



# Traditional Mechanisms in Transitional Justice

June 2012



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Traditional Mechanisms in Transitional Justice

To request a copy please contact:

**CCSF Secretariat**

National Association of Non-Governmental Organisations (NANGO)

5 Meredith Drive, Eastlea

P.O.Box CY 250, Causeway, Harare, Zimbabwe

Tel: +263-4 708761/732612

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# SECTION 1: BACKGROUND

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## 1.0 Introduction

Transitional justice is not alien to the African socio-politics. Consequently, transitional periods aimed at establishing peace after violent conflict clutter the continent's historical terrain. What perhaps is new is the use of western constructed transitional justice jargon by peace practitioners and scholars to name processes already embedded within the African conflict resolution culture and ethics. Since the 1990s, there has been increased advocacy amongst peace practitioners and scholars alike for the adoption of traditional mechanisms in transitional justice. Apparently this position highlights the inadequacies of western transitional justice models and limitations of what the state and civil society is able to do to spearhead the transitional justice agenda in post conflict Africa. This section of the report conceptualizes violence and violence prevention and analyzes the theories of transitional justice. The review also contemplates the evolution of transitional justice, unpacks some of the assumptions of the contemporary transitional justice architecture and discusses the peace or justice debate in transitional justice. This section also explores the state-traditional leadership interface and analyses the Zimbabwe legislative framework within which the current transitional justice agenda is premised. The review also explores the dynamics of traditional mechanisms and sets groundwork for analysis of their viability as vehicles of the transitional justice processes in Zimbabwe.

## 1.1 A Synopsis of Violence in Zimbabwe

Zimbabwe has a profile of violence which pre-date the colonial times. Episodes of violence encompass the 1893 War of Dispossession in Matebeleland, the 1st and 2nd Chimurenga, the Gukurahundi atrocities in the Midlands and Matabeleland in the early 1980s (Raftopolous, 2009). Violence in Zimbabwe has steadily been increasing since 2000 and several regions of the country especially the rural areas have been turned into theatres of political violence. In 2000, 2002, 2005 and 2008, political violence erupted as a result of the highly charged and contested nature of elections. The 2000 land invasions which were heralded by the invasions of the Svosve people and Operation Murambatsvina (2005) are also violent cases in point (Makumbe, 2009). Nonetheless, the June 2008 pre-runoff election violence is arguably one of the brutish episodes of Zimbabwe's electoral violence. The violence witnessed abductions, rape, torture and beating and the most vulnerable group was women (Research and Advocacy Unit, 2009). There have also been violence during the COPAC outreach programmes and the terror unleashed by



some youth militia called Chipangano in Harare (Bulawayo, 24, 2012). These various violent dispensations have been accompanied by transitional mechanisms such as the Lancaster House Conference (1979), 1987 Unity Accord between ZANU and ZAPU which consummated into the formation of ZANU PF and the recent Global Political Agreement of 2008 entered into by ZANU PF and the two MDC formations (MDC-T and MDC-M) (Masunungure, 2009).

It is important to observe that the transitional periods in the history of Zimbabwe appear to have sought to placate or accommodate the disenfranchised rank and not necessarily providing healing and justice to its file who are the worst hit by violence. It is plausible to argue that the justice in this scenario appears to be the victor's justice. Observably the transitional justice interventions have been monopolized by political actors who occupy the echelons of power. Even when one reflects on the 1980 reconciliation policy enunciated by the state after the violent and bloody liberation war, one notices that it did not go beyond reconciling the two major races- the whites and the Africans. There was no deliberate effort to extend the reconciliation and healing among the Africans themselves who were themselves divided. This may have perpetuated the differences between ZANU and ZAPU and caused such violent clashes as observed at Entumbane (suppression of dissent among former combatants) and Gukurahundi (massacre of civilians in Matebeleland in the name of national security) (Muvingi, 2011). The precedence that has taken place raises an important question of who is supposed to lead the transitional justice agenda or if it has to be top-down or bottom-up approach. There have also been questions on which models have to be adopted to conceptualize and prevent violence.

## **1.2 Conceptualizing Violence and Violence Prevention**

Galtung (1996) argued that violence is triangular in nature and manifests itself as cultural, direct and structural Violence. According to Galtung (1996) cultural violence refers the unchanging differences between people, perhaps based on ethnic divides that make one group of people distinct from another whereas direct violence can be perceived as an event characterised by coercion, which is physical and involves identifiable actors. The political violence alluded to above fall within the ambit of direct violence. On the contrary structural violence (indirect violence) does not physically violate its victims rather it violates their rights through the absence of structures that promote the fulfilment of their life requirements. Grewal (2003) observed that structural violence manifests itself as exploitation, poverty, misery, denial of basic needs and marginalisation. Put another way structural violence infringes on human dignity and human security. The Outreach Report by NANGO

(2009:5) identified in the context of Zimbabwe structural violence as emanating from electoral, governance, economic, legal and security systems. According to Galtung's theory it is logical to infer that transitional justice interventions have to take cognisance of these three types of violence. In the context of African societies Galtung's model however fails to address other forms of violence such as spiritual violence which may manifest as ngozi that haunt perpetrators of violence that leads to death of victims. This and other gaps necessitates for serious consideration of encompassing traditional mechanisms in conceptualizing violence and in conceiving transitional justice mechanisms.

One can also observe that conflict permeates all tiers of society and those who bear the worst brunt are those who are located at the grassroots. This is the case because violence cascade downwards from the top where those who wield power and monopolize the use of apparatus of violence are situated. Traditional mechanisms are located at the grassroots level where the majority of the rural folk reside making them strategically positioned to assist in violence prevention and transitional justice. Nonetheless it is questionable whether traditional mechanisms can on their own resolve or prevents conflict. It is also worthy studying if traditional mechanisms can work in complementarity with civil society and the state in hybrid tripartite arrangement in which each draws strength from the other.

### **1.3 History of Transitional Justice in Zimbabwe**

Between the 1940's and the early 1980s the way to deal with post violent eras was to try to "close the books" but today there is a shift to accountability and this has been the result of the growth of a human rights culture. This shift witnessed the setting up of tribunals such as Hague, Arusha (for Rwanda) and the International Criminal Court (ICC) (Ramsbotham, 2005). In the historic context of Zimbabwe, according to Muvingi (2011) there have been human rights investigations, documentation and reporting of violence that date back to 1997 which constitute part of memorialisation. Muvingi (2011) further asserted that the formation of the National Constitutional Assembly (NCA) to press for institutional reform can be perceived as a transitional justice initiative. In 2003 organised civil society publicly called for transitional justice and in July 2009 a coalition of non-governmental organisations (NANGO) launched a report on their transitional justice outreach initiatives in over 50 constituencies of the country (NANGO position paper, 2009). The Global Political Agreement Article VII which calls for the promotion of equality, national healing, cohesion and unity and which led to the formation of the Organ on National Healing, Reconciliation and Integration (ONHRI) is also a hallmark effort towards transitional justice (GPA Document, 2008). The GPA and ONHRI would shortly be discussed. According

to Muvingi (2011), the conceptualisation of transitional justice has to be situated within the framework of a new political regime as no sitting government would willingly embark on serious investigations of its own wrong doings- hence serious discourse on transitional justice in Zimbabwe as there is Government of National Unity (GNU).

Notably there has been disparities on the conceptualisation of transitional justice in Zimbabwe as different groups have advocated for varying *modus operandi*- the state's focus has been on forgiveness, NCA on institutional reform and setting up of a Truth, Justice, Reconciliation and Conflict Prevention Commission (NCA Constitutional draft, 2001). NANGO sees truth seeking, prosecutions, reparations and institutional reforms as mechanisms for transitional justice while other stakeholders such as the private media have been demanding trials and indictments of political elites by the International Criminal Court (ICC) (Muvingi). However accountability through the judiciary has conceived insignificant results. According to Zhakata (2006) in 2001, some political violence victims instituted lawsuits in a New York court ordering the state to pay US\$100 million but the victims were not compensated. The same fate fell on white commercial farmers who took their case to the Southern African Development Community (SADC) Tribunal in Namibia. There have been questions on how traditional mechanisms can contribute to transitional justice and upon which theory transitional justice ought to root itself in. It is the object of the next subsection to unpack theory on transitional justice.

## 1.4 Theories of Transitional Justice

The concept of transitional justice is contested in meaning and form (Machakanja, 2010). The United Nations defines transitional justice as the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. Kritz (1995) defined transitional justice as a holistic approach to reconcile or re-unite deeply divided and polarised societies with a legacy of gross violations of human rights. The International Centre for Transitional Justice (2008) defined transitional justice as a response to systematic or widespread violations of human rights. It seeks recognition for the victims and to promote possibilities for peace, reconciliation and democracy.

- **Contestation Over Choice: Retributive Versus Restorative Justice**

Retributive justice refers to the use of criminal courts to bring punishment on perpetrators of human rights abuse which according to Bass (2001) assists the

country to internalize and individualize its guilty. Retributive Justice can be perceived as the victim-oriented approach to transitional justice. Proponents of retributive justice argue that a post conflict society has a moral obligation to prosecute and punish perpetrators, because retributive justice is what most victims' desire. It also helps to heal their wounds and restore their self confidence because it publicly acknowledge who was right and who was wrong and clears the victims of labels of "criminal" placed on them by the authorities. Through criminal courts retributive justice establishes individual accountability and eradicates perceptions that the whole community was responsible for violence and such was the precedence among the Hutu and Tutsi in Rwanda in 1994.

Restorative justice is a theory of social repair that focuses less on perpetrators to the benefit of victims and shifts justice back to the affected communities. The basic assumptions of restorative justice are that crime is not primarily law breaking but a conflict among individuals and though it affects an individual, it also affects the community and the perpetrator. Restorative justice also assumes that criminal justice should aim more at reconciling the parties and repairing the wrong rather the punishing the perpetrator. Restorative justice should engage the participation of the victims, offenders and their respective communities. Traditional mechanisms of transitional justice in a great measure fall under the ambit of restorative justice. Desmond Tutu commented that:

*Western-style justice does not fit within the African jurisprudence. The African view of justice is aimed at the healing of breaches, the redressing of imbalances and the restoration of broken relationships. This kind of justice seeks to rehabilitate both the victim and the perpetrator, who should be given the opportunity to be reintegrated into the community he or she has injured by his or her offence (Tutu, 1991, 51).*

The foregoing has compelled many scholars to countenance the prospects of coming up with hybrid models of transitional justice tailor-made to suit the African political and socio-economic peculiarities. This research seeks to interrogate the place of traditional mechanisms in transitional justice and against this backdrop the following is a framework that identifies traditional mechanisms as grassroots mechanisms for violence prevention.

### • **Lederach's Peace Building Pyramid**

Lederach (1997, 2005) propounded a model of peace-building which describes the conflict affected population as a triangle. This model is a departure from traditional approaches to peace-building that engaged the echelons of power in conflict transformation. Put other way Lederach's model diverts from the top-down approach. The diagram in fig 1 below depicts Lederach's model.

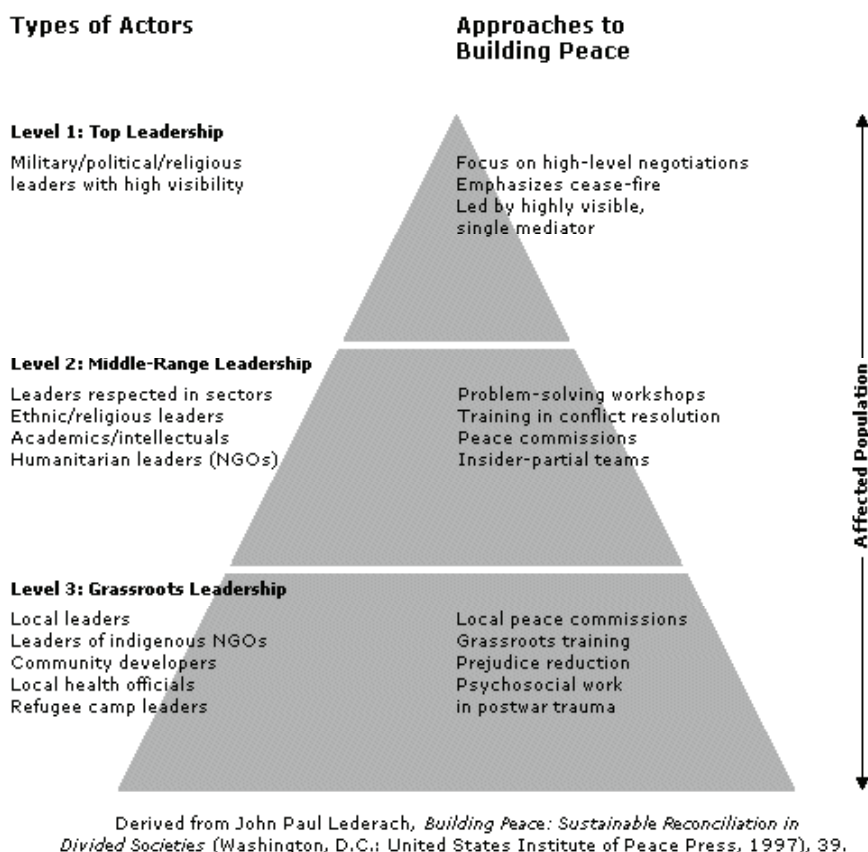


FIG 2.1 APPROACHES TO BUILDING PEACE

According to Lederach (1997) at the apex of the triangle are key military and political leaders and this is level one. In the middle of the triangle at level two are regional political leaders, religious and business leaders and the bottom of the triangle (level three) are the majority of the affected population—common people, local leaders, elders, church groups and locally based NGOs. It is at the bottom of the triangle where traditional institutions of conflict prevention and resolution are also located. In such a scenario most conflict resolution takes place at level one (state-centric) and yet for conflict resolution to be sustainable according to Lederach strategies across all three levels must be undertaken (Ramsbotham, 2005). The model assumes that the middle level can serve to link the top level and bottom level respectively. Lederach argued that it is essential to learn from domestic cultures how to manage conflicts in a sustained way over time and thus the theory places more value on local community peacemaking assets as compared to the conventional practice where peacemaking assets are from outside the conflict (Ramsbotham, 2005). The grassroots actors, not

only experience the day-to-day impact of conflict, but are also best positioned to resolve that conflict because of their intimate interaction with conflict and disputing parties.

It is worth noting that Lederach's model to peace-building is a multi-track model which identifies the leaders at the top level of the triangle as Track 1 diplomats, middle level (track II) and those at the bottom (local actors) as Track III. Lederach (1997) proposed The United Nations (UN), international and regional organisations as Track I leaders and International NGOs, churches, academics, private sector as Track II leaders. The model is also premised on the thesis that solutions reached by Track I diplomats may be simply expedient and not imply a change of heart and yet this is the crux of peace. There must be a change of heart. Without this no settlement can be considered secure (Curle, 1992: 132).

One can observe that Lederach's model challenges the wisdom of most of the "western model" to conflict transformation and resolution which rests on the engagement of outsider neutral mediators which Lederach claimed was not understood by those involved in the conflict while the idea of insider partial peacemaker was. It is also important to point out that Lederach referred to his "bottom up" approach as indigenous empowerment which implies giving the local actors a voice and initiative in mapping out their own peace. The following citation of Lederach (1995: 212) quoted from Ramsbotham (2005: 220) sums the model in question;

*The principles of indigenous empowerment suggest that conflict transformation must actively envision, include, respect and promote the human and cultural resources from within a given setting. This involves a new set of lenses through which we do not primarily "see" the setting and the people in it as a problem and the outsider as the answer. Rather we understand the long term goal of transformation as validating and building on people and resources within the setting.*

Curle (1992) thoughts concur with Lederach and argued that it is important to identify the cultural modalities and resources within the conflict setting in order to evolve a comprehensive framework which embodies both short term and long term perspectives for conflict transformation.

The relevance of the model is underlined by the fact that it locates sustainable conflict transformation with local actors who are the functionaries that preside over traditional mechanisms and recipients of their services. Lederach's model advocates for a departure in conflict transformation, from state centric models to indigenous systems embedded in local cultures which in essence include traditional mechanisms. People have a tendency of valuing the importance of their own culture and as such

the model enhances both the appeal and significance of traditional mechanisms in transitional justice. However it should be noted the model assumes that people are contained in social rigid stratum, presupposing that traditional leaders are always found at the bottom of the pyramid. It is worth observing in the context of Zimbabwe that some traditional leaders such as those in the Chiefs' council and in the Senate at one time speak as traditional leaders and at another serve the interest of Level 1 leaders which may eventually compromise their effectuality in transitional justice. It suffices therefore that being a traditional leader does not always mean that the incumbent would in all cases represent the voice of the grassroots.

## 1.5 Growth of Acceptability of Traditional Mechanisms in Transitional Justice

It is imperative to briefly proffer an explanation why traditional mechanisms in transitional justice are in vogue. In his August 2004 report on Rule of Law and Transitional Justice in Conflict and Post Conflict Societies, Kofi Annan wrote that:

*Due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their often vital role and to do so in conformity with both international and local tradition (UN Report, 2004).*

Annan's speech confirms the general acceptance of traditional (indigenous) mechanisms of transitional justice in resolving conflict. Huyse and Satter (2008) argued that the accepted wisdom in current is that the best "resources" and the best "answers" to resolving conflicts lie within countries themselves. Received wisdom has limitations contrary to indigenous wisdom which is contextual fit to deal with African conflicts, has legitimacy and is resilient. Huyse and Satter (2008) further argued that in Africa in particular, an undervalued indigenous conflict management resource is to be found in traditional social mechanisms. Machakanja (2010) in a report entitled, *National Healing and Reconciliation in Zimbabwe: Challenges and Opportunities*, in the same vein asserted that macro-processes of transitional justice need to be combined with micro-level grassroots initiatives. There is ample evidence suggesting the practical relevance of traditional institutions in transitional justice. This includes the *gacaca* courts and *abunzi* mediators of Rwanda, the *bashingantabe* of Burundi and the *palava* management system in Liberia. There was also ritual integration of ex-combatants in Mozambique following the announcement of a blanket amnesty after the civil war. The same was done in Sierra Leone. According to Huyse and Satter (2008) the preliminary pact on accountability and reconciliation (June 2007) between the Ugandan government and the Lord's Resistance Army, Article 3.1 stated that there was to be the use of traditional transitional justice mechanisms such as Culo Kwor

and Mato Oput in which following the resolution of a conflict the involved parties are asked to drink the bitter Oput drink to symbolize the pass away of bitterness (Machakanja, 2010).

In the cases alluded to above, local communities utilised their inherent structures in the post conflict period to inculcate accountability. In Rwanda traditional mechanisms of dispute resolution such as *gacaca* and *abunzi* mediators are recognized under the law. These mechanisms are better placed to deal with dispute resolution in local communities in the sense that they have procedures, penalties for wrong doing which are not internalized by the community in question but which are also accepted as just and acceptable. In Zimbabwe context traditional institutions are recognized through customary law provisions. The *dare* (traditional court), has been known to preside over both civil and criminal cases and the chief's ruling is recognized both by the actors and the state (Mararike, 2008). The general acceptance and respect accorded traditional mechanisms by members of local communities and the state position them as potential facilitators of transitional justice at the grassroots which can then cascade the entire state structure.

## **1.6 Place of Traditional Mechanisms in Transitional Justice and Violence Prevention in Zimbabwe**

### **• History of Traditional Leadership in Zimbabwe**

Traditional leadership and indeed traditional mechanisms of conflict resolution are as time-honoured as the pre-colonial state formation in Zimbabwe. The colonial and post-colonial epochs have had a bearing on determining the position of traditional leadership to date. During colonialism, the colonial government used indirect rule as a system of colonial administration in Zimbabwe and according to Mazarire cited by Moyo (2012) colonial governments were forced by financial and manpower costs to employ chiefs in the administration of Africans. It is against such a backdrop that traditional leadership occupied a difficult position as the highest ranking representatives of their people in the traditional system and the lowest ranking representatives of the colonial administration system. The colonial administration supplanted from the local communities the duty to approve new chiefs and those who became chiefs were reduced to salaried warrant chiefs who were paid paltry wages for judicial and tax collection services they provided. Makumbe (2010) argued that chiefs were used to denounce liberation fighters and he cited one Minister of Information, P.K van de Byl as having remarked that, "*Chiefs were necessary for preventing the rural black people from stepping out of line and getting subversive*". This in essence compromised on the legitimacy of traditional institutions.



At the inception of independence in 1980 under the Chiefs and Headman Act and Community Courts Act, chieftainship was retained as a symbol of traditional values but the chiefs were stripped of all their administrative and judicial functions. Put another way the position of traditional leaders of being cheer leaders of political elites did not change with the advent of independence but what may have changed are their handlers. The District Council assumed the administrative functions previously performed by traditional rulers while Community Courts took over the judicial functions. In 1998 the State enacted the Traditional Leaders Act (Chapter 29:17) to be reviewed below, which restored some of the chiefs' powers. In spite of the vacillation on the part of the post colonial state as regards to its treatment of traditional institutions, traditional leaders have been able to weather off these highs and lows and continue to be relevant and still command profound respect from their subjects. The consultations and subsequent engagement of traditional institutions for a cleansing ceremony following The National Sports Stadium stampede where fifteen people died during a football match between South Africa and Zimbabwe is a noteworthy case in point.

- ***The Political and Religious Structure of the Traditional Institutions***

At the bottom rung of the political ladder is the hut (*imba*) led by family head, neighborhood (*mana*) led by its head, village led by a village head or *samusha* (*sabbuku*). The term *sabbuku* was introduced during the colonial period when the *samusha* was required to keep a register book which contained the names of all adult males for tax collection purposes (Mararike, 2003). Above this political division is the region or *dunbu* led by headman (*sadunbu*), and chiefdom or *nyika* led by chief. Above the chiefs is the King who governs with the assistance of a council (Kings Council/*Dare*). Members of the *Dare* include priests (medium spirits) and Kings' wives and close relatives. Traditional political leadership is sanctioned by religious authority and it is this religious and historical claim that gives legitimacy to leadership. Institutionally there are community spirits (*masvikiro*) and national spirits (*mbondoro*). These religious functionaries play a role in the choice of traditional leaders as there are believed to be the link between the living and the deceased of the land.

According to Jackson and Marquette (2005), traditional leaders are seen to represent the “indigenous”, truly African values and authority and this accounts for the position of respect that they are accorded by some governments. Religious functionaries play a role in ceremonies such as rain making ceremonies “*Mukwerera*” and cleansing ceremonies (Mukanya, 1998). The role of the spirit mediums in the history of Zimbabwe pre-date state formation and played a pivotal role in both Chimurenga 1 and 2.

Spirit mediums equally played a vital role in cleansing ceremonies across the country at the inception of independence in 1980 (Mararike, 2003). One can infer that the cleansing ceremonies were part of the transition from warfare to peace and were a mechanism of transitional justice. Oral histories record that the spirit mediums insisted on such ceremonies on the grounds that a lot of blood had been shed during the liberation war. According to the spirits it was therefore critical to appease the spirits of the dead to bring about sustainable peace. How credible it was is one issue but what is relevant is that it many people subscribed to it and that it went a long way to bring some form of closure to the war hostilities and mark a transition to peace. What is imperative to observe that it appears that transitional justice goes beyond healing and reconciling the victim and perpetrator but to healing the ancestral spirits and cleansing the land. The recent case of appeasing the avenging spirit of Moses Chokuda, a political activist slain in March 2009, also highlights the place of traditional mechanisms. Dube, (The Standard, 30 October 2011) reported that Jason Machaya (ZANU PF Midlands chairperson) compensated the Chokuda family 35 beast of cattle and US\$15,000 for the murder of Chokuda by Machaya's son and his accomplices. This therefore places traditional mechanisms in an enormously potential position in the delivery of justice.

## **1.7 Legislative and Institutional Arrangements for Traditional Institutions**

- **Chiefs and Headmen Act (1982, No.29)**

Section III of the Chiefs and Headmen Act states that chiefs are appointed by the president, who also has the power to remove the chief from office. In appointing a chief in terms of sub-section 1 of the Act, the president gives consideration to the customary principles of succession, if any; applicable to the community over which such chief is to preside. According to the same Act, Chiefs are the custodians of customary law and practice. The Act also stipulates that Chiefs who are appointed are entitled to be paid by the state an allowance or a salary that is decided through an Act of parliament.

- ***Traditional Leaders Act (Chapter 29:17)***

Today there are 265 traditional chiefs in Zimbabwe who all have different customs and likewise the Traditional Leaders Act 29:17 of 1998 regulate the activities of these traditional leaders. Prior to the promulgation of the Traditional Leaders Act, traditional leaders were unrecognised by the state in the formal local government structure. The Act empowers the traditional leaders to deal with problems of land, natural resources conservation and management in their areas, preserve and maintain rural family life, punish offenders of such crimes as the misuse of resources and stock theft. According to the act the chiefs are appointed by the president who gives due consideration to the prevailing customary principles of succession applicable to the community over which the chief is to preside (Mararike, 2003). The Traditional Leaders Act Part III (8) states that the headmen are appointed by the relevant Minister and the village head are nominated by the headmen and are appointed by the Secretary of the Ministry concerned. The Traditional Leaders Act provides for the creation of a Council of Chiefs chosen by a Provincial Assembly of Chiefs which is made up of all chiefs in a province. The Council of Chiefs in turn elects ten (10) of its membership to sit in the parliament as non constituency Members of parliament. In parliament the chiefs have a right to vote. Participation by chiefs at this legislative level of governance offers them a rare opportunity for them to raise their voice on political violence and push to be engaged in transitional justice initiatives such as those prescribed by Article VII of the Global Political Agreement. Under the traditional leaders Act, traditional leaders can participate in politics as candidates of political parties which if they engage they cease to be non partisan.

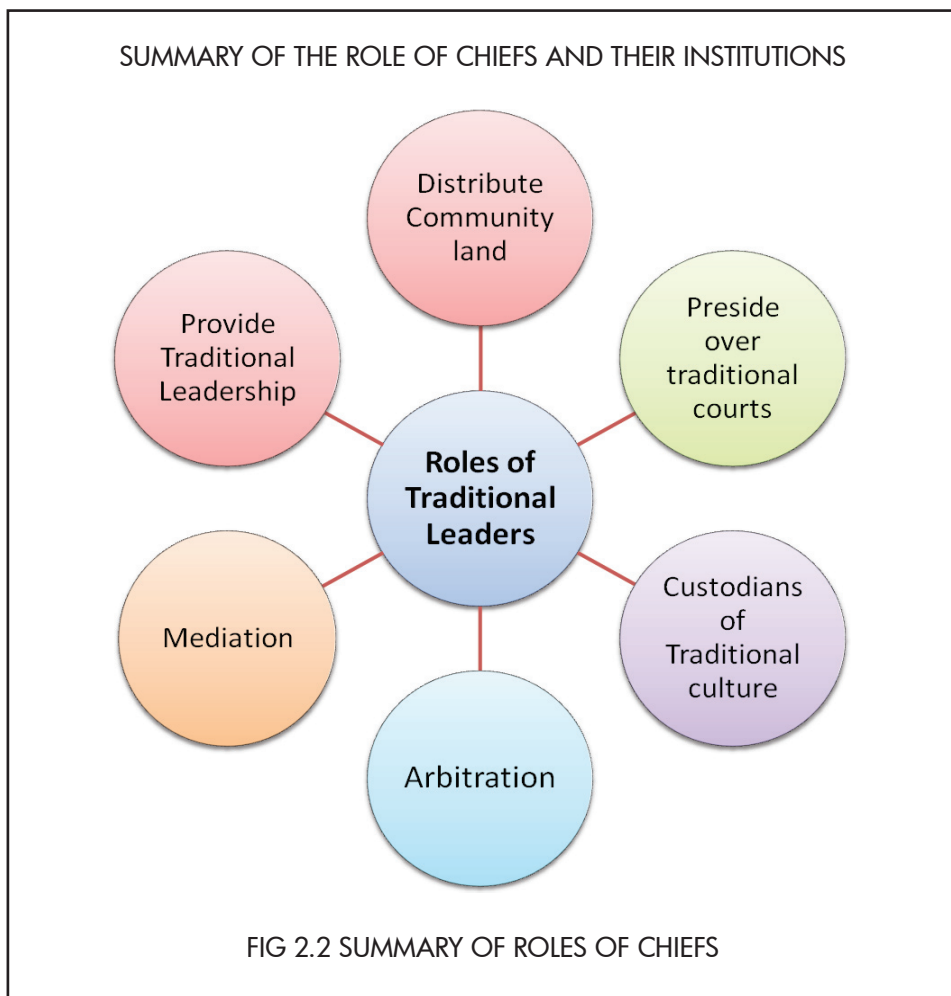
- ***Customary and Local Courts Act (No.2 of 1990)***

Under the Community and Local Court Act, a chief can summon any individual if there are grounds to believe that local traditions have been violated. Prominent people of note to have been summoned to traditional courts are Prime Minister Morgan Tsvangirai and Jeffryson Chitando who were summoned by Chiefs Negomo and Murinye respectively with the former being accused of marrying in the sacred month of November and the latter of abusing Constituency Development Fund (Moyo, 2012). Though many have criticised the traditional leaders in question, what however suffices from these cases is the extent of the reach of traditional leaders' powers, which if used well can be very instrumental in transitional justice.

• **Rural District Act (Chapter 29:13)**

The RDC Act regulates activities carried out by the rural district councils. It provides for an elected body led by a chairperson. All councillors are part-time and the council has to have five mandatory committees (finance, roads, rural district development, natural resources, conservation, ward development and village development committees. According to the RDC Act the lowest structure in the local governance system is the Village Development Committee (VIDCO) chaired by the headmen (Village head). According to Zimbabwe Institute Report (2005) the rural district structure was created to ensure control by central government of life in the rural areas and not necessarily to be a development vehicle. Above it is the Ward Development Committee (WADCO) which is led by the councillor. The role of VIDCO is to identify and articulate village needs, co-ordinating and forwarding village needs to WADCO. WADCO which is made of six VIDCOs is there to oversee and co-ordinate development plans in their area of jurisdiction. These grassroots structures provided by the RDC Act were from the official position are meant to facilitate decentralised planning through community participation. One can therefore note that there are structures that can be utilised by transitional justice practitioners to build peace from below.

However the Zimbabwe Institute Report (2005) commented that the local structures such as VIDCO were successor structures to those established by ZANLA forces during the liberation war in the rural areas they controlled. In essence they were underground village liaison and mobilisation structures. Nonetheless if these grassroots structures are de-politicised they can be viable vehicles to carry transitional justice to communities traumatised by violent conflict as is the case in most rural communities in light of the violence of the 2008 harmonised elections. A Zimbabwe Television (ZTV) news report on 15 February 2012 reported that the Association of Rural District Councils embraced the concept of national healing in its operation to augment the efforts of the Organ for National Healing, Reconciliation and Integration. The argument of the Association of RDCs is that its involvement would ensure that national healing cascades to the grassroots as they work with the grassroots. What one may wait to see is if such an initiative would engage traditional mechanisms constructively.



The diagram in Fig 2.2 is a representation of the general roles of chiefs as explained by Mararike, 2003. Traditional leaders are there to provide traditional leadership in their communities and perform duties assigned them under the Customary and local Courts Law and the Chiefs and Headmen Act. They also play a role in the settling of disputes among their people and these disputes are mainly of a civil rather than a criminal nature. The chiefs elect among themselves representatives to serve on the National Council of Chiefs and to bring to the Minister of Local Government matters of local and national interest. They also have the role of mediating between the government and the people in their areas and in some cases they can be used to persuade people to agree to relocation as occurred with the people of Chiadzwa who were relocated to Transaau (The Manica Post, February 10-17 2012).

- **Merits and Demerits of the Use Traditional Mechanisms in Transitional Justice**

According to the Zimbabwe Institute Report (2005), traditional mechanisms can effectively compliment conventional judicial systems and present a real potential for promotion of justice, reconciliation and a culture of democracy. Even in communities that may demand retributive justice against offenders, traditional mechanisms may still offer a way of restoring a sense of accountability.

The demerit is that traditional mechanisms have been greatly altered in form and substance by the impact of colonization and modernization and hence this may compromise their discharge of service of transitional justice (Johnson and Marquette, 2010). However where traditional leadership is non partisan and has grassroots legitimacy and traditional leadership has a colossal potential of championing transitional justice agenda.

## **1.8 Traditional Leadership and Contemporary Governance Interface**

Traditional leadership is active at all levels of governance in Zimbabwe from national to village level. The institution is recognised by the Zimbabwe constitution (Traditional Leaders Act 29:17) as discussed earlier. There are however conflicting claims of legitimacy and uneasy co-existence between traditional and elected leadership especially with the local elected structures (Zimbabwe Institute Report, 2005). Traditional leadership and local government officials occasionally trade accusations of the abuse of power, non compliance with laws, customs and traditions. Traditional leaders exercise their judicial administrative and legislative functions in rural areas. According to the Zimbabwe Institute Report (2005), successive governments since 1980 have been concerned with reconciling the powers and the functions of traditional authorities with those of elected government officials. One can observe that this harmonisation of parallel structures is meant to ensure total control of the rural constituencies.

Chiefs receive a non-taxable allowance monthly, have benefited under the rural electrification programme and they have also accessed car loan scheme. Jackson and Marquette (2005) claimed that chiefs have become glorified civil servants. The modern political and traditional structures collide at the level of community leadership. VIDCOs and WADCOs derive their power and mandate from the people as expressed through elections while traditional leaders derive their authority from customary law. From 2000 to date with the advent of a strong opposition in the form

of MDC many chiefs have been manipulated to protect and entrench the power of political parties in the same colonists did (Ruhanya, 2012). Makumbe (2010) asserted that realising the general acceptance of traditional leaders by the majority of the citizens, the pre-GPA government decided to harness this component of customary governance for its political ends. Ruhanya further asserted that it was for this reason that many chieftainships like that of Chiadzwa were contested in Zimbabwe because for one to be installed, one has to be a faithful supporter of the reigning political party (Manica Post 10-17, 2012). In a lot of cases traditional leaders have assumed the dual role of being the spokesperson of both the people and political parties as evidenced by Chief Chiveshe's barring of the burial of a NCA member from his area. There are claims that chiefs have often been co-opted into violent campaigns by political parties (Neiuwaa, 2003). The role also played by traditional leadership in the politicization of food hand outs and farming inputs also has smeared the image of traditional leaders in some communities. Makumbe (2012) commented that:

*Chiefs are in a fix as they cannot say no to (politicians)... I am reliably informed that both Chiefs Negomo and Murinye were ordered by the CIO to do what they did (call Tsvangirai and Chitanda) to their courts.*

It is evident that in many situations, chiefs find themselves in a place between the hard place and a rock but that should not compel one to throw away the bath water and the baby, traditional leaders and their structures have an invaluable role to play and a pedigree in transitional justice in Zimbabwe.

## **1.9 Lessons for Transitional Justice and Traditional Mechanisms**

### **• Global Political Agreement (GPA)**

The current legislative framework guiding the political life and the transitional justice discourse in Zimbabwe is the Global Political Agreement (GPA). The GPA is a political agreement between ZANU PF and the MDC formations to form a government of national unity (GNU) signed on 15 September 2008. In its preamble the GPA states that, “Dedicating ourselves to putting an end to the polarisation, divisions, conflict and intolerance that has characterised Zimbabwean politics and society in recent times” (GPA Document, 2008). This preamble reveals that there is acceptance across the political divide that there was and still there is need for transitional justice. Article XIV of GPA recognizes and acknowledges the importance of traditional leadership and the need for political neutrality as a way of ensuring citizen participation in transitional justice. Article VII of GPA mandated the new government to the setting up of a

mechanism to properly advice on necessary and practicable measures for national healing after pre and post independence political conflict.

This saw the creation of the Organ on National Healing, Reconciliation and Integration (ONHRI) which is a department supposed to reconcile victims of political disturbances (Zimbabwe Human Rights Forum, 2009). It drafted a code of conduct to hold political parties perpetrating violence to account for their actions which however is not mandatory and as such political parties become parties to it voluntarily. ONHRI cannot prosecute the political parties that continue to perpetrate violence. Apart from that many people are unaware of its existence and work and yet these are the same people it is supposed to help to heal. Interestingly more than two years after the organ's birth, Moses Mzila Ndhlovu one of the core-chairperson of ONHRI conceded that the organ had not done much in educating people on its role as captured in his words are below:

*We are trying to set up a national peace reconciliation council and once it's set up, we will have a mechanism of disseminating and reaching out to the affected people (Wurayayi, 2012).*

People's ignorance of the existence of ONHRI raises the question of whether the organ has been engaging traditional leaders who are close to the people. Chinoputsa (2012) made the following observation:

*Civil society engagement is critical as it brings ownership of the whole process to a broad spectrum of society. Traditional leaders should also be given a key role. Civil society needs to improve its interaction with the traditional leaders and the traditional leaders have to move away from their partisan manner of dealing with their subjects.*

Chinoputsa advocates for a tripartite engagement of the government, the civil society and traditional leadership to undertake the national healing project to fruition. The GPA also led to the creation of JOMIC under article 22. The committee is mandated to monitor the compliance with and progress of the items agreed upon in the GPA. It is worth observing that the work of ONHRI falls under the ambit of the JOMIC monitoring. However like ONHRI, JOMIC lacks of an enforcement mechanism. This shortcoming again underscores the importance of smart partnerships between civil society and traditional leadership in covering the ground which state organs is failing to cover as far as transitional justice is concerned.



## • **Connection and Disconnections between TJ and Traditional Mechanisms**

Transitional justice has to anchor on truth telling, compensation, forgiveness, reconciliation and acknowledgement of wrongs committed. Apparently there is some dragging of feet since there is lack of will to implement national healing among the political parties (Makumbe, 2010). The fear of prosecution or indictment over human rights violations may account for the lack of progress in the national healing project.

Below are some of the pointers into the gaps and new developments around TJ and traditional mechanisms.

- Transitional justice in Zimbabwe, understood in the context of its attachment to wider political transformations and regime change, has created inertia among some actors and players.
- The perpetrator-victim binary in the TJ discourse has created radical polarities which political principals are challenged to address, unless a large dose of political volition is induced.
- A review of the conceptualisation of transitional justice would need to be undertaken away from the simple retributive-restorative rhetoric to ‘transformative un-personalised’ justice that would seek to restore the socio-political ethos, identity and nationhood.
- there is an apparent need to draw from sedimented historical norms and traditions that have stood the test of time in culturing legitimacy, belonging and relationship building in communities. This is further augmented by the accessibility to justice that rests in low-transaction traditional arenas.
- the duplicity of traditional authorities as judicial-religious and legislative entities accountable to the state and the subjects make their loyalty questionable specially given their deliberate deployment to advance state interests in the past and today.
  - the ‘anointed’ character of traditional leaders poses serious democratic deficits in the discharge of contemporary democratic values more-so given allegations of their politicisation.
- The capacity of local government/ traditional structures is further theoretically and empirically challenged given the scales and hierarchy transitional issues in Zimbabwe’s transitions where the state has both been architect, victim and victor in violence projects.

In view of the above, the research will endeavour to establish working models of TJ befitting the Zimbabwean socio-political milieu. Establishing nested synergies between traditional institutions, civil society and state structures is an imperative that seeks grassroots consultation and wisdom gathering.

## **1.10 Conclusions**

This review has revealed the resilience, cost effectiveness and versatility of traditional mechanisms as apparatus for the discharge of transitional justice. Practical and celebrated traditional models have also been examined which can serve as best practices for Zimbabwe's national healing exercise. Several questions are raised such as should transitional justice seek peace as expressed in the cessation of direct violence or justice for both the victims and perpetrators of violence? The other question raised through the review is who is supposed to lead national healing and how effective can traditional leadership be in complimenting the efforts of the state and the civil society. It is the object of the subsequent sections to present findings on these questions and the viability of traditional mechanisms in bringing about transitional justice.

## SECTION 2: METHODOLOGY

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### 2.0 Introduction

To locate the place of traditional mechanisms in transitional justice and national healing, the research solicited the views of traditional leaders and their subjects in various chiefdoms and provinces in Zimbabwe. Traditional healers, spirit media, community members, elders and opinion and religious leaders were engaged through ethno methodologies to uncover traditional wisdoms and narratives surrounding the relevance of traditional institutions in transitional processes. Given the ethnic geography and demography of the Zimbabwean society, the research had to draw from the Manicaland, Mashonaland, Matebeleland ethnic groups and urban inter-ethnic communities to document the violence-response cultural and religious practices that citizens identify with and are loyal to. The research was crosshatched on the presumption that traditional institutions have the moral capacity to preside over and resolve communal violence regardless of the political and economic forces impelling populations. Focus groups and in-depth unstructured interviews in Mutasa, Mutare Rural, Chimanimani districts of Manicaland; Mbire and Mazowe districts in Mashonaland Central, and Nkayi in Matebeleland North; Bulawayo and Harare provinces, were the major instruments employed. State and non-state actors such as ONHRI, JOMIC, CCSF, human rights organisations and war veterans, political parties, women, youths and the academia served as key informants given their centrality in the current transitional dynamics in Zimbabwe. Below is an outline of the sampling strategy, data collection methods, data analysis and interpretation.

### 2.1 Research Design

Nachmias and Nachmias (1976) conceptualise a research design as a plan that guides the inquiry or the process of collecting, analyzing and interpreting observations and data. It is a logical model/framework from which the researcher draws inferences concerning causal relations about or subjective constructions of the variables under investigation. *The Traditional Mechanisms and Transitional Justice Project* study is situated within the qualitative paradigm and aimed to develop an ideographic understanding of participants, unpacking their social and contextual realities and worldviews. The study in consequence focused on the lived experiences of citizens, actors and stakeholders in Zimbabwe on their interaction with traditional mechanisms of violence prevention and traditional justice. As such the qualitative research design enabled the research team to capture the multi-layered conversations around the continuities and discontinuities of violence and violence prevention infra and super structures in contemporary Zimbabwean politics. The research problem from the

perspectives of the local communities, particularly those in rural areas. Grounded in group-out group rivalries were iterated to identify intergenerational, political party, gender, ethnic and class explanations of the causes of violence. Proponents of the grounded theory, Glaser and Strauss (1967), comment that the use of grounded techniques affords the researcher the opportunity to probe more on ambiguities to yield invaluable information. In other words the researcher does not have to wait for the end of the research to verify on the emergent issues from the study.

## **2.2 Population Sample and Sampling Procedure**

The population included traditional leaders such as chiefs, spirit media, traditional healers, members of ZINATHA, non-governmental organizations focusing on human rights, religious leaders, focal points of Church and Civil Society Forum (CCSF), local authorities, local members of parliament, councillors, women groups, youths and residents of the local communities. A deliberate effort was made to mainstream gender participation of informants in the research.

To ensure navigability of the research environment, purposive sampling was used involving deliberate selection of research subjects perceived to have information on the research topic or problem (Creswell, 2007). In this regard the study sought mostly to engage individuals who had experienced violence or had engaged with traditional institutions and transitional justice arrangements. The research team also employed the snowballing (chain sampling) technique to incrementally connect and access repositories of research data. Snowball refers to a method in which the first respondent refers the researcher to the next. The snowball method therefore serves simultaneously as a triangulation, gap filling and data gathering approach. Because of the sensitivity surrounding politically motivated violence and the related reprisals since the *Gukurahundi* massacres in the 1980s, villagers are scared to disclose their experiences of political violence. There is however an increasingly growing constituency of citizens that is committed to 'breaking the silence' through transformative dialogue. The strategy was used to solicit information from victims of the *Gukurahundi* violence and the subsequent cycles. This sampling strategy drew on established rapport and trust with research participants and organisations dealing in transitional justice.

## **2.3 Data Collection Methods**

### **2.3.1 Primary Sources**

The data collection process included field visits, unstructured interviews, focus group discussions and oral histories. The field experiences allowed the research team to

immerse into the context where violence obtained especially in the rural areas. The field visits allowed the research team to collect first hand data based on the lived experiences of the research participants, affected by violence and the submissions of those working with victims and survivors of violence. The study also embraced the life histories and experiences of chiefs, village heads, spirit media, traditional leaders and members of the Zimbabwe Chiefs' Council. The same data collection instruments were employed to solicit information from representatives of OHNRI, JOMIC and organisations working with affected people. Participatory learning workshops (PLWs) helped to draw data from groups of civil society organisations through knowledge sharing and generation in Mutare, Harare and Bulawayo. Focus Group Discussions (FDGs) were also used for the research especially to get the views of women and youths. The FDGs discussed the strategies for national healing, reconciliation and the role of traditional mechanisms and the synergies they could establish with state and non state actors. The data collection process also included reconciliation models which can serve as prototypes for traditional mechanisms involvement in transitional justice.

### **2.3.2 Secondary Sources**

Since data from interviews was mainly in the form of anecdotal evidence, the research team felt it was imperative to corroborate this with relevant secondary documents such as the Traditional Leadership Act, Rural District Councils' Act and Global Political Agreement document. Other secondary data included reports of the work done by the CCSF (2009) National Organ of Healing and Reconciliation in Zimbabwe, newspapers articles and updates on the transitional processes in Zimbabwe including the COPAC Draft Constitution and the Kariba Draft. Anthropological writings and analyses of the hierarchy, operation, evolution and transformation of traditional mechanisms in Zimbabwe were also consulted.

## **2.4 Ethical Considerations**

The research team had to first make a courtesy call on the local chief under the Shona custom of kusuma (informing) so that the headmen would give the team his blessing to carry out the research in his jurisdiction. Political and social gatekeepers were also engaged. The research team also reserves the anonymity and integrity of research participants by both negotiating their consent and promising to share the research findings, outcomes and benefits. For this reason names of research subjects are not disclosed and where necessary pseudonyms are used. The delicacy of the interview process and the traumatic effect of the violence on victims of violence equally deserved appropriate understanding of the Zimbabwean political and community relations to ensure empathy while not falsely.

## **2.5 Data Analysis and Management Plan**

Yin (1989) defined data analysis as consisting of examining, categorizing, tabulating, or otherwise recombining the evidence, to address the initial propositions of a study. As data collection was informed by the grounded theories the analysis of data began during the collection process. As data analysis ensued the research team took the opportunity of testing the relevance of Lederach's peace building model which sought to explain the place of traditional mechanisms in transitional justice. All interviews were recorded, transcribed and coded into thematic areas would responsive to the research project. Translation of recordings from local language and then into English and assisted to establish the main narratives of the communities on traditional mechanisms and transitional justice. All transcriptions from audio-recorded interviews and discussions have been safely kept.

## **2.6 Conclusions**

This section of the report identified the qualitative paradigm as the research design for this study, explained its relevance and also revealed that the study employed purposive and snowballing strategies. The justification for using these methods was explained. This section of the report also outlined how the study employed in-depth interviews, focus group discussions, narratives, participatory learning workshops and observation methods to collect data. Data collection and analysis was informed by the grounded theory approaches.

## SECTION 3: FINDINGS

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### 3.0 Introduction

Zimbabwe's human rights record spans a long history which encompasses the pre-colonial, colonial and post-colonial experiences. Sensitivity transitional processes in Zimbabwe must be informed by an appreciation of the background and context in which they arose, and of the evolving relationships within and between the diverse players involved. The inertia in implementing transitional justice is currently linked to the asymmetrical power regimes, polarised ideologies and legitimisation of narratives associated with the ruling and opposing classes. While the pre-independence brutalities were largely Rhodesian-led and anti-black, there were lots of black to black atrocities, maiming and betrayal. The liberation movements, ZANU and ZAPU, equally suffered but more vulnerable were the civilians. Little documentation has been done of the war crimes and there were no international judicial proceedings instituted to address the alleged war crimes.

The first decade of Zimbabwe's independence witnessed gross human rights violations followed with consistent failure by the authorities to hold perpetrators to account. According to Auret (in Joint CSO Johannesburg conference on Zimbabwe 2003) the underpinnings for impunity were laid during the independence negotiations at Lancaster House, where a policy of 'forgiving and forgetting' under the guise of 'national reconciliation' was adopted and pursued, albeit grudgingly. In essence, this meant the negotiated transition failed to identify perpetrators and hold them to account, and failed to deliver justice to the victims. Lancaster also failed to undertake the necessary institutional transformation required to address both prevailing issues and to install the necessary safeguards for the young democracy.

During the military operation known as the *Gukurahundi* 1982-87, thousands of people in Matabeleland and Midlands were killed, tortured and terrorised before a peace deal was brokered between ZANU-PF and PF-ZAPU which led to the creation of an amalgamated ZANU-PF and a de facto one-party state led by Robert Mugabe. Critics argue that an understanding of the histories of the two liberation movements and their dealings with one another is required to fully appreciate what transpired in Matabeleland during *Gukurahundi*. Understanding the nature of abuse in Zimbabwe requires an appreciation of the evolving and inter-related divergences and power struggles that have characterised the colonial and post-colonial dispensations. While the dynamics of the conflicts have developed and changed over time, there are remarkable continuities in the methods used to escape justice and accountability. Often utilising the same or similar security legislation and apparatus, both Rhodesian

and Zimbabwean governments justified harsh security action as a necessary response to perceived threats to security and to law and order.

Concerns relating to injustices and impunity and allegations of state complicity in human rights violations have gone unattended for years. There is an argument that holding perpetrators to account would be an impediment to peace and reconciliation. Since Independence judicial-executive relations have been systematically eroded and torture has been co-opted as an alternative to law, ironically by state security. The damage caused by the *Gukurabundi* in Matabeleland continues to reverberate as a carry-forward injustice but nonetheless pardonable. To date, the findings of the government-sponsored Chihambakwe Commission of Inquiry (set in 1986) into the violations have not been made public, nor have any efforts been made to compensate the victims. Several other Commissions set to cleanse the government of malpractices have since adopted with no accountability to the citizens. Many of the alleged perpetrators, including leaders and planners of the violations, continue to hold senior positions in security and political structures, setting the stage for the recurrence of violence and pile-up of grievances.

The collapse of the Zimbabwean economy at the instigation of Structural Adjustments, the 1997 crunch of the Zimbabwean dollar after the War veterans, gratuities, the increased social unrest leading to 1998 food riots, the emergence of the Movement for Democratic Change-MDC and the failed referendum in 2000 facilitated a qualitative difference in the nature of repression. Evidence collected about human rights violations – especially since the February 2000 Constitutional Referendum and subsequent parliamentary elections contradicts government's aggressive effort to 'economically empower' the indigenes with the degeneration of the civil political rights regime.

The *Gukurabundi* period and the ongoing manifestations of organised violence and torture constitute, according to several human rights debates, a departure from international norms of state practice. Patterns in the location of violence have also emerged pitting state and the ZANU machinery on one end and the, the opposition movements on the other. Despite the substantial evidence of abuses, and the negative impact that the Zimbabwean crisis is having on the region, there remains limited consensus within and without the country on what constitutes the root of the problem, how to address the issues or how to demarcate/map the issues for resolution.

Contemporary transitional justice discourse in Zimbabwe is premised within on the Global Political Agreement (GPA) of 15 September 2008 hatched in the aftermath of the June 2008 election violence. The increased advocacy towards justice for the victims



and accountability for perpetrators of violence has therefore to be understood within this context. However, transitional periods from direct violence to negative peace are not peculiar to the post 2008 era as they have been witnessed in reconciliation policy of 1980 and the Unity Accord of 1987 and the various economic and political shifts associated with electoral cycles. Nonetheless these processes did not present high prospects for transitional justice as the GPA which acknowledges violence prevention as opposed to amnesia. The arrangements were thus mere facilitation processes for the cessation of direct violence (negative peace) and did not bring to account perpetrators of violence nor render healing to victims. The GPA and the Inclusive Government through various provisions and mechanisms have been expected to ensure robust institutional and violence prevention reforms. Article VII of the GPA saw the consummation of the Organ for National Healing, Reconciliation and Integration (ONHRI), while the GPA guarantor (SADC) and JOMIC are expected to monitor the transitional process. The visibility of local traditional arrangements in transitional justice has been minimal, at best.

The successful engagement of traditional mechanisms in Rwanda under the *gacaca* system and Uganda under the *matoput* has led to their inclusion of the on transitional justice agenda in Zimbabwe. International and local civil society lobby groups in Zimbabwe argue that traditional mechanisms are easily accessible, authentic, have local fit and have a long pedigree of use. However different transitional experiences and particularly state sponsored and condoned political violence have been difficult for traditional institutions to deal with. This report herein presents the findings on the place of traditional mechanisms in transitional justice in Zimbabwe. The findings capture the perspectives of informants such as civil society, women groups, traditional leaders and traditional functionaries. These participants were drawn from Manicaland, Matebeleland North, Bulawayo, Harare, and Mashonaland Central provinces.

Zimbabwe today poses as a sociological laboratory presenting unprecedented challenges and opportunities for civil society coalitions, transitional justice theorists, traditional justice systems, practitioners and the state(s) many of whom are unclear about how to critically engage traditional mechanisms to secure meaningful participation, accountability and sustainable peace. While the TJ arrangements elsewhere paid more attention to the person (s), in Zimbabwe traditional mechanisms have broader implications on the organic evolution of communities. Such framework serves the dual role of sharing liability between individuals and society, while preserving individual sovereignty. In this way fear of retribution by perpetrators is allayed while at the same time permitting sanctions and penalties to be imposed on perpetrators of violence. It will be interesting to question modalities of engaging traditional institutions, given that they also suffered abuse at the hands of multiple actors.

### **3.1 (In) consistencies between Traditional Mechanisms and Violence Prevention in Zimbabwe**

There are several legal, institutional and judicial arrangements that recognise traditional values and customs in Zimbabwe. Such arrangements include the constitution of Zimbabwe and other constitutional drafts such as government draft of 2000, NCA of 2000, Kariba of 2008 and the COPAC drafts of 2012. The Global Political Agreement, article- acknowledges the centrality of traditional institutions in conflict transformation. The same document advocates for the de-politicization of traditional authorities. Drawing from colonial and post colonial experiences traditional institutions as governance structures and instruments of indirect rule have participated in and perpetrated violence the following ways:

- Active engagement as an extension of the colonial government to suppress communities and marginalise black indigenous communities.
- As victims during the liberation struggle, targeted by the guerrilla movements.
- Agents of tax collection and recruiters of African labour.
- Serving as proxy of political parties.
- Participation in the administration and delivery of customary law.
- Participation in biased distribution of land.
- Politicization of food and grain relief.
- Play roles as gate keepers and obstacles in citizen political participation.
- Campaigning on behalf of political parties.
- Force marching electorate in their jurisdiction to vote.
- Intimidating of subjects belonging to divergent political persuasions.
- Directly involvement in political violence.
- Declaring their stand regarding presidential candidature.
- Active engagement in politics as political candidates.
- Act as informants/spies

The research, however established cases where some traditional leaders condemned violence and “spilling of blood” in the jurisdictions. In some cases the traditional authorities have maintained their connection with their people by delivering and presiding cases of violence in their jurisdiction, conducting cleansing ceremonies and assisting people under spiritual attack. In the context of this research, mechanisms such as spirit media, traditional healers and sorcerers have become the accessible means of seeking revenge by victims of violence especially where state interventions are not forth-coming.

### 3.2 Prevailing Traditional Leadership Structure and Functions- a field summary

The table below depicts the traditional leadership hierarchy in Zimbabwe. Traditional leaders in all provinces the research team visited spelt out that the foundation of the traditional leadership structure is the family which is led by a family head who in turn reports to the village head (sabhuku). The sabhuku reports to the ward leader (Ishe) who in turn is accountable to the chief (mambo).

TABLE 3.1 HIERARCHY OF TRADITIONAL LEADERSHIP

TRADITIONAL LEADER	FUNCTIONS/ROLES
Chief (Mambo/Inkosi)	<p><b>-Preside over secondary traditional courts-</b> Disputes brought to this court are usually referred from the primary court. The chief deals with cases such as murder, solving issues of <i>ngozi</i><sup>1</sup>, solving land disputes, cleansing areas where blood was spilt (e.g. after independence), cleansing dark spots of ill omen, protecting the environment against degradation, solving cases of child labour e.g. those haunted with bad omens such as <i>chikwambo</i><sup>2</sup>.</p> <p><b>-Supervise headmen-</b> ensure that headmen and the rest of the file adhere to their duties.</p> <p><b>-Distribute land-</b> issue out communal land for residential, school and other purposes that benefit the community.</p> <p><b>-Stipulate-</b>times for harvesting (crops, grass e.t.c). Such is the precedence in Matebeleland North.</p>
Headman (Ishe/Induna enkulu)	<p><b>-Preside over primary traditional courts-</b>deal with cases that the chief deals with. However disputes they fail to settle they refer to the chief (secondary case).</p> <p><b>-Supervise village heads-</b> they ensure that village heads serve their traditional roles well.</p> <p><b>-Distribute land within their jurisdiction-</b> issue out land to people within their jurisdiction.</p>

1 Avenging spirit

2 Spiritual charms secured for getting wealth e.t.c.

<p><b>Village-Head (Sabhuku/Induna)</b></p>	<p><b>-Attends to inter-family disputes-</b> is a local representative of the chief. Solves disputes such land boundaries , grazing area disputes  <b>-Sanctions burials,</b> traditional rites such as unveiling ceremonies</p>
<p><b>Family-Head (Samusha)</b></p>	<p><b>-Promote family life-</b> solves disputes within the extended family such as domestic violence, facilitate family rituals ad ceremonies such as the payment and receiving of lobola.  <b>-Allocates land to members-</b> Allocates family land to the extended family.</p> <ul style="list-style-type: none"> <li>• <b>Tete (Aunt)</b>-play the role of arbitrating family issues such as matrimonial disputes of their brothers.</li> </ul> <p>-They attend the family council meetings, officiate family functions such as <i>masungiro</i><sup>3</sup> -They play a role in marriage matters of their maternal brothers.</p> <ul style="list-style-type: none"> <li>• <b>Sekuru (Uncle)</b>-assist the male and plays roles equal to that of the aunt.</li> <li>• <b>Muzukuru (nephew or niece)</b> - officiates family functions such as burial e.t.c and helps in the sharing of the family's deceased estate.</li> </ul>

The findings of the study in most chieftainships also portrayed that there is woman representation in the echelons of power. One should hasten to point that there is negligible representation of women in traditional structures. Such observations were made in Zimunya which has three female “headmen” and two assessors out of five at Chief Zimunya’s court. In Marange and Mutasa’s jurisdictions women are also represented in leadership. It is worth observing that most of the communities in rural Zimbabwe are patrilineal and as such those women who become village heads or headmen do so by default- it may because their husbands may be deceased or their children may be reluctant or not ready to occupy the position. However it is imperative to note that women belonging to the ruling family occupy an important position in the traditional leadership structure and in Marange these women are called *madziashe* who assist advice to the Chief in traditional rites. The mainstreaming of women in traditional arrangements, particularly as assessors makes women turn to the traditional courts for recourse, more than they do to the formal courts. More so, the traditional court is sensitive to issues that are feminine and require an appreciation of feminine issues. The findings of this study submit that the multi-natured organisation

<sup>3</sup> Ritual in which a woman is sent back to her matrimonial home in preparation for child delivery.

of traditional leadership ensures that every individual is under the jurisdiction of a traditional leader. This therefore implies that traditional leadership has widespread control and has enormous potential to effect violence prevention at all levels.

This study revealed that there is an intricate nexus between traditional leadership and spiritual media (*masvikiro*) in which the latter guides the former. The research team witnessed the inauguration ritual of Headman Gonon'ono in Marange and observed that traditional leadership is confirmed by spirit media. The spirit media conduct traditional rites, protect sacred grooves, sacred days (*chisi*), sacred pools and shrines such as *Njelele*. They also hold the conscience of the community. Interestingly the study observed that there is a sizable number of female spirit media. On issues of spirituality this study unpacked that if one commits murder, one or his family would be haunted by the avenging spirit of the deceased. The avenging spirit can only be placated through compensation which is spelt out by the deceased's spirit. The spirit speaks through an intermediary in a process called *kusvikirwa*<sup>4</sup>. *N'angas* may be consulted especially in cases of *ngozi*. There is no designated *n'anga* for the royal court. Rather the parties involved consult *n'angas* who they think are reputable. The concept of *ngozi* is deeply entrenched in the African belief system and as such, according to traditional leaders it is one of the violent conflict prevention and resolution tool. It is imperative to note that traditional leaders play the role of mediators only in resolving cases of *ngozi*. Traditional leaders argued that in the past, compensation for *ngozi* used to require the guilty party to offer own female child to the wronged party. Nonetheless in the wake of the Rights of the child, there has been a paradigm shift and penalty is now in the form of cattle. Spiritual leaders who included spirit media and *n'angas* commented that national healing without spiritual cleansing (*chenura*) would be a non event. According to these spirit media every time blood is shed in the community or nation there is need for a *bira* (a ritual ceremony which involve the brew of traditional beer) to cleanse the blood of the deceased for the nation to have sustained peace. These informants asserted that a lot of communities undertook these rituals at independence and the current national healing has to consider spiritual cleansing as pre-requisite to peace. The recent cycles of violence have resulted in the death of many of which most have not been given proper burial or cleansing rituals as required by tradition. This is especially the case in Western Zimbabwe where most victims of *Gukurahundi* have either not been found or interred properly. This study noted that there are several places such as Mushumbi in the Zambezi Valley and St Columbus in Honde Valley where spirits of deceased guerrilla fighters torment young female pupils. Accordingly these pupils are affected by hysteria attacks which drive them into trances in which they imitate actions done by the guerrilla fighters of the liberation of the war. Currently there is an impasse between the war veterans and traditional authorities over that the former seized a

4 Being possessed by a spirit of a deceased person.

pool at *Njelele* to have their own cleansing without the sanction of the former. In light of the foregoing some traditional leaders argued that it is not only the land that has been desecrated and that requires cleansing but so do the leaders as they have also perpetrated bloody violence.

### **3.3 Traditional Judiciary Mechanisms and Procedure**

The findings of the study revealed that the traditional court is a system that is organic in nature and is respected by the members of the communities the researcher visited. The traditional court withered off the onslaught of colonialism and the subsequent formalisation of the judicial system sufficing that the traditional judiciary is a component of the material culture of local communities. The primary traditional court is presided by the headman and the secondary by the chief. The findings observed that the organisation of the courts share a lot of similarities with a few variations influenced by ethnic influence. This observation makes the traditional court standard in its practice. The traditional leader is assisted at court with five assessors (one is a court clerk) and chief's police (*machinda*). The role of the chief's police extends beyond the traditional court as they assist in monitoring peace in the community.

These structures are supported by the Customary and Local Courts Act (No.2 of 1990) and those arraigned before the traditional court and the plaintiff are required to pay a court fee '*marime*' which is gazetted by law at US\$5. This fee however differs from one traditional jurisdiction to the other and ranges between US\$5 and US\$20.00. The local communities have no qualms with the penalties that are time honoured in they use, known and accepted by all members. Penalties are therefore viewed as deterrent measures to potential offenders. The justice rendered by the traditional court is restorative and not retributive. According to traditional leaders in Zimunya, Mutasa and Nkayi argued that the purpose of the court is not to punish but to restore relations between the aggrieved and the aggrieving party. The one bringing a case before the court is asked the form he wants to be paid as compensation. This element of the court places traditional mechanisms as a viable vehicle for transitional justice in Zimbabwe. It is imperative to observe that the traditional court has limitations such as;

- challenges in resolving violence involving extra-jurisdiction or cases of violence instigated by people from distant constituencies.
- Resolving state perpetrated disputes e.g. in Matebeleland traditional authorities have lived with remains of the Gukurahundi victims without executing decent burials and traditional rituals, much to the chagrin of theirs moral and traditional values.

- Handling cases implicating the chief- (*Mambo baatongi*).<sup>5</sup>
- Attending to overspill cases from urban area to the rural area.
- Traditional courts are ethnic specific and may be limited in addressing inter-ethnic violence.
- Inconsistencies and contradictions with the formal justice system.
- Weak enforcement mechanisms.
- Traditional institutions in Zimbabwe lack the capacity to deal with structural challenges facing the country (e.g. nationwide economic challenges, inequality, poverty, deindustrialisation, marginalisation e.t.c.
- In newly resettled areas (former) commercial farms there were no village heads and those who became village heads were mostly war veterans. As a result these appointed village heads are subservient to the state and apologetics of perpetrators of violence.

This study established that perpetrators of violence take advantage of the fact that traditional authorities have limited geographical extent and cause mayhem in an area in which they do not dwell and consequently cannot be arraigned before the court. Nonetheless the traditional chiefs that were part of the study maintained that there is no politician who is above the traditional court's jurisdiction.

#### HIGHLIGHTS OF VIOLENCE-RELATED ISSUES RAISED BY COMMUNITIES

- |  |   |
|--|---|
| • abductions   | • arson                                       |
| • murder and mass killings<br>(especially in Matabeleland) | • denial of food                              |
| • eviction & forced displacement                           | • threats /coercion                           |
| • looting  | • development denial and deprivation          |
| • reprisal and revenge attacks                             | • Protection fees                             |
| • forced Public confession                                 | • disruption of burial and memorials          |
| • petrol bombing   | • soured community relations                  |
| • sexual abuse and violence                                | • being forced not to mourn dead<br>relatives |
| • being forced to bury relatives during the night etc      |   |

The research established that most traditional institutions were incapacitated to address the nature of grievances affecting their communities. However, the traditional institutions were still operational in dealing with some local conflicts.

5 The Chief cannot be brought before the court

The following is a portfolio depicting cases addressed by traditional courts and the possible penalties;

TABLE 3.2 (B) OFFENCE/PENALTY PORTFOLIO

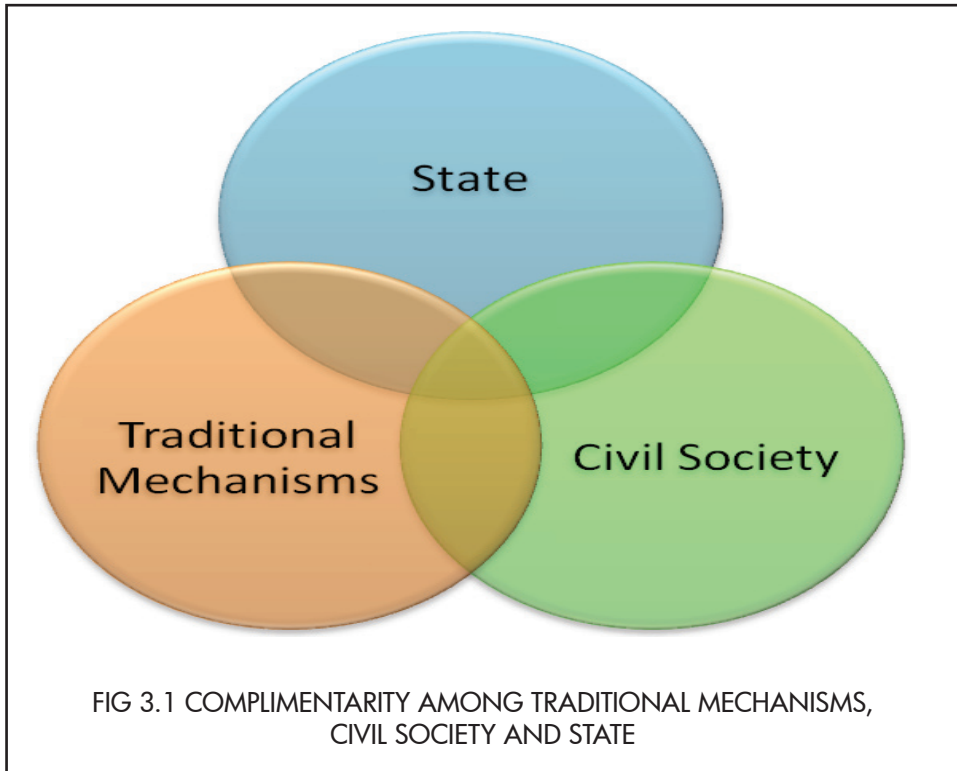
	OFFENCE	PENALTY
a.	Removing another person's eye/tooth	Payment of a one cow
b	Desecrating a grave	Payment of a three cattle
c.	Defamation of a kraal head	Payment of a goat
d.	Adultery	Payment of three cattle
e.	Ngozi	Payment determined by the avenging spirit
f.	Failure to adhere to traditional code by village heads	Payment of a goat to the chief
g.	Witchcraft	Payment determined through consultation of an n'anga. <b>N.B</b> there is no n'anga for the chief- the n'anga is chosen by the parties levelling accusations on each other.

• **Existing Challenges for Traditional Mechanisms in addressing Transitional Processes**

- Findings unveiled that traditional mechanisms have been politicized and this became pronounced due to the bitter contestation for power among political powers which began in 2000.
- Consequently traditional authorities face the dilemma of who to please- their subjects or their paymasters.
- Some traditional leaders perpetrated violence and this has made them lose community acceptability in the eyes of the victims of violence.
- Some traditional authorities have challenges of legitimacy.
- Some traditional leaders are corrupt, bribed and hence passing biased judgement.
- Most efforts made in communities are viewed as campaigns against perpetrators of violence.
- Violence is limited in definition- defined as what happens between MDC and ZANU PF and yet it has always has been there.
- Leadership in Zimbabwe has been generally perpetual. Transitional Mechanisms do not call for leadership renewal and transformative leadership.



### 3.4 Current Synergies among the States, Civil Society and Traditional Mechanisms



The findings of this study unveiled that there are some synergies among traditional mechanisms, civil society and the state. The following were the observations made about this relationship;

- ***Traditional Mechanisms/ Central Government Relationship***

- There is a strong power relation between the central government and traditional leadership. However according to some members from the civil society the state's relationship with the traditional institutions can be equated to that of a horse and a rider in which the state is the rider whilst the traditional leadership is the horse. The claim is that the state only has self-regard for traditional leadership when it sees it expedient to perpetuate its political agenda. This makes some traditional leaders partisan.
- The researcher observed that some of the traditional leaders put on political regalia such as caps, t-shirts and badges of particular political parties.

- Some traditional leaders in lament the treatment that they receive at the hands of the post independent state and pointed out that the colonial government appeared appreciated better the importance of traditional mechanisms in community life. He cited the case of the mining operations in Chiadzwa where traditional institutions were not consulted in the establishment of mining activities in the area.
- There has been some engagement of Traditional mechanisms and ONHRI and JOMIC. In Matebeleland North the activities of ONHRI and JOMIC has not been visible.

### • **Traditional Mechanisms /Local Government Relationship**

- The findings of this study revealed that traditional leadership and the local councillors have a strained relationship and as such the two are uneasy bedfellows.
- Traditional Mechanisms and Local government present two parallel powers and contesting structures which sometimes over ride each other's authority. In Mutasa one local councillor accused the village head (sabhuku) of diverting water supply from the school to his own reservoir. It sufficed from a court session at Chief Mutasa's court that the councillor had little personal regard for the village head and the assessors at the court had to reprimand.
- The finding showed that there is a mutual relationship between the Rural District Appointed officials such the District Administrators and the traditional leaders. District Administrators are perceived as appendages of the central government and as such they are respected by the traditional chiefs.
- Traditional and councillors acknowledge there is a serious overlap of power. This creates animosity which makes it problematic to resolve conflict.

### • **Traditional Mechanisms /Civil Society Relationship**

- Generally there is a working relationship between civil society groups and traditional leadership although in some areas which are highly politically charged some traditional leaders are reluctant to engage for fear of victimisation by political actors. In one area in Manicaland, traditional leadership received the gift of maize seed from a senior politician but because it was perceived as coming from the "enemies of the state" villagers were proscribed from getting such aid.
- The study's findings revealed that civil society groups are involved in programmes to assist victims such as rebuilding vandalised houses, financing memorial and reburial expenses, sponsoring the set up of self help projects. In most cases if the assisted people are from a specific party, then the aid organization would also be labeled as partisan.

- The study's findings also unpacked that some civil society organisations have taken initiatives to heal communities and in doing this they have to engage traditional leaders who are the gatekeepers of local communities.
- Some civil society organisations encourage community healing through traditional practices such as *nhimbe* which create platforms for a communal spirit.
- Traditional leadership in several communities receive leadership training from civil society organisations which in most cases would be working in tandem with Rural District Councils. Such efforts included advocacy and sensitization on the legislative frameworks and capacity building the traditional courts' personnel.

### • **Traditional Mechanisms/Church Relationship**

- There is a cordial relationship between the church and traditional institutions. At the installation of a traditional leader in Marange, the researcher observed how the church was accommodated time on the programme-i.e. The church was given the task of giving devotion while the traditional authorities did the rest of the ceremony's rites.
- Some traditional leaders are members of church sects and as such relate with the church well. In some rural communities land to construct churches is granted by traditional leaders, underlining the symbiotic relationship that exists between the two institutions.
- The majority of people in local communities belong to churches and as the traditional leadership is compelled to have peaceable relations with churches, either out of conviction or for popularity expedience.
- Findings of the study disclosed that in post-colonial Zimbabwe, both the church and traditional leadership have been politicized and thus some traditional leaders sing the same chorus of the same political song called by their paymasters.

## **3.5 Victim/Perpetrator Polarity**

### • **Colonial Era**

The findings revealed that the liberation movements (*ZIPRA, ZANLA, FROLIZI* e.t.c.) sought the guidance of traditional functionaries when they entered a community to launch the liberation war. The traditional leaders informed the guerrillas of their local taboos and practices. There was oneness of purpose between the traditional institutions and the guerrilla movements as they fought against a white supremacist government. The traditional leaders who did not co-operate with the guerrilla movements were few and considered as renegades. It sufficed therefore that largely Africans were victims.

### • **Post-Colonial Era**

In spite of the pivotal role that traditional mechanisms played during the liberation war, the post colonial government seeking loyalty from rank and file created Village Development Committees (VIDCOs) as village governance structures replacing traditional leadership in grassroots governance. The findings of the study showed that in a way, the marginalization of the traditional mechanisms made them victims. The traditional leaders were accused by the post colonial government of having being sell-outs. During the *Gukurahundi* period the 'Ndebele identity' was a sufficient qualification for one to be a victim. Victimhood went beyond the individual and became communal as the Ndebele viewed themselves as being victimised on the basis of ethnicity. In other words the traditional leader and his people were the object of political violence unleashed by the 5<sup>th</sup> brigade. From the 1990's socio-economic challenges brought about retrenchment, student unrests, operation Murambatsvina which were both direct violence and structural violence relegated many people to the rural areas where traditional mechanisms had no power to mitigate their misery as power had been delegated to VIDCO structures. It should be noted that traditional mechanisms became aligned with the ruling party in tandem with one party state mood of the time. Traditional leaders were therefore forced to be partisan and that legacy lingers on today. In 1998 the government after observing that the VIDCO structures were failing to drum up enough grassroots electoral support a passed the Traditional Leaders Act that revived some of the traditional leaders powers. This reform has however led to the creation of a dual village structure.

### • **Post 2000 Era**

During the post 2000 era traditional institutions have been turned into a kitchen commissariat for the then ruling party as a lot of them, according to the findings have been used to peddle political propaganda. Traditional leaders have been seduced into partisan politics with state salaries, farms under the haphazard land reform programme and state vehicles. It is against such a backdrop that in the March and June 2008 elections traditional leaders were either perpetrators or victims. Contrary to what obtained in Matebeleland in the 1980s victimhood after 2000 (ie all plebiscites, Land Reform, Operation Murambatsvina, 2008 Election related violence and the Chiadzwa's Operation Hakudzokwi) was individual and not collective. In other words it did not contain dynamics of ethnicity. As things stand to date, the capacity to mediate a conflict or to spearhead the national healing agenda depends on nature of involvement of the traditional leader, that is, being a perpetrator or a victim impacts on the traditional leaders' attitude towards national healing.

### 3.6 Discussion and Analysis

Global conceptualisations of transitional justice in Zimbabwe assume the need to address the ills of the past as socio-political jurisdictions break into new political dispensations. Dealing with past injustices within the neoliberal jurisprudence, involves arraigning perpetrator of violence to account while delivering justice for the victims. The transitional justice mantra has often been attached to societies emerging from socio-economic turmoil, often marked with human rights violations, mal governance and violence. This alone sets a platform for contests within the Zimbabwean polity where political and transitional players would not want to be identified as having mal governed nor perpetrated human right abuses. Granted that generally TJ involves wide ranging remedial and restorative options such as prosecutions, amnesties, reparations removal of indicted officials institutional reforms and recovery of sequestered information, traditional institutions would only be best suited for local level agendas. Otherwise simply placing transitional justice as a nationalist agenda naturally overwhelms traditional institutions in both mandate and legitimacy.

Although traditional leadership has its roots in tribal ‘hegemonic’ wars, transitions then were based on victor justice. This therefore poses conceptual and empirical challenges and contradictions when we expect the traditional institutions to administer and deliver transitional justice. It would even be fruitful to figure the various roles the traditional leadership would assume given their participation in structural, cultural and direct violence since pre-colonial times. Zimbabwe’s political history, governance structures and the administration of customary law are responsive to generational patriarchy. However, field experiences have demonstrated that traditional institutions today are the more active in dealing with violence in communities, albeit their localized influence. Zimbabwe’s merger of gang violence, with political militias and the state operatives constitutes a paradigmatic cataclysm which calls for deeper analysis into the political economy of state formation.

Whereas the *Gukurahundi* atrocities pitted state<sup>6</sup> and an ethnic community (the Ndebele) in its execution, the muscle of the traditional institutions in that case was rendered void, since they too were part of the social victimhood. Subsequent violent cycles individualized victimhood based on disloyalty to a political persuasion and ideology. The traditional leadership during this chapter played both perpetrator and victim depending on the character of the perpetrator. The absence of transitional mobility and the top and the inertia, rigidity and impunity by perpetrator constituency has infiltrated all tier of leadership including the traditional authorities. Should the top echelons of power display some political will in terms of upholding values for

<sup>6</sup> The state is suspected to have been representing the Shona interests and so Gukurahundi and the eventual marginalization of Matabeleland is perceived a handover from Settler colonialism to Shona colonialism by the Ndebele

humanity and delivering justice and sustainable peace, transitional justice would be easy to uptake by traditional institutions.

In view of the circumstances in Zimbabwe and the organic robustness of traditional mechanism over time, it would be opportune to create hybrid transitional justice interventions that draw from the strengths of the state, civil society and traditions. The broad based coverage of low cost traditional mechanisms would cascade transitional justice widely and arrest the grassroots buy-in into violence. Complementarities and synergies with civil society especially in training and sensitization and advocacy together with a supporting institutional and legislative environment by the state should deliver an indigenously generated TJ model. Current effort such as the ONHRI policy proposal and the JOMIC interventions should further be corroborated by progressive constitution provisions and programmatic political will.

The Zimbabwean TJ case is a test case for the dualism of human rights defence and accountability on one hand and the requirements for conflict resolution, peace building and reconciliation on the other. In Zimbabwe ironically, it has been the victim that has sought reconciliation and this has set a dangerous precedent for both sustainable peace efforts and future democratic and human rights culture. For that reason the majority of the citizenry in Matabeleland had reinvigorated their calls for devolution at best and cessation at worst given the political arrogance and impunity of state players. The continual postponement, partial fulfilment and delay of victim friendly recommendations is viewed by many a moral victory for the perpetrators, which in its own way incubates premises for further violence and disables the volitions of traditional institutions. Because of the delays in institutional reforms agreed under the GPA, Zimbabwe for many stakeholders is in an incomplete transition or a pre-transition phase.

In a context marked by people-to-people communal violence, the authenticity of grassroots dynamics should be understood in order to credibly deliver transitional justice. Localised processes of justice, healing and reconciliation must be carried out through meaningful interaction with the state. Among these, are hearings, use of local languages, local rituals that enhance participation, all of which must function recognizably within a national legal framework.

### 3.7 Conclusions

The research made the following observations on the place of traditional mechanisms in transitional justice.

- The research team noted that direct violence is still obtaining in some areas in spite the rhetoric by political parties that they are dissuading their membership from it.
- There is a tendency of the victim looking for the perpetrator for reconciliation. There has been impunity and intimidation to challenge the victim.
- Structural violence is ubiquitous and manifests in forms such as the distribution of grain under the grain loan scheme on partisan lines.
- The traditional mechanisms are vibrant and functional in many communities and have the respect of the majority of community members in many localities.
- Traditional mechanisms such as ngozi are very strong deterrents of violent behaviour. This in a way can be perceived as one of the indigenous ways of violence prevention.
- The traditional courts provide a platform for dispute resolution and its bias towards restorative than retributive justice make them viable tools of engagement in the administration of transitional justice.
- Traditional mechanisms have also their shortcomings and chief among them being that they have been adulterated by partisan politics. This has made people in some communities such as Chiweshe and Nkayi to lose their faith in these institutions.
- Transitional mechanisms are managing conflict and not necessarily transforming conflict. There initiatives in violence prevention are short term and not long term.
- In some areas it was also observed that traditional leaders though they were not perpetrators of violence they were bystanders whilst their own subjects were being violated. This is contrary to the community's expectations of the role of traditional leaders who are viewed as the protectors of their own people.
- Nonetheless the weaknesses of traditional mechanisms are outweighed by their strengths. The following diagram illustrates the advantages of traditional Mechanisms.

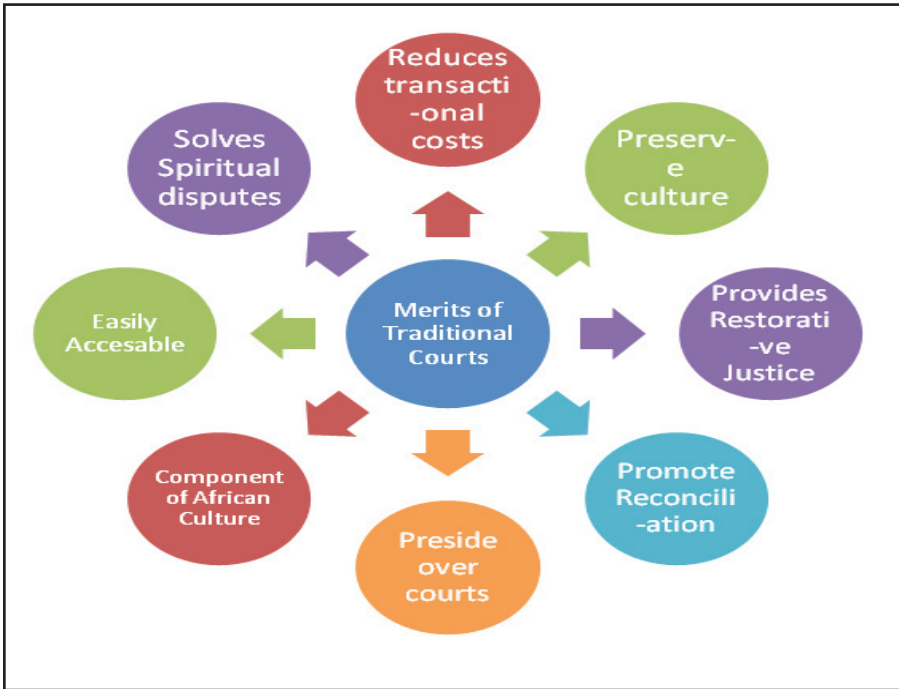


FIG 3.2 MERITS OF TRADITIONAL MECHANISMS IN TJ

### 3.8 Recommendations

This study proffers the following recommendations;

#### **Capacity and reinforcement of tradition**

- Redefining mechanisms to democratise traditional mechanisms to enhance acceptability and legitimacy.
- Re-orienting traditional governance a leading role to lower tiers for transitional justice to function such as civil society organisations.

#### **Conceptualising Transitional Justice**

- Transitional justice in Zimbabwe should consider both the pre-colonial and the post-colonial eras.
- Identification of the victim/perpetrator conception of transitional justice is limited. There has to be a conceptualization of violence as communally owned *“Hatarasi munhu nekuti muroyi”*<sup>7</sup>

<sup>7</sup> We cannot throw a person because a person is a witch.



- The existing global definition of transitional assumes that there is a disjuncture in the processes which does not tie in with how traditional mechanisms work for they do not work in line.
- Transitional Justice should balance restorative retributive justice and distributive justice.
- Transitional justice should encompass:
  - Memorialisation, forgiveness, reconciliation, compensation, prosecution changing of perceptions, removal of ethnical sentiment and gender mainstreaming.
- There should be wide consultation of traditional mechanisms by ONHRI, JOMIC and other transitional justice initiatives.
- Creation of a TJ implementing council that incorporates civil society, traditional mechanisms and churches in the administration of transitional justice.

### ***Synergies among stakeholders***

- The research team observed that there is a need for a hybrid mechanism which engages traditional mechanisms, the civil society and the church to spearhead the transitional justice project in Zimbabwe, particularly at the grassroots level.

### **Governance**

- Clear re-definition and delimitation of roles of tradition and councillors to reduce overlap and duplication of roles.
- Traditional leadership should be non partisan.
- Harmonization of the formal judicial and traditional judicial systems to avoid overriding of the latter by the former.
- Traditional mechanisms, civil society and churches should increase engaging each other in spearheading the transitional justice agenda in Zimbabwe.

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Any comments, queries, contributions can be directed to the CCSF Secretariat at the following addresses:

National Association of Non-Governmental Organisations (NANGO), 5 Meredith Drive, Eastlea ,  
P.O.Box CY 250, Causeway, Harare, Zimbabwe. Tel: +263-4 708761/732612 Fax: +263-4 794973  
Email: [cephas@nango.org.zw](mailto:cephas@nango.org.zw) or [machinda@nango.org.zw](mailto:machinda@nango.org.zw)