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**The (un)finished business of transitional justice in South Africa
'the past is in the present'**

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THE (UN) FINISHED BUSINESS OF TRANSITIONAL JUSTICE IN SOUTH AFRICA: 'THE PAST IS IN THE PRESENT'

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Abstract

In the last four decades, transitional justice processes and mechanisms that confront the legacies of historical injustices have become ubiquitous. Criminal trials, truth commissions, amnesties, hybrid tribunals, reparations, restitution and reconciliation have been the dominant approaches in that encounter with the past. These mechanisms and processes have largely remained within narrow Western and Euro-centric, top-down, donor-driven and state-centric frameworks. However, these processes and mechanisms have struggled to respond to the multi-faceted dimensions of justice after conflict to the extent that they have failed to be relevant and responsive to the justice needs and expectations of victims. These mechanisms and processes have continued to be completely decontextualised from the circumstances of those that endured the impact of mass atrocities. While victims have become central to transitional justice scholarship and practice, their perceptions and expectations of justice have rarely been placed at the heart of mechanisms and processes that seek to address the injustices they endured.

Using a grounded theory methodology undertaken in Cape Town and East Rand, South Africa between January and July 2016, 52 participants were interviewed through semi-structured and unstructured interviews. Cape Town was chosen because it is an emblem of the journey that South Africa has traversed as a country. It is where the first European settlers arrived in 1652, later becoming the seat of the colonial and apartheid regimes in which racial segregation policies were promulgated and executed. The large black townships of the East Rand were chosen because they represent a different dimension of the black-on-black violence between supporters of the ANC and the IFP—induced by apartheid—that continued right to the end of minority rule. The major findings of this research demonstrate that transitional justice is understood and interpreted by victims of apartheid in varied and dissimilar ways. Most significantly their perceptions of justice premised on restoring their humanity must be incorporated into the design and implementation of transitional justice processes and mechanisms in order to be responsive to their needs and interests. The study further underscores that what victims of apartheid expected from the transitional justice processes and mechanisms remains unmet, 23 years after the TRC concluded its work. Perhaps by integrat-

ing these expectations in the design and implementation of its processes and mechanisms, transitional justice could have better responded to their needs and interests. To that end, the thesis advocates for a wider conception of transitional justice—one that is relevant and responsive to the needs and expectations of apartheid's victims. The thesis proposes that this broader conception must ensure that victims are part of the design and implementation of transitional justice processes and mechanisms.

Acronyms

AI	Amnesty International
ANC	African National Congress
AZAPO	Azanian People's Organisation
CRR	Committee on Reparations and Rehabilitation
ECCC	Extraordinary Chambers in the Courts of Cambodia
EU	European Union
DRC	Democratic Republic of the Congo
HRW	Human Rights Watch
ICC	International Criminal Court
ICTJ	International Centre for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IFP	Inkatha Freedom Party
NPRC	National Peace and Reconciliation Commission
OHCHR	United Nations Office of the High Commissioner for Human Rights
PAC	Pan Africanist Congress
SADF	South African Defence Forces
TJ	Transitional Justice
TJWG	Transitional Justice Working Group
TRC	Truth and Reconciliation Commission
UNDP	United Nations Development Programme
UNSC	United Nations Security Council

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Chapter 1: Introduction

This thesis examines empirically how transitional justice is understood and interpreted among the victims of apartheid in South Africa, 24 years after the country transitioned from apartheid to liberal democracy. It explores victims' perceptions of the approaches undertaken to confront the historical injustices of the past, in order to evaluate how and to what extent transitional justice processes and mechanisms have been relevant and responsive to their needs and expectations for justice. Based on empirical evidence gathered in Cape Town and East Rand, South Africa, this thesis invokes the voices of contemporary South Africans 20 years after the Truth and Reconciliation Commission (TRC)—established to address the wrongs of the apartheid regime—delivered its findings. It provides a retrospective analysis and a telescopic understanding of the perceptions and expectations of South African victims of apartheid toward the transitional justice processes and mechanisms adopted in that country.

While a significant literature has emerged on victim-centric processes within this field, the research has—paradoxically—failed for the most part to fully capture how victims themselves conceive of rightful atonement and restitution for past wrongs (McEvoy 2013; Méndez 2013; García-Godos 2013; Villa-Vicencio 2004; Madlingozi 2010).[1] That it is a paradox that the victim perspective has largely been overlooked in transnational justice can hardly be overstated. Victims are the concluding theme (both within the normative framework as well as in the practice) of transitional justice. However, victims are seldom consulted about—or invited to participate in—the design and implementation of transitional justice processes and mechanisms, leaving their role and significance a major point of contestation (de Waardt 2016: 432; Méndez 2016: 1; Kent 2012: 33; Nagan 2006: 127; Manning 2017: 138; Annan 2010: 6; Robins 2011: 75; Hansen 2014: 105; Durbach 2016: 376). In most cases, victims become involved at the implementation stage—way after the processes and mechanisms have been designed by national elites working with external experts (McEvoy and McGregor 2008: 3). This fundamental gap in the literature reinforces the argument that transitional justice processes and mechanisms are driven by agendas that are either unresponsive to—or fail

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[1] This research uses the *Coventry University Guide to Referencing in Harvard Style.* However, footnotes are used sparingly to explain some of the colloquial words, terms and phrases that are used.

to encompass—the needs and expectations of victims (Engle, Miller and Davis 2016: 158).

In its contribution to the fields of transitional justice, politics, international relations, peace and conflict, this thesis provides a deeper and nuanced appreciation of victims' own perceptions of transitional justice processes and mechanisms. Just as importantly, that understanding is integral to designing and implementing mechanisms that better respond to specific circumstances. It theorises that understanding justice *from the perspective of those who have been wronged* is fundamental in transitional justice and must, of necessity, inform its design and implementation. This viewpoint is underscored by the fact that the concept of justice is 'complex and contested'—generations of theoretical debates stretching back to the ancients have sought to ascertain what constitutes justice (Laplante 2014: 68). Therefore, a people's understanding of justice cannot simply be made to align with some 'external' framework 'issued' to them by national elites and policy makers. It emerges, instead, in 'congruence with [their] deeper understanding of [themselves] and [their] aspirations, and [the] realization that, given [their] history and the traditions embedded in [their] public life, it is the most reasonable doctrine to [them]' (Rawls 1980: 519).

In other words, the preponderance of justice models from the outside that are introduced to discrete instances transitional justice struggle to resonate with the realities of the victims (Villa-Vicencio 2009: 45). For instance, in societies like Rwanda, the former Yugoslavia, Northern Ireland and South Africa that are characterised by deep societal cleavages centred on collective ethnic, national, religious or political identity, 'attempting to understand the needs of justice within a linear western framework is problematic' (Aiken 2014: 41). On the contrary, understanding justice in post-conflict settings must mirror the multiple justice needs of victims, premised on their own specific circumstances and experiences (Lambourne 2014).

To fully appreciate the varied nature of victims' post-conflict needs and expectations of justice, the present research taps into their experiences, insights, and perspectives of transitional justice processes and mechanisms to assess the extent to which such processes mirrored their circumstances. Although great steps have been made in recent years in the field—most notably the foregrounding of victim-centric processes—tran-

sitional justice 'discourse and practice continue to be largely based on the implicit assumptions of justice that are often commonsensical in Western thinking' (Buckley-Zistel et al. 2014: 1). This skewed thinking inevitably negates victims' own perceptions of justice by prioritising external conceptions that struggle to resonate with the realities of victims. In fact, as argued by Nussio et al. (2015: 336): 'we still know little about what victims think of transitional justice'.

This is the gap that the present research seeks to fill. It does so by highlighting how justice is thought of by victims. This, in turn, shows us how different these conceptions are to externally introduced notions that are 'foreign' to their contextualities. Diagnosing the extent to which current transitional justice processes and mechanisms fall short in not being relevant and responsive to victims' needs and expectations requires such an analysis. By foregrounding the victims' perceptions of justice, this thesis aims to contribute to the ongoing debate on victim-centric processes and the design of transitional justice processes and mechanisms. Only with a deep understanding of how victims perceive justice—what constitutes a just outcome *for them*—can the design of such programmes be fully responsive to their needs and expectations.

In bringing the victims' voices to the fore in this way, this research returns to the historical injustices of apartheid, which remain the 'unfinished business' of the transitional justice processes and mechanisms in South Africa. We know that the victim perspective has been overlooked from the various studies that have demonstrated that victims were never engaged directly in the design and implementation of the processes and mechanisms implemented in South Africa (Durbach 2016: 376; Madlingozi 2015; Villa-Vicencio 2009; Mamdani 2000; Hamber, Nageng and O'Malley 2000). The fact that victims continue to 'endure the structural legacies of a troubled past and the potential limitations of transitional justice' is arguably symptomatic of this failure (Gready 2011: 1).

This present research makes the following contributions. First, through deep and contextual scholarly analysis, it presents an important empirical account that articulates victims' own understanding and interpretation of transitional justice process. Second, it advances an expansive and 'thicker' understanding of victims' notions of justice rather than one simply abstracted from theoretical and normative frameworks. This focused analysis will be integral in broadening the discourse on transitional justice

by providing an opportunity for incorporation in future efforts. Third, it provides a thorough examination of the inherent challenges of promoting transitional justice in the absence of full and unfettered participation by victims in its design and implementation on the ground. Fourth, the thesis extensively discusses how failure to address victims' expectations inevitably produces anger, resentment and frustration—with the risk of relapse into violent conflict.

1.1 The Research Context

South Africa provides a compelling case for empirical inquiry into the limitations of contemporary discourses of transitional justice (Campbell et al. 2003). The distinctive features of the South African transitional justice framework, hailed as 'a model for achieving peace, justice, democracy and nation building' (Madlingozi 2015: 1), makes it a strategic case study in examining the extent to which transitional justice as it is currently practised actually meets the needs and expectations of victims (Sooka 2006). Although many truth commissions, especially in Latin America, predate the TRC—Bolivia (1982), Argentina (1983), Uruguay (1985) and Chile (1990)—the South African model saw a paradigm shift in transitional justice (Moon 2008: 5; Rotberg & Thompson 2000). In fact, the TRC exemplified 'the indisputable *locus classicus* to which innumerable subsequent instances of reconciliation politics have referred and it constitutes the analytical lens through which many cases prior to South Africa have been viewed and reviewed' (Moon 2008: 1).

Two decades after the TRC concluded its work, it is important to 'take stock' of these claims. In so doing, we must ask what the perceptions and expectations of the victims of apartheid were and the extent to which the TRC in fact met them. That stock taking exercise can inform the field of transitional justice—most obviously in influencing the design and implementation of future processes and mechanisms so that they are better aligned with victims' views and experiences. To that end, South Africa's experience of transitional justice will continue to serve as a model to 'measure, adjust and improve these processes and mechanisms around the world' (Villa-Vicencio 2009: 44). Its notoriety in Africa and around the world has ensured that many truth commissions created after 1994—notably in East Timor (2002), Ghana (2002), Sierra Leone (2002), Liberia (2005), Kenya (2008), and Nepal (2015)—have sought to emulate it (Sriram

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2009). Given that the South African model has proven so adaptable to a range of different contexts—including emerging ones like the upcoming transitional justice process in Zimbabwe—it is an obvious case study choice.

Despite its worldwide acclaim, recent studies—corroborated by the findings of the present research—have demonstrated that transitional justice in South Africa has remained contentious, especially among the victims of apartheid (Sriram 2009: 7; Madlingozi 2015: 10). Key to the challenges facing transitional justice in South Africa is what Gready (2011) refers to as a 'problematic reality' informed by the relentless injustices occasioned by apartheid: debilitating poverty, heightened race relations, widening inequality, rising social and criminal violence and xenophobia. These enduring 'structural legacies of a troubled past present an essential opportunity to interrogate the potential and limitations of this ever-growing field' (Gready 2011: 1).

For instance, how does a world-acclaimed model fail to resonate with the needs and expectations of victims who—for all intents and purposes—are the prime focus of transitional justice? If both victims and perpetrators were implored to participate in the work of the TRC how then did it fail to prioritise victims' needs and expectations in its design and implementation (Boraine 2000: 149)? If indeed public participation (bringing together victims and perpetrators) was at the core of its procedure, could its failure to reconstruct a complete picture of the injustices of apartheid be attributed to its inability to recognise the centrality of victims' needs and expectations in its design? (Kiss 2000: 74). Although these questions do not form part of the empirical inquiry of this study, they are important in understanding the limitations of the transitional justice model adopted in South Africa—particularly the inherent challenges in incorporating victims' needs and expectations.

A fundamental question that arises then is this: how did the whole world celebrate a mechanism that clearly circumvented a crucial perspective, that of the victims? In other words, what did they see as a novelty in a process that was so obviously exclusionary? What we can be sure of is that South Africa's history of colonialism and apartheid underpinned an unjust political system geared towards fostering racial economic exploitation (Powell 2010).

Victims of apartheid were not only subjected to physical violence and brutality; they also suffered immensely from structural injustices based on a 'comprehensive system of social engineering and racial exploitation that was deeply embedded in the basic fabric of society at every level' (Powell 2010: 237). While the TRC was designed to deal with these injustices, its major handicap was manifest in its enabling legislation—particularly its complex categorisation of victims (Mamdani 2002). For instance, the individualisation of victimhood in a society that had been subjected to large-scale, forced removals clearly narrowed the share of the overall population that 'counted' as victims of apartheid.

Regrettably the discourse on transitional justice has continued to justify constructing and reproducing South Africa's transition within narrow frameworks by focusing on individual human rights abuses at the expense of structural violence that dominated the apartheid repertoire (Powell 2010). Quite significantly, the debate about justice in the context of victims' own conceptualisation has remained within the periphery of the transitional justice discourse (Powell 2010). Hence such a failure by the transitional justice process to prioritise victims' needs and expectations in its design and implementation is a serious indictment to this world-acclaimed process (Gready 2011: 1).

Undeniably, transitional justice in South Africa is no 'easy terrain' to navigate. There is a preponderance of research and its coverage is broad and wide-ranging. Much has been written on the ground-breaking work of the TRC, its successes, limitations and how victims as well as perpetrators interacted with it (Borraine 2000; van Zyl 1999; Hamber, Nageng & O'Malley 2000; Backer 2005; Bryne 2004). However, none of this literature 'does justice to the reality of South Africa's history of exploitation, its transition to democracy or its efforts to secure justice [for the victims] in that transition' (Powell 2010: 236). This viewpoint is corroborated by Madlingozi (2015: 10), who contends that from the perspectives of the victims 'the past 20 years have been 20 years of amnesia, denialism, no reparations, no restitution, no social reconciliation and certainly no justice'. What Powell (2010) and Madlingozi (2015) posit here is that transitional justice in South Africa was 'constructed', implemented and experienced in messy, liminal, and multiple ways. It therefore struggled to incorporate victims' own notions and expectations of justice. It also presupposes that victims had very little input

into the design and implementation of the transitional justice to the extent that the process has been 'wholly inadequate' (Madlingozi 2015: 9; Durbach 2016: 376). It is these observations that inform the basis of this thesis.

In other words, what is noticeably lacking in literature are the 'perceptions and expectations of victims, whose experiences are, after all, the subject of these processes' (Backer 1995: 2). In that regard, an empirical study that investigates victims' own perceptions and expectations of transitional justice so that they are incorporated in the design and implementation of these processes and mechanisms, becomes justified.

This research is also inspired by possibility that its key findings can be extrapolated to inform the emerging process in Zimbabwe, my home country. Here, the extent to which the perceptions and expectations of victims of more than 50 years of colonialism, brutality and repression can inform the design and implementation of transitional justice processes and mechanisms in Zimbabwe loom large. Since this process is still at its infancy, what lessons can it be drawn from a 'world-acclaimed model' in navigating the complex 'paths' between global expectations, on the one hand, and the needs and expectations of victims of successive injustices, on the other? They key question to ask therefore is: is it that victims have grandiose expectations that transitional justice processes are never suited to satisfy them? Alternatively, it is in what Madlingozi refers to as 'how transitional justice operates' in that it does not lead to what he calls 'radical transformation of society' (Madlingozi 2015: 2).

At a personal level, this present research is fundamental for two major reasons. First, in the last decade I have worked with victims of mass atrocities in Liberia (2005), Nepal (2007), South Sudan (2010–11) and Zimbabwe (2012–14). I 'experienced' their pain and frustration with the institutions and processes ostensibly set up to address their concerns. I have worked with them in developing strategies toward justice, healing, and reconciliation. It is victims' struggles for justice that has really captured my heart—spending time with them and hearing their stories has motivated me to research and write on the issues that affect victims of violent conflict and repression.

Second, in 2013 Zimbabwe adopted a new constitution. One of the key provisions in the constitution is the establishment of the National Peace and Reconciliation

Commission (NPRC) mandated to ensure post-conflict justice, healing and reconciliation (Zimbabwe Constitution 2013: 118). Although the South African experience is not necessarily transferable, it serves as a useful reference point for other contexts. Indeed, South Africa and Zimbabwe share a similar historical experience of colonialism and I am confident that lessons drawn from the South African case can be instructive and can provide useful lessons for shaping the Zimbabwean process. In 2014, I served as a member of the civil society-led Interim National Transitional Justice Working Group (NTJWG) in Zimbabwe, representing the Church. It was during my tenure at the NTJWG that I strengthened my resolve to ensure that transitional justice work incorporates the views and interests of victims in its design as well as its implementation. I have continued to advise the NTJWG while conducting this doctoral research, providing opinions and experiences from South Africa. It is my interest in continuing to serve as part of the process in Zimbabwe that has influenced my decision to study the South African case.

1.2 Significance of the study

A reading of the existing literature on transitional justice reveals at least five broad gaps that the research seeks to address. First, this research deconstructs the conventional paradigms of transitional justice from their normative frameworks premised on legalistic, state-centric and top-down mechanisms-that underpin them (Teitel 2003; McEvoy 2007; Robins & Wilson 2015: 220; Mani 2008; Nagy 2008) These traditional hegemonic transitional justice approaches are critiqued through an assessment of how transitional justice is perceived among the victims of gross violations of human rights in South Africa and what expectations emerge from these processes (Gready and Simons 2014: 341; Madlingozi 2015: 5).

Transitional justice is a discourse dominated by Western liberal-democratic concepts and an overly legalistic approach that views justice through a state-centric lens (Madlingozi 2010; McEvoy 2007). This domination has led to top-down and mostly externally driven processes that have overlooked the needs and expectations of victims, which derive from their local cultures and experiences (Sharp 2013; McEvoy 2007; Mani 2008).

In deconstructing these international notions of transitional justice, I am particularly persuaded by Bruce Baker and Eric Scheye's assertion that conventional paradigms in international policy need to be challenged by an assessment of 'the reality on the ground… unshackled by normative considerations' (Baker & Scheye 2007: 514). This viewpoint is buttressed by Alex De Waal in his reference to the 'original sin' of much international policy—namely that it prescribes and justifies while overlooking the essential analysis of how states and societies 'actually' function (De Waal 2010). Research has demonstrated that transitional justice has been too deeply entrenched in 'normative notions of what is inherently believed to be right, rather than evidence about what has been occurring on the ground' (McDonald 2016: 13). To that end, there has been disproportionate emphasis on the 'moral-philosophical and jurisprudential aspects' of transitional justice processes and a preoccupation with 'institutional design and implementation' to the exclusion of what that actually means to victims of mass violence (Backer 2009: 60). This gap in the literature reinforces the argument that despite the field of transitional justice having matured, our understanding of what transitional justice would look like from the point of view of those subject to injustice remains limited. This assertion comports with García-Godos' (2013: 241) observation that the international community's expectations of what transitional justice is capable of providing on the ground are 'in need of a serious reality check'. This underscores the crucial task of uncovering the dimensions—socio-economic, political and cultural—of transitional justice as they are understood in the specific contexts in which injustice has occurred and its legacies remain.

Secondly, contemporary debates within this field are replete with the notion that transitional justice mechanisms and processes must be victim-centric. Implicit in this discourse is the view that victim-centred considerations should then inform the relationship between transitional justice interventions and their impact on victims (Madlingozi 2013). Yet, as we have established, the victim perspective has been very much overlooked. A number of reasons have been advanced for this. One, defining and identifying victims is challenging, given many different groups of people were involved in carrying out violent acts under apartheid and individual actors were often both subject to and complicit in some way in unjust acts (Méndez 2013). Individuals—bystanders, complex victims (victims-turned-perpetrators and perpetrators-turned-victims) and informants (Baines 2010)—thus cannot always be placed neatly into either 'victim' or

'perpetrator' categories. It was this highly complex social and moral situation that different conceptions of transitional justice emerged.

To develop this idea further, in long drawn out conflicts victims sometimes become perpetrators and vice versa which poses immense difficulties in implementing victim-centric processes after the conflict has ended. Irrespective of the fact that victim identity is complex in post-conflict societies, research has shown that without victims, the whole point of instituting transitional justice processes and mechanisms becomes questionable. Hence interrogating victims' perceptions and expectations of transitional justice work becomes peremptory in contributing to enriching and reshaping victim-centric discourse.

Third, transitional justice's failure to incorporate victims' perceptions and expectations further manifests in its struggle to respond to the tensions between local initiatives and international imperatives (Shaw and Waldorf 2010). Even though striking that balance between international standards, on the one hand, and local and cultural notions of justice practices, on the other, has been challenging, many scholars continue to advocate for the prioritisation of the 'discourse of the locals' (Shaw and Waldorf 2010; Lundy and McGovern 2008; Hinton 2010). In her study in Sierra Leone, Meith (2013) concludes that there was clear disjuncture between local expectations of the Special Court and international imperatives of its mandate. Invariably, local processes were overwhelmed by pressure to implement the mandate laid out by international actors, leaving the perspective of affected communities almost entirely out of the picture. South Africa's struggle to incorporate notions of *Ubuntu* into its transitional justice terrain is indicative of this struggle. Yet in the present research, the victims who participated articulated how notions of justice are embedded within their socio-political and cultural worldview, which invariably differs fundamentally from international perspectives, for instance on such issues as linearity and temporality. Much as local ownership is a growing narrative in transitional justice, it is also contested and poorly understood, and many gaps still exist in practical implementation (Chesterman 2007). Even more, the notion of 'local ownership' is complex since 'different "locals" can result in very different priorities and interests and pose different problems' (Wong 2007: 47). Despite

the above challenges, the notion of local ownership continues to gain currency in international efforts especially around fundamental questions of agency: 'who decides, who controls, who implements and who evaluates' (Donais 2008: 3).

As mentioned, this study argues that victims' 'absence' in the formulation of the TRC led to the development of unrealistic expectations, which have culminated in heightened emotions associated with 'unmet' and unfulfilled promises. Two key observations—around reparations and remembrance—exemplify this deficiency. Reparations are a contentious and emotive issue in South Africa both in terms of their overall purpose as well as the financial amounts paid out. The research affirms that the failure of the reparations programme to demonstrate the varying injuries suffered during apartheid when juxtaposed with the scale of continuing adversities due to these violations demonstrate lack of prioritisation of victims' perceptions and expectations in the formulation of these transitional justice processes and mechanisms. Further the misgivings that symbolic reparations and all aspects of remembrance are being articulated through 'Western eyes' thus negating the victims' 'own story' mirrors the key arguments advanced in this thesis about the neglect of the victim perspective. As concluded by Madlingozi (2010: 211), transitional justice scholars and experts alike,

> appropriate the right to speak for victims by dint of [their] geopolitical and institutional privilege […] not because the latter invited and gave her a mandate victims are never accorded the opportunity to speak for themselves, but because the [elites] sought the victim out, categorised her, defined her, theorized her, packaged her, and disseminated her on the world stage.

This implicit perpetuation of the disempowerment and marginalisation of victims is what this research purports to address by amplifying victims' unheard narratives. Essentially this research underscores that victims' voices and participation are central in the 'local ownership' of transitional justice processes.

Fourth, despite the upsurge in the discourse on transitional justice over the last three decades, South Africa's continuing challenges in economic development further challenges the normative framework of transitional justice. While there has been tremendous focus in the harms caused by physical violence, transitional justice processes

and mechanisms in South Africa, including the TRC, has paid minimal attention to the 'harms caused by economic violence including violation of economic and social rights, corruption, plunder of natural resources and other economic crimes' (Miller 2008: 266). Indeed, the intention of the authors of the apartheid system to exploit black and coloured people economically were problematic in the design of the justice choices after the conflict (Miller 2008; Mamdani 2002). Inevitably victims' aspirations continue to be short-changed by the justice choices undertaken after apartheid. The TRC's challenges in addressing the ongoing socio-economic disparities demonstrate transitional justice's challenges in dealing with these injustices. This thesis therefore argues that the failure to incorporate socio-economic conditions of the conflict highlight the inherent challenges faced by transitional justice in contributing to the practical and tangible transformation of victims' circumstances after mass atrocity.

Finally, in 2010 then United Nations Secretary-General Kofi Annan published 'the guiding principles and framework for the United Nations to transitional justice processes and mechanisms' (UNSC 2010: 1). As a critical component of the United Nations framework for strengthening the rule of law in post-conflict societies, the document outlined ten key principles to guide its work. Of relevance to this study is principle number six which underscores that transitional justice must 'ensure the centrality of victims in the design and implementation' of its processes and mechanisms. The essentiality of victims in the transitional justice discourse was further underscored by the recent publication (March 2016) of a special issue by the *International Journal of Transitional Justice* (IJTJ) edited by Juan E. Méndez. The thrust of that volume was to 'reconsider appropriate responses to victims of conflict' essentially dovetailing into the argument advanced by Kofi Annan. In the same issue, Sajjad (2016: 25) raises critical questions that forms the basis of this thesis, namely: 'who constitutes the terrain of victims and who has a role in the design of TJ mechanisms'. Other scholars, like Saeed (2016), Moffet (2016), Lacerda (2016) and Benarth (2016) all weighed in with various examinations and importance of the need for a rigorous and nuanced interrogation of victim-centric processes in transitional justice. To further demonstrate the relevance of this research in contemporary transitional justice practice, Nussio et al. (2015: 338) argue that in Colombia, 'the law requires that victims be allowed to participate in the design of transitional justice policies'. This nascent body of work suggests that there is

significant scope for rethinking the role of victims in the design and implementation of transitional justice. This thesis is therefore an important component of that endeavour.

1.3 Research Questions

The main objective of this research is to investigate the perceptions and expectations of transitional justice among victims of apartheid, 21 years after the TRC closed 'its doors'. Implicit in this key objective is the observation that transitional justice processes and mechanisms must incorporate victims' own perceptions of justice in order to be responsive and relevant to their needs and expectations. As argued throughout this thesis, victims' perceptions—which are varied and differ from those of perpetrators, bystanders, international experts and local elites—need to be integrated into the design and implementation of transitional justice processes. To a greater extent, such appreciation must be distinguished from the normative conceptions of justice that abound in the transitional justice industry. In that regard, this thesis argues that victims have a unique and peculiar way of understanding of justice. Such perspectives are heavily shaped by their own circumstances and experiences. The thesis proposes that transitional justice must be

> driven by victims, informed by local [cultures] by placing the [them] at the heart of knowledge production, ensuring [that] an understanding of the past is cognisant of the social and political environment in which violations occurred and in which their impacts must be addressed' (Robins & Wilson 2015: 236).

This objective will be achieved by fulfilling the following research questions:

- What are the perceptions among victims of apartheid of the South African transitional justice process in meeting justice needs and expectations?

This overarching research question implies a series of sub-questions;

- What did victims of apartheid expect from the transitional justice process?

- To what extent has the Truth and Reconciliation Commission process met the justice needs and expectations of victims in South Africa?

Drawing on empirical research employing aspects of grounded theory methodology undertaken in South Africa in 2016, this thesis examines perceptions of transitional justice among victims of apartheid in order to respond to the empirical gap highlighted above. As will be explained in further detail in Chapter 4, the primary data sources were semi-structured and unstructured interviews with victims of apartheid in East Rand and Cape Town. This thesis therefore purposely privileges their voices and perspectives as a constituency that is often not accorded the platform to speak in transitional justice processes. A total of 52 interviews were completed, each of which averaged between 45 minutes to an hour in length. These interviewees were audio taped, transcribed and conducted with promises of confidentiality; pseudonyms have been used to conceal victims' identities. Approximately 60 percent of the interviews were conducted entirely in English while 40 percent were conducted with the aid of a translator because the participants did not have a working knowledge of the English language. These interviews were conducted in person sequentially, one participant at a time. The data collected, both primary and secondary (books, journal articles, newspaper reports, online articles), as well as other information were analysed with the aid of a computer-generated software, NVivo, in response to the research objectives highlighted above.

1.4 Scope and Limitations of the Study

This research was conducted to determine the perceptions of transitional justice among the victims of apartheid. Perceptions are defined in this study as the ways in which transitional justice is understood and interpreted among the victims of apartheid. It investigated this understanding through the prism of the TRC as the prominent transitional justice mechanism as well as other processes incidental or connected to it—in particular reconciliation, restitution, reparations and the redress of socio-economic injustices. Although transitional justice mechanisms and processes went beyond the mere establishment of the TRC, this thesis mostly focusses on the TRC and its related processes because, according to victims of apartheid interviewed in this study, the TRC represents the sum total of transitional justice. Hence mechanisms like constitutional reform and institution-building were deliberately excluded from the focus of this research in order to create enough depth on the issue of TRC as the most critical aspect of transitional justice in South Africa.

This research was conducted in East Rand and Cape Town between January and July 2016. Participants were recruited using the snowball sampling technique. These were mainly blacks and mixed-race victims, who constitute 94.2% of the respondents. The remaining 5.8% of the interviewees were not victims per se but were white anti-apartheid activists who did not bear the brunt of this oppressive system by virtue of the colour of their skin. However, they identified with the struggles against the segregationist system by blacks and mixed-race communities and work with institutions that advance the cause of redressing the injustices occasioned by apartheid. Victims of this study are therefore delineated by gender, location and race as distinct demographics in order to draw out more nuanced features for analysis. The study deliberately excluded ethnicity as a defining variable for the simple reason that apartheid brutalities were largely perpetrated along racial categories as opposed to specific ethnic profiling. In that sense, the present research gives voice to blacks and mixed-race victims in the two specific geographical locations.

Although the terms 'victim' and 'survivor' are sometimes used interchangeably (depending on the context), this study adopts the term victim-based on how the South African state and the TRC prioritised this term. More specifically, the choice of the term mirrors the argument advanced by the TRC that:

> when dealing with gross human rights violations committed by perpetrators, the person whom that violation is committed can only be described as a victim, regardless of whether he or she emerged a survivor. In this sense, the state of mind and survival of the person is irrelevant; it is the intention and action of the perpetrator that creates the condition of being victim (TRC1998, Vol1: 59).

Finally, a crucial limitation of this research is that the perceptions of transitional justice among the victims of apartheid appear to be monolithic. This homogeneity may challenge the complex notions of victim and victimhood discussed in Chapter 2, particularly where hierarchies and power dynamics are concerned. However, in contexts like South Africa—where injustices were perpetrated using race as a defining variable—such similar responses may not be particularly surprising. Other limitations to this research

around the field research methodologies and related challenges are discussed extensively in Chapter 4.

1.5 Thesis Structure

This research investigates the perception of transitional justice among victims of apartheid in South Africa after the transition. To effectively accomplish this aim, this thesis is divided into seven chapters as follows: the present introduction, the literature review, methodology, context, two empirical chapters and a conclusion. This introduction chapter offers a general overview of the thesis and its contribution to knowledge, as well detailing its significance, identifying its limitations and providing the overall framework.

Chapter 2 details the conceptual framework within which the field of transitional justice is located. It highlights the tremendous growth of this field of study since the Nuremberg and Tokyo trials. It further critiques the contemporary discourse on transitional justice, in particular its inherent challenges in placing victims at the centre of its mechanisms and processes. To that end the chapter advocates for the adoption of wider notions of transitional justice in order to incorporate victims' own perceptions and expectations of justice. The chapter concludes by discussing the centrality of victims in the transitional justice processes and mechanisms and how incorporating their perceptions enhances their relevance and responsiveness to victims' needs and expectations.

Chapter 3 answers the question, to what extent has the TRC process met the justice needs and expectations of victims in South Africa? In that regard the chapter provides an analysis of the context within which the varied processes and mechanisms of transitional justice were established in South Africa between the periods 1996-2016. The preliminary sections of the chapter contextualise the conflict in South Africa and outline her transitional route to liberal democracy. This is followed by an analysis of the transitional justice processes and mechanisms undertaken, focusing on the elite negotiations prior to the first democratic elections of April 1994, and the creation of the TRC and a precis of some of its major criticism. The chapter concludes by deliberating

on some of the contemporary challenges facing victims of apartheid and their failure to achieve justice in the last 20 years.

Chapter 4 discusses the philosophical and methodological stance adopted in this qualitative research. It describes the grounded theory qualitative methodology used to access, synthesise, and present the perceptions of transitional justice among victims of apartheid. The chosen qualitative strategy relied on face-to-face, semi-structured and unstructured interviews, with a view to drawing out relevant critique of the transitional justice processes and mechanisms. A grounded theory approach is particularly suited for exploring the rich and complex topic of transitional justice in South Africa, and as such is utilised in this thesis to fulfil the objectives of: (1) discovering victims' own perceptions and expectations of transitional justice; (2) implementing rigorous, struc-tured, and organised data gathering and analysis methodologies; (3) allowing the indi-vidual narratives of victims to shape the explanatory constructs and categories used to understand the interview data, and; (4) integrating the research procedures with theo-retical development in order to explain processes related to victims' perceptions of tran-sitional justice (Charmaz, 1995).

Chapter 5 offers a deeper and nuanced empirical discussion of victims' own understanding of the notion of justice. It highlights their views, experiences and per-spectives after the transitional justice processes in South Africa formally ended. The chapter underscores the theory that there are varied and very distinct ways of under-standing and interpreting the concept of justice, especially among victims of apartheid. It concludes that the concept of justice as defined by victims is multi-dimensional and largely shaped by their distinct backgrounds, situations and experiences.

Chapter 6 analyses the empirical evidence of victims' expectations of the tran-sitional justice process in South Africa. It evaluates what victims were hoping for by focusing on the transition of the country from apartheid to liberal democracy in 1994 and the subsequent establishment of the TRC in 1996. It argues that, with a broad man-date to build national unity and reconciliation, the TRC raised a lot of hopes among those that had suffered under apartheid. It further illustrates that victims expected that justice and accountability would be vigorously pursued to redress the wrongs perpe-trated under apartheid. The chapter demonstrates that victims anticipated the TRC would also deal with matters of social and economic justice, which were at the core of

their struggles against the brutal regime. It concludes that victims of apartheid are disillusioned by transitional justice because their expectations in these areas remain unfulfilled.

Chapter 7 concludes the thesis and answers the research's overarching question: What are the perceptions among victims of apartheid of the South African transitional justice process in meeting justice needs and expectations?

It evaluates whether and to what extent the thesis achieves the research aims and suggests further research. It summarises the observations from the various chapters and then concludes by tying up the entire study.

Chapter 2—Toward a Wider Conception of Transitional Justice

2.0 Introduction

Transitional justice has grown exponentially over the last four decades, so much so that it is now the default approach to addressing past wrongdoing in post-conflict settings. It has greatly influenced the socio-political and legal discourse of societies emerging from mass atrocities (Lundy and McGovern 2008; Villalba 2011). In fact, Rubli notes (2012: 13) that 'very few other terms have acquired so much attention in so little a time as transitional justice', to the extent that it has become an almost automatic response to conflict and human rights violations and a 'permanent feature of our political universe' (Teitel 2002: 895; Hazan 2007: 10). Robins & Wilson (2015: 219) buttress this point and argue that transitional justice has become a 'preferred response' to the needs of societies emerging from conflict or political violence'. Indeed, the emergence of official programmes and projects within United Nations (UN) agencies and the international community focusing on transitional justice underscores the point that the field of study has gained currency and traction in societies emerging from repression and systematic violations of human rights (de Greiff 2010). Moreover, it is often cast as part of a broader process of dealing with the legacy of the past after violent conflict that includes progressing toward democracy, protection of human rights and state reconstruction (Fischer 2011). The central focus of dealing with the past is often guided by 'the circumstances of the transitional societies themselves, and public interest in and international expectations of accountability after atrocity' (Lundy and McGovern 2008: 266).

Post-conflict justice has evolved significantly since the Nuremberg (1945) and Tokyo (1946) war crimes trials, moving to international tribunals, truth commissions, amnesties, hybrid tribunals and back to trials again (McEvoy 2007; Sharp 2013; Clark 2015). In that period, these platforms for transitional justice have proliferated across the globe—e.g., Bolivia (1982), Argentina (1983), Uruguay (1985) and Chile (1990), South Africa (1996), Ghana (2002), Sierra Leone (2002), East Timor (2002), Liberia (2005), Cambodia 2006, Kenya (2008) and Nepal (2015)—with varying degrees of success (Mutua 2015). Sadly, the greater percentage of such interventions have been

criticised for being top-down and prescriptive (McEvoy 2007; Robins & Wilson 2015: 220). These interventions have included 'one-size-fits-all tool-kits' designed by international experts working with national elites that resonate poorly in the transitional societies to which they are applied (Nagy 2008: 275; Rubli 2012). Ironically, despite a promulgation of these state-centred and externally driven, bureaucratised processes, many transitional societies have struggled with responding to the multi-faceted dimensions of justice after conflict (Powell 2010).

In this chapter, I elaborate in greater detail the critique touched upon in the introduction that traditional, hegemonic conceptions of transitional justice based on Western, Euro-centric, legalistic, top-down, donor-driven and externally-packaged methods and practices are narrow and 'remote from the contexts in which they are articulated and the populations [they] claim to serve' (Robins & Wilson 2015: 219). This conceptualisation of justice in many transitions has been so problematic that ensuring that the needs of the victims are catered for remains a fundamental challenge for both scholars and practitioners. For instance, cases in the Global South (e.g., Liberia, Kenya, Rwanda, Sierra Leone and South Africa) serves as clear examples of how these mostly 'foreign' models of transitional justice have had little or no resonance in local contexts (Oomen 2005; Meith 2013; Madlingozi 2015; Ycaza 2013). The colossal challenge has been that while victims are the lynchpin of any transitional justice process, their perceptions and expectations of justice have rarely shaped the choice of the mechanism that was adopted in their respective countries. Hence victims are generally excluded from the justice narrative formed after atrocity (Ferrara 2015: 3). To validate this standpoint, the dominant argument in this thesis concurs with the observation by Backer (2005: 2), that:

> Surprisingly, empirical studies of the responses of victims […] whose experiences are, after all, the subject of these processes […] are noticeably lacking in the literature. Consequently, a host of basic questions have yet to be thoroughly evaluated: What do victims think about these commissions? Do they seek to engage the process? Are their interactions positive or negative? Do their impressions change over time? Do their experiences with these processes affect their political outlooks? What factors and circumstances shape these outcomes?

Clearly, the sum total of these questions points to the mismatch between the exponential growth of the field and its challenges in incorporating victims in the design and implementation of transitional justice processes and how their perceptions and expectations are continuously excluded. As McEvoy and McGregor (2008: 3) rightfully note, 'there is a shared disquiet that the voices of those most affected [by conflict] are not always heard or accorded adequate weight once the wheels of institutionalised international justice begin to turn'. This critique is the driving force behind this thesis that transitional justice is shaped by universal notions of justice that negate the needs and expectations of those most affected by violent conflict. Even where attempts have been made to consult with victims regarding their own values, perceptions and preferences of 'doing justice after atrocity', in most instances this has been a 'shallow and technocratic exercise' carried out in the implementation rather than the design phase of transitional justice work (Sharp 2017: 142). The prime focus of this thesis therefore is to unpack and demonstrate that victims have their own unique notions of justice that do not resonate with the Western and Euro-centric concepts that are abound within transitional justice discourse.

This thesis demonstrates that victims' perceptions of justice are varied and dissimilar from those abound in this field and unfortunately were not incorporated into the design and implementation of transitional justice processes in South Africa (Durbach 2016; Madlingozi 2015). Essentially this thesis further argues that the so-called victim-centric processes have continued to be 'crafted' by elites and hence perpetuate the top-down framework of transitional justice that has received so much criticism in the recent past (Mani 2008; Nagy 2008; Sharp 2011). The fundamental point being made here is that transitional justice has continued within narrow and linear frameworks and these have negated the perceptions and expectations of victims of mass atrocity (García-Godos 2013). For transitional justice to 'grow', it must then be reflexive of itself within the local contexts in which it is being applied. Essentially, it requires a gradual and cyclical process that operates at different levels of society to redevelop itself by incorporating victims' expectations of justice (Villa-Vicencio 2009).

The first section of this chapter discusses the concept of justice. This is in order to demonstrate the complexities involved in defining this notion and to debunk the universal conceptualisations that characterise the contemporary discourse of transitional justice.

The second section provides the conceptual framework within which transitional justice is situated. It begins by highlighting the genesis of this field of study, based on the notion of international criminal accountability that underlay the Nuremberg and Tokyo trials. The section goes on to examine the theoretical grounding of this field of study, premised on the need to address the legacies of the past. It argues that for any society emerging from mass atrocity and authoritarianism, the restoration of justice to those that were denied it or were, indeed, at the receiving end of violence is a vital exercise. The section further illustrates the complexities in existing understandings of transitional justice in the literature, which generally divide into narrow and broad conceptualisations.

The next two sections (2.2 and 2.3) highlight the broader debate advanced in this chapter concerning the narrow and the wider notions of transitional justice. Within the narrow debate, four sub-sections highlight the limitations of legalistic, Western, Euro-Centric, donor-driven and retributive models of justice. These sub-sections detail the major criticisms that emerge in the international community's insistence on imposing one-size-fits-all, technocratic and decontextualised solutions to societies emerging from violent conflict. They conclude that these Western, liberal and prescriptive models are detached from victims' circumstances and therefore struggle to respond to victims' shattered pasts.

These limitations are then juxtaposed with conceptions that incorporate context-specific, local, cultural and victim-centric understandings and interpretations of transitional justice. The five sub-sections that support this wider notion draw on several case studies to highlight the salience of a broader, richer and deeper conception of justice 'with many faces'. The section asserts that transitional justice mechanisms must be driven by victims' perceptions that are grounded in their local, cultural contextualities. The section also discusses socio-economic conceptions of transitional justice that includes reparations, restitution, rectificatory and distributive notions of justice.

The fifth section discusses the centrality of victims in the theory and practice of transitional justice. It highlights the challenges in prioritising of the needs and expectations of victims within Western, Euro-centric, donor-driven and state-centric mechanisms and processes. Needless to say, these approaches are designed by international experts, external and internal elites and inevitably struggle to incorporate victims' interpretation and understanding of justice. The section concludes that broadening the conception of justice to incorporate victims' perceptions enhances the responsiveness and relevance of transitional justice mechanisms and processes in addressing their (victims) needs in the wake of conflict.

2.1 Interrogating the Concept of Justice

Before interrogating the concept of transitional justice, it is imperative to briefly discuss the notion of justice more generally. After all, justice is a complex idea that has defied attempts to define it definitively for millennia. Most importantly, the section argues that 'external' definitions should never be used to delineate this concept for and on behalf of victims of mass atrocities. As Villa-Vicencio (2004) has observed, justice is specific to time, place and circumstance—no universal model of justice can fully embrace the aspirations of victims. The concept of justice is also reviewed because one of the goals of transitional justice is 'to restore justice to victims' of mass violence.

In broad terms, the concept of justice refers to the fulfilment of the legitimate expectation of the individual within the confines of the law. It endeavours to reconcile individual rights with the broader social good, the latter being defined as an action that provides some kind of benefit to the general public. Justice assesses social institutions, basic social structures (e.g., constitutions), and the distribution of goods—but it also taken to assess actions and character traits and is premised on the values of liberty, equality and fraternity. It can also be conceptualised as 'moral permissibility as applied to distributions of benefits and burdens or as applied to social structures such as legal systems' (Vallentyne 2003: 2).

The etymology of the term justice is worth noting. Deriving from the word 'jus'—which refers to joining together or fitting—it thus connotes 'cementing and joining human beings together'. What is essential to note is the fact that justice is not static

and changes over time as society advances. Vallentyne (2003: 2) argues that 'there is no single determinate concept of justice that philosophers refer to by the term "justice". There are rather several related, but fundamentally different concepts of justice'.

Justice—as political thinkers have noted—is often construed as an evolving concept that can be defined in myriad ways (Vallentyne 2003). Plato famously defined justice as a virtue instituting rational order (Johnson 2011). For Aristotle, justice consists of lawfulness and fairness. He wrote that justice is a social virtue which is at the core of human relationships based on equity in the administration of justice. He introduced two categories of justice: distributive and corrective. The concepts of distributive and corrective justice are detailed later in this chapter.

In classical Rome, where the approach to justice was greatly influenced by the Greek philosophers, lawyers and statesmen like Cicero conceptualised justice as part of natural law, which stands apart from human beings and does not depend on their consent for its moral force. He advanced the view that justice was 'unchangeable and eternal' and a fundamental ground upon which the whole of human society rests (Maduabuchi 1997). In that sense, it binds all nations and human beings equally. According to Cicero, since justice was of universal application, it restrains human beings from committing wrongs against each other. Once wrongs have been committed, it becomes the duty of the state to give effect to the principle of justice. Hobbes, on the other hand, argued that justice is a virtue necessary for civil society, while Kant defined it in terms of respecting other people's fundamental freedoms and dignity. Rawls, for his part, outlined justice in terms of provision of fairness and equality for society. In general, all these philosophers and indeed many others regard justice as a fundamental virtue ordering relations between people in the interests of social stability (Johnson 2011).

In advancing the argument that justice depends on the values of each society, Perelman (1980: 3), offers six formulae for justice, demonstrating the complexity of this concept. Two of his formulae are highlighted for the purposes of this thesis. Formula 1: To each the same thing - this conception is premised on the understanding that human beings must be 'treated in the same way, without regard to any of their distinguishing particularities' (Perelman 1980: 2). Formula 2: 'To each according to his needs', which is about meeting the basic needs of man (Perelman 1980: 4). Admittedly, justice is a construct based on 'multiple interpretation of the values and needs of those

that apply them' (Cabral & Guaranha 2014: 22). As advanced by Cicero above, the notion of justice pre-exists linguistic expressions because it embraces the notion of equality, which is a universal concept.

On the contrary, justice is not universal. The fact that so many varied notions of justice appear in different social and political settings in attempts to settle conflicting claims and interests provides ample evidence of the complexity and ambiguity of this concept. As noted by the Greek philosopher Aristotle cited above 'it appears that the words justice and injustice are ambiguous; but as the different senses covered by the same name are very close to each other the equivocation passes unnoticed and is not comparatively obvious as to where they are far apart' (Maduabuchi 1997). Perelman (2012: 58) supports this assertion and argues that a people's sense of justice 'considers, simultaneously, several essential categories, which are not always in agreement'. In other words, it complicates this notion and cements the idea that perfect justice is never possible. As noted by Cabral and Guaranha (2014: 22) 'the notion of justice is fluid and not based on facts, but on values applied in the assessment of the facts, which implies different points of view, controversies, disagreement, and agreement as well'. Hulbert and Mulvale (n.d.: 14) buttresses this dualism and conclude that defining justice is a 'moving target; conceptualizing justice is an ever-changing, subjective process of assessing the fairness of relations between individuals and groups of people'. Clearly, the concept of justice must then be understood within specific contextual realities of those who have suffered injustice, in this thesis the victims of apartheid. Clearly, the concept of justice must then be understood within specific contextual realities of those who have suffered injustice, in this thesis the victims of apartheid. Maduabuchi (1997: 498) supports this line of argument, noting that human beings have an 'individual intuitive, *a priori* knowledge' of what justice entails.

Within the discourse of transitional justice and the context of this research, justice is achieved when victims are made to feel 'whole' again and when perpetrators of the atrocities are made accountable. This study demonstrates that the many notions of justice premised as righting wrongs, rehumanisation, restoring dignity and oppression, equality of opportunities and resources represent the variability of how justice is conceptualised in many spheres of life. Villa-Vicencio (2004: 33) makes a similar point,

noting there are diverse notions of justice—in particular: retributive, deterrent, compensatory, rehabilitative, exonerative and restorative. What Villa-Vicencio underscores here is that justice is diverse and understood differently depending on the context and circumstances of victims; hence it can never be universal or homogeneous. Consequently, these qualified definitions used to distinguish each individual or society's intended idea of justice couched as rectificatory, corrective, reparative, retributive, universal and social further reinforce the argument that indeed justice 'has many faces' (Huyse 2011.)

What emerges from the multivariate notions of justice clearly demonstrate that arriving at a universal understanding of this concept is a momentous task. This is further compounded by the fact that conceptualising justice in the context of societies emerging from mass violence is obviously messier and remains a major challenge faced by transitional justice scholars and practitioners alike. This is also evident in the many approaches (trials, truth commissions, amnesties, hybrid courts, international tribunals) established to restore 'justice' to those that were denied it during periods of repression. Ironically, a proliferation of internationally designed 'tool-kits' geared toward the restoration of the rule of law, truth-seeking, justice and guarantees of non-recurrence (De Greiff 2012) have been recommended for adoption as a response to the challenges faced by societies in transition. However, despite these frameworks, many post-conflict societies have faced numerous challenges of responding to the multi-dimensional understanding of justice particularly among victims of atrocity. In most cases, this concept is narrowly conceived and limited to the legal sphere and is often addressed in skewed, partial and piecemeal terms which represent significant philosophical and conceptual shortcomings by transitional justice scholars, policy makers and practitioners.

2.2. Theorising Transitional Justice

Transitional justice is the latest iteration in a long-standing international project to 'instigate a regime of international criminal accountability', which began at the war trials in Nuremberg and Tokyo after the Second World War (Lundy & McGovern 2008: 268; Teitel 2003; Andrieu 2014). A series of international agreements and treaties have cemented the criminalisation of state wrongdoing based on international human rights law. This post- World War II phase was immediately followed by the rise in the estab-

lishment of truth commissions as dominant mechanisms in the transitions from authoritarianism to democracy starting in Latin America (Bell 2009; Arthur 2009; Kritz 1995). This coincided with growing support for 'tribunality', the principle that leaders should be held accountable for atrocities committed under their watch (Kaminski et al. 2006). With the end of the Cold War, the focus of transitional justice switched from inter- to intrastate conflicts, which characterised the global terrain. These intrastate conflicts shaped the discourse on transitions from war and civil strife to peace.

Broadly, transitional justice embodies a conceptual and analytical approach that seeks to address historical legacies occasioned by violent conflict and gross human rights violations (Gready 2011). It is largely driven by the desire to address the challenges that confront societies as they move from an authoritarian state to a form of democracy (Robins & Wilson 2015: 219; Boraine 2000). In other words, it strives to 'promote a deeper, richer and broader vision of justice […] and start a process of transformation toward a more just and humane society' (Murithi 2016: 10). Essentially, it 'comprises 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, to ensure accountability, serve justice and achieve reconciliation' (UNSG 2004: 4). To achieve this, a broad range of 'judicial and non-judicial mechanisms' have been implemented across the globe to respond to the legacy of massive human rights abuses (Lundy & McGovern 2008: 267). These mechanisms generally include—but are not limited to—trials, truth commissions, amnesties, institutional reform and guarantees of non-repetition (De Grief 2010). It generally encompasses the legal, moral and political dilemmas that arise in holding rights abusers accountable at the end of the conflict (Bell et al. 2004). Fundamentally, it is about examining a range of dilemmas associated with dealing with the past in order to create a more just and inclusive future.

Much as the broad focus articulated by Kofi Annan (2010) appears to capture the understanding of this ever-evolving field, there have been 'few attempts to conceptualise transitional justice theoretically' (Buckley-Zistel et al. 2014: 1). The failure to theorise it has been attributed to the fact that transitional justice is 'extremely heterogeneous' and this could have inhibited the development of a common language from either 'emerging or crossing disciplinary boundaries' (Buckley-Zistel et al 2014). Sim-

ilarly, the fact that transitional justice is a relatively new field of study driven by practice and perpetually in motion (to the extent that it has been shaped by lessons learned from previous applications) could well have affected the development of a theoretical construct (Buckley-Zistel 2014). In an argument that comports with these points, Clark and Palmer (2012: 1) claim that transitional justice might have 'grown too quickly' and indeed be 'in transition', meaning that developing a succinct theory has been quite problematic. In De Greiff's assessment, transitional justice remains

> tremendously under-theorised, not only because no single conceptualisation has succeeded in gathering sufficient acceptance to become a sort of paradigm; but [because] there have been very few attempts to articulate a conception of transitional justice systematically (De Grieff 2010: 17).

However, over recent decades more critical and analytical engagements that have sought to understand how these global set of ideas are perceived, interpreted and evaluated in the contexts where they are applied. Thus, the call for greater inclusion of local perceptions, expectations and viewpoints in the design and implementation of transitional justice processes and mechanisms is a more persuasive argument. That strand of the argument resonates with the motivation for this thesis than the chase for theoretical approaches. This is not to say that theoretical frameworks are not important. If anything, theories help us to understand events, behaviours and situations systematically. In other words, they provide a better understanding of what transitional justice is and what it is not. Essentially, it may not be prudent to advance a singular theory of transitional justice; rather the plethora of approaches to conceptualising this phenomenon can be multifarious and very diverse potentially bringing in tension with each other. Yet these divergences are important in explaining the heterogeneity of this field.

The lack of consensus about what transitional justice entails has brought with it two divergent conceptualisations within the field, both of which are very central to this thesis. Generally, within scholarship we find two broad paradigms: the 'narrow' and the 'wide' conceptualisation. The former advocate for a narrowly defined concept premised on the law (Bell 2009; Teitel 2000) while the latter advance a 'thicker', wider and broader understanding (Roht-Arriaza 2006; McEvoy 2007; Mani 2008; Nagy 2008; Fischer 2011). These two distinct viewpoints are discussed below in order to highlight the limitations of the narrow view, on the one hand, and to articulate the importance of

adopting a broader view, on the other. Such a juxtaposition is intended to clearly demonstrate that navigating the contours of transition-specific justice is a daunting undertaking, which has been recognised as such by academics and practitioners alike (Bell 2003: 1097).

2.3 Limitations of the Narrow View of Transitional Justice

This section discusses the limits of the narrow approach to transitional justice. It begins by focusing on the weaknesses of legalistic conceptions of transitional justice. As these notions are usually the preserve of lawyers, human rights practitioners and other experts, they disproportionately negate victims' own version of justice. As reiterated throughout the thesis, transitional justice has challenges in incorporating victims' notions of justice because it is top-down, Western and Euro-centric (Sharp 2011). Highlighting these limitations helps in appreciating the central argument of the thesis— namely, that victims have their conceptualisation of transitional justice and those must be incorporated in the design and implementation of these processes and mechanisms. Resorting to narrow approaches to justice limits the development of processes and mechanisms that better respond to victims' needs. This thesis therefore proposes that transitional justice offers an eclectic vision of justice that addresses the needs of the victims of violent conflict (Boraine 2006: 18). To elaborate this point further, the next area of focus in this section will be the legalistic lens that is often adopted in transitional justice environments.

2.3.1 Legalistic Lens

Within the narrow interpretation, transitional justice is defined as 'the view of justice associated with periods of political change, characterised by legal responses to confront the wrongdoings of repressive predecessor regimes' (Teitel 2003: 69). This approach adopts a legalistic lens on the basis that the law is regarded as a 'safe, neutral, universal way to engage with other countries' and therefore useful in responding to exceptional violence (Oomen 2005: 893 see, also, Palmer 2015: 5). The establishment of the International Criminal Court (ICC) exemplifies this logic (Palmer 2015). However, this conception has major shortcomings because it assumes that justice is synonymous with the

law. In her research among the victims of political violence in Kenya, Clarke (2015: 275) has highlighted that conflating justice with law (based on a conceptual framework she refers to as 'legal encapsulation') creates a kind of language that narrows justice by 'judicialising' (i.e. erasing the socio-political and economic realities of violence). This is mostly evident in contexts where 'poverty has contributed to vulnerabilities related such as in Kenya, the Democratic Republic of Congo (DRC) and the Central African Republic' (Clarke 2015). By prioritising the role of the law in the move away from conflict, it presupposes that transitions are neat and linear and can be responded to in legal terms. Yet the reality is that transitions are complex and messy, wherein ideologies, tensions, vested interests and power asymmetries are heavily involved.

Furthermore, legalistic notions of justice '[ignore] the root causes of conflict by privileging civil and political rights over their socio-economic counterparts' (Arriaza and Mariezcurrena 2006: 2; see, also Nagy 2008). In most conflicts, socio-economic conditions trigger conflicts—to completely ignore these in the context of a transition is without merit. This is a point that will be elaborated in much greater detail below. For now, it pays to reaffirm that this thesis rejects the legalistic approach because it advances a narrow proposition premised on an international and legalistic understanding of justice. It can be concluded that despite this definitional challenge, a consensus exists within the transitional justice field that justice is at the epicentre of any transitional approach or process, that perpetrators of mass violence should be held accountable for their involvement in atrocities, and that victims of such violence must receive compensation in the form of reparations (both material or symbolic). This is based on the understanding that accountability after atrocity is central in deterring future crimes and that states emerging from violent conflict have 'no choice in whether to deal with the past but rather on how, when and which mechanisms to deploy' (Rubli 2012: 16). This is buttressed by the realisation that roughly half of those countries emerging from conflict return to violence within a decade unless there is a sturdier collaboration among peacebuilding, development and justice responses in fragile situations (Collier 2004; Powell 2010).

2.3.2 Western-dominated and Euro-centric Conceptions of Justice

One of the fundamental challenges in ensuring justice after atrocity is that processes and mechanisms are dominated by traditionally hegemonic Western, liberal-democratic frameworks and tool-kits that view justice through a state-centric lens (McEvoy 2007; Madlingozi 2010). Within this approach, judicial accountability measures, trials, truth commissions, hybrid tribunals and reform of state institutions are the norm and constitute the only legitimate measures of transitional justice. This approach is oftentimes accompanied by programmes and projects geared toward the re-establishment or (in other contexts) consolidation of the rule of law (Mokhiber 2000). The centrality of the rule of law as a fundamental component for the existence of a free society is not debatable; neither is its overarching role in ensuring accountability for contraventions against the law (Boraine 2006: 19). However, most rule-of-law initiatives established after conflict consist largely of 'legal transplants of western and neoliberal constructs whose end product could be a liberal democratisation agenda' (Oomen 2005: 92). These interventions have tended to be top-down, oftentimes elitist, patently legalistic and externally driven (Sharp 2013). In most of these endeavours, tensions between the 'function of law (to arbitrate on crime) and the desire to consolidate the state to reconcile different stories of the past and visions for the future', are commonplace (Jeffrey & Jakala 2015: 45). On the contrary, the reality of transitioning societies is such that post-conflict situations are very fluid and that keeping up with the ever-changing political contexts presents a significant challenge. This is further exacerbated by the fact that these one-size-fits-all mechanisms of justice are so narrow that they are often accused of 'overlooking victims' needs as well as the desire of members of the broader society to rebuild their lives after conflict (Sriram 2009: 3)

Within the last three decades, the prosecution of war criminals has taken centre stage. This has been most notable in Africa, with the trials of Charles Taylor (the former president of Liberia); Thomas Lubanga Dyilo, Germain Katanga and Bosco Ntaganda (DRC); Dominic Ogwen (Uganda); Ahmad Al Faqi Al Mahdi (Mali); Hissène Habré (Chad); and many others (ICC 2016). These trials exemplify an important development in international law, in particular the movement from the historical examples of Nuremberg and Tokyo to the much wider legal response to crimes of international concern—genocide, war crimes and crimes against humanity. This shift from 'impunity to

accountability focused prosecutions has become a defining feature of the international human rights movement' (Boraine 2006: 20). Understandably, those who advocate for this kind of justice celebrate the prospect of achieving redress for gross violations of human rights. Undoubtedly for the victims of amputations in Sierra Leone; for HIV positive rape victims in Rwanda; for those subject to murder, rape and pillaging in the Central African Republic and the Timorese families burnt in their homes, prosecution of perpetrators is worth the pursuit.

However, the use of international law and frameworks oftentimes referred to as 'global' justice to pursue justice has enormous limitations. First, where violations occur on a large scale—as in Rwanda, Sierra Leone, and the former Yugoslavia—prosecuting every single individual involved in the commission of despicable acts of violence is impossible (Clark 2008: 335). Worse still, while 'tribunal justice is inevitably symbolic' that is prosecuting a few 'war criminals stand for a larger groups of individuals' essentially turns individual justice into a *de facto* way of exonerating many of those that participated in the violence (Bass 2000: 300). The unfortunate reality is that if a small number of people are prosecuted, the broader extent of the guilt that exists within society remains unknown (Clark 2008: 336). Second, the assumption that pursuing personal culpability under criminal law has a deterrent effect was heavily challenged in the case of the Darfur atrocities. Third, prosecution under international law has serious political constraints. Examples of this include the decision by the Extraordinary Chambers in the Courts of Cambodia (ECCC), subject to intense political compromise, to examine the crimes committed by the Khmer Rouge between 1975 and 1979 and the Iraqi Special Tribunal's lack of jurisdiction to judge crimes committed after the invasion by the United States and its allies (Scheffer 2008; Oeung 2016: 105). Invariably, while international tribunals and the attendant prosecution of those responsible of heinous crimes is important, 'societies in transition need other instruments and other models in order to supplement one form of justice' (Boraine 2006: 19). Therefore, one-size-fits-all tribunals struggle to incorporate other models of justice that resonate with victims of violent conflict. To that end, transitional justice need to 'embrace a notion of justice that is broader than these narrow retributive models (Boraine 2006: 20).

While international criminal law has been progressively entrenched as a crucial source for the redress of serious atrocities and human rights violations, its equivalence

with 'global' justice come with the risk that local and alternative understandings of justice will be marginalised (Nouwen and Werner 2014). The caution against the monopolisation of discourses on justice is especially redolent when claims are made in the name of 'global justice'. The use of the adjective 'global' infers that something higher and advanced is at stake than in the case of 'local', 'ordinary' or 'national' justice (Nouwen & Werner 2014). In their research in Uganda and Sudan, Nouwen and Werner (2014) have concluded that the monopolisation of discourses on justice by international criminal law inevitably does the opposite of what the gap between ideas of (global) justice and existing institutions requires—namely protecting openness toward alternative understandings of what justice means. Within the pluralist global society, various conceptions of justice coexist, overlap and compete (Ferguson 2007). Hence, notions of justice that effectively marginalise alternative interpretations of what is just are therefore deeply problematic.

Further, these accountability mechanisms continue to play a significant role in transitional societies they have received widespread criticism as a part of the common attitude by the international community to impose one-size-fits-all technocratic and decontextualised solutions to societies emerging from atrocity. The criticism emerges from the fact that oftentimes, these mechanisms are deemed to be 'foreign' and indeed alien to those who will live together again after atrocity (Mani 2008). In many instances transitional justice seems to be applied to the so-called developing countries, hence it suffers from the obvious challenge of universalism of human rights. Citing the case of Iraq, Nagy (2008) argues that the transitional justice timeframe artificially adopted in that country only applied to Saddam's Iraq and not the illegality of the US-led invasion. In that case, Iraq's 'Western Liberators' were more enthralled with the importance of a 'fair trial - justice being seen to be done', at the expense of socio-political and economic significance of that transitional process to the Iraqi people (Nagy 2008). Thus, the local ideals and relevance of the process were of lesser importance to the international community. What mattered to them was the creation of a one-size-fits-all technocratic model that did not incorporate the desires of the victims of the violent conflict in that country.

The reality that there can never be a one-size-fits-all mechanism that serves the needs of victims is an issue that transitional justice must come to terms with (Clark

2011). The fact that a mechanism works in one country does not mean it works everywhere, as the case of truth commissions established in Africa after the South African TRC demonstrate. For instance, although the TRC left a large footprint in Africa that many countries (Kenya, Sierra Leone, Liberia) after 1994 sought to emulate, the reality is that that it was not necessarily transferable to either of the countries undergoing periods of political change (Sriram 2009). Interestingly, the Kenyan Truth, Justice and Reconciliation Commission (TJRC) was almost a 'cut and paste' version of the South African TRC, even though the conflicts were very different. While the TRC in South Africa was created to address the historical injustices of apartheid, the Kenyan Commission was established in 2008 with a mandate to investigate gross violation of human rights, economic crimes, illegal acquisition of public land, marginalisation of communities and public violence between 12 December 1963 and 28 February 2008. The lesson here is that no two mechanisms can be expected to work in the same way in different contexts (Kiplagaat 2014). In other words, transitional justice needs to be contextualised and culturally sensitive to the realities of each specific post-conflict society. Considering local circumstances is important because these shape the justice narrative that 'speaks' to the reality of victims. Regrettably, imposing Western-dominated, top-down mechanisms inherently institutionalises transitional justice to the extent that those most affected by mass violence of the past 'are not in control of the processes that are designed and implemented to deal with their past' (Murithi 2016: 20).

To expand the investigation of Western-centric transitional justice approaches, the next section discusses the donor-driven conception of justice. It is important for this thesis because it pushes for a narrow conception of justice that marginalises broader notions that resonate with victims' circumstances.

2.3.3 Donor-Driven Justice

At the sharp end of the conflict, the reality of most post-conflict societies is that funding and the attendant logistical support comes predominantly from international sources (Muvingi 2016: 10). This was true in Rwanda, Sierra Leone, Kenya, Liberia and elsewhere. This international financial support commonly referred to as foreign aid or donor-driven support is usually accompanied by imposition of narrow models of justice

that are predominantly Western and Euro-centric. The concept of donor-driven assistance (also sometimes known as development aid) emerges from the field of international development. In its widest definition, it refers to 'all resources, physical goods, skills and technical know-how, financial grants (gifts) or loans transferred by donors to recipients' (Ridell 2007: 17). Its explicit focus is always on addressing humanitarian needs, poverty and vulnerabilities within poor communities. In his major critique of development aid, Ridell (2007), argues that firstly, in that transaction it is normally hazy why the transfer of resources is taking places, what the intended impact if going to be is, the extent to which the giving and receiving is voluntary or based on some conditionality and or coercion. Secondly, in most cases this relationship is based on the intentions of those who are giving the aid as opposed to those who are receiving it. Essentially, how much to give and the form in which it is given has always been donor-driven.

Within the discourse of transitional justice, although post-conflict contexts may vary, donor-driven transitional justice templates tailored to attract funding have been instituted around the globe. Recent examples of hybrid tribunals in Sierra Leone, Cambodia, East Timor, Lebanon—as well as the Extraordinary Chambers in Senegal—are cases in point (Méndez 2009). Hybrid tribunals (courts) incorporate both 'international and national features (judges, prosecutors and support staff) and apply a mix of international and national law' (Muvingi 2016). These mechanisms are insisted upon by the international community and—being a key requirement—must meet international norms and standards to win donors' trust and their financial support. With these international standards come international experts, scholars, practitioners whose performances and targeted outcomes are shaped by donor expectations and demands (Newman 2002). For instance, in Sierra Leone, institutional challenges relating to the recruitment of local staff—who were deemed by their international counterparts to be 'unqualified and redundant' (Ekiyor 2009: 156)—derailed the work of the commission.

These teething problems made conditions worse in Sierra Leone, as donors developed cold feet; when the major donor, the United Kingdom, froze its contributions to the United Nations Office of the High Commissioner for Human Rights (OHCHR), the process ground to a halt (Ekiyor 2009). The key architects whose mandate is to deliver this donor-driven conception of justice are donors (naturally) or Western-

funded civil society organisations whose justice tool-kits are advanced by their financial backers. These actors typically perpetuate Western-centric justice models that may be at variance with the victims' understanding and appreciation of justice. Inevitably, the fundamental challenge with these donor-driven models lies not only with how they are understood and internalised within post-conflict communities, but also with those that 'bring' justice to the communities affected by violent conflict.

Power is central to the debate about the relationship between those that 'bring' justice and the post-conflict communities to which justice is brought. By providing the resources, donors and other external actors assume a position of power over the intended recipients of justice—the victims. Transitional justice 'requires considerable human, financial and technical resources' (Thallinger 2007: 681) and most post-conflict societies lack the capacity to underwrite their own transitional justice processes due to the debilitating nature of the conflict they are emerging from. Since local resources are scarce or non-existent, transitional justice becomes a donor-driven project. The needs and expectations of victims are thus vulnerable to being overlooked or excluded. Needless to say, these donor-driven agendas are driven by set standards that are not value-neutral and predictably advance Western models of justice. This assertion is supported by Lundy and McGovern (2008: 277), who contend that donor-agendas are directed at 'reconstructing post-conflict societies in the image of Western liberal democracies, establishing such models as the ideal type and setting externally defined limits to the field of permissible action'. Therefore, the justice to be pursued in these post-conflict societies must be in the 'image and likeness' of the providers of the resources.

Post-genocide Rwanda provides an interesting case study of donor-driven justice. Major donors included the governments of Britain, Canada, Denmark, France, Germany, Japan, Norway, The Netherlands, Sweden and Switzerland and the United States. Additionally, multilateral organisations like the European Union (EU), the United Nations Development Programme (UNDP), the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Children's Educational Fund (UNICEF), to name but a few, opened offices in Rwanda after the genocide. It is estimated that by the end of 1994 more than 41 international NGOs were 'delivering justice' in Rwanda (Oomen 2005). This large influx of international actors brought significant challenges, most notable being competition, repetition, duplication and a lack of

coordination. As observed by Oomen (2005: 899) 'the overwhelming donor presence, led to a situation in which Rwandans often refused to participate in meetings without financial inducements'. The greatest casualty of these externally financed justice projects were culturally resonant, local justice models. Sadly, donor funds became a key determinant of what would be implemented within the transitional justice repertoire.

Studies have also shown that between 1988 and 2002, the amount of money poured by OECD[2] into development assistance associated with transitions rose from US$500,000 to US$ 581 million. This growth in law-related development assistance was also accompanied by 'prefabricated' justice packages, ready to be implemented in toto by countries in transition. According to Oomen (2005: 888–9), this intensive donor involvement, also cemented:

> [A] global trend toward the judicialisation of international relations that goes further than criminal justice in the wake of massive human rights violations. Since such justice processes were and/or are heavily financed by the nebulous entity called the international community, it has indeed become one of the "avenues" of international cooperation.

In fact, such well-financed justice projects have also partnered local institutions. Cardenas (2003) has noted that in most post-conflict societies, truth commissions or some other similar institution—working within the aegis of a national human rights body—are prescribed and endorsed with a lot of finance. However, such collaborations usually serve the conceptions of justice of funders, policy makers and elites, which may negate local initiatives. Arguably, Western, Euro-centric, donor-driven notions of justice suffer from the limits of the assumption of linearity. These western frameworks assume that since they influence models that come with donor-driven assistance, transitions will become neat and linear and therefore solved within those limits. Yet transitions are messy and complex—failure to appreciate this simply demonstrates that the needs and expectations of the victims of atrocity are negated.

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[2] OECD CRS Database on aid activities, http://oecd.org/dac/stats/idsonline

2.3.4 Challenges with the retributive model of justice

Another key limitation of the narrow conception of transitional justice is the prioritisation of retributive approaches to redress after mass atrocity. Retributive justice is based on a criminal approach that prioritises punishment of offenders. This model of justice is based on a theory of retribution, which underscores that the best response to a crime is a punishment proportional to the harm caused with the hope of restoring a proper balance (Clark 2008; Mohanty 2015). Since Nuremberg, international criminal tribunals (e.g., in Rwanda and the former Yugoslavia), hybrid courts (e.g., in Cambodia, Kosovo, Sierra Leone and Lebanon) and amnesties (e.g., in South Africa) 'have become relatively common tools of transitional justice' (Sriram 2009: 2). The mandate for these mechanisms is usually premised on prosecuting those who bear the greatest responsibility in the perpetration of gross violations of human rights—the so-called individual accountability mechanism (Teitel 2000; Sriram 2009; Gready 2011; Andrieu 2014). The major criticism of these models is that they promote victors' justice because the powerful generally evade accountability, while the needs of victims—including their strong desires for justice—is often compromised (Gready 2011).

However, advocates of retributive mechanisms of justice like the International Centre for Transitional Justice (ICTJ) assert that trials (especially of powerful people) are an integral component of transitional justice because they contribute to the strengthening of the rule of law by conveying a strong message that crimes will not be tolerated under the new (i.e., post-conflict) dispensation. This is said to have a curative effect (Andrieu 2014: 91). This curative effect is said to rest on the establishment of the truth, which serves to educate the entire society about the true nature of the past injustices and above all to 'promote a shared retrospective understanding' of what happened (Andrieu 2014: 91). This is based on the view that wrongdoing must be punished because '[a] wrongful act merits condemnation and punishment' (Mani 2002: 33). Further, supporters of this model hypothesise that a failure to punish perpetrators of past human rights abuses in effect condones their actions, which undermines the rule of law and invites repeat violations in the future (Benomar 1995). The rationale is that prosecuting earlier abuses has the capacity to create a 'clean break' from the past and buttress adherence to new democratic values based on the rule of law. It is also assumed that when trials are conducted in a way that mirrors victims' demands, they offer the prospect of

restoring dignity and delivering justice. In that endeavour, prosecuting individuals who served the departing regime remains a common pressing question for societies emerging from violent conflict (Albon 1995). However, Kostovicova (2014: 249), in her reflection on the trial of Slobodan Milošević, concludes that trials are a defective model in transitional justice because 'the voices of the victims were not heard'. The focus is mostly on the perpetrator and the demands of accountability and acknowledgement of the harms done.

In prosecuting perpetrators of violence where atrocities are widely committed under conditions of chaos and disorder, finding sufficient evidence to prosecute everyone responsible is almost impossible. This is one of the biggest dilemmas that can cause a rift between newly elected governments and victims still outraged by the 'official' repression of the past. Yet the question of criminal responsibility in its moral, legal and political dimensions is one that must be addressed if societies are to move forward and achieve justice. Several factors therefore restrict the number of available political and legal strategies (Huyse 1995). First, a full and widespread purge of those associated with the departing regimes can create permanent and bitter cleavages rather than healing the wounds the past has left behind. Second, if the judiciary was allied to the departing regime, reconstituting this body anew so that it is seen as untainted will cripple the criminal justice system. In practical terms, replacing the entire judiciary may be impossible, time-consuming and too expensive. In most jurisdictions, judges are employed with the security of lifetime tenure and therefore simply dismissing them because a new regime has assumed office presents enormous challenges. Oftentimes, dealing with the past under such circumstances will be 'slow in operation and ambiguous in contention' (Huyse 1995: 110). Third, in cases where the transition is based on compromise—and where the forces of the former regime still wield some power and control—amnesties usually take centre stage. The need to avoid confrontation and to nurture the delicate transition means criminal prosecution often gives way to a policy of forgiveness. That being said, 'too much forgiveness undermines the respect for the rule of law induces anger in those who suffered, and is an impediment to an authentic reconciliation and an invitation to recidivism' (Huyse 1995: 110).

The interplay between instituting amnesties in a concurrent process with a truth commission is full of challenges, as the case of South Africa has demonstrated. For instance, the proposed relationship between the criminal justice system and the TRC in South Africa was evidently compromised in many areas. In particular, the day-to-day interaction between these two systems was seen to cause interference with investigative work, especially where the parties were conducting concurrent investigations, which brought with it a lot of tension and discomfort (Gready 2011: 102). Additionally, since evidence obtained during the amnesty process was not admissible within the criminal justice process against the accused person, the amnesty proceedings were viewed as hampering criminal prosecutions. Even then, the lack of a complementarity framework between the TRC and criminal justice processes was deemed to have undermined the amnesty process. In all these challenges, the role and function of the victims was never part of the conversation.

In all these retributive processes, victims are largely relegated to the role of 'witnesses' who facilitate the prosecution of perpetrators. This usually takes place in a court or tribunal that is normally unfamiliar to the settings that victims are accustomed to. The language that these 'witnesses' have to be familiar to is so 'foreign' that victims struggle to fully participate or even follow proceedings. This adversarial process never places the victim at the centre, and therefore cements the argument that trials are in themselves 'too detached' from victims' notions of justice and may, in many cases, even be totally meaningless to those who suffered under previous regimes. For instance, Oomen (2009: 13) has observed that about 56% of the victims of the Rwandan genocide were not well informed and were generally negative about the ICTR because it was 'detached from the locality'. That the court was situated in a foreign country—it was based in Arusha, Tanzania—deliberating on circumstances of victims of the genocide, may have been a contributing factor in that resentment. In other words, it did not have meaning in their lives after the genocide. Victims' organisations were also very critical of the tribunal approach in certain sensitive matters. Its insistence on an 'adversarial approach in rape testimonies, disclosure of identity of certain witnesses as well as the lack of stronger emphasis on retribution' was also quite problematic for the victims (Oomen 2009: 14). These challenges within the retributive model demonstrate that the broadening of the understanding of justice from the perspective of the victims becomes essential. The South African TRC, the Special Court in Sierra Leone, the Chilean TRC,

and the Kenyan Truth and Justice Commission are some of the examples of transitional justice mechanisms that have eschewed the retributive justice route. These models, though with their own challenges, went to great lengths to include victims in certain aspects. However, victim participation in the design and implementation of these institutions was non-existent.

2.4. Toward a Wider Conception of Transitional Justice

With the narrow conceptions of justice clearly limited in their application, widening the notion to include, among other things, victims' own perceptions is a more persuasive proposition, one that as mentioned this thesis attempts to articulate. As demonstrated in the sections above, the narrow and restrictive frameworks simply perpetuate the limitations that transitional justice has been roundly criticised for. Hence, a wider, richer and deeper conception of justice 'with many faces' is called for. This expanded view of justice must be sufficiently comprehensive that it assists in the transformation of oppressed societies into free ones by addressing the injustices of the past through measures that can produce an equitable future (Arbour 2007). Such a conceptualisation could widen the space for justice in the widest sense to incorporate social, political, economic and cultural aspects (Mani 2008). This expanded conceptualisation of justice should consider the complexities of post-violence societies as highlighted by Hayner (2002: 4):

> We must ask: what form of justice is due for the victims of the crimes,
> especially those who suffered severe physical and psychological injury,
> or whose economic means have been disrupted, such as through loss of
> a breadwinner? What would be an appropriate form of justice for whole
> communities that have suffered or been destroyed?

While the dilemmas posed above mirror the complications of arriving at a conception justice—particularly within the transitional or post-conflict context—it is victims' personal, family, community and, indeed, collective suffering that should inform the varied conceptions of justice that this thesis advocates (Hoogenboom 2011). The inescapable reality is that 'faced with each new instance of violent conflict, new solutions must be devised that are appropriate to the context, history and culture in question' and indeed

justice is no exception (Huyse 2003: 1). Victims are affected by violence in distinct and varied ways, a variation of experience that shapes individual understandings and expectations of justice (Clark 2008: 333).

The proponents of a broader approach are best exemplified by Roht-Arriaza (2006: 2) who defines transitional justice so broadly as to include practices, mechanisms and concerns that are aimed at confronting and dealing with the past violations in both human rights and humanitarian law. In buttressing this argument, Mani (2002) and Nagy (2008) propose a threefold approach premised on reparative justice: (1) restoring the rule of law through reforms to prisons, police and judiciary; (2) rectifying human rights violations through trials, truth commissions, reparations and traditional mechanisms and; (3) redressing the inequalities and distributive injustices that underlie war. This approach is accepted within the peace discourse, as it encompasses the importance of local knowledge, context and culture in the design of the peace architecture. As noted by Powell (2010) the proponents of the expanded view of transitional justice beyond the narrow focus concur that any account of justice that negates the relationship between structural inequalities and the conflict is selective and irresponsible

2.4.1 International vs Local Dichotomy of Transitional Justice

This section discusses the tensions between the international and local notions of justice after conflicts have ended. It emphasises the centrality of incorporating local, culturally resonant notions of justice that reflect victims' circumstances in the interests of a broadened theory and practice of transitional justice. The importance of the local context is best exemplified by the words of Kofi Annan, then Secretary-General of the United Nations (2004: 17) who observed that:

> Ultimately no rule-of-law reform, justice reconstruction, or transitional justice initiative imposed from outside can hope to be successful or sustainable […] due regard must be given to indigenous, informal traditions for administering justice or settling disputes, to help them continue their often vital and tom do so in conformity with both international standards and local tradition.

This statement demonstrates that justice models imposed from outside are seen—for all intents and purposes—as culturally alien by those who will live together after conflict, have serious challenges in the long term and may become the object of frustration and resentment (Sharp 2016: 142). Citing the findings of his research in Rwanda and Uganda between 2003 and 2013, Clark (2014: 1) has concluded that 'all justice is local', given the changing nature of mass violence. He argues that most victims of mass violence identify principal perpetrator or a 'specific individual, the one they personally knew, who had wielded the machete or thrown the grenade, not the faceless official who may have ordered the violence'. Since these perpetrators and victims of intimate violence typically live in close proximity after the conflict has ended, the nature of justice instituted during transition has to be 'intimately bound up with context-specific history and culture' (Sharp 2016: 142). Muvingi (2016: 11) buttresses this point, arguing that since conflict and post-conflict situations are diverse, history, cultural practices play a key role before and after the violent conflict. In other words, local history, culture and circumstances influence the perceptions of justice of those who live there. In sum, local contexts and conceptualisations are paramount in victims' perceptions and expectations of justice.

In post-conflict societies, the local cultures and capacities of victims of atrocity have fallen victim to the narrow frameworks of justice premised on international imperatives. For instance, in Sierra Leone, Rwanda and elsewhere there has been visible grassroots resistance to these internationally established institutions and processes (Meith 2013). In an ethnographic study conducted in Sierra Leone on the Special Court,[3] Meith has demonstrated how the Western and donor-driven concept of retributive justice made the work of the Court completely irrelevant to the needs and expectations of justice of locals. This assertion is shared by Ekiyor (2009: 168) who observes that while it is vital that experiences from other transitional justice contexts are shared, 'it [is] important that each process is conceptualised with due attention to the culture, needs, behaviour of people in that country'. The Sierra Leonean conceptualisation of justice based on compensation and returning victims to the *status quo ante* was never

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[3] The Special Court for Sierra Leone was established at the prompting of the United Nations and the government of Sierra Leone. The mandate of the Court was to 'prosecute persons who bear the greatest responsibility' for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone between 1991−2002.

pursued by the Court (Meith 2013). To that end, locals had serious problems with the *modus operandi* of the Court, in particular processes like amnesties, which were viewed as literally 'forcing' them to live together with perpetrators, in time and space (Meith 2013). Overall, the disjuncture between the pursuits of these internationally-acclaimed notions of justice at the expense of local imperatives had a profound effect on the acceptance and relevance of the court, particularly its failure to resonate with the contemporary challenges and continuing injustices within the Sierra Leonean body politic (Meith 2013).

In the case of Rwanda, the disconnect between the international and local or domestic imperatives are best captured by two examples. First, while the International Criminal Tribunal for Rwanda (ICTR) managed to produce ground-breaking case law underscoring that rape and sexual violence constituted essential elements of the crime of genocide, it nevertheless remained an institution far outside the reach of ordinary Rwandese society (Palmer 2015). The court's 'detachment from locality' led to negative perceptions within the country about its work and relevance for victims of genocide (Oomen 2009). The unintended consequence was that the Rwandese victims lacked the capacity and the comfort to connect with a court seen as targeting 'big fish'. Collectively these resentments stemmed from the fact that the international approaches underpinning these processes of transitional justice relegated locals to the status of victims to be emancipated and the perpetrators as prosecutable entities, whose contribution to the reconstruction of their future remains at the mercy of the international community (Madlingozi 2010: 211).

The tension between international and local notions of justice were also apparent in contexts like Rwanda, Uganda, Sierra Leone and Mozambique where traditional mechanisms were preferred at the expense of Western, Euro-centric and donor-driven institutions. Local mechanisms—for instance the *gacaca*[4] in Rwanda—were roundly criticised by leading international human rights organisations like Amnesty International (AI), Human Rights Watch (HRW) for failing to meet international legal principles of due process (Clark 2016: 79). Other criticisms emerged from leading scholars in the field of transitional justice like Lars Waldof and Bert Ingelaere, who condemned

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[4] The *gacaca* courts were a mechanism of community-led justice initiative based on the Rwandese tradition. These were adopted in 2001 as a way of promoting communal healing and rebuilding after the 1994 genocide.

the *gacaca* for its 'lack of legitimacy within affected communities'—in other words, that it was not 'strictly traditional or indigenous' (Clark 2016: 74). Other critics argued that although the *gacaca* courts were widely acclaimed to have been a success, the participatory nature and its traditional orientation, as noted above, were called into question. Its highly formalised rules of procedure stood in stark contrast to informal grass-roots processes and therefore it lacked traditional authenticity (Cobban 2002). In their characterisation, Engle, Miller and Davis (2016: 158) have observed that the 'g*acaca* was defined as a local, designed by the national and produced by the international'.

In Uganda the traditional justice mechanisms were criticised on two fronts. First, the *mato oput*[5] was criticised for treating the opinions of the Acholi people of northern Uganda as monolithic—not all of them were against the intervention of the ICC. Second, since the conflict in northern Uganda has spilled across borders into South Sudan, Chad, Central Africa Republic, instituting a traditional mechanism of one ethnic group across different countries and cultures may present serious challenges (Sharp 2017). Although a fully-fledged discussion on the merits and shortcomings of the *gacaca* and *mato oput* is not the central concern of this study, highlighting them nevertheless advances the argument that the donor-driven, Western and Euro-centric views of justice are overly 'thin'. Furthermore, Clark (2016: 86) has noted that

> community-based approaches to justice such as *gacaca* have provided innovative responses to mass violence and have gained substantial legitimacy among affected communities because of its ability to do justice to community-level perpetrators and to pursue broader social objectives including truth and reconciliation.

It is true that no system of justice is perfect and the *gacaca* and *mato oput* fall into that broader observation. However, the nature of the violence perpetrated in Rwanda, Mozambique and Sierra Leone mandated a more nuanced, context-specific model of intervention that could reach into the individual and collective consciences of those that suffered the brutality of the genocide in order to facilitate their participation in justice processes (Clark 2011; Hirsch 2009).

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[5] *Mato oput* are local, tradition-based restorative practices among the Acholi people of northern Uganda. They are presided over by local chiefs and elders with the intention of reconciling a perpetrator or his clan with the offended clan or community.

As concluded by Hirsch (2009: 214), a comparative analysis of the Sierra Leonean and Mozambican experiences shows that the decision on which model of justice to adopt after mass atrocity is context-specific and must be driven by citizens of a country rather than the international community (Hirsch 2009: 215). Therefore, despite the fact that the international community (external actors) may be critical in the development of local accountability mechanisms, locals—as Hayner (2002: 7) has noted—'should always lead in the design of the transitional justice agenda and the shaping of the preferred policy options'. Inevitably the critical questions around the design, mechanisms to be adopted, process and timing should be addressed by national actors first (with external actors as supplemental), so that policy imperatives have a national character and are owned by the locals. In that regard, the meaning of justice must therefore be grounded 'in the flux of local life' (Burgis-Kasthala 2013: 515). This is not to romanticise local context but to acknowledge that ignoring local preferences of justice prevents both the theory and practice of transitional justice from acquiring the broad-based, global legitimacy it arguably needs to thrive (Sharp 2017: 143).

In East Timor as well, locals found transitional justice imposed without any consultation among those affected on the ground (Stanley 2010). In many instances, transitional justice is introduced with little regard for internal socio-political dynamics and is divorced from the 'lived realities of those who will live together after atrocity', to the extent that locals are only included in the process at the level of implementation (Nagy 2008: 275). Their perceptions, understanding and expectations of justice are never solicited and considered. They are often 'forced' to acquiesce in external, expert-defined, donor-driven, Western concepts and frameworks. As argued elsewhere in this section, oftentimes such paternalistic impositions prompt a backlash from locals. In fact, Goetschel and Hagmann (2009) argue that because of the preponderance of international norms and standards transitional justice policies produce a problematic division of labour wherein the Global North defines and finances transitional justice projects which are supposed to be absorbed and implemented by the Global South. This only serves to show how Western-oriented approaches to achieving justice often crowd out local initiatives for promoting justice after mass violence.

More so, in transitioning societies, national justice systems are often 'aloof and unapproachable, corrupt, tainted, ineffective, overwhelmed or incapable of responding

to the needs of transition' (Lambourne 2009; Jeffrey & Jakala 2015: 47). Due to this focus, transitional justice is typically state-centred, elite-driven and organised conceptually and politically along the lines of the nation-state. Such an approach may be an affront to local realities, historical developments and the attendant socio-economic, political and cultural conditions in which those transitions occur (Colvin 2008).

To conclude this section, the preponderance of Western-dominated and donor-driven packages reflect the struggle that transitional justice has encountered in closing the gap between local initiatives and international imperatives. Since transitional justice is concerned with restoring justice to those who were denied it in periods of mass atrocity, it is essential that an in-depth contextual knowledge of the societies under transition is grasped by the international community. The design and implementation of transitional mechanisms must be locally-influenced, adapting to specific contexts exploring existing informal models of resolving conflict, customary laws, religious and other cultural institutions. The prioritisation of the 'discourse of the locals'—which seeks to strike a balance between international standards, on the one hand, and local, cultural and justice practices on the other —is what this thesis advocates for. This is in line with the growing discourse in transitional justice processes — 'fascination with locality' emerging from experiences in East Timor, Sierra Leone and Mozambique (Shaw & Waldof 2010: 4). Therefore, with careful scrutiny, tradition-based practices can create transitional justice mechanisms and processes that are 'contextually-specific, locally owned, and deeply resonant with a local sense of what it means to 'do justice' in times of transition and beyond (Sharp 2017: 86).

2.4.2 Socio-Economic Dimensions of Transitional Justice

In this section, the notion of socio-economic justice is expanded to cover other forms of justice that are financial, material, compensatory, reparatory and distributive. It begins by providing a broader argument for the inclusion of socio-economic dimensions in the theory and practice of transitional justice. It then follows this up with discussions around other key components like reparations, restitution and distributive justice that are central to the needs and expectations of victims. This section is important because it highlights why employing a narrow conception of transitional justice inevitably leaves out the socio-economic issues that were at the centre of the conflict thus clearly

underestimating the entrenched deprivation of victims perpetrated by the previous regimes. The effect of such a misnomer is evident in contemporary South Africa where the apartheid socio-economic disadvantages have been 'reproduced, if not accumulated over generations' (Bundschuh 2015: 11). In order to expand the discourse on transitional justice from its narrow and minimalist to wider and broader debates, the socio-economic considerations have, of late, featured quite significantly within the transitional justice discourse (Miller 2008; Schmid & Nolan 2014). Sharp (2013) observes that over the last three decades violent conflicts have had a huge impact on the economies of many societies.

While there has been tremendous focus on the harms caused by physical violence, minimal attention has been paid to the 'harms caused by economic violence including violation of economic and social rights, corruption, plunder of natural resources and other economic crimes' (Miller 2008: 266). Because transitional justice emerged and evolved as a way of holding perpetrators accountable and compensating victims, its response to the emerging dilemmas of structural injustices warrants a reappraisal of normative assumptions. Such a realisation reverberates with Powell's (2010: 248) observations that transitional justice 'should do more for justice in the face of actual injustices that are remediable'. The import of that observation is that if the injustices were caused by socio-economic challenges, then transitional justice must broaden its lens in trying to bring a fair restitution to victims of such injustice. This thesis advocates a broadening of transitional justice to ensure that justice is not merely 'brought'— as Powell alludes to above—but that victim's expectations for socio-economic redress are also incorporated into the design and implementation of mechanisms and processes that follow at the end of the violent conflict. Inevitably, the normative change required demands a fresh sets of measures better suited to meeting victims' demands for justice in transition. The fact that these measures must be informed by victims' own understanding and interpretation of justice cannot be over-emphasised.

To further extrapolate on Miller's 'sins of omission', this thesis argues that relegating the issues of economic violence and its concomitant consequences may be problematic in designing justice approaches that are victim-centric after the conflict. This is because failing to consider the underlying socio-economic structures of the conflict

may affect the socio-economic choices undertaken to remedy the situation. For instance, because truth commissions in Chile and El Salvador focused on the 'most serious' crimes (which were of a physical nature), the recommendations and the attendant remedies that emerged failed to consider the economic implications for the future (Buergenthal 1994). To further buttress this point, the South African TRC, though endowed with a mandate to investigate the socio-economic implications of apartheid, narrowed its enquiry to gross violations of human rights (Asmal 2000). In its final report it also failed to highlight the centrality of the socio-economic factors as a fundamental cause of the injustices perpetrated by the apartheid machinery. Clearly there has been insufficient progress on key measures of economic development for most of South Africa's poor black communities since 1994 (Asmal 2000: 12).

However, in the recent past there has been noticeable consideration of economic violence as a key component of the transitional justice processes in Africa and other parts of the developing world. The truth commissions in Chad, Liberia and Sierra Leone, for example, had broad mandates to include issues related to the socio-economic consequences of conflict and provided recommendations to address them (Liberia TRC Report 2009: 259,274; Chad Commission of Inquiry Report 1992: 85; Sierra Leone TRC Report, Volume 3B 2004: 3–514). This could be useful in benchmarking the theory and practice of the economic implications of transitional justice to ensure that victim-centric approaches are adopted. Such an approach may also influence 'a forward-looking' intervention fostering more democratic and inclusive societies after the violent conflict. As noted by Powell (2010: 235):

> If the economic and social structures that contributed to the conflict are not addressed, inequalities in the society will survive intact despite any political settlement that is reached, and will pose a latent threat to one of the chief goals of transitional justice, non-repetition of atrocities.

This observation highlights how failure to consider socio-economic challenges means transitional justice may be limited in addressing the needs of victims.

South Africa is a clear case in point. The fact that the TRC focused on individual human rights abuses at the expense of the massive socio-economic injustices that characterised the apartheid machinery underscore the concern. Contemporary South Africa

suffers massive inequality, tense race relations, and incessant violence (including very high rates of gender-based violence), all of which may be seen as legacies of the oppressive apartheid system. That these injustices continue unabated decades after the end of apartheid speaks volumes about the failure of the transitional justice paradigm to address the socio-economic challenges of the conflict. Needless to say, such a failure has left victims in the same predicament they were in before transition (Du Toit, Woolard & Nyoka 2015). In her research in Rwanda, Cambodia and East Timor, Lambourne (2014) has concluded that the failure to meet victims' basic needs was 'a significant impediment to peace and reconciliation'. In Sierra Leone victims also referred to extreme levels of poverty and lack of development as factors in their sense of injustice (Ekiyor 2009).

These examples show that paying attention to the economic and social dimension of victims requires a paradigm shift within transitional justice discourse (Schmid & Nolan 2014: 379). Failure to incorporate the socio-economic dimensions has the unfortunate reality of 'treating inequality or structural violence as contextual background rather than central issues to the transition or reducing the economic concerns to a narrow discussion of reparations' Miller (2008: 266). This is because economic violence and economic justice have been considered merely peripheral and only useful in understanding why such violence took place. Miller (2008: 272) describes this as the 'sins of omission in literature'. She posits that these 'sins of omission' occur because of the 'seductiveness of using a "backward looking" project of transitional justice' at the expense of a more forward-looking, progressive justice that foregrounds socio-economic issues (Miller 2008: 273).

2.3.2.1 Reparative justice: Reparations, Rectification and Restitution

Considering the socio-economic circumstances of victims and the remedies available to them is an important in transitional societies. In designing such remedies, repairing what has gone wrong in order to benefit the victims becomes paramount. Most importantly, the design of such remedies must be viewed through the lens of justice as it is defined and understood by victims (Laplante 2014). Reparative justice draws on the concept of remedy as defined within the framework of international law (Shelton 2005). In that context—and more particularly the law of state responsibility—reparative justice is broadly understood as:

the various means by which a state may repair the consequences of a breach of international law for which it is responsible […] that is to redress individual harm from human rights violations: reparations, restitution, compensation, satisfaction and guarantees of non-repetition' (United Nations 2006: 19–23).

It is thus a generic term describing the various methods available to a state to discharge or release itself from responsibility for a breach of international law. Essentially the primary function of reparative justice—implicit in the provision of effective remedies under international law—is to 'right the wrong' done to a victim or the injustice they have suffered and restore them to the condition they would be in had the violation not taken place. Thus, the sole purpose of reparative justice is to return the victims to the *status quo ante* (original position) through *restitution in integrum* (returning to the victim all they have lost) (Shelton 2005). This principle is what underpins the notion of rectificatory justice premised on reparations and restitution. Its prime focus is to restore parity between the perpetrator and the victim by imposing a penalty that is proportional to the crime committed and the harm suffered (Roht-Arriaza 2004).

To further clarify the points made above, the concepts of reparations and restitution—often discussed in terms of 'corrective' or 'rectificatory' justice—emerge from the principle of civil remedies grounded in classical thought (Englard 2009). Both reparation and restitution have the same root: restoration which is a form of compensation or rectification. Restitution refers to restoring what has been lost or taken away while reparation is the restoring something that has been damaged to its original, or near original, condition. Reparations are due when an object or a relationship is broken irrespective of whether or not an injustice has occurred.

However, from a traditional perspective, the idea of repair is predicated on the assumption that one party has wronged another in terms of a violation of justice (Walker 2010). Alternatively, traditional concepts of restitution contend that the one who has created a wrong has a duty to return what has been taken to its rightful owner. In that regard, there must be a wrongdoer who is credited with creating the injustice—the one who bears the responsibility for restoring the loss by providing restitution. It is also noted that 'the object of reparations should be to wipe out, as far as possible, all consequences of the illegal act and re-establish the situation which would in all probability

have existed if the act had not been committed' (Shelton 2005: 52). The fundamental aim of reparations as founded in international law should mirror the logic behind national remedies: 'to make good the injury caused to persons or property by a wrongful act' (Shelton 2005: 52). Providing remedies for past crimes thus represents the state's 'most tangible manifestation' to remedy the harms suffered by victims (De Greiff 2006: 2). Such remedies should both be forward- and backward-looking and place moral, rather than material, reparation at the core (Roht-Arriaza 2004: 122). Consequently, as an 'effort on behalf of the victims', reparation represents a balancing act between acknowledging the wrongs committed without necessarily victimising the victims.

Although reparations have become integral in transitional justice practice in the last few decades, they have remained controversial and contested (Moffet 2016). Therefore, narrowly constructing reparation programmes without the full participation of the victims in the design can be problematic. One of the major challenges is repairing injustices that occurred a long time ago, especially those induced by colonialism, such as violent land conquests. Under such conditions, imagining what life would have been like for victims if the injustice had not been committed is quite a challenging feat. The likelihood is that new 'injustices' will occur where the reparative model fails to satisfy the victims. As argued by Waldon (1992: 12), if redressing past injustices is likely to affect the current well-being of victims, then redress should not take place. Therefore, transitional justice's attempt to repair something that cannot fixed and to return to a situation that has forever changed clearly misses the point of justice from the perspective of the victims (Waldon 1992).

The second complexity of reparations is that the damage done to a society is, in most cases, too extensive to quantify in monetary terms. This is not to suggest that reparations are only configured in monetary terms and not in other, symbolic ways. In South Africa, where whole communities were displaced under apartheid, designing reparative models that respond to the needs and expectations of the victims has been politically contentious (Colvin 2006). The magnitude of the victimisation induced by collective violence has continued to pose serious logistical challenges over determining beneficiaries to ensure that the reparations are both effective and meaningful (Colvin 2006). Even though reparations featured prominently in negotiations to end apartheid, the government that took over in 1994 has failed to make adequate provisions for them

despite receiving recommendations from the Committee on Reparations and Rehabilitation (CRR) of the TRC (Colvin 2006). In this context, one can argue that reparations have become a political issue used to the benefit of elites as opposed to the intended beneficiaries: the victims. For instance, in the period prior to local government elections in August 2016, advertisements were published in local newspapers by the TRC unit for children of victims with a reference (commonly referred to as TRR) number to apply for education grants. Such advertising, it can be argued, was intended to drum up support for the ANC in those elections, thus alienating those that never appeared before the TRC and sending a political message of the value of certain victims over others within the new political order (De Greiff 2006).

The third and most challenging aspect of reparations is to define who is a victim and therefore eligible for compensation. The fluidity of the victim–perpetrator dichotomy in extended conflicts—discussed in greater detail below—produces enduring challenges in deciding who qualifies and who does not as well as the nature of reparations. Competing narratives of victimhood and attendant entitlements are quite complicated given that victims often became perpetrators when exacting revenge during the conflict. Narratives of the 'ideal' victim—one who suffered innocently, deserves unconditional sympathy, support and reparations—may dominate post-conflict societies yet collective violence is normally complex (Morrissey and Smyth 2002). While the notion of the complex victim has not featured prominently in transitional justice discourse, because most countries establishing reparations programmes emerge from state-sponsored injustices like South Africa, this thesis contends that interrogating such concepts is important in developing a nuanced approach that better responds to competing narratives of victimhood. Such prioritisation would respond to Bernath's (2016: 46) observation that, 'the complexity of victimhood in contexts of mass atrocity poses vexing questions to TJ scholars and practitioners that have yet to be addressed'. Yet the centrality of reparations to victims of mass atrocity was aptly captured by the Sierra Leone TRC, which state that: 'for victims, reparations are important in acknowledging and remedying the suffering as well as providing tangible means to improve the quality of life' (Sierra Leone TRC 2004: 40). It follows that victims must be at the forefront of the formulation of reparation policies and programmes and their subsequent implementation.

2.3.2.2 Restitution

As highlighted above, the central components of the concept of restitution are the restoration of something to its rightful owner or alternatively its original state—the *status quo ante*. Where restoration is discussed as a moral concept, it furthers the idea of a wrong being rectified. Rectification is thus one of the most important moral means to right a wrong. However, the notion of righting a wrong does not always reflect a return to the *status quo ante* as injustices of a moral nature cannot be undone or restored to a prior situation—these violations are, in this sense, immutable. Some other form of compensation is therefore needed to 'right the scales of justice'. In the context of transitional justice, the concept of restitution focusses primarily on the historical wrongs occasioned by oppressive regimes or other perpetrators of heinous crimes (O'Donnel 2011: 51). In that regard, restitution becomes important in not only 'the reconstitution of individual or group identities but also crucial in the successful completion of transitional justice processes' (O'Donnel 2011: 50).

In South Africa, the dispossession of land was a crucial vector in the subjugation of the African in the colonial and apartheid eras (Budlender 2010). Such dispossession was carried out by violent conquest, which inevitably led to the separation of families, the rupture of communities, dehumanisation and the obliteration of identities. As aptly captured by Atuahene (2014: 2):

> the bulldozers that razed Kliptown did not just demolish physical buildings, they destroyed Adanna's vibrant community, stole her inheritance and denied her dignity. The destruction and relocation was part of apartheid's strategy to subjugate blacks and cement their position as sub humans in the polity.

Thus restitution of the *status quo ante* for victims under such circumstances is impossible and therefore a form of compensation to 'right wrongs' becomes mandatory over and above returning victims to their original lands, where possible.

This thesis advances the argument that both reparations and restitution are an important part of transitional justice in their broader goal to 'repair harm', provide remedies and acknowledge the suffering of the victims of mass atrocities. As argued by

Teitel (2000: 119) such restitution and reparation must 'include all aspects of compensation of victims who have been harmed during war or mass atrocity'.

Although reparations have become a normative part of transitional justice, defining who is a victim and therefore eligible for reparations is often contested and controversial (Moffet 2016: 146). As canvassed further below, these controversies arise because perpetrators and victims do not fall within neatly defined categories after mass violence. However, given that transitional justice has been rooted within the normative frameworks of justice that are legalistic and top-down, implementing reparation programmes that address the needs and expectations of the victims remains important. More so, since most violent conflicts emerge from the deep-rooted socio-economic inequalities, reparative justice programmes that respond to these structural problems 'not only repairs the harm suffered by victims, but also prevents new cycles of violence (Laplante 2014: 77). It is this thesis' take that such programmes must adopt a maximalist approach encompassing all manner of reparative justice aims discussed above to ensure that they do 'no further harm to those they intend to benefit'(Rubio-Marín and de Greiff 2007: 331). This thesis therefore further underscores that victims must participate in the process of designing and implementation of reparative justice processes and mechanisms.

2.3.2.3 Distributive justice

In order to widen the conception of transitional justice, this thesis accentuates the argument that inclusion of distributive justice is a fundamental component in addressing the needs of victims. Prioritising this is important because in most societies emerging from mass violence, greater emphasis has been placed on corrective justice at the expense of distributive concerns (Bergsmo et al. 2010). While the focus on specific atrocities and their direct consequences is an important aspect of addressing the legacy of violence, these have largely remained backward-looking and within the narrow frameworks of transitional justice. Inevitably, such a focus has tended to leave out the economic impacts of violent conflicts and the role that distributive justice plays in addressing the roots causes of many conflicts—particularly around poverty, inequality, wealth distribution and land expropriation (Aiken 2016) Yet studies have shown that economic growth addressing the present needs of post-conflict societies contributes immensely to

the attainment of sustainable peace, promotion of guarantees of non-repetition and attenuation of 'institutional inequalities that causes social dislocation' (Kamau 2016: 25; see, also Bergsmo et al. 2010).

The notion of distributive justice emerges from John Rawls' theory of justice. It is based on the idea that 'society is a system of mutual cooperation and advantage between individuals' (Rawls 1985: 223). In his conception, Rawls argues that the principles of justice must define the appropriate distribution and weights of social cooperation. In other words, fairness and equality must underpin social organisation and interaction. It is important to underscore that Rawls did not expect his theory of justice to have unqualified and uniform application. He did, however, recognise the existence of conditions that impact on on how justice is implied in practical situations.

Two key principles underlie such a conception. First, a central tenet of Rawls' conception of justice is that every individual must enjoy the full range of rights which are compatible with the basic liberties of others (Kamau 2016: 50). This tenet has been unachievable in post-conflict societies since on the one hand, deprivation of rights and liberties for instance was at the core of apartheid and on the other, the post-apartheid scenario exude circumstances that inhabit such enjoyment. Second, the principle of justice as fairness requires that any inequalities in a society should be designed in such a manner that they are to the greatest benefit of the least disadvantaged. Reality on the ground—particularly structural and material inequalities in South Africa and around land rights in Kenya—have shown to be debilitating and even dehumanising (Kamau 2016; Aiken 2016). As noted by Mofokeng (2008), post-transition processes like reconciliation may be impossible to accomplish because real and tangible economic redistribution—which would enable material improvements in victims' lives—remains unaddressed in the new polity. Since these principles, when juxtaposed with the realities on the ground, are clearly unachievable, it therefore calls for corrective notions of justice that are underpinned by a distributive element.

The centrality of distributive justice in its attempts to tackle the structural factors that contributes to the escalation of conflict into violence cannot be over-emphasised (Kasapas 2008: 66). Recent research in Liberia and Sierra Leone has demonstrated that in most post-conflict societies, the knee-jerk reaction to establish trials and truth commissions was a 'low priority' for victims of mass violence, with only 5% of

the respondents recommending the adoption of these Western mechanisms (Sirleaf 2013). The research further demonstrates that victims preferred a more transformative form of justice that 'places meeting basic needs central to their survival including food, health, shelter, sanitation and education' (Sirleaf 2013: 1). In Liberia, a study by the Human Rights Centre at the University of California in 2011discovered that 45% of victims prioritised 'the provision of housing and education' while 65% preferred financial compensation (Vinck et al. 2011: 3). The report reveals that 64% viewed greed and corruption as the causes of the conflict while 30% and 27% attributed it to poverty and inequality, respectively (Vinck et al. 2011: 3). In a country where 78% of the population were victims, these findings demonstrate that the Western, Euro-centric normative framework of transitional justice premised on trials, truth commissions and other top-down mechanisms has not been designed to address the root causes of conflict. It is this thesis' contention that under these circumstances, such mechanisms will inevitably struggle to respond to the peculiarities of victims of mass violence. Hence a thicker and wider conception of justice—one that transcends the limits of legal institutions but is geared toward addressing the underlying causes of conflict and placing victims at its core—needs to be adopted within transitional justice theory and practice.

2.4.3 Restorative Justice and Reconciliation

This section discusses the notion of restorative justice and its linkages to the concept of reconciliation. It begins by laying out the theoretical framework of restorative justice, its key principles and how its focus on the victims is central to the main argument of this thesis. It highlights the centrality of victims' cultures as an important component of addressing their justice needs after conflict has ended. Finally, it proposes a radical shift from the Western-centric, top-down conceptions of justice in the design of restorative mechanisms and processes to one informed by the perceptions of the victims. Thereafter the section dovetails into a discussion of reconciliation, first highlighting the restorative processes' potential to inform reconciliation processes and then the contestation around defining the concept of reconciliation—especially given it is typically cast as both goal and process.

In widening the dimensions of transitional justice available to victims of mass atrocity, restorative justice has received rave views for its ability to focus on justice

from the perspective of victims. As an approach to justice after mass atrocity, its fundamental goal is the restoration of social relationships, 'to repair the harm' inflicted on victims and to restore their dignity and recognise their suffering (Laplante 2014: 72). One of its major principles is that people most affected by crime and violence must participate in its resolution because crimes are a violation of people and their relationships— 'justice therefore entails the involvement of the victim, offender and the community in promoting repair, reconciliation and reassurance' (Zehr 1990: 181). At the core of restoring relationships after conflict is the promotion of healing through structured frameworks that involves victims, offenders and the community (Gilbert & Settles 2007). This proposition ties in very well with the broader argument advocated in this thesis—namely, that the victims' perspective on justice must be prioritised in the resolution of mass violence. It comprises a range of non-judicial tools encompassing 'truth commissions, commissions of inquiry, reparations, compensations, apologies as well as traditional informal practices such as the *gacaca* and *mato oput*' detailed earlier (Kostovicova 2014: 257). Of all these models, the truth commission has become the most popular mechanism and has been adopted in many post-conflict contexts for instance in South Africa after apartheid; in Chile at the end of the Pinochet dictatorship; in post-conflict Liberia and Sierra Leone as well as in Ghana after the end of military rule (Nkansah 2011: 158). A direct rejection of the retributive model discussed above, Marshall (1999: 5) defines restorative justice as 'a process whereby all parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future'. While its historical roots were premised on ordinary interpersonal wrongful acts, recent studies have demonstrated how it can apply in places where mass atrocities have occurred (Villa-Vicencio 2000: 68).

In transitional societies, restorative justice is important because it places greater emphasis on the victims in answering the questions about what must be restored and how. For instance, the Sierra Leone TRC prioritised restorative justice as a means for 'restoring relations between victims and perpetrators and between perpetrators and the community to which they belong' (TRC Report 2004: 434). Within restorative justice processes, victims are recognised as 'stakeholders' and they participate in repairing harms caused by violence, fostering self-respect and restoring dignity (Doolin 2007: 432). Victim recognition is also important in addressing the loss of dignity and power

that result from the dehumanising nature of mass violence. By participating in restorative justice initiatives, victims 're-define their relationship to the world around them [… by exercising] power over the way in which justice is carried out, to have a say in what must be done to "right the wrong"' (Hill 2009: 115). Needless to say, the definition of relationships here takes places within contexts local to the victims. Hence influencing the justice options, goes to great lengths to ameliorate some of the pitfalls posed by the narrow, Western, donor-driven conceptions of justice. Such widening of the justice options is centred on the flexibility of restorative justice particularly its reliance on the ability of victims to define the parameters of justice that best captures their local, customary and cultural contexts as exemplified by the traditional mechanisms of *gacaca, moto oput* and *nahe biti boot*[6] (Babo Soares 2004: 21; Rose 2008). This participatory approach to transitional justice—wherein victims have control over the design of the processes and mechanisms—dovetails into what Lundy and McGovern (2008: 265) refer to as a radical shift away from the top-down, one-size-fits-all approach in order to allow victims' voices to be 'heard and heeded'.

The potential for restorative processes to foster reconciliation is well established within transitional justice discourse (Clark 2008). Yet its objectives both as a goal— 'something to achieve'—and a process— 'a means to achieve that goal'—is hugely contested within the transitional justice literature (Kritz 1995; Bloomfield 2003: 12; Hoogenboom & Vieille 2010). For instance, Tutu's (2003) assertion that truth is at the heart of reconciliation—when juxtaposed with Rigby's (2001) argument that justice is at the core of any reconciliation effort—demonstrates the complexity of this notion. Whether truth leads to reconciliation and vice versa, or reconciliation leads to justice and vice versa or indeed as a continuum —that truth leads to justice and then to reconciliation —represents a web that theory and practice has indeed struggled to entangle. As if to underscore this point, Mamdani offers a cynical questioning of the role of reconciliation in the South African process: 'if truth has replaced justice—has reconciliation then turned into the embrace of the evil?' (Krog 1998: 112). This clearly shows the delicateness of this concept in the context of victims of mass violence. What the above entails is that coexisting with former enemies, without loving, forgetting or forgiving

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[6] *Nahe biti boot* is a community-based ritual employed in East Timor. It literally means laying down on the mat as a means to facilitate consensus with the help of ancestors.

them is no mean feat; yet the need to move from a divided past to a shared future beckons every society that has been ripped by violence (Bloomfield 2003).

In an attempt to provide a clearer delineation, Staub (2006: 868) defines reconciliation as:

> A mutual acceptance by groups of each other. The essence of reconciliation is a changed psychological orientation toward the other. Reconciliation means that victims and perpetrators, or members of hostile groups, do not see the past as defining the future, as simply a continuation of the past. It means that they come to see humanity of one another, accept each other and see the possibility of a constructive relationship.

It is clear from this conceptualisation that the process of reconciliation must involve a broad spectrum of people: victims, perpetrators, bystanders, elites and probably external actors as well. These social groups must be endowed with a spirit of participation, ownership and inclusivity (Lederach 1998). As a central component of such a process, victims of mass violence must be treated not as spectators but as drivers of the process. This enables them to share their painful experiences in order to bridge the divide between them and those who perpetrated the violence. In bridging the divide, Staub's (2006: 881) research with communities in post-genocide Rwanda concluded that it was important to acknowledge that 'no one group has a monopoly of suffering' in long drawn out conflicts. Therefore, if one group sees itself as sole victims, this can potentially impede the reconciliation process. In that regard, where victimhood and responsibility are shared, there is more potential to construct a common identity, which invariably creates a basis for dialogue (Gibson 2006).

The first criticism of the idea of reconciliation in the transitional justice context is the doubtfulness that 'after having been involved in atrocious crimes, all victims and perpetrators will be able or willing to establish strong ties of solidarity and confidence among them' (Uprimmy & Saffon 2003: 6). Second, reconciliation assumes that both victims and perpetrators are in absolute agreement about the utility and the value of re-establishing social ties after conflict. Certainly, the model of reconciliation espoused by Archbishop Desmond Tutu—which sought to secure values such as friendship, magnanimity, hospitality and compassion—was problematic in the wake of such a long

period of repression and violence (Crocker 2002). Materialising those values across the entire spectrum of victims may not be achievable after atrocity, as the case of South Africa clearly attests. As this thesis argues, many of the victims of apartheid have failed to see the value of reconciliation because the manner in which it was advocated was a top-down approach and an affront to victim-centred processes and mechanisms. This top-down approach presumably failed to appreciate that 'it takes more than one generation for societies to overcome atrocities and fully reconcile' (Uprimmy & Saffon 2003: 6).

Third, in many post-conflict societies reconciliation has been used as a political smokescreen to mollify the victims without any genuine interest in pursuing it conclusively. Reconciliation is proclaimed as official policy and victims are pressured into premature closure, as happened in South Africa. Such reconciliation inevitably fails to resonate with victims, hindering the building of long-term relationships going forward (Huyse 2003). Tutu's advice that 'each society must discover its own route to reconciliation' consistent with victims' context, history and culture' is instructive (Bloomfield, Barnes & Huyse 2003). Hence the sense that each society can and must define its own framework of reconciliation is very much in line with the argument pursued in this thesis. Victims—the bearers of the scars of mass violence—must therefore be accorded the platform to influence the framework within which the reconciliation processes take place. This is why justice—which many scholars believe is not only a 'necessary but [a] sufficient condition and indeed inextricably linked to reconciliation in divided societies'—must not only be done but 'must be seen to be done' (Aiken 2014: 50; see, also Rigby 2001).

In this radical shift, it is imperative that transitional justice engages with traditional, indigenous and non-Western approaches to justice that are central to restoring relationships and repairing the harms caused by mass atrocity. To that end, the next section will introduce the concept of *Ubuntu*, outline its philosophical grounding and how its application in transitional societies is important in broadening the notion of post-conflict justice.

2.4.4 *Ubuntu*: A Communitarian Approach to Justice Based on the Idea of Wholeness

The word *Ubuntu* is derived from a *Nguni* aphorism, *Umuntu Ngumuntu Ngabantu*, which can be translated to mean, 'a person is a person because of or through [an]other' (Tutu 2004: 25). Clearly, this definition epitomises the real risk of capturing and conveying indigenous philosophies in a manner that is understandable to individuals 'outside' of their cultures. As Dale Turner (2006: 101) observes, 'it is one kind of activity to speak or write about indigenous philosophy; it is quite another to weave indigenous thinking into Western philosophical thinking…any hopes for a rich dialogue must be articulated in the language of the dominant culture'. Therefore, capturing the meaning and essence of *Ubuntu* may be difficult because it is a complex concept that is not directly translatable into the English language. The complexity also emerges from the fact that *Ubuntu* is regarded as a way of life, a philosophy of humanism, 'something akin to a soul force—a metaphysical connection shared between people which helps them connect with each other' (Ngondo 2007: 42). It stresses the importance of community, tolerance and generosity and 'advocates a profound sense of interdependence and emphasizes that our true human potential can only be realized in partnership with others' (Ngcoya 2009: 1). Mokgoro (2008: 1) summarises the definition of *Ubuntu* as 'a philosophy of life which represents personhood, humanity, humaneness and morality'.

At the core of the *Ubuntu* worldview is the interconnectedness of an individual to the wider community through a constant interaction and feedback between personhood and community (Battle 1997: 51). This is underpinned by one's attachment to his or her community and the understanding that life is bound up with the good of the community—restoring relationships within proximate groups after violent conflict is therefore paramount. To that end, the need for interconnectedness means disharmony and hostility within the community as well as indifference to outsiders is to be avoided (Ngondo 2007: 91). Hence, oppressive tendencies, conflict and violence are also loathed within this communitarian worldview. If disputes arise, everyone is granted an opportunity to contribute to dispute resolution through consensus-building. As a conflict resolution mechanism used to solve complex and multiparty processes, achieving a mutually acceptable solution becomes the hallmark of the communitarian approach

to justice (Burgess & Spangler 2003). This conception of justice recognises the important components of social behaviour and interaction and to a large extent influences the way justice is instituted.

First, the communitarian approach bypasses the Western liberal lens through which justice is viewed by focusing on the community and it relationship to the victims of mass atrocity. The communitarian approach buttresses the argument above that emphasises the prioritisation of 'those who will live together after violent conflict' as a fundamental focus of transitional justice (Nagy 2008: 275). More so, it is indisputable that a people's sense of justice is shaped by their appreciation of who they are and the values they attach to it, hence the relationship between the individual and her/his society must inform the manner in which transitional justice mechanisms and processes are designed and implemented (Mulhall & Swift 1996: 13). Second, the understanding that the notions of justice are varied, context-specific and elusive gives credence to the argument that such conceptions are indeed embedded in a society's cultural peculiarities. The communitarian approach becomes useful in that it gives primacy to the community as a provider of standards and parameters which shape the notions of what is good, bad, fair, just and unjust. In essence this thesis argues that since victims cannot be moral subjects outside their community, it would be imperative that their sense of justice, shaped by the values and standards espoused therein, informs the transitional justice processes and mechanisms adopted within their post-conflict context.

An important component of the worldview of justice, within the communitarian context, is the notion of wholeness. Krog (2008: 355) defines wholeness as a process of 'becoming in which everybody and everything is moving toward its fullest self, building self; one can only reach that fullest self though, through and with others which include ancestors and universe'. The belief underlying this concept is that everything between the individual, his or her community and the wider culture, is interconnected. Put more simply, it means that one cannot understand something if one does not understand how it is related and connected to everything else. While this may pose a challenge for those 'outside' this cultural worldview to understand, it is essential to see how justice is a constituent element of the very social fabric of the community, which means that justice is not limited to legal proceedings as is the hallmark of Western conceptions.

For instance, in her research in Northern Uganda, Erin Barnes discovered the derivation of the Luo language spoken by the Acholi has no equivalent word for justice (Barnes 2006). This illustrates the apparent disjuncture between the conceptions of justice which is abound in transitional justice field and that of communities, which is premised on the interconnectedness between individual and community in the restoration of wholeness. In that sense, a perception of justice that responds to mass violence must prioritise this interconnected web of relationships in order to respond to the needs of the victims. That prioritisation is based on the understanding that justice permeates all facets of the life of an individual and his or her community and is thus not only limited to the legal sphere.

Justice is therefore not simply a means to redress wrongs but a way of life that embodies the morals and customs of society. Hence, its role in restoring wholeness between individual and community as well as in keeping social order and indeed harmony is paramount (Mbiti 1991: 174). If formalised justice processes and mechanisms are prioritised in the context of mass atrocity, they inevitably fail to meet the expectations of 'those who will live together again after conflict'. It is therefore fundamental to note that the cultural worldview discussed above with its key aspects of communitarian, interconnectedness and wholeness notions of justice provides an opportunity for scholars and practitioners alike to acquire insight into wider notions of justice that goes well beyond the legalistic frameworks that dominate transitional justice mechanisms and processes.

2.5 Incorporating Victims' Complex Identities in Transitional Justice

The preceding discussion of the narrow versus the wider conceptions of justice highlighted in this chapter fundamentally provides a good basis to determine the centrality of victims in the transitional justice processes and mechanisms. To recap, Western, Euro-centric, donor-driven conceptions of justice fail to prioritise the needs and expectations of victims within their mechanisms and processes. Yet, consensus exists within scholarship and practice, as sufficiently demonstrated in the introduction to this thesis, that victims are the central component of transitional justice practice despite their role in the designing and implementation of transitional justice processes and mechanisms having been minimal at best and none existent at worst (Méndez 2016; Manning 2017;

Annan 2010). Broadening the conception of justice to incorporate victims' own understanding and interpretations can therefore be expected to enhance the responsiveness and relevance of transitional justice particularly in addressing victims' expectations after conflict. Taking cognisance of the cultural worldviews and socio-economic circumstances of victims in the aftermath of mass violence is the only way the victim standpoint can be fully understood. Employing a wider conception of justice thus remains persuasive. While the notion of victimhood is complex, as will be discussed in this section, this thesis accentuates the argument that in any post-conflict context, victims do actually exist despite the social constructs like hierarchies, the dichotomy between what is legitimate and what is illegitimate that political and social negotiations produce (de Waardt 2016).

2.5.1 Victims, victimhood and the complexities of participation

The notions of 'victim' and 'victimhood' are rarely addressed in transitional justice discourses. This is largely because these ideas are tough to pin down: they are complex, subjective and produced in multi-layered political contexts. In other words, their definition 'lies in the proverbial eyes of the beholder (Saeed 2016: 168). What is central to the discussion here is whether or not victims should be viewed as passive individuals or active agents of change.

Without a shadow of doubt, transitional justice is an intricate field, not only because of the political, moral and legal dilemmas at the heart of the theoretical discourse, but also because of the realities on the ground that it seeks to address. These realities 'are often much messier than in theory, and involve contexts about which many experts do not have deeply rooted knowledge when it comes to designing transitional justice [processes] and mechanisms' (Saeed 2016: 169). The very ideas of victim and victimhood are a major dilemma here, because these conceptions are mired in various interpretations of an ever-changing socio-political contexts where it is very hard to distinguish meaningfully between victim and perpetrator. In post-conflicts contexts, where more than half of the population identify themselves as victims of one kind or another (each with a peculiar conception of the harm inflicted and a particular notion of remedy), determining victimhood and distinguishing victims is complex (Jacoby 2015). For instance, in his research in Afghanistan in 2016, he notes that where one repressive

regime has replaced another with some victims becoming perpetrators, it is difficult for distinct identities of victim and victimhood to be constructed (Saeed 2016). Post-conflict societies like South Africa, Rwanda, Sierra Leone continue to grapple with these complexities.

Victimhood as a concept is defined within the socio-economic, political and cultural norms and realities of a given context. It is a term that is prone to manipulation by politicians, the broader civil society and victims themselves. It is a form of collective identity based on the harm suffered (Jacoby 2015: 511). This identity emerges from collective victimisation resulting from collective violence, which the World Health Organisation has defined as

> the instrumental use of violence by people who identify themselves as members of a group—whether this group is transitory or has a more permanent identity—against another group or set of individuals, in order to achieve political, economic or social objectives (WHO 2002: 215).

While collective victimisation is 'the objective infliction of harm by one group toward another, collective victimhood refers to the psychological experience and consequences of such harm' (Noor et al. 2017: 121). Collective victimisation includes different forms and dimensions that manifests in both structural and direct violence (Galtung 1969). Structural violence can be defined as harm that is done by creating discriminating societal structures and practices, resulting in inequalities in health, housing, education, employment, and so forth that can impact on life expectations. Collective victimisation resulting from direct violence includes 'colonization, occupation, slavery, ethnic conflict, terrorism, hate crimes, war, and genocide' (Noor et al. 2017: 122). Victim groups may be exposed to both direct and structural violence simultaneously, or they may endure one form after another.

In that regard, given the multiple lenses, differing worldviews and philosophies that obtain in post-conflict contexts, victimhood is a complex, socially constructed phenomenon. Therefore, applying an objective, unified approach to every situation might be challenging. Instead a broader interpretation of victimhood—taking into considera-

tion various types and categories of victims and their socio-political and cultural context—must be applied after conflict has ended 'to assess multiple types of victims and their needs, thus mirroring the objective and subjective realities as well' (Findlay 2009: 188). McEvoy and McConnachie (2013: 491) support this assertion, nothing that:

> In exploring the relevance of victimology, of course, one should avoid crudely mapping the experiences of victimhood from, for example, the United States onto Rwanda or the United Kingdom onto Sierra Leone. The scale and intensity of violence and suffering, the fact that organized or proxy state violence is often a key dynamic in such conflicted societies, the influence of international legal actors in later contexts—these and a myriad of other variables mitigate against nuanced comparisons.

In essence, victimhood can only be understood within the lived realities of a given society. For instance, victims of the Maoist rebellion in Nepal cannot be equated to the victims of apartheid in South Africa. These are two distinct post-conflict contexts with varied and dissimilar geographical, social, economic and political circumstances. Therefore, victimhood is context-specific and must never be reduced to a 'one-size-fits-all' notion even within the same geographical territory. For example, Saeed's (2016) study in Afghanistan has revealed that perceptions of victimhood were different between the educated and uneducated communities within the same space. Among the literate populations, victims were aware of their rights which enabled them to coalesce around issues and advocate for their demands. They were endowed with an appreciation of the possibilities and limitations of their actions. They also had a good understanding of their identities and social position (Saeed 2016). In contrast, in situations of high illiteracy, 'victimhood may easily be attributed to "destiny" or expressions like "we are the poor victims with no means, what can we do?' (Saeed 2016: 168).

The notion of victimhood is also political—not only in terms of the political context within which victims suffer harm but in the manner in which the concept is produced, used and in many cases abused in political discourse and practice. In many instances, particularly in weak and failed states where corruption and impunity are common, victimhood is manipulated for political expediency—namely, to gain or assume and/or maintain power. McEvoy and McConnachie argue that,

despite the rhetoric, victims are (to varying degrees) instrumentalized in the pursuit of larger political and social goals such as reinforcing the rule of law, deterring future offenders, getting to the "truth" of past violence and, of course, the pragmatic deal-making that is inherent in making peace (McEvoy & McConnchie 2012: 528).

In conflict and post-conflict contexts, labels, categories and groups are created with a particular political aim. Therefore, distinguishing 'genuine' from 'non-genuine' or 'deserving' from 'undeserving' victims is a complex undertaking.

Two broad conceptualisations of 'victim' are considered in this section. The term victim can be delineated within the framework of the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violation of International Human Rights Law and Serious Violations of Humanitarian Law. In that framework, victims are defined as those that have 'suffered physical or mental harm, economic loss or impairment of their fundamental rights; that there can be both direct and indirect victims, such as family members or dependents of direct victims; and that persons can suffer harm individually or collectively' (Saeed 2016: 171). Within the context of the Colombia's Justice and Peace Law of 2005, which laid the framework for transitional justice in that country, victims were defined as 'people who have individually or collectively suffered harm since January 1, 1985 as a result of violations of International Humanitarian Law or other grave violations of International Human Rights norms' (Nussio et al. 2015: 343).

While these definitions may not be entirely exhaustive is important for this thesis because it incorporates individuals, their families and their communities and 'offers a lifetime opportunity for [victims] to confront the past' (Manoba 2012: 1). It can be argued that a correlation exists between attempts to exhaustively define the concepts of victim and victimhood on the one hand, and widen the scope of transitional justice on the other to ensure that victims (in the broadest sense) are incorporated into transitional justice theory and practice. This is useful in measuring the extent to which this field of study has gained currency in responding to the needs and expectations of victims in the post-conflict context.

2.5.2 The ubiquity of the victim–perpetrator dichotomy in post-conflict settings

Quite critically, the ubiquity of victims post-conflict areas is a massive challenge in addressing the legacies of the past (Huyse 2011). In long drawn out conflicts, clear categories of victim and perpetrator are not easy to distinguish, since those who are victimised today may become tomorrow's perpetrators and vice versa; the compelling case of child soldiers in Sierra Leone, Liberia and Uganda is instructive (Mamdani 2001; Enns 2012). In other instances, perpetrators can be victimised, and victims can be responsible for victimising others while in other contexts former victims overpower their perpetrators, thus becoming perpetrators themselves and assuming new roles in the new polity after conflict (Moffett 2016). For instance, in the case of Liberia, 'perpetrators became the political elites: a microcosm of the post-war relationships where victims 'were treated with apparent callousness and disdain' (Weah 2012: 331). Regardless of the widespread acknowledgement that victims remain the primary focus of these processes, Gready and Robins (2014: 340) affirm that 'a sustained engagement with victims has not become part of the mainstream transitional justice practice'. Probably this is the greatest challenge faced by societies emerging from mass atrocity despite many elite and oftentimes donor-driven processes and mechanisms designed to respond to the needs victims of violence after the conflict has ended. Yet there is convergence among policy makers, academics and practitioners that after mass violations have occurred, the concept of justice which mirrors specific political, social, historical and cultural contexts, needs to be restored underpinned by what Weinstein and Stover refer to as 'the desire to right wrongs of the past' (Weinstein & Stover 2004: 11 see, also Hoogenboom 2011).

While understanding justice from the perspective of the victims is a complex undertaking, deciding who fits into the categorisation of victimhood presents no fewer dilemmas. Yet the obligation of victim participation has become a well-established norm in transitional justice, perhaps not as a *sine qua non* requirement on the part of states that embark on transitional justice processes, but certainly as a benchmark for their effectiveness and as predictors of their chances of success (Méndez 2016). As argued by Moffet (2016: 146), the messy reality of conflict means that perpetrators and victims do not always fall into two distinct categories, because in many circumstances—protracted conflicts like those in Liberia, Sierra Leone, South Africa and

Rwanda—perpetrators can be victimised and victims can be responsible for victimising others, as Mamdani (2001) chronicled in his seminal work, 'when victims become killers'. In South Africa, the massive black-on-black violence in East Rand toward the end of apartheid could be used as an example of a multi-layered context within which victims and victimhood complexities acquired multiple interpretations (Thompson 2014; Saeed 2016: 168). In that scenario, members of Inkatha Freedom Party (IFP)—who had themselves been victims of colonialism and apartheid—were themselves guilty of victimising African National Congress (ANC) supporters. Here we can see how victims and perpetrators of violence are not homogeneous or always diametrically opposed, but can coincide. The reality of these 'grey zones' meant that the complex identities of victim-perpetrators existed at the same time, or evolved over time by one group being victimised one day but carrying out a retaliatory attack the next (McEvoy & McConnachie 2013). Given some adults were forced 'against their will' by the apartheid machinery to commit atrocities or human rights violations, the situation appears even more complex. Therefore, the notion of 'innocent victim' and 'barbaric perpetrator' becomes contested and gives credence to Moffet's concept of 'complex victims'— 'those who have been victimised and are responsible for victimising others'. While the notion of the innocent victim is contested, this thesis argues that in South Africa where oppression was state-sponsored, the vulnerability of victims of apartheid to a very large extent fits that description. However, this thesis argues that indeed there were victims of apartheid, both innocent and complex, whose perceptions of transitional justice could have been incorporated in the design and implementation of the transitional justice processes and mechanisms.

2.5.3 Victim participation—a contested concept

Victim and victimhood are notions that are often misconstrued as synonymous with passivity, marginality and disempowerment as well as stripping people of their agency. Irrespective of how these identities are constructed and labelled, victim participation in transitional justice has been construed as a key priority for societies emerging from violent conflict (Madlingozi 2015). Minow and Parmentier supports this viewpoint and argues that 'if there exists a genuine need to

[gain] insight into the perspectives of victims […] of war in an effort to tackle the question of "what works" and "what does not work", then inevitably [victims] ought to be employed throughout the process of designing and implementing a transitional justice mechanism. This could be a way to make the practice more bottom-up (Minow 1998: 5; see, also Parmentier 2011).

Taylor (2014: 4) argues similarly as follows:

Without doubt, victim participation has changed the way that policy-makers and practitioners conceive of TJ. In its absence it is assumed that TJ will be detached from affected communities, will face difficulties in generating local ownership and grassroots impact, and will fail to address the grievances of the victims of serious crimes under international law.

Saeed (2016) proposes a rights-based approach that is premised on participation, empowerment, accountability and non-discrimination ensuring that victims are active agents of change. Gready (2008) concurs, positing that turning people into active agents is requires advocacy and mobilisation. He emphasises the role of empowerment and agency in transformative participation.

The concept of participation is contested both in theory and in practice. In most cases it is either qualified by terms like individual, community, citizen, civic, public, vertical and horizontal, or institution-focused (Cornwall 2002). It is also varied and complex because it borrows heavily from top-down theories of development that reflected the modernisation theory dominant in the 1960s (Lane 1995). Since it is an ideologically contested concept, arriving at a homogeneous definition of participation has been difficult. Ndekha et al. (2003: 236) define participation as a 'a social process whereby specific groups with shared needs living in a defined geographic area actively pursue identification of their needs, take decisions and establish mechanisms to meet these needs'. Eyben and Ladbury (1995: 192) emphasises the pursuit of legitimate interests by those affected with a view to influence the decisions that affect them, while Devas and Grant (2003: 309) argue that 'citizen participation is about the ways in which citizens exercise influence and have control over the decisions that affect them'. Price

and Mylius define participation within the framework of how intended beneficiaries are actively involved in the planning, designing and implementation of an intervention including making decisions that affect them (Price & Mylius 1991: 6). These definitions demonstrate a vagueness and a lack of commonly agreed conceptualisations of participation which creates confusion over the needs and expectations of the intended beneficiaries.

Victim agency is a critical component of the concept of participation. As noted by Asad (1996: 272) agency echoes an ethical imperative, 'a doctrine of action that has become essential to our recognition of other people's humanity'. In that sense, agency is best conceived as the autonomy of the subject, whether individual or community. The theory of agency holds that victims are in charge of their own fate and are agents in processes that seek to address their needs. In many cases, victim and victimhood are not merely identities that are ascribed post-conflict. In fact, they may be the root cause of conflict itself if they arise from a sense of enduring marginalisation based on gender, ethnicity, race or economic status. Hence, victims' needs emerge from a convergence of long-term marginalisation and the harms inflicted by conflict. It is therefore imperative that victims have agency in transitional justice processes and mechanisms to address their plight.

In his first report to the Human Rights Council in 2012, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, noted that the implementation of measures of transitional justice 'can be construed as having as their goals providing recognition to victims, fostering trust and strengthening the democratic rule of law. None of this can happen on the backs of victims, without their meaningful participation (de Greiff 2012: 17).

2.6 Conclusion

This chapter has critically analysed the discourse on transitional justice, in particular its relevance and responsiveness to the victims of mass atrocities. The chapter has detailed the field of transitional justice, noting how it has evolved since the Nuremberg and the Tokyo trials and how it has become almost a default approach for societies

emerging from violent conflict. It has highlighted some of the mechanisms and processes that have been instituted across the globe and how those have been premised on Western, Euro-centric conceptions of justice.

The broad survey provided in the chapter has underscored the inherent challenges that underlie theorising the concept of transitional justice, which is why some scholars have noted that transitional justice is heavily under-theorised. To review, transitional justice is heterogeneous and cross-disciplinary and the field is still in transition itself and may have been the victim of its own rapid growth. In the absence of a coherent theory, two divergent conceptualisations have emerged: the narrow and broad notions of transitional justice. The chapter has juxtaposed and discussed these to show how transition-specific justice is a daunting undertaking than has not been effectively understood by scholars and practitioners alike.

The chapter has discussed the limitations of the narrow conception of justice and the challenge of incorporating victims' own perceptions in transitional justice processes and mechanisms. The chapter noted that as a preserve for lawyers, human rights practitioners and other experts, these processes and mechanisms disproportionately negate victims' own understanding and interpretation of justice. This is because such processes and mechanisms are dominated by Western, Euro-centric, top-down and state-centric conceptions of justice. A major challenge with these mechanisms and processes is the assumption that transitions are neat and linear and can be addressed by legalistic frameworks; yet they are messy and complex. The chapter has also highlighted the proliferation of donor-driven mechanisms and processes across the globe and the way they fail to meet the needs and expectations of the victims. A key challenge with these models is that they have to conform to 'international frameworks' to receive financial aid. Such international standards may not be informed by the needs and expectations of victims but by those who provide the funding. The chapter has underscored that highlighting these limitations helps in appreciating the central argument in this thesis that victims have their own perceptions and expectations of transitional justice and those must be incorporated in the design and implementation of these processes and mechanisms.

The chapter has further discussed the wider conception of justice that must include, among other things, victims' own perceptions and peculiarities is a more persuasive proposition. This broader conception is informed by the fact that victims are affected by violence in varied and dissimilar ways and therefore their understanding and expectations of justice are shaped by the experiences they went through. Therefore, transitional justice must take into account these specific peculiarities in designing mechanisms and processes that addresses the needs and expectations of victims after mass atrocity. The chapter emphasised the centrality of incorporating local cultural notions of justice that resonate with victims' circumstances. Since perpetrators and victims of intimate violence live must live in close proximity after conflict, the nature of justice instituted during the transition must be 'intimately bound up with context-specific history and culture' and as diverse as possible. The chapter emphasises that the cultural approach becomes useful in that it gives primacy to the community as a provider of standards and parameters which shape the notions of what is good, bad, fair, just and unjust. In essence, this thesis argues that since victims cannot be moral subjects outside their community, it is a community sense of justice—shaped by local values and standards—that must be incorporated into transitional justice processes and mechanisms adopted after conflict.

The chapter has advocated for the broadening of the conception of justice to include the socio-economic dimensions of transitional justice. It has underscored that the wider approach is fundamental because it pays attention to the 'harms caused by economic violence including violation of economic and social rights, corruption, plunder of natural resources and other economic crimes'. It has also affirmed that relegating issues of economic violence and the consequences of it may be problematic in designing the justice choices that are victim-centric after the conflict. This is because failing to consider the underlying socio-economic structures of the conflict may affect the socio-economic choices undertaken to remedy the situation. This chapter has also emphasised that broadening the view of justice to include distributive justice is fundamental in the transformation of oppressed societies by addressing the injustices of the past through measures that can produce an equitable future. The chapter also affirms that distributive justice cannot be 'treated as an after-thought' if transitional justice entertains the hope of addressing the underlying causes of structural injustices (Sirleaf 2013).

The chapter has concluded by advocating for the centrality of victims in the design and implementation of transitional justice processes and mechanisms. It has argued that Western, Euro-centric, donor-driven models have serious limitations in prioritising the needs and expectations of victims—even as victims are claimed to be a central component of transitional justice. The chapter has underscored that prioritisation of victims' cultural worldviews, local contexts and socio-economic circumstances in the aftermath of mass violence must be an imperative in understanding the peculiarity of victims' own perceptions and expectations of justice. Although defining victims and victimhood is a complex challenge in the aftermath of long, drawn out conflict, this chapter has affirmed that the primary focus must be to address victims' needs and expectations after conflict. In fact, this thesis advances the argument that without victims, transitional justice has no relevance.

Chapter 3-Contextualising Transitional Justice in South Africa

3.0 Introduction

This chapter analyses the context within which the varied processes and mechanisms of transitional justice were undertaken in South Africa. This critical analysis is important because it provides an appreciation of the injustices of apartheid on one hand, and the transitional justice approaches and mechanisms instituted post 1994 in order to understand the extent to which these processes and mechanisms were implemented. That inquiry is central to understanding how victims' perceptions and expectations were grounded and shaped. In that regard, the chapter seeks to answer the following research question: To what extent has the Truth and Reconciliation Commission process met the justice needs and expectations of victims in South Africa?

The first section provides an expansive discussion of the oppressive system of apartheid and its major characteristics particularly the creation of a social hierarchy based on racism and racial exploitation, forced displacement of black and mixed race communities and violence. The second sections discusses the intense negotiations prior to the first democratic elections in 1994 that was central to the establishment of the transitional justice processes and mechanisms in that country. It concludes the section by providing a summary of some of the key factors that led to the demise of apartheid. The third section discusses the transitional justice processes and mechanisms adopted after apartheid. It focusses on the TRC as a lynchpin of South Africa's transitional justice paradigm post the transition from apartheid to a liberal democratic state. The focus on the TRC is deliberate because it is the mechanism that the participants to this research deemed represented the entirety of the transitional justice process in South Africa. It will further highlight the role of civil society in transitional justice focusing to the successes and the challenges encountered by civil society and NGOs around thr globe. The section also analyses some of the challenges faced by the TRC particularly around its mandate, the notion of reconciliation on which it premised its work, the ambiguity of the legislation that created it, victimhood, reparations as well as the amnesty provisions. It concludes by noting the general disparagement victims have expressed

toward the transitional process given its failure to meet their expectations about the provision of just outcomes.

The third section deliberates on some of the contemporary challenges facing victims of apartheid and their quest to achieve justice in the last 20 years. It highlights key challenges such as structural violence, intergenerational poverty and inequality in order to demonstrate the challenges transitional justice processes and mechanisms encountered in addressing the needs and expectations of the victims.

The chapter concludes by summarising the major findings in regard to the extent to which transitional justice processes and mechanisms met the justice needs and expectations of victims of apartheid.

3.1 The Legacies of Apartheid

This section discusses the enduring legacies of apartheid. It begins by chronicling the advent of apartheid 1948 and its key features. It further provides a narration of the excesses of apartheid focusing on the period just after South Africa gained independence.

The apartheid project began in earnest when the National Party under Dr D.F. Malan took power in 1948 after the end of British colonial rule in 1910. The party created a deliberate yet corrosive system that imposed 'group identity and racial classification enforced by the state' (Rakate 1999: 16). Ten homelands (the Transkei, Bophuthatswana, Ciskei, Venda, Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa, and QwaQwa) were created to enforce this racial policy. The central thesis of these ethnic homelands was purely premised on the concept of divide and rule distinctly opposed to that of nations and nationalities that dominated the indigenous cultures. As aptly captured by Powell (2010: 237):

> Apartheid was not an aberrational policy choice imposed on the otherwise normal society by an irrational government, but a comprehensive system of social engineering and racial exploitation that was deeply embedded in the basic fabric of society at every level. All institutions of the

state, economy and society and every human relationship bore apart-

heid's imprint in one way or the other.

In fact, apartheid created a rigid social hierarchy with whites at the top, followed by coloured, Asians and—lastly—blacks at the bottom. It instituted repressive social controls such as forced removals, pass laws[7] to curtail mobility and systematic stripping of the basic rights of blacks and other non-white races—including the right to vote (Department of Justice Report 2016: 10). The consequences of racial cataloguing differed for whites and blacks. Whites were the only ones entitled to the rights of citizenship, including the right to vote, access to economic opportunities and the best jobs, a superb education and world class infrastructure and public services. Blacks and mixed-race coloureds were not considered South African citizens and hence were not they were not entitled to access opportunities on the same terms as whites (Powell 2010).

Land displacements and forced removals were a key feature of the apartheid system. Blacks and mixed-race South Africans were brutally displaced off their land, businesses and were forced to live in overpopulated and impoverished homelands with limited or no basic services. Ten homelands were created for a potential African 'nation' under the tutelage of the whites. As aptly captured by Atuahene (2014:48), 'the forced removals that occurred in South Africa in the twentieth century were merely one chapter in a longer historical narrative where white authorities systematically dehumanised and infantilized blacks and usurped their property rights'. The infantilization of black people had been a key feature of colonialism where Europeans 'conveniently likened natives to childlike savages who did not have capacity to live a civilized life' (Atuahene 2014:48). It therefore justified and cemented racial segregation in all aspects of life from 'housing to general public amenities, education, employment, recreation, social welfare and politics' (Mbanjwa 1976: v).

The oppressive system was so entrenched that from 1948 'whites only' notices were peached up in all conceivable places. Laws and regulations were promulgated to enforce this distinct policy and it was imposed in 'taxis, ambulances, hearses, buses, trains, elevators, benches, lavatories, parks, church and town halls, cinemas, theatres,

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[7] The pass laws were introduced by South African governments between 1800 and 1994 to control the movement of blacks and Coloured people under apartheid. Such laws inevitably sanctioned the rights of such people to residence and travel with urban areas and to effectively segregate the races.

cafes, restaurants, hotels, schools and universities' (Thompson 2014: 196). The Population Registration Act of 1950 was effected to regulate racial categories of each and every individual. Its most debilitating effect was the breaking up of homes particularly in instances where one parent was classified white while the was deemed to be coloured. Two other notorious pieces of legislation, The Prohibition of Mixed Marriages Act of 1949 and The Immorality Act of 1950 criminalised marriages and sexual relations across races.

Violence was a key feature of the apartheid repertoire. In fact, between the 1960s and the 1980s South Africa witnessed outbreaks of intense violence between blacks and whites as well as among the blacks themselves. Vigorous resistance to apartheid spread to most parts of the country characterised by bloody demonstrations particularly between 1976 and 1986: 'School boycotts, bus boycotts often led to violent clashes between township residence and security forces' (Thompson 2012: 228). Attacks on these state security personnel and on government facilities, coupled with intermittent nonviolent public protests, were commonplace. While the initial phases of the conflict were marked by violence between the liberation movements and the apartheid state, it took a dramatic twist in the late 1980s and early 1990s with insurrections between the liberation movements themselves (Meredith & Rosenberg 1999). The key protagonists in this violent acrimony were the inadequately trained self-defence and protection units that operated within the ANC and Inkatha Freedom Party (IFP) areas. These units carried out most of the atrocities, particularly between 1985 and 1994. As corroborated by the findings of the TRC, the IFP was regarded as the major perpetrator of violence and 'responsible for 4,500 deaths compared to 2,700 attributed to the police and 1,300 to the ANC' (Graybill 2002: 147).

Ironically, the violence instigated by the IFP was aided and abetted by the state security personnel, which supplied the organisation with artillery and other support. In its report the TRC described how the IFP had increasingly turned to government support in its struggle against supporters of the United Democratic Front (UDF) and the ANC (TRC Report 1998). The TRC also noted in its findings that the state perpetrated massive human rights violations both in South Africa and other neighbouring African countries. As noted by Van der Merwe and Lamb (2009: 6):

Torture, abduction, severe ill treatment including sexual assault, unjustified use of deadly force in situations where lesser measures could have been used, deliberate manipulation of social divisions in society, resulting in violent clashes, judicial and extrajudicial killings; and covert training, arming and funding of offensive paramilitary units or hit squads for deployment internally against opponents of government.

The country that Nelson Mandela inherited was racked by cumulative effects of colonialism, apartheid and surging numbers of urbanization. The United Nations Human Development programme ranked South Africa at 90th out of 175. Its state institutions, particularly the judiciary, security services, bureaucracy was dominated by white men who had been brought up under the apartheid system. It had one of the highest gaps between the rich and the poor: most white people were well educated and had decent jobs while most black people were poor, uneducated and had no decent housing. In 1994, 24% of African adults had no formal education, 37% had attained some primary education, 22% had attended secondary school with a paltry 6% having with some tertiary qualification (Thompson 2014). In a ranking by the World Economic Forum Global Competitiveness Report 2016-17, South Africa's education system was rated 126 out of 138 countries (Schwab 2016).

Violence remained a key feature of South African society. Whereas whites had a monopoly of guns and dangerous weapons during apartheid, by 1994 South Africans of all races owned modern weapons including AK-47 assault rifles. The average murder rate per hundred thousand people was 'ninety-eight in South Africa, compared to four in France and Germany and ten in the United States' (Thompson 2014:247). In its crime statistics for 2017/18, the South African police service noted that the country has witnessed an increase of 1 320 murders from 19016 in 2016/17 to 20 336 in 2017/18 (Sicetsha 2018). Kriegler (2018) attributes the high murder rates to high levels of inequality because South Africa has one of the highest gini-coeffcents in the world. Rape before and after the fall of apartheid has continued to one of the biggest challenges facing South Africa.

3.2 'Elite-driven' political compromise

This section highlights the elite-pact entered into by the key protagonists to the struggle against apartheid. It briefly chronicles the processes of negotiations after the release of anti-apartheid icon, Nelson Mandela, the agreements that ensued leading to the holding of the first democratic elections in 1994.

As argued by van Zyl (1999), by 1989, it became increasingly apparent to the protagonists as well as the international community that the only viable option to solving the country's intractable conflict was through a negotiated settlement. This eventually led to the unbarring of the African National Congress (ANC) and the legalisation of numerous political parties leading to the release of Nelson Mandela from prison in February 1990 (Boraine 2000). In the immediate aftermath of Mandela's release a number of fundamental agreements were concluded: an indemnity process that led to the release of political prisoners and returnees to ensure their participation in the peace process, the so called *Groot Shuur* Minute; the National Peace Accord which provided an outline for dealing with political remonstrations and community conflicts; and the creation of an interim constitution under the Convention for a Democratic South Africa (CODESA) which culminated in the first democratic elections in 1994 (van der Merwe and Lamb 2009). Indeed, one of the outcomes of CODESA process was a negotiated constitution which, received broad support from a cross section of South Africans, including but not limited to political parties, human rights campaigners, civil society and the general public. The support was premised on its strong, justiciable and expanded bill of rights which, for the first time, included socio-economic rights central to addressing grinding poverty and inequality; independence of the judiciary and other key independent institutions crucial for democratic governance (van Zyl 1999). Five years later the first democratic elections were held in South Africa leading to the election of Nelson Mandela and the creation of a government of national unity.

In the immediate aftermath of Mandela's release, a number of fundamental agreements were concluded. The first was the so-called *Groot Shuur* Minute—an indemnity process that led to the release of political prisoners and returnees to ensure their participation in the peace process. There was also the National Peace Accord, which provided an outline for dealing with political remonstrations and community

conflicts. Finally, an interim constitution under the Convention for a Democratic South Africa (CODESA) was established, which culminated in the first democratic elections in 1994 (van der Merwe & Lamb 2009). One of the outcomes of the CODESA process was a negotiated constitution that received broad support from a cross-section of South Africans, including, but not limited to, political parties, human rights campaigners, civil society and the general public. The support was premised on the strong, justiciable and expanded bill of rights included in the new constitution. It ensured that, for the first time, socio-economic rights central to addressing grinding poverty and inequality, independence of the judiciary and other key independent institutions crucial for democratic governance were guaranteed in South Africa (van Zyl 1999). Five years later the first democratic elections were held, leading to Nelson Mandela becoming president and the creation of a government of national unity.

Although negotiation played a key role in ending apartheid, it is important to note that various other processes outside the negotiations pressured the South African government to end its apartheid project. One school of thought advanced by Madlingozi (2015) is that the negotiations that paved the way to the post-conflict situation were not the handiwork of Mandela and the ANC but rather a process initiated and controlled by the regime. This viewpoint is supported by van Zyl (1999), who posits that the liberation movements had failed in their bid to remove the apartheid government from office through military means. In fact, if the former government had wished, 'it could have dug its heels and retained power at all costs for a prolonged period of time'. However, prolonging the war was proving to be a difficult proposition given that from 1978 the South African government had been reeling under a 'sharp recession and the administration of the complex network of apartheid laws was proving to be extremely costly' (Thompson 2014: 221).

One of the key indicators that supports the regime-based argument is the ANC's failure to negotiate conclusive terms on the socio-economic front (Klein 2007). A key tragedy that befell the ANC in negotiating the terms of the transition was that it was 'outmanoeuvred' on matters of the economy to the extent that it was 'caught in a new kind of web, one made of arcane rules and regulations, all designed to confine and constrain the power of elected leaders' (Klein 2007: 202). The net effect of such a web was that the attraction of investment through policy prescriptions like fiscal discipline,

market regulation, and privatisation of the central bank as well as key industries became the major focus. The major casualties of such a focus were key programmes to address land redistribution, which were put on hold. This was primarily to protect existing property rights through a skewed initiative based on the 'willing buyer, willing seller' principle, which cemented a pro-capitalist undertaking that land could only be distributed through voluntary exchanges (Muiu 2008: 156). These negotiations also brought to the surface the complexities of the debate on the socio-economic dimensions of transitional process geared toward addressing past abuses.

A second view contends the apartheid project ended because by 1977 the United Nations had passed sanctions on the sale of arms to the South African government. Coupled with this was international pressure based on the new world order which had witnessed the increased growth of independent black states save for Rhodesia and Namibia. While the whites were losing the war in Rhodesia, the United Nations had declared South Africa's control of Namibia illegal. South Africa became isolated within the world as well in regional geopolitics (Thompson 2014). Over and above the economic situation and pressure from the international community, domestic pressure from anti-apartheid movement and civil society also contributed immensely to the demise of the oppressive system.

A third point is that from 1978 domestic resistance became more formidable and a protest culture pervaded all facets of South Africa society with 'students and workers, children and adults, men and women, the educated and uneducated [becoming] involved in efforts to liberate the country from apartheid' (Thompson 2014: 228). In 1983 a broad-based movement made up of 575 organisations representing trade unions, sporting bodies, community groups, women and youth group coalesced to form the United Democratic Front (UDF), which was a non-racial, coordinated platform to oppose apartheid. Between 1983 and 1987 South Africa witnessed vigorous resistance throughout the country. In 1984 alone, the government reported 'fifty-eight incidents of sabotage against state departments, petrol depots, power installations and railroad lines and twenty-six attacks on the police' (Thompson 2014: 230). Between 1987 and 1994 domestic resistance heightened, with increased protests, boycotts, insurgency, strikes which had a huge impact on the economy. In a nutshell the negotiations for a democratic South Africa were enabled by a wide array of factors.

3.3 Transitional Justice in South Africa: Deeply Flawed or Complex Trade-Off?

This section discusses the broader transitional justice process in South Africa. It begins by highlighting the link between the political negotiations at the end of apartheid and the development of the transitional justice mechanisms and processes. It focuses particularly on one mechanism that was geared toward addressing the injustices of the past—the TRC. The mandate and key committees established within the framework of the TRC are examined in order to assess how and to what extent they were implemented.

Although there are other mechanisms and processes like constitutional reform, institution-building and Black Economic Empowerment (BEE), these did not come up for discussion during the primary data collection conducted in South Africa, as extensively discussed in Chapter 4. Perhaps victims did not discuss other mechanisms because these fall outside their conceptualisation of transitional justice and are thus irrelevant to their needs and expectations.

From the onset, it is imperative to note that the transitional justice mechanisms and processes South Africa were products of compromise within the political class of the time (Sooka 2006: 312). The complexity of the negotiations meant that 'give and take' among the key political players (ANC, PAC, IFP and the National Party) was inevitable. This naturally meant that the mechanisms and processes emerging from such negotiations would mirror elitist, top-down political machinations as opposed to victims' own conceptualisation of transitional justice. The TRC was therefore created as the principal institutional manifestation of South Africa's transitional justice paradigm. It was constituted under the Promotion of National Unity and Reconciliation Act of 1995, regarded as the 'most sensitive, technically complex, controversial and important legislation ever passed' (Krog 1998: 9) but criticised for 'leaning more toward party political compromises than the will of the people' (Liebenberg & Zegeye 1998: 551). In its early years, the TRC was condemned civil society and political parties as an 'evil' compromise between the ANC and the National Party and therefore rejected as an exercise born of political expediency that abandoned justice in favour of some semblance of peace (Boraine 2000).

The mandate of the Commission was broadly to examine politically-motivated human rights abuses committed between 21 March 1960 (the day of the Sharpeville Massacre[8]) and the 10 May 1994 (the day Nelson Mandela took oath of office as the first democratically elected President of the Republic of South Africa). It was also created to 'bring national truth and reconciliation in a deeply divided society' by allowing perpetrators to give a full account of what happened during the dark days of apartheid in exchange for amnesty (Rakate 1999: 4, de Hollanda 2013: 8). The Commission began its work on 15 April 1996 and submitted its report on 28 October 1998. It was criticised for operating for such a short period, which Alex Borraine (2000: 67) asserts was justified on the ground that 'the investigation of crimes should not go on for an excessive amount of time at the risk of allowing past experience to condemn the present and future of politics'. Madlingozi (2015) criticises this, arguing that the time frame of the Commission's work was extremely limited and arbitrary given the fact historical injustices over land could be traced back to the arrival of the Dutch settlers in 1652. Further complications were witnessed in 1910, when the English and the Dutch settlers signed an agreement to establish South Africa (as a white man's country), compounded further still by the introduction of apartheid in 1948. Therefore, to only focus on the period 1960–1994 was seen to negate well-documented historical struggles by the victims of colonialism and apartheid (Madlingozi 2015). Doing justice to the victims was also circumscribed as only two years were set aside for people to tell their stories to the TRC (1996–1998). This made it hard for victims to find closure. Therefore, the story the Commission told about South Africa was extremely partial and contained historical gaps (Madlingozi 2015).

The objectives of the TRC were set out in Section 2 of the Promotion of National Unity and Reconciliation Act as follows:

(a) establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during

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[8] The Sharpeville Massacre was a demonstration on 21 March 1960 attended by 5,000–7000 people at a police station in Sharpeville, near Johannesburg, South Africa. The demonstration was against Pass Laws, which mandated South Africa's black population to be in possession of an identity book at all times. The identity book contained information on the names, addresses, employer details and tax code. It was an offence which warranted immediate arrest and detention to travel around without the book. A total of 69 unarmed blacks lost their lives and approximately 180 were injured after secuirty forces opened fire on the crowd.

the period from 1 March 1960 to the cut-off date, including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the Commission of the violations, by conducting investigations and holding hearings;

(b) facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective and comply with the requirements of this Act;

(c) establishing and making known the fate or whereabouts of victims and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them;

(d) compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission contemplated in paragraphs (a), (b) and (c), and which contains recommendations of measures to prevent the future violation of human rights.

To fulfil this mandate, the Commission worked through three committees. The Human Rights Violations (HRV) Committee was tasked with investigating human rights abuses that occurred between 1960 and 1994. The Reparation and Rehabilitation Committee (RRC) was charged with restoring victims' dignity and formulating proposals to assist with rehabilitation. Finally, the Amnesty Committee (AC) considered applications for amnesty that were requested in accordance with the provisions of the Act (Graybill 2002; de Hollanda 2013).

Overall, the Commission conducted 140 hearings across 61 towns and some 22,000 victim statements taken covering 37,000 violations with over 7,000 perpetrators applying for amnesty (TRC Report 1998). Ironically, reparations were recommended for only 20 000 victims. As noted by the Khulumani Support Group,[9] the 20 000 people

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[9] The Khulumani Support Group is a membership-based organisation of more than 100,000 victims and survivors of gross human rights violations perpetrated by the apartheid regime in South Africa. It was started by victims, some of whom went on to testify at the TRC. Khulumani is recognised globally as a movement that spear-=headed victims' agency on matters of healing, memory, trauma and the struggle for reparations in South Africa. See www.khulumani.net.

recorded were but a fraction of those truly impacted by apartheid. After all, South Africa has 50 million people and apartheid was implemented systematically for nearly five decades after 1948; many victims had to have been excluded from the TRC's record. The larger and more complicated question advanced by Mamdani (2002) is that if apartheid was indeed a crime against humanity as declared, how could a crime of that nature involving racial and ethnic cleansing among the bulk of the population have only 20 000 victims? Obviously, this is not logical and indeed untenable since a large share of victims of forced removals and other egregious violations were left out. Khulumani estimates that only about 10% of those who fitted the TRC's own narrow definition of 'victim' were able to participate (Madlingozi 2015).

The TRC concluded its work in October 1998 and a report with extensive recommendations was issued. Most importantly, when the Commission concluded its work the 'truth' about the past was acknowledged in an officially sanctioned way, as an authoritative version of events (Graybill 2002; Boraine 2000). The findings were based not only on victims' and perpetrators' testimonies but also on information gathered by the investigative unit and research departments of the TRC. However, it ended its work under a torrent of criticism from all sides and praised by few. This goes to show how the Sought African model of transitional justice, premised on elite compromises, had little local resonance. Its report drew mixed responses across South African society. All the non-regime actors implicated in aiding and abetting human rights violations and other heinous crimes, including the ANC, PAC and IFP, dismissed the report as a biased 'witch hunt'. Ironically, even the ANC —which was at the forefront of the creation of the Commission—tried to arm-twist it into rewriting its findings. When the TRC refused, it was accused of criminalising the anti-apartheid struggle and ANC President Thabo Mbeki called its findings 'capricious and arbitrary' (Graybill 2002: 148).

3.3.1 The role of civil society in transitional justice

This section discusses some of the key successes as well as challenges of the TRC in order to illuminate how and to what extent this approach was implemented. In its two and half years of operation, the TRC, despite reeling under an enormous weight of criticism, managed to score some successes. Indeed, the number of the people that

appeared before it, the statements that it recorded and the amnesties it granted remain perched high in its endeavour to achieve peace, justice and reconciliation for victims of apartheid.

First, the TRC was lauded in its uniqueness as a profound example of a transitional justice mechanism officially encouraging civic input on the goals and mandate of a truth commission (Sooka 2006). This exceptionality could be revered particularly if juxtaposed with the commissions set up before it in Latin America and elsewhere, which were predominantly 'creatures' of excessive decrees (Hayner 1994). For instance, in South Africa, participation by a powerful network of civil society organisations was an important component of the process. The manner in which Commissioners were selected, (particularly the Human Rights Violations and the Reparation and Rehabilitation Committees) and eventually appointed, the monitoring of the work of the Commission itself thus holding the Commission accountable, reflected a key feature of public participation. The 'public' nature of the proceedings, a standard set by the TRC, became a benchmark for the work of all other Commissions in Africa (Sooka 2006). The TRC was also lauded by academics and the international community for being more public and victim-centred, thus offering more opportunities for direct participation (Baker 2010). In the same vein it recognised the significance of the victim to 'the construction of a unifying national narrative'. In the next section I discuss the role of civil society in transitional justice.

The role of civil society in the promotion of transitional justice processes and mechanisms is well documented (Backer 2003; Brahm 2007). Hayner (2001) posits that civil society contributes to the success of truth commissions playing key roles as interlocutors as well mobilizing public opinion and engagement, providing training, platforms for connections with communities as well as providing support to victims appearing before truth commissions. She further argues that civil society is an essential ingredient that can play a significant role in the shaping of the transitional justice mechanisms. For instance, in South Africa, Gready (2011:64) cites the role of civil society in the work of the TRC as a 'public participatory enterprise'. In other words, civil society and NGOs played a pivotal role in the formative stages of the TRC, including but not limited to, the drafting of the enabling legislation that established the TRC by convening platforms for debate and engagement. These spaces for conversation served as

'resource-banks' for the conceptualization of the transitional justice idea and the crafting of representations submitted to government. The contribution even extended to the drafting of the selection criteria and subsequent appointment of the Commissioners through monitoring the hearings. More so the reparations programme in that country was developed and finalized after wide and extensive consultations with local communities, victim groups, religious groups and faith-based organisations (Colvin 2006). In Guatemala, the Alliance Against Impunity made significant contribution to the crafting of the reconciliation legislation. In Argentina and Chile, civil society made innovative interventions articulating specific legal provisions relating to defining of disappearances as kidnappings in an endeavour to clarify issues of amnesties and statutes of limitations (Brahm 2007). In Liberia, Pajibo (2007:294) opines that civil society and the TRC developed a collaborative working relationship in areas of 'community education and outreach, victim mobilization and research on key issues including amnesty and accountability, reparations, memorials and economic crimes. Khulumani Support Group facilitated participation by victims of apartheid assisting them to craft statements submitted before the TRC as well as accompaniment before, during and after the hearings (Gready 2011:65).

Civil society also play a crucial role both before and after the institution of transitional justice mechanisms and processes. For instance, in South Africa, organisations like Centre for the Study of Violence and Reconciliation (CSVR), Trauma Centre, Khulumani Support Group, continue to provide platforms of discussion, engagement, healing (both physical and psychological) and trauma support services. These organisations have survived beyond the life of the Commission and have championed an important cause for the implementation of the recommendations. For instance, Khulumani Support Group continues to pressure government to fully implement the recommendations of the TRC.

While the positive contribution of civil society to the practice of transitional justice has been acknowledged in literature, its role may not always be smooth and is at times limited (Hayner 2001). Crocker notes that in post-conflict contexts, civil society is sometimes 'weak, disorganized, under-developed, under-equipped and lack independence (Crocker 1999: 390). Hence there is no guarantee that they will be able to play any meaningful part in transitional settings. In Argentina, the Mothers of Plaza de

Mayo viewed the Commission as an impediment to the full disclosure of what had befallen their loved ones to the extent that they dismissed proposals for reparation. In both South Africa and Guatemala amnesties were viewed with disdain and regarded as an unacceptable substitute for trials. Van der Mwerwe (2001) posits that in the South Africa context, the goal of national reconciliation as espoused by the TRC clashed with local groups' preferred model of community-based healing. It did not have any regard to the local justice structures. For instance, formal structures and institutions were preferred in South Africa as opposed to broad based community initiatives (Gready 2011). In Liberia, civil society's capacity to engage with the Commission was heavily constrained by the prevailing context in that country characterized by high levels of poverty and a clear lack of capacity to engage (Pajibo 2007). In Nepal, Gready and Robins (2017:968) observes tensions between victim groups and NGOs emerging from the latter's perceived failure to 'frame issues of transitional justice in ways that resonate with populations affected by violations', has led to a direct contestation of both the role and modalities of traditional civil society. Finally, in the case of South Africa, Gready and Robins (2017: 962) concluded that 'most NGOs found it easier to engage with the lobbying process to set up the TRC than with the TRC as an active institution. Further, looking to the health of civil society in the post-transitional justice era, the TRC did not engage 'sufficiently or bolster directly the organs of civil society which are to carry on the more long-term work of rebuilding society'. Overall participation has been problematic outside the 'formal structures and official avenues' and remains a core element of the 'unfinished business' of transitional justice (Gready 2011)

3.3.2 Major Shortcomings of the TRC

One of the major failings of the Commission was that its mandate was deemed to be too 'ambitious for its own good and not inclusive enough to be effective' (Boshomane 2016:1). The lack of inclusivity resonates fundamentally with the main argument advanced in this thesis—that victims' own perceptions and expectations of justice are never incorporated into the design and implementation of processes and mechanisms. As mentioned at length in this chapter, this mechanism was an 'offspring' of political compromise and hence it would be inconceivable to expect it to be inclusive enough as to integrate victims' needs and expectations. Even the Commission itself

corroborated this anomaly in its report and acknowledged that the 'scope of its inquiry was defined so ambiguously that it required an interpretation' (TRC 1998: 10). Because of this incongruity, de Hollanda (2013) hypothesises that its intentions became grandiose, to the extent that it failed to focus on palpable localised objectives. Inevitably, and as a direct consequence of its overly ambiguous mandate, it became a victim of the confluence of anticipations of its final conclusions and recommendations. Van Der Merwe (2008) concurs, that the impreciseness of its mandate can best be seen in the Commission's perceived lack of appreciation for the specific social and political context that obtained at the time. That mandate was a clear victim of political negotiations between the outgoing apartheid regime and the liberation movements, the major sticking point being the demands for accountability for perpetrators of apartheid and the blank amnesty for the same people (Abduroaf 2011). In that interregnum, victims' needs and expectations were sacrificed.

Second, as a clear demonstration of the above hypothesis, the TRC's articulation of the theme of reconciliation —as that between the victims and perpetrators, despite the fact that the issue had racial connotations and way beyond the caprices of individual agents —was clearly not in tandem with socio-political context of the conflict. Quite clearly 'reconciliation on an individual basis tended to obfuscate the force of the collective question of racism which invariably underlay the majority of cases taken to the Commission' (Mamdani 2002: 53). Consequently, the inability of the TRC to identify and call out the politics behind racially-motivated crimes, which was conveniently excluded from the mandate, became a source of discomfort (Boshomane 2016). Yet, land expropriation and forced removals under the Group Areas Act were carried out as part of a political process against blacks, coloureds and other identifies, primarily on basis of the 'colour of their skin' (Mamdani 2002). In that regard and in a majority of cases, the Commission received further criticism for its approach that was premised on the common fundamental characteristic of prioritising individual cases which was totally inconsistent with victims' social and political situation (De Hollanda 2013). This assumption failed to give credence to the fact that despite South Africa being a hotbed of polarity within and between communities, the TRC consequently failed in assisting South Africans transcend their fragmented story (Mamdani 2002: 7). It thus peddled and imposed a meta-narrative about historical injustices and the nature of conflict. As concluded by Mamdani, the TRC's failure to appreciate the wrongs of

apartheid served not only to 'dehistoricize but decontextualise the story of apartheid' (Mamdani 2002: 57).

Third—and probably one of the foremost weaknesses of the entire process—was that the legislation that created the TRC failed to provide a clear and concise definition of 'victim'. This meant that the definition of perpetrator became equally abstruse, inevitably curtailing the parameters within which the TRC operated. This unfortunately meant apartheid victimhood became individualised, notwithstanding the Commission's own acknowledgement that this oppressive system was 'a crime against humanity which had targeted whole communities for ethnic and racial policing and cleansing' (Mamdani 2002: 33). This erroneous conceptualisation reduced apartheid from a relationship between the state and entire communities to one between the state and individuals. Thus, in the absence of a 'comprehensive acknowledgement of victims of apartheid, there was only a limited identification of perpetrators and only a partial understanding of the legal regime that made possible the crime against humanity' (Mamdani 2002: 33).

Mamdani (2000) has underscored this discussion in arguing that the TRC's narrow and highly individualised notions of truth and responsibility failed to realise that apartheid's core function of power—its victimisation of a vast majority of South Africans. Statistics demonstrate that between 1960 and 1982, an estimated '3.5 million people were forcibly removed, their communities shattered, their families displaced and their livelihoods destroyed' (Mamdani 2000: 177). Most importantly these were victims of 'faceless' communities. The argument is that if these were victims, then why did the TRC not include them in its construction of victimhood as defined by the law.

More so, the law that created the TRC allowed it to define the gross denial of rights after 1960 within a historical context. It is common knowledge that this was predominantly a history of conquest and disposition, including forced removals from land, legalised by apartheid legislation like the Group Areas Act, as well as militarisation of labour through pass laws (Thompson 2014). Inevitably the conceptualisation of gross violations would have included the violence perpetrated against victims of forced removals. Such an appreciation of that context would have highlighted the colonial violence that led to the dispossession of land and the militarisation of labour — that would

have produced a different kind of truth. It would have exposed this segrogationist system as a reality lived by the greater proportion of the population — one that produced 'racialized poverty alongside racialized truth'. In short, it would have redefined the understanding of the victims of apartheid (Mamdani 2000). That understanding could have inevitably raised consciousness of the importance of prioritising victims' needs and interests.

The contentious amnesty provisions, a key part of the negotiations to end apartheid and the transitional justice process, exuded both negative and positive effects in equal measure. Landsman (1996) postulates that the amnesty provisions were fundamental in the broader democratic process, mainly by persuading the National Party to proceed with the 1994 elections, which would have been impossible without those guarantees. Furthermore, amnesty provisions were essential in reintegrating perpetrators back into the social order, so they could participate in the nation-building endeavour (Landsman 1996). Yet, there was a sense that the granting of amnesty to individuals who knowingly participated in brutal crimes against humanity would cultivate a culture of civic irresponsibility in the country. As noted by Baker (2010) the amnesty was a focus of a legal challenge, the famous *Azanian People's Organisation and Others v President of the Republic of South Africa and Others, Case No.61/1996,* brought by families of several notable political activists who had lost their lives under the apartheid regime. The Constitutional Court conveyed serious misgivings about the amnesty provisions' violation of the rights of victims to pursue civil action but it still ruled that provisions for reparations constituted ample redress. As concluded by Baker (2010), the conditional amnesty was controversial and unparalleled.

The Commission's approach to reconciliation also came under heavy criticism because it was deemed to be top-down and lacked the participation of victims in the construction of such an important component of transitional justice. The assumption that people could reconcile in spite of the many brutal years of violent conflict and devastating segregation was deemed to be extremely optimistic and excessive and therefore could not take place instantaneously (De Hollanda 2013). For many South Africans, the hypothesis of reconciliation was inconsistent with the ethics of 'taking responsibility' coupled with 'justice as accountability' rooted within the *Ubuntu*

worldview (Oelofsen 2013). The rationale was that the refusal to apply the accountability principle would be the result of a 'romantic and undifferentiated view of African culture, which valorises expressions of social harmony instead of conflict' (De Hollanda 2013: 20). To that extent, the reconciliation that was espoused by the TRC was 'remote, idealised and armophous' because it had very limited traction and relevance to the local dynamics at play after the transition (Van Der Merwe 2017: 182).

The issue of reparations, an emotive issue to this very day, was also quite problematic. In its deliberations, the Commission 'resolved to confine the number of victims eligible for reparations to three areas: victims who personally made statements to the Commission; victims named in a statement by a relative or other interested person and victims identified through the amnesty process' (TRC 1998: 136). The result was a list of individuals as opposed to groups, yet, as argued earlier in this chapter, the violence perpetrated by apartheid targeted groups more than specific individuals. But communities that were at the receiving end of most of the violations were not considered for reparations. Even then, the reparations programme has not been rolled out to the specifications recommended in the TRC report. One-off payments of a lump sum of thirty thousand rand among other smaller payments were made to only about a quarter of the victims identified under the Commission (Mentjies 2016). Regrettably the grants disbursed by the government were far smaller and not in tandem with the recommendations of the TRC. In addition, individuals were denied access to these reparations for one reason or another, the most notable of which was their failure to appear and submit statements before the Commission and hence 'their incapacity to demonstrate that they indeed experienced gross abuses, expressed disenchantment about their exclusion from the financial benefit' (Baker 2010). This is an issue that continue to create acrimony and discomfort to this day.

As Rakate (1999) observes, transitional justice in South Africa was bound to disappoint given the inevitable mismatch between the enormity of the crimes committed under apartheid and the paucity of the remedies provided by the TRC. Arguably the TRC's bigger failure was its inability to address the collective loss of dignity opportunities and the systemic violence experienced by the victims. Victims suffered multiple losses both individually through direct violence and collectively through mass displacements that tore families, communities and societies apart. The Commission was also

blamed for shifting the trauma and pain from private realms (of family, friends and neighbours) to the public schema through the three committees. In doing so, it fashioned anticipations it was incapable of fulfilling in particular its ability to provide closure with regard to the now public narratives which the Commission itself had brought up and instigated (De Hollanda 2013: 26). As a result of its failure to examine these wider and systematic oppressive mechanisms, its work was widely disparaged (Mentjies 2013).

3.4 South Africa Today—Twenty-One Years after the Truth and Reconciliation Commission

This section highlights some of the major contemporary challenges that victims of apartheid are confronted with in South Africa. This is intended to demonstrate that, notwithstanding the world-acclaimed transitional justice process, victims of apartheid remain stuck in the predicament they were in before the transition. It goes a long way in cementing the broader argument in this thesis that transitional justice processes and mechanisms that fail to incorporate victims' perceptions and expectations in their design and implementation struggle in addressing their (victims) needs and expectations.

From the onset, it is indispensable to acknowledge that the current period in South Africa exemplifies the diverse political environment in which numerous justice endeavours must operate. This is largely because of the causal link between the many deep-seated socio-developmental challenges South Africa experiences today and the world-acclaimed transitional process that the country went through (Mahwinney 2015; Mentjies 2013). In contemporary South Africa, 55.5 % of the population live in grinding poverty; gross inequality (the richest 1% has 42% of the wealth); rising unemployment (27.7%); large income disparities; skewed ownership and distribution of land (10% transferred to blacks since 1994) that existed before the transition has survived and deepened, and mirror the divisions orchestrated by apartheid (Stats SA 2017). The poverty margins that were witnessed in 1994 prior to democratisation have persisted in the post-apartheid period (Du Toit, Woolard & Nyoka 2016). Admittedly, while the state has made commendable progress toward redressing the excesses of apartheid, such headway appears incapable to meet the demands for socio-economic justice (Powell 2010). This thesis argues that hat failure to address the socio-economic structures aided

and abetted by apartheid, has led to the unfortunate persistence of gross inequalities and structural violence.

South Africa still suffers from disturbing levels of violence in all its forms. Statistics from the South African Police Service for the period 1 April 2016 to 31 March 2017 report 19 016 murders (34.1 per 100, 000 people); 39 828 rape cases (75.4 per 100, 000 people); 386.2 robberies per day and 428.6 assaults every day (Africa Check 2017). However, the assumption is that with the democratic transition aided through a world-acclaimed TRC process, the margins of violence could have been drastically reduced. As argued by Kynoch (2005), the fact that South Africa entered a democratic phase did not in itself mean that a culture of violence, which was the hallmark of apartheid, would be easily erased. In fact, it is alleged that toward the end of apartheid, the near-breakdown of the law and order structures provided a haven for the birth and strengthening of criminal gangs to establish well-coordinated networks and engage in incessant violence. As Kynoch (2005: 511) has noted, 'situating transition-era violence within its historic context and broadening the narrow conception of "political" conflict enable us to better understand both this fractious period and the violence that continues to afflict South Africa'. South Africans today lack trust in the criminal justice system partly because of the high crime rates that they live with on a daily basis; they also blame the transitional justice processes for not dealing effectively with apartheid criminals (Boshomane 2016). According to a study entitled 'Traces of Truth' published by the University of Witwatersrand, 'nowhere in the victims' hearings were the stories told of the everyday violence of the apartheid system'. This thesis argues therefore that victims link the everyday violence they endure today to the failures to the transitional justice mechanisms and processes to effectively deal with criminality associated with apartheid.

The ongoing intergenerational structural violence around poverty and inequality has created offshoots among the young generation particularly within the student movement. The political turbulence witnessed in 2015—stirred by the #RhodesMustFall[10]

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[10] Rhodes Must Fall is a protest movement that began in March 2015 at UCT directed at the statue of Cecil John Rhodes. Its ideological basis emerges from a collective effort by staff and students against institutional racism at the university. The fall of the statue also symbolises the inevitable fall of white supremacy and privilege at the institution.

and #FeesMustFall[11] movements orchestrated by university students, beginning at the University of Cape Town (UCT) and the University of Witwatersrand, respectively, and spreading to other historically white universities—could be symptomatic of this phenomenon of violence. This violence has given renewed impetus to the debate on decoloniality, white supremacy, privilege and exclusion (Du Toit, Woolard & Nyoka 2016). These protests were also unprecedented in many ways as they managed to forge ties and, indeed, solidarity across race, class and political affiliation to demand broad-based access to education for the historically marginalised and under-privileged, a key remnant of the socio-economic injustices of apartheid (Du Toit, Woolard & Nyoka 2016). Certainly, the discourse on decoloniality that underpins these two movements has exposed South Africa's fragility—particularly around race and the many layers of inequality that the country needs to confront. These layers are a clear demonstration of the unfinished business of the transitional justice processes and mechanisms adopted at the end of apartheid.

Racial discrimination, white dominance and associated privileges have also dominated debate and discontent among victims of apartheid. One of the primary narratives in contemporary South Africa is that the past twenty years has largely been a transition that has furthered the beneficiaries of apartheid (white people) and a small layer of black elites (Madlingozi 2015). Sooka (2006) agrees with this observation and posits that the conflict in South Africa was not only about victims and perpetrators; it also included a huge percentage of those that benefitted from the unjust and segregationist system of apartheid, in particular business. Madlingozi (2015) theorises that this is not necessarily the failure of transitional justice *per se* but that transitional justice 'never leads to a radical transformation of society in such a way that the economy is redistributed and stolen land is returned; that there is genuine social reconciliation, meaningful multiculturalism and peace' (Madlingozi 2015: 2). Therefore, contemporary South Africa fits into the realm of criticism targeted at post-conflict societies in the global south. Madlingozi (2015: 3) further argues that in those transitional societies:

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[11] Fees Must Fall is a protest movement that began in October 2015 at the University of Witwatersrand in direct response to the government's increase of university fees. It later spread to other universities across the country.

> Truth about what happened is always contested; violence in all its forms never ceases and justice in the form of radical redistribution of economic, cultural and epistemological powers is never achieved. Historical injustice relating to land and the sovereignty of indigenous kingdoms is never resolved. The economy continues to be skewed, the culture and epistemology of settler colonizers continue to be predominant and decolonization in the form of land reconquest never happens.

The above assertion ties in with the general mood among victims that transitional justice never achieves the goals of peace, truth and justice. This is because 'experience demonstrates that it is never structured to achieve those goals in the first place and therefore cannot be deemed to have failed if it does not achieve them' (Madlingozi 2015: 4). The argument is that since transitional justice processes—especially in Africa—are products of both elite compromises and pressure from powerful Western door-countries and their international agencies (international community). These agencies are 'concerned with an agenda of liberal state building rather than addressing the needs articulated by affected populations' (Robins & Wilson 2015: 220). This observation confirms the perception of victims that, the past 20 years have been years of 'amnesia, denialism, no reparation, no restitution, no social reconciliation and certainly no justice' (Madlingozi 2015: 10).

4. Conclusion

This chapter has critically analysed the context within which the transitional justice processes and mechanisms were established. Quite fundamental is the chapter's illuminating insights in responding to two fundamental research questions: (a) what were the wrongs of apartheid? (b) what was the transitional justice approach undertaken to redress the injustices of that oppressive regime? The first section has presented a historical narrative of the colonial project and how its enduring legacies, especially around massive land displacement, dovetailed into the apartheid system in 1948. The chapter highlighted the link between colonialism and its successor, apartheid—an unjust political system geared toward fostering racial segregation and exploitation. In responding to the research question focusing on the wrongs of apartheid, the chapter emphatically

delineates the system of apartheid in particular its key characteristics of systematic violence, forced land displacement of blacks and mixed races, pervasive racial discrimination in the socio-economic and political sectors of society, enacting laws and regulations that enforced the separation of races in schools, transport, residential areas and social amenities. It has also discussed the systematic stripping of citizenship and rights among blacks and other people of colour, thus curtailing their participation in the political spheres of the country. Highlighting the excesses of apartheid is important in measuring how and to what extent such injustices were addressed if juxtaposed with the approaches South Africa undertook to redress such inequalities.

In responding to the second research question, as mentioned above, the chapter has discussed the transitional justice approach undertaken in South Africa to address the legacy of human rights violations that took place between 1960 and 1994. Most significantly, the chapter has narrowed the discussion to the TRC as the prime mechanism that victims believe represented the sum total of transitional justice approaches in South Africa. The chapter illustrated that while the transitional mechanisms and processes designed to deal with the legacy of human rights violations had their successes however these were far outweighed by the shortcomings. The chapter has illustrated that the major challenge with the TRC was that it was a creature of compromise between the political powers of that time. Hence the 'give and take' nature of this mechanism meant that negotiations were not victim-centric such that victims' needs and expectations were excluded from its design and implementation. This is further exemplified by the inability of the TRC to broadly define victimhood in a manner consistent with the socio-political context of South Africa and its ambivalence on such key processes such as reconciliation and reparations. The individualisation of truth and responsibility in a society that was riddled with community-centric violations premised on large-scale forced removals was also problematic. Such a skewed conceptualisation tended to complicate the legal framework within which the Commission operated. The chapter has concluded that the failure by the TRC to deal conclusively with these exigencies continues to play out in present-day South Africa, where poverty, violence, inequality and marginalisation have become the new normal.

This chapter has further underlined that the failure to address these apartheid-induced challenges cements the key argument in this thesis that without victims being

the driving force behind these processes, transitional justice remains unresponsive to their hopes. Yet, as argued in this thesis, victims are a fundamental component of transitional justice processes and mechanisms. Without them, transitional justice becomes meaningless. This assertion is supported by evidence in Chapter 6 that victims has tremendous expectations of what the transitional justice process in South Africa might achieve during the negotiations that were never met. Indeed, two decades later the general attitude toward the Commission—and indeed the transitional justice process as a whole—can best be described as ambivalence mixed with downright resentment, given the challenges that have continued to haunt the victims of apartheid. In as much as the compromises that were reached avoided a probable fallout between and among major political forces, the initial acceptance from the South African polity on the mainstream concessions seems to have attenuated over the years under the weight of the unfulfilled promises (Du Toit, Woolard & Nyoka 2015).

Inevitably, a complex inquiry of the discourse of transitional justice must answer the question of whether transition justice actually works for victims or if it is there to serve the political needs of the elites and the historically privileged (Madlingozi 2015). In South Africa, this is a pertinent question that continues to haunt those whose lives were immensely impacted by the brutal apartheid regime and who have continued to struggle under their weight in the new order.

Chapter 4 - Research Methodology

4.0 Introduction

This chapter provides a detailed account of the research methodology adopted in examining the perceptions of transitional justice among victims of apartheid in South Africa. A qualitative design informed by an interpretivist paradigm was employed for this research in order to investigate participants' perceptions of transitional justice within the context in which they live (Hennink, Hutter & Bailey 2011). A qualitative grounded theory methodology was adopted, which relied on face-to-face, semi-structured and unstructured interviews. Data were collected in three distinct locations in the Western Cape and Gauteng provinces of South Africa. Within the Western Cape, interviews were carried out in Cape Town, specifically in the urban, and black/mixed-race townships of Philipi and Manenberg, respectively. In Gauteng province, interviews were undertaken in Pretoria, urban Johannesburg and in the East Rand townships of Kwa Tema, Thokoza, Tsakane, Springs and Katlehong.

The data collected—primary, secondary and other information—have been analysed in relation to the overarching question posed in the thesis: What are the perceptions of transitional justice among victims of apartheid in South Africa? Implicit in this question is the assumption that transitional justice processes and programmes must be informed by victims' own understanding and interpretation of justice. Presumably, such an understanding—which is different from that of perpetrators, bystanders, international experts and local elites—must be incorporated into the design and implementation of transitional justice.

The first section provides an overview of the conceptual framework within which this research is situated. Here, the philosophical, epistemological and ontological underpinnings of this research are discussed. The section emphasises that locating this research in the interpretivist paradigm enables people's socially constructed reality, premised on their specific context and circumstances, to be understood and explained. The second section discusses the research methodology and the methods that were adopted to collect data. It discusses the grounded theory methodology and concludes by justifying selection of it over other methodologies. The section also focuses on the

data collection process, highlighting the two key methods adopted, including their characteristics and challenges. The section also highlights the total number of interviews undertaken during the course of fieldwork, the languages used in collecting data and the average amount of time allocated to each interview. A process of data analysis is then discussed starting from data preparation, identifying and developing codes to the building of theory. It then details the process of data analysis using computer-assisted qualitative data analysis software, NVivo. The third section highlights the demographics of this study illustrating the research communities in which primary data collection took place, the number of research participants that were interviewed and their locations. These demographics are delineated along several dimensions—namely location, gender, race and social class. The fourth section discusses the relationship between researcher and subject, considering issues of reflexivity, positionality and the dynamics that arose within fieldwork and how the researcher dealt with bias, cross-cultural issues, the insider/outsider dichotomy and access. The fifth section addresses the ethical considerations, in particular the intricacies of undertaking research in complex environments, with victims of mass atrocity and how that impacts both the researcher and the subjects.

4.1 Research Philosophy, Ontology and Epistemology: A Theoretical Approach

This section provides a synopsis of the philosophy underlying this research study. However, it will not delve into the comprehensive interrogation of the philosophical, ontological and epistemological discussion because doing so would be tantamount to perpetuating the top-down, Western-centric frameworks that this research attempts to debunk. This thesis seeks to amplify victims' often unheard narratives and how Western, Euro-centric frameworks struggle to respond to their needs and expectations. Therefore, a demonstration of the appreciation of these concepts is more in keeping with the objectives of this research than a comprehensive discussion that may turn out to be superficial to it.

4.1.1. The Interpretivist Paradigm

Two dominant paradigms underlie social science research— positivist and interpretivist. However, these two paradigms contain contrasting ontological, epistemological

and methodological assumptions and rules of research (Denzin & Lincoln 2008). As an epistemological position that promotes the application of natural sciences to the study of social reality, positivism is a philosophy of science and theory that suggests that people are subjects of social forces beyond their control. The defining features of positivism are as follows: (i) systematic empirical research can produce objective facts and theories; (ii) causal laws or theories are to be discovered which can lead to the development of society and; (iii) quantitative methods ensure objectivity and reliability, which result in developed research and new knowledge being free of bias and prejudice, because hypotheses can be tested statistically (Bryman 2008: 14). As a result, positivist explanations are inherently reductionist and deterministic, detailing conclusions that may be free from unique experiences, failing to recognise the transitional nature of social life and how people engage in meaningful interaction.

The interpretivist paradigm, on the other hand, draws its origins from a number of disciplines phenomenology, sociology and anthropology. At the core of interpretivism is the belief that reality is discovered through participants' context, circumstances and viewpoints (Hudson & Ozanne 1988). This allows researchers to 'view the world through the perceptions and experiences of participants' (Thanh & Thanh 2015: 1). Prasad (2005: 14) argues that such philosophical approach must be underpinned by a constructivist ontology, which propounds that 'reality is socially constructed through experiences, practices and interactions that occur within social, cultural, historical and personal contexts'. This ontological position also holds that social phenomena are not only produced but are in constant state of revision—for this reason, researchers can only produce a specific version of reality which is not definitive (Bryman 2016: 29). Such a subjective approach resonates with the epistemological standpoint advanced by Smith (1998) that all knowledge is situated in a specific historical and social context and largely shaped by people's lived experiences. As Butler-Kisber (2010) asserts, there is no gap between knowledge and everyday action because 'knowing is in the doing' (experience). Therefore, knowledge is both temporal and continuous as one experience grows out of another. In that regard, there are multiple ways of knowing the world that are always constituted and contextually dependent. The researcher and the participants are interconnected in that who they are and how they understand the world is a central part of how they understand themselves, others and the world (Denzin &

Lincoln 2005). This assumes a 'dialectical reality wherein subjective realities and meanings emerge and are shared among social actors' (Harris 2008: 33).

The focus of this research fits perfectly into the understanding of human perceptions, meanings and divergent views of the world. As argued by Gephart (1999), the assumption in interpretivist research is that knowledge and meaning are acts of interpretation, and that therefore there is no objective knowledge which is independent of thinking or reasoning humans. Hence, access to that reality—within the premise of interpretive researchers—is only through social constructions, such as language, consciousness and shared meanings (Myers 1999). Using this paradigm therefore helps the researcher to understand the key concepts used by social actors and their respective meanings they assign to such phenomena (Harris 2008). A key component of the interpretivist paradigm centres on accepting and seeking multiple perspectives, being open to change, practising iterative and emergent data collection techniques which are central to the grounded theory methodology adopted in this study (Willis 2007)

4.1.2 Interlinkages with Phenomenology

One of the biggest challenges with the interpretivist paradigm is that it is not a single approach but is part of a family of diverse models whose philosophical base is hermeneutics and phenomenology (Boland 1985). Although the research is not primarily phenomenological, some of its aspects are underpinned by the principles of phenomenology, which focuses on discovering and expressing essential characteristics of a certain phenomenon as they really are. Epistemologically, phenomenological approaches are based in a paradigm of personal knowledge and subjectivity and emphasise the importance of personal perspectives and interpretation (Englander 2012). As such, they are powerful for understanding subjective experience, gaining insights into people's motivations and actions, and cutting through the clutter of taken-for-granted assumptions and conventional wisdom. Creswell (1998: 51) contends that a phenomenological study describes the meaning of the lived experiences for several individuals about a concept or a phenomenon. In the human sphere, this normally translates into gathering 'deep' information and perceptions through inductive qualitative research methods such as interviews and representing this information and these perceptions from the perspective of the research participants (Englander 2012: 14). These strategies are particularly effective at bringing to the fore the experiences of individuals from their own

perspectives, and therefore challenging structural or normative assumptions (Englander 2012).

However, despite this clear overlap, with phenomenology as articulated above, this research will remain located within the interpretivist paradigm because it fits into the parameters of the study in trying to understand and interpret perceptions and experiences of victims of apartheid within their socio-economic, historical, political and cultural contexts. Apartheid was experienced in a specific historical and geographical context and hence adopting an interpretivist paradigm assists in describing, explaining, and understanding the way in which people make sense of the circumstances that befell them. Research ought to try to explain the meaning of events and not just their causes (Smith 1998; Prasad 2005: 14).

4.2 Methodology: Grounded Theory

Since this research is located within the interpretivist paradigm, it has adopted a grounded theory methodology underpinned by semi-structured and unstructured interview methods to collate primary data. This section therefore discusses the theoretical grounding of this methodology, the methods employed to collect data as well as how data were prepared for analysis and eventually analysed.

Grounded theory is an inductive methodology that involves the construction of theory through systematic gathering and analysis of data (Strauss & Corbin 1994; Martin & Turner 1986: 142; Bryman 2016: 381). In other words, it consists of 'flexible guidelines for collecting and analysing qualitative data to construct theories "grounded" in the data themselves' (Charmaz 2006: 2). Grounded theory emerged from the post-positivist work of sociologists Glaser and Strauss (1967). Over the years the original methodology was expanded, with different interpretations to include symbolic interactionism and the pragmatism of Strauss and Corbin (1990)—and eventually to the constructivist approach of Charmaz (2000). The development by Strauss, Corbin, Charmaz and others from its classical approach represents a 're-founding of the methodology in an attempt to liberate it from all traces of positivism while maintaining its main characteristics intact' (Faggiolani 2011: 1). Most importantly, its philosophical positioning

underpins how methods are used and hence emphasises the need for development of keen epistemological and ontological self-awareness (Ralph et al. 2015). Such awareness encourages researchers to (1) learn and understand the context within which the inquiry is taking place and the nature of life that the participants are leading; (2) study how to understand and interpret their statements and actions and; (3) ask what analytic sense can be derived from that understanding (Charmaz 2006: 3). One of its major characteristics is its iterative or recursive nature, meaning that data collection and analysis takes place 'in tandem, repeatedly referring back to each other' (Bryman 2016: 381).

Grounded theory approaches are chosen for the present research because they are intensely inductive and are not simply satisfied with describing a particular phenomenon, thus striving to identify major constructs and categories that emerge from the data and explore their relationships with the context and between each other. Charmaz (2008) affirms that grounded theory provides an approach based on analytic rigour, through which theory can be built from the data. Cresswell (2006) supports this point and notes that grounded theory aims to move beyond mere description of a phenomenon and generate a theory regarding the experiences of participants. Thus, research questions remain quite open and are shaped and altered as theory emerges during the research process.

In this iterative process, data collection and analysis occur simultaneously to shape further questions, visualise gaps and direct sampling. For example, unexpected or apparently extraneous comments made in an interview can be followed up in subsequent interviews. This process also allows the researcher to use a sampling technique to increase the 'density' of data within each of the emerging theoretical constructs during the data collection process (Charmaz 2008). Therefore, data collected, both primary and secondary as well as other information, are analysed in relation to the overarching research questions stated in Chapter 1.

4.2.1 Data Collection Methods: Semi-structured and Unstructured Interviews

It is established in literature that interpretivism is premised on approaches that are concerned with understanding social phenomena from the perspective of those that are involved (Bryman 2001; Denzin & Lincoln 2011). In this paradigm, knowledge is

deemed to be created through social interaction and how day-to-day life is interpreted. Since interaction and negotiation are regarded as the basis for the creation and understanding of social life in interpretive approaches, 'it is the interaction of the participants in the interview situation-the researcher and the researched- that creates knowledge' (Edwards & Holland 2013: 17). These data that emerges from the interviews are regarded as co-construction of knowledge—what Kvale calls a literal *inter-view* (Kvale 1996). In that regard, interviews have become ubiquitous in data collection and may represent the most widely used method in qualitative research (Edwards & Holland 2013). Most significantly, interviews are important tools in research whose function is to explore 'people's experiences and their inner perceptions, attitudes, and feelings of reality' (Zhang & Wildermuth n.d.: 1).

Studies have shown that there are essentially three major types of research interviews: structured, semi-structured and unstructured (Bryman 2001; Gill et al. 2008). Structured interviews are usually 'verbally administered questions in which a list of predetermined questions are asked with little or no variation and with no scope for follow-up questions that warrant elaboration' (Gill et al. 2008: 291). This is the typical survey approach. Semi-structured interviews, on the other hand, are guided by several key questions that provide the extent of the issues to be explored but allow the interviewer and the participants to digress in order to explore an issue in greater detail. Such an opportunity has the potential of bringing to the fore issues that may be useful to the interview but were not considered by the researcher in advance. This approach reinforces the importance of gaining a detailed insight into the research issues from the perspective of the study participants themselves. It is important to note that both the interviewer and the interviewee co-create knowledge and meaning in the interview setting and thereby co-construct reality (Hesse-Biber & Leavy 2006: 128).

Unstructured interviews are defined as 'interviews in which neither the question nor answer categories are predetermined' (Zhang & Wildemuth n.d.: 1). However, the fact that they do not use predetermined question does not mean they are random and directionless. They are often premised on a detailed knowledge of the literature and a thorough study of the context within which the research takes place. I had to use what Bryman (2016: 468) calls *aide-mémorie*, a brief set of points that provided a guide of the range of topics or issues I needed to cover. This was a very useful tool to use because

it provided the victims the opportunity to 'pour their hearts out'. That flexibility allowed the victims to frame the issues, explain them with minimal interruption, and bring up issues that they thought were fundamental to their lives. That digression helped me in further appreciating the context within which I was conducting this study. However, the biggest limitation with allowing victims to 'pour their hearts out' is time. Interviews took longer than I had anticipated because each interview was 'highly individualised' (Patton 2002). Since each interview followed the pace set entirely by the interviewee, I had to resort to prompting my interpreter using gestures to ensure that a polite interruption would be made. Although one of the pitfalls of this method is the voluminous data produced, this was not a problem in analysis because my analytical framework was grounded theory, where line-by-line coding is the first step.

Both semi-structured and unstructured interviews were chosen for their suitability in exploring individual views, opinions, insights and motivations concerning the social actors' conceptualisation of justice. The participants also articulated their expectations of the transitional justice process within their specific geographical context, thus providing a deeper understanding of this phenomena (Gill et al. 2008). Most importantly, in employing this approach, I was not only interested in collecting data on certain experiences, but also gain an appreciation of the socio-economic, political and cultural context of the different communities and to allow 'real stories to emerge' (Charmaz 2006: 26). The choice of the two methods was premised on my conviction that in order to understand my participants' world, I needed to approach it through their own perspectives and on their own terms. This suited the interpretivist paradigm that guides this research in particular the assumption that reality is socially constructed in participants' various settings. The semi-structured and unstructured interviews were also adopted because they provided me with a flexibility to adjust the sequence of the questions, where necessary adding more probing questions based on the context of the participants' responses (Zhang & Wildemuth n.d.: 1).

In order to explore victims' perceptions of transitional justice, I developed a semi-structured interview guide in the early stages of my fieldwork. This was inspired by my reading of the literature as well as my research questions. Since this research is based on grounded theory methodology, the guide was consistently revised in order to

reflect the gaps that were occurring in data collection and was, to a large extent, informed by previous interviews (Charmaz 2006). In the interviews conducted in East Rand, which were mostly unstructured, I had a very rough guide that was inductively developed in the field from my earlier memos. The use of unstructured interviews was also based understanding that in order to make sense of the participants' world, I had to approach it through the participants' own perspective and in the participants' own terms (Denzin 1989).

A total of 52 interviews were conducted during fieldwork, which I conducted from February through to July 2016. All interviews were audio recorded, save for three participants who felt uncomfortable with this. The interviews were conducted in spaces chosen by the participants themselves or with the aid of my research assistant and lasted for approximately 45 to 60 minutes. The majority of the interviews were conducted in the English language while some were in the local *Xhosa* and *Zulu* dialects. Those in vernacular were translated by either by the research assistant I had hired to help me with these interviews or an employee at one of the institutions that acted as my research assistant in East Rand. These interviews were transcribed for analysis.

4.2.2 Data Preparation and Analysis

In this section, I describe the process of analysing textual data from data preparation, through identifying and developing codes, to the building of theory. From the outset, I was aware that semi structured and unstructured interviews discussions generate a large amount of textual data. I was also aware that the 'attractiveness and richness' of the data might present a difficulty in finding analytic paths and was therefore careful not to be captivated by it to the extent that I failed to give the data wider significance. I was further aware that there are very few well-established and widely accepted rules for analysing qualitative data. To that end, data analysis required me to systematically search and organise the narratives in the interview transcripts to build the arguments presented in this thesis. In my field study, data analysis occurred concurrently with data collection, which was essential in generating 'new' questions and guided sampling (Creswell 1998). All the interviews were transcribed by the researcher and were checked for accuracy and completeness.

4.2.2.1 Coding

The first analytic step in grounded theory is understanding what data are about. This involves synthesising 'hundreds of pages of interviews, field notes, documents and other texts to develop grounded theory' (Charmaz 2006: 43). This process is defined as coding and involves 'naming segments of data with a label that simultaneously categorises, summarises and accounts for each piece of data' (Charmaz 2006: 43). These segments are what are known as codes and can be issues, topics, ideas or opinions evident in the data (Hennink et al. 2011). Within the grounded theory approach, there are two major phases of coding data: line-by-line (broadly defined as initial or open coding) and focused coding. Line-by-line coding involves naming each line of the data and is useful for drawing out nuances within the data especially 'detailed observations of people, meaning of their statements, actions and settings to reveal telling and consequential scenes' (Charmaz 2006: 50). It is also useful in being critical about your data, interrogating it further, identifying gaps and guiding the process for further inquiry. Interviews were open and became a central tenet of learning about my research participants and understanding their lives and experiences. Each interview was transcribed immediately after the interview and was accompanied by field notes on my personal reflections, analytic thoughts, observations of the body language of the interviewees, the settings within which the interviews took place, as well as how the interview started and ended (Bryman 2012). As argued by Charmaz (2006: 27) constant observation of the interviewee is essential because 'interviewers must remain attuned to how participants perceive them and how participants' and interviewers' past and immediate identities may influence the character and the content of interaction'. These field notes were integrated into memos that focused on my thoughts, reflected the comparisons of data between different interviews, identifying connections in order to inform new questions and the sectors I needed to interview and the direction I needed to take. Although my initial interviews were guided by a semi-structured interview guide, the subsequent ones—particularly those in East Rand, Johannesburg and Pretoria—were largely informed by the data that I had collated in the initial phases of fieldwork. This early data was carefully studied in order to understand the nuances, identify the gaps and inform future interviews. These carefully studied memos were very useful in subsequent data collection and in the data analysis phase after field work, especially the constant comparison between data and data, as well as data and codes (Charmaz 2006).

4.2.2.2 Analysis

Once the interviews were transcribed verbatim and read they were uploaded into qualitative data analysis software, Nvivo, to manage, sort and organise the data. Through a detailed, line-by-line open coding, a total of 178 codes were initially generated. This entailed a process of breaking down, examining, comparing and conceptualising the data (Charmaz 2006, Silverman 2012). Subsequently, the codes were refined through focused coding by linking them to other codes, thus identifying categories (themes). Focused coding is the process that follows initial coding within grounded theory. It involves synthesising and explaining larger amounts of data based on 'which initial codes make the most analytic sense to categorise your data incisively and completely' (Charmaz 2006: 58). A total of ten categories or themes emerged inductively from the data. Upon completion of the coding process, these categories structured the content of the data presentation in the empirical chapters. This process allowed me to weave together individual interview narratives into a larger fabric and a broader story of the experiences of the victims of apartheid. This larger and coherent narrative is presented in this thesis as a picture of the perceptions and expectations of transitional justice among victims of apartheid.

4.3 Participants Demographics and Locations

In this section, I highlight the demographics of my research participants. These demographics are delineated along several dimensions—namely location, gender, race and social class. I deliberately excluded ethnicity as a defining variable in this study for three simple reasons. First, apartheid brutality was largely perpetrated against blacks and other mixed races and not members of specific ethnic groupings. Second, the sample size for this study is not large enough to adequately tease out differences of perceptions between various ethnic groups. Third, I believed that general statements regarding ethnicity and local conceptions of justice would naturally emerge from the interview themselves, which eventually was the case.

4.3.1 Gender

Although this study is not primarily focused on the gendered aspects of transitional justice, two broadly defined groups underlie this research study and structured the manner in which interview participants were approached and chosen. Men and women's experiences of mass violence and brutality are dissimilar and therefore their perspectives of transitional justice were critical for this project. The research study included interviews with 21 males (40.4%) and 31 females (59.6%).

4.3.2 Organisational type

Research participants were drawn from a cross-section of society, particularly those institutions working in the area of transitional justice and ordinary citizens who were victimised by apartheid. These included academia, non-governmental organisations (NGOs), women's groups, youth (tertiary students) and ordinary citizens. Of the 52 participants, 27 (51.9%) were ordinary men and women, 6 (11.6%) were from academia, 5 (9.6%) were university students and 14 (26.9%) worked with civil society.

Chart 1- Organisational Type
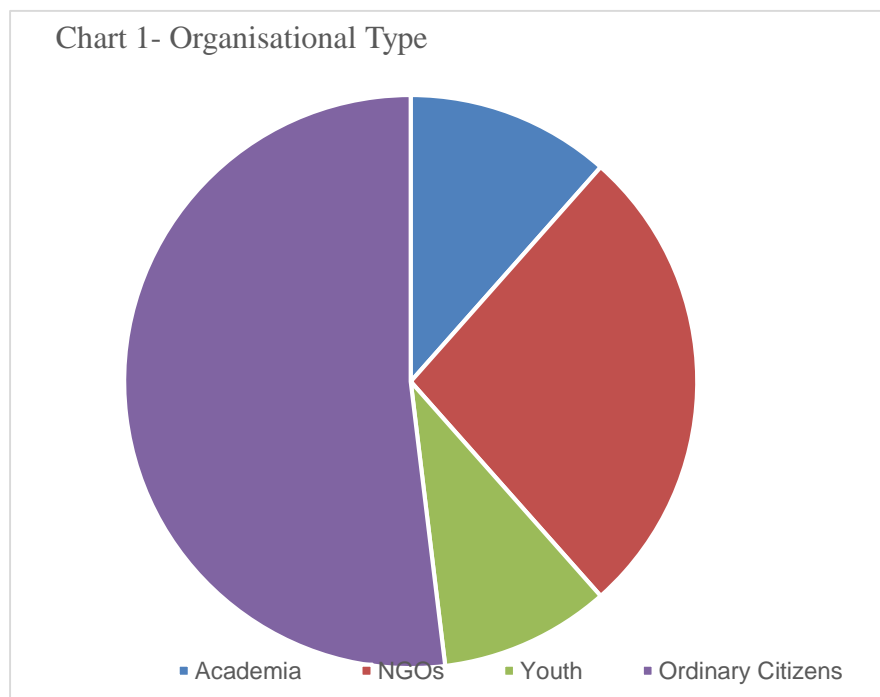
Source: Author's elaboration

4.3.3 Race

Since the perpetration of crimes under apartheid was along racial lines, informants were also recruited these demographics in imnd. Their racial demographics were as follows 40 blacks (76.9%), 3 whites (5.8%), 7 mixed-race (13.5%) and two Indians (3.8%).

Chart 2- Racial Configuration
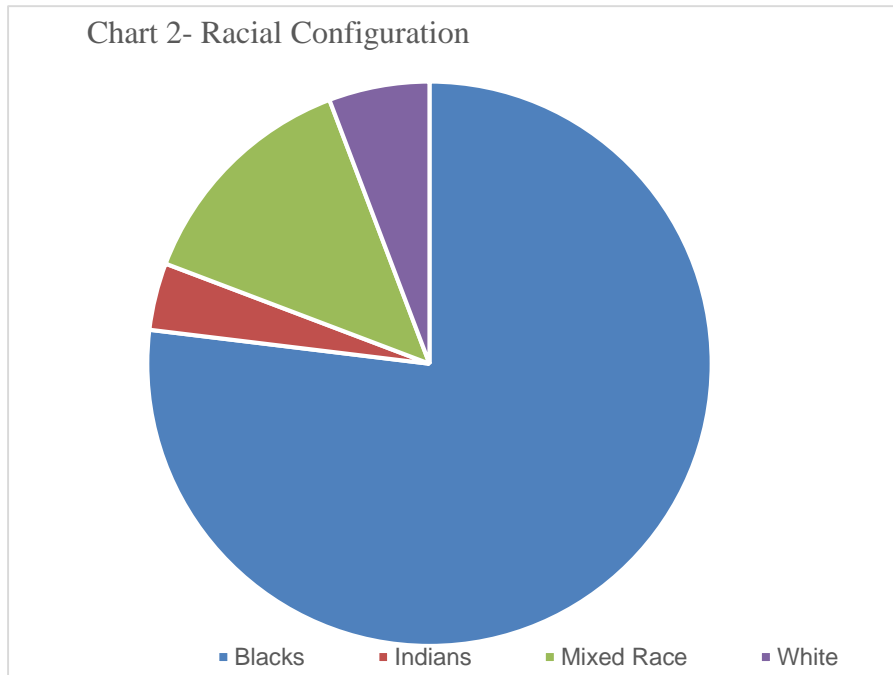
Source: Author's elaboration

The participants were chosen according to their unique experiences with both the apartheid brutalities as well as the transitional justice process in South Africa, in particular their understanding and interpretation of the transitional justice. Thus, a majority of participants have had direct involvement in the overall transitional justice project in South Africa, either as victims or institutions working in the area of justice.

4.3.4 Location

Source: Map of South Africa - www-pub.iaea.org

Participants were chosen from two locations in South Africa: (1) Cape Town and its environs, which includes Stellenbosch, Phillipi and Manenberg and (2) Johannesburg in East Rand and the townships of Tsakane, Katlehong, Kwa-Tema, Thokoza, Tsakane, Vaal and Springs. Some of the participants came from the sprawling black township of Soweto in Johannesburg. Essentially participants from East Rand were direct victims of the brutality of apartheid. Thirty-three (63.5%) of the interviews were carried out in Cape Town and nineteen (36.5%) were conducted in Johannesburg.

Cape Town was chosen because it is an emblem of the journey that South Africa has traversed as a country, from the space where the first European settlers arrived in 1652, to the seat of the colonial and apartheid capitals where racial segregation policies were promulgated and executed. Socially it is also the only province and city where black Africans are not in the majority. This is the result of successive legal campaigns throughout history, which more effectively than anywhere else, sought and succeeded in keeping black Africans out and in fact created a political identity wedge more than anywhere else, within the black section of the population, i.e. coloureds and black Africans. Its various populations continue to 're-live' apartheid and the city reflecting the physical vestiges of this oppressive system. Opulence is juxtaposed with grinding

poverty with marginalised black and mixed-race communities at the periphery of the city—a clear remnant of apartheid policies. The political identity created around the white community from apartheid has had more chance for survival here because coloureds and black Africans do not share the same political identity and ideology, but in fact vote against each other. Even with an almost commonly shared history through the 1980s struggle against apartheid, the narratives are quite divergent because apartheid laws created different lived experiences for the two groups, and hence different ways of responding to what they both understood as a common struggle. The precarious balance maintained by this social division mimics apartheid South Africa's social engineering more than most of the rest of the country. Therefore, if one has an interest in the glimpse of the stark reality of apartheid's social experiment juxtaposed with what the new South Africa is 'trying' to achieve, then one must interrogate socio-political divisions in Cape Town than anywhere else in South Africa. Cape Town is also the seat of parliament and 'home' to many organisations that work in the area of transitional justice.

The sprawling black township of Philippi is one of the remnants of the segregationist system of apartheid. Because accessing participants in townships is challenging, Philippi proved the best choice because this is where my research assistant resides and was thus a relatively 'safe' place to conduct interviews. The other interviews were carried out in Manenberg, a township created by the apartheid government for low income mixed-race families. Currently it has an estimated population of about 70 000, clearly overcrowded with poor living conditions and high levels of crime and gangsterism (SA Stats 2016).

Fieldwork was also undertaken in East Rand, near Johannesburg in Gauteng province. The large black townships of the East Rand—Thokoza, Tsakane, Katlehong, KwaTema and Springs—were the scene of heavy clashes between the ANC and IFP in the period running up to the end of apartheid. This black-on-black dimension of the struggle against apartheid was covered in Chapter 3. Interviews were also conducted with direct victims and active members of the largest victim support group in South Africa, the Khulumani Support Group.

4.4. Interrogating the Relationship Between Researcher and Subject

In this section I highlight some of the practical issues that I encountered during field-work and the attendant challenges posed by conducting fieldwork in a multi-cultural, foreign setting. I consider two important aspects: reflexivity and positionality. Reflexivity is discussed in relation to the potential implications of my biases and background and how that could potentially impact data collection and analysis, i.e., methodological consciousness (Lynch 2000). Undertaking research in cross-cultural, 'similar but different' settings presents serious challenges for the researcher. These settings were similar because of geography (sub-Saharan Africa), both impacted by colonialism and inhabited by predominately black people with identical cultures and languages (Ndebele, Shangaan, Venda) across the two countries – South Africa and Zimbabwe. However, the settings were at the same time different in geography (two different nation-states), impacted by apartheid and diverse languages and cultures. Hence, I will discuss my positionality in relation to three key issues: the insider/outsider dichotomy, access and cross-cultural understandings.

4.4.1 Reflexivity

It is essential to appreciate that as researchers there is an ingrained need to maintain an informed reflexive consciousness to contextualise our own subjectivity in data collection, interpretation and representation of experiences in the research process. This subjectivity also entails an appreciation of the power relations between the researcher and subject and how reflexivity and positionality are intimately connected when approaching these relations (Roer-Strier & Sands 2015: 252). Self-reflexivity promotes the reconciliation of personal motivations against biases for conducting research and the extent of accountability owed to the population studied (Bryman 2008). Since no research, using any mode of inquiry, is value-free, the challenge is not to eliminate but to document the effects of personas that influence our behaviour and positionality (Bryman 2008).

In my case, the fact that I am a married, black African man coming from a Western University, researching in a predominantly black African country with complex context-specific cultures was a key component of my reflective process. Coming

from a Western university, a former coloniser to the country I was now conducting research meant the power relations needed to be managed carefully. Hoffman (2007) argues that power relations are inherent in the interview process particularly when the interviewer poses questions to the interviewee which inevitably creates asymmetrical and hierarchical relations. While Kvale and Brinkmann (2009) argue that interviewing is unidirectional and instrumental with the researcher possessing the monopoly over interpretation, Hoffman (2007) argues the contrary, asserting that interviewees also have power in possessing the knowledge that the researcher requires and can either refuse to be interviewed or withhold information. Such power relations needed to be carefully navigated during fieldwork. However, this could be reflexively managed based on the congruence of my skin colour with that of most of the participants. Further, the biases that could also have potential of influencing the research process were premised on the fact that here I am a Zimbabwean national conducting field study in a country where my fellow nationals have 'run to' for economic salvation. In the last decade, these fellow nationals have been at the receiving end of incessant xenophobic attacks. A fundamental bias then was the belief that South Africans generally do not like Zimbabweans. That reflection heavily influenced my positionality. Therefore, to undertake responsible research I reflected critically about the influence the research could have on participants and their communities, on myself and on the body of knowledge under investigation.

In thinking through the ethical issues and challenges inherent in my research I made critical decisions about how I would participate in the world of my informants, irrespective of the biases annotated above. This also entailed giving back to the communities that my research participants came from, without necessary appearing to merely 'parachute into and out of' the research area to take data and return 'nothing' for my informants. I also reflected on how this research will potentially contribute to the discourse on justice for victims and how I was going to manage expectations arising out of the relationship I had created with the participants as an outsider. Hence, I entered the research area committed to taking victims' agency and voices seriously. This was premised on the belief that victims can make sense of their world, meaning that their seemingly endless struggle for justice, for instance, can be better understood by soliciting for their views, opinions and experiences.

As human beings, we are products of our life experiences, environments, and histories. It is therefore important to appreciate that we each have a differing worldview shaped by several factors, among them gender, sexual orientation and socio-political and cultural heritage. Through reflective practice, it is therefore important to openly acknowledge the ways in which our heritage may influence both the data collection and analytical processes. Berger (2015: 2) defines reflexivity as 'turning of the researcher lens back onto oneself to recognise and take responsibility for one's own situatedness within the research and effect on the setting and people, data being collected as well as interpretation'. In other words, researchers must be reflective of the potential implications of their 'methods, values, biases and decisions for knowledge of the social world they generate' (Bryman 2016: 388). Hammersley and Atkinson (1995: 131) support this position and opine that it is not a question of minimising or indeed eliminating the influence of the researcher, but rather a process of understanding and appreciating how a researcher's worldview has shaped and moulded the research design, process, data collection and analysis. Pillow (2003) affirms this position and recommends the continuous use of reflexivity throughout the research process to reflect of any potential influence on the annotated processes. Essentially subjectivity, both from the researcher and from the study population, is ingrained in an interpretive approach. Therefore, as a researcher I was critically conscious of participants' potential influence on the research process. Key considerations were based on the subjectivity, particularly my social background as a Zimbabwean studying in a Western university, my assumptions of the context within which the research was taking place as well as my positioning and behaviour and how that could impact the research process. Quite fundamentally I also had to take stock of my positionality and my role in the research process and that entailed a conscious reflection that I was part of the social world(s) I was investigating (Berg 2007: 178). As Pillow (2003: 175) argues, reflexivity is needed to 'legitimize, to validate and to question' the research process.

Hesse-Biber and Leavy (2006) distinguish two aspects of reflexivity—personal and interpersonal. Personal reflexivity relates to how the researcher's personal background and assumptions may influence the research process and the data generated. As alluded to above, I reflected on my personal and academic backgrounds both as a Zimbabwean as well as a student studying in a Western university and how that would influence the research process. Interpersonal reflexivity on the other hand 'recognises

that the interview setting and the interpersonal dynamic between the researcher and the participant can influence the knowledge creation' (Hesse-Biber & Levy 2006: 146). It therefore recognises the importance of continuously reflecting on the situational dynamics between researchers and subjects and how that impacts the creation of knowledge. In that respect, I was sure to reflect on the spaces that interviews would take place. In all the cases, I let my participants choose the venue that they felt comfortable being interviewed in. In other cases, particularly with the interviews with victims of apartheid in East Rand, I gave the gatekeeper (Khulumani Support Group) the latitude to choose suitable and 'safer' places for both my research participants and myself, given the sensitivities of conducting fieldwork in townships in South Africa.

Green and Thorogood (2004) locate three important benefits of using reflexivity throughout the research process. While reflexivity encourages methodological as well as theoretical openness, it also provides an awareness of the wider social context. In other words, not only does the researcher reflect on how the data were uncovered, particularly the decisions and actions that may influence the data collection, but also a consideration of the theories that have been applied and how they have guided the research (Bryman 2016). Equally important is how the socio-political context might have shaped and constrained the research (Lynch 2000). Carrying out research in townships in South Africa is very challenging. Safety and security are issues, given the 'shocking' amounts of crime in those spaces. I therefore reflected on the challenges of accessing research participants in such a context. I ended up soliciting the services of a research assistant to provide insights as to the safety of a 'foreigner' in those areas as well as conducting some of the interviews in my absence. All these subjective considerations had a bearing on the study and demonstrate how I managed subjectivity throughout the research process (Finlay & Gouch 2003).

Considering the above, it must be noted that our research identities, change with time and experience, just as our everyday identities do. Inevitably we bring our beliefs, assumptions and biases that need to be reflected upon in the research process (Denzin & Lincoln 2008). Before I went to South Africa, I conducted desk research on the safety standards in the townships that I intended to undertake fieldwork. These preliminary findings affected the way I viewed South African society. I believed that South Africans

were so violent that my safety was going to be compromised. Throughout my field-work, the fear of being robbed or assaulted was my constant companion, to the extent that on certain days it really affected the way I would operate. To overcome this, I complied introspective memos or short statements that I wrote regularly to reflect on what I was experiencing as well as to clarify and question assumptions (Butler-Kisber 2010). I also carefully maintained notes on how I felt on particular days and what I observed as I walked or sat in public buses or moved through public spaces.

I elected to never take the train, which I had learned during my desk research was where most robberies on public transport take place in South Africa. Because of this fear, I missed an important interview with one institution that works around social justice in Khayelitsha because I could not find somebody to accompany me. Since these memos and statements were developed over time, they represent an interesting, temporal path which I used in peer debriefings with supervisors as part of a critical form of reflexivity. With the aid of field notes, the research and data gathering process took the form of diverse experiences, encounters, relationships, observations and conversations all informed by my positionality.

4.4.2 Positionality

I must admit that despite the abundance of the literature on researcher positionality, finding a word that best describes my positionality —a term that I felt represented the role I played in the research —could be an exciting academic exercise. First, although I was completely an outsider to my research context, my attachment to an institution that employs staff from a diverse multi-cultural background, including my country of origin, meant that my positionality was 'negotiated and influenced' very much by that reality. Second, the fact that I am a black person researching in a predominantly black country that had experienced colonialism like my own country, meant my positionality fluctuated between insider and outsider.

Certainly, conducting research in cross-cultural contexts brings to the fore the dichotomous insider/outsider argument regarding the positionality of the researcher (Rubin & Rubin 2012). Indeed, much scholarship tends to assume that there exists an obvious contrast regarding the researcher's positionality—either the researcher is an

outsider, or they are an insider (Herod 1999). Implicit in this assertion is the assumption that insiders, or those perceived in that light, are deemed to have an advantage owing to their perceived understanding of contexts, histories, and events as they evolve (Merton 1972). Yet these assumptions are continuously problematised in research demonstrating that insiders may differ over social class, age, culture and other variables that can impede gaining access and acceptance (Dunbar et al. 2001). Angotti and Sennott (2014: 438) define insiders as those who are indigenous to the communities of interest while outsiders are those who are foreign to them despite that feminist and post-modernist theorists have challenged these binary distinctions as 'over-simplified and presume that social positions are static'.

Reflecting on my experiences in South Africa, I concur that one's positionality either as an insider or outsider is more complex than the distinct binaries articulated in theory. Prior to undertaking any interviews with research participants, I had simply assumed since I was a non-South African citizen my positionality was that of an outsider since I was certainly not connected in any way with the culture or other identity of the social actors I was interviewing. Yet, the more I conducted interviews with different participants, the more it became apparent that this dichotomy was not quite so simple and linear in practice. In fact, it was quite messy and ever-changing, context-dependent and shaped by my own status on the ground (Merton 1972). As Darling (2014: 6) notes, positionality is 'never static but rather constituted in response to various audiences, demands and contexts throughout research'. However, in the interviews I felt as if some participants treated me as an insider attached to an organisation that they share a lot with in terms of identity, cause and strategic goals. Certainly, the interviews I conducted with some members of staff of the Institute for Justice and Reconciliation (IJR) exuded a lot of 'insiderness', yet I was obviously an outsider in South Africa. Because I sat in their meetings, participated in their programme development sessions, had informal discussions and came to the office everyday meant that I had become an insider to them. Clearly, through this experience my positionality changed from being perceived as an outsider to an insider as my fieldwork progressed (Darling 2014). This change was despite the fact that I wasn't conducting any follow-up interviews with participants I had worked with initially.

In my research, I conducted interviews with selected staff members of IJR, with whom I had shared conversations on a myriad of issues, more than a month after I had started my fieldwork. In those interviews, they would not even read the participant information sheet and cared less about consent but were very prepared to proceed. They openly expressed that since I was 'one of them' it was not necessary to go through all those procedures. On reflection, it may have appeared to them that I was more of an insider than an outsider. Song and Park (1995: 243) corroborate this point and argue that these insider/outsider myths are 'inadequate to capture the complex and multi-faceted experiences of some researchers who find themselves neither insiders nor outsiders in relation to the individuals they interview'. This complexity reinforces the idea that insider-outsider boundaries are porous and multifarious and may 'fluctuate between belonging and not belonging, affinity, distance and insider/outsider/foreign axes' (Roer-Strier & Sands 2015: 253; see, also Siwale 2015;). The insider/outsider dichotomy changed many times during fieldwork as my identity became fluid in different contexts thus disrupting the hypothetically constant duality of insider/outsider. This dynamism contradicts the assumed privileged positionality of the insider that is found in literature on interview methodologies has assumed (Mullings 1999; Rubin 2012). While both the researcher and subject are thought co-partners in the production of knowledge, the usefulness of engaging in the discourse on insider/outsider dichotomies, given that such binaries are dynamic over time, is questionable (Kvale 1996).

Notwithstanding that much of the literature on interviewing as a research method tends to accentuate the attractiveness and firm position of insider status (Agar 1996), my experience is that there are advantages as well in being perceived as an outsider. Some of these advantages are comparatively ordinary to the extent that in post-conflict societies where trust levels are low, research participants tend to open up to an outsider (particularly a foreign outsider) more than an insider. I realised that sometimes research participants are more comfortable disclosing information that might be seen as sensitive when being interviewed by an outsider than if they were dealing with a local researcher. Perhaps one of the greatest advantages is that as an outsider I think one is constantly interrogating issues and reflecting on the dynamics often precisely because one does not understand certain things in the way that an insider does. On many occasions I had to implore my research participants to elaborate 'uncomfortable' concepts and categories in tremendous detail, in a way that an insider would be reluctant

to do. From that perspective, however, I have also attempted to debunk the presumption that insiders enjoy a privileged position in the production of more valid accounts from their interface with social actors. On the contrary, my experience is such that outsiders working with a 'trusted' gatekeeper usually gain access to accurate and authoritative information.

4.4.3 Research Site and Access

The challenge of conducting research across cultural and political differences has been well documented in the literature (Rubin & Rubin 2012). Chief among them is gaining access to research participants in general as well as 'their complex and context-specific attitudes and behaviours' (Roer-Strier & Sands 2014: 251). It is important to note that simply gaining access to the research area, its institutions as well as the participants can be an extremely daunting undertaking. Indeed this has a bearing on and in fact amplifies the complexity of the entire research process (Herod 1999). Gummesson (2000) argues that there are three different aspects of access: physical, continued and mental access. Physical access is defined as the capacity to get to the proximity of the object of study to interpret what could be obtaining. Continued access refers to how the researcher maintains ongoing physical access whereas mental access implies that ability to comprehend what is happening and why (Siwale 2015).

During my time in the field both in Cape Town and Johannesburg, I noticed that gatekeepers are very central to these types of access (Hammersley & Atkinson 2007). Gatekeepers are people who 'are able to arbitrate access to a social role, field setting or structure. Their role is integral in ensuring that researchers gain access to potential participants and sites for research' (McFadyen & Rankin 2016: 82 see, alsoLavkaras 2008). In my research, the institution I was attached to managed to assign various members of its staff to share this gatekeeping role. Therefore, most of the participants I approached in Cape Town were amenable to my research because of my attachment to that institution because they were familiar with it. Some of them were recommended to me by my colleagues at the Institute and those responded positively either by phone or on email. In that regard, 'institutional' and individual gatekeepers helped in ensuring that I gained access to potential research participants. In fact, using an institutional representative as a gatekeeper ensured that I not only had access to their data base, but

connected to their internal email platform which gave me access to internet, attended organisational and programmes progress meetings. I was also provided with a working space where I could come to everyday as well as access to meeting rooms to conduct interviews for participants that felt comfortable meeting me at the IJR offices. This was a critical component of my gaining access as it facilitated the smoothening of the snow-ball sampling technique. These positive influences were invaluable during the entire research process and were made easier by the fact that individuals assigned to assist understood transitional justice quite well (McFadyen & Rankin 2016).

Theory on conducting interviews as a research method seems to assume that the major focus should be directed at the dynamics of the interview itself since gaining access to institutions is relatively banal. In practice, simply arranging an interview can itself be an extremely challenging ordeal despite being 'armed' with such basic knowledge as contact addresses, emails and so forth (Herod 1999). For instance, when to contact institutions within their other daily schedules has a huge impact in whether or not one is granted access. Three of my interviews with the Department of Justice and Constitutional Affairs in Cape Town and the follow-ups in Pretoria as well as with Members of Parliament were challenging to achieve because of timing. First, my inter-view with the Regional Head of the Ministry of Justice and Constitutional Affairs in Cape Town was postponed an hour before it was scheduled due to an unexpected emer-gency meeting and could not take place for the duration of my time in field despite repeated attempts to reschedule it. Second, when I approached Parliament, I was told the Secretary to Parliament, a key official in organising interviews, was away in prep-arations for the local government elections that were to take place a month after I re-turned from fieldwork. Third, the intended interviews at the Police Service were also problematic as they kept on advising that the suitable person was busy with work. My follow-up with TRC Directorate in Pretoria, after being referred by my gatekeeper, was also a victim of timing as the person responsible for the matters flowing from the TRC was said to be busy and would be available the beginning of August by which time I would have returned from the field.

Overall, I found that being able to access research participants in influential offices does depends on many considerations that unfortunately I could not immedi-ately locate. However, on a positive note I discovered that access to high-level officials

can be obtained through carefully crafted letters of introduction. Sometimes the use of business cards was also helpful. Without them, accessing high-level officials could have been problematic. This underlines the importance of networking in establishing a degree of credibility among the potential participants and especially those that may be sceptical about how the researcher obtained their names.

4.4.4 Cross-Cultural Understanding

Probably the biggest challenge of conducting research in a foreign setting is cross-cultural comprehension and the concomitant expectations. Of fundamental importance is how language is used to construct representations of people through oral or written accounts (Temple 2005). Quite central to this predicament is the complexities of language and the inability of the researcher to converse with the research participants directly (Siwale 2015). However, the reality of research is such that issues of representation are present in all empirical inquiry and language plays a major part (Temple 2005). In my research I was therefore reflexive of the fact that I was going to interview participants who did not have a working knowledge of English and therefore engaged research assistants who spoke the participants' language. I therefore asked my interpreters not to 'foreignise' the translations but to provide them as raw as they were within the context in which they were spoken by participants. This is because I was aware the translators might have been tempted to 'tidy up' accounts to alter how participants and their institutions would be viewed. Ironically, I realised that my research participants were very eager to speak directly to me, since I was black, 'one of them'.

However, they could not fathom how, coming from a neighbouring country, one whose main cultures is almost identical to theirs, I could not competently converse in their language. To overcome that I decided to use interpreters in those interviews in which communicating in English was impossible. The major challenge with that approach was the extent to which interpreters are competent enough to understand the thrust of the research and the attendant questions (Herod 1999). However, I was content that all choices of methods of data collection have epistemological consequences and was satisfied that in social science research there is no objective definitive text (Temple 2005). During my fieldwork, I discovered that using interpreters during interviews—especially the use of a language that I wasn't competent in speaking—is simply a very

complex engagement. This is not to suggest that lack of competence in a language is fatal to the overall collection of data, but it brings into light issues that the researcher needs to be reflexive about. However, these issues are, in many instances, overlooked. (Herod 1999). As I reflected in my own field notes compiled on 14 July 2016:

> Translations are a major challenge regarding these interviews. In some instances, victims tell a very long, seemingly detailed story, in their own language and to my surprise the interpreter is giving very short translations. Sometimes you wonder whether or not all that information can be compressed to such an extent. I kept wondering if it might be useful to either have a professional or competent translator to ensure that the gatekeeper's representative does not play a dual role. However, due to resource limitations, I had to make do with what was made available to me by my gatekeeper.

In simple terms, the assumption is that conducting interviews with participants from diverse communities places the researcher at the disadvantage because of a perceived lack of appreciation of the social context within which they hope to gather data (Angotti & Sennott 2014). Advancing such an argument has two inherent limitations. First, it assumes that only those who grew up in one context can provide meaningful insights as compared to those that did not. Second, it perpetuates an unenviable positivist position that the insider has a 'truer access to knowledge which is seen to pre-exist the research process and which is simply awaiting to be discovered by those with the appropriate cultural resources and skills' (Angotti & Sennott 2014: 438). Hence, the production of a more nuanced interpretation is the preserve of the insider because the outsider will encounter challenges in accessing true and correct knowledge about the interviewee's context. This assumption is rejected by Bryman (2008), Angotti and Sennott (2014: 449), Kvale (1996) and others who have long established that interviews in research are a co-production of knowledge and hence both the insider and the outsider have the capacity to influence the research such a process in different way. Therefore, assuming that one form of such knowledge is truer is highly contestable. More so, Temple (2005) argues that there cannot be one single correct translation of text because 'all researchers present accounts from their own social location and there is no way to make

"objective" knowledge claims from outside your position in the social world' (Temple 2005).

4.5 Ethics

4.5.1 Ethical Considerations in Conducting Fieldwork in Multi-cultural, Post-conflict Societies

This section examines the many ethical challenges that arise when conducting research in a multi-cultural, post-conflict setting. It focusses on dealing with emotions, research participants' expectations and the dynamics of collecting data in unstable settings.

Conducting academic research with victims of gross human rights violations is fraught with important ethical considerations. Essentially there exists a fine line between what ought to be a robust inquiry and the sensitives around the victims' ability to talk through their traumatic experiences with profound resolve. Jasini (2015) observes that conducting research in post-conflict societies presents a complex set of challenges which is a psychologically daunting and emotionally draining experience particularly if the focus of the empirical research is on victims of mass atrocity. Although 21 years is a long time in the life of a human being, it is just like 'now' in the minds of the victims of gross human rights violations. The exigencies and the pain associated with it remain fresh, persist in the psyche and are a living part of their 'present'. In most interviews, women would break into tears and I would stop the interview, so they could recover. As part of my duty of care I had compiled a list of institutions that work in the area of stress management and was prepared to contact them just in case the participant appeared to be in distress. In one such interview, the sobbing went on for more than five minutes and when I asked my interpreter for advice about whether we should conclude the interview, the participants cried for two more minutes and committed to continue with the enquiry. She noted that it was her first time sharing her experiences with anyone outside her family and that she felt that her pouring out was analogous to removing 'a very heavy stone from her heart'. Participants being distressed, or overcome by emotion, is a constant occurrence among victims of mass atrocity. This was my experience in East Rand, South Africa.

Prior to engaging in the interview process with victims, I reviewed a series of troubleshooting protocols on the potential pitfalls that lay ahead by reflecting on a number of questions:

1. What would be the difference between interviewing victims and those with NGO practitioners, academia and other groups at the different levels of society?

2. What techniques and personality traits would I need to obtain high-quality data at the same time as meeting my ethical obligations to avoid re-victimising the already traumatised research participants?

I tried to familiarise myself with the unique matrix of factors (apartheid atrocities, current levels of economic deprivation and inter-communal violence) inherent in each geographical space by reading newspapers and other materials on contemporary challenges as well as asking questions of my gatekeeper. Nevertheless, I found the actual experience daunting. Despite spending a considerable amount time preparing to be reflexive throughout the research process and not to unhelpfully raise issues that could cause a participant distress, in hindsight what I needed was to prepare myself mentally for listening to harrowing accounts of their lives.

For instance, as mentioned female victims would sometimes break down during interviews. This had a tremendous impact on me. However, the prior preparation was very cardinal in addressing some of the complexities I eventually encountered which would have been worse if I had not taken the trouble to reflect on that. Needless to say this approach was very useful in designing and conducting interviews with victims. On a human level, conducting interviews with victims of mass atrocity and gross human rights violations affects one's emotional well-being, and despite the plethora of studies on the subject one cannot escape that reality. In my experience, it was helpful to be surrounded by friends and colleagues at the Institute with whom I could talk to and share my emotions and views in between interviews.

4.5.2 Dealing with Emotions: 'Parachuting into and out of People's Emotional Journeys'

As the section above has discussed, qualitative research focusses on experiences, perceptions, beliefs and motivations of study participants. In such situations, there is a possibility that some participants may become emotional as a result of previous experiences (Bailey 2008, Darak & Kulkarni 2005). As mentioned, narratives of personal loss and trauma occasioned by apartheid came up quite often during my interviews. Peel et al. (2006) note that while researchers are mostly focused on minimisation of harm or distress, it is often easy to overlook the benefits participants derive from participating in the research, even if it is emotionally challenging. Indeed, in the present research, participants often reported that despite the distress, these interviews were beneficial to them as it offered an opportunity to tell their stories. The self-awareness generated in this way may be beneficial in considering solutions to problems discussed in the interview process.

At times, however, I felt that I was being very unfair to my research participants. After having 'poured' their hearts out for an hour, they are left to their own devices—to return to the reality of their unresolved situation. I could not reconcile with this for most of those I interviewed, and this left me frustrated and feeling hopeless. Silverman (2000: 201) reminds researchers that they should always remember that while they are doing their research, they are in actual fact entering the private spaces of their participants. Understandably, this raises several ethical issues that should be addressed during, and after the research has been conducted. Creswell (2003) concurs, suggesting that the researchers have an obligation to understand the contexts in which they operate especially taking cognizance of the needs, expectations and the values ascribed to by the research participants. Miles and Huberman (1994) caution researchers to be mindful of these and other issues before, during and after the research had been conducted.

4.5.3 'What's in it for us?': Contextual Considerations

In most African societies, food is almost always provided at social gatherings—it is a cultural norm. My interviews in East Rand and at the offices of my gatekeepers in

downtown Johannesburg involved travelling to and from the venue where interviews were actually conducted. My gatekeeper organised that each day we would interview about four people, with a minimum duration of approximately one hour for each. Since we wanted participants to tell their stories in full, sometimes interviews would take about two hours. That entailed starting early and finishing late and these victims would travel by public transport using their own resources to the venues. As a token of appreciation and at the instigation of my gatekeeper, I bought food to share with victims and ensured that I reimbursed their transport costs with an additional small amount to ensure that they are able to 'buy a drink' on their way back. I found this important in increasing mutuality and at the same time keeping to the 'tradition of doing "business" between my gatekeeper's institution and its membership. This was also important 'demonstrating respect of the cultural sentiment' in South African society (Jasini 2015: 30). On the contrary, this might come across as unethical in the Western tradition which greatly differs from African communitarianism. This reality is best captured by Wamai (2014: 213) who notes that 'the processes of ethical review are often limited in their applicability once faced with the complexities of fieldwork itself'. In that regard, fieldwork calls for on-the-spot judgements that sometimes surpass institutional bureaucratic frameworks of ethics, especially when researching in the developed world (Darling 2010).

Conducting fieldwork in developing countries that are overly researched like South Africa has its own challenges. In my first batch of interviews, in Tsakane, East Rand, the proverbial question, 'what is in it for us?' arose (on this issue in field research generally, see Hennik, Hutter & Bailey 2011: 74). After I had been introduced by the Chairperson of the Khulumani Branch in that area, she asked me an interesting question: 'how is the research going to help victims who have struggled with the challenges posed by apartheid in the last 20 years? Is it merely an exercise to check how people are after all these years, obtain people's information and leave them to their problems?' This question really threw me off and I struggled to explain, how in pragmatic terms, my research was going to have a direct bearing on the victims. The participants joined and voiced that they had had enough with researchers since they 'come to us to get information, get more money and leave nothing for us'. After negotiating for an hour, they relented, stressing that since I was a student, black like them from neighbouring Zimbabwe, and in the spirit of *Ubuntu* they were going to help me. However, they

implored me to carry a message to my supervisors that 'victims need assistance'.[12] As a result of the experience I was therefore mindful to reassure participants at the beginning of the data gathering process. Since I did not intend to offer any incentives, financial or otherwise, I was realistic and remained steadfast—save for the food and transport money, which for all intents and purposes constituted fair recompense. Butler-Kisber (2010) supports this view and further notes that the delicate balance is to be able to inspire interest and even excitement in the research without promising the impossible.

4.5.4 Conducting Data Collection in 'Safe' Spaces

(Browne & Moffett 2014: 223). affirms that 'entering the field can be a daunting, demanding and at times bewildering and anxiety-inducing experience'. Researching in black townships in South Africa is challenging. As alluded to earlier in this chapter, violence, crime and gangsterism are rife. Locals and foreigners alike are robbed and sometimes killed in broad daylight. These messy realities meant I had to be conscious of my surroundings and cautious whenever I entered the field, albeit with the aid of my research assistant.

This reality affected my awareness in unpredictable ways. The most challenging thing was my constant fear that something untoward might happen to me. This fear would always come upon me whenever a group of young men walked toward me and my research assistant. I would literally 'freeze' and remain silent, fearing that if they spoke to me in their language (I would not be able to respond after all) they would realise I was a foreigner—in South Africa but also in 'their space'. I do not think that the fear that I always experienced was necessarily irrational. Philippi, Manenberg and other townships remain as grotesque monuments to the apartheid system and crime is a symptom of apartheid-induced displacement and poverty, overcrowding, frustration and inequality (Malan 1990). A paradox exists in these spaces as I observed a juxtaposition of extreme violence and gangsterism and the tremendous kindness and generosity of local women. In fact, Cape Town is a place of head-spinning contrasts. The serene and almost first-world development status is contrasted with sprawling slums infested with gang violence and some of the highest murder and crime rates in the world. The housing situation in these townships shattered my nerves even though I also come from

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[12] This was my experience with victims in Katlehong, East Rand, Johannesburg on 12 July 2016.

a developing country. No running water, no ablution facilities, and no roads traversing the tin shacks, save at the outskirts of the township. Gory stories of the 'bucket system'[13], men waylaying women and girls who try to access the communal toilets in the night, everyday robberies, murder and rape characterise the daily goings-on in these spaces. To put it bluntly, these spaces are completely untamed and utterly ungovernable. In fact, statistics show that Cape Town is one of the ten most violent cities in the world (Business Tech 2016). Even the police or state security structures play second fiddle to a coterie of violent gangs that provide security apparatus to their kith and kin at the same time subjecting them to the very violence that exist between and among these gangs. Participant recruitment, with the aid of my assistant, was cognisant of all of this challenging detail so as to minimise both physical and psychological harm to those I interviewed (on ethical participant recruitment, see Fielding 1993, van den Borne 2007). I took extra care and reflected on how the individuals might be viewed or treated by their peers as a result of participating in the research. Incidentally, I often asked my research participants the source of such horrific violence—they all 'almost proudly' cast the violence as a remnant of apartheid which the TRC had unfortunately turned a convenient blind eye to. Undertaking fieldwork in these circumstances inhibited, to a greater extent, the initial plan to access these communities.

4.6 Limitations of the Study

In conducting this study, a number of roadblocks were encountered during fieldwork. Conducting research in cross-cultural contexts presents numerous problems associated with access, language barriers and an understanding of where useful data may be collected from. The intention of this research was to interview participants in the black and mixed-race townships around the Western Cape, while based at Stellenbosch University. I had to alter my plans because Stellenbosch University was quite a distance from the spaces I intended to carry out most of my research. I then had to shift to Cape Town. The biggest challenge I encountered was that I could not gain access to the intended townships of Khayelitsha and Gugulethu because of safety and security issues. These spaces are very violent and therefore to get in and out safely—let alone recruit

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[13] The bucket system is a simple form of a dry toilet which is portable. In structure it is basically a plastic bucket fitted with a toilet seat used in many townships where there are no proper ablution facilities.

participants—was practically impossible. I therefore had to change plans and started interviewing civil society organisations and academic institution in and around Cape Town. This meant that the initial plans had to be reworked.

A second limitation to the research was my inability to converse with some of the research participants directly, particularly those in East Rand. I had to use the services of a project officer allocated to me by my gatekeeper, although his prime role was to ensure that I was able to meet and engage research participants. Unfortunately, his command of the English language was not sufficiently advanced to handle the complex issues raised by participants and some key information could have been lost in translation. I quickly found that using interpreters raised many questions about whether respondents were interpreting the questions and categorising the experiences in the same ways as myself (Herod 1999). From a practical point of view, I have found that conducting interviews either through an interpreter or in a language other than my own is simply a very tiring ordeal. Therefore, the study would have benefitted immensely from engaging a professional interpreter who could have assured the integrity and quality of the data collected.

Thirdly, in order to access participants in the townships in Cape Town, I solicited the services of a research assistant, a student within the Department of Education at the University of the Western Cape. Our initial plan was that she would help me access the townships I had planned to recruit participants from. However, since she could not guarantee my safety in those volatile spaces, I decided to train her so that she could go on her own, recruit participants and conduct interviews. We would then meet from time to time to review the process and go over feedback. Unfortunately, on more than one occasion she pretended that she had understood the research focus and requirements. Much as I provided her with a semi-structured interview guide, I could not guarantee whether she had translated these correctly during interviews. There was no quality control check on these interviews to assure they were conducted within the ethical limits of the study. The data that she provided were of poor quality and thus not very useful.

4.7 Conclusion

This chapter has provided a detailed discussion of the research methodology adopted in this study. It has highlighted the philosophical and methodological underpinnings of

the research. The chapter underscores that this research's epistemological and ontological standpoints are based on the belief that reality is constructed through participants' context, circumstances and views. This allows researchers to view the world through the perceptions and experiences of participants themselves. Therefore, framing the research in the constructivist ontology underscores the intersubjective construction of reality through meanings and understandings developed socially and experientially. This ontological and epistemological approach brings into the picture the socio-political and economic context of the researched. The chapter notes that this is incredibly important when researching victims of mass atrocity. The chapter has also discussed grounded theory methodology, originating with the work of the sociologists Glaser and Strauss to the more constructivist model developed by Kathy Charmaz. Methods of data collection, semi-structured and unstructured interviews, their suitability and the potential challenges have also been highlighted in the chapter. The demographic particulars of the sample of research participants have also been detailed in this chapter including the justification for selecting the locations in which fieldwork was conducted.

This chapter has underscored the importance of reflecting on researcher–subject hierarchies within social inquiry. It has acknowledged that as researchers we enter the field with beliefs systems, values and a certain position in the world that enables us to be aware that our standpoints have potential to influence the production of knowledge. To that end, processes and practices of reflexivity and positionality when researching in cross-cultural contexts have been discussed. Ethical considerations in conducting fieldwork in developing countries have also been detailed in this chapter, especially the ability to adapt and respond to 'on-the-spot' reflections that resonate with research participants' cultural context. Despite all these challenges, my experience reinforced my fundamental determination to bring to light the centrality of victims' perceptions and expectations into the design and implementation of transitional justice processes and mechanisms. I have dedicated my research to those who shared their painful and traumatic experiences as well as dignity and resilience in the face of adversity. Their views and insights have contributed, in large part, to a better and informed understanding of the role and scope of victim participation in the TRC, as well as the wider role of active participation in transitional justice processes.

Chapter 5—Unpacking Victims' Conceptions of Justice

5.0 Introduction

Transitional justice mechanisms and processes are assumed to assist post-conflict societies is by providing justice to the victims. In that sense, a central aspect of the 'justice' in therefore, is their 'ability to provide a recognition of who has been victimised and who has perpetrated human rights violations' (Stanley 2009: 58). Yet, as scholars have observed, the major challenge to achieving justice is that it is an amorphous and elusive concept that can be interpreted in multiple and myriad ways (Gready 2011; Kent 2012: 33; Huyse 2003; Aiken 2014). In order to appreciate how transitional justice has been relevant and responsive to the needs of victims, it is imperative that victims' own understanding and appreciation of the concept of justice is understood. To that end, this chapter provides an empirical account of victims' perceptions of justice.

This chapter is organised around nine themes that emerged from the research. These themes are grouped into two broad categories: 'Wholeness and Humanisation' and 'Justice and Reconciliation'. The first four themes discuss the notions of justice within the framework of how victims' humanity is restored after mass violence. This perception of justice is premised on the understanding that justice is that which makes people 'whole' again (Villa-Vicencio 2004). The first section explores victims' interpretation of justice defined as restoring wholeness both at the level of the individual and his/her community. Victims argue that restoring wholeness must take place at these two levels in light of the mass atrocities occasioned by apartheid. At the core of this understanding of justice is how victims come to terms with their painful past and how they transcend such memory of offence.

The second section discusses the notion of justice based on the rehumanisation of victims. It argues that the apartheid-era injustices premised on forced removals not only dislocated communities but dehumanised victims as well. The section underscores that acknowledging the wrongs done as a way of re-humanising victims has been the missing link in post-apartheid South Africa. The section further reveals that, as a result of non-recognition, victims feel that they are being infantilised and treated as inferior,

negligible or simply being made invisible (Haldermann 2006). The section also emphasises that the failure to re-humanise victims has negatively affected reconciliation.

The third section discusses the concept of dignity and its centrality to victims' notions of justice after violent conflict. It introduces the concepts of 'dignity taking' and 'dignity restoration'. The fourth section highlights victims' understanding that the concept of justice is imbedded within their cultural worldview. Therefore, their conception of justice is informed, though not explicitly articulated, by the notion of humanity, goodness, communitarianism and coexistence. The findings also illustrate that victims' view justice as a multi-dimensional construct which is shaped by different cultural backgrounds and their specific circumstances (Gready 2011: 106).

The second broad section discusses five different notions of justice and its linkage to the process of reconciliation. The first sub-section (5.2.1) analyses victims' conceptions of justice premised on telling their story. It illustrates the cases of three victims that appeared before the TRC and how telling their story was perceived as a measure of justice. The second sub-section (5.2.2) locates victims' understanding of justice within the framework of 'righting wrongs'. It discusses the concept of rectificatory justice which victims contend must address their moral outrage in response to the 'wrongs' they suffered under apartheid. The section concludes that the failure to make a meaningful impact in victims' lives assumes that the transitional justice frameworks and processes that have been applied in an attempt to 'righting the wrongs' have never been within the realm of the victims themselves. The third sub-section (5.2.3) highlights victims' perception of justice based on the provision of reparations. It defines the theoretical foundations of the concept of reparations in order to locate state liability post violent conflict. The section further narrates the basis of the reparation in the South African transitional justice process and how these have remained emotive post the TRC. Victims therefore argue that the payment of reparations represents their perception of justice as they go to great length to atone for the injustices they suffered under apartheid. The fourth sub-section (5.2.4) analyses victims' perceptions around reconciliation and its connection to their understanding of justice. It illustrates how reconciliation has become an emotive issue in contemporary South Africa based on the TRC's failure to prioritise justice. The fifth sub-section (5.2.5) discusses the concept of social justice

based on victims' socio-economic predicament. It highlights victims' plight and how accessing opportunities represent their perception of justice.

5.1 Wholeness and Humanisation

5.1.1 Restoring Wholeness

Forty-seven of the fifty-two victims interviewed in this study underscore that 'restoring wholeness' is integral to their understanding of justice. This conception of justice was articulated mostly among black and mixed-race victims of apartheid in both Cape Town and East Rand. This was summarised by a project officer working with NGO that focuses on transitional justice, who stated: 'apartheid destroyed us both as individuals and disconnected us from our families and communities […] it feels like being cut in half, apartheid made us half-human beings. Sadly, the TRC failed to make us full human beings again' (CT1: 1 March 2016). Given this premise these victims argue that, 'restoring wholeness' is a sense of justice that address to the violence they experienced under apartheid. It must address not only individual suffering but also consider the interconnected web of relationships between victims, their families and their society. The findings of this study show that such a broad-based approach would encompass victims' own understanding of justice. Key to this conception of justice is how victims are made 'whole' again within the context of their societies.

This interconnected web was discussed in Chapter 2 where it was noted that within the African culture 'the community defines the individual; personhood is not bestowed on somebody simply through birth, but is something to be acquired; personhood is something at which an individual could fail' (Gyekye 1997: 37). This communitarian understanding based on the notion of *Ubuntu* mirrors the victims' perception of justice as articulated by most research participants. In the words of a black male lecturer in the Faculty of Law at one of the universities in Pretoria, 'this notion of justice is not simply likened to or an add-on to interconnectedness, but it is entrenched into and forms the interpretive foundation of restoring wholeness' (P1: 7 July 2016). This view of justice also resonated with the young generation, as articulated by two black

female university students whose parents were victims of apartheid. In their understanding, restoring wholeness must happen at both individual (given the physical and psychological harms victims suffered) as well as at the collective level considering the massive displacement and destruction of communities which, according to victims, was 'blatantly dehumanising' (CT23: 13 May 2016).

Since it is irrefutable that apartheid was a dehumanising system that ruptured victims' personal integrity and the entirety of society's cultural identity, all black and mixed-race victims interviewed in this study firmly believe that restoring wholeness must be reflected in a multiplicity of ways, guided by the specific circumstances of each community. In their opinion, the guiding framework would be informed by interrogating how victims have come to terms with the painful past, how they transcend such pain and how that influences and shapes their life going forward. This was deemed (by the victims) to be a critical process of 'restoring wholeness' (CT1: 1 March 2016). This view was firmly supported by a female participant who was a member of the TRC, who noted that approaching the conception of justice using the framework suggested above would lead to the restoration of 'wholeness' which is a victim-centric manifestation of justice:

> […] justice is about my life changed, if you want to think about in its broader context, it's about [asking the question] has something happened that I can say now I can transcend this whole painful history that I have carried all these years, has something happened to that extent and so if it does, restoration of wholeness is the path that process might fall in. That would be the process of justice which would require a real re-definition of justice (CT24: 14 September 2016).

What emerges from the above extract is that transcending the painful memories of the past is central to restoring 'wholeness'. Most victims once again emphasise that such a process can only be achieved if the injustices they suffered under apartheid are acknowledged and addressed. Sadly, victims interviewed in this study are literally carrying the burden of apartheid both in terms of unresolved pain and injuries as well as the socio-economic inequalities occasioned by this oppressive system. Therefore, to be restored to wholeness under the same conditions that existed under apartheid remains a huge challenge for the black and mixed-race victims that were interviewed in this study.

Part of this challenge is that there has never been recognition of their predicament in post-apartheid South Africa.

Regrettably, within the research findings, none of the victims could attest that their suffering had been recognized. Haldermann (2006: 37) makes the following claim about the importance of recognition to justice:

> If we think of recognition as an essential part of doing justice to the victims, then a 'different kind of justice' might be required […] What we owe the victims as equal fellow-citizens is that their dignity and worth and the wrongs done to them by governments or the broader society are publicly acknowledged. This is, it seems to me, a minimum requirement of transitional justice as *justice*.

Recognition in the sense posed by Haldermann ought then to be incorporated into the design and practice of transitional justice, and not excluded or treated as an afterthought. This view was dominant among victims in East Rand, who were of the firm view that there has never been sufficient 'acknowledgement to their loss of humanity as a people occasioned by the dehumanising system of apartheid (CT24: 14 September 2016).

The black and mixed-race victims I interviewed unanimously agree that the view of justice as 'restoring wholeness' by acknowledging dehumanisation was never part of the transitional justice process in South Africa. Most victims asserted that such a notion is absent in the consciousness of those who never suffered these gross violations. To support this viewpoint, a mixed-race woman working with one of the leading universities in Cape Town argued that both external experts and local elites have no clue what the concept of 'restoring wholeness' entails because they never suffered under apartheid (CT14: 13 May 2016). Yet about 94% of the victims posit that this conception of justice is very integral in addressing their needs after mass atrocities because it places their restoration as 'whole beings' at its centre. Victims believe that this has been the fundamental challenge within the transitional justice in South Africa in that this important notion of justice was never canvassed or addressed.

5.1.2 Re-humanising the Dehumanised Victim—A Different Kind of Justice

All 52 participants interviewed in this study attested to the dehumanising nature of the system of apartheid as articulated in the preceding section. This viewpoint is aptly supported in literature and other secondary sources (newspapers)—after all, apartheid was declared a crime against humanity (Mamdani 2002). One of the key features of apartheid injustice was the forced removal of blacks and mixed-race communities—an estimated 3 to 5 million people are believed to have been affected by this gross violation of human rights (Mamdani 2000). On this issue, all participants interviewed in this study concurred that forced removals not only caused economic damage, they:

> also shattered strong communal bonds, dismembered communities, schools, separated people from their faiths, shifted people from communities of familiarity to ones of deep disconnection and also delivered a blow to a modicum of economic self-sufficiency victims had attained (Atuahene 2014: 42).

Literally every victim who participated in the study—including the few whites who were interviewed—noted that this dehumanising process coupled with mass violence sent South Africa to 'the proverbial borders of human-inhuman: the so-called edge of humanity', as noted by a female participant and former member of the TRC. These proverbial borders of humanity were also described by a mixed-race man working with a civil society organisation in Cape Town:

> If you are dehumanised, you in turn stand a good chance of dehumanising somebody else and I often make this example, if somebody wants to stab me with a knife, he would call me a name to dehumanise me first in his mind because when he dehumanises me he can do what he wants because in his mind I am not a human … [for example] he says you pig and he stabs me. Psychologically and subconsciously even unconsciously he is stabbing a pig. So, this is the very dehumanisation that happened in apartheid you know […] we were deemed to be non-human so that whites could do whatever they [wanted] with us (CT8: 15 March 2016).

All the research participants attest to the fact that this dehumanisation of blacks and other races by whites characterised the framework within which apartheid was executed. Therefore, any mode of justice that fails to address that dehumanisation serves no purpose to those who suffered under apartheid. Most victims therefore argue that the restoration of humanity through a process of rehumanisation must see justice administered to the understanding and satisfaction of the victims.

This understanding is supported by Santos and López's (2013) theory of the 'software side of conflict transformation', which is premised on the rehumanisation of individuals and collectives. This idea of the 'software side' fits perfectly into the general approach to justice articulated by the victims of apartheid. Rehumanisation is defined as a process of restoration of human dignity that was taken away during periods of mass atrocity (Rediehs 2014). Such rehumanisation fits into Honneth (1992)'s recognition theory, which entails recognition of one's physical and affective self as well as personal and cultural differences which is a key tenet of victims' understanding of justice. On this particular point most victims argue that their rehumanisation has been the missing link in post-apartheid South Africa.

Most black victims in East Rand noted how common it is to hear people say in their neighbourhood that 'black life is cheap because there has never been a deliberate process of re-humanising our societies after apartheid'. This viewpoint was firmly supported by mixed-race participants in Cape Town as well and was expressed in the following words of another participant:

> [...] therefore justice should be something, a situation, a dispensation where there is equality of humanity [...]. So, justice has to be justice that attends to that specific issue of humanisation. White people have not become humans because they have not [...] you know [...] have not contributed to processes that will lead to equality. They still hold the resources, they still hold the economy, and they still hold the land. In African society anybody who holds anything like that is not [considered] a human being, you know (P1: 7 July 2016).

It is evident from this statement that apartheid not only inflicted physical harm on individuals, it also destroyed 'their being as people as well as their humanity as a collective'. The oppressive system also categorised people based on race where blacks and mixed-race people were deemed of less moral worth than their white counterparts. Stanley (2001: 529) buttresses this point, arguing that state brutality demonised and dehumanised both individuals and groups. This fact came out in the language of the victims and their frustration at finding little had changed in the period after apartheid: 'we are still treated as if we are not human beings' (P1: 7 July 2016). This kind of disillusionment resonates with Margalit's theory of a decent society which calls humiliation 'injury to self-respect […] to the respect that a human being deserves for the very fact of being human' (Haldemann 2008: 693).

This disillusionment was a recurring perception among the research participants. One recollection by an unemployed black woman interviewed in Thokoza demonstrates this painful reality. She noted the injustice of 'me being targeted for rape or the way they burnt my husband, when they were doing *braai* here (grill meat over the fire), they were also burning his body here […] these people are not human beings' (ER13: 14 July 2016). For most victims this kind of treatment was and still is so humiliating that they feel very inferior to other human beings. The failure to accord such recognition comports with Frank Haldemann's (2008: 693) concept of misrecognition, 'a specific attitude of treating others as inferior, minor, negligible or simply invisible, possibly inflicting psychic injuries, and ultimately damaging the sense of basic self-respect on which basic human agency exists'. In fact, when collective evil occurs, as in the case of apartheid, victims suffer additional injustice when they are 'ignored, silenced, smothered and suppressed from the public eye' (Haldemann 2008: 693).

What also emerges from the extract above is that dehumanisation of victims under apartheid led to the dehumanisation of the perpetrators as well. As one interviewee noted: 'if you are dehumanised, you in turn stand a good chance of dehumanising somebody else (CT8: 15 March 2016). This observation is supported by Tutu (1999: 35) who observes that even supporters of apartheid were victims of the vicious system because of the intertwined nature of South African humanity based on *Ubuntu.* As he notes: 'The humanity of the perpetrator of apartheid's atrocities was caught up and bound up in that of his victim whether he liked it or not. In the process of dehumanising

another, in inflicting untold harm and suffering, the perpetrator was inexorably being dehumanized as well' (Tutu 1999: 35). It follows that the whites who perpetrated these heinous acts-require rehumanisation. Much as this may be a necessary process, most victims did not think that perpetrators deserve such recognition because of their culpability.

Most female participants interviewed in this study argue that because of their dehumanisation, justice is an empty concept in South Africa. One female university student of Indian descent noted: 'It [justice] is completely empty, devoid and completely political' (CT16: 16 May 2016). This observation might well reflect the fact that rape and sexual harassment were endemic under apartheid and have continued to plague women since. The fact that rape was used as a 'weapon of war' during apartheid—with little or no recourse in sight for women—underscores the idea expressed above that 'justice is empty'. This is further compounded by the fact the 'rape culture' in South Africa and the challenges associated with confronting this scourge mirrors the apartheid era. Regrettably, this 'dehumanising act continues to confront women and girls and there is very little being done to ensure that they achieve justice' (CT3: 7 March 2016). The misrecognition that victims of apartheid alluded to above is the problem in the practice of transitional justice which is premised on what victims believe is the urge to quickly 'put aside and move on'—yet its inherent failure to address the injustices of the past inevitably exacerbates the dehumanisation of victims.

Most victims see failure to re-humanise victims of apartheid as a hindrance to genuine reconciliation (for discussion see Rediehs 2014). Most victims interviewed for this study believe that reconciliation in South Africa is stalling because those that benefitted from the colonial and apartheid systems remain unwilling to even embraces the idea that rehumanisation must precede genuine reconciliation.With the research findings it could be pointed out that victims' frustration with the reconciliation project which was premised on the creation of a 'rainbow nation[14]' could have everything to do with the improbable thrust of reconciling the 'dehumanised victim' with the 'dehumanised perpetrator' in the absence of a process of rehumanisation. As articulated by white man and an anti-apartheid activist, the 'the romantic notion of a rainbow nation

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[14] Rainbow nation is a term coined by Archbishop Desmond Tutu to describe South Africa as a multi-racial and multi-ethnic country.

is no longer meaningful and won't be sustainable because those at the lower rungs of life have had their lives not meaningfully impacted by the new dispensation' (CT9: 16 March 2016). The fact that victims still suffer from the injustices that were occasioned by apartheid with no end in sight gives credence to this assertion.

5.1.3 Justice as an affirmation of human dignity

A recurring theme in the testimonies of most interviewees in this study is that rehuman-isation should also include restoration of their dignity. Most victims affirm that mass displacement coupled with gross violations of human rights had a massive impact on their dignity. As summarised by a mixed-race woman, 'when you come into my house and rape my soul, chase me away from my premises, take everything away from me and dump me where I never imagined... do you think I can retain my dignity as a human being' (CT14:16 May 2016). The Kantian notion of dignity is defined as 'an affirmation of the equal, or perhaps […] supreme moral worth of every human being' (Dan-Cohen 2011: 10). At the core of this notion is the respect for person's physical and psycholog-ical integrity as a human being. Hawthorne (2011) underscores that human dignity is inalienable and inherent in any human beings.

As articulated by victims elsewhere in this thesis, the oppressive system of apartheid presents a clear example of the subjugation and the stripping of victims' dig-nity, what Bernadette Atuahene refers to as 'dignity taking'. Indeed, the land dispos-sessions in South Africa from colonialism to apartheid are an archetype of dignity tak-ing. As discussed at length in Chapter 3, forced removal under apartheid was a strategy to subjugate black people and infantilise them. Citing narratives of displaced victims Atuahene (2014: 2) illustrates the inherent loss of dignity in mass displacements, 'when you own something, you feel proud that you have got something. But, when they take that away from you, you feel naked […] you feel as if you are stripped naked. You are nothing'. In that sense the loss of dignity by victims of mass atrocity occasioned by forced displacement becomes apparent.

In South Africa, loss of dignity ensued within a broader context of subjugation that included 'use of death, disappearance, torture, educational disruption, political ex-clusion, incarceration, sexual violence and psychological terrorism' (Atuahene 2014:

4). 'Dignity taking' occurs 'when a state directly or indirectly destroys or confiscates property rights from owners or occupiers whom it deems to be sub persons without paying just compensation or without a public purpose' (Atuahene 2014: 3). Needless to say, the displacement of black and mixed-race communities interviewed in this study fits into this definition. Most victims believe that the transformation of their circumstances by way of restitution and/or 'compensation that addresses both dignity and deprivations' would constitute justice (Atuahene 2014: 4). As expressed by one of the participants, 'it's a different kind of justice that means restoration of dignity by a change of my life circumstances and the circumstances of my children going into the future and so yes will be a central element of that kind of justice' (CT24: 14 September 2016).

Approximately half of the victims interviewed, particularly those in Cape Town, noted that a change in their circumstances entail the implementation of a process of dignity restoration. In other words, remedying past property seizures, land displacement, fair and appropriate restitution, recognising the loss adds to restoring the dignity that was obliterated by the apartheid-era misdemeanours. A female mixed-race participant who works with a leadership institute succinctly articulate sthis viewpoint:

> […] for me I think that we need to understand what the loss was first;
> we need to understand, if you take the forced removals, for example,
> what was the loss there; and it was very easy to pin down, there was a
> policy governing forced removals, the Group Areas Act; it's very easy
> to track and chase who these people were that lost their land. So, justice
> for those people would be a financial compensation that would be equal
> what it is that they have lost (CT4: 8 September 2016).

Understanding victims' loss requires a deeper appreciation that when apartheid forcibly displaced them, their loss extended well and beyond the narrow margins of property seizures. However, in redressing such a norm, restitution — among other processes, becomes an important component of justice —as an affirmation of restoration of dignity.

Restitution premised on changing victims' circumstances is largely based on the theory of corrective justice. Corrective justice is premised on the fact that those who caused harm have a duty to repair the losses that were incurred by the victims (Posner

1981). Mixed-race victims in Cape Town believe that justice in periods of transition has to 'fix the wrongs' and restore them 'back into the position they were in before the deviation occurred or else where they would have been if the deviation has not taken place at all'. This view was dominant among participants who were either directly affected or whose relatives or families were impacted by the removal of mixed-race people from District Six[15] in Cape Town (CT23: 13 May 2016). Victims claim that since forced removals were a pillar of the policies of apartheid, in particular the Native Administration Act and the Group Areas Act, statistics on who was removed from where and the kind of restitution that is required are readily available (CT4: 8 March 2016). These two pieces of legislation reinforced inferiority of non-white races and were responsible for the dislocation of blacks and mixed-race communities in urban areas (Gibson 2010). More so, mass displacement inevitably interfered with victims' cultures and identity which exacerbated these 'processes of humiliation' and loss of dignity (Lindner n.d: 2). In fact, the forced removals that took place in South Africa in the twentieth century 'were merely one chapter in a longer historical narrative where white authorities systematically dehumanised and infantilized blacks and usurped their property rights and [dignity]' (Atuahene 2014: 48). The questions posed by a mixed-race woman working with a leadership institute at a university exemplifies victims' overall frustration with the slow pace of restitution and dignity restoration:

> What had happened? What were things like before apartheid? What did access to land look like? Unpack the Group Areas Act. How did that work out? How was it instituted? What was the loss? The people of District Six want to move back to their land but they can't afford it. I mean there is no justice. You have brought down the homes of 60 000 people and they want to come back home. Justice should let them come back home—you should not have to have money in a bond [first] so that you can come back home. That is not justice. Why must there be such a lengthy process? People have died already (Respondent CT4: 8 March 2016).

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[15] District Six is a residential area in Cape Town where over 60 000 blacks and mixed-race inhabitants were forcibly removed by apartheid beginning in 1968 after the area was declared a whites only place in 1966.

Most victims are incensed that since land was 'stolen' during colonialism and the apartheid era, restoring it to its 'rightful owners' involves such a lengthy process The present research has found that victims further believe that if they cannot be returned to the areas they were removed from, then fair and just restitution must be paid out to them. Victims further affirm that because these deviations, which are patently wrong, not only injures individuals but societies as a whole, require some form of dignity restoration, fair and just compensation or restitution so that 'wrong doers do not continue to benefit from their wrong doing'. Although the South African government has attempted to remedy land inequality, only 10% of the land identified for such purposes in 1994 has been transferred to the black majority (Parker 2014). The goals of dignity restoration may also entail future deterrence to the commission of violence, the rehabilitation of the perpetrators and punishing them in proportion to the harm caused (Hopkins & Roederer 2004). As advanced by the victims interviewed in this study, to continue to live in injustice —characterised by contemporary challenges faced by victims —constitutes a failure in the deterrence aspect of dignity restoration:

> I think we need to look at how we restructure the cities. We are still so
> very segregated—white areas, coloured areas and black areas and peo-
> ple don't have the finances to move into this area so it's a huge project
> to reimagine what the city could look like but justice is where is your
> home is […] you can't move on and gloss over these things like we
> have a new South Africa and pretend these things don't matter. They
> actually do matter (CT13: 13 May 2016)

The geography of cities like Cape Town reproduce the remnants of apartheid in terms of how different races were either affected or benefitted from mass displacement. These remnants are a reminder of how blacks and mixed races lost both their property and dignity. Many of these people still live in squalid conditions, tin shacks with no basic amenities particularly the black townships of Khayelitsha, Gugulethu, Makhaza, Harare as well as the mixed-race residential areas of Manenberg, Hannover Park and Mitchells Plain. Therefore in an effort to ensure that victims' dignity is restored reconfiguration of the cities may play a fundamental role in adhering to the justice needs of victims.

What emerges from this sub-section is that the segregationist system of apartheid had a huge impact in taking away the dignity of its victims. Through its massive

land displacement and other injustices victims' dignity was grossly impaired. Victims interviewed in this study concur that restoration of dignity is a fundamental component of the provision of justice for them. However, such a process was never undertaken within the transitional justice processes and mechanisms and hence remains un-addressed.

5.1.4 Through the Cultural Prism

Most of the victims interviewed in this study firmly believe that the notions of justice are embedded within their cultural worldview and can only be articulated from that particular perspective. Victims, especially among the black communities in East Rand stress, that although they come from different sectors and spaces of society they are mostly bound by the cultural worldview of *Ubuntu*. Therefore, these black victims' conception of justice is informed, though not explicitly articulated, by the notion of humanity, goodness, communitarianism and coexistence. Within this worldview, victims affirm that justice is geared toward optimising harmony in society, 'so you hear people talking about the need to coexist […] there were atrocities [but] we need harmony' (P1: 7 July 2016). Black victims believe that within this prism of justice the most important thing is living together again harmoniously post conflict. Therefore, what constitutes an injustice is basically everything that causes disharmony in society. Although some victims submit that they have other justice issues of a retributive nature for instance 'getting the bodies of their children that disappeared, on getting to know the truth, getting reparations given the atrocities; coexistence and living in harmony with each other takes precedence over revengeful processes'. Thus the cultural interpretation of justice resonate more with victims and indeed override the Western and Euro-centric notions.

Most victims assert that their cultural interpretation of justice contradicts Western notions that are linear and focus predominantly on the past.   As one female community leader in Tsakane noted, victims always see justice as temporal; in other words, justice is cyclical in nature. Since the injustices of the past have not been resolved and they continue to play out within victims' contemporary lives, understanding justice from a linear perspective relegates their present circumstances to the past. Yet the all the research participants stress that justice should address the dual pronged nature of

the injustices they endured and the ongoing suffering. This understanding is captured in a phrasing coined by members of Khulumani Social Group interviewed in East Rand: 'the past is in the present'. This difference between the cultural and western notions of justice is demonstrated by a black male university lecturer in the Faculty of Law at one of the universities in Pretoria:

> In Western philosophy justice deals with what happened, hence we need justice therefore the notion of the past. But for our members because they are people of *Ubuntu* and because they abide by African philosophy; not articulated, not sophisticated they talk about […] the past is in the present. So, from there you appreciate that justice is about ongoing injustice—it's not about the past, its ongoing. It's not about addressing the past because for them the past is in the present (P1: 7 July 2016).

This *Ubuntu* philosophy premised on coexistence, harmony and community as discussed in Chapter 2, differs fundamentally with the Western conception of justice, which is linear and individualistic. This notion of justice is what Archbishop Desmond Tutu, former chairman of the TRC, has stated:

> We contend that there is another kind of justice, […] which was a characteristic of traditional African jurisprudence. Here the central concern is not retribution or punishment. In the spirit of *Ubuntu*, the central concern is the healing of breaches, the redressing of imbalances, the restoration of broken relationships, a seeking to rehabilitate both the victim and the perpetrator, who should be given the opportunity to be reintegrated into the community that he has injured by his offence (Bell 2002:90).

The importance of recognising and incorporation of cultural notions of justice post violent conflict was demonstrated in the experiences of Mozambique and Sierra Leone in the aftermath of protracted civil wars (Hirsh 2009). In Mozambique traditional healing mechanisms and local community practices which were in sharp contrast to formal legal processes, played a fundamental role in assisting Mozambicans 'withstand

the tragedies and existential disruptions of the war era' (Hirsh 2009: 206). The Mozambican process buttresses the importance of context-specific, socio-cultural mechanisms that 'illustrate a local form of post-conflict justice in which [victims] are called upon to assume their own individual and collective responsibilities' in order to build new relationships (Igreja 2009: 277). These cultural notions could be employed at the expense of normative and theoretical mechanisms that prioritise western and Euro-centric models of justice. Tutu's observation further underscores the point that after mass violence there is a different kind of justice that 'requires a commitment to repair broken relationships, heal wounds of victims and offenders alike, and restore the health and well-being of their communities' (Haldermann 2006: 35). Victims underscore that such kind of justice can only be understood within the prism of their' cultural context.

Within the cultural interpretations of justice, this research recognises the value attributed to the role and function of 'the departed' in the construction of the notions of justice. 60% of the victims in East Rand townships of Kwa Thema, Thokoza, Springs, Kathlehong, whose relatives disappeared and have never been found, believe that locating the 'bones' of their loved ones and being able to rebury them according to their custom and tradition represents their understanding of justice. Two black participants (male and female) in Thokoza and KwaThema respectively summarise this thinking in the following extracts:

> So I want to get permission to exhume my father's body, get a decent coffin, and conduct a proper reburial in accordance with my family culture. Right now, I cannot do anything, I can't find work and I can't progress in life unless and until I am allowed to decently bury my father. That to me would be justice (ER1: 12 July 2016).

> [For] me the main issue here is that justice is a long way from here especially in relation to the disappearance of my son. At this juncture I am not sure if the provision of reparations will constitute justice if I do not get the whereabouts of my son. For me finding my son, or his remains will constitute justice so that I bury him in a proper and dignified way (ER5: 13 July 2016).

Within this cultural realm, most black victims emphasise that their ancestors always play a fundamental role in their lives, including but not limited to, their sense of justice. They argue 'that nothing good comes to a society without the ancestors playing a central role' (Field Notes 13 July 2016). The role of the ancestors in the lives and future of the living mirrors Victor Igreja's (2009) concept of 'practices of rupture' as annotated in the Mozambican example discussed above. The practices of rapture refer to 'a set of socio-cultural mechanisms and strategies involving spiritual agents' who fundamental role was to induce war survivors of the war to break silence imposed by political elites over the injustices perpetrated during the war (Igreja 2009: 277). The use of community rituals, known as *magamba* spirits by victims of the civil war, 'to keep the peace, create healing and attain justice' is therefore instructive. When mass atrocities happen, ancestors are incensed and therefore mechanisms to redress the situation require their guidance and involvement. For these victims, transitional justice outside the realm of the 'spirits' is always non-conclusive because ancestors play an important role in the *peace process*, in achieving genuine *reconciliation* at national level. The fundamental role ancestors play in the life of the victims is expressed by one of the participants below:

> South Africa is one place where there is no day of remembering people who were killed under apartheid. [We] have Freedom Day, Reconciliation Day, Heritage Day, Women's Day and Youth Day but there is not a day to commemorate those who were killed. Once you recognise those who were killed, as a people all of us are to appease the spirits. We don't have a day where we appease the spirits of those who were killed, and those who disappeared, and we still do not know where they are […] the ancestors are angry with us. South Africa will never have peace until the ancestors are appeased (P1: 7 July 2016).

Most of the victims particularly those in the communities in East Rand argue that while some of these days are important however that model of remembering does not fit within their prism of justice. It is tantamount to 'narrating the story through western eyes' and that cannot be justice according to the research participants (CT24: 14 September 2016). For them justice must be from below, which means victims being able to re-tell and document their story 'in the presence' of their ancestors. Quite central to

the telling of the 'story' is to deal with those who are still psychologically wounded whose sense of justice cannot be attained through reparations and other financial payments.

5.2 Justice and Reconciliation

5.2.1 Story-telling as a Form of Justice

This study has found that story-telling is considered a central part of victims' understanding of justice. The son of a former liberation icon, Katlehong, stated that when people are traumatised for many years, sometimes giving them the opportunity to re-tell their story bolsters justice (ER1: 12 July 2016). Story-telling allows victims to re-connect with both the living and the departed. This connection is articulated by one of the interviewees as follows:

> But for us the trauma is because you feel you have been separated from the ancestors, and from those who are still coming and from the community, so psychological integration or reintegration takes place in a community. That's how we have been doing it in Africa for hundreds of years. So, telling your story within a safe environment, where people are praying to ancestors, to God and so forth—that's psychological justice (P1: 7 July 2016).

This statement indicates the central role of story-telling within the cultures of many communities of African origin. Story-telling takes place among three audiences: the living, the departed and the yet-to-be-born in African societies. Knowledge, histories and aspirations in pre-colonial times were shaped and shared from one generation to the next through story-telling. Hence, when a society is traumatised, telling its own stories becomes part of a narrative of (in)justice.

This study's findings comport with the assertion of van Der Merwe (2017: 180) that 'storytelling has been affirmed as a valuable aspect of South Africa's narrative of justice and a critical component in building relationships within communities'. Kent (2012: 34) concurs, observing that:

enabling victims to tell their stories can be seen as a commitment to recognising past harms committed against victims and to acknowledge their dignity as human beings. That recognition is in itself a modicum of justice. Victims' testimonies [reinforces] the belief that 'justice is about telling our story, our narrative'.

One of the participants of the present study expressed a similar idea this way:

When I served at the Truth and Reconciliation Commission I spoke about redefining justice so that its justice not in the criminal jurisprudence way of justice that is prosecutorial but justice of a different kind and I draw from just voices of victims or people who came to the Commission at the time and what I gathered at the time was that the freedom to speak in public about what happened to them and speak about your pain in the way that you wanted to do, was in itself an experience of justice. Having perpetrators coming to talk about what happened in the past and their role in it, was a witnessing of justice in action (CT24: 14 September 2016).

Another articulated it as follows:

[We need] to tell our story as a token to make up for the loss. We have to speak to the loss, we can't forgive if we haven't even named the crime, so Africans feels very short changed. A lot of the white people in spaces say they got here because of hard work and education and that apartheid didn't benefit them […] if you have a white person that says they haven't benefitted from apartheid, we haven't told the story of apartheid properly (CT4: 8 March 2016).

Justice through story-telling is best exemplified by the cases of three victims of apartheid who were interviewed in this study. A woman whose husband was abducted in Tsakane and never found again narrated how she felt when she appeared before the Commission:

Before, I appeared at the TRC, I was so angry that I wanted to avenge the disappearance of my husband […] but when I told them of my story,

strangely enough all that anger dissipated about a month after. I was satisfied that someone had listened to the story of my husband. That listening felt very much like he was getting justice from the people that abducted him (ER13: 14 July 2016).

The importance of story-telling as an element of justice is also captured in the TRC Report. One case in the report concerns Mr Sikwepere, whose testimony of how he was shot in the face and tortured by the police is reported. He eventually lost his sight. When asked how he felt after testifying, he said: 'I feel what has been making me sick all the time is the fact that I couldn't tell my story. But now it feels like I got my sight back by coming here and telling you the story' (TRC, 1998: 352). Mr Sikwepere's case is similar to that of Khabonina Masilela, who travelled about 500 km from Swaziland to reach a Human Rights Violation (HRV) hearing at Piet Retief. In her testimony she thanked the TRC for affording her the opportunity to tell her story because 'I had a broken heart' (HRV hearing, Piet Retief, 21 May 1997). In another case in July I997, Mr Diliza Mthembu claimed: 'If you feel like speaking, you have to speak it out until everything is out. Then maybe you will feel better. That is how I feel now' (HRV hearing, Johannesburg, 22 July 1997). These narratives demonstrate that story-telling is a central feature of victims' notion of justice. However, the fact that stories could be told in the absence of corresponding duty for others to listen was also quite problematic for victims. One interviewee argued that it is

> disrespectful to let me tell my traumatic story and then you move on and you can't reconcile. It is rude to expect people to reconcile if you have not given them a sense that their story is valued that they have merit and they need to get something in return (CT4: 8 March 2016).

The proliferation of truth commissions as transitional justice mechanisms focused, among other things; on recovering the truth buttresses the notion that story-telling is a fundamental component of the attainment of social justice (Wångrenn 2015). The significance of the public articulation of their stories within the framework of truth telling, cements the argument that Commissions are not vehicles for procedural justice only but that the justice process is tied to telling stories and to telling the truth to the extent that all around the world, victims of human rights abuses are judged on their stories (Sangster 2017). This view is supported by Bell (2010) who argues that stories

are analytic tools with which we can unpack injustices and hence their value in reconstructing narratives of justice after mass atrocity is unquestionable.

The inescapable reality is that victims' cultural worldview sometimes communicated through story-telling remains an integral component of understanding the socio-economic and political processes around them and justice is no exception (Bloomfield, Barnes & Huyse 2003). Certainly, their contemporary narratives couched in their 'memory of offence' are a clear indication of the absence of justice within their cultural spaces. One could argue therefore that in order to 'restore wholeness', transitional justice must lend a critical 'ear' to the cultural interpretations of justice.

5.2.2 Righting the Wrongs

Nine in ten of the victims interviewed in this study stated they understand justice as 'righting the wrongs'. As will be argued in Chapter 6, victims expected the transitional justice processes and mechanisms to conclusively redress the wrongs they had endured under apartheid. Hence 'righting wrongs' was a fundamental conception of justice for these victims. This understanding of justice is best captured by a young mixed-race woman who recently graduated from university, justice is […] when those who have been wronged, have been righted […] when that which is inherently wrong has been righted, fixed, changed for something better" (CT18: 20 May 2016). In her conceptualisation, 'to right wrongs' means to 'make things right' which implores a deeper understanding of the victims' feelings, anger, alienation and dehumanisation.

Most victims in this research opined that after such atrocities as perpetrated by the apartheid regime, justice must address their moral indignation in response to the 'wrongs' they suffered. They believe that such an address must be underpinned by the recognition of their dignity as human beings in redressing the exigencies of the past. This imperative was articulated by a female university student of Indian descent, who stated: 'we need to have a system where we are fixing the wrongs of the past, and we cannot happily gloss over and move over and reconcile and love each other without looking back and fixing what went wrong' (CT16: 16 May 2016). The findings of this research illustrate that most victims believe that South Africa and in particular the TRC had simply 'glossed over' and grossly failed to address their justice needs. Instead

victims argue that reconciliation was prioritised at the expense of justice, yet justice is so cardinal to victims to the extent that it was supposed to be a precursor to other such processes. This demonstrates the centrality of this conception of justice in post-apartheid South Africa.

In righting the wrongs of apartheid, victims interviewed in this study acknowledge that a key process of rectification is essential in identifying appropriate criteria for reckoning with the past wrongs, acknowledging them, then working to address the factors that created them and trying to make sure that they do not happen again (P1: 7 July 2016). As argued elsewhere in this chapter, the process of acknowledgement is very much linked to rehumanisation which victims believe, once undertaken, has the capacity to guarantee non-recurrence. A female mixed-race lawyer interviewed in Cape Town noted righting wrongs through a process of rectification is 'of crucial importance with respect to the moral challenge of reckoning with past evils' (Haldermann 2006: 19). Without doubt rectification is regarded as one of the most central means to right a wrong.

As discussed in Chapter 3, victims' understanding of justice as righting wrongs borrows very much from Aristotle's definition of rectificatory justice which he wrote was central to the 'setting right' of two sorts of transactions among people. The first one being 'a kind of correction related to the unjust results mutually voluntary transactions for instance buying and selling; and secondly one dealing with two kinds of involuntary transactions where the victim does not consent but is either forcibly or coercively wronged without their knowledge' (Haldermann 2006). What is cardinal to Aristotle's conception of this form of justice—which aligns with my research participants' views—is that the rectification 'restores an antecedent condition: the perpetrator must lose something (liberty, wealth, social repute etc) and the victim must gain something (truth, justice, financial restitution or proper burial)' (Haldermann 2006: 4). Notwithstanding that Aristotle does not use the language of human rights, his notion of rectificatory justice applies to crimes against humanity and gross violations of human rights, which were the main characteristics of apartheid. Needless to say, these violations were carried out forcibly and coercively.

Embedded or central to the concept of rectificatory justice is the concept of returning things to the *status quo ante* (May 2011). In the literal sense, this is analogous

to turning the clock back to where things were before the atrocities. This is sometimes difficult to achieve practically speaking, since restoring things to their original state might be impossible particularly with injustices like forced removal, disappearances, murder and rape. In that regard, a fair and just compensation, as a form of restitution, becomes the natural path to take. However, as is evident in this study, what is fair and just to victims of enduring injustices like apartheid is not easily discernible. For instance, about 17% of the victims that were interviewed in East Rand argue that the amounts of money they received from the TRC (particularly those that appeared before it) 'were insufficient to make any meaningful change in their lives' (ER2: 12 July 2016). In that sense, returning them to the *status quo ante* has not been achieved firstly because the amounts they received cannot atone for their loss, a loss that is difficult to quantify in monetary terms. Secondly, and as highlighted above, the concept of the *status quo ante* is inapplicable to some of the injustices suffered by the victims. Hence most victims believe that righting wrongs is a conception of justice that will have an impact in their lives.

The failure to make a meaningful impact in victims' lives presupposes that for the past twenty years the existing frameworks and systems that have been applied in an attempt to 'righting the wrongs' have never been within the ambit of the victims themselves. Such systems that have failed to be 'fixed and changed' may have been a casualty of the top-down model of responding to victims' particular notions of justice. Although the notion of rectificatory justice seeks to 'making things right' how that plays out in practice, in particular, restoring victims to the *status quo ante* is problematic and sometimes unachievable. This complexity gives credence to my research inquiry which is premised on deconstructing the notion of justice in order to locate it within victims' own understanding. In this instance, exploring what *status quo ante* means in the context of victims' understanding may be a good case for further research.

5.2.3 Reparations a Form of Justice

It is important to note that the liability of the South African state for gross violations of human rights that occurred under apartheid and its obligations to pay reparations to the

victims took place within the framework of the TRC. The TRC in its findings recommended that victims that appeared before it be paid reparations for the injustices they had suffered under apartheid. As noted by the Commission:

> [T]housands of people have been severely affected by the conflicts of the past. If we are to get over the past and build national unity and reconciliation, we must make sure that people who suffered gross human rights abuses are acknowledged by providing them with reparations (TRC 1998).

These reparations were supposed to take the form of individual, symbolic as well as community rehabilitation programmes. However, victims reveal that reparations have either been paid partially or not at all and have been extended to only those that were formally declared victims by the Commission. Only three of the seventeen (17.6%) research participants interviewed in East Rand received some form of reparations. The rest were never considered because they did not appear before the Commission, even though all narrated harrowing stories of their suffering under apartheid. The notion of justice within these communities is premised on the payment of reparations. This is the dominant narrative among victims in East Rand. All the victims interviewed are members of social movement, Khulumani Support Group.

The members of Khulumani Support Group, in East Rand who constitute 36.5% of the research participants, held remarkably similar opinions on their notions of justice. This is despite the variability of the injustices they suffered under the apartheid regime. Victims of rape, forced disappearances, torture and other forms of physical violence held overwhelmingly uniform responses. For these victims, their notion of justice is centred around the framework of the recommendations of the TRC. As one intervieww noted:

> [W]e understand that the TRC promised to pay reparations, both individual and symbolic, they also promised education of our children, proper housing, health care but these promises have remained empty. These recommendations, though done by the TRC have not been adopted by government (ER5: 13 July 2016).

The fact that their responses appeared to be choreographed can be understood from two perspectives. First, that they are members of a support group that has precise demands to the government and hence are expressed within a specific framework, as exemplifed by one interviewee:

> [A]s victims we came to Khulumani Support Group whereby we saw that this is a better organisation which can help us to fight and get the justice we are looking for although we have been in other parties we did not get a space or a platform to talk about this justice (ER6: 13 July 2016).

While this assertion may hold true, the alternate possibility could be that they are required to 'tow the party line' to become a member in the first place. This, however, is a matter that was not canvassed by this research.

More interesting still, the fact that everyone has different truths and/or experiences but still chose to remember the same events is also quite intriguing. It appears that 'in the presence of their community leaders, victims appeared to be manipulated to fit into a specific narrative' (Field Notes 18 July 2016). Second, the fact many of them have a relatively identical experience following these atrocities may help explain this phenomenon. Interestingly, this is an important component for further research in order to explore how victims' perceptions of justice are shaped by institutional narratives, particularly in instances where they belong to social movements or group. Presumably this may shed light on how victims' 'own' stories 'belong' not only to their individual selves but to particular organisational discourses which are merely voiced and couched in victims' narrative of justice (Temple 2005).

Most victims' narratives of justice are also replete with discontent centred on the slow and/or non-implementation of reparations programmes as articulated in Chapter 6. As argued by victims:

> Our other frustration is that our current government does not want to listen or indeed reconsider the plight of victims. We have tried all we could to get that audience, but all avenues have been closed. Khulumani did push the issue of reparations and in the recommendations, we were supposed to receive R120 000 each but the government of Thabo Mbeki

changed all that and issued R30 000 instead. We feel we need to speak
to them directly and demonstrate how they need to meet our needs
(ER2: 12 July 2016).

The findings of this research highlight that reparations have remained a very conten-tious issue in South Africa (on reparations, see: Colvin 2006). This is demonstrated by the government's reticence in concluding payment of the reparations, on the one hand, and its failure to distinguish reparations from other broader developmental pro-grammes, on the other. Victims interviewed in East Rand argue that this failure by the current government to pay set amounts raises broader issues about the role of repara-tions in transitional justice—particularly the involvement of victims in defining the scope of what reparations mean and how they should be distributed. Ironically, the way the TRC's position on reparations was limited to making recommendations to govern-ment, leaving it to elected officials to decide on the final form, content and programme of distribution (Colvin 2006). Implicit in this observation is that the victims were never consulted on the nature and form of reparations, which would have had a significant impact in their lives. This challenge has been succinctly summarised by Hamber Nageng and O'Mailley (2000: 39) who note that:

> Notwithstanding the near impossible task of continuing investigations
> and prosecutions of those responsible, and the achievements of the TRC
> in publicising the horrors of the past, the right to truth and justice of
> those interviewed cannot, as a matter of principle, be negated by prag-
> matism or expediency. South Africa has treated truth, justice and repa-
> ration as separate issues supposedly because it is impossible to deal with
> them in any other way in a society in transition. However, for the vic-
> tim, truth, justice and reparation are inter-linked. Truth complements
> justice, justice can reveal the truth, and reparation is not only a right,
> but an integral part of re-establishing the rule of law and the survivor's
> trust in a just future. Reparation (and often punishment) is the symbolic
> marker that tells the survivor that justice has been done, or simply put,
> justice is reparation.

This research demonstrates the disjuncture between the propriety of reparations and the practical challenges in rolling them out and the impact that this has on the needs and

expectations of victims. While the theoretical framework is premised on international law, again such law is not in any way an embodiment of victims understanding and context. It is Western and top-down and therefore not in tandem with victims' worldview.

Although victims view reparations has justice Hamber, Nageng and O'Mailley (2000: 39) observe that 'it is inescapable that the multitude of individual and psychological and material needs of survivors could never be addressed through the TRC or any other body for that matter'. Without doubt, the aim of victim reparations and their implementation programmes is to address the needs of the victims (De Grieff 2006: 460). Needless to say, the non-provision of reparations for over twenty years, in a sense, signifies an absence of justice. This is despite the fact that many of the victims interviewed in this research interacted with the transitional justice processes in good faith and with a legitimate expectation that justice would be served. However, most of them feel greatly let down by this process.

5.2.4 Linking Reconciliation to Justice

The achievement of reconciliation in the aftermath of mass violence requires an element of justice that formally recognises the wrongs committed during the atrocities and seeks in some way to acknowledge and repair the injustices done to the victims (Aiken 2013: 40). Although reconciliation is a very emotive issue in South Africa, as highlighted by the participants in Cape Town, those in East Rand argue that reconciliation is a form of justice. This understanding resonates with Colvin's (2006: 33) contention that reconciliation is linked to issues of restitution and reparation and invariably radiates into many domains of social, political and economic life of the victims. In fact, reparative schemes are not only meant to reconcile victims and perpetrators but to 'construct a mutually affirmable and affirmed post-conflict social and political order' (Lu 2016: 1). Through reconciliation and reparations, new relationships are created after violent conflict providing an opportunity for victims and perpetrators to live together after conflict. The transitional justice framework in South Africa, in particular the work of the TRC, was largely premised on confronting the painful legacy of the past in order to achieve a holistic sense of justice by reconciling peoples and communities (Tutu 1995). However, the assumption that societies in post-conflict settings can reconcile without some

semblance of justice 'being seen to be done' was heavily criticised by many of my research participants (CT9: 16 March 2016). Many of them lay blame squarely on the TRC for not prioritising justice during its tenure. Such criticism resonates with Santos and López (2013) assertion that reconciliation may be difficult to achieve without justice.

Victims further argue that over the years they have come to realise that achieving reconciliation is a lot more complex than merely creating institutionsor mechanisms tasked with a mandate to confront these historical legacies. As reflected by one of the participants:

> I think that as a country we moved very quickly into the spaces of reconciliation. I think that we have not actually, really unpacked the crime against humanity, the complete dehumanisation of people, the loss of integrity and dignity and material things such as land and […] homes and so we have just quickly said we have to reconcile, we have to build a rainbow nation, we have to love each other as South Africans and I think that after 21 years people are now crying out for justice (CT4: 8 March 2016).

Victims stress that the notions of reconciliation were 'romantic' during the years of the TRC, however without addressing their present predicament, justice remains an impossible task to achieve. The addressing of their contemporary socio-economic circumstances represents a measure of justice. This lack of justice means the mere mention of the word reconciliation invoke bitter memories of structural, cultural, psychological and physical violence among the victims. This is the reason that victims 'are not talking about reconciliation anymore; [we] think it [the idea of reconciliation] was meant to keep people passive, so that [we] do not talk about what the real issues are but [hence we] are crying out for justice' (CT2: 1 March 2016).

The complexity of reconciliation in South Africa is that it is not only lacking between black and whites but also between and among blacks themselves. This was evident in East Rand where there was a lot of black-on-black violence in the late 1980s and early 1990s between the supporters of the ANC and the IFP. These complexities are reflected in the interview comments of the following interviewee:

[S]o you hear people talking about the fact that within black communities we have not reconciled you look at these big meta narratives, reconciliation between white people and black people and if you go to places like East Rand, like KwaZulu-Natal there is a lot of distrust among black communities because some of them worked with the apartheid government, some of them because of inter-ethnic conflict induced by the apartheid government. That kind of justice has not been done. There hasn't been a process of coming together. That coming together is justice. That reconciliation among black people has not happened. So, people are also interested in that kind of justice. Justice that brings communities together, coexistence within communities, that's justice. It's not just reconciliation but reconciliation for justice. A just community is a community based on reconciliation and stability (P1: 7 July 2016).

The fact that the reconciliation is an emotive process can be understood from two different perspectives. First, the fact that it was associated with the TRC may mean that victims could have regarded it as imposed and therefore foreign to their processes of building 'new bridges' after conflict. As with the failed reconciliation process in neighbouring Zimbabwe, 'victims were not consulted but watched powerlessly as many perpetrators of human rights violations were unpunished' (Huyse 2003: 37). As a consequence, there is a strong possibility that the need for reconciliation was not internalised by the victims and hence produced incompatible goals (Bloomfield 2003: 40). Even more, the framework on which it was premised could have by-passed reconciliation processes that are informed by different cultural contexts like *Ubuntu* which provide a 'rich resource for home grown tools' that are focused on traditional processes of bringing communities together (Bloomfield 2003: 46).

Second, as argued elsewhere in this chapter, victims viewed reconciliation as a way to silence them and literally bar them from talking about real justice (CT9: 16 March 2016). For victims, the reconciliation agenda could have been based on 'more than pragmatism and rhetoric' (Huyse 2003: 36). Victims reside in the same squalid conditions as they did under apartheid, endure increased inequality and witness the con-

tinued white domination with no resolution of their predicament in sight. Yet perpetrators were visibly exonerated under the amnesty provisions. Hence, they believe that reconciliation was prioritised at the expense of justice.

5.2.5 Justice as Access to Opportunities

This research has found that about 95% of the participants underscored how their socio-economic conditions shape their notions of justice. High unemployment, lack of access to basic services, education, and health care, and deepening inequality constitute some of the contemporary challenges that the majority of blacks and mixed-race South Africans are confronted with (Du Toit, Woolard & Nyoka 2015). Victims state that addressing these socio-economic challenges is a manifestation of justice which fits into their background and context. As summarised by one of my interviewees, 'my sense of justice would be closely tied to equal access of opportunity to basic services, education, policing, housing, food, health all and that has been missing in South Africa' (CT14: 13 May 2016).

The need for social justice in South Africa is evident in the communities that were part of this study, especially the Philipi, Manenberg, Hannover Park and the East Rand townships of Kwa Tema, Thokoza, Tsakane, Springs and Katlehong. The socio-economic conditions in these spaces are a manifestation of the dynamics of past atrocities. High levels of poverty are the norm and contribute greatly to crime (Fischer 2016). Recent calls by opposition political parties, especially the Economic Freedom Fighters (EFF), for an equitable redistribution of resources (including land), resonates with the interviewees' conceptualisation of justice, which is largely informed by the inequality they experience on a day-to-day basis. This notion of justice resonates with the second generation of victims of apartheid who want 'to see it in real, material ways' which entails a concrete change in victims' present circumstances.

Victims' quest for socio-economic justice fits within the notion of distributive justice, which seeks to address victims' current predicament and to place them close to where they would have been had they not been subjected to the brutality of apartheid. García-Godos (2013: 253) defines distributive justice as 'a form of justice that takes into consideration the socio-economic and political forms of distribution of power and

resources in a given society'. That this understanding is especially pertinent to countries endowed with deep socio-economic inequalities, like South Africa, is non-contestable. However, in the field of transitional justice contestations are abound as to whether distributive justice should be an integral part of this field or relegated to the realm of politics (García-Godos 2013). Victims believe that addressing the legacies of apartheid that continue in to the present are a prerequisite for resolving ongoing injustices. Regrettably, they reveal that their quality of life today resembles how they lived under apartheid, whereas their white counterparts continue to enjoy the privileges and benefits bestowed upon the white community by that segregationist system. While victims seem to pile all the blame on apartheid, this research also notes that the ineptitude of successive governments has contributed immensely to their predicament (CT2: 1 March 2016).

Addressing contemporary injustices through a distributive lens is akin to justice as 'righting the wrongs' of the past. The stark reality is that the unmerited benefits and unjust burdens imposed and facilitated by apartheid pass on from generation to generation through the laws of succession and contract. Victims and their descendants continue to suffer this severe intergenerational segregation, exclusion and marginalisation. Their white counterparts and the generations that follow will continue to benefit from the lopsided system (Hopkins & Roederer 2004). Victims bemoan the failure of government to address their plight. Victims argue that on numerous occasions they have tried to engage government agencies like the TRC Unit in the Ministry of Justice and Constitutional Affairs. However, they state that very little progress, if any, has been made. Victims' challenges in engaging government are illustrated by the statements of an interviewee thus:

> [We] need to see that things are changing. Probably that adds to the
> frustrations that people are experiencing in terms of justice and in terms
> of reconciliation because [we] don't see it; [we] can't see the actions
> happening even when you ask them what's government is doing […]
> they will not give you a concrete answer (CT7: 15 March 2016).

That access to opportunities is still very much skewed in favour of one race and retains the unbalanced structures of apartheid cements the point that victims still suffer unbear-

able injustice over twenty years after the transition. Suffice to say that their understanding of this noble concept of transitional justice is mirrored through lack of equality of access of opportunities and failure to transform structures. In any case, addressing the needs and expectations of victims enhances the legitimacy of many transitions within the perspective of the victims and provides a clear and unadulterated demonstration that the state and indeed the rest of society recognises their suffering as well as the legitimacy of their claims. Indeed, 'there is a very strong notion that socio-economic justice is what is needed in the country' (CT12: 13 May 2016).

5.3 Conclusion

This chapter has articulated the empirical findings on victims of apartheid's varied and dissimilar notions of justice. It has highlighted that victims understand justice in complete dissonance with how the many framers of transitional justice mechanisms like the TRC do. The chapter clearly underscores that restoring wholeness, rehumanisation and dignity is at the centre of victims' understanding and interpretation of justice. For victims, dehumanisation, dislocation of communities and mass violence have a debilitating effect on the person and his/her community. Hence transitional justice must advance a perception of justice that primarily acknowledges that loss of humanity in order to address the core challenges faced by victims after mass atrocity. That kind of justice must be contextual and culturally resonant with victims' circumstances and premised not only on restoring humanity at both the individual and community levels but also on rehumanising victims. Such a process must pay special attention to the complex web of interconnected relationships between individuals and their societies to help victims transcend the pain of the past. Regrettably victims underscore that acknowledging their loss of humanity has been the missing link in post-apartheid South Africa and indeed the transitional justice process undertaken in that country. Because of this misrecognition, victims reveal that they feel regarded as if 'they are not human beings'. Unfortunately, this has been the narrative that runs through the entire period, from apartheid atrocities to post-apartheid South Africa. The misrecognition affirms some of the challenges of transitional justice that confront transitional justice's narrow and linear conceptions that seek to 'put aside and move on' before real justice is served. Yet this research demonstrates that failure to recognise past wrongs inevitably exacerbates the

dehumanisation of victims. Clearly, at the core of 'making victims feel like human beings again' lies the inescapable complexities unique to societies in transition in that the pursuit of justice in these contexts is disparate to what it is in stable democracies. For this reason, a unique and nuanced way of understanding justice peculiar to transitions is essential (Hopkins & Roederer 2004).

The chapter also illustrates that failure by the transitional justice process in South Africa to re-humanise victims may have aggravated emotions and resentment toward the reconciliation process. It also discusses the issues of reparations and notes that in spite of internationally and nationally policies that provides for the payment of post-transition reparations, their partial and, in some cases, non-payment reflects a lack of a broader and deeper understanding of their significance in restoring victims to the *status quo ante*—or, better still, a better situation than the one they currently find themselves in—by transitional justice experts and elites alike. Calls for a 'different kind of justice' therefore become louder under these circumstances where the language of reconciliation and restitution is frowned upon and is met with increased anger and indifference. The meanings of justice suggested by the victims therefore call for broad and complex understandings in the aftermath of violent conflict. In conclusion, Hamber, Nageng and O'Mailey (2000) illuminate the gap that resonates with the findings of this study—namely, that Western notions of justice oftentimes disregard the way harmony and coexistence hinge upon collective ideas about justice. Indeed, victims' needs for justice should be understood as the foundation on which shaky transitional justice will always be founded. This is the challenge that lies ahead in the theory and practice of transitional justice in truly understanding victims' own conceptualisation of justice after the end of conflict and incorporating them in the design of these processes and mechanisms.

Chapter 6—Unravelling Victims' Expectations of Transitional Justice

6.0 Introduction

Without doubt, the end of apartheid brought with it huge expectations on the part of victims. The establishment of the TRC as a formal transitional justice mechanism geared toward confronting the legacy of this brutal regime only served to heighten these expectations. In fact, when South Africa gained independence in 1994, the dawn of democracy heralded promises for a 'united and prosperous country' for many of the victims of apartheid. This was encapsulated in the inaugural speech of President Nelson Mandela, who laid out the objectives of the transition as being:

> […] to liberate all our people from the continuing bondage of poverty, deprivation, suffering, gender and other discrimination … [to] build [a] society in which all South Africans, both black and white, will be able to walk tall, without any fear in their hearts, assured of their inalienable right to human dignity—a rainbow nation at peace with itself and the world (cited in the African Studies Centre report 1994:1).

In response to the public discourse at the time, voiced by people like President Mandela, victims hoped that the injustices they had endured under apartheid would be addressed. Nearly a quarter-century after the famous Mandela speech, South Africans speak of a 'betrayed promise', arguably because what they had expected has not come to fruition (Bhorat et al. 2017). For a great percentage of black and mixed-race South Africans (people of colour) circumstances have not changed and they continue to 'live in segregated spaces that reinforce apartheid geography' (Andrews 2017: 1). These failed expectations are best understood in discussions with the victims of apartheid who had hoped for a 'new' South Africa where change would have had a positive impact in their lives. Most victims believed that the TRC would further address issues of justice, reconciliation, reparations and restitution. The TRC also embodied the aspirations of a 'new' society, one whose standards and values were to be remarkably different from the one the victims had endured under the oppressive system of apartheid (Valji 2003).

To respond to the tension between aspirations, expectations and accomplishment in the post-apartheid era, this chapter analyses the empirical evidence of victims' expectations of the transitional justice process in South Africa. It evaluates these anticipations focusing on the transition of the country from apartheid to liberal democracy in 1994 and the subsequent establishment of the TRC in 1996. In so doing, the chapter aims to address the research question into what victims expected from transitional justice after 1994. It argues that with a broad mandate to build national unity and reconciliation, the TRC raised a lot of hopes among the victims of apartheid. The chapter also demonstrates that over and above this mandate, the victims believed that the TRC would also deal with matters of social and economic justice, which were at the core of their struggles against the brutal apartheid regime.

Despite these aspirations, evidence shows that victims remain aggrieved by the failure of transitional justice processes to achieve justice 'for people of colour', facilitate reconciliation, ensure payment of reparations, terminate white dominance in all spheres of life and guarantee transformation of their socio-economic circumstances. However, the perceived contribution of the TRC toward this agenda of transformation would always be problematic because it was never set up for that purpose and its mandate did not extend to addressing the structural sources and consequences of apartheid. Notwithstanding this, data shows that both realistic and unrealistic expectations were raised by the country's transition to democracy. A cursory analysis of the emergence of unrealistic expectations would likely point to the lack of education and/or awareness among the victims on the role, function and limitations of the TRC as a political institution. Based on fieldwork data, this chapter gives voice to the unheard narratives of victims and provides a close detailing of their expectations of transitional justice in post-apartheid South Africa.

In terms of its organisation, the first section of the chapter explores victims' expectations that the transitional justice processes would usher in a 'new' era of justice for those who had suffered under apartheid. These victims were mostly blacks and mixed races (coloureds), Indians, and other marginalised communities oftentimes referred to collectively as 'people of colour'. The second part discusses victims' expectations emerging from the recommendations made by the TRC, focusing on three key areas in particular: reconciliation, reparations and restitution. The third section focusses

on victims' belief that the transition from apartheid to democracy would lead to the end of socio-economic inequalities. This section also interrogates the centrality of the educational sector in the attainment of socio-economic justice and how lack of progress on its transformation has heightened tensions, especially among 'students of colour'. It also examines the ever-emotive racial discourse premised on the perpetuation of white privilege and dominance. This examination juxtaposes the concept of whiteness with poverty and how transitional justice has failed in 'interrupting' these excesses over twenty years after apartheid.

The chapter underscores that South Africa's social fragmentation, particularly along racial lines, which continues to fuel simmering tensions, is emblematic of unmet expectations. The chapter concludes that if expectations are not met over time, they generate narratives of anger and resentment. In other words, expectations are eventually expressed as challenges that victims are confronted with in their daily interactions. The chapter further accentuates that victims are currently frustrated with 'unmet' expectations and there is a general apprehension about the slow process of change. Therefore, an understanding of victims' expectations of the process can potentially break this deadlock and allow policies to be driven by the needs of those most affected (Robins 2011: 75)

6.1 Justice: A Major Expectation for People of Colour

When South Africa gained independence in 1994, victims expected that justice and accountability would be vigorously pursued to 'fix the mess that apartheid had created' (CT16: 16 May 2016). The assumption was that this effort would include redressing the wrongs perpetrated against 'people of colour' and establish ways to avoid repetition of the past. This expectation came to light in all the interviews carried out with participants. However, victims argue that for 21 years after the closure of the TRC these expectations have not been met and 'there [has been] very little justice for people of colour' (CT8: 15 March 2016). Victims further affirm that they have struggled to 'get justice' for the many challenges that have 'spilled over' from apartheid into the new democratic order. This failure is reflected in serious undertones of anger and frustration which were reproduced by the victims, as reflected below:

[M]y absolute passion is getting justice; otherwise we are setting the country for a very violent engagement in terms of getting justice in a very brutal way, which is bloody and very tragic (CT4: 8 March 2016).

South Africa struggles with the provision of justice particularly in poor communities. Levels of murder, robbery, rape and sexual violence are prevalent in black and mixed-race neighbourhoods and are believed to be symptomatic of the deficit of justice. The xenophobic attacks on foreign nationals coupled with the ever-rising levels of violence within townships are a reflection of the brutal manner in which 'mob justice' is believed to be effective (Human Rights Watch 2017). It is also believed to be accessible and inexpensive. Victims stress that 'here in our community we do have a street committee. When something happens on our street we come together and try and resolve the issue' (CT20: 20 June 2016). The capacity to 'take justice into their own hands' is a demonstration of the non-responsiveness by the government to victims' justice concerns. Victims argue that this has the case since apartheid, hence they are justified in instituting 'justice that works'. As revealed by one of the participants:

[T]he justice system was hostile to black people in this country; when you appear in court and it's a black person against a white person […] you know it's a black person who is almost guaranteed to lose. So, what that did was that it created this deep-seated understanding that we cannot depend on this system for justice and so when we need justice to be administered we will do it ourselves (CT8: 8 March 2016).

What can be gleaned from this extract is the expectation that under the post-apartheid political dispensation, victims expected that justice would be both accessible and responsive. However, this is not what the people have found, hence the resort to alternative means of justice. This is further supported by the evidence that access to formal systems of justice has been an enormous challenge for people of colour especially victims of rape, sexual harassment and domestic violence.

To this point, female victims of apartheid expected that justice would be delivered to those who had experienced rape and sexual violence under apartheid. Victims

argue that since 'rape was used a weapon of war during the apartheid' that transitional justice would include:

> Initiative[s] that South Africa could embark on […] where they go out and actually, one-on-one [and] community-per-community tell people the different mechanisms that are available for accessing justice—specifically, justice for rape survivors (CT5: 9 March 2016).

In South Africa, violence against women is a serious human rights violation that is all too common. A study by Gender Links in the Western Cape Province in 2014 concluded that 39% of women living there had experienced gender-based violence, while 44% were victims of intimate partner violence (Gender Links 2014: 7). Another study by the Institute for Security Studies noted that 51,895 cases of sexual violence (142.2 per day) and 42,596 cases of rape were recorded in 2015-16 (Wilkinson 2016). With these statistics, women expected a more robust response from the criminal justice system, including the police. However, victims chronicle serious misgivings about the absence of justice for sexual crimes, particularly the attitude of the courts and the police service. As articulated by a female participant:

> The courts also make you realise a lot of perpetrators get let out on bail and that means it's very easy for a perpetrator to see the victim before the court case comes up again. That instils a lot of fear into people because seeing your perpetrator brings back what happened and also seeing the perpetrator again means it could happen again and if the courts are letting perpetrators out on bail, it's just letting them out [without] actually charging them; I feel like it's not sufficient and if they are out on the loose, it's very easy to […] re-offend (CT5: 9 March 2016).

Victims demonstrate a lack of understanding of the criminal justice process, particularly the provision of bail to accused persons. According to victims, the mere sight of the accused person on bail presupposes that perpetrators have the opportunity to 'interfere' with the process. This misinformation led the participant to conclude that:

> I think one of the short comings of justice system for rape survivors is that they look at the case in very simplistic ways. The fact that rape has to be proved is a form of re-traumatisation for the survivor and the many

tests and also the language that is used when opening a case sort assumes that it hasn't happened (CT5: 9 March 2016).

Mitigating these everyday challenges would address the gendered perception that justice is inaccessible for women. The complexity of the language and the concept of burden of proof in criminal matters further complicate victims' understanding of justice. This notion that justice is unreachable is further compounded by poverty and the general lack of confidence and trust in the police service. For victims is elongated route to achieving justice is dehumanising. As articulated by one of the participants, 'I think justice is people's access to the most minimum conditions that make them feel like dignified human beings' (CT3: 7 March 2016).

Victims also indicate that the lack of the basic necessities of life within the townships is emblematic of the dearth of justice. Since victims continue to wallow in poverty, emotions have been heightened—leading them to question the import of the country's transition to democracy. The expectation was that visible change would have taken place after more than two decades of independence. As captured by one of the research participants:

> We have waited for too long and have wasted a lot of time. I don't know
> what was negotiated at the Convention for a Democratic South Africa
> [CODESA] meetings but there has been no change in the standard of
> living and […] there has been very little justice for people of colour
> (CT16: 16 May 2016).

This disillusionment points to the development of complex narratives that emerge among victims when transitional justice processes appear to turn a proverbial 'blind eye' to their circumstances. Certainly, the question of the time within which these expectations could have been addressed is apparent in the conversations with research participants and one can, with some caution, conclude that their emotions reflect the slow pace of change.

Slow progress has reshaped victims' attitudes toward the transitional justice process. In the years immediately after the transition, victims had high expectations of these processes, however these have waned progressively over time and have turned into resentment. The change in attitudes can be explained by the fact that 'transitional

justice processes unfold over an extended period of time, during which attitudes may vary in many ways' (Backer 2010: 456). Whether attitudes have fluctuated over time as a result of slow progress or have re-mained constant since the transition is another avenue of research that could make a contribution to the field of transitional justice.

The link between the pace of progress and the provision of justice was also clear in this research. Victims expected that after the transition, socio-economic justice was going to be prioritised. Such a priority would have led to visible change in their localities. However, with the slow pace of change, victims are now beginning to believe that justice in South Africa is the preserve of a privileged few, mostly white people. As one interviewee stated: 'you have to be of a certain race […] to be able to access a certain type of justice and I think that justice keeps the status quo in many aspects' (CT8: 15 March 2016). The fact that victims believe that there is no traction in the provision of justice for people of colour reinforces the discourses of whiteness and white supremacy that abound in contemporary South Africa. Victims firmly posit that justice has been the missing link because the transitional processes have had little or no relevance to their standard of living. The main argument in this thesis mirror these views—essentially that transitional justice is oftentimes top-down, elitist, state-driven and decontextualised from the lived realities of those who bore the brunt of mass violence (Mani 2008; Sharp 2011). These observations also reveal the tension in transitional justice that when victims are absent 'at the negotiating table', their expectations of justice rarely become part of the conversation and are often not incorporated. With victim perspectives excluded so systematically in this way, it is no wonder victims come to expect more from transitional justice processes than these mechanisms are intended to achieve in the first place. In essence, unrealistic expectations emerge from these processes.

Victims' unrealistic expectations oftentimes are symptomatic of a lack of education or awareness among the victims, particularly on the mandate of the TRC. This is especially notable since the TRC was hailed as a model that encouraged civic input in its goals and mandate (Hayner 1994). However, the civil society organisations that provided input may well have encountered limitations in conducting awareness raising programmes within victim communities. Arguably, such programmes would have built the capacity of victims and solicited their views in order to shape a mechanism that would have been responsive to their expectations. This could have gone a long way in

pacifying victim's frustration with the transitional justice process and in particular the TRC. Although the TRC was established to bring justice, 'South Africans never felt it really did justice to the victims' (Moore 2012: 2).

6.2 Implementing TRC Recommendations: Raising Hopes and Fulfilling Promises

Within the legislative framework of the National Unity and Promotion of Reconciliation Act, the TRC was mandated, 'to make recommendations with regard to the creation of institutions conducive for a stable and fair society' (TRC Report 1998: 305). These institutions were supposed to introduce administrative and legislative measures in order to prevent the commission of further human rights violations (TRC Report 1998: 305). When the TRC concluded its work and presented its report in October 1998, it made a broad range of recommendations, including but not limited to, a commitment to reconciliation and unity, healing and rehabilitation as well as reparations and restitution. Victims believe that the fulfilment of these recommendations would result in a new epoch for those that had suffered under apartheid. However, these aspirations have not materialised to their satisfaction. A central aspect of this disappointment stems from the fact that despite the TRC having 'opened the door for South Africa to walk in a new way […] its biggest tragedy is that its recommendations were not taken seriously by Government' (CT9: 16 March 2016). The general understanding among the victims is that the government has abdicated its responsibility to implement the recommendations of the TRC. The non-implementation of these recommendations represents unfulfilled expectations and continues to foster anger and disillusionment.

6.2.1 Reconciliation: Redefining Relationships, Building 'new bridges'.

One of the major expectations of the victims of apartheid was that the transitional justice in South Africa would promote reconciliation and unity among individuals and societies. Those expectations could have been reinforced by the TRC's model and mandate, on the one hand, and the recommendations that emerged out of that process, on the other. Unarguably, the TRC was modelled around the notions of reconciliation and healing. The legislation that provided the framework was even entitled the Promotion

of National Unity and Reconciliation Act, despite the fact that the concept of reconciliation was not explicitly defined within it.

Bar-Tal and Bennink (2004: 12) have defined reconciliation as 'transforming relations to [a] friendly and harmonious relationship' as a long-term endeavour that requires former antagonists to form 'new relations of peaceful coexistence based on mutual trust and acceptance, cooperation and consideration of each other's needs'. This appreciation of reconciliation in divided societies presupposes a social learning process, whereby victims and perpetrators re-define and reinterpret their realities after conflict. In the same vein, a social and psychological process would emerge, geared toward transforming the protagonists into redefining their 'new' and positive relationships by 'reaching out, building bridges'. That social learning process is what was expected of the South African process. In fact, the phrase 'rainbow nation' assumed that the reconciliation process would result in the 'building of new bridges' and the redefining of relationships (Aiken 2014: 42; TRC Report 1998: 304).

However, 21 years after the closure of the TRC, victims assert that enormous challenges have continued to characterise the redefining of relationships. Such challenges manifest in the emotions that arise at the mere mention of reconciliation. These emotions are captured by the words of two participants as follows: 'people are not talking about reconciliation anymore […] it was meant to keep people passive so that they do not talk about what the real issues are' (CT4: 8 March 2016) and 'is too idealistic given the current context' CT9: 16 March 2016).

Although the above extracts highlight victims' apprehension with the notion of reconciliation, it also raises the issues of agency. Victims were incensed that the focus on reconciliation had been used to pacify them so that they would not demand justice. This perception, often filled with emotion, resonates with South Africa's current context which is emblematic of huge inequalities, heightened race relations, incessant violence, rising unemployment and many other challenges that were introduced and perpetuated by apartheid. Victims emphasised that despite now being able to move freely around the country their current predicament is not different from how they lived under the former system. Therefore, talking about reconciliation was deemed a 'useless exercise' if such a conversation did not have a social and psychological effect in transcend-

ing the challenges of apartheid. That transcendence would assist in redefining new social relations with their former adversaries. Thus, the negativity that surrounds the notion of reconciliation is a clear indication of unmet expectations and cements victims' conclusion that 'reconciliation was promoted at the expense of justice' (CT9: 16 March 2016).

The negativity surrounding the notion of reconciliation further raises victims' desire to articulate their own issues. Victims' ability 'to speak' for themselves and to set the agenda for transitional justice was indeed usurped by the Commission. For them, justice should have been the dominant narrative since it has everything to do with addressing the injustices they had suffered. Victim agency is a contested issue in transitional justice. In most processes, elites, civil society and external agencies (known as 'transitional justice entrepreneurs') arrogate for themselves the right to speaking and on behalf of victims ' not because the [victims] invited them or gave her a mandate but because the entrepreneur sought the victim out, categorised her, defined her, theorised her, packaged her and disseminated her on the world stage' (Madlingozi 2010: 211). By stifling victims' agency, the 'transitional justice entrepreneurs' stand accused of 'stealing the pain of others' (Razack 2007). Madlingozi (2010: 211) further argues that despite the 'good intentions of the [entrepreneurs] it is not possible to get to know the reality of the victim-other'. Therefore, victims affirm that the prioritisation of the dominant narrative of reconciliation perpetuated their disempowerment and marginality. This is the challenge transitional justice continue to face despite its so-called victim-centric processes.

Victims also expected that the transitional justice processes would reconcile the different races within the country. The expectation was that the reconciliation narrative would smoothe race relations and the attendant tensions that had been 'planted' by apartheid. However, the failure to achieve that goal is beginning to have an intergenerational effect, especially among young black students. Among young people, the narrative is that the older generation of Nelson Mandela and others 'sold out' during the negotiations that ended apartheid. The young generation believe that very little was done to ensure the successful implementation of the reconciliation agenda 'which would have focused on dismantling the structures of dominance which perpetuates racism and racial inequality' (CT18: 20 June 2016). Although South Africa is celebrated

across the world as a country that has 'successfully transitioned' into a liberal-democratic state through negotiations and the use of reconciliation discourse, the persistent failure to address the volatility around race as one of the major societal ills linked to the dark past has remained a key source of resentment among young people, in particular those within institutions of higher learning.

This bitterness among young student activists has led them to challenge the very premise upon which the transition was negotiated in 1994. In doing so, they have managed to 'draw parallels between the context of their struggles and those of other marginalised South Africans' (Hofmeyer & Govender 2015: 2). Students stressed that the transition to liberal democracy has neither changed their parents' plight nor their own circumstances. Victims expected that enhanced access to education for black students would have been a key dividend of the reconciliation agenda. Such an outcome could have gone a long way toward addressing intergenerational social inequalities and poverty. This frustration and disappointment from the failure of the reconciliation discourse seems be fuelling the 'new' emotive debate on decoloniality in South Africa and what it means for an average black South African student. This decolonial narrative has ignited protests by young people within universities under the banners 'Rhodes Must Fall' and 'Fees Must Fall'. These protests, by and large, 'are manifested at a local level in direct response to context-specific issues that afflict the poor and powerless communities' (Hofmeyer & Govender 2015: 2). Therefore, reconciliation is roundly criticised among young people for its failure to ensure greater access to education for previously disadvantaged groups.

This section has discussed how central the notion of reconciliation was in the transitional process in South Africa. It has attempted to define the concept as the transformation of relationships between and among individuals and communities. The section has also highlighted how the current challenges within South Africa have raised resentment toward the reconciliation agenda among victims and young people. This has also heightened tensions between the races, particularly around the absence of magnanimity from the whites in acknowledging their role under apartheid. Despite the concept of reconciliation having raised expectations of changed relations among victims and building hope for a peaceful and prosperous life (new social relations, new opportunities), this research has found that there appears to be a general apprehension by the

participants about the progress South Africa has made toward reconciliation. Victims concur that achieving a reconciled society remains a huge challenge as long as those who suffered as a result of apartheid remain in their current predicament of incessant poverty. In other words, victims affirm that addressing poverty and inequality is an important but as yet unmet component of the reconciliation agenda, which explains the negativity expressed as betrayed or unfulfilled expectations.

6.2.2 Reparations: A Sanctuary for Realistic and Unrealistic Expectations

Victims' unfulfilled expectations also extends to the provision of reparations (both individual and symbolic) which were recommended by the TRC but have not—for the most part—been forthcoming. Within the framework of the TRC and in the spirit of building national unity and reconciliation, those that had been 'severely affected by conflicts of the past' were expected to be compensated, the goal being that 'people who suffered gross human rights abuses [would be] acknowledged by providing them with reparation' (TRC Report 1998). These reparations were divided into different programmes: individual, symbolic and community rehabilitation.

Within this framework, a very wide array of expectations—both realistic and unrealistic—emerged. For most victims, their expectations were that reparations should only be paid and/or extended to those who directly suffered the injustices of the past. This is the expectation that characterised participants' understanding:

> It [reparations] must not be like just a blanket cover for everyone but should mirror the specific recommendations made by the TRC, which include individual reparation focusing on health conditions, proper medication, proper education for our children, housing, and that final compensation (ER5: 12 July 2016).

This assertion includes, it is fair to say, a realistic expectation and an unrealistic one. This is because by their very nature reparations are intended to restore victims to their previous situation, had the atrocities not happened. Therefore, the logic is that those that were affected must be afforded the redress. On the contrary, this expectation can also be unrealistic because in long drawn out conflicts the distinction between victims

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and perpetrators is often blurred and complex. Sometimes victims can become perpetrators and vice versa and therefore to have a reparations programme that focusses on victims alone may prompt unachievable expectations (Borer 2003). This somewhat narrow and inflexible viewpoint demonstrates the inherent tensions within the reparations debate in South Africa, in particular the role that they played in the negotiated end of apartheid vis-à-vis the subsequent controversy around their implementation (Colvin 2016). This tension is compounded by the insufficient legal guarantees for reparations and the concomitant difficulties in defining the full scope of 'what they mean and who should be involved, including the political and social causes and consequences of the fight for reparations' (Colvin 2006: 31). These dilemmas are reminiscent of the challenges that victims have faced in maintaining their push for direct reparations, on the one hand, and accessing social programmes to deal with basic needs, on the other. This evidence underscores the victims' assertion that receiving services everybody is entitled to—such as humanitarian assistance or access to primary education and healthcare—and framing these as a form of reparations, has the potential of increasing a sense of injustice among victims (Field notes 15 July 2016). As advanced by one of the participants:

> [W]hen we talk about reparations, we are not referring to the provision of grants or pensions because [these are] part of our tax, which we worked for and that's what any government is supposed to do. In contrast, the payment of reparations is meant to address and to heal the atrocities that happened to us during apartheid (ER3: 12 July 2016).

Victims contend that conflating general developmental programmes with the reparations packages inevitably obfuscates the need to redress concrete harms that were inflicted under the prior regime.

The potential conflation of reparations and the general developmental programmes in South Africa has produced a hierarchy of victimhood. In particular, we can speak of a tripartite hierarchy among those who received full reparations, those who were partially paid and those who did not receive anything. This hierarchy can be gleaned from research participants' assertion that 'some have not received these sums to date while [others] have been paid even up to R30,000, so we feel that government did not do justice to us' (ER2: 12 July 2016). Over and above these two distinct groups,

as alluded to in the extract, there are some that did not even appear before the TRC and thus received neither recognition (as victims) nor payment.

Despite the very real fact of this hierarchy, victims in East Rand easily transcend it, with the distinctions becoming inevitably blurred, particularly for those that belong to social movements like Khulumani Support Group. Ironically, members presented a common narrative on the failure of the government to address their expectations. Despite experiencing different kinds of injustices and the fact that some received individual amounts and others did not, their narrative on expectations on reparations 'was interestingly identical and seemingly choreographed'(Field notes 15 July 2016). How such a uniform narrative comes about within a broad social movement is a matter that is quite intriguing. However, these universal narratives have the tendency of subsuming victim agency within their institutional goals and strategies. In contrast, victims believe that government's intransigence in failing to pay reparations over the past two decades can best be confronted by a unified narrative emerging from a country wide social movement.

The tensions in the reparations debate in South Africa have further been compounded by government's reticence to fulfil their promises presented in the TRC's final report. While the government has indeed struggled to 'engage with the difficulties of reparations in a creative way', victims' organisations, and indeed the entire civil society, have equally failed to design a 'rich and sustainable political programme' in their fight for reparations (Colvin 2006: 35). A counter-narrative is that although this assumption may hold true, research participants argue that victims support groups, in particular Khulumani, 'did push the issue of reparations and in the recommendations [they] were supposed to receive R120, 000 each but the government of Thabo Mbeki changed all that and issued R30, 000 instead' (ER2: 12 July 2016). This statement details the various efforts that the social movement of victims has undertaken in an attempt to lobby the government to honour its promise on reparations. Therefore, the fact that reparations have remained a political issue is an inescapable reality in South Africa. This has led to accusations that the government and indeed the TRC were much more interested in placating perpetrators than in meeting the needs of victims as a way to recognise their injuries and acknowledge their dignity (Colvin 2006).

Victims expected that they would have been accorded an opportunity to play a significant role in the determination of the kind of reparations that would recognise the injuries and acknowledge their dignity. For them, people that have not been subjected to the atrocities they suffered would never be able to understand the kind of pain they went, through let alone quantify the amounts commensurate with such pain. The victims further argued that an amount decided in their absence is bound to be tokenistic. As noted by one of my interviewees, 'some of us got varying amounts ranging from R2,500 to R3,000 but we did not know how these figures were arrived at. The government also did not consider our specific situation in order to determine the amounts' (ER3: 12 July 2016). In South Africa, the kind of injustices that victims suffered were varied and dissimilar. Therefore, to come up with a blanket amount for victims of physical violence, rape, mass displacement, enforced disappearances was certainly a negation of the principle of quantifying reparations commensurate with the harm suffered. While they all acknowledge that no amount of money could ever repair the damage of the past, nor bring back lost family members, it was hoped that the payment of reparations would go a long way in recognising the injury and acknowledging the dignity of the victims which would be central to redressing the legacy of the policies of the past.

To restore the dignity of victims, the TRC recommended within its remembrance and rehabilitation framework that symbolic reparations be made. These were meant to assist communities in remembering the 'pain and the victories' of the past by setting aside a day of remembrance, building memorials and monuments as well as community initiatives geared toward healing (TRC Report 1998). Even though these have been provided to a certain extent, the major contention lies around the understanding of what constitutes a community initiative and how those should resonate with different cultural groups' methods of remembering. In my research, victims were apprehensive because the government had not met allowed communities to fashion their own methods of remembrance as had been promised. Instead, museums and monuments have been established by 'those believed to have a linkage with the historical past'. As summarised by one of my participants:

> South Africa is one place in the world where the former oppressors benefit from the pain of others; [an] ongoing benefit, and that's insane. You never go to Israel and find a German person running an NGO dealing

with the holocaust. [That happens] here in South Africa and its fine; it's not a scandal. You have apartheid museums owned by two white people—how can two white people [be allowed to] benefit from the pain of the past? (P1: 7 July 2016).

Here we see a fundamental dilemma confronting victims concerning the discourse about who can design and establish institutions, activities and processes of memorialisation. For victims, the expectations are that all forms of memory should be rooted in respective ethnic groups' cultural beliefs and practices. Such practices will then decide how victims want to be remembered and which events and ceremonies would mark such occasions. As one participant put it: 'we want to document our own story, our own history, we [want to] tell our stories' (P1: 7 July 2016). The expectation by the victims therefore was that the design and development of institutions and processes of memory would remain their prerogative. The current set up, where the perpetrators of violence become the owners of the 'history' and platforms of remembrance, is a mockery to the suffering they (victims) endured under apartheid. In fact, victims argued that such platforms only serve to reinforce colonial narratives of domination. As one noted, 'all forms of memorialisation are Western. So, you narrate the history and the present of the nation through Western eyes' (P1: 7 July 2016). Victims further believe that the obliteration of their own historical narratives is an ongoing exercise given their 'exclusion' from the spaces of remembrance. Therefore the 'documentation of [their] history as victims, which is mostly unknown history because it's never written about and published' was an expectation that remains unfulfilled (ER5: 12 July 2016). While reparations are an integral component in historical redress and remembrance, they must also play a central role in linking those facts from the past to the current challenges facing South Africa (Dulitzky 2014).

This section has highlighted the expectations of the victims based on the recommendations by the TRC on reparations and rehabilitation. It has underlined victims' misgivings regarding individual amounts paid out as reparations and how some of them were excluded from such payments. For victims, the determination of the amounts to be paid out were not consistent with the context of the victim and the harm suffered as they should have been. It further highlighted the tensions within the reparations agenda

and how governments must not conflate reparations with broader developmental programmes. The section has concduded by underscoring the victims' expectations that all methods of remembrance should be rooted in respective ethnic groups' cultural beliefs and practices.

6.2.3 Restitution: Redressing Land Imbalances and Restoring Dignity

A central feature of the apartheid machinery was mass displacement of blacks and mixed-race communities through notorious legislation, of which the nefarious Group Areas Act stands out. As argued in Chapter 3, land expropriation and forced removals were undertaken against the aforementioned groups based on the 'colour of their skin' (Mamdani 2002). Most importantly, these were victims of state-sponsored violence whose plight was never examined by the TRC. Therefore, restitution for victims for the loss they endured under both apartheid and colonialism and the redistribution of such key resources as land are the issues that they (victims) expected would be addressed by the 'new' government when it took office in 1994. As argued by one of my participants:

> I don't even really know if we are moving in terms of restitution. We now have new policies that are coming into place in terms of land restitutions. So, there are farmers who feel that Willing Buyer, Willing Seller has not been effective at all; very little transformation if at all. People, in terms of forced removals […] have been waiting for 20 years to be compensated for land and homes lost. They don't have the financial access to move back into the areas they have been forcibly removed from. What has been done about that? The government has not even kept an eye on that when looking economic transformation and how people will get the land back (CT4: 8 March 2016).

Thus, land redistribution, 'acquiring land from large-scale landholders for the purpose of giving it to the landless' (Moyo 2015: 74), has failed to meet what victims expected for restitution. Notwithstanding the fact that the acquisition of land has socio-economic and political connotations, 'legal experts are scratching their heads about how some proposed reforms would be implemented' given the land tenure model that South Africa inherited at independence (Moyo 2015:75). The bimodal agrarian structure that the

country inherited in 1994 was underpinned by a 'racialized pattern of ownership that was instituted in 1913 under the infamous Land Act' (Du Toit, Woolard & Nyoka 2015: 49).

With the end of apartheid, it was anticipated that a key element of state-building would be, *inter alia*, the restoration of land rights for the majority of black citizens denied these rights under apartheid (Du Toit, Woolard & Nyoka 2015). Such a policy would inevitably have a spill-over effects that would raise rural incomes and generate large-scale employment by distributing land to formerly disadvantaged groups (DLA 1997). However, under the 'willing buyer, willing seller' land policy, the South African government, the ANC and indeed the victims of apartheid had hoped that 30% of white-owned farms would be redistributed over a period of five years beginning in 2010 (Hall 2009). In 2014, the Restitution of Land Rights Amendment Bill became law with the intention of 'rolling back the legacy of land dispossession resulting from colonialism and apartheid' (Restitution of Land Rights Amendment Bill 2014). The new law provides for a re-opening of the lodging period (5 years) within which those dispossessed of their land through racial policies are required to submit a claim for restitution. However, this has not led to a timely resolution of the land imbalance. As a result of the complexity of the land reform process, victims believe that the government 'should have legislated restitution way back in 1994 but was maybe careful not to rattle the feathers of those that had benefitted from apartheid' (CT9: 16 March 2016). On the contrary, government actually did pass the Restitution of Land Rights Act in 1994. The objective of that legislation was to 'offer a solution to people who had lost their land as a result of racially discriminatory practices such as forced removals. This included people who were dumped in Bantustans and put under traditional leaders' authority (Restitution of Land Act 1994). Such persons were required (under that law) to submit their claims for restitution before 31 December 1998. This example demonstrates that sometimes victims' expectations arise out of a lack of information. In this instance, they could have taken advantage of the law to exercise their rights for restitution. While this assertion may hold true, the reality of the situation is that about 10% of white-owned land has been handed over since 1994 (Parker 2014), thus clearly demonstrating that victims' expectations for restitution have not been fully met. This failure to address the land issue is to some extent attributable to the delicate nature of the negotiations that led to the transformation of South Africa from apartheid to democratic rule.

The failure to address the land issue further demonstrates the complexities of 'repairing skewed postcolonial land patterns in racially divided former settler colonies of Zimbabwe and South Africa' (Moyo 2015: 72). The structural land injustices existing in South Africa's land allocation were caused by the colonial and postcolonial administrations. While dominant transitional justice discourses favour restitution as a way of redressing the wrongs of the past, the failure to deal conclusively with the land issue in South Africa perpetuates the argument that transitional justice is 'anti-decolonial' (Madlingozi 2015: 4). Certainly, transitional justice's limited attention to colonial injustices and its preference to a corrective restitution model further supports this view (Moyo 2015). Indeed, the restitution model somehow projects a sense of legitimacy to the previous owner's title to land. Yet, such 'title' was acquired through violence and forced removals. Land is central to African societies and failure to address it further compounds the limitations of transitional justice. Victims therefore expected the prioritisation of land redistribution as a central component of righting the wrongs of the past.

This section has discussed victims' expectations around restitution particularly focused on redistribution of land. It highlighted the challenges with the policy prescription that had been adopted by the South African government which did not offer restitution of land victims had expected given the intransigence of those that are still in possession of large tracts of land. However, victims still believe that restitution is central to redressing the land imbalances that were produced by the apartheid regime.

6.3 Transformation of Socio-Economic Inequalities

What might arguably be termed 'the greatest expectation' of many of the victims was that the transition from apartheid to liberal democracy in South Africa would lead to a practical and tangible improvement in their own lives overall. At the centre of such transformation would be the redressing of socio-economic inequalities that characterised the segregationist system of apartheid. These inequalities include segregation in education, health and welfare, racially distorted incomes, lack of basic infrastructure for blacks and mixed races, sexism and poverty. To date, these serious socio-economic problems continue to confront the victims to the extent that very few of their aspirations for change have been realised. This failure explains why most people in South Africa feel let down by their current government because the new democratic dispensation has

not 'touched their lives' (ER10: 13 July 2017). The research participants also stressed that although they occupied 'centre stage' during the years the TRC was operational, this has not provided the means to transcend their circumstances. Instead, and as highlighted elsewhere in this chapter, they are inheriting the poverty of the apartheid order. In effect, neither their lives nor their communities have transformed.

6.3.1 Addressing Socio-Economic Disparities

When South Africa won its independence, victims expected that their plight, a consequence of historical inequalities, in particular poverty and other socio-economic disparities, would be transformed by the new government. As explained by one of my participants, these inequalities 'draw their genesis from the history of South Africa throughout colonialism, apartheid and into the new dispensation' (CT6: 10 March 2016). Victims' expectations for transformation were further given impetus by the South African government's socio-economic policy framework of 1994, known as the Reconstruction and Development Programme (RDP), whose prime emphasis was that '[n]o political democracy can survive and flourish if the mass of our people remain in poverty, without land, without tangible prospects for a better life. Attacking poverty and deprivation must therefore be the first priority of a democratic government'. However, despite this seemingly clear and rational objective, victims are still subjected to a ever-rising gap between rich and the poor. The assumption was that the new dispensation would set up a reciprocal system that would reverse access to the resources of the country for the previously disadvantaged as a direct response to apartheid systems that had propagated the disempowerment of the majority of South Africans. As affirmed by one of my respondents:

> I think a lot of people are struggling with the speed at which change is happening in terms in of socio-economic redress […] Besides the general things like crime and corruption, lack of housing, challenges with social services in general […] we are doomed because nothing seems to be going right in terms of addressing those issues that apartheid had done to us. Our government has faced the other way and as you can see we are really suffering all they know now is stealing money and corruption (CT18: 20 June 2016).

For 21 years South Africa has indeed struggled to reverse the legacy of apartheid. Massive inequality, deepening racism, marginalisation, a chronic housing shortage, and lack of access to education and other social services feature prominently on the 2018 South African socio-economic scoreboard. It is no secret that these are the broader issues that characterise expectations that have not been met. Victims also acknowledge various policy prescriptions that have been adopted since 1994. However, these have been hampered by endemic corruption entrenched in the public sector (Lodge 1998: 157) often referred to as 'tenderpreneuism'[16] and 'Black Economic Empowerment (BEE) fronting'.[17] In President Zuma's later years in office there were growing call for him to leave office on the basis of corruption allegations demonstrating the extent to which corruption had gained roots in the South African body politic and how it had and still is impacting society. One of my participants illustrates this as follows:

> If you look at the discourse that has been introduced by Jacob Zuma right from the time he was fighting his return in Polokwane, to fighting his corruption charges in courts, to the kind of language that we saw at the time, I am really convinced Zuma has corrupted the soul of the country and that […] all that violence, even the violence of the denial of the corruption charges and not taking responsibility, the image of leader being defiant and not following the rules and the kind of things that he says […] has an impact on society (CT24: 14 September 2016).

The former president of South Africa has been 'fingered' in massive corruption scandals involving the use of state resources at his private residence in Nkandla and his relationship with one family, the Guptas, who allegedly influenced his official appointments. As a result of these scandals, the general perception in the country is that he has corrupted the entire government system to the extent that it now affects the provision of tenders and other government contracts. Victims therefore argue that the former president's misdemeanours have had a lasting impact in society, particularly in the provision of services within communities.

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[16] Tenderprenuerism is where individuals enrich themselves through the corrupt awarding of government tenders through personal connections with elected officials or their families.

[17] BEE fronting refers to the abuse of empowerment rules where qualifying (previously disadvantaged) individuals are put on the Board of companies in order to satisfy government requirements for contracts. However, such persons usually have no decision-making power within those companies.

This research also notes that victims expected the provision of social services to improve in the urban areas. However, the services have deteriorated due to the sharp increase in rural–urban migration at the end of apartheid. Since the apartheid system heavily curtailed freedom among blacks and other races through the infamous Group Areas Act, services for whites could be ring-fenced and not subjected to unexpected pressures posed by human movement. Victims believed that the net effect of such sudden demographic changes inevitably had a knock-on effect on essential services like health, housing, education, as expressed by one of my participants below:

> After that there was an opening of all the gates that were closed into the urban areas, the consequence was a huge influx of people from the rural areas into the urban areas in search of jobs and I think that the ANC leadership may not, and I mean […] I do not understand why; they may not have prepared themselves for this kind of pouring in of people into the towns looking for jobs. This was the promise they made, this is the promise Mandela made, these are the promises the [ANC] party made—jobs for all. […] I mean, if you think about some of these areas that were non-existent but came into existence after 1994—that shows the extent of the impact of this movement into the cities (CT24: 14 September 2016).

While rural–urban migration in South Africa is viewed as causing problems in the cities, for those whose movement was restricted by apartheid argue that such mobility 'offers hope for the future—at least from the point of view of the individual or household concerned' (De Haan 2000: 1). For many of those families that had languished in the remote areas under the oppressive apartheid system, hopes for improved income can be viewed in a positive light. In fact, a study conducted by Statistics South Africa in 2006 have concluded that large-scale in-migration does not necessarily have a negative impact on the receiving areas, provided those areas have relatively strong economies as was the case with the cities across South Africa. It also concludes that the heightened economic activities within the receiving areas are ascribed to large inflows, which bring with them available labour from the hinterlands, which can also be tapped for work in the mines and other areas that require unskilled labour. More often than not

the distinction between temporary and definitive migration is usually missed in the narratives on rural–urban migration in South Africa, which also faces other migratory (cross-border and international) challenges from sub-Saharan Africa and beyond. Understanding these complexities is crucial in appreciating the impact of rural–urban migration on social services within the cities.

Although the victims' assertions on social services points to 'failed expectations', the government's evaluation of progress points to a completely different conclusion. In its report, the National Planning Commission indicates that:

> [a]ccess to services has been broadened, the economy has been stabilised and a non-racial society has begun to emerge. Millions who were previously excluded have access to education, water, electricity, health care, housing and social security. About 3 million more people are working today than in 1994, the poverty rate has declined, and average incomes have grown steadily in real terms (National Development Plan–2030: 14).

Victims argue that these statistics contradict their current circumstances. They submit that South Africa suffers from unemployment—which the World Bank (2015) puts at 26.6% (54.3% among the youth)—and huge challenges in access to education over and above the general challenges like crime and endemic corruption. This is further evidenced by social dislocation, grinding poverty, poor social services and amenities and rising unemployment (Stanley 2001: 527). This research finds that expectations for socio-economic equilibrium are a major concern for the research participants both at the individual and community levels. Thus, victims affirm that neither the transitional processes and mechanisms nor the government have satisfactorily confronted the socio-economic inequalities which undergirded the oppressive system of apartheid. This is because the broader issues underpinning socio-economic transformation that the victims expected at the point of transition remain unchanged.

6.3.2 Transforming the Education Sector: A Social Justice Imperative

Within the broader context of socio-economic transformation, victims expected that the education sector would be prioritised as 'one of the most important aspects of national regeneration and progress' (Pew 2009: 1). Out of this broad thinking, victims anticipated that their 'children [would] have greater access to education over and above the [general] improvement of the education system', which had been discriminatory and exclusionary (ER6: 13 July 2016). Victims also expected that universities and colleges will be spaces of integration for black and white students, thus helping to reduce the racial tensions that have characterised post-apartheid South African society. Despite these noble expectations, however, access to education for the black majority as advanced by the 'new' government has largely remained a pipe dream. The struggle by black and mixed-race families to ensure their children attain the best possible education remains a constant reality. Victims expected that after independence in 1994, the government would adopt universal standards across the country over and above affordability and improved educational access for children. Again, this expectation has not been met, as noted forcefully by one of my interviewees:

> I did travel, for example, about three hours a day to get good schooling and when I was travelling there were lots of risk for me as a young girl. I eventually grew so tired of travelling and […] my marks were average that my mum decided that I go to a school closer [to home]. At that school, I couldn't leave my bag in the class, while in my previous school I could leave my bag; I could leave my books open, anything. I wasn't threatened at any time or bullied. At the other school, the education was ok but it wasn't safe to go to school but that is the choice you have to make in this new South Africa (CT14: 13 May 2016).

The transactional costs that merit good education are out of reach for many of the victims of apartheid. Implicit in the extract above is that the academic divide in terms of the quality of education for South Africa still largely follows apartheid-era racial imbalances. For one to be able to send one's children to a good school entails daily travel to an affluent suburb, which are still inhabited mostly by whites and the black middle class. That on its own attracts huge costs, which many of those that suffered under

apartheid can hardly afford irrespective of other challenges like safety and security of the children. Unsurprising, the schools in the black townships face many challenges: overcrowding of classrooms, massive dropout rates, drugs and other delinquencies. For parents, the dilemmas are often stark, as further explained by the same interviewee:

> Do I keep my child in this school; is he going to get the best education, or do I spend the 40% of my salary that I am already spending on transport for my own travel —travelling for my husband? […] Do I place an additional burden on that to get my child to school further away to ensure that he has greater access to decent education; so that he can get out of the cycle of poverty? (CT14: 13 May 2016).

Two highly disruptive student protests provide a case study of the 'whole rapture and ravelling' in education occurred in South Africa in 2015. These protests were staged under the banners 'Rhodes Must Fall' and 'Fees Must Fall'. The demonstrations underlined the ultimate expressions of inequality and frustration within the country (CT5: 9 March 2016). These student protests—which began at the University of Cape Town in 2015 and spread to other universities—reenergised debates around social inclusion in a society that is skewed favourably toward the white race, thus exposing the fragility of race relations in South Africa. They also brought to the fore solidarity across class and political affiliation particularly around the lack of transformation within the education sector. Since universities are no longer the preserve of the elite, young black students who are not well off are now part of those studying at institutions of higher learning, together with their white counterparts. What emerges is the juxtaposition of extreme wealth, on the one hand and extreme poverty on the other. While being at the university 'is enviable for black students and exudes elements of equality between black and white students attending classes together and undertaking similar courses', the inequalities still emerge in ways that are not immediately obvious (CT24: 14 September 2016). For instance:

> [S]tudents who are doing projects, say, on architecture, sometimes have to work after lectures in the laboratories. While white students can work up to midnight, get into their cars and go home, the black students sometimes have to squat in the libraries or in other spaces on campus because

for them they may not have the means to get home (CT24: 14 September 2016).

The findings of this research show that such proximity to built-in white privilege becomes a source of anger for black students. What is ironic therefore is that the very spaces (universities and colleges) that were supposed to bring about connection—integrating and bridging the racial divide—are the very spaces that whip up emotions and disruptive behaviour, particularly because of the realisation of relative poverty in proximity with whiteness.

While research participants expected universities and colleges to be spaces of integration among the different races, these places of higher learning have remained fiercely contested and have continued to present monumental challenges for most black students, who believe that university authorities acquiesce to the unbridled use and abuse of the 'racial card'. One of my research participants spoke of this through the metaphor of death (of identity), stating:

> [E]very time I come back to university I have to die in order to continue being black and every time I get into a taxi to go back home I have to resuscitate this person that has died, put the person together in order now to be the person I can be with my family' (CT12: 12 May 2016).

The major questions that arise, according to my research participants, are the following:

> What does it mean for students who are black in a country where the black people are in the majority, if they have to 'die' in order to exist in these institutions? How disempowering is that? What does it mean to be 'themselves' and to move on in life where they have to live this death? (CT24: 14 September 2016).

These narratives of allegorical 'death' in order to 'fit' into the spaces that are characterised by precipitous race relations is prevalent in many universities in South Africa, in particular those in Cape Town, Stellenbosch and Free State (Nicolson 2016). The symbolic death invoked here suggests that racism is institutionalised and has not only permeated the social spaces but also structures of society. Sadly, the 'horror and struggles' that these students go through is hard to reconcile in a democratic country that is

predominantly black. Notwithstanding this, victims seemed to suggest that the whole idea of transition or transformation 'has to be redefined […] because the stories that I am encountering suggest to us that something else that we have not seen so far has to happen' (CT2: 1 March 2016).

6.4 Interrupting 'Whiteness': Deconstructing Structural Advantage and Race Privilege

South Africa's fragile race relations have been well documented, from colonialism through to the post-apartheid era. They are worsened by the perpetuation of white privilege in a predominantly black country. The white minority's failure to acknowledge that they continue to enjoy the benefits of a system that had unjustly favoured them for over half a century further aggravates the situation. What we find then are 'racially ranked hierarchies', born under a system of enforced segregation but carried into the present, with 'profound implications for victims' (Durbach 2016: 380). When the TRC was established, victims' expected that it would deal with these matters of white superiority and dominance—by instituting policies or recommendations to bring them to an end. Victims further expected that the TRC would

> create opportunities for white South Africans to acknowledge benefit—
> almost like another truth commission, which might be called an
> Acknowledgement Commission […]—a recognition that they indeed
> benefitted from apartheid (CT24: 14 September 2016).

This 'failure' to ensure that the 'beneficiaries' acknowledge their role in apartheid brutalities was a general perception among my participants, who make the 'connection' that a lot of the racism in South Africa 'comes from that place where white people do not want to be challenged about their whiteness, about their white privilege' (CT24: 14 September 2016). Thus, narratives about the silences around white beneficiaries are reflective of the heightened tensions around race relations in South Africa. On one hand, the argument has always been that 'white people may be oblivious to the structural benefits of whiteness and thus are "blind" to racism's continued presence; hence, they rationalise their ignorance by thinking that black people are "race-obsessed"' (Cowell 2016: 2). On the other hand, the assumption is that whites may:

be attuned to the realities of racial inequality and even acknowledge the disadvantages faced by 'communities of colour' because of discrimination and prejudice, but they still have a hard time placing themselves in this system of race relations and seeing the ways in which the disadvantages of others are closely and directly tied to their own structural advantages (Hartmann, Gerteis & Croll 2009: 407).

Irrespective of the reasons advanced above, the findings demonstrate that white people continue to enjoy the same privileges they had during apartheid and nothing has been done to 'interrupt the unjust system premised on whiteness' (CT5: 9 March 2016). This enjoyment is still self-evident in places like Cape Town and Stellenbosch, which still retain 'monuments of apartheid' (CT17: 20 June 2016).

The concept of whiteness can be defined within three parameters: (1) as a location of structural advantage or race privilege; (2) as a standpoint from which white people look at themselves in relation to others and society at large and; (3) a set of cultural practices that are 'unmarked and unnamed' (Hartmann, Gerteis & Croll 2009: 406). Implicit in this concept of whiteness is 'the assumed logic of racial difference premised on the self-consciousness of the subjective self and belonging in social groupings' (Hartmann, Gerteis & Croll 2009:406 see, also Paige 2009). Whiteness was the hallmark of apartheid and is believed to have remained uninterrupted in present-day South Africa. Through the system of apartheid, blacks and other races were segregated from the productive sectors of society and unfortunately 24 years after independence very little has been done to address this. Statistics show that black South Africans continue to be victims of intergenerational loss that has not been 'interrupted' by the transitional process.

This failure to 'interrupt' whiteness has created new dilemmas among black South Africans around the 'true meaning of blackness' today. Such a catastrophe reinforces the South African economic base that has largely remained

> violently and legally pro-white and manifestly anti-black. Yet the legislative framework in particular the Promotion of Equality and Prevention of Unfair Discrimination Act outlaws policies and practices that

perpetuates the structural or historical nature of oppression (Mbele 2016:1).

The questions that emerge are ones often repeated by my research participants:

> What does it mean to be black after apartheid after a truth commission? What does it mean to be a black person in South Africa after all this history in relation to whiteness? Because, you know, when you think about justice, when you put a black person next to a white person, a white person has greater access because they are entering the scene with better empowerment; because they have been exposed to opportunities; their families have been exposed to that as well (P1: 7 July 2016).

Here, white supremacy and the anti-blackness agenda underline the black suffering continues 'uninterrupted' in South Africa today. Essentially, for victims, the transition did not deal with the challenges of whiteness and its impact on intergenerational poverty and other excesses that were occasioned by apartheid. Unfortunately, the transitional process 'did not pay attention […] and that's the tragic lesson from that process […] not paying attention to what we needed to happen to interrupt the repetition of this kind of past' (CT6: 10 March 2016). Invariably, future generations will continue to inherit that problem, unless interrupted.

This intergenerational loss by black people in the areas of education, skills development and other key sectors means that victims' children are 'born into that loss and inevitably inherit [that loss] in a way the cycle will continue to play out without being interrupted' (CT24: 14 September 2016). Victims argue that understanding the nature of this loss and how this might be 'interrupted' is a process that needs to be undertaken. The notion of interruption refers to a complete discontinuation of the policies and practices that underpinned the segregationist system. It also entails deliberate and targeted programming to eradicate inequalities in order to uplift the previously disadvantaged people. Victims lamented that such a process did not take place—it remains one of the lessons of the transitional justice process in South Africa. The inescapable reality is that the current generation of white people are coming from homes where there are just greater opportunities, skills and capacity to support and empower younger people. In contrast, black youth growing up after apartheid come from families where

the parents were excluded from these kinds of opportunities. The cycle of poverty continues unabated. These disparities further reflect the intractable challenges in addressing victims' expectations, fuelling resentment—especially if seen through the prism of whiteness that continues to play out in South Africa.

6.5 Conclusion

The chapter has discussed victims' expectations focusing on the transition from apartheid to liberal democracy and the establishment of the TRC. It has highlighted their expectations of justice emerging from the change of the political system from apartheid to an independent South Africa, which they hoped would address the injustices that they had been subjected to. It has also interrogated victims' aspirations emerging from the creation of the TRC and the subsequent recommendations that it made at the conclusion of its mandate. A key outcome from this process was that the non-implementation of these recommendations—in particular a 'failed' reconciliation process, tensions around outstanding reparations and non-redress of land imbalances—represent unfulfilled expectations. The anger and disillusionment manifesting in South Africa points to this conclusion. Expectations around the transformation of society are interrogated through the prism of socio-economic disparities and the education sector as a key component of national reintegration and progress. The chapter has concluded by focusing on the victims' expectations around the deconstruction of white dominance and privilege.

This chapter's findings have underscored the point that failure to raise awareness and build capacity of victims so that they participate in the design and implementation of transitional justice mechanisms inevitably produces a gamut of expectations. These may prove realistic or unrealistic, depending on circumstances. This is important because victims' unmet expectations inevitably metamorphose into anger, resentment and frustration, which can lead into a relapse into violent conflict. The findings underscore the point that transitional justice must provide a 'voice' to victims of atrocities to ensure that unrealistic expectations are attended to. In that regard a careful incorporation of victims' aspirations could be a key component of guarantees of non-repetition. Reparations are, by their very nature, emotive and contentious—hence they should be

distinguished from broader post-conflict developmental programmes. Essentially, victims' expectations of redress and reparations cannot be pacified by broader developmental programmes that do not specifically address the violations they suffered. This is important because subsuming reparations programmes into other reconstruction processes can heighten tensions, leading to victims believing that the injustices will continue perpetually. Certainly, the current fragmentation along racial lines in South Africa which continue to fuel simmering tensions is a clear manifestation of the unmet expectations of the transitional justice process. These tensions are further fuelled by the absence of a viable transformative agenda that would reshape the socio-political structures of society in order to redress the imbalances, inequalities and residues of white dominance under apartheid. The findings also validate the argument that if transitional justice processes do not facilitate the 'interruption' of cycles of intergenerational poverty, injustice and exclusion, they may be complicit in perpetuating the 'old order'. Essentially, these cycles of poverty are likely to foment resentment and provide fertile ground for the development of a 'new conflict' between those that negotiated the transition and the younger generations. Although research participants expressed a desire to live in a reconciled South Africa, regrettably this aspiration has suffered from the unresolved historical legacies of apartheid that continue to influence socialisation patterns based on prejudice.

Chapter 7—Summary and Conclusion

This research has examined the perceptions of the South African transitional justice process in meeting justice needs among victims of apartheid. It has also provided an analysis of victims' expectations in relation to the processes and mechanisms undertaken in South Africa in dealing with the historical legacies of apartheid.

The study has employed a qualitative grounded theory research methodology that relied on face-to-face semi-structured and unstructured interviews with victims of apartheid in South Africa in order to achieve the research aim. This research was conducted, analysed and presented within the context of transitional justice in South Africa and the body of literature within which this study is located. The following sections demonstrate how each chapter responded to the research questions that guided this study.

Chapter 2 has analysed a body of established literature within the field of transitional justice, highlighting how it has largely failed to address the needs and expectations of victims of mass atrocity. Its central focus has been to critique the dominant models within the field, which are based on Western, Euro-centric, legalistic, top-down, mechanisms and are remote from the contexts in which they are instituted. It has highlighted the complexities in theorising the concept of transitional justice—a result of the nebulous and elusive nature of notions of justice. The chapter has demonstrated that there is a lack of consensus both in theory and practice of what transitional justice entails. This discord therefore brings with it two divergent dimensions of transitional justice: the narrow and wider conceptions. The chapter has extensively discussed the limitations of the narrow conceptions of transitional justice, based on legalistic, retributive, donor-driven and state-centric frameworks, juxtaposing it with calls for wider and broader notions of transitional justice that incorporate victims' perceptions. Within the wider spectrum, the chapter has illustrated the tensions between external mechanisms and local initiatives and how the incompatibilities arising therefrom have been a source of persistent discomfort for victims. It has used a number of case studies to highlight the disjuncture between victims' expectations of the various transitional justice mechanisms and the mandate of the tribunals instituted in their countries and how transitional

justice has struggled to close the 'gap' between international imperatives and local demands.

Chapter 2 has further discussed the socio-economic dimensions of transitional justice. It has highlighted transitional justice's failure to take into consideration socio-economic drivers of conflict, which limits its impact in addressing the needs and expectations of victims. This observation was particularly relevant to the South African context. The chapter has underscored that failure to incorporate socio-economic dimensions within the transitional justice field has the unfortunate reality of treating inequality or structural violence as contextual background rather than central issues to the transition or reducing the economic concerns to a narrow discussion of reparations. Chapter 2 has therefore called for in-depth contextual knowledge of societies under transition to grasp the socio-economic dimensions that fuelled the conflict. That in-depth contextual knowledge must appreciate the complexities of victims and victimhood and their multiple justice perceptions, needs and expectations in the wake of mass atrocity. That contextual knowledge must place victims at its core as well as in the design of transitional justice processes and mechanisms established to redress the injustice of mass atrocities. The chapter's conclusion highlights the criticality of victims within the wider conceptions of transitional justice, notwithstanding the complexities of power, hierarchies that are associated with notion of victimhood.

Chapter 3 has presented the answer to one of the research questions investigating the wrongs of apartheid. It has detailed the historical trajectory of colonialism dating back to 1652 and the subsequent establishment of the apartheid system in 1948. It has shed light on the callous nature of this oppressive system, particularly gross human rights violations, violent land displacement, subjugation, dehumanisation and infantilisation of blacks and other mixed races. The chapter has demonstrated how the segregationist apartheid system instituted repressive social controls through curtailment of mobility as well as systematically stripping blacks and mixed races of their citizenship and other fundamental rights. This survey of the excesses of apartheid competently dealt with one of the key research questions—what were the wrongs of apartheid? The chapter has further delineated the context within which the transitional justice approaches were undertaken in South Africa in confronting the injustices of the apartheid regime. It has shed much-needed light on the complicated nature of the establishment

of transitional justice which were preceded by elite-managed political negotiations that failed to include victims in the design and implementation of these processes. The chapter has shown how the TRC emerged as the dominant transitional justice paradigm in that country, and to detail its successes and some of the major criticisms levelled against it. The chapter has also presented a glimpse of contemporary South African society and the ongoing challenges in achieving justice, twenty-two years after the conclusion of the TRC process. The idea has been to show how very little has been done to redress the exigencies of apartheid in South Africa, even though its transitional justice process was celebrated around the world. This indicates clearly the limitations of the approaches undertaken in South Africa as well as evaluating whether or not victims' perceptions and expectations were incorporated in the mechanisms and processes established to redress the injustices they suffered.

Chapter 5 explores victims' perceptions of justice as a response to one of the key research questions. It has cemented the claims that victims' understanding of justice is in complete dissonance with how the Western and Euro-centric frameworks views this concept. While justice is defined within narrow and linear terms within mainstream transitional justice discourse, victims understand it differently. For victims, justice is about restoring the humanity of individuals and their community from the legacies of mass atrocity, thus making them 'whole' again. This victim-centric understanding of justice underscores that restoring wholeness, the dignity of the human person and rehumanisation is at the epicentre of victims' understanding and interpretation of justice.

This thesis has demonstrated that dehumanisation, the dislocation of communities and mass violence have profoundly negative impacts on victims and their communities. To then assume that Western and Euro-centric notions of justice will address such complexity without the participation of victims (i.e., incorporating their unique perceptions of justice) raises the fundamental question: 'is it even possible for the experts to get to know the victim-other'? (Madlingozi 2010: 211). In most cases, transitional justice through 'justice entrepreneurs' (i.e., external experts and national elites) 'appropriate[s] the right to speak for victims by dint of geopolitical and institutional privilege'(Madlingozi 2010:211). Hence, this thesis argues that transitional justice must advance a notion of justice that is primarily shaped by victims themselves and which largely acknowledges their loss of humanity. Chapter 5 has shown that this has

been the missing link in the transitional justice process in South Africa because victims still feel treated 'as if they are not human'. Moreover, the research demonstrates that the failure to recognise past wrongs inevitably exacerbates the dehumanisation of victims. Clearly, at the core of 'making victims feel like human beings again' lies the inescapable complexities unique to societies in transition— in that the pursuit of justice in these contexts is disparate to what it is in stable democracies— hence a unique and nuanced way of understanding justice peculiar to transitions is inimitable (Hopkins & Roederer 2004).

Chapter 6 discusses and answers one of the empirical questions, focusing on victims' expectations from transitional justice processes instituted in South Africa after the end of apartheid. It demonstrates that victims' expectations emerged initially from the country's transition from apartheid to liberal democracy. Victims expected that the excesses of apartheid that had characterised their lives would be dealt with under the new order. It highlights that these expectations were heightened by the establishment of the TRC as a formal transitional justice mechanism geared toward confronting the legacy of the brutal apartheid regime. The chapter argues that with a broad mandate to build national unity and reconciliation, the TRC raised a lot of hopes among the victims of apartheid. Expectations that the injustices they had endured under the apartheid era would be redressed were high on the agenda of victims, who believed that the TRC would also deal with matters of social and economic justice, poverty and inequality, which were at the core of their struggles against the apartheid regime. The chapter underscores that the non-implementation of these TRC recommendations: a 'failed' reconciliation process and tensions around outstanding reparations and non-redress of restitution especially land imbalances, represent unfulfilled expectations. These expectations around the transformation of society were interrogated through the prism of socio-economic disparities and the education sector as a key component of national reintegration and progress.

Other key expectations that were not met relate to race relations, particularly the rolling back of white superiority in all facets of life. The chapter has validated the argument that if transitional justice processes and mechanisms do not facilitate the 'interruption' of cycles of intergenerational poverty, injustice and exclusion, they may be complicit in perpetuating the 'old order'. These cycles of poverty are likely to foment

resentment and provide fertile ground for the development of a 'new conflict' between those that negotiated the transition and subsequent generations. The chapter demonstrates that these tensions are further fuelled by the lack of a viable transformative agenda that can reshape the socio-political structures of society to redress the imbalances, inequalities and residues of white dominance brought about by apartheid. It further underscores the point that transitional justice must provide a 'voice' to victims of atrocities to ensure that unrealistic expectations are managed and attended to. In that regard, a careful incorporation of victims' aspirations could be a key component managing expectations, reducing tension and guaranteeing that victims' needs and interests are catered for. The concluding theme of this chapter is that victims' expectations were never met probably because they were never prioritised in the design and implementation of transitional justice processes and mechanisms in South Africa.

7.1 Overview of the Research Findings and Recommendations

7.1.1 Transitional Justice is 'Unfinished Business'

The key question that this thesis has sought to answer is: what are the perceptions among victims of apartheid of the South African transitional justice process in meeting justice needs and expectations? In responding to this broad question, the study has examined and articulated a broader and deeper understanding of victims' perceptions and expectations of transitional justice in South Africa. Overall, the thesis empirically demonstrates that victims of apartheid have not been well served by processes and mechanisms established to redress the injustices of the past—victims therefore see transitional justice as 'unfinished business'. In fact, they argue that transitional justice has not been relevant and responsive to their needs and expectations at all. Three broad reasons can be advanced for such a conclusion.

First, this thesis clearly demonstrates a clear disjuncture between victims' perceptions of justice and the processes and mechanisms that were implemented in South Africa. Victims in East Rand and Cape Town underscored that at the core of their perceptions is the understanding that justice is that which makes them 'whole' again. As demonstrated in Chapter 5, that understanding and interpretation of justice is context-specific and unique to their socio-economic, cultural and historical circumstances.

The inescapable reality, therefore, is that victims' perceptions of transitional justice are formulated through the prism of the wrongs they suffered under apartheid. To that end, their needs and expectations are shaped by the naturalised belief that when a wrong is committed 'justice has to be done or at least must be seen to be done' (Pillay 2009: 347). Yet, this thesis demonstrates that transitional justice processes and mechanisms adopted in South Africa did not prioritise victims' own notions of justice, which are dissimilar from the normative frameworks. For victims, these top-down, state-centric models of justice did not fit within their paradigm. Hence the study illustrates that victims expected a model of justice that was informed by their understanding and implemented within their cultural purview. In the absence of that, the justice needs and expectations of victims have been largely unmet.

Therefore, calls for the wider conceptions of transitional justice advanced in this thesis —cements the argument that justice is a multi-dimensional construct —which is shaped by plurality of ways in which victims are impacted by mass violence. Thus, in perpetuating narrow conceptions of justice, transitional justice has remained 'unfinished business' because broader notions of justice that incorporate victims' needs have struggled to enter the mainstream. In order to address the aspirations of victims, transitional justice must not only broaden its conceptualisation to include 'the many faces of justice' but must be sensitive and reflexive in incorporating victims into the mainstream transitional justice practice geared toward addressing the injustices they endured.

As Hugo van der Merwe (2001) asserts, transitional justice discourse has not significantly advanced an understanding of victims' perception of justice in its various forms. An awareness of the broader context, with all its complexities and intricacies, therefore plays an important role. If there is genuine agreement among TJ scholars and practitioners regarding the importance of gaining insight into the perspectives of victims and survivors of war in an effort to tackle the question of 'what works' and 'what does not work, then inevitably more local actors ought to be employed throughout the process of designing and implementing a TJ mechanism. This could be a way to make the practice more bottom-up (Saeed 2016: 169)

Second, the thesis further demonstrates that victims perceive that they were not well served by transitional justice because their expectations from its processes and mechanisms remain largely unmet. Clearly the injustices they endured in the past have

remained a permanent feature of their present circumstances. This study shows that victims realistically expected that the transitional justice processes and mechanisms would deal decisively with the injustices they had endured under apartheid. In contrast, victims are frustrated that, notwithstanding the 'world-acclaimed' transitional justice process, their plight has basically remained the same. As argued in Chapter 6, failure to meet these expectations metamorphoses into emotional discontent which continues to 'fascinate, bewilder and anger' and has the potential to trigger relapse into violent conflict (Villa-Vicencio 2009: 62). This research has found that the expectations for socio-economic equilibrium were a major concern for victims both at individual as well as community levels. Thus, victims affirm that neither the government nor the transitional mechanisms have sufficiently challenged these structural inequalities which are a legacy of apartheid policies and programmes. The broader issues underpinning socio-economic transformation that the victims expected at the point of transition remain unaddressed.

Unrealistic expectations also emerged from the transitional justice processes and mechanisms in South Africa. As demonstrated in Chapter 3, apartheid injustices were so broad as to encompass personal, community, socio-economic, political and cultural spheres and to expect the TRC to address all these challenges was unrealistic. Victims also unrealistically expected that the TRC was going to work toward the transformation agenda even though it was never set up for that purpose and its mandate did not stretch to include addressing the structural consequences of apartheid. There was no way the TRC could have extended or broadened its mandate outside the parameters set within the negotiation process. Because victims were not aware of this, this was bound to raise tensions.

Both these examples demonstrate the importance of managing expectations by incorporating victims' perspectives in transitional justice. The theory that emerges is that if transitional justice seeks to address the justice needs and expectations of the victims it must take cognizance of their context-specific perceptions, needs and expectations. However, merely taking cognizance may lend itself to the narrow, Western, Euro-centric, donor-driven models, the limitations of which have been carefully canvassed in this study. Hence an alternative theoretical model that incorporates victims in

the design and implementation of transitional justice processes and mechanisms is what this thesis proposes.

Third, this thesis' focus on the perceptions and expectations of victims is an attempt to give voice to those whose narratives are often 'unheard' in transitional justice. As illustrated in this study, victims were never part of the elite political compromise in South Africa and that resulted in the failure to place their perceptions, needs and expectations at the heart of the transitional justice processes and mechanisms (de Waardt 2016; Thompson 2014: 247). Ironically, this failure occurred against a backdrop of a glut of literature on victim-centric processes. This thesis has demonstrated that allowing victims to participate in processes and mechanisms designed by elites perpetuates the top-down, Western, Euro-centric models of transitional justice and these can never be victim-centric in the true sense of the realities of post-conflict societies. For instance, although the transitional justice processes and mechanisms were revered internationally as a model, they have been roundly condemned domestically by the victims of apartheid because they failed to address their needs (Sooka 2006; Gready 2011; Thompson 2014; Madlingozi 2015). Implicit in this condemnation is that these processes and mechanisms failed to meet the expectations of the victims simply because they did not include them in design and implementation (de Waardt 2016; Madlingozi 2015).

As stated above, victims were not part of the negotiations that led to the establishment of the transitional justice processes and mechanisms. The dilemma that then arises out of such dialogues is that where negotiations precede and inform transitional justice processes, 'compromises have to be made, but which comprises, who is compromised and what is the role of transitional justice in facilitating or contesting compromise'? (Gready 2011: 1). In that regard, victims' perceptions, needs and expectations of justice suffer the vagaries of political brinkmanship especially the agendas and priorities of those who 'sit at the negotiating table' (Lundy and McGovern 2008; Pankhurst 1999). Although these compromises could be defended as necessary for the transition, in the case of South Africa this thesis ably demonstrates that victims' expectations for brighter future were betrayed (Gready 2011). Invariably, the perception that transitional justice is an 'unfinished business' emerges from the fact that the processes

and mechanisms established to redress the exigencies of apartheid were a victim of compromise and hence failed to meet the expectations of the victims.

As canvassed above, transitional justice is complex and controversial and therefore the needs and expectations of victims are best served when victims champion their own cause. In fact, the celebrated successes of many mechanisms and processes has never been premised on the simple fact that such frameworks merely exist. However, they may be grounded in the fact that victims are able to inform, organise and advocate for their own needs within the confines of what they perceive as justice that responds to their specific circumstances. Therefore, any justice model that does not respond to these specific realities of victims of each particular context, inevitably struggle to incorporate their perceptions and expectations.

Overall, this thesis proposes victim-centric transitional justice processes and mechanisms that clearly place at the core victims' own interpretation and understanding of justice informed by their experiences in post-conflict settings. Such processes may go a long way in addressing the needs and expectations of the victims. While victims have become central to transitional justice scholarship, much of the debate has largely focused on the divergences between rhetorical and genuine commitments to victims in transitional justice processes and mechanisms (Bernath 2016). This thesis fundamentally interrogates this victim-centredness and advocates that transitional justice processes and mechanisms that do not incorporate victims in their design and implementation are not victim-centric. Rather they are either perpetrator-focused and/or elite-centric driven mostly by 'transitional justice entrepreneurs' that 'appropriate the right to speak for victims by dint of geographical or institutional privilege [… even as] it never possible for the expert to know the reality of the victim-other' (Madlingozi 2011: 210). What Madlingozi argues here is very persuasive and ties in very much with the main argument in this thesis that it is only the victims who fully understand the extent and impact of the violence they endured. To design transitional justice mechanisms and processes in victims' absence is therefore an attempt to 'speak for' or 'speak about' victims' suffering that in many ways perpetuates Western, Euro-centric hegemonic models of justice (Kapoor 2004: 628).

Truly victim-centric processes must place the perceptions, needs and expectations of victims at the centre, empowering victims to be incorporated in the design and

implementation of processes and mechanisms that are relevant and responsive to the 'many faces of justice' (Huyse 2003). In measuring the extent to which transitional justice processes and mechanisms are victim-centric, this thesis proposes that the following questions must be engaged:

- What is the role of victims in the planning process of transitional justice mechanisms and processes?
- How much are their needs, expectations incorporated into the design and implementation framework of processes and mechanisms of transitional justice?
- How much leverage do victims have in the timing and sequencing of transitional justice processes and mechanisms?

These questions cement the major argument in this thesis that victims' perceptions and expectations must significantly inform the design and implementation of transitional justice processes and mechanisms that mirror their circumstances. In the case of South Africa, victims continue to suffer from the legacies of apartheid despite the institution of transitional mechanisms and processes geared toward addressing the injustices of the past. Although the processes in South Africa were deemed to be victim-centric, as clearly demonstrated in Chapter 3, they did not incorporate victims in the design and implementation (de Waardt 2016). Victims only participated in 'telling their stories', albeit in a narrow and linear framework designed by political elites. Hence to suggest that they be part of the design and implementation of transitional justice processes and mechanisms is not far-fetched but wholly informed by the findings of this research.

7.2 Recommendations for Future Research

Based on the findings of this research, there are several ways in which victims' perceptions and expectations of transitional justice could be incorporated into the design and implementation of TJ processes. First, future research in the area of victims' perceptions of transitional justice needs to break out of the confines of major urban centres such as Cape Town, Johannesburg and Pretoria. There are several reasons for this point of view. A significant majority of the South African population lives in rural areas and has remained unassessed by researchers, yet they hold valuable insights that could further the discourse of transitional justice. While there could have been studies conducted

focusing on the rural victims of apartheid, most of these have targeted the urban areas and particularly victims within structured social movements like the Khulumani Support Group and other institutions. Moving to rural areas might be useful in reducing the urban/elite bias.

Second, this study demonstrates victims have their own perceptions of justice and these notions should be incorporated into the design and implementation of transitional justice processes. Further research therefore is needed in interrogating the practical steps on how these local perceptions can be used both in the design and implementation of transitional justice processes and mechanisms and to influence the broader transitional justice process discourse. It is vital to get a fuller understanding of local contexts of these transitional justice societies to enable the researcher to have a nuanced appreciation of victims' circumstances. Central to this research is a careful consideration of the methodologies that ensure researchers gain victims' respect and are therefore able to provide viewpoints that enhance the development of this discourse.

Third, there is no point in participating in the design and implementation of transitional justice mechanisms and processes if there is no concomitant desire to ensure that such justice models are accessed by victims. Therefore, access to justice of these wider and broader conceptions of justice is an area that requires extensive research. For instance, what would access to justice mechanisms and processes for models of justice premised on restoring wholeness, rehumanisation and restoring dignity look like?

Fourth, an important component for further research is to explore how victims' perceptions of justice are shaped by institutional narratives, particularly in instances where they belong to social movements or groups. This may shed light on how victims' 'own' stories 'belong' not only to their individual selves but to particular organisational discourses which are merely voiced and couched in victims' narrative of justice

Therefore, building sufficient capacity among victims to enable them to influence (through their perception of justice), actively participate in the transitional justice processes and mechanisms, has the inevitable outcome of addressing both the realistic and unrealistic expectations to reduce tensions and resentment.

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