



**GRASSROOTS TRANSITIONAL JUSTICE FRAMEWORK:
THE ROLE OF MEDIATION IN ZIMBABWE'S TRANSITIONAL
JUSTICE PROCESSES**

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DECLARATION

Grassroots Transitional Justice Framework: The Role of Mediation in Zimbabwe's Transitional Justice Processes

I, **Edknowledge Mandikwaza**, declare that this thesis, submitted for the Ph.D. in Public Management – Peace Studies, has not been previously submitted for a degree at any other university worldwide.

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ABSTRACT

This study investigated the role of mediation in grassroots transitional justice processes. The major aim of the study was to understand the role of mediation in transitional justice processes, ascertaining its effectiveness as a grassroots transitional justice mechanism and how its demand for use in transitional justice can be increased. The study was carried out using action research methodologies, with a mediation project carried out in the Makoni District of Manicaland in Zimbabwe. The mediation project involved community members addressing transitional-justice-related conflicts using mediation as a tool for conflict resolution. The mediators were provided with mediation skills through a training programme and their work was evaluated thrice to ascertain the role and impact of the mediation interventions on transitional-justice-related conflicts. The project was termed *Mediation for Everyday Transitional Justice* because it was implemented in a natural community's daily environment, by local people and for the local communities.

The continuing failure of transitional justice mechanisms in Zimbabwe amid continued human rights violations justifies the undeniable value of this study. Zimbabwe's past transitional justice efforts (since 1980, when the country became an independent republic) failed to build sustainable peace hence the country's continued relapse into political and socio-economic turmoil. However, with appropriate transitional justice interventions that are built on grassroots-informed processes, sustainable peace is conceivable in Zimbabwe. Mediation, as an alternative dispute resolution process that is both persuasive and non-retributive, offers an interesting opportunity to the practice of transitional justice.

The research concluded that the role of mediation in transitional justice is to facilitate truth telling, reparations, healing, and reconciliation among disputants without the need to use national-level transitional justice infrastructures. This means that, at the grassroots level, transitional justice processes can take place without waiting for the statist transitional justice approaches. However, in cases where the past human rights violations being addressed are tied to structural violence, driven from outside the community, local mediation processes may not be possible without the consent, cooperation, and willingness of those who sustain such conflicts. In addition, mediation cannot play any significant role in enabling prosecutorial justice, memorialisation, and institutional reforms at the grassroots level. Prosecutorial justice cannot be achieved because perpetrators can withdraw quickly when possibilities exist to be held criminally accountable for past human rights abuses. Institutional reforms also require changing governance policies and practices which are issues beyond the control of specific local communities. The study also observed that mediation is an effective tool for grassroots transitional justice issues because it is efficient, it saves time and financial resources, and it can be undertaken by local actors. To increase its demand and use in transitional justice processes at the grassroots level, there is a need to increase communities' awareness of the importance of mediation in transitional justice, provide mediation-skills capacity-development interventions to potential mediators, and enhance the agency of various mediation actors at the grassroots levels.

DEDICATION

Sandy, Addknowledge Jr. and Cde Strive – it is a life duty to strive, add your knowledge, and succeed.

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LIST OF ABBREVIATIONS

BMATT	British Military Advisory Training Team
BSAC	British South Africa Company
CAZ	Conservative Alliance of Zimbabwe
CCMT	Centre for Conflict Management and Transformation
CIO	Central Intelligence Organisation
CNA	Centre for Nonviolent Action
COI	Commission of Inquiry
COPAC	Parliamentary Constitutional Select Committee
CSO	Civic Society Organisation
DDR	Disarmament, Demobilisation and Reintegration
ESAP	Economic Structural Adjustment Programme
FGD	Focus Group Discussion
FROLIZI	Front for the Liberation of Zimbabwe
FTLR	Fast Track Land Reform
GNU	Government of National Unity
GPA	Global Political Agreement
HZT	Heal Zimbabwe Trust
ICC	International Criminal Court
ICTJ	International Centre for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
JOMIC	Joint Monitoring and Implementation Committee
MDC	Movement for Democratic Change
NCA	National Constitutional Assembly
NDP	National Democratic Party
NPRC	National Peace and Reconciliation Commission
NVMS	Northern Virginia Mediation Service
ONHRI	Organ on National Healing, Reconciliation, and Integration
SADC	Southern African Development Community
SADF	South African Defence Forces
SRANC	Southern African Rhodesia National Congress
SSR	Security Sector Reform

TJ	Transitional Justice
TJRC	Truth, Justice and Reconciliation Commission
TRC	Truth and Reconciliation Commission
UANC	United African National Council
UN	United Nations
USSR	Union Soviet Socialist Republics
ZANLA	Zimbabwe African National Liberation Army
ZANU	Zimbabwe African National Union
ZANU PF	Zimbabwe African National Union Patriotic Front
ZAPU	Zimbabwe African People's Union
ZHRC	Zimbabwe Human Rights Commission
ZIPA	Zimbabwe People's Armies
ZIPRA	Zimbabwe People's Revolutionary Army
ZNA	Zimbabwe National Army
ZNLWVA	Zimbabwe National Liberation War Veterans Association
ZUM	Zimbabwe Unity Movement

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CHAPTER 1: INTRODUCTION TO THE STUDY

1.1 Introduction

Transitional justice remains one of the most important pathways towards building sustainable peace for countries emerging from violent conflicts or those transitioning from authoritarianism to democracy. However, for Zimbabwe, state-led transitional justice (TJ) interventions and complementary peacebuilding initiatives by civic society organisations and churches have failed to break the cycles of violence and gross human rights violations. Failed state-led TJ interventions include redistributive, reparative, and restorative justice mechanisms whereas complementary initiatives by civic society organisations involve grassroots led mediations. Hence, this study is concerned with finding alternative TJ intervention mechanisms by exploring the role of mediation in Zimbabwe's grassroots TJ processes through action research methodologies.

This introductory chapter provides foundational interpretation of the entire thesis by explaining the research background, research problem, key research objectives and questions. The chapter explains the significance of the entire study, both in the theory and practice of transitional justice and mediation. In this introductory chapter, I demonstrate the worthiness of this research and how it will improve policies, practices, and processes in the field of peacebuilding, transitional justice (TJ), and mediation. To offer insights on the study area a brief overview of Makoni District, where the action research was carried out, is provided. The structure of this thesis, including study limitations and delimitations are also explained.

1.2 Background to the Study

Zimbabwe is suffering from its past socio-economic and political experiences, circumstances that require robust peacebuilding mechanisms and processes, if sustainable peace is to be secured. Transitional justice is one alternative sustainable peacebuilding approach viable for Zimbabwe given that the country endured violent experiences and gross human rights violations from prior to colonialism when it was

colonised since the 1890s to the post-independence era beginning in 1980 to date. Attempts to facilitate TJ have been done, mainly at state level, through redistributive, reparative, and restorative justice mechanisms, but their impact were insignificant mainly because the processes have lacked political will, expertise, and resourcing (Murambadoro 2019; Munhende 2020; National Peace and Reconciliation Commission (NPRC) 2020; Rwodzi 2020).

According to Rwodzi (2020:5), the TJ process in Zimbabwe simply failed when “the ruling elite presented reconciliation as an event rather than a process.” This means that the government leaders undertook reconciliation interventions just to ‘tick boxes’ without due process and sincerity that allows proper reconciliation to take place. Additionally, there have been multiple interpretations for what effectively constitute transitional justice in Zimbabwe (Murambadoro 2020) making it difficult to create local and nationally accepted methodologies for a proper TJ process. These observations generate complex questions on the possibilities of undertaking a successful TJ in Zimbabwe. One fundamental question is: What could be the best approach to facilitating TJ in Zimbabwe, as an essential and best alternative mechanism for sustainable peacebuilding. I attempt to answer this question by investigating mediation, as a key methodological gap in pursuit of Zimbabwe’s TJ objectives. This is achieved by analysing the role mediation in supporting TJ processes for sustainable peacebuilding, using action research methodologies.

Unaddressed past violations include the killings of over 30,000 people during the liberation struggle between 1965 and 1979 (Murambadoro and Wielenga 2014), massacres of approximately 20,000 people through state-sponsored violence against the Ndebele minority population between 1982 and 1987 (Ndlovu 2017), violent land dispossession of approximately 3,900 farmers and the subsequent displacement of approximately 224,000 farm workers (Sachikonye 2001), involuntary displacements of 700,000 urban dwellers in 2005 (Bratton and Masunungure 2006), and political killings amounting to 200 deaths in 2008, among other cases (Human Rights Watch 2011). These gross human rights violations continue to occur and they are severe, widespread, deliberate, systematic, and largely conducted with impunity (Mavhinga 2020). For example, under a new leadership of President Mnangagwa (post President Mugabe era) in 2018, “7 people were killed after the deployment of the military during

postelection protests” and in 2019 “at least 12 people were killed, more than 78 people were treated for gunshot wounds, and over 302 were treated for serious injuries that include dog bites, assaults, severe beatings, blunt trauma, and use of sharp and penetrating objects...while several women and girls were reportedly raped by members of the security forces” (Naidoo, Roth and Byanyima 2019: 1-2).

In 2020, Zimbabwe’s human rights situation continued worsening regardless of the existence of a transitional justice architecture, the National Peace and Reconciliation Commission and the Zimbabwe Human Rights Commissions, among other human rights protecting institutions. Showing the declining human rights situation, the Human Rights Watch (2021) notes that in 2020 “suspected to be state security agents, abducted and tortured more than 70 critics of the government during 2020. Security forces also continued to commit arbitrary arrests, violent assaults, abductions, torture and other abuses against opposition politicians, dissidents, and activists (Watch 2021). This observation was also echoed by the United States Department of State which noted Zimbabwe’s key human rights violations between 2019 and 2020 as including:

unlawful or arbitrary killings of civilians by security forces; torture and arbitrary detention by security forces; cases of cruel, inhuman, or degrading treatment or punishment; harsh and life-threatening prison conditions; political prisoners or detainees; arbitrary or unlawful interference with privacy; serious problems with the independence of the judiciary; serious government restrictions on free expression, press, and the internet, including violence, threats of violence, or unjustified arrests or prosecutions against journalists, censorship, site blocking, and the existence of criminal libel laws; substantial interference with the rights of peaceful assembly and freedom of association; restrictions on freedom of movement; restrictions on political participation; widespread acts of corruption; lack of investigation of and accountability for violence against women; crimes involving violence or threats of violence targeting women and girls, and the existence of laws criminalizing consensual same-sex sexual conduct between adults, although not enforced (United States Department of State 2020: 1-2).

The violations above evidently show Zimbabwe’s continued episodes of gross human rights violations. The country’s relapse into periods of gross human rights violations and violence exposes how Zimbabwe’s past (alternating) TJ efforts (since 1980, when the country became an independent republic) failed to build sustainable peace. These efforts have included the government’s declarations of peace, amnesia, amnesties,

peace agreements, prosecutions, and deliberate restorative justice policies. Ndlovu-Gatsheni and Benyera (2015: 20), contends that only “three mechanisms were used by the state between 1979 and 2014 to address the justice and reconciliation question in Zimbabwe, which are amnesties and pardons, amnesia and commissions of inquiry.” For example, the General Amnesty Ordinance 3 of 1979 gave amnesty and blanket immunity to perpetrators of state-sponsored violence and silenced the victims, and the Chihambakwe Commission and the 1987 Unity Accord muzzled voices of the *Gukurahundi* victims and survivors where over 20,000 people were killed (Kriger 2005b; Mashingaidze 2005). In 1980, a forced reconciliation decree (forgive and forget) was declared while the general reconciliation politics were repudiated by the ruling government as it proceeded with “politics of frontal assault” instead of promoting meaningful TJ (Raftopoulous and Savage 2004: ix-xi). Between 2000 and 2008, multiple cases of politically motivated human rights violations including torture, arson, murders, displacements, and economic injustices were recorded, but little was done to facilitate effective justice, healing, and reconciliation processes (Raftopoulous and Savage 2004; Machakanja 2010; Mungure, Mandikwaza and Guthrey 2018).

More precisely, to show a series of failed TJ approaches, at independence in 1980, the government declared a ‘forgive and forget’ reconciliation policy, but from 1983 to 1987 the state sponsored *Gukurahundi* atrocities occurred, killing over 20 000 people in the Matabeleland and Midlands provinces (Bere 2020). On 22 December 1987, a Unity Accord was signed to mark end the *Gukurahundi* atrocities, but electoral political violence campaigns continued against opposition members from the 1990 general elections (1990, 2000, 2002, 2005, 2008, 2013 and 2018) to date. In 2000 farm invasions occurred with 4500 white farmers violently losing their land (Sachikonye 2001) and over 70 000 farmworkers being displaced (Scoones et al. 2019). To remedy the farm invasions a Global Compensation Deed was signed in 2020 (Zimbabwe Farmers Union 2020) yet farm invasions continue. For example, after signing the compensation agreement in July 2020, “in September 2020, Martin Grobler, who had a farm in Ruwa, 30km outside the capital Harare, was evicted after he was given 24 hours’ notice” (Nyoni 2021: 1). Operation Murambatsvina occurred in 2005 affecting approximately 700 000 people (Tibaijuka 2005). To repair the damage, the government launched Operation Garikayi, a housing scheme for the displaced, but the ruling party benefitted its members (Besada and Moyo 2008). In 2008 political violence

swept across the country killing hundreds of people and displacing thousands and a coalition government was established in 2008 with institutions such as the Organ for National Healing, Reconciliation and Reintegration (ONHRI) to facilitate transitional justice . These violations and TJ efforts took place under President Mugabe, a ruthless dictator who ruled the country between 1980 and 2017, and during his reign “opposition supporters suffered harassment, intimidation, forced removal and death” (Swart 2017: 1).

In late 2017, upon taking over the presidency, President Emmerson Mnangagwa promised to break from Mugabe’s rule by reconciling the nation, ending corruption, impunity and to respect human rights. To follow through his words, he signed into law the National Peace and Reconciliation Act (NPRC Act) (a successor to ONHRI) and he began conversations with the people of Matabeleland region (through Matabeleland Collective)¹ in 2019 to address the Gukurahundi atrocities. President Mnangagwa promised the Gukurahundi victims community reparations, reburials, access to documentation (births and deaths certificates) and developmental projects (Harris 2020). By 2021 the reconciliation promises were becoming “deeply controversial, leading to a split within the Matabeleland Collective and falling far short of any meaningful truth-telling and justice-seeking initiative” (Helliker and Mazarire 2021: 171). In other words, the promises have not been fulfilled, four years down the road (2018-2022) confirming the Centre for Innovation and Technology [CITE] (2020) supposition that the promises were insincere and mere public relations gestures.

In 2018, on the eve of his first election debut, Mnangagwa unleashed the military to thwart protests leading to seven deaths (Naidoo, Roth and Byanyima 2019). A Commission of Inquiry was instituted (known as the Motlanthe Commission), but its recommendations were never heartily implemented (Munhende 2020). Constitutional, civil, and political reforms that were anticipated to be carried out were stalled and the constitution adopted in 2013 began being mutilated with wholesale amendments hence stifling institutional reforms that forms the broader part of transitional justice (National Transitional Justice Working Group [NTJWG] 2021). These examples show

¹ Matabeleland Collective is a coalition of civic society organisations in the Matabeleland region established to lobby and advocate for the interests of the region’s peoples.

the extent to which past TJ approaches have failed to end continued gross human rights violations in the country hence, the need for alternative TJ mechanisms that goes beyond declarations of amnesties, forgive, and forget policies and the mere establishment of peace and reconciliation commissions.

The challenge with Zimbabwe's past efforts to facilitate TJ have largely been top-down (elite level) processes implemented without grassroots' buy-in, ownership, and support, hence their failures (Murambadoro and Wielenga 2014; Chivasa 2021). These efforts have also largely failed to yield meaningful results due to a lack of political will, poorly conceptualised TJ interventions, inadequate resources, and political bickering (Mashingaidze 2010a; Ndlovu-Gatsheni and Benyera 2015; Ngwenya and Harris 2015; Mungure, Mandikwaza and Guthrey 2018; Murambadoro 2020). Upon recognising the failure of past TJ attempts, through a new constitution adopted in 2013, Zimbabwe established the National Peace and Reconciliation Commission (NPRC) to facilitate the much needed TJ options (Human Rights NGO Forum 2013). The NPRC became operational in 2018 as a formal TJ architecture for Zimbabwe, but its modicum of operation has taken a top-down approach characterised by a lack of independence from the Executive, a lack of political will, and elitism, which predictably indicate its likely failure, (Murambadoro 2019, 2020) as observed in other past mechanisms. Also, pursuing accountability for past violations through retributive justice (prosecutions) would be difficult due to the partisan nature and corruption of the security services and the justice system (Haider 2010; Mavhinga 2020; United States Department of State 2020).

However, if appropriate TJ interventions built on grassroots-informed processes are established, sustainable peace is conceivable in Zimbabwe. Sustainable peacebuilding refers to "a peace that is maintained over a long period of time with the underlying causes of the original conflict having been addressed (Dashwood 2016: 219). This view suggests that appropriate transitional justice that supports sustainable peace should be able to offer a "deeper, richer and broader vision of justice which seeks to confront perpetrators, address the needs of victims and assist in the start of a process of reconciliation and transformation" (Boraine 2006: 18). TJ will therefore contribute towards a socially cohesive and just society where victims and perpetrators (former enemies) are able to continue living together after conflict (Brounéus 2007).

What Zimbabwe did, however, was to apply truces for several epochs of conflict and violence instead of developing TJ mechanisms that promote sustainable peace (Ndlovu-Gatsheni and Benyera 2015). Declarations of peace, amnesties, prosecutions, amnesia, unity agreements, and partial dialogues were generated mostly to the advantage of the perpetrators of violence without much regard for the victims' interests (Machakanja 2010; Mashingaidze 2010a). These challenges are closely linked to the country's governance system and political culture that are discussed in detail in Chapter 2.

To help address the aforementioned transitional justice challenge in Zimbabwe, this study identified mediation as a possible appropriate TJ mechanism capable of contributing to the country's sustainable peacebuilding process. The study specifically investigated the role of mediation in supporting grassroots level transitional justice processes. Mediation is a "process by which a neutral third party (the mediator) attempts, through participation in face-to-face negotiations with the disputing parties to assist those parties reaching an agreement that resolves the dispute" (Nahrstadt 2016: 68). This approach, in transitional justice contexts makes both the victim and the perpetrator collaborate in addressing the existing conflict, grievance and or issue. Zimbabwe needs this approach because major perpetrators are still in power and would be less inclined to implement TJ processes that compels them to account for their legacies of gross human rights violations. Besides, mediation as an alternative dispute-resolution mechanism is generally gaining increasing relevance in the 21st century as compared to previous times (Nahrstadt 2016), because it is non retributive and it is based on mutuality between the victim and the perpetrator.

Mediation as an alternative mechanism for facilitating transitional justice processes seems not to have been fully explored in Zimbabwe. This is because studies explaining mediation issues in Zimbabwe display peace-making transition (mediation) literature detailing the country's civil war in the 1970s (Stedman 1991) and regional mediation processes implemented through the Southern African Development Community (SADC) following a violent election and electoral credibility crisis in 2008 (Ndlovu-Gatsheni 2011). Adding to these is the November 2017 military coup where a semblance of mediation between the then President of Zimbabwe, Robert Mugabe and the military was negotiated for a peaceful transfer of power, now known as the

military-assisted transition from Mugabe to Emmerson Mnangagwa (Pollitt 2017). These experiences are state level mediated transitions without an iota of substantive transitional justice denotations that takes into account the rights of victims to truth, justice, healing, and reconciliation.

It is these gaps in the literature concerning the practice of mediation that motivate this action research study to test the applicability of *TJ mediation* as a sustainable peacebuilding model with greater emphasis being placed on grassroots-informed processes.

TJ scholars such as Ruth Murambadoro (2020, 2019), Pamela Machakanja (2010), Sabelo Ndlovu-Gatsheni and Evaristo Benyera (2015), Douglas Munemo (2016), Evaristo Benyera (2014), Kudakwashe Chitsike (2012), Du Plessis Max and Ford Jolyon (2008), and the Human Rights NGO Forum (2013), addresses TJ alternatives for Zimbabwe with varying suggestions on how best to facilitate a successful transitional justice process that supports peacebuilding within the current socio-political contexts. For example, Benyera places traditional peacebuilding mechanisms at the centre of transitional justice such as ngozi (avenging spirits), spirit mediums (masvikiro), self-shaming (botso), nyaradzo (memorial service as a cleansing ceremony to appease the dead for his or her spirit to protect the family and avoid being retributive), as avenues for transitional justice (Benyera 2014, 2015). Just like Benyera, Murambadoro (2020: 96) Murambadoro takes the discussion further by enunciating how “spirituality provides a holistic remedy to the harms incurred through rituals, ceremonies and reparations which restores harmony among cosmic beings.” What informs these traditional TJ mechanisms is the varied and deep understanding of violence within local contexts. Murambadoro, in her monograph, discusses what violence within the local context mean and spaces within which it occurs as a harm.

Violence in the Zimbabwean context is perceived as:

“mhirizhonga (violence, instability or disorder), bopoto (quarrelling), kurwisana (fighting), makakatanwa (tensions), bvongamupopoto (disruptive behaviour), bvonga bvonga (chaos), nyonganiso (chaos or disruptions) and zhowe zhowe (chaos)” (Murambadoro 2020: 36).

As noted earlier, these contextual perspectives of violence help TJ practitioners to comprehend how Zimbabwean local cultural values contribute to transitional justice processes in a natural way in situations where a state-led TJ would have failed.

Another perspective articulating TJ viewpoints is articulated by Ndlovu-Gatsheni and Benyera (2015) who argue that the political project as a TJ agenda has failed and a reconstitution of the political system in Zimbabwe is what is necessary. The authors note that;

[I]n a reconstituted political, the role of the government must be to create an enabling environment for healing and reconciliation to occur. But for Zimbabwe, the challenge to the proposed reconstitution of 'the political' is that the very government which is supposed to champion national reconciliation and healing is accused of benefitting from human rights abuses. This challenge, therefore, gives credence to those voices that clamour for regime change as an essential prerequisite for genuine national healing and reconciliation" (Ndlovu-Gatsheni and Benyera 2015: 29).

The authors view, acceptably, is that the state-led transitional justice system has failed because the state itself is feeding on human rights violence, hence their suggestion is the adoption of a survivor's justice approach to TJ. Whereas this notion of survivor's justice dovetails well with grassroots (people-led) TJ my study places mediation as the medium for TJ. Mediation is the prime mechanism for transitional justice, amid the prevailing convoluted national transition.

Other authors such as Eppel (2004), and Ngwenya and Harris (2015), also articulate the mediatory role of community dialogues and coordinated writing of personal stories in healing and reconciliation, as well as the role of family and community initiatives as key interventions that shows citizen agency in grassroots TJ processes. For example, Ngwenya and Harris (2015) observed that without apologies and justice experienced, victims can vent out their bottled trauma and embark on a healing journey if provided a safe environment to share their experiences with peers and writing about the violations for the public to access the truth. Eppel details the agency of families and local communities in facilitating memorialisation initiatives that including reburials and rituals to bring closure to the Gukurahundi victims (Eppel 2004, 2014, 2020). In one of her writings, Eppel notes that "exhumations can vindicate and restore historical memory while at the same time righting cultural wrongs and bringing some closure"

(Eppel 2020: 264). However, this agency is only possible in situations where the state allows such initiatives to take place without repression by the government.

Arguably, whereas the Gukurahundi atrocities were the worst violations in Zimbabwe's post-independence era, there is a need to consider multidimensional nuances of TJ such as broader political, economic, and cultural violations that occurred in the country's history-making process, if sustainable peace is to be built. Wielenga (2020) warns that failure to question whether TJ conceptualisations and propositions will allow sustainable peacebuilding may be retrogressive. According to Wielenga, it is important to suggest ways that allows peace to be built as opposed to trigger resistance from perpetrators and possible rekindled conflicts (Wielenga 2021).

Mediation is one such an aspect that allows sustainable peacebuilding because it does not create resistance, but it negotiates for consensus on both ends, between the victim, and the perpetrator. "Mediation as a tool for conflict transformation provides a proper response to the challenge of asymmetry because it targets the attitudes and behaviours of conflicting actors in order to transform their relations into constructive interaction" (Giessmann 2013b: 3), which should be vital in situations where TJ is implemented in countries, like Zimbabwe, where political transition is lethargic. A more elaborate conflict history of Zimbabwe will be described in Chapter 2.

While the above context provides an overview of Zimbabwe's conflict history and the need for TJ, this study was specifically carried out in Makoni District (in Manicaland Province, Zimbabwe). The district has experienced the brunt of politically motivated violence, during and after the liberation struggle, which makes it a suitable case study for TJ initiatives, and it mirrors the broad national conflict experiences. Manicaland Province, in general, has been at the frontier of the liberation as the war was launched through the eastern parts of Zimbabwe from Mozambique and it has also been the political hotbed of opposition politics since independence. Moreover, most notable opposition leaders including Edgar Tekere, Simba Makoni, Morgan Tsvangirai, and Douglas Mwonozora hailed from Manicaland Province and they have organised their political activism efforts drawing strength from that province. This allows Makoni District to serve as a useful case study for TJ taking into consideration pre- and post-independence conflicts, justice, healing, and reconciliation needs.

1.3 Statement of the Problem

The problem being investigated in this study is about Zimbabwe's lack of a viable TJ intervention approach that assists the country to undertake a successful national healing, justice, and reconciliation process. The inquiry is extremely significant because Zimbabwe continues experiencing a recurrence of gross human rights violations, especially during electoral episodes, even after implementing some TJ processes to remedy the past (Bere 2020; Makonye, Ehiane and Otu 2020). TJ exists to offer justice, reparations, and healing to victims of gross violations, but Zimbabwe's past TJ efforts have failed to meet this objective. Hence, the continued need to explore options for a viable transitional justice process for the country. Mediation is this thesis' proposition. It is evaluated through action research methodologies, as an alternative transitional justice mechanism that may successfully support the country's TJ processes towards sustainable peacebuilding.

To demonstrate how legacies of violence and gross human rights violations have recurred in Zimbabwe: the government declared a 'forgive and forget' reconciliation policy in 1980, but from 1983 to 1987 the state sponsored Gukurahundi atrocities killing over 20 000 people in the Matabeleland and Midlands provinces (Bere 2020). The Dumbutshena and Chihambakwe Commissions of Inquiries were instituted in 1982 and 1984, with a view to facilitate justice healing and reconciliation, but the report and their recommendations were never made public or rather implemented (Kriger 2005b; Eppel 2009). The truth was hidden from the citizens. On 22 December 1987, a Unity Accord was signed to mark end the Gukurahundi atrocities, but subsequently the perpetrators were never brought to justice and those that had been arrested were granted amnesty (Mashingaidze 2010b).

Electoral and politically motivated violence and gross human rights violations increased from the 1990 to the 2018 elections including fatal gun shots, arson, abductions, arbitrary arrests and detentions, torture and enforced disappearances while the perpetrators continue occupying public offices and without any justice to the victims (Makonye, Ehiane and Otu 2020). TJ mechanisms including the Global Political Agreement of 2009 that established a coalition government, the Organ on National Healing and Reconciliation (ONHRI), a new Constitution adopted in 2013, the

National Peace and Reconciliation Commission (NPRC), the Motlanthe Commission of Inquiry and the Political Leaders Dialogues Platform (POLAD) were all established after violent episodes, but they have not been able to end gross human rights violations and facilitating justice, healing and reconciliation.

The failure of TJ efforts is not only unique to Zimbabwe, it is a global challenge which makes the subject an important inquiry for global sustainable peacebuilding efforts (Pathak 2017; Murambadoro 2020). TJ failures are attributed to various factors including the TJ approaches adopted by states, international development partners and civil society institutions as well as the societies impacted by gross human rights violations (Robins 2017; Georgi 2022; Li 2022). Liberal peacebuilding approaches, for example, have been criticised for being state-led and state-centred as opposed to being victim centric (Zambakari 2016; Yuan 2022). Zimbabwe's TJ processes have been restricted to this liberal peace discourse (Murambadoro 2020), hence the need to find localised alternatives founded on the concepts of sustainable peacebuilding to avoid relapses into violence. In circumstances where sustainable peacebuilding has taken shape recurrence of gross human rights violations and violence, a lapse or relapse into violent conflict should be preventable, managed or mitigated (United Nations Peacebuilding Support Office 2017; Schmidt and Mincieli 2018). Hence, this study will contribute towards addressing the broader problems of TJ theory and practice.

1.4 Overall Research Aim

This study, through action research methodologies, explored mediation as a TJ mechanism to confirm its role in grassroots-level TJ processes in Ward 12 and 13 of Makoni District, in Zimbabwe. Transitional justice is a post-conflict and transitional process aimed at addressing legacies of past gross human rights violations to facilitate justice, accountability, healing, and reconciliation. Mediation, is therefore, is one of multiple mechanisms that are used to facilitate transitional justice in post-conflict and transitional societies.

Specific Research Objectives

Two TJ mediation groups were established in ward 12 and 13 of Makoni District (Zimbabwe) to practically explore the role of mediation in grassroots TJ processes. In this study, the overall objective was broken down into three specific sub-objectives, which are:

- a) To establish the role of mediation in grassroots TJ processes
- b) To increase the demand for mediation in grassroots TJ interventions
- c) To evaluate the effectiveness of mediation in grassroots TJ processes

1.5 Research questions

In view of the identified study objectives, the fundamental research question is centred on understanding the role of mediation in TJ processes and ascertaining its effectiveness as a grassroots TJ mechanism and how its demand for use in TJ can be increased. To answer this broad question, three key questions were posed. These questions are:

- a) What is the role of mediation in TJ processes?
- b) How effective is mediation, when employed at grassroots level, in addressing TJ issues?
- c) How can the demand for mediation in grassroots TJ interventions be increased?

The study ultimately seeks to strengthen the use of mediation in grassroots TJ interventions and evaluate the effectiveness of mediation in bottom-up TJ processes.

1.6 Significance of the Study

The significance of this study *Grassroots Transitional Justice Framework: The Role of Mediation in Zimbabwe's Transitional Justice Processes* is that it triggered intellectual and functional conversations on how best to facilitate TJ in post-conflict and non-transitional societies, through mediation, where gross human rights violations are perpetual when the state has failed. Zimbabwe is yearning for peace and several TJ efforts have been made without success. The failure of past TJ efforts in Zimbabwe is not just peculiar to the country, but it is a global challenge, hence justifying the need for continued search of new knowledge, policy and practices that contributes to context

responsive TJ needs. Henceforward, the study adds both intellectual and real-world value to peacebuilders, policy makers and social cohesion building stakeholders within and beyond Zimbabwe's borders by reviewing the challenges of implementing TJ interventions in slow transitioning (and non-transitional) societies such as Zimbabwe and testing mediation as an alternative entry point to TJ processes, through action research, at grassroots level.

The study of mediation as a mechanism for grassroots transitional justice is uniquely investigated focusing on local communities' capacity to address legacies of gross human rights violations without (i) waiting for the state or the government to declare a period of TJ and (ii) without paying attention to victims only, but a collective of victims and perpetrators as strategic players in pursuit of sustainable peace. While the conventional TJ processes are usually modelled to meet the interests of victims of gross human rights violations and punish offenders, this generated a mutual approach to meeting justice for the victims, healing, and reconciliation with perpetrators as willing key players.

In this study, the practice of TJ is challenged to go beyond meeting justice without considering the extent to which sustainable peacebuilding is achieved. Most TJ processes are fixated on punishing offenders and lauding deterrence without deeply engaging and transforming the attitudes of both victims and perpetrators towards mutually accepting the past (acknowledging the wrong, apologies, forgiving) and reconciling (building future peace) collectively. In this study mediation is confirmed to have a transformative effect on TJ related conflicts and helpful in building sustainable peace.

Beneficiaries of the study are peacebuilding practitioners, at grassroots and national levels, policy makers, the civil society, and members of the academia. This is because the study advances professional knowledge and intellectual awareness on the link between mediation and transitional justice and the interaction of these two concepts contributes to sustainable peacebuilding.

1.7 Research Methodology

The data collection, presentation, and analysis issues that underpinned this study are explained elaborately in Chapter 5 of this thesis. However, in brief, this study was carried out in Makoni District, Manicaland Province, in Zimbabwe using exploratory qualitative action research methods. The study was grounded in transformative world views because it used action research methodologies. Action research is an intellectual inquiry that allows both the researcher and the research subjects to provide practical solutions to problems in societies (Kaye and Harris 2017). The approach involves problem identification, data collection, interpretation, acting on evidence, and the evaluation of results (Adebayo 2017).

Several research data collection methods were used as part of the action research process. These methods include the use of key informant interviews (KII), focus group discussions (FGDs) and a practical field intervention. Data collected through key informant interviews and focus group discussions was used to inform the design of the field experiment and the project tools, including the identification of key research participants.

A total of 19 key informant interviews, five focus group discussions, and one field intervention (a mediation project involving two groups) were carried out between the years 2018 and 2021. Key informant interview participants included transitional justice researchers and practitioners, state security agents, war veterans of the liberation struggle, academic researchers, and policy makers. These were interviewed to gain a global understanding of key national transitional justice issues in Zimbabwe. For a more nuanced TJ issues in Makoni District, initial five focus group discussions were carried out in the district (in three wards -ward 12, 13 and 16) and were attended by traditional leaders, locally elected Councillors (from the local government), church leaders and general citizens. The aim was to understand the real TJ problems affecting communities in Makoni District. Data collected from the 19 key informant interviewees and five focus group discussions was used to prepare for a field project intervention design.

The field project intervention design involved identifying key priority conflict issues that communities would like to mediate, designing a training manual for mediators, training the mediators, and having the trained members conducting mediation interventions. Therefore, after consolidating data from key informant interviewees and the initial five FGDs, the researcher carried out a focus group discussion on 18 October 2019 with 20 research participants to co-create a training manual. Co-creation is a human-centred development design that involves beneficiaries in identifying solutions that work for them. Participants in this training manual co-creation FGD were people generally considered as mediators and conflict resolution actors within their community (some of which participated in the initial five FGDs) inclusive of traditional leaders, church leaders and notable community members. This FGD also acted as an inception meeting for the mediation project in the targeted communities.

The researcher consolidated the contributions from the participants and developed a training manual titled *A Training Manual for Community Mediators in Everyday Transitional Justice*. When the training manual was completed, 21 research participants were then trained to become mediators in conflict issues involving past gross human rights violations. The impact of their mediation activities was evaluated, thrice, at the end of the project and the results forms part of this study's findings. Thematic and content analysis techniques were used to interpret and analyse the collected data. The findings were derived from an inductive research approach, as detailed in Chapter 5.

1.8 Delimitation of the Study

This study was carried out in the Makoni District of Manicaland Province, Zimbabwe. Two aspects informed the choice of the study area. Firstly, Makoni District is my home area, hence the desire to carry out a study in an area with which the researcher was acquainted and where the researcher's academic inquiry would first improve. Secondly, the organisation for which I work (Heal Zimbabwe Trust) has peacebuilding-programme activities in Makoni District, which gave the researcher an informal advantage in accessing duty bearers and research participants to some extent. More importantly, the district has experienced the brunt of politically motivated violence, during and after the liberation struggle, which makes it a suitable case study for TJ

initiatives. Manicaland Province, in general, has been at the frontier of the liberation as the war was launched through the eastern parts of Zimbabwe from Mozambique and it has also been the political hotbed of opposition politics since independence. Moreover, most notable opposition leaders including Edgar Tekere, Simba Makoni, Morgan Tsvangirai, and Douglas Mwonzora hailed from Manicaland Province and they have organised their political activism efforts drawing strength from that province. This allows Makoni District to serve as a useful case study for TJ taking into consideration pre- and post-independence conflicts, justice, healing, and reconciliation needs.

1.9 Limitation of the Study

This study experienced some logistical and pedagogical limitations. The major challenge was centred on accessing communities as often as would be required due to the COVID-19 travel restrictions. The coronavirus pandemic prevented the researcher from visiting the research area more frequently, including during the evaluation of the action research project. The researcher ultimately carried out three evaluation meetings instead of planned four visits.

Secondly, in designing the field research project, the researcher realised that it was pertinent to deliberately include an awareness-raising activity as a way of creating awareness of the mediation services that were being offered by the trained mediators. As a result, the mediators concluded with identifying mediation cases following an outbreak of a conflict rather than the disputants looking for the mediators before the outbreak of a conflict. An awareness raising activity would have increased both the supply side and demand side of mediation.

Related to the second limitation was the lack of necessary financial resources to meet the field-project needs. During the training of mediators, it was argued that there was a need for the *new mediators* to have branded paraphernalia including pamphlets, T-shirts, and sling bags that would increase their visibility and market the mediation ideas to the people. This would have increased community members' awareness of the services being offered by the mediators. However, due to limited financial resources, the researcher could not provide any paraphernalia. This situation obviously limited the research participants' community visibility, something that may have impacted the

demand for mediation. However, the project still leverages its visibility through involving traditional and church leaders as part of the mediation teams, hence would even preach about the mediation services in their social.

Lastly, this study was politically sensitive, and it was, notably, not easy to access or identify TJ cases to mediate without a compelling need, even if the mediators knew of specific cases where individuals and families would need their services. The mediators were also forced to address both transitional and non-transitional-justice cases, by virtue of them being known as mediators of conflicts. If they had only selected cases related to past human rights violations, then the entire project would have been considered a political venture, partly because of the high political polarisation in Makoni District and, more generally, across the entire country.

1.10 Conceptual Definitions and Clarification of Terminologies

This study focused on the role of mediation in promoting grassroots level transitional justice processes for the purposes of building sustainable peace. Therefore, three key terminologies that dominated this thesis are transitional justice, mediation, and sustainable peacebuilding. The terms are defined and explained below, including the conceptual relations of all the terminologies, as used in this study.

(a). Transitional Justice

The United Nations Secretary General (2010) defines TJ as “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. TJ processes include facilitating truth recovery, institutional reforms, reparations, and prosecutions with a view to ensure that there is a discontinuation or rather a break from the past (legacies of violence) to a peaceful and democratic society (McAuliffe 2021). There are two circumstances in which the need for TJ arises which are: (i) when addressing post conflict justice following an armed conflict and (ii) “when dealing with past abuses committed by dictatorships or authoritarian regimes” (Binder 2013: 9). Zimbabwe has gone through both phases first, an armed struggle for liberation from colonial rule and secondly a phase of dictatorial rule which arguably continues, however. The overall goal of TJ is to reconcile conflict

parties and affected populations by establishing accountability and acknowledgement processes and guaranteeing non-recurrence by ending impunity and restoring the rule of law (Mobekk 2006; Binder 2013; McAuliffe 2021). As such, given Zimbabwe's state of human rights situation, as noted in the research context, the country is a perfect candidate for TJ processes.

(b). Mediation

Mediation is an assisted negotiation process (Hopkins 2017) where a "neutral third party (the mediator) attempts, through participation in face-to-face negotiations with the disputing parties to assist those parties reaching an agreement that resolves the dispute" (Nahrstadt 2016: 68). This means mediation, as a conflict transformation and dispute resolution tool, "targets the attitudes and behaviour of conflicting actors in order to transform their relations into constructive interaction" (Giessmann 2013a: 1). Mediation has three key elements which include "(i) assistance of some form of interaction by (ii) a third party who (iii) does not have the authority to impose an outcome" (Wall, Stark and Standifer 2001: 370). These characteristics makes mediation non-confrontational and capable of producing a lasting (peace) solution as there will be mutuality between the conflicting parties. Therefore, in the context of TJ, mediation creates an enabling environment for perpetrators tell the truth and account for their actions and victims to receive acknowledgements of wrongdoing and mutually stating their reparative and justice needs. The major objective of mediation is to peacefully resolve conflicts (Roepstorff and Bernhard 2013). However, it is important to note that mediation exists among other conflict-resolution mechanisms such as dialogue, negotiation, arbitration, and courts as detailed in the theoretical framework.

(c). Sustainable Peacebuilding

Sustainable peacebuilding refers to "a peace that is maintained over a long period of time with the underlying causes of the original conflict having been addressed (Dashwood 2016: 219). It is both a goal and a process that is "aimed at preventing the outbreak, continuation, escalation and recurrence of violent conflict, addressing root causes, assisting parties to a conflict to end hostilities, ensuring national reconciliation, and moving forward towards recovery, reconstruction and development" (United Nations Peacebuilding Support Office 2017: 2). Based on the above definitions,

sustainable peacebuilding includes the processes of transitional justice as part of creating conditions for long term peace, hence the subject's relevance in this study.

(d). Linking Transitional Justice and Mediation to Sustainable Peacebuilding

Sustainable peace is the ultimate endeavour of all peace processes, whether implemented as preventive, mitigation and or management measures. This is clear in the United Nations Peacebuilding Support Office (2017: 2) conception of sustainable peacebuilding as activities “aimed at preventing the outbreak, continuation, escalation and recurrence of violent conflict, addressing root causes, assisting parties to a conflict to end hostilities, ensuring national reconciliation, and moving forward towards recovery, reconstruction and development.” Hence, TJ processes and mediation actions, in general, feed into this broad objective. In this study, TJ is the major peacebuilding process while mediation is considered a mechanism for TJ.

The overall goal of transitional justice is directly linked to sustainable peacebuilding because “it seeks to address root causes of conflict towards achieving a just and sustainable peace” (Selim and Murithi 2011: 60). More precisely, TJ is a post-conflict peacebuilding process that should begin the process of reconciling conflict parties and populations affected by the conflict through establishing accountability and acknowledgement processes and ensuring that there is enough deterrence that guarantees non-recurrence (Mobekk 2006). The UN Office of the High Commissioner for Human Rights (2020) demonstrates this link between transitional justice and sustainable peacebuilding by stating that “the implementation of transitional justice processes can prevent the recurrence of human rights violations and abuses and contribute to sustainable peace and development.” This is because TJ processes address grievances of victims, ensures that there is reconciliation between conflicting parties and that a shared future is developed with mutuality, hence shaping prospects for sustainable peace. However, if legacies of past violence are left unaddressed bitterness from the affected populations and victims may escalate or deepen societal divisions, conflict and violence hence frustrating prospects for future peace (Boehle 2021).

In this study, victims, perpetrators, and local community members were connected through mediation interventions in a way that relates to their context, hence

contributing to sustainable peacebuilding. Below is my abstract conception on the link between sustainable peacebuilding, TJ, and mediation used in this study.

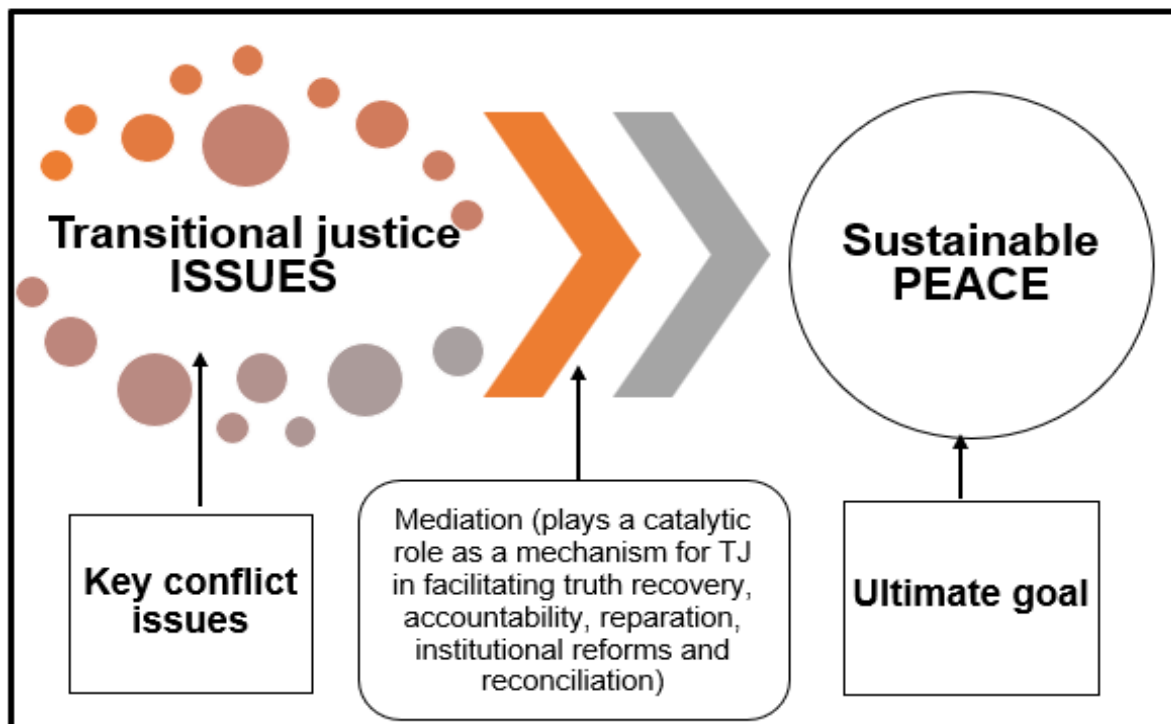


Figure 1.1: The link between transitional justice and sustainable peace (Source: Author)

Based on figure 1 above, mediation plays a catalytic role between sustainable peacebuilding and transitional justice. This can be clear when one analyses three requirements of sustainable peacebuilding identified by Giessmann (2013a) which are credibility, resilience, and reliability. According to Giessmann (2013a: 1) credibility explains the change of attitudes of conflict actors into becoming engaged in peacebuilding processes, “resilience means to protect the process from backlashes and spoiling” and reliability requires trust building because “peacebuilding is neither a linear nor a one-dimensional process it needs a vision of peace that is broadly shared.” Mediation process carries these attributes because it cultivates the willingness of affected communities to collaborate with each other to desire addressing the use of violence and violent actions amicably. Thus, preventing resistance from other actors, a situation that normally see a society relapsing into violence. Resilience is enabled by involving the local communities and affected populations to become actors in mediating their own conflicts.

DeConing (2021: 257) considers this resilience building as 'adaptive peacebuilding' where societies are helped to "develop the resilience and robustness that they need to cope with and adapt to change, by helping them to develop greater levels of complexity in their social ins." In this study, mediation interventions were used as a mechanism to make local communities articulate their own TJ problems, identify complex intervention issues, utilise their own knowledge of practical solutions towards building peace, hence meeting the requirements for sustainable peacebuilding - credibility, resilience, and reliability.

According to Akande, Kaye and Rukuni (2021: 2), sustainability in peacebuilding is linked to communities "capacity to self-organise" in violence prevention and conflict transformation. This study, through action research intervention methodologies, capacitated two mediation groups to learn to self-organise and mediate transitional justice related conflict issues with a view to draw lessons on how exactly mediation supports grassroots-level TJ towards sustainable peacebuilding processes. This approach agrees with Mahmoud, Connolly and Mechoulam (2018: 7) who notes that sustainable peacebuilding is an "endogenous process that requires strong and inclusive national ownership and leadership by reinforcing the structures, attitudes, and institutions that underpin it." Traditional leaders, church leaders and political party leaders who sustains local structures were involved in the mediation processes undertaken during the study.

The concept of sustainable peacebuilding, however, shies away from liberal peacebuilding, instead, focuses on investing "in the resilience of local social institutions to prevent, cope with and recover from conflict, i.e. to sustain peace" (DeConing 2016: 166). Liberal peacebuilding involves "leading states, international organizations and international financial institutions promoting their version of peace through peace-support interventions, control of international financial architecture, support for state sovereignty and the international status quo" (Mac Ginty 2008: 143). The use of this liberal peacebuilding approach towards sustaining peace has seen relapse into violence and cycles of conflict (Zambakari 2016; Wahlisch 2020; Yuan 2022), hence the need to focus on the grassroots context-based approaches (bottom up approaches or rather a hybrid approach combining both bottom-up and top-down approaches (Tadjbakhsh 2011; Wall 2018).

The struggle for sustainable peace, however, is a continued processes of searching ways to build lasting peace. According to DeConing (2016: 166) “for a for a peace process to become self-sustainable, resilient social institutions need to emerge from within, i.e. informed by the local culture, history and socio-economic context.” Hence, linking mediation to TJ is this study’s attempt to understand how grassroots communities can address past human rights violations using their local contexts resources, culture and experiences.

1.11 Overview of Thesis Chapters and Structure

This thesis is divided into 10 chapters. **Chapter 1** introduces the study by detailing the research context and background, research objectives, central research question, study limitations and delimitation, as well as the significance of the study. The aim is to allow the reader to understand what this thesis encompasses.

Chapter 2 provides in-depth reflections of Zimbabwe’s conflict issues and episodes from the country’s precolonial times to date. The country’s significant conflict episodes including the liberation war struggle and the post-independence governance challenges are explained in detail to form a strong basis for TJ deliberations.

Chapter 3 is a review of literature discussing the concept of TJ and its evolution. The chapter explains the objectives of transitional justice and circumstances in which the process is essential. This chapter is important because it help readers to understand how Zimbabwe’s conflict episodes links well with TJ contexts. In fact, it enables readers to locate the place for TJ in Zimbabwe’s historical socio-political and economic evolutions.

Chapter 4 outlines theories and concepts of mediation and their applicability to TJ contexts. The aim is to locate the policy, practices, and theoretical constructs of mediation in grassroots TJ process; how these concepts are related; and if they have ever been addressed in the past through theory and practice.

Chapter 5 discusses the study’s research methodologies, data collection, interpretation, and analysis. The aim is to bring to the fore how the action research interventions were carried out and what informed each data-collection and project-

implementation stages. While action research has stages, at least theoretically, in practice there are back-and-forth processes which are also detailed in this chapter.

Chapters 6 presents an analysis of past TJ efforts that were implemented in Zimbabwe to facilitate national healing, peace, and reconciliation. The chapter essentially articulates what Zimbabwe has done in an attempt to address the legacies of its dark past characterised by gross human rights violations. The analysis exposes the failure or rather inadequacies of past TJ efforts which justifies why a revisit to Zimbabwe's TJ issues is necessary. Content analysis techniques were used to analyse data in this chapter.

Chapter 7 presents research findings from key informant interviews and focus group discussions that were carried out before implementing a pilot project on mediation for TJ. Here, the views of key informants (academics, civil society, political parties, and peacebuilding practitioners) provide a broader overview of how mediation supports TJ while perspectives from focus group discussions provide community-level (grassroots) views on the role of mediation in TJ processes. Thus, capturing both national-level and local-level perspectives on the link between TJ and mediation. Both views were used to design the field intervention project.

Chapter 8 presents the findings from the action research project. This chapter explains how the action research project was carried out, beginning with the identification of key TJ issues in Makoni District, recruitment of research participants, training, and project experiments, as well as the evaluation of the study.

Chapter 9 discusses the research findings in Chapters 6, 7, and 8. The aim is to triangulate all the findings to find convergences and divergences. The analysis in this chapter provides a clear picture of how mediation supports grassroots level TJ processes in theory and practice. Key determinants for successful mediation targeting TJ issues are identified and outlined for use by peacebuilding practitioners, policy makers and TJ stakeholders. They also form some kind of new knowledge that can be interrogated further and improved.

Chapter 10 provides summaries of findings and recommendations. The aim is to ensure that the study findings are clearly articulated, and new knowledge is separated

from data confirming existing knowledge, and to provide recommendations on how TJ and mediation can be better understood in theory and practice.

1.12 Chapter Conclusion

This chapter provided an outline of the entire study. The background to this study was presented. More prominently, in the background information, are the existing challenges of TJ in Zimbabwe and how alternative mechanisms for TJ are needed. The chapter also outlined the research objectives and how meeting these objectives will contribute to understanding the role of mediation in TJ processes. A detailed explanation of the study's motivation was provided, including a brief overview of the research methods that were adopted in the study. The chapter ended by explaining the delimitation and limitations of the study and the general overview (structure) of the entire thesis.

CHAPTER 2: LITERATURE REVIEW (PART I)– A HISTORICAL CONTEXT OF ZIMBABWE’S CONFLICT EPISODES

2.1. Introduction

In chapter 1, a brief background to this study was presented without providing in-depth discussions on Zimbabwe’s conflict history (section 1.3) yet is it important in demonstrating the country’s fitness for a TJ process. Hence, to demonstrate the importance of transitional justice in pursuit of sustainable peacebuilding in Zimbabwe, this chapter provides a more nuanced account of the country’s conflict history. The country’s conflict narratives provided in this chapter also help to unpack questions of whether Zimbabwe is a post-conflict or transitioning country befitting for a TJ process. The chapter clearly outlines specific conflict issues, including a conflict map, that justifies the need for a TJ process in Zimbabwe.

2.2. Zimbabwe’s Conflict History

According to (Ndlovu-Gatsheni and Benyera 2015: 9), historically:

Zimbabwe has never had meaningful and comprehensive programmes to provide justice in the many issues that cascade from conflict and violence in the nation. What has been done, amounts to armistices rather than transitional justice mechanisms. Consequently, Zimbabwe has not seriously dealt with the primary sources of conflict and violence that date back to colonial times. The rhetoric of unity premised on amnesia has been privileged over effective practical healing and reconciliation mechanisms that address the root causes of recurrent human rights violations. Indemnities, amnesties, and presidential pardons have been used to protect perpetrators of conflict and violence.

In 1980, Zimbabwe gained independence from British colonial rule under the leadership of Robert Mugabe as prime minister and Canaan Banana as president (Compagnon 2011; Nyoni 2018). The state of Zimbabwe came into existence following a protracted armed struggle that spanned over 15 years (Ndlovu-Gatsheni and Benyera 2015: 12). Thus, the country has a precolonial genealogy with memories of

violence, repression, and conflict cultures, the influence of which can be read in the post-independent Zimbabwe. Both the White-settler regime and the post-independence Black people's government system were led through violence, repression, and domination, which, if taken together, presuppose the need for a robust TJ, national healing, and reconciliation process. In this regard, the country's conflict history or histories inform the types of TJ processes and interventions that Zimbabwe needs.

As shown in Figure 2.1, below, Zimbabwe went through several conflict episodes before and after its independence from colonialism. These are explained in the subsequent sections though not exhaustively; the post-independence conflict issues are largely captured as these are more relevant to the TJ contentions in the country. As such, precolonial violence will be explained in brief, while post-independence violence that has mostly featured regarding TJ grievances is explained in detail.

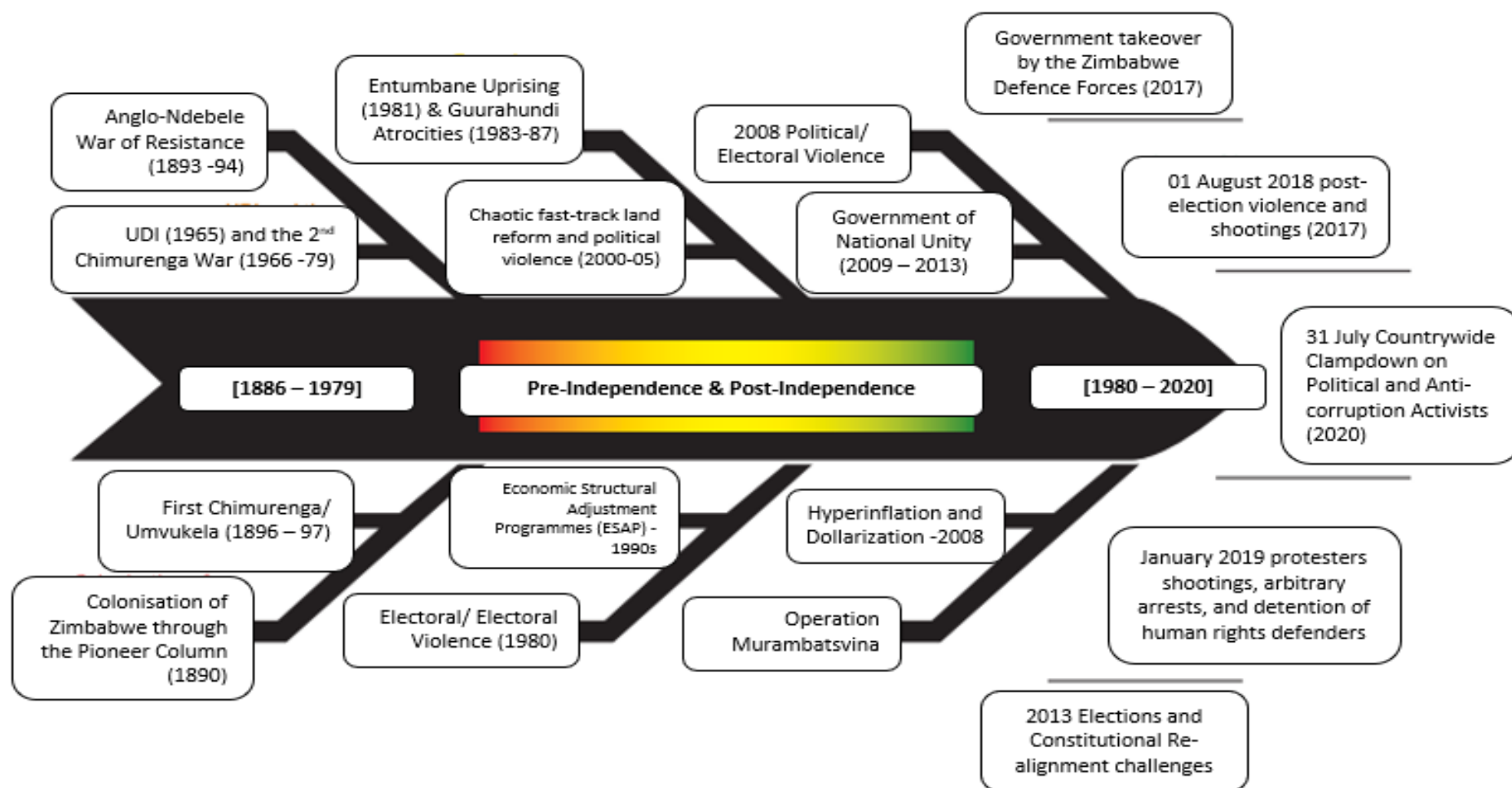


Figure 2.1: Zimbabwe's conflict and violence continuum (Source: Author).

2.3. Pre-Independence Conflicts

Pre-independence violence began as a tribal conflict between the Ndebele and Shona tribes and later transmuted into a conflict against the settler regime (that is, the war against colonialism). According to Ndlovu-Gatsheni and Benyera (2015: 11), it was the arrival of colonialists that increased ethnic violence and tensions: “Colonial encroachment and rule provoked not only the *Anglo-Ndebele War of 1893*, the *Ndebele-Shona Uprising (1896–1897)*, otherwise known as the First Chimurenga/ Primary Resistance, but also the Second Chimurenga (War of Independence, 1960–1980).” “The word Chimurenga refers to war or the struggle against any form of tyranny” (Vambe 2004: 167). Therefore, the First and Second Chimurenga were a fight against the tyranny of the White colonial regime. These pre-independence conflicts have not been addressed meaningfully as TJ cases, hence their relevance in the current Zimbabwean TJ processes. The pre-independence conflict issues are listed as follows:

- Precolonial ethnic violence (Shona-Ndebele violence)
- Anglo-Ndebele War 1893
- First Chimurenga (the Ndebele and Shona uprising) 1896–1897
- Second Chimurenga (the war of liberation) 1960/1966–1979
- 1979–1980 electoral violence

The key pre-independence conflict issues listed above are explained in the following subsections to comprehend how each of them continues to influence and dominate the country’s TJ processes.

2.3.1. Precolonial Ethnic Violence

Pronounced ethnic conflicts in Zimbabwe have largely existed between the Ndebele and Shona people (Beach 1976; Ndlovu-Gatsheni 2008; Gusha 2018). Their ethnic fault lines began in the 1830s when the Ndebele people came into Zimbabwe fleeing violence in the *Nguniland* in South Africa (Beach 1976). The Ndebele established powerful militaries upon which they dominated part of the Shona communities and chiefdoms in the southern part of Zimbabwe. As the two ethnic groups progressively coexisted, they occasionally raided each other’s lands fighting for power, space, and

wealth. According to (Munemo 2016: 61), it was the Ndebele who occasionally raided the Shona's lands for "cattle, women, grain and children" which brought tensions that continue manifesting among the groups to date in contemporary Zimbabwe. On the contrary, Beach (1976: 2) argued that "the Shona were not backward in this respect" and they also raided the Ndebele people's lands. The author also further stated that raiding was a common practice in "many African societies of small communities banding together to raid others for women and livestock for their own immediate profit" (Beach 1976: 2).

In view of Beach's argument, if raiding was a common practice, then ethnic violence was catalysed by some other factors beyond the raids. Impliedly, the advent of the colonial regime exacerbated the ethnic conflict and violence in the context of both the divide-and-rule and White-governing strategies. Beach (1976: 2) buttressed this observation by noting that the "Ndebele raids on the Shona were also of use to excuse Rhodes' conquest of the kingdom in 1893." These colonialists' divide-and-rule tactics are further described in the subsequent section as part of the causes of the First Chimurenga.

2.3.2. The First Chimurenga (1896–1897)

Between 1896 and 1897, the Zimbabwean natives waged their first war against the British colonial settlers. This was the First Chimurenga rebellion, also known as *Umvukela 1*, in the Ndebele language. The colonial settlers had arrived in the Zimbabwean territories in the early 1890s through the British South Africa Company (BSAC). "The BSAC occupied Matabeleland and acquired full control of the country which it named Rhodesia" (Munemo 2016: 62). To fully conquer the Black natives, the colonialists adopted divide-and-rule methods of governance, which generally soured relations between the Ndebele and Shona communities. They did this by recruiting Shona people to work in the Ndebele region, knowing full well about the ethnic groups' existing tensions. The souring ethnic relations meant triumph for the colonialists, but it soon backfired as the Ndebele retaliated against the nascent colonialism, which marked the First Chimurenga war in 1896. According to Munemo (2016: 62):

The first to rise were the Ndebele in March of 1896; they were incensed by the presence, arrogance and brutality of the Shona police who were

stationed in Matabeleland to preside over them. The Ndebele regarded the Shona as their former slaves and thus treated the Shona police with contempt. The deployment of Shona police amongst the Ndebele population apparently gave the Shona the impression that they were a superior social/ethnic group. The stationing of Shona police in Ndebele country was not only designed by settlers to divide and rule the Africans but to also classify them socially in line with the coloniality of being. The effect of these colonial actions was the souring of relations between the Shona and the Ndebele, therefore sowing seeds of future conflict between the two ethnic groups.

Contrary to Munemo, Dawson (2011: 145) argued that the primary triggers for the Ndebele and Shona uprising and how the uprising was executed are highly debatable, stating that “The revolt was attributed to the M’Limo and the concurrent events of rinderpest, drought, and the arrival of white settlers.” This debate emerges because most historiographers on Zimbabwe, including Terrence Ranger, Diana Jeater, Ngwabi Bhebhe, Julian Cobbing, and David Beach, among others “do not have access to primary Shona and Ndebele accounts of the uprisings, and have thus interpreted the uprisings primarily through the eyes of the British who participated in ending the First Chimurenga” (Dawson 2011: 145).

That which is not contested, however, is that the Ndebele uprisings against the White settlers began in March 1896 while the Shona uprisings began in June of the same year. The Shona uprising came later, not because they did not share common grievances with the Ndebele, but because they were fighting for their own space which was not related in any way to uniting with the Ndebele. Notably, the Shona already conflicted with the Ndebele from their previous encounters. The racialised systematic colonial dispossession of wealth, land, and dignity, however, soon united the Ndebele and Shona people to face their alien enemy together through the Second Chimurenga war. Towards the end of 1897, both revolts had been crushed by the British soldiers. The defeat of both the Ndebele and Shona ethnic groups pacified their resistance and enabled the British colonialists to “establish a brutal, oppressive, exploitative colonial system of administration that discriminated against blacks” (Munemo 2016: 63).

2.3.3. The Second Chimurenga (1960/1966–1979)

The Second Chimurenga was waged between 1960/1966 and 1979. Having defeated the Ndebele and Shona people in 1897, the White colonialists entrenched their

establishment of Rhodesia using a racially discriminatory governance system. To reinforce their control on Africans in Rhodesia, discriminatory laws including the 1895 Compulsory Identity Cards law, Registration of Labour Act 1896, Private Location Act 1908, African Labourers' Act 1911, the Land Apportionment Act 1930, Industrial Conciliation Act 1934, and Native Passes Act 1937 (Moyana 1984: 66) were established. These pieces of legislation increased the dehumanisation of the Black people, and their right to land and freedoms were watered down and outrightly denied as they were considered slaves rather than equal human beings. As a result, the Black peoples' political consciousness grew stronger, and resistance continued rejuvenating as differential racial treatment became the source of structural violence and gross human rights violations.

Radicalised social mobilisation increased from the 1950s where resistance groups such as the Southern African Rhodesia National Congress (SRANC), National Democratic Party (NDP; 1960), Zimbabwe African People's Union (ZAPU; 1962), and Zimbabwe African National Union (ZANU; 1963) were established (Sithole 1979; Ranger 1985; Ranger 2004; Chung 2006). These groups, albeit being suppressed, shifted their focus from being pressure groups fighting unjust laws to being armed groups ready to replace the colonial regime. By 1964, preparations for the armed struggle began as ZAPU established the Zimbabwe People's Revolutionary Army (ZIPRA) while ZANU established the Zimbabwe African National Liberation Army (ZANLA) as their military wings (Munemo 2016; Tendi 2017). In 1966, the armed struggle began. According to Ndlovu-Gatsheni (2013), this Second Chimurenga was a direct revolt against the colonial rule. The war was particularly triggered by the Rhodesian government's unilateral declaration of independence on 11 November 1965, which signalled its intention to perpetuate colonial rule when many African countries were becoming independent of their colonial oppressors (Munemo 2016).

Struggle within the struggle (liberation movements conflicts)

As the Second Chimurenga unfolded, both parties and their armies (ZANU/ZANLA and ZAPU/ZIPRA) also fought among themselves – this was a reflection of the ethnic fault lines manifesting in the political power dynamics of the liberation struggle. Sithole (1979) detailed the bimodal ethnic categorisation of Zimbabwean nationalist

movements and the social-identity fault lines that defined alliances during the war against the White-settler regime 'as struggles within the struggle'. Political mistrust between ZAPU and ZANU had begun from 1963 when ZAPU split, leading to the formation of ZANU. Joshua Nkomo, who was the leader of ZAPU at the time, argued in his autobiography that ZANU came into existence due to the Shona people within ZAPU who detested his minority Ndebele ethnic group (Nkomo 2001). Munemo (2016: 74) also reiterated Nkomo's argument that "Shona speaking members of ZAPU led by Leopold Takawira were uncomfortable with a person from the small Ndebele tribe leading the nationalist struggle in a country where the Shona are the dominant ethnic group." In the researcher's view, Nkomo's argument can be disputed, given that it was his tribesman, Enos Nkala, who was dominant in ZAPU's split, as detailed in the writings of Turshen (2001). Sithole (1984: 120) also argued that the split between ZAPU and ZANU was not a tribal conflict, but a confrontation between a faction of the educated middle class among the nationalists. Hence, arguably, the split was more of a case of political antagonism than a tribal conflict.

While waging the liberation armed struggle together, ZAPU and ZANU failed to fight collaboratively due to multifaceted reasons. The reasons "had to do with administrative differences, tribalism, personality clashes, tactical differences, power politics and ideological divergences" (Munemo 2016: 75). Ideologically, ZAPU was largely sponsored by the Union Soviet Socialist Republics (USSR), the military fighting tactics of which were rooted in conventional warfare and the use of technically advanced weapons (Mazarire 2017; Ngwenya and Molapo 2018). On the other hand, ZANU was supported by China which believed in guerrilla warfare tactics (Ngwenya and Molapo 2018). In terms of war administration, the differences between ZAPU and ZANU were exacerbated by the Frontline States Leaders who "who pushed their own agendas on ZAPU and ZANU, thereby exacerbating an already volatile relationship between these two liberation movements" (Ngwenya and Molapo 2018: 72).

In addition to interparty conflicts between ZANU and ZAPU, there were also internal party fights within ZANU which either led to political splits or internal atrocities (Sithole 1984). These conflicts were caused by ethnicity, social class differences, and pure power politics. For example, in 1971, ZAPU experienced a second split (since the first split in 1963) leading to the formation of the Front for the Liberation of Zimbabwe

(FROLIZI). The second split was a result of politicised ethnicity perpetuated by James Chikerema (ZAPU vice president and also acting president at the time when Nkomo was in detention) and Jason Ziyaphapha Moyo. Rusare (2014: 1) stated that the ZAPU split occurred following “leadership misunderstanding between Chikerema and Moyo stemming from the Wankie Campaign,” as both leaders accused each other of perpetuating tribalism. The split occurred along tribal lines as the Ndebele leaders continued with ZAPU while the Shona leaders moved to establish FROLIZI (Munemo 2016) such that “many guerrillas believed FROLIZI was nothing more than a “tribal union of Zezurus” (Rusare 2014: 1).

Within ZANU and its military win, ZANLA atrocities emerged with accusations and counteraccusations of loyalty and disloyalty. For example, the 1974 mutiny “led by field commanders Thomas Nhari, Dakarai Badza and Caesar Molife,” later known as the Nhari-Badza rebellion, arose following the field commanders’ disappointment with the ZANLA leadership whom they accused of living lavishly in Zambia (Chung 2006; Tendi 2017: 143). However, in response, Tongogara ordered the arrest and killing of the mutineers without addressing their concerns (Ngwenya and Molapo 2018). The killings caused pain, trauma, and disorientation among the ZANLA fighters with some withdrawing from the war front completely. Another conflict that saw many ZANU and ZANLA leaders killing each other occurred in 1975 when a Vashandi rebellion occurred resulting from differences between Mugabe and the Vashandi group (Mhanda 1978). The conflict led to the arrest of Vashandi group members with some of them being executed. However, in his autobiography, Edgar Tekere argued that he stopped the executions to avoid a repeat of the Nhari-Badza rebellion killings (Mazarire 2011). These and many other examples, including the death of Herbert Chitepo in 1975 and Josiah Magamba Tongogara in 1979, tell a story of violent conflicts during the liberation struggle, the ramifications of which can be traced to the current Zimbabwe socio-economic and political healing and reconciliation questions with political parties, the government, and the entire country at large.

An attempt for unity among the fractious ZAPU and ZANU and their military wings happened briefly through FROLIZI in 1971 and the Zimbabwe People’s Armies (ZIPA) in 1974. As a splinter group from ZAPU, FROLIZI claimed to be a unifying party for

both ZAPU and ZANU, while ZIPA² was established to unite the military wings ZIPRA and ZANLA (Mozambican Information Agency and Machingura 1977). It was the Frontline States leaders who insisted “that ZANU and ZAPU merge their guerrilla armies to form the Zimbabwe People’s Army (ZIPA)” (Ngwenya and Molapo 2018: 72) but this failed to work because of the divergences between ZAPU and ZANU (Chung 2006). The failure of both FROLIZI and ZIPA and the continued differences among the Black nationalist fighters led to more atrocities by the nationalist fighters against their peers, as noted earlier in the Nhari-Badza rebellion, for instance.

As a result, the unresolved differences of the nationalist and liberation war movements during the liberation struggle continued manifesting into post-colonial Zimbabwe, which remains a TJ and reconciliation issue to date.

2.4. Reflections: Pre-Independence Conflict

In view of the foregoing discussions on the pre-independence conflicts, precolonial conflicts involved the ethnic violence between the Ndebele and Shona people. The tribal conflict was further exacerbated by the colonialists who used a divide-and-rule approach leading to the First Chimurenga between 1896 and 1897. The First Chimurenga triggered by the Shona people’s dominance in Matabeleland created the foundations for both tribal hatred among the Shona and Ndebele people and also the political consciousness of both tribes on the need to fight colonialism. As a result, the Second Chimurenga ensued from 1966 until 1979. The First Chimurenga was predominantly a tribal conflict, while the Second Chimurenga was an anti-colonial struggle (Dawson 2011). Both the First and the Second Chimurenga are estimated to have claimed more than 30,000 lives with many more being unaccounted for (Elkins and Pederson 2005).

In view of the preceding discussions, it is arguable that pre-colonial and pre-independence conflict episodes experienced in Zimbabwe, including the (a) Zimbabwean ethnic wars involving Ndebele and Shona societies before colonialism

² ZIPA was a notable idea of the three presidents of Mozambique, Tanzania, and Zambia who advised and ensured that ZANLA and ZIPRA guerrillas combine to form one standing guerrilla army that would face the Rhodesian security forces. The initiative, however, failed because of long-standing differences between ZAPU and ZANU. See Chung (2006).

and during the First Chimurenga, (b) the colonial violence, and (c) the Black liberation movements fighting among themselves, warranted a TJ process. This is mainly because the episodes involved gross human rights violations whose consequences continued reverberating in the Zimbabwean societies. For example, the *ethnicized* conflict between black liberation war fighters could have been inherited from the unresolved precolonial Ndebele-Shona conflict. However, it must be acknowledged that a proper TJ process may not have been possible given that during the colonial era, principally, because the concept of TJ and human rights was yet to develop.

At the time of independence in 1980, these conflicts from the precolonial era to the First and Second Chimurenga were never addressed. The turning point was marked by Mugabe's forgive-and-forget policy. Hence, the precolonial Ndebele-Shona violence, White racist governance, and Black nationalist atrocities continued hanging in the people's minds as the state transformed into an independent system. These conflicts have become a case for political reconciliation rather than truth telling, reparations, and justice, given the lack of adequate data on the circumstances of the violations, amnesia, and the voluminous absence of the first-hand victims. Political reconciliation refers to "a transitional process from a state of severe injustice to a state of renewed social peace and cooperation under conditions of serious disagreement and in the absence of a well-ordered social structure (Hahn 2020). For this kind of reconciliation to exist, should be a good political community (Murphy 2011).

A good political community reflects a reconciled society because it is characterised by (i) rule of law, (ii) (political) trust and (ii) citizens capabilities (Murphy 2011). Without these three attributes, political relationships are damaged and the political society will be eroded and plunged into chaos (Eisikovits 2012), something reminiscent of the pre-independent Zimbabwe. Applicably, during the country's pre-independence era, there was no rule of law particularly because of the racially designed apartheid laws. When rule of law is eroded citizens experience resentment and loss of confidence, and it is that racial resentment that created violence in the liberation war. This situation was further worsened by the natives' *ethnicised* or rather tribalized violence between the Shona and Ndebele communities who mistrusted each other. Political trust did not exist among the colonial whites and blacks and between the Shona and Ndebele black

communities because there was no (racial and ethnic) goodwill, fair play, loyalty and a respect for moral agency among the aforementioned groups.

In terms of capabilities, citizens should be able to be respected, be able to participate in socio-economic and political life of the community, be recognised as a political community member and perform basic functions to survive and live a decent life (Murphy 2011:95). These capabilities were highly interfered with by the colonial whites against blacks. Black people were disrespected and treated as second class citizens who did not fit in the country's white-governed political community, they could not participate in their communities' life with equality and could not easily function towards escaping poverty without racial scrutiny. Equally, Ndebele communities were denied respect and other capabilities by the Shona community, something that continued into the post-independence era, as will be noted in the succeeding discussions where issues of political reconciliation will be amplified.

2.5. Post-Independence Violence and Conflicts

The conclusion of Zimbabwe's liberation war was marked by the Lancaster House Agreement signed in 1979, which transitioned Zimbabwe from being led by the White colonialists into being in the hands of Black nationalist leaders. The agreement set out the "terms of an Independence Constitution, and that elections should be supervised under British authority to enable Rhodesia to proceed to legal independence and the parties to settle their differences by political means" (Her Majesty's Stationery Office 1979: 4). As the independence formally came on 18 April 1980, all Zimbabweans hoped for a better future where gross human rights violations would end and access to social services and treatment would reflect universal suffrage and non-discrimination. However, all hopes were shattered immediately as the Black nationalists' parties entered into a conflict beginning with Robert Mugabe and Joshua Nkomo's parties and their military wings and progressing into broader protracted socio-economic and political conflicts. A timeline of Zimbabwe's post-independence conflicts, compiled by the researcher from diverse research sources, is presented as follows and are described in detail below:

- Entumbane uprisings (1981–1982)

- Gukurahundi (1983–1987)
- Economic structural adjustment programmes (ESAP)
- Land reform conflict – the Fast Track Land Reform (Eppel 2009)
- Operation Murambatsvina 2005
- Electoral and or political violence (1990, 2000, 2001, 2005, 2008, 2013, 2018)
- Military-assisted coup – November 2017

2.5.1. Entumbane Uprisings

When the liberation struggle came to an end, the newly elected government of Zimbabwe, under the leadership of Canaan Banana as president and Robert Mugabe as prime minister, moved to implement the demobilisation, disarmament, and reintegration process. The demobilisation process was largely focused on the two liberation war armies, ZIPRA and ZANLA, and the colonial army, the Rhodesian Army. The demobilisation arrangement involved integrating all three forces into one, the Zimbabwe National Army (ZNA). However, an internecine conflict between ZIPRA and ZANLA forces in their assembly points (demobilisation camps) escalated leading to violent conflicts mainly in Entumbane in 1981 (Binda 2007). In detailing how the conflict emerged, (Chiumbu 1997: 1) noted that:

At independence, the government had decided to integrate the three armies, the Zimbabwe African National Liberation Army (ZANLA), Zimbabwe People's Revolution Army (ZIPRA) and the Rhodesian Forces into one single national army. In November 1981 fighting started between the ZANLA and ZIPRA guerrillas who were encamped at Entumbane in Bulawayo. The fight ended after a few days. However, another fight erupted again in February 1982 and this one spread to other groups awaiting integration and this only ended when the new government deployed ex-Rhodesian units to deal with the fighting. Close to 300 people died. These clashes provoked the first large-scale defection from the army.

In view of Chiumbu's thoughts as presented above, there were two episodes where ZIPRA and ZANLA fought. The first conflict occurred in 1981 while the second clash occurred in 1982 (also known as Entumbane I and II). The causes of the Entumbane clashes, which almost threw the country into a civil war, were multifaceted. These include the inherited liberation-war ethnic incompatibilities, political mistrust, and increasing perceptions of favouritism of ZANLA forces and against ZIPRA cadres

within assembly points. It is argued that the ZIPRA forces perceived the ZANLA members as being favoured with promotions and supplies within their camps which amounted to discrimination (Munemo 2016). However, that which triggered the clashes and increased fighting beyond the camps “was the sacking of opposition PF-ZAPU’s leader, Joshua Nkomo, from the cabinet by President Mugabe in 1982 following the discovery of arms caches on land belonging to Nkomo’s party, PF-ZAPU” (Chiumbu 1997: 1). After this, many ex-ZIPRA soldiers deserted the newly integrated national army and went back to the bush. Regardless of the various conflict triggers at Entumbane, a liberation war veteran, Sadomba (2008: 72), emphasised that it “was in the interest of nationalists for former guerrillas to be fighting among themselves, and disunited.” The central question to Sadomba’s assertion would be, what could have been the key interest for the nationalists?

In view of the above notes, it is notable that the clashes between ZANLA and ZIPRA erupted because of a lack of proper disarmament, demobilisation, and reintegration (DDR). DDR is an important TJ issue because it is perpetrator centric and it “focuses on rehabilitating and reintegrating ex-associates of violence and violent actions,” in this instance, former liberation war fighters (Olojo and Mahdi 2022). Therefore, if DDR had been implemented well in Zimbabwe without compromising trust building, inclusive decision processes, and engagement, the clashes and insurrections should not have occurred (Chikwanha 2022; Foya 2022; Mugari 2022). It was the mistrust, ethnic connotations borrowed from the past, and the liberation-war conflict era that influenced the Entumbane uprisings. Arguably, such a TJ failure became a cursory process towards the commission of *Gukurahundi* massacres.

2.5.2. The Gukurahundi Atrocities

Gukurahundi is a code name that was used by the Mugabe administration to refer to the military operation that occurred in Matabeleland and some parts of the Midlands provinces in Zimbabwe between 1983 and 1987 in which approximately 20,000 people were massacred (Ngwenya and Harris 2015). The massacres, through an operation code-named *Gukurahundi*, were carried out mostly by the state sponsored *Fifth Brigade* allegedly deployed to contain the ZIPRA rebellion led by Joshua Nkomo who was a leader of ZAPU.

The Fifth Brigade was an elite North-Korean-trained roving military unit that was deployed in the Matabeleland region between 1981 and 1987 to deal with allegations of dissidents. The Brigade's violence, also described as an ethnic genocide or ethnic cleansing, claimed over 20,000 lives while many others were tortured, maimed, and terrorised (CCJP 1997). The 1987 Unity Accord was signed to stop the atrocities and resulted in an amalgamated Zimbabwe African National Union Patriotic Front (ZANU PF; (Mashingaidze 2005). The accord symbolised victor's justice because there was no requisite redress of the developmental stagnation of the affected regions or the rehabilitation of the traumatised communities (Raftopoulos 2006).

Eppel noted that Mugabe's decimation attempts of ZAPU was not because the party was a threat to his power, but that it stifled his pursuit of a one-party state upon which "ZAPU stood in the way of this goal" (Eppel 2009: 2). ZANU PF had sold to the world, and to most of the Shona people, propaganda that *Gukurahundi* was meant to decimate ZAPU-supporting dissidents who were pulling the country towards a civil war. Indeed, however, there were armed bandits who numbered less than 400 people at their peak (Eppel 2009) but this could not justify the wanton killings of unarmed civilians numbering more than 20,000 people (CCJP 1997).

The root causes of the *Gukurahundi* are not without contestations. (Mashingaidze 2005: 83) noted that "the war was a spill-over from the nationalist politics of the 1960s and 1970s." The dominant nationalist movements ZAPU and ZANU were defined by languages, with the former dominated by Ndebele-speaking people while the latter was dominated by the Shona. The arms cache³ in February 1982 and subsequent "attacks on the Prime Minister's residence" made the ZANU-PF-controlled government fear being overthrown by ZIPRA, the military wing of ZAPU (Mashingaidze 2005: 84). The arms cache describes the government's claim to have discovered weapons owned by ZAPU at its Nitram farm and in ZAPU assembly points, supposedly to fight Mugabe's elected government. This cache was, however, disputed as a hoax planted by ZANU PF to justify their attack on ZIPRA and the Ndebele people. This is well

³ In February 1982, the government claimed to have discovered weapons owned by ZAPU at its Nitram farm and in ZAPU assembly points supposedly to fight Mugabe's elected government.

argued by Doran who plainly suggested that the *Gukurahundi* “operation had everything to do with politics, comingled with tribalism and other animosities, and little to do with a much-hyped military or security threat” (Doran 2020: 2).

ZAPU was also arguably working with the South African apartheid regime to destabilise the ZANU PF government. The apartheid regime of “South Africa sabotaged Inkomo Barracks in August 1981, and nearly succeeded in liquidating the ZANU-PF leadership” (Mashingaidze 2005: 84). The Zimbabwe Air force was decimated in an attack on the Thornhill airbase in July 1982. In August of the same year, three White soldiers of the South African Defence Forces (SADF) were killed in a clash in Zimbabwe (Scarnecchia 2011). “At the end of 1982, South Africa launched *Operation Drama*, an effort that involved recruiting and arming a Zimbabwean insurgent group dubbed Super ZAPU” (Mashingaidze 2005: 84). These factors, therefore, made the government paranoid, hence launching the *Gukurahundi*. Figure 2.2 presents the statement made by a former ZANU PF minister on Twitter regarding the arms cache.

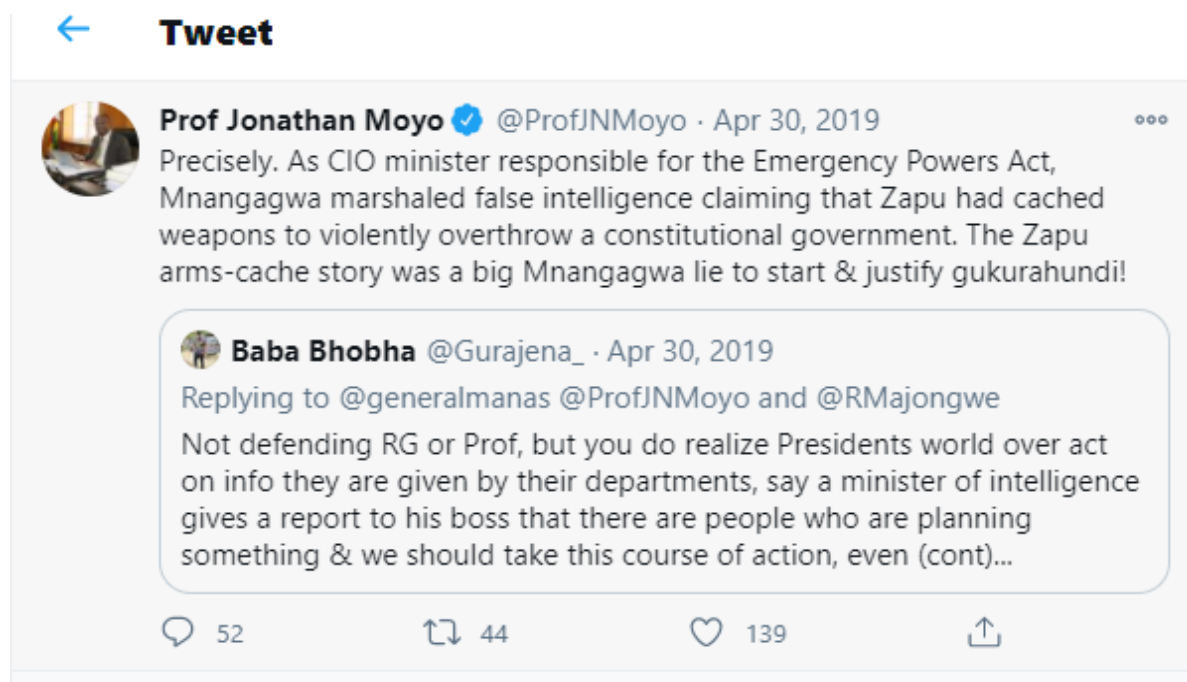


Figure 2.2: Statement made by a former ZANU PF minister on Twitter regarding the arms cache (Source: Moyo 2019).

If this foregoing argument is to be followed, then *Gukurahundi* was not an ethnic conflict but an act of political cleansing, the consequences of which amounted to ethnic genocide by coincidence.

According to Ngwenya and Harris (2015: 36), the central aim of the *Gukurahundi* was to “deal with those thought to have sympathies with ZIPRA and ZAPU” which largely “involved violence against Ndebele individuals and communities.” However, Mashingaidze (2005: 85) argued that “its course did not altogether follow ethnic lines” as people linked with ZAPU of Shona origins were also affected in areas such as Hurungwe (Mashonaland Central Province) and Gokwe (the Midlands Province). Notably, while the state-security agents and Fifth Brigade largely targeted Ndebele speakers, “the dissidents attacked Shona speakers, particularly those in the Midlands district of Mberengwa” (ibid). Eppel (2009), on the contrary, argued that the *Gukurahundi* was not an ethnic conflict but rather Mugabe’s pursuit for a one-party-state agenda, which could be realised by decimating ZAPU and its affiliates.

The damage caused by *Gukurahundi* continues to reverberate as continued injustice. The government-sponsored Chihambakwe Commission of Inquiry Report (1984) into the Matabeleland disturbances has not been made public, while many of the alleged perpetrators, leaders, and planners of the violations continue to hold senior positions in government and security services, thereby reinforcing impunity and amnesia. To worsen matters, the post-*Gukurahundi* footprints are characterised by allegations of regional developmental stagnation, deindustrialisation, and ethnic decimation by other means.

There is also a contentious discourse that brings in the role of international players in Zimbabwe’s perpetration of gross human rights violations and TJ affairs. This discourse is centred on why the international community – in this case, foreign governments who were allies of ZANU, ZAPU, and Western countries in general – turned a blind eye to the *Gukurahundi* atrocities (Doran 2017; Cameron 2018). For example, when the *Gukurahundi* unfolded, it happened in the presence of the British government which, at the time, was providing technical military support to the Zimbabwean government as part of the decolonisation transitional process. Notably, “Members of the British government in Zimbabwe, which included a British Military Advisory Training Team (BMATT) on the ground, were intimately aware of the violence that resulted in the death of between ten and twenty thousand people” (Cameron 2018: 2) but they wilfully decided to turn a blind eye. The United States government was also aware of the violence, but they took no actions to end the atrocities.

2.5.3. Economic Structural Adjustment Programmes

In the early to late 1990s, Zimbabwe's economic policies generated violent socio-economic challenges, the repercussions of which are a case for TJ. Zimbabwe adopted the Economic Structural Adjustment Programmes (ESAPs) as part of the conditionalities to receive financial aid from the Bretton Woods Institutions including the World Bank and the International Monetary Fund. ESAPs involved the privatisation of public entities, wage cutting, the introduction of user fees in public health institutions, and other public services provisions. Workers' exploitation increased through deregulation. These actions triggered substantial employee retrenchments, the "skyrocketing of prices of goods, rising inflation to record levels and steep devaluation of local currencies" (Kawewe and Dibie 2015: 99).

As the country became politically vulnerable due to the intensifying economic crisis associated with the ESAPs, President Mugabe offered (first) generous pensions and subsequently land to appease the aggrieved constituencies (Onslow 2011). The resultant economic decline coincided with the war veterans' cash hand-outs (compensation) which led to the fall of the Zimbabwean Dollar on Black Friday (on 14 November 1997). The civil strife of the late 1990s activated the radicalisation of labour and the eventual formation of the Movement for Democratic Change (MDC) which set the stage for the reactivation of violent state machinery with the co-option of youths, war veterans, and state-security elements. These historic moments also marked ZANU PF's deftness in populist politics involving constitutional manipulation, patronage building, exploitation of legitimate grievances, and prowess in violence.

Describing the impact of ESAP on Zimbabwe's peace, Kawewe and Dibie (2015: 79) stated that "ESAPs' devastation of the poor translates into recurrences of socio-economic crises that threaten peace and social justice and compounded by natural calamities and the relentlessness of the HIV/AIDS pandemic." The authors argued that women and children were the most affected as education costs increased – children were withdrawn from schools, especially girls, due to the "patrilineal society devaluing women" (Kawewe and Dibie 2015: 83).

Generally, Zimbabweans could not cope with the overall impact of ESAPs. The cost of utilities increased, and the costs of social services concerning health, food,

education, and transportation skyrocketed amid retrenchments with consequential effects of high unemployment. Salaries decreased as the government deregulated working conditions in the private sector. These created a fertile ground for violent protests to which the government, in turn, reacted with brutality. The wounds and memories of the ESAPs continue to exist and many societies hope for healing, especially those who were retrenched, pensioners, war veterans, and the business communities.

2.5.4. Land Conflict – the Fast-Track Land Reform (the Third Chimurenga)

It was about land in the beginning; it was about land during the struggle; it has remained about land today. The land issue in Zimbabwe (Rhodesia) is not ancient history (Sir Shridath Rampha 2007 cited in (Magaisa 2010: 2).

One of the cardinal grievances that motivated the liberation struggle was the land issue. Zimbabwe's colonialists took away productive land from the Zimbabwean natives and the liberation struggle was fought to reclaim it, which did not occur at independence. As a result, in 2000, the land grievance resurfaced through the Fast-Track Land Reform Policy, also known as the *Third Chimurenga*. The researcher believes that it was called the Third Chimurenga because of two reasons: (i) it was a continuation of the decolonisation struggle, and (ii) the White commercial farmers were violently driven out of their farmland by war veterans and the ruling party, ZANU PF. Ndlovu-Gatsheni and Benyera (2015) undoubtedly agreed with the first reason that the *incomplete decolonisation* provoked the *Hondo Yeminda / Third Chimurenga / Jambanja* – violent Fast Track Land Reform Programme which commenced in the year 2000 (Ndlovu-Gatsheni and Benyera 2015).

At independence, the Zimbabwean government did not fully address the land issue which was fundamental to the liberation struggle. That which it did was to adopt a mollifying policy of the *willing buyer-willing seller* as part of compliance with the Lancaster House Agreement which restricted the compulsory acquisition of land for 10 years (Sadomba 2011; Shay 2011). The willing buyer-willing seller arrangement gave the White land holders autonomy to cede land to the Zimbabwean government for resettlement according to their own volition and conditions. Evidently, the country's independence constitution postponed the land grievance (Ndlovu-Gatsheni and

Benyera 2015) through the willing buyer-willing seller arrangement. As a result, the Black population, approximately 97%, continued occupying 25% of the country, while the White minority, making up 3% of the Zimbabwean population, owned 75% of the most fertile lands (Chilunjika and Uwizeyimana 2015). This policy failed to work as most White land holders clung onto their land and also partly because the Zimbabwean government did not have money to buy off the land from the White farmers.

The land grievance continued escalating as the Black population bulge demanded more land for resettlement and farming such that in the year 2000, the war veterans, selected ZANU PF supporters, and other concerned citizens moved to grab land from the White holders through violence (Du Plessis and Ford 2008; Sadomba 2008). Approximately 4,500 White farmers violently lost their farms, which were redistributed to approximately 300,000 beneficiaries (Sachikonye 2001; Aljazeera 2020). The Fast-Track Land Reform Programme allowed the local Black people to occupy land held by the White population without paying any compensation as a way of correcting the historical land-distribution inequalities.

In view of the foregoing discussion, the land invasions, and the Fast-Track Land Reform (FTLR) policy were a TJ issue that sought to address racial land-ownership imbalances. However, in the process, the land-redistribution process became violent, politically radicalised, and a gross violation of human and property rights (Degeorges and Reilly 2007). This created more TJ challenges because “many white farmers and their workers were killed, tortured and harassed. Few of these instigators of violence were tried and charged, as most of them were granted amnesty under the Clemency Order of 2000” (Mandikwaza 2016: 33). More precisely, the White population that owned farms had title deeds which entitled them to compensation, but they were harshly sent off the farms. Also, farm workers whose employers were evicted were neither compensated nor absorbed into employment by the new farm owners, and they were left destitute. According to Scoones *et al.* (2019: 811),

“70,000 farmworkers’ households continued to have employment on remaining farms and estates, about 25,000 were displaced in situ, remaining on the farms but initially without work, and approximately 45,000 households were forced to move.”

Lastly, many supposed beneficiaries of the land reform could not access the land as the process was largely partisan and a few powerful personalities became multiple farm owners (Mkodzongi and Lawrence 2019). Instead, the land reform programme “left a legacy of overlapping boundaries, double occupations, evictions (including of farm workers), follow-on invasions and illegal allocation of lands outside the fast-track framework, competing authorities over land, lack of clarity over gendered rights and more” and the problem continues (Scoones 2017: 1). Almost two decades after the Fast-Track Land Reform Programme (FTLRP) took place, the land issue as a political and economic TJ grievance continues dominating the national discourse.

Chilunjika and Uwizeyimana (2015: 130) noted that by 2015, the country’s land conflict had evolved in four phases:

[The four phases included] the willing buyer and willing seller paradigm (1980–1990); the compulsory acquisition with fair compensation paradigm (1990–2000), the Fast-Track Land Reform Programme (FTLRP) where there was compulsory acquisition with no compensation (2000–2002) and the partnerships and agricultural contracts between white commercial farmers and the indigenous black landholders (2014 to date).

Post 2015, the government moved to address the Black land-ownership imbalances through the land audit findings (Land Commission) and compensating the aggrieved White farmers through the Global Compensation Deed (Zimbabwe Farmers Union (CFU) 2020). These actions, however, are yet to be fully implemented, just as with any other TJ policy that Zimbabwe has seen (as will be discussed in the next chapter).

2.5.5. Operation Murambatsvina 2005

In May 2005, the government launched a campaign of clearing urban slums, including undesignated market stalls and informal trading shops, which came to be known as Operation *Murambatsvina* or Operation Restore Order. In effecting the Operation Murambatsvina campaign, the government bulldozed, burnt, and destroyed thousands of homes across the country that were supposedly constructed in undesignated spaces, arguably to restore order and sanity within urban communities. Besada and Moyo (2008: 18) disagreed with the government’s justification of the operation by stating that Operation Murambatsvina was “aimed at the urban poor, who are seen by

the regime as a source of political opposition and economic noncompliance.” Therefore, they were to be forcibly displaced to their rural areas (Potts 2008) to make it difficult for them to vote in urban areas where they are registered voters.

In destroying the houses, the government violated legal “procedures set out in Zimbabwe’s national laws, including section 32 of the Regional, Town and Country Planning Act” (Human Rights Watch 2005: 1). The act of destroying people’s dwellings was a flagrant human rights violation, the effect of which created livelihood crises. According to the United Nations Mission led by Anna Tibaijuka, approximately 700,000 people lost “either their homes, their source of livelihood or both” (Tibaijuka 2005: 7), while a further 2.4 million people were indirectly affected. However, statistics from the Zimbabwean government recorded “570,000 people, or 133,534 households as having been displaced from 92 460 demolished dwelling units across Zimbabwe” (Potts 2008: 1).

During and after the demolitions, the most affected people were women and children. Approximately 56% of Operation Murambatsvina’s total victims were children, and of the 70% who lost their livelihoods, “the majority were women who were engaged in informal enterprises” (Benyera and Nyere 2015: 6526). Children lost shelter and supportive structures, and those at the school-going age were forced to withdraw from school as they and their parents had suddenly become homeless, while other parents had lost their jobs and could not cope with a new life of being unemployed. More generally, most of the Operation Murambatsvina victims were not offered any alternative shelter or a place to settle but were “told to go back to the rural areas they originally came from” (Potts 2008: 1).

To repair the damage, the Zimbabwean government launched Operation Garikayi, a housing scheme for the displaced. However, majority of the houses were allocated to ZANU PF supporters and allies of government officials while few houses that actually benefitted victims were inhabitable due to poor quality material used in their construction (Besada and Moyo 2008: 18-19). Therefore, a thorough redress of the Operation Murambatsvina violations remains a case for Zimbabwe, given that criticisms in Zimbabwe will always be present due to the country’s poor socio-economic and political policy processes which are usually partisan and motivated by

corruption. The merits and demerits of the remedial actions in response to Operation Murambatsvina will be discussed later in chapter 6.

2.5.6. Electoral Violence in Zimbabwe's History (1980–2018)

Zimbabwe is an electoral democracy, but violence has characterised the country's electoral contestations since its inaugural independence elections in 1980 to date (Mandikwaza and Zvaita 2019: 18). The country holds elections every five years, and each electoral episode has had experiences of either flash or intense violence. That which varies is the structure, intensity, and contexts in which the electoral violence is effected. Notably, ZANU PF has generally "used remarkably similar strategies in every general election since 1980, notwithstanding striking differences in the contexts, issues, and nature of the chief opposition party" (Kriger 2005b: 1).

The most impactful electoral violence episodes were experienced in 1990, 2000, 2002, 2005, 2008, and 2018. The violence is perpetrated largely to safeguard and protect the interest of the incumbent ruling regime. Hence, the violence is mostly perpetrated by the ruling-party and state-security apparatus, while the victims are largely the opposition-party supporters and the general community members who are either passive or active opposition-party followers. In Africa, in general, "patrimonialism as the style of politics, the types of elections, the type of electoral and election administration are the main causes of election violence" (Kewir and Ngah 2017: 1).

Electoral violence can be defined as a type of political violence that is "distinguished by its timing and motive" (Adolfo *et al.* 2012: 1). The violence occurs particularly immediately before, during, and immediately after an election process where "physical harm, intimidation, blackmail, verbal abuse, violent demonstrations, psychosocial manipulation or other coercive tactics aimed at exploiting, disrupting, determining, delaying, reversing or otherwise influencing an electoral process and its outcome" are used (Reif 2011: 1). These and other methods have existed in Zimbabwe where the opposition parties and general citizens have been subjected to acute physical beatings, burning of their houses and property, abductions and torture, and severe harassment with a view to influence their voting behaviour in favour of the ruling party, ZANU PF, and to a limited extent, in favour of the opposition parties (Bratton and Masunungure 2006; Mandikwaza and Mwonzora 2019). The following subsections

describe specific cases of electoral violence experienced between 1980 and 2018. However, the 1995 and 2013 elections experiences were omitted because of their insignificance in terms of contribution to electoral violence.

(a). 1980 Electoral Violence

The 1980 elections were Zimbabwe's inaugural independence elections where nine key parties, including the United African National Council (UANC), ZANU PF, ZAPU, and the Rhodesian Front, participated. Electoral violence and intimidation preoccupied all political parties (Kriger 2005b: 4). However, after the elections, when ZANU PF won, the party started using violence, hate speech, and intimidation in defiance of the official reconciliation policy. Kriger (2005b: 5) wrote, "in the aftermath of the election, despite the official policy of reconciliation, the ruling party's one-party mentality was evident in its political discourse and use of coercion." That which is unfortunate in the 1980 elections is that the impact of violence and coercion has been downplayed yet it is very significant if the build-up to the *Gukurahundi* violence is to be considered.

(b). 1985 Elections

The 1985 general elections took place when ZANU PF was consolidating its own power stranglehold against its rival party, ZAPU, in pursuit of a one-party state. Notably, the election took place amid the *Gukurahundi* annihilations, referred to in earlier sections. "This time ZANU PF Youth Brigades were responsible for much of the political violence in urban and peri-urban settings, including the burning of houses, assaults and murder" (Eppel 2004: 45). Much of the election violence was directed to ZAPU. Kriger (2005b) noted that in the 1985 election, ZAPU supporters were forced to buy ZANU PF cards and attend the party's rallies. According to Kriger (2005b: 7) "the sequence of events was often the death of a local ZANU(PF) official, allegedly killed by a dissident, followed by ZANU(PF) youth being bussed into an area and then going on the rampage, burning houses of suspected ZAPU supporters, and sometimes beating the occupants, even to death."

Notably, regardless of the violence, ZAPU won 15 of the 16 Matabeleland seats and this angered ZANU PF such that "immediately after the polls closed, violence flared up again, spurred on by Mugabe's advice to his supporters to 'go and uproot the weeds

from your garden' and his depiction of Nkomo and ZAPU as 'enemies of the country'" (Kriger 2005b: 10).

(c). 1990 Election Violence

For the 1990 elections, ZANU PF had a new enemy, the Zimbabwe Unity Movement (ZUM). ZANU PF's electoral and political animosity with ZAPU had ended with the signing of the Unity Accord in 1987. ZUM had been founded by Edgar Tekere, the then ZANU PF secretary general, who had been expelled from government and ZANU PF for criticising corruption. Thus, during the 1990 elections, ZANU PF used aggressive tactics against its new rival party, as was the case with ZAPU. ZUM experienced acute violence, intimidation of its supporters, and disruption of its political activities. Racist slurs and threats of violence became convenient for ZANU PF due to ZUM's alliance with Ian Smith's party, the Conservative Alliance of Zimbabwe (CAZ). A prominent case of violence in the 1990 election is the shooting of Patrick Kombayi (a ZUM candidate) by state-security agents at the instigation of Vice President Simon Muzenda who wanted to be the sole candidate in Gweru. The perpetrators of violence who shot Kombayi were convicted, but they were immediately granted a presidential pardon in 1994. "They did not spend a day in prison, and one of the two men was subsequently appointed to the ZANU(PF) Central Committee" (Kriger 2005b: 18).

(d). 2000/2002 Election Violence

The elections in 2000 and 2002 were different from those of all previous years as there was a fierce contestation between the ruling party, ZANU PF, and a newly formed Movement for Democratic Change (MDC). The elections held in 2000 were for parliamentary seats, while the 2002 elections were presidential elections. Further, the election was taking place following a constitutional referendum (in 2000), the outcomes of which were against ZANU PF and the government. Both the 2000 and 2002 elections made ZANU PF sense a loss of political support base such that it "engaged in violence and intimidation, often relying on the youth and war veterans, even as it accused its opponents of subversive violence" (Kriger 2005b: 1). Describing

4 In 2000, Zimbabwe held parliamentary elections while in 2002, presidential elections were held with ZANU PF and the MDC being the main political contenders.

the 2002 presidential elections, the Zimbabwe Peace Project (2008: 4) stated that “the 2002 Presidential election was one of the most politically volatile post-independence election era ever experienced in Zimbabwe,” the effects of which were most experienced in Manicaland, Masvingo, Mashonaland East, and the Midlands provinces. The election violence was even more intense due to the Fast-Track Land Reform land grabbing that was taking place, much to the disadvantage of the White commercial farmers and farm labourers.

(e). 2008 Election Violence

Electoral violence in Zimbabwe reached its climax in the 2008 elections where over 200 people were killed, approximately 5,000 were tortured and assaulted, while thousands were displaced (Human Rights Watch 2008). The 2008 violence reached a crescendo when a presidential election rerun was scheduled for June 2008 after the initial election failed to produce a winner, as required by the Zimbabwean election laws. Morgan Tsvangirai (opposition MDC) had garnered 47.9% of the total vote ahead of Robert Mugabe (ZANU PF) who had 43.2%. Each of them needed to garner 50% plus one vote to win the presidential election. To ensure that ZANU PF won the presidential race, the party deployed ferocious violence against the opposition MDC party. “The killings were primarily committed by members of ZANU-PF, ZANU-PF youth militia, war veterans, and, to a lesser extent, members of the military and police” (Bureau of Democracy, Human Rights and Labour 2009).

The 2008 election violence was reminiscent of the *Gukurahundi* massacres of the 1980s and the 2002 presidential elections. According to (Eppel 2009: 3), “the modus operandi of the massacre at Chaona in Mazowe in May 2008, when eight people were brutally tortured and beaten to death in front of their families, echoes horribly the massacres in Tsholotsho, Lupane and Nkayi in 1983.” However, according to the Zimbabwe Peace Project (2008: 4), the “2008 electoral behaviour and the 2002 presidential elections” show similarities in the violence trends. As the election campaign intensified, ZANU PF set up torture camps throughout the country where opposition supporters and the general citizens were assaulted, tortured, and killed to instill a gross fear among the voters (Dube 2018). It was the war veterans and youth militia who spearheaded ZANU PF election campaigns mounted roadblocks across

the country where they would victimize people if they do not have the ruling party's membership cards (Mwonzora and Helliker 2020). "Clinics, hospitals, schools, resettlement areas, business centres and growth points were converted into base camps" were opposition supporters and citizens critical of ZANU PF would be tortured, assaulted, raped or forced to denounce their political parties (Zimbabwe Peace Project 2008).

The intensity of human rights violations motivated local and international organisations to come to the rescue of approximately 6,300 victims through the provision of psychosocial support services including medical care, safe houses, and food (Human Rights Watch 2008; McGreal 2008). A government of national unity, negotiated by SADC through Thabo Mbeki, became part of the remedial process that averted Zimbabwe's crisis from deepening (International Crisis Group 2008; Mutisi 2011).

(f). 2018 Election Violence

The 2018 elections were historic in the Zimbabwean history for three reasons: firstly, they were the first elections to be held in Zimbabwe without Robert Mugabe being the presidential candidate and opposition MDC leader, Morgan Tsvangirai, who had been Mugabe's presidential challenger since the year 2002; secondly, the pre-election and voting periods were relatively peaceful; and lastly, it was the first time in decades that international foreign election observers participated in Zimbabwe's elections. Violence, however, broke out after the election when opposition-party supporters and political activists protested the delay in announcing the presidential election results (two days after voting) on 01 August 2018. The government reacted to the protests using excessive force, including firing live ammunition, teargas, and water cannons to disperse the swelling crowds (Barron 2018). According to the IRI/NDI Zimbabwe International Election Observation Mission (2018: 10), "Zimbabwe Defence Forces (ZDF) soldiers were deployed and opened fire on opposition protesters with live ammunition, resulting in 6 people killed and another 14 wounded. In response to international demands, the government established a commission of inquiry" led by South Africa's former President Kgalema Motlanthe. The commission made a raft of recommendations for curbing state violence, but such recommendations have not been implemented by the Mnangagwa administration.

(g). Reflections on Electoral Violence

Not all elections were detailed above, including the 1995, 2002, 2005, and 2013 elections, not only because they were less competitive and less violent (Mandikwaza and Mwonzora 2019) but also since the scope of this section was to build a case for elections related to TJ by providing an overview of the violent nature of elections in Zimbabwe. The dominant underlying fact is that the Zimbabwean elections since 1980, under one-party leadership – ZANU PF, have been violent (Eppel 2009; Raftopoulos and Mlambo 2009; Mandikwaza and Zvaita 2019). In the case of Matabeleland, “it has become standard procedure for elections in Matabeleland to be accompanied by threats from the ruling party of forced disappearances, forced deprivation of food along political lines, and violence” (Eppel 2004: 47).

This challenge of electoral violence is not only a Zimbabwean problem but an African anathema where “most African countries have failed to speak to institute a democratic dispensation that speaks to the welfare and aspiration of the people” (Ngwane 2011: 1). For Zimbabwe, the country’s electoral ecosystem requires effective mechanisms to address violence while, at the same time, address the past violations. In all the election violence experiences, there had been neither reconciliation nor justice provided to the victims. Instead, the perpetrators of electoral violence, particularly those from the ruling party, would be offered a presidential pardon after being convicted for electoral violence crimes (Kriger 2005b).

The impact of electoral violence in Zimbabwe has created fear in communities where citizens are afraid of politics and elections. Communities endure spiritual, psychological, and sociological distress daily mainly because “meaningful and caring relationships have been broken. ... have lost household properties, homes and loved ones because of political violence” (Machinga 2012: 2). It is within this context that the political transition periods have stretched without proper healing and reconciliation processes that close past chapters of violence and guarantee its non-recurrence. The fact that violence has shaken communities in every electoral period means that without a proper TJ, perpetual hurt will span any healing potentials. Therefore, TJ mechanisms must help to end cycles of electoral violence by guaranteeing nonrecurrence of

politically motivated violence, principally because one of the objectives of TJ is nonrecurrence (Olojo and Mahdi 2022).

2.5.7. Military-Assisted Coup – November 2017

In November 2019, as ZANU PF and the government sought to reform their power structures, the military staged a coup which deposed Robert Mugabe and installed Emmerson Mnangagwa as an alternative leader for the government and ZANU PF party. The military coup represented TJ grievances within ZANU PF, and it also triggered new TJ grievances from the party members who were forced to go into self-imposed exile. More broadly, it resonated with the masses' desire for a transition that would usher in genuine TJ.

The military-assisted power transition, named Operation Restore Legacy, was allegedly intended to “restore the ethos of the liberation struggle and deal with criminals around the President” (Moyo 2017: 1). However, the way that it occurred showed that it was about ZANU PF's factional politics that had seen Mnangagwa being dismissed from his post as vice president and being expelled from ZANU PF. Following his dismissal, Mnangagwa went into exile and the military went on to force Mugabe to resign. In a few days, the military moved to consolidate their power seizure by arresting Mugabe's loyalists, with some being detained and tortured to death. For example, Peter Munetsi (an Intelligence Officer) was arrested and died in detention while some were forced into self-imposed exile, including Jonathan Moyo, Patrick Zhuwao, Saviour Kasukuwere, Godfrey Gandawa, and Walter Mzembi, among others (Cook 2017).

That which is less detailed by many scholars regarding the November 2017 coup in Zimbabwe is that the internal party wounds and government bureaucrats' divisions widened such that a TJ process within the government systems, particularly the security sector and ZANU PF as a party, has become a necessity. Reporting on the coup brutalities, Mananavire (2019: 1) stated:

The army operation left a trail of destruction at properties owned by government officials perceived to be loyal to Mugabe. The walls and doors were plastered with bullet holes and there was blood on the floor at some of the properties. Bullet casings and fragments were also found scattered

around the properties. There were blood stains around former finance minister Ignatius Chombo's home, while casings and bullet fragments were found at the homes of former ministers Jonathan Moyo (higher education) and Saviour Kasukuwere (local government). Former ZANU PF youth leaders Kudzanai Chipanga and Innocent Hamandishe were detained and tortured by the military during the coup. Munetsi, a career spy, was captured by soldiers during the dramatic events.

Munetsi actually "died as a result of multiple blunt force injuries during the military-led coup that ousted President Robert Mugabe," according to autopsy reports (Mananavire 2019: 1). In this view, there are truth telling, justice, and reparations issues that occurred from the conflated ZANU-PF-party-state transition that transmuted in November 2017.

2.6. Reflections on Post-Independence Conflicts

The post-independence conflicts in Zimbabwe largely occurred in pursuit for democracy and a one-party-state agenda. ZANU PF has been the dominant party, the main approach to governance and leadership of which has been that of a supreme party that should not be challenged by any opposition party. Since independence, ZANU PF has shown its violent nature and has used violence to thwart its enemies, an approach that has shaped post-independence TJ needs. From the Entumbane uprisings to electoral violence and state-party militarisation in Zimbabwe, the conflicts have largely concerned the political control of state levers and corruption-related struggles. Internal party conflicts within and outside both the ruling party and opposition parties have been elusive ramifications of past human rights violations and liberation-struggle-shaped political militarism. Hence, it is fair to claim that Zimbabwe is a country with institutionalised violence evidenced from the use of state-security power and political-party electioneering processes.

Zimbabwe's conflict triggers involve the following: racial discrimination motivated the liberation struggle; ethnicity provoked the post-conflict violence, the impact of which was most felt during the *Gukurahundi* atrocities (Ndlovu-Gatsheni and Benyera 2015); while political polarisation largely motivated perpetual political violence since independence. More broadly, it is the incomplete decolonisation process that provoked the country's existing conflicts, including the land reform (Sadomba 2011). As a result,

the government has paradoxically committed gross human rights violations “in the name of correcting past injustices, combating neo-colonialism, restoring the dignity of the African people, fighting the British Government, and preventing the recolonisation of Zimbabwe” (Kwinjeh 2007: 1). In view of the above discussion:

[Zimbabwe’s TJ questions involve] historical legacies of abuse and violence dating from pre-colonial times; challenges arising from incomplete decolonisation; the interpretation of nationalism and liberation; issues of inclusion and exclusion; the national question which comprises nation-building and state-building; inter- and intra-party tensions and contestations; issues of race, ethnicity and citizenship; and finally the role of external interference, otherwise known as ‘coloniality’ (Ndlovu-Gatsheni and Benyera 2015: 17) .

Coloniality captures a situation of the continuation of colonial-like practices of governance in a post-colonial state. In addition to these are social- and economic-justice issues including “dealing with the land question, ownership and indigenisation of the economy, compensation and reparations, social cohesion and unity, and resolving economic and social inequalities, perceptions and realities of marginalisation of minorities, patriarchy and gender” (Ndlovu-Gatsheni and Benyera 2015: 18).

2.7. Chapter Conclusion

This chapter concludes that Zimbabwe is a country perpetually in conflict since its founding. The country’s socio-economic and political progress is hampered by unaddressed gross human rights violations dating back to its pre-colonial era. The post-independence human rights violations have been severe, and the perpetrators are part of the ruling elite today, which complicates TJ interventions, if they are to be implemented given that the perpetrators cannot be their own judges, or rather referees, for TJ. This is more revealing in chapter 6 which analyses Zimbabwe’s past attempts to facilitate TJ processes within a non-transitioning governance system.

CHAPTER 3: LITERATURE REVIEW– UNDERSTANDING TRANSITIONAL JUSTICE

This chapter discusses the meaning, varying definitions, and purposes of TJ, as well as the contexts in which TJ is undertaken. Both scholarly and practitioners' definitions are used to dissect divergences and convergences in the conceptualisation of TJ. I then offer a personal definition of TJ for the purposes of this study. The chapter also discusses the purpose of and circumstances under which TJ is started as well as different components of TJ and how the field of TJ has evolved in theory and practice. Lastly, the researcher ends by demonstrating the link between TJ and sustainable peacebuilding, an essential component which brought about the researcher's desire to investigate how mediation aids TJ.

3.1. The Concept of Transitional Justice

TJ is a scholarly, legal, and moral practice field that creates conceptual and definitional convergence and divergence problems. For example, TJ has a “definitional ambiguity surrounding cultural rights which is partially to blame for their historical neglect in the human rights domain” (Luoma 2021: 37). Generally, *TJ* describes a society that is transitioning from a state of war to a state of peace, a society transitioning from authoritarianism to democracy or justice that regulates the transition of a society characterised by widespread human rights abuses or mass atrocities to a more human one. This means that the concept of TJ blends the two philosophies of *transition* and *justice*. While *transition* refers to a shifting era of bad governance towards peace (Đukić 2007: 37), *justice* signifies aspects of fairness going beyond criminal justice and encompassing broad notions of accountability and redress (Davis 2010: 11).

TJ is a response to systematic human rights violations in the pursuit of peace, reconciliation, democracy, and the recognition of victims (ICTJ 2009). However, a more comprehensive definition is offered in the United Nations Secretary General's guidance notes of 2010, which defined TJ as “the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of

large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (United Nations Secretary General 2010: 2). This means that TJ is intended to help societies emerging from conflict to address past gross human rights violations with guarantees of non-recurrence. These human rights violations could include torture, extrajudicial execution, disappearances, war crimes, crimes against humanity, and forced labour or enslavement and may have been committed by state-security forces, rebel groups, militias, corporations, and/or private persons (Herman and Martin-Ortega 2012: 6).

The notion of TJ is considered a multi-layered, broad, and complex concept which causes conceptual definitional problems (Sandoval 2011b; Binder 2013). This has caused some scholars and practitioners to view TJ as a moral response to gross human rights violations while others confine the concept to legal metaphors or both. For example, Seibert-Fohr (2019: 1) defined *TJ* as “a field of international law which is concerned with the question of how to confront a situation of past large-scale human rights violations and humanitarian abuses in a period of transition to peace and democracy.” This legal definition is amplified by Teitel (2003: 69) who defined *TJ* as “a conception associated with periods of political change characterised by legal responses meant to confront the wrongdoings of repressive predecessor regimes.”

The above two descriptions of TJ have faults; first, both scholars cast TJ as a legal response which confines TJ to courts, yet there are non-legal responses to the field of TJ as well. Secondly, Teitel’s definition, for instance, narrows the wrongdoings to aftermaths of “repressive predecessor regimes” yet TJ can also occur after violent conflicts or any form of widespread human rights violations. In addition, Seibert-Fohr (2012) placed TJ within the framework of international law, yet country-specific domestic laws usually direct how TJ is undertaken. As such, Sandoval (2011a: 9) made it contrastingly clear that TJ is a state-centred practice that is “built and constructed around the belief that a consistent response should be articulated in the territory of the state where the atrocities occurred and, also, that the root causes of such atrocities exist within the borders of a particular state.” These conceptual divergences restricting TJ to legal or non-legal responses or to local or international realms prove that TJ is a broad and complex subject.

Lundy and McGovern (2008: 267) provided a broader conception of TJ by observing that TJ is “a field of inquiry and practice that is concerned with various judicial and non-judicial approaches to dealing with legacies of human rights violations in societies emerging from conflict or authoritarian era.” This definition opens TJ conceptualisation to both legal and non-legal responses and beyond repressive regimes, as well as to general conflict issues warranting redress within specific territories. A simplified thought-provoking abstract definition was provided by Leebaw (2008: 98) who defined *TJ* as the “the conception of justice in periods of political transition.” Thus, what could this conception of justice be? What type of justice is it and whose justice is it?

The (ICTJ 2009: 1) provided a basic answer to the above questions by expressing that TJ “is not a special form of justice, but justice adapted to societies transforming themselves after a period of pervasive human rights abuse.” This suggests forms of justice beyond criminal (courts-defined) justice towards broad accountability for past human rights violations. Đukić (2007: 693) captured this suggestion by stating that TJ “seeks a holistic sense of justice instead of relying solely on a classical, retributive notion of justice.” That which, therefore, separates TJ from other forms of justice is that it is a process undertaken to address a specific conflict era marked by gross and systematic human rights violations “often in the aftermath of violent conflict or repressive rule” (Davis 2010: 3).

Many scholars, according to Posner and Vermeule (2003), view TJ as a backward-looking process, yet the practice can also be futuristic in its objective projection. The authors argued that:

In the literature, writers generally understand transitional justice as backward-looking: punishing wrongdoers, compensating victims for their losses, forcing individuals to disgorge property that was wrongfully acquired, and revealing the truth about past events. But transitional justice can also be understood in forward-looking terms: providing a method for the public to recapture lost traditions and institutions; depriving former officials of political and economic influence that they could use to frustrate reform; signalling a commitment to property rights, the market, and democratic institutions; and establishing constitutional precedents that may deter future leaders from repeating the abuses of the old regime (Posner and Vermeule 2003: 766).

This observation reveals that as much as TJ is concerned with looking at past human right violations, the achievements contribute significantly towards future peacebuilding investments and, ultimately, the prevalence of sustainable peace.

While there are notable divergences in the definitional conceptualisation of TJ, it is evident that the central purpose of TJ is to address the legacies and consequences of gross human rights violations. The process is a political process that utilises both judicial and non-judicial processes to address past human rights violations to mark a *political* transition. However, the contexts of transitions within which societies seek redress may vary. For example, “crimes may have ceased long before the transition takes place (e.g. Spain), they may have been committed up until the transition (e.g. Timor Leste) or they may even continue to be committed during the transition (Uganda)” (Đukić 2007: 693). In order to further understand different contexts within which TJ is implemented, the following section explores the purpose of TJ.

3.1.1. The Evolution of Transitional Justice Systems and Practice

The concept of TJ has evolved over time (Andrieu 2010; Arnould 2016; Pathak 2019), but the available literature shows various distinct schools of thought describing the period when TJ started and how it has evolved over the decades. Pathak (2019: 20), in his review entitled *Generations of Transitional Justice in the World*, observed that “the origin, use and development of TJ system” has evolved over five generations, from the late 1940s, when the Second World War ended, to the present day. Andrieu (2010) pointed to a shift in TJ practice from focusing on legal justice to restorative justice and social justice; these aspects will be addressed in detail in the subsequent sections. However, according to Teitel (2003), TJ, as a field of practice, emerged in the 1980s in Latin America in response to gross human rights violations committed by authoritarian regimes and later began being applied in post-conflict societies to address war crimes and gross socio-economic and political injustices perpetuated by different regimes against the masses. Sandoval (2011b), on the other hand, reasoned that the term *TJ* was coined in 1995, as a result of the publication of *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, edited by Kritz.

In view of the above-mentioned views, it can be argued that the evolution of TJ should be understood within two categories: first, as a practice, and second, as a field of

study. The practice of TJ can be traced to the Second World War when the Nuremberg Trials and the Tokyo International Military Tribunal were initiated to address war crimes and crimes against humanity (Andrieu 2010; Pathak 2017). However, TJ, as a field of study for policy practice, gained prominence in the 1980s when truth commissions emerged in Latin American polities as the countries transitioned from authoritarianism to liberal democracy (Andrieu 2010: 2).

According to Pathak (2019: 40), this era symbolised the second generation of TJ systems when the practice “embraced the notion of internecine war to ensure truth, justice, reparation, vetting, prosecution and institution reform to the victims, survivors and society at large and perpetrators (Pathak, forthcoming) putting the core values of human rights, international criminal law and international humanitarian law at the centre of investigation establishing the transitional justice body, named Truth Commission.”

It is essential, therefore, to appreciate that the concept of TJ has transitioned over time from being a democratisation instrument into becoming a “human rights [issue], [and] it has tended to become an essential component of any liberal peace-building operation” (Andrieu 2010: 3). It has notably become a tool for wider peacebuilding processes. As a field of study, TJ has also evolved from a retributive-justice-centred approach “towards a more restorative one, focusing less on perpetrators and more on relationships at the level of society, with the explicit goal of healing the victims” (Andrieu 2010: 3). Beyond this, the concept is fast embracing social justice and economic development issues. Nevertheless, the above discussion suggests that the practice of TJ began earlier before the term *TJ* was conceived, and more importantly, its conceptualisation as a field of study and practice was embryonic.

To demonstrate that the theory and practice of TJ has changed with the changing conflict environment, this study reconceptualises Pathak’s writings on the generations of TJ systems. As noted earlier, Pathak (2019: 19) noted that the TJ systems have changed over five generations. The first generation includes the Nuremberg Trials and Tokyo International Military Tribunal; second generation focuses on the formation of the Transitional Justice bodies starting from Uganda (January 1974) to the beginning of 21st century; the third generation delves into the formation of the International

Criminal Court in 2002 (Rome Statute of the International Criminal Court, July 17, 1998); the fourth generation initiates from 2001 to 2019 which includes Non-state to Non-State conflict in the USA, Canada, Sri Lanka, and the fifth generation includes peace agreements, government and political parties who vow to form Truth Commissions (Pathak 2019: 20). Figure 3.1 below shows a diagrammatical presentation of the TJ evolution generations from Pathak's viewpoint.

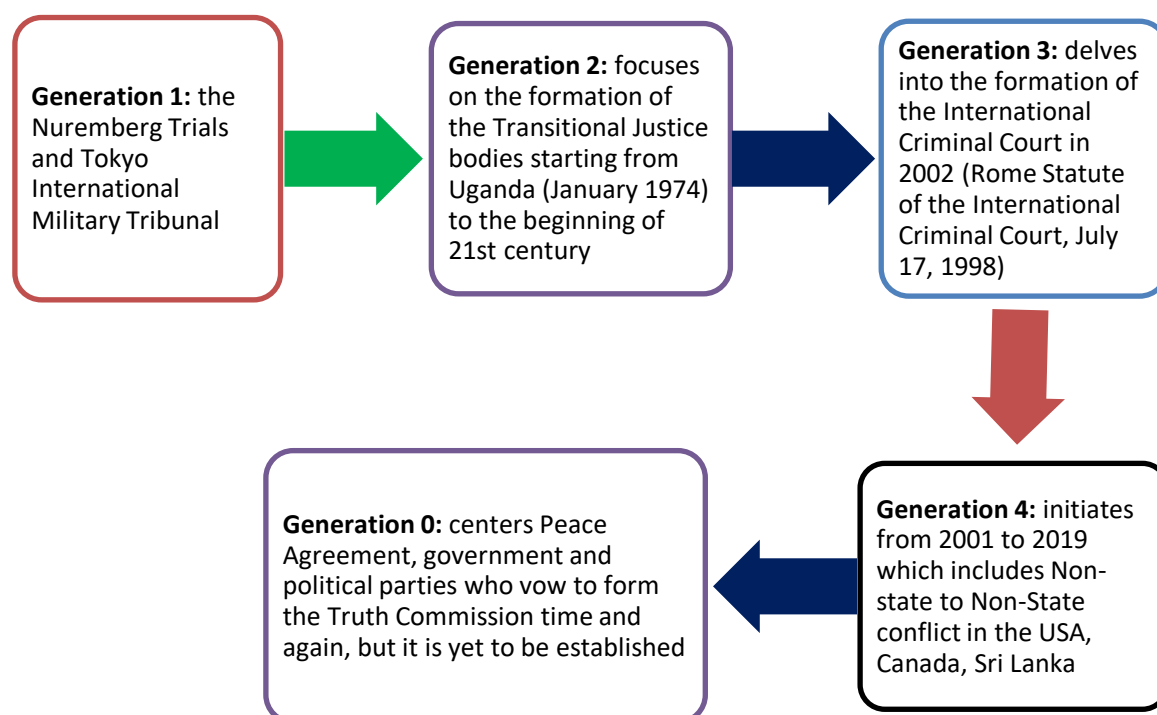


Figure 3.1: Transitional justice evolution: The five generations of transitional justice systems (Source: Pathak 2019).

In view of the above conceptualisation (in figure 3.1), it is clear that over decades, the practice of TJ has changed such that “today it covers the establishment of tribunals, truth commissions, lustration of state administrations, settlement on reparations, and also political and societal initiatives devoted to fact-finding, reconciliation and cultures of remembrance” (Fischer 2011: 407). However, the expansion and shifting practice of TJ has also brought about the divergence of ideas among scholars and practitioners in the field of TJ, as will be noted in various subsequent discussions. Additionally, this study may influence and shift the theory and practice of TJ towards mediation-oriented TJ systems.

3.1.2. The Evolution of Transitional Justice Theory

Has the theory of TJ also shifted? This becomes a pivotal question in the study of TJ, especially when its practice has changed. Despite this, the practice of TJ has evolved from the theory of TJ, which remains underdeveloped. “The most prominent theory of transitional justice is that it serves a remedial function about past atrocities” (Nesiah 2016: 9). Those who have tried to develop the theory of TJ have done so using the feminist theory, democratisation theories including liberal and neoliberal theories, and human rights concepts (Hansen 2011; Buckley-Zistel *et al.* 2013; Nesiah 2016). Nesiah (2016: 12), for example, noted that some “theorists frame the normative and pragmatic stakes of transitional justice as an echo of the state of nature heuristic of liberal social contract theory,” while Buckley-Zistel *et al.* (2013) noted that the feminist theory attempts to explain how TJ is gendered. These examples imply that TJ theory has not truly evolved, but its principles have been articulated through other subject theoretical constructs. This is made clearer by Andrieu (2010: 2) who suggested the following:

[That which is called TJ are] the theories and research programs that explain, justify, compare, and contest specific practices of moral and social repair, and the political and social movements dealing with the past, including practices such as Truth Commissions, trials, administrative reorganization, nation building, commemoration, and reparation.

Hence, it is problematic to ascertain whether the theory of TJ has essentially evolved as has occurred in its practice.

3.1.3. The Purpose of Transitional Justice

Circumstances, within which TJ questions arise, determine the objectives of undertaking TJ processes. Generally, TJ is largely undertaken as recognition that past gross human rights violations should be addressed in order to promote sustainable peace and democracy while ending impunity, a culture of violence, and establishing the rule of law (Teitel 2003; Sandoval 2011a; Pathak 2017). According to (Grieff 2012), the goal of TJ is to provide recognition to victims, foster civic trust, and contribute to reconciliation and democratisation. This view supports the assumption that TJ usually occurs “either as a post conflict justice in the context of armed conflict or when dealing

with past abuses committed by dictatorships or authoritarian regimes” (Binder 2013: 9). The common global objective of facilitating TJ is, therefore, to seek “recognition of victims and promotion of possibilities for peace, reconciliation and democracy” (ICTJ 2009: 1). Public Action Research (2015: 2) identified four key purposes of TJ, which are to:

- promote accountability for past human rights abuses;
- foster trust in state institutions;
- enhance long-term reconciliation and support peace processes; and
- recognise victims, especially as bearers of rights.

The assumption behind TJ is that “in periods of change any state, where mass atrocities have taken place, should engage in processes (judicial and non-judicial) that will achieve justice for past crimes” (Sandoval 2011b: 2). This recommendation agrees with that of the United Nations (UN) which stated that “transitional justice should consist of both judicial and non-judicial processes and mechanisms including prosecution initiatives, facilitating initiatives in respect of the right to truth, delivering reparations, institutional reform and national consultations” (United Nations Secretary General 2010: 1). Lie, Binningsbo and Gates (2007) reinforced this option by stating that failure to facilitate TJ politically undermines the legitimacy of post-conflict governments and encourages future violence. This means that TJ must guarantee the non-recurrence of gross human rights violations.

Notably, TJ contributes towards the realisation of the rights to justice, truth, and reparations (Brankovic and van der Merwe 2014). These rights are “enshrined in the international legal frameworks and they include the right to justice, the right to reparation, the right to truth, and guarantees of non-recurrence” (Public Action Research 2015: 1), thus agreeing with the UN Secretary General’s note that argues that whatever approach is taken to meet TJ needs should comply with international legal standards (United Nations Secretary General 2010). These legal standards include human rights protection conventions such as the United Nations Convention on the Prevention of Genocide (United Nations 1948) and the 1984 UN Convention Against Torture and other Cruel, Inhuman, Degrading Treatment, International Covenant on Civil and Political Rights.

There are, however, country-specific domestic regulations that also seek to promote human rights. In Zimbabwe, for example, the constitution provides for a Bill of Rights which outlines different human rights that should be protected and promoted. In relation to state-level practices, there is an increasing consensus that TJ processes must respond to the specific contexts of the country in transition, instead of relying on a “one size fits all” model (Brankovic and van der Merwe 2014: 10).

TJ is also seen as a peacebuilding process that should be undertaken towards securing a democratic future (Clark and Ungar 2021) . This is because TJ promotes security and stability, the rule of law, and deepened social cohesion. However, TJ and peacebuilding are sometimes viewed as mutually exclusive, given that tools for TJ somehow differ from those of the peacebuilding process. For example, those targeted for criminal prosecutions, or generally by any accountability mechanism, may resist by taking a hardened stance that could possibly return a country to war (Sriram and Mahmoud 2006). However, for TJ to play a peacebuilding role the process should go beyond prosecutorial accountability towards including peacebuilding mechanisms such as promoting rule of law, ensuring “security and stability, disarmament, demobilization, and reintegration of ex-combatants (DDR), and security sector reform (SSR)” (Herman and Martin-Ortega 2012: 2).

In view of the above discussion, the general purpose of facilitating TJ is to enhance peace, justice, and reconciliation. TJ also builds social cohesion through socio-political systems’ institutional transformation including the transformation of conditions that have given rise to gross human rights violations. Therefore, to achieve the objectives of TJ, there is a need to employ different mechanisms and approaches such as truth telling, reparations, justice, reconciliation, and institutional reforms. However, these mechanisms are mutually reinforcing and complementary to each other, as will be noted in subsequent sections.

For Zimbabwe and any other transitioning society, TJ is a peacebuilding dimension that seeks to create an environment that reconstructs broken societies through facilitating accountability of past human rights violations, truth telling, restoration, reconciliation, and greater participation of politically marginalised communities in governance processes. If correctly implemented, therefore, TJ can “deal with events

of the past and also look to the future to prevent a recurrence of conflict and abuse” (ACCORD 2015: 54), hence advancing sustainable peace and peacebuilding. This study is, therefore, an attempt to provide alternative avenues towards successful TJ interventions supported by mediation as a sustainable peacebuilding approach that can be undertaken at both local and national levels.

3.2. Transitional Justice Mechanisms

TJ involves multiple mechanisms, approaches, or processes that include reparations; truth telling; institutional reform; justice; memorialisation; public consultations; demobilisation, disarmament, and reintegration; amnesties; and exiles (Teitel 2000; Lie, Binningsbo and Gates 2007; Bell 2009; Fischer 2011; Sandoval 2011b). These mechanisms are practised in whole or in part depending on the nature, context, and magnitude of violations experienced and more broadly on the purpose of undertaking the process. The type of regime (autocratic or democratic) facilitating the TJ process largely determines the success or failure of the TJ process (Lie, Binningsbo and Gates 2007).

Scholars and peacebuilding practitioners, however, do not agree on the number of mechanisms that constitute TJ and how they should be pursued. For example, Sandoval (2011a) identified four key TJ mechanisms, namely, truth telling, justice, reparations, and institutional reform, while Brankovic and van der Merwe (2014: 11) identified only three mechanisms for TJ, namely, reparations, justice, and truth. Figure 3.2 shows key TJ mechanisms, according to Brankovic and van der Merwe (2014).

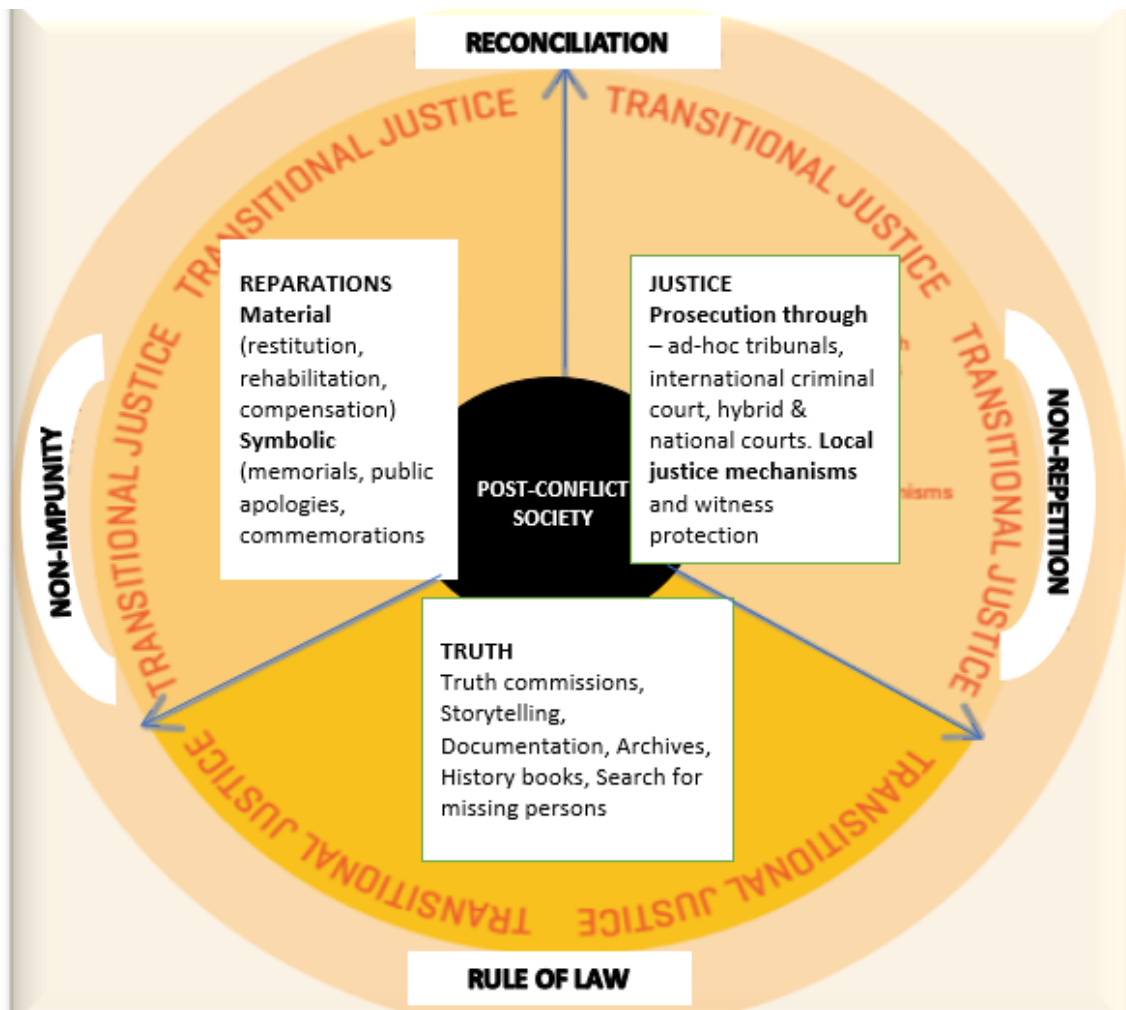


Figure 3.2: Transitional justice components, (Brankovic and van der Merwe (2014).

Brankovic and van der Merwe (2014) and Sandoval (2011a) excluded reconciliation as a stand-alone TJ mechanism, which is backed by Fischer (2011: 406) who argued that “transitional justice and reconciliation, although they overlap, are not identical.” Fischer (2011) further reasoned that reconciliation is a sustainable peacebuilding mechanism rather than a conflict-transformation tool. However, Kasapas (2008: 61) stated that reconciliation is the “primary goal for every post-conflict society and a long, painful process that cannot be externally imposed or internally legislated.” Regardless of these divergent scholars’ positions, the researcher of this study proposes that reconciliation can be viewed as a TJ mechanism, given that it plays a specific role towards the ultimate goal of undertaking TJ processes.

The ICTJ (2009: 1) identified gender justice, security system reform, memorialisation efforts, truth commissions and criminal prosecutions, and reparations programmes as the basic TJ approaches that some governments have adopted. Unique in this list are

gender justice and memorialisation. Gender justice is a particularly important component for TJ to fully understand the different abuse experiences of men and women in times of conflict and to prevent gender-blind TJ interventions. “Impunity for sexual- and gender-based violence must be addressed as a key component to each transitional justice approach and gender-sensitive approaches can also empower women as agents of positive change in transitional justice mechanisms” (Davis 2010: 9). Gender considerations in TJ processes are important because the failure to include women as equal participants “has often led to major shortfalls in achieving TJ objectives” (Opongo 2021: 5)

“A better understanding of gender, culture and power structures is needed to appropriately analyse the causes, dynamics and consequences of conflict and violence” (Fischer 2011: 412). In Haiti, Sierra Leone, and East Timor, gender-based violence was taken into consideration in the mandates of their truth and reconciliation commissions. In addition, women were raped in Zimbabwe’s different conflict incidences yet they have neither been healed nor helped to reconcile with their violators (Turshen 2001), and their voices remain subdued in TJ determinations. Basically, gender issues in TJ processes are essential because “the *transformation* of violent conflict is impossible without using these gendered lenses” (Harders 2013: 132). Moreover, women can be effective mediators and conflict-resolution agents, hence their grievances should be addressed in TJ processes with gendered lenses. However, TJ policies should not only take into consideration gendered lenses but there should be sensitivity to different social groups that could be disadvantaged to a greater extent, such as children, elderly people, and the disabled (South Asian Centre for Legal Studies 2015).

Vetting, lustration, and traditional justice mechanisms are often excluded from other lists of TJ mechanisms. A range of other processes, from rewriting history textbooks to the forms of public storytelling, vigilante justice, and amnesty can also be considered as broadly falling within the field’s ambit (Brankovic and van der Merwe 2014: 10). In addition, public consultations succinctly form part of transitional justice interventions, and disarmament, demobilisation, and reintegration are peripheral aspects that often accompany transitional justice processes (Sandoval 2011a).

Notwithstanding diverse scholarly views regarding the listing of TJ mechanisms, Davis (2010: 3) argued that “there is no exclusive list of approaches, and indeed new techniques are developed all the time.” This suggests that while there are disparities in listing TJ mechanisms, there is a general agreement that the process evolves using multiple complementary tools. Highlighted mechanisms for TJ, therefore, include truth telling, reconciliation, criminal justice, restorative justice, institutional reform, and memorialisation (Abe 2014). Disarmament, demobilisation, and reintegration; vetting; lustration; history rewriting projects to the forms of public storytelling, vigilante justice, and amnesty; and traditional justice mechanisms are ancillary TJ process mechanisms that aid the aforementioned mechanisms.

In order for TJ to take place, states normally establish institutions called *truth and reconciliation commissions*. These commissions exist “with five-pillar policy: Truth, justice, healing, prosecution and reparation,” according to Pathak (2017: 194), therefore, the following section is a brief discussion on truth commissions followed by an in-depth analysis of different mechanisms and approaches used in TJ processes.

3.2.1. Truth Commissions

Truth commissions (also known as *truth and reconciliation commissions*) are generally TJ vehicles established to investigate, record, and report on gross human rights violations. They are ad-hoc institutions established for a specific timeframe. For example, the Rwandese and Kenyan truth and reconciliation commissions (TRCs) were established for two years each (Ndungu 2014; Pathak 2017),

“to generate authoritative records about past abuses and operate in a range of ways including public or closed hearings, general statements concerning responsibility of or detailed lists of perpetrators’ names and reliance on existing information or use of subpoenas” (Brankovic and van der Merwe 2014: 10).

The TRCs’ prime work is to “reveal the identities of perpetrators or collaborators and the nature of their activities, but not to punish those individuals except by exposing them to public outrage; those who cooperate are often granted amnesty” (Posner and Vermeule 2003: 766).

Over 50 truth commissions have been established across the globe beginning with the first commission being established in Uganda in 1974 (Pathak 2017, 2019). All the commissions have closely related objectives and functions, although their establishments are premised on different conflict contexts and different names. Herman and Martin-Ortega (2012: 7) noted that normally, the aims of these commissions include “to discover, clarify, and formally acknowledge past abuses; to respond to specific needs of victims; to contribute to justice and accountability; to outline institutional responsibility and recommend reforms; to promote reconciliation.” The writers’ suggestions imply that TRCs are normally established following violent or conflict experiences. In Kenya, for example, the Truth, Justice and Reconciliation Commission (TJRC) followed a disputed presidential election which ignited violence leading to more than 1,500 deaths and the forced displacement of more than 600,000 people (The New Humanitarian 2011: 1).

However, not all truth commissions are established after a violent episode. For example, the South African Truth and Reconciliation Commission was established in 1995 following the end of a lengthy racial war between the South African Blacks and the apartheid government. “Apartheid was a system of legally enforced racial segregation in South Africa between 1948 and 1990” (United States Institute of Peace 2011: 1). The system stripped the Black South Africans of their civil and political rights and socio-economic justice. This led to internal resistance by Blacks and the government response was violent. The South African TRC was established “to bear witness to, recording – and in some cases granting amnesty – to the perpetrators of crimes related to human rights violations during apartheid” (Wielenga 2017: 1). The TRC took a restorative justice approach to deal with its history of apartheid, unlike Sierra Leone and Rwanda which established hybrid TJ systems with a retributive justice orientation.

Sierra Leone and Rwanda’s TJ processes had a unique approach to addressing past human rights violations. Hybrid TJ models refer to the use of a variety of mechanisms and processes to complement TJ objectives (Andrew 2014). In Sierra Leone, for example, their hybrid system involved establishing a truth commission that operated alongside an international tribunal (Special Court for Sierra Leone) and national courts to try perpetrators for gross human rights violations. In Rwanda, the TJ system

involved establishing a TRC (National Unity and Reconciliation Commission) that operated alongside hybrid court systems. The hybrid court systems included a national court system, a traditional court system (the *Gacaca* courts), and the international court system through the International Criminal Tribunal for Rwanda (ICTR).

Briefly, the TJ process in Sierra Leone came after the country had experienced a brutal civil war between 1991 and 2002. In the conflict, approximately “70,000 people lost their lives and 2.6 million were displaced” (Ainley 2015: 1). The country established a TRC between 2002 and 2004 to establish a record of gross human rights violations experienced from 1991 until the signing of the “Lomé Peace Agreement; to address impunity; to respond to the needs of victims; to promote healing and reconciliation; and to prevent a repetition of the violations and abuses suffered” (Crawford 2015:1).

In Rwanda, the TJ process was established to deal with the effects of the country’s 1994 genocide where “up to one million people perished and as many as 250 000 women were raped, leaving the country’s population traumatised” (International Criminal Tribunal for Rwanda 2021: 1). The justice and reconciliation project had multiple hybrid mechanisms, given the magnitude of the violations and victims who needed justice. Most contentious was its *Gacaca* system where traditional leaders presided over criminal offences. The mandate of *Gacaca* courts was to efficiently reduce the caseload of alleged perpetrators of the genocide. Wielenga (2017: 1) noted that:

The *Gacaca* trials took place in every community across the country and were presided over by judges from the communities. Perpetrators were identified and community members could speak out about the crimes that had been committed. Perpetrators then had to do community service which involved rebuilding roads and homes, among other things. This allowed some healing to begin.

The Rwandese *Gacaca* system was more controversial in that the courts were considered to lack professional justice-dispensing skills which affects the rule of law. For example, “Some people were accused of crimes they never committed: when evidence was lacking, it became one person’s word against another, and some people were wrongly accused. Judges were not always impartial and the record of events was sometimes inaccurate” (Wielenga 2017: 1).

In view of this foregoing discussion, that which is interesting, both for policy practice and in advancing the theory of TJ, is understanding the extent to which the hybrid systems of Rwanda and Sierra Leone were effective in providing justice for the victims of gross human rights violations as compared to the South African and Kenyan TJ models. Generally, most TRCs are later criticised for practically representing the interests of the perpetrators or completely failing to meet a reasonable test of justice, restoration, and reparation.

The Kenyan Truth Commission, for example, was once described by Wangari Maathai as “one designed to facilitate impunity, hoodwink and massage victims and yet again, sweep the crimes under the carpet” (The New Humanitarian 2011: 1). This was because the TRC was flawed as it failed to afford victims and perpetrators an opportunity to share their experiences, especially those involved in the 1984 Wagalla atrocities experiences (Mueni 2022). Wangari’s perception of the Kenyan TRC was confirmed by the Kenyan Government’s failure to implement the Commission’s recommendations (since 2013) and the subsequent appointment of a Taskforce in 2019 “popularly known as the Building Bridges Initiative” to seek public opinion on how to heal and reconcile Kenyans (Maliti 2020: 1). The issues that the BBI sought to address were similar to those set out in the mandate of the Kenyan TRC, hence confirming its failed mission.

The South African TRC, although generally considered successful, is widely accused of having traded justice for the truth (Forde, Kappler and Björkdahl 2021) . This is because truth telling was carried out in exchange for amnesty, hence allowing the perpetrators to walk free without being held accountable for the gross human rights violations they had perpetrated. Long after the TRC has completed its work, socio-economic inequalities continue to exist in the country. The TRC’s inadequacies are captured by Kasdan (2018: 1) who argued that the TRC created “a culture of impunity in the aftermath of apartheid; when the TRC granted amnesty, the government could not follow through on the TRC’s establishment of fact and the identification of perpetrators with criminal proceedings.” Therefore, because there was no justice for the victims after amnesty, the truth alone was not enough. Wielenga (2017: 1) echoed this same argument by stating that “what seems to be coming out clearly is that truth telling isn’t enough. Social justice and equity must remain front and centre of the

reconciliation agenda.” Notably, for South Africa, it is arguable that the transitional justice process was inadequate because the victims did not receive clear reparations and accountability for the violations was not met because it was traded for the truth.

Pathak (2017: 194) substantiated negative views on truth commissions by arguing that “practically, the world experiences that the victims or survivors receive less justice as they belong to general, weak and poor people.” Reflecting on this view, it can be argued that most TJ processes prioritise stability and peace at the expense of justice. A clear example is the case of South Africa where the TRC rushed “to build peace through the offering of amnesty which ended up precluding the possibility of formally holding perpetrators to account before a court of law” (Kasdan 2018:1). Pathak (2017:194) further added that “victims often are from marginalized, vulnerable and disadvantaged groups” because they are often less involved in shaping TJ process interventions, yet they are the intended beneficiaries of the process (Robins 2011). This makes TJ, broadly speaking, a political-elite project that seeks to sanitise perpetrators of human rights violations while the victims and vulnerable groups are faced with discrimination.

Notwithstanding the criticisms, it must be acknowledged that some countries noticeably establish truth commissions without considering the feasibility of such institutions, the context, or using empirical evidence (Kritz 1995; Fischer 2011). In addition, some countries commence their TJ processes in the most difficult contexts where some of the national institutions will be weak and not be credible in the eyes of the public (South Asian Centre for Legal Studies 2015). Hence, Truth Commissions are central to state-driven TJ programmes implementation regardless of their failures, as noted earlier. Below is an in-depth discussion on different TJ mechanisms and how they support sustainable peacebuilding processes.

3.2.2. Justice (Prosecutorial Justice)

In TJ processes, it is generally agreed that war crimes, crimes against humanity, and genocide are punishable offences, which the perpetrators should experience. Justice (in terms of legal justice), also known as criminal prosecution, is preferred as a deterrent and repressive mechanism that punishes perpetrators for gross human rights violations (Lie, Binningsbo and Gates 2007; Machakanja 2010; Mungure,

Mandikwaza and Guthrey 2018). Stated differently, justice in TJ processes evokes criminal responsibility of human rights violations, which is generally established through judicial procedures. This type of justice is viewed as retributive justice, because it emphasises “the need to hold perpetrators accountable and to be punished for their crimes” (Lie, Binningsbo and Gates 2007: 3).

There are three reasons that justify criminal prosecutions. These reasons are “that (a) international law paradigm obliges states to investigate, prosecute and punish such crimes, (b) that adequate reparation under international law include bringing perpetrators to account and (c) that accountability for past crimes is crucial to prevent such atrocities in the future” (Sandoval 2011a: 4). However, scholars such as Kasapas (2008: 61), provided other justifications for criminal prosecutions as (a) a deterrent against acts of private revenge, (b) to prevent impunity and discouraging future violations, (c) to fulfil a moral obligation to the victims, (d) to provide a guarantee that those who had committed war crimes would not retain positions of power in the new democracy, and (e) to break dichotomist perceptions that stigmatise the entire community by individualising justice. Both scholars’ justifications suggest that the central objective of criminal prosecutions is to punish perpetrators and deter future human rights violations or potential impunity. This means that prosecutions are pursued to guarantee non-recurrence of violence, which implies securing future peace.

Criminal prosecutions for gross human rights violations are generally effected through judicial procedures using domestic, hybrid, or international courts and tribunals. For example, countries such as Rwanda, Sierra Leone, Chile, Colombia, Argentina, and Yugoslavia once established international tribunals and domestic courts to prosecute perpetrators for gross human rights violations. The prosecutions are carried out mostly for individuals and groups “bearing the greatest responsibility for international crimes such as war crimes, crimes against humanity and genocide” (Davis 2010: 3). According to Bass (2005 cited in Lie, Binningsbo and Gates (2007: 4), these prosecutions are justified because “there is little doubt that victims desperately want to see some form of punishment for those that have destroyed their life or killed their loved ones making amnesty an incomplete and unacceptable solution.” Moreover, it would be unprincipled not to punish a criminal offence involving killing, maiming, and

raping with impunity (Katshung 2006). This means that those who commit crimes against humanity should be punished simply for the sake of justice.

However, the success of these criminal prosecutions in achieving peace or deterring future human rights violations is disputed. Scholars such as Vinjamuri and Snyder (2015) have argued that criminal prosecutions in TJ can cause further atrocities and reinforce authoritarianism instead of enhancing the prevention of further conflicts. This happens in situations where the old regime's residual power shapes decisions about legal accountability for authoritarian crimes by protecting perpetrators and making reforms difficult to come through. In fact, legal accountability in a transition is polarising, hence creating violence potentials. Evidence from Dancy *et al.* (2019), however, reveals that prosecutions may be associated with increases in mass violence only in the short term because of polarisation and the old regime's remnants, but in the long term prosecution actually deters leaders from potentially acting in a repressive and authoritarian manner.

Further arguments against criminal prosecutions suggest are that the practice is targeted at punishing human rights violators as opposed to facilitating healing to the victims (trauma healing for instance). Prosecutions punishes, thereby suppressing the truth and "it cannot recognize general patterns of abuse which trivialises deterrence and could promote victor's justice which is a source of instability" (Kasapas 2008: 62).

Lie, Binningsbo and Gates (2007: 2) agrees that prosecution have shortcoming in TJ because it "ultimately creates winners' justice "directed at the conflict's losing party, with the intention of repression and deterrence rather than forgiveness and reconciliation." Other peacebuilding experts who agree that criminal prosecutions have practical shortcomings in securing sustainable peace argue that (i) using courts to achieve TJ objectives make the field an absolute legal response to gross human rights violations; and (ii) the legalistic approach cannot promote reconciliation, instead, in some instances, it perpetuates impunity and revenge (Lie, Binningsbo and Gates 2007; Leebaw 2008), hence the need to establish alternative dispute-resolution mechanisms that promote genuine reconciliation by transforming conflicts into positive relationships. Leebaw (2008: 114) observed that in Rwanda and Kosovo, for instance,

prosecutions have been ineffective as “reprisal killings” occurred after the setting up of the ICTR and the International Criminal Tribunal for the former Yugoslavia (ICTY). The legal justice system should contribute towards fairness and impartiality. However,

Meernik (2003) observed that the ICTY even perpetrated biased prosecutions and promoted victor’s justice such that the courts ended up being accused of protecting perpetrators’ rights while ignoring the victims’ needs. Lie, Binningsbo and Gates (2007: 4) argued that such situations occur in autocratic settings where trials end up being directed at the weaker parties, as shown in trials “where the outcome is known prior to the legal process.” In cases where justice is skewed to favour the perpetrators, it is undoubted that truth telling becomes combative, resources to support access to justice become scarce, and the potential for socio-political instability increases.

In situations where the perpetrators or victims feel that the justice system’s proposed settlement is unfair or impartial or, rather, has perceived or real negative consequences, they may decide to create their own forms of justice. *Private justice* describes a situation where the victim attempts to carry out their own justice with a view to pre-empt the formal legal justice process (Lie, Binningsbo and Gates 2007: 3) through revenging or taking the case to a formal court for redress. For example, in Haiti, victims decided to create *private justice* after becoming frustrated from failing to bring their persecutors before the courts of law (Leebaw 2008). This approach included direct revenges to the perpetrators, hence creating cycles of violence (ibid).

However, TJ practitioners who support TJ’s legalistic approaches have argued that the process promotes a strict adherence to the rule of law for accountability purposes (Boraine 2006). At the same time, criminal justice “will stigmatise the elites who perpetuate conflict, and help separate individuals from collective guilt, breaking the cycle of violence” (Fischer 2011: 409). Criminal prosecutions also help in improving the protection of human rights both in transitioning states and neighbouring societies (Sikkink and Kim 2013). In their study, Lie, Binningsbo and Gates (2007: 6) also concluded that “post-conflict trials will lead to a stable and more durable peace in autocratic as well as democratic post-conflict societies.” However, as noted earlier, the political elites may always attempt to become peace spoilers to insulate themselves

from prosecutions which run contrary to peace consolidation, social cohesion, and reconciliation and healing.

In view of the foregoing discussion, a “challenge to the justice element of TJ is the perception that it can be an obstacle to peace, truth, or reconciliation” (Sandoval 2011a: 4-5). Therefore, there is a need to conceptualise TJ beyond the legal limits of institutional TJ mechanisms and consider TJ in terms of sustainable peacebuilding. For countries emerging from violent conflicts, maintaining a “balance between justice and reconciliation” (Kasapas 2008: 64) is a viable option to succeed in facilitating TJ. There is also a need to conduct further research on alternative ways of achieving justice without compromising the possibilities of peace in the future. This study, henceforth, seeks to analyse the place for mediation in achieving justice and securing sustainable peace in TJ processes.

Reflections on prosecutions

In view of the preceding discussion, more questions should be answered in order to understand how prosecutions can promote TJ effectively:

Can justice be done or at least seem to be done if the majority of the perpetrators escape conviction? On the other hand, how feasible is it to hope for reconciliation if justice means that thousands must be purged? Are trials a continuation of war by legal means as many critics of retributive justice argue? Do they imply new division rather than a new start for the war-torn society? (Kasapas 2008: 63).

Principle of justice: It is clear that in the TJ processes, *justice* focuses on the principle of punishing offenders. It is arguable, therefore, that TJ must be victim centred. If punishing the offender meets the interests of the victim, then it justifies the mechanism. For example, in cases where healing occurs by observing impunity being punished, punitive justice becomes essential. However, it is notable that punishing largely affects the perpetrator rather than the victim; hence, it becomes perpetrator centred as opposed to victim centred. In addition, where the perpetrator is punished retributively through the judicial system, hatred is sown between the victim and the perpetrator. The perpetrator will not have a reason to apologise and reconcile with the victim if he/she will serve a sentence after being convicted for crimes against humanity, and the potential for the victim’s revictimization is highly possible in cases where legal

instruments and systems to protect the victim are not in place. As such, any mechanism for TJ must facilitate futuristic, sustainable peace, which cannot be achieved by punishing offenders without seeking their repentance and change of attitudes and behaviours.

Manipulation of justice: There are possibilities of justice being manipulated to serve the interests of the perpetrator, especially in cases where the perpetrator is still in power. This casts justice as a scapegoat in TJ processes. As noted earlier, there are instances where justice has been carried out to protect the perpetrators from being punished for their wrongs in Rwanda and the former Yugoslavia. For example, allowing perpetrators to have legal representation gives them an advantage over the poor (mostly victims) who will not have the means to obtain legal representation or, at least, sophistication to win legal cases. This situation challenges the conceptualisation of TJ as a legal issue rather than a social-relational transformation process. The researcher, therefore, argues that justice must be individualised between the victim and the perpetrator, and it does not have to only incorporate legal justice because prosecution does not sustain peace nor change perpetrators' attitudes towards the victims or wrong society, but rather hardens individuals and makes reconciliation and transformative attitudes difficult to achieve.

In addition, in cases where the perpetrator wins a legal case against the victim, there is a likelihood of retribution. The victim will become more emotionally and physically vulnerable than before the TJ intervention. This argument can be further expounded by noting that while prosecution could act as deterrence, for decades, it has failed at the local and international levels to prevent genocide, authoritarianism, and gross human rights violations. The International Criminal Court (ICC) has heard cases of genocide and convicted authoritarian leaders but these cases continue being manifested, which means that legal deterrence is simply ineffective and crimes against humanity continue (Carter and Schense 2017). In the same vein, countries have employed domestic trials for perpetrators of gross human rights violations as a TJ measure, but human violations continue. This could be the case because forced peace through retributive justice does not foster genuine remorse; a change of attitudes; and ultimately, long-term peace.

Nonetheless, in principle, criminal justice for gross human rights violations acts as a deterrent measure and it could possibly guarantee the non-recurrence of violence for fear of prosecutions. Justice helps citizens to trust in laws, prevent impunity, and facilitate respect for the rule of law. Without justice, victims can tend to continue to feel aggrieved, resentful, angry, leading to the desire for revenge, depression, continued cycles of violence. However, prosecutions, as a TJ mechanism, works best in cases where the perpetrators of the supposed human rights violations are not in power, where the state has genuinely transitioned from an authoritarian or conflict situation. As such, rehabilitation must be prioritised to pursue changes in attitudes and behaviours of the perpetrators.

3.2.3. Truth telling

Truth telling in TJ processes refers to the exposure of that which actually happened to the victims and survivors of conflict and violence. Truth telling is central to TJ theory and it describes a “formal process which is facilitated by truth commissions, that seeks to publicly reveal the truth about historical injustices” (Matsunaga 2016: 33). The notion of facilitating a truth-telling process is based on the legal and moral perspectives that victims have a right to know that which happened during the violations, who perpetrated the violations, and how they were carried out. Therefore, that which justifies truth telling is the “inherent need to clarify what happened and who was responsible” (Sandoval 2011a: 8), given that most gross human rights violations during conflicts occur covertly and under the cover of darkness.

The process of truth telling is based on the *right to know* principle which is used to empower victims of past human rights violations. When the truth is known, it is assumed that it contributes towards ending impunity and enhancing the promotion and protection of human rights (Naqvi 2006). Elaborating on the right to know, the United Nations (2012: 1) observed that:

The right to the truth is often invoked in the context of gross violations of human rights and grave breaches of humanitarian law. The relatives of victims of summary executions, enforced disappearance, missing persons, abducted children, torture, require to know what happened to them. The right to the truth implies knowing the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them,

including knowing the circumstances in which the violations took place, as well as the reasons for them.

In view of the above quotation, the truth that should be revealed should be complete or full. More importantly, it must be focused on victims' needs – a principle also known as *victim centeredness*. Truth telling, according to Lie, Binningsbo and Gates (2007: 6), "may, at least, contribute to the opening of a national reconciliation process by allowing past atrocities to become a possible subject for future political action." This means that when the truth is told, victims and the general interested parties will know precisely that which happened and how the violations were committed. As a result, the truth will start to heal social wounds as victims relive their traumatic memories and come to terms with many questions that they would otherwise have about that which has happened and where and how it has happened. Truth telling unmask official lies and strips away impunity (Lie, Binningsbo and Gates (2007: 6).

However, it is difficult to expect a full account of the truth not only because of limited state resources to extract the truth but also due to the disappearance of evidence, concealment, and political interference. For instance, states have an obligation to provide the truth, but not all governments are willing to do so, citing arguments such as the compromising of national security and interests (Naqvi 2006; Hayner 2011). Therefore, in cases where the truth collides with measures adopted to ensure an efficient fight against impunity (Crettol and La Rosa (2006: 360) or where the government justifies its concealment, the right to know becomes infringed.

There are also contestations on the rights holder's right to know. "Is it the victims of gross human rights violations or is it society as a whole, or both of them (Sandoval 2011a: 8) that have a right to know?. The implication of this question is that while the individual rights are violated, the society is also interested in knowing the person or institution that violated the rights. This is because the society has a moral right to protect its own members and the victims' substantive inalienable right to know that which has caused their circumstances. This perhaps justifies the holding of public hearings by TRCs to afford both the community and the individuals access to the truth.

How is truth telling carried out? Truth is revealed through a process of systematically culling documents, records, photographs, and recording survivors' recollections about

the injustice (Matsunaga 2016: 33). This is normally enforced through the establishment of a TRC that will conduct investigations and “report on key periods of past abuse and may make recommendations to remedy the abuse to prevent recurrence” (Davis 2010: 3). However, that which determines “the kind of truth that a commission will document is the information management system that it uses to collect, organize, and evaluate the huge amount of information that may be available to it” (Hayner 2011: 80). This means that the truth is determined by the methodologies employed by the TRCs in data management which makes truth telling vulnerable as well.

Court processes are also platforms for truth telling, especially through prosecutions. For example, court processes were used in South Africa, Rwanda, Liberia, and Sierra Leone, among other countries to extract the truth from perpetrators and victims (Andrieu 2010). Clarke (2014) agreed that courts enhance the degree of truth and accountability, but they drift away from the goals of reparation and reconciliation. This could be because, as noted earlier, courts are naturally punitive and punish rather than reconcile parties with mutuality.

However, the adversarial nature of prosecutions has been criticised for “making the truth less easily disclosed” by the perpetrators (Andrieu 2010: 9). In one instance, some courts (in Sierra Leone) were incentivised to produce a false record that demonises the Revolutionary United Front [RUF] while propping up Kabbah’s government which shows possibilities of manipulation. “The Court could only hear evidence related to its cases and was presented information to justify holding individuals criminally responsible, not to paint an accurate picture of the conflict” (Ainley 2015: 4). This shows the possibilities of the manipulation of court processes.

In a different instance, in South Africa, prosecutions showed limitations as a means of obtaining the truth “in the few high-profile cases that went to trial shortly after the end of apartheid” (Hayner 2011: 107). For example:

[One case involved] the former minister of defence, Magnus Malan, and nineteen others of carrying out a massacre of thirteen people in the mid-1980s. After a difficult trial, with the prosecution led by an attorney general who himself had worked with the former apartheid government, all defendants were acquitted. They left the courtroom to declare their

innocence to the world, to the delight of the previous government and its supporters (ibid).

This means that courts generally do not adequately document the global truth of historical events, which causes the *truth* in TJ processes to become contestable. When courts are s the compulsion for revenge may be as a result of unhealed, internalised trauma. On the other hand, her findings from Timor-Leste and Bougainville suggest that bottom-up processes undertaken there have had an impact on reducing the actualisation of revenge (Guthrey 2013). However, truth commissions that facilitate truth-telling processes rarely use bottom-up traditional mechanisms during truth-seeking processes (Guthrey 2013; Guthrey 2020) as was the case in South Africa where the truth was exchanged for amnesty.

Reflections on truth telling

Truth telling in TJ is essentially meant to allow the victims to know the truth of the violations that have affected them, who caused them, how they happened, and what the motives were. The “imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims’ fate” (Hayner 2011: 24) makes it crucial for the victims to know the truth. More importantly, truth telling serves to enable a process of healing following the truth having been revealed to the victims while, on the other hand, victims also have an opportunity to tell the truth of their experiences.

It is difficult to envisage and measure the type of truth that fulfils the intentions of TJ, given the varieties of truths that are found in many TJ practices. There is *official truth* which is collected by TRCs and courts. This type of truth is formalised and has suppressed realities. For instance, the truth revealed in courts is based on legal facts as opposed to realistic experiences encountered by the victim or the perpetrator. The methodologies and the data-collection staff and analysts who compile the confessions and statements made by different audiences influence the truth provided by TRCs. *Truth-for-amnesty* forms another type of truth. A formalised truth is revealed by the perpetrators in a formalised set-up, where the perpetrators know very well that they will have prosecutions against them waived. There is also *unofficial truth* which is essentially data collected through non-governmental organisations. This truth is almost correct, given that it mostly presents the victims’ perspectives. However, it is

unfortunate that this type of truth does not easily find its way into the formal TRC processes because the state tends to avoid its “uncensoredness” for fear of being exposed, mostly in cases where it is complicit.

The truth being traded for amnesty ideally affects the nuances of TJ, allowing the victim to feel appeased and healed by the consequences of the revealed truth. The consequences of the revealed truth should ideally be prosecution for criminal offences, remorse and an apology by the perpetrator, or reparation. However, when amnesty is traded for the truth in TJ, the victim will not be healed, nor will they feel appeased by knowing the truth. As such, for sustainable peacebuilding, truth telling must not be exchanged with amnesty or be forced based on conditionalities imposed by truth commissions, as was the case in South Africa (Wielenga 2017). Arguably, the truth that heals is the truth that is voluntary, and the truth initiated to meet the justice expected by the victims without causing harm to the perpetrator.

In view of the above, the question becomes whose truth counts – official or unofficial truth or truth-for-amnesty? (Matsunaga 2016: 33) argued that “formalized truth-telling processes exclude, evade or dismiss negative emotions like anger and resentment from the possible range of emotions felt and expressed by survivors.” However, Coulthard (2014) noted that anger and bitterness should not be dismissed and invalidated but be regarded as an indication of critical consciousness. As a result, their healing effect is difficult to measure. It is arguable that formalised truth is, at best, a procedural issue that has little effect on healing unless followed up by appropriate mechanisms. The question remains as whose truth counts and are there differences between official truth and unofficial truth / formalised truth versus informalised truth?

While truth telling is an anticipated step in facilitating healing and reconciliation, it is essential to ensure that the truth-telling process does not retraumatise the victims. Preparing the victims to receive the truth without revictimisation may also prevent their propensity to exact revenge, hence placing the victims on the path of healing. However, in practice, it seems that most TRC and TJ processes do not fully prepare victims to receive the truth, which makes it difficult for the processes to bring about healing and reconciliation. More importantly, the truth should be revealed in a situation where both parties are ready to work out a solution as opposed to, for example,

exchanging the truth with amnesty without a mutual understanding of the pain caused and the offering of an apology between the conflicting parties.

A more significant question is what type of truth will be sought during a TJ process and whose truth should be considered – the victims’ or the perpetrators’ truth, the official truth published by courts and truth commissions, or the unofficial truth produced by human rights organisations and research institutions outside the government – even if this is much more evident in cases where the perpetrators are part of the government? In other words, ideally, truth telling should simply be a pivotal process that assists in changing the way the victims and perpetrators’ narratives, concerns, and issues are viewed by making the unknown known to the public and to the victims.

The assumption is that it is the perpetrator who should tell the truth based on the victim’s right to know and this has been the emphasis of truth-telling commissions’ processes. However, the victims must also tell the truth with regard to their circumstances such that justice will not only be served but seen to be served when judging the perpetrator either through prosecution or reparations. The researcher’s assumption is that due to human nature, the victim is not immune to the truth if they want to receive more reparations through either compensation or from the sheer desire to see acute retribution being delivered to the perpetrator.

3.2.4. Reparations (Restorative Justice)

Reparations in TJ are victim oriented measures meant to remedy injuries suffered by victims during periods of conflict or bad governance (Moffett 2017; Forde, Kappler and Björkdahl 2021). Reparations helps to “repair the material and moral damages of past abuse, typically through a mix of material and symbolic benefits” (Davis 2010: 3). According to Haider (2016), reparations may also be defined as different measures aimed at addressing past wrongs through compensation, rehabilitation, and satisfying the victim’s needs. For example, Chile, Argentina, and Brazil set up reparation programmes to deal with their governments’ prior military dictatorships’ atrocities (Binder 2013). Reparations serve to “acknowledge the legal obligation of state or individuals of groups to repair the consequences of violations either because the violation was committed by them or failed to prevent them” (ICTJ 2019: 1). To victims,

reparations are viewed as a way of receiving meaningful justice from those responsible.

Reparations can be symbolic or material. Symbolic reparations, for example, include “apologies, commemorations (including the establishment of commemoration dates and places) memorials (including names of public spaces) (International Centre for Transitional Justice [ICTJ] 2021: 1) while material reparations include financial payments “restitution of material goods, access to land and access to services such as education, health-care and other measures necessary for the rehabilitation of the victims of violence, human rights abuses and atrocities” (Forde, Kappler and Björkdahl 2021: 33).

The significance of reparations is derived from both legal and moral obligations. Legal obligations for reparations are derived from international laws established in the United Nations General Assembly Resolution 60/147 of 2008 outlining the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. The principles were adopted by the UN General Assembly through Resolution 60/147 of 16 December 2005. However, in addition to the legal and moral obligations, reparations are also characteristically “a political project that transforms official visions of violence, responsibility, and victimization into material and psychological benefit” (Dixon 2017: 1).

The assumption behind initiating reparation programmes is based on the view that “gross human rights violations cause severe harm to its victims” hence the need to address such harms (Sandoval 2011a: 6). The responsibility to facilitate or offer reparations lies with two entities which are the state and the individuals implicated in the wrongdoings. The individual has a criminal responsibility to address the harm caused while the state has a domestic and international obligation to promote and protect human rights from being violated. These obligations and responsibilities are affirmed by the United Nations General Assembly Resolution 60/147 of 2008 (United Nations 2008). Other international laws that protect and provide remedies for victims

include the Rome Statute of the International Criminal Court⁵ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁶

a. *Reparations in Practice*

The beneficiaries of reparations in any TJ process are the victims who have experienced a violation or violations. Reparations, therefore, become an official recognition of the harm experienced by the victims. For the purposes of making reparations, the victims can be categorised in different ways. In Peru, for example, the victims who were to benefit from reparations were classified into two groups – individual and collective beneficiaries (Correa 2013). This means that providing reparations “can be individual or collective and it can take the form of material reparations (cash payments, building of school or community centre, physical or mental health assistance) or symbolic reparations (public apologies and memorials and monuments)” (Brankovic and van der Merwe 2014: 10; Haider 2016). In a more succinct narrative, The Tahrir Institute for Middle East Policy [TIMEP] (2019: 1) noted that, as defined in the UN General Assembly Resolution 60/147, providing reparations takes five primary forms:

[Providing reparations involves] (1) restitution, meant to restore the victim to his or her original situation before the violation took place; (2) compensation, which is payment provided for any ‘economically assessable damage;’ (3) rehabilitation, which includes medical and psychological care, as well as legal and social services; (4) satisfaction, which can take a variety of different forms, from public apologies to commemorations; and (5) guarantees of non-repetition, which include measures that help bring to a halt future violations.

However, reparations may also take the form of revealing the truth about the violations themselves and providing guarantees that they will not be repeated. While such

5 The Rome Statute of the International Criminal Court is a body of law that establishes the International Criminal Court which has the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions.

6 The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is an international human rights treaty, under the review of the United Nations, that aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world.

methods of making reparations can be judicial or non-judicial,⁷ they all function as recognition of the victims' circumstances which promotes trust building within the communities and between the state and the citizens (Herman and Martin-Ortega 2012). The type of reparation needed can also vary according to the victim's economic or social class, gender, age, and identity.

Achieving "adequate reparation" and proportional remediation is, however, a difficult task, given the lack of standard measurements of that which constitutes adequate reparation and the extent to which proportionality can be measured, for example, in terms of victimhood levels, emotional trauma, disappearances, or torture (Forrester 2019; Forde, Kappler and Björkdahl 2021). In Rwanda, for example, Herman and Martin-Ortega (2012: 14) observed that "[ex]combatants received \$700 while victims received nothing and in South Africa victims waited 6 years after the Truth and Reconciliation Commission Report for reparations, which were much smaller than the demobilization grants and special pensions awarded to ex-combatants." These perceived or real discrepancies in awarding reparations and delays in awarding reparations remedies could cause perpetual conflicts and further grievances.

However, the researcher proposes that in order for the reparations to become meaningful in terms of facilitating healing and restoration in the eyes of the victim, they must be adequate and proportional to the harm caused. Notably, more broadly, there are a myriad of questions that require answers on how genuine and fair reparations can be achieved. For example, Sandoval (2011a) quires what constitute adequate compensation for torture, genocide or disappearance; how harm can be quantified in monetary value, how monitoring for compensation orders can be done and how the compensation paid by the state complement that of the perpetrator. Added to this are international law related questions:

is the question of who counts as a victim of such atrocities. ... their surviving family, friends, and the communities they lived in be included? Are those who witnessed the genocide victims? How can all the victims be identified and recognised by the law as entitled to reparations? How can adequate reparations be made when Rwanda was left bankrupt after the genocide? What about reparations for refugees or people who are in exile? Do women

⁷ This means being enforced by the court of law or enforced through non-legal means.

and children require special reparation measures? Is it better to provide collective reparations, relying more on rehabilitation, satisfaction measures and guarantees of non-repetition for the communities, than to provide individual compensation and other forms of reparation? How can collective harm and individual harm be best balanced, and reparations made accordingly? An additional challenge when considering reparation relates to who can order reparations and how such systems can be made consistent.

The above questions show the complexity of implementing reparation programmes in a way that satisfies the victims and promotes sustainable peacebuilding processes without returning to violence or conflict. It becomes even more complex when the expectations of the victims outweighs government resources such that their needs jeopardise other necessary transitional processes such as institutional reform and/or memorialisation (Binder 2013). Nonetheless, for victims, “reparations are the most tangible manifestation of the state’s efforts to remedy the harms they have suffered and criminal justice is a struggle against the perpetrators rather than an effort on behalf of the victims” (Boraine 2006: 24). They act “as a means of relieving shameful feelings and restoring a sense of collective pride” (Johnstone and Quirk 2012: 158).

b. Reflections on Reparations

It is notable that reparations are a moral and legal obligation that the state and those who have been involved in causing gross human rights violations must meet to appease the victims. This means that in all TJ processes, reparations must be victim centred (Robins 2011; Forde, Kappler and Björkdahl 2021). However, in most cases, the challenges that often occur are that the victims do not have an opportunity to shape the reparations processes. It is through the government, through the truth and reconciliation commissions or through specific laws, that the victims’ reparations are defined and dictated. However, in line with this thesis proposition, only in community-level-mediated reparations can the victims have a voice to shape the type of reparations that they want.

According to the ICTJ (2019), victims’ participation is essential to enable an inclusive process in identifying and implementing reparations. However, in practice, TJ “research indicates that many reparations programs fail to appropriately incorporate the voices of marginalized groups like women and children” (The Tahrir Institute for Middle East Policy [TIMEP] 2019: 1) Further marginalisation in times of reparations is

most likely to occur in situations where the victims' voices are overshadowed by other events or actions. It may also be because the government, through the TRCs, may decide to offer blanket or group reparations to victims without understanding the victims' specific needs. It is in this context that the search for appropriate reparations must be linked to the victims' perspectives, which is highly possible through mediation as opposed to top-down TRC processes.

In addition, reparations may fail to take shape when initiated by the government in spaces where low budgets are set aside for the programme. Generally, reparations budgets from governments are less because they will be competing with other pressing national priority budget lines including those for public health, education, jobs creation and poverty alleviation (TIMEP 2019:1). As a result, little budgets will fall short of meeting key victims' needs. The expectations for healing through reparations become far-fetched and in cases where large-scale gross human rights violations were committed, it may be difficult to facilitate reparations at times. An alternative could be providing group reparations while ensuring that other complementary TJ processes including truth telling, memorialisation, and prosecutions also take place. I define group reparations as the provision of amends provided to a group of people after experiencing similar harms as opposed to individual amends. This notion is, however, dismissed by Nickel (2013) who argues that there is nothing like group reparations because the reparation is done as a result of individual harms experienced by a collective of individuals who happen to be of the same identity. While this is agreeable, I put forward that group identity is also important to define collective reparations, especially where resources to provide individual amends is scarce.

3.2.5. Institutional Reform

The call for institutional reform is based on the view that existing state institutions have failed to prevent and protect citizens from crimes perpetrated against them. Institutional reforms involve "the building of fair and equitable institutions as a safeguard against the recurrence of human rights violations" (Binder 2013: 22). According to Davis (2010: 3), reforming public institutions includes reforming the "security sector (particularly the army, police and judiciary) from instruments of repression and corruption into instruments of public service and integrity." Institutional

reforms are, therefore, meant to ensure that such systems and structures that failed or were involved in the commission of gross human rights violations are improved towards guaranteeing the non-recurrence of violence.

Institutional reform serves two critical purposes which are (i) to transform institutions that have allowed gross violations to take place, and (ii) to rebuild non-existent or fragile institutions that could have prevented such violations if they were put in place (Sandoval 2011a; Collins 2021a; Rodgers 2021). That which justifies the essence of institutional reform is the view that a lack of strong institutions or their weak state creates a conducive environment for gross human rights violations, corruption, and impunity, hence state failure. Strong democratic institutions move states and their societies from conditions of human rights violations towards the protection of such rights; they impede impunity, stall bad governance, and uphold the rule of law and democratic valuation. Therefore, reforms of state institutions contribute towards democracy building and trust building between citizens and the state institutions (Brankovic and van der Merwe 2014: 10). Any failure to facilitate institutional reform could bring back corruption and impunity, hence affecting the entire TJ process (Herman and Martin-Ortega 2012; Brankovic and van der Merwe 2014).

Generally, institutional reforms have largely been viewed in the context of security sector reform (SSR), which is an anomaly in both the theory and practice of TJ because reform of institutions should go beyond security institutions into including other governance and public service institutions that enables non-security motivated gross human rights violations. SSR “entails a range of policies and programmes that support institutions and individuals responsible for the security of the populace and oversight of security institutions, including not only the police but also judges, prosecutors, corrections personnel and ombudspersons” (Herman, Martin-Ortega and Sriram 2012: 14). Hence, institutional reforms must be viewed beyond security-sector institutions as the process also includes reforming traditional structural institutional practices that cause the abuse of people’s rights regardless of the level of security measures of the institution (Organisation For Economic Co-Operation And Development [OECD] 2007).

Institutional reforms broadly include reforming the manner in which the public sector works in terms of the recruitment of government workers, service delivery, and public allocation of resources to improve the protection of human rights and advance healing and reconciliation, particularly for previously marginalised groups who are the most affected by authoritarianism and any form of bad governance. The process largely seeks to change public institutions, in their broad definition (including those of the security sector), from being instruments of oppression into becoming instruments of public service and integrity. When public institutions are reformed, there will be some form of guaranteed non-recurrence of abuse, violence, and any other forms of human rights violations. Table 3.1 presents examples of institutional reform measures.

Table 3.1: Examples of institutional reform mechanisms.

Mechanism	Brief Explanation
Constitutional and legal reforms	Constitutional and legal reforms involve altering laws to become more compliant to human rights protection and promotion. Kenya, for example, experienced constitutional reforms leading to the promulgation of a new progressive constitution in 2010. Magara (2016), however, observed that the constitutional reform remains the only concrete achievement of Kenya's institutional reforms agenda. Zimbabwe only has a new constitution which is incomplete and is already under amendment to reverse the gains of the people's reform agenda. ⁸ This also includes the reform of the judicial system.
Vetting	Vetting refers to the removal of individuals and reorientation or re-education of concerned institutions that lack respect for human rights. According to Sandoval (2011:10), vetting is the process of "assessing an individual's integrity as a means for determining his or her suitability for public employment." It is through vetting that the ruling elite will be able to demonstrate its commitment to addressing past violations and build public trust (Davis 2009). For example, in El Salvador, new military doctrines including subordination to civilian authority were introduced. Military vetting and retraining was also undertaken (Herman and Martin-Ortega 2012). In Zimbabwe, vetting of public officials, to exclude those involved or alleged to have been part of the perpetration

⁸ First and Second Constitutional Amendments – 2017 and 2020 gazette. Firstly, it involved the judiciary, and secondly, it involved the president's increased powers to appoint judges, appoint non-constituency MPs as cabinet ministers, etc.

	<p>of human rights violations, has never taken place despite having a TJ process.</p> <p>Ayu <i>et al.</i> (2009: 16) recommended that as part of institutional reform, “a meaningful and rigorous process for the police force should be implemented to ensure that all members of the police force meet the minimum standards for capacity, professional integrity and are free from links to past or ongoing criminal activity.”</p>
Lustration	<p>Lustration involves censoring those accused of gross violations from being employed in public institutions. Hayner (2011: 9) noted that when some Eastern European countries implemented TJ measures, they “removed persons from public employment because of their affiliation with the prior regime.” However, this process may be difficult to implement because in some instances, those wrongly accused will be disadvantaged with regard to gaining employment.</p>
Disarmament, demobilisation, and reintegration (DDR)	<p>In cases where a country is emerging from an armed conflict, there will be a need to demobilise the combatants from the war fronts, collecting their arms, and assisting them to re-join society. Necessary institutional reforms, however, “should be complemented by further initiatives such as comprehensive training programmes” (Binder 2013: 22).</p>

As shown in Table 3.1, measures that can be taken as part of institutional reforms include constitutional and legal reforms; vetting; lustration; and disarmament, demobilisation and reintegration (DDR) programmes (Binder 2013). This means that institutional reform broadly involves “a process of reviewing and restructuring public and state institutions so that they respect human rights, presence of the rule of law and are accountable to their constituents” (Magara 2016: 11).

However, there are situations where institutional reform is difficult especially in cases where TJ is implemented under the same regime or institutions that perpetrated the violations. For example, Boraine (2006) observed that, at one point, Serbia failed to move beyond the past because most state institutions remained the same. Boraine (2006: 24) observed that “The same policemen control the police forces, the same generals control the army.” In South Africa, also, transitional justice took place and governing regimes also change since 1994 but almost two decades after, the racist

and discriminatory Apartheid institutions remains intact (Knaus and Brown II 2015; Shackleton and Gwedla 2021). Boraine further warned that institutional reforms should also be managed carefully as they can close democratic spaces, as was the case in Iraq where the Baath party was completely banned, thus creating a collective guilt and punishment over individual responsibilities.

Reflections on institutional reform

While it is agreeable that institutional reforms contribute to more stable democratic institutions and improve the rule of law (Teitel 2000; Davis 2009; Binder 2013), existing literature barely considers community-level institutional reforms. It largely focuses on national institutions, including the judiciary, the military, and the police, yet there are community-level systems and structures that can only be addressed through traditional systems of conflict resolution.

In cases where there is no genuine change of regimes, it is likely to be difficult to achieve institutional reforms. Approximately seven years after a constitutional change in Zimbabwe, the government is yet to fully comply with realigning laws to the new constitution adopted in 2013. However, on the other hand, the same regime is now in the process of amending the constitution, which largely reverses the democratic gains protected by the current supreme law of the land. The same situation happened in Kenya where TJ mechanisms were developed without a genuine regime change (Magara 2016). This view agrees with that of Lynch (2011) who had previously asserted that none of Kenya's political transitions had genuinely changed regime systems. As such, institutional reforms require a genuine transitional process in order to be successfully achieved within the TJ contexts.

3.2.6. Memorialisation

Memorialisation refers to a range of processes and forms of collective remembrance (Haider 2016: 8). It is "an actor effort to remember, commemorate, preserve or provoke memory or transmitted experience of others" (Ruwanpathirana 2016: 7). Collective memory can be developed from torture and genocide sites, mass graves, drawings, or buildings that rekindle prior atrocities or gross human rights violations. Tunamsifu (2018) identified public memorials (museums and monuments), various

documentation activities (oral history collections and archives), works of art, and public performances as key memorialisation activities. “Without a proper engagement with the past and the institutionalization of remembrance, societies are condemned to repeat, re-enact, and relive the horror. Below, in figure 3.3, is an example of memory building

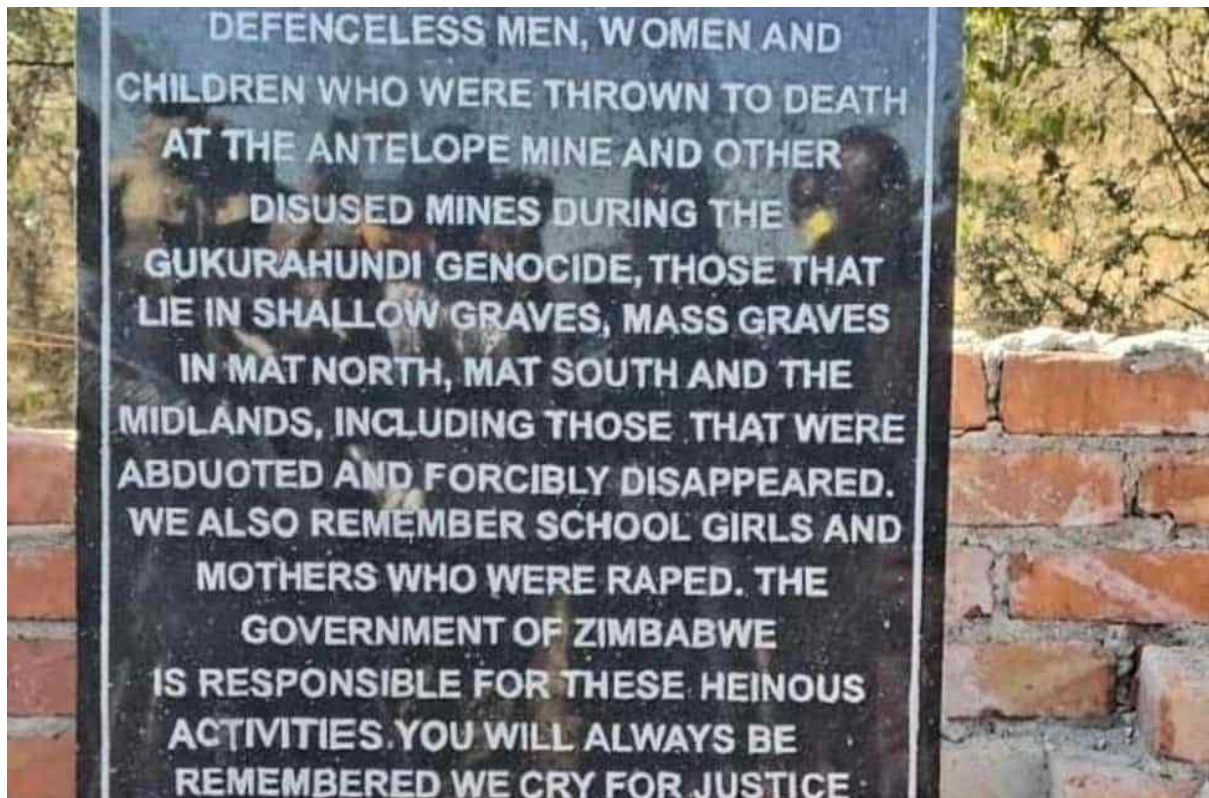


Figure 3.3. Memorial plaque erected at Bhalagwe in Matabeleland, Zimbabwe in remembrance of the victims of the Gukurahundi atrocities (New Zimbabwe 2021).

Forgetting is not a good strategy for societies transiting to a minimally decent condition” (Bhargava 2000 cited in Tunamsifu (2018: 33). Therefore, developing institutions to preserve the public memory of victims raises the moral consciousness of all citizens (Binder 2013) and contributes towards preventing the recurrence of any future human rights abuses. Haider (2016: 8) further noted that:

[T]he goal of redress involves helping survivors and those who lost loved ones to have a space to reflect and to grieve. The Vietnam Veterans Memorial in Washington, DC, the hillside Halabja Memorial in Iraq and the 8,000 graves at the Srebrenica-Potočari genocide memorial in BiH, for example, have all been designed to provide such a space.

In Rwanda, following the 1994 genocide, the Kigali Memorial Centre was established to remember all the victims. Beyond erecting memorial sites, “aptly named schools, hospitals and public markets” (Tunamsifu 2018: 34) may be introduced in memory of past abuses as well as for symbolic collective reparation, thus making memorialisation a mediation tool for reparation and healing as well. In this view, memorial spaces assist in shaping historical narratives and societal ideologies towards peace and stability. When present and future generations reflect on the heinous experiences of the victims, it is assumed that they will sympathise with the victims while also developing a peaceful mind-set that guarantees non-recurrence of violence.

However, some critics such as Hamber, Ševcenko and Naidu (2010) have argued that developing memorial sites and memorialisation in general could be used to propagate narratives that could be contested and build glorified narratives rather than carry out memorialisation. Some memorial sites may also be used to cast a negative image or to lay blame on other social groups or personalities which could increase conflicts (Haider 2016). Moreover, memorialisation could lead to the re-traumatisation of the victims because each time they see the memorial symbols, they relive the distressing experiences. Nonetheless, considering people other than the victims, the memorial symbols help present and future generations to resist violence by emphasising the “never again” message across societies.

Therefore, it is essential to develop shared thoughts on which symbols and actions constitute a common memory to avoid contestations on the credibility and exactness of the memories. Common memories should “be acknowledged by those who created and implemented the unjust system, those who fought against it, and the many more who were in the middle and claimed not to know what was happening in the country” (Boraine 2006: 22). In this way, the impact of memorialisation is increased towards effective TJ and sustainable peacebuilding.

Reflections on memorialisation

Memorialisation plays an essential role in institutionalising remembrance of the experiences. It plays approximately five functions in both TJ and the society in general, which include recognising the victims of past abuses, acting as symbolic reparation, guaranteeing non-recurrence (preventing future violence), and acting as a tourist

attraction centre. Thus, memorialisation as a process mediates between the citizens and their past. It creates spaces for the non-recurrence of violence. Stated differently, mediation can be used to create spaces where narratives are collectively developed or spaces where collective memory is developed such that limited, or no contestations, will exist during TJ processes. Any contested narratives or history could trigger perpetual conflicts, hence preventing the building of sustainable peace.

The greater value of memorialisation is to enable victims, survivors, and societies to have an opportunity to mourn their experiences and heal. Memorialisation contributes to truth telling and it represents a form of justice and reparation by simply recognising the victims and survivors; and it creates spaces for public education, dialogue, and generational engagements, which all allow possibilities for the non-recurrence of violence and preventing impunity. Memorialisation mediates reparation, healing, and reconciliation. Memory, therefore, is a mediation tool between the state and citizens which helps create social constructs that enable healing and reconciliation.

However, for memorialisation processes to become successful in TJ, it is necessary to create shared and collective memories. When a country or society does not have a mutually shared objective in memorialisation, “there is always the danger that the dominant political party will put resources into memorialising its particular narrative of the past” (Zupan and Servaes 2007: 6). Furthermore, the state may also create memory narratives in the form of “selective amnesia where it influences collective memory formation ... in an attempt to forge immediate reconciliation” (Naidu 2004: 1).

Such processes ultimately create multiple narratives that are motivated by individual interests as opposed to the desire to correct historical facts. A more complex situation arises in that some memories are usually disapproved of by the government, as was the case in Sri-Lanka where the government did “not want to commemorate armed insurgencies against it or acknowledge the horrific acts of violence carried out by the government to quell insurgencies” (Ruwanpathirana 2016: 7-8).

3.2.7. Reconciliation

Reconciliation is “the long-term aspiration for political community based on consent and shared norms” (Leebaw 2008: 105). Reconciliation may also be “understood as

nothing more than simple coexistence in the sense that former enemies comply with the law instead of killing each other” (Skaar 2013: 12). While Leebaw’s definition articulates reconciliation as political community, Skaar’s definition legalises the process of reconciliation by assuming that it involves perpetrators’ compliance with the law. Like Leebaw, Maddison (2015: 40-43) conceived of reconciliation as a process that is deeply political and one that prioritises the capacity to retain and develop democratic political contest in societies that have, in other ways, been able to resolve their conflicts. However, (Brounéus 2007: 6) gave a relatively neutral definition where reconciliation involves “finding a way to balance issues such as truth and justice so that the slow changing of behaviours, attitudes and emotions between former enemies can take place.” Nonetheless, the conceptual definition of reconciliation varies in meaning and significance mainly because the process of reconciliation is not linear but rather fluid and is dependent on individual entities seeking reconciliation. This has undeniable implications on how academics and practitioners identify the components of reconciliation and how its impact is measured.

In practice, reconciliation could “mean co-existence or it can mean dialogue, remorse, apology, forgiveness and healing” (Anderlini, Conaway and Kays 2004: 2). “Reconciliation is redefined to encompass not only the goals of stabilizing and legitimating state authority but also the aspiration for political community based on consent and shared norms” (Henry 2015: 204). The reconciliation process, therefore, does not seek to restore how different elements appeared before the conflict, but it allows the reconstruction of relationships in a way that promotes continuation of life without hanging on the past. Put differently, reconciliation seeks to restore fractured relationships by overcoming grief, pain, and anger emanating from gross human rights violations.

Reconciliation lacks a clear definition because, in practice, politicians in transitory and post-conflict societies also often treat amnesty as a replacement for national reconciliation, yet amnesty, for instance, does not heal the wounds of gross human rights violations. To show that amnesty is far from reconciliation, the victims, and the perpetrator, Henry (2015: 204), in writing about the Australian reconciliation programme, adopted a restorative justice perspective by defining reconciliation as

“premised on a vision of formal equality located within a restorative justice paradigm that seeks to unite all Australians” (Henry (2015: 204).

In conceptualising reconciliation, it is essential to also note that it can be conceived as a process or a goal that occurs at multiple levels, for instance, at the individual, local, and national levels. As a process, reconciliation can be understood as a method of changing individual and group attitudes, beliefs, and values by lessening the sense of injury or violation. However, as a goal, reconciliation describes the result sought by a TJ process. Skaar (2013: 66) added, “as a process, reconciliation may be thought of as top-down or bottom-up.” Top-down reconciliation begins from political leaders whereas bottom-up reconciliation commences from the community level.

As noted earlier, reconciliation can take place at different levels, such as the national and community levels. According to Anderlini, Conaway and Kays (2004: 3), reconciliation that takes place at the national level can be called *national reconciliation* which “refers to a political form of consensus and interaction among parties and leaders,” whereas reconciliation that happens at the community level can be defined as “societal reconciliation referring to the longer-term, more difficult process of community and individual reconciliation.” However, Skaar (2014: 66) treated national-level and societal reconciliation as one level of reconciliation where “a societal process involves mutual acknowledgement of past suffering and the changing of destructive attitudes and behaviour into constructive relationships towards sustainable peace.” Skaar further noted that community-level reconciliation can be recognised as individualised reconciliation where “at the individual level, reconciliation must take place between the victim and the offender/perpetrator.”

In order to observe that reconciliation is taking shape, characteristics of repairing relationships can be observed through acknowledgements, forgiveness, healing, and remembrance. Skaar (2013: 13) added that “another central element of reconciliation is mutual respect, that is, willingness to judge people as individuals and not brand them with group stereotypes.” According to Maddison (2015: 51), “when divided societies expand their political capacities, embrace conflict without violence and find new ways of respecting old adversaries,” it reflects evidence of meaningful reconciliation. This means that reconciliation exists when divided communities display

the capacity to acknowledge their experiences and mutually disagree without engaging in violence or conflict while ensuring that unity prevails beyond such differences. According to the Community Toolbox (2019), reconciliation involves five steps which include:

- Developing a shared vision of an interdependent and fair society
- Acknowledging and dealing with the past
- Building positive relationships
- Facilitating significant cultural and attitudinal change
- Enabling substantial social, economic, and political change

While reconciliation is the ultimate goal of TJ, there are challenges in measuring the extent of the success of reconciliation efforts. At present, there is little evidence demonstrating how TJ ultimately leads to reconciliation because a lengthy period is required to measure the success of different mechanisms. There is “no existing statistical study [that] has attempted to gauge the impact of transitional justice mechanisms on reconciliation” (Skaar 2013: 57). In addition to difficulties in measuring the success of reconciliation in practice, in academic circles, it remains difficult to dissect the various forms of reconciliation and how they are produced by diverse reconciliation mechanisms.

Reflections

Reconciliation is the ultimate goal of TJ. However, it is a process and product of various mechanisms of TJ including restorative justice, truth telling, memorialisation, institutional reforms, and lustration. However, evidence of reconciliation manifests from characteristics including apologies, forgiveness, remembrance, acknowledgement, and healing. In the realm of academics, the concept of reconciliation remains highly contested, however, because of its “ambiguity in meaning as well as its varied psychotherapeutic, religious and cultural applications and connotations” (Henry 2015: 205). Notably, in both practice and theory, reconciliation is not considered a direct component of TJ, but a field that is independent of TJ, yet without it, TJ may not promote sustainable peace.

The process of reconciliation can take place at the local and national levels. However, that which contributes to the success of reconciliation are TJ-enabling factors including legitimacy and local ownership, government commitment, involvement of civic organisations, outreach, capacity building, appropriate timing, and the use of a combination of mechanisms and empirical research (Haider 2015: 2). The greatest challenge, however, in pursuing reconciliation is based on the character of the process, which is achievable in the long-term rather than immediately after any TJ intervention. It concerns transformed attitudes and behaviours as opposed to process events that lead to its achievement.

3.3. Chapter Conclusion

TJ is an evolving concept in both theory and practice. The concept describes responses to systematic human rights violations in pursuit of peace, reconciliation, democracy, and the recognition of victims. TJ occurs in circumstances where a society is transitioning from a state of war to a state of peace or when a society is transitioning from authoritarianism to democracy. The primary objectives of TJ are to (i) promote accountability for past human rights abuses; (ii) foster trust in state institutions; (iii) enhance long-term reconciliation and support peace processes; (iv) and recognise victims, especially as bearers of rights. TJ is, therefore, a peacebuilding process because it promotes security and stability, the rule of law, and deepened social cohesion.

Key mechanisms for TJ include truth telling, justice, reparations, institutional reforms, memory building and reconciliation. In majority of instances, governments wishing to carry out TJ processes have established Truth and Reconciliation Commissions (TRCs) and Commissions of Inquiries as vehicles that first determine the magnitude of violations and what needs to be done to meet TJ objectives. The Commissions, depending on their mandate will then move to facilitate various TJ mechanisms. What is outstanding in the work of these TRCs and TJ performance, in general, is that few of them have been successful due to lack of political will, inadequate resources, non-implementation of recommended TJ actions and corruption. However, in ideal situations, successful TJ process should be able to promote sustainable peacebuilding, lasting peace for lasting societies.

CHAPTER 4: THEORETICAL FRAMEWORK – THE LINK BETWEEN MEDIATION AND TRANSITIONAL JUSTICE

4.1. Introduction

This chapter discusses the theories and practices of mediation with a view to articulate its linkages and roles in TJ processes and sustainable peacebuilding. Exploring mediation theories in this chapter is essential for two reasons, firstly because this study is principally investigating the functions of mediation in grassroots TJ processes and secondly, establishing the theoretical framework identifies analytical components for the study during data collection and analysis. Key mediation practices, processes and success determinants are discussed in this chapter, and they are linked to TJ and sustainable peacebuilding. I begin this chapter by discussing theoretical descriptions of mediation followed by an analysis of how mediation supports each TJ mechanism (that is truth telling, reconciliation, justice, reparations, and memorialisation). The chapter closes with a synopsis of how mediation, if successfully applied to transitional justice can contribute to sustainable peacebuilding. Overall, developing the theoretical framework was essential in making connections between theoretical and practical elements observed in my field data.

A theoretical framework “is a structure that summarizes concepts and theories” developed from previously tested and published knowledge, which a researcher synthesizes as a basis for data analysis and interpretation of research results (Kivunja 2018: 46). Key theories and concepts for this study include mediation, transitional justice, and sustainable peacebuilding. Therefore, this chapter examines theories and concepts of mediation as a dispute resolution mechanism and how they apply to transitional justice practice towards sustainable peacebuilding. The importance of developing a theoretical framework is that it “provides a structure for what to look for in the data, for how you think of how what you see in the data fits together, and helps you to discuss your findings more clearly, in light of what existing theories say” (Kivunja 2018: 47). Hence, for this research, the theories and concepts of mediation were

applied to the study's field project intervention in Makoni District with a view to understand how mediation practically supports TJ processes towards sustainable peacebuilding.

4.2. Mediation Theories and Concepts

In reviewing literature on TJ, it was notable that the current TJ practice does not have a clear positive impact that can be appraised as successful. This is partly because of little research having been conducted on the impact of TJ experiences across the globe, but also due to poor methodologies and approaches being used to implement TJ interventions. As mentioned earlier, this study analysed the role of mediation in TJ processes towards a bottom-up TJ framework. In addition, current TJ theoretically places a great emphasis on the needs of the victims while, in practice, there is little impact attained, hence the need to continue searching for better TJ-design intervention mechanisms.

This section discusses how mediation can be a critical tool for TJ interventions looking particularly at what role mediation can play in various TJ processes in working towards sustainable peace and how mediation can be sustainably used to design broader TJ frameworks. A few scholars, including Kirchhoff (2007), have attempted to analyse the link between mediation and TJ. However, Kirchhoff does not demonstrate how mediation promotes bottom-up TJ, which could be highly effective in ensuring participative justice that is empowering to citizens and, in the long-term, more peace sustaining.

In addition, this section brings mediation theory and practice discourse from international-level conflict designs to the community-level grassroots practice. Most literature available on mediation involves international conflict-resolution issues (Zartman and Touval 1985; Beardsley and Lo 2014; Lindgren 2016; Hinz, Herz and Siman 2021; Ifediora 2021) yet there is recognition that building local mechanisms for mediation could enhance sustainable peacebuilding and conflict resolution in vulnerable communities (Council of the European Union 2009; Roepstorff and Bernhard 2013). There is also scanty and confusing theoretical details that explain the theory of mediation. Wall, Stark and Standifer (2001: 370) acknowledged that most

literature “describes mediation per se, mediation approaches and outcomes” only without providing necessary theory-development pointers. However, the authors also observed that there are societal norms and laws that promote mediation which will be discussed in this study to observe grassroots mechanisms for conflict resolution.

4.2.1 The Concept of Mediation

The notion of mediation, in conflict resolution, assumes that it settles conflicts and solves problems, with mediators controlling the process (Gaynier 2005). By definition, mediation is an assisted negotiation process (Hopkins 2017). Mediation can also be defined as “the process by which a neutral third party (the mediator) attempts, through participation in face-to-face negotiations with the disputing parties to assist those parties reaching an agreement that resolves the dispute” (Nahrstadt 2016: 68). In another definition, Roepstorff and Bernhard (2013: 163) described mediation as “a process in which a third party intervenes in a conflict to bring about a peaceful settlement between the disputants and contribute to a successive transformation of the conflict.”

While all the definitions from Hopkins (2017), Nahrstadt (2016), and (Roepstorff and Bernhard 2013) uniquely identify mediation with a *third-party* intervention, an interesting divergence is the inclusion of the term *neutral* by Nahrstadt (2016). Mediators have to be neutral in their mediation interventions yet, in many instances, the process is often saddled with mediators’ biases. “Neutrality is a concept central to the theory and practice of mediation; as the antidote against bias, neutrality functions to preserve a communication context in which grievances can be voiced, claims to justice made, and agreements mutually constructed” (Cobb and Rifkin 1991: 35). Mediators’ neutrality is captured by Wall, Stark and Standifer (2001: 370) who defined mediation as “assistance to two or more interacting parties by third parties who have no authority to impose an outcome.” Wall, Stark and Standifer further noted that mediation has three key elements which include “(i) assistance of some form of interaction by (ii) a third party who (iii) does not have the authority to impose an outcome.” What mediators are expected to do and their behaviour is also articulated by Webel and Galtung (2007: 51) that “the mediator should be “unfamiliar to the conflict, trustable, unbiased and intending to be neutral.”

The above notional definitions and descriptions of mediation show that for a process to be considered mediation, there have to be disputing parties and a mediator(s) without the authority to impose outcomes. This means that the disputing parties' interests are honoured or valued during mediation and the processes are not bound by evidentiary or procedural rules. On the other hand, the third party involved in the mediation process should intend to peacefully settle disputants' conflict by successively transforming the conflict in a neutral manner. Also, the definitions show that mediation is not concerned with transforming the disputants' characters, but with resolving and containing conflicts using diverse approaches (Gaynier 2005) in a transformative manner.

Mediation exists among other conflict-resolution mechanisms such as dialogue, negotiation, arbitration, and courts. Figure 4.1 is an illustration locating mediation within other conflict-resolution mechanisms.

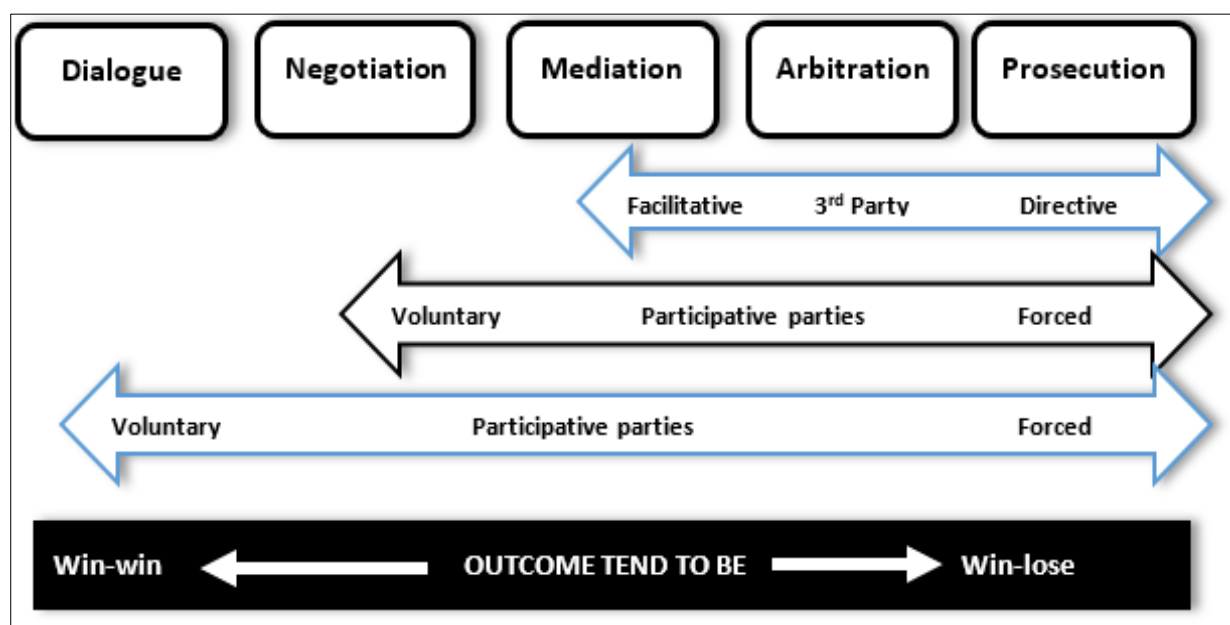


Figure 4.1: The location of mediation within other conflict-resolution mechanisms (Source: Author).

Dialogue and negotiation are non-conventional conflict-resolution mechanisms, which are largely voluntary and participatory in nature and mainly occur at the initiative of either of the conflicting parties. On the other hand, courts and arbitration are directive and confrontational mechanisms that use legal procedures in resolving conflicts. However, mediation is neither a third-party forced (directive) nor legal process, but it

is a third party-assisted negotiation meant to peacefully resolve conflicts with mutuality.

4.2.2 The Essence of Mediation in Conflict Resolution

Resorting to mediation shows the sheer acceptance that the conflicting parties have failed to enter into a dialogue among themselves or negotiate with each other to resolve their conflict issues. As such, mediation becomes a fair, mutually beneficial approach to resolving a conflict, given that resorting to arbitration and courts will become more arbitrary and create a win-lose situation that does not promote sustainable peace. Because of its solution sustainability approach, mediation is increasingly becoming an effective and popular conflict-resolution method as compared to litigation processes which places it well in TJ as compared to prosecutions and other methodologies.⁹

Using mediation as a conflict-resolution mechanism gives disputants “the opportunity to experience individualized justice as a relief from the rigidity of the formal justice system” (Nolan-Haley 2012: 61). This means that the conflicting parties will be able to see their story contrasted on mutual sides which makes it easier to find a common ground. In such circumstances where justice is individualised with disputants mutually contrasting their stories, there are more opportunities for forgiveness and reconciliation (Nahrstadt 2016). To buttress this view, Nolan-Haley (2012: 69) added that “mediation espouses interior peace, offering opportunities for apologies, forgiveness and reconciliation.”

Mediation commences with the consent from the disputants which means that it is voluntary, flexible, and grounded in self-determination. Self-determination increases the parties’ problem-solving capacities as the mediation will be carried out based on their terms, interests, and values. In addition, confidentiality becomes a sacred cannon in the mediation process, as Nolan-Haley (2012: 61) observed, because it can be

⁹ Gary Phelan, *Dispute Resolution the Mediation Way*, Conn. L. Trib. (Aug. 18, 1997): An oft-cited survey of general counsel, deputy counsel, and chief litigators from 528 of the 1,000 largest corporations in America; the respondents noted that 85% had used mediation in the past three years and 84% stated that they were likely or very likely to use it in the future. This same survey also indicated that 81% of the respondents felt that mediation provided a “more satisfactory process” as compared to litigation, 66% stated that mediation provided “more satisfactory settlements”, and 59% stated that mediation “preserves good relationships.”

protected by ethical codes and agreements between the parties. In cases where mediation is applied to TJ, disputants' details can easily be shielded from public exposure, unless the disputants give consent for their details to be revealed.

"Mediation is less time consuming, it has simpler procedural and substantive rules than litigation, it tends to be less hostile and emotionally charged than litigation and it is more flexible in scheduling" (Nahrstadt 2016: 68). As a result, mediation is becoming increasingly popular such that even in the legal fraternity, "it is becoming more and more unusual for a case to not be subjected to some form of [Alternative Dispute Resolution] ADR" (Nahrstadt 2016: 68). Hence, applying mediation in TJ becomes a necessity in an attempt to find lasting and impactful solutions towards successful TJ interventions that are largely informed by affected communities themselves as opposed to legal processes that are time-consuming and mostly arbitrary and focused on short-term results.

4.3. Mediation Framework: The Practice of Mediation

The practice of mediation can be traced from the biblical times when Moses acted as the mediator between God and people, from the advent of the Church when congregants turned to priests to intercede for them and even today in Africa, Europe and the Americas (Webel and Galtung 2007). As a grassroots peacebuilding practice, mediation is well rooted in the African and Asian dispute resolution processes (Menkel-Meadow 2016) and, therefore, its application to Zimbabwe is germane. In China, for example, mediation is mostly used to settle commercial disputes whereas in Japan, mediation is used to address domestic or family relations (Menkel-Meadow 2016). In Zimbabwe, at grassroots level, mediation (known as *kuyanisanisa*, *kugadzirisana*, or *kuenzanisa* in vernacular language) is used as a traditional community peacebuilding and conflict resolution mechanism with traditional leaders, community elders and opinion makers acting as mediators. However, it is important to mention that these terms *kuyanisanisa*, *kugadzirisana*, or *kuenzanisa* may also refer to justice rather than mediation. For example, Murambadoro (2020: ix) notes that in Buhera, Mudzi and Uzumba the term justice "means *kuenzanisa* (creating a balance or making equal), *kunzwana nhunha* (listening to troubling issues), and *kuringanisa* (making amends or creating a balance)." In mediation terms *kuenzanisa* means creating balance between

two forces, *kugadzirisa* is correcting the wrong among the conflicting positions. It is therefore, important to consider the contextual meanings of peacebuilding terms to avoid misinterpretation of issues.

In Uganda the *mato-oput* practice equalises a mediation process where “the Acholi ethnic communities and the Karamajongs use traditional ceremonies to bring disputed parties to reconcile” (Mandikwaza and Mungure 2020: 28). The practice “promotes forgiveness, healing, trust-building and reconciliation between communities and individuals in conflict” (Masiko-Mpaka 2020) . Figure 4.2 below shows a reconciliation process of Mato-Oput.



Figure 4.2: Mato Oput reconciliation process. Source: Comboni Missionaries' Team (2017)

Generally, there are divergences and convergences in the practice of mediation based on communities’ socio-cultural practices, legal systems, and history. What is more applicable to the Zimbabwean grassroots conflict resolution processes, however, is community mediation (equally related to Mato Oput) where cultural, traditional, and religious systems, values and practices are used to address conflict issues at family and community level without resorting to state legal institutions. Community mediation “is a constructive conflict resolution process where people in conflict have an opportunity to create choices for the resolution of their dispute and control of the outcome, through collaborative, equitable and transparent means” (National Association of Community Mediators [NAFCM] 2021: 1). The ultimate objective of this

kind of mediation is to put the disputants in a safe environment where they are able to talk out their differences, understand the causes of their conflict and mutually decide to reconcile.

What also resonates well with community mediation are self-organised local peace committees that are informally established to address conflicts and building local resilience mechanisms. Chivasa (2021: 69) for example, notes that local peace committees, although informal, are effective in grassroots peacebuilding because they are inclusive of all relevant stakeholders such that men, women, and youth are able to “engage equally in decision making processes.” Interestingly, these community mediation actions link well with insight mediation approach. The insight mediation approach is based on relations and it “sees individuals as connected to each other by cultures, traditions, religions, communities and relationships” (Centre for Conflict Education and Research 2021). It views conflict as responses to defending threats rather than a competition for resources or incompatibilities (Picard 2017).

In an attempt to develop a mediation theory, Wall, Stark and Standifer (2001) offered a mediation framework that seeks to explain how mediation occurs. The proposed mediation framework provides an explanation of the “determinants of mediation, mediation itself, approaches employed, determinants of the mediation approaches, outcomes of mediation, and determinants of the outcomes” (Wall, Stark and Standifer 2001: 371). The framework, as argued by Wall, Stark and Standifer (2001), is based on cultural efficacy notions that communities practising mediation have experienced over time by seeing conflicts being resolved by third parties, hence shaping mediation practice. Figure 4.3 shows the authors mediation framework.

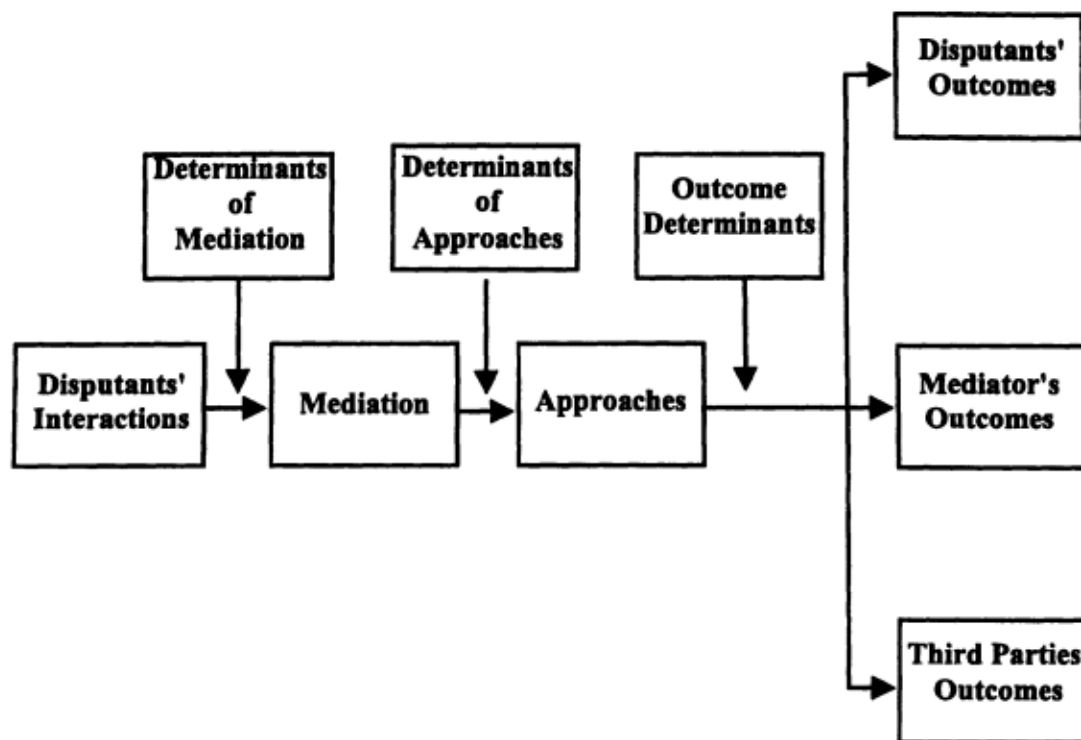


Figure 4.3: Mediation framework (Wall, Stark and Standifer 2001).

Without delving into theoretical extrapolations sought by Wall, Stark and Standifer (2001), the mediation framework in figure 4.3 shows that for mediation to take place, key aspects in the mediation process will include disputants, mediation itself, mediation approaches, and the mediation outcomes. However, all these are affected by diverse factors which could be internal or external to the mediation process. These factors are determinants of each key mediation aspect (mediation, mediation approaches, and mediation outcomes). These key aspects will be explained in the following subsections.

4.3.1 Disputants in Conflict

Disputants are conflicting parties who have a stake in a dispute. Burgess (2004: 1) also added that for conflicting people to be considered disputants, they should have “care about the outcome” of their conflict. Disputants can be primary (active disputants), which means that they are actively involved in a conflict, or they can be secondary (indirect) disputants. Secondary disputants have indirect interests in a conflict and are indirectly involved. An example of secondary disputants are allies of parties involved in a dispute; allies are indirectly involved but can be implicated to become actively involved in a conflict. Therefore, in mediation contexts, disputants are

the parties whose dispute is being mediated. This means that mediators only come in to facilitate the disputants' mutual interests to resolve their own conflicts.

However, it is important to highlight that some disputants may be stronger than their mediators or weaker than their mediators, which is a factor that influences the mediation outcomes. In their study on the mediation process, Welton and Pruitt (1987: 123) observed that:

Disputants with high power over the mediator were more accepting of the mediator but tended to be less influenced by the mediator than disputants with low power. Disputants with high power also used less contentious tactics and reported that they were less concerned about appearing strong to the mediator than disputants with low power.

This means that in mediation processes, it is important to also consider the power vested in the disputants as well as the mediator to prevent mediation biases.

4.3.2 Mediation Styles

There are different styles of mediation or mediation strategies that can be employed to resolve conflicts (Wall, Stark and Standifer 2001; Gaynier 2005; Kirchhoff 2007; Ridley-Duff and Bennett 2011). For example, Moore (2014 cited in Wood (2017: 85) identified "three broad types of mediators, defined by the relationship the mediator has with involved parties: (i) social network mediators, (ii) authoritative mediators, and (iii) independent mediators." Peck (1996) identified mediation strategies as power-based, rights-based, and interest-based, while Kleiboer (1996) classified mediation strategies as based on power-broking, dominating, problem solving, and transformation. There are also three main strategies that explain mediator behaviours, according to Zartman and Touval (1985), which are facilitation, formulation, and manipulation. These three strategies will be discussed for the purposes of this study's conceptualisation:

- i. *Facilitation mediation* involves the mediator acting as a communication channel among conflicting parties by ensuring continued dialoguing and discussions. In this approach, the mediator exhibits little control over the process or substance of mediation (Gartner and Bercovitch 2006). Facilitating communication allows both parties to know the facts and separate perceptions from realities and ensures that neither party overestimates its capabilities, interests, and needs.

- ii. *Formulation/procedural mediation* allows the mediator to propose solutions and possible actions towards conflict resolution. The mediator, in this case, performs a coordinating role. The mediator may also “*determine such factors as the environment, the number and type of meetings with the adversaries, covered in those meetings, the control of constituency influences, and the distribution of information and resources*” (Gartner and Bercovitch 2006: 832).
- iii. *Manipulative/directive mediation* involves both facilitation and formulation, but the mediator will also use his/her position to leverage and influence the mediation outcomes. The mediator will seek to affect the content and substance of the mediation process, including using a combination of ultimatums, carrot and stick methods, and developing new proposals (Gartner and Bercovitch 2006: 832). Applied in international crisis mediation, manipulative mediators may even “increase the costs of non-agreement and the costs of reneging against the agreed positions” (Beardsley *et al.* 2006: 64), including offering benefits and threats such as direct compensation, enactment of favourable economic policies towards the actors, or other diplomatic concessions (benefits) or economic and diplomatic sanctions or threats of military action (threats).

The mediation styles discussed above involve integrative strategies, but they differ on how the mediator contributes to the conflict-resolution process (Beardsley *et al.* 2006). As such, these styles can lead to different mediation outcomes depending on the contexts in which they are being applied. This study did not prescribe any form of mediation style, but it instead sought to understand how mediation, in general, can be applied to diverse grassroots TJ perspectives in Zimbabwe. Therefore, observations on the type of mediation model that is appropriate and the extent to which mediators should influence (exert power on) the process or the depth at which the underlying conflict issues are resolved (Kirchhoff 2007) were considered. Understanding mediation styles helps one to appreciate “the micro-foundations of mediation and, in the process, to discover implications for more effective mediation” (Beardsley *et al.* 2006: 59).

A badly practised mediation style may resolve conflicts without addressing the root causes of the conflict. According to (Jameson, Sohan and Hodge 2014: 210), “mediation outcomes can include no agreement, an agreement that resolves the immediate problem but leaves issues unexplored, or more transformative outcomes.” Therefore, it is essential to understand how mediation facilitates conflict resolution and conflict transformation such that when applied to TJ interventions, the mediation outcomes will be somehow predictable. The authors (Jameson, Sohan and Hodge

2014: 210) argued that it is the mediators' communication patterns when mediating that leads "to conflict resolution versus conflict transformation," which implies the importance of mediation styles in the mediation process.

Using manipulation in TJ processes could hinder sustainable peacebuilding and the intended healing and reconciliation needs. "Facilitation and formulation" can help actors to identify an existing alternative that is mutually preferable to fighting, while manipulation can expand the set of alternatives that are mutually preferable (Beardsley *et al.* 2006: 67). In this view, it is important to consider the mediation styles that could be effective (Lallande and Lallande 2014) in the TJ set-up and how appropriate mediators can be identified.

The *narrative mediation style* has not been explored in much detail yet more essential in the therapeutic mediation style is narrative mediation. "Narrative mediation builds on the storytelling metaphor" (Hansen 2004: 298) hence, in the broader peacebuilding context this style of mediation can be categorised under narrative peacebuilding or storytelling (Senehi 2019; Anyeko and Hoffmann 2020). In this study, narrative mediation is, however, differentiated from narrative peacebuilding in the sense that the former specifically focuses on disputants narrating their stories in a way that enables them to understand the divergences and convergences in their conflict (Winslade 2003) while the latter (narrative peacebuilding) could refer to (true or fictional) stories told for purposes of peace education and conflict transformation (as articulated in the writings of Anyeko and Hoffmann (2020) and Njoku and Senehi (2019).

The constructionism perspective of narrative mediation is articulated by Harper (2006: 609) who notes that the style utilises the interpretations of conflict "based on the idea that the language is a meaning-making activity – humans literally 'speak [themselves] into existence' and define themselves through language." This means in narrative mediation disputants can tell each other the truth in their hearts in a way that constructs new understandings and deconstructs perceptions that form part of the conflict. The conflicting parties will "identify and surface those unsaid expectations to improve understanding, increase mutual respect and dilute the conflict-saturated stories that dominate the narratives of parties in conflict" (Davies 2015: 1). Through this process, disputants will be able from their told stories to settling the conflict (Hansen 2004: 279).

Arguably, unlike other mediation styles such as facilitation, formulation, and manipulation, narrative mediation empowers the mediation process to extract transformative truths from among the disputants. When disputants are allowed to narrate their stories fully in the mediation process, “there is greater opportunity to achieve equality, healing, and justice” because the mediator “inject[s] values of equality into the mediation in order to assist the parties in breaking down these myths and increase the disadvantaged person’s potential for achieving justice” (Harper 2006: 611). However, this narrative mediation process may not achieve the mediation goals on its own without integrating other mediation styles, where necessary.

4.3.3 Mediation Outcomes

i. Sustainability on Mediation Settlement

Writing on international conflict mediation, Gartner and Bercovitch (2006: 822) observed four key factors that determine the durability of mediated conflict settlements as (i) the conflict-management process, (ii) the dispute, (iii) the disputants, and (iv) the settlement. The type of disputants – in terms of their interests, positions, and needs as well as resources at their disposal – can influence their propensity to support lasting peace.

Finally, the type of settlement agreed upon by the disputants also determines the settlement sustainability. Gartner and Bercovitch (2006) observed that where disputants had reached a partial settlement, there was a likelihood of short-lived peace, while full settlements could possibly facilitate long-lived peace. Hence, in TJ processes, there is a need to ensure that different factors are taken into consideration to ensure sustainable peace.

ii. For the Mediator

These determinants can be understood through two lenses of the conflict-mediation process. These lenses involve the conflict-selection process (selection effect) and the conflict-mediation process (process effect) itself. “Selection effects identify the type of the conflict we observe, while process effects refer to factors, internal as well as external, which influence the course of a conflict and its resolution” (Gartner and Bercovitch 2006: 820). The writers further argued that mediated conflicts are generally

selected from a population of disputes which “are likely to be more intractable, making mediated settlements more likely to be short-lived, while the result of the process effects is that mediation helps to resolve the factors fuelling a conflict, making mediated settlements less likely to be short-lived.” This suggests that in the TJ process, the selection of conflicts to mediate and the mediation process are critical aspects that could determine the sustainability of the mediated solutions.

4.3.4 Mediation Actors and Selection Determinants

In addition to mediation styles, the types of mediators and their selection is crucial in determining the possible success or failure of a mediation process. Mediation actors are the people or institutions involved in the process of mediating the identified conflict (Whitfield 2010; Roepstorff and Bernhard 2013). Some mediators are empowering, controlling, substantive experts or neutral jurists (Nahrstadt 2016). Stated differently, some mediators are closer to the conflict than others and their proximity to the conflict could affect their objectivity depending on their interests or non-interests in the conflict issue. These characteristic variations or mediator behaviours determine the style that a mediator may take. Other factors to consider that are related to the mediator’s characteristic behaviours are their background and mediation strength. Some mediators use biblical approaches (biblical mediation), legal approaches (legal mediation), and cultural approaches (traditional mediation), among other approaches. Roepstorff and Bernhard (2013) also suggested that mediation choices depend on whether the mediator is an insider or an outsider.

Insider mediators are those living and experiencing the conflict and who have knowledge of the root causes of the conflict and the conflict actors and issues, while outsider mediators are intermediaries who are detached from the conflict or have not experienced or become involved in the conflict (Mason 2009; Roepstorff and Bernhard 2013). Roepstorff and Bernhard (2013: 165) defined *insider mediators* as local actors “who are directly affected by and have stake in the conflict and the impact of the conflict resolution initiatives.” Insider mediators are crucial in grassroots TJ because they involve people who understand the conflict issues at the community level and who could have witnessed the violations occurring in some way. This study is concerned with the role of insider mediators and, more importantly, those closer to the conflict

issues because mediators who are closer to the conflict issues appreciate obtaining knowledge of the conflict dynamics, and they are conversant with traditional or indigenous forms of conflict management and resolution.

In practising mediation, it is generally agreed that the mediators control the process while the disputants control the mediation outcome (Gaynier 2005). Other scholars such as Wall, Stark and Standifer (2001) have also observed that mediators should be impartial in order for the outcomes to be fair and based on the merits from both disputants. However, some scholars such as Honeyman (1991 cited in Wall, Stark and Standifer (2001) have argued that mediators should be partial towards the weaker party in order to protect it. The mediator's conduct, however, affects the sustainability of the mediation settlement. The sustainability of the mediation settlement is dependent on various factors such as the mediator's attitude and conflict-management skills, the conflict environment and resources, and the conflict-management process.

The conflict-management process requires correct timing and appreciation of different conflict-resolution mechanisms and resolution stages. The nature of the dispute(s) in terms of conflict magnitude and parties involved determines the length of time that it will need to be resolved, the nature of the resources needed, and the different processes that should be followed to address the conflict.

4.3.5 Mediation Process

The mediation process describes the different stages that the mediation involves, from the start to the finish when the mediation outcomes are realised. There is no consensus on the number of stages or steps that should be considered in carrying out a mediation process mainly because "every mediation process has its own peculiarities" (International Peace Institute 2009: 1). For example, in their book entitled *Mediation Skills and Process*, the Northern Virginia Mediation Service [NVMS] (2015) proposed four stages of mediation which include (stage 1) orientation to set the stage, (stage 2) identifying issues and understanding parties, (stage 3) problem solving, and (stage 4) writing the agreement. However, Smith and Smock (2008) proposed a six-step mediation process which includes (stage 1) assessing the conflict, (stage 2) ensuring the mediator's readiness, (stage 3) ensuring conflict ripeness, (stage 4) conducting track 1 mediation, (stage 5) encouraging track 2 dialogue, and (stage 6)

constructing a peace agreement. Notwithstanding these differences in defining the mediation stages, the mediation outcomes should be aimed at resolving the identified conflict issues.

In addition to the above, mediators should be adaptive and able to use flexible techniques, as shown in figure 4.4 below.

<i>Technique</i>	<i>Example</i>
Disputant oriented	
Information gathering	From disputants or written documents
Pressing	Threatens a party in some way
Compensation	Rewards a person for making a concession
Education/advising	Calls for specific agreements or concessions
Reflexive	Uses humor or lightness
Empowerment	Suggests that disputants reach a solution on their own
Distributive	Criticizes a side's position
Inaction	Simply monitors the dispute
Disputant-disputant relationship	
Smoothing and cooling	Develops trust
Agenda	Meets together with disputants
Siding	Sells one side's case to the other
Integration	Packages issues
Problem solving	Looks for facts in the case
Representation	Asks one side to state the other's position
Disputants-third-party relationship	
Use of third parties	Obtains assistance from third parties
Making the dispute public	Shares the conflict with others

Figure 4.4: Mediation techniques (Wall, Stark and Standifer 2001).

The mediation techniques in figure 4.4 can influence the stages of the mediation process, the mediation styles, and the mediation turning points. Hence there is an obvious need for mediators to become dynamic in their mediation actions.

4.3.6 Turning Points in Mediation Practice

During the mediation process, one should pay attention to the turning points. Beyond mediation styles and mediator selection, those involved in the mediation process should pay attention to specific stages in the mediation process upon which they can leverage to succeed in resolving and transforming conflicts. That which should be noted by mediators in practice are the *turning points* (Blake 1999; Druckman 2001; Cohen 2009; Jameson, Sohan and Hodge 2014). Turning points are events or

occurrences associated with changes in relationships. According to Jameson, Sohan and Hodge (2014: 211), turning points are “critical moments in mediation that can lead to greater understanding between parties in a dispute and have the potential to alter their relationships.” For example, (Blake 1999) highlighted that turning points occur when the disputants acknowledge the conflict issue (understanding the problem), become engaged (listening actively and displaying a problem-solving attitude), and are frank (expressing emotions and feelings). Cohen (2009), on the other hand, identified two turning points, that is, when disputing parties start understanding each other’s point of view and when the disputants’ focus shifts from the past to the future.

In view of the above descriptions, it is notable that turning points can lead to the transformation of relations among disputing parties which is crucial in TJ interventions. However, Jameson, Sohan and Hodge (2014) argued that not all turning points are transformative, and there has to be a relationship within that turning point. As such, if mediation is undertaken in TJ processes, the mediation process requires not only dexterous thoughtfulness in the selection of mediators and mediator styles but also the skills to observe what and how to leverage on the mediation outcomes at different stages.

4.3.7 Reflections: Mediation and Conflict Resolution

Mediation is one of the non-judicial dispute-resolution tools (Posner and Vermeule) that have been largely used in TJ efforts yet knowledge about its broader role and effectiveness towards sustainable peacebuilding in transitioning societies is scarce. Little is documented about the type of conflicts or disputes that can be addressed by mediation in grassroots TJ contexts. Furthermore, in instances where mediation has been practised in TJ processes, there is a need to establish the different types of mediation styles and actors who can assist in addressing past human rights violations and promoting accountability at various levels of the society. There are different styles and models of mediation that can be employed to achieve peace, justice, healing, and reconciliation. These styles include facilitation, formulation, and manipulation (Bercovitch and Houston 2000; Beardsley *et al.* 2006). Mediation may also be in the form of power-broking, dominating, problem solving, and transformation (Kleiboer 1996). Peck (1996), likewise, identified different forms of mediation as power-based,

rights-based, or interest-based. As will be discussed in the succeeding sections, these styles and models produce different results depending on the contexts in which they are applied.

It is also noticeable that mediation has core values that make it attractive in conflict resolution and more likely to be adopted in TJ processes. Mediation's core values are self-determination and participation which means that mediation is consensual, confidential, and a problem-solving process. These attributes of mediation make it a suitable tool for TJ interventions. Arguably, the fact that mediation allows confidentiality makes the victim and the perpetrator feel that their dignity is protected from public degradation, hence the mechanism's suitability in TJ interventions. Through engagements, directly or indirectly, mediation allows disputants to build mutual trust and move from merely considering their stories of conflict and positions towards settling their conflict. This movement, observably, is the transformative (peaceful) power of mediation.

4.4. Conceptualising Mediation in Transitional Processes. Justice Studies and Practice

Reflecting on the preceding review of literature and discussion on the theories of mediation and transitional justice, this section lays out a conceptual framework describing observed ideas, knowledge, and insights on the role of mediation in TJ processes. A conceptual framework describes a researcher's "total, logical orientation and associations of anything and everything that forms the underlying thinking, structures, plans and practices and implementation of the entire research project" (Kivunja 2018: 47) Therefore, I draw down my analysis to six pillars of TJ namely: truth telling, justice (criminal prosecutions), reparations (social justice), institutional reform, memorialisation, and reconciliation. These are testable components that were practically observed through an action research intervention in Makoni District using two mediation groups to validate the practical roles of mediation in grassroots TJ contexts.

4.4.1 The Function of Mediation in Transitional Justice

There is a general agreement among scholars that while TJ broadly seeks to address the justice needs of the victims of gross violations and pursue sustainable peace, there are competing interests between justice, peace, and reconciliation (Brounéus 2007; Hayner 2011). The argument is that pursuing justice means that perpetrators of gross human rights violations will have to account for their criminal actions. Hence, when made to account for their actions, they are likely to resist (violently) their criminal liabilities which causes societies to revert to conflict. Contributing to this debate, Hayner (2011: 14) argued that:

Whether emerging from army generals or recently disarmed rebel warlords, tough truth has sometimes (though rarely) brought open threats of breaking the peace, as well as, ominously, death threats against commissioners. This classic “peace versus justice” tension has been present in the context of many post-war truth commissions, as well as in many post-dictatorship contexts if the powers of old still hold sway. These tensions must be recognized.

This observation means that when pursuing TJ in a way that builds sustainable peace, there is a need to carefully select mechanisms that ultimately make “former enemies, perpetrators and victims ... continue living side by side just as before the atrocities were committed” (Brounéus 2007: 5). Mediation, arguably, is one such mechanism that can concurrently and mutually pursue TJ and peace.

In addition, a TJ framework that has a potential to succeed is one that is based on a consensus particularly between stakeholders and involved victims and perpetrators. The interests of different actors, therefore, may be crucial in designing intervention processes and in understanding contexts within which different actors can participate in TJ activities that promote sustainable peace. To promote inclusivity and participation in designing the most appropriate intervention, mediation could be crucial in negotiating operational processes as well as that which different actors will carry out. For example, Kirchhoff (2007: 16) observed that “during the configuration of the framework of any transitional justice program, any lack of coherence and effective coordination between external players can threaten the success of the processes.” Therefore, mediation can again play a role in coordinating different actors in TJ as well as facilitating dialogue on which processes should be undertaken for TJ interventions

to become successful. The subsequent subsections present an account of how mediation can support TJ processes in the pursuit of justice and peace, without contradictions.

a. *The Function of Mediation in Truth Telling*

Truth telling refers to the process of uncovering the truth about specific violations, atrocities, and incidents of violence experienced during the conflict period. Kirchhoff (2007) observed that mediation cannot facilitate truth telling, but it can play an indirect role in uncovering past events. However, the researcher of this study reasons that a mediator can assist individual perpetrators of violence who would like to confess or provide the truth to their victims. The purpose of truth telling in TJ is to ensure that communities know exactly that which motivated the violations and how they happened and why because divided societies tend to deny aspects of the violations and some blame each other, yet establishing the truth puts to rest perceptions and blames. As such, truth telling can reveal the cause, nature, patterns, magnitude, and the purpose of the violations (South Asian Centre for Legal Studies 2015). Recognising the truth promotes trust, acceptance, and appropriate solutions. The South Asian Centre for Legal Studies (2015) observed that truth seeking can be achieved by facilitating trials (judicial) or investigations, artworks, historical narratives, or investigative journalism. However, the authors failed to also consider mediation as a possible mechanism for truth extraction which is an essential ADR mechanism.

b. *The Function of Mediation in Justice (Criminal Prosecutions)*

The wider concept of justice allows mediation to be used as a mechanism to pursue justice. According to (Kirchhoff 2007: 14) the notion of “justice contains, but is not limited to, retributive justice (focusing on the offender), restorative justice (focusing on the victim), moral and social justice (focusing on shared concepts of fairness), and distributive justice (focusing on the fair sharing of goods). By inference, it is an expression and feeling of fairness and satisfaction by the affected. Mediation, in this context, is a non-judicial mechanism that can be used to facilitate individual experiential justice that is initiated between the conflicting parties. In addition, a mediator can assist in helping parties to differentiate between various issues and categorise them accordingly in line with how they should be addressed.

The criminal justice process constitutes prosecutions to offer a direct form of accountability for the affected victims and survivors. Justice, therefore, is facilitated to ensure that those who have participated in gross human rights violations are held accountable and punished for their actions to deter future impunity. It also allows opportunities for the victims to seek redress – compensation and restitution – where possible.

c. *The Function of Mediation in Reconciliation*

Reconciliation is a process of building relationships between and among individuals and groups or societies. Bloomfield *et al.* (2003) defined *reconciliation* as a societal progression from their divided past towards a shared vision, unity, and cohesion with a sense of collective responsibility and understanding. Peacebuilders, human rights activists, and social change agents view reconciliation as a pre-requisite towards building sustainable peace because achieving it contributes towards the prevention of revenge, further violence, and human rights violations. Lederach (1995) posited that for reconciliation to be achieved, there should be an acknowledgement of the wrong, an apology and forgiveness, mercy, and genuine contrition on the part of the perpetrator. However, the victims are the only ones who have the right to or not to reconcile, forgive, or accept an apology which is key to achieving reconciliation. This is made clear by Bloomfield (2006: 24) who noted that “the right *not to reconcile* is a key issue in understanding some of the resistance that victims feel towards reconciliation and one that is often forgotten by international actors as they blithely design post-conflict reconciliation processes in the abstract.” Mediation, therefore, as an ADR, has the potential to unlock this right by converting the victim’s thoughts into voluntary willingness to forgive. The four dimensions of reconciliation are shared truth, justice, regard, and security (Kriesberg 2007). However, a key question that requires both practical and scholarly interrogation is how reconciliation should effectively be achieved.

d. *The Function of Mediation in Reparations*

Reparations in TJ refer to the process of providing compensation, restitution, or rehabilitation to the victim. There are four types of reparations which include restitution, compensation, rehabilitation, and satisfaction (South Asian Centre for Legal Studies

2015). Mediation can support reparation processes by assisting in the determination of the best possible but practical type of reparation that can be awarded to the victim. Kirchhoff (2007) recognised that it is almost impossible to compensate victims in proportion to the harm that they have suffered, hence the need to consider standards of fairness between that which is demanded by the victim and that which the perpetrator can practically offer. Therefore, mediation can play a significant role in ensuring that there are open, participatory, and deliberative negotiations that allow the victim to receive reparations without necessarily feeling that he or she has been bought to be silent. Buying victims' silence is undeniably different from honest reparation which is directly linked to acceptance of the committed wrong. In addition, mediation becomes important in balancing the interests of parties involved in a conflict, given that reparations are more individualistically determined without mutuality, yet true reparations made in the spirit of reconciliation should show the symbolism of remorse, feeling apologetic, and acceptance of wrongdoing.

e. The Function of Mediation in Healing

Mediation can play a crucial role in enabling victims to heal because it involves putting the victim and the perpetrator in direct contact where they are able to narrate their conflict stories to each other (refer to earlier discussions of narrative meditation). As the victims discuss their conflict issues, positions, and interests, the disputants come to know the truth about their conflict, conflict issues, and perceptions and realities surrounding their conflict which transforms their individual psyche towards healing (Hansen 2004; Harper 2006). As such, the process of unpacking a conflict through mediated narratives has a healing effect among disputants such that at the end of the mediated narratives, the disputants have a newly defined understanding of the conflict, which ultimately allows for sustainable settlement. In other words, mediation accelerates healing among disputants as they engage with their conflict stories.

4.4.2 Mediation and Transitional Justice Actors' Interests

TJ processes have several stakeholders whose interests should be taken into consideration when devising mechanisms that seek to address legacies of violence. This means that there are underlying interests that mediators should take into consideration when determining their mediation actions and approaches. Kirchhoff

(2007) categorised these stakeholders as victims, perpetrators, society, and the state. Victims' interests may differ depending on their experiences, but they include recognition of their rights, acceptance of reparations, equal treatment as citizens, and the desire for prosecutions of their violators. The perpetrators' interests, on the other hand, include restoration of their dignity, fairness in determining their punishment, privacy with transparency in their case handling, and acceptance into society with recognition of their changed behaviour.

More overarching are the society's interests in TJ mediation processes. Society desires to improve community cohesion, rebuilding the social fabric that upholds communal values, increasing interpersonal trust, promoting human rights protection, and enhancing democratic practices. Stakeholders directly interested in TJ who are part of the society include individuals; churches; community-based organisations; schools; and broadly, community infrastructures for peace (Roepstorff and Bernhard 2013). However, while the respect for diverse stakeholders' interests is crucial, it is important to consider overriding interests among them. For example, where the interests of the perpetrator clash with those of the victim, the victims' interests should prevail.

4.4.3 Transitional Justice, Mediation and Sustainable Peacebuilding

TJ efforts become more meaningful when the interventions are able to build and maintain sustainable peace, a requirement that has been difficult in many peacebuilding interventions (CNA 2002; The World Bank 2018). Sustainable peace is "a situation without violence and built on sustainable development, justice, equity and protection of human rights" (The World Bank 2018: 78). Sustainable peace should be built from the base, from the grassroots, by citizens who take responsibility to prevent the possible outbreak of violence, escalation, recurrence, or continuation of violent conflicts (CNA 2002). Therefore, citizens must be involved in TJ interventions in order to build sustainable peace in their communities. Mediation is a participatory process that promotes affected individuals and community's participation in the resolution of their conflicts. Hence, if mediation is considered in TJ interventions, it can conceivably promote sustainable peacebuilding. In addition, if mediation only focuses on "securing

short-term peace, we will witness continued relapses into violence and instability that present dangerous consequences for us all” (Ahere and Hellmüller 2014: 5).

To facilitate sustainable peacebuilding, there has to be “credibility, resilience and reliability” (Giessmann 2013b: 1). Credibility in peacebuilding relies on the willingness of people to collaborate with mutual respect, tolerance, and readiness to compromise, while resilience refers to protection from backlashes and preferential treatment through inclusivity and participation. Reliability, on the other hand, focuses on transparency and the existence of a shared vision in the peacebuilding process. Therefore, a mediated TJ process that involves the grassroots can efficiently promote sustainable peacebuilding as it allows credibility, resilience, and reliability. In this view, it is evident that mediation and TJ are inextricably linked to sustainable peacebuilding.

The sustainability of peace brought through mediation is generally dependent on four key factors that include (i) the conflict-management process, (ii) the dispute, (iii) the disputants, and (iv) the settlement (Gartner and Bercovitch 2006: 822). The type of disputants – in terms of their interests, positions, and needs as well as resources at their disposal – can influence their propensity to support lasting peace also. Therefore, applied to TJ, mediation enables truth establishment, it determines reparations, support the victims’ healing process, and it supports the process of negotiating reforms (Kirchhoff 2017). Besides playing a role in specific TJ processes, mediation can also be crucial in designing the TJ framework that fits specific contexts and interventions desired by the parties involved.

Finally, the type of settlement agreed upon by the disputants also determines the settlement sustainability. Gartner and Bercovitch (2006) observed that where disputants had reached a partial settlement, there was a likelihood of short-lived peace, while full settlements could possibly facilitate long-lived peace. Hence, in TJ processes, there is a need to ensure that different factors are taken into consideration to ensure sustainable peace.

As noted earlier in Chapter 1, mediation plays a catalytic role between sustainable peacebuilding and transitional justice. Figure 4.5 below is my abstract conception on the link between sustainable peacebuilding, TJ, and mediation.

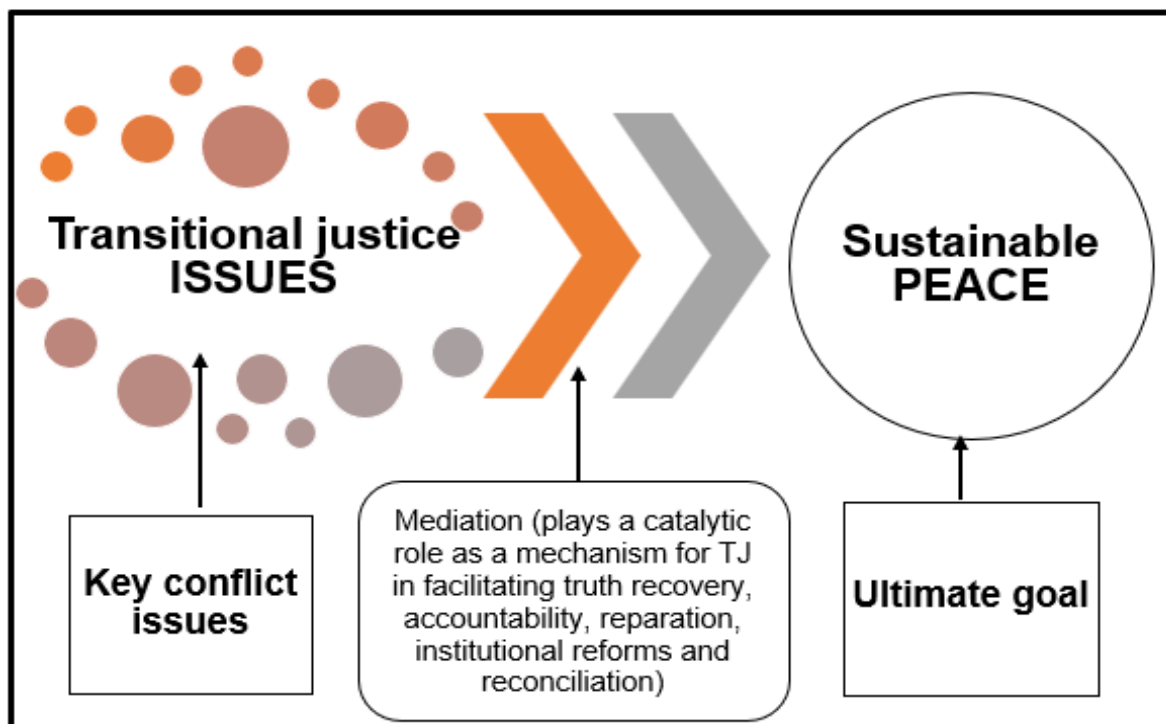


Figure 4.5: Link between TJ and sustainable peacebuilding (Source: Author)

Mediation cultivates the willingness of affected communities to collaborate with each other to desire addressing the use of violence and violent actions amicably. Thus, preventing resistance from other actors, a situation that normally see a society relapsing into violence. In this study, mediation interventions were used as a mechanism to make local communities articulate their own TJ problems, identify complex intervention issues, utilise their own knowledge of practical solutions towards building peace, hence meeting the requirements for sustainable peacebuilding - credibility, resilience, and reliability.

According to Akande, Kaye and Rukuni (2021: 2) sustainability in peacebuilding is linked to communities “capacity to self-organise” in violence prevention and conflict transformation. This study, through action research intervention methodologies, capacitated two mediation groups to learn to self-organise and mediate transitional justice related conflict issues with a view to draw lessons on how exactly mediation supports grassroots-level TJ towards sustainable peacebuilding processes. This approach agrees with Mahmoud, Connolly and Mechoulam (2018: 7) who notes that sustainable peacebuilding is an “endogenous process that requires strong and inclusive national ownership and leadership by reinforcing the structures, attitudes, and institutions that underpin it.” Traditional leaders, church leaders and political party

leaders who sustains local structures were involved in the mediation processes undertaken during the study.

4.5. Reflections on Transitional Justice and Mediation

TJ, as noted in the literature review, remains under-theorised. However, the field of TJ practice is conceptualised as a response to systematic human rights violations in pursuit of peace, healing, reconciliation, and democracy with the recognition of victims at the centre of its processes. This concept of TJ has a definitional problem because it pursues multifaceted objectives using multiple approaches as well. However, that which is essential in TJ is that its result is a socially cohesive society where human rights violations and violence are addressed with guarantees of non-recurrence. These aspects are peacebuilding ingredients and raise questions on the methodologies of conflict resolution where mediation, negotiation, prosecutions, and dialogue become subjects of debate in terms of their relevance as conflict-redress tools. This study selects mediation as the methodology of choice, however.

Mediation, as a field of practice, does not have a clear-cut theory. According to Noll (2001), the current literature does not provide a clear theory of mediation. That which literature provides are explanations on “which process is better, who is qualified to be a mediator, and on outcome measurement” (Noll 2001: 1). Wall, Stark and Standifer (2001: 370) also agreed with this view and stated that “mediation per se, mediation approaches, and outcomes is very descriptive rather than theoretical.” However, conceptually, mediation theory can be understood as that which mediators do or how they act when intervening in a conflict situation. Noll (2001:1) suggested a theory of mediation that explains “various mediation styles and outcomes—when a certain approach is appropriate and why.” Both Wall, Stark and Standifer (2001) and Noll (2001) suggested that the available descriptive literature provides an ample base for theory development. According to Wall, Stark and Standifer, a review of mediation determinants and mediation approaches and outcomes can assist in theory development, while according to Noll (2001:1), “four strands: conflict goals, level of conflict escalation, mediation style or process, and outcome” are the aspects that constitute mediation theory. Arguably, both authors’ suppositions, nonetheless, point towards a model of mediation practice rather than a theory. This study, therefore,

considers the concepts of mediation and TJ as existing in a world of underdeveloped theory, hence the reliance on models and frameworks.

Therefore, in juxtaposing the concepts of TJ and mediation, it is noticeable that TJ ultimately seeks to achieve healing and reconciliation while ensuring a guarantee of non-recurrence of violence and gross human rights violations – a path towards sustainable peacebuilding. However, to achieve these, there must be a genuine transition capable of facilitating successful TJ mechanisms including truth telling, institutional reforms, justice, reparations, and memorialisation, among others. Under circumstances where the transitional contexts are fluid, conflict transformation becomes extremely essential to allow a negotiated TJ process that transmutes both perpetrators and victims' attitudes and behaviours towards a sustainable TJ (mediated peace) process. Mediation, therefore, becomes a conflict-transformation tool that both parties (perpetrators and victims) can use to transform their position, interests, and needs towards a commonly shared goal, which sustainably promotes healing and reconciliation without a sense of retribution or loss. In this view, the theory of conflict transformation becomes essentially befitting to understanding the role of mediation in TJ processes.

Conflict transformation “is about the way societies deal with conflict, moving them from violent to non-violent means” (The Cordoba New Forum 2013: 6). Lederach (1995: 1) defined conflict transformation as envisioning and responding, “to the ebb and flow of social conflict as life giving opportunities for creating constructive change processes that reduce violence, increase justice in direct interaction and social structures, and respond to real-life problems in human relationships.” This definition is in agreement with that of Jameson, Sohan and Hodge (2014: 211) who defined conflict transformation as “conflict outcomes that include a change in the relationship between parties.” As such, conflict transformation is, therefore, a process of engaging with and transforming the relationships; interests; discourses; and, if necessary, the very constitution of society that supports the continuation of violent conflict.

In performing conflict-transformation tasks, different methods are employed which include dialogue, mediation, and law enforcement, among others. However, the appropriate method for conflict transformation can only be chosen once the type of

desired change and type of actors are clearly defined (The Cordoba Now Forum 2013). Inspired by Thomas Moore (2003), the Cordoba Now Forum outlined a spectrum of conflict-transformation methods, as shown in figure 4.6.

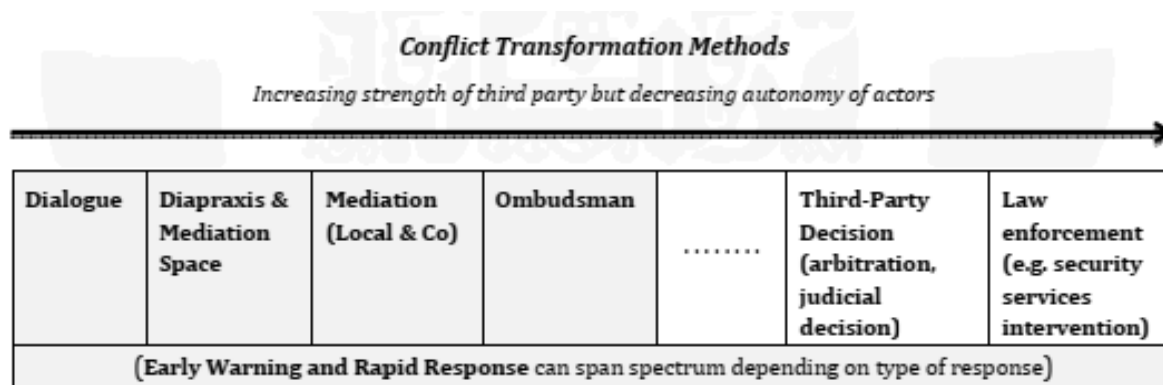


Figure 4.6: Conflict-transformation methods (Cordoba Now Forum 2013).

In view of the methods of conflict transformation presented in figure 4.6, this study considers mediation as a method to transform TJ-related conflict issues in a more sustainable way. This study contends that the legacies of violence and gross human rights violations in TJ contexts require reframing conflicting parties' positions, moving from the root causes of the conflict to the attitudes, behaviours, and structural characteristics of the involved parties (Fischer 2011). Therefore, the theory of conflict transformation can be useful to explain the role of mediation and TJ.

The conflict transformation theory assumes that human beings' existence is based on the foundations of the interdependence of their lives. It presupposes that humanity cooperates to promote good for all rather than the victory of some at the expense of others (Francis 2010, 2013) because naturally, human beings have inevitable competing interests and desires which constantly require transformative processes to balance the conflicting interests. Conflict transformation can happen at the local or national levels, be immediate or slow, or impact many people or few depending on the scale of its application and effectiveness. For parties' conflicting interests to be solved, the parties "must work together to find ways in which the needs of all can be satisfied so that the conflict itself is transformed or transcended" (Francis 2013: 507). The researcher finds this observation linked to mediation because mediation as a mechanism for dispute resolution seeks to transform conflicting parties, and its processes involve participation; inclusivity; and understanding one's position,

interests, and fears. Participation is a valuable aspect of both mediation and conflict transformation because it creates “a peace process that is grounded in shared power and will work to meet the needs of all” (Francis 2013: 508). Therefore, applying conflict transformation in an attempt to understand the role of mediation in TJ is appropriately placed.

Mediation is capably transformative; it transforms conflict issues to become acceptable to victims and perpetrators, which is a direction towards sustainable peacebuilding. Through mediation, a focus on the aspects projected by the conflicting parties is essential because conflicts are contextually defined by the attitudes and behaviours that form their reality (Miall 2004), hence Galtung’s observation that transforming conflicts requires focusing on the interests, relationships, and discourses within society and the conflicting parties (Galtung 1996). Fischer (2011) expounded this idea by narrating that unfavourable relationships within communities create divisions and could hinder peacebuilding, while memories are constructed understandings of societies and could be varied according to culture, age, and religion, among other factors and could lead to social divisions and hence possible conflict. In view of the foregoing discussion, it can be argued that mediation processes should be designed to create a fertile ground for conflict transformation (Ahere and Hellmüller 2014: 8). If this argument holds water, transformative mediation becomes a central theory that engages mediation and TJ befittingly.

Transformative mediation focuses on the empowerment and recognition of the disputants (Bush and Folger 2004; Gaynier 2005). The mediator does not control the outcome of the mediation process. Folger and Bush (2014) based their assumption of transformative mediation on the theory of human morality and the relational world view. The authors argued that disputants have “as much needs and capacity for self-determination and human connection as they do for the fulfilment of their material needs and interests” (Folger and Bush 2014: 22). Therefore, transformative mediation empowers disputants to take a “relational orientation” rather than a relationship orientation as “people in conflict may decide to end relationships but they are capable of doing so in a relational way” (Folger and Bush 2014: 23). This relational aspect of transformative mediation is essential in grassroots TJ as it “replace[s] directive, top-down processes of resolution by an authoritative outsider” (Folger and Bush 2014: 21).

The cornerstone of this transformative mediation is its ability to empower disputants to address their differences which is essential in TJ as well.

However, transformative mediation ignores “the powerful influences of resistance, a disputant’s own competing (conflicting) interests and the mediator’s lack of awareness of herself as a player in the dynamic” (Gaynier 2005: 401). It is highly likely that in circumstances of TJ where the victim or perpetrator does not value the purpose of the mediation process, there will be resistance which frustrates the intended objective of conflict settlement and problem solving. Nonetheless, for the purposes of this study, transformative mediation appears fitting, given that grassroots communities desire peaceful coexistence and moral growth as opposed to resistance. Notably, the aims and processes of mediation and conflict transformation are intertwined and interdependent. Figure 4.7 is a diagrammatical presentation depicting the role of transformative mediation in transmuting TJ-related conflict processes, based on the author’s observation.

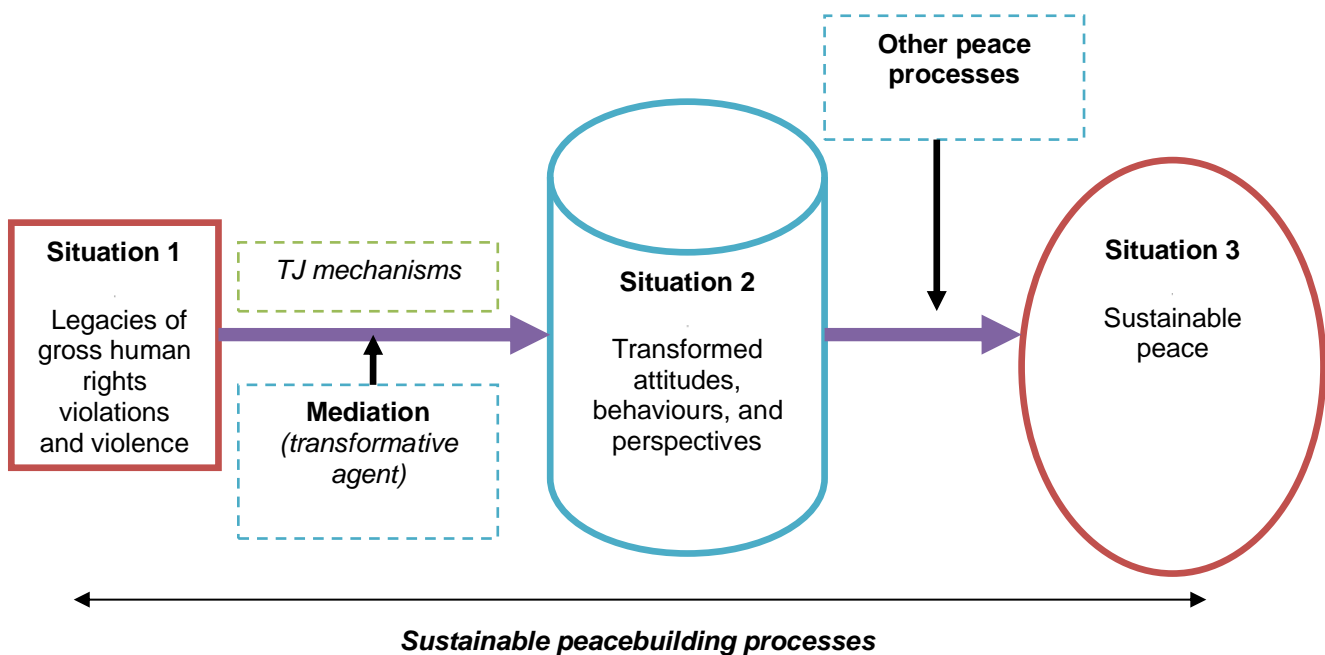


Figure: 4.7 Role of transformative mediation in transmuting transitional-justice-related conflict processes (Source: Author).

As noted earlier, transformative mediation is concerned with moral growth and relational alterations, and mediation as a transformative agent transforms actors (victims, perpetrators, and state institutions), issues, rules, and structural challenges.

This perspective links well with Wall, Stark and Standifer (2001) mediation framework where the interaction of mediation processes leads to disputants, mediators, and third-parties' outcomes which, in this case, are different transformations. This notional objective of transformative mediation, therefore, links well with TJ aims such as healing and reconciliation. TJ seeks to ensure that conflicts are not only transformed but also that the victims of human rights violations feel satisfied with the outcome of the conflict and have a feeling of being healed or reconciled. Nonetheless, it is also essential to appreciate that although justice and equality are central values to conflict transformation (Miall 2004; Wils *et al.* 2006), the process is not concerned with the achievement of justice, but rather how the conflict changes parties' future relations. This causes conflict-transformation concepts to be contrary to TJ objectives. As such, where one applies conflict transformation theory to TJ, one should identify the type of transformation that is needed and why it is necessary. For example, actor transformation, issue transformation, rule transformation, and structural transformation (Miall 2004) can be categories of mediation within TJ contexts.

In view of the above discussion, a deduction from the review of literature shows that building a theory linking TJ and mediation is complex. This is because both TJ and mediation literature remain descriptive of the practices (mediation and TJ). In addition, TJ is a broad interdisciplinary subject, the practice of which continues evolving contextually while mediation has largely been conceptualised in terms of its diversity in approaches, styles used, and variants in objectives. For the purposes of this study, a conceptual framework works best to explain how mediation plays a transformative role in addressing the goals of TJ, as outlined in the conceptual framework above.

While this section provided a review of the literature on the concept of TJ, mediation, and the role of conflict transformation, the following sections provide a practical action research methodology where local mediation processes are applied to address TJ-related conflict issues. In adopting the action research methodologies to facilitate TJ processes, the researcher was conscious that "one of the major difficulties in mediation, is how to design the process" (The Cordoba Now Forum 2013: 8) hence the need to be flexible and consider constant adjustments.

4.6. Chapter Conclusion

This chapter discussed diverse theories and concepts linking mediation, transitional justice, and sustainable peace building. Mediation theory is central to the study because it is its functions that are being investigated in the context of grassroots transitional justice. Notably, there are no clear-cut theoretical descriptions explaining how mediation plays a role in TJ, especially at grassroots levels. What is outstanding from the foregoing discussion is that mediation theories combined with the theories of TJ and conflict transformation suggest that transformative mediation is a more relevant concept that addresses the interaction between mediation and TJ in sustainable peacebuilding processes at grassroots levels.

Mediation as a field of practice involves the resolution of conflicts by third parties who attempts, through participation in face-to-face negotiations with the disputing parties, assist those parties to reach an agreement that resolves the dispute. A mediator does not have authority to impose an outcome of the mediation process. Rather, mediation outcomes are dependent on various factors including the type of the mediator (authoritative, independent, facilitative); the mediation strategies and styles adopted by the mediator (power-broking, dominating, problem solving, or transformative) and the disputants' attitudes towards the mediation process, among other factors. Mediation as a mechanism for TJ can assist creating a safe space for victims and perpetrators to engage in a process where truth telling and truth extraction takes place, reparations are agreed, apologies issued and healing and reconciliation occurring.

CHAPTER 5: RESEARCH METHODOLOGY

5.1. Introduction

This chapter describes the research methods that were adopted to collect and analyse data towards meeting the research objectives set out in Chapter 1. A mix of primary and secondary data collection and analysis methodologies were used in this study and are presented in this chapter. The study adopted an action research approach to explore the role of mediation in TJ at the grassroots level. Action research involves understanding the phenomena under study through field experiences following steps including problem identification, data collection, interpretation, acting on evidence, and the evaluation of results (Adebayo 2017). Focus group discussions, key informant interviews, and practical participatory field experiences were used as methods of collecting data and acquiring knowledge. The study was carried out in Makoni District, Manicaland Province, in Zimbabwe.

The research questions to be answered determine the method in which data collection and analysis will be conducted (Krathwohl 1998: 27). Hence, qualitative action research, as a study method, was chosen because of its ability to provide practical solutions to complex human problems around which TJ is, or should be, practised to advance sustainable peace and human rights. The central question that this study sought to answer is *what is the role of mediation in grassroots TJ processes?*

5.2. Research Aim Synopsis

As noted in Chapter 1, this study in overall aimed at exploring the role of mediation in grassroots TJ processes using action research methodologies. Transitional justice is a post-conflict peacebuilding process while mediation is a conflict resolution mechanism. In this study mediation, therefore, is treated as a catalysing component for TJ related peacebuilding processes. The study was carried out as an action research programme where practical mediation interventions were undertaken in Makoni District in Manicaland Province (Zimbabwe).

The “theory of acquiring knowledge and the activity of considering, reflecting upon and justifying the best methods determines research methodologies considered by researchers.” (Wellington *et al.* 2012: 97). Therefore, for this study, data collection involved four stages, which included conducting (i) 19 key informant interviews, (ii) five focus group discussions, (iii) practical project implementation involving two mediation groups and (iv) project evaluation involving three focus group discussions. For ease of data collection and analysis, the overall research objective was broken down into three specific sub-objectives, which are to: establish the role of mediation in grassroots TJ processes; strengthen the demand for mediation in grassroots TJ interventions and evaluate the effectiveness of mediation in grassroots TJ processes.

To establish the role of mediation in grassroots TJ processes; literature related to mediation and transitional justice was reviewed, which provided a strong theoretical understanding of the subject under study and abstract knowledge on how mediation works in practice and how the concept can be applied to TJ. A total of 19 key informant interviews and five focus group discussions were also conducted to gain both expert views and community-level thoughts about the use of mediation in addressing TJ issues at grassroots level. The action research interventions (a mediation project involving two groups) served to provide practical knowledge on how mediation applies in practice to TJ interventions. The central question that guided actions towards achieving this objective was: How can the demand for mediation in grassroots TJ interventions be increased?

To strengthen the demand for mediation in grassroots TJ interventions: A key question ‘How can the demand for mediation in grassroots TJ interventions be increased’ was asked to both key informant interviewees and FGDs participants. Responses from these two data collection methods were used to design a practical mediation intervention in Makoni District within 2 wards. Before carrying out the mediation interventions, I convened a meeting to co-create a training manual, which I then used to train potential mediators in 2 wards, Ward 12 and 13. Participants for the co-creation process were local community members, traditional leaders, Councillors, and church leaders some of them had participated in the FGDs. The contributions from the co-creation meeting were used in developing a training manual on ‘Everyday Transitional Justice Mediation.’ Thereafter, two groups of potential mediators were

established and trained in mediation and conflict resolution. The trained participants were empowered to practice mediation as a conflict resolution mechanism that could help them address TJ related conflicts in a way that builds sustainable peace. It was anticipated that if the mediation pilot study was successful, the successes will motivate victims and perpetrators of past gross human rights violations and TJ stakeholders to reach out to the mediators demanding for support in addressing TJ related conflicts. Thus, making research and research outputs address real problems affecting communities and contribute to social change through the local agencies.

To evaluate the effectiveness of mediation in grassroots TJ processes: the central question that guided the researcher in working towards achieving this objective was: How effective is mediation, when employed at grassroots level, in addressing TJ issues? Evaluation sessions were carried out, through both physical and virtual meetings, with the two mediation groups that carried out the mediation activities. Some local community members who benefitted from the mediation process were also interviewed to get a glimpse of their thoughts. These approaches helped the research to establish the of mediation in supporting grassroots TJ processes.

5.3. Research Design

An exploratory qualitative research design informed this study's research questions, data collection instruments, data analysis, interpretation, and recommendations (Creswell 2014: 288). The research design defines the research strategy adopted by a researcher, which links the research problem to the actual research processes (Mouton 2001; Bryman 2005). Therefore, an exploratory research design involves investigating a problem that is not clearly defined and where the researcher knows little about the issue under study (Reiter 2017; Bhat 2020). Research design is usually "conducted about a research problem when there are few or no earlier studies to refer to or rely upon to predict an outcome" (Witt 2019: 1). In this instance, the role of mediation in TJ processes, especially at grassroots levels, is less documented. There is no visible literature emphasising or rather evaluating the use of mediation as an approach to effective TJ processes.

The goal of exploratory research designs is to “establish a well-grounded picture of the situation being developed, gaining familiarity with the basic details, settings and concerns under study, determining whether the study is feasible in the future and to generate new ideas and assumptions” (Witt 2020: 1). According to (Bhat 2020: 1):

For such a research, a researcher starts with a general idea and uses this research as a medium to identify issues, that can be the focus for future research. An important aspect here is that the researcher should be willing to change his/her direction subject to the revelation of new data or insight.

In this study, as noted earlier, data collection involved four stages, which included conducting (i) 19 key informant interviews, (ii) five focus group discussions, (iii) practical project implementation involving two mediation groups and (iv) project evaluation involving three focus group discussions. These data collection methods adopted provided the best strategy of acquiring rich, in-depth knowledge that provides practical, participatory, problem-solving actions and solutions to daily human problems of conflict and violence. This agrees with the view of Wellington *et al.* (2012: 97) who noted that the “theory of acquiring knowledge and the activity of considering, reflecting upon and justifying the best methods determines research methodologies considered by researchers.”

5.4. Research Population and Sample

This study’s target research population were men and women, youths, civic organisations, traditional and church leaders, war veterans, political parties, locally elected officials, and opinion leaders drawn from Makoni District in Zimbabwe. The research population refers to the larger sample in which the research participants will be selected (Jacobs 2010). Makoni District has a total population of 272,340 (ZIMSTATS 2012) in 39 wards. The district has 133,632 males and 138,978 females. Given that this study is qualitative and exploratory, a sample of 50 people was selected to participate in five focus group discussions (FGDs) with at least 10 participants per each FGD. The 50 were selected by virtue of them being residents of Makoni District and notable community members motivated to contribute to peacebuilding within the targeted 3 wards where the researcher intended to collect the initial data to understand the nature of TJ issues in the district. Further, 50 was also a reasonable number that would make each of the five FGDs to have a maximum of 10 participants.

Notable to understand also is that I had previously worked with some of the participants as members of local peace committees, hence, I had an understanding of the targeted communities and the diversity of the attracted participants.

In addition, a total of 19 key informants drawn from the peacebuilding, TJ, and human rights and governance sectors were interviewed with a view to gather expert knowledge on the subject under study. The 19 participants were specifically chosen as interviewees because of their known work in peacebuilding, as government agencies and as individuals capable of informing the study with unique knowledge unknown to the researcher.

This study used non-probability sampling techniques, purposive sampling, and snowballing in selecting research respondents for both the FGD participants and key informants. The purposive sampling technique “is a deliberate choice of an informant due to the qualities the informant possesses” (Tongco 2007: 147). In other words, the researcher decides from whom to collect data based on the respondent’s willingness to participate and their knowledge and experience.

The snowballing technique was used in selecting research participants for the FGDs. According to (Etikan and Bala 2017: 49) “this technique is useful when the researcher knows little about a group or organisation to study; contact with few individuals will direct him to other groups.” I knew some of the participants from the targeted three wards from my peacebuilding work at Heal Zimbabwe Trust whereas other participants were new and had been mobilised by the few known to me, hence the snowballing factor.

5.5. Data Collection: The Action Research Process

As noted earlier, this study is an action research initiative. Action research “is a disciplined process of inquiry conducted by and for those taking the action” (Sagor 2000: 1). Action research process involves about five steps beginning with identifying the research problem, collecting data, data interpretation, acting on the observed evidence and the evaluation of results (Adebayo 2017). These steps, according to Lewin (1946 cited in (Townsend 2013: 10), “are composed of a circle of planning, action, and fact finding about the result of action.” This portrays action research as a

field of study that allows testing social issues in reality “on the basis of their practical effectiveness.” As such, as an intellectual inquiry, action research allows both the researcher and the research subjects to provide practical solutions to problems in societies (Kaye and Harris 2017). This agrees with the view of Torre (2009) cited in (Life & Peace Institute 2015: 11) who defined action research as “a framework for creating knowledge that is rooted in the belief that the most impacted by research should take the lead in framing the questions, design, methods, analysis and determining what products and actions might be the most useful in affecting change.” In addition, action research provides an optimal opportunity for change and learning to take place. “Any research that produces nothing, but books will not suffice” (Lewin 1948: 202-203), especially when it fails to produce transformation and change. According to (Carr 2006: 421), action research “functions to sustain a distorted understanding of what practice is.” Its main advantage is that it helps researchers to “overcome limitations of traditional methodologies.” Figure 5.1 shows the action research process.



Figure 5.1: The action research process (Source: Kaye and Harris 2017).

As shown in Figure 5.1, the action research process involves five stages, but it does not necessarily follow the sequence of the outlined stages, thus fitting it perfectly within the exploratory research design. Sagor (2000), however, considered that action research has seven steps, including selecting a focus, clarifying theories, identifying

research questions, collecting data, analysing data, reporting results, and taking informed action. Based on the above action research cycle, to conform with action research design, in this study the action research processes began on the third stage (acting on evidence) when two mediation groups were established, trained to acquire mediation skills, and then practically carried out the mediation processes (more details to be provided in the subsequent section).

Nonetheless, when applied to peacebuilding processes including TJ, action research ensures participation in data collection, giving the communities under study full control of the research processes. According to the (Life & Peace Institute 2015: 12), the applicability and premise of action research to peacebuilding “lies in the ‘everyday’ understanding of peacebuilding, that is including survival strategies and perceptions of peace, security and change at the local level in broader programming to ensure local support and broader sustainable change and peace.” It is with this understanding that this study chose to use action research as a method of intellectual inquiry to understand how grassroots communities can use mediation as a mechanism to facilitate TJ processes.

The following subsections provide a clear outline of how this study performed data collection and analysis and stages where the action research processes began to conform with action research design.

5.5.1. Primary Data Collection

Primary data refers to data originating from a researcher for the first time. Primary data sources include interviews, questionnaires, focus group discussions, observations, and surveys (Pérez-Sindín 2013; Ajayi 2017). Primary data sources are essential because they provide the researcher with real-time factual data which is also highly specific to the researcher’s needs. This study collected data through 19 key informant interviews, 5 FGDs, a practical field project experience that involved one training manual co-creation workshop, and three evaluation FGDs. Initial FGDs and key informant interviews were carried out concurrently while the field project implementation and impact assessment were carried out thereafter. Table 5.1 below provides a presentation of how data was collected.

Table 5.1: Data collection methods used during the study

Data collection method	Detailed data collection process
Key informant interviews (preparatory data)	19 key informant interviews carried out to gain the broader understanding of TJ
Focus group discussions (preparatory data)	5 focus group discussions carried out in three wards (ward 12, 13 and 16).
Field intervention project	1 training manual co-creation workshop and two mediation groups established and one training carried out.
Evaluation focus group discussions	3 evaluation focus group discussions carried out to measure project impact

a. Key Informant Interviews

Key informant interviews are purposeful conversations held to obtain in-depth information from knowledgeable persons in the research field or subject under study (Adams and Cox 2008). A total of 19 key informant interviews were conducted targeting knowledgeable persons in the field of peacebuilding, TJ, and the general human rights and governance fraternity. The 19 participants were largely practitioners in peacebuilding and conflict transformation, including university lecturers (in politics, governance, and peacebuilding), political-party leaders, war veterans, individuals from government agencies, and members of the civic society. Table 5.2 below shows the categories of key informants who participated in this study.

Table 5.2: Respondents' categories in key informant interviews

Category	Number of Respondents	Overlapping Category*
Academic	2	1
Civic Society	8	
Political Parties	3	
Government Agencies	2	1
Church	2	
War Veterans	2	

* Overlapping category means that someone counted in this group also qualifies to be in any of the other categories listed in the table.

Key questions asked to key informant interviews related to their understanding of TJ and how they see mediation playing a role in healing and reconciliation processes in Zimbabwe and how sustainable peace can be built. I also asked the participants to

identify conflict episodes warranting a TJ process and how the process can be carried out in a way that builds sustainable peace. Challenges and opportunities to pursuing a grassroots TJ process using mediation were also discussed during the key informant interviews. Their input provided national-level insights on that which constitutes TJ and how mediation can be conceptualised within the Zimbabwean TJ contexts. The key informant interviews were carried out between June 2019 and May 2020. The researcher continued carrying out key informant interviews within the stated period until a saturation point was reached where new issues were no longer emerging from the collected data. In addition, data analysis was simultaneously conducted together with the data collection. Below is a table showing the key informant interviewees list and their coding. Table 5.3 below shows the coding of each interview response.

The coding was used for in-text referencing in chapters where data presentation and analysis was done.

Table 5.3: List of interviewees and their coding references

KII 1	Personal interview with KII 1, former political liaison officer at the Joint Monitoring and Implementation Committee (JOMIC), 08 August 2019, Harare
KII 2	Personal interview with KII 2, transitional justice researcher, Research and Advocacy Unit (RAU), 09 August 2019, Harare
KII 3	Personal interview with KII 3, development worker, Zimbabwe Council of Churches (ZCC), 27 August 2019, Harare
KII 4	Personal interview with KII 4, natural resources governance activist, Centre for Natural Resources Governance (CNRG), 29 August 2019, Mutare
KII 5	Personal interview with KII 5, peacebuilding practitioner in natural resources conflict areas, 31 September 2019, Zvishavane
KII 6	Personal interview with KII 6, community mediation facilitator, Tree of Life (ToL), 24 September 2019, Harare
KII 7	Personal interview with KII 7, former army officer and Zimbabwe African National Patriotic Front (ZANU PF) member, 07 October 2019, Harare
KII 8	Personal interview with KII 8, former liberation war veteran, Zimbabwe African People's Revolutionary Army (ZIPRA) representative, 20 November 2019, Bulawayo
KII 9	Personal interview with KII 9, peacebuilding practitioner, Centre for Peace Initiatives in Africa (CPIA), 08 January 2020, Harare

KII 10	Personal interview with KII 10, transitional justice practitioner at the National Peace and Reconciliation Commission (NPRC), 16 September 2020, Harare
KII 11	Personal interview with KII 11; youth development officer; Community Tolerance, Reconciliation and Development (COTRAD); 05 January 2020; Masvingo
KII 12	Personal interview with KII 12, gender activist and development worker, Emthonjeni Women's Forum (EWF), 31 January 2020, Bulawayo
KII 13	Personal interview with KII 13, liberation war veteran and former mayor of Masvingo Urban, 05 January 2020, Masvingo
KII 14	Personal interview with KII 14, church and civic society leader, Grace to Heal, 01 January 2020, Bulawayo
KII 15	Personal interview with KII 15, peacebuilding expert and academic, Africa University (AU), 10 September 2019, Mutare
KII 16	Personal interview with KII 16, Member of Parliament and Provincial Chairman for War Veterans, 30 December 2019, Bubi
KII 17	Personal interview with KII 17, President of Rebuilding Zimbabwe party and church leader, opposition political party, 15 September 2019, Harare
KII 18	Personal interview with KII 18, church leader, Evangelical Fellowship of Zimbabwe (EFZ), 10 September 2019, Harare
KII 19	Personal interview with KII 19, Member of Parliament, opposition party MDC Alliance, 12 February 2020, Bulawayo

Table 5.3 above provides an overview of the total key informant interviewees and their profiles. The abbreviation KII represents key informant interviewee.

b. Focus Group Discussions

The researcher carried out FGDs thrice, albeit in different phases of the study. FGDs involve group conversations with purposefully selected participants who have an idea about the topic under study (Rabiee 2004). The first set of FGDs were five FGDs carried out between 12 and 13 August 2019 in Makoni District. Specific participating communities were research participants from three wards, namely, wards 12, 13, and 16. The number of participants per FGD ranged between 5 and 11; the largest group had 11 participants while the smallest group had five participants.

Phase 1 FGDs (preparatory data collection) – I carried out 5 initial FGDs in three wards (12, 13, 16) to gain a broader understanding of TJ related issues in Makoni District and how the participants understood mediation, from a grassroots perspective. The FGDs were carried out to understand the communities’ conceptualisation of TJ, their perception of mediation, potential actors, and known mediation challenges and opportunities. The participants of these five FGDs were mobilised through a former councillor in the research area who was generally aware of the socio-economic and political dynamics in Makoni District. The contact also made efforts to obtain a diverse group of participants including women, men, and youth; and victims of violence, perpetrators, traditional leaders, councillors, ward development committee members, and the general community members who consented to participate in the study. The FGDs were carried out in natural environments in terms of the venues’ neutrality and acceptability to participants. The participants knew each other and could relate to issues within their localities which enhanced some level of trust during the conversations as well as the general quality of the conversations. Notably, some of the participants were known to me due to their involvement in local peace committees that I worked with in my grassroots peacebuilding work. Table 5.4 below shows the coding of FGDs, the wards in which they were carried out and dates.

Table 5.4: Preparatory group discussions held in three wards (including ward 16)

	Phase 1 FGDs (preparatory data collection)
FGD1	Personal interview with FGD2 research respondents in Ward 13, 12 August 2019, Makoni
FGD2	Personal interview with FGD2 research respondents in Ward 16 , 12 August 2019, Makoni
FGD3	Personal interview with FGD3 research respondents in Ward 16, 12 August 2019, Makoni
FGD4	Personal interview with FGD4 research respondents in Ward 12, 13 August 2019, Makoni
FGD5	Personal interview with FGD5 research respondents in Ward 12, 13 August 2019, Makoni

While table 5.4 (above) shows the coding of all five initial FGDs carried out, table 5.5 (below) shows the number of participants per each FGD conducted.

Table 5.5: Number of participants per each FGD

Category	Number of Respondents
FGD1 (ward 13)	11
FGD2 (ward 16)	9
FGD3 (ward 16)	5
FGD4 (ward 12)	8
FGD5 (ward 12)	10
Total participants	43

Phase 2 FGDs (training manual co-creation) – the second set of FGDs were a single workshop carried out to co-create a training manual. This co-creation process *involved* identifying 20 participants from two of the three wards as participants for the action research training and for experimental mediation purposes. However, before being trained, they needed to identify their own training needs, gaps, and scaling opportunities, hence the co-creation workshop. So, with the help of some participants from the first phase FGDs, I identified 20 participants from two of the three wards as participants who were then brought together on 18 October 2019 to discuss the key mediation skills and issues that they would like to learn and address in their project. The participants included traditional leaders, church leaders and notable people in the targeted communities generally known as mediators and peacebuilders. Table 5.6 below shows how the data from the co-creation workshop were coded and referenced in-text.

Table 5.6: Focus group discussions held to co-create a training manual

	Phase 2 FGDs (training manual cocreation)
FGD6	Response from one of the participants at the co-creation meeting, held in Makoni Ward 13 on 18 October 2019.

Key questions that were asked during the co-creation workshop included understanding: what training needs do you have regarding mediation, and what issues should be part of the training? and how should the training be undertaken, and who should participate in the training as possible and relevant mediators for local TJ processes?

Data from this co-creation workshop was combined with data sets from the key informant interviews and the first phase of FGDs to develop a comprehensive training manual. The training manual developed, was titled *Mediation for Sustainable Peacebuilding: A Training Manual for Community Mediators in Everyday Transitional Justice* and was inclusive of data from experts and informed by grassroots beneficiaries. This manual was then used to train a group of 21 potential mediators on the 14th of March 2020, all of whom had participated in the co-creation training, plus one additional person who volunteered to be added into the group because of her interest in conflict resolution. It is important to mention that 21 people attended the training, one community member insisted, he wanted to be part of the mediation skills training.

Phase 3 FGDs (intervention evaluation processes) – when the mediation intervention was coming to an end, I carried out three evaluation exercises to measure the project's impact. The evaluation activities will be explained in detail in chapter 8. However, in brief, the first evaluation was carried out on the 10th of September while the last evaluation was carried out on 15th January 2021. Table 5.7 below shows how the data from the evaluation FGDs was coded and referenced in-text.

Table 5.7: Focus group discussions held to evaluate the mediation field interventions

Phase 3 FGDs (intervention evaluation processes)	
FGD 7	Response from research participants at an evaluation workshop held on 10 September 2020
FGD 8	Response from research participants at an evaluation workshop held on 04 December 2020
FGD 9	Response from research participants at an evaluation workshop held on 15 January 2021

To show the overview of the data collection journey travelled, I provide a diagrammatic presentation below, in figure 5.2. This presentation is also shown in chapter 8.

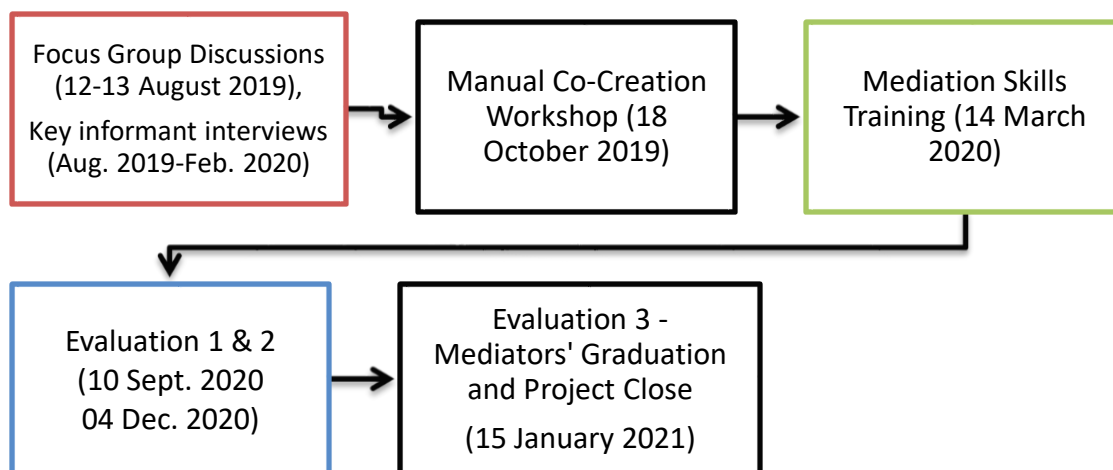


Figure 5.2: Practical field research project timelines (source: Author)

This whole primary data collection process was not smooth, however. Primary data collection is notably expensive and time-consuming. This study experienced challenges with financing more field visits to monitor the mediation pilot-project activities. These will be detailed in chapter 8.

5.5.2. Secondary Data Collection

Secondary data is data that has been collected by someone from whom the data did not first originate. The data would have been collected for other purposes but is still useful to other researchers (Pérez-Sindín 2013). This type of data is obtained through a review of literature sources including textbooks, journal articles, newspapers, and reports from non-governmental organisations including human rights protection institutions such as the Zimbabwe Human Rights NGO Forum, Heal Zimbabwe Trust, Amnesty International and the Human Rights Watch, among other sources. This study used these above-mentioned sources to explore the nexus of mediation and TJ and how mediation at grassroots levels supports TJ. Secondary data was largely used to gain an in-depth analysis of Zimbabwe's past and present TJ efforts, as presented in chapter 6.

Using secondary data was time-saving and less expensive, and the data was easy to access. Most secondary data sources were accessed through online research portals and websites which made the process much easier as compared to primary data collection. However, the researcher was also conscious that using secondary data

sources does not provide the precise research data required, hence a variety of data sources were consulted to ensure that relevant in-depth data was collected. The text data sample (relevant literature related to the study) is listed in the table 5.8 below.

Table 5.8: Reviewed text on Zimbabwe's past TJ efforts

Text sources	Nature of data collected
Bratton and Masunungure (2006), Chung (2006), Dawson (2011), Eppel (2004), Machakanja (2010), Mashingaidze (2005), Munemo (2016), Ndlovu-Gatsheni (2013), Ndlovu-Gatsheni and Benyera (2015), Raftopoulos and Mlambo (2009), Sadomba (2011), Sithole (1979), Tendi (2017)	These authors provided in-depth text on the country's conflict history and the challenges for transitional justice for example, Machakanja detailed transitional justice needs for Zimbabwe and a history of past healing and reconciliation efforts while Eppel zeroed in on the Gukurahundi atrocities and how transitional justice is direly needed for the victims. Sadomba provided a detailed account linking land conflicts, the liberation struggle, and the need for reparations.
Human Rights NGO Forum, (2003, 2020, 2021), Amnesty International (2020), Human Rights Watch (2019, 2020, 2021), Heal Zimbabwe (2018, 2019, 2020), Catholic Commission for Justice and Peace [CCJP] (1997), Zimbabwe Peace Project [ZPP]	These institutions provided grey literature on the state of human rights in Zimbabwe through either news updates or detailed analytical reports. These data sources (some of them) were important in that they also provided human rights trends depicting different conflict episodes and human rights violations since independence.

The text reviews provided above in table 5.8 were mainly used for historical narrative reviews carried out specifically for chapter 6. The data was analysed using thematic analysis, as detailed in subsequent sections.

5.6. Data Analysis

This study used content and thematic analysis tools to analyse the collected data throughout the action research process. Content analysis was used to analyse secondary data detailing historical narratives of conflict and TJ efforts in Zimbabwe, while thematic analysis tools were used to analyse primary data collected through key informant interviews and FGDs. Secondary data is presented and analysed mainly in

Chapters 2, 3, 4 and 6 of this study, while the primary data is presented and analysed in Chapters 7, 8 and 9. The following subsections present detailed explanations of content and thematic analysis tools and how they were applied in this study.

5.6.1. Content Analysis

Content analysis is a research approach used by researchers to identify patterns, meaning, relationships, and concepts within written text and oral and visual communication sets. “The objective in qualitative content analysis is to systematically transform a large amount of text into a highly organised and concise summary of key results” (Erlingsson and Brysiewicz 2017: 94). The sources of data used for content analysis include “books, book chapters, essays, interviews, discussions, newspaper headlines and articles, historical documents, speeches, conversations, advertising, theatre, informal conversation, or really any occurrence of communicative language” (University of Missouri–St. Louis 2004: 1).

The choice to use content analysis in this study was mainly made to identify Zimbabwe’s conflict narratives and TJ efforts that were documented before and after the country’s independence. Rather than solely relying on key informant interviewees and FGDs, it was pertinent for the research to begin by extracting the many narratives of conflict and healing and reconciliation that have been peddled in the Zimbabwean TJ discourse. The researcher was, therefore, able to collect data that could be easily coded into themes with consistency and at a low cost. The data collected was also flexibly collected and analysed over time, given that there was ample time to collect data and perform data analysis progressively and simultaneously.

Inductive content analysis was employed specifically in Chapters 4 and 5 where the researcher analysed information from textbooks, journal articles, newspapers, speeches, and websites with relevant information on the history of Zimbabwe, the country’s conflict episodes, and TJ efforts experienced before and after independence. Inductive content analysis involves organising qualitative data systematically by open coding, creating categories, and abstraction (Elo and Kyngäs 2008: 109). The researcher was able to collect data with flexibility in terms of time and analyse the data as and when convenient. While content analysis can be used in both qualitative and

quantitative research (Elo and Kyngäs 2008; Mayring 2014; Bengtsson 2016), in this study, the data analysis technique was purely used for qualitative research needs.

5.6.2. Thematic Analysis

This study also employed thematic analysis to analyse data gathered through key informant interviews and FGDs. Thematic analysis is a research tool that is used to identify and “interpret patterns of meaning (themes) within qualitative data” (Clarke, Braun and Hayfield 2015: 297). The choice of using thematic analysis to interpret data collected from key informant interviewees and FGD participants was based on the view that the technique allows the researcher to code data from research questions and build themes with flexibility. According to Clarke, Braun and Hayfield (2015: 297), “the hallmark using thematic analysis is its flexibility – not simply theoretical flexibility, but flexibility in terms of research question, sample size and constitution, data collection method, and approaches to meaning generation.” In this study, the researcher interviewed 19 key informants and carried out five FGDs. Through thematic analysis, the researcher was also able to interpret social meaning and patterns of the research participants’ lived experiences, practices, and behaviours towards the use of mediation in TJ processes. In addition, the researcher was able to identify cross-referenced data between the evolving research themes (Alhojailan 2012).

The analytical approach allowed the researcher to give a succinct structure to the collected data while identifying, comparing, and determining data on which he would focus (Alhojailan 2012). Rabiee (2004: 567) advised that “the process of data analysis begins during the data collection, by skilfully facilitating the discussion and generating rich data from the interview, complementing them with the observational notes and typing the recorded information.”

5.6.3. Simultaneous Data Collection and Analysis

It is important to also highlight that the researcher simultaneously performed data collection and analysis during the key informant interviews and FGDs. The researcher used this approach to avoid being overwhelmed by large volumes of data and, more importantly, to capture important nuances as the data collection process unfolded. Simultaneously collecting data and analysing it is a good practice in qualitative

research, as Merriam (2009: 170) argued that “you have undermined your entire project by waiting until after all the data are collected before beginning the analysis.” This is also mainly because it is sensible, effective, and efficient to organise data, make reductions, comparisons, and reconfigurations as data (comes in) accumulates progressively.

Concurrently collecting data and analysing it also made it easier to begin coding issues and categorising them into specific themes progressively. This was especially interesting when data collected from key informant interviews was to be concurrently analysed with views from the FGDs. There were many issues and themes that resonated with both research-participant categories, hence advantageous to the researcher. More critical is that the researcher was able to determine the saturation point of both key informant interviews and FGDs. The saturation point is reached when one is convinced that no new data or issues different from those already coded and themed will emerge. In this study, the saturation point reached in the FGDs was five (groups), while in the key informant interviews, a saturation point was determined after 19 interviews had been carried out. Finally, in assessing the impact of the action research project, three focus group discussions were carried out (FGD 7, 8, and 9).

The use of thematic and content analysis techniques were above standard, as noted by Terry *et al.* (2017). The authors noted that interviews for thematic analysis should number between 15 and 20 when data is the only part of the entire project, while FGDs should number between three and six – both these standards were met in this research study, with 19 key informant interviews and five FGDs being carried out.

5.7. Data Validity and Reliability

In research work, study findings must be both valid and reliable. Validity, on the one hand, describes the extent to which the research tools accurately measure that which they intend to measure. “Validity is concerned with the meaningfulness of research components” (Drost 2015: 114). In this view, validity concerns itself with the “accuracy and trustworthiness of instruments, data, and findings in research” (Bernard 2006: 53). Using the incorrect instruments in data collection leads to invalid data being collected.

Reliability, on the other hand, describes the extent to which the research results can be repeated “when different persons perform the measurements, on different occasions, under different conditions, with supposedly alternative instruments which measure the same thing” (Drost 2015: 106). This means that for a study to be considered reliable, one should be able to use a similar or different instrument and arrive at the same answer more than once.

More critical and applicable to this study is that there is a need to understand that research validity and reliability also depend on whether the study is a qualitative or quantitative study (Tichapondwa 2013; Drost 2015).

5.7.1. Validity

The difference between validity in qualitative and quantitative research is that:

[I]n quantitative research there are two types of validity, namely internal validity, and external validity. Internal validity is the extent to which research results can be accurately interpreted while external validity is the extent to which research results can be generalised to populations and conditions ... in qualitative research validity is measured in terms of truthfulness of findings, comparability of results and, to some extent, translatability (Tichapondwa 2013: 34).

In this study, to ensure that the research results were valid, the researcher used standardised data collection tools which included a standard key informant interview guide, a standard FGD guide, and standard post-project-implementation evaluation questions. The tools were used consistently and were pre-tested before using them for the actual research process.

5.7.2. Reliability

Reliability describes the consistency and stability of measurements in a variety of situations (Drost 2015). “In quantitative research, reliability refers to the repeatability, replicability and consistency of research ... while in qualitative research reliability is measured in terms of dependability, confirmability and observer agreement” (Tichapondwa 2013: 35). Given that this study is a qualitative research study, to ensure reliability, the researcher collected data from multiple sources using different data collection tools whilst measuring the same aspects, and triangulation was carried

out to check data consistency in terms of converging and diverging results. Results from this study can be reliably measured by observer agreement and are dependable. The findings may not be generalised, however, due to high dynamisms in the Zimbabwean socio-economic and political contexts.

5.8. Ethical Considerations

5.8.1. Confidentiality and Anonymity

The study respected the confidentiality of all the research participants. The data collection process avoided using identifiable participant names. However, participants whose identities were noted were those who expressly consented to having their names identified in the study. All other participants' identities were kept anonymous and were not exposed to anyone other than the researcher and the supervisor.

5.8.2. Data Security

All the data collected was kept under lock and key and in off-site electronic-storage facilities. The data will be disposed of three years after satisfying the university's research requirements and the awarding of the Doctoral studies certificate. However, materials carrying non-confidential work will be kept for future academic writings and professional mediation practice.

The researcher directly recruited research participants purposively because the proposed topic required that knowledgeable persons and those with experiential evidence be involved in the study. However, some of the participants were recruited by other participants to create a natural setting that did not interfere with the daily living experiences of the research subjects.

5.8.3. Informed Consent

An informed consent form and a letter of information on the study were provided and signed by the research participants. The research participants were aware that the English or Shona languages were used to communicate the study needs and requirements. However, in circumstances where there were gaps in the information,

the researcher provided translated letters of information and informed consent forms to ensure that all participants were fully informed in the language that they understood.

5.8.4. Do No Harm

To address possible emotional harm during the study, the researcher carried out the study project with the help of a social counsellor who would provide emotional support to the affected research participants. This plan was essential because in the field project interventions, experiences of violence, hurt, and trauma were encountered, especially on the part of victims of gross human rights violations. The experiences, however, were emotionally healing, given that some people who participated in the study had never had an opportunity to express their experiences of being violated (emotionally or physically).

5.8.5. Community Benefits

The project did not leave the community in a disadvantaged position. The study provided solutions to long-term challenges that had, in some way, prevented peaceful co-existence due to political polarisation, hurt, and violence that had not been addressed for several years. It is, therefore, submitted here that the project left the communities empowered to face past and present conflict issues with courage and capacity, which would not have happened without this action research project.

The study is expected to provide solutions to conflict issues causing harm to the community. The study empowers the community to become solution holders to their TJ grievances and challenges. By pursuing the objectives and research questions, the researcher pictured TJ processes where victims and perpetrators realise the need to resolve their past conflicts without waiting for state-sanctioned interventions, thus placing mediation at the centre of peer-to-peer-facilitated justice (from below) as opposed to vertical-court-facilitated justice (from above).

5.9. Delimitation and Limitations

This study analysed the role of mediation in facilitating bottom-up (grassroots) TJ using the case of Makoni District in Zimbabwe. The study was neither a comparative study

nor an attempt to critique the effectiveness of TJ. The study examined how mediation enables TJ to be effective for sustainable peacebuilding. Challenges experienced included failure to access the work of the NPRC due to bureaucratic challenges as well as directly addressing perpetrators of gross human rights violations. However, these challenges were addressed by working closely with key stakeholders in the community where the pilot project was implemented. The COVID-19 outbreak created difficulties in accessing the project sites for project monitoring and evaluation purposes. As a result, the researcher utilised virtual platforms, including the WhatsApp platform, as a stopgap measure in project monitoring and evaluation.

The WhatsApp virtual platform was used as a meeting space to discuss the project's interventions, mainly the mediators' experiences including their successes, failures and lessons learnt. Mediators would participate in the meeting and contribute their views and mediation experiences. This platform literally replaced the physical evaluation meetings, but it had its own shortfalls. The major shortfall is that without direct interaction with the research participants, it was difficult to understand participants emotions including body language. It also prevented effective probing of issues as would be ordinarily done when people are physically converging in a shared space. Internet connectivity was intermittent such that communication would be interrupted in some instances. The use of a virtual platform, however, did not affect the overall data collected.

5.10. Chapter Conclusion

This chapter provided an overview of the study's research methods including data collection and analysis, ethical considerations, and research validity and reliability issues. It was well noted that this study is exploratory qualitative research that used mixed research methods, including primary and secondary data-collection processes. Key informant interviews, FGDs, and a practical project implementation process were carried out to assess the role of mediation in grassroots TJ processes.

CHAPTER 6: ZIMBABWE'S TRANSITIONAL JUSTICE EFFORTS

6.1. Introduction

This chapter presents evidence and an analysis of TJ efforts carried out in Zimbabwe since the country gained its independence in 1980 to date. Such efforts include the forgive and forget reconciliation decree issued in 1980, commissions of inquiries into gross human rights violations, peace accords and a litany of reparative mechanisms. Most TJ efforts detailed reflect gaps, opportunities, and areas of improvement towards an effective TJ process in Zimbabwe. Information captured in this chapter employed the content analysis approach because the data was drawn from diverse grey literature including websites, newspaper articles, monographs, textbooks, and journal articles chronicling Zimbabwe's TJ efforts.

6.2. Transitional Justice Efforts

Although Zimbabwe's historical narratives are marked with conflict stories, the country has made efforts to address national healing and reconciliation issues at various opportune times with varying levels of success and failure. From 1980 to date, there have been three outstanding TJ mechanisms that have been used in Zimbabwe which include "amnesties and pardons, amnesia and commissions of inquiry" (Ndlovu-Gatsheni and Benyera 2015: 11). While this may be largely true, the use of coalition governments and the establishment of commissions (not necessarily of inquiry only), reparations, and prosecutions adds to the list of mechanisms that have been used to address the national healing and reconciliation questions for Zimbabwe. A list of diverse context-specific TJ efforts that have been attempted in Zimbabwe is given as follows:

- Forgive-and-forget reconciliation decree (1980)
- Amnesties and pardons (1980–2020) (*there is a need to detail all the amnesties in order*)

- Chihambakwe and Dumbutshena Commissions of Inquiry 1983
- The Unity Accord – uniting ZANU PF and PF ZAPU (1987)
- War Victims Compensation Fund (1995 & 1997)
- Constitutional reforms and referendums (2000 & 2013)
- Fast track land reform (2000 onwards)
- Global Political Agreement – establishing a coalition government with mechanisms such as the Organ on National Healing, Reconciliation and Integration, Joint Monitoring and Implementation Committee, and Constitutional Select Committee (2009)
- Khalani Khuhle Housing reparations programme (for the Operation Murambatsvina victims)
- National Peace and Reconciliation Act – establishing the National Peace and Reconciliation Commission (2019)
- Motlanthe Commission of Inquiry (2018)
- *Several Civic Society Organisation (CSO) efforts including the setting up of the National Transitional Justice Working Group*
- *Traditional mechanisms and CSO-initiated peace committees*

In view of the above-listed items, it is notable that all the mechanisms for TJ experienced in Zimbabwe have been state-driven initiatives. This means that TJ in Zimbabwe has been a top-down process which could help this study understand why the diverse processes have failed to prevent the recurrence of violence and conflict. In the sections that follow, the research details key TJ mechanisms and how they have succeeded or failed in meeting justice interests.

6.2.1. Amnesia: Forgive-and-Forget Reconciliation Policy

In 1980, when the country gained independence, the inaugural prime minister of Zimbabwe, Robert Mugabe, declared a “forgive and forget” policy which is reminiscent of forced amnesia. In his speech in March 1980, after winning the elections, Robert Mugabe stated that:

[W]hether you are black or white, join me in a new pledge to forget our grim past, forgive and forget, join hands in a new amity, and together as Zimbabweans, trample upon racialism, tribalism, and regionalism, and work

to reconstruct and rehabilitate our society as we reinvigorate our economic machinery (Foreign Policy 2019: 1).

In his independence speech, Mugabe also reiterated the policy by stating, “let bygones be bygones”, which is something that “marked the death of statist justice and reconciliation mechanisms in Zimbabwe” (Ndlovu-Gatsheni and Benyera 2015: 21).

The forgive-and-forget declaration was mainly meant to create a reconciliatory platform for both the native Zimbabwean Blacks and the White colonialists as well as among the Black population itself, given the animosity that existed, especially between the ZANU PF and ZAPU parties and their military wings. The racial and political integration policy saw the White colonialists continuing to live in Zimbabwe with some experienced White bureaucrats continuing with their jobs in the Africanised government administration. The Whites also continued occupying the most fertile lands and soils, yet one of the aims of the Second Chimurenga (1966–1979) regarded the equitable distribution of land and resources.

To achieve the objectives of the forgive-and-forget policy, Mugabe further integrated ZIPRA, ZANLA, and the Rhodesian forces into a single unified army, the Zimbabwe National Army (ZNA). He stated that “the need for peace demands that our forces be integrated as soon as possible so that we can emerge with a single national army” (Foreign Policy 2019: 1). While the integration was successful, all three forces – the ZANLA, ZIPRA, and Rhodesian armies – were incompatible with each other.

While the forgive-and-forget reconciliation policy smoothed the political power transition from the colonial White to the Black administration as well as the integration of the three-armed forces into the ZNA, the inadequacies of the forced amnesia policy regenerated protracted conflicts. Barely a year after the integration of ZANLA, ZIPRA, and the Rhodesian army, war broke out between ZANLA and ZIPRA due to unresolved past animosities. Further, the inclusion of the Rhodesian force in the ZNA “brought with it institutionalised technologies of torture from Rhodesia into Zimbabwe” (Mungure, Mandikwaza and Guthrey 2018: 8). The postponement of the land reform through the willing buyer-willing seller policy appraised the White minority’s indispensability (Moyo 2014), which made it problematic to create a racially unified society. Later, in the 1990s, the war veterans demanded compensation for injuries

incurred during the liberation struggle, and subsequently, the land reform violence (in 2000) emerged. All these violent grievances were rooted in the TJ processes deferred at independence.

Robert Mugabe further used the forgive-and-forget reconciliation policy after the *Gukurahundi* atrocities. Mugabe argued that:

If we dig up history, then we wreck the nation, we tear our people apart into factions, into tribes, and villagism will prevail over our nationalism and over the spirit of our sacrifices. If we go by the past, would Ian Smith be alive today? What cause would there be to impel us to keep him alive? Perhaps I will be the first man to go and cut his throat and open his belly, but no, we shall never do that. We have sworn not to go by the past except as a record or a register. The record or register will remind us of what never to do. If that was wrong, if that went against the sacred tenets of humanity, we must never repeat, we must never oppress man (Reeler 2004: 236).

The above quotation shows precisely why the past TJ processes should be considered inadequate, given the extent to which TJ issues were forced to fade away under the forgive-and-forget reconciliation process.

In view of the above, it can be argued that it was practically impossible for the forgive-and-forget reconciliation policy to work because “wounds of the war were still fresh and when emotions were also still too high to forgive and forget” (Rwodzi 2020: 18). In addition, the fact that Zimbabwean people had over 15 years of fighting, it would be unthinkable to have them simply forgiving and forgetting the gross violations experienced during the liberation struggle. Regardless of these facts, “political expedience could have on several occasions” compelled the ZANU PF government “to clamour for silence over potentially divisive past conflicts” (Mashingaidze 2010b: 23).

6.2.2. Amnesties and Pardons

To augment the forgive-and-forget policy, Zimbabwe also adopted the use of amnesties and pardons as a TJ approach. Amnesty refers to the act of forgiving someone or a class of persons for past offences, while pardon is a tool that exempts a convicted criminal or criminals from serving their sentence(s), in whole or in part, without expunging the underlying conviction by an Official Act (Mandikwaza 2016). In

this view, amnesties are largely applied to the broader TJ framework, while pardons are related to the forgiving of criminal offenders. Zimbabwe adopted the use of both amnesties and pardons from 1980, first for liberation-war fighters and later for perpetrators of gross human rights violations who would have acted in the interest of the state and ZANU PF (Mashingaidze 2010b; Ndlovu-Gatsheni and Benyera 2015).

“The emergence of amnesty is a result of countries absolving those people involved in crimes against humanity and gross human rights abuses to avoid their prosecution, as a way of encouraging the restoration of democracy” (Mandikwaza 2016: 30). For Zimbabwe, therefore, the first amnesty, the General Amnesty Ordinance 3 of 1979 and 1980 “pardoned Rhodesian military and security operatives, ZANU-PF and PF-ZAPU nationalist forces and the Internal Settlement auxiliaries aligned to Muzorewa and Sithole” (Mashingaidze 2010b: 21-22). This amnesty could have eased tensions among the different liberation-war armies and their parties, hence smoothing the power transfer and setting up of a new Africanised government, that is, from the colonial government to the Black-nationalist-led government.

The second amnesty after independence came in 1988 following the signing of the Unity Accord between ZANU and ZAPU on 22 December 1987, a cursory end to the almost decade long *Gukurahundi* atrocities.¹⁰ As noted earlier, the *Gukurahundi* atrocities took place between 1983 and 1987. Therefore, “Clemency Order No.1 of 18 April 1988 (General Notice 257A of 1988)” was invoked to pardon all the security forces and dissidents who had committed gross human rights violations during the *Gukurahundi* period (Mandikwaza 2016; Rwodzi 2020). For instance, among the pardoned “were 75 members of the security forces who had been charged or convicted of offences relating to human rights abuses,” including four “Fifth Brigade soldiers convicted of the abduction and murder of two men and two women in Matabeleland in 1983” (Carver 2007: 23).

Over the years, as ZANU PF entrenched itself into an indispensable dictatorship, “the tradition of granting amnesties to perpetrators of human rights violations became self-perpetuating” (Carver 2007: 23). More amnesties continued from the early 1990s to

10 See Zimbabwean Government Gazette Extraordinary, 3 May 1988.

date, with beneficiaries including not only criminals but those responsible for gross human rights violations. Table 6.1 shows some crude evidence of the perpetual amnesties and pardons that characterised the forgive-and-forget justice mechanisms (up to 2014), much to the benefit of perpetrators of human rights violations.

Table 6.1: Amnesties and pardons between 1975 and 2014 (Source: Mandikwaza 2016).

Year	Amnesty
1975	The Indemnity and Compensation Act granted amnesty to the police force, civil service, and Central Intelligence Organisation (CIO) members for offences committed in the past (in retrospect) and for those anticipated to occur.
1979/1980	Amnesty Ordinances of 1979 and 1980 were granted by the transitional government at the sealing of the Lancaster House Agreement.
1988	General Notice (GN) 257A/1988 granted amnesty to “dissidents,” collaborators, and members of the Zimbabwe African People’s Union (ZAPU).
1990	General amnesty, repeating GN257A/88 to include the state’s uniformed forces, who had been responsible for <i>Gukurahundi</i> in the Matabeleland and Midlands provinces in Zimbabwe from 1982 to 1987. <i>Gukurahundi</i> is the name given to the bloody military repression of opposition to the government immediately after Zimbabwe’s independence in 1980. This repression led to over 20,000 deaths, affecting mainly the Ndebele tribe in Zimbabwe’s Midlands and southern provinces.
1993	GN111C was a general amnesty for people arrested before 31 March 1980 and prisoners serving less than 12 months.
1996	GN362A was a general amnesty for life sentences before 31 January 1981, infanticide offenders, and determinate sentences.
2000	GN457A was a general amnesty for politically motivated crimes (liability pardon and remission of sentences). However, the names of those pardoned were never published.
2014	Close to 2,000 inmates were granted pardon – reportedly due to hunger and service-delivery pressures in the country’s prisons.

The use of amnesties and pardons as a mechanism for TJ immunised perpetrators of human rights violations from prosecution which militates against justice and

accountability in favour of the victims. The Clemency Order of October 2000, for example, “granted amnesty to individuals who kidnapped, tortured and assaulted people and destroyed houses and other possessions in the run up to the June 2000 legislative elections” (Mashingaidze 2010b: 21). Therefore, this means that the use of amnesties and pardons were a futile process towards a genuine TJ process.

It is important, however, to note that the use of amnesties and pardons, initially, was not necessarily the making of the independent Zimbabwean government. Firstly, the Rhodesian government set a precedent “in 1975 when it implemented the Indemnity and Compensation Act, granting amnesty both retroactively and in advance to members of the army, the police, the Central Intelligence Organisation and the civil service for offences committed in ‘good faith’” (Mashingaidze 2010b: 21). Secondly, the Lancaster House Agreement contained provisions for amnesty “for all crimes committed on both sides in the course of the liberation war” (Carver 2007: 21). Hence, the failure of TJ can be partly attributed to the use of colonial approaches to justice and reconciliation.

6.2.3. Commissions of Inquiry

Zimbabwe has also used commissions of inquiry (COIs) as mechanisms for TJ. In 1981, the government established the Dumbutshena Commission to inquire into the “mutinous disturbances which took place in February 1981 at Glenville Military camp, Ntabazinduna military camp and Entumbane ZANLA and ZIPRA camps” (Supreme Court of Zimbabwe 2003: 1), also generally known as the Entumbane uprisings. In 1984, the government again appointed a COI (Chihambakwe Commission) into the “events between December 1982 and March 1983.”¹¹ The Commission “was to investigate the killing of 1,500 political dissidents and other civilians in the Matabeleland region in 1983 and to gather testimony from villagers about what occurred”. Both commissions’ reports, however, were never published, initially because their production to the public would affect national interests, and recently,

¹¹ The report of the Dumbutshena Commission of 1981 is known as the Dumbutshena Report 1982, while the report of the Chihambakwe Commission of 1984 is known as the Chihambakwe Report 1984.

because the reports could not be located, hence it was improbable to make them public (Supreme Court of Zimbabwe 2003: 11; Mafu 2017; Rwodzi 2020).

In addition to the government retaining the publication of both commissions' reports, nothing was done for the victims regarding the violations that they had experienced. Instead, the "victims and perpetrators who had given their testimonies to the two commissions" (Ndlovu-Gatsheni and Benyera 2015: 21) experienced re-victimisation. For example, Shadreck Denga Moyo and his brother disappeared at the hands of state-security agents a few days after giving evidence to the Chihambakwe Commission of Inquiry (Carver 2007). To worsen matters, other than these two COIs, no other efforts have been made to fully investigate the atrocities of the Gukurahundi massacres, including the "Bhalagwe Camp and other detention centres, and the 1985 enforced disappearance and murder of hundreds of people" (Eppel 2009: 5). An alternative report, however, was established by a church organisation, the Catholic Commission for Justice and Peace.

More recently, in 2018, a COI was established to investigate and report on the circumstances surrounding the post-election violence that occurred on 01 August 2018. On 30 July 2018, Zimbabwe held a general election, and allegations of vote rigging triggered public protests in Harare. However, the government's military and police response were crudely brutal as live bullets were fired at protesters, leaving about seven people dead and hundreds injured (Adekoye and Kondlo 2020; Tofa 2020). The violence attracted international condemnation, piling pressure on the government to account for the atrocities. As a result, President Mnangagwa established a COI led by the former President of South Africa, Kgalema Motlanthe. The commission was meant to "investigate the circumstances that led to the post-election violence, the main actors involved and their motivations, whether the use of force was appropriate to the circumstances, the role of the security forces and finally to make recommendations for future conduct" (Democracy in Africa 2018: 1). The government denied that its forces had killed the protesters, regardless of "incriminating photographs and video footage" (Democracy in Africa 2018: 1). However, on the contrary, the commission's findings concluded that the government was responsible for the fatalities and would need to provide reparative justice to the victims.

Two years have passed since the Motlanthe Commission report was published, and the government is yet to implement its recommendations. The commission recommended “among others, compensation for victims of the atrocities and the bringing to account, members of the country’s security establishment who killed the civilians” (Munhende 2020: 1). The fact that the government did not, or rather is, delaying the implementation of the Motlanthe Commission report casts doubt on the state’s political will to facilitate an effective justice, healing, and reconciliation process for the victims. ‘Political will’ is “the commitment of actors to undertake actions to achieve a set of objectives (U4 Partner Agencies 2010: 1). Therefore, with political will lacking, the Dumbutshena and Chihambakwe Commissions, the Motlanthe Commission’s fact-finding mission will remain a wasted and unproductive effort.

6.2.4. Reparations

The government of Zimbabwe made gestures for reparations to victims of some conflict episodes where the government was largely involved or rather concerned. Reparations are rectification measures meant to “correct the harm suffered by the injured party by trying to return to the position they were in before the harm” (Moffett 2017: 2). For Zimbabwe, notable reparations include the war veterans’ compensation fund and the Operation Garikai initiatives. The war veterans’ compensation was meant to pay them for their contribution in the liberation struggle, while Operation Garikai was meant to mitigate the effects of Operation Murambatsvina (which is detailed in the preceding chapter).

6.2.5. War Veterans’ Compensation

Compensation is a type of material or financial resource awarded for reparations following a violation or harm. It “involves both pecuniary and non-pecuniary awards to cover the cost and moral harm suffered by victims, whether through a lump sum or a pension” (Moffett 2017: 4-5). In Zimbabwe’s TJ efforts, the prominent compensation awarded was made to the liberation-war war veterans between 1995 and 1997. The war veterans had always agitated for rehabilitation, reparations, and justice for the suffering that they experienced during the liberation struggle. It took over 16 years after independence for the Zimbabwean government to recognise the need to offer meaningful reparations to liberation-war victims and war veterans, as envisaged by

the 1980 War Victims Compensation Act. The Act provided “for the payment of compensation in respect of injuries to or the death of persons caused by the war; and to provide for matters incidental to or connected with the foregoing” (Government of Zimbabwe 1980: 1). Therefore, that which the government had done was paying “disabled ex-guerrillas a Z\$600 demobilization gratuity that would be unrelated to their disabilities” as well as providing rehabilitation support in a few centres (Kriger 2005a: 254). Ex-combatants were ignored.

However, it was only in 1987 when the Zimbabwe National Liberation War Veterans Association (ZNLWVA) was formed to push for their reparations and rehabilitation. After its formation, the ZNLWVA subsequently began influencing legislative amendments towards the veterans’ healing needs. These include “the War Victims Compensation Act 1992, Enactment (1992) and amendment of the War Veterans Act 1996, Compulsory Land Acquisition Act 1992 to mention but the critical ones and forcing government to designate white farms” (Sadomba 2008: 22). In 1995, when Chenjerai Hunzvi became the leader of the ZNLWVA, he demanded that trauma healing and rehabilitation for veterans be considered. The Herald (1995 cited in Sadomba 2008: 88) reported that war veterans were mentally broken and suffering from trauma because of their experiences during the liberation struggle. The report further noted that besides the war veterans there are people who experienced stress “on demobilisation; with families dead or uncaring, friends gone, and homes destroyed they cannot piece the bits back together and go over the edge themselves” (ibid).

As a result, the veterans’ mounting pressure made the government “set aside over Z\$200 million to cover another round of medical assessments of war-disabled ex-combatants. There was a dramatic rise in new disability claims, almost all from ex-combatants: 1,000 in 1994, 6,000 in 1995, 9,000 in 1996, and 9,500 for the first nine months of 1997. State expenditures on the compensation scheme also jumped from Z\$353 million in 1995 to Z\$606 million in 1996” (Kriger 2005a: 257). However, these funds were looted by high-profile politicians and, therefore, could not benefit the target groups. This made war veterans to continue mounting pressure until August 1997 when the government conceded to pay them a gratuity amounting to “Z\$50,000 and a Z\$2,000 monthly life pension for each ex-combatant, free education and health

services for ex-combatants and their dependants, funds for business projects, funeral expenses, and twenty percent of future land resettlement plots” (Kriger 2005a: 261).

Still, more war veterans could not receive the benefits due to acute corruption (Kriger 2005a; Sadomba 2008). Notably, the war victims’ compensation scheme was “severely plundered with some beneficiaries falsifying injuries and creating fictitious stories just to receive compensation” (Ndlovu-Gatsheni and Benyera 2015: 28). To worsen matters, the land grievance was not addressed, which continued the war veterans’ advocacy agenda until the year 2000 through a trigger of the land reform. As such, it can be argued that the government’s reparation responses were simply a pacification mechanism to manage the war veterans’ anger rather than a genuine TJ process.

6.2.6. Operation Garikayi / Hlalani Kuhle

To mitigate the impact of Operation Murambatsvina of 2005, the government immediately (within five weeks) launched Operation Garikai / Hlalani Kuhle, a housing scheme for the displaced. By 2009, only 7,487 housing units had been constructed, a figure that was far less than that which was required for the 700,000 directly affected people (The Zimbabwean 2009: 1). Notably, however, “many of the houses that have been built were allocated to ZANU-PF supporters and government cronies” (Besada and Moyo 2008: 18-19). This agrees with The Zimbabwean (2009: 1) which noted that “the few houses that were built were reportedly given to civil servants, police and soldiers.” In Bulawayo, for example, of the 700 housing units built, only 39 of the 10,000 victims benefited and the rest were taken by “mainly politicians, well-known soccer players, public servants and security force members involved in the operation, and at least 600 of the ‘illegal beneficiaries’ owned one or more properties elsewhere in the city” (The New Humanitarian 2007: 1). Besada and Moyo (2008: 18-19) also argued that some of the houses that the victims received “were of poor quality and perceived to be so dangerous to live in that recipients refused to move into them.”

In this view, it can be argued that the government’s housing reparation programme was a political smokescreen created to “hide the national government’s brutality towards the urban poor” (Mpofu 2011: 177). The programme “lacked a genuine, legitimate and ethical authority and the political will to remedy the situation caused by

Operation Murambatsvina” (Benyera and Nyere 2015: 6522). This means that the government’s reparation programme failed to meet a proper TJ goal. Rather, the programme ended covering up the impact of the government’s gross human rights violations. Therefore, a thorough redress of the Operation Murambatsvina violations is required for Zimbabwe, given that criticisms in Zimbabwe will always be present due to the country’s poor socio-economic and political policy processes which are usually partisan and motivated by corruption.

6.2.7. The Land Reform

With continued pressure from the war veterans about reparations and land redistribution, coupled with ZANU PF’s waning political support base, the ZANU PF government initiated the Fast-Track Land Reform Policy in 2000. The Chronicle (1997 cited in (Sadomba 2008: 93) reported that “war veterans vowed to move onto white-owned commercial farms if the government did not resettle them by July 1998.” This notion also agrees with that of Moyo (2001) who believed that it was the war veterans who rekindled the land-redistribution discourse as central to national development. This suggests that the government’s 2000 land reform programme became an opportunistic reconciliation effort to address one of the national TJ grievances.

Although the land reform programme befits the description of a TJ effort, the process remains highly debatable because of the manner in which it was executed. Firstly, the land-redistribution process was violently carried out with a racial veil of discrimination, given that most White commercial farm owners suffered physical harm, the loss of property, and emotional trauma, for which the government did not pay compensation. Notably, it triggered the necessity for a racial TJ process, as was the case with the 1980 independence scenario. Secondly, the intended beneficiaries did not benefit much as political heavyweights parcelled out the land in their favour to the extent of owning multiple farms (Moyo 2004; Sadomba 2008; Mungure, Mandikwaza and Guthrey 2018). In this view, the land issue remains a TJ question as Mungure, Mandikwaza and Guthrey (2018) observed in a Heal-Zimbabwe-commissioned survey report entitled *A Baseline Study Report on the peace healing and reconciliation processes in Zimbabwe: An ideal bottom-up peace and reconciliation framework for Zimbabwe*.

6.2.8. Peace Accords (The Unity Accord and the Global Political Agreement)

Accords and/or agreements were also used in Zimbabwe as a TJ (process) mechanism. An accord (also known as a peace accord or peace agreement) refers to an official agreement to end a conflict or to come to peace (Dictionary 2020). Normally, accords play a facilitative role in TJ by providing details of how a transition and TJ will take place. For example:

[T]he Chapultepec Accords, settled in 1992 between the El Salvadoran military government and the Farabundo Martí National Liberation Front (FMLN), paved the way for a comprehensive roadmap for peace in El Salvador. ... and the process was closely linked to measures of transitional justice including the vetting of former combatants in their transition to political positions (Schernbeck and Vimalarajah 2017: 8).

In the Colombian Peace Accord, most of the content was “devoted to transitional justice, victims, and the emphasis on subsequent implementation” (Quinn and Joshi 2019: 207). In view of the above, it is trite to state that most accords contain elements of TJ, hence their consideration as TJ mechanisms.

For Zimbabwe, two key accords that were facilitative to a transitional *justice* process include the Unity Accord, signed on 22 December 1987, and the Global Political Agreement, signed on 15 September 2008.

(a). Unity Accord

The Unity Accord was signed between the ZAPU and ZANU PF parties. The accord was an 11-page document negotiated in two years, and its contents were without any specific TJ issues. It “offered ZAPU little except a commitment that killings in ZAPU strongholds would stop. ... you cease to exist and we will stop killing you” (Eppel 2009: 8). Mashingaidze (2005: 14) agreed with Eppel that the accord ended hostilities between ZAPU and ZANU, but it did not bring genuine peace and healing in Zimbabwe.

A further analysis of the above views suggests that the accord was meant to prevent the redress of the Gukurahundi atrocities, perhaps because the Unity Accord itself did not speak about any TJ issues (Rwodzi 2020: 14). Notably, the peace agreement was not mutually concluded out of the realisation of the need for peace, but ZAPU was

coerced into signing the peace agreement to end the annihilation of the Ndebele people (Ndlovu-Gatsheni 2008; Eppel 2009). The Unity Accord only sought to transition Zimbabwe from being a multiparty state into a one-party state, an ideology that Mugabe wanted to perpetuate since independence (Eppel 2009). This view holds water largely because the ZANU PF government went silent about the victims of the Gukurahundi immediately after the signing of the Unity Accord, and it continues evading accountability for the Gukurahundi atrocities to date.

(b). Global Political Agreement

Another striking and significant accord was the Global Political Agreement (GPA)¹² which was also an agreement between the political parties of ZANU PF and two MDC formations (splinter groups) that contested elections in 2008.

According to Eppel (2009: 10), the “GPA is a power sharing agreement and it is intended to create a transitional government” whose primary objectives included (i) establishing a new constitution, and (ii) improving the democratic space to enable the holding of free and fair elections.

The GPA’s uniqueness in comparison to the Unity Accord is that (i) it established a coalition government, and (ii) the agreement largely provided for TJ mechanisms. As with the South African National Peace Accord, which sought to “bring an end to political violence in our country and to set out the codes of conduct, procedures and mechanisms to achieve this goal” (Unknown 1991: 1), the Zimbabwean GPA sought to bring to an end the acute political violence surrounding the country’s elections, as noted in earlier sections. Hence, the coalition government (also known as the

¹² The GPA led to the establishment of a Government of National Unity (GNU). Following a disputed presidential election held on 27 June 2008, a coalition government was established as an attempt to forge political reconciliation among the two contending parties and the ensuing aggravated effects of the politically motivated election violence. In March 2008, Zimbabwe’s presidential election failed to produce an outright election winner. Morgan Tsvangirai won 47% while Robert Mugabe scored 43% of the total election, both missing the 51% plus one vote required by law. This led to a June presidential election run-off which was largely marred by acute violence and gross human rights violations such that Morgan Tsvangirai withdrew from the election race. This formed the basis for a GNU, agreed upon on 11 September 2008 and formally implemented in February 2009. The GNU was a mediated solution to the political crisis, and it was mediated by the South African former President Thabo Mbeki on behalf of the Southern African Development Community (SADC).

Government of National Unity, or GNU), established through the GPA, was reflective of a TJ effort.

More succinctly, besides forming a transitional government, the GPA provided for the establishment of peace and TJ architectures, which include (a) the establishment of the Organ on National Healing, Reconciliation, and Integration (ONHRI) (b) a Joint Monitoring and Implementation Committee, and (c) a Constitutional Select Committee. The ONHRI was responsible for facilitating national healing, justice, and reconciliation considering the country's interminable past human rights violations grievances. The Joint Monitoring and Implementation Committee (JOMIC) was essentially a mediatory monitoring mechanism for parties implementing the GPA, while the Parliamentary Constitution Select Committee (COPAC) was responsible for facilitating constitutional reforms towards a more egalitarian constitution. Overall, the GPA successfully created an atmosphere of peace throughout the coalition government's tenure, but impunity continued due to the toxic political environment in which it was implemented (Machakanja 2010; Ndlovu-Gatsheni and Benyera 2015). The ONHRI failed to facilitate national healing and reconciliation, while the COPAC process successfully contributed towards the establishment of a new constitution.

6.2.9. Constitutional Reforms (From 1980–2013)

Post-independence Zimbabwe had two significant constitutional-reform attempts. The first attempt produced three constitutional drafts that were never adopted, which include the rejected 2000 draft, the National Constitutional Assembly draft of 2001, and the 2007 Kariba draft. The second constitutional-reform attempt was the successful COPAC process that led to the adoption of a new constitution in 2013. Both attempts sought to transition the country's constitution from the compromised colonial Lancaster House Constitution towards a home-grown people-driven constitution. Arguments against the Lancaster House Constitution were that it was bequeathed by colonial Britain, and it entrenched the White people's interests as preconditions for independence. For example, "it guaranteed the white minority 20 seats in parliament, and entrenched land and property rights for 10 years, thereby preventing any immediate attempts at land reform" (Sadomba 2008; Dzinesa 2012: 2).

Beyond the constitution's colonial compromises, it had been amended countless times to entrench executive powers in the presidency. Since independence, the constitution had been amended to create an executive president with sweeping powers to control "the appointment and removal of judges, commissioners, chiefs of the security services and other public figures, and can therefore unilaterally reconstitute various state bodies in pursuit of personal or partisan ends" (Dzinesa 2012: 2). Therefore, the urgency to reform the constitution involved attempts to transition from colonially biased laws and partisan amendments towards a constitution that reflected the Zimbabwean people's aspirations.

a. *The 2000 Draft Constitution and Referendum*

The increasing demand for legislative and political reforms in Zimbabwe influenced the constitutional referendum in 2000. In response to countrywide demands for a new democratic constitution that was not bequeathed by colonialists, the government appointed a 400-member Constitutional Commission to spearhead the drafting of a new supreme law of the land which would be adopted through a referendum. However, the draft constitution was defective to such an extent that the majority of the Zimbabweans rejected it in a referendum, a result that angered ZANU PF. The referendum defeat "was iconic in Zimbabwe as it marked ZANU PF's first defeat in any form of democratic contest" (Benyera 2014: 161). The newly established opposition, the MDC, had "overwhelmingly defeated the government's proposed new constitution" (Chung 2006: 313) in the referendum.

ZANU PF's humiliation in the referendum meant that the party had lost its political grip, hence the need to employ crude political tactics to avoid another loss in the subsequent parliamentary elections that were due to be held. "The wave of occupations of white-owned farms that began in March was generally seen in relation to the defeat of the land clause in the draft. But it was far more closely related to the ruling party's fear of losing the elections" (Carver 2000: 16). This means that the land reform became a prime target because it was going to galvanise political support, especially from the war veterans. This is because the war veterans had been demanding land and had rejected the draft constitution provided for the compulsory acquisition of farms, insisting that compensation "would have to be paid by the British

government, as the power standing behind by the colonial authority that had originally appropriated the land” (Sadomba 2008: 1). Therefore, the referendum failure motivated ZANU PF to introduce the Constitutional Amendment (No. 16) Act to allow farm invasions – the fast-track land reform process.

Notwithstanding the Constitutional Amendment (No. 16) Act, the fact that the 2000 (home-grown) draft constitution failed to pass the referendum test means that the need for constitutional reforms remained indispensable. Therefore, nearly a decade later, the 2013 constitutional-reform processes came into perspective.

b. The 2001 National Constitutional Assembly Draft

The failure of the 2000 constitutional-reform process prompted the National Constitutional Assembly (NCA) to develop its own constitutional draft in 2001, as an alternative. The NCA was a coalition of like-minded civic society organisations, the desire of which was to have a genuine people-driven constitution, hence its audacity to draft an alternative constitution. The NCA’s draft constitution sharply differed from the 2000 draft constitution in that it created the Office of the Prime Minister who would be the Head of Government, and it established provisions for “a truly independent electoral commission, a human-rights commission, an anti-corruption commission and a strong auditor-general to enhance democracy” (Dzinesa 2012: 4), among other provisions.

However, some of the provisions were similar to those of the 2000 draft constitution. For example, “the powers of the Senate and the possibility for the President at the advice of the Prime Minister to veto legislation were quite similar to that of the commission’s draft” (Vollan 2013: 18). Nonetheless, the draft was ignored by the government, which meant that the constitutional reform issues would continue existing on the table.

c. The 2007 Kariba Draft Constitution

The Kariba draft constitution emerged out of a dialogue among three parties including two MDC formations and ZANU PF in September 2007. The dialogue was mediated by SADC through the then South African President, Thabo Mbeki (Vollan 2013). The

draft was criticised for its contents that mirrored the rejected 2000 draft. It failed to protect and promote fundamental human rights and freedoms while retaining shortcomings of the 2000 Constitutional Commission's draft (Dzinesa 2012). Additionally, this Kariba draft constitution was defective because it was a political-party-negotiated law that denied citizens the right to write their own constitution, thus arguably replicating the Lancaster House Constitution and only differentiated by varied partisan interests contrary to those of the colonial compromises. The draft constitution was, however, never adopted because it was overtaken by political events of 2008. The 2008 harmonised elections disrupted the adoption of the constitution leading to its annexation to the GPA to inform future intended constitutional-reform processes (Dzinesa 2012).

d. *Constitutional Reform (2013)*

Zimbabwe carried out a constitutional reform process between 2009 and 2013. As noted earlier, the constitutional reform was a result of Article IV of the 2008 GPA, which provided for the setting up of a Parliamentary Committee (COPAC). The purpose of COPAC was to facilitate a nationwide consultative process towards developing a new constitution for Zimbabwe. COPAC was established in April 2009, and it facilitated the constitutional reform process until the adoption of the Constitution in 2013 through a referendum (held on 16 March 2013). The constitution's adoption somehow improved national cohesion by virtue of it being a people-driven product. It marked Zimbabwe's departure from the colonial constitution (Lancaster House Constitution) to a home-grown constitution.

However, the failure to fully implement the 2013 constitution increased socio-political conflicts within the country. A challenge was also added by the government's attempts to amend the 2013 constitution before its full implementation of the nationally adopted law. The government moved to amend the 2013 constitution in a way that reinforces authoritarianism and entrenches political interests of the ruling party (Heal Zimbabwe Trust 2020; Shivamba 2020). The proposed constitutional amendments seeks to return the country to the old (amended Lancaster House) constitution by "widening scope of presidential powers, undermining of democratic accountability and burgeoning size of central government" (Hofisi 2020: 1).

Nonetheless, that which is unique with the 2013 constitution is that it establishes independent commissions that support democracy. These include the Zimbabwe Media Commission, Zimbabwe Electoral Commission, Zimbabwe Gender Commission, Zimbabwe Human Rights Commission, and the NPRC. The NPRC is more directly concerned with TJ, hence its qualification as a TJ attempt.

6.2.10. National Peace and Reconciliation Act

Zimbabwe's current vehicle for TJ is the NPRC. The NPRC is established by section 251 of the constitution with a mandate to facilitate national healing and reconciliation processes. While the NPRC is substantively responsible for facilitating national healing and reconciliation processes, it is visible that the process is largely marked with inefficiencies. For example, the NPRC has failed to produce annual reports, as obliged by the constitution, such that the 2018 report was produced in mid-2020 (National Peace and Reconciliation Commission (NPRC) 2020). Additionally, the NPRC is generally underfunded, and its work has practically been dogged by a lack of political will such that since its establishment in the constitution in 2013, it is yet to facilitate the actual healing and reconciliation process. Political will is seen to be lacking when "politicians are unable to commit themselves" (Karnik 2000: 4) to facilitate a genuine national healing and reconciliation process by providing necessary support including resources and a conducive policy framework. This also explains why the Motlanthe Commission of Inquiry, following the 01 August 2020 military shooting against the protestors in Harare, was established without regard for the NPRC and the Zimbabwe Human Rights Commission as constitutional bodies responsible for national healing and reconciliation, and human rights protection and promotion, respectively.

6.2.11. Civic Society Organisation Transitional Justice Efforts

It is also important to mention that most of the TJ work has been undertaken by civic society organisations (CSOs). The National Transitional Justice Working Group is centrally leading the national-policy-level TJ processes, while other organisations including Heal Zimbabwe Trust (HZT), Centre for Conflict Management and Transformation (CCMT), Zimbabwe Human Rights NGO Forum, Zimbabwe Civic Education Trust, Habbakuk Trust, and Grace to Heal, among others are carrying out grassroots level peacebuilding and transitional justice interventions.

6.3. Reflections

In view of the preceding discussion, it is noticeable that Zimbabwe implemented diverse TJ mechanisms, before and after independence. The efforts included amnesties and pardons, constitutional reforms, reparations, justice (prosecutions), memorialisation, and institutional-legal reforms. Noticeably, there is no truth telling or acknowledgement process that the government has officially considered. These policies and mechanisms failed to address both colonial and post-colonial grievances (Ndlovu-Gatsheni and Benyera 2015: 13). The country's TJ efforts, therefore, are reflective of an incomplete TJ process. The country's continued conflict episodes due to selfish political interests, a lack of justice, corruption, a lack of unity and cooperation, a lack of inclusivity, and a lack of political will, among other reasons, make TJ difficult to pursue.

In TJ, reparations are usually victim-centred measures for TJ, yet in the Zimbabwean context, most beneficiaries were the perpetrators and non-victims. Both in providing reparative compensation to the war veterans and war victims and the victims of Operation Murambatsvina, the government did not pay attention to the victim-centric concept. War victims' funds were looted and many people who benefited manipulated the beneficiaries' selection criteria, which left most appropriate beneficiaries disadvantaged. The same applied to the Operation Murambatsvina victims. Firstly, the government built very few housing units as compared to the number of people affected. Secondly, the beneficiaries of the few housing units were not victims but rather capable individuals who were police officers, soldiers, or civil servants, some already with homes.

Related to the war veterans and the Operation Garikai reparations is the land reform programme. The ideals of the land reform programme are essential, yet the programme beneficiaries were those who already had farms. The needy beneficiaries were denied the right to own land in some way while racial TJ needs regenerated, with the Whites then being at a disadvantage. However, it must be recognised that the land reform, to a great degree, addressed a decade-long TJ grievance that the government was failing to address.

Amnesties and pardons are a helpful practice to unlock political logjams and resistance to transitions. However, these should be accompanied by truth telling and acknowledgement of past wrongs. The Zimbabwean experience did not match any of these exceptions. Amnesties and pardons benefited the perpetrators, yet they could not be subjected to truth telling, acknowledgement, and accountability for non-recurrence guarantees. In this regard, the victims of the pardoned and amnestied perpetrators were further traumatised and sometimes re-victimised, which reverses any possible expectations for TJ.

The Peace Accords, mainly the Unity Accord and the GPA, were useful mechanisms for political transition, the effects of which only ended with enabling the commitment of violence. The agreements, however, helped the government disregard political violence and superficially consider proposed transitional processes. Tied to the agreements were constitutional reforms. The government has displayed its lack of interest in developing a democratic constitution, but that which safeguards the political interests of the incumbent ruling party, ZANU PF, are taken into consideration. This is clearly noted in the government's move to amend the 2013 adopted constitution without having fully implemented many of its democratic provisions. This, therefore, underscores the continuing struggle for institutional reforms.

Given the number of mechanisms that the Zimbabwean government has implemented to address past human rights violations and conflicts, it can be argued that there has not been adequate, or rather genuine, political will to meet TJ needs and demands. This agrees with some scholars' views, including those of Mafu (2017) and Murambadoro (2019), that the Zimbabwean government glosses over violence and human rights violations through political agreements and amnesties and pardons. This is because all the transitional mechanisms used in the country's history have not met the criteria for a proper TJ process.

Additionally, it is important to note that all the TJ mechanisms and policies implemented in Zimbabwe were gender insensitive. None of the mechanisms identify women's TJ needs as different from those of men, which casts doubt on the holistic nature of the mechanisms. For example, Mafu (2017: 231) noted that female victims' narratives of the *Gukurahundi* conflict represent the subaltern voice in "wars of men."

In view of the above, there should be a survivor's justice in which there is "a new society, underpinned by a new political (political reform) capable of producing a new humanity" rather than the "traditional post-1945 Nuremberg-criminal justice with its propensity to fragment a people emerging from mass violence into 'perpetrators' and 'victims'" (Ndlovu-Gatsheni and Benyera 2015: 11). This means that "any truth, reconciliation and justice mechanism would need to be driven from local communities" (CCMT 2013: 13). Hence, this study sought to test and influence communities' responsiveness to their own TJ processes using bottom-up action research methodologies.

6.4. Chapter Conclusion

This chapter provided a detailed overview of the different TJ efforts experienced in Zimbabwe. The country implemented TJ mechanisms including amnesties and pardons, COIs, peace accords, constitutional reforms, and even established TRCs such as the NPRC and the ONHRI. These efforts reflect a conscious acceptance of the Zimbabwean government that there is a need to heal and reconcile Zimbabweans from the past human rights violations. However, the various TJ efforts adopted have failed, to a great extent, due to a lack of political will. Notably, except for the colonial government that ended in 1980, the current (post-independence) government has continued violating human rights with impunity, hence the need to find alternative TJ measures that can be applied in non-transitional settings such as those in Zimbabwe.

CHAPTER 7: MEDIATION AND TRANSITIONAL JUSTICE: PERSPECTIVES FROM KEY INFORMANTS AND FOCUS GROUP DISCUSSIONS

7.1. Introduction

In Chapter 6, a detailed explanations on the different TJ efforts that have been undertaken in Zimbabwe since the country gained independence in 1980 to date (2021) were discussed. Using content analysis, the researcher reviewed existing secondary data to identify, describe, and analyse the extent to which different TJ mechanisms have succeeded in healing and reconciling Zimbabweans. It was clear that the TJ mechanisms employed in Zimbabwe failed to meet expectations, hence understanding different TJ mechanisms that Zimbabwe has previously implemented helped the researcher to begin identifying alternative ways of facilitating TJ while drawing lessons from past interventions. In this study, the bias is on finding alternative grassroots-level TJ mechanisms as opposed to using the statist TJ approach.¹³

This chapter, therefore, presents research findings from the primary data collected through key informant interviews and FGDs. Both sets of data were collected before the practical field project was undertaken. The researcher conducted 19 key informant interviews and five FGDs (as indicated in Chapter 5). The responses from the key informant interviews were drawn from practitioners in TJ and peacebuilding from the academic and civil society fraternity, government (security) institutions, political parties, and the National Peace and Reconciliation Commission. Table 7.1 below indicates the number of key informant interviews and their categories.

¹³ *Statist transitional justice* is a term that describes a range of state-led transitional justice initiatives. In Zimbabwe, these include the appointment of Commissions of Inquiry, trials in national courts, the formation of the Human Rights Commission and the Organ on National Healing, Reconciliation, and Integration (ONHRI), or the Organ on National Healing (Benyera 2014: 5).

Table 7.1: Respondents' categories in key informant interviews.

Category	Number of Respondents	Overlapping Category*
Academic	2	1
Civic Society	8	
Political Parties	3	
Government Agencies	2	1
Church	2	
War Veterans	2	

* Overlapping category means that someone counted in this group also qualifies to be in any of the other categories listed in the table.

The selection of the respondents was purposive in the sense that the participants were chosen based on their knowledge of TJ, human rights promotion, and protection. Hence, the selection of participants was not bound by geographical locations, although efforts were made to interview people from diverse backgrounds and from diverse provinces in Zimbabwe, with a view to improve the regional representativeness of views and perspectives regardless of sectoral areas from which the participant(s) were coming from.

While key informants were drawn from the broader community of experts, FGDs were carried out in the study area, Makoni District, specifically within communities where the field project was going to be implemented. The FGDs were carried out in the area where the field project was going to be carried out for two reasons. Firstly, the FGDs were to reflect the affected communities' thoughts about the role of mediation in TJ for comparison with experts' views. Secondly, drawing views from the affected communities' populations was also meant to inform the design of the field project itself.

The information analysed and presented in this chapter was analysed through thematic data analysis techniques. Thematic analysis was used mainly because the data collected was qualitative and it drew lessons from two different sets of data (key informant interviews and FGDs) inquiring on the same subject, using similar questions. In view of the above, the subsequent sections are presentations of views and opinions expressed by key informant interviewees and FGD respondents, whose views also informed the action research project design and implementation.

In this chapter, the research respondents were asked to explain their understanding of TJ, key conflict issues that constitute TJ, and how mediation can play a role to facilitate the grassroots healing and reconciliation process. As mentioned earlier, the key informant interviewees provided expert views while the FGD participants provided grassroots-level perspectives.

7.2. Conceptualising Transitional Justice in Zimbabwe

The research respondents were asked about their conceptualisation of TJ within the context of Zimbabwe. The respondents indicated that TJ in Zimbabwe was concerned with addressing historical conflict issues that have caused emotional and physical harm to citizens with a view to build unity and shared goals among Zimbabweans. For example, a former army officer and academic interviewed, stated that TJ is about “redress of past conflict issues that caused emotional and physical damage to citizens” (KII 7), while a peacebuilding practitioner in the area of natural resources management stated that, “TJ is a process of addressing past atrocities and injustices; it is a change of direction from the past periods. It involves identification of victims, survivors and perpetrators and helping them to access justice”(KII 5). These definitional views capture the broader TJ concepts which are related to responding to human rights violations truth, justice, healing, and reconciliation as noted in chapter 3.1.

However, in conceptualising TJ, some respondents cautioned that Zimbabwe was not truly in a transition, hence the need to define a contextualised TJ programme that is different from the conventional TJ processes used globally. One respondent stated that “Zimbabwe is not in transition and therefore, there is no transitional justice to talk about. What Zimbabwe needs, given the current state of governance, is societal, mental, structural, and ideological transformation where individuals recognise the importance of just living in a peaceful society” (KII 3). This view is valid because some people who were involved in committing gross human rights violations are still in influential government leadership positions, hence they cannot prosecute themselves for the violations. Zimbabwe had a change of leadership from Robert Mugabe to Emmerson Mnangagwa as the president in November 2017. However, there were no changes in terms of the governance systems and structures, something which echoes a continuation of the status quo, hence the view that Zimbabwe is not in transition.

As noted in Chapter 3, TJ interventions normally take place after the occurrence of significant political changes (including the governance systems and structures). On the contrary, in Zimbabwe, the country went through a power reconfiguration process without creating conditions for TJ. In simple terms, “a civilian dictatorship of Robert Mugabe was removed and replaced with a military dictatorship,” as echoed by one respondent, (KII 19). This cannot create spaces for democratisation or any sustainable peace. The ruling party continues to control the presidency, it continues to control the Parliament with a majority, and it still uses similar governance tactics as were used by the previous government.

Arguably, Zimbabweans (in general) should consider that the Zimbabwean transition began even before the change of leadership from Mugabe to Mnangagwa. The transition began with the GNU when the GNU and its various mechanisms were created such as COPAC, JOMIC, and the ONHRI which were established to steer transitional processes. The mechanisms were also reiterated a former JOMIC employee, who was interviewed. The respondent argued that transition in Zimbabwe began earlier when “three transitional mechanisms were established: COPAC, ONHRI and JOMIC” (KII 1). As mentioned earlier in Chapter 6, JOMIC was meant to monitor the implementation of the GNU while the ONHRI was meant to promote peace while addressing the past human rights violations. The ONHRI was supposed to address human rights violations that occurred between 2000 and 2009, but it failed to achieve its objectives. COPAC focused on establishing a people-driven constitution which was finally adopted in 2013, thus transitioning from the Lancaster House Constitution to a home-grown Zimbabwean-shaped constitution.

The fact that Zimbabwe changed its leadership from Robert Mugabe to Emmerson Mnangagwa without changing the material structural make-up of the power systems and governance style does not invalidate the view that there are shades of transition in Zimbabwe. Structural, mental, and ideological transformations are part of a larger TJ need, hence the need to think about developing a TJ framework that is compatible with non-transitional societies or rather *incomplete transitions*. That which the researcher calls an incomplete transition is a transition that is not conducive for TJ. The leadership transition remains a transition. It is unimportant to deny a transition

where it has taken place because it even reconfigures the governing body's internal power structural dynamics.

Zimbabwe's ruling party (ZANU PF), for example, has redefined factional conflicts and ideological differences because of Mugabe's departure, hence this shift warrants being considered a transition. After Mugabe's departure from the ZANU PF leadership, issues of political factionalism did not disappear. There is continued elite disintegration within the ruling party which is a vehicle for transition. Notably, the internal power reconfiguration within ZANU PF (internal transitions) influences the broader national transition processes.

The conceptualisation of TJ in Zimbabwe can also be considered convoluted and based on mistaken narratives. One respondent argued that firstly, using the conventional definition of TJ as is done by Western scholars, is wrong because "the modern conceptualisation does not go beyond the precolonial era because TJ (by Western definitions) commenced after the Second World War" (KII 2). Secondly, "Zimbabwe does not have a national narrative, hence the challenge on creating an agreed position of what actually constitute national history for TJ purposes" (KII 2).

Explaining why TJ should be conceptualised in a context-specific situation, respondents provided a myriad of issues that explain the pain and anger that Zimbabweans have. For example, one respondent asserted that "from Rhodesia to Zimbabwe, we expected a government that will not behave like the colonialists, but they became worse and in the process, violence flared" (KII 8). Another respondent also stated that the Zimbabwean people are bitter because of various promises that were made since 1980 and it is those unfulfilled promises that warrant TJ. "At independence, Zimbabweans were promised land and freedom from colonial governance, but to date the land question has not been addressed clearly and this explains the land grabbing in 2000" (KII 10). In addition, "the state and the military are bulldozing their way into communities endowed with natural resources taking the communities' resources, polluting their water, and degrading their land, and some people are dying as a result of such, including from starvation" (KII 4). These and other reasons mirror the woundedness, trauma, and lingering anger that justify the need for TJ in the country.

7.3. Key Conflict Issues Requiring Transitional Justice

Having identified the definitional concepts of TJ from the perspectives of key informants and affected communities (through FGDs), the participants were asked about the specific conflict issues that should be attended to and how this should happen. Understanding the key conflict issues helps to identify priority TJ needs for the identified communities. The respondents listed the *Gukurahundi* atrocities, the 2000–2009 political violence, the liberation struggle massacres such as those experienced at Chimoio and Nyadzonia, and the land issues, among others. These conflict issues were justified differently regarding why they should be prioritised. For example, one respondent stated that the land conflict must be prioritised because it was the primary reason for going to war, while some stated that the *Gukurahundi* must be prioritised because “there has never been acceptance of what happened and *Gukurahundi* victims must be told what happened, given its ethnic and national unity ramifications”(KII 11).

The respondents from the initial five FGDs (Phase 1 FGDs) raised almost similar conflict issues identified by the key informant interviewees. The responses from the FGDs revealed that people at grassroots levels are concerned about the political violence that has been experienced in their communities, land conflicts, religious conflicts, traditional leadership wrangles, and family conflicts. Some FGD respondents singled out the 2008 political violence as the major TJ conflict issue that should be urgently addressed. The respondents argued that since the 2008 political violence, “there has not been any clear communication from the government or traditional leaders on the steps that should be followed for people to apologise to each other” (FDG 4).

However, conflict issues related to TJ that featured the most were related to the continuing political polarisation among local communities which manifests through partisan distribution of food aid, partisan selection of community leaders, and in general social relations. Therefore, communities believe that justice would have been served if there was an end to partisan selection of community leaders including school development committees, village, and ward development committees, and when food aid and farming inputs are being distributed without partisanship.

The conflict issues raised by both groups of respondents, the key informant interviewees and focus group discussion respondents reflects some of the issues (but not entirely all) also captured in a study report by Heal Zimbabwe Trust entitled *A Baseline Study Report on the Peace and Reconciliation Processes in Zimbabwe: An Ideal Bottom-Up Peace and Reconciliation Framework for Zimbabwe*. Figure 7.1 shows a summary of what Heal Zimbabwe's survey found to constitute key conflict issues that should be considered for TJ in Zimbabwe.

Reconciliation Issues	Percentages
Political and electoral violence	50.8
Economic disintegration	13.4
Corruption	5.1
2008 Political violence	4.8
Poor social services/utilities and infrastructural dilapidation	4.8
Gukurahundi	4.8
Tribal/ethnic/religious conflicts	4.0
Partisan justice delivery	2.9
Unfair distribution of land and other resources	2.1
Chaotic land reform	2.1
Murambatsvina or property destruction	1.6
Gender Based Violence (GBV)	1.3
Chiadzwa atrocities	1.3
Liberation struggle	0.8
Total	100.0

Figure 7.1: Key conflict issues that should be considered for transitional justice (Source: Mungure, Mandikwaza and Guthrey (2018).

From the list in figure 7.1 above, key conflict issues that resonates with what the surveyed respondents also highlighted include political and electoral violence, partisan distribution of food aid and land, the Gukurahundi atrocities and the liberation struggle gross human rights violations. However, it is crucial to note that FGDs respondents in Makoni district mentioned some issues that were slightly different from those listed by key informant interviewees. For example, the Gukurahundi issues were not mentioned in any of the FGDs carried out in Makoni District, but they were mentioned by key informant interviewees. This shows that the FGDs respondents mentioned what is

contextually relevant to their community as opposed to key informants who took a nation-wide perspective to TJ issues.

Some respondents felt that instead of looking at which key conflict issues should be addressed, there is a need to look at how far back the transitional justice issue should go, and this determines conflict issues that should be addressed. This means that while there may be key conflict issues that some people may want addressed, that which is essential is to have a consensus on the period from which conflicts can be traced. It can be argued that, given the differences in impact and effects of these conflicts on different people, using periodicity to mark priority conflicts could be essential. Identifying specific conflict issues to address could create more hate, conflict, and trauma to those whose conflict memories will be left out.

It can be observed that while experts, key informant interviewees, were largely concerned about national-level conflicts, those who participated in the FGDs were mainly concerned about conflicts that had happened within their local communities. It is this difference in scale and magnitude where TJ should be contextualised to citizens' (victims, perpetrators, and bystanders) needs, hence the need for grassroots-level-initiated TJ processes, which this study sought to model.

7.4. The Role of Mediation in Transitional Justice

To understand the role of mediation in TJ processes, the research respondents were first asked what they understood from the term *mediation*. Both the key informant interviewees and FGD participants understood that mediation was a third-party intervention to a conflict. For example, respondents in FGD3 (2020) stated that "mediation involves a neutral person who presides over two or more people in a conflict where both sides of the story are unpacked and understood." This definition was consistent with that of the key informant interviewees who mentioned the third-party involvement. To amplify the definition of mediation, one key informant stated that "mediation is important because it builds and restore broken relationships. Reconciliation of the society ensures that there is peace and stability and promotes unity and good working relations" (KII 12). In this view, it can be argued that there is a

general awareness of the existence of mediation and why it is essential among communities when conflict resolution is concerned.

After defining mediation, the research respondents were further asked to explain how they position mediation as a conflict-resolution mechanism in TJ activities. The respondents indicated that the most important aspect of mediation that helps TJ is its ability to bring together conflicting parties to dialogue, clear out perceptions, and address the antagonistic realities of conflicting parties. For example, one key informant stated, “mediation enable protagonists to come together to address their differences through a third party” (KII 17). This was also reiterated by a peacebuilding practitioner interviewed who stated that mediation would “enable two sides to agree, mend relations, build bridges and reparations are mutually done” (KII 9). This means that in TJ processes, mediation is mutual, and it is not retributive. The mediator “provide support walking through the affected parties without judging them but accepting who they are” (KII 6). These views mean that mediation has a role to play in TJ processes if it can create spaces for the conflicting parties to come together through a third party.

According to a natural resource governance activist interviewed, mediation helps to bring people to a negotiating table, which is the starting point of building a sustainable peace process. The respondent argued that “in most of the cases, interaction between victims and perpetrators is violence, but mediation gives the victim a safe environment to engage, it gives both sides to understand each other – victim to understand the perpetrator and reasons why they did what they did (KII 4). These views also agree with beliefs held by FGD4 participants who argued that mediation is purposefully initiated to “build and restore relations that might have been broken or lost in the past.” It is the safety that mediation presents that allows conflicting parties to dialogue.

While confirming the role of mediation in TJ, the respondents, both key informants and FGD participants, were quick to also mention the qualities of a mediator. It was noted that if the mediator is to succeed, the mediator should not judge the conflicting parties, provide advice, or become biased towards one of the conflicting parties. Instead, “mediation is about trust building and parties should believe in the mediator” (KII 15). A former military officer and academic who was interviewed also stated that “Mediation should be conducted by a neutral person who is accepted by both parties” (KII 7). The

respondent further said “in the Shangani community, mediation is still being done appropriately unlike in other communities where people now believe more in conventional courts” (ibid). This remark draws an ethnic-cultural dimension to the preservation of mediation practice because, in Zimbabwe, the Shangani community is generally considered a marginalised ethnic group whose social and economic life is confined to its cultural practices (Muzondidya and Ndlovu-Gatsheni 2007; Mpofu and Salawu 2018). Following the respondent’s view, it can be argued that the application and the success of mediation in grassroots TJ issues (and in general) will now depend on the extent to which the community is modernised and its proximity to conventional court systems. Closed communities that still practice mediation based on their cultural practices may probably succeed compared to those with adulterated mediation practices.

However, some respondents felt that mediation does not apply in TJ because the process is a power issue as opposed to a moral or legal justice issue where the perpetrators may feel obliged to accept mediation. One key informant argued that:

[I]t is a bit difficult to apply the concept of mediation in our context in that mediation deals with power. For mediation to work, there must be some equilibrium in terms of power dynamics between protagonists, yet in the Zimbabwean cases, there is unequal power balance between the state and the victims of structural violence (KII 14).

This remark was made, presumably, in the context that Zimbabwe is not in a transition and the major perpetrators of gross human rights violations are the state and the ruling elite whose interests are centred on power. Under such circumstances, where power and dominance are superior to healing and reconciliation, there will be no incentives for the state to accept mediation because it simply uses “state power and military to suppress the communities to become silent” (KII 19). Another respondent argued that because communities “have different configurations, mediation should not be the only approach to collaborative TJ processes” but rather there should be customised actions depending on the intervention’s entry points (KII 3).

The role of mediation in specific transitional justice pillars

After confirming that mediation has indeed a role to play in TJ processes, the participants were asked to explain whether mediation can address specific pillars of

TJ and how this happens. The respondents acknowledged that mediation processes can facilitate truth telling, restorative and prosecutorial justice, institutional reform, reconciliation, and memorialisation. However, it was interesting to observe that for mediation to address all these key pillars of TJ (truth telling, justice, reconciliation, reparations, and memorialisation), there must be two types of mediators: (a) ordinary mediators whose authority to mediate is derived from the conflicting parties' recognition, and (b) employed mediators whose authority is derived from their government positions such as truth commissions, commissions of inquiry, and any other reconciliation bodies. This differentiation will be explained subsequently, while addressing how mediation addresses each type of mediator processes. This study is, however, more concerned with the first type of mediator, with a mediation process that is bound by moral obligations as opposed to the statist top-down mediation process.

7.4.1. Truth Telling

Mediation creates a platform for the conflicting parties to come together and dialogue based on a common belief that differences will be transformed. This then allows the truth to be told among the conflicting parties. The truth comes either because both parties would have built mutual trust and genuinely want the conflict to be addressed or because the mediator has the authority to ensure that the conflicting parties are forced into revealing the truth. For example, a former JOMIC political liaison officer who was interviewed stated that "JOMIC created a platform where victims tell their stories, and the perpetrator would also give their side of the story which enabled truth extraction and truth telling" (KII 1). As noted earlier in Chapter 6, JOMIC was a state-mandated mediator between conflicting political parties during the time of the GNU. Therefore, its experiences in mediation indicate that truth telling can be facilitated with authority. However, in cases where there is no legal authority mediating, a mutual desire to resolve the conflict and trust building become the basis for truth telling.

Demonstrating that mediation facilitates truth telling, another respondent stated that "mediation brings a eureka moment where someone discovers the truth they did not know. There is some boding that happens with mediation and then the truth begins to come out" (KII 4). This means that mediation creates a conducive environment for people to begin trusting each other such that the truth will begin to unfold during the

dialogue. A liberation war veteran who was interviewed also supported the view that mediation brings the truth by stating that mediation takes away prejudice between the victim and the perpetrator. The respondent noted that “truth comes as prejudices fall away and trust is built (check the contact theory). Animosity depreciates and one begins to understand why things happened the way they did” (KII 8). These views point to the conclusion that mediation is a catalyst for truth telling.

However, it must be noted that truth telling does not necessarily come because there is a mediator but because there is trust that has been built between the conflicting parties. This was articulated by a community mediation facilitator interviewed who stated that “opening up in mediation should not be mistaken as truth telling just because the mediator does not judge the extent of openness or the content. The exposure of truthfulness is only ascertained later along mediation process as trust is built” (KII 15). This opinion indicates that mediation does not necessarily lead to truth telling unless there is either a compulsion to tell the truth or mutually built trust and a shared desire to address the conflict based on truthfulness.

7.4.2. Prosecutions

Prosecutions in TJ are a form of retributive justice. Therefore, only mediation that is led by state-appointed agencies can lead to prosecutorial justice, whereas the mediation process that is based on the perpetrator and victims’ recognition of the need to address their conflicts cannot support prosecutions. For example, one respondent noted that “JOMIC helped victims to report their cases to the police and some perpetrators were sentenced” (KII 1). The respondent further explained that during their (JOMIC) mediation process, the police were biased towards protecting perpetrators, but in some instances, they would act and get the reported cases heard before the courts. This means that when the state-established mediators facilitate the conflict-resolution process, their intervention can achieve prosecutorial justice, but in a corrupted justice system, partisanship, and bias in favour of the perpetrator can always be experienced, thus stifling prosecutorial justice in TJ processes.

However, in cases where mediation is based on the conflicting parties’ readiness and mutuality to resolve their conflict, prosecutorial justice is unwanted. This was confirmed by KII 9 who argued that if mediation (for TJ) leads to prosecution, then

perpetrators would not want the mediation process. This means that “prosecutions must be left to the state” (KII 9). Given that this study is exploring the possibilities of using mediation in grassroots-level TJ processes, it can be argued that grassroots mediation that can potentially build sustainable peace cannot achieve prosecutorial justice unless the state-mandated institutions are mediators themselves.

7.4.3. Reparations

The research respondents were asked to specify if mediation can play a role in facilitating reparations. The respondents acknowledged the role that mediation plays in reparations. The respondents from FGD5 agreed that mediation within local communities is carried out to repair the aggrieved parties and “it normally happens through payment with cattle, goats, grains, money, or exchange of human beings.” Diverse examples where mediation has achieved reparations were cited at both grassroots- and state-agencies-initiated reparations interventions. For example, a respondent who participated at a JOMIC-initiated mediation, stated that “in Mutoko, following a dialogue where the perpetrator (Member of Parliament) apologised for the violations, he was asked to return the displaced victim to her home village and to guarantee non-recurrence” (KII 1). This means that following the mediation process, the mediators further pushed the perpetrator to repair the victim by asking him to facilitate the victim’s return to her village where she had escaped politically motivated violence.

In explaining how mediation supports reparations at the grassroots level, some respondents echoed the mediation role of traditional leaders in conflict resolution and peacebuilding. For example, “when chiefs intervened in the conflict, the properties of opposition members that had been taken were returned,” a respondent recounted her experience with traditional leaders mediating politically motivated violence in Mutoko (KII 9). Another respondent buttressed the point that reparations can be achieved through mediation by noting that “traditional leaders can facilitate reparations because naturally when there is a spell (ngozi) in their communities, they enforce reparations to stop or prevent the problem” (KII 15). This perspective shows a community-level mediation process being facilitated by traditional leaders.

Another befitting example where traditional leaders have mediated TJ-related issues leading to reparations was observed in Gokwe where a member from the Chokuda family was killed during the wave of political violence in 2008. Through traditional spiritual magic (*ngozi*), the body could not be buried for over two years as the victim's family "demanded a virgin, 70 heads of cattle and US\$ 15 000" (Zvomuya 2015: 1). The government tried to intervene in the case through the court system, but the victim's family continued refusing to bury the body until Chief Njelele finally brought together the feuding families (of the victim and the perpetrator) for a dialogue leading to reparations being paid.

In general, it can be argued that when conflicting parties are brought together to dialogue on their differences, there are high chances that reparations will be satisfactorily agreed upon as the moderator (mediator) will ensure that the demands for reparations are not punitive but fair.

7.4.4. Memorialisation

In terms of memory building, respondents indicated that mediation could support memorialisation only if the mediation process is carried out by a person with knowledge of the circumstances of the conflict issues. For example, the FGD3 respondents asserted that at the grassroots level, "traditional leaders have memory of the dead. They can assist to perform rituals and pointing out where past graves are and how they can be addressed in a more dignified manner." This means that traditional leaders are cultural mediators who can assist the TJ process by facilitating cultural rituals that promote healing and reconciliation. At the state level, the erection of monuments, establishment of heroes' acres, and naming of roads and buildings after key events also act as memories which the local authorities and the government implement.

However, it was interesting to note that none of the respondents indicated the negative side of memorialisation. The establishment of memorial infrastructure may trigger emotions and open old wounds. Opening old wounds may rekindle hurt and trauma among the victims or trigger revenge violence among disputants, as noted in the theory and practice of TJ in Chapter 3.

7.4.5. Reconciliation

Reconciliation is an essential component of TJ. Therefore, the research participants were asked if mediation processes can support TJ. One respondent argued that even if mediation allows conflicting parties to dialogue and understand their differences, “reconciliation is entirely dependent on the individual person” (KII 18). This means that there may be acceptance of the wrong committed and an apology can be given through mediation, but this does not guarantee reconciliation which depends on how the victim feels. Another respondent also argued that “reconciliation comes after reflections from the mediation intervention” (KII 6). This view means that mediation is a catalyst for reconciliation because it allows conflicting parties to understand their differences through critical reflections which impliedly leads to a reconciliatory mindset. This researcher agrees that mediation cannot produce reconciliation, but it can enable conflicting parties to have in-depth soul-searching actions that enhance the probability for reconciliation.

7.5. Mediation Actors and Stakeholders

The research respondents were also asked to indicate key mediation actors and what their interests were when carrying out mediation processes related to TJ issues. This would help identify possible actors who could facilitate mediation interventions that address TJ grievances within local communities. Key mediators identified by both the key informant interviewees and FGD participants included traditional leaders, church leaders, the police, civil society institutions, and the general eminent community members. These various individuals and institutions can act as mediators because they are closer to the people and have finer details on the local conflict issues.

The identified actors, generally, “are neutral people like church leaders, traditional leaders or merely professionals working in those communities such as nurses, agricultural extension officers, headmasters to whom many people get services, and they submit to those people” (KII 4). These people serve both victims and perpetrators as part of their work obligations, without discrimination. This observation suggests that mediation can be carried out at the level where people of influence can lead the conflict redress process with perceived or real neutrality. Government actors identified as

mediators were the National Peace and Reconciliation Commission, rural district councils, and elected officials. Figure 7.2 shows different mediation actors and their interests, as identified by research respondents.

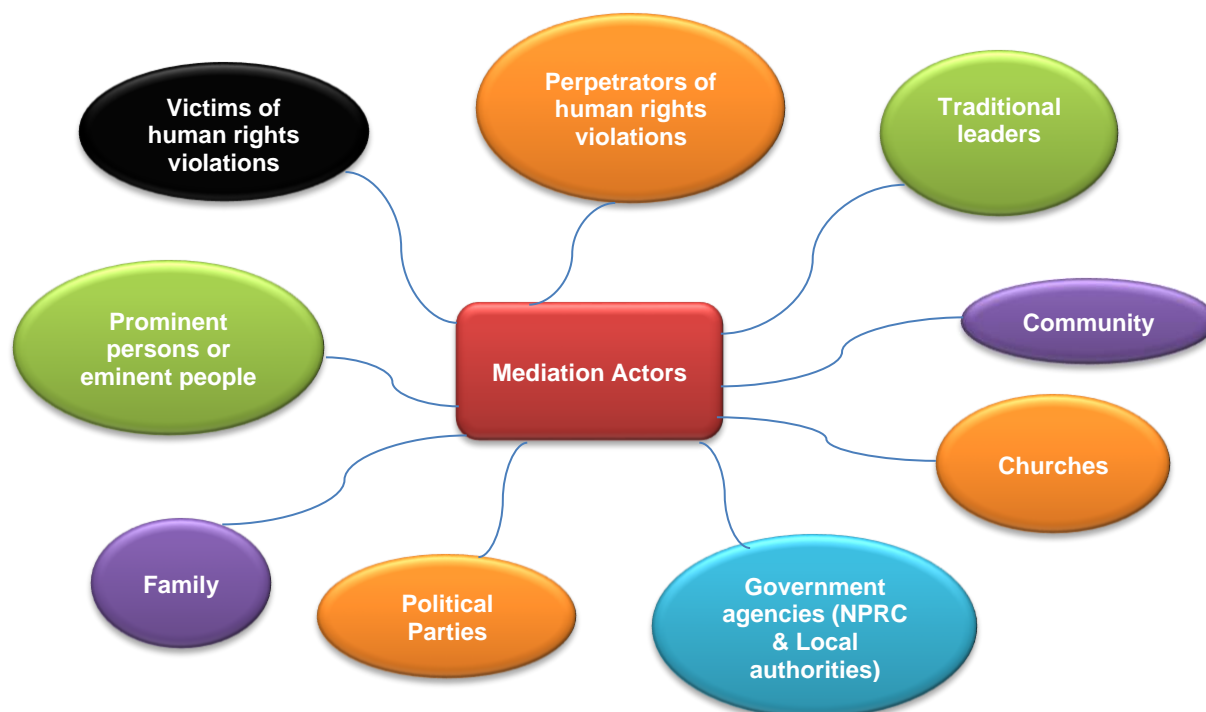


Figure 7.2: Different mediation actors and their interests, as identified by research respondents (Source: Author).

In view of Figure 7.2, the subsections that follow provide explanations of each actor's role and interests.

7.5.1. Community

Majority of the respondents began by indicating that the community has a broader responsibility to ensure that there is social cohesion, peace, and tranquillity among its members simply because it shares the commons that cannot be enjoyed without collaborative efforts. When a violation occurs in a community, it affects the entire community, hence the need to have the entire community take responsibility in mediating TJ issues. In explaining the community responsibility to mediate conflict issues, one respondent stated that the "African culture says that if someone is killed or violated, the whole community will experience a spell of ngozi and droughts, among others. Therefore, the community can act in unison to prevent such cases" (KII 14).

The interest of the community, in this case, to mediate TJ issues is plainly to ensure that there is no collective punishment of *ngozi* and droughts. Notably, bloodshed, for example, causes communities to become divided, thus breaking local relationships. Hence to avoid a disruption of community relations, there is a compelling need for the community to act as a mediator in TJ, healing, and reconciliation processes. This view was emphasised by six respondents in FGD2 who argued that “communities live for the other, hence interests are based on relationships.” This relational appreciation is essential because “communities share space, the air they breathe, pastures, and water sources,” (KII 15) which makes the community a pivotal instrument for relationship building. This means that there is an inherent communal interest to maintain peace and order, given the shared spaces and resources which are best enjoyed when there is some level of peace and sanity.

In addition, in every community, conflicting parties gather around either the victim or the perpetrator which makes the community a key stakeholder in the resolution of the conflict. Hence, the community as an interested actor in any prevailing conflict issue has a role to play not only in the resolution of TJ-related conflicts but in the broader sustainable peacebuilding process. If the community fails to take an interest in mediating TJ, healing, and reconciliation issues, it remains poor and underdeveloped, as argued by RR5 who stated that “the community wants development and where there is conflict, there will be no development” (KII 5). Development largely emerges when people in a community act collectively and in unison and good relations are a pre-requisite for these to happen. Without collective actions, the community cannot achieve any “futuristic purposeful development where they see life with a positive eye” (KII 6). In general, the community’s commitment to peaceful coexistence drives the desire to mediate TJ at the grassroots level, but challenges may emerge when members of the community take the side of the perpetrator.

7.5.2. Traditional Leaders

Traditional leaders are generally pivotal in conflict resolution within rural communities because of their institutional position, and they derive their power from customary practices and history (Centre for Conflict Management and Transformation 2014). They are the first-line leaders within local communities, and they are also the

custodians of traditional cultures that regulate communal practices and conduct. Traditional leaders mediate conflicts over land, water, family, and witchcraft issues (KII 4). This view was corroborated by another key informant interviewee who asserted that:

[Traditional leaders] facilitate the building of bridges among community members which cannot be done by the NPRC ... they know both the perpetrators and victims because they live closer to the people, they know where the graves of the killed are, the behaviour and character of their subjects ... they have clear knowledge of the past violations and they know the underlying root causes too by virtue of being closer to the people (KII 2).

The above observations point to the fact that traditional leaders' proximity to the people and their daily interaction with both perpetrators and victims make their mediation role a necessity for the community. Notably, traditional leaders experience the immediate effect of violence and conflict, hence their desire and suitability to address past human rights violations. For example, "in case of a killing in their village, *ngozi* and drought effects affect the traditional leader most since people will expect him or her to address the spell." This perspective agrees with that of Benyera (2015) who observed that traditional leaders have a duty to preside over *ngozi* issues and see reparations through until they have been made.

However, Benyera is also quick to indicate that the *ngozi* payment tradition has assumed an inferior position due to modern prosecutorial justice, yet in a practical case of Moses Chokuda who was killed in political violence, the case could not be solved through prosecution. "For more than three years, Moses practically 'refused to be buried'. His family was adamant that Moses will only be buried when they receive compensation from his murderers, their incarceration notwithstanding" (Benyera 2015: 6760). As a result, traditional leaders had to facilitate the *ngozi* payment rituals. The case of Chokuda shows that traditional leaders have a better understanding of dealing with murder than, for example, the criminal justice system. Arguably, therefore, traditional methods have a way of rehabilitating the perpetrator and enabling the victim to be repaired. The perpetrator will also be an example for the community for deterrence purposes, yet in the criminal justice system, people receive murder sentences, and their incarceration causes more harm than good. That which is also

revealed from the Chokuda case is the memorialisation, reparations, and justice role played by traditional leaders.

On the contrary, the most obvious concern that was raised by the research respondents was the politicisation of traditional leaders and their partisan behaviours when intervening in human rights violations issues. A former JOMIC representative who was interviewed stated that:

[Traditional leaders] can play a crucial role, but the institution has been politicised such that people no longer respect them. ... they have been partisan in food aid distribution, [and] some traditional leaders hold office in the ruling party hence a challenge for the communities to accept them (KII 1).

As noted in Chapter 6, the politicisation of traditional leaders and their work suggests that they cannot handle TJ issues arising from political conflicts. Notably, in the Zimbabwean context, it is difficult for traditional leaders to be accepted, as was the case with the *Gacaca* situation in Rwanda because of the perceptions of bias, partisanship, and a lack of trust from victims and perpetrators. Some respondents, nonetheless, justified the partisan behaviour of traditional leaders, arguing that traditional leaders have not been conscientised on several TJ issues, especially because the ruling governments suppress their roles and politicise them. This being the case, there is a need to build the capacity of traditional leaders to become more objective and aware of the drawbacks of being partisan when executing their duties.

7.5.3. Churches

Churches and church leaders were considered strategic mediators in TJ processes for various reasons which include the church's power to mobilise and galvanise people from across socio-economic and political groups, the general trustworthiness of church leaders, and the church having a critical mass capable of influencing public thought. One respondent stated, "churches are easy mediators because both perpetrators and victims are both members of the church and they would all want to be seen behaving in a godly manner" (KII 4). Another respondent added that "religious platforms can play a positive role only if they have a leadership that can access victims and the leadership responsible for the violations" (KII 18). The church is capable of acting as

a galvanising force because it “does not have a direct political interest,” hence its acceptability in TJ mediation (KII 3).

Furthermore, there is a general trust placed in church leaders because they are focused on winning souls for heavenly objectives which cannot be achieved when communities, families, and individuals are divided. This was articulated by a respondent who noted that church leaders can mediate conflicts successfully because people trust pastors; “it is a biblical teaching to seek mediation from the church or elders, [and] making your life right with the Lord requires one to seek mediation, forgive, and reconcile,” hence the essence of the church (KII 14). These perspectives suggest that the church remains a crucial pillar in conflict mediation because of its uniting role, and it gathers people from different backgrounds, including victims and perpetrators.

However, the respondents also added that some churches and their leaders had become politically active such that their mediation roles cannot be accepted due to issues of mistrust. “Some churches like the apostolic sect have been politicised and if anything, they are not interested in mediating community conflicts” (KII 1). Similar sentiments were echoed by participants within all five FGDs and by another key informant interviewee who singled out Bishop Trevor Manhanga as an example of a church leader whose position was politically compromised and, therefore, he could not be trusted to mediate TJ issues relating to interparty violence, for example.

When asked on the interest of the church in mediation processes for TJ, the respondents reasoned that the church was compelled to become a mediator because the institution naturally wanted to recruit more people into its membership, and it sought to address social and moral spiritual issues that could only be enriched when there was reconciliation, justice, and healing. Therefore, mediating conflict issues helps the church to recruit more people into the church and to advance the heavenly kingdom.

7.5.4. Political Parties

Political parties are key stakeholders and actors in TJ mediation because of their participation in violence and conflict generation. In Zimbabwe, since pre-

independence times, gross human rights violations have occurred because of interparty violence mediated and/or enabled by the government itself. Therefore, political parties should be able to play a critical role in creating a conducive environment for dialogue and the resolution of conflicts especially by educating their members on the peaceful resolution of conflicts as well as mobilising them away from hate speech and violence or having a spirit of revenge.

However, this mediation process works effectively if the political-party leaders commit to peaceful political activities, as argued by key informant who stated that “political parties are responsible for most of the violence that has occurred in Zimbabwe, therefore, they should lead the mediation processes across the political divide” (KII 13). This argument is valid because politically motivated violence has been the major conflict issue in Zimbabwe, and it is centred around political parties’ power contestations.

7.5.5. Prominent People

Local and national prominent persons were also identified as possible TJ mediators. A prominent person is someone who is favourably known, outstanding among other persons, respected, or a noticeable person (Collins Dictionary 2022). The research respondents singled out these persons as *vanyarikani* (communally respected persons, *vaparidzi* (religious preachers), *n’anga* (traditional healers) and community opinion makers. These people are influencers, they influence what the individuals and the general public thinks, they are trendsetters, hence their potential power to mediate TJ related conflicts. They carry some respect and are listened to, in some instances, in a way that may not equal (some) community leaders.

For example, it was noted that traditional healers’ opinions can be respected because they are considered foretellers and their views are important, and prophets were also considered in the same way as traditional healers (KII 2). These people (traditional healers and prophets) are considered important in deflecting bad spirits caused by mere cursing or murder, which are TJ matters. Therefore, when they speak, their opinions are likely to be respected, hence their possible ability to influence conflicting parties to accept dialoguing and setting aside their differences for the common good of their community and families.

The interests of eminent leaders in mediating TJ were generally echoed as similar to the generality of citizens staying in a peaceful environment where there is cohesion and tranquillity. In most cases, eminent people gain their prominence for participating in activities that uphold progress within their communities. This was confirmed by one respondent who echoed that prominent people generally have something that they do in the community's resilience in the face of conflict, poverty, and underdevelopment. Hence, it can be justified that their interest in community mediation processes is community driven rather than personal.

7.5.6. Families

Family members were also singled out as important mediators in TJ processes. It was argued that both victims and perpetrators are family persons who would want their families to live in a safe environment. Therefore, families of conflicting parties should take the central role in mediation. One respondent, for instance, argued that engaging the church and traditional leaders is an escalated level because of the need to promote privacy:

Remember Ngugi's statement in the book *A Long Time Ago* when he says, 'the oil of the household cannot be spread to the strangers' – what he meant is that conflicts in the family must not be put out to the public unless internal resolutions have failed (KII 2).

This respondent is, arguably, suggesting that the interest of the family to mediate TJ issues is to keep family secrets and maintain privacy. The suggestion evidently shies away from public hearings and any broadcast of the TJ process among conflicting parties in the interest of promoting reconciliation, justice, and reparations with privacy, as a critical caveat.

7.5.7. Government Agencies

The government has its own nationally established architectures for peace which are charged with duties of violence prevention, conflict transformation, and healing and reconciliation, in general. The research respondents singled out the NPRC, the Zimbabwe Human Rights Commission (ZHRC), and the rural district councils as key mediators in TJ conflict issues. As noted earlier, the NPRC is the country's TJ vehicle

established through the Constitution of Zimbabwe, while the ZHRC is a national vehicle to promote and protect the rights of citizens. These commissions are already operational, but their impact is yet to be experienced, given that Zimbabwe continues to experience gross human rights violations regardless of the institutions' presence (KII 11).

The research participants were asked to explain why the government, through the identified agencies, would be interested in mediating TJ issues. It was noted that the government would be happy to have TJ-related conflicts mediated as long as the process does not threaten those in power. One respondent submitted that divided communities are difficult to maintain, therefore, "it must be in the interest of the government to ensure peaceful communities" (KII 16). A former army security officer who was interviewed supported this view by acknowledging that the government suffers a cost if it does not take an interest in mediating conflicts. The interviewee argued that "any resolution of conflicts at the local level supports the government's development agenda because where there are conflicts, the government's efforts will not work" (KII 7). This means that there could be an active interest for the government to facilitate mediation processes.

Another perspective on why the government could be interested in mediation processes is because it is usually the perpetrator and if there is reconciliation, the government agencies who commit violations on behalf of the state will be safe. A former ZIPRA fighter who was interviewed, for instance, argued that the government knows that once the perpetrator (who is the government's messenger) is accepted into the community, the person will no longer be a threat to the state because probabilities of exposing their wrongful deeds would be minimised. "In Tsholotsho, people who committed atrocities are known and once they are accepted by the community, the state knows they are no longer a threat to both the state and the community" (KII 8). This view suggests that the government is threatened by its agents who are not accepted by the community after being exposed, because they can potentially expose the truth of that which has happened if pressured by the community. However, if the same agents are reintegrated into their community without pressure to tell the truth, they can be useful again in helping the state commit more human rights violations without much attention from the community.

It was also noted that the government is usually both the punisher and perpetrator of gross human rights violations. Therefore, although the government is supposed to mediate conflict issues, where peace costs political power, the state will see no value in ensuring peaceful communities, as is the case in the North African countries of Sudan, Somalia, and South Sudan. One respondent argued that the government always looked at matters from the viewpoint of electoral votes and political control. "If mediation gives the government greater control of the community, it will support it, but if the mediation exposes the government, then the government will stifle it" (KII 4). Another respondent added that "the government feels powerful when there is allegiance which comes from the divide and rule" (KII 9). This suggests that the government cannot support mediation processes that advance TJ, healing, and reconciliation as long as the processes threaten the political elite's power interests.

7.5.8. Victims

Victims of past human rights violations were also identified as key actors in TJ mediation because they can initiate the mediation process with a view to make peace with the perpetrator. When asked on the major victims' interests in the mediation process, the respondents identified reparations, safety, trust building, and love as essential needs. The participants in FGD2 agreed that the feeling of unjust violations naturally affect the victim. "When beaten, you naturally want to return the fight, but if you cannot, one will call for reconciliation." This view implies that the victim can call for mediation in cases where one cannot seek revenge or justice individually. Another interviewee, a community mediation facilitator, stated that "victims want the wrongdoer to confront the problem by realising that they were wrong. But for rape, they want such people to be jailed" (KII 6). This view means that some cases such as rape are beyond mediation.

The researcher also observed a contrary opinion where the victim would be marginalised from the community if he or she did not call for mediation. This was revealed by a former army security officer and academic who argued that the victim's interest is to unlock the economic and relational value associated with being a member of the community. Otherwise, "the victim may remain marginalised from the community." This view is surprising as in the respondent's opinion, the victim is the

one being marginalised by the entire community. Under normal circumstances, it is the perpetrator who should become marginalised for wrongdoing in a society bound by peaceful moral values. This means that if a victim feels obliged to call for mediation in these circumstances, it will reflect the power of fear instilled by the perpetrators and the silence of the majority on transgressions.

In general, it can be deduced that the victim can be an agent to invoke mediation support. However, the victim's interests are motivated by the need for reparations, safety, and trust building, among other factors.

7.5.9. Perpetrators

Perpetrators are key actors in the mediation process, which the research participants confirmed. Under normal circumstances, perpetrators, by virtue of being the wrongdoers, are expected to actively call for mediation to make amends with the victims. This is because "it's not safe [for the perpetrators] to be in the state of a perpetrator and as such, every perpetrator lives in fear"(KII 8). Perpetrators would want a "guarantee of safety especially where they would have been exposed" (KII 1). This means that perpetrators feel safer only when the conflict has been addressed. When a conflict continues unaddressed, perpetrators will always feel unsafe, fearing revenge and continuous discrimination and labelling.

Some perpetrators want to be accepted back into the community, but if not accepted, "they tend to abuse drugs because if they do not have anyone to share with their stories, they tend to be suicidal, and if they move away from that community where they committed violations, they may become worse" KII 6). In addition, perpetrators could be interested in mediation simply because they want to clear their names and guilty conscience. Those who want to clear their names will, at times, have been sent by other people to commit the violations, hence their proclivity to have the conflict issues addressed.

There is, however, a possibility of perpetrators wanting the mediation process to cover their penchant for human rights violations. One interviewee argued that some perpetrators may desire normalising relations without being genuinely repentant. The respondent claimed that "they may appear to be reformed or peace-loving to avoid

community sanctions associated with that kind of behaviour” yet they still commit gross human rights violations within their communities (KII 7). Nonetheless, when perpetrators call for mediation, it reflects their acceptance of wrongdoing and the desire to reconcile, build relations, and enhance peace.

7.5.10. The Civic Society

The civic society was also identified as a key stakeholder in TJ mediation processes. The research respondents indicated that most conflicts within their communities related to TJ or non-transitional justice issues and were largely handled by civic society organisations. This view was also confirmed by Ndlovu-Gatsheni and Benyera (2015: 25) who noted that civic organisations support TJ issues “with the provision of technical support, expertise and even personnel in support areas such as communication, logistics, advertising and data analysis.”

When asked about the interest of civic society organisations in supporting TJ, the respondents were quick to indicate that most civic organisations supported humanitarian and development work to enable peaceful living. Therefore, their interest to “see communities living in a peaceful environment where there is cohesion” (KII 19). However, some respondents also indicated that as much as civic organisations were good arbiters within several communities, the government had been “preventing most human rights organisations from accessing communities easily which would make it difficult for them to operate effectively in addressing human rights violations and emerging conflict issues,” as related KII 14).

7.5.11. Other Actors

It was interesting, however, to note that the business community and women’s groups were never mentioned as key actors in the mediation processes. In rural communities, women normally form clubs and associations for livelihoods projects and money saving schemes which can be a vital space to address conflict and peacebuilding issues (Manchanda 2005; Chivasa 2018). Women are generally major victims of gross human rights violations and the international call (through the United Nations Resolution 1325) to have more women as key actors in peacebuilding should be advanced. Ndlovu-Gatsheni and Benyera (2015: 24) also advanced this view by noting

that in Zimbabwe, “women should do more than just bring out their testimonies” by being actively involved in TJ processes, given that they are the most affected in any conflict situation in both the household setting and public life.

The business community, on the other hand, is central either in funding political activities that support gross human rights violations or in promoting peace and social cohesion, hence their relevance in conflict-mediation processes. The interest of the business community in ensuring that there is peace in their communities is relevantly anchored on business interests. In a violent community where there is no social cohesion or healing and reconciliation mechanisms, criminality is highly likely. Therefore, the business community would likely participate in conflict resolution if awareness were raised and probably if trained and equipped with relevant skills.

7.6. Mediation Challenges and Opportunities

Mediation processes are generally faced with several challenges, some of which are manageable, however. The research respondents were asked to identify possible key mediation challenges, opportunities, and ways in which the demand for mediation can be increased. This section, therefore, provides respondents’ views on the challenges, opportunities, and possible ways to increase the demand for mediation.

7.6.1. Possible Mediation Challenges in Transitional Justice

The research respondents identified various challenges that may affect TJ mediation processes. Some of the challenges include a lack of political will, fear of the unknown by both the victims and the perpetrators, poor prioritisation of conflict issues that should be mediated, and a lack of collective action by affected communities.

(a). Lack of Political Will

There was a belief that the government may not allow mediation processes aimed at TJ to take place especially if the process negatively affects the ruling elite’s power structures. To confirm this view, one respondent noted that “the government may not allow such processes to happen so that it maintains the divide and rule and anything that feeds into their power retention” (KII 2). In addition, lack of political will may

emerge from the state's failure to believe that the existing conflicts require TJ, or the state may not necessarily prioritise conflict resolution and TJ, in particular.

(b). Lack of Cooperation by Perpetrators

It was also noted that the mediation process may not be successful in cases where some perpetrators are unwilling to participate in the mediation processes. One respondent argued that "unwillingness by some actors, especially perpetrators, to participate in the mediation processes could hinder progress" (KII 4). This unwillingness may be a result of a mere refusal to take account for one's actions, the fear of taking accountability responsibilities, or other factors. However, preparation of both parties will be essential to ensure maximum cooperation throughout the mediation process.

(c). Mistrust

If the mediators cannot be authenticated or trusted by the conflicting parties, it may also be difficult to effectively carry out the mediation process. Not all people are accepted as mediators because of perceptions and mistrust. "Mistrust is a big challenge because people may plan things together but when it comes to establishing representatives or executing the plans, everything goes back to the initial point" (KII 18). It is, therefore, essential to cultivate trust at every point in the mediation process to avoid mediation collapses.

(d). Peace Spoilers

The respondents also indicated that generally, there are people who benefit from conflicts. Hence, these people may spoil the mediation processes to maintain their benefits. One respondent suggested that, in some instances, both victims and perpetrators have become captives of their associates, and this makes it difficult for the conflicting parties to reintegrate into the community, hence they become spoilers together with their associates. Therefore, associates to the victims and perpetrators may also need to be brought to the mediation table to prevent the spoiling of the peace processes.

7.6.2. Increasing the Demand for Mediation in Transitional Justice

Regardless of the diverse challenges identified by the respondents, there are also possible ways to increase the demand for mediation in TJ processes. The respondents identified trust building, awareness raising, and community education as essential mechanisms to increase the demand for mediation. Trust building should be increased among potential mediators such that both the victims and perpetrators will believe in mediation processes. Awareness raising and education should be particularly directed at the conflicting parties to enable them to understand the cost of conflicts and why mediation can reduce such costs. This is because “if conflicts are not addressed, development opportunities are lost to frustration, anger, vengeance, and disgruntlement” (KII 11). Therefore, by increasing education and awareness on the importance of resolving conflicts through mediation and dialogue, the costs of not addressing conflicts and making people more aware of alternative dispute resolution mechanisms will be minimised.

Self-organisation among victims can increase the demand for mediation, given that once a coalition is built, there will be pressure for accountability. During FGD3, it was argued that “there has to be self-organisation of the victims to demand dialogue and demanding the truth, which will increase the mediator necessity.” This has already happened in Zimbabwe, for example, the victims of the *Gukurahundi* atrocities have self-organised through the Matabeleland Collective and have been able to meet the president on several occasions to demand policy responses towards the healing and reconciliation of the Matabeleland and Midlands people. There is also the Zimbabwe Political Victims Foundation Trust, a pressure group of victims of political violence aimed at demanding accountability, healing, and reconciliation from the government. In this view, it means that to increase the demand for mediation driven by victims, there must be a structure that represents victims at local or national levels.

With regard to awareness raising and educational activities, it was noted that a lack of knowledge has hindered the use of mediation in TJ-related conflict issues. For example, one respondent stated that “education needs to be done and even perpetrators must know the dividends of mediation that they have a healing effect” (KII 14). Case studies of previously mediated cases can also be used within target

communities as part of the education and awareness-raising process. This is because “at times, communities adopt practices when they have seen an example of results elsewhere, locally or internationally” (KII 10). Therefore, awareness raising, and education can be one of the alternative ways of increasing the demand for mediation. Only when victims, perpetrators, potential mediators, and the general people have knowledge and awareness on the dividends of using mediation as a conflict-resolution mechanism will the demand for mediation possibly increase. However, for this to work, communities must have established mediation groups and structures where practical lessons and examples will be drawn.

7.7. Grassroots Mediation and Sustainable Peacebuilding

To determine if mediation related to TJ can lead to sustainable peace, the researcher asked the research respondents whether it was important for communities to participate in the resolution of their own conflicts and what they thought about mediation and sustainable peacebuilding.

The research respondents noted that because communities deal with pragmatic conflict issues daily, it is important for them to identify TJ mechanisms that help to resolve their grievances without waiting for state initiatives. In addition, it was also noted that if communities do not participate in the resolution of their own conflicts, they will lose internal capacities to become adaptive, absorptive, and transformative in their conflict-resilience processes.

In explaining how mediation, as a conflict-resolution mechanism, can promote long-term peace, the research respondents indicated that mediation does not automatically lead to sustainable peace unless it addresses underlying root causes of the conflict. In addition, it was also noted that because mediation is carried out by people known and trusted by both conflicting parties, it has the likelihood of utilising traditional and cultural practices that are respected in the concerned communities. This then makes the mediation process and outcomes possibly sustainable, hence the potential for sustainable peace becomes evident. Notably, grassroots-oriented mediation also allows the restoration and use of cultural methods of conflict resolution, which are usually compatible with societal norms and practices. In addition, it increases a sense

of ownership, enhances long-term skills, and promotes the protection of positive practices, which is vital in sustainable peacebuilding and conflict resolution.

7.8. Further Observations

During the interviews and FGDs, the researcher observed some issues that may be considered outliers to the study but essential in TJ and mediation processes. Firstly, it was noted that victims of gross human rights violations are constantly complaining of their victimhood but without clear solutions towards their grievances. For example, one respondent who was a victim of politically motivated violence constantly stated that “we were violated but the government has done nothing to compensate us.” Upon inquiring on what they would want, the respondent kept arguing that “the government should come up with a solution.” The responses echo a lack of urgency by the victims of gross human rights violations and their expectation of the state to develop a solution on their behalf, which, in any case, is asking the perpetrator to identify a solution. In view of this observation, there is a need for victim-led solutions in TJ processes to complement TJ efforts by other actors.

Gender dynamics were also less visible in the study responses although the researcher made efforts to interview both men and women, including ensuring gender balance in the FGD participation. The practice of appeasing the dead (*kuripa Ngozi*) is considered a TJ mechanism in the African context, but little was raised to condemn its violation of the rights of women and girls. Some respondents also argued that the concept of mediation does not adequately provide a solution to situations where a woman is raped and gives birth to a child out of pain. For example, one respondent, argued that “rape victims who also have kids born out of the suffering cannot be adequately covered by mediation because the actual perpetrator is not there” (KII 12). This argument simply means that in cases where the perpetrator cannot be identified, mediation does not apply. Rather, one can plainly state that conceptualising the product of rape in mediation is a dilemma. A raped woman can only be mediated with a perpetrator whom she knows, and in cases where she does not know the perpetrator, mediation does not apply, unless the government takes responsibility. The government may have to take responsibility because, in the first instance, it is

expected to protect citizens, and the occurrence of violations reflects the government's abdication of its responsibilities.

7.9. Chapter Conclusion

This chapter concludes that, based on the key informant interviews and FGDs that were carried out, mediation can support TJ initiatives. If mediation is used as a conflict-resolution tool in TJ interventions, there are probabilities that the conflict-resolution mechanism can help facilitate truth telling, reparations, healing, reconciliation, memorialisation, and institutional reforms. However, mediation, because of its voluntary nature, cannot support prosecutorial justice because this is retributive. Mediation for TJ requires mutual engagements and non-punishing conflict-resolution processes. The findings from the key informant interviews and FGDs presented in the chapter helped the researcher to design a training manual and a field project where the gathered views were tested in practice to measure their applicability, efficiency, and effectiveness. Therefore, the next chapter (Chapter 8) provides evidence of how mediation at the grassroots level works in supporting TJ issues.

CHAPTER 8: PRACTICAL MEDIATION EXPERIENCES – THE ACTION RESEARCH

8.1. Introduction

Chapter 7 provided views from key informant interviews and FGDs on the role of mediation in promoting grassroots TJ processes. Therefore, the current chapter provides a detailed account of a mediation experiment carried out to practically determine the role of mediation in TJ interventions. The mediation project experiment was carried out in Makoni District Wards 12 and 13 to determine how grassroots mediation functions in support of TJ initiatives within local communities. The chapter provides detailed empirical accounts on the dynamics of mediation, nature of conflict issues related to TJ that communities can organically address, actors, challenges, and opportunities for future use when mediating TJ-related conflicts towards sustainable peacebuilding initiatives.

The evidence presented here are details of three evaluation accounts following a mediation training carried out on 14 March 2020. As indicated in Chapters 5 and 7, the action research process involved carrying out five FGDs that were carried out in three wards of the 39 wards in Makoni District. The FGDs were carried out to understand the communities' conceptualisation of TJ, their perception of mediation, potential actors, and known mediation challenges and opportunities. A total of 19 key informant interviews were also purposively carried out to generate expert-informed data on how mediation supports TJ initiatives. Both data sets (drawn from key informant interviews and FGDs) informed the development of a draft training manual entitled *Mediation for Sustainable Peacebuilding: A Training Manual for Community Mediators in Everyday Transitional Justice*, which was then used to train a group of 21 potential mediators.

Following the FGDs, the researcher identified 21 participants from two of the three wards as participants for the action research training and for experimental mediation purposes. The participants were brought together on 18 October 2019 to discuss the key mediation skills and issues that they would like to learn and address in their project. The researcher calls this process a *manual co-creation process* where the trainees contribute to identifying their own training needs, gaps, and scaling

opportunities. When the manual was ready, a training on mediation for grassroots TJ processes was carried out on 14 March 2020. Thereafter, the 21 trained participants began their mediation processes that were then evaluated thrice. Figure 8.1 is a diagrammatic presentation of the action research project timelines.

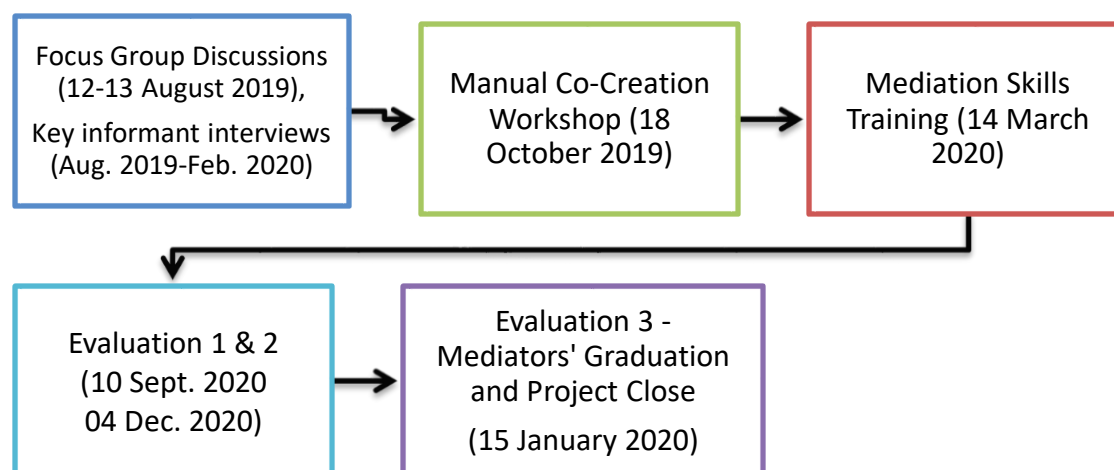


Figure 8.1: Practical field research project timelines.

The timeline in Figure 8.1 shows four significant processes that were carried out during the study. These stages are clearly captured in the discussion that follows.

8.2. The Action Research Process

The pilot project, as noted in Chapter 5, was implemented in Makoni District, and the project research participants included victims and perpetrators of past human rights violations, traditional and local government leaders, as well as the general community members. The pilot project commenced on 18 October 2019 when the training manual co-creation process was carried out and it ended in January 2021 when the final project evaluation was conducted. This means that the project took place in a space fourteen months; that is four months to develop the training manual, under one month of training (March) and nine months of actual mediation processes at grassroots level and one month of project closing and final evaluation. Two process evaluations were carried out in September and October 2020. The project took a bit long because it was deliberately designed to take a natural community daily life pace by avoiding hurrying the mediation processes. Conflict issues had to be addressed as they occur naturally within the targeted communities. This, however, does not discount the fact that the

COVID-19 pandemic outbreak also significantly slowed down community life including social interactions, something that directly impacted the project implementation period.

Before commencing the project, the researcher attempted to establish a support group to provide a technical oversight role in the project, but the efforts did not materialise because the most relevant persons identified had mixed feelings about the study due to its political sensitivities. As a result, the researcher relied on the expert opinions of senior academics working on TJ research and advocacy work, including Dr Solomon Mungure from Africa University, Dr Webster Zambara from the Institute of Justice for Reconciliation, and Dr Charles Moyo from the University of Gottingen. The following subsections provide a clear description of the mediation project stages and outcomes.

8.2.1. Problem and Issues Identification (Stage 1)

In order to gain an in-depth understanding of the conflict issues affecting the targeted communities and how a pilot project for mediation can be designed, the researcher carried out five FGDs in Makoni District between 12 and 13 August 2019. The FGDs were carried out in three wards (Wards 12, 13, and 16) and they were attended by general community members, traditional leaders, and local government agencies. The number of participants per FGD ranged between 5 and 11; the largest group had 11 participants while the smallest group had five participants.

The participants for all the FGDs were mobilised through a former councillor for Ward 12, Mr Obert Gonzo. He was a councillor between 2013 and 2018 and has now become a Director of Family Visions Child Trust, a civic organisation that operates in Makoni District. Working with a former councillor was essential because he had valuable socio-economic and political knowledge of the research area, Makoni District. Mr Gonzo helped the researcher to gain access to the research areas, Ward 12 and 13 as well as mobilising diverse community members to participate in the study. As noted in Chapter 5 the participants mobilised included general community members, including youths, men and women who have either been victims of violence, perpetrators, or by-standers. Stakeholders including local leaders such as traditional leaders, ward development committees and Councillors were also mobilised to participate in the study. The FGDs took place in safe environments where all participants would freely share their experiences without fear of revictimization. This

is mainly because the activity was carried out in familiar environments where the research participants knew and also knew each other as neighbours and community member. This described environment allowed trust building and enhanced the quality of data collected during the study process. The objectives of the FGDs were:

- a) To introduce the research project to the community members in the study area
- b) To establish TJ conflict issues and gaps in mediation skills in the study area
- c) To identify key entry points to project implementation

Focus group discussions

The FGDs were facilitated by the mobiliser, the former councillor, because he was known to both the research participants and the researcher. In all the FGDs, the former councillor would introduce the researcher and the general objectives of the FGDs. Thereafter, all participants introduced themselves and the actual discussions commenced. The discussions were guided by a FGD guide (see annexures for reference). The questions were largely similar to those asked in the key informant interviews. However, the major difference was that the FGDs were largely contextualised to the area of study, Makoni District.

During the FGDs, as noted in Chapter 7, the researcher noted that the communities were fully aware of their challenges in addressing past conflicts and human rights violations. However, they indicated that they lacked appropriate skills to mediate conflicts in a manner that promoted sustainable peace, especially on issues relating to politically motivated violence. Politically motivated violence was cited as a recurring problem in each election cycle, yet between the election periods, people would behave as if they could afford to be peaceful. Hence, the communities wanted to develop ways to sustainably address such conflicts and to guarantee their non-recurrence.

The FGDs participants demanded a full training on mediation, arguing that the skills should help them prevent potential violence as well as address existing conflict issues. This was an interesting demand for the researcher because it exhibited the effectiveness of the researcher's initial contact with the research participants.

It is important to note that these FGDs succeeded because local leaders, who are also key gatekeepers in the target communities, were present in the FGDs. There were traditional leaders, political leaders from the ruling party, as well as elected officials. Their participation was also easily attained because of the former ruling-party councillor with whom the researcher worked in arranging the FGDs.

8.2.2. Project Design and Training Manual Co-Creation Workshop (Stage 2)

After carrying out the five FGDs, the researcher conducted a training-manual co-creation workshop with two groups of 10 participants each from two wards (ward 12 and 13) on 18 October 2019. The researcher chose to work with two groups of the three wards where initial FGDs were conducted due to challenges in securing financial resources. The researcher had limited resources which could not support five project areas. The purpose of co-creating the training manual involved two reasons:

- (i) To generate information around the type of support that communities would want if they were to undertake TJ mediation activities in their communities
- (ii) To understand crucial skills that community members would want to acquire in order to successfully facilitate grassroots-level TJ interventions

(a). The definition and impact of co-creation

Co-creation is a social innovation approach capable of “creating wide-ranging solutions that draw on the insights of everyone involved” (Social Innovation Exchange 2011: 3). Co-creation is a human-centred development design that involves beneficiaries in identifying solutions that work for them. Therefore, in this study, 20 selected community members (including some who were part of the initial data-collection FGDs) participated in the co-creation space with a view to shape the type of support that they needed as a community in order to facilitate grassroots-led TJ as well as identify skills that they would need to learn in order to undertake TJ work effectively and efficiently.

For the purposes of this study, creating a space for training and project co-creation was meant to ensure that the research population can receive relevant support in terms of skills, information, and knowledge. The Education and Training Foundation

(2019) noted that co-creating a training curriculum, for instance, allows learners to decide what they want to learn and how they will be taught. This enables communities to personalise and take control of their learning process in line with their daily experiences and contexts. In action research, inclusivity in designing learning projects makes it easier for the research participants to take ownership of their ideas, change them into a project, and take responsibility of the final research outcomes (Social Innovation Exchange 2011).

However, it is important to note that “efforts around the world to make co-creation more meaningful and useful are fragmented” (Social Innovation Exchange 2011: 5) . There are few explanations available detailing the effective methods of co-creation in terms of what works and what does not. This study took the approach of conducting FGDs to solicit the participants’ views. This is in line with the view that “co-creation necessitates an attitude of learning and listening from the people you are working with” (Social Innovation Exchange 2011: 8).

When facilitating co-created designs, there are three principles that should be treasured (O’Keeffe 2017). They should allow (i) access to deep and meaningful insight (Etikan and Bala 2017), (ii) obtaining knowledge and ideas from everywhere, and (iii) connectivity, which drives creativity. With these principles, the approach enables greater involvement and commitment towards the intended outcomes. A co-creation approach “undermines top-down thinking while entirely not being bottom-up” (Social Innovation Exchange 2011:3). Sanders (2005) clarified that in order to co-create the future, “we must explore the full set of experiences (i.e., memories, the current moment and dreams) that people have.” This means allowing affected persons and stakeholders to reflect on their past and existing experiences such that they suggest their future expectations. However, Sanders noted that “doing so requires that we explore not only what people say and what people do, but also what people make” (ibid). Figure 8.2 is Sanders’ (2005) diagrammatic conceptualisation of the co-creation process called the *Experience Domain*.

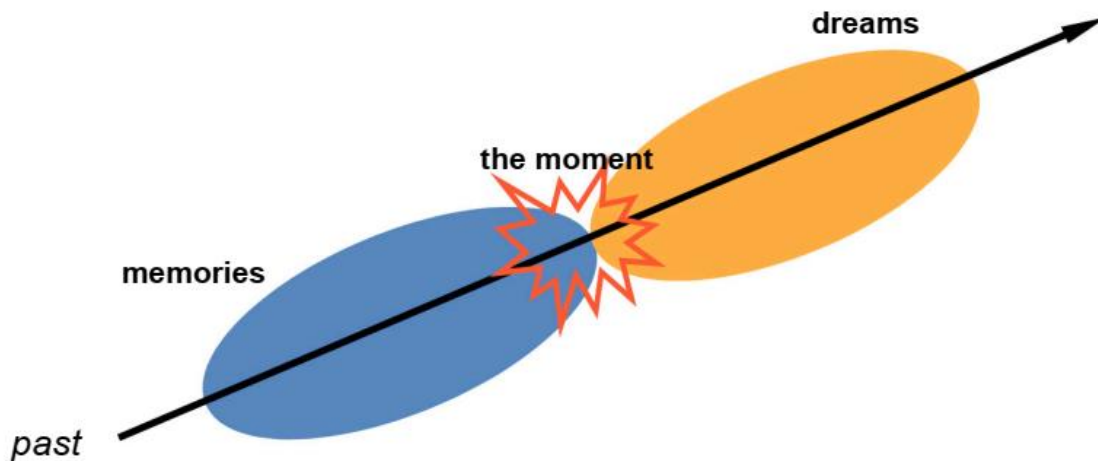


Figure 8.2: The Experience Domain (taken from Sanders 2005).

Sander's *Experience Domain* acknowledges the essence of co-creation as being “part of the way in which we live our lives and shape our society” (Social Innovation Exchange 2011:3). In this pilot project, there was a need to understand the community’s past experiences and what they knew, did not know, and could potentially do or need. As such, the study participants were asked what support they would want and the type of skills they would like to acquire to effectively undertake TJ.

In their responses, the participants stated that they needed training in community conflict mediation and negotiation. For example, one participant said, “I wish to learn mediation skills so that we are able to bring both aggrieved parties to dialogue” (FGD 6). They desired learning ways to facilitate dialogue and engagement between victims and perpetrators, but also of being able to observe turning points in their facilitation processes to avoid bad timing of negotiations and mediation processes. The need to observe turning points in their engagements came clearly when a participant stated that “at times, it is important to learn observation skills so that you know when to bring both parties together after engaging them separately ... this prevents bad timing in the conflict-resolution process” (FGD 6).

When asked on who should be part of the training and who would be able to facilitate grassroots TJ mediation processes, majority of the participants stated that “traditional leaders, church leaders, respected elders, and known communal mediators should be trained” because they are already accepted in their communities (FGD 6). Working with accepted characters in mediating conflicts and TJ-related cases requires

accepted parties and those who can command respect and legitimacy in their processes, hence the validity of the participant's suggestions.

While the community members participating in the study worked collaboratively throughout the design development process (Sanders 2015: 11), the researcher consolidated their ideas and developed a training manual. For the purposes of this study, that which the research participants did was co-creating a transformative mediation educational toolkit for grassroots actors.

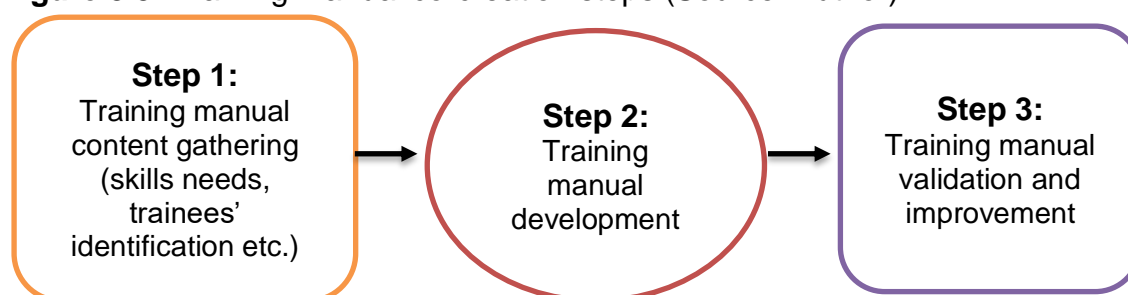
When co-creation methodologies are utilised, they create a “participatory design language that encourages everyday people to explore and express their thoughts and feelings about their experiences (past, present and future)” (Sanders 2005: 12). The researcher believes that the co-creation space that he created gave the community an opportunity to construct a prototype TJ mediation-oriented process to their liking, hence increasing the possibility of success and sustainability. The target community members and research participants were acting together to design a TJ mediation model to meet their local TJ needs. Through the co-creation process, it was notable that the participants were able to share ideas and experiences; they developed skills in collective action, they developed a sense of community, and they were able to articulate their own skills, needs, and support gaps. The process enhanced the participants' self-awareness, and it promoted the value of working together regardless of their political affiliation, among other aspects that divide communities.¹⁴

¹⁴ Training manual co-creation guiding questions included the following questions: *what training needs do you have regarding mediation, and what issues should be part of the training?* and *How should the training be undertaken, and who should participate in the training as possible and relevant mediators for local TJ processes?*

(b). The Training Manual Co-Creation Process

The training manual co-creation process involved three steps which are (i) focus group discussion on potential mediators training needs, who should be trained and how the training should be carried out (ii) the development of a training manual and (iii) validation of the training manual. As shown in figure 8.3 below, the training manual was developed over a space of four months between November 2019 and February 2020.

Figure 8.3: Training manual co-creation steps (Source: Author).



Step 1: a total of 20 participants including people who had participated in the initial five-FGDs (traditional leaders, church leaders, respected community members and general citizens known as community peacebuilders) were gathered to discuss their training needs, conflict issues they thought should be addressed and how the training should be carried out. The discussions were facilitated by the researcher and the participants collaboratively. However, the researcher's duty was largely to listen, taking down notes and guiding the conversations. Key questions that were discussed were: what training needs do you have regarding conflict mediation and resolution, and what issues should be part of the training? How should the training be undertaken, and who should participate in the training as possible and relevant mediators for local TJ processes? This process generally allowed the participants to share ideas and experiences; developed skills in collective action and a sense of community as they articulate their own skills needs, and support gaps.

Step 2: after gathering views from potential mediators, the researcher consolidated the views into a training manual. The training manual structure included topics such as (i) understanding conflict (ii) conflict analysis (iii) conflict management and resolution strategies (iv) mediation and consensus building and (v) understanding

transitional justice, healing, and reconciliation mechanisms. In developing the training manual, the researcher utilized personal experience and skills in grassroots level peacebuilding capacity strengthening interventions. The researcher has in the past developed training manuals for community peace clubs, human rights monitors, and grassroots social movements. This experience made the development of the manual a lot easier.

Step 3: after fully developing the training manual, the researcher shared it with two development practitioners who are in the field of peacebuilding and transitional justice for editorial reviews. The reviewers raised issues about the language in the manual that needed to be simplified and the need to develop additional group work training tools with simplified language. The recommendations were fully considered and carried out, accordingly. The researcher wanted to take the draft training manual back to the participants for validation and further input, but this could not be achieved as the COVID-19 pandemic travel restrictions had been imposed. Added to this was the insurmountable cost of meeting the validation workshoping needs. Nonetheless, support from the two reviewers covered this technical gap in some way.

8.2.3. Mediation Skills Training (Stage 3)

On 14 March 2020, the researcher conducted training for two of the three wards where the FGDs were carried out. A total of 21 participants from the two wards (Wards 12 and 13) participated in the training on mediation for sustainable peacebuilding and TJ. Participants were introduced to the concept of conflict and conflict analysis, ways of managing conflicts, TJ, and healing and reconciliation. The central objective of the training was to impart conflict-mediation skills for sustainable peacebuilding at the grassroots level with a particular focus on past human rights violations.

During the training, the participants were able to learn how to recognise conflicts; understand their origins; and map them in terms of actors, dynamics, root causes, and possible solutions. Other topics covered in the training included communication styles, interest-based problem solving, active listening and preparing for mediation sessions, and dealing with bias and power imbalances. More importantly, the participants were able to map conflict issues affecting their peaceful co-existence. The conflicts were

categorised into two areas, namely, (i) unresolved past conflict issues that had lingering effects on the present, and (ii) existing ongoing conflicts.

Figure 8.4 is a photo of the mediation training participants, and Figure 8.5 depicts some of the conflict issues mapped by the training participants.



Figure 8.4: Mediation training participants (trained on 14 March 2020 in Makoni, Zimbabwe).

(a)

WARD 12	
Past Political Land Churches Chiefs	Ongoing 1 Churches 2 Food distribution 3 Schools 4 Family matters 5 Village heads
Root causes	
Political Kusiyana kwonapato. leadership Money	Ongoing Food distribution Corruption fairness, poor communication self interest
Land Lack of fairness distribution - Discrimination - Lack of implements - Self interest - preudize	Schools Peer communication - Desee for power - Corruption making assumptions
Churches Money - poor communication - leadership - Desire for power	Family matters ignorance Self interest - needs not met - poor communication making assumptions
Effects Political Heritage Hatirage Murder cases assault cases	Effects Chiefs Death Hatirage Witchcraft
Land Death Heritage Hatirage assault	Churches Witchcraft Death Hatirage assault finding another church
	ON GOING same as PAST

Identify Conflicts In Our Area	
1. Kudyisirana mindla 2. Kutora mukadzi wemumwe 3. Makuhwa 4. Kuromba 5. Political Parties 6. Local authority & traditional leaders	Past WARD 13 1. Political Conflicts: Inter-party Conflicts 2. Boundaries
Root causes	
1. No fencing, Laziness, negligence, care-free. 2. Ruchiwa, Kuromba. 3. Laziness 4. traditional 5. differences in political thinking. 6. Boundaries to be clearly defined.	Present 1. Segregation: distribution of agents through relief 2. Leadership wrangle: East West 3. Local go authority & traditional leaders 4. Wrangle on Projects (Community) (Local authority & Party structures still)
	Effects of the conflicts Corruption, self interest 2. Mutual suspicion 3. No development in the area 4. No development in the area 5. Boundaries of land still in dispute

Figure 8.5: (a) and (b) Some of the conflict issues mapped by training participants.

Reflections from the training of participants

During the training, the participants were asked to map past and present conflict issues characterising their communities. While listing the conflict issues, the participants indicated that past conflict issues had a strong influence on prevailing conflict issues, which means that the failure to address legacies of violence committed in the past would lead to continued conflicts. Table 8.1 presents both past and ongoing conflicts in Wards 12 and 13, sampled in the study.

Table 8.1: Conflict issues mapped during the training.

Past Conflict Issues	Current/Ongoing Conflicts
<ul style="list-style-type: none">• Political violence (intolerance within and across political parties)• Land conflicts• Church conflicts• Traditional leadership conflicts	<ul style="list-style-type: none">• Power conflicts between traditional leaders and local government authorities• Community leadership wrangles (village heads, headmen, and chiefs)• Conflicts over development projects• Unfair distribution of food and farming aid (drought relief aid)• Church conflicts• Family conflicts• Corruption
Root Causes	Root Causes
<ul style="list-style-type: none">• Political intolerance• Unclear land boundaries• Money and other material resources	<ul style="list-style-type: none">• Negligence• Poor communication• Self-centred interests• Leadership unfairness• Desire for power• Making assumptions• Prejudice• Ignorance• Unmet needs
Effects	
<ul style="list-style-type: none">• Corruption• Development projects decimation• Poor standard of living• Murder cases• Assault cases and general hatred	

- Witchcraft

After the training, participants were asked to reflect on the training and what their way forward would be like. The participants indicated that they felt empowered by the training and would like to put the skills into practice. After this training, “we want to put the skills and the knowledge on the ground,” as stated by one participant (FDG 6). Another participant stated, “we thought some people who do this mediation work are prayer worriers, but it is because they have a strong understanding of conflict transformation, this we can do from what we learnt” (FDG 6). The reflection adds value to the participants’ appreciation that it requires much learning to become a conflict mediator.

However, some participants were worried that if they started supporting mediation processes, traditional leaders may not be happy and could potentially interfere with their duties. Generally, traditional leaders are the peace brokers within communities, but they have, of late, been accused of passing politically biased judgements. Following deliberations, the worries were addressed by agreeing that the mediators’ work is not in competition with that of the traditional leaders, but they are complementary efforts towards creating a peaceful society where past and present conflicts are resolved amicably.

8.2.4. Practical Mediation Processes (Stage 4)

The trained participants assumed their mediation roles immediately after the training on 14 March 2020. The participants were expected to identify key conflict issues emerging from past human rights violations and seek to mediate them in the best possible way using skills and knowledge acquired during the training. The mediators mainly had two tasks, namely, (i) to solicit cases for mediation with a particular bias on TJ-related cases, and (ii) to increase the demand for mediation from victims and perpetrators of gross human rights violations within the local communities.

During the project implementation period, when mediation activities were taking place, the researcher provided technical support on how to handle complex cases. However, these cases were largely those unrelated to TJ. The mediation process issues and

outcomes are detailed in the evaluation section that follows. The section provides details about the mediation processes (in terms of models), types of mediation, mediation styles, and outcomes of notable mediation actions that relate to TJ.

To assess the impact of the mediation interventions carried out by the trained research participants, the researcher conducted three evaluation meetings. Of the three evaluation meetings, one was carried out using the WhatsApp virtual platform. Zimbabwe, just as many other countries, imposed travel restrictions to contain the spread of the coronavirus pandemic. As a result, it was difficult for the researcher to travel to the project site regularly as was planned. The first and the third evaluation meetings were carried out physically while the second evaluation meetings were virtually held. More importantly, however, is that the evaluation questions asked in all the evaluation meetings were similar. The evaluation questions and evaluation FGDs processes are provided in the following sections.

8.3. Action Research Evaluation Findings and Discussion (Stage 5)

This study evaluated the mediation activities carried out in Makoni District by the trained mediators through participatory evaluation procedures. Three evaluations (activities) were carried out through FGDs with the 21 trained mediators who had implemented mediation activities. One of the three evaluation FGDs was carried out on a virtual platform due to the coronavirus lockdown travel restrictions, while two of the evaluation activities were carried out physically.

The first evaluation was carried out on 10 September 2020, five months after the mediation training had taken place and the mediators had commenced their work. The second evaluation was carried out virtually on 4 December 2020, three months after the first evaluation. The third and final evaluation was physically held on 15 January 2021, a month after the second evaluation. The three evaluation processes were carried out in the form of FGDs and were facilitated by one to two members of the research group. The facilitators shared the responsibilities among themselves. The researcher decided to let the members of the research group facilitate the FGDs in order to make the evaluation process as participatory as possible. However, the

facilitators were guided by specific questions that I had prepared ahead of the evaluation meetings.

In all the evaluation FGDs, similar questions were repeatedly asked, and these include mapping conflict issues experienced in the target wards (ward 12 and 13) and understanding emerging conflict with traces from past gross human rights violations. There were also questions seeking to identify specific mediation actions taken by the trained mediators, individually or as a group and how the mediation skills were applied to the conflict and the roles the mediation process actually played in addressing past human rights violations. Participants were also asked to identify conflict actors and stakeholders who were part of or rather interested in the mediation processes as well as the challenges experienced during the mediation processes (see appendix 4 for the evaluation guide. Similar questions were used during all evaluations to avoid measurement inconsistencies.

8.3.1. Evaluation of Mediation Process Outcomes

The researcher evaluated the action research project to measure how the mediation activities carried out by the 21 trained mediators functioned. As noted earlier, the first evaluation took place after five months of project implementation. The evaluation of an action research intervention “focuses on the effectiveness of the strategy for change that has been implemented” (Cardno 2003: 34). In this study, the strategy for change was mediation (a conflict-resolution mechanism). This study sought to understand the role of mediation in grassroots TJ processes. The evaluation approach taken was action evaluation – a participatory evaluation process. According to Friedman and Rothman (2015: 90), “action evaluation (AE) is a deeply participatory action research practice for assisting stakeholders to define, promote and assess success.” This kind of evaluation is different from conventional evaluation methodologies in that it “enables local people to analyse their own realities as the basis for planning, monitoring and evaluating development activities” whereas conventional evaluations are normally led by externals without the participation of programme beneficiaries and stakeholders (McCloughlin and Walton 2012: 13; Napier, Simister and Jain 2020).

Participatory monitoring and evaluation was a suitable methodology because “a standard practice in participatory evaluation is to involve the providers and clients of a program or an activity in the process of interpreting evaluation results” (Greenwood and Levin 2007: 190). Therefore, the 21 research participants were brought together to discuss the conflict issues that they had addressed, map transitional and non-transitional justice conflicts among those they had mediated and assess how the mediation processes supported TJ objectives. The evaluation procedure examined the mediation dynamics, processes, and mediation outcomes as understood by both the researcher and the participants. During the evaluations, the researcher was cognisant that ‘observation, evaluation and self-evaluation’ should precede and inform critical and self-critical reflection in the entire action (Piggot-Irvine 2008). The researcher was also generally conscious of the dynamics and shortcomings of action research evaluation. “Evaluation of some action research projects consists entirely of a comparison of ‘before’ and ‘after’ data” (Piggot-Irvine 2008: 18). This study, however, was not a comparison, but a measure of the usefulness of mediation as a conflict-resolution mechanism deployed to address TJ grievances.

This study utilised FGDs as a technique for data collection during the evaluation processes. Three FGDs were carried out using guiding questions on relevant discussion topics. The standard guiding questions were developed using the participants contributions and views on what constitute TJ and successful mediation process. The contributions were drawn from the co-creation workshop. However, flexibility was allowed as two to three people among the participants would facilitate the discussions at each FGD, while the researcher interjected where necessary, especially to probe for further critical reflections.

During the evaluations, the researcher noted that the trained mediators were able to mediate both transitional and non-transitional-justice-related conflicts. This was mainly because the team could not selectively deal with TJ-related cases for two reasons: (i) their mediation activities would seem politically motivated if they were to choose conflict issues linked to past human rights violations only, and (ii) their mediation activities would seem irrelevant and out of touch with prevailing community conflict-resolution needs and conflict triggers.

In addition to the reasons above, the researcher submits here that the mediation actions carried out by the mediators were priority issues within the community and, therefore, some conflict issues with traces of past human rights violations were either subsidiary to the existing conflict issues or had substantive lingering effects on the prevailing socio-political conflicts. This observation, however, does not make the study irrelevant, given that there are relevant TJ cases that were addressed following the manifestation of the results of conflicts from such past violation grievances. What this observation communicates is that TJ may not be relevant to communities, in instances where there are local pressing needs and priorities. This agrees with Visoka and Lumi (2020) and Thomson and Kihika (2017) who notes that there is always need to consult or rather involve affected communities to define their priorities before rolling out TJ processes to avoid implementing what is not immediately needed by the intended beneficiaries. This observation could have also meant that mediation was not the missing link in the community's TJ processes. Alternatively, it may have also meant that the definition of TJ needed to include other conflict issues prioritised by the local communities. More deliberations on the study's action research intervention evaluation are discussed subsequently.

8.3.2. Field Mediation Project Analytical Framework

Figure 8.6 below is a diagrammatic presentation of the field mediation project analytical framework followed by a clear explanation of the study findings observed from the field research process.

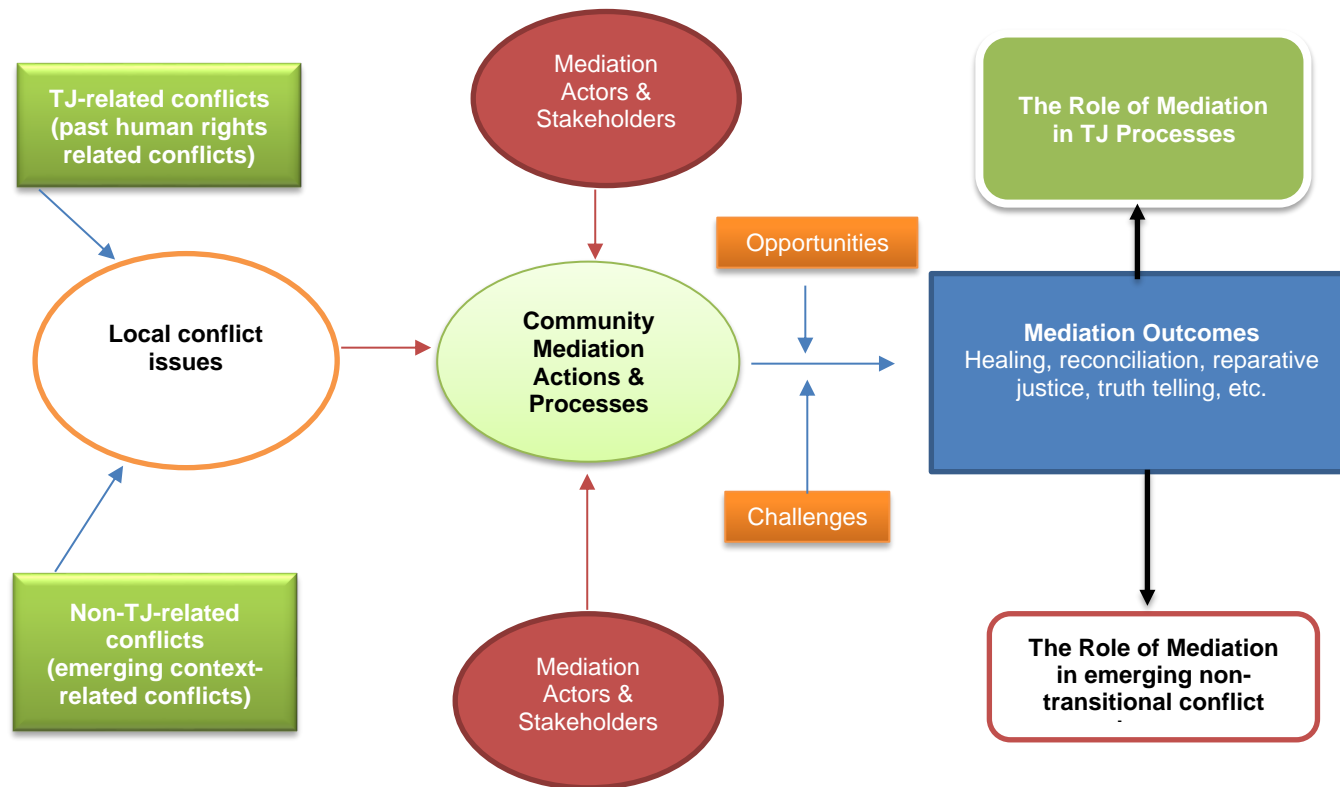


Figure 8.6: Field mediation project analytical framework (Source: Author).

The field mediation conceptual framework depicted in figure 8.6, above, shows the researcher's conceptual thoughts on how mediation functions at grassroots-level TJ processes in an environment where the state is not involved in leading TJ interventions. Subsequent sections provide detailed reflections on this conceptual framework expounding the researcher's findings.

8.4. Conflict Mapping

During the project evaluation, the research participants were asked to map conflict issues that they mediated during the research project period after receiving a mediation training. Conflict mapping is an analytical process of identifying conflicts, conflict actors, their interests, interrelations and strength of their influences (Herbert 2017). In mediation and conflict resolution, in general, this process is important because it enables the mediator to identify actors who are sustaining the conflict (spoilers and dividers) and actors who can aid peace (connectors) and how to engage them. The conflicts were identified and then categorised into two sets with a view to differentiate (i) emergent conflict issues that were not related to TJ from (ii) TJ-related conflicts that were a result of past human rights violations. The research participants identified 30 conflict issues that they had mediated. These cases included cases of domestic violence, land disputes, cultural disputes, political and social violence, grudges, and child abuse. Table 8.2 below presents the conflicts that were mediated by the trained mediators, categorised as transitional and non-transitional justice conflict issues.

Table 8.2: Mediation cases mediated during the project period (March – December 2020).

Non-transitional-justice-related conflicts mediated	Transitional-justice-related cases mediated
<ul style="list-style-type: none"> Physical violence between husband and wife (domestic violence) [25 cases] Self-poisoning suicide attempt (domestic violence) [1 case] Child abuse (rape case) [1 case] 	<ul style="list-style-type: none"> Family hatred between relatives supporting different political parties (political intolerance) [1 case] Violence against children, human rights violations' perpetrators (personal family grudges) [1 case]

	<ul style="list-style-type: none"> • Perpetual partisan distribution of food aid (a case for political intolerance) 1 case]
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The conflict issues identified in Table 8.2 above are reflective of the conflict issues that were raised during the training when participants were mapping conflicts in their areas. Mediators gained access to these cases by single-handedly identifying their existence and approaching the conflict actors or by reference from other local community members who knew the mediators. In instances where the mediators were unable to approach the conflict actors, they would approach a traditional, church or community leader to become the front cover for engagement. As observed earlier in the theoretical framework, some mediators are closer to the conflict than others and their proximity to the conflict could affect their objectivity depending on their interests or non-interests in the conflict issue (Roepstorff and Bernhard 2013; Nahrstadt 2016). Hence, the mediators' ability to appreciate their position of influence and capacity to engage with conflict actors was essential, in this case.

Among the 30 mediated conflict cases, only three cases were related to TJ (past human rights violations issues) and the remaining 27 cases were non-transitional-justice-related emergent conflicts influenced by the prevailing socio-economic and political context. The three conflict issues related to TJ were linked to the 2008 political violence and the continuing political polarisation between the ruling ZANU PF and the opposition MDC-party supporters. On the contrary, emergent conflicts influenced by the prevailing context were related to socio-cultural relations, with domestic violence being the central issue. The partisan distribution of food aid and other public aid were crosscutting conflict issues. The partisan distribution of aid is both a TJ- and economic- and poverty-related issue influenced by the country's unfavourable economic environment.

This study was specifically interested in assessing the role of mediation in TJ processes. Therefore, the subsequent discussion will draw its analysis mainly from specific cases of mediation that have links to past human rights violations. Three case

studies will be detailed to comprehend how mediation was used to address the identified conflicts.

8.5. Mediation Actions and Case Studies

After mapping and categorising all the conflict issues that were mediated, the research participants and the principal researcher discussed how the 30 cases were actually related and unrelated to TJ issues. Firstly, the 27 cases that had been categorised as largely of domestic violence and unconnected to past gross human rights violations were discussed and thereafter, the three conflict issues that were related to TJ were then discussed separately for in-depth analysis to conceptualise the mediation processes, styles, and outcomes.

(a). Non-TJ Related Cases

Participants were to explain why the 27 cases considered totally divorced from TJ issues. Reflectively, participants reiterated that what they would consider as TJ related issues are those cases that were “politically motivated, linked to perpetual human rights violations and involving discrimination based on political affiliation” (FGD 9). The participants definition or rather understanding of TJ attributes somehow linked to the theoretical definitions where gross human rights violations should have taken place in a large scale to a defined population. Hence, the 27 cases that were mediated did not fit these definitional attributes and therefore unfit to be considered TJ related.

However, I inquired further if the cases did not have traces of other attributes of TJ relating to economic disenfranchisement and large-scale inequalities because social and economic violations have usually been disregarded as TJ related yet they grossly affect majority of people resulting from corruption and economic marginalisation by the ruling elite especially where ethnic groups are leading. This question was pertinent because economic development and conflict are inseparable (Luoma 2021: 37). In response to this question, respondents began discussing the efficacy of considering unequal power relations between men and women as a transitional justice issue.

Majority of participants were quick to argue that the socio-cultural issues relating to domestic violence were not as traumatic as those related to politically motivated violence and that the cases were easy to mediate compared to genuinely TJ issues. One participant from the final evaluation argued that “the 27 cases have happened in different families and have not recurred as the three cases that were of TJ in nature” (FGD 9). This reflection related to issues raised in the Chapter 2 where I indicated that Zimbabwe’s case of human rights violations is continuing and they recur following the country’s electoral cycles. As such, it is arguable that what communities consider as TJ related issues are politically motivated violations that reverberates across their communities without redress and are directly linked to the country’s political culture and practice.

(b). TJ-Related Cases

The three cases that were considered as TJ related were debated further to qualify their fitness in the category. As noted in the preceding section, the cases qualified to be considered TJ related because they were directly linked to political parties’ affiliation and were committed as a result of political discrimination. A further qualification that also came from the participants is that the three cases were “leading to divisions not only within a family but also in the community and such divisions were long term because of their association to political parties and political affiliation” (FGD 9). This observation means the participants see TJ related cases as violations affecting not just a family but a community. Thus, implying communal oneness and its importance in reflecting on human rights beyond the individual.

Having agreed on the categorisation of the mediated conflict issues and how they fit in TJ parameters, the three cases were further discussed, now to determine the role of mediation in grassroots TJ processes. The three conflict issues are presented below as case studies and examples of TJ-related cases that were mediated, out of the total of 30 conflict issues. The case studies identify the key conflict issues, disputants, mediation styles, and outcomes. It was difficult for the researcher to clearly ascertain the mediation turning points, which are largely an experiential process, because all the mediation processes took place in the absence of the principal researcher. As noted

in chapter 4, turning points are “critical moments in mediation that can lead to greater understanding between parties in a dispute and have the potential to alter their relationships” (Jameson, Sohan and Hodge 2014: 211). Turning points offer an opportunity to the mediator to shift the mediation discourse towards successful resolution of the identified conflict.

8.5.1. Case Study 1: A Case for Political Intolerance

a. Disputants and Dispute Context

During the first FGDs, a conflict case involving some of the participants was identified and the local councillor for Ward 13, Mr Nyawedegwe, volunteered to mediate the conflict. The disputants involved Mary and her aunt, Mrs Mafamba. The relatives had become enemies since 2008 due to a conflict created from their differences in political affiliation.

b. Conflict Case

The conflict came to the fore for mediation during the researcher’s first FGD when he was introducing the research project and gathering communities’ views on TJ and mediation. Mary was a member of the opposition party, the MDC, while her aunt, Mrs Mafamba, was a member of the ruling party, ZANU PF, which is also a dominant party in their ward. The two started hating each other after Mary was expelled from a community burial gathering because of her political affiliation as an opposition-party supporter. She heard that her aunt, Mrs Mafamba, had instigated her expulsion from the local burial activity. From that time onwards, the relatives never spoke to or visited each other, yet they used to be remarkably closer to each other.

c. Mediation Process and Actors

During the first FGD, Mary raised her hand and bluntly pointed out that the mediation process needed to begin with her and her aunt. Mary remarked, “The mediation you are talking about must begin with me and my aunt, we were very close but because of politics, she expelled me from a burial ceremony, and I started hating her from there”. Mr Nyawedegwe, who had invited both participants, immediately volunteered to

handle the case. Both parties were invited outside and spoken to briefly because the victim, Mary, was already emotionally charged, and the meeting atmosphere was becoming tense because her outrage triggered political emotions and polarity which are generally strongly held positions. Mr Nyawedegwe and the researcher calmed the disputants (outside the meeting room) and the mediator promised to further engage with them. The mediator followed up on the case immediately after the FGD meeting and spoke to both parties independently. However, Mrs Mafamba was not forthcoming in discussing the issue forthwith as she felt exposed and disrespected. Hence, the case became a mediation case beyond the FGD meeting day. The researcher regularly checked on the case's progress with the mediator and it was revealed that the case was finally resolved. The mediator later shuttled between the disputants trying to understand the case and bring both parties to a dialogue to forgive each other and reconcile. The mediator reported that initially, Mary's aunt was extremely angry and believed that she had nothing to do with her niece. She believed that her niece was accusing her of that which she had not done, and to worsen matters, Mary had failed to communicate with her by simply asking if she had indeed instigated her expulsion from the local burial ceremony based on their political differences. The mediator reported that the "political party affiliation was used as a divider" (FGD 7). The mediator discovered that the aunt was not actually angry about Mary's political affiliation, but rather she felt disrespected by the niece, hence her stance that drew political tantrums.

d. Mediation Outcome

Mary and her aunt, Mrs Mafamba, reconciled, and they have normalised their relations both as relatives and community members. They both agreed that they had mistakenly soured their relations based on rumours and feeling disrespected as opposed to political affiliation. Political affiliation issues were, however, used as the major conflict issue, yet the root cause of the conflict was based on a failure to communicate among themselves. The researcher witnessed the reconciled research participants during the follow-up evaluation activities of the action research process. Figure 8.7 below is a photo depicting the conflicting parties, the mediation trainer, and the researcher, the second party to the conflict, and the mediator (Councillor). This mediation process took

place within a space of six months after the initial engagement with the conflict on 18 October 2019.



Figure 8.7: From left: one of the conflicting parties, the mediation trainer and researcher, the second party to the conflict, and the mediator (Councillor Nyawedegwe).

e. *Mediation Challenge*

The mediator reported that his major challenge in the mediation process was interference by the local traditional leader. The traditional leader reportedly felt that his role as an authority in conflict mediation was taken away. As a result, the traditional leader confronted the councillor seeking explanations on why he was mediating the conflict. The mediator reported that he had to explain his mediation role to the traditional leader and the interference then ended. It was revealed that the traditional leader was aware of the two disputants' conflict as a political issue and did not care about the issue, but when he had heard through others that Mr Nyawedegwe was

mediating the conflict, he then became interested and felt that he should have been involved in the mediation process as well.

8.5.2. Case Study 2: A Case for Revenge

a. *Disputants and Dispute Context*

The dispute occurred between Freddy and Kazembe in August 2020. Circumstances around the dispute were that Freddy approached Kazembe at his homestead and requested a scotch cart to ferry his firewood from the surrounding bushes. However, Kazembe responded by assaulting Freddy with clenched fists and a machete without giving any explanations. The victim, Freddy, suffered serious injuries leading to the arrest of Kazembe. However, upon the intervention of the mediators trained through this research project, the victim agreed to withdraw the case on condition that the perpetrator meets his medical bills.

b. *Mediation Process and Actors*

Upon hearing about the assault of Freddy, three mediators who had been trained through this study's research project visited the perpetrator's house to understand the circumstances around the violence and how they could help promote a peaceful resolution of both parties' differences. The mediators were initially rebuffed by the perpetrator, but upon insistence, the perpetrator later indicated that he was seeking revenge for the physical violence that he had suffered at the hands of Freddy's father during the 2008 political violence era. Freddy's father is already late, and he was a war veteran responsible for torturing people at a political base established by the ruling-party cadres at Cloud Gogo's house in the same village. Therefore, Kazembe was one of the victims of politically motivated violence perpetrated by the ruling party where Freddy's father was a lead torturer. Kazembe, however, never had an opportunity to heal and reconcile with the perpetrator. He kept a grudge against the family of the perpetrator and on this day, Freddy made the mistake of asking for help from his father's victim, a situation of which he was not aware.

c. *Mediation Outcome*

The mediators were able to discuss with Kazembe regarding the implications of his vengeful actions and the criminal litigation process that had been started by the victim. The mediators also engaged with the victim and explained the reasons why Kazembe had reacted angrily to his request and why it was important for both to dialogue and appreciate that the violation experienced was regrettable and that it was unfortunate that the perpetrator was no longer available to apologise. Resulting from the engagements, Kazembe apologised to Freddy. The apology was accepted, and the victim placed a condition that Kazembe would have to meet his medical bills, and the case reported to the police was also withdrawn. At the time of the second evaluation, it was reported that both the victim and the perpetrator were now relating well. However, while the mediation process succeeded with the conditions being met, it was noted that the victim, Freddy, did not fully recover from the injuries that he had suffered. Freddy now has a mental health problem, yet only his immediate medical needs were met.

d. *Mediation Challenge*

The mediators initially experienced rejection by the perpetrator. However, they were later accepted after repeatedly highlighting why it was important for Kazembe to listen to the mediators to find an amicable solution that would build amicable peace between the conflicting parties.

8.5.3. Case Study 3: A Case for Partisan Distribution of Humanitarian Aid – Structural Violence

a. *Disputants and Dispute Context*

The disputants involve the ruling-party and opposition-party followers and their leadership. The disputants' conflict was centred on the partisan distribution of food aid. This conflict issue was identified across the two study areas, and it was left unresolved. The major reason why it became difficult to resolve it was because it was a structural conflict issue controlled beyond the research communities. The partisan distribution of

food aid has become an unwritten policy practice, generally, across the country, pitting the ruling and opposition parties, as well as traditional leaders and elected officials including Members of Parliament and councillors, against each other. However, the salient actor in food aid distribution is the Department of Social Welfare, but its work is overridden by political actors such that it has become a perpetual practice that undermines institutional independence with impunity.

b. Conflict Case

The partisan distribution of food aid is the dominant conflict in this case study. The Department of Social Welfare distributes food aid within local communities to address food insecurity issues. In their distribution plan, they use different household vulnerability criteria to identify beneficiaries. However, through the mediator's reports and other auxiliary reports from humanitarian and development organisations, it has come to light that, at times, these criteria are disregarded when political leaders become involved in the distribution process. This has also been the case in both wards under study. The political leaders reportedly bring their own list which, according to them, should be used for distributing the food aid available. The leaders will either bring the list directly to the distribution point or they will ask a local traditional leader to present the list during the distribution exercise. Social workers, unfortunately, are unable to insist on their criteria because they feel politically vulnerable and comply to keep their jobs.

In Ward 12, for example, the councillor who should provide the final list of beneficiaries to the Department of Social Work for aid distribution has not been able to exercise her duty, supposedly because she is from the opposition party (MDC Alliance). In her place, the losing councillor from the ruling party performs the food-aid-distribution exercise together with the party leadership. This experience has created political animosity and polarity among the opposition- and ruling-party supporters. However, in Ward 13, the councillor was elected on the ruling-party ticket, but he has a bad relationship with the party chairperson. Their conflict has created intra-party conflict on how ward-development decisions should be made, including the party-level criteria of selecting food aid beneficiaries. Notably, the party chairperson for the ward prevails

and he influences the aid distribution processes, including deciding on internal party factions' beneficiaries and interparty-level selections.

c. *Mediation Process and Actors*

The mediation actors in this conflict included the trained mediators; political-party leaders, both in the ruling and opposition parties; the Department of Social Welfare; and the general community members. Both mediation teams in the two study areas attempted to engage with the political leaders from the ruling and the opposition parties to forge a dialogue with a view to develop a cohesive practice that supports the equitable distribution of aid. However, the efforts were fruitless. The major reason cited by the research respondents was "because there was no political will from either side to have the issues addressed." For example, the ruling-party leaders would argue that food aid is coming from the government, and it is, therefore, justified that those who support the ruling party benefit first. In cases where some people from the same party were denied aid, the validation would be that they were supporting a wrong political faction. Efforts to engage the Department of Social Welfare, on the other hand, have failed to yield anything positive because the officers will argue that they work with local leadership of which traditional leaders are a part and that is influenced by political leaders.

d. *Mediation Outcome*

The mediation actions from both groups failed to yield any positive results. Notably, the process of food aid distribution involves political actors whose power and influence extends beyond the local leadership. As a result, the mediators' power is over-powered and the situation then calls for a stronger mediation team, which obviously goes beyond the local communities.

e. *Mediation Challenge*

The mediation challenge is centred on the mediators' power. The mediators were inferior to the disputants, particularly the ruling party and the social workers. These actors did not feel compelled to come to the negotiating table and comply with the

mediators' efforts because the mediators' power was negligible. As a result, the mediators' intervention did not yield anything.

8.6. Reflections on the Mediation Case Studies

8.6.1. Mediation Process

In view of the case studies mentioned above, the mediation actions taken by the trained mediators followed the generic mediation steps which include setting the stage through engaging with conflicting parties, identifying issues, understanding the parties, problem solving, and writing the agreement as noted by Smith and Smock (2008) in section 4.2.5 of this thesis. However, the stages could not be ascertained clearly because the mediators' engagements did not follow a linear progression. There were many back-and-forth exchanges which arguably reflect non-linear mediation steps. For example, the mediator in Case Study 1 initially engaged with the conflicting parties and he realised the need to speak to the conflicting parties' friends and relatives to establish the depth of the conflict as well as ask them to speak to the conflicting parties about the need to dialogue. After that process, it then became easier to bring both conflicting parties to a dialogue where they ultimately agreed on apologising to each other and reconciling. This observation is in agreement with the International Peace Institute (2009) which observes that each mediation process has its own peculiarities, it does not follow a linear process generally.

8.6.2. Mediation Styles

As noted in the theoretical framework in Chapter 4, there are different mediation styles that can be used by mediators. In this study, the mediators used a mix of mediation styles to achieve their objectives. Theory confirms that in mediation practice, using different styles allows the mediator to flexibly manage the conflicting parties and direct them towards the intended goal of resolution (Kirchhoff 2007; Morris 2015). In both Case Studies 1 and 2, it is notable that the mediators used both the facilitation and formulation styles to address conflict issues with which they were dealing. In Case Study 2, for example, the mediators first used the directive or manipulative mediation style by attempting to make the perpetrator see the value of apologising and

committing to meet the medical bills for the victim to avoid being arrested. At the same time, they used a facilitative mediation style by engaging with the victim and influencing him to understand the need to dialogue with the perpetrator because of the participation of the victim's father in human rights violations. The victim needed to understand the grudge that the perpetrator had held against his family over time for having been violated and why truth telling, healing, and reconciliation was necessary. By using both mediation styles, the mediators successfully prevented the arrest of the perpetrator and, at the same time, allowed a dialogue to occur between the conflicting parties. The mediation outcomes and negative aspects will be presented in the following sections.

8.6.3. Actors and Stakeholders

Among the two TJ-related cases that were mediated by the trained mediators, the key actors were mainly the conflicting parties and the mediators themselves. For example, in both Case Studies 1 and 2, the mediators mainly dealt with the conflicting parties directly without the involvement of traditional leaders, churches, and political parties. Community members, traditional leaders, civic society organisations, churches, and political parties are generally the key stakeholders in the broader realm of TJ. However, in this research project process, it seems that the scale at which the mediation process took place was very small such that the broader actors were not relevant. The researcher, therefore, argues that if the mediation process were intentionally carried out by all these local actors beyond the trained mediators, there would have been a very large traction on TJ issues at grassroots levels. This is because the stakeholders are public authorities who generally have legitimate jurisdictional authority with a defined followership and listeners.

In view of the above explanation, the mediation interests of different actors could not be observed because the major actors in the identified cases were only the disputants and the mediators, whose interests were obvious. Mediators interests "relates to how much a mediator has a stake in a dispute" (Lee 2013: 83) whereas stakeholders interests refers to how much stakeholders have stakes in the mediation process. Perhaps it would have been easier to observe the different actors' interests if the

mediation process had a community-wide engagement and involvement as opposed to individualised cases.

However, in Case Study 3, the interests of the mediation actors were somehow clear. Political leaders were key actors in the conflict, and unfortunately those in the ruling party did not have an interest in the mediation process, whereas those from the opposition parties were reluctant to pursue the route because historically, they had not been able to win the debate on food aid distribution. This reluctance arguably also depends on the leader's ability to push the boundaries of resistance towards accountability. When asked why it was difficult to address the case of partisan distribution of food aid, one respondent from the evaluation FGD9 stated that "this tradition of partisan food aid distribution is controlled from the top, therefore, even leaders within our communities cannot change it because once it's known that they benefited opposition leaders, they will be in trouble." This remark reveals the existing structural violence and violations in the name of political culture. It is only when the community is able to manoeuvre to change their existing political culture that it becomes easier to address food-aid-related conflict within their communities. In other words, it is essential to identify weak points that sustain such structural networks of human rights violations in order to disentangle the entire community from feeding into both local- and national-level forms of violations.

However, that which could have been interesting to note within the three case studies is the disputants' power. Disputant's power (as noted in 4.2.1) relates to the influence of conflicting parties over the mediator (Welton and Pruitt 1987). Unfortunately, it was unclear to what extent the disputants' power could have influenced the mediators' bias. This is because the project design could not allow the researcher to directly observe the disputants' characters and the extent to which they could influence the behaviour of mediators. The research participants were asked to comment on their influence in the mediation process in relation to the power of the disputants. Majority of the respondents indicated that in both Case Studies 1 and 2, the disputants were less influential and perhaps considered themselves equal to the mediators. This situation, presumably, could have minimised mediator biases based on the disputants' power. Arguably, in Case Study 1, the mediator was a high-ranking political leader (councillor)

from one of the disputants' political party (ZANU PF), and his authority could have played a role in shaping the mediation discourse, but the researcher could not verify this in any case. However, as noted earlier in the theoretical framework (Chapter 4), bias is inevitable in cases where one of the conflicting parties is more powerful than the mediator.

8.6.4. Mediation Outcomes

Mediation outcome relates to the ultimate results of a mediation process which could be positive (successful) or negative (unsuccessful) [see Chapter 4.2.3]. In this study, it was notable that the mediation processes undertaken to address the three TJ-related cases indeed successfully promoted truth telling, healing, and reconciliation. For example, in both Case Studies 1 and 2, the conflicting parties were able to come together, fully reveal the truth about their anger and accept to forgive each other for the past wrongs. The conflicting parties were also able to tolerate their differences after establishing the truth, leading to their reconciliation. However, the case studies recorded could not reflect how restorative justice is met through mediation. Also, healing could not be ascertained too, perhaps due to the limited timeframe. Healing, in transitional justice is a long term process (Anderlini, Conaway and Kays 2004). In Case Study 2, it was even more unfavourable to ascertain healing because the victim (Freddy) had developed a mild mental health challenge after being beaten for the gross human rights violations committed by his father.

However, the mediation outcomes for Case Study 3 notably failed to succeed because of the unwillingness of political parties who wanted to protect their political stakes through the partisan distribution of food aid. The representatives of political parties concerned did not only have political stakes to safeguard but also the interests of their leaders outside the community under study (who sustains the conflict). In Case Study 3, the conflict actors have vested interest in the conflict and for the ruling party, maintaining the conflict helps them preserve their 'power over' the opposition party and sustaining their 'influence' over citizens. This is unlike in Case Studies 1 and 2 where the conflicting parties were not concerned about power relations, but they were

concerned about their 'relationship' at individual and community level. I expand this argument in the next section where I discuss mediation success and failures.

Mediation played a transformative role in Case Studies 1 and 2 a result that confirms the suitability of transformative mediation in grassroots TJ processes. As noted in chapter 4.4, transformative mediation focuses on the empowerment and recognition of the disputants' (Bush and Folger 2004; Gaynier 2005). In this study, mediators in Case Studies 1 and 2 used a facilitative mediation style something that empowered the disputants to recognise their relational needs, hence transforming their attitudes and behaviours towards each other. In both Case Studies 1 and 2, the relations of the disputants were transformed from being hostile to each other into becoming positive.

8.6.5. Mediation Success and Failure

In this study, mediation success refers to an outcome that ends angers, hostilities, or aggressions among the disputants. Earlier in the theoretical framework review, I indicated that mediation success is dependent on two broad factors that include "mediation context and the mediation process" (Munevar 2005: 71). In this study, a comparative analysis of Case Studies 1 and 2 (successful mediation cases) and Case Study 3 (a failed medication case) showed that TJ related issues arising from the community, involving local community members, and influenced by local members are likely to succeed in mediation compared to TJ issues arising from externally driven influencers and executed by locals. This observation is arising from the fact that of the three cases mediated, the two successful cases were generally involving local disputants and sustained by local conflict actors whereas the unsuccessful mediated cases was involving local disputants, but it was sustained by external conflict actors. Internal conflict actors in these cases of local people living within the community under study while external conflict actors are people coming from outside the community within which the conflict is existing. Below, in figure 8.8, is a diagrammatical presentation demonstrating assumptions of possible success and failures of grassroots mediation on TJ related cases based on the environmental context factors.

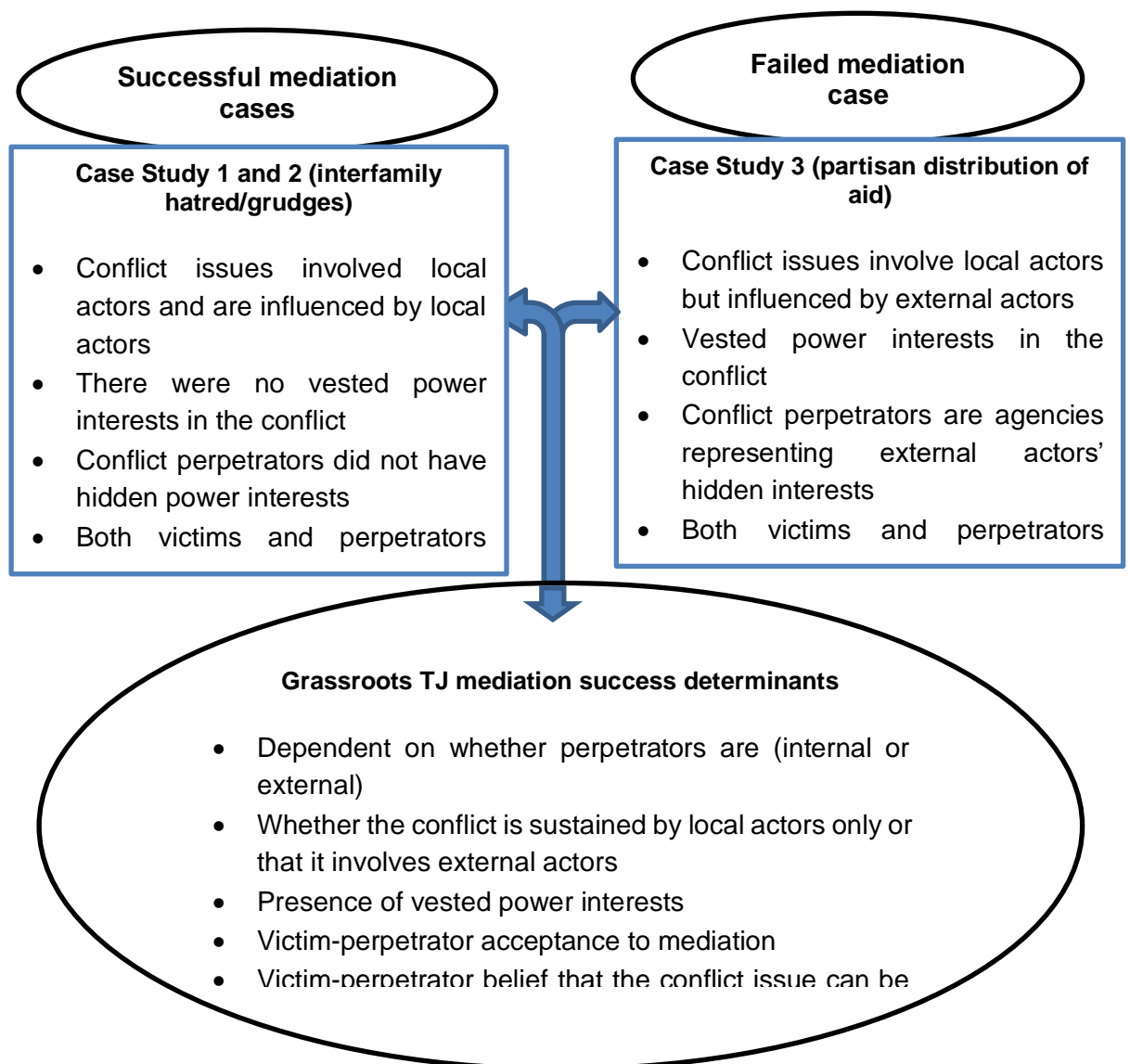


Figure 8.8: Mediation success determinants (Source: Author)

Based on the observations in figure 8.8 above, grassroots mediation on TJ issues can succeed depending not just on the nature of the violation and grievance but on the actors involved and whether the conflict is influenced from outsiders or by just locals. In case studies 1 and 2, both cases were involving local actors whose grievances were locally contained yet in Case Study 3, the conflict issue and grievance involved both locals and outsiders from the community. The outsiders had vested (power) interests that were pursued by using local people as their agents. This made the local perpetrators less amenable to any mediation efforts because they would want to

ensure that their (outsider) influencers are happy, hence the sustainability of the conflict or rather its intractability. In addition, the victims in case study 3 had lost hope on the possibility of having the conflict being addressed such that at the point of mediation the interest in coming to the discussion table was less. This means, there is also need for mediators to motivate interest of victims to realise the importance of religiously reaching out to their opponents.

For grassroots mediation on TJ issues to succeed, it is of value that both the perpetrator and the victim are interested or will have their interest motivated to accept mediation. Once there is acceptance of mediation, then the path to truth telling, healing and reconciliation can begin to shape. Case study 3 reveals that in circumstances where the perpetrator or both are less interested in having the conflict issues resolved (out of vested interests or hopelessness), it is difficult for mediation at grassroots level to address TJ issues.

8.7. Mediation Challenges Experienced and Opportunities Realised

Challenges experienced during the field research project were both procedural and substantive. Procedurally, the mediators were, in some instances, rejected by one of the conflicting parties, especially the perpetrators. Mediators' rejection was based on their voluntary authority which the conflicting parties would disdain. To avoid mediator rejection, there is need to build trust between the disputants and the mediator (Yiu and Lai 2009; Herman, Martin-Ortega and Sriram 2012). However, the mediators were later accepted as the conflicting parties began to trust the mediators' motives. This means, reflectively, that the mediators were proactively engaging with the disputants and soliciting acceptance by the conflicting parties. Voluntary acceptance of the mediation support was, therefore, cultivated.

The fact that the volunteers had to solicit cases for mediation indicates that, in general, victims and perpetrators of gross human rights violations are less likely to solicit mediation support unless there are triggers, including solicitation for mediation by local actors. This situation, suppositionally, means that the government or local

communities can declare a period of TJ and give local actors the authority to mediate past violations, hence catalysing the propensity of victims and perpetrators to open up to their trusted mediators. Alternatively, increasing mediation awareness could increase the propensity of victims or perpetrators to request help from known mediators to mend relations with the other disputant.

8.7.1. Substantive Challenge

The mediators could not singularly identify TJ conflict issues and mediate them without waiting until a specific conflict issue arose. It was notable that of the 30 conflict cases addressed, only 3 cases were TJ related, and of the TJ-related cases mediated, the conflicts were only attended to when they had manifested. This is different from a proactive national process that invokes the need for healing and reconciliation. In this view, it can be argued that for grassroots TJ mediation activities to take place, there is a need for victims and perpetrators to be helped, or rather prepared, to speak out on their need for mediation. This means that a process of awareness raising was necessary if more TJ cases were to be identified and mediated.

8.7.2. Rejection Faced by Mediators

The mediators experienced rejection by the perpetrators until they were able to build trust by demonstrating to the perpetrators that it was in their best interest to get the conflict resolved. For example, in Case Study 3, the mediators were completely rejected such that their work went into disarray, and in Case Study 2, the mediators were initially dismissed by the perpetrator who later accepted the mediators after they explained the dangers of refusing a mediation process. Notably, it can be argued that only when the perpetrator realised that his interests in the mediation process would be met did he accept the mediators. This means that acceptance of mediation can occur when the perpetrators and victims realise that their interests will be met.

8.8. Project Closing: Research Participants' Transformations

At the project close, the researcher asked the participants to indicate from what they had benefited at the individual and community levels through participating in the action

research project. The participants indicated that they had acquired skills to handle conflicts that would sustainably help them to address future differences amicably. It was noted that some community members were now aware of the mediators' roles and would refer conflict cases to them for mediation. More awareness on mediation potentials and the mediators' capabilities could lead to an increase in mediation demand, which is once of this study's objective. The participants added that they had increased their networking skills between and across duty bearers and the general citizens, a development that contributes, broadly, to social capital and cohesion-building influence. It was also revealed that the community was generally improved in terms of political polarisation because of the interparty relations built by the mediators as they engaged with different actors during their mediation processes.

8.8.1. Conflict Resolution Skills

The research participants reflected that their participation in the study gave them conflict-resolution skills that they did not have. For example, one participant stated, "I never thought I can be a good mediator, but after that training, I began to feel confident in resolving conflicts both in the family and in the community" (FGD 9). The participants added that through the skills that they had acquired, they were now recognised as community mediators such that some locals and their leaders would refer conflict issues to them. This proves the view that action Research methodologies empower research participants, as noted in Chapter 5. Action research creates knowledge among those most impacted by the research such that they become solution holders to their own challenges (Kaye and Harris 2017). Skills acquisition is essential in TJ, sustainable peacebuilding, and conflict-resolution processes.

8.8.2. Referral Mediation Infrastructure

This study improved the local community's (research area) peace infrastructure which proved the practical problem-solving nature of action research. Action research closes the gap between scholarly knowledge and practice by addressing real problems through active learning (Bleijenbergh, van Mierlo and Bondarouk 2021). For example, the researcher established a team of 21 trained mediators who reside within the

community where the study was carried out. This means that the areas of study (Wards 12 and 13) already have a living peace architecture that will be valuable to the community for posterity. This was also confirmed by the research participants who indicated that “we are now known such that some people, including traditional leaders, now refer conflicts to us for mediation” (FDG 9). This remark validates the impact that the mediation team has had in the community and its potential influence in future conflict-resolution needs in their community. This is more profound if traditional leaders find some collaborative means with the trained mediators by referring some cases to them.

8.8.3. Reduced Political Polarisation

The mediators (research participants) were composed of people from both the ruling and opposition parties. As they carried out their mediation roles, it allowed observers from the community to appreciate that regardless of being affiliated with different political parties, with political tolerance, people can act together towards a common good. This was revealed in the third evaluation meeting (FGD 9) where one participant argued that “the fact that we mediated conflict issues together without considering our political differences means some people learnt the value of political tolerance. We support different parties, but we worked together” (FGD 8). In this view, the researcher acknowledges that the selection and involvement of grassroots mediators should be sensitive to the environmental political dynamics of inclusivity, in order to become more impactful.

8.8.4. Networking and Relationship Building

The mediators were able to network with other organisations that provide support services to the community, such as Msasa Project, the CCJP, the Department of Social Welfare, and the Zimbabwe Republic Police (ZRP). For example, one participant indicated that “we used not to engage with many organisations in the way we do now because of our mediation roles” (FGD 7). Impliedly, the mediation roles that the research participants assumed helped improve their relationship building and networking skills.

8.9. Mediation Project Design Reflections

This project was successful because there were TJ cases that were mediated, hence meeting the overall intended research objective. The overall study objective was to explore the role of mediation in grassroots-level TJ processes in Ward 12 and 13 of Makoni District, in Zimbabwe. Specific objectives were:

- a) To establish the role of mediation in grassroots TJ processes;
- b) To strengthen the demand for mediation in grassroots TJ interventions; and
- c) To evaluate the effectiveness of mediation in grassroots TJ processes

The researcher was, therefore, able to practically assess the extent to which mediation supports grassroots-level TJ interventions, beyond theory. The researcher could have achieved more erudite results had the research design been enhanced by including community-wide mediation awareness activities immediately after training local mediators. Below are some of the immediate observed research design weaknesses and strengths that were learnt during the action research interventions.

8.9.1. Mediation Actors' Group

The selection and training of the mediators' group was correct because it was diverse enough to include the general citizens, traditional leaders, church leaders, teachers, and elected officials. It also included people from across the political divide, and both opposition- and ruling-party supporters were included. However, some of these actors did not have enough bargaining power and influence to address the structural conflicts within their communities. As noted earlier in the theoretical framework, mediators should be individuals with capacity to create a rapport with the disputants with credibility and demeanour (Northern Virginia Mediation Service [NVMS] 2015; Wood 2017). Presumably, the mediation design should have taken into consideration the need to include high-level actors from outside the identified communities. High-level actors would help unlock engagement challenges where the disputants' power is stronger than that of the mediators.

8.9.2. Mediation Demand Agency

The pilot project design did not take into consideration the need to deliberately include an awareness-raising activity that popularises the mediators and the mediation processes, in general. This design gap made it difficult to create mediation demand from the victims and perpetrators of past gross human rights violations. As a result, the mediators had to mediate conflicts that had manifested as opposed to play a preventive role. They would mediate a TJ-related case that had manifested in the form of a conflict. However, if adequate demand-creation actions had been carried out, it would have been easier for the disputants to approach the mediators rather than the mediators soliciting for mediation cases.

8.9.3. Mediators' Interests

This project failed to trigger mediation actions by other mediation actors outside the trained participants. Traditional leaders and church leaders, for example, were mediation actors who should have also been involved in the mediation processes depending on the case under mediation. However, the cases mediated only involved the trained mediators and the disputants as the key actors. Presumably, this was largely dependent on the scale at which the mediation process took place and the low demand for mediation from victims and perpetrators of past human rights violations.

8.9.4. Financial Resources

The pilot project lacked adequate financial resources to equip the mediators with regalia that they could use when performing their mediation processes. It was agreed in the mediation training that the researcher would provide the mediators with paraphernalia including T-shirts, handbags, hats, and pamphlets such that they would be able to increase their visibility as part of awareness raising and marketing, but this was not achieved due to restricted financial resources. In FGD 9, majority respondents mentioned that they could have increased their visibility by wearing some kind of branded regalia identifying them as community peace facilitators. The researcher was only able to provide the research participants with airtime for communication purposes. This impediment, therefore, limited the project performance needs.

8.9.5. Transitional Justice Periodicity

Traditionally, transitional justice interventions are implemented to address specific conflict episodes (Thoms, Ron and Paris 2010; Collins 2021b). However, this study noted that TJ is quotidian at grassroots level unlike the state-level initiatives undertaken through Truth Commissions and other mechanisms. During the action research interventions, it was notable that of the three cases that were addressed it was notable that everyday relational issues were important influencing factors compelling the disputants to accept the mediation process and negotiate for peaceful coexistence. This agrees with Waldorf (2020: 192) who notes that “transitional justice is slowly becoming more responsive to what victims and their communities actually want – which also means taking their cultural values, informal institutions, and every day practices seriously.”

8.10. Chapter Conclusion

In this chapter, it can be concluded that mediation plays an essential role in promoting grassroots-level TJ. Grassroots-level-initiated mediation allows TJ grievances to be addressed peacefully. Truth telling, reconciliation, and reparations can possibly take place through grassroots-level mediation processes. However, prosecution and memorialisation may not be easily realised. Firstly, mediation avoids prosecution because it makes the traditional justice process difficult to carry out mainly because mediation is voluntary, and it is reconciliation oriented as opposed to punishing.

For memorialisation, this study observed that mediation for grassroots-level TJ issues is highly individual as opposed to being community owned, hence memory-building issues are less considered. Memory building is best undertaken at the community level as opposed to individual levels a view which is also supported by Tunamsifu (2018: 41) who notes that “entities and activities such as public memorials (museums and monuments), various documentation activities (oral history collections and archives), works of art, and public performances.” However, this observation may also be because of the type of conflicts that were mediated, which did not involve any memory-building issues. Nonetheless, I argue that with a broader community level involvement

in collective mediation for TJ, a more success memorialisation process could be realised.

Given that most cases that were mediated related to non-transitional justice conflicts, it could be deduced that communities were not fully prepared to speak out about their TJ needs. Therefore, there is a need to adequately prepare local communities, victims, and perpetrators to become aware of the importance of mediation in TJ processes such that when they need support, they can engage with the mediators with ease. In this study, it was clear that the TJ-related cases mediated were only handled when a conflict had manifested. This leaves preventative conflict measures underutilised.

It is also conclusive that, in practice, mediation for TJ at the grassroots level cannot be periodised as that which occurs when the state stipulates a period for TJ (through truth commissions) which is usually between two to five years. Grassroots-level TJ happens naturally, and such historical grievances are addressed as and when the conflicts manifest among those who have wronged each other. This means the daily interaction of disputants and mediators within formal and informal spaces at grassroots level contributes to TJ properties including truth, healing, justice, and reconciliation.

CHAPTER 9: DISCUSSION OF RESEARCH FINDINGS: A CRITICAL REFLECTION

9.1. Introduction

Chapter 8 explained the researcher's findings from the study's field experiences. The chapter concluded that mediation indeed plays a role in TJ at the grassroots level. However, TJ-related conflicts cannot be easily identified and mediated exclusive of the existing conflict issues within the target communities. Thus, underscoring the link between TJ related issues and quotidian conflict issues that acts as entry points to understanding the past that is hurting the victims and their societies.

This chapter provides a synthesis of the findings from secondary data (presented in Chapter 6), the key informant interviews and FGDs (Chapter 7) and field experiences (Chapter 8). The researcher, here, provides a critical reflection and analysis of the commonalities and divergences in the role of mediation in grassroots-level TJ and that which can be done to increase the demand for mediation towards effective community-initiated TJ processes. In this view, the data analysed here is a triangulation of secondary data, key informant interviews, FGDs, and practical action research field intervention experiences.

Conceptualisation of Transitional Justice: Grassroots Perspectives

Experts and the general citizenry have a harmonised appreciation of the concept of TJ in general and in Zimbabwe in particular. TJ is understood as an attempt to address past gross human rights violations to repair and heal victims and reconcile both the perpetrators and the victims (Teitel 2003; Clark 2021). The nature of the conflict issues that the Zimbabwean government should take into consideration to address national and local grievances regarding past gross human rights violations can be traced from the precolonial, colonial, and post-colonial eras (Machakanja 2010; Independent Advisory Group on Country Information [IAGCI] 2021; Nyoni 2021). However,

prominent, or rather popular, conflict issues that people want to be addressed are related to the country's post-independence violence and violations, including the 1980s *Gukurahundi* atrocities and successive politically motivated violence.

However, of note is that at the grassroots level, communities have their own conflict issues that they would want addressed and which do not necessarily reflect the national-level TJ grievances. These conflict issues include gender-based violence, land conflicts, water conflicts, socio-cultural-relations disputes, and the partisan distribution of public aid (including relief food aid and farming inputs from either the government or non-governmental organisations). These conflicts, nonetheless, have politically motivated root causes yet “transitional justice processes have usually dismissed the root causes of conflicts making it even harder to achieve its aims” (Sandoval 2011:10). To avoid a mismatch of intervention needs between state-level and grassroots level TJ processes, there is need to use a victim-centred approach to TJ. This approach (victim-centred) makes TJ relevant to the affected communities by meeting what victims and or affected communities perceive as aiding to their recovery from the impacts of the violations (Robins 2017).

More precisely, what is clear from the data presented in Chapters 6, 7 and 8 is that there are TJ- and non-transitional-justice-related conflicts that communities want addressed. TJ-related conflicts are linked to past gross human rights violations while non-transitional justice issues are emerging conflicts that have been largely influenced by the prevailing socio-economic and political developments. It is, therefore, important to consider that when intending to address TJ issues, interventions should also take into account immediate needs of the victims and perpetrators. This enhances target participants' commitment and intervention effectiveness.

9.2. Concept of Mediation in Grassroots Transitional Justice

Mediation is traditionally accepted as a conflict-resolution mechanism among grassroots communities (Moyo 2018; Chivasa 2021). Traditional leaders, church leaders, eminent people, or opinion makers and government employees or agencies including district coordinators, councillors, teachers, and agricultural extension officers are often accepted mediators on various conflicts that take place within communities.

In this study, notably, church leaders, traditional leaders, and opinion leaders were generally considered as trusted mediators for TJ-related conflicts. In case study 1, an elected Councillor who is also a church leader was involved in the mediation process while in case study 3, a village head led the mediation process. These actors have their own interests, however, which may influence the mediation processes and outcomes.

Traditional leaders are generally the most recognised conflict mediators because of their positions within local communities (Moyo 2018). They use their traditional authority to preside over traditional courts where various conflict cases are presided over and in Rwanda, the Gacaca courts (Andrew 2014) markedly demonstrate how traditional mediation addresses TJ issues at grassroots levels. However, due to increased political polarisation, Zimbabwe's traditional leaders' duties and responsibilities are becoming unacceptable as they would be seen as partisan especially where the disputants are affiliated to different political parties. Such political biases have also been experienced in countries that have relied on traditional systems for conflict resolution and TJ interventions such as Uganda, Burundi and Rwanda (Brehm *et al.* 2021; Lambourne 2021). This means that besides formal traditional mediation systems, effective TJ mediation may also be carried out by informal institutions that are free from political influence and biases.

9.3. Mediation Practice and Actors and Stakeholders' Interests

9.4.1. Mediation Practice and Function

Mediation practice can transform the way TJ is carried out within local communities. This is because mediation is based on a voluntary and mutual desire to resolve conflicts emanating from past human rights violations either at the request of the conflicting parties or based on the initiative of trained or traditional mediators within local communities. This means that for the mediation processes to take place:

- (i) there must be trained mediators who identify TJ-related conflict issues within local communities and mediate them while taking into consideration their

relevance to conflict priorities within the target areas and affected individuals and groups; or

- (ii) alternatively, there must be a conscious process that creates awareness for local communities on the importance of seeking mediation to address conflicts, including issues of past human rights violations. The awareness programmes increase the disputants' knowledge on why mediation is essential and, in the process, boost mediation participants' confidence when speaking out for repairs.

Mediation, as a practice, if applied to TJ-related cases, allows truth telling, reparations, healing, and reconciliation. Mediation can support these because, by design, disputants are supposed to open up on the root causes of the conflict which allows both parties to know that which motivated the violation and how the victim felt when the violation occurred. For examples, it is this truth that leads the victim and perpetrator to agree on a settlement plan including the issuing of apologies, forgiveness, and reparations. However, it is important to be conscious that mediation in itself does not guarantee truth telling, but it can play an indirect role in uncovering truth about past events (Kirchhoff 2007). But, once the truth has been uncovered, there are probabilities of healing on the part of the victim and reconciliation among both parties.

This study reveals that memorialisation, at grassroots level, is possible if mediation processes are adopted at the community level where structures and actions can be put in place for memory building. "Memory initiatives can be a great healer and an enabler of reconciliation, paving ways and opportunities for dialogue, understanding, apologising, acknowledging and addressing past violence between divided societies" (Ruwanpathirana 2016). However, at individual levels, memorialisation is less likely to be established unless expressly stated, a situation that this study did not observe. This was not observed because among the mediated cases no one required a memory building process such as installing a memorial plaque or reburial, as is usually the case with community-driven TJ memory building.

In the same way, institutional reforms for TJ purposes may not be experienced at individual or family level mediation processes, as was noted in this study. Institutional

reform is meant to change the practices of institutions, particularly those that would have supported the commission of gross human rights violations, especially the security sector involving the police, state intelligence service and the military (Mobekk 2006; Cross 2021). This finding, therefore, suggests that only when mediation interventions targeting TJ are practised at the community-wide and higher levels that there will be a probability to achieve institutional reforms. This is because such levels involve decision makers who have authority to change or rather influence policies and practices that affect a wider society.

9.4.2. Mediation Actors and Interests

The interests of mediation actors determine the scale and use of mediation as a TJ mechanism. As noted in section 4.2.4, mediation actors are the people or institutions involved in the process of mediating the identified conflict (Whitfield 2010; Roepstorff and Bernhard 2013). Grassroots-level mediators observed in this study include traditional leaders, church leaders, the community, individual eminent people, teachers, nurses, district coordinators, and councillors, among other actors. These actors have different interests that motivate them to accept mediating TJ-related conflicts or they themselves initiate some mediation processes. For example, church leaders are motivated to convert more people and bring them to the church, hence mediation is part of their ministerial processes, while traditional leaders are obliged to meet their socio-cultural duties and maintain a peaceful community.

Some mediation actors, arguably, are not taking an active interest in addressing TJ-related conflicts, not because they do not want to or because they are technically incapacitated. It is because the political environment does not allow them to easily pursue their mediation interests. For example, some traditional leaders have been politically captured by the ruling party (see chapter 2 and 7) and made to believe that addressing TJ issues in their communities is politically incorrect unless they are explicitly given the liberty to do so by the central government and the ruling party, in particular. This challenge is also noted by Njeru and Masiya (2021: 129) who observe that traditional leaders are being turned by the ruling party to become partisan, but

there is potential to reform and enable them to effectively facilitate TJ in their communities.

Further, to the above views, I argue that the government must explicitly give all potential mediation actors room to address TJ-related queries at the grassroots level; then, mediation (within TJ contexts) will become a viable modern justice, healing, and reconciliation mechanism. This observation, further, implies the usefulness of social capital, the mediators will have to be respected and trusted in spite of training or their authority, and will have to be seen as part of the way things are done in the community, hence their acceptability to the mediation process.

What is clear in this study is that TJ at the grassroots level has many actors to support it. These actors derive their interest in their social roles and responsibilities within the community. The church has the interest to convert people to become godly and, in the process, socially cohering with their neighbours, while traditional leaders have interests in seeing the society being peaceful, developmental, and productive because of their traditional authoritative responsibilities. The business community, as mediation actors, knows that in a violent community, businesses will collapse unless peace prevails. Therefore, the mediators' interests are varied but united by a common denominator, that is, peace and social cohesion.

9.4.3. Mediation Process and Style

The mediation process [framework] experienced during the action research process was conceptually similar and does not vary across different cases, as noted in Chapter 4.2. The mediators adopted multiple mediation styles depending on the behaviour of the victim or perpetrator in the mediation process. This practice of adopting multiple mediation styles agrees with Jon Linden's Mediation Toolkit which suggests that different mediation styles can be applied to any given mediation case depending on the nature of the conflict dynamics and conflict actors (Linden 2000). During this study's action research field interventions, facilitative and formulation mediation styles were interchangeably used. The facilitative mediation style is suitable in cases where both conflicting parties are willing to participate in the mediation process, while the

formulation mediation process is suitable in cases where the mediators are yet to agree on the actual conflict issues and how they want the conflict to be resolved (Beardsley *et al.* 2006). The manipulation mediation style was not used in any of this study's interventions, which makes it less or rather not applicable in TJ interventions as it would likely cause a resurgence of conflicts in the future as other disputant parties may feel cheated in the mediation process.

However, mediation processes and styles can also be influenced by mediator biases and the disputants' power. Firstly, once mediators become part of the conflict, they influence the conflict dynamics depending on their power and interests to the conflict hence the inevitable use of different mediation styles (Welton and Pruitt 1987; Beardsley *et al.* 2006). In this study, it can be submitted that grassroots-level TJ mediation processes were largely dependent on the mediator's quality more than the mediator's power because most mediation actors were generally powerful (or rather influential) as compared to the disputants. Church leaders, traditional leaders, district coordinators, and councillors are critical mediators who are normally respected, influential, and powerful in comparison to the general community members who are usually the disputants. Challenges, however, emerge in cases where some of these actors are part of the disputants, which is likely the case with politically motivated violence.

9.4.4. Mediation Outcomes

Measuring mediation outcomes success or failure depends on "the context in which the mediation activities are undertaken (Munevar 2005: 74). In this study, mediation outcomes for the two TJ-related conflicts were positive and successful. However, the determinants of success also vary depending on the mediator, the nature of the conflict being mediated and the nature of the parties to the conflict (Kleiboer 1996; Nicholson 1996) and or whether the conflict has reached a mutually hurting stalemate (Zartman 1985), which is basically part of the context). In this study it was notable that when mediation is carried out by locals who are known to the disputants (victim and perpetrator), there is a high likelihood of success. Reasons for the success are that the mediators are known by the disputants', hence establishing trust is generally easy

as compared to building trust with someone from outside the community. Creating a climate of mutual trust is generally essential to all mediation initiatives (Gaynier 2005, Savun 2008)

In addition, it can be submitted that the mediators also had a broader understanding of the general conflict dynamics in the area and are aware of the personalities of the disputants, even before engaging in the mediation process. This helps the mediation process as the mediators (insiders) will know how to flexibly adapt to different mediation mechanisms and strategies depending on the characters and behaviours exhibited by the disputants. Thus, confirming the value of insider mediator. Insider mediators have “in-depth knowledge of the situation as well as close relationships to the (conflicting) parties” (Mason 2009: 4).

In Case Study 1, for example, the mediator was able to change the mediation strategy from directly engaging the disputants to working through the friends or close allies of the disputants when he realised that the disputants were not ready to meet and dialogue. This shift was possible because the mediator knew the disputants’ close allies who could easily collaborate towards the resolution of the conflict. In addition, it is notable that the shift also made the mediator change the mediation style from facilitative mediation to formulation. Formulation became essential as the mediator needed to reflect on the feedback from the disputants’ friends which would provide a greater understanding of the conflict beyond the earlier information provided directly by the disputants. In this regard, it can be advanced that the grassroots TJ mediation outcomes were positive.

A comparative analysis of Case Studies 1 and 2 (successful mediation cases) and Case Study 3 (a failed medication case) shows that TJ related issues arising from the community, involving local community members, and influenced by local members are likely to succeed in mediation compared to TJ issues arising from externally driven influencers and executed by locals. Figure 9.1 below shows a diagrammatical presentation demonstrating assumptions of possible success and failures of grassroots mediation on TJ related cases.

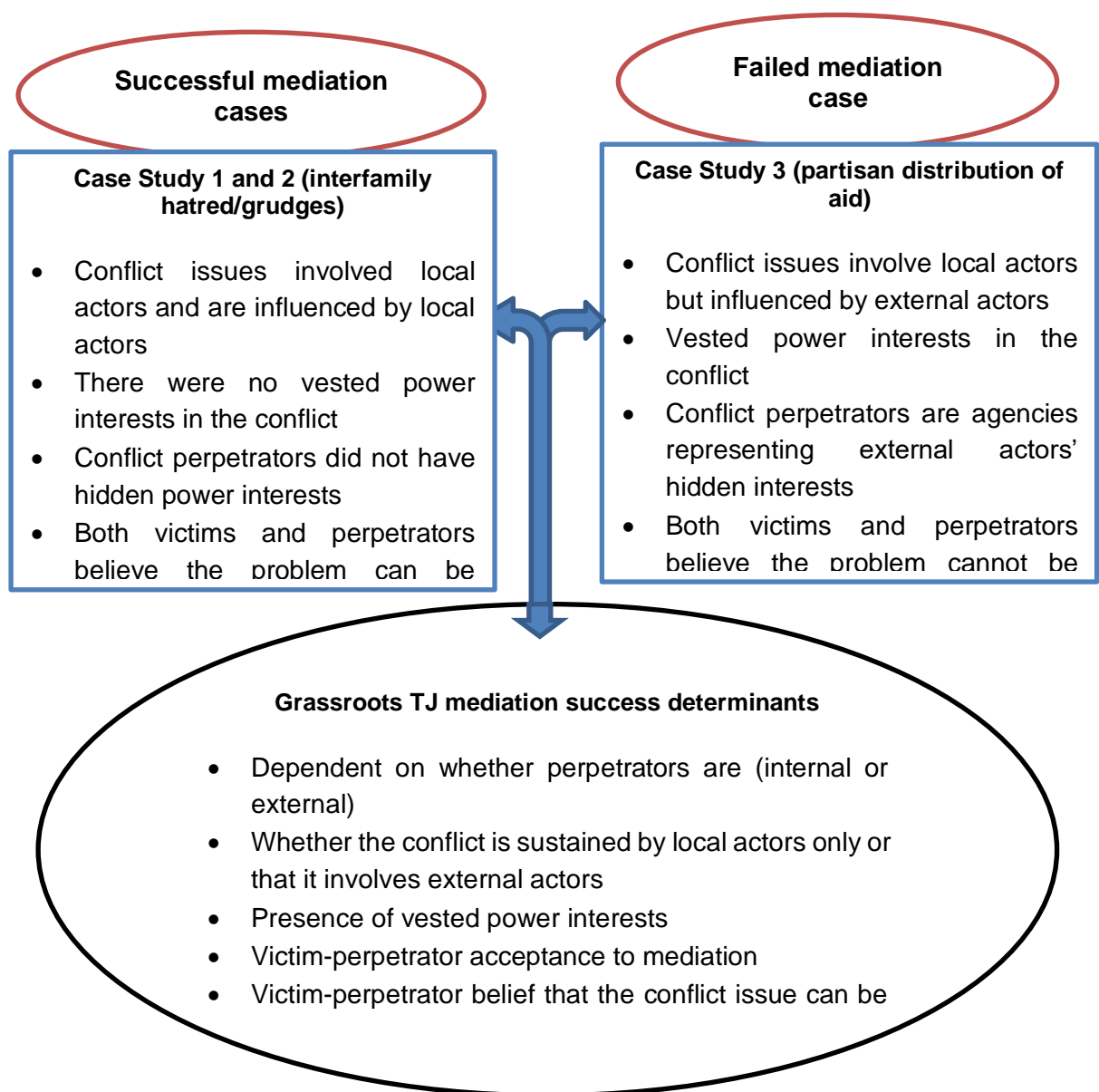


Figure 9.1: Mediation success determinants

Based on the observations in figure 9.1 above, grassroots mediation on TJ issues can succeed depending not just on the nature of the violation and grievance but on the actors involved, whether the conflict is influenced from outsiders or by just locals. In case studies 1 and 2, both cases were involving local actors whose grievances were locally contained yet in Case Study 3, the conflict issue and grievance involved both locals and outsiders from the community. The outsiders had vested (power) interests that were pursued by using local people as their agents. This made the local

perpetrators less amenable to any mediations efforts because they would want to ensure that their (outsider) influencers are happy, hence the sustainability of the conflict or rather its intractability. In addition, the victims in case study 3 had lost hope on the possibility of having the conflict being addressed such that at the point of mediation the interest in coming to the discussion table was less. This means, there is also need for mediators to motivate interest of victims to realise the importance of religiously reaching out to their opponents.

For grassroots mediation on TJ issues to succeed, it is of value that both the perpetrator and the victim are interested or will have their interest motivated to accept mediation. Once there is acceptance of mediation, then the path to truth telling, healing and reconciliation can begin to shape. Case study 3 reveals that in circumstances where the perpetrator or both are less interested in having the conflict issues resolved (out of vested interests or hopelessness), it is difficult for mediation at grassroots level to materialise of TJ issues.

9.5 Mediation Challenges

The challenges of using mediation in grassroots TJ initiatives are largely contextual to the communities and can be mitigated. These challenges include the rejection of mediators, a lack of political will by other local actors, mistrust, and the general lack of awareness on the importance of mediation.

9.5.1. Rejection of Mediators

In grassroots-mediation actions, mediators are rejected if they are the ones who identify a conflict issue and approach the disputants for mediation purposes. Because the disputants would not have solicited mediation support, it is anticipated that the rejection of support would occur at first. However, to avoid rejection under such circumstances, the mediators should be able to declare their interest in the matter in the early stages of engagement. This quickly builds trust among the disputants. Furthermore, engaging other actors who are closer to the disputants will be helpful.

In addition to the above, the possibilities of mediator rejection may be reduced by raising awareness on the importance of mediation and ensuring that people develop trust and confidence to approach the identified mediators when seeking assistance in resolving their conflict issues. This approach is notably encouraging, increasing the demand for mediation by locals (disputants) through information dissemination and education.

9.5.2. Lack of Political Will and Mistrust

Lack of political will is the government and politicians' failure to commit to meeting a set of objectives, (Karnik 2000; U4 Partner Agencies 2010) in this instance, national healing, justice, peace and reconciliation. The study finds that lack of political will arises in TJ mediation in cases where the government (agencies), political parties and other actors responsible for gross human rights violations or their prevention are unwilling to come for mediation, as disputants or stakeholders to the conflict. Unwillingness to participate in a mediation process emerges from various reasons including the fear of accountability, fear of the unknown, disapproval of the mediator, and partly due to inappropriate engagement approaches used by the mediator. These reasons also reflect mistrust which, if possible, must be addressed at the point of starting the mediation process.

9.5.3. Point of Mediation Versus Conflict Stage

It was notable that mediation on TJ matters was possible at the point of conflict when a conflict had manifested. This challenge, however, existed because there were no victims or perpetrators who came forward requesting for mediation. Among the cases mediated, for example, in case 2, the mediation process was carried out at the initiative of the mediators when a conflict had already occurred (past wound festering). This challenge, therefore, calls for proactive mechanisms to increase the victims and perpetrators' agency in demanding mediation as opposed to having TJ conflicts addressed at the initiative of the mediator.

9.6 Chapter Conclusion

This chapter provided an analysis of how mediation plays a role in TJ processes and how the demand for mediation can be increased. From the study, it is notable that grassroots mediation plays a significant role in facilitating truth telling, reparations, healing, and reconciliation. It, however, discourages prosecutorial justice simply because, by its nature, the conflict-resolution tool values voluntary participation, mutual trust, and empathy. In cases where prosecution comes into existence, the mediation process ceases to be voluntary, and it is likely to collapse. Hence, the use of mediation in TJ processes at grassroots levels must continue working based on persuasion and the desire to correct historical wrongs with mutuality. The demand for mediation can largely be increased through education and awareness raising among the target communities and, more precisely, among victims and perpetrators.

CHAPTER 10: RESEARCH CONCLUSION AND RECOMMENDATIONS

10.1. Introduction

This final chapter explains the major contributions of this study to TJ and mediation knowledge, linking key research findings and discussing the future theory and practice of sustainable peacebuilding through mediation within grassroots TJ contexts. This chapter also recommends possible ways of increasing the demand and use of mediation as a tool for sustainable peacebuilding within TJ programme policy and practice interventions. A summary of the research objectives is first given, followed by the research conclusions and recommendations.

10.2. Research Objectives

The principal objective of this study was to explore the role of mediation in grassroots-level TJ processes in Zimbabwe, using action research methodologies, with a view to strengthen its use in sustainable peacebuilding programmes. The specific research objectives were:

- a) To establish the role of mediation in grassroots TJ processes
- b) To strengthen the demand for mediation in grassroots TJ interventions
- c) To evaluate the effectiveness of mediation in grassroots TJ processes

The fundamental research question was centred on understanding the role of mediation in TJ processes, ascertaining its effectiveness as a grassroots TJ mechanism and how its demand for use in TJ can be increased. To answer this broad inquiry, three key questions were considered: What is the role of mediation in TJ processes? How effective is mediation as a conflict-transformation tool in TJ interventions? What can be done to increase the demand for mediation in TJ interventions?

10.3. Conclusions

10.3.1. The Role of Mediation in Grassroots Transitional Justice Processes

The research sought to understand the role of mediation in grassroots TJ processes using action research methodologies. The most significant understanding was that mediation actions facilitated by community-level actors support TJ by permitting truth telling, reparations, healing, and reconciliation among disputants without the need to use national-level TJ infrastructures. This means that at the grassroots level, TJ processes can take place without waiting for the statist TJ approach. Notable explanations as to how grassroots mediation allows truth telling, reparation, healing, and reconciliation are that:

- The mediation process is voluntary, and it takes place when both disputants agree that they are interested in mending relations.
- Trust building begins as disputants narrate their stories; share their perceptions and conflicting points; and their feelings, desires, and considerations if reconciliation is to take place. In the process, the truth is extracted, and possibilities of settlement are generated.
- In cases where an agreement is reached, apologies are issued, there is forgiveness, and, in some instances, there is acceptance to offer reparations.

However, this agency of mediation, as noted in the study, applies to conflict issues that involve individuals and individual families within the community. This is because both the disputant parties live in the same community; they are known to each other and the mediators; and, more importantly, they share societal commons including water points, grazing lands, shops, rivers, washing / swimming points, and roads or paths which compels them to desire to mend relations to avoid the agony of being hurt each time they meet or interact in the community's commons.

In cases where past human rights violations or TJ issues are tied to structural violence, local mediation processes may not be possible without the consent, cooperation, and willingness of those who sustain such conflicts. As noted in the study, mediating issues

of the partisan distribution of food aid was unsuccessful. The conflict is perpetual, and it is sustained by a political culture that is not only existent within the community but driven by external forces. Hence, mediating such a conflict at the grassroots level without involving the structures that sustain such a conflict would be tantamount to failure. The major challenge in this instance is that the perpetrators who sustain the conflict do not share the commons with the victims. Rather, it is the victims and the agents of human rights violence who interact; conflict with each other; and perpetuate hurt, anger, and victimhood. The term *agent* in this case refers to those who are used to commit human rights violations by political leaders who do not reside in the same community with the victims.

This study also revealed that mediation employed at grassroots-level TJ interventions cannot play a significant role in enabling prosecutorial justice, memorialisation, and institutional reforms. Firstly, regarding prosecutorial justice, because mediation is a voluntary initiative between disputants, the perpetrator is less likely to consent to mediation for fear of being criminally held accountable, thus defeating the purpose of prosecutorial justice. In cases where the perpetrator consents to mediation from community pressures, there are possibilities that the perpetrator will not expose the truth, especially that which incriminates him/her, thus defeating one immediate component of TJ.

Secondly, regarding institutional reform, grassroots-level mediation mainly targets the transformation of attitudes and behaviours of disputants (who are mostly individuals and families) as opposed to institutions and structures within the community. As a result, the mediation agency will fall short of capacity. However, in cases where the mediation is carried out by an authoritative person who can potentially change institutional cultural practices and values within the community such as village heads, headmen, chiefs, or councillors, possibilities of institutional reform could exist at the grassroots level. This study was unable to observe, or rather test, this view, but it is reflectively the case given other findings.

Reflecting on mediation actors is important to understand the role of mediation in grassroots-level TJ processes. Mediation process outcomes are highly dependent on

the character of the people involved in the mediation activity. The authority, power, recognition, and skills held by those involved in the mediation process, either as disputants or mediators, determine whether the goals of TJ will be met. The argument here is twofold. On the one hand, mediators must be skilled enough to use different mediation styles to enable truth telling, healing, and reconciliation because, if they are not competent, they may fuel the conflict or rather simply fail to meet the TJ goals. On the other hand, the disputants must have the same vision, that is, having an intention to resolve their dispute and restore relations in order to meet their individualised justice and healing goals.

10.3.2. The Effectiveness of Mediation in Grassroots Transitional Justice Processes

The effectiveness of mediation in TJ issues is evidenced by the technique's ability to resolve TJ-related conflicts sustainably in a mutual and peaceful manner. This measurement can be derived from the "two basic assumptions of mediation that (1) the objectives of mediation are settlements and problem solving, and (2) that mediators control the process" (Gaynier 2005:398) through empowerment and recognition of the disputants. In this view, the mediation process, and outcomes from the three case studies demonstrated that:

- Mediation is an effective tool for addressing grassroots TJ-related conflicts when implemented to address individual and community-level conflicts that are not directly caused by structural conflicts, driven, and sustained from outside the target community. This is because both disputant parties have the power and capacity to control their conflict attitudes and behaviours without external influence.
- However, in cases where the conflicts are sustained by structural policy, practices, and processes, mediation cannot effectively address such conflicts unless the external actors cooperate and are willing to have such conflicts addressed.

The mediator's control is part of the measures of effectiveness because "a positive outcome does not just depend on the willingness of both parties to come to an agreement, but rather the ability of the mediator to facilitate, remain neutral, and to build rapport with both parties" (Evidence 2016: 1). In this study, the researcher concludes that for mediation in grassroots-level TJ processes to become effective, the mediators must be skilled and abide by mediation principles that include confidentiality; the ability to listen to stories from both sides; and, more importantly, the ability to flexibly use different mediation styles. As noted earlier in Chapters 7 and 8, the mediators were successful because they were able to switch from one mediation style to another. These styles include formulation, facilitative, manipulation, and narrative mediation. The manipulation style is, however, discouraged because it does not promote sustainable peace. If one of the disputants realises that he/she was manipulated, the conflict or grievance may rekindle, hence the need to use more civil mediation styles that sustain peace.

Mediation can also be considered an effective tool to address TJ-related issues at the grassroots level where it is carried out by local people who are known to the disputants and who are aware of the existing conflict background issues. When the disputants know the mediators, it is somehow easy to accept their mediation support because they are not outsiders whose interests may not be easily ascertained. This is because trust building is essential in mediation processes (Evidence 2016) which can be easily established by mediators known to the disputants than by those who come from outside. In addition, local mediators have expansive knowledge of the disputants which makes it easier for them to identify entry points to the mediation process. Nonetheless, the mediator's skills remain essential in ensuring mediation success.

More importantly, one of the significant observations in this study regarding mediation effectiveness was its ability to facilitate truth telling, reparations, healing, and reconciliation which are essential pillars of TJ. The fact that mediation can be used to achieve truth telling, reparations, and other objectives of TJ is tremendously valuable in the field of TJ. This means that with few financial and time resources, TJ needs at the grassroots level can be met if mediation interventions are utilised.

10.3.3. The Demand for Mediation in Grassroots Transitional Justice Interventions

One of the objectives of this study was to strengthen the demand for mediation in grassroots TJ interventions. This objective was achieved because the mediation activities carried out in Makoni (Wards 12 and 13) left the communities with trained mediators equipped to facilitate not only TJ-related conflicts but also emerging conflicts in their localities. By providing training and increasing awareness on the importance of using mediation in TJ conflict-related issues, the study increased the agency for mediation, hence strengthening the demand for mediation.

The research participants who acted as mediators during the action research project-implementation period indicated that they were already receiving cases requiring mediation from their leaders and the general community members. This demonstrates that the demand for mediation can be increased, and the market is available for mediation initiatives towards TJ, healing, and reconciliation.

However, it is pertinent to note that to increase the demand for mediation, there is a need to create the demand. Demand creation for mediation can be increased by raising awareness of the mediation services provided by local mediation actors and more substantively increasing awareness on the importance of mediation services in advancing TJ within local communities. When victims and perpetrators of past human rights violations are not aware of the mediation services available to meet their needs, it becomes difficult for them to seek services of which they are not aware. In addition, the mediators will be forced to solicit TJ cases to mediate rather than wait to be approached by those in need. The implications of soliciting cases to mediate is that few cases will be identified and addressed unlike when those aggrieved are fully aware of the mediation potentials and they reach out to relevant service providers.

It is essential to emphasise that for mediation aimed at addressing TJ to succeed, its demand-creation mechanisms should not be simply targeting past human rights violations, but community conflicts in general. There is a danger in implementing mediation interventions targeting only past human rights violations because

perpetrators may easily interpret the intervention as a politically motivated intervention targeting political opponents for criminal liability. This means that it is acceptable to have both transitional and non-transitional justice conflicts being addressed in a project wholly targeting TJ results.

10.4. Personal Reflections

This action research project was an interesting and empowering initiative that deepened the researcher's understanding of peacebuilding and conflict transformation. As a practitioner in peacebuilding, the researcher's experience with the project transformed his approach to community development. One critical lesson was that when designing programme activities, it is essential to involve the beneficiaries while guiding their actions to avoid negative technical lapses. For example, if the researcher had not involved the research participants in designing the training manual, he could have easily developed training material that did not address their skills gap. The researcher would like to thank Dr Webster Zambara for the insights on this stage that the researcher had initially skipped. The following subsections include specific reflections on the project findings in their entirety and the action research.

10.4.1. Grassroots-Level Mediation for Transitional Justice

TJ has long been practised from the perspectives of a statist approach where the government declares a period of national healing and reconciliation through establishing TJ mechanisms such as TRCs. These commissions will then implement truth telling and reparative and justice interventions, mostly without serious commitment to ensuring impactful responses of the commissions' interventions. In authoritarian countries where such TRCs are established, the TJ objectives are never met. Zimbabwe is one of these such countries. Therefore, to remedy such challenges, initiating grassroots-level mediation interventions that are premised on peacebuilding and conflict transformation is essential. Mediation implemented by locals without the intervention of the state can address TJ grievances within local communities. However, in cases where the TJ grievances are or were created by structural violence

systems which continue to exist, the need for specific state institutions to participate in the process will be necessary.

10.4.2. Institutional Reform and Prosecutorial Justice

Grassroots TJ mediation processes cannot address institutional reform and prosecutorial justice issues. This is broadly because institutional reform requires a change of government practices and systems of governance which are obviously beyond the control of the communities. As a result, for institutional reform processes to take shape, there will be a need for community mediators to interact with policy-level actors, which is a process that is long-term and politically conflictual. Prosecutorial justice also cannot be achieved because it is a retributive process that is against the mutual consent that characterises mediation. Hence, once mediation involves prosecution, there is a likelihood of the perpetrators withdrawing from the initiative for fear of criminal liabilities.

10.4.3. Victims and Perpetrators

At the grassroots level, the promotion of TJ is guided by the communities' desire to mend relations because both the perpetrator and the victim share public resources daily such as grazing lands, water points, and even the air that they breathe. As a result, the cost of maintaining the hurt is higher than mending the relations such that they both share the commons peacefully, with a sense of security and freedom. Therefore, mediation has a ready market if applied to grassroots-level TJ processes.

10.4.4. Capacity Building

It is essential to continuously improve communities' capacity to address the causes and effects of human rights violations. Community actors are better positioned to address their own conflicts because they are generally known to and trusted by their neighbours as compared to outsiders. Therefore, the agency for mediation and TJ must be built and improved through local actors. When creating content for capacity building, again working through and by involving local actors promotes ownership and it enhances the intervention's relevance.

10.4.5. Political Polarisation

It must be acknowledged that political terrains where TJ programmes are implemented are generally characterised by political polarisation. Any peacebuilding intervention that takes place in a politically polarised environment should consider addressing its root causes also.

10.5. Recommendations

TJ mediation processes at the grassroots level can be successful if the state-level TJ issues have been invoked and local leaders are actively engaged in the processes. In this way, they encourage local mediation actors to begin supporting TJ efforts with freedom and determination. To enable mediation for grassroots-level TJ processes:

- (i) There must be trained mediators who identify TJ-related conflict issues within local communities and mediate them while taking into consideration their relevance to conflict priorities within the target areas and affected individuals and groups.
- (ii) There must be a conscious process that creates awareness for local communities on the importance of seeking mediation to address conflicts, including issues of past human rights violations. The awareness programmes increase the disputants' knowledge on why mediation is essential and, in the process, boost the mediation participants' confidence when speaking out for repairs. These awareness activities can be effective if carried out by church leaders, traditional leaders and respected persons who have influence on the communities' opinion or rather the way of conceiving life. Neutral spaces that are organic to the communities such as community gatherings, church gatherings, community clubs meetings and organically created social spaces (such as soccer groups) are essential to carry out these awareness campaigns. I recommend these because they do not disrupt communities' normal daily lives and will not be perceived as imposed initiatives (from outside).
- (iii) Civic society organisations, as players in TJ interventions, must increase their focus on capacitating grassroots level structures (as opposed to state level

advocacy) to carry out healing and reconciliation activities. In fact, there is need for civic society organisations to balance their advocacy for state-led TJ processes with grassroots-led interventions. This is because, state-led interventions are observably polarising and inefficient whereas those led by community mediators are largely transformative, less polarising and less or not retributive at all.

- (iv) In slow transitioning countries such as Zimbabwe, institutions advocating for TJ must shift from focusing on conventional TJ processes (that treats the process as a periodized special type of justice) towards recognising transitional justice as an everyday process that can take place without national level interventions or rather the proclamation of a national TJ process.

10.6. Areas for Further Study

There is a need to broaden the investigation on how TJ can be supported at the grassroots level without waiting for state-level approaches that are usually impeded by political bickering, resource constraints, and political polarity. There is also a need to conduct research on the extent to which past human rights violations influence existing conflicts. There is a danger of focusing on past human rights violations while turning a blind eye to emergent conflict triggers and root causes on which it is more essential to focus than past conflicts, in cases where there is no direct core relation simply because society is constantly evolving.

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APPENDICES

Appendix 1: Letter of Information and Consent Form



LETTER OF INFORMATION

Title of the Research Study:

Grassroots Transitional Justice Framework: The Role of Mediation in Zimbabwe's Transitional Justice Process.

Principal Researcher:

Edknowledge Mandikwaza, Ph.D. Public Administration
(Peacebuilding)

Co-Supervisor: Dr. Sylvia Kaye

Co-Supervisor: Professor Geoff Harris.

Brief Introduction and Purpose of the Study:

I am kindly requesting you to participate in my academic inquiry in pursuit of a Doctoral qualification in Public Administration (Peacebuilding) at the Durban University of Technology.

The study titled *Grassroots Transitional Justice Framework: The Role of Mediation in Zimbabwe's Transitional Justice Process* assesses how mediation can promote sustainable peace building in Zimbabwe. The research seeks to generate new knowledge establishing how mediation promotes peaceful resolution and redress of conflicts from grassroots level. The study is important as it promotes peaceful resolution of disputes for sustainable peace building and deepening social cohesion within communities.

Outline of the Procedures: You are expected to voluntarily contribute to this study through interviewing or participating in focus group discussions. Questions that will be asked during the interview or focus group discussions include; your experiences with conflict or disputes, your perception about mediation as a conflict resolution tool, qualities of potential mediators, preferred mediation styles and how mediation promote sustainable peacebuilding.

The interview or focus group discussion will take about 30 – 60 minutes although completion varies with time and nature of issues emerging from the participants. If you prefer a particular way of responding to the questions, kindly inform me in person using any of the contacts provided at the end of this letter.

Risks or Discomforts to the Participant: Some participants may experience distress during the interviewing or discussion process if asked about their past conflict experiences and how they addressed them.

Benefits: By participating in this study, you will become more aware of how mediation can contribute to peaceful resolution of disputes and how to enhance sustainable peace in your families and community. You will also have full access to the study findings. More possible benefits to the society will be knowledge and learnt experience in dispute resolution and conflict transformation. In the long-term, if the study findings are

adopted by the community, there will be deepened social cohesion and sustainable peace processes.

Participation and Withdrawal from the Study: A research participant can, at any point, refuse to answer any questions, or withdraw from the study with no effect. There will be no adverse consequences for the participant should he/she chooses to withdraw.

Remuneration: Participants are expected to participate voluntarily. There will be no remuneration or material benefit associated with this study.

Costs of the Study: You are NOT expected to incur any cost in relation to this study.

Confidentiality: I promise that your information will be kept confidential, under lock and key. All data collected will remain confidential and accessible only to the researcher of this study. If the study results are published, your name will not be used. If you choose to withdraw from this study, your data will be removed and destroyed from any existing transcript or database.

Persons to Contact in the Event of Any Problems or Queries:

Please contact me (the researcher) on mobile: +263773244227 (Zimbabwe) +27847108167 (South Africa); Email: 21855184@dut4life.ac.za; my supervisor's contact is Dr. Sylvia Kaye, email: sylvia.k@dut.ac.za; Tel. +27-31-373-6860. You may also contact the Institutional Research Ethics Administrator on +27313732375. Complaints can be reported to the Director: Research and Postgraduate Support, Prof S. Moyo on +27313732577 or moyos@dut.ac.za.

Researcher's Signature

The above are the terms and conditions under which I will conduct the study

ED
Mandikwaza

Digitally signed by ED Mandikwaza
DN: cn=ZA, ou=HICON - Peacebuilding, o=Durban
University of Technology - DUT, cn=ED
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Reason: I am the author of this document
Location: Durban, South Africa
Date: 2019-08-05 22:49:54
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Edknolwedge Mandikwaza (PhD Student)
Faculty of Management Sciences (Peacebuilding)
Durban University of Technology
Durban, South Africa



CONSENT FORM

Statement of Agreement to Participate in the Research Study:

- I hereby confirm that I have been informed by the researcher, _____ (name of researcher), about the nature, conduct, benefits and risks of this study –Research Ethics Clearance Number: _____.
- I have also received, read and understood the above written information (Participant Letter of Information) regarding the study.
- I am aware that the results of the study, including personal details regarding my sex, age, date of birth, initials and diagnosis will be anonymously processed into a study report.
- In view of the requirements of research, I agree that the data collected during this study can be processed in a computerized system by the researcher.
- I may, at any stage, without prejudice, withdraw my consent and participation in the study.
- I have had sufficient opportunity to ask questions and (of my own free will) declare myself prepared to participate in the study.
- I understand that significant new findings developed during the course of this research which may relate to my participation will be made available to me.

_____	_____	_____	_____
FullName of Participant	Date	Time	Signature/ Right Thumbprint

I, E. Mandikwaza (name of researcher) herewith confirm that the above participant has been fully informed about the nature, conduct and risks of the above study.

ED
Mandikwaza
Edknowledge Mandikwaza
Full Name of Researcher

Digitally signed by ED Mandikwaza
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o=Durban University of Technology -DUT,
cn=ED Mandikwaza,
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Location: Durban, South Africa
Date: 2019-08-08 16:25:37
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Date

ED
Mandikwaza
Signature

Digitally signed by ED Mandikwaza
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Appendix 2: Key Informants Interview Guide

INTERVIEW GUIDE		
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Facilitator	EDKNOWLEDGE MANDIKWAZA	Durban University of Technology (DUT)
	PhD Candidate	Mediation and Transitional Justice
About the Study	<p>This study seeks to understand how mediation promotes/support peaceful resolution of conflicts and sustainable peacebuilding among communities. (<i>Tsvagiridzo yandiri kuita iri pamusoro pekutarisa kuti “kuyanana” kunobatsira sei kuti vanopokana vawirirane, vafambidzane, varipane, varegererane uye kuti vakanganwirane zvavakatadzirana</i>). <i>Importance:</i> The study is important because it promotes peaceful resolution of disputes for sustainable peacebuilding and deepened social cohesion within local communities in Zimbabwe.</p> <p>This study is purely for academic purposes. The participants' name will not be written anywhere, and his/her confidentiality is guaranteed as NO any of the responses will be disclosed to anyone. All the information acquired will be safely kept under lock and key.</p>	

Section A: Introduction	Conflict Mapping
--------------------------------	-------------------------

1. What is your conceptualisation of transitional justice in Zimbabwe? (Transitional justice refers to efforts meant to address past human rights violations to bringing closure, healing, and reconciliation)
2. What conflict issues do you think should be attended to and how?

Section B:	Role of Mediation in Specific TJ Pillars
-------------------	---

3. How do you position mediation as a conflict resolution mechanism in transitional justice processes?
4. How does it address different transitional justice pillars needs? (Truth-telling, restoration, justice, institutional reform, reconciliation etc.)

Section C:	Mediation Actors & Stakeholders' Interests
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5. Which actors are best placed to facilitate communal conflict mediation and why?
6. How should the mediation process be undertaken in order to be successful?
7. What are the interests of the following groups in conflict mediation?
 - a) The community
 - b) Government/NPRC
 - c) Victims of past violations
 - d) Perpetrators of past violations

Section D:	Mediation Challenges and Opportunities
-------------------	---

8. What can be done to increase the demand for mediation on TJ issues in your community/Zimbabwe?
9. What challenges could be experienced when mediating transitional justice issues in your community/Zimbabwe?

Section G:	Grassroots Mediation & Sustainable Peacebuilding
-------------------	---

10. Why is it important for communities to participate in the resolution of their own conflicts?
11. How does mediation (as a conflict resolution mechanism) promote long term peace?

Appendix 3: Focus Group Discussions Guide

COMMUNITY FOCUS GROUP DISCUSSIONS GUIDE
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Facilitator	EDKNOWLEDGE MANDIKWAZA	Durban University of Technology (DUT)
	PhD Candidate	Mediation and Transitional Justice
About the Study	<p>This study seeks to understand how mediation promotes peaceful resolution of conflicts and sustainable peacebuilding among communities. (<i>Tsvagiridzo yandiri kuita iri pamusoro pekutarisa kuti “kuyanana” kunobatsira sei kuti vanopokana vawirirane, vafambidzane, varipane, varegererane uye kuti vakanganwirane zvavakatadzirana</i>). <i>Importance:</i> The study is important because it promotes peaceful resolution of disputes for sustainable peacebuilding and deepened social cohesion within local communities in Zimbabwe.</p> <p>This study is purely for academic purposes. The participants’ name will not be written anywhere, and his/her confidentiality is guaranteed as NO any of the responses will be disclosed to anyone. All the information acquired will be safely kept under lock and key.</p>	

Section Introduction	A: Conflict Mapping
-----------------------------	----------------------------

12. What are the major conflict issues that were experienced in the past in your communities (social, economic, political conflicts)?
13. What were the major causes and actors in these conflict issues?
14. What has been (and) can be done to address these conflicts?

Section B:	Role of Mediation in Specific TJ Pillars
-------------------	---

15. How can mediation be used to address these past conflict issues with a specific reference to national healing and reconciliation

Section C:	Mediation Actors & Stakeholders’ Interests
-------------------	---

16. Which actors are best placed to facilitate communal conflict mediation and why?
17. How should the mediation process be undertaken in order to be successful?
18. Why would the following people or groups be interested in mediation that addresses past conflict issues?

Section D:	Mediation Challenges and Opportunities
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19. What can be done to increase the demand for mediation on healing and reconciliation issues in your community?
20. What challenges could be experienced when mediating conflict issues in your community?

Section G:	Grassroots Mediation & Sustainable Peacebuilding
-------------------	---

21. Why is it important for communities to participate in the resolution of their own conflicts?
22. How does mediation (as a conflict resolution mechanism) promote long term peace?

Appendix 4: Field Project Evaluation Guide

Evaluation Guide – Action Research

Section A: Mapping

1. From the training you had in February 2020 to date, are there any new types of conflicts that have emerged in your communities?
2. Among those conflicts are there those that are caused by past conflict issues or human rights violations
3. Who are the major actors in these conflicts?

Section B: Mediation actions

1. Is there any conflict that you have resolved among those conflicts using mediation skills acquired from the training or from other sources?
2. How did you address those conflict issues or how did the mediation process take place?
3. Was there any truth telling, justice, reconciliation, restoration, institutional reform, memorialisation processes or changes realised?

Section C: Actors and Stakeholders Interest

1. Who were the actors involved in the mediation process towards resolving the conflict and what role did they play?
2. What were the interests of the stakeholders involved in the mediation process? (victims, perpetrators, government, the community)


Section D: Challenges experienced and opportunities

1. Are there any challenges you experienced in mediating the conflicts identified?
2. What could be done to prevent these challenges in the future?
3. How can the demand for mediation be increased?

Section E: Challenges experienced and opportunities

1. In your view, will be conflict issues addressed/resolved re-emerge again or they were sustainably solved and why?

Appendix 5: Gatekeepers Consent Letters



30 April 2018

ICON - Peacebuilding Programme
Durban University of Technology
P O Box 1334, Durban, 4000
South Africa

Request for Support in Conducting a Peacebuilding Research in Your Operational Area

Dear Obert Gonzo (Mr.)

My name is EDKNOWLEGE MANDIKWAZA, a Ph.D. student in Public Administration – Peacebuilding at the Durban University of Technology. The research I wish to conduct for my Doctoral thesis involves *Exploring the Role of Mediation in Zimbabwe's Peacebuilding Processes*. I, therefore, request your moral and technical support in accessing communities in Ward 12 and 13 (Makoni District) where you work and implement activities related to peacebuilding. I believe your participation in my community research activities will enhance intervention acceptance and easy collaboration by local gatekeepers and decision makers.


I have attached herewith a copy of my proposal, which includes copies of the data collection tools and consent and/ or assent forms to be used in the research process, as well as a copy of the approval letter which I received from the Institutional Research Ethics Committee (IREC).

If you require any further information, please do not hesitate to contact me on 21855184@dut4life.ac.za [mobile: +263773244227 (Zimbabwe) +27847108167 (South Africa)]. In case of any other queries my supervisor's contact is Dr. Sylvia Kaye (Email: sylviak@dut.ac.za; tel: +27-31-373-6860).

Thank you for your time and consideration in this matter.

Yours sincerely,

Edknowledge Mandikwaza
Durban University of Technology





30 April 2018

ICON - Peacebuilding Programme
Durban University of Technology
P O Box 1334, Durban, 4000
South Africa

Request for Permission to Conduct Research in Your Jurisdictional Area

Dear Sir/Madam

My name is EDKNOWLEGE MANDIKWAZA, a Ph.D. student in Public Administration – Peacebuilding at the Durban University of Technology. The research I wish to conduct for my Doctoral thesis involves *Exploring the Role of Mediation in Zimbabwe's Peacebuilding Processes*. I am hereby seeking your consent to conduct the study in your area of jurisdiction (Ward 12).

I have provided you with a copy of my proposal, which includes copies of the data collection tools and consent and/ or assent forms to be used in the research process, as well as a copy of the approval letter which I received from the Institutional Research Ethics Committee (IREC).

If you require any further information, please do not hesitate to contact me on 21855184@dut4life.ac.za [mobile: +263773244227 (Zimbabwe) +27847108167 (South Africa)]. In case of any other queries my supervisor's contact is Dr. Sylvia Kaye (Email: sylviaak@dut.ac.za; tel: +27-31-373-6860).

Thank you for your time and consideration in this matter.

Yours sincerely,

Edknowledge Mandikwaza
Durban University of Technology

MUNICIPAL DISTRICT COUNCIL
WARD 12 EKAMHEPA
DATE 2-05-2018

30 April 2018

ICON - Peacebuilding Programme
Durban University of Technology
P O Box 1334, Durban, 4000
South Africa

Request for Permission to Conduct Research in Your Jurisdictional Area

Dear Sir/Madam

My name is EDKNOWLEGE MANDIKWAZA, a Ph.D. student in Public Administration – Peacebuilding at the Durban University of Technology. The research I wish to conduct for my Doctoral thesis involves *Exploring the Role of Mediation in Zimbabwe's Peacebuilding Processes*. I am hereby seeking your consent to conduct the study in your area of jurisdiction (Ward 13).

I have provided you with a copy of my proposal, which includes copies of the data collection tools and consent and/ or assent forms to be used in the research process, as well as a copy of the approval letter which I received from the Institutional Research Ethics Committee (IREC).

If you require any further information, please do not hesitate to contact me on 21855184@dut4life.ac.za [mobile: +263773244227 (Zimbabwe) +27847108167 (South Africa)]. In case of any other queries my supervisor's contact is Dr. Sylvia Kaye (Email: sylviaak@dut.ac.za; tel: +27-31-373-6860).

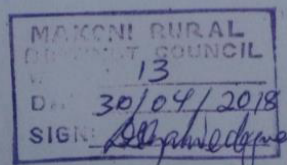
Thank you for your time and consideration in this matter.

Yours sincerely,

Edknowlege Mandikwaza
Durban University of Technology

(DO YOUR RESEARCH WELL)
ACKNOWLEDGED SIR

COUNTERED
0773 263 846



Appendix 6: Training Manual Co-Creation Guide

Training Manual Co-creation and Dialoguing Guide

Following five focus group discussions with selected community members, including many of you, I have identified several issues that leads us to a training in mediation and dialogue. However, for this training or trainings to take place, there is need to co-create the training ideas as well as clearly understanding the training needs from you, as part of the potential mediators.

Generally, this training manual, we should co-create is meant for use in training community mediators who will in turn mediate various transitional justice issues within the study areas. Co-creation is a social innovation approach capable of “creating wide-ranging solutions that draw on the insights of everyone involved” (Social Innovation Exchange, 2019)¹⁵ therefore, the major purpose of facilitating a training co-creation meeting is to enable community members who participated in the FGDs to identify their own mediation training needs, transitional justice issues in their community, identify suitable training methodologies and expected training outcomes. This approach makes it easier for the research participants to take ownership of their ideas, change them into a project and taking responsibility of the final research outcomes.

Below are specific questions that we should interrogate in order to come up with an effective training manual that is relevant to the community’s needs.

Co-Creation Questions

Following our focus group discussions, we agreed to conduct training on mediation and TJ. Therefore.

- What training needs do we have regarding mediation and transitional justice?
- What issues should be considered or form part of the training?
- How should the training be undertaken?
- Who should participate in the trainings –as part of possible and relevant mediators for transitional justice processes in your communities?

¹⁵ Social Innovation Exchange. (2019) Co-creation Guide: Realising Social innovation together. [Online] Available at: https://socialinnovationexchange.org/sites/default/files/uploads/co-creation_guide.pdf (Accessed 11 October 2019).

Appendix 7: Training Manual

DURBAN UNIVERSITY OF TECHNOLOGY

**MEDIATION for SUSTAINABLE
PEACEBUILDING**

**A Training Manual for Community
Mediators in Everyday Transitional Justice**

Edknowledge Mandikwaza

November 2019

This training manual is part of an action research project implemented by Edknowledge Mandikwaza to fulfil the requirements for the Doctoral Degree in Public Administration (Peace Studies) at Durban University of Technology (South Africa). The purpose of the training manual is to build the capacity of grassroots mediators to address conflicts in their communities in a more sustainable manner.

Table of Contents

Introduction and Background

This manual was developed as part of an action research project implemented by Edknowledge Mandikwaza to fulfil the requirements for the Doctoral Degree in Public Administration (Peace Studies). Action research is an intellectual inquiry that allows both the researcher and the research subjects to provide practical solutions to problems in their societies (Kaye 2017). The approach involves problem identification, data collection, interpretation, acting on evidence and evaluation of results (Adebayo 2017). Therefore, the author developed this manual to help communities put research knowledge, acquired from their participation, into practice in a way that promotes sustainable peacebuilding, healing, and reconciliation within their localities.

The manual was developed after conducting FGD with community members (would be trainees) in 5 selected areas in Makoni District (Manicaland Province, Zimbabwe) and 15 key informant interviews. The researcher also conducted a training manual co-creation workshop with 20 people, some of which participated in the initial FGDs. Therefore, the content of the training manual is largely informed by grassroots mediation and conflict resolution perspectives. Examples used in the training manual mirrors largely the views of the FGD participants and key informant interview respondents.

Purpose of the Training Manual

The purpose of this training manual is to build the capacity of grassroots mediators to address conflicts in their communities in a more sustainable manner. More interestingly is that the mediators will learn from their collective contributions and solutions they recommended during the focus group discussions.

Why mediation for sustainable peacebuilding

The training manual is focused on mediation as a conflict resolution and management approach because of three reasons.

- (i). **The author's agenda** –the author is principally to research on the role of mediation in promoting effective transitional justice, healing, and reconciliation with a view to advance participatory research-driven solutions to public problems; and
- (ii). **Mediation as a practice** –mediation in itself seems more effective in supporting sustainable peace within communities given its ability to help conflicting parties to understand their differences, individualizing justice and presenting a non-confrontational space
- (iii). **The cost of NOT talking** –the cost of not talking within communities is very high. The more people are silent about conflict and violence in their communities, the more resources they need to address the consequences. Hence, there is need to enhance the practice of mediation, negotiation, and dialogue among communities to reduce the costs of violence and conflicts.

Understanding Conflict

Session Objectives

- a) Defining conflict
 - b) Understanding the causes and effects of conflicts
 - c) Explaining or describing different types of conflicts
-

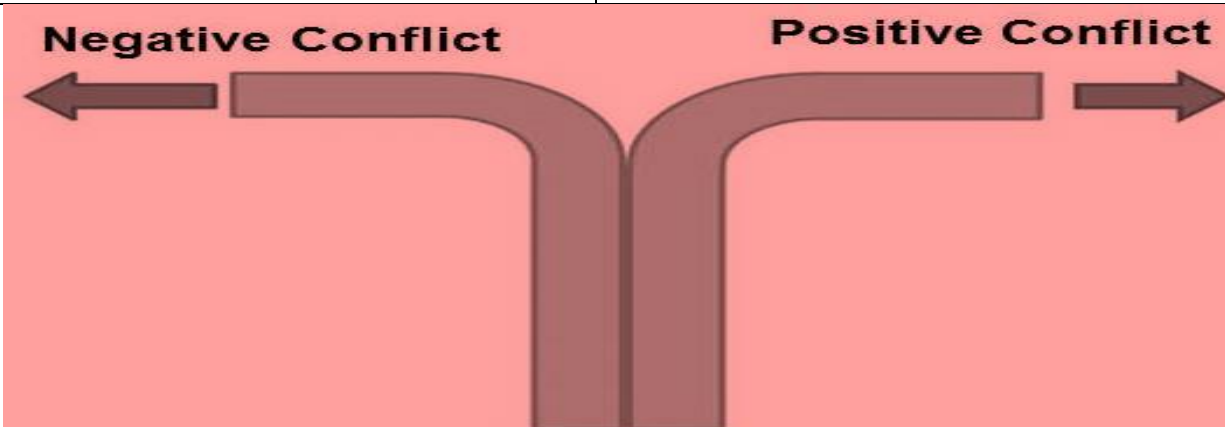
What is conflict?

- Conflict refers to opposing ideas and actions of different people, groups, or entities. People have different views, opinions, beliefs, culture and even languages. Therefore, when people have their own way of seeing things and act that way, they find themselves in conflict.
- Because of our natural differences, with our different ways of looking at things, conflict is part of life.
- Conflict may happen with individuals, groups, or countries.

When conflict happens, it can be positive or negative. Conflict can be negative if it causes violence, hatred (kuvengana) and when it causes pain to others. When a conflict is positive it promotes good behaviour, good ideas and good relationships.

Table 6: Positive and negative conflict

<p>Negative conflict– it is a conflict that causes violence, it destroys relations and generate hate and bad relationships</p> <ul style="list-style-type: none"> • Destroys lives and relationships • Prevents community development • Destroys infrastructure and properties • Creates enmity and hatred 	<p>Positive conflict – it is a conflict that is constructive, it helps people to correct mistakes and improve relations. Positive conflicts</p> <ul style="list-style-type: none"> • Leads to greater self-awareness • Helps resolving other conflicts, • Promotes unity and bonding
---	--



Conflict can lead to violence, which is even more dangerous in our lives. **Violence** on the other hand is the use of physical force or power against oneself or another person with the intention to cause harm, inflict pain or violating one's rights. Violence and conflicts leave deep scars on a society, and sustainable peace becomes possible only when people lean into the injustices of the past.

Causes of conflicts

Why do conflicts happen? There are different factors or things that cause conflicts. Examples of what causes conflicts include competition for resources, imposition of ideas, beliefs, or values on other people or groups, miscommunication, wrong perceptions (kufungidzira), bad behaviour, jealousy, mistrust. People have different personalities, which in most cases result in incompatible choices and opinions, hence conflicts emerging. Below is an explanation of some of the key things that causes conflicts.

Table 7: Causes of conflicts

Causes	Explanation
--------	-------------

Relationships conflict	Happens when there is negative behaviour, miscommunication, emotions/feelings, stereotypes,
Values conflict	Happens when there are different beliefs or values, which are imposed on others. Imposing one's religion beliefs to others can cause a conflict. Also, different criteria of evaluating ideas.
Structural conflict	This form of conflict happens when there is unfairness in distribution of resources or treatment. Group marginalization, tribal discrimination are also examples of sources of structural conflicts (time constraints, unequal control of resources etc.
Interest conflict	This is when there is competition (perceived or real) of resources, power, or influence. The interests may also be psychological or procedural in nature.
Data conflicts	Such conflicts relate to lack of information, misinformation, differing interpretations and differing views on data relevance

Types of Conflicts

Do many of these conflicts described above have types? Conflicts can be classified into four as shown below.

- a) **Intrapersonal conflict** - this type of conflict occurs within an individual. It happens in an individual's mind when trying to make a decision. This kind of conflict can cause restlessness, depression, and uneasiness.
- b) **Interpersonal conflict** –refers to conflict that happens between two individuals.
- c) **Intra-group conflicts** –These conflicts happen among people within a group or team.
- d) **Inter-group conflicts** –these are conflicts happening between two or more groups.

Other ways of categorizing conflicts

- a) **Family conflicts**—these are conflicts emerging from clan disputes.
- b) **Religious conflicts**—these are conflicts that emerge from different religious beliefs and practices

- c) **Social** conflicts—are found among households and social spaces and they emanate from problems such as poverty, unequal access to resources including land, social identities, infidelity, etc.
- d) **Economic** conflicts – emerge between groups and individuals competing for jobs, business, and markets as well as resources.
- e) **Political** conflicts among citizens living in a country with polarized political parties.

Brainstorming Session: In groups, discuss conflicts your community has experienced over time. Categorize these conflicts as ‘past or historical conflicts and current conflicts.

Conflicts Experienced in the past	Ongoing/Present conflicts

Advantages and Disadvantages of Conflicts –list the advantages and disadvantages of the current conflicts and those that occurred in the past in relation to your community.

Advantages	Disadvantages

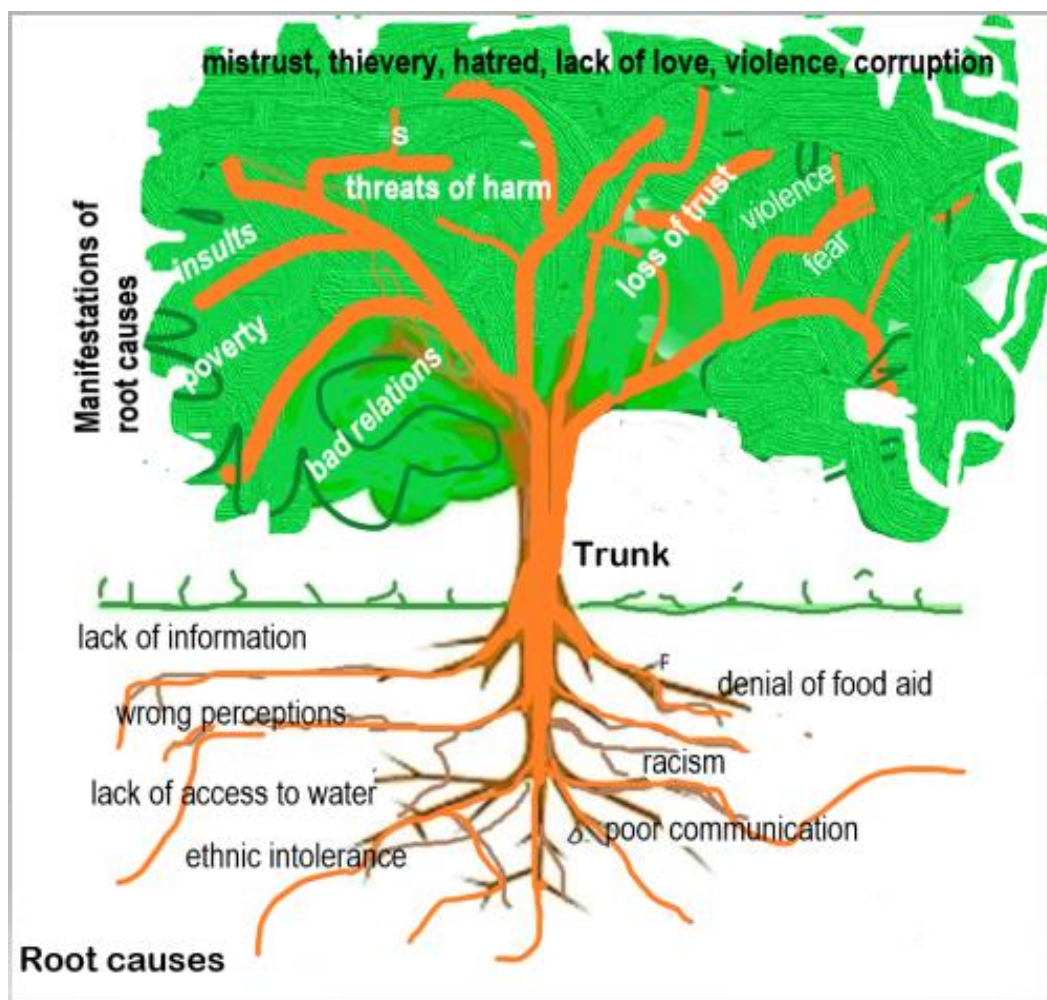
Conflict Analysis

Session Objectives

- Learning how to analyse conflicts using different tools
- Understanding different conflict stages of development

In order for us to resolve a conflict, we must understand it by investigating its root causes, what makes the conflict continue and the effects it has to people and the community in general. To investigate a conflict, we can use a tool called “A Conflict Tree.” Below is the conflict tree.

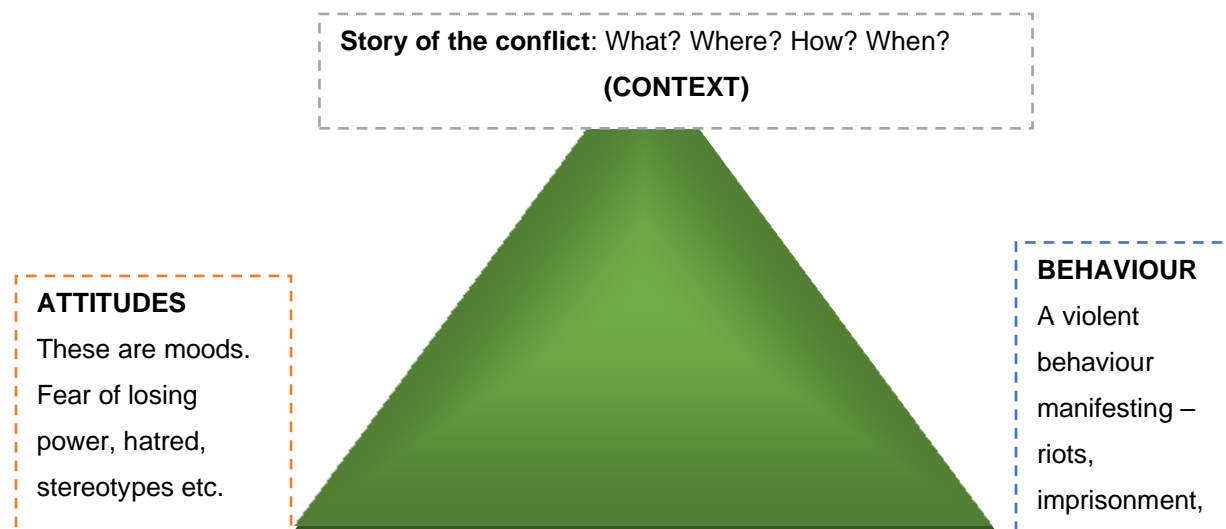
Figure 1: Conflict Tree



- a) **Roots** –represents different causes of conflicts within communities. These are not open to the people but are the underlying root causes.
- b) **Tree Trunk** – this core problem manifests because of several conflicts underground.
- c) **Tree branches and leaves** –these are the effects of the conflicts manifesting themselves to the people and the society. For example, political violence is what we see because of the growing roots and trunk ‘problems.’

While the above helps us understand the root causes to a conflict, it is important to know the story of the conflict in terms of how it happened. Knowing the key players in the conflict and their roles helps to identify what sustains the conflict also. A conflict triangle best describes these aspects clearly.

Figure 2: ABC Triangle

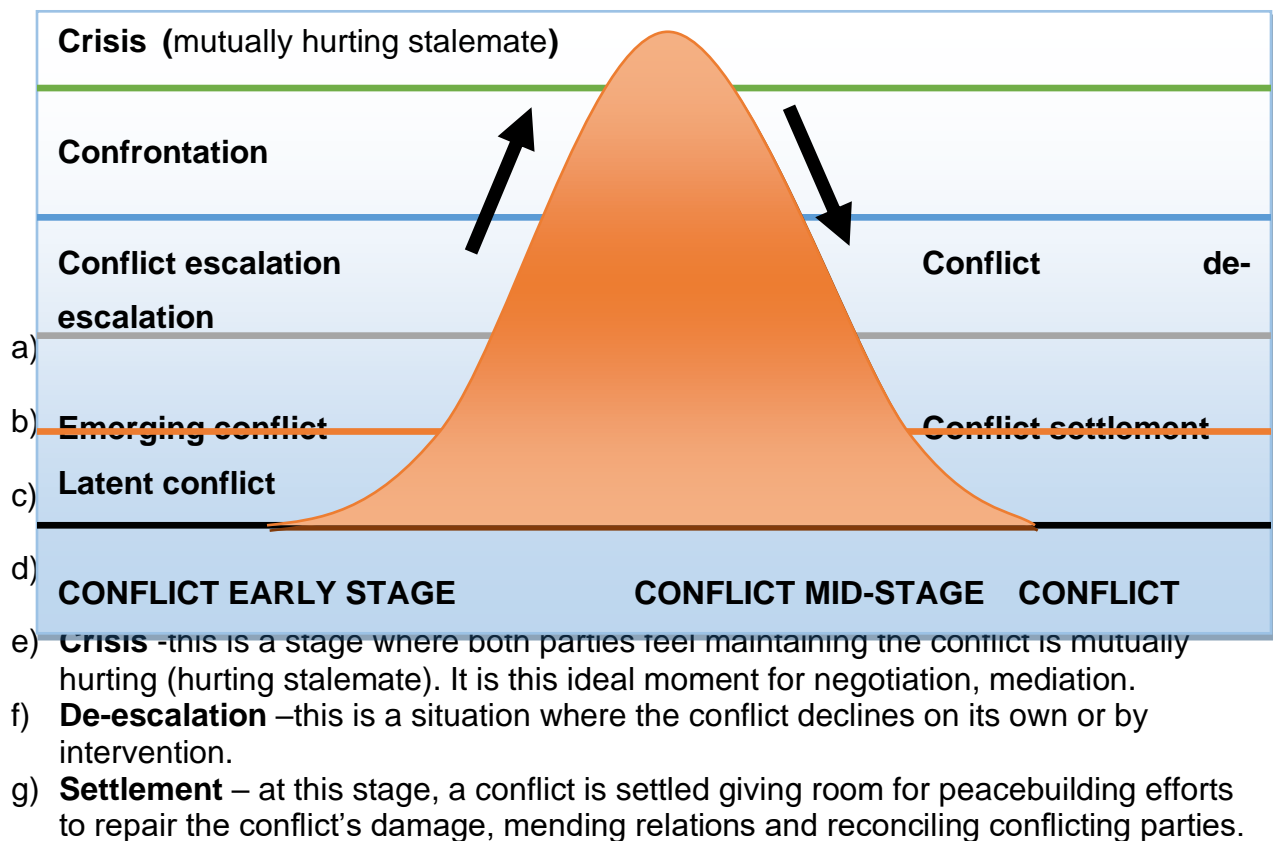


Context: Story of the Conflict	Conflict Parties	Root Causes
<ul style="list-style-type: none"> Know the whole story What are the facts to the story? Know the time when the conflict started Know each conflict party's version of the conflict issues Background of the conflict must be known Socio, economic and political contexts –what? 	<ul style="list-style-type: none"> Identify those directly involved in the conflict (<i>primary actors</i>) Establish people directly affected by the conflict (<i>secondary actors</i>) Identify those outside the conflict but important in ending the conflict (<i>peripheral actors</i>) 	<ul style="list-style-type: none"> Identify the underlying factors causing these conflicts What is the history of this conflict and who has been benefitting or losing from this conflict? How has the conflict been growing and what issues remains key to the conflict?

In a conflict, the violent **behaviour** we see has its roots in people's **attitudes** and the political-economic **context**

Conflict Stages

Conflicts have stages, at times they are noticed and resolved when they have just started while others take long periods to be noticed let alone being addressed. In order to fully understand a conflict and identifying how to one should also know the stage at which the conflict is.



Conflict Management and Resolution Strategies

Session Objectives

- Understanding the difference between conflict management and conflict resolution
- Understanding the importance of resolving conflicts and
- How to choose appropriate approaches to conflict management or resolution

It is important to manage and resolve conflicts before they escalate to unbearable levels. When conflicts unaddressed much harm such as violence, social strife, diseases, and new forms of conflicts emerge within communities. Unresolved conflicts impose a huge cost to the society because not only relations are destroyed, but also lives are lost, properties are destroyed, development is held back and social progress is stalled. Therefore, it is important for us to learn and understand how to resolve conflicts as and when they emerge to reduce the costs of violence and conflicts within our societies.

Conflict Response Strategies

When faced with a conflict people, whether individually or in groups, have different strategies of responding to them. There are five common strategies conflicting people typically resort to when faced with a conflict. These are avoidance, accommodation, compromise, competition, and collaboration.

+

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In the chart above, the vertical axis represents one's concern for personal interests (high degree of self-concern when competing and less care for others) while the horizontal axis represents one's concern for others (high degree of concern for others interest and less care for self when accommodating).

- a) **Avoidance** –withdrawal from the conflict (fleeing, denying, or ignoring). Often done when the issue is not important or when the risk of being harmed is too high. [*there is no conflict, what conflict?*]
- b) **Accommodation** –agreeing or appeasing when the issue is more important to the other person. Also done when intending to trade favours over time or to maintain relationships. [*whatever you want is OK with me*]
- c) **Competition** –confronting to win (control, contest, coerce) regardless of other people’s interest or hurting. Usually pursued with disrespect and focused on individual interests. [*do it as I want, my way only*]
- d) **Compromise** – aims to bargain and reduce expectations based on the belief that finding a solution is better than having a stalemate. However, the parties want a quick fix to their problem due to limited time and resources. [*splitting the difference*]
- e) **Collaboration** –finding alternatives to the conflict through dialoguing while taking into consideration that both the issues at hand and relationship are important. Conflicting parties acknowledge the need to cooperatively find a solution and have each party’s buy-in. [*how can we solve the problem together*]

“When
the only
tool you
have is a
hammer,
every

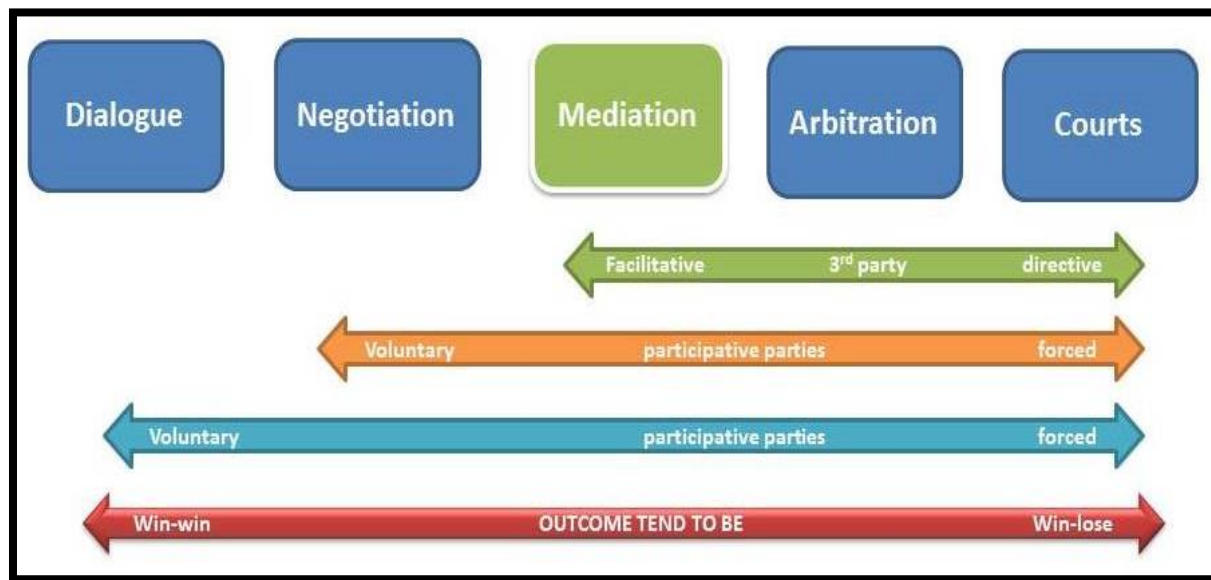
However, it is important to note that these approaches are used at different times in different circumstances. Each approach is appropriate when correctly used depending on the situation at hand. It only becomes difficult when a person or group uses two approaches to address the same problem.

Conflict Resolution Mechanisms

When parties involved in a conflict fail to respond in a way that resolves the conflict, there is need to employ other methods. Dialogue, negotiation, mediation, arbitration, and prosecution are conflict resolution mechanisms normally used when the conflict reaches a crisis stage when both parties are mutually hurting. Just like the conflict response

strategies, these mechanisms can be used depending on the nature of the conflict and the extent to which the conflicting parties are able to resolve it with or without helpers. Each of the approach, therefore, has advantages and disadvantages.

Table 9: Conflict resolution continuum



- Dialogue** –sharing of opinions or exchanges focusing on understanding and building trust
- Negotiation** – interdependent decision making toward an agreement
- Mediation** – assisted negotiation through a third party who does not make decisions
- Arbitration** -assisted conflict resolution through a third party who makes binding decisions
- Courts (prosecution)** - prosecution or settling a dispute by approaching courts of law

Understanding Mediation and Consensus Building

Session Objectives

- Understanding the concept of mediation and how it is facilitated
- Acquire knowledge on how to identify turning points in mediation
- Identify qualities of a good mediator
- Understanding the advantages and disadvantages of mediation

-
- Learning different challenges and opportunities that comes with mediation
-

The Concept of Mediation

Mediation is “a process in which a third party intervenes in a conflict to bring about a peaceful settlement between the disputants and contribute to a successive transformation of the conflict” (Roepstorff and Bernhard 2013: 163). Mediation is an assisted negotiation facilitated by a third party (Goldberg, Sander and Rogers, 1992).

The purpose of mediation of mediation is to give the conflicting parties an opportunity to **(1)** vent and diffuse their feelings, **(2)** clear their misunderstandings **(3)** determine underlying interests or concerns **(4)** find areas of agreement and ultimately **(5)** incorporate these areas into solutions devised by the parties themselves.

Mediation is voluntary and it can be used to address any type of conflict including settling family, community, or business disputes. The people in conflict must agree to the mediation process and should control the resolution of their dispute. Mediation is NOT adversarial; therefore, there is not plaintiff or defendant. This characteristic differentiates it with arbitration or litigation. Mediation is largely informal because it makes use of trusted and respected persons.

What mediators **MUST** do

- Make the proceedings manageable
- Develop an atmosphere conducive to problem solving negotiations.
- Gather all the information available about the interests of the parties.
- Help the parties to create options.
- Help the parties narrow the options and move towards agreement.
- Help the parties make rational decisions between agreement and pursuing a claim

What mediators **must NOT** do

- a) Mediators do not make decisions pass judgment on behalf of the conflicting parties or tell them what to do.
- b) Mediators do not have authority to make a binding decision unless both parties agree to give the mediator that power.

- c) Mediators do not seek power over the lives of others.
- d) Mediators do not have answers over other people's problems.
- e) Mediators do not bear the responsibility if mediation fails.
- f) Mediators do not take credit for success.

Forms of Mediation

Facilitative mediation – the mediator only plays a facilitative role. The mediator does not provide assessments of the merits or demerits of the case. The mediator only helps the parties to negotiate among themselves by ensuring that the environment is conducive. The mediator sees suggesting options or solutions likely to endanger the negotiating parties trust or outcomes.

Evaluative mediation –this form of mediation focuses on exploring diverse alternatives the parties have to settle their dispute. The mediator offers suggestions and creatively influence the parties consider certain ideas. Evaluative mediators use se authority conferred to them through experience, to propose solutions or compromises and directs conflicting parties towards them. However, the mediator does not have any binding authority.

Transformative mediation –this approach focuses on the disputing parties' interactions to empower them to address their conflict through confidence building, enhancing their ability to listen, trust each other as they address their differences. Facilitative and Evaluative mediation focuses on the resolution of the dispute while Transformative focuses on changing relational interactions.

Mediation Actors and their Characteristics

As mentioned above, mediation is voluntary, and someone should carry it out with trust and respect. In the African culture, people who mediate conflicts are families' respected persons such as uncles, aunts, and nephews. At community level, traditional leaders are expected to mediate conflicts that divide societies within their jurisdiction. With the rise of the gospel religion, Church leaders and churches as institutions have become powerful mediators too.

Selecting A Good Mediator

It is difficult to identify a good mediator because there are no qualifications one has to acquire in order to become one. However, there is need to identify people with knowledge of the conflict and experience in resolving conflicts. In addition, there are qualities of good mediators that should be considered. In other words, mediators should have good qualities, which make their capacity to address conflicts easy. Some of the qualities of good mediators are.

- a) **Trustworthiness** –a mediator must be trusted and should inspire trust. When people attend mediation, they want to know that their information will be kept confidential. Failure of being trusted could lead to lack of openness in the mediation engagement process.
- b) **Impartial** –should be able to be objective and balanced in making judgments. Impartial mediators control their feelings and avoid putting their emotions in the mediation process. A neutral and unbiased person, who can be trusted by both parties, characteristically facilitates mediation.
- c) **Approachable** –should be friendly, easy to talk to and ice to all parties regardless of the conflict magnitude.
- d) **Committed** –mediators must be dedicated to the work they do, to ensure that a conflict they are resolving is completed;
- e) **A good listener** –all-conflicting parties would want their issues to be heard and treated equally. Therefore, mediators must be good listeners.

Mediation Process and Process Design

Mediation, when properly designed, goes through different stages. The stages break down what should be done at every step. Below is a five-stage mediation process design.

While the mediation process has clear steps that should be followed, the mediator **MUST** have a clear plan on how different stages will be executed. Below are specific questions the mediator should be clear as he or she designs the mediation execution process.

Table 10 : Mediator's process design considerations

Why?	<ul style="list-style-type: none"> • Goal ? • Context of process?
What?	<ul style="list-style-type: none"> • Content of conflicts? • Issues to be addressed (i) easy to agree, (ii) medium hard, (iii) very hard • Issues to be negotiated (in short term (ii) medium-term (iii) long-term
Who?	<ul style="list-style-type: none"> • Who is the third party? What is their role –hosting, facilitative, mediating. • Who needs to be in the process to meet the target objective? • Who needs to be close to the process but not directly involved? • Who needs to be consulted or informed but not close to the process?
When?	<ul style="list-style-type: none"> • How long with it take to negotiate the content with the involved people • How long will the meetings take and how frequent?
Where?	<ul style="list-style-type: none"> • Where should the process take place? Closer to where the conflict happened or away from the conflict place? • How should the venue be organized (formal, informal, sitting arrangement)?
How?	<ul style="list-style-type: none"> • How will the content and format be sequenced? (private meetings, plenary, joint etc); How to build trust and measure progress? How is communication going to be done (internally and externally) • How will DO NO HARM principle be maintained? • How does each process link with the other processes or activities?

Understanding the conflict- understanding the conflict first helps the mediator to know what the conflict is about and what causes it, what is being contested, differences and commonalities.

Conflict analysis tools such as conflict tree, conflict triangle, conflict onion (issues and interests, positions, grievances, needs and relationships) can be used to achieve this.

Understanding actors involved-observing actors involved, attempts to be inclusive in resolving the conflict, understanding the structures of those involved, ascertain spoilers and supporters, skills, resources, and influence of leadership.

Understanding conflict environment -knowledge about the environmental socio-economic and political processes (historical context of the conflict environment and conflicting parties), legitimacy of existing institutions and structures of conflict resolution etc.

Understanding sources of power and leverage –involves identifying resources and parties control over the resources. One will also understand what sustains the conflicting parties – influence, power dynamics and weaknesses of influence and balance of power between conflicting parties

Turning Points in Mediation (transformative power)

Mediation naturally must transform conflicts from being worse to better. Therefore, during the mediation process, the mediator must look out for ‘turning points.’ Turning points are events or occurrences associated with changes in relationships among the conflicting parties during the mediation process. They are “critical moments in mediation that can lead to greater understanding between parties in a dispute and have the potential to alter their relationships.” The mediator or the disputants can initiate turning points.

Advantages of Mediation

- Mediation is less expensive a quicker process compared to civil litigation
- Mediation happens in a relaxed environment
- The conflicting persons make decisions by themselves because they both participate in the process
- Mediation process can be terminated at any time without constraints (for reflection and cooling off of tempers
- Levels of conflict are reduced rather than increasing them (when handled well)
- The parties can preserve the relationship with one another
- Mediation is confidential

- Settlements reached in mediation are more agreeable to both parties than court judgments.

Disadvantages of Mediation

- Mediation lacks the procedural and constitutional protections guaranteed by state courts
- Mediation does not always result in a settlement agreement.
- Legal precedent cannot be set in mediation.
- Either party can withdraw from the proceedings at any time yet in litigation, the only party that can withdraw is the plaintiff, if they drop the suit. This means that even the party that is 'at fault,' can withdraw if they are not happy with where the mediation process is headed to.
- When the mediator is an outsider, he or she may not have prior knowledge of the cases

Transitional Justice, Healing and Reconciliation

Session Objectives

- Understanding the concept of transitional justice
 - Learning how mediation connects with transitional justice
 - Understanding the concept of healing and reconciliation
-

Transitional justice is about addressing past conflicts, human rights violations, and grievances in order to promote sustainable peace in a given society or country. The United Nations defines transitional justice as “a full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.” This means seeking closure on the past wounds and conflict issues with a view to open a new page where people live in peace and harmony.

Transitional justice consists of both judicial and non-judicial processes and mechanisms, including prosecution initiatives, truth-seeking, reparations programmes, institutional reform, or an appropriate combination of all. It is about “dealing with the past,” by promoting the truth, justice, reparation and guarantees of non-recurrence.

In order for transitional justice, healing, and reconciliation to take place, it has to meet certain guiding principles. For example, there must be transparency, participation of all people affected and the process must be gender sensitive.

More importantly, any transitional justice process must never promote violence, further conflicts, and harm to the society. **DO NO HARM!**

The overall goals of any transitional justice process is : **(i)** To prevent the recurrence of such abuses and **(ii)** To repair the damage caused to the extent that is possible.

COMMON TRANSITIONAL JUSTICE MEASURES	
 <p>Criminal prosecutions. The investigation and prosecution of crimes—including genocide, crimes against humanity, war crimes, and other crimes related to human rights violations and abuses—are important components of TJ. Such prosecutions can take place in domestic courts, international courts, or in hybrid or mixed courts that involve a combination of international and domestic actors and laws.</p>	 <p>Truth commissions. A specialized type of commission of inquiry, these commissions have the primary purpose of investigating and reporting on periods of abuse. They are non-judicial independent institutions that are often, but not always, government-sponsored. Their mandates may vary, but truth commissions are generally created to examine the root causes and patterns of violence, create a historical record of periods where abuses and violations took place, provide a venue for victims to share their experiences, and make recommendations to remedy abuses and violations and prevent their recurrence.</p>
 <p>Institutional reforms. These efforts aim to transform public institutions—including but not limited to security and justice sectors—from instruments of repression and corruption into institutions dedicated to public service and marked by transparency and integrity. Reforms may take the form of vetting and lustration, structural reform, civilian oversight, transformed constitutions or legal frameworks, or education and training. They may also include new educational curricula, or social welfare initiatives that provide services to all in need.</p>	 <p>Reparation programs. These initiatives are focused on repairing and restoring victims by redressing the material and moral damages of past abuse and taking steps to prevent future harm. Reparation may include a mix of material and symbolic benefits to individuals and groups of victims, including compensation, restitution, rehabilitation, official apologies, and guarantees of non-repetition.</p>
 <p>Missing person commissions. These non-judicial commissions focus specifically on identifying those who remain missing and work to clarify what happened to them.</p>	 <p>Memorialization efforts. These may include the establishment of museums, memorials, and days of remembrance or commemoration to preserve public memory of victims, raise awareness of past abuses, and help prevent recurrence.</p>
 <p>Documentation. Documentation efforts involve collecting information about violations and abuses as well as those who may have been affected by or implicated in them. Such initiatives can help establish a better understanding of events, and provide a foundation of credible information for other TJ measures.</p>	 <p>Other measures. Many societies have developed other creative TJ approaches to dealing with legacies of abuse and atrocities. As a result, the field has gained diversity over the years.</p>

Figure 3 :Adapted from the USA Department of States: TJ Overview

Healing and Reconciliation

Healing and reconciliation are important objectives in transitional justice processes. The purpose of facilitating transitional justice is to ensure that the affected persons are healed and that they reconcile with their erstwhile enemies.

a) Healing

What is healing?¹⁶ Healing is the process of the restoration of health from an unbalanced, diseased, damaged or unvitalized organism. The result of healing can be to cure to a health challenge, but one can grow without being cured or heal without "a cure. Healing has two facets.

- **Healing Outside –In** - it is the medical approach where you are diagnosed and given medication e.g., for a physical wound
- **Inside –Out healing** –where healing starts from inside, it is the emotional healing that addressed trauma.

¹⁶ <https://pennyheiple.com/what-is-healing/> -Rich Source on Healing and Reconciliation



Figure 4: Adapted from: <https://sustainingcommunity.wordpress.com/2011/02/22/healing-foundation-day-1/>

Inside Out Healing Process

- a) Getting the right support
- b) Understanding the nature of suffering
- c) Taking responsibility (movement out of the victim consciousness)
- d) Moving away from pain (there is something more than pain and suffering)
- e) Slowing down and getting present (health is slow)
- f) Inhabiting the witness (Curiosity vs animosity)
- g) Embracing and accepting ourselves fully and completely
- h) Integration, transformation, and deepening

b) Reconciliation

Reconciliation is an integral part of sustaining peace and security particularly at the local level. Within the bigger debate of peacebuilding, reconciliation refers to the changing of destructive behaviours and attitudes into constructive relationships that leads to sustainable peace.

- Brounéus (2003: 20) defines reconciliation as "a societal process that involves the mutual acknowledgement of past sufferings and the changing of destructive attitudes and behaviour into constructive relationships towards sustainable peace."
- Lederach (1997: 28) provides a four-part reconciliation model which include; peace, justice, truth, and mercy (forgiveness or healing).

Peaceful reconciliation of conflicting parties exists when non-adversarial methods of conflict resolution such as mediation, negotiation and dialogue are used.

Reconciliation of conflicting parties promotes peacebuilding and social cohesion.

Transitional Justice and Mediation

Mediation supports transitional justice in different ways depending on how the mediators use the methodology. Past conflicts and human rights violations committed can be mediated at both community and national levels,

Mediation can;

- Facilitate truth extraction and narrative corrections
- Allow restorative justice (reparations and rehabilitation)
- Facilitate apologies by the wrongdoers
- Support the development of collective memorialization
- Support institutional reforms and
- Enable punitive justice where necessary.

Tasks: Case 1 –Tombonya, the War Veteran

Tombonya is a War Veteran leaving in village 12, he has 35 cows and 50 goats. Some villagers accuse him of using traditional medicine to make other people's livestock to die so that he has more. However, to fix him, Murambadoro started spreading a word that Tombonya is supporting Councilor Mandi's opponent who lost to him during primary elections of their party. Murambadoro, however, does not come from Ward 12 but he continues saying Tombonya donates meat for campaigns in support of the loosing Councilor called Magurure. This is purely to make Tombonya hated by Councilor Mandi and his supporters.

Councilor Mandi heard about the story and confronted Tombonya with a fight and lately getting him expelled from the party. The Councilor also paid 6 people to steal Tombonya's 20 cows. Tombonya, however, wants the Councilor to know the truth and to make sure they normalize their relationship. Tombonya also knows that the Councilor send people to steal his cattle, but he does not know who took them. Tombonya wants his cattle back.

Case 2: New Migrants in Maganga Village

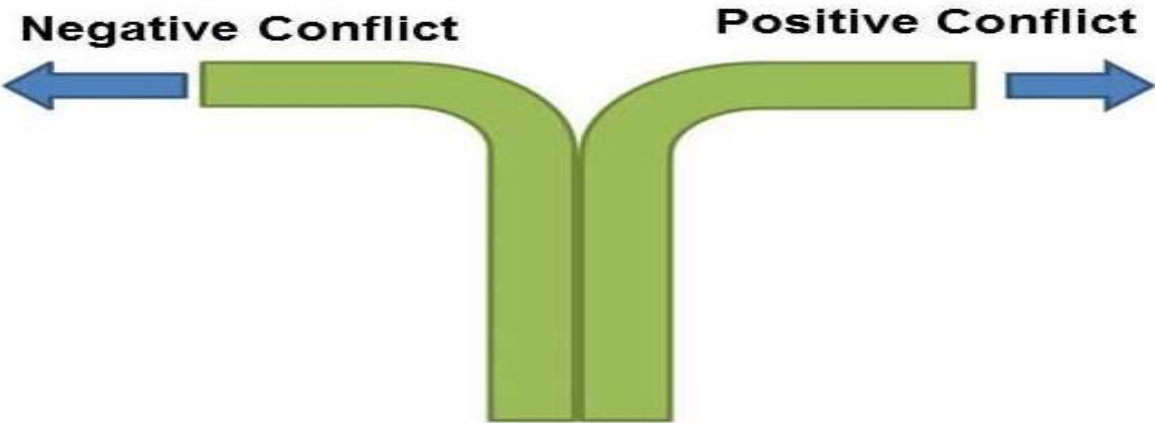
There is a small village in Maganga that is occupied by new immigrants, who were brought by the government. The new immigrants are cutting down trees to clear land for cultivation, which is against the local community's belief because it is their grazing land. The people of Maganga Village are not happy with the immigrants' behaviour and are beginning to fight them physically. The key challenge in this instance is that both the natives and the immigrants believe they have legitimate rights over the land in question. As a mediator how will you address the brewing conflict.

Additional Training Tools

Mediation for Transformative Justice Training in Summary

<p>Session 1: Defining conflict</p> <ul style="list-style-type: none"> • What is conflict? Is conflict bad? • What causes conflict? • What is violence? • What is the difference between conflict and violence? How about a dispute? • How do you identify a conflict? • Types of conflicts • Conflict Map 	<p>Session 2: Conflict Analysis</p> <ul style="list-style-type: none"> • How do you understand the root causes of a conflicts? • How do you know the conflict issues, actors, stakeholders, relationships (between actors), external dynamics and time/history? • Use Conflict Tree; ABC triangle, Conflict Onion • How do you know the stage at which the conflict is (magnitude, when to intervene and what to do)? • Why do we even analyse conflicts?
<p>Session 3: Conflict Response Mechanisms</p> <ul style="list-style-type: none"> • Management approaches – compromise, compete, accommodate, avoid, • Resolution mechanisms –dialogue, negotiation, mediation, arbitration, and court settlement • CHOOSE MEDIATION AS A TRANSFORMATIVE JUSTICE PROCESS 	<p>Session 4: Mediation</p> <ul style="list-style-type: none"> • What is mediation? Why choose mediation – A TRANSFORMATIVE JUSTICE AGENDA • Forms of mediation • Qualities of a good mediator • Mediation in process (The ACCP Model) • NB: Attention on TURNING POINTS
<p>Session 5: From transitional justice to transformative justice</p> <ul style="list-style-type: none"> • Transitional justice and it tenets vs. transformative justice (similarities and difference) • Mediation as part of our everyday life. • 	<p>Session 6: Way Forward</p>

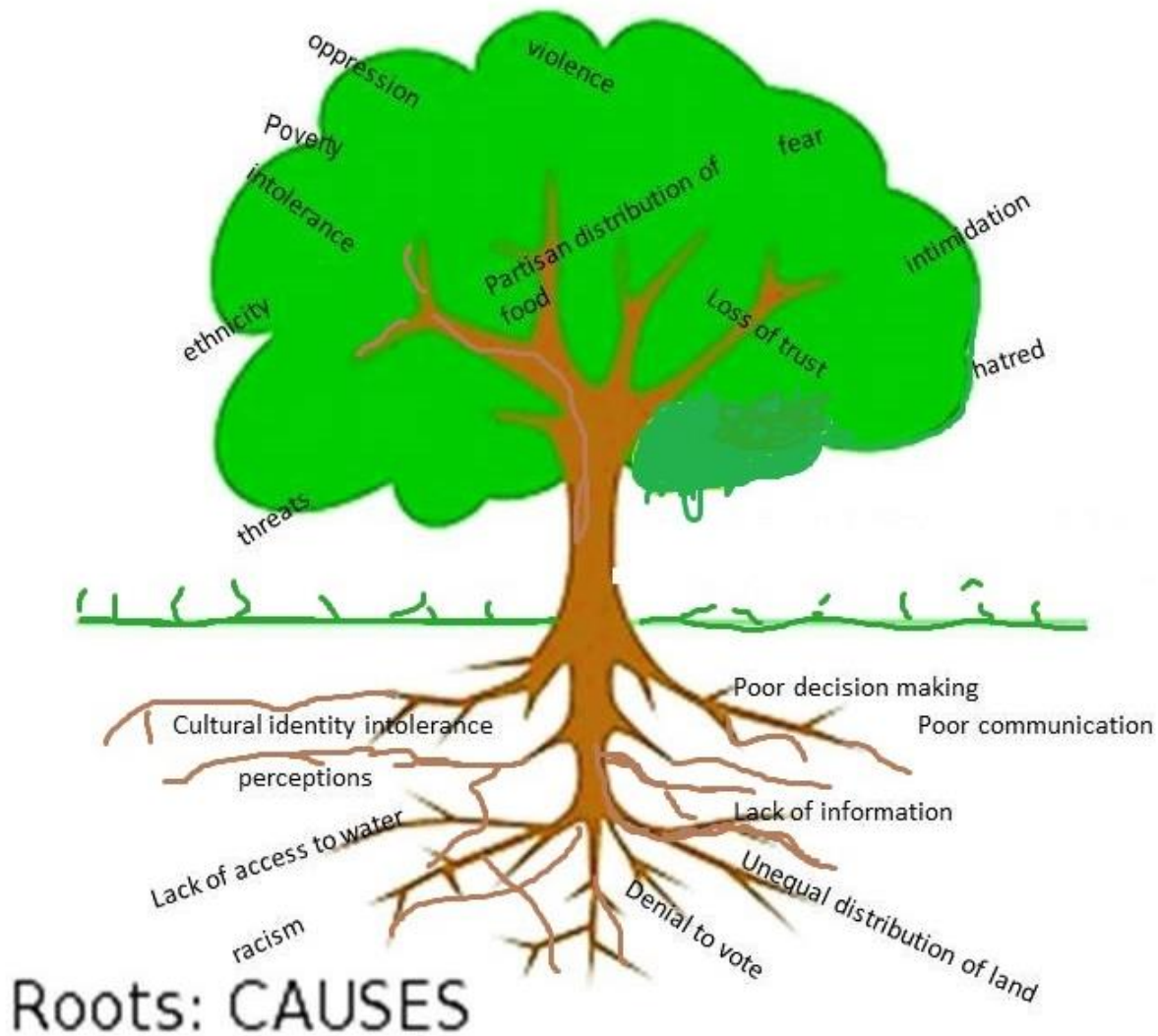
What is Conflict? What is Violence?

<p>Negative conflict– it is a conflict that causes violence, it destroys relations and generate hate and bad relationships</p> <ul style="list-style-type: none"> • Destroys lives and relationships • Prevents community development • Destroys infrastructure and properties • Creates enmity and hatred 	<p>Positive conflict – it is a conflict that is constructive, it helps people to correct mistakes and improve relations. Positive conflicts</p> <ul style="list-style-type: none"> • Leads to greater self-awareness • Helps resolving other conflicts, • Promotes unity and bonding
	

Brainstorming Session: In groups, discuss conflicts your community has experienced over time. Categorize these conflicts as ‘past or historical conflicts and current conflicts.

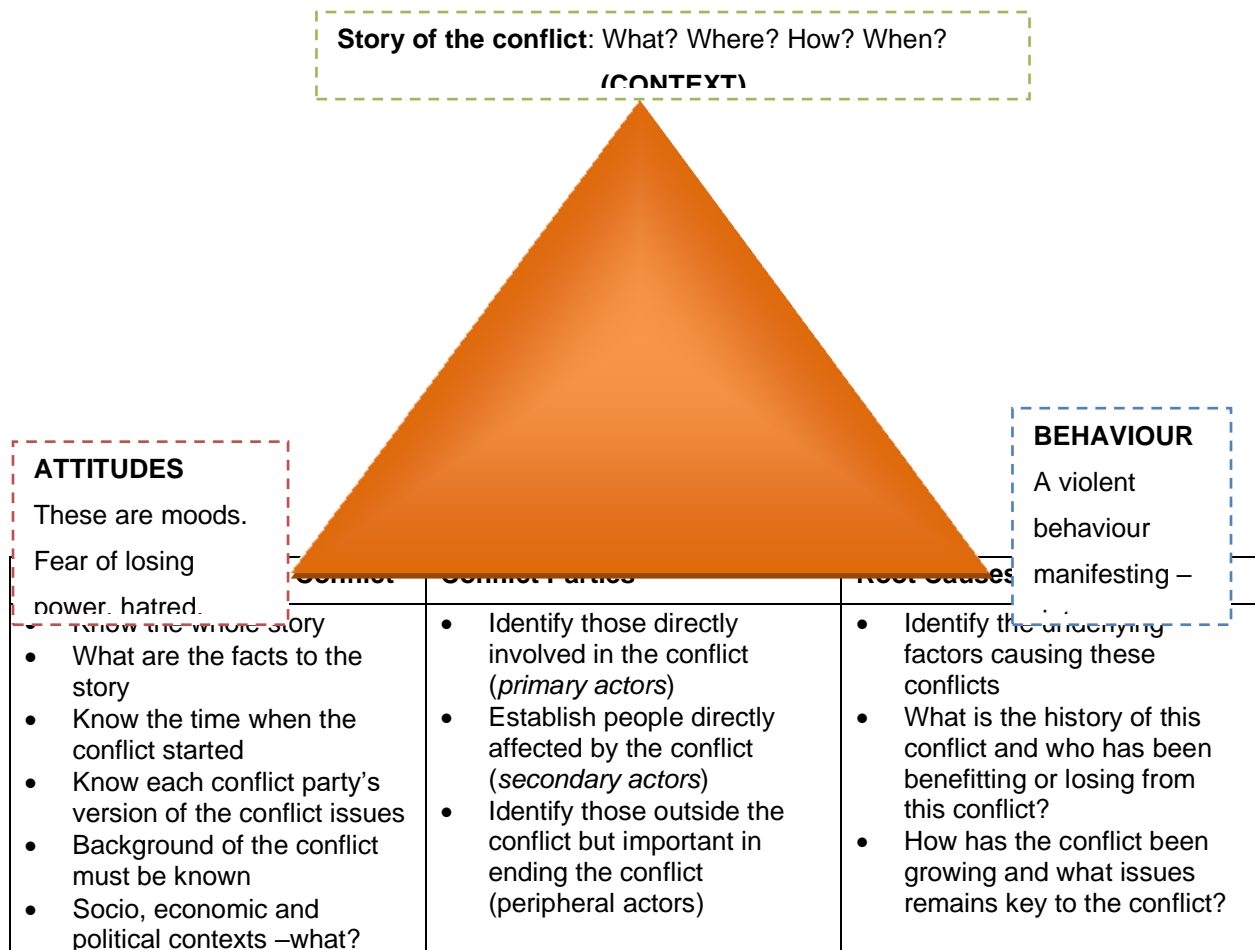
Conflicts Experienced in the past	Ongoing/Present conflicts

Conflict Analysis: Conflict Tree



- d) **Roots** –represents different causes of conflicts within communities. These are not open to the people, but are the underlying root causes.
- e) **Tree Trunk** – this core problem manifests because of several conflicts underground.
- f) **Tree branches and leaves** –these are the effects of the conflicts manifesting themselves to the people and the society. For example, political violence is what we see because of the growing roots and trunk ‘problems.’

ABC Triangle



In a conflict, the violent **behaviour** we see has its roots in people's **attitudes** and the political-economic context

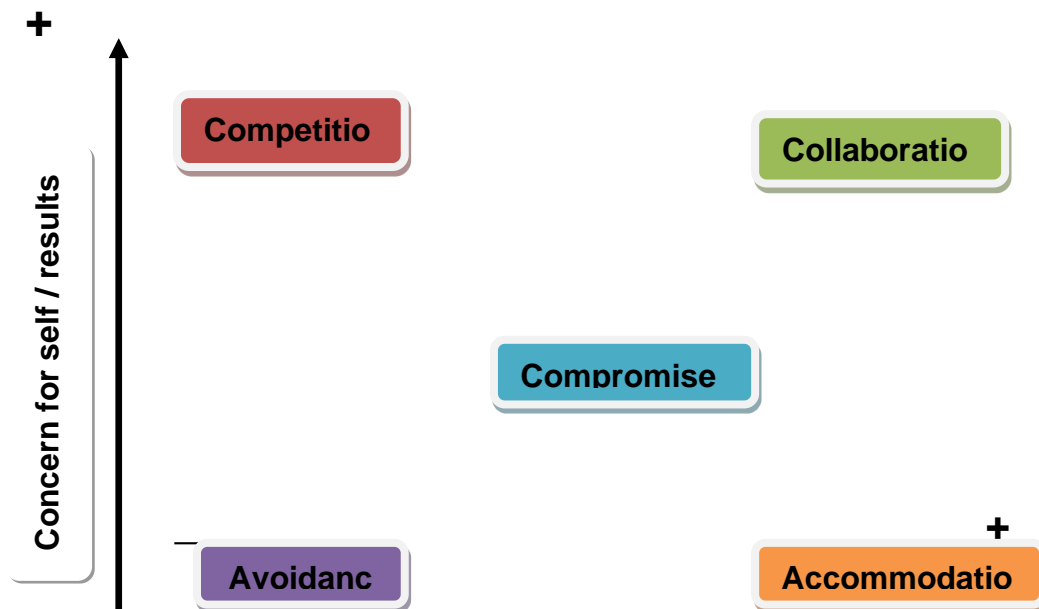
Conflict Stages

- a) **Simmering/latent tensions** –this is when a conflict has not been observed. It is a potential conflict waiting for a trigger to emerge.
- b) **Emerging conflict** –this is when the latent conflict is triggered to manifest. Conflict emergence may be followed by settlement / resolution or it may escalate.
- c) **Escalation** –conflict escalation refers to its increase in terms of its intensity. De-escalation may also happen temporarily or permanently at this stage.
- d) **Confrontation** -without de-escalation, the conflicting parties will confront each other a level that may involve violence and pain.
- e) **Crisis** -this is a stage where both parties feel maintaining the conflict is mutually hurting (hurting stalemate). It is this ideal moment for negotiation, mediation.
- f) **De-escalation** –this is a situation where the conflict declines on its own or by intervention.
- g) **Settlement** – at this stage, a conflict is settled giving room for peacebuilding efforts to repair the conflict's damage, mending relations and reconciling conflicting parties.

Session Task: In your groups discuss one conflict you think it went through all these stages and ask why it was important to know its stages of development.

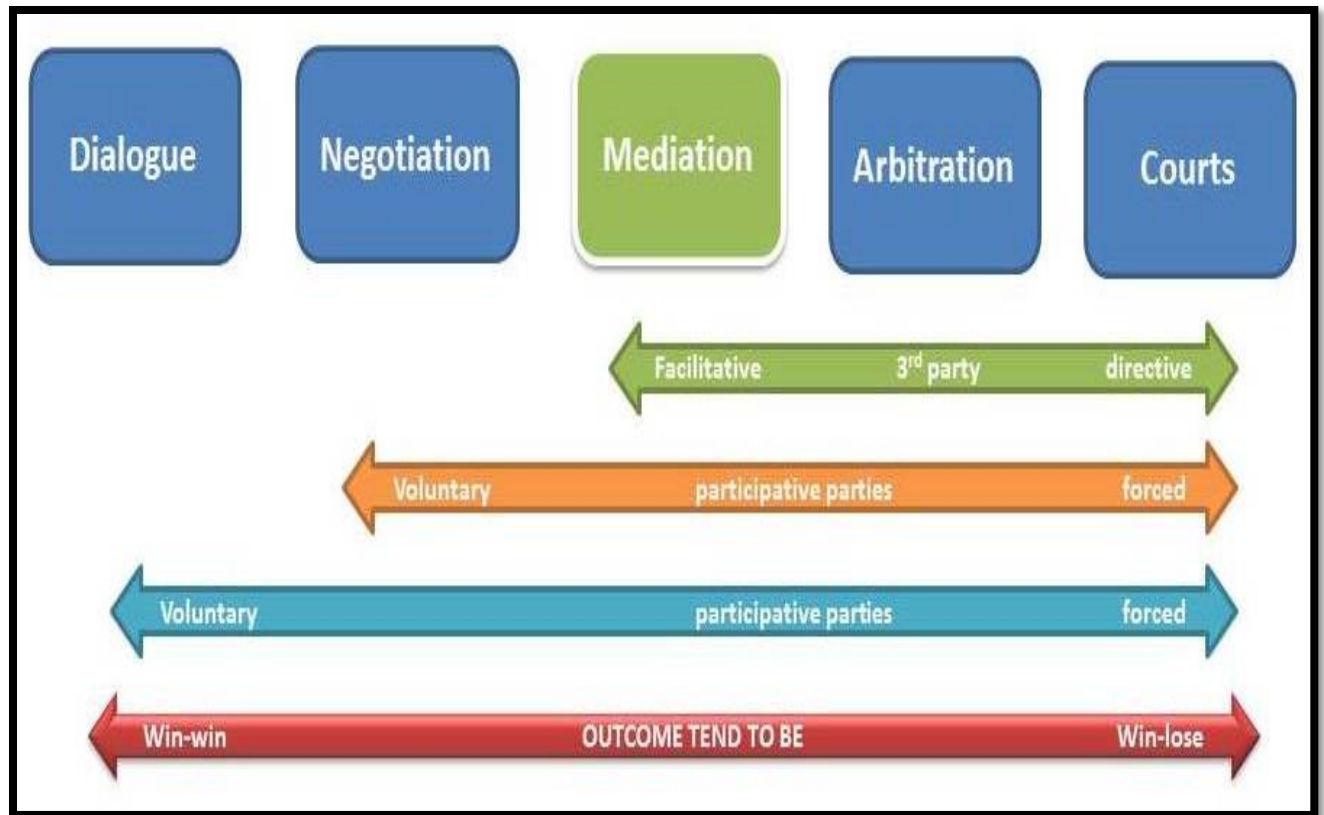
Conflict Response Strategies

When faced with a conflict people, whether individually or in groups, have different strategies of responding to them. There are five common strategies conflicting people typically resort to when faced with a conflict. These are avoidance, accommodation, compromise, competition, and collaboration.



- a) **Avoidance** –withdrawal from the conflict (fleeing, denying, or ignoring). Often done when the issue is not important or when the risk of being harmed is too high. [*there is no conflict, what conflict?*]
- b) **Accommodation** – **Concern for others** is more important to the other person. Also done when intending to trade favours over time or to maintain relationships. [*whatever you want is OK with me*]
- c) **Competition** –confronting to win (control, contest, coerce) regardless of other people's interest or hurting. Usually pursued with disrespect and focused on individual interests. [*do it as I want, my way only*]
- d) **Compromise** – aims to bargain and reduce expectations based on the belief that finding a solution is better than having a stalemate. However, the parties want a quick fix to their problem due to limited time and resources. [*splitting the difference*]
- e) **Collaboration** –finding alternatives to the conflict through dialoguing while taking into consideration that both the issues at hand and relationship are important. Conflicting parties acknowledge the need to cooperatively find a solution and have each party's buy-in. [*how can we solve the problem together*]

Conflict resolution continuum



- f) **Dialogue** –sharing of opinions or exchanges focusing on understanding and building trust
- g) **Negotiation** – interdependent decision making toward an agreement
- h) **Mediation** – assisted negotiation through a third party who does not make decisions
- i) **Arbitration** -assisted conflict resolution through a third party who makes binding decisions
- j) **Courts (prosecution)** - prosecution or settling a dispute by approaching courts of law









In light of the above mechanisms,
“how do you choose the best way
to resolve or manage conflicts?”

Mediation Process and Process Design

Mediation, when properly designed, goes through different stages. The stages break down what should be done at every step. Below is a five-stage mediation process design.

Mediator's process design considerations

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Healing

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Training Programme

Activity	Time	Training Tools	Content Aims
Arrival and Registration	08:30 09:00		
Introduction to the training objectives	09:00 09:30	Plenary/	Creating a shared goal and perspectives regarding the training
Understanding Conflict	09:30 10:30	Lecturing	Equipping the participants with conflict recognition, analysis, and management knowledge. The theory and practice of conflict identification and analysis
Conflict Analysis	10:30 11:00	Discussions and practice (conflict tree pamphlets needed)	
BREAK (11:00-11:15)			
Conflict Response Strategies (Management and resolution)	11:15 11:45	Copies of conflict response strategies graphs and explanation	To help participants understand different responses to a conflict (conflict management strategies)
Mediation as a tool of choice: Concepts (definition, merits and demerits, forms of mediation, insider, and outsider mediation)	11:45 12:30	Discussions / group work	Helping participants to understand the practice of mediation and its salient concepts
Qualities of Good and Bad mediators	12:30 13:00	Plenary	
LUNCH (13:00-14:00)			
Mediation in Practice (Process & Process Design)	14:00 15:00	Mediation process copies/ practice in groups	To enable participates to simulate the practice of mediation in reality. Simulation assists in internalizing taught components
Turning Points in Mediation	15:00 15:30	Plenary	Reflections of what participants learnt during the mediation simulation process
Mediation for Everyday Transitional Justice	15:30 16:00	Plenary	To help participants connect their intended mediation processes to transitional justice
Way forward & closing	16:00 16:30	Commitment notes / building a collective community vision	Devising a way forward with mediation practice within target communities.

Binding Oath: DO NO HARM PRINCIPLE