentric-North-American perspective to understand the lived experiences of the local people. This has produced scholarship about people in Africa that is conceptualised in a Eurocentric-North-American gaze (Nabudere 2011). My familiarity with the local communities gives impetus to local processes of justice in that this research brings to the fore the African perspectives on transitional justice. Furthermore, it provides information on local understandings of justice and the processes that can be followed to obtain justice in accordance with the value systems of the local people. This serves as a contribution to African scholarship and giving a voice to African knowledge systems.

Several research techniques were employed to ensure for reliability and validity of the study. At the primary level - surveys, semi-structured in-depth interviews, focus group discussions and participant observations- were employed during the fieldwork which was conducted in three phases. The fieldwork data was triangulated using secondary data sets obtained from archival records, such as academic journals, books, newspaper articles, government publications and reports by local civil societies working on transitional justice and reconciliation. More so, a combination of stratified purposive sampling and snowball sampling was used to identify the research participants. These two sampling techniques were

adopted because this research was exploring communities under state security surveillance, which required one to exercise caution and ensure for safety of both the research team and participants. The advantages of working through referrals and a select group of people is that one can build trust and work timeously in high risk areas.

The above research strategies can be used in other research projects working with similar communities, however, the purpose of the research is not to provide a basis for replication. Rather it gives depth to the context of the communities under study and how the people relate their lived experiences to the research question. The advantage of the ethnographic case study method, which is also its limitation, is that it works best with a small population size. Given that this research largely worked with a small sample of 36 people, the findings in this thesis do not necessarily represent the views of all community members in the two districts and the broader Zimbabwean community. The community meeting at the chief's court and the NPRC public hearings included in the study (which involved bigger population sizes), offer some information on the broader perceptions of various stakeholders, allowing this research to make minimal generalisation. Further research involving bigger population samples would be required to make stronger generalisations. This research, therefore, provides insight on how studies working on a similar subject can approach the research using a qualitative research design.

8.5 Recommendations

The research concludes by offering recommendations for future research in the field of peacebuilding and in Zimbabwe.

8.5.1 Recommendations for future research

The research established expressions of justice and an understanding of the lived experiences of local communities that is outside the framing of the mainstream peacebuilding literature. This has opened room for further research to be conducted to establish how various population groupings in Zimbabwe and Africans at large, resolve conflict and the justice processes they follow. Future research can look at the following questions:

i. To what extent did colonialism transform the way of life of various clan groupings in

Zimbabwe?

ii. What are the similarities and differences of practices followed by various clan groupings in Zimbabwe?

iii. What role can traditional authorities play in facilitating transitional justice among the rural community?

iv. What legal framework can be developed to enable various justice systems to be used in the pursuit of transitional justice?

v. To what extent do state boundaries intercept the customs, traditions and practices of transboundary communities in Zimbabwe?

vi. How do clan groupings in Zimbabwe relate with similar population groupings outside the country?

vii. What are the settling patterns followed by various African population groups on the continent?

viii. To what extent did colonialism transform the way of life followed by local population groupings in Africa?

ix. How do local people in various parts of Africa, resolve conflict in relation to their customs, traditions and value systems?

The research established that the legal delimitations set on the tradition-based justice system in Zimbabwe were forged during the colonial era and the current government has not made revisions on the hierarchisation that exists between the formal and tradition-based justice systems. In line with advancing the decolonial project that was initiated at independence in 1980, the research recommends that there is a need to undertake further research on how existing legislature might recognise the formal and tradition-based justice systems as equal legal systems. Notwithstanding its criticisms, the *gacaca* justice system was implemented for transitional justice in Rwanda through an act of parliament which gave the traditional authorities the power to try crimes scheduled under the formal justice system. This could be an example of how to expand the legal jurisdiction of tradition-based justice systems, without taking them out of the value system and context of the local community. More so, there is need for the policy framework of the National Peace and Reconciliation Commission to be aligned with the expectations of justice held by various population groups in Zimbabwe.

8.6 Conclusion

Transitional justice remains the primary arena in which global actors engage with the socio-political dynamics of conflict to put in place a new political order that prevents further conflict. Since transitional justice is being employed to establish a new political order for conflict stricken post-colonial societies in Africa, it could also be concerned with dismantling coloniality. Yet, for many decades there have never been any transitional justice processes that took interest in the colonial and decolonial project. Actors in the Global North are interested in establishing a liberal democratic political order, while African governments are in many cases interested in 'finishing' the project of liberation and emancipation from the Global North. So, these two purposes are working in opposition to each other. The one is trying to establish 'democracy' while the other is trying to destroy coloniality. An additional complication is that African governments have often become extensions of the colonial order; they have become an extension of the colonial authorities by colonising their own people. More so, African governments seemingly want to hold onto power and keep their citizens 'subjected' to them, whereas the local people require social harmony.

Given that transitional justice offers present justice for the past injustices, the research established that a one-size-fits-all approach to transitional justice and reconciliation is not adequate. Various people hold varying meanings of what would count for justice to be served; therefore, an enabling environment that accommodates various views of justice is required for transitional justice to work. For the government, justice is about forgiving each other, letting go of the past and co-existing. The civil society are of the view that justice processes need to hold perpetrators to account in accordance with international legal standards and procedures. But, community members in Buhera and Mudzi districts believe that justice is *kuenzanisa* (creating a balance or making equal), *kunzwana nhunha* (listening to troubling issues), *lunganisa* (making things right or equal) and *kuringanisa* (making amends or creating a balance).

In this research, transitional justice was therefore understood as processes of redress in periods of disruption that reflect diverse practices of justice which enable the society to transform incidents of past injustices into an environment that fosters social harmony. It remains to be seen whether, the formal and the tradition-based justice systems can be given

equal legal standing without ascribing to international legal standards and procedures, so that the transitional justice and reconciliation processes employed would meet the justice needs of the people. Hence, the validation of justice processes could be fostered in meeting the justice needs of the affected parties.

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10. APPENDIXES

Appendix A: SURVEY QUESTIONNAIRE

Interviewer: Please ensure the respondent is comfortable and understands the nature of the research. Please ensure every question below has a response.

Q01. What is your gender?	
Male	1
Female	2

Q02. What is your age?	
18-35	1
35-30	2
50-65	3
65 and older	4

Q03. Which village do you belong to? (Interviewer: Complete list of possible villages prior to administering survey questionnaire).	
	1
	2
	3
	4

Q04. Do you hold a leadership role in the community?	
Appointed leaders (traditional, political or government-appointed)	1
Other kind of leader (eg: religious, business, agricultural, women, youth)	2
Head of a household	3
No particular leadership role	4

Q05. If there is a conflict that you cannot resolve, who would you turn to in order to resolve it?	
Formal justice system (state-sponsored)	1
*Informal justice system	2

Both	3

*This can include a community based court led by traditional leaders that is or is not formally recognised by the state. It can also include interventions by the family, religious leaders, or any other kinds of leaders outside of the formal/state-sponsored court system.

Q06. Have you participated in an informal mechanism for resolving your conflicts?	
Yes	1
No	2

End questionnaire here if respondent has not participated in an informal mechanism for resolving their conflicts (ie: if the answer to Q06 is 'no').

Q07. Which is the type of conflict you have been most affected by? *(Interviewer: read out options)* What about second? Third? Fourth? Fifth? *(repeat options, if required)*

	7A. 1st response	7B. 2nd response	7C. 3rd response	7D. 4th response	7E. 5th response
Within the family	1	1	1	1	1
Within the community	2	2	2	2	2
External to the immediate community	3	3	3	3	3
Conflicts that are related to larger, political conflicts	4	4	4	4	4
Other: Specify: _____	5	5	5	5	5
Don't know	97	97	97	97	97

*Please record their first response in column 7A, the second response in column 7B and so forth.

Q08. To whom would you turn to first to resolve the conflict? *(Interviewer: read out options)* What about second? Third? Fourth? Fifth? *(repeat options, if required)*					
	8A. 1st response	8B. 2nd response	8C. 3rd response	8D. 4th response	8E. 5th response
Chief	1	1	1	1	1
Community mediators	2	2	2	2	2
Religious/church leaders	3	3	3	3	3
Family/friend	4	4	4	4	4
Other: Specify: _____ __	5	5	5	5	5
Depends on the conflict	6	6	6	6	6
Don't know	97	97	97	97	97

*Follow up qualitative question: Does the type of conflict influence who you would turn to and why?

Q09. For each of the following factors, please tell me whether you would need it in place for you to be satisfied that the conflict has been resolved:				
		Yes	No	Don't know
9A.	Apology?	1	1	97
9B.	Compensation?	2	2	97
9C.	Forgiveness?	3	3	97
9D.	Change of heart?	4	4	97
9E.	Punishment?	5	5	97
9F.	Other [specify]: _____	6	6	97

*Follow up qualitative question: What do you understand by these?

Q10. When conflicts have been resolved through the informal system, have you been satisfied that the conflict was settled once and for all?	
Never	1
Sometimes	2

Usually	3
Always	4
Don’t know	97

Q11. When conflicts have been resolved through the informal system, how have relations between you and the conflicting parties been?	
Worse	1
The same	2
Improving	3
Good	4
Don’t know	97

Appendix B: INTERVIEW SCHEDULE

APPENDIX B1: INTERVIEW GUIDE FOR COMMUNITY MEMBERS

The main aim of this research is to examine the avenues for justice available to community members affected by violence in Buhera and Mudzi districts, and to determine how they function in relation to meeting the expectations of the local community. This interview meeting will be guided by the following questions:

1. Are you aware of any conflicts that are affecting your community?
2. How do people in your community resolve conflicts?
3. Are you aware of any practices that have been used to resolve conflicts in your community?
4. Who are the actors involved in the practices?
5. What issues in the community do the practices address?
6. How are these practices conducted?
7. In your view, how effective are these practices?
8. Are there any challenges involved in conducting these practices? If yes, explain
9. In your view, how can the challenges be addressed? (if yes to Q7)
10. Have you ever heard of the following concepts?
    a. Transitional justice
    b. Reconciliation (If yes, explain)
11. Are you aware of any transitional justice and reconciliation processes in your community (either official or unofficial)?
12. How does transitional justice and reconciliation processes in your community operate? (If yes to Q10)
13. How would you suggest the national transitional justice and reconciliation processes be conducted?

APPENDIX B2: INTERVIEW GUIDE FOR TRADITIONAL LEADERS/GOVERNMENT OFFICIALS/CIVIL SOCIETY

The main aim of this research is to examine the avenues for justice available to community members affected by violence in Buhera and Mudzi districts, and to determine how they function in relation to meeting the expectations of the local community. This interview meeting will be guided by the following questions:

1. Are you aware of any conflicts that are affecting your community?
2. How do people in your community resolve conflicts?
3. Are you aware of any practices in your community that are used to resolve conflicts?
4. Who are the actors involved in the practices?
5. What issues in the community do these practices address?
6. How are these practices conducted?
7. In your view, how effective are these practices?
8. What level of support is available for these practices, from both the local community and government?
9. Are there any challenges involved in conducting these practices? If yes, explain
10. In your view, how can the challenges be addressed? (if yes to Q8)
11. Have you ever heard of the following concepts?
    a. Transitional justice
    b. Reconciliation (If yes, explain)
12. Are you aware of any transitional justice and reconciliation processes in your community (either official or unofficial)?
13. How does transitional justice and reconciliation processes in your community operate? (If yes to Q10)
14. How would you suggest the national transitional justice and reconciliation processes be conducted?

Appendix C: FOCUS GROUP GUIDE

APPENDIX C: GUIDE FOR FOCUS GROUP DISCUSSIONS

The focus group meeting is being conducted to facilitate engagement on issues that came up during the individual interviews. The discussions of this meeting will be limited to a duration of 60 minutes. More so, the meeting deliberations will be guided by the following questions:

1. What forms of violence have been experienced by the people in your communities?

2. What is your understanding of the following terms?

    a). Justice

    b). Violence

    c). Transitional justice

    d). Reconciliation

3. Do you engage in any transitional justice initiatives?

4. In your view, what contribution do you make to building peace and social harmony between conflicting parties?

5. What challenges do you face when resolving conflicts that emerge in your communities?

6. How do you suggest these challenges can be addressed?

Appendix D: RESEARCH PERMISSION LETTER MUDZI DISTRICT

Telephone: 0272-2230/2818/2687
email:damudzikotwa@gmail.com
The District Administrator
2nd Floor, Government Complex

ZIMBABWE

Reference: .....

MINISTRY OF LOCAL GOVERNMENT,
PUBLIC WORKS AND NATIONAL HOUSING
P. O. Box 100, MUDZI

7 July 2015

TO WHOM IT MAY CONCERN

Re: RUTH MURAMBADORO: PhD CANDIDATE IN THE DEPARTMENT OF POLITICAL SCIENCES AT THE UNIVERSITY OF PRETORIA, SOUTH AFRICA

This is to confirm that Ruth Murambadoro approached our office today 6 July 2015 for assistance to interview Chief Chimukoko and the District Administrator in her pilot study entitled Transitional Justice and Reconciliation in Zimbabwe: A Comparative study on Tradition Based Approaches in three ethnic Rural Communities.

We grant Ms Murambadoro permission to undertake her studies in the District of Mudzi up to the end of her studies (2015-2018) provided every time she visits she pays courtesy call at our offices as protocol demands. We will do everything possible to assist. We wish her all the best in her studies.

.....
J. Misi (00263 772 378 798)
For: **THE DISTRICT ADMINISTRATOR-MUDZI**

DISTRICT ADMINISTRATOR
MUDZI
06 JUL 2015
P. O. BOX 100, MUDZI
ZIMBABWE, TEL: 2230

Appendix E: RESEARCH PERMISSION LETTER BUHERA DISTRICT

MINISTRY OF RURAL DEVELOPMENT, PRESERVATION AND PROMOTION OF NATIONAL CULTURE AND HERITAGE

Reference : SM015

Telephone: 021-2497

Fax:

ZIMBABWE

OFFICE OF THE DISTRICT ADMINISTRAT
P.O. Box 79
BUHERA

Tuesday, September 27, 2016

TO WHOM OT MAY CONCERN

RE: RUTH MURAMBADORO: PhD CANDIDATE IN THE DEPARTMENT OF POLITICAL SCIENCES AT THE UNIVERSITY OF PRETORIA, SOUTH AFRICA

This is to confirm that Ruth Murambadoro approached our office today 27 September 2016 for assistance to interview all Chiefs of Buhera in her research entitled Transitional Justice and Reconciliation in Zimbabwe: A Comparative study on Traditional Based Approached in three ethnic Rural Communities.

We grant Ms Murambadoro permission to undertake her studies in the District of Buhera up to the end of her studies provided every time she visits she pays courtesy call at our offices as protocol demands. We will do everything possible to assist. We wish her all the best in her studies.

R.P. Madondo
DISTRICT ADMINISTRATOR
BUHERA

DISTRICT ADMINISTRATOR
MIN. OF LOCAL GOVERNMENT
AND NATIONAL HOUSING
27 09 2016
P.O. BOX 79, BUHERA
ZIMBABWE

Appendix F: ETHICAL CLEARANCE LETTER

UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA

Faculty of Humanities
Research Ethics Committee

12 April 2016

Dear Prof Africa

Project:	**Transitional justice and reconciliation in Zimbabwe: A case study on tradition-based approaches in two local communities**
Researcher:	**RR Murambadoro**
Supervisor:	**Dr C Wielenga**
Department:	**Political Sciences**
Reference:	**28264402 (GW20160311HS)**

Thank you for the **well written** 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 7 April 2016, conditional to written permission being granted by:

- Buhera community.

Please note that data collection may not commence prior to the Buhera community giving permission and subject to final approval by this committee. To facilitate the administrative process, please respond to Ms Tracey Andrew at tracey.andrew@up.ac.za or Room HB 7-27, at your earliest possible convenience.

Sincerely

Prof Maxi Schoeman
Deputy Dean: Postgraduate Studies and Ethics
Faculty of Humanities
UNIVERSITY OF PRETORIA
e-mail:tracey.andrew@up.ac.za

Kindly note that your original signed approval certificate will be sent to your supervisor via the Head of Department. Please liaise with your supervisor.

Appendix G: LETTER OF INFORMED CONSENT (ENGLISH VERSION)

UNIVERSITEIT VAN PRETORI
UNIVERSITY OF PRETORI
YUNIBESITHI YA PRETORI

Dept. of Political Sciences
Humanities Building 21
http://www.up.ac.za/
Tel.: +27 12 420 2464

October 2015

RESEARCH PROJECT: *Transitional justice and Reconciliation in Zimbabwe: A case study on Tradition-Based Approaches in two local communities.*

The main aim of this research is to examine the avenues for justice available to community members affected by violence in Buhera and Mudzi districts, and to determine how they function in relation to meeting the expectations of the local community. A lesser aim is to establish in what ways, if any, can the local processes of justice contribute to the national transitional justice and reconciliation project in Zimbabwe. The specific research objectives ensuing from this broad aim are to:

- Determine the nature of violence experienced by community members in Buhera and Mudzi districts.
- Investigate the underlying assumptions and narratives of transitional justice and reconciliation among local communities in the two districts.
- Explore existing practices for resolving conflict available to the local people, and how they function.
- Identify the processes followed by the local community, community leaders and government to facilitate transitional justice and reconciliation at the community level.
- Establish the relationship between existing transitional justice and reconciliation processes (i.e. official vs unofficial) in Zimbabwe.

Data for this research will be obtained through periodical field trip visits over three years (2015-2017) in two communities, namely, Buhera and Mudzi districts. The data will be gathered using a qualitative ethnographic case study research method which involves research techniques such as surveys, semi-structured interviews, focus group discussions and participant observation. Audio devices may be used with the consent of research participants, to enhance data capturing as well as cross examination of data at later stages of the research.

My name is Ruth R Murambadoro, I am a postgraduate student (nr. 28264402, DPhil: Political Science) in the Department of Political Sciences at the University of Pretoria and I am conducting field research on the above topic in Zimbabwe. Permission to conduct the field research has been granted by the University of Pretoria and the Ministry of Local Government, Zimbabwe.

My research findings will eventually appear in my doctoral thesis and in journal articles, books and other forms of academic publication.

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 organisation 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: +27 76 470 1200. My supervisors are Dr C Wielenga and Prof A Mlambo. Dr Wielenga is a Research Fellow in the Department of Political Sciences at the University of Pretoria and she may be contacted via telephone (+27 12 420 4486) or e-mail cori.wielenga@up.ac.za. Prof Mlambo is a professor and is Head of the Department of Historical and Heritage Studies and he may be contacted via telephone (+27 12 420 5475) or e-mail alois.mlambo@up.ac.za

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 the participant**	**Date**

Appendix H: INTRODUCTION LETTER

UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA

Faculty of Humanities
Department of Political Sciences

15 September 2016

To whom this concerns

Re: Research project on transitional justice and reconciliation in Zimbabwe

This is to verify that Ruth Murambadoro is a PhD student in the Department of Political Sciences at the University of Pretoria, South Africa.

Ms Murambadoro is pursuing her doctoral research on the important topic of transitional justice and reconciliation in Zimbabwe, specifically in the districts of Mudzi and Buhera. Her research includes one-on-one interviews, observations and focus groups in this communities and in Harare. All data that she collects will be safely stored at the Department of Political Sciences at the University of Pretoria for fifteen years.

This research is supported by the University of Pretoria, and Ms Murambadoro has secured the necessary ethical clearance from the University in order to pursue this research.

Her findings will be shared in her PhD thesis, which may be turned into a book volume in the future. Further, findings may be shared at conferences, in policy briefs and in academic articles.

If you have any queries about this research, please contact the supevisor, Cori Wielenga, on tel: +27 12 420 4678 or cori.wielenga@up.ac.za.

We thank you in advance for your support of Ms Murambadoro's research.

Sincerely

Cori Wielenga

Research Fellow in the Department of Political Sciences

HSB 21-22
University of Pretoria
PRETORIA 0002
Republic of South Africa

Tel: +27-12 420-4486
Fax: +27-12 420-4486

Cori.Wielenga@up.ac.za
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