

**Mediation as a Tool for Conflict Transformation: A Comparative
Analysis of the South African Truth and Reconciliation Commission
and the Rwandan *Gacaca* Courts**

by

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DECLARATION

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ABSTRACT

Within the broad field of conflict resolution, mediation has traditionally been conceptualised as a tool for conflict management or settlement. In other words, in both theory and practice, mediation is assumed to be a process of interest-based negotiation facilitated by a third party with the aim of arriving at a tangible agreement. Whether the agreement be in the form of a ceasefire, partial settlement or signed peace treaty, this outcomes-based approach has traditionally dominated the mediation discourse. In African practice this trend remains, with most mediation efforts being restricted to the elite level in the form of political negotiations between high-profile leaders.

This study aims to extend these assumptions of traditional mediation concerning the conflict resolution potential of the mechanism. Given that mediation brings disputants together in communication that is otherwise unlikely to have taken place, it opens a unique possibility for dialogue and improved mutual understanding. By developing a newer model of mediation, that of ‘process-based’ mediation, this study resituates the mechanism as a tool for holistic conflict transformation. This approach prioritises the process of mediation as an end in itself, as opposed to a means to settlement ends. When formulated according to the five characteristics of the process-based model, mediation projects are argued to engender transformations of conflict at their root cause by improving the quality of relational interaction between disputants. These characteristics are community participation, context-specificity, the use of an Insider-Partial mediator, limited resource pressure, and a relational focus.

Through a comparative case study analysis of the South African Truth and Reconciliation Commission and the Rwandan *gacaca* courts and using the process-based model as an analytical framework, the study demonstrates the applicability of this model in cases of protracted conflict on the African continent. In comparing the relative manifestation of the model within these cases and their subsequent transformative success, the study provides support for the use of process-based mediation as a conflict response in Africa. The case comparison finds that the five characteristics of the process-based model are in many ways linked, with the most important transformative elements being community participation and a relational focus. By demonstrating the transformative potential of mediation practice, the findings contribute to a contemporary movement in mediation literature away from its limited traditional conceptualisation.

OPSOMMING

In die breë veld van konflikoplossing is bemiddeling tradisioneel gekonseptualiseer as 'n instrument vir konflikhantering of oplossing. Met ander woorde, in beide teorie en praktyk, word aanvaar dat bemiddeling 'n proses van onderhandeling is wat deur 'n derde party gefasiliteer word op grond van belang, met die doel om tot 'n tasbare ooreenkoms te kom. Of die ooreenkoms in die vorm van 'n wapenstilstand, gedeeltelike skikking of ondertekende vredesverdrag bestaan, oorheers hierdie uitkomsgebaseerde benadering tradisioneel die bemiddelingsdiskoers. In Afrika-praktyke bly hierdie tendens voort, met die meeste bemiddelingspogings beperk tot die elite-vlak in die vorm van politieke onderhandelinge tussen hoëprofielleiers.

Hierdie studie het ten doel gestel om hierdie aannames van tradisionele bemiddeling rakende die konflikoplossingspotensiaal van die meganisme uit te brei. Aangesien bemiddeling geskille bymekaar bring vir kommunikasie wat andersins onwaarskynlik sou plaasvind, skep dit 'n unieke moontlikheid vir dialoog en verbeterde wedersydse begrip. Deur die ontwikkeling van 'n nuwer bemiddelingsmodel, naamlik 'proses-gebaseerde' bemiddeling, word hierdie meganisme hervat as 'n instrument vir holistiese konfliktransformasie. Hierdie benadering prioritiseer die bemiddelingsproses as 'n doel op sigself, in teenstelling met 'n middel tot skikking. Wanneer bemiddelingsprojekte geformuleer word volgens die vyf kenmerke van die proses-gebaseerde model, word daar geredeneer dat bemiddelingsprojekte transformasie van konflik tot gevolg het by hulle kernoorzaak, deur die kwaliteit van die verhoudingsinteraksie tussen disputante te verbeter. Hierdie kenmerke is gemeenskapsdeelname, konteks-spesifisiteit, die gebruik van 'n "Insider-Partial" bemiddelaar, beperkte hulpbrondruk en 'n verhoudingsfokus.

Deur middel van 'n vergelykende gevallestudie-analise van die Suid-Afrikaanse Waarheids- en Versoeningskommissie en die Rwandese *gacaca*-howe, en die gebruik van die prosesgebaseerde model as analitiese raamwerk, toon die studie die toepaslikheid van hierdie model in gevalle van uitgerekte konflik op die vasteland van Afrika aan. In die vergelyking van die relatiewe manifestasie van die model in hierdie gevalle en die daaropvolgende transformatiewe sukses, bied die studie ondersteuning vir die gebruik van prosesgebaseerde bemiddeling as konflikrespons in Afrika. Die gevalvergeljing vind dat die vyf eienskappe van die prosesgebaseerde model op baie maniere gekoppel is met die belangrikste transformerende elemente, gemeenskapsdeelname en 'n verhoudingsfokus. Deur die transformatiewe potensiaal van bemiddelingspraktyk te demonstreer, dra die bevindings by tot 'n kontemporêre beweging in bemiddelingsliteratuur en beweeg weg van die beperkte tradisionele konseptualisering.

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17 years of education later and it has all come down to this – 135 pages of coffee, tears and a whole heap of pride!

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LIST OF ABBREVIATIONS

ANC	African National Congress
AU	African Union
AUMSU	African Union Mediation Support Unit
AI	Amnesty International
MK	Umkhonto we Sizwe
NURC	National Unity and Reconciliation Commission
PAC	Pan-Africanist Congress
PFP	Progressive Federal Party
PRI	Penal Reform International
RRB	Rwanda Reconciliation Barometer
SACP	South African Communist Party
SADF	South African Defence Force
SARB	South African Reconciliation Barometer
SPLA/NDA	Sudan People's Liberation Army/National Democratic Alliance
TRC	Truth and Reconciliation Commission
UDF	United Democratic Front
UN	United Nations

CHAPTER ONE – RESEARCH OUTLINE

1.1 Introduction

The history of the African continent, rife with continued conflict and resultant combat, has shown how significant societal divisions can be when left unresolved. Conflict in Africa appears to persist in cyclical patterns, with there being a strong likelihood of recurrence in countries that have already experienced large-scale violence (Cilliers, 2018:22). There is thus a necessity for methods of national conflict resolution that interject at the transitional phase of conflict to break these patterns and address the root causes of such conflicts, to create longer lasting and sustainable peace.

Two countries in which the threat of recurrent conflict was (and to some degree remains) all too real, are South Africa and Rwanda. Both have histories of deep conflict and division, with the majority of South Africans having experienced extreme oppression under the apartheid regime and the Tutsi population having survived a genocide aimed at eliminating their entire nation group. It can be argued that both the apartheid regime and the Rwandan genocide were caused by and served to further exacerbate deep divisions within the citizenries of the two countries. Once these violent regimes came to an end, the broken nations left in their wake required mechanisms for conflict resolution targeted at the transitional era and the need for national reconciliation moving forward. The two mechanisms that resulted, namely the South African Truth and Reconciliation Commission (hereafter referred to as the TRC) and the Rwandan *gacaca* courts system, have come to be widely respected as successful projects in the resolution of deep-rooted conflict.

Despite not having been developed specifically as mediation efforts, these two projects demonstrate certain basic characteristics of the mediation technique. Both encouraged direct interaction between disputants¹ in the form of a ‘truth-telling’ process, facilitated by a mediating body in the form of an institutional committee. Although these projects had differing primary objectives and practices, both aimed to mediate the expression of each sides’ experience so as to encourage reconciliatory mutual understanding between the disputing parties by the conclusion of the procedure.

Although the mechanisms displayed the basic characteristics of a mediation project, one would be hard-pressed to find a discussion of either in most ‘traditional’ discussions of mediation as

¹ In both cases the disputants involved were perpetrators and victims of violent crimes, thus their interaction can be regarded as ‘victim-perpetrator’ mediation.

a tool for conflict resolution. These traditional discussions are most often focused on elite-level interaction, with the signing of peace agreements regarded as the most important indicator of mediation success. In developing a reconceptualization of the mediation project, and what constitutes mediation success, these two community-based African examples bring traditional conceptions into question. As opposed to the traditional focus on short-term mediation outcomes, these cases suggest that mediation could in fact be a method for creating longer-lasting peace in deeply divided African societies².

1.2 Background and Rationale of the Study

As regimes rise and fall and power changes hands, conflict remains constant. Whether it be between individuals; ethnic/racial or religious groups; regions or countries, conflict and the divisions it creates affects every level of human and particularly political life. As such, the study of conflicts and their peaceful resolution has formed a constant, integral part of the study of society and politics, as scholars attempt to understand why conflicts occur and how best to resolve them.

The broad field of conflict resolution encompasses many different theories and mechanisms in attempts to tackle the issue of reconciling conflicted parties to one another. One such mechanism is that of mediation. In its most broad sense one could define mediation as “a process of dialogue and negotiation in which a third party assists two or more disputant parties, with their consent, to prevent, manage or resolve a conflict without resort to force,” (Nathan, 2012:1). As is the case with virtually any concept in the social sciences, any definition of mediation can undoubtedly be disputed, however the key component, that of a mediating body or institution facilitating discussion between disputants, remains the core of this approach to conflict resolution (Tillett & French, 2010:105; Fisher, 2011:159; Kressel, 2006:726; Touval & Zartman, 1985:7).

However, the preoccupation in general conflict literature with issues surrounding armed conflict and so-called ‘hot’ war has resulted in a parallel preoccupation within both the literature on conflict resolution and mediation itself towards the resolution of these kinds of conflict (Tillett & French, 2010:2). Being a mechanism that facilitates discussion between active disputants that would otherwise not have been likely to proceed (Zartman, 2001:8),

² This study uses a characterisation presented by Guelke (2012:30), which regards a deeply divided society as distinguishable from other societies by the existence of an entrenched fault line that is recurrent and endemic, containing the potential for violence between the fractured segments.

mediation has in traditional conceptualisations been firmly situated as a tool for conflict management or settlement (Mitchell, 1981:275; Burton, 1988:2; Ramsbotham *et al*, 2016:24). In other words, its utility has primarily been discussed in terms of bringing the leaders of disputing parties together and reaching some kind of agreement to reduce active combat.

Throughout much of the mediation literature this assumption has permeated analyses, particularly with regards to measuring the success of mediation attempts, which is most often quantified by the signing of a peace agreement, settlement or ceasefire at their culmination (Touval & Zartman, 1985:14; Bercovitch & Gartner, 2006). With no regard for the longevity of such agreements or their contribution to building long-term, sustainable peace in deeply divided societies, this traditional practice and analysis of mediation arguably limits its utility as a tool for holistic conflict transformation. It is here that this study finds its point of entry into the scholarly discussion of mediation.

When situated as a tool for conflict settlement, the mediation mechanism is seen to be “task-oriented” (Fisher, 2011:159) and “interest-based” (Furlong, 2005:110). This outcomes-focused approach is therefore generally unconcerned with the nature of the disputants’ relationship and aimed more specifically at terminating immediate crisis situations and avoiding escalation of harmful violence (Wilkenfeld, Young, Asal & Quinn, 2003:282). However, this study will contribute to a trend of departure in mediation theory from regarding the tool as one for conflict settlement, to a tool for holistic conflict transformation. Transformation initiatives target the structural and institutional foundations of the conflict and address its cultural implications in terms of altering the way actors perceive themselves and their opponents in conflict situations (Rigby, 2006:47). By addressing these foundational elements of conflict and the relationships between disputants, mediation initiatives could have longer lasting results and create more durable, society-wide peace.

This study advocates that the key to viewing mediation as a tool for conflict transformation, as opposed to settlement, is moving from an ‘outcomes-based’ to a ‘process-based’ approach.³ This shift requires focusing primarily on the relational process of mediation and how the interaction between disputants can be used as a reconciliatory end in itself, as opposed to a

³ It must be recognised here that Horowitz (2007:57-58) does make mention of ‘process-focused mediation’ as a trend in mediation practice. According to Horowitz, process-focused mediation limits the mediator’s role to that of ‘traffic lights’, concerned only with the physical process of the disputants’ dialogue, acting as a kind of negotiation administrator. This is the only place where mention of a process-oriented mediation trend has been found. For the purposes of this study however, the term ‘process-based mediation’ will refer to the model of mediation as developed in Chapter Two, focused on altering disputant relationships.

means to settlement ends. In this approach the mediators' responsibility is no longer simply to facilitate agreements between disputing parties but is redirected to impact disputants' relational interaction (Lederach, 2002:92). In this way the mediation effort could address the more deep-rooted conflict that exists between disputants and actively attempt to prevent exacerbation, recurrence or catalysing of overt tensions and potential violence.

1.3 Problem Statement and Research Questions

Mediation has been limited to a tool for conflict settlement in traditional theory and practice, with this trend extending into African mediation scholarship and practice. The assumption of this limited utility is however problematic in that it underlies all mediation efforts undertaken by key actors, shaping action taken by major institutions for conflict resolution such as the African Union Mediation Support Unit (AUMSU). As a result, all of the resources dedicated to mediation efforts by bodies such as the United Nations (UN), African Union (AU) and donor countries are directed at elite-level mediation operations that often prove unsuccessful or produce short-lived outcomes (Gartner & Bercovitch, 2006).

Although there has been some assertion of the need for documenting African mediation experience and drawing lessons from the past (AUMSU, 2016; Mottiar & van Jaarsveld, 2009; Govender & Ngandu, 2010), there remains much debate within the conflict resolution discipline over the link between the shortfalls of previous mediation attempts and the inadequacies of an outcomes-based approach to mediation. This study will aim to highlight these inadequacies and propose a shift in thinking with regards to the theory of mediation, suggesting that the potential of the mechanism lies not only in precipitating peace agreements, but in driving a *process* of society-wide conflict transformation. This could potentially inform mediation practice that shifts its focus from high-level meetings to community-based projects that are informed by the context in which they are conducted and address the divisions that both cause conflict and are left behind by conflict.

In addressing this research problem, the study will thus present the question: To what extent does 'process-based' mediation succeed as a tool for conflict transformation in African nations?

In order to measure the 'success' of African 'process-based' mediation projects in transforming conflict contexts, two sub-questions will frame the discussion:

- Under what conditions can a mediation project be deemed 'process-based'?
- Under what conditions can a mediation project be deemed 'successful'?

1.4 Research Design and Methodology

This study will be done for descriptive and explanatory purposes. As the name suggests, descriptive research is done with the intention of describing phenomena and events. Descriptive studies, often qualitative in nature, answer questions of what, where, when and how (Babbie, 2011:68). This study will be descriptive in that the analysis will first undertake a description of the cases in question, delineating the historical context within which each took place, as well as the intricacies of the implementation of each project. Thus, the questions of what the projects constituted, where they were carried out, at which point in history they were undertaken, and how they were implemented will all be answered.

The study furthermore has a second purpose in explanation. Explanatory research is done to explain phenomena, or in other words to address questions of ‘why’ (Babbie, 2011:69). This study will aim to be explanatory in that it will explore why traditional outcomes-based mediation has thus far yielded mostly short-term solutions in African conflict resolution and propose a new way to utilise mediation in transforming conflict contexts and creating longer term peace.

1.4.1 Case Study Design

The research design of this project will be that of a case study design. A case study can broadly be described as “the in-depth examination of a single instance of some social phenomenon,” (Babbie, 2011: 301). The social phenomenon in this case being a mediation project that shows signs of being focused on the process of the mediation rather than its particular outcomes. According to Zartman (2005:3-4), case studies are arguably the most frequently used tool in studies concerning political negotiations and follow the trend of mediation research in focusing on the basic question of how outcomes are obtained through a negotiation. This is interesting in the context of the present research which challenges this focus of the mediation discipline, as in highlighting the process-related elements of the mediation projects the study will now also challenge the focus of the most commonly used research design within the study of political negotiations.

Kaarbo and Beasley (1999:372) provide a broad definition of a ‘case study’, stating it to be “a method of obtaining a “case”⁴ or a number of “cases” through an empirical examination of a real-world phenomenon within its naturally occurring context, without directly manipulating

⁴ ‘Case’ described as “an instance, or a data point” (Kaarbo & Beasley, 1999:372).

either the phenomenon or the context.” This definition is illuminating for this study as it identifies the design quite precisely but does not assume a specific purpose for this kind of investigation, as there can be more than one. Furthermore, it highlights the importance of context and lack of researcher’s direct manipulation of the phenomenon or this context (Kaarbo & Beasley, 1999:373).

The case study allows for understanding of phenomena in both their complexity and natural context (Miller & Brewer, 2003:22), with its main strength being that it provides in-depth insights into phenomena of potentially high complexity (Mouton, 2001:150). This design is therefore well-suited to the analysis of mediation mechanisms, which are most often employed in conflicts with high levels of content complexity (Tillett & French, 2010:139). While engaging with units of analysis such as nations, religions, social uprisings or, as in the case of this study, social projects, case studies help to develop intricate, cumulative historical explanations of complex cases (Bennett, 2004:19; Zartman, 2005:5). This type of case study can be referred to as ‘configurative-idiographic’, a design that attempts to build a near-total picture of the case, displaying the facts and not concerned with theory (Eckstein, 1992:136-138). In this type the purpose of the case study is description (Kaarbo & Beasley, 1999:373; Brown, 2018:16).

Given the descriptive purpose of this study, it will aim to describe the historical progression of the two projects as they took place in their natural context, particularly with regards to the characteristics of a ‘process-based’ mediation model. However, as stated by Brown (2018:20): “Deploying cases in this manner [for description] allows for the greatest possibility of authenticity and the least amount of generalisability.” This is due to the fact that no two practical cases are exact replicas, meaning that inferences drawn from in-depth analysis of a particular case cannot simply be generalised to others. This study, like most case studies, aims to extend beyond these limitations of purely factual description into the realm of theory-building and thus must extend beyond the bounds of idiographic research.

The configurative-idiographic type of case study is expressly not theory-driven. These studies are not guided by established or hypothesised generalisations, nor do they aim to generate theoretical propositions (Lijphart, 1971:691). However, this does not exclude the case study design from the scientific project of theory-building. Besides creating a clear historical picture of the cases in question, case studies may contribute to theory either by generating new hypotheses in a logic of discovery, or by testing existing ones in a logic of confirmation

(Bennett, 2004:21). The link of case studies to theory is said to operate on a continuum, in which the first stage sees theory being used to explore cases⁵, the next seeing cases used to develop theory, in the next cases may be used to explore and refine theory, and finally cases may be used as tests of theory (Kaarbo & Beasley, 1999:374-376). The link to theory of the case studies in this research will be to explore and refine the theory of mediation, looking towards an updated model that could be tested further.

Case studies provide both wide and in-depth analysis of the cases in question and thus are able to model complex relationships. The importance of the descriptive ability of case studies is extended here, as it is the researcher's in-depth understanding of a particular case that allows them to give context and meaning to data collected for causal explanations (Zartman, 2005:6). The complexity these models are able to encompass is a strength of the design when compared to the more straightforward, clinical relationships deduced by other approaches (Bennett, 2004:19).

Modelling complex causal relationships within specific case studies is therefore insightful but lacks generalisability as case study findings are often contingent on the specific conditions of the cases studied (Bennett, 2004:19)⁶. While it is logical that cases would have 'within-case' value, meaning conclusions will have validity in the context in which the study was done, it is not as widely accepted that any findings may be generalised beyond this context (Brown, 2018:18; Flick, 2009:134). The construct validity that allows for detailed analysis of contextual variables comes at the cost of external validity – producing generalisations applicable beyond the cases in question (Bennett, 2004:34). In this light the historical specificity that can be viewed as a strength, is seen as a weakness of the design and has led to a stereotype of case studies as atheoretical (Kaarbo & Beasley, 1999:371).

However, as exemplified by George & Bennett's (2004:5) definition of a case study as "the detailed examination of an aspect of a historical episode to develop or test historical explanations that may be generalizable to other events," there are scholars who believe insights from case studies may be extended beyond the specific cases analysed. Due to their high level of construct validity, case studies allow for contextualised comparisons of phenomena that may manifest differently in different contexts but are 'analytically equivalent' (Bennett, 2004:34; George & Bennett, 2004:19). It is for this reason that case study researchers often turn to a

⁵ This type of case study is defined by Eckstein (1992:138-139) as 'Disciplined-Configurative' – existing general hypotheses can inform case explanations, but cases cannot in turn build or shape theories.

⁶ See also Babbie (2011:303), Miller & Brewer (2003:23) and Mouton (2001:150).

comparative methodology to harness the strength of highly contextualised conceptual understandings to compare ‘analytically equivalent’ phenomena and contribute to a theory-building project. This therefore supports the choice of methodology for this study, that of comparative analysis.

1.4.2 *Comparative Analysis Methodology*

Given the inherent limitations of case study research in building generalizable theory, an approach often used to offset some of the risk of overgeneralisation is to compare more than one case. As stated by Zartman (2005:7), “single case studies are of inherently limited utility in producing *knowledge* about negotiation as opposed to *data* on the unique case,” (emphasis added) and therefore in order to contribute to general theory-building, a comparative approach is useful.

Eckstein (1992:125) provides a definition of comparative case study commensurate with the approach to be taken in this research, defining it as “the study of numerous cases along the same lines, with a view to reporting and interpreting numerous measures on the same variables of different ‘individuals’.”⁷ He states further that by using a comparative methodology in conjunction with case studies, theory may be successively refined through a ‘building-block’ technique in which regularities may be found through the simultaneous investigation of several cases (Eckstein, 1992:144). Miller & Brewer (2003:33) concur, stating comparative studies look for patterns of convergence between a single social process in different nation states. These patterns of convergence are intended to test and support the validity of a general theory that has been applied to understand and explain this social process.

Expanding on this definition, the historical comparative methodology constitutes “The examination of societies (or other social units) over time and in comparison with one another,” (Babbie, 2011: 347) and focuses on the similarities and differences between units of analysis in order to discover causal factors affecting an outcome seen in the set of cases (Mouton, 2001:154; Neuman, 2006:471). As stated by Mahoney and Rueschemeyer (2003:13), comparative historical analysis “makes possible a dialogue between theory and evidence of an intensity that is rare in quantitative social research.” The qualitative comparison of these two cross-national cases of mediation aims to give validity to a newer theory of mediation and thereby influence the construction of future projects using it as a tool for conflict

⁷ ‘Individuals’ meaning ‘cases’ in Eckstein’s definitional vocabulary.

transformation. It is here however, in introducing the potential for causal analysis, that the method of comparing complex cases encounters a challenge.

Although the detail and complexity of case research provides in-depth understanding of case and context, when comparing cases to one another, comparisons must battle the weakness of having many variables and a small number of cases (Lijphart, 1971:685). If cases are used for what Skocpol and Somers (1980:181) define as ‘Macro-Causal Analysis’, controlled comparisons are intended to follow an experimental logic and provide valid causal inferences through multivariate analysis. However, with a multitude of potential extraneous variables and the practical impossibility of finding highly like cases in the real world, there is a definite danger of conclusions providing spurious relationships.

Skocpol and Somers (1980:176) argue however that the logic of ‘Macro-causal Analysis’ is not the only type of comparative analysis available to comparative scholars. They define two others, that of the parallel demonstration of theory and the contrast of contexts. Contrast-oriented comparatists, similarly to those conducting configurative-idiographic case studies, are focused primarily on the unique characteristics of individual cases and use comparisons to show how these characteristics influence general social processes within these specific contexts (Skocpol & Somers, 1980:178). Parallel-theorists on the other hand use the juxtaposition of cases to “persuade the reader that a given, explicitly delineated hypothesis or theory can repeatedly demonstrate its fruitfulness – its ability to convincingly order the evidence – when applied to a series of relevant historical trajectories,” (Skocpol & Somers, 1980:176). The similarity between cases under this approach is not necessarily in identical dependent or independent variable values (as would be necessary for strong causal conclusions) but lies in the common applicability of overall theoretical arguments. In this way these studies aim to show the validity of their theoretical arguments.

The present research will fit most comfortably into the latter approach, that of the parallel demonstration of theory. Due to the departure of this study from common mediation conceptualisations, and the resultant lack of similar cases based on this specific mediation model, the possibility of providing strong causal analyses based on multivariate analysis is limited. However, if a structured, focused comparative mechanism (as will be discussed below) can be produced from the theory as discussed in Chapter Two, this newer theory of mediation can be applied to cases with similar basic characteristics in an effort to determine the level of

applicability (and thereby the validity) of the overall theoretical arguments. This is how the study will fit the purpose of the Parallel-comparatists.

1.4.3 *Alexander George's Structured, Focused Comparison*

In terms of strictly devised comparative methodologies, John Stuart Mill (1843/1967) is regarded as the father of comparative case study analysis, particularly with regards to his “method of agreement”⁸ and “method of difference”⁹. Following the logic of experimental studies, these methods compare values of specific dependent and independent variables, with all other conditions kept constant. However, as has been stated, the reality in case study research is an impossibility of perfectly controlled case comparisons (Bennett, 2004:20). In using cases which may be influenced by different cultures, geographic locations, historical timing etc., controlling for every external variable becomes practically impossible.

One scholar who attempted to respond to these limitations of Mill's methods is Alexander George and his method of structured, focused comparison of cases (George & Bennett, 2004:67-70). This study aims to achieve reliability and validity¹⁰ through this method which systematises the study of historical experience (George & Bennett, 2004:67) in a bid to develop more reliable and thus reproduceable case comparisons. Structured, focused comparison is regarded as the most-used approach for contemporary scholars engaging in case study research (Kaarbo & Beasley, 1999:370), and as the most recent authoritative statement thereof (Zartman, 2005:7).

This method is ‘structured’ in that it asks a set of standardised general questions reflecting the research objectives to guide data collection, making possible the systematic cumulation and comparison of case findings. It is also ‘focused’ in that it only deals with certain specific aspects of the historical cases under examination (George & Bennett, 2004:67). By using this set of questions and focusing on clearly identified classes of events, data can be systematically collected and compared (George & Bennett, 2004:69). Qualitative research in general is often critiqued for its lack of rigor, replicability and a systematic approach, thus this method provides a response to these problems (Kachuyevski & Samuel, 2018:3). It is when used in this way as

⁸ The researcher compares cases with the same value of the dependent variable to find potentially causal antecedent conditions (independent variables) that are also the same (Bennett, 2004:30).

⁹ The researcher compares cases with different outcomes (dependent variables) to find antecedent conditions (independent variables) that differ, judging that antecedent conditions that were the same despite the different outcomes were not sufficient to cause these outcomes (Bennett, 2004:31).

¹⁰ Reliability understood as the reproducibility of the research project, as opposed to validity understood as a generalisation that has withstood attempts at falsification (Eckstein, 1992:127; Creswell, 2014:201).

the basis for a systematic methodological approach, that case studies may form the foundations for analytical claims with external validity (Brown, 2018:16).

For the purposes of this study, George's method of structured, focused comparison provides a helpful basic outline to follow. Using the mediation literature surveyed in the following chapter, a model for mediation projects to be conducted in deeply divided societies will be outlined, based on selected structured characteristics. The 'questions' thus guiding data collection will be to what extent each case demonstrates these characteristics. The comparison of cases can then be focused by this structure, with the analysis centring on the manifestation of the characteristics and how the transformative success of each project was impacted as a result.

By focusing the comparison on specific theory-derived elements of the cases in question, this approach aims to combat the problem of comparing highly complex cases (Flick, 2009:135). The approach can be discussed as a kind of 'coding' of qualitative data, in which themes and categories are pre-decided and used to structure both the data collection process and the case comparisons. This process can also be referred to as qualitative content analysis, a model of text analysis in which the basic goal is to reduce a multiplicity of available information (Flick, 2009:323).

1.4.4 Case Selection

The cases that have been selected as potential examples of 'process-based' mediation in Africa are that of the South African TRC established in 1995 and the Rwandan *gacaca* courts system founded in 2002.

The TRC and the *gacaca* courts have been studied extensively as mechanisms of transitional justice, particularly in terms of their significance in formal legal systems. However, they have yet to be included in discussions of mediation, particularly in the African context. Both cases show characteristics of community-style mediation between perpetrators and victims, with institutional structures facilitating dialogue between the disputants, and respected individuals forming the panel of mediators conducting these dialogue processes.

As this study is introducing its own theory-driven conceptualisation of mediation as a national conflict response, there are no well-documented cases of this specific type of mediation project. The cases selected therefore needed to be of a high-enough profile that there is sufficient secondary data available to build a complex case, but still achieve the comparative case

requirements of salience in the general discourse of African conflict resolution and relevance to the conceptual issues addressed in the study (Zartman, 2005:7). The comparison relies on the applicability of this mediation theory to the cases in question, thus they must exhibit the basic characteristics of a mediation project in order to be comparable at all, but vary on the values of each element of the newer model, so as to make deductions about the effects of each element on the overall success of the project at transforming the root causes of conflict.

The specific selection criteria for these cases are based on the primary elements of the study's conceptualisation of a *process-based* mediation project. This conceptualisation is broken down into two focal criteria. The first as has already been mentioned is the presence of a third-party mediator or mediating body, facilitating and encouraging discussion between disputants that otherwise would not have taken place (Zartman, 2001:8). These conflicts were suited to the mediation process, in that a third-party was needed to break down the barriers of negative feelings between disputants, a strong disagreement or difficulty to ascertain the 'truth' of the situation, and an absence beforehand of a negotiating forum (Kressel, 2006:732).

The second criterion, as the study is aimed at providing support for mediation aimed at the transformation of national conflict, is that the projects must have aims based on reconciliation, durable peace, and restorative justice. It is only with aims based on these key themes that mediation projects will focus on the change in quality of relational interaction between disputants that this newer theory of mediation espouses. Transformation extends beyond the immediate cessation of violence and creation of issue-based solutions (Mitchell, 2002:3), and endeavours to engender structural change to ensure long-term positive peace with social justice (Fisher, 2011:158). It would be impossible to assess conflict resolution projects on their ability to engender widespread conflict transformation if this is not what they were intended for. This is why the cases will not include any former 'traditional' mediation attempts in active African conflict that were primarily focused on the signing of peace agreements or ceasefires.

The two selected mechanisms did have different goals and procedures, with the TRC being aimed largely at truth-telling and the granting of amnesties (Wielenga, 2011), while the *gacaca* courts had more of a mixture of aims between truth-telling, reintegration of perpetrators and in some cases a degree of punitive measures (Bowd, 2010). However, both projects had the overall aim of reconciling citizens in the transitional phase of their post-conflict societies and providing some measure of restorative justice. Thus, they both provide good examples of

mediation mechanisms aimed at conflict transformation, however with varying elements in their procedures and aims to be compared with the study's model of 'process-based' mediation.

1.4.5 Data Collection

With improvements in technology the popularity of statistical methods boomed from the 1960s and 1970s, leading to increasingly negative assumptions about the capabilities of qualitative research (George & Bennett, 2004:6). Researchers in the social sciences have attempted to use technical statistical data to add credibility to their work in the scientific research community. However, as argued by Kachuyevski and Samuel (2018:7-8), highly technical research methods can in some cases create a divide between theory and practice as they may be overly lengthy and difficult for citizens or practitioners to fully appreciate. On the other hand, while quantitative methods provide stringent statistical interpretations based off so-called proxy indicators, qualitative methods allow for the interpretation of themes and patterns (Creswell, 2014:17), giving real-world context and actionable knowledge to political research (Kachuyevski & Samuel, 2018:8).

Therefore, the data to be used in this comparative analysis will be qualitative in nature. According to Babbie (2011:24), "Qualitative data are richer in meaning and detail than are quantified data," and thus will be useful in building a detailed and in-depth understanding of the cases in question. Context is of great importance in the collection and analysis of qualitative data as there is a recognition of the complex intertwining between social processes and their social context (Miller & Brewer, 2003:193). This recognition of the importance of context is foreseen to be important in this study with its particular focus on African conflict. The African continent provides a unique social context that is inextricably linked to all social processes that take place therein, and thus must be examined in order to build the in-depth understanding a qualitative approach can provide.

As is typical in qualitative research, through an emergent data collection process this study will make use of various forms of data (Creswell, 2014:186), including secondary sources such as published books and journals, and primary sources in the form of organisational/government reports. This qualitative data will be collected by means of desktop research. The data will be organised or 'coded' according to the categories described above. As these projects began and culminated several years ago, it will be necessary to look at what they were intended to achieve at their inception, what they were able to achieve by their conclusion, and the changing perception of their impact on the respective nations. Particularly as the study aims to assess the

longer-term durability of conflict transformation resulting from these projects, it will be necessary to see how these perceptions have shifted over time. This will be achieved by assessing the literature produced concerning the projects and available data on public perception, such as that found in the South African Reconciliation Barometer (SARB)¹¹ and the Rwandan Reconciliation Barometer (RRB)¹².

1.4.6 Limitations and Challenges

As discussed by Mouton (2001:155), a limitation associated with the comparative methodology are problems with selecting “appropriate” cases that both fit within the selection criteria and are comparable to a high degree. As has been stated, this is a problem for this study in particular due to the lack of previous mediation attempts based on this model. However, to mitigate this limitation the cases selected both exhibit the basic characteristics of a mediation project and thus are comparable but vary on their individual demonstrations of the model’s characteristics. This will thereby make possible deductions concerning their varying successes. Mouton (2001:155) also notes that in cross-cultural and cross-national studies, as this one will be, there are constraints in comparability due to the differences in areas such as language, tradition and culture. However, in the context of this study these differences are in fact a necessary condition in order to evaluate the relevance of context-specificity and utilise this strength of the case study design.

A challenge facing this study in particular is the definition and measurement of ‘successful conflict transformation’. Definitively measuring the level of conflict transformation in a country proves difficult when the term itself encompasses such a vast array of conflict relationships. This study will therefore aim to build a broad picture of the level of conflict transformation in each country, based on triangulation of various sources of data concerning themes such as reconciliation, peace and restorative justice.

1.5 Contribution of the Study

By shifting the focus of mediation efforts from the outcomes it produces and towards the transformed conflict environment a mediation process could engender, this study could provide evidence for a new approach to mediation efforts. This approach could potentially provide

¹¹ 2017 SARB report produced by the Institute for Justice and Reconciliation, South Africa. The SARB uses survey data to measure public perception of the state of reconciliation in South Africa.

¹² Reports published in 2010 and 2015 by the National Unity and Reconciliation Commission of Rwanda in collaboration with the United Nations Development Programme. Uses survey data to measure public perception of the state of reconciliation in Rwanda.

longer-lasting effects than those of the traditional outcomes-based approach. Furthermore, this study will focus on mediation in Africa, a continent with a long history of violent conflict that continues to this day and is in desperate need of new approaches to resolution. With peacebuilding resources being low in supply and high in demand on the continent, the conflict responses required are those that can efficiently and effectively address the deeper roots of conflict in a society and thus help to avoid lapses back into the costly and persistent cycles of violence. This study could provide evidence for mediation as a conflict response with the potential to achieve such goals, provided its practice and utility is reconceptualised as a process of conflict transformation and not simply agreements for conflict settlement.

In discussing and describing a contemporary holistic approach to mediation and comparing this to similar mediation attempts already having been carried out on the continent, this study would aim to make both a theoretical and practical contribution, thus being both basic and applied in nature. Theoretically, it could provide support for a newer model of mediation, moving away from the traditional outcomes-based approach. Practically, it could provide evidence that this model is one worth emulating in future peacebuilding efforts on the continent and give practitioners in the business of conflict resolution reason to revisit the conduct of mediation as a conflict response tool in transitional societies.

1.6 Outline of the Study

This study will be presented in five chapters. This first chapter has served as an introduction and outline of the study to be conducted, including the research design and methodology. Chapter Two will form the conceptual and theoretical framework of the study with a discussion of traditional mediation theory and the major debates surrounding its description as a mechanism for conflict management, as well as mapping the progression of mediation theory towards the goal of broader conflict transformation. This chapter will further provide the analytical framework for the study in the form of a model for process-based mediation projects.

Chapters Three and Four will then be dedicated to the construction of the cases and the analysis thereof with regards to the analytical framework produced in Chapter Two. Chapter Three will be dedicated to the historical contextualisation of each case, with a discussion of the conflict climate in each nation that necessitated the resolution projects, followed by a description of these projects. The data collection and presentation for this study will be done in Chapter Four, where the comparative analysis of the TRC and the *gacaca* courts will take place. Following the historical description of the cases, the theory of ‘process-based’ mediation will be overlaid

on to the cases, highlighting their relative manifestations of the criteria included in the study's conceptualisation of this new type of mediation project. The two cases will be contrasted and compared, looking both at how they are similar and how they differ in demonstrating a process-based project, and how these differences have led to the relative conflict transformation of each historically conflicted nation.

Finally, Chapter Five will follow with a discussion of the findings in Chapter Four and relate them back to the research question as originally posed in Chapter One. This chapter will serve as a conclusion to the study and provide recommendations for further research.

CHAPTER TWO – CONCEPTUAL, THEORETICAL AND ANALYTICAL FRAMEWORK

2.1 Introduction

Just as conflict has retained a constant presence throughout human history, so has mediation played an integral part in its resolution. Evidence of mediation practice is found in cultures throughout the world, and in ages as far removed as the Biblical – from Moses acting as mediator between God and men to shamans in Asia, America and Oceania mediating with spirits (Horowitz, 2007:51). However, in the contemporary era with weapons so destructive and technology so developed, mediation has become an even more important tool in terminating violent conflict that is both costly and irrational (Bercovitch, 1996:2).

The upsurge in mediation practice, particularly in the post-Cold War era, has led to a consequent surge in scholarly work surrounding the discipline, with many adding their analyses to the conceptualisation of the term ‘mediation’. Upon examination of these varied analyses it becomes clear that there are at least two broad approaches to the practice, a traditional and a non-traditional. The traditional can be described as a ‘problem-solving’ approach, situated within the field of conflict management. The non-traditional however is more of a ‘transformative’ approach, aptly named due to its situation within the field of conflict transformation. Although this study is concerned with the potential of mediation as a tool for conflict transformation, in order to provide full reasoning for this preferred conceptualisation, it is necessary to provide an overview of mediation in all its varied forms; the aim of this chapter.

2.2 Mediation Defined

As one of the primary mechanisms utilised and discussed in the field of conflict resolution, the concept and practice of ‘mediation’ are subject to much debate. In structuring an initial conceptualisation of the term, an often-cited definition of the term ‘mediation’ provided by Christopher Moore is useful. Moore (1986:14) describes mediation as an “intervention into a dispute or negotiation by an *acceptable, impartial* and *neutral* third party, who has *no authoritative decision-making power* to assist disputing parties in *voluntarily* reaching their own *mutually acceptable settlement* of issues in dispute” (emphasis added).

This definition, while including every aspect of mediation practice that are often assumed integral, in fact provides a concise summary of its most contested elements. In order to

contribute to the discussion of mediation best practice, as this study aims to do, it is important to begin with an analysis of these key elements and the various debates surrounding them.

2.2.1 Conflicts Conducive to Mediation Intervention

As a result of overwhelmed legal systems and the often exorbitant costs associated with legal disputes, mediation has increasingly been utilised as a form of Alternative Dispute Resolution that relieves courts and can reduce costs of resolving conflict (Fisher, 2011:159). Despite its popularity and widespread practice however, it must be recognised that mediation is but one of a plethora of conflict resolution mechanisms. Furlong (2005:124) identifies a key element that is often regarded as the signifier for mediator intervention as opposed to any of these other mechanisms, that of the stalemate. He states that prior to parties reaching a stalemate, pure negotiation through direct interaction between disputants is the tool most likely to be implemented. However, there are other signifiers that suggest mediation to be the most appropriate approach and these will be discussed below.

Kressel (2006:732) distinguishes three sets of barriers which may impede pure negotiation and thus encourage the intervention of a mediator. The first of these are interpersonal barriers, in which negative feelings between disputants or dysfunctional communication between them infringe on the quality of direct interaction. The second are substantive barriers, in which disputants disagree strongly on the content of the disagreement and have difficulty ascertaining the 'truth' or 'facts' of the situation. The third set of barriers are procedural, in which there is an absence entirely of a negotiating forum and thus a complete deadlock. Mediation may break down these barriers as it provides an opportunity for constructive communication in which all aspects of the conflict and possible solutions can be fully investigated and weighed up, potentially opening new political space that previously had not been seen (Ramsbotham, Woodhouse & Miall, 2016:213).

Tillett & French (2010:139) ascertain a set of pre-conditions for mediation to take place, these being: previous failure to resolve the conflict through collaboration, disputants' perception that they will not be able to resolve their issues alone, distrust or hostility between the disputants, extended duration of conflict, and a high level of complexity in the content of the conflict. Similarly, Bercovitch and Houston (1996:12) suggest mediation is likely to be called upon when the conflict has gone on for some time, if previous efforts have ended in stalemate, if both actors face unendurable costs if the conflict were to continue, and if the parties to the conflict are open and willing to engage in mediation through direct or indirect dialogue.

Although mediation is intended to provide a level playing field for negotiation, inevitably in some cases there will be an imbalance of power between disputants. Weaker actors may therefore turn to mediation in the belief that they could achieve a better outcome than they would otherwise have done without the mediator present. Parties may also agree to the mediation in the hopes that the mediator will act as a guarantor for any agreements reached, reducing the risk of either side reneging on the agreement (Touval & Zartman, 1985:9). In the case of victim-offender mediation and traumatic conflict, the presence of a third-party may make the affected victim feel safer in attending the negotiation (Furlong, 2005:124).

Timing is also an important factor as contended by Zartman's (2001:8) 'ripeness theory', in which mediation is considered the appropriate response once conflict has reached a "*mutually-hurting* stalemate". In other words, mediation should only take place when conflict is 'ripe', and a cost-benefit analysis demonstrates two conditions: that neither party is willing nor able to make any more power moves towards winning the conflict, and that the continuation thereof has become detrimental to all parties involved.

In an empirical study concerning the effectiveness of mediation in mitigating international crises, Wilkenfeld, Young, Asal and Quinn (2003:282) found that mediation is two or three times more likely to be the conflict response of choice in times of crisis and hostility than in periods of lower intensity. This being the result of pressure due to a perceived deadline and the immediate consequences if an agreement fails to be reached. The study also found that the higher the number of relevant issues in a crisis, the higher the chance of the crisis being mediated (Wilkenfeld *et al*, 2003:285). Finally, it showed that territorial crises, conflicts involving geographically close disputing groups and those involving ethnic divisions, all of which have been the trend post-Cold War, are more likely to feature mediation than conflicts without these key characteristics (Wilkenfeld *et al*, 2003:286).

In contemporary warfare with the reality of nuclear arms and the extended duration of conflicts, mediation provides an alternative to the zero-sum game that is resolution of conflict through 'winning' or 'losing' a war. It is said to differ from other forms of third-party intervention in that it is an act of peacemaking, which in theory does not intend for one party to triumph over the other (Touval and Zartman, 1985:7). It is thus possible to resolve active conflict by reaching win/win outcomes in which the interests of all parties are considered and included in the decision-making process (Furlong, 2005:110). For disputants trapped in cycles of violence or halted in a stalemate, the push they may need is intervention from a mediator whose

fundamental objectives are to help them find a mutually acceptable solution and to offset their tendencies towards a competitive win/lose mindset (Kressel, 2006:726).

2.2.2 *Bias, Neutrality and Impartiality*

The next element for discussion, and possibly the most highly contested element of the mediation mechanism is that of the bias, neutrality or impartiality of the mediator themselves. While it is commonly agreed that mediators cannot be a party to the conflict in question (Fisher, 2011:161), there is a general assumption evident in many conceptualisations that mediators must be both neutral and impartial (Tillett & French, 2010:105; Fisher, 2011:159; Horowitz, 2007:51). In some texts, mediators are even referred to as “third-party neutrals” and in practice are often bound to the principle of neutrality by ethics codes (Wehr & Lederach, 1996:56). Tillett and French (2010:140) go as far as to say that a neutral third-party is the ‘distinguishing factor’ of mediation from similar processes such as collaborative decision-making and conflict resolution more broadly.

Within the North American scholarship in particular, the ideal mediator is expected to have both externality and neutrality, thereby coming from outside the conflict situation and having no connection to either side (Wehr & Lederach, 1996:57-58; Horowitz, 2007:53). The mediator’s role is defined negatively, focusing on what the mediator is not as opposed to what they are or could be. This includes mediators being unconnected to disputants, unbiased, having no investment in a particular settlement or outcome, and not expecting any reward from either side (Moore, 1986:15-16). Intuitively this may make sense, as in order to ensure a fair and equal process one would assume the mediator should have no reason to favour one side or the other. In the case that a mediator were to show bias towards either party, they may risk losing the trust of the other (Touval & Zartman, 1985:9).

In practice however, it is often the case that the third-party is partisan or allied to one side of the conflict. This may cause them to push solutions supporting that side or adding resources in its favour (Mitchell, 1981:275). For example, in the early 1990s at the beginning of the mediation of the Sudanese conflict, the mediating countries had different allegiances to the primary conflicting parties. Through the process this would change, as Eritrea, Ethiopia and Uganda came to support the Sudan People’s Liberation Army/National Democratic Alliance (SPLA/NDA) over the government of Sudan. With the support of these three mediators, by 1997-1998 the mediation had reached the point of agreement with a solution favouring their preferred side of the conflict, the SPLA/NDA (Svensson, 2009:448). However, contrary to the

assumption of the negative impact of bias and partiality of mediators, many authors argue these qualities could in fact be productive in the overall mediation process.

For example, based on their experience as mediators in Guatemala and Nicaragua, Wehr and Lederach (1996:58-59) introduce the conceptualisation of a 'new' kind of mediator role, that of the 'Insider-Partial'. This mediator is said to be best suited to traditional societies with community-based norms and values. The 'Insider-Partial' is purposefully drawn from within the conflict context as their acceptability stems from extensive trust and connections with the conflicting parties. The success of this mediator relies on their proximity to the conflict, partly due to the fact that they do not leave the conflict setting once negotiations have ended, and from the accumulated knowledge of the conflict context shared by disputants and mediator (Wehr & Lederach, 1996:58). The parties are assured of the genuine vested interest the mediator would have in seeing the conflict effectively reconciled, and the mediator has extensive contextual knowledge to assist in achieving this goal.

Touval and Zartman (1985:8-9) argue it is in fact rare for mediators to be completely indifferent to the outcomes of the mediation, and that they almost always have some form of self-interested motivation for taking part. They list two such motivations, the first being that continued conflict may in some way disadvantage the mediator, for example if the conflict has gone unresolved for some time and the mediator wants to prove their problem-solving skills. The second is the potential to extend and increase their own influence through developing a stronger relationship with the parties involved. Touval and Zartman go on to state explicitly that impartiality is not important for successful mediation as parties accept the mediator based on their perceptions of what their own relationship with the mediator would be and the potential consequences of accepting or rejecting the eventual terms of agreement. They claim that parties are not as concerned as might be expected with the mediator's general attitude and relationship towards them prior to the mediation (Touval & Zartman, 1985:15).

An author who attempted to empirically test these varying hypotheses on mediator bias is Svensson (2009). On the one hand his analyses of biased and neutral mediators in civil wars showed that biased mediators can positively and significantly affect the likelihood of specific institutional agreements within peace agreements. On the other they showed that because neutral mediators' sole purpose is getting parties to come to an agreement, they are less concerned with the provisions set out in the agreement. Therefore, neutral mediators create outcomes "without provisions for political and territorial power-sharing, third-party security

guarantees, government-sided amnesties and repatriation of civilians.” (Svensson, 2009:461). Without such provisions, Svensson argues that agreements are unlikely to develop democratic institutions which he deems essential for ensuring durable peace.

2.2.3 Mediator Role and the Use of Leverage

In conjunction with the debate over the bias and neutrality of the mediator is a debate over their subsequent role in the mediation process and the leverage they should or should not be able to wield over disputants. This concerns the extent to which mediators should control or guide the proceedings and the amount of influence they should be granted over its outcomes. Fisher (2011:158) in fact argues that third-party intervention types can be distinguished by the amount of power (read leverage) the mediator has over the mediation process, for example in an arbitration case as opposed to an international dispute.

In terms of their more general roles, mediators help advance communication between adversaries, they may change adversaries’ images of one another, and they can suggest compromises, bargain and negotiate to encourage adversaries to change their stance (Touval & Zartman, 1985:7). In terms of coming to an agreement, a mediator could assist in differentiating positions and interests, helping create options, being an ‘agent of reality’ and reformulating previous disagreeable outcomes (Horowitz, 2007:55-56). Due to the possibility that parties may not have entirely constructive motives for engaging in a process of mediation, one of their most important roles is said to be deciphering the deeper motives of the disputing parties and ensuring they do truly wish to reach a mutually acceptable agreement (Fisher, 2011: 162).

As in the case of bias and impartiality, it is often simply assumed that the mediator must have no decision-making authority with regards to the content of agreements, and furthermore that they must provide no recommendations or advice in their assemblage (Tillett & French, 2010:105; Moore, 1986:14; Bercovitch & Houston, 1996:12; Fisher, 2011:159). Kirchhoff (2009:243) gives reason to this assumption by cautioning that disputants are more likely to remain committed to agreements they formulated themselves and thus mediators should avoid extensive contributions to their content. It is perhaps due to this reasoning that intermediaries are expected generally to prefer persuasion as opposed to coercion in bringing parties to agreement (Wallenstein & Svensson, 2014:316).

Other authors however discard the assumption of a non-interventionist role for the mediator. Wehr and Lederach (1996) are two such authors who, following the conceptualisation of their ‘Insider-Partial’ mediator role, also assert that Western attempts in the literature at finding a

stringent definition of mediation are misguided. They suggest that both the concepts of mediation and mediator should have simple definitions, with the addition of mediator roles as and when necessary. These roles could include the mediator-negotiator, mediator-legitimiser, mediator-conciliator, and mediator-broker – all of which are said to be necessary just at different times and in different contexts (Wehr & Lederach, 1996:70-71).

Two more authors who concur with the extended view of mediator role are Touval and Zartman (1985:11-12) who present three different kinds of interventionist mediator, differentiated by the extent of their involvement in the decision-making process. The first considers the mediator as communicator or facilitator, where their sole purpose is improving communication between disputants. The second is the mediator as formulator, in which they present disputants with new solutions and outcomes they have not found on their own, but does not advocate for any specific agreement and has no power over parties reaching a decision. The final type sees the mediator as manipulator, where they use leverage and resources to manipulate the disputants towards certain preferred outcomes. While these differing roles present a more complicated conceptualisation of the mediator, Touval and Zartman (1985:12) consider each to be as practically possible and potentially useful as the other.

If the definition of a mediator is to be expanded to include roles such as the mediator-manipulator, there must be subsequent analysis of the potential use of leverage. The mediator as manipulator may engage in what Fisher (2011:165) refers to as “power mediation”, a type of mediation in which the mediator facilitates negotiations by using leverage or coercion through promised rewards or threatened punishments. Ramsbotham *et al* (2016:21-22) allow for the possibility of mediator leverage by defining mediation as “a voluntary process in which parties retain control over the outcome (pure mediation), although it may include positive and negative inducements (mediation with muscle).” Thus, these authors support the ideas presented by Touval and Zartman (1985) that mediators may have some influence over decision-making and that disputants do not always enter into agreements voluntarily.

Wallensteen and Svensson (2014:316) on the other hand purposefully exclude the concept of ‘mediation with muscle’ in their core characteristics of mediation as they claim this would be “premature”. They argue that the use of coercion to push a certain outcome or agenda is to be treated as another dimension entirely of action by third-parties. It must be noted that their view of mediation ‘muscle’ is as third-party military force and not individual leverage of the mediator such as their reputational authority or control over economic resources. This

dimension would require looking at whether peaceful mediation is assisted or undermined by third-party military force. However, the ‘muscle’ of mediation need not always equate to military force as a mediator’s position affords them other forms of leverage inspiring agreement.

In a discussion of ‘intangible leverage’, Princen (1992:42) states that “information is power” and thus that mediator leverage derives from both their material and immaterial attributes. Mediators are able to use the information available to them to separate disputants’ true interests and motives, and then suggest attractive outcomes or extract concessions, ultimately wielding influence over parties to the conflict. By using information leverage mediators can also increase disputants’ perceptions of the costs of conflict as they are able to discern what matters most to each party (Beardsley, 2008:723). In this way historical and cultural ties providing the mediator with in-depth contextual knowledge may be as influential a form of leverage as material resources such as military strength.

Following Princen, Reid (2017:1402-1403) distinguishes between two kinds of leverage: capability and credibility. Capability leverage is constituted by material strength such as military backing or economic resources used to alter disputants’ bargaining range. The second is credibility leverage, through which parties may be swayed to cooperate due to the mediator’s store of information, contextual knowledge and perceived commitment to the peace process. Through a quantitative study of civil war mediation attempts from 1989 to 2006, Reid goes on to argue the importance of understanding leverage to be context-dependent and finds that softer forms of mediation “fostering rather than forcing settlements” can potentially ensure longer-term benefits (Reid, 2017:1424).

Thus, it can be said that mediator role, while often considered to be quite static and limited, may in fact be extended to include several types of mediator. The kind of leverage they wield, whether it be military ‘muscle’ or a more intangible form, will affect their role in the mediation process as a whole. There is a fine line for mediators to walk between being ‘power-full’, potentially constructing weak agreements relying on coercion for implementation, and being ‘power-less’, failing to be taken seriously by conflicting parties (Mitchell, 1981:312). In line with the need for mediators to recognise their biases and partiality, it is therefore important for mediators to be cognisant of the leverage available to them and their consequent influence over disputants.

2.2.4 *Mediator Identity*

Considering the above debates over the role of the mediator, it follows that a further debate in defining mediation concerns who exactly the mediator should be. Mediators may be linked to disputants via social networks (e.g. community elders or religious leaders), they might have more authoritative power in a formal relationship with disputants (e.g. powerful states), or they may be professional mediators independent from disputants and intended to offer objective consultation (Fisher, 2011:162). As they differ in size, scope, strength and resources, each type of mediator may be useful in a different context. For example the social network mediator may offer easier access to parties or civil society actors whereas a professional mediator will have knowledge and experience of past peace processes (Ramsbotham *et al*, 2016:212). It is therefore necessary to distinguish the set of ‘tools’ available to each in order to account for the influence they may have on the process and outcomes of mediation (Reid, 2017:1423).

If, as the previous section concludes, mediators can have a variety of roles based on different forms of leverage and the set of ‘tools’ available to them, this suggests the selection of mediator should be more deliberate and intentional than it is often found to be (Wehr & Lederach, 1996:71). Mediators should be chosen based on their skills and social positioning, which will affect the stage at which their intervention would be most successful. Nation-states, or at least representatives of nation-states, often take the position of mediator in international crises (Rupesinghe, 1996:154; Bercovitch & Gartner, 2006:337). These situations provide interesting cases for analysis regarding bias and neutrality, as nation-states usually only involve themselves as mediators when they have an economic or political reason, or simply to extend their own influence (Fisher, 2011:161; Kressel, 2006:735). Besides their potentially unhelpful motives, this kind of intervention often results in diplomats being given mediatory roles based on their acceptability to the parties rather than on their expertise as mediators, ultimately threatening the overall success of the process.

Apart from states themselves, the other most important governmental organisation in the practice of mediation is the UN. The organisation has a wealth of resources at its disposal that other mediators do not, for example an international forum, skilled personnel, and the ability to mobilise international consensus (Bercovitch & Gartner, 2006:336). The UN could in fact be regarded as the most important actor in mediation worldwide, as its legitimacy and resources give it a special position and much bargaining power (Ramsbotham *et al*, 2016:217). However, as it is intended to be the most independent international actor, the UN is unlikely to intervene

in low-level disputes where it is considered too much of an outsider (Bercovitch & Gartner, 2006:336).

While mediation efforts at the nation-state level are the best documented, more and more intermediary efforts are taking place at the mid- and grass-roots levels of conflicted societies. These efforts are conducted by mid-level officials, NGO personnel and military officers on peacekeeping missions. These actors all use their organisational capacity to encourage disputants to cooperate (Fisher, 2011:161). Furthermore, there is a trend in current NGO interventions towards replacing outside interveners with a process of training local people in the skills of intervention combined with indigenous traditions of conflict resolution (Ramsbotham *et al*, 2016:215). This is supported by Rupesinghe (1996) whose analysis of conflict resolution in Sri Lanka provides support for capacity-building within the affected community so as to ensure sustained resolution efforts rooted in local traditions.

Non-governmental and civil society actors have a particularly important role to play in providing society-to-society contacts. Ramsbotham *et al* (2016:215) refer to the subsidiary mediation practices of these actors as ‘Track II’ mediation, ‘Track I’ being that which takes place at the elite level. They assert that Track I and II efforts are proven to be more successful when operating in conjunction with one another, and that Track II efforts may inspire more concerted peacemaking efforts in governing bodies as they show society is making cooperative efforts alongside elites. Through empirical and case-study research Gartner and Bercovitch (2006) find that mediated agreements are likely to be short-lived unless non-state actors have been involved in their formulation.

In a context where traditional forms of conflict management are evident, mid-level local authorities become important actors in Track II efforts. Wehr and Lederach’s (1996:58-59) mediator model of the ‘Insider-Partial’ can again be an important role to consider as these authorities have specific knowledge of the traditions governing their communities and also wield credibility leverage due to their position in society. Becorpi (2018:110) discusses the example of Sierra Leone where community chiefs are ‘custodians of land and tradition’ and can prove effective actors in local dispute resolution. However, while traditional leaders have important roles to play in their communities, in nations such as Sierra Leone which are rife with patronage networks that leave governance structures vulnerable to misuse, the accountability, reliability and responsiveness of these leaders may be subject to question.

2.2.5 *Major Threats to Effective Mediation*

In identifying trends in mediation that could prove helpful in developing durable peace-making initiatives, it is also important to identify issues that have been found to impede such initiatives. There are a range of issues that could pose potential risks to the mediation project, of which Tillett and French (2010:142-143) identify several including power imbalance between disputants and the subsequent possibility of explicit or implicit coercion, lack of skills on the part of the mediator, latent trauma which may surface as disputants face one another, and conflict escalation outside the negotiation space placing pressure on both disputants and mediator to rush into an agreement. Kressel (2006:731) highlights other risks such as a shortage of resources to support the mediation, low commitment to the process, low motivation in reaching agreements or the problem of tackling matters of ‘principle’, all of which also pose threats to the effectiveness of mediation.

Looking at the mediator themselves, it is possible that their individual qualities and rank may have an impact on the potential effectiveness of the mediation (Touval & Zartman, 1985:15). Mediator intelligence, contextual knowledge, expertise, commitment and imagination are all qualities that could affect their performance in the process. The influence of rank relates back to the leverage debate as a highly ranking mediator may have the authority and (explicit or implicit) coercive power to pull parties out of a stalemate, however outcomes may not be equally satisfactory and may place pressure on weaker parties to concede prematurely (Touval & Zartman, 1985:15).

A factor that threatens the perceived effectiveness of mediation is a high level of conflict intensity. Kressel (2006:731) asserts that “in empirical studies of mediation, a high level of conflict is the most consistent factor associated with mediator difficulty in helping parties reach agreement.” He states that conflict intensity can be measured by the severity of prior conflict; disputants’ perceptions of one another as untrustworthy, unreasonable, angry, or impossible to communicate with; or the prevalence of strong ideological or cultural differences. As suggested by Gartner and Bercovitch’s (2006) ‘selection effects’ theory, mediation is expected to be chosen specifically in cases of protracted intensive conflict, therefore the threat of high levels of conflict is important to consider.

Although a mediation project is generally only called upon if the conflicting parties agree to it, there must be an awareness of the possibility that their motives for agreeing are not always constructive. Parties may have certain “devious objectives” such as stalling for time,

legitimizing their own position or saving face in the eyes of the public (Fisher, 2011: 162). Perhaps as a result of the reality of these devious objectives, parties may also not fully commit to the process if they do not have faith that the opposite side will abide by their part in the agreement (Ramsbotham *et al*, 2016:204). It is possible that intermediary actions may not have any influence on conflict resolution at all, as parties may decide on a compromise between themselves before finding a convenient third party “to act as a go-between and legitimiser of their activities” (Mitchell, 1981:281).

There are therefore many potential threats to the effectiveness of mediation. However, the point must be made here that as one reads different authors’ contributions to this discussion, an important trend becomes apparent. It is clear that many of these threats assume the aim of a mediation project to be achieving an agreement or settlement. This is a trend evident in the other elements of mediation conceptualisation discussed above but becomes even more apparent when the discussion turns to the effectiveness of mediation, as will be further explored below.

2.2.6 Difficulties in Measuring Mediation Success

Perhaps as a result of the difficulty in discerning when a conflict has truly been ‘resolved’, the mediation literature evidences a difficulty in measuring mediation ‘success’. As stated by Wallensteen and Svensson (2014:315), “the overall body of literature that now exists on international mediation provides credible evidence of its effectiveness, although the particular conditions under which mediation is effective are still debated.” In other words, scholars are willing to discern a mediation project as ‘successful’ without having a sound framework for the conditions that determine its success. Ramsbotham *et al* (2016:218) provide three reasons for this difficulty in measuring mediation success, these being: the complexity of conflicts that mediation often addresses, the multiplicity of mediation attempts and their differing approaches, and the confidentiality generally attached to mediation procedures (particularly as a result of these taking place at the elite level).

In order to simplify the measurement of mediation success, and in line with the wider assumption of mediation goals, scholars often look to the outcomes of the project in the form of settlements or cease-fires (Bercovitch & Houston, 1996:14). In a study measuring and comparing the mediation success of individuals, states, and regional/international organisations, Bercovitch and Gartner (2006) determine success by whether the mediation project ended in partial settlement, full settlement, ceasefire or outright failure. Similarly

Touval and Zartman (1985:14) state their preferred definition of mediation success as “the conclusion of an agreement promising reduction of conflict.” These conceptualisations evidence the fact that mediation success is not often determined by the durability of the agreements or outcomes it produces, nor do they assess whether the project had any effect on the fundamental divisions that caused the conflict.

This focus on outcomes and agreements speaks to a wider assumption in mediation literature that the primary purpose of mediatory action is to facilitate negotiation towards an interest-based settlement in times of crisis. This is evident in many definitions of mediation, including that of Moore (1986:14) mentioned at the outset of this chapter, in which some variation of a ‘mutually acceptable settlement/resolution’ is positioned as the primary goal (Tillett & French, 2010:105; Fisher, 2011:159; Kressel, 2006:726; Mason & Quinn, 2006:16). This thus situates the mechanism as a means of conflict settlement, rather than resolving the issue at its root cause. While this positioning will be discussed extensively below, it is worthwhile taking note of here, as it has a clear impact on conceptualisations of mediation success.

2.3 Questioning the Durability of Mediated Peace

Considering the above discussion of threats to effective mediation and the common way in which mediation success is measured, it becomes clear that explanations for each will depend on whether mediation is aimed purely at concluding immediate conflict, or alternatively at the resolution of all underlying causal issues. The tendency in mediation literature generally seems to be the former, with a pervasive assumption that a signed settlement or agreement is the ultimate goal of a mediation project. However as has been mentioned, rarely do analyses recognise the problem of the durability of mediated peace.

Theoretically, as the mediation process is cooperative, contrasted with the win/lose orientation of other dispute mechanisms such as legal courts, it should provide better outcomes more suited to the disputing parties’ needs and wants. Furthermore, the intensive participation of disputants in the creation of their solution, as opposed to imposing a solution upon them, should lead to a kind of psychological commitment to agreements and their subsequent endurance (Kressel, 2006:727). However, in reality this is not always the case, and mediated settlements are often short-lived.

When compared to military victories, negotiated settlements are more likely to break down as they preserve a condition of dual sovereignty in the leadership of the nation. Military victory, such as the Allied victory over Germany in World War II, ends this condition by demobilising

the forces of the defeated side, thus making it difficult for that party to mobilise the resources needed to resume war (Mason & Quinn, 2006:21). Mediated settlements however include power-sharing components and leave both sides of the conflict with the available resources to renege on a ceasefire should they deem it in their best interest. The failure of the demobilisation project included in the Rwandan Arusha Accords of 1993 are one such case (Willard, 2014). This example proves particularly important to this study as the resultant tensions between the Rwandan government and the Rwandan Patriotic Front are said to have been a key catalyst of the genocide in 1994 (Willard, 2014).

One reason for the frequently short-lived nature of mediated settlements is the pervasive threat of time pressure in mediation projects. This pressure comes in different forms such as the threat of waning resources, imminent increase in violence or imposed deadlines by funding actors. While project timelines may help prevent a deadlock, they can also have a negative impact on the durability of agreements as the mediation process is rushed and agreements are made for the sake of reaching a deadline, and not necessarily because the substantive issues have been resolved. A study carried out by Pinfari (2011) concluded that while time pressure can in certain circumstances be associated with the culmination of broad agreements, only when time pressure is low or completely absent are agreements durable. The study further showed that time pressure has particularly negative consequences for the durability of agreements if the issues at hand are highly complex.

Gartner and Bercovitch (2006) discuss a dichotomy in mediation efforts that influence the durability of settlements. They define two theories for mediation outcome based on what they call 'selection effects' and 'process effects'. According to the theory of 'selection effects', mediation is often called upon in cases of intractable conflict, where the underlying cause of the conflict relationship is unlikely to be altered (e.g. ethnic or religious conflict). Thus, settlements are likely to be short-lived. On the other hand, 'process effects' suggest that the process of mediation should be able to identify both the internal and external causes of the conflict, thereby constructing more durable agreements that address these underlying causes (Gartner & Bercovitch, 2006:821-822). Gartner and Bercovitch create a framework capturing these opposing forces, arguing that the durability of the settlement depends on the interplay of these forces in each particular conflict. If the conflict includes intractable disputes, the selection effects are most likely to have the biggest impact. However if the mediation is focused on process and not outcomes, the 'process effects' may be able to contribute to the durability of settlements.

Beardsley (2008) claims that the long-term ineffectiveness of mediation is a result of something even more fundamental than Gartner and Bercovitch's 'selection effects'. He defines this fundamental issue as 'time inconsistency problems': as time goes on mediators lose influence due to their temporary position in the peace process, and actors' bargaining positions change thus their relationship with the mediator and with the opposing party will shift. While mediators struggle to curb these problems by promptly coming to an agreement, they may in fact be exacerbated by the promotion of settlements that are not self-enforcing (Beardsley, 2008:723). Analysis of all international crises from 1918 to 2001 confirmed that intermediaries often create artificial incentives that force agreement and create immediate stability but are not viable in the absence of constant third-party influence (Beardsley, 2008:724).

What is important to note here, as stated by Diehl (1987:47), is that 'peace' is not simply the negative of 'war', but requires efforts extending beyond the conclusion of armed aggression. Thus, if mediation is confined to the negotiating table in times of immediate conflict, it is unlikely to have a long-term effect on the broader peacekeeping process (Diehl, 1987:47). Particularly in societies with protracted conflict, responses such as traditional international mediation that are restricted to high-level negotiations will be unlikely to transform the conflict at its underlying causes and thus be unlikely to bring about long-term resolution (Rupesinghe, 1996:165). The above discussion illustrates this issue with mediated peace agreements, and the limits to long-term mediation effectiveness when the process is aimed solely at tangible outcomes in the form of signed settlements and agreements.

2.4 Short-Term Agreement or Long-Lasting Peace?

Having highlighted the tendency of traditional mediation literature towards conceptualising the mechanism as an outcomes-focused means for achieving conflict settlement, it is prevalent now to situate this conceptualisation within the broader field of conflict resolution. In doing so, inherent assumptions about the nature of conflict and the peacemaking potential of mediation may be illustrated and challenged, leading to a distinction between mediation as a tool for conflict management, and as a tool for conflict transformation. This distinction is intended to frame an advocacy of the potential of mediation in creating durable peace given its reconceptualization within the field of conflict transformation.

2.4.1 A Shift in Theory – Management to Transformation

It can be said that the field of conflict resolution as a whole has been generally preoccupied with the study of war, and it is perhaps for this reason that tools for resolution such as mediation

have been focused on the culmination of active combat. There is however an important distinction to be made between ‘conflict’ and ‘violence’. Active aggression is a manifestation of conflict, but does not equate to conflict and thus cannot be the singular focus of efforts at its resolution (Tillett & French, 2010:2). To analyse a conflict given this distinction would require distinguishing between its symptoms, signalling the conflict exists, and its causes, the factors which when addressed correctly could resolve the conflict (Tillett & French, 2010:6).

Throughout the mediation literature, particularly before the early 1990s, the discussion appears to parallel this preoccupation of conflict resolution theory and situates mediation as a tool for crisis intervention. In this context, mediation is aimed at terminating the immediate crisis so as to avoid further escalation or the spread of violence (Wilkenfeld *et al*, 2003:282). Thus the focus is placed on conflict symptoms, i.e. violence and war, limiting its potential to treating these symptoms as opposed to addressing the root causes of the conflict. When limited in this way it could be said that many authors see mediation as a tool for conflict management or ‘settlement’ (Mitchell, 1981:275; Burton, 1988:2; Ramsbotham *et al*, 2016:24).

Conflict management approaches on the whole are focused on mitigating or controlling the destructive consequences emanating from conflict (Assefa, 2015:238) and thus this form of mediation situates the mechanism within this discipline. Mediation viewed as a tool for conflict management is seen to be “task-oriented” (Fisher, 2011:159) and “interest-based” (Furlong, 2005:110). The primary goal in this approach is a reconciling of disputing parties’ interests into some form of the often-mentioned *mutually acceptable settlement* and is relatively unconcerned with the nature of their relationship. It is thought that interest-based approaches tend to be more consensual as parties feel their interests have been heard and integrated into a win/win outcome (Furlong, 2005:110).

Approaches aimed at conflict management or settlement can be defined as ‘problem-solving’, based on human-needs theory and the idea that basic needs connect all parties to a conflict. Thus the response should facilitate the movement of these parties towards their ‘common ground’ of human needs (Rupesinghe, 1996:154). In the problem-solving approach it is accepted that disputants act as individuals, concerned mostly with their own interests. The focus is placed on the outcome as disputants are seen to accept mediation on the basis of the expectation that mediation will be the most effective way of achieving a favourable outcome (Touval & Zartman, 1985:10; Princen, 1992:61). The settlement agenda does not try to modify the separate goals of the parties, but instead aims to identify these goals and lead parties to

making ‘fair’ sacrifices to reach a compromise (Mitchell, 1981:276). The problem with this approach is that while negotiation over an agreement should theoretically open the political space for fair democratic contestation, the frequent use of mediation as a tool to end violence results in rushed consensus-based compromises that in fact shut down this political space (Maddison, 2017:159).

Since the end of the Cold War, most armed conflicts throughout the world have become intra-state. The use of mediation as a conflict response followed this trend, as from the 1980s the frequency of civil war mediation exceeded interstate mediation and from the 1990s negotiated settlements became equally or even more common than military victories (Wallenstein & Svensson, 2014:317-318). As conflict became less of a zero-sum game and its culmination no longer relied on one side defeating the other, “the relationship between the contending sides must, to a much greater extent, be defined by accommodation and dialogue, rather than by the imposition of victor’s justice” (Daly & Sarkin, 2007:9). In other words, in societies transitioning from war to peace, there were no longer ‘winners’ to set the agenda and thus negotiation became a necessary component in transitional politics.

Furthermore, as a result of the intra-state nature of conflict, disputants are no longer able to isolate themselves from one another once the conflict is ‘resolved’, as nation-states are able to do. Military strategy has also changed, with armed combat no longer being fought in open fields but moving into urban centres. Civilians become both victims and perpetrators, drawn into the conflict by its close proximity (Daly & Sarkin, 2007:9). Relationships between protagonists are far more intimate and complex, as they share geographic regions, are economically interdependent and may be connected through social ties such as intermarriage. Therefore, simplistic conflict management strategies are no longer adequate in resolving the deep fractures existent in deeply divided societies that must continue to live alongside one another once the fighting has ended (Assefa, 2015:239).

This change in the nature of conflicts necessitates a movement towards conflict resolution processes that recognise the importance of reconciliation and resolution processes in which the underlying causes of conflict as well as the antagonistic relationships between adversaries are transformed (Assefa, 2015:239). Particularly in contexts where violent internal conflicts have taken place, the division between opposing parties is characterised by a high level of polarisation and demonization. Therefore, in order for a mediation project to address these fundamental aversive relationships, it cannot simply be focused on reaching an agreement

based on the compromise of party interests. An effective conflict response would have to analyse the historical background of the conflict in order to fully appreciate the polarised relationships between disputing parties and find ways of transforming them (Rupesinghe, 1996:156; Miall, 2004:75).

The two cases to be analysed in this study demonstrate quite succinctly this contemporary nature of conflicts, and the resultant need for a relationship-focused conflict response. In an opinion piece for the *New York Times*, former South African president Thabo Mbeki and esteemed scholar Mahmood Mamdani (2014) argue plainly that:

“Central to the kind of justice dispensed at Nuremberg was the widely shared assumption that there would be no need for winners and losers (or perpetrators and victims) to live together in the aftermath of victory. But South Africa’s whites and blacks did have to live together in a single country — just as Hutus and Tutsis had to live together after Rwanda’s genocide.”

South Africa and Rwanda provide examples of contemporary societies in which punitive conflict responses such as those carried out in post-WWII Germany could not be considered. In both cases the armed conflict was intra-state and permeated the whole of society, with the lines between victim and perpetrator often being blurred. If culpability for the conflict must be placed on a large portion of society, and these victim-offenders must all live alongside one another once conflict has come to an end, there is a need for resolution responses that focus not on truth or punitive justice but on reconciliation.

This brings the discussion to a different approach to resolving conflict, that of conflict transformation. Despite debates over the conceptualisation of conflict transformation, one central tenet is that it extends the conflict response past immediate cessation of violence, the achievement of a compromise settlement, and the joint creation of an issue-based solution (Mitchell, 2002:3). A conflict transformation paradigm requires a broad approach in which “antagonists agree upon and create the political, economic and social structures that will engender positive peace with social justice over the longer term” (Fisher, 2011:158). Hoffman (1992:278) agrees that a transformative process is concerned with “broader social structures, change and moving toward a social space open for co-operation, for more just relationships and for non-violent mechanisms for handling conflict.” Ramsbotham *et al* (2016:206-207) concur that transformation is required at a range of levels to resolve conflict causes, these levels being context, actor and issue transformation, personal and group transformation, and structural transformation.

In order to move from a settlement to a transformation approach, a conflict response must shift its aims and objectives parallel to the shift in theory. Thus, a mediation project aimed at transformation must refocus from the culmination of armed violence towards a more holistic approach, identifying the structural changes necessary to transform fundamentally divisive relationships between adversaries. Bush and Folger (1994:51) state, “Today, it seems that few think of the mediation movement as even relevant to the problems of disempowerment, division and alienation that lie at the heart of societal tragedies...” However, this is the point that this study aims to contest. While the effectiveness of mediation has been questioned as a result of the limited durability of mediated settlements, this does not necessarily speak to the potential of mediation when conceptualised as a tool for conflict transformation, and refocused on changing the nature of conflict relationships at their core.

When seen as a tool for conflict transformation, the *process* of mediation becomes the focus. It is recognised that even if parties fail to come to some kind of agreement, through the process of interaction that takes place during a mediation, issues can be clarified, opponents can be humanised, and partial agreements may be reached (Kressel, 2006:732; Ramsbotham *et al*, 2016:219). It is interesting to note that even an author such as Mitchell (1981:313) who fits in to the more ‘traditional’ problem-solving approach, also recognises the potential of mediation to have process-based effects such as providing new perspectives and redefining the nature of the problem among the parties themselves. This suggests that those who in the past assumed the problem-solving nature of the mechanism may in fact have recognised its extended potential to advance conflict transformation, but have been limited by the scope of mediation literature being produced at the time.

2.4.2 *Resolution vs. Transformation*

The question may be asked whether it is necessary to introduce another concept so similar in nature to that of ‘conflict resolution’. Akin to transformation, resolution as opposed to mere management or ‘settlement’ is intended to provide a more permanent solution to the problem causing conflict (Burton, 1988:2). Tillett and French (2010:2) define conflict resolution as “a multidisciplinary, analytical, problem-solving approach to conflict that seeks to enable the participants to work collaboratively towards its resolution.” In this sense, although the concept of resolution does imply more of a collaborative approach, directed at longer-term multidimensional conflict responses, it could be argued that the term provides somewhat of a

catch-all phrase, including every possible response to conflict regardless of specific aim and objective.

The most important distinction between resolution and transformation in the context of this study however is its continued focus on outcomes of conflict responses. Conflict resolution approaches argue that conflicts based on fundamental human needs cannot be compromised but that it is possible to transcend conflicts if parties are able to “explore, analyse, question and reframe their positions and interests” (Miall, 2004:70). Resolution in its commonly accepted sense does not extend as far into recognition of relational aspects of conflict as does transformation. Conflict transformation turns away from a focus on outcomes completely, instead aiming to engage with and transform the patterns of conflictual relationships that extend beyond the particular site of the conflict. This paradigm extends to the very foundations of conflict, recognising the possible need to transform the very constitution of society and the power dynamics upon which it is built (Miall, 2004:70).

The shift towards a transformation paradigm comes as a result of the changed nature of contemporary conflicts as discussed above. Contemporary violent conflicts are asymmetric, in other words they are often marked by inequalities of power and status between disputants. They are often protracted, and do not follow the cyclical or bell-shaped models of conflict phasing. Finally, because they are protracted, contemporary conflicts severely warp the societies, economies and regions in which they are situated (Miall, 2004:69). Therefore while conflict resolution could encompass any project aimed at resolving any aspect or manifestation of conflict, transformation is specifically conceptualised in response to the contemporary nature of conflicts in deeply divided societies.

2.4.3 Concepts of Transformation and Transitional Societies

In moving towards a transformation paradigm, as has already been alluded to, the priorities of a resolution mechanism shift. Transformation initiatives are more likely to be located in the post-war phase, when societies are transitioning from civil war or authoritarian rule and are involved in the process of societal reconstruction. A new set of literature includes new concepts that are worthwhile mentioning, particularly in the field of conflict transformation. These concepts include reconciliation, justice, truth, and peace, the definitions of which are all highly contested. Although there is not sufficient space in this study to address each of these concepts in their entirety, some important points may be raised in their relation to the overall project of transforming a conflict.

2.4.3.1 Reconciliation

In most sources concerning conflict transformation, there will inevitably be some mention of the term ‘reconciliation’ and its importance in a process of societal transition. Assefa (2015:237) describes reconciliation as an approach that “tries to find solutions to the issues underlying the conflict but also works to alter the adversaries’ relationships from that of resentment and hostility to friendship and harmony.” He goes on to state that the main difference between reconciliation and other forms of conflict management and resolution is the voluntary admission of responsibility and guilt. In this way interactions between parties are not intended to be adversarial, communicating one’s own grievances against the actions of the other, but are also an act of self-reflection recognising one’s own role in the dynamic of the conflict (Assefa, 2015:240).

In line with the previously mentioned issue of coercive mediation resulting in the break-down of agreements, Assefa (2015:241) states that admission of guilt or acceptance of responsibility based on coercion is unlikely to sustain enduring conflict transformation. Endurance of the changed relationship relies on self-reflection and self-criticism, thus recognising and redefining one’s own role in the conflict. This point will become important in a conceptualisation of ‘transformative mediation’ discussed in the next section of this chapter.

The conceptualisation of reconciliation provided by Assefa reflects a common theory of reconciliation as a somewhat idealistic goal of harmony and friendship. Particularly in societies that have experienced extreme violent conflict, this kind of reconciliation may be an impractical expectation. Both Little (2017) and Maddison (2017) support what they deem to be a more realistic conceptualisation of reconciliation that recognises its inevitable failure. These authors both accept conflict as ever-present and claim that it is important to recognise this fact when opening up space for conflictual engagement.

As stated by Maddison (2017:156), reconciliation politics, much like mediation projects, are often approached with “simplicity and impatience”, aiming for efficiency as opposed to effectiveness. While this is not only an unrealistic approach to the resolution of deep-seated divisions, it also threatens to drive these conflicts underground from whence they are bound to resurface even more fierce than before.

In a discussion quite relevant to the reality of deeply divided societies, Little (2017:201) argues that “instead of construing reconciliation as a harmonious and/or consensual accommodation of conflictual difference, it should be understood as part of a *process of transformation whereby*

social relations change over time in negative as well as positive ways” (original emphasis). As opposed to the individualistic concentration of many resolution initiatives, this argument suggests that reconciliatory efforts should rather focus on the social and structural effects that might be possible in a reconciliatory project.

Particularly in the case of intrastate conflict, reconciliation in this way could be understood as coexistence, accommodation or toleration, but does not require a forced model of assimilation, integration, absorption or unification (Daly & Sarkin, 2007:205). Reconciliation understood in this way fits directly into the transformation paradigm in which “the capacity to live with apparent contradictions and paradoxes lies at the heart” (Lederach, 2003:52). Projects need not set arguably unrealistic goals of a harmonious ideal¹³, but instead could aim for disputants’ recognition of one another as a ‘moral equal’, part of a shared community but still accepting difference (Maddison, 2017:161; Becorpi, 2018:107).

In this way, reconciliation practices could benefit from moving away from a Western ideal of individualism and towards the community identity evident in many African societies. The individual is defined through their community and thus “this network of mutuality makes reconciliation at the group level indispensable” (Daly & Sarkin, 2007:68). According to Zehr (2004:309) processes of conflict transformation should explicitly be based on a common set of underlying values – respect, humility, empowerment, and engagement. These are said to reflect a worldview based on interconnectedness. In this way the community identity such as evidenced in Africa should be emphasised as an asset in the project of peacebuilding.

Finally, Little (2017:208) states that reconciliation cannot be viewed with an all or nothing approach when evaluating its success or failure. Reconciliation efforts may ‘fail’ at both the individual and societal level, but in some way still have contributed to the process of reconciliation as a whole. In this way it is “learning from failure rather than success that is the key dynamic in the development of reconciliation policy” (Little, 2017:207). If mediation is to be construed as a tool for conflict transformation, it should be viewed in this same light, discarding the ‘all or nothing’ agenda of the traditional settlement-focused approach and instead looking to its potential in incremental transformation of conflict causes.

¹³ One could think here of the idealised South African ‘Rainbow Nation’ (Maddison, 2017:156).

2.4.3.2 *Justice*

A point of contention in projects aimed at reconciliation and conflict transformation is the pursuit of justice. Particularly in deeply divided societies in which violent conflict has taken place, there is a dire need for reconciliation in the national reconstruction project however terrible crimes will have been committed for which many will seek justice. Reconciliation and justice are often seen to have a dichotomous relationship, with the assumption that reconciliation cannot be achieved if justice is pursued, but that reconciliation without justice leads to impunity, encouraging similar behaviours in the future and belittling victims' suffering (Assefa, 2015:241).

However, this dichotomy is not necessarily insurmountable, and reconciliation may rely on the way justice is sought. For example, legal trials may be able to promote reconciliation if they are conducted in an unbiased manner, aimed at holding those responsible for human rights abuses accountable, and not simply as a tool to make scapegoats out of the losing side (Daly & Sarkin, 2007:15). However, in order to contribute to a broader transformation of conflict, justice must move past the pursuit of an admission of guilt and punishment according to the law, the kind of punitive justice pervasive in Western legal systems. As with problem-solving mediation, this approach does not take into account the disputants' feelings towards one another (Assefa, 2015:242). This brings the discussion to a distinction in the literature concerning transitional societies between retributive and restorative justice.

Restorative justice is said to have "direct parallels" in the movement for reconciliation through an inclusive, participatory system including victims, perpetrators and the wider community (Daly & Sarkin, 2007:14). Characteristics that the two are said to share are goals of healing the victim, education of society, and helping perpetrators reintegrate; being a forward-looking mechanism for dealing with the past (constructive/transformational not punitive/retributive); and avoiding the stigmatisation and alienation that characterise penal justice (Daly & Sarkin, 2007:15). Restorative justice as a conceptual framework is able to shift the focus from wrongdoing and justice to harms, needs and obligations, especially emphasizing engagement and empowerment (Zehr, 2004:306).

Considering the changed nature of conflict and its involvement of civilians, not only is it difficult to determine who exactly were victims and perpetrators, but also how to deal with the 'grey zone' of members of the public who may not have participated directly but benefitted from or supported the oppressive system (Daly & Sarkin, 2007:13). By using an inclusive,

collaborative process focused on recognition of harms and obligations, the project of seeking justice is less of a dichotomy with reconciliation as there is a mutual recognition of past wrong on all sides, and a forward-looking approach including the peacebuilding responsibilities of all involved (Zehr, 2004:307).

This is generally the aim of Truth Commissions, to pursue the ‘truth’ and through this process seek a form of restorative justice. The mission for the South African TRC was in fact based on a conceptual framework of restorative justice (Zehr, 2004:307). In many cases truth commissions are able to obtain voluntary acknowledgement of guilt by offenders, part of the process of self-reflection said to be necessary in a process of reconciliation. However, the problem with these commissions is often a lack of sincere remorse, along with a lack of deliberate attempts to repair the relationship between offenders and victims (Assefa, 2015:242).

2.4.3.3 Truth

With regards to the concepts of ‘truth’ and ‘justice’, Little (2017:206) states that processes aimed at achieving these ends are “little more than fact-finding exercises”, to be carried out by policing and courts of law. The contribution of these processes towards the transformation of societal conflict can be debated especially considering the fact that a universal ‘truth’ is unlikely to ever be found. Inevitably different worldviews and experiences mean that the ‘truth’ of the past will look different to every individual that lived through it (Maddison, 2017:163). Each individual’s ‘truth’ is their own personal narrative which plays an important role in conflict transformation, trauma recovery and restorative justice. ‘Truth-telling’ processes may then be better conceptualised as ‘storytelling’, opportunities for which should be incorporated into peacebuilding processes (Zehr, 2004:308).

This difference in ‘truth’ can prove problematic in transformative approaches as opposing sides simply have different views on where the divisive relationship stems from. In the case of victim-perpetrator conflict, perpetrators may be unable to admit guilt in the way victims would like as they genuinely do not accept their actions as wrong in the same way that victims view them (Daly & Sarkin, 2007:72). Conflict is not purely based on reality and facts, but also on perceptions and feelings (Tillett & French, 2010:2). Therefore, a conflict response assuming to be able to find the ‘truth’ of the situation fails to acknowledge that often the factual ‘truth’ matters less than the parties’ perceptions thereof.

What mediation and the presence of a third-party could offer in approaching this difficulty is giving disputants a framework as to what questions they should be asking one another and what

expectations they should or should not have of the process (Daly & Sarkin, 2007:76). In this way the mediation project could provide the space for constructive engagement and small, incremental transformations in disputants' definitions of self and other.

The model of Narrative Mediation is one in which the space for storytelling and the creation of a communal 'truth' could be achieved through a mediation process. This kind of mediation developed in the mid-1980s out of an interest in post-modernism and social constructivism, in other words looking at how meaning can be created through language and subjective interpretation of 'facts' (Hansen, 2004:297). The approach rejects the tendency of problem-solving approaches to separate content and process, and instead recognises both as part of the meaning-making system (Hansen, 2004:300).

Narrative Mediation consists of three phases: engagement, deconstruction of the conflict-saturated story, and construction of an alternative story (Hansen, 2004:302). In this way the process pulls apart old ways of thinking, challenging each sides' deepest assumptions about the conflict and about themselves, and deconstructing even the underlying power dynamics inherent in the conflict relationship. Then a collaborative process is undergone to construct a new narrative of the conflict based on the integrated perspectives of the adversaries. The unique outcomes of this approach are said to be the potential to evoke acknowledgement of and empathy for the situation and problems of the opposing side (Hansen, 2004:304).

2.4.3.4 Peace

The elusive concept of 'peace' can also be raised here as mediation through a conflict transformation lens could be argued to bring about a more constructive 'peace' than the ceasefires and settlements of traditional mediation. Curle (2015:219) distinguishes between 'negative' and 'positive' peace, the former being the absence of overt conflict and the latter being a more constructive conceptualisation including "active association, planned cooperation and intelligent efforts to forestall or resolve potential conflicts." When understood as a concept for the transformation of conflict relationships, mediation has the potential to bring about positive peace as the conflict at its core is no longer evident in the same way as it was before the project was undertaken.

The post-Cold War context again becomes important here, as it was the movement towards a liberal peacebuilding project that allowed for the rethinking of conflict resolution mechanisms as broad-based transformation projects. The failures of the Cold War era had proven that simple aid in the form of grants and occasional visits from humanitarian organisations could not

interrupt the cycle of conflict and bring about positive peace (Helman & Ratner, 1993:7). The international community recognised the need for a more systematic approach, to be championed by the United Nations. In the early-to-mid-1990s following the fall of Communism, a liberal agenda including democratisation and more open economic policies had been presented as a kind of “magical formula” for positive peace (Paris, 2010:338). This assumption of peace following liberalisation was challenged by continued state failure in countries such as Cambodia and Angola despite attempts at liberal reform, and remains a debated issue (Paris, 2010:341). However, this context is important as it allowed for a rethinking of the conflict resolution process beyond the end of open combat.

In his ‘Agenda for Peace’ report, presented in June 1992, former UN Secretary-General Boutros Boutros-Ghali highlighted the need in a post-Cold War world for efforts of ‘preventive diplomacy’, ‘peacemaking’, and ‘peacekeeping’, but also added the concept of ‘post-conflict peace-building’. Following the newer international focus on issues of human security, Boutros-Ghali (1992:3) asserted that the threats to human life created by conflict could no longer be limited to consequences of military engagement. His introduction of the concept of post-conflict peacebuilding followed this assertion, as he argued durable peace requires the identification and support of structures that will strengthen and solidify peace in order to avoid conflict relapses (Boutros-Ghali, 1992:6). Conflict resolution thereby necessarily includes institutions that are dedicated to structural and systemic change in the affected nation.

Returning to the practice of mediation specifically, Boutros-Ghali (1992:11) did follow the trend of positioning mediation within the peacemaking paradigm, discussing the mechanism as a tool for reaching settlement. However, if a distinction is made between peacekeeping, peacemaking and peacebuilding, mediation within a paradigm of conflict transformation could be situated in the field of ‘peacebuilding’. Although discussions around these efforts do tend to include a more structural approach than mediation is intended to achieve, projects aimed at peacebuilding are “initiated to deal with the underlying problems or basic needs of the parties to the dispute, to foster conditions that enhance the likelihood that the dispute will not escalate or re-escalate to military hostilities, and to enhance the likelihood that the dispute will be peacefully settled by the parties” (Mullenbach, 2006:56). Therefore if mediation is reconceptualised to focus on affecting the relational interaction between disputants, it may be able to address the underlying problems in the conflict and foster a ‘positive’ peace.

2.4.4 *Theories of Transformative Mediation*

As illustrated by the discussion of conflict transformation and its differing aims to practices of resolution and management above, “transformative” theorists regard conflict as a social phenomenon, not only concerned with rights, interests or power but rather with peoples’ interactions as human beings (Bush & Pope, 2002:72-73). This requires a re-evaluation of the mediation mechanism, as different foci will require a different approach in how a mediation project is conducted. This section addresses two theories for this refocused form of mediation, both of which provide vital insights into the make-up of a transformative approach to mediation projects.

2.4.4.1 *Bush and Folger’s Transformative Mediation*

Two authors who are regarded as the pioneers in the conceptualisation of transformative mediation are Bush and Folger in their book titled *The Promise of Mediation: The Transformative Approach to Conflict*, first published in 1994 with a second edition published in 2005. In this book the authors discuss four ‘stories’ of mediation, the satisfaction story, the social justice story, the oppression story and the transformation story. The last, and most emphasized story is that of transformation, in which the focus is on empowering the individual and inspiring in them recognition and empathy. What follows is a discussion of the reasoning behind this new approach and a description of these main transformative processes.

As initially discussed, it is believed that parties use mediators for reasons such as saving money, avoiding formal legal systems, hoping to achieve a fair resolution and restoring a working relationship for the future. However, it could be argued that these motivations reflect a deeper reasoning for parties to turn to a mediator, that of wanting to find a new mode of dealing with their conflict in which they feel more involved in and in control of the process (Bush & Pope, 2002:68).

Bush and Pope (2002:71-72) discuss an interesting observation they have made from their careers as mediators in varied settings. They state that in most cases they have found that the part disputants find most difficult about conflict is not their frustration in achieving satisfaction of a right or interest, but is the way the conflict makes them behave towards themselves and others. Disputants illustrate feelings of alienation from their own sense of self and from their connection to others.

Transformative mediation aims to address the ‘interactional crisis’ that is said to be ignored by problem-solving approaches. This crisis is a result of a cycle of two feelings in the disputants brought about by conflict, the feelings of weakness and self-absorption. First, conflict brings a feeling of weakness, or losing control over both the situation and oneself, resulting in confusion, doubt, uncertainty and indecisiveness (Bush & Pope, 2002:73). Then, as each party feels weakened they become more focused on themselves, with an instinct towards self-defence, suspicion, hostility and closing themselves off to the perspective of the other. These two feelings are said to then reinforce one another in a cycle of disempowerment and demonization that scholars refer to as ‘conflict escalation’ (Bush & Pope, 2002:74).

When parties approach a mediator at the point of a ‘mutually-hurting stalemate’, this could also be understood then as the point at which this downward spiral of mutual alienation and destruction has degenerated to such an extent that parties recognise they need help in order to reverse the cycle (Bush & Pope, 2002:75). This is where the mediator steps in with a process of ‘transformative mediation’.

What is required in order to reverse this cycle is a movement from weakness to strength, and self-absorption to responsiveness (Bush & Pope, 2002:80). This movement is said to be achieved through Bush and Folger’s (1994, 2005) processes of ‘empowerment’ and ‘recognition’. In the literature concerning non-traditional forms of mediation, Bush and Folger’s work is considered a seminal text, with these two processes defining a mediation approach that achieves the full ‘promise’ of mediation in transforming the “quality of conflict interaction itself, so that conflicts can actually strengthen both the parties themselves and the society they are part of” (Bush & Folger, 2005:13).

Through empowerment the individual is able to restore their sense of value and capacity, encouraging feelings of strength where there were feelings of weakness. Through recognition the individual is pulled out of their state of self-absorption and encouraged to see the conflict through the perspective of their adversary, recognising their differing perspectives and inspiring a kind of empathy and openness towards them (Bush & Folger, 2005:14-15). The idea of ‘recognition’ fits well with Maddison’s (2017:161) argument related above that reconciliation could amount to disputants’ recognition of one another as a ‘moral equal’. In this way mediation forms part of a process of transformation as the foundations upon which the conflict was built that form the ‘interactional crisis’ begin to transform and regenerate (Bush & Pope, 2002:82).

While it has been argued that mediation is not intended to be psychotherapy (Kressel, 2006:729), this does not necessarily limit the potential impact it can have on the individual. Ramsbotham *et al* (2016:208) make an interesting point that true resolution of conflict cannot rely on the ability of the mediator to appeal to actors' humanity, but requires a fundamental shift in parties' interests, goals and self-definitions. This points to the fact that this kind of mediation is not necessarily a naively optimistic, heart-warming project, and does not expect disputants to leave hand-in-hand but is a process of relational change that has the potential to change fundamental individual definitions of self and other. This links to Assefa's (2015:241) discussion of the place of self-reflection in processes of reconciliation.

As has been mentioned in terms of a transformation approach to resolving conflict, the goal in transformative mediation is incremental movement in the processes of empowerment and recognition, regardless of how small or insignificant the shifts may seem (Bush & Pope, 2002:82). In this way the mediator's role and the value they add to the process is in helping the parties "make positive interactional shifts ... by supporting the exercise of their capacities for strength and responsiveness through their deliberation, decision-making, communication, perspective-taking, and other party activities" (Bush & Pope, 2002:83-84).

2.4.4.2 Lederach's Mediative Capacity

Another author who has been integral to the development of the conflict transformation paradigm is John Paul Lederach. Two of his more well-known publications, *Preparing for Peace: Conflict Transformation Across Cultures* (1995) and *Building Peace: Sustainable Reconciliation in Divided Societies* (1997) are both widely cited in discussions of mediation and its reconciliatory potential. His 1997 volume is said to provide one of the most comprehensive statements of conflict transformation thinking for practitioners. Lederach advocates for the broad approach of a project in conflict transformation, addressing changes in personal, structural, relational and cultural aspects of conflict thereby transforming a war system into a peace system (Miall, 2004:73).

Lederach's (1997:25) description of reconciliation as a *place* is a point most relevant to this study. He describes reconciliation as a social space in which Truth, Mercy, Justice and Peace all meet together. In terms of conceptualising a mediation project that achieves conflict

transformation and addresses all the above-discussed concepts of importance in transitional societies, Lederach's reconciliatory 'space' provides a fantastic framework¹⁴.

However, besides these seminal works, in an article entitled *Building Mediative Capacity in Deep-Rooted Conflict* (2002), Lederach presents a theory of transformative mediation that could prove even more important to this study and provides the foundation off which the proposed model of mediation for conflict transformation will be based. Lederach (2002:91) argues that traditional ideas of mediator role and purpose are insufficient in contemporary conflicts, particularly in cases of protracted conflict. His solution is institutionalising what he calls 'social mediative capacity', an approach aimed at taking relationships defined by cycles of violence and turning them into new modalities of nonviolent interaction. This stands in direct opposition to the problem-solving approach but aligns with Bush and Folger's transformative approach by placing the focus of mediation on disputant relationships, which were considered entirely unimportant in the more traditional approaches.

In this approach to mediation, the expectations of a mediators' role are necessarily changed. In building a space with 'social mediative capacity' Lederach (2002:92) discerns that the responsibilities of the mediator can no longer be delineated into specific sets of action by a single person or institution, but constitute a 'constructive change process' with a focus on impacting the relational interaction between disputants rather than specificity of outcomes. Furthermore, in terms of the location of the mediation process, as protracted conflict permeates the whole of society, Lederach (2002:93) asserts that mediation efforts cannot be confined to direct dialogue between high-level political and military elites.

An example Lederach (1997) provides in one of his earlier works is worthwhile mentioning here as it is illustrative of the potential effectiveness of creating a so-called mediative 'space'. He discusses the example of an Israeli-PLO agreement made in 1993 involving mid-level officials who stayed together at a summer lodge during the negotiation process. These officials slept under the same roof, ate their meals together, and spent time interacting as individuals and not simply as political adversaries. This allowed the space for developing a true *recognition*¹⁵ and understanding of one another's perspectives, and created a tone of acceptance and cooperation, as opposed to one of competition (Lederach, 1997:25). Although these talks were still conducted by mid-level elites with the purpose of reaching an agreement, the success

¹⁴ For a brief comparison of the reconciliation approaches of South Africa and Rwanda based on Lederach's 4-part reconciliation theory see Wielenga (2011).

¹⁵ Note the relevance of the example to Bush and Folger's (1994, 2005) 'transformative mediation' as well.

of these talks in achieving a cooperative environment and constructive, forward-looking decisions made, highlights the importance of altering disputant relationships.

2.5 Mediation as a Context-Specific Process

A final important point to consider regarding the changed nature of mediation theory is the contemporary notion in general third-party literature that different conflicts at different points in time will require more than one unified method of intervention (Fisher, 2011:158). This is stressed by authors identifying conflict to be a dynamic process and thus the need for conflict responses to change shape parallel to these shifting dynamics (Ramsbotham *et al*, 2016:206; Bercovitch, 1996:4)

According to Bercovitch and Houston (1996:15), the success of the mediation is above all reliant on its ability to be “adaptive and responsive” to the wider conflict context. It must include all actors, issues and perspectives, adapting as and when these change over time. Kressel (2006:738) argues that differences among mediators are shaped by the social context within which they operate and the types of dispute they handle. He states that in this sense all mediation is in fact “local” because it is shaped by the context in which it is practiced. Thus the content of the negotiations, the mediator’s role and the strategies they employ should all reflect and be shaped by the conflict in which they operate.

When considering the context of the conflict, there must be a cognisance of the societal, regional as well as international levels that may influence a peacebuilding project. Furthermore, while being aware of the changing dynamics of the conflict at present, taking context into consideration also requires addressing the historical background, particularly in the case of protracted conflict where attitudes disputants may have towards one another are shaped by previous interaction (Miall, 2004:75-76).

Similarly, as discussed regarding the role of the mediator, Wehr and Lederach (1996:72) assert that mediators should be chosen based on the context of the conflict. Particularly with regards to traditional communities, their work in the Esquipulas case in Nicaragua suggested that choosing the mediator based on the values and norms of society can be an important ingredient for success.

2.5.1 Traditional African Conflict Resolution Mechanisms

An awareness of context is particularly important for this study and its focus on conflict transformation efforts on the African continent. Given the multitude of cultures, communities

and ethnic groups on the continent, one would be remiss in attempting to discern a ubiquitous form of African conflict resolution. However, despite differing approaches, there are similarities in the underlying values attached to many African dispute resolution mechanisms.

The most important characteristic of many African nations that forms the foundation of their responses to conflict is the overriding value placed on community. Given the tight-knit nature of African nations that lived communal lives with scarce resources, it is logical that conflict would arise and require a process aimed at restoring social harmony (Skelton, 2007:231). As the conflict affects the community as a whole, community ownership of the process is stressed and seen as a common duty. This communal responsibility becomes important in the case of individual crimes, as those closely associated with the perpetrator are seen as responsible for compensation, which is owed to all those associated with the victim of the crime (Skelton, 2007:237).

Particularly interesting for the purposes of this study is the fact that mediation, in various shapes and sizes, appears as a primary traditional dispute-settling tool (Olowu, 2018:12). Most traditional African societies are governed by some form of chieftaincy, with a group of elders forming a body of community authorities. These elders, whether they be lineage title holders, priests, traditional warrior chiefs or skilled personas, usually take on the role of mediators facilitating processes of deliberation, negotiation and reflection (Olowu, 2018:12; Bukari, 2013:89). As is suggested by the earlier discussions of the Insider-Partial mediator, these mediators hold credibility leverage by virtue of their position in society, which leads disputants to accept their direction more readily than if the mediators were outsiders.

Several examples of such traditional African conflict resolution mechanisms can be outlined. The Barolong people of the North-West province in South Africa are a nation committed to dialogue and healing frayed relationships through restoring dignity and respect for all individuals involved in a dispute (Olowu, 2018:13). Peace talks take the form of *kgotla* (communal meetings) in which negotiations lead to informal but concrete bargains, formulated with the holistic wellbeing of the community as the primary focal point.

Pastoralist societies in Kenya also present an example of negotiations led by elders in which a communal spirit is stressed. In cases of individual crimes, the entire kin group of the defector is held responsible for the crime, as the kin are expected to ensure their members abide by communal rules (Chopra, 2010:104). Payment is made to the aggrieved kin group, which serves

to define its boundaries and strengthen internal group relations, while re-establishing peace between the two groups (Chopra, 2010:104).

A further example of mediated negotiations can be found in the Southern Sahelian Belt of Sudan. These negotiations take the form of *goodiya* (also known as *judiya/judiyya*) in which an *ajawi* (a single mediator) or *ajaweed* (a group of mediators) lead reconciliation conferences (Bronkhorst, 2011:35). These conferences do not include the community participation of the above-mentioned examples, but include a variety of concerned parties, dignitaries and tribal leaders. These parties work together to provide solutions to the disputants and rarely reach official conflict resolution channels as community norms dictate outside intervention in local affairs to be shameful (Bronkhorst, 2011:35).

Another important part of many African conflict resolution mechanisms is the prevalence of symbolic rituals. An example of which can be found with the Kusasi people of the Bawku chieftaincy in Northern Uganda, who have a process of conflict resolution founded on their worship of the earth-god. The first stage of this process includes blood-collecting and cleansing, in which animals are sacrificed to pacify the land in which human lives were lost to the conflict. The sacrificed animal is often roasted and eaten by the conflicting parties to signify a common effort towards creating peace (Bukari, 2013:98). The second stage involves the burial of an okro stalk as an agreement between the disputing factions and the earth-god to cease bloodshed on the earth. Finally, a ceremony of merry making is conducted, during which the parties come together to celebrate and declare their support for peace in the area (Bukari, 2013:99). This example shows the deep connection of the community to their land, and also to one another, as each stage of the process requires an acknowledgement of the earth-god, and an act of coming together to commit to change.

The Acholi people of Northern Uganda present a further example of the importance of rituals through their dispute resolution mechanism of *Mato Oput*. This mechanism pre-dates the colonial period and is based upon the principle of consensus-building (Murithi, 2006). As the aim is communal consensus, the entire community is involved in the public assemblies known as *Kacoke Madit*. In a process similar to that of the *gacaca* case analysed in this study, these assemblies allowed for community members to voice their opinions, ask questions of the disputing parties, and make suggestions to the council of elders presiding over the process (Murithi, 2006). Once compensation is agreed upon, the ceremony of *Mato Oput* is performed in which the disputants drink a bitter herb from the Oput tree. This symbolises the commitment

to transcending the bitterness in their minds during the conflict, and thereby restoring harmony and trust (Murithi, 2006).

As these examples illustrate, despite the presence of many different cultures, there are certain fundamental values evident in African communities that result in similar traditional conflict resolution mechanisms across the continent. These mechanisms can for the most part be compared to modern restorative justice processes, in which the need for community reconciliation and restoration of social harmony takes precedence over individual punishment and assignment of guilt (Skelton, 2007:230; Olowu, 2018:14). This presents these traditional mechanisms as particularly relevant in discussions of conflict transformation, where adversarial relationship change is the focus, as opposed to the simple compromise of disputant interests. Given this context, Africa appears as a fertile testing-ground for mediation approaches aimed at conflict transformation, as this is already the tradition of many African nations. This gives pertinence to the cases selected for this study and validates the African continent as a prime region for such testing.

2.6 Analytical Framework: A ‘Process-Based’ Mediation Model

Having provided a broad conceptual and theoretical framework for the resolution approach that is mediation, it becomes clear that there are many points of contention when defining a mediation project. However, the focal point for this study, and the primary point of dispute it aims to contribute to, is the assumption of an outcomes-focus in the practice of mediation. By refocusing the intent of the mediation tool away from the signing of peace agreements and towards engendering deeper conflict transformation through the process of mediation, regardless of its outcomes, this study aims to contribute to a newer theory of mediation.

In order to provide reasoning for this newer theory, a model of this type of mediation must be delineated, to provide a basic analytical framework for the comparative case studies to be performed. Each characteristic in this model is chosen based on the surveyed literature and thus deemed important in a mediation project aimed at conflict transformation in deeply divided societies. These characteristics are focused on the *process* of the mediation, in particular the extent to which relational interaction at a community level is engaged with. In this way the study fits into a newer trend in comparative case study research, in which less time is spent on “correlating inputs and outcomes,... absent effects, non-instances, or control cases”, and more time is spent on understanding “how perceptions, processes, communications, and grievances operate in known instances of negotiation,” (Zartman, 2005:12).

This analytical framework will provide basic categories into which the qualitative data will be 'coded' and thereby cases may be constructed. 'Coding' the data in qualitative studies requires identifying themes or categories into which the data may be divided (Creswell, 2014:200). The basic framework of themes to be used in the 'coding' of this study consists of five characteristics. These characteristics form the 'process-based' mediation theory that will then be applied to the two cases.

The first of these characteristics (other than the basic requirement of a third-party mediator) is the involvement of the wider community in the mediation project. As conflict no longer equates to war across international borders but is found within nations and in urban centres involving civilians as both victims and perpetrators, disputants in deeply divided societies must continue to live alongside one another once the active conflict has ended (Assefa, 2015:239). Thus, in order to precipitate the kind of reconciliation needed to overcome the deep-rooted causes of conflict, national conflict resolution approaches can no longer be limited to elite-level discussion. By conducting an inclusive, community-based project, a shared space is created that reflects a tangible manifestation of the reconciliatory recognition of one another as 'moral equals' and part of a shared community (Maddison, 2017:161). Furthermore, this fits the project into the transformation paradigm by facilitating restorative justice, in which a participatory system includes victims, perpetrators and the wider community (Daly & Sarkin, 2007:14).

The second characteristic is the creation of a context-specific project. As conflict is a dynamic process and heavily influenced by both the past and present circumstances in which it exists, the conflict response must be adaptive and responsive to these realities (Bercovitch & Houston, 1996:15). Particularly as this study focuses on projects to be carried out in the context of the African continent, there are unique historical features in every nation that one would expect to have deeply influenced the conflicts that manifested, and thus would have to be heeded in the formulation of the conflict response.

The next characteristic included in this theory is the presence of an 'Insider-Partial' mediator (Wehr & Lederach, 1996:58-59). While the role, bias and partiality of the mediator are all heavily debated concepts in the mediation literature, this non-traditional approach to mediator positioning is said to be particularly suited to societies with community-based norms and values such as those exhibited in many African societies. This mediator is drawn from the conflicted community itself and thus has both a vested interest in the genuine transformation of conflict

and has extensive contextual knowledge to assist in achieving this goal. These traits provide the mediator with credibility leverage within the local community. Given the evidence found that 'biased' mediators are not necessarily detrimental to the success of a mediation project (Wehr & Lederach, 199:58-59; Touval & Zartman, 1985:8-9; Svensson, 2009), practitioners need not shy away from involving local actors as mediators. Especially considering the community-centric element to this approach, having the proceedings be conducted by a trusted individual with an embedded understanding of the deep divisions causing conflictual relationships could provide a more encouraging and constructive mediative space.

The fourth important characteristic is that of minimal resource pressure. Shortage of resources dedicated to mediation projects and the resultant limits on project duration places pressure on the process as a whole that threatens the potential for durable transformation of conflict (Pinfari, 2011; Beardsley, 2008). In allowing for a longer duration of projects with an agenda focused on extensive storytelling, disputants are afforded the time and space to present their own perspectives and engage in a process of recognition of the opposing side and their differing conflict narrative.

The fifth, final and most important characteristic of this kind of mediation project is that of a focus on disputant relationships. This focus is the element that most obviously situates the project within the field of conflict transformation, by extending the aims of the conflict response beyond settlement and the cessation of violence, towards creating a social space for incremental shifts in the quality of relational interaction between disputants (Lederach, 2002:92). It is under this characteristic that the themes of reconciliation, peace and restorative justice all become vital to the process of the mediation and the goals it sets out to achieve. The important elements to consider here are the mediator's approach at addressing the 'interactional crisis' between disputants through a process of empowerment and recognition (Bush & Folger, 1994) and thereby creating a social mediative space in which constructive change can take place (Lederach, 2002).

Once the cases have been described and deciphered according to this model of 'process-based' mediation, the discussion must turn to the extent to which the projects were 'successful' in transforming conflict. Measuring mediation success has been accepted by scholars in the field as a difficult endeavour (Ramsbotham *et al.*, 2016:218), and this is arguably the reason for the outcomes-based focus of many studies¹⁶ that this research aims to dispute. Thus, in turning

¹⁶ See Bercovitch & Gartner (2006), Bercovitch & Houston (1996:14), Touval & Zartman (1985:14).

away from the simple indicators of partial settlement, full settlement, ceasefire, or outright failure, this study will use the case design and comparative methodology to build a more complex picture of the projects' relative successes. As the research operates on the premise that conflict transformation as opposed to conflict settlement leads to more durable peacemaking through reconciliation of conflicted relationships, this picture of success will necessarily look at the state of both nations today and the extent to which it can be qualitatively affirmed that conflict has been transformed.

2.7 Conclusion

Considering the debates discussed in this chapter, it can be said that Moore's (1986:14) definition stated at the outset reflects a certain theoretical framework and ideological foundation, and thus may not be an all-inclusive definition. Considering the developments in mediation theory, Kressel (2006:726) does provide a rather encompassing definition, stating mediation to be "a process in which disputants attempt to resolve their differences with the assistance of an acceptable third party." This definition includes the major actors of a mediation process, disputants attempting to resolve their conflict and a third-party to assist them in doing so, however does not provide any insistence on the role of the mediator or an outcomes-based focus.

The most important aspect of this definition and the reason it will take the place of the definition of mediation in this study is its description of mediation as a *process*. When viewing mediation as a tool for conflict transformation, this is arguably the most important component of the mediation project. If the process of the mediation, in the sense of managing and facilitating disputants' relational interaction, could be the focus of mediation projects, its potential in transforming conflicts at their most fundamental level could be achieved.

Perhaps what is needed is not an unrealistic agenda aimed at realising the elusive ideals of perfect 'truth', 'justice' and 'peace', but creating a political space that facilitates ongoing conversations about these concepts. In this way the focus as discussed above shifts from seeking tangible resolutions in the form of signed agreements signifying a now harmonious society, but recognition of the importance of ongoing, incremental transformations of relational engagement (Maddison, 2017:163).

Furthermore, in light of the need to move away from the idea of mediation as an elite-level bargaining process and changing the mediator identity, it is possible to reconceptualise the mediation process as a grassroots, community-based collaboration. This approach allows for

multiple stakeholders with diverse perspectives to work together and can provide a framework for addressing conflict guided by the transformative ideological principles of social justice and social change (Kim, Jang & Kim, 2018:413).

Thus, a *process-based* mediation project can be conceptualised, prioritising incremental shifts in the quality of relational interaction between disputants, constructing a common narrative, inspiring processes of recognition and empowerment in the individual, while also encouraging a collaborative, community-based initiative in a reconciliatory space. Ultimately this kind of mediation is intended not simply to manage conflict symptoms through interest-based compromises but to transform conflict at its fundamental root causes. This is the form of mediation that will be advocated in this study, and that will shape the comparison of the cases to be analysed. Having delineated an analytical framework in the form of a process-based mediation model, the study may proceed to the construction of these cases, the first step of which will be to provide a historical contextualisation which follows next in Chapter Three.

CHAPTER THREE – HISTORICAL CONTEXTUALISATION OF RWANDA AND SOUTH AFRICA

3.1 Introduction

In order to build a complete picture of the conflict resolution projects to be analysed in this study, it is important to have an understanding of the history of the conflicts they were intended to combat. As discussed in Chapter One, the cases were chosen based on two focal criteria of the study's model for process-based mediation. Both are examples of conflict resolution mechanisms in transitional societies that first, included the presence of a third-party mediator or mediating body, and second, had aims based on reconciliation, restorative justice and the creation of durable peace. The cases thereby chosen are the South African TRC and the Rwandan *gacaca* courts.

Both South Africa and Rwanda experienced violent conflict based on racial or ethnic division. In both cases, as in most other African countries, this division was heavily influenced by colonial intervention. Each of the transitional projects was rooted in this historical context, with different approaches aimed at different process goals, however both with the overall aim of contributing to reconciliation within their respective citizenries. This chapter will provide an overview of these historical contexts, outlining how South Africa and Rwanda came to be deeply divided nations. This will then illustrate how their respective transitional projects were shaped by history and how they were intended to overcome these deeply rooted divisions.

3.2 *Gacaca* – Rebuilding after Genocide in Rwanda

3.2.1 *Hutu vs Tutsi - A Colonial Divide?*

Rwandan society has been plagued by a clear societal divide that long preceded the nation's civil war, the genocide and even colonial intervention. The deep division between the Hutus and Tutsis stands as the root cause of the genocide and much of the conflict experienced by Rwanda before this violent event. This ethnic divide was a pre-colonial social phenomenon based on divided economic activity, as historically the Tutsi were cattle-herders while the Hutu majority were peasants who cultivated the land (Prunier, 1995:5). Given the high value of cattle, the tension between the groups stemmed from control over this important resource by a small minority of Tutsi elite. By the beginning of the 19th century a socio-economic hierarchy had been established leaving all Hutu and a majority of Tutsi with lower status as clients in the *ubuhake* or cattle clientage system, and a small minority of Tutsi elite with most of the economic and political power (Melvin, 2010:939).

A further significant difference between the groups was physical, the Hutu being shorter and more thick-set, resembling neighbouring groups from Uganda and Tanganyika, while the Tutsi are generally thin and tall with angular facial features (Prunier, 1995:5). Besides being a clear visual differentiator between groups within the Rwandan population, this physical difference was imbued with ideas of superiority once colonial powers arrived in Africa.

There is a tendency, shared by the current Rwandan government, to place blame on the colonial administration for allegedly infusing the terms Hutu and Tutsi with inequity. However, it may be more accurate to say that the Europeans failed to discourage the pre-existing division (Melvin, 2010:939). At the Berlin Conference of 1885 Germany took possession of Rwanda and Burundi, however the colony was lost to Belgium in 1918 (Melvin, 2010:938). The Belgian regime in particular used the existing ethnic hierarchy to gain some local support for colonial rule by affording political control and financial opportunities to a small portion of Tutsi elite. As a result of their physical differences and the preoccupation with the pseudo-science of racial difference at the time, the colonialists were “quite smitten” with the Tutsi, who resembled the European build (Prunier, 1995:6).

The Tutsi soon became allies of the colonial settlers and came to be perceived by the Hutu as colonialists themselves (Drumbl, 2002:5). The constant European reinforcement of racial stereotypes during the period of colonial rule led to an inflation of Tutsi cultural ego on the one hand and the growth of “an aggressively resentful inferiority complex” among Hutu on the other (Prunier, 1995:9). This dynamic was upheld by colonial support of the Tutsis until the 1950s when the Belgian authorities switched allegiances to the Hutu majority and anti-Tutsi violence was sparked. The colonial change in allegiance culminated in the Social Revolution of 1959, the first systematic violence against the Tutsis that lasted until 1967 and resulted in 20 000 murders and the escape of 200 000 refugees (Melvin, 2010:939).

In the intervening decades of Hutu control between independence in 1962 and the beginning of the civil war in 1990, many Tutsis lived as refugees in neighbouring countries such as Uganda, the Democratic Republic of Congo and Burundi. Those who remained in-country faced constant persecution. This meant that when the Hutu government of Juvénal Habyarimana gained control of Rwanda in a bloodless coup on 5 July 1973, many were initially relieved. Under this new regime it seemed the Tutsi population would have some respite from ethnic oppression, as long as they remained outside of political life (Prunier, 1995:76). However, the underlying ideologies of racial difference were never addressed by the

Habyarimana government, so while they were no longer contributing to violent persecution of the Tutsis, they were still simmering under the surface of Rwandan society. By the end of the 1980s when the government's power came to be threatened, these deeply rooted divisions resurfaced with more deadly consequences than before (Prunier, 1995:84-85).

3.2.2 *The Spring of 1994*

The Rwandan genocide was the culmination of four years of insurgency, which began with the invasion of Rwanda in 1990 led by the Tutsi-controlled Rwandan Patriotic Army (RPA), the armed wing of the Rwandan Patriotic Front (RPF) and its leader, now President Paul Kagame (Buckley-Zistel, 2005:114; Melvin, 2010:933). Taking advantage of the insecurity of the Habyarimana regime during the period of 1988 to 1990, the RPA invasion was timed to help collapse the existing political structure (Prunier, 1995:90). On the 6th of April 1994, after four years of civil war, the spark that ignited the genocide was the assassination of President Habyarimana and Burundian President Ntaryamira when their aeroplane was shot down (Melvin, 2010:938). Despite a lack of evidence as to who was responsible for these deaths, Hutu extremists were quick to accuse the RPA of the assassinations and begin the massacre of the Tutsi population. Although the genocide was sparked by the President's assassination, plans had been in place to carry it out for months before (Drumbl, 2002:6).

The genocide would last for 100 terrifying days from April to June of 1994 (De Brouwer & Ruwebana, 2013:938). The killing was personal and did not stem from societal chaos, but from a shared Hutu belief that the world would be a better place if the Tutsis were exterminated. Population density coupled with prosperous agriculture had created a history of resource struggle. While the orders to kill came from political leaders, the reason so many ordinary citizens became involved was a belief that "there were too many people on too little land, and that with a reduction in their numbers, there would be more for the survivors" (Prunier, 1995:4). It was a physical, labour-intensive kind of violence and yet the number of deaths rose at nearly three times the rate of Jews during the Holocaust (Drumbl, 2002:8). The attacks were systematic and state-sanctioned, with the extremist Hutu government ordering neighbour to turn against neighbour, completely destroying the social fabric of Rwandan society, including the norms and values that underpin collective action and cooperation (Longman, 2009:305; Bowd, 2010:163).

Most estimates situate the number of Tutsi and moderate Hutu deaths between 800 000 and one million (Buckley-Zistel, 2005:114; Meyerstein, 2007:472). Furthermore between 250 000

and 500 000 (mostly Tutsi) girls and women, as well as boys and men were raped. Given that the population of Rwanda is estimated to have been around seven million in 1994 (De Brouwer & Ruwebana, 2013:938), the proportion of citizens killed and/or violently assaulted in the genocide is immense. It is relevant to note that this was not the first massacre of Tutsi citizens in Rwanda, with others having taken place such as the 10 000 Tutsis slaughtered between December 1963 and January 1964 (Prunier, 1995:56). The Tutsis had been in increasingly more danger from the 1950s when the Hutu population began to gain more favour with the colonial administration. The difference between these previous atrocities and the genocide of 1994 was that the culprit regime had always retained control of the country, thereby allowing offences to go unprosecuted and creating a culture of impunity (Buckley-Zistel, 2005:115).

Despite the extreme violence and extraordinary rate at which citizens were massacred, the only entity that fought to stop the genocide was the RPA. The RPA consisted primarily of Tutsis who had fled to Uganda in the previous bouts of violence. Given that the genocide regime was poorly trained and equipped and fuelled by an anti-Tutsi sentiment rather than organised efforts of civil war, the RPA was able to invade and oust the extremist regime within four months (Drumbl, 2002:6). Once they had overtaken the Hutu *génocidaires*, the RPF took control of the transitional Government of National Unity and would then go on to be elected in 2003 as the ruling political party, led by President Paul Kagame who has remained in power ever since (Melvin, 2010:932).

Once the RPF overcame the extremist Hutu regime and the four months of slaughter came to an end, the arguably more difficult task of rebuilding the nation began. Rwanda had been left decimated by the conflict, with the nation's infrastructure completely destroyed and the population left to inhabit the ruins. An outflux of two million refugees had escaped, 500 000 existing Tutsi refugees returned and over 500 000 people were internally displaced (Meyerstein, 2007:472). In addition to the administrative challenge of kickstarting a stagnated economy, one of the first major challenges the new government faced was an overcrowded prison system, filled with perpetrators arrested for their part in the genocide. Over 120 000 accused filled prisons designed for 15 000 (Meyerstein, 2007:468), with many of these individuals being potentially innocent.

Not only had a culture of impunity been left behind by previous regimes, but the three months of genocide had encouraged "extraordinary lawlessness" that now needed to be contained (Longman, 2009:305). The number of genocide suspects arrested made up an estimated 10%

of the adult male Hutu population (Drumbl, 2002:6) making the situation all the more extraordinary in its widespread participation.

In the years following the genocide both the Rwandan government and the international community recognised that criminal trials were necessary to end this culture of impunity (Longman, 2009:305). In November 1994 the United Nations Security Council voted to create the International Criminal Tribunal for Rwanda (ICTR) to try the most senior leaders and instigators of the genocide. The ICTR was based in Tanzania and shared a chief prosecutor with the recently formed Tribunal for the former Yugoslavia in the Hague (Longman, 2005:305). However, by 2002 after over six years of work the ICTR had spent nearly \$200 million and only heard nine cases, resulting in eight convictions and one acquittal with many of these subject to appeal (Drumbl, 2002:6).

While the most common (Western) domestic approach for crimes the likes of murder, rape and destruction of property is to try perpetrators in a common court of law, the Rwandan legal apparatus along with most other infrastructural systems had been destroyed (Bowd, 2010:168). The majority of lawyers and judges had been killed, fled into exile or been involved in the crimes themselves. Reported pre-genocide counts place numbers at 758 judges, 70 prosecutors, and 631 support staff, while post-genocide these are said to have reduced to 244 judges, 12 prosecutors and 137 support staff (Meyerstein, 2007:473).

Initially following the common international approach, a new law was passed in 1996 establishing 12 specialised chambers to try genocide cases in ordinary courts (De Brouwer & Ruvebana, 2013:939). Despite an abbreviated training programme intended to prepare new judges and lawyers (Longman, 2009:306), the Rwandan legal system remained vastly understaffed, resulting in only 7 000 trials between 1996 and 2002 (when the *gacaca* courts were launched) (Buckley-Zistel, 2005:115). At this rate of prosecution, it was estimated that re-building all necessary structures and trying all perpetrators would have taken more than a century (Buckley-Zistel, 2005:115; Longman, 2009:306).

At this pace it was likely that most perpetrators would live their lives through without ever having had to answer for their crimes, leading to a situation of ‘justice delayed, justice denied’ (De Brouwer & Ruvebana, 2013:939). An innovative solution was therefore necessary to deal with the unique circumstances of widespread violence and participation therein. During the course of 1998 and 1999, then President Pasteur Bizimungu sponsored a series of meetings called the ‘*Village Urugwiro*’ with national leaders of government, civil society and industry

discussing the way forward for the country (Bowd, 2010:169). It was here that the first suggestion of *gacaca* was made (Longman, 2009:306; Meyerstein, 2007:473). After much debate and revision, the Rwandan Transitional National Assembly adopted the Organic Law No. 40/2000 on the 12th of October 2000 establishing the contemporary *gacaca* courts system (Longman, 2009:306; Meyerstein, 2007:473).

3.2.3 *The Gacaca Courts*

The Kinyarwanda word ‘*gacaca*’ can be loosely translated as ‘small grass’ or ‘lawn’ and refers to the physical space where communities traditionally gathered in front of respected male elders to resolve community disputes (Longman, 2009:306). *Gacaca* have otherwise been described as “traditional village tribunals” (Buckley-Zistel, 2005:113). These relatively informal courts were a community-centred, pre-colonial justice system based on reconciliation, that traditionally dealt with disputes over land, household and family disagreements, badly-honoured contracts and pastoral conflicts (Buckley-Zistel, 2005:115; Longman, 2009:306). While appropriate punishment was included as part of the tribunal process, the focus was placed more on restoring social harmony and tranquillity to the community, as well as reintegrating offenders (Towner, 2015:285; Buckley-Zistel, 2005:115).

The contemporary *gacaca* courts however can be described as a “truly hybrid” form of criminal court, rooted in pre-colonial tradition while also “responding to the problem of mass atrocity produced by collective violence” (Meyerstein, 2007:471). While still grounded in restorative motives, the contemporary *gacaca* were courts in the legal sense and employed retributive measures to bring perpetrators to justice. The restorative roots however are evident in how they shaped the setting of the *gacaca*. This is reflected in elements such as bringing perpetrators and victims together and providing a forum for truth-telling which acknowledges crimes within the communities in which they were committed and in front of the victims (Towner, 2015:287). Furthermore, in a purely retributive system justice is meted out by the state and the victim is largely alienated from the process (Wielenga & Harris, 2011:18), which was simply not the case in *gacaca*, where victims were given agency over their experience and faced the perpetrator directly.

As a result of becoming state-administered, the new *gacaca* were institutionalised – they operated on a national scale, were more regulated and (after low attendance during the pilot programme) were no longer voluntary (Meyerstein, 2007:468; Towner, 2015:285; Longman, 2009:308). They remained a grassroots institution but now operated at every level of Rwandan

society: the cell, sector and district levels (Bowd, 2010:170). The courts were mandated to deal specifically with genocide crimes committed between 1 October 1990 and 31 December 1994 (Melvin, 2010:942). Although they were still regarded as respected members of the community, those chairing the meetings were no longer community elders, but formally elected judges called *inyangamugayo* (Kinyarwanda for “those who detest dishonesty”) and could be women or young people (Longman, 2009:307).

The stated objectives of the contemporary *gacaca* can be limited to five: giving Rwandans the means to solve their own problems; speeding up the genocide trials; establishing the truth about the genocide; rendering justice and thereby ending the culture of impunity; and finally reconciling the people of Rwanda (Buckley-Zistel, 2005:116). The process can be considered one of transitional justice as it was applied to the political crimes of a former regime, that of the Hutu President Habyarimana and his successors (Buckley-Zistel, 2005:114).

Despite having various objectives, like many other transitional processes the *gacaca* were directed by the project of truth-finding. This is important to note particularly given the comparison to be made in this study between the *gacaca* and the South African TRC. The *gacaca* dealt with two ‘types’ of truth – forensic/factual based on evidence (although this evidence was limited to testimonies), and narrative based on the meaning individuals and groups ascribe to certain events (Buckley-Zistel, 2005:120). The extent to which factual truth can be found is questionable, particularly in this setting where perpetrators faced extended prison sentences dependent on their crime. There was a tendency for these perpetrators to make partial confessions or accuse co-conspirators that were already dead or hiding abroad (Buckley-Zistel, 2005:120). Therefore, the factual truth is often “more a reflection of power structures than of what actually happened,” (Buckley-Zistel, 2005:121). Narrative truth, on the other hand, relies on memory and remembering – a process that involves “rearranging, selectivity and interpretation” (Buckley-Zistel, 2005:121). The *gacaca* contributed to the process of finding a common narrative truth surrounding the events of the genocide by giving victims, perpetrators and witnesses in the community the chance to give testimony of their experiences.

The main rationale behind the truth-finding of the *gacaca* process is an assumption that truth leads to justice (particularly in this case where retributive measures were taken) and justice in turn is expected to lead to reconciliation. In this way *gacaca* were again a hybrid, as truth-telling is generally a component of restorative justice, however in this case it included retributive elements. Critiques of restorative truth-telling state that the burden of restoration

lies on the victim as they must forgive for the greater good of society as a whole (Bowd, 2010:164). However, the retributive elements of *gacaca* meant that truth-telling did in fact lead to a degree of retribution for perpetrators' crimes. Uncovering the truth of past injustice is expected to lead to closure and contribute to a more consolidated peace (Buckley-Zistel, 2005:113). As will become clear through the following chapter, these assumptions can and have been challenged by critics of the *gacaca* process, however this is the premise on which the courts were established.

In October 2001, citizens of Rwanda's 9001 cells (the smallest political unit) elected panels of 19 *inyangamugayo* who would then in turn elect representatives to the 1545 sector-level and 106 district-level courts, with a total of over 254 000 judges elected nationally by the end of that year (Longman, 2009:307; De Brouwer & Ruvebana, 2013:941). After a brief training programme for judges, pilot tribunals were launched in June 2002, in one sector of each of the eleven provinces (Longman, 2009:307). These pilots would make up about 10% of the overall number of courts once *gacaca* was launched nationally in 2005 (Buckley-Zistel, 2005:116).

Gacaca was to proceed in a two-step process. The first was an evidence-collecting phase to record all of the crimes committed, the names of those killed, those suspected as perpetrators and those expected to be called as witnesses (Longman, 2009:308). Given the lack of forensic evidence concerning genocide events, the detailed records compiled during this phase were intended to authenticate testimonies given during the second phase (Melvin, 2010:942). It was at this stage that perpetrators were offered the option of confession in exchange for reduced sentences, and that crimes were listed according to three categories. These categories were confirmed for the national trial rollout in Article 51 of the Organic Law No. 16 of 2004 as: category one – leaders of the genocide, well-known murderers and rapists; category two – murderers and those who attacked with or without the intention to kill; and category three – offences against property (Organic Law No. 16/2004: Art. 15).

In the second phase of *gacaca* came the trials, where the *inyangamugayo* heard testimonies and sentenced those found guilty (Longman, 2009:308). During 2005-2006 there was some discussion of trying category one suspects in *gacaca*, however this was highly opposed from all sides. Thus, the *gacaca* mandate was limited to the trial and sentencing of category two and three offenders (Meyerstein, 2007:474). Trials of category one suspects remained in the ordinary courts where an estimated 2 000 planners of the genocide and 8 000 rapists were tried.

However, by 2008 cases of sexual violence were brought under *gacaca* jurisdiction as well (De Brouwer & Ruvebana, 2013:940).

After two years of work the information-gathering phase of the pilot programme was complete. The government commenced the data collection phase on a national scale in January 2005 and the judgement phase of the pilot sectors in March 2005 (Meyerstein, 2007:474). Procedurally, cell-level *gacaca* consisted of weekly sessions involving the General Assembly (comprised of all cell inhabitants over 18 years old, witnesses, victims and the accused) and the Bench, a panel of nine elected judges and five alternates¹⁷ (Buckley-Zistel, 2005:117; Meyerstein, 2007:475). During the trials, everyone in the General Assembly was free to speak, encouraging the participation of the community as witnesses to hold perpetrators accountable. Victims were allowed to publicly confront perpetrators and detail accounts of their experiences, under the assumption that once the community had recognised victims' suffering all would be able to move forward together (Longman, 2009:306). The accused defended themselves and testimonies were seen as sufficient evidence without physical evidence being presented (Buckley-Zistel, 2005:117).

Sentencing was dependent on the perpetrator and their willingness to provide accurate information concerning their crimes. If deemed full and sincere, confessions that included all the information regarding the crimes committed, incrimination of co-conspirators and an apology, could result in the halving of prison sentences in exchange for community service (Buckley-Zistel, 2005:117). Most community service was carried out in *travaux d'intérêts généraux* (TIG) camps, administered by Rwanda Correctional Services (Clark, 2010:79). This community service in many places was intended to provide practical assistance to victims and their families with projects such as building houses, and to help broader society with projects such as construction of roads (De Brouwer & Ruvebana, 2013:942).

After prosecuting over a million *génocidaires* in front of more than 11 000 *gacaca* courts, the *gacaca* system was officially closed on the 18th of June 2012 (De Brouwer & Ruvebana, 2013:937). In terms of its goal of speeding up the pace of genocide trials, *gacaca* was undeniably successful, handling over two million cases in the space of ten years (De Brouwer & Ruvebana, 2013:940). However, in terms of its ability to reconcile Rwandans and thereby

¹⁷ The number of judges required for a Bench had been reduced from nineteen to nine, with 5 alternates to stand in for any unavailable judges, in the revised *gacaca* law of 2004 (Clark, 2010:75).

address the root cause of conflict in the nation, there is much debate as to its success. These debates will be discussed in the following chapter.

3.3 The Truth and Reconciliation Commission – Uniting a Separated South Africa

3.3.1 A History of Separatism

While ethnic divisions in Rwanda were exploited and entrenched by colonial rule, these divisions were pre-existing before the settlers arrived. In South Africa on the other hand, racial segregation entrenched during the apartheid era was *created* by European colonialism and its accompanying ideas of white supremacy. From the 17th century arrival of the first Dutch settlers in the Cape, perceptions of white racial superiority were evident in the division of legal status based on race. Legal categories were made of Dutch East India Company officials, free burghers (settlers), slaves, ‘Hottentots’ (Khoisan) and Free Blacks (manumitted slaves) (Worden, 1994:66). This kind of racial categorisation would serve as the basis on which South African society was built and formed the foundation for the racial conflict to follow.

According to Worden (1994:71), the first example of structured segregation in South Africa can be traced as far back as 1846 with the introduction of the ‘Shepstone System’. As head of ‘Native Affairs’ in the Natal colony, Shepstone decided that to maintain control by the colonial state he would need to allocate land unclaimed by white farmers as ‘locations’ for African workers to cultivate under the rule of a local chief and ‘Native Law’. This local control was of course a façade as chiefs would ultimately report to the white Resident Magistrates and Administrators of Native Law. This system served as a precursor to the cornerstone of the ‘grand apartheid’ project – that of the Homelands system.

After the end of the South African War in 1902 and once the Union of South Africa was established in 1910, segregationist policies truly took hold (Worden, 1994:72). The 1911 Mines and Works Act established the colour bar differentiating workers’ rights and pay based on race in favour of white workers. The 1913 Natives Land Act segregated land ownership, allocating less than 8% of South African land to black individuals and driving the black population into cramped reserves or urban townships where they provided cheap labour to white-owned industry (Jones, 2014:14; World Bank Group, 2018:1). The 1920 Native Affairs Act set the foundation for separate political representation of black people through ‘tribally-based’ district councils; and the 1923 Natives (Urban Areas) Act established racial segregation in towns (Worden, 1994:72).

Between 1910 and 1920 the white population made up approximately 21% of the overall citizenry. Thus, these laws had placed political control of the majority in the hands of a small minority (Jones, 2014:13). The history of racial separatism that began with the arrival of Dutch colonial settlers set the stage for the enforced segregation that was to come and that left a lasting legacy of tension between racial groups in South Africa.

3.3.2 *The Reality of Apartheid*

After the end of World War II in 1945, white supremacy had started to wane in Africa as former colonies began to fight for their independence. However, in South Africa it only took stronger root (Worden, 1994:65). As its name suggests, the crux of the apartheid project was the compartmentalisation of the population on the basis of race. After the National Party came to power in 1948 the apartheid project began, with President Malan first introducing the prohibition of mixed marriages in 1949 and the Immorality Act of 1950, extending the ban of marriage between white and black people to the prohibition of any and all sexual conduct between whites and all other race groups (Worden, 1994:95).

As discussed by Worden (1994:96), the Population Registration Act of 1950 formally categorised the population according to four race groups: white, coloured, 'Asiatic' and 'Native' (later changed to 'Bantu' or African). In the same year the Group Areas Act extended the segregation of residential areas on a compulsory basis. The 1951 Bantu Authorities Act introduced government-approved chiefs in reserves (African residential areas) and made no provision for representation of African people in 'white' areas. The 1953 Reservation of Separate Amenities Act separated social spaces and all public amenities. The Bantu Education Act of 1953 brought all schooling of African children under the control of the Department of Native Affairs and altered the curriculum, deliberately preparing students for nothing more than manual labour (Worden, 1994:96; World Bank Group, 2018:1). Thus, in every area of life the South African population was divided by race, creating a system that greatly privileged the white minority and allowed for very little interaction between population groups.

The cornerstone of apartheid policy is arguably the 1959 Promotion of Bantu Self-Government Act. This law set up eight, later extended to ten, 'Bantu Homelands' converting the existing reserves into self-contained national units and effectively removing the black population from South Africa entirely (Worden, 1994:110; Jones, 2014:18). This was followed by the Bantu Homeland Citizens Act of 1970 which stripped black people from the legal right to South African citizenship, forcing them to become citizens of the Bantustan to which they had been

assigned (Jones, 2014:18). While these Homelands were supposedly based on ethnicity and the historic location of ethnic groups, they were in fact largely determined by the location of untenable land left unclaimed by white settlers. Once this policy came into effect, forced removals and dispossession of land became a widespread phenomenon, with an estimated 3.5 million people relocated between 1960 and 1983 under the Group Areas and Separate Development legislation (Worden, 1994:110). While developmental intentions were outlined for the Homelands originally, these did not come to fruition and instead these areas became ‘dumping grounds’ for government to resettle black people who had been forcibly removed from now-white areas (Giliomee & Mbenga, 2007:351).

While these laws created the segregation at the root of racial conflict in South Africa, the TRC was a transitional mechanism focused specifically on the violence involved in the anti-apartheid movement. This violence is said to have been started by the turning point that was the Sharpeville massacre in March 1960. It was at this point that peaceful protest was abandoned as a strategy for instigating change and more assertive action began to take its place (World Bank Group, 2018:1). After this event the leading anti-apartheid organisations of the African National Congress (ANC) and Pan-African Congress (PAC) were banned and forced to join the South African Communist Party (SACP) underground. The armed wing of the ANC, Umkhonto we Sizwe (MK), also emerged in this era and the PAC was represented in armed insurgency by the Azanian People’s Liberation Army (Jones, 2014:20).

Following Sharpeville and the banning of these major liberation organisations, the 1960s were somewhat of a ‘decade of quietude’ (Worden, 1994:113). However this would change from the early 1970s, culminating in another critical event in the liberation struggle, that of the Soweto Uprising of 1976, when 20 000 high school students protested the Bantu Education system and Afrikaans being used as the medium of instruction (Jones, 2014:20). The protest gained significant international attention due to the ruthless response of the police, resulting in 176 deaths in just over a week, most of whom were schoolchildren (Morris, 2004:200). The protest was memorialised by a photograph of 13-year-old student Hector Pieterse, one of the first to be killed during this protest, being carried by a fellow student while his sister runs alongside. This photograph remains “one of the most graphic pictorial records of the brutal realities that apartheid rhetoric of ‘separate development’ attempted to disguise” (Jones, 2014:21).

The labour and urban resistance that characterised the years between 1973 and the 1976 events in Soweto represent one of several important changes in South African society. These changes

are significant in that they led to a state policy shift from ‘petty apartheid’ segregation laws to a full-blown ‘total strategy’ (Worden, 1994:122). The uprisings had caught the government unaware and had proven repression was no longer a sufficient response to the efforts of liberation activists. A second factor was the shift in South African industry towards manufacturing, resulting in a shortage of semi-skilled permanent workers with a labour economy set up to provide unskilled migrant black labourers (Giliomee & Mbenga, 2007:347; Morris, 2004:208). Thirdly, economic changes had caused a shift in the support base of the NP resulting in a party split, with the removed faction forming the Conservative Party under Andries Treurnicht in 1982. Finally, the international attention and threat of sanctions in the aftermath of the events at Soweto all culminated in a series of policy developments between 1979 and 1984 that would begin to spell the end of apartheid. However, this end would not come before the ‘total strategy’ provided the platform for the worst of apartheid-era human rights violations.

The ‘total strategy’ developments took place in several different sectors. They included a shift in government economic policy towards free market enterprise, permission of trade union membership and registration for black workers, and the dismantling of white job reservation. Pass laws were finally abolished in 1986, compulsory primary education was extended to all children and many ‘petty apartheid’ restrictions were removed such as public spaces in major cities no longer being segregated and the opening of national sport to all races (Worden, 1994:123-124; Stemmet, 2013:123). However, these surface-level changes were matched by a deepening of apartheid state control over national administration. The introduction of the Tricameral Constitution in 1983 gave some powers of self-determination to separate parliamentary assemblies for white, coloured and Indian Members of Parliament. However, political representation for black people was still restricted to the homelands and as a result the Tricameral elections were largely boycotted (Worden, 1994:124; Stemmet, 2013:124-125).

In light of the conflict response that was to come in the form of the TRC, one of the most significant ‘total strategy’ developments was an extension of the role of the South African army. Since the 1960s the South African military had been building steadily, with its own Armaments Corporation established at this time to counteract arms embargoes. By the 1980s the military was fully self-sufficient in producing ammunition, missiles and small armaments (Stemmet, 2011:103). Under the leadership of the new Minister of Defence, General Magnus Malan, the State Security Council was established in 1972 as an advisory body to the Cabinet but is said to have in effect served as an alternative Cabinet in itself (Worden, 1994:125). This

body was given greater powers under the new policy, including control over intelligence and security work. This ‘intelligence and security work’ while explained at face-value as state security measures to stem the ‘Communist threat’ was in effect the government giving free reign to security forces in terms of murder, torture and abuse for the sake of the apartheid regime (Worden, 1994:125).

The South African Police and South African Defence Force (SADF) were the human face of the increased security measures, with their jurisdiction being expanded as the government was attempting to market its pretence of policy reform (Stemmet, 2011:104). On the home front, the security forces were charged with individual attacks such as the 1982 letter bomb that killed Ruth First, wife of ANC strategist Joe Slovo, and also more overt action such as the SADF attacks in the same year on 12 targets in Maseru killing 41 ‘political’ refugees (Morris, 2004:214). In attempts to quell mounting opposition from neighbouring states, President P. W. Botha launched a campaign of destabilisation, with both direct military interventions and the support of rebel groups such as RENAMO in Mozambique. Raids were ordered for central areas that were said to be housing ANC guerrillas in Lesotho, Swaziland, Zimbabwe and Botswana, while a guerrilla war was being fought in Namibia with the nationalist force of SWAPO (Worden, 1994:125).

The 1980s would prove to be a watershed in South African history, as the country found itself in the throes of violent conflict on the brink of civil war, with violence built into the strategies of both the ruling NP and the exiled ANC (Stemmet, 2015:59). The worst of this erupted in 1984 with cycles of violence until the end of the decade marked by successive States of Emergency each year from 1985 to 1988. Although these were initially imposed only in certain areas, once security forces were deployed they were met with increasingly violent opposition which quickly spread throughout the country (Stemmet, 2015:60). In a chillingly ironic statement given the gross human rights violations that were to be unveiled during the TRC process, P. W. Botha launched the 1986 State of Emergency claiming it as an effort of “civilised” means of security to protect South Africans’ liberty (Stemmet, 2015:63).

Given the extraordinary powers and freedoms afforded to the security forces during this time, torture, murder and the covering-up of such events became commonplace (Stemmet, 2011:105). One of the most high-profile cases of torture and death in detention was that of Steve Biko, the founder and leader of the Black Consciousness movement. Kept naked and shackled in various prison cells for weeks, beaten and starved, Biko was eventually thrown in

the back of a Land Rover and driven 1 628 kilometres to Pretoria to be taken to hospital, but died in a prison cell before he was admitted (Morris, 2004:206). Biko's case is but one of the hundreds of instances of gross human rights violations undertaken in the name of the apartheid regime that would be the focus of the TRC mechanism.

By the end of the 1980s the Botha government realised that it could not quell resistance with coercion alone but needed the cooperation of certain "acceptable" black groups (Stemmet, 2015:74). However, despite maintaining the majority of the white electorate through the tumultuous decade, they were unable to gain support of moderate black groups. There was a parallel realisation that resistance could not be crushed but was continually mounting, fuelled by political discontent of the marginalised black majority (Stemmet, 2015:75).

This was reflected in the strategy of the liberation during this time as well, as summarised by the ANC battle cry written by Thabo Mbeki, 'Make apartheid unworkable and the country ungovernable' (Stemmet, 2011:106). The Soweto riots served as a turning point for the liberation struggle as well, as a landslide of support bolstered the fighting power of the armed struggle, particularly from the youth wanting to join the armed forces. A key aspect of the ANC's strategy during this time was mass mobilisation at a grassroots level. By creating a whole alternate system of governance made up of street committees, self-defence units and people's courts, the ANC aimed to create black communities that were effectively no-go zones for apartheid security forces.

Although this mass mobilisation had the intended effect of encouraging the population to be involved in the struggle, it also inadvertently created a system of local justice and lawlessness. So-called 'collaborators' thought to be connected to apartheid authorities were judged in the people's courts, with sentences often including the death penalty by necklacing to serve as a 'deterrent' for others (Stemmet, 2011:109). In Kwazulu Natal, deep divisions within the liberation movement between the United Democratic Front (UDF)¹⁸ and the Inkatha Cultural

¹⁸ An umbrella organisation that coordinated around 400 various civil society organisations, specifically to oppose Botha's Tricameral Parliament. Founded in 1983 in Mitchell's Plain, Cape Town (Joyce, 2007:158).

Movement¹⁹ led to intense violence within black communities, a conflict that was only exploited by the apartheid security forces²⁰ (Morris, 2004:236).

On a public level MK was responsible for outright attacks in South African society. Between 1978 and 1984 the armed wing carried out 212 attacks resulting in 48 deaths (Stemmet, 2011:111). A car bomb targeting the headquarters of the South African Air Force and Military Intelligence in Pretoria killed at least 16 people and injured a further 188 on the 20th of May 1983 (Morris, 2004:220). 1987 saw a further 200 attacks and in 1988 over 262 were carried out (Stemmet, 2011:111). The argument for using civilian targets was that apartheid had been held in place by the continued electoral support of ordinary white civilians, thereby ‘justifying’ these attacks (Stemmet, 2011:111). Outside of South Africa, ANC camps across the border such as the infamous ‘Quatro’ in Angola were used as centres for torture and abuse of alleged apartheid agents who infiltrated the organisation as turncoats or spies (Morris, 2004:237-238).

By the end of the 1980s, given the reality of immense pressure placed on the NP government, there came a final realisation that the regime could no longer hold on to power. International disapproval had been evident from the party’s election in 1948 and had grown steadily, particularly from the time of the ‘total strategy’ onwards. Despite the violence that can be attributed to the liberation movement, their cause would always be justified to the rest of the world if apartheid continued to exist (Stemmet, 2011:112). The economy was also in downturn, with inflation at 18.4% between December 1984 and December 1985, its highest in 66 years (Morris, 2004:232). Apartheid had proven simply unproductive, causing another shift in NP support. Until the early 1980s the party had enjoyed the backing of white South African business leaders, however by the middle of the decade the economic reality caused a switch in their allegiance away from the NP and towards the liberation movement (Morris, 2004:232).

By 1987 the country had reached a stalemate. For the first time in the elections of that year, the NP found itself as the more liberal of apartheid parties, with Treurnicht’s Conservative Party eroding its power base. Liberation icon and first President of democratic South Africa Nelson Mandela had in 1986 decided to begin discussions with government officials and in 1987 the

¹⁹ A cultural movement of the Zulu population, led by the Zulu prince, Chief Mangosuthu Buthelezi (Joyce, 2007:140). Inkatha occupied a middle-ground between the government’s separate development policies that Chief Buthelezi opposed, and the militancy of the Xhosa-dominated liberation movement he feared (Joyce, 2007:141). The movement would later become the Inkatha Freedom Party, a major opposition party based in Kwazulu Natal.

²⁰ Evidence was in fact uncovered that secret government funding for the training of Inkatha units began in the late 1980s and continued until 1991, after President de Klerk was inaugurated, causing him to demote Minister of Defence Magnus Malan and Minister of Law and Order Adriaan Vlok (Morris, 2004:255).

ANC found allies in former parliamentarians Frederick Van Zyl Slabbert, leader of the liberal Progressive Federal Party (PFP) and Alex Boraine, another PFP MP, holding discussions in 1987 in Dakar with the two leaders (Morris, 2004:238).

After suffering a stroke in January 1989, it was Botha's health that caused the *Groot Krokodil* to resign from his presidency (Morris, 2004:240). The elections later that year placed F. W. de Klerk in power, a man Mandela believed 'represented a genuine departure from his predecessor' (Morris, 2004:240). From this point onwards, the 'winds of change' had begun in earnest. In February 1990, in a somewhat unexpected move, de Klerk announced the ANC, PAC and SACP were unbanned, with leaders such as Mandela released from prison (Jones, 2014:21). He also lifted restrictions on organisations such as the UDF and the Council of South African Trade Unions, lifted restrictions on the media, released other political prisoners and "declared that the time had come to create a 'totally new and just dispensation' based on equality" (Morris, 2004:244).

In the four years that separated the jubilation of Mandela's release in 1990 and the first democratic elections in 1994, South African political leaders would be wrapped in debate as to how the New South Africa was to be created. The armed struggle still waged, with the early 1990s being one of the most blood-spattered periods of the country's recent history. Between 1990 and 1994 there was a total of 15 977 fatalities, approximately 69% of the total number over the 12 worst years of political violence between 1985 and 1996 (Guelke, 2012:72). Both the apartheid and struggle leaders recognised the need to put an end to the extreme violence and to prioritise a state-sanctioned reaction holding perpetrators accountable (Morris, 2004:253). The mechanism used to achieve this end would be formulated as the South African Truth and Reconciliation Commission.

3.3.3 *The Truth and Reconciliation Commission*

Truth commissions have become a popular conflict resolution mechanism used in transitional societies, with 19 commissions having taken place in 16 countries over the 21 years preceding the South African instance (Hayner, 1996:19). After the purportedly "ground-breaking work" of the South African TRC and its perceived success, the popularity of truth commissions only grew (Brounéus, 2008:291). Many believed the lack of bloodshed²¹, retribution and vengeance in the country post-apartheid was in large part a result of the TRC process (Gibson, 2006:410). Truth commissions are temporary, government-sponsored projects, often having a relatively

²¹ Relative to similar transitions in other African countries.

short and specific time period over which to complete their work. Apart from the obvious aim to find the truth concerning national events, these commissions can promote reconciliation, identify societal issues and outline reforms in response, allow victims to speak out about their experiences and also represent an acknowledgement of a long-silenced past (Hayner, 1996:19).

The South African TRC²² was officially established on the 19th of July 1995, by the Promotion of National Unity and Reconciliation Act No. 34 (Evans, 2016:707). The mandate of the Commission covered instances of gross human rights violations committed between 1960 and 1994. Its primary reports were completed by 1998, however it continued to operate over several more years to complete the amnesty hearings (Hayner, 2006:298). The Commission was led by a team of commissioners, nominated by the public but eventually selected by the newly inaugurated President Nelson Mandela. In 1996 Archbishop Desmond Tutu accepted the role of Chair of the Commission (Vora & Vora, 2004:305).

The Commission was made up of three sub-committees, each with a distinct role, in an attempt to address several broad aims such as achieving social justice, upholding the rule of law and attempts at reconciliation (Stanley, 2001:526). These sub-committees were the Human Rights Violations Committee, the Amnesty Committee, and the Reparation and Rehabilitation Committee. The Human Rights Committee was tasked with taking statements and conducting hearings with victims and perpetrators. The Amnesty Committee had a more legalistic mandate, in hearing amnesty applications and granting amnesty. Lastly, the Reparation and Rehabilitation Committee provided recommendations on state compensation for victims but did not have the power to enforce these recommendations (Evans, 2016:708). While it was not a legal entity in itself, the TRC ran parallel to the justice system and made recommendations to the national courts based on its findings with the goal of reconciliation in mind (Vora & Vora, 2004:305).

Due to the denial of the apartheid state of human rights violations, the truth-telling project was important in the South African context, not only for any reconciliatory objectives it may have had but to uncover a more complete history of the apartheid reality. This is often the reason behind the work of a truth commission – an attempt to prevent history from being lost, rewritten or repeated (Hayner, 1996:21). The necessity for this truth-telling process was made clear in the unexpected amount of people that came forward to participate, with over 21 000 victim

²² Also referred to as ‘the Commission’ through the remainder of this study.

statements being submitted, 2 000 public testimonies (Jones, 2014:23) and over 7 000 amnesty applications (Stanley, 2001:528).

Possibly the most contested aspect of the TRC process were the operations of the Amnesty Committee. This Committee was given the power to grant amnesty in exchange for confessions (Hayner, 1996:19) and was comprised of two lawyers and 19 judges independent from the Commissioners (Jones, 2014:23). The granting of amnesty had been a requirement of white apartheid leaders in their agreement for democratic elections to be held (Vora & Vora, 2004:302) and was also an attempt to avoid alienating the white population (Evans, 2016:707). While the *gacaca* had exchanged confessions for sentence reductions or community service, the TRC was mandated to grant complete amnesty to individuals who unveiled the full truth of their actions. The impetus behind this decision was the hope that ‘unburdening of the past’ through documenting the full truth of human rights violations took precedence over the call for ‘natural’ justice (Stanley, 2001:526). It was further hoped that amnesty would help in creating a national culture upholding human rights (Wielenga, 2011:41). Perpetrators from the liberation movement were also intended to benefit from this policy as many were imprisoned for crimes committed on behalf of liberation organisations (Evans, 2016:707).

The ‘truth-for-amnesty’ model was outlined in the 1995 Act establishing the Commission and included three conditions (Hayner, 2001:43). First, there had to be proof provided that the act was politically motivated. Second, the Commission had to be satisfied that testimonies were complete. Finally, the violation had to be proportional to the intended political objective (Evans, 2016:707). The consequence of not revealing the truth in its entirety was that perpetrators would not be granted amnesty and would be prosecuted in normal courts (Stanley, 2001:526). As in the case of the *gacaca* plea-bargaining option, the hope was that amnesty and the threat of prosecution would encourage perpetrators to come forward and thus the full truth of apartheid events could be found (Evans, 2016:707).

As is evident simply from the name of the Commission, this transitional process similarly to the *gacaca* was established off an assumption of truth leading to reconciliation (Melish, 2012:280; Hirsch, MacKenzie & Sesay, 2012:387). It is interesting to see the long-term impact of this association reflected in public perception still today, as the SARB concludes that when given a list of potential connotations to attach to the concept of reconciliation, the third most frequently mentioned item is ‘Truth – establishing the truth of the past’ (Potgieter, 2017:21). Therefore, the TRC had a lasting impact on South Africans’ consciousness in linking truth to

reconciliation. The difference here is that while the *gacaca* institution assumed a process of truth leading to (retributive) justice, which in turn is expected to lead to reconciliation (Buckley-Zistel, 2005:113), the TRC replaced the emphasis on justice with an emphasis on amnesty. It is also said to have incorporated the restorative dimensions of both Judeo-Christian tradition and African traditional values of *ubuntu* – both containing elements of communal healing and restoration (Vora & Vora, 2004:306).

Marketing campaigns for the Commission attempted to highlight these restorative dimensions and paint the mechanism as a nation-building project, playing down the truth-for-amnesty model. This was done through quasi-religious slogans such as ‘Truth: the road to reconciliation’, ‘No future without forgiveness’, ‘Healing our land’ and ‘The truth will set you free’ (taken from the Bible verse John 8 vs 32) (Evans, 2016:708).

Despite all of its proclaimed intentions of providing the full truth of apartheid-era violence, in the end many felt the TRC fell short, particularly given the refusal of many high-level leaders to submit to the amnesty process. Known culprits of gross human rights violations such as the infamous Vlakplaas²³ commander Eugene de Kock were able to deflect responsibility to their commanding officers and thereby reduce their sentences. Despite de Kock serving a reduced sentence (which amounted to a double life sentence), none of the accused commanding officers were charged (Morris, 2004:290).

On the liberation side the leadership of the ANC, MK and UDF accepted full responsibility for the gross human rights violations perpetrated by its members between 1960 and 1994. However, senior leaders of the ANC did not apply for amnesty. Both the ANC and the NP tried to block certain parts of the final report that painted the organisations in a negative light (Morris, 2004:291). In some ways this shows that the process was able to remain even-handed to the end, placing blame on all sides of the struggle, however it did threaten the legitimacy of the common truth created by the process.

What the TRC was undeniably able to do, like the *gacaca*, was to bring to the surface many previously unknown facts regarding the reality of the conflict and mediate between the experiences and testimonies of both victims and perpetrators. When reflecting on the TRC’s contribution to the reconciliation project in South Africa, Constitutional Court judge Albie

²³ Vlakplaas was from the late 1970s the “base of a counter-insurgency unit that trained and deployed death squads made up of former liberation fighters who had been ‘turned’ and were now working for the apartheid state” (Morris, 2004:289).

Sachs who survived a car bomb assassination attempt stated succinctly that the TRC “meant ‘people could see human beings were doing things to other human beings’ and this ‘wipes out the possibility of denial’, creating ‘some kind of shared understanding, not of the details and responsibilities, but that terrible things were done’,” (as quoted in Morris, 2004:295).

3.4 Conclusion

This chapter has thus served as a historical overview of the dynamics that underscored the conflict in both South Africa and Rwanda under their respective oppressive regimes. Both countries experienced conflict as a result of deep ethnic or racial fault-lines that slowly built up to breaking points of intense violence. The *gacaca* courts and the TRC were both conflict response mechanisms aimed at altering these divisive relationships, primarily through a truth-seeking process in which common narratives were created out of the various experiences of those involved. The following chapter now turns to the analytical model of process-based mediation outlined in this study, applying it to each case and assessing the extent to which each characteristic manifested in these conflict resolution mechanisms.

CHAPTER FOUR – APPLICATION OF THE ANALYTICAL MODEL AND COMPARATIVE ANALYSIS

4.1 Introduction

Having contextualised the cases of the South African TRC and the Rwandan *gacaca* courts, it is now possible to return to the mediation theory and analytical model as outlined in Chapter Two. Using Kressel's (2006:726) pared-down definition, the TRC and the *gacaca* can both be considered mediation projects as they involved "a process in which disputants attempt to resolve their differences with the assistance of an acceptable third party." In both post-conflict societies, the conflicted parties had reached a "mutually-hurting stalemate" (Zartman, 2001:8) in which neither party was willing/able to make a further power move to revert back to conflict, and the continuation of this conflict had become detrimental to all parties involved. It was for this reason that both interim governments formulated transitional mechanisms creating the space for conciliatory dialogue, mediated by a third party.

Introducing a mediator into such a conflict environment is intended to overcome three sets of barriers impeding pure negotiation between disputants (Kressel, 2006:732). Firstly, interpersonal barriers taking the form of negative feelings between disputants can infringe on the quality of their direct interaction. This was assuredly the case in both South Africa and Rwanda, given the history of deep racial and ethnic division that had resulted in violence against all sides of the conflict. Second are substantive barriers, which amount to strong disagreement on the content of the conflict, resulting in difficulty ascertaining the 'truth' of the situation. Again, both cases experienced these substantive barriers, as victims and perpetrators in Rwanda told different stories of the extent of violence during the genocide, and given the secrecy of the apartheid regime crimes. Finally, procedural barriers impede open communication when there is a complete absence of a negotiating forum. Before the introduction of the TRC and the *gacaca* courts, there was indeed no forum for interaction between members of the conflicted groups. Due to the presence of these three sets of barriers, a mediatory space was required to break them down, provide the opportunity for constructive communication and potentially open new, previously unseen political space (Ramsbotham *et al.*, 2016:213).

However, in terms of the traditional conception of mediation as elite-level, interest-based, outcomes-focused compromise, these projects do not fit the mould. They have been selected due to their suitability to the model of process-based mediation as outlined in this study. This

model is expected to be more reconciliatory than traditional elite-level attempts at mediation, serving to transform the conflict as opposed to mitigating it. These cases are used to investigate the validity of this model through a comparison of the TRC and the *gacaca* courts, applying process-based mediation as an analytical framework. By comparing the similarities and differences between the cases according to this framework, this fourth chapter will assess the applicability of the model, and the potential of each characteristic for inducing long-term conflict transformation.

4.2 Application of the Analytical Model to South Africa and Rwanda

As outlined in Chapter Two, the analytical model of process-based mediation includes five characteristics: community participation, context-specificity, the use of an Insider-Partial mediator, the absence of resource pressure, and a relational focus. These characteristics have all surfaced as a result of extensive reading into the debates surrounding mediation theory and practice, forming part of a contemporary departure from traditional outcomes-focused mediation. This discussion will be divided according to the characteristics, using the case study research design in a consecutive application of the model to the cases, illustrating how each characteristic manifests in the two cases. Through the methodology of comparative analysis, the discussion under each characteristic will also compare the two cases, finding the relative similarities and differences between the TRC and the *gacaca* courts as examples of process-based mediation projects.

4.2.1 Community Participation

Contemporary conflict theory suggests that as post-Cold War conflicts are more often intra- as opposed to inter-state in nature, elite-level conflict settlement strategies are no longer sufficient in addressing violence that permeates the whole of society (Assefa, 2015:239). Conflict theorists have highlighted that as civilians within one nation have taken on the roles of both victims and perpetrators, disputants must continue to live alongside one another once violent conflict has come to an end (Daly & Sarkin, 2007:9; Assefa, 2015:239). Therefore, to combat intra-state conflict in such a way as to engender long-term peace, transformation of the remnant fractures in transitional societies is required. In order to achieve this transformation, it is expected that restorative measures are required involving victims, perpetrators and the wider community (Daly & Sarkin, 2007:14). This is to ensure the conflict response involves all those who were involved in the conflict itself. It is also the reason community participation is

included as a characteristic in process-based mediation, given the aim of the model to transform conflict at its root cause in the contemporary era.

4.2.1.1 Application

Consequently, a strong motive for using the *gacaca* courts as a case in this study is their status as possibly the most participatory justice mechanism ever seen in a transitional society. Mechanisms of transitional justice like the *gacaca* most often aim to bring the former exploitative government regime to justice. However, these courts differ from the norm in that their reach was in the first instance local, not national, addressing crimes “committed by community member against community members, and not by the state against its citizens,” (Buckley-Zistel, 2005:114). This posits Rwanda as a succinct example of the above-mentioned contemporary type of conflict – fought within national borders, in urban centres and between neighbouring citizens. As a result, community involvement would be a vital component in the relevant conflict response, in order to reach those ordinary citizens who had been involved in the conflict – which in the Rwandan case was almost every citizen.

The emphasis placed on the need for a community-based response is evident in the Preamble of the Organic Law No. 16/2004 which states that because offences “were publicly committed in the eyes of the population,” it is the population itself that “must recount the facts, disclose the truth and participate in prosecuting and trying the alleged perpetrators.” Once participation was made compulsory for the national rollout of the trials, fines were instituted for community members who failed to participate in the proceedings (Meyerstein, 2007:476).

Community participation was intended to encourage the citizenry, particularly local communities, to work together in judging *génocidaires* (Buckley-Zistel, 2005:116), as opposed to having judgements made by unrelatable authority figures in far-removed (both geographically and metaphorically) Western-style courts. Prior to judgements, the data collection process was also communal, again contrary to the traditional Western approach of a prosecutor or investigator building a case on their own (Meyerstein, 2007:477).

However, in reality community participation was reportedly low in certain areas. In interviews conducted with *gacaca* monitors, Buckley-Zistel (2005:118) found that actual attendance in the weekly sessions, at least in the early stages was low, suggesting that trust and hope in the project was in turn low as well. She suggests that this was a result of many General Assemblies being dominated by Hutu relatives or friends of the *génocidaires* who protected their fellow Hutu from prosecution. Some survivors also report being subject to intimidation and threats

such as Beatrice Bazayirwa, a survivor who was targeted in stoning attempts by the perpetrators who killed her husband and three children (De Brouwer & Ruvebana, 2013:953).

Furthermore, especially once attendance was made compulsory, the weekly participation commitment of one whole productive day clashed with citizens' priorities of sustenance farming. Participation is therefore not only an emotional but also an economic sacrifice, adding to existing community obligations as explained by one resident: "One day for the market, one for the national work, another one for the *Gacaca*, and Sunday to Church... we have three days left in the week to support our families..." (PRI, 2005:40).

Despite these setbacks, interviews with survivors conducted by De Brouwer and Ruvebana (2013:948) indicated that as time went on members of the public did open up to the process. Over time the trials became more common practice and better understanding of its workings relieved the fear of many Hutus that it was simply a national Hutu witch-hunt. Better security and policing by the end of 2008 also relieved some of the fear of witnesses thus leading to more open dialogue (de Brouwer & Ruvebana, 2013:953). It was also suggested in their interviews that incentives for lighter sentences and feelings of guilt led perpetrators to admitting their crimes more honestly as well.

Moving to the context of apartheid South Africa, there was a difference in the spread of open conflict as extreme physical violence was not experienced by the nation as a whole. However, although the physical atrocities were not as widespread as those of the Rwandan genocide, the structural violence that oppressed the majority of the population was indeed society wide. Wildschut states (as quoted in Stanley, 2001:541), that in order for there to be peaceful coexistence and reconciliation in such a society, action has to involve the whole of that society. Particularly in a case such as South Africa where there were the oppressed, oppressors and beneficiaries to that oppression, with each citizen falling into one of these categories. Beneficiaries were not directly involved in creating the system of oppression, but they held (and still hold) the most socio-economic power to affect change (Stanley, 2001:541). This suggests then that all citizens – oppressed, oppressors and beneficiaries – should have been involved in the transitional mechanism. Unfortunately, the TRC process was unable to engender widespread public buy-in, arguably its biggest hindrance in the objective of achieving long-term reconciliation.

While TRC hearings were largely public (Hayner, 1996:19), they were not participatory in the same way as the *gacaca*. The hearings were in fact originally intended to be held *in camera*,

however after the façade of the Harms Commission²⁴ the South African public was uninterested in a truth commission without public hearings. The only hearings to be held in private were those where the Commission deemed it ‘in the interest of justice’, or if the participants were expected to be in danger (Evans, 2016:709).

In terms of participation of perpetrators themselves, it is questioned whether the innovative ‘carrot and stick’ of amnesty for confession actually encouraged participation. Stanley (2001:531) posits that in fact the majority of perpetrators did not step forward and thus the truth recorded by the Commission was indisputably partial. Influential people and organisations are said to have used their influence and powerful legal support to hide the full extent of their responsibility for atrocious acts (Stanley, 2001:532). One such example is that of Winnie Madikizela-Mandela and her testimony regarding the Mandela United Football Club.

A sense in which the TRC was indeed participatory concerns the media coverage afforded to the process. South Africa was the first country to allow media access to its truth commission and attracted much media attention, particularly due to the censorship of the apartheid era (Evans, 2016:705). The hope was that live broadcasting could provide transparency and link the process to all South Africans. However, due to the expense and strain on resources, only two hearings were televised live: the opening hearing and Winnie Madikizela-Mandela’s controversial testimony.

Newspaper coverage on the other hand was extensive, with special correspondents covering the hearings from *Beeld*, *Business Day*, *City Press*, *Rapport*, the *Sowetan* and the *Star* in Johannesburg; *The Cape Argus* and *The Cape Times* in Cape Town; and the *Daily News* in Durban (Evans, 2016:709). The SABC broadcast a weekly documentary round-up of the week’s trials called the *Special Report* between 21 April 1996 and 29 March 1998, which was frequently in the top ten viewed programmes of the week (Evans, 2016:710). Furthermore, radio coverage sponsored by the Norwegian government was live broadcast daily on a dedicated channel, Radio 2000 (Evans, 2016:712). Gibson (2006:416) states that with all of these media outlets making witness testimonies so widely available in all their excruciating

²⁴ The Harms Commission of Inquiry was appointed in January 1990 to investigate the activities of the Civil Cooperation Bureau, the secret SADF arm operating as an undercover death squad. Although it did find the CCB to be involved in many crimes kept secret and without evidence, it exonerated Defence Minister Magnus Malan and other leading security force figures, ultimately serving the interests of those it was intended to investigate (Morris, 2004:255; Joyce, 2007:180).

detail, it is likely that the majority of South Africans were in some way exposed to the Commission's work and able to make their own judgements on its conclusions.

Overall however the public reception of these media releases does not reflect a nation committed to understanding and acknowledging the crimes committed under apartheid. Even though only two hearings were broadcast live, their low viewership numbers suggest the public would not have been interested in more live television coverage. More people watched the first episode of the *Special Report* than watched the first hearing, however it was still only the fourth-watched programme of the week (Evans, 2016:712). The live radio broadcasts were no better received with less than 100 000 listeners per day on average (Evans, 2016:714).

In making the hearings more victim-friendly, the Commission sacrificed accessibility to the general public through the media. Witness statements were allowed to meander from the theme of human rights abuse and in some cases were incoherent or suffered from stilted and monotone translation (Evans, 2016:713-714). Radio broadcasts provided little contextualisation and thus listeners tuning in struggled to follow the testimonies (Evans, 2016:714). Overall, although the TRC has been regarded as a mechanism upholding the democratic values of transparency, public debate and participation, the extent to which the public actually involved itself in the process is thus questionable.

4.2.1.2 Comparison

Considering the above discussion, it can be said that the South African TRC and the Rwandan *gacaca* courts had quite distinct differences in the form of public participation they employed. Both societies exhibited the nature of contemporary conflicts in being fought intra-state, between citizens of the same nation. It is expected therefore, that both would have needed a participatory element in order to achieve longer-term reconciliation. While the Rwandan case employed a very broad-based approach, it also displayed the issues with leaving criminal justice in the hands of local communities. The TRC on the other hand left the impetus for participation up to the individual, resulting in a lack of participation on the part of many beneficiaries.

The *gacaca* courts involved direct, compulsory public participation through which communities were encouraged to collectively hold perpetrators accountable by contributing their testimonies to the trials. The result of this was that all Rwandans were compelled to involve themselves in the process of conflict resolution, linking the individual to the reconciliation agenda whether they desired to be reconciled or not. While this caused some fear

in the minds of certain perpetrators and forced hurting victims to re-live their experiences, over time it did lead to open dialogue between these groups as trust was built in the process. Despite the various factors discussed that inhibited participation, the communal effort of creating a common narrative through mediating different experiences of the same event was an important exercise in redefining the rhetoric surrounding the genocide.

The TRC on the other hand involved passive participation that effectively left individual citizens to involve themselves in the process as far as they saw fit. The fact that the Commission dealt only with gross human rights violations limited direct participation in the project to victims and their families. For the general public this meant that it was up to the individual whether they would attend public hearings, listen to live radio broadcasts or watch weekly summaries of the cases heard. In this way there was a lack of emphasis on collective responsibility for the reconciliation project. This is particularly significant with regards to the nature of the negotiated transition in South Africa which for the most part left the underlying segregated social and economic structure in place. Beneficiaries to the apartheid regime (i.e. white South Africans) were able to remove themselves from responsibility as they were not compelled to partake in the activities of the TRC and were also left with their socio-economic position relatively untouched.

In *gacaca* despite the fact that individuals were on trial, it was the responsibility of the community as a whole to recognise the truth of the events that had taken place and work collaboratively towards building a common narrative. In South Africa, the white population were horrified to learn of the atrocities that had taken place but were able to assign responsibility to the individuals appearing in the amnesty hearings. While ordinary Rwandans were all compelled to partake in the national reconciliation project, most South Africans were for the most part removed from this experience.

In linking back to the significance of this difference for the model of process-based mediation, the difference between these cases does suggest that inclusive direct participation is necessary for engendering society-wide conflict transformation. Although there were flaws with the Rwandan system, it would have been difficult for any citizen, no matter how personally removed they had been from the conflict, to remove themselves from the reconciliation project. Relationships between ordinary South Africans were left largely untouched by the TRC process, failing to forge a feeling of communal responsibility for reconciliation.

4.2.2 Context-specificity

The model for process-based mediation outlines that mediation projects must be designed with cognisance of the conflict context within which they will operate. Conflicts are in themselves dynamic processes, and therefore conflict responses must change parallel to the shifting contextual dynamics (Ramsbotham *et al*, 2016:206; Bercovitch, 1996:4). It is here that the historical contextualisation of Rwanda and South Africa is vital, especially given the protracted nature of their societal divisions, as disputants' relationships are shaped by previous historical interaction (Miall, 2004:75-76).

4.2.2.1 Application

In Rwanda, the national reconciliation project after the genocide is said to have been shaped by several social factors unique to the Rwandan context (Melvin, 2010:932). The first of these is the mass participation of Hutu civilians in the genocide against the Tutsi population. The second is the geographical constraints associated with the small area and land-locked borders of the country itself. Outside of Kigali communities are mostly rural, meaning that the violent conflict of the civil war and genocide was intensified by poverty and overpopulation. Finally, the last important factor is that the reconciliation programme was informed by the RPF (Melvin, 2010:933). In other words, despite pronounced aims of reconciliation and justice, this process was dictated by the victors of war, a reality that would have significant consequences as will be discussed below.

The influence of the first factor on *gacaca* has been discussed extensively above, in that the response to widespread citizen participation in the genocide was a transitional process which made community participation compulsory for all adult citizens. In terms of historical specificity this approach was matched to a traditional Rwandan mechanism of conflict resolution which opportunely suited the widespread nature of the violence. Although amnesty was discussed, it was thought that the widespread crimes required criminal prosecution of perpetrators, particularly to address the existing culture of impunity (De Brouwer & Ruvebana, 2013:950). The use of a reformulated traditional mechanism did encounter a problem of incongruency in that the pre-colonial *gacaca*'s emphasis on collective responsibility for the crime was replaced by the individualisation of guilt to avoid collective stigmatisation of Hutus as *génocidaires* (Buckley-Zistel, 2005:122). This, along with the problems previously highlighted with public participation does illustrate the difficulties encountered in involving the entire population.

The second factor, that of geographical constraints, was also a driving contextual element behind the formulation of the contemporary *gacaca* courts. In pre-colonial times, before institutionalised national administration had been implemented, *gacaca* was used because community conflicts were central, particularly as a result of the close proximity of rural life (Buckley-Zistel, 2005:115). Following the genocide this proximity remained, resulting in what Drumbl (2002:8) dubs a “dualist post-genocidal society”. This means that both victim and perpetrator occupy the same territories and share the same public spaces, as well as the same language, religion and lifestyle. Thus, one of the contributing factors to finding such a widespread transitional mechanism was the reality of Hutus and Tutsis having to once again live in close proximity with one another, both geographically intermingled and economically interdependent.

The physical location of the courts was also specific to the context as the fields and grasses on which trials were conducted were often the actual locations in which crimes were committed. The surrounding community would gather in these locations to try cases that occurred within their own boundaries and to their own citizens (Towner, 2015:285). This is symbolically significant and plays a part in the humanising of the victims, as perpetrators are made to stand in the location where they committed the crime, facing the people they have harmed, surrounded by the community that witnessed their actions. This humanising process is unlikely to have happened if perpetrators remained in prison, surrounded and supported by others with their same mindset (Drumbl, 2002:11).

Finally, the reconciliation process was also informed by the stronghold of the RPF in the transitional government. The Rwandan case is an example of a contemporary conflict that falls outside of the usual bounds of mediation, as the rise in mediatory conflict responses has been attributed to the rise in negotiated settlements in post-Cold War intra-state conflict (Wallenstein & Svensson, 2014:317-318). As conflict has become less of a zero-sum game, its resolution has required more accommodation and dialogue, and disallowed the imposition of victor’s justice (Daly & Sarkin, 2007:9). However, this was not the case in Rwanda as the genocide only came to an end as a result of the RPA military victory, which enabled the RPF to set the transitional agenda. This influence of context on the mediation process was less positive than the previous two as it resulted in one of the primary critiques of the *gacaca* process – that it was biased in favour of RPF members and against the general Hutu population. The balance of power that underpinned the national reconciliation programme is exemplified by the top-down structure of the institution and emphasis on maximal justice of the National

Unity and Reconciliation Commission (NURC) and National Service of *Gacaca* Jurisdiction (Melvin, 2010:934).

The TRC, like the *gacaca*, was also intentionally shaped by its national context. While cognisant of the danger of essentialising ‘traditional African values’, it cannot be denied that the TRC is emotively linked to the African context through its purported foundation on the concept of *ubuntu*. This phrase is a Nguni concept that provides a shortened version of the proverb ‘*umuntu ngumuntu ngabantu*’, roughly translated as ‘a person is a person through other people’ (Jones, 2016:25). This communalistic value system includes a reciprocal relationship between the individual and the community as “individual security, safety, and well-being depend on ensuring such for others in the community,” (Akinola & Uzodike, 2018:93). The *ubuntu* rationale behind the TRC was that in participating and sharing in the process, a project of constructing national unity could be embarked upon creating a sense of belonging (Jones, 201:26). The above discussion on actual public participation in the TRC has indicated that this foundation did not necessarily extend into practice. Nevertheless, similarly to the indigenous nature of the *gacaca*, in its original intentions the TRC was founded on indigenous African values and traditions.

The restorative approach of the TRC is also matched to its context in that while the crimes committed in Rwanda were generally public knowledge, in South Africa the truth of apartheid crimes had long been denied and thereby covered over. The secrecy that shrouded the apartheid regime was by and large lifted by the detailed stories provided to the TRC, with the sincere remorse of some perpetrators having a real impact on how citizens reacted to the process (Gibson, 2006:417). Gibson (2006:423) points out that apartheid had been a very legalistic regime, with segregation laws forming its foundation. This created a political culture of legality, with the population being forced to stick quite succinctly to the divisions outlined in the laws of the country. Thus, the process of truth-telling in the TRC was constructive in the post-apartheid context as it delegitimised the previous government in the eyes of white South Africans by illuminating the extent of its misdeeds outside of the law.

However, there were also less-positive elements of context-specificity in the case of the TRC. These were not so much a result of purposefully shaping the mechanism to the context but rather inadvertent ways in which the historical context was reflected in the process. Although the country is heralded for its ‘peaceful’ transition, the negotiations that made this possible did not significantly alter the structural make-up of South African society. The TRC fit in to this

trend as a transitional institution that avoided challenging the status quo too severely (Stanley, 2001:526). It can be argued that while this avoided the outbreak of full-scale civil war, it resulted in limited transformative potential for the process as the racial power structure created by the apartheid system was not broken down.

Furthermore, criminal trials in the Nuremberg format were not altogether possible in the post-apartheid context for several reasons, and the transitional government was essentially forced to sacrifice retributive justice. The apartheid bureaucracy was still in power during the 1990 to 1994 period, so physical evidence of crimes was largely absent, missing or destroyed. An early attempt at high-profile prosecution in the case of Defence Minister Magnus Malan had ended in acquittal by 1996 and shown the political and monetary cost of formal criminal trials. Finally, the lack of decisive military victory meant that both extremes of retributive criminal trials and blanket amnesty were impossible (Jones, 2014:25). Despite the mass mobilisation achieved by the ANC and its UDF partner in South Africa, the liberation movement was simply not as militarily strong as the SADF bastion. During the 1980s, MK was attempting to topple a military regime that spent approximately \$2.8 billion on its army alone, with its own budget only reaching between \$8 million - \$25 million (Stemmet, 2011:111). The ANC, weakened by the loss of Soviet support and facing a still active and strong SADF, had little choice but to accept the non-negotiable condition of amnesty laid out by apartheid leaders (Gibson, 2006:424).

Finally, while the appeal to African values of *ubuntu* did root the process in some form of African tradition, it can be argued that the opposite was true for the religious foundation of the process. Motsemme (2011:222-224) argues that the dominance of Christian chairpeople and mainstream Christian churches in the TRC proceedings marginalised African perspectives of healing. By allowing Christian narratives to supercede those of African Traditional Religion, Motsemme (2011) highlights the continued predominance of colonial institutions in the post-apartheid system.

4.2.2.2 Comparison

In comparing the two cases and their individual manifestations of context-specificity, there are significant similarities that can be outlined. Firstly, the cases illustrate as expected that context must be taken into account when formulating a conflict response with the intention of transforming conflictual relationships. Both conflict responses were formulated with the context in mind, creating transitional processes that at least to some degree matched the needs

of the post-conflict nation. The Rwandan case was unique in the mass participation of civilians and its geographical limits, resulting in an extreme example of the close quarters of contemporary intra-state conflict. A large majority of the population was involved in the conflict either as perpetrators, victims or witnesses, and yet had to live alongside one another once the violence had ended. Thus, the widespread participation and locality of the *gacaca* suited the dynamics of the post-conflict reality and left no-one who experienced the conflict out of the reconciliation process.

The TRC was also matched to national contextual dynamics in its focus on truth-finding, given the secrecy of the apartheid era. The atrocities committed by the secret police were some of the most violent of the gross human rights violations committed during the apartheid era and yet they were the least documented. The truths brought forward during the TRC process, despite some being partial or incomplete, did show the South African population the reality of apartheid conflict and delegitimised any attempts to denounce the atrocities that were committed.

A further similarity is particularly significant in the context of Africa and the legacies of colonial intervention. These two cases illustrate the potential success of African conflict mechanisms that turn from the norms of traditional Western criminal justice and are instead rooted in African custom and values. *Gacaca* was a traditional justice mechanism tailored specifically to the Rwandan context, particularly with regards to the close proximity of civilians' lives and the community-centric nature of Rwandan society. These characteristics of the Rwandan landscape remained after the genocide and thus by using a reformulated version of this mechanism it was afforded a high level of legitimacy and understanding in the eyes of citizens. This is a level of legitimacy that far-removed normal courts and international mechanisms such as the ICTR would never have enjoyed.

In South Africa, the TRC's foundation in and advocacy of the values of *ubuntu* similarly grounded the process as a distinctly African response. This was needed in the context of a nation beginning the journey of distancing itself from the oppressive legacy of European rule. Particularly given the lack of responsibility afforded to the white population, this placed a moral expectation on white South Africans to become *African* in at least one significant way by adopting this cultural-ethical tradition (Jones, 2014:26). In both cases the shaping of the mechanism to the context had significant consequences in addressing issues specific to these nations and their reconciliation needs.

However, it must be noted that both these cases also suggest that context-specificity is only positive insofar as it is intentional. While shaping the mediation process to match the dynamics of the conflict context, practitioners should be aware of how the context may in turn shape the conflict response. In the Rwandan case, the zero-sum military victory of the RPA placed its leaders in control of the transitional agenda while the opposition was demobilised to the extent that they could not re-ignite the conflict, regardless of their feelings towards the conflict response. While *gacaca* was in many ways well-matched to the project of reconciliation after the genocide, it can be described as a form of victor's justice, given the lack of prosecution of RPA perpetrators. Similarly, in South Africa the TRC was limited by its formulation during the negotiated transition. The Commission was created by a transitional government that avoided upsetting the status quo and was limited due to the power still held by the main perpetrators, the apartheid leaders. It was also formulated within a system still structured by colonial institutions such as the Christian church. Therefore, the extent to which it was able to truly address the root causes of the conflict is questionable, as the inherent structure of the apartheid system was left largely intact.

The above discussion can be summarised in saying that context-specificity would be an important characteristic in a process-based mediation project. In order to formulate a response that addresses the root causes of a conflictual relationship, it is necessary to understand both the current and historical background of this relationship. This is to ensure that the mediation project is intentionally shaped to match the conflict dynamics, and to ensure that any influence the context may in turn have on the project is accounted for. The need for practitioners to be aware of the conflict context suggests that mediators would benefit from having significant contextual knowledge to suit this need, a point which leads to the discussion of the next characteristic of process-based mediation – the Insider-Partial mediator.

4.2.3 *'Insider-Partial' Mediator*

The discussion of this characteristic contributes to one of the most widely contested elements of mediation theory, that of the bias, neutrality and impartiality of the mediator. This contest is divided into two broad camps between those who are for²⁵ and those who are against²⁶ the idea that mediator impartiality is a necessary condition of effective mediation. Of the two broad camps, this study falls into the latter, advocating for Wehr and Lederach's (1996:58-59) idea

²⁵ See Tillett & French (2010:105), Moore (1986:14-16) and Horowitz (2007:51).

²⁶ See Wehr & Lederach (1996:70-71), Svensson (2009) and Touval and Zartman (1985:15).

of the Insider-Partial mediator who is expected to be suited to societies with community-based norms such as those in many African countries. The Insider-Partial mediator is drawn from the conflict context specifically because of their connection to the local community (a point which is particularly important in a community-based project) and because of their extensive local knowledge to help in addressing the root causes of conflict (Wehr & Lederach, 1996:58-59). These traits provide the mediator with significant credibility leverage within their community.

As a contribution towards African mediation theory specifically, in this study this characteristic is significant. Laurie Nathan, one of the most influential scholars in African mediation literature and practice, has posited that African mediation suffers from a lack of consideration when mediators are selected (Nathan, 2007:12). He has suggested that African mediators have in the past been selected based primarily on their status as prestigious African leaders, and not as a result of their mediation expertise (Nathan, 2005:10). While this is influenced by the fact that almost all mediation activity thus far on the continent has been concentrated at high-level negotiations, the critique is still relevant that African mediation requires a more conscientious approach in the choice of a mediator, based on their relevant skills, expertise and societal positioning.

4.2.3.1 Application

Despite the historic conflict between the Hutus and the Tutsis, Rwandan society has always been largely community-based (Prunier, 1995:1-5) and by the late 20th century most communities were made up of a mixture of these groups. In this context, specifically given the locality of genocide crimes and the resultant community-based nature of *gacaca*, it is expected that mediators with extensive contextual knowledge and ties to the community would be most suited to this conflict response. The *gacaca* judges, or *inyangamugayo*, therefore fit succinctly with the concept of the Insider-Partial mediator. These elected judges were respected individuals within Rwandan communities and seen to have a vested interest in the transformation of community conflict.

According to the original design of the *gacaca* courts, the judges performed the role of mediator specifically in the final stages of the information-gathering phase. During validation meetings, judges were intended to balance accusations against defence testimonies in debates regarding the categorisation of defendants (Meyerstein, 2005:489). The Organic Law 16/2004 prohibited individuals with specific political or governmental affiliations from being elected to the Bench. Impartiality in a political sense was thus emphasized strongly in the Laws establishing the

gacaca courts (Meyerstein, 2007:475). Article 14 of Organic Law No. 16/2004 stated the conditions for Bench judges as: no participation in the genocide, free from ‘the spirit of sectarianism’, not having been sentenced to any imprisonment exceeding six months, of high morals and conduct, truthful and honest, and characterised by a ‘spirit of speech sharing’.

In the political sense, there was still an emphasis on impartiality of the judge (read mediator), as evident political or governmental affiliations could lead to their dismissal from the Bench. However, in the sense of partiality towards the interests of the community, it can be said that this was a requirement of the *gacaca* judges. The intention was for individuals committed to the project of truth-finding and reconciliation of the community to take on the role of mediating between victim and perpetrator statements and in this way help construct a common narrative surrounding the genocide events.

Unfortunately, in reality, the judges did not always end up performing this mediatory role. Information-gathering of the kind originally intended for the *inyangamugayo* was often relegated to underprepared *nyumbakumi* – individuals who head groups of ten households. Abuse of this position is said to have led to inaccurate information and false accusations (Meyerstein, 2005:489).

It has also been reported that judges’ bias and community position did in some cases lead them to favouring the side of the perpetrators, resulting in a lack of protection for the victims. An individual example of this is the case of Pascasie Mukasakindi, a rape survivor who was supposed to testify in closed session, but had to endure community members listening in to her testimony and making disparaging remarks through the courtroom windows, which the judges did nothing to stop (De Brouwer and Ruvebana, 2013:949). The extent of the potential bias of judges is reflected in the fact that approximately 40% of the 254 000 elected judges had to be replaced as they were found to have been involved in the genocide themselves (De Brouwer & Ruvebana, 2013:941).

However, interviews with survivors conducted by De Brouwer and Ruvebana (2013:948) indicated that generally both Hutu and Tutsi judges were commended for their professionalism. The authors also note that judges’ position as local citizens meant they knew their congregation well and could empathise well with their fellow community members and support survivors while testifying. This supports the suggestion of the process-based mediation model that the Insider positioning of the mediator is important in providing a constructive space for dialogue between disputants.

Furthermore, as suggested by Drumbl (2002:10), perpetrators are more easily shamed when there is familiarity between those involved in the conflict resolution process. In the case of Rwanda there is strong familiarity between victims, perpetrators, and the mediator as a result of the geographical constraints discussed above. Therefore, if Drumbl's assertion is correct, the Insider positioning of the *gacaca* judges, alongside the public nature of hearings, is expected to have contributed to the shaming and remorse of perpetrators.

The TRC differed from the *gacaca* in that the Commissioners, who played the role of mediator in this project, were more high-profile leaders that travelled to each community in which the hearings were being held. However, especially in the case of Chairperson Desmond Tutu, they can still in some ways be regarded as Insider-Partials.

African truth commissions have generally been criticised for including commissioners who are too political and allied either to the government or a specific region. Hayner (1996:25) argued that African truth commissions need commissioners who can assert that the commission's work is not politically motivated (Hayner, 1996:25). In this way as with the *gacaca* courts, impartiality in the political sense is seen as negative as it would threaten the legitimacy of the mechanism, however partiality in favour of the community and improving disputant relationships could signify better trust between the mediator and disputants.

Chairperson Desmond Tutu is said to have played a primary role in the TRC's reconciliatory ambitions. His involvement was intended to signify that the Commission was not simply a façade for a political amnesty deal (Evans, 2016:708). In alignment with the balance of accountability upheld by the Commission, Tutu's relative independence from any political organisation, especially from the ANC, meant that he was considered effective at casting blame on all sides of the conflict (Gibson, 2006:427). Although this does suggest impartiality was key in the character of Tutu as a mediator, he was partial in a sense towards the South African population as a whole.

Archbishop Tutu's religious affiliations and ideology fit well with dominant notions of reconciliation (Gibson, 2006:427). In particular the emphasis on forgiveness, sincere remorse for wrongdoing and repentance from future offences were all particular focus points he brought to the Commission and that contributed to its reconciliatory potential. Tutu's persona, alongside continued support from President Mandela, was also important in legitimising the collective memory created through the TRC process (Gibson, 2006:418).

One high-profile example of his partiality towards remorse and focus on reconciliation is his imploring of Winnie Madikizela-Mandela during her testimony saying, “You are a great person and you don’t know how your greatness would be enhanced if you were to say: “Sorry. Things went wrong, forgive me”. I beg you’,” (as quoted in Evans, 2016:716). Although Tutu’s political impartiality is often stressed as a reason for his legitimacy, in alignment with the advocacy of an Insider-Partial mediator it was also his clear vested interest in the reconciliation of South Africans that helped legitimise the process.

4.2.3.2 Comparison

A comparison of the mediators in each of these examples illustrates the continued relevance of the partiality debate. On the one hand, they both suggest that political partiality can be detrimental to the conflict transformation process. In Rwanda, the fact that many judges were Hutus themselves and closely connected to the Hutu proportion of their communities, meant that certain judges were seen as biased on favour of Hutu perpetrators. Certain survivors’ experiences show that contrary to the expectation of international human rights organisations that lawyer-less courts would disadvantage the perpetrators²⁷; it was often the survivors who would have benefitted from more support in the face of potentially biased judges. In South Africa, the political independence of Chairperson Tutu and his resultant even-handedness legitimised his role in the process and further served to legitimise the collective truth that was produced by the work of the TRC. These cases therefore suggest that in national conflict transformation processes where political division is evident, political impartiality is a necessary component of mediator identity.

However, with regards to the advantages of using an Insider-Partial mediator, the cases also serve to validate the potential of an individual drawn from the local context who has extensive knowledge of the community dynamics and a vested interest in the constructive transformation of conflict relationships. Both the *gacaca* judges and the TRC commissioners, especially the figure of Archbishop Tutu, were important figures in the landscape of their respective communities and had vested interests in moving society towards the goal of reconciliation. Had these mediators been completely neutral outsiders, perhaps from the international community, it is unlikely that they would have had the same contextual knowledge required to shape these

²⁷ This critique of human rights organisations, particularly that of Amnesty International, is discussed further below in section 4.3 regarding the Transformative Success of the *gacaca* and the TRC.

processes to achieve reconciliation within their particular contexts. It is also unlikely that they would have enjoyed the trust of the communities involved.

Therefore, in terms of the model for process-based mediation, political impartiality is relevant and cannot be completely disregarded, however the Insider-Partial mediator does provide a suitable framework for mediators' role in African community-based mediation projects. It can be said that the use of an Insider-Partial mediator in both cases added a sense of legitimacy to the proceedings due to their positioning as important members of society. Given that impartiality in the political sense is one of the most debated elements of traditional mediation, it is unsurprising that political impartiality seems to be held up as an important characteristic of the mediators involved in these cases. However, the Insider status of the mediator does take on new meaning and importance within this model.

4.2.4 Resource Pressure

The fourth element advocated by the process-based mediation model is that of limiting as far as possible the resource pressure on the project. In the context of traditional mediation focused on outcomes and settlements, time pressure is seen as a positive element in the process as it encourages fast agreements and culminates active combat quickly. However, while this may solve the immediate conflict crisis, forced agreements are often not self-enforcing and fall apart once the mediator leaves the foray (Beardsley, 2008:723-724). This study follows the finding of Pinfari (2011) that only when time pressure is low or absent are agreements durable and transfers this idea into a project of transformation. The expectation is that durable changes in disputant relationships will require low resource pressure so as to afford disputants enough time to communicate their grievances in full and to construct new relationship dynamics.

4.2.4.1 Application

In a conflict as violent as that experienced during the Rwandan genocide, it is logical that the conflict response will take time to address the breadth and depth of societal destruction. The *gacaca* system however, being built on a traditional mechanism that simply required the community sitting together on a communal grass, required few physical resources to take place. The decade over which the process operated indicates that the government was prepared to take the time required to address the conflict as widely as necessary for transformation to occur.

It is clear from the information-gathering process that priority was given to taking the time for thorough proceedings. During the data collection of the first phase, cell-level General

Assemblies took two to three months carrying out six informational surveys through a series of meetings. These surveys named and listed those who lived in the cell prior to the genocide beginning, those who had died during the period of October 1990 to December 1994, those cell-members who had died elsewhere, lists of property damage and those suspected of participating in the genocide and their respective alleged crimes (Meyerstein, 2007:476). Each data-collecting 'session' would carry out as many of these meetings as was required to complete the six surveys (Meyerstein, 2007:476). There was therefore an institutional commitment written in to the *gacaca* procedures to build as full a picture of the genocide as possible, regardless of the lengthy time it took.

The exceptional length and breadth of this project did however produce an unforeseen consequence in that through confessions and the requirement of incriminating co-conspirators, the number of accused rose continuously, with an extra 63 447 suspects implicated by the end of the pilot phase (Meyerstein, 2007:477) and estimates of over one million accused suspects by 2008 (Longman, 2009:310). The pressure that this exorbitant number of suspects placed on government resources was reflected in actions taken to release a large number of suspects. In January 2003, a Presidential Order released 25 000 prisoners in categories such as the very old or underage (Meyerstein, 2005:475). This was followed by a further release of 36 000 inmates in July 2005 (Meyerstein, 2005:475). It is thought that this was the government's response to the pressure placed on national resources by overcrowded prisons (Meyerstein, 2005:487).

Furthermore, while the actual proceedings themselves required little monetary resources, the time cost of dedicating one full day a week to *gacaca* hearings was felt by the citizens themselves. As discussed above, this resulted in low public participation and animosity towards the process as a whole.

The TRC was even more limited than the *gacaca* due to resource pressure, reflected in both a limited mandate and limited time period over which to conduct its work. As a result of restrictions imposed by the government on the time and finances afforded to the Commission, its mandate was limited to 'gross violations of human rights'. The principal acts documented by the Commission included murders by both state agents and armed opposition, disappearances, torture and abuse by the police and armed forces, abuse in opposition detention camps outside South Africa and raids into neighbouring countries by armed forces targeting the opposition (Hayner, 2006:302). While this placed particular focus on the horrific acts undertaken during the apartheid era that had thus far been kept secret, as has been mentioned

it provided limited acknowledgement of the structural and institutional nature of apartheid segregation (Stanley, 2001:530). Furthermore, it focused on human rights violations that involved bodily trauma, and did not look at violations such as socio-economic dispossession or forced removals that had arguably more pervasive effects (Evans, 2016:708; Hayner, 2006:302). This limitation in turn limited the potential of the TRC to contribute to social transformation, as it dealt only with these high-profile events and not with the structure that had produced them.

The time afforded to the TRC to fulfil its mandate was simply not long enough to heal the extended history of conflict and division at the root of apartheid segregation (Stanley, 2001:542). As has been noted before, it would be misguided to judge the success of a project in achieving a goal it was not in fact intended to achieve. The TRC had the purpose of gathering testimonies from victims and perpetrators of gross human rights violations during the apartheid era, a mandate that was dictated by time pressures. It did fulfil this mandate and heard thousands of testimonies. However, the fact that reconciliation took place more so at the individual level as opposed to the societal level does show the impact that limited time and in turn limited mandate can have on the transformative potential of a transitional project.

4.2.4.2 Comparison

Concerning the characteristic of resource pressure, the differences between the two cases are therefore significant. The *gacaca* courts, though incurring costs on the side of the participants, required few physical resources relative to other transitional mechanisms such as criminal trials or a travelling truth commission, as was the case with the TRC. This meant that *gacaca* was able to operate for a decade, covering a breadth and depth of the conflict that would otherwise have been practically impossible, particularly given the decimation of infrastructure as a result of the violence. Due to the developing nature of African economies, transitional mechanisms often face a nation-building project with very little resources to fund them. The *gacaca* therefore again provide an example of an African country finding an innovative indigenous solution to a problem experienced by many other post-conflict African countries.

The TRC on the other hand was limited in its available resources but was also in itself a costly process, resulting in a limited mandate covering only gross human rights violations. Although these were important historical events that had been largely covered up before the work of the Commission, they represented the worst outcomes of an extensive underlying system of structural violence. While the atrocities committed by individuals during the liberation struggle

needed to be brought to light to give families and victims some form of closure, and to hold perpetrators accountable in the public eye, this limited mandate resulted in a national focus on individual events and people, instead of dismantling the underlying oppressive system. The project did not infiltrate the grassroots level of South African society, allowing many to remove themselves from the reconciliation project and failing to create the mediative space required for disputant relationships to be transformed on a national scale.

Resource pressure is therefore shown to be an important element for mediation practitioners to be conscious of, as durable transformation of conflictual societal relationships requires a much longer process than traditional mediation allows for. Although there are not always extensive resources available to aid in a long-term reconciliatory project, it is up to the formulators of the mediation project to find practical solutions that will be sustainable at a grassroots level. One can reiterate here the sentiments of Ramsbotham *et al* (2016:215) and Gartner and Bercovitch (2006) as mentioned in Chapter Two concerning the importance of ‘Track II’ mediation efforts involving non-state civil society actors. These efforts can maintain pressure on governmental reconciliation activities and continue reconciliatory practices long after the state-led transitional period has come to an end. If civil society can be included in state-sanctioned transitional mechanisms, this may relieve some resource pressure off government reserves and reinforce a feeling of communal responsibility for the reconciliation project.

4.2.5 Relational Focus

This analysis now turns to the final, and most important characteristic of the process-based mediation model, that of the relational focus. Of the five elements included in the model, it is this one that most obviously removes the practice of mediation from the field of conflict settlement or management and reconceptualises it within the field of conflict transformation. The aim of the mediation project is no longer reaching a negotiated agreement based on compromising disputants’ interests but is extended to creating a social space in which the quality of their relational interaction can begin to change (Lederach, 2002:92). In this way mediation can be used to engender more sustainable peace, due to the transformation of conflictual relationships at their root cause.

4.2.5.1 Application

An analysis of *gacaca* in light of this relational element highlights the mechanism’s focus on transforming disputant relationships through the mediation of opposing testimonies. As the project was positioned in the transitional phase and took place at the grassroots level, it is clear

that its aims went beyond those of elite-level settlement and cessation of violence as is typical of traditional mediation approaches. It created the social space for incremental shifts in the quality of relational interaction between disputants (Lederach, 2002:92), and was premised off goals of reconciliation and (in some ways) restorative justice. The Rwanda Reconciliation Barometer (RRB) (NURC, 2015:25) notably found in 2015 that Rwandans do in fact view reconciliation as relational, agreeing that it involves ‘building good relationships’ (97.9% of citizens, 87.1% of which strongly agree), asking for forgiveness (98.2% of citizens), and granting forgiveness (98% of citizens). This suggests that the Rwandan transitional process did emphasise relational change as important for reconciliation, leaving a lasting impression on the citizenry.

Turning to the elements of Bush and Folger’s (1994) ‘transformative mediation’ as discussed in Chapter Two, one can draw parallels with two of the *gacaca* process’ stated aims. The first of these was the intention to establish the truth about the genocide (Buckley-Zistel, 2005:116). This contributes to the element deemed necessary in transformative mediation of recognition of disputant experiences. Survivors were given the opportunity to talk about their experiences in *gacaca*, giving them an audience to hear stories that otherwise would not have been told in such a public manner (De Brouwer & Ruvebana, 2013:946). As has been mentioned above, the community-centred nature of the project with its public testimony and confrontation of perpetrators was intended to both bring out the whole truth of the events and have the community collectively recognise the victim’s suffering (Longman, 2009:306). The institutionalised and government-mandated nature of the *gacaca* also contributed to recognition at the bureaucratic level, as there was official acknowledgement of human rights abuses and violations (Melvin, 2010:934).

During the trials, accusations and testimonies did become heated but even this has been seen as a positive element allowing for hidden grievances and resentments to be made public knowledge, encouraging the community to fully recognise the extent of divisions and from that point find constructive ways to deal with them (Longman, 2009:308). Through these kinds of interaction recognition could also go both ways between victims and perpetrators, with each side recognising the other as a ‘moral equal’ (Maddison, 2017:161). Perpetrators would be forced to bear witness to the suffering of their victims and recognise the part they played in producing such suffering. Perpetrators’ families in some cases were shown the extent of their family members’ actions that they had not previously known in full (De Brouwer & Ruvebana, 2013:946). Victims and their families on the other hand may be presented with the realities of

government-sanctioned violence and the consequential pressure placed on some Hutu perpetrators, inducing the recognition of a different side of the conflict (De Brouwer & Ruvebana, 2013:946; Wielenga & Harris, 2011:23). This process of mediating between different experiences can be regarded as a key dimension of *gacaca* that matches the relational focus in this model of process-based mediation.

The *gacaca* also contributed to the second element of Bush and Folger's (1994) transformative approach, that of empowerment. This can be seen clearly in the stated aim of giving the Rwandan population the means and capacity to solve their own problems (Buckley-Zistel, 2005:116). This pan-Africanist-type ownership of the transitional process fits quite directly into Bush and Folger's (1994) stated need for a process of empowerment in mediation attempts intended to transform disputant relationships. The genocide had not only left survivors with broken families, communities and bodies, but had broken their collective spirit leaving feelings of hopelessness and fear. The *gacaca* process allowed victims and communities on the whole to take ownership of their own narrative, speaking their stories out into the world and having them recorded as a part of Rwandan history.

The relational focus as evidenced by a restorative element is seen in the confession mechanism of the *gacaca*, intended to encourage apology and forgiveness (Buckley-Zistel, 2005:117; Longman, 2009:306). The hearings provided a space in which perpetrators were compelled to face their victims, in the hopes that humanising the crime in connection with the victim would inspire sincere remorse. This was intended to give relief to victims by finding out the full truth of events and seeing perpetrators convicted for their confessed crimes (De Brouwer & Ruvebana, 2013:942). In some cases, confessions also resulted in perpetrators directing families to where the remains of their victims lay, allowing for proper burials which are symbolic in Rwandan society (Longman, 2009:308). The plea-bargaining exchange of prison time for work done in service of the community or the victim is further thought to have been restorative in its potential to reintegrate offenders back into their communities (Longman, 2009:306).

This is not to say that most confessions were sincere or even deemed necessary by the perpetrators. One author reported from interviews with survivors, that they were shocked by the arrogance of some perpetrators who argued "that the state (and for some also God) has forgiven them and thus demand that the survivors do so, too," (Buckley-Zistel, 2005:125). In the case of perpetrators expected of lying, there was often no one alive to corroborate their

stories. Particularly in cases concerning sexual violence, many perpetrators are suspected to have given only partial confessions, as full confession could result in life imprisonment (De Brouwer & Ruwebana, 2013:947).

Through what she calls a ‘Fantasy Theme Analysis’ of trial transcripts, Towner (2015) finds a pattern in the rhetoric of survivors versus perpetrators that shows the significance of mediating a common narrative through communication in the *gacaca* space. Perpetrators are found to have what Towner (2015:290) describes as a “macro-vision”, that despite the limited mandate of each court (geographic boundaries of the community and time boundaries for crimes committed between October 1990 and December 1994) sees testimonies extending far beyond its bounds emphasising systemic, historical causes. Survivors on the other hand are described as having “micro-vision”, with their testimonies emphasising localised details of genocide events in specific people, places and implications or effects.

The allocation of responsibility in the macro-vision is on large groups and higher-level leadership while the micro-vision points out specific individuals. The macro plotline is ‘collective and conspiratorial’, with ideological motives given and indirect means used such as laws, military orders and fear. The micro plotline however highlights the personal nature of the violence with neighbour killing neighbour, motives of vengeance or hatred, and using handheld weapons such as machetes and clubs (Towner, 2015:292). It is interesting to note here that in the survivor interviews conducted by De Brouwer and Ruwebana (2013:944) all interviewees agreed to have their names included in any research published from their experiences, with many specifically requesting the inclusion. This demonstrates the detailed and personalised ‘micro-vision’ of survivors’ narratives in that they wish to be recognised as specific individuals with specific personal experiences. Towner’s (2015) analysis is not only a compelling insight into the different psyches of victim versus perpetrator but is significant in showing the necessity for communication of experiences between these groups in the process of recognition and rewriting the accepted truth of events.

When turning to the case of the TRC, the limited mandate of dealing only with gross human rights violations in turn limited the potential of the mechanism in engendering societal relationship transformation. Despite the gravity of these violations, they were not nearly as widespread in South Africa as in Rwanda and therefore by only addressing these crimes the mechanism did not directly involve society at large. However, in its official intentions the project did aim for broad-based reconciliation despite the lack of widespread direct

participation. As stated with regards to its openness to the public, through attempts to be accessible the TRC was intended to shift relationships between citizens, despite the focus of hearings on individual perpetrators. The use of a truth commission as opposed to legal trials meant that it was accessible to ordinary citizens, a necessity if the process is to be directed at a project of societal transformation (Gibson, 2006:424).

As was the case with *gacaca*, the TRC contributed to the necessary element for transformative mediation, that of recognition. Stanley (2001:529) succinctly states that “In allocating a space for those who have been previously silenced, the Commission played a part in affirming that individual experiences of trauma are important at a societal level.” The work of the truth commission and the publication of its Final Report were state-sanctioned, which provided an official acknowledgement of victims’ previously denied truths and played an important psychological role in healing (Hayner, 1996:22). The official end of the process and publication of a Final Report is also thought to lend a feeling of closure to individual victims and society (Hirsch *et al.*, 2012:387).

In terms of the empowerment potential of the TRC, it did give victims the opportunity to take control of their own stories and have their history written in a way that reflected their experience. Despite the fact that amnesty was granted, due to the involvement and direction of commissioners in the dialogue amnesty hearings are said to have often turned into “tutorials on reconciliation and forgiveness” (Gibson, 2006:425).

Similar to the micro- and macro-visions Towner (2015) discusses with regards to Rwandan perpetrators and victims, Gibson (2004b:132) distinguishes between the micro- and macro-truths of reconciliation in South Africa. These two truths represent two different relationship planes on which reconciliation can and should occur. The micro-truth is the truth of what happened to specific loved ones and involves the direct relationship between victims and perpetrators. This kind of reconciliation was the most publicised during the TRC process as it was the most visual. The macro-truth on the other hand concerns reconciliation between racial groups on the whole, operating more at a societal level. This macro-truth requires an acceptance of responsibility for harms done under the apartheid regime, an acceptance that many white South Africans have not entirely maintained, as will be discussed below with regards to the transformative success of the TRC.

Following his own research Gibson (2006:414) has concluded that the TRC process produced reconciliation by encouraging the population to rethink their views concerning apartheid. By

bringing to light the reality of the lived experience on all sides of the conflict, the TRC was able to inspire attitude change or ‘cognitive dissonance’ with citizens’ conscious/sub-conscious views. What is interesting here with regards to this study is that this altering of South Africans’ attitudes towards one another was not necessarily a direct product of truth-finding but could arguably be explained as a result of building a common understanding. If a project of process-based mediation is focused intently on this goal in creating a new common narrative based on the experiences of all parties involved, and thereby altering the relationship disputants have with one another, it could achieve the same cognitive dissonance as was produced by the TRC.

Wielenga (2011:42) in fact posits that, “This was at the heart of the TRC: a rehumanisation of both perpetrators and victims, so that South Africans could begin to engage each other as human beings in relationships, in the way that Lederach described.”

4.2.5.2 Comparison

These two cases thus demonstrate the process-based mediation characteristic of a relational focus but to varying degrees. Both mechanisms contributed to the recognition and empowerment of disputants (especially victims) in providing the space for them to share their experiences on a public platform. The key process that this engendered was the creation of a common narrative concerning the events of the past, thereby creating a foundation for moving forward from a place of mutual understanding. The extent to which the general public accepted this common narrative is however different in the two cases and is linked to the extent of public participation. In the *gacaca* courts the whole community was compelled to be involved in the process, meaning that all of society was made responsible for the reconciliation project. In South Africa on the other hand, while there were captivating events of individual reconciliation between victims and perpetrators of gross human rights violations²⁸, the lack of widespread participation limited the societal transformation the project could engender.

Neither of the mechanisms were focused on conflict settlement or mitigation, both were formulated with the intention of catalysing reconciliation at a societal level. Therefore, both provide examples of a mediated conflict transformation initiative, however their approach at achieving this goal was different and resulted in differing transformative capabilities. This suggests that the multi-faceted analysis provided in this study is valid, as in assessing the characteristic of relational focus, the extent of community participation, informed by the conflict context, is shown to have an effect. These characteristics are inextricably linked to one

²⁸ See below in section 4.3 Transformative Success the example of Neville Clarence and Aboobaker Ismail.

another and therefore in formulating mediation projects practitioners must be cognisant of them all, and the effect they will have on one another.

As a final comment on the relational characteristic, while it is recognised that neither project was run as a mediation project employing intentional mediation techniques, both provided a space in which common understanding could be created and at the very least laid the foundation for disputing parties to view each other as moral equals. Given that this relational impact was more a by-product of the truth-finding process than an intentional step-by-step transformative mediation approach, the hope would be that a project intentionally formulated with the theorised relational focus in mind would be even more successful at transforming disputant relationships.

4.3 Transformative Success

Having analysed the cases of the *gacaca* courts and the TRC with regards to the analytical framework of process-based mediation, the study now turns to an assessment of the transformative success of the mechanisms. As the purpose of this study is to advocate for a model of mediation aimed at driving a process of society-wide transformation, the transformative success of each case must be analysed. In discussing their demonstrated ability to transform disputant relationships, the explanatory potential of the five process-based mediation characteristics can be explored.

In the case of the *gacaca* courts, it must first and foremost be recognised that certain sections of the international community, particularly human rights NGOs, opposed the *gacaca* form of justice. One such organisation was Amnesty International (AI) (Meyerstein, 2007:468). This opposition was founded on the organisation's claim that the informal, testimony-based trials failed to satisfy the demands of Article 14 of the International Covenant on Civil and Political Rights, which includes the right to fair trials, the right to be presumed innocent, the right to equality of arms, and the right to impartial judges. This critique is valid in that while the methods of the courts allowed for the processing of over two million cases in ten years, this was not without some sacrifice in terms of perpetrator representation.

Furthermore, it cannot be denied that the RPF has created a political system that more closely resembles a dictatorship than the liberal democracy Rwanda is purported to be. Disappearances and unexplained deaths seem to follow any political opposition, and so-called free and fair elections have kept Kagame's coalition party in power with a vast majority of the vote since 2003. This is a regrettable consequence of a war with winners and losers, as the winners are

able to set the agenda post-war with little opportunity for dissent from the disempowered losing side.

Returning to the *gacaca* process itself, despite all good intentions associated with community participation fostering ownership of the process and improving communication, the lack of participation at least initially in *gacaca* undermined these key aims, inhibiting the achievement of a common ‘social truth’ and thereby inhibiting the potential for reconciliation (Buckley-Zistel, 2005:119). As argued by Daly and Sarkin (2007:6), the potential of truth to lead to reconciliation is threatened when there are opposing conceptions of this truth, making the narrative-building potential of process-based mediation important in its reconciliatory success. Without public buy-in to this process the reconciliatory potential of *gacaca* was thus threatened.

The absence of physical evidence and promotion of confessions also made it difficult for the *gacaca* to fulfil its intention of finding the whole truth and instigating sincere apologies from perpetrators. On the side of the Tutsi population, the process lost legitimacy due to threats and violence against witnesses, incomplete confessions, majority Hutu General Assemblies and reliance on witness testimonies subject to intimidation (De Brouwer & Ruvebana, 2013:949). The government had lost a certain measure of trust of the Tutsi population before the national trials had even begun as overcrowding in prisons had led to the afore-mentioned release of prisoners through two Presidential Orders (Meyerstein, 2005:475). A lack of process legitimacy and the potential for partial testimonies thereby inhibited victim-perpetrator relationship transformation as the creation of a common narrative upon which the process depends is also threatened.

Perhaps one of the biggest obstacles to the transformative success of the *gacaca* was its sole mandate over genocide crimes – in other words, ignoring crimes committed by the RPF during the insurgency of 1990-1994, the massacres after they had taken office, and the tens of thousands of deaths during the 1996 invasion of the Congo. It is estimated that the RPF’s campaign to end the genocide along with attacks intended to find remaining Hutu extremists had led to between 25 000 and 60 000 Hutu deaths (Meyerstein, 2007:472). Despite this reality there came to be a problematic relationship between *gacaca* and ethnic identity, as crimes were only considered to be part of the genocide, and thereby the *gacaca* mandate, if the perpetrator was Hutu and the victim was Tutsi (Longman, 2009:309). The process thus lost legitimacy in

the eyes of the Hutu population as well, as this came across as a kind of ‘victor’s justice’ (Buckley-Zistel, 2005:123).

This victimisation Hutus felt was supported by the fact that conviction in *gacaca* became legally sufficient grounds for termination of employment and also stripped the perpetrator of many of their civic rights as citizens, including the right to hold public office and the right to vote. This placed many Hutu in a “socially subservient and vulnerable position” (Longman, 2009:310), potentially reinforcing this root cause of societal division. Penal Reform International (PRI) (2006:49) states that although it is difficult to determine the true extent of false accusations, they are not negligible and contributed to the collective fear and anxiety felt by the Hutu population once the *gacaca* were rolled out nationally.

However, despite these procedural issues with *gacaca*, its aim of reconciliation did remain a focus throughout the process and in the minds of citizens. An important point to note is that most of the critique administered against the *gacaca* was a result of government intervention and manipulation of the process (Longman, 2009:309), as in the case of excluding RPF crimes, and therefore not necessarily a result of flaws in the process itself. In interviews with survivors, reconciliation is almost always mentioned as a key objective of the courts (De Brouwer & Ruwebana, 2013:951; Clark, 2010:308) showing that despite the various issues threatening the legitimacy of *gacaca* truth, reconciliation did remain a primary objective of the citizenry throughout.

One positive element to the *gacaca* process linked to the transformative mediation goal of empowerment was the ownership of the process by Rwandans themselves. It is important to note here the positive view of citizens towards *gacaca* compared to the ICTR, which by and large is viewed as a somewhat hypocritical imposition of the international community, stepping in to ‘provide justice’ when there was almost no response from international actors before or during the genocide itself (Drumbl, 2002:12). The *gacaca* presented an innovative and legitimate attempt to transform traditional Rwandan social institutions to fit contemporary social needs (Longman, 2009:307). Particularly in the African post-colonial context where states have struggled to restructure social institutions in truly African ways, the *gacaca* provide an example of former South African President Thabo Mbeki’s often-used adage: ‘African solutions to African problems’.

This focus on the locally specific nature of *gacaca* is evident in the Rwandan Supreme Court’s response to the criticisms of AI described above (Meyerstein, 2007:469). Although this

response borders on a form of ‘soft’ cultural relativism, the points it raises concerning a lack of recognition of Rwanda’s resource limitations are completely valid. The Supreme Court highlighted the immense difficulty the Rwandan government faced in providing a solution “given the near-impossible context of a mass participatory genocide in a developing country” (Meyerstein, 2007:469).

Despite the Western critiques questioning the fairness of lawyer-less criminal trials, the *gacaca* arguably included innovative elements of fair trials outside of the Western criminal court structure. In this light *gacaca* is only viewed as deficient in its capacity as a substitute for *Western* transitional justice (Meyerstein, 2007:470). Extensive public participation provided more transparency and public oversight than is often possible in transitional mechanisms, and decentralised control of each community’s process could explain survey data suggesting widespread support (90.8% of Rwandans in February 2002) of *gacaca* before trials even began (Longman, 2009:307).

As an institutionalised process for justice and reconciliation, the *gacaca* was successful in recording and trying the vast majority of genocide cases that otherwise would have taken over a lifetime to achieve. Communities were able to voice their experiences and create a common narrative around significant events. In many cases survivors found out how friends and family had died and where their bodies were buried (Wielenga & Harris, 2011:23). These effects together show how the *gacaca* was able to transform the post-genocide society from one of distrust and suspicion to one of comparatively open dialogue, facilitating a new narrative around the violence and disrupting the divisive relationship between the Hutus and the Tutsis.

In line with the theories of John Paul Lederach, the physical and metaphorical space that *gacaca* created is perhaps the most vital ‘relational’ component to this study. Lederach’s theories of reconciliation as a *place* (Lederach, 1997:25-26) and social mediative capacity (Lederach, 2002:92) must be recalled here. When describing reconciliation as a place, Lederach contends that it can only be achieved when a social space has been created where Truth, Mercy, Justice and Peace meet together. *Gacaca* created this physical social space, where the General Assembly creates a boundary inside of which the perpetrator and witnesses stand or step forward to give their testimonies, faced by the locally elected judges (Towner, 2015:285). Within this space Truth was the professed goal, Mercy was given in exchange for confession and apology, Justice was served through sentencing, and Peace was instigated by communities acknowledging their shared experiences.

In assessing the ‘success’ of the *gacaca*, a phrase used by Buckley-Zistel (2005:113) regarding the rationale of the process is useful to consider. She describes the fact that the intention and incentives of truth-telling were to uncover past wrongs and, in this way, move towards a *consolidated* peace. It is the use of the word consolidated here that could be descriptive of the transformative success of this process.

Given that the *gacaca* had the enormous, arguably insurmountable, task of reconciling a nation after the most rapidly destructive genocide in history, the mark of its success cannot be a completely reconciled nation in which all is forgiven and forgotten but is instead measured by the consolidation of its people. Consolidation means to bring several entities together to form a stronger and more effective whole. Again, one can stress the fact that in terms of its democratic consolidation, the Rwandan political system leaves much to be desired. There can be no denying that intimidation and suppression are rife within the work of the RPF. There is room to suggest that any post-genocide government institution, the *gacaca* included, would have been negatively affected by RPF dominance. However, the aim of this study was not to analyse the democratic consolidation of the cases, but to ascertain whether the process-based mediation project did transform conflict relationships and thereby consolidate citizen relationships. Through the discussion it facilitated, *gacaca* helped neighbours who had just months before been perpetrators and victims of intentional massacre, sit together and once again live alongside one another. Recognising that there is still much work to be done before Rwanda can be regarded a stable democracy, one can argue that conflict relationships were to a certain extent transformed.

This distinction in assessment of transformative success is not unique to this study, as the deduction of peaceful co-existence being a sufficient sign of reconciliation thus far falls into the pragmatic of two ‘reconciliation camps’, the other being a moral (Christian) approach viewing reconciliation as broad-based social harmony (Buckley-Zistel, 2005:114). It is true that certain civil and political rights have been pushed to the wayside as a cost of promoting state legitimacy and nation-building (Melvin, 2010:933), as is demonstrated by the lack of legal support in *gacaca* trials. However, in comparison to the lawlessness and division of the genocide era, the post-*gacaca* Rwanda demonstrates an undeniably more consolidated citizenry.

While the process was flawed and many victims may have felt silenced, many others were able to make their grievances and resentments known plainly to their communities, providing a

point off which all understood the gravity of their community's division and could from there at least attempt to move forward (Longman, 2009:308). Survivors report that before the *gacaca* process began in 2001, Hutu and Tutsi could not even greet each other on the street, yet after *gacaca* they were able to talk, invite one another into their homes, come to each other's aid, and even intermarry. It is also not uncommon to find survivors living with the families of their relatives' killers or living alongside perpetrators who have served their sentence and re-joined the community (De Brouwer & Ruvebana, 2013:952).

It was *gacaca* that provided the physical space and impetus for this communication to take place that is otherwise unlikely to have happened. Along with other NURC programmes, *gacaca* has contributed to reshaping the rhetoric around the genocide, restructuring "discussion, education and legislation surrounding ethnicity, identity and Rwandan history" (Melvin, 2010:933). Here the project was able to unveil the roots of division left behind by the genocide and thus is a signifier of some level of transformative success.

A quote from one genocide survivor, Beatrice Bazayirwa, shows the reality of *gacaca* success despite its shortfalls when she asked at the end of an interview: "Are there people who are going to read this? I am asking you, because there are some people abroad who deny or underestimate the workings of *gacaca*. You, however, have been able to visit us in Rwanda and to get the real truth from us survivors. You should make it clear to others that *gacaca* was very important to Rwandans; it brought us from one level to the other" (De Brouwer & Ruvebana, 2013:964).

In turning to the case of the TRC however, relationship transformation was arguably more aesthetic than deep-rooted. As the hearings were focused on individual perpetrators and their testimonies, it is unsurprising that some of the most note-worthy indicators of TRC reconciliation were in the form of individuals with reconciliatory attitudes (Stanley, 2001:542). One example of this was the "symbol of hope" handshake between Neville Clarence and Aboobaker Ismail. Clarence, a former South African Air Force captain, lost his sight after falling victim to a bomb attack, planted by Ismail, the former head of the MK special operations unit (TRC, 1998:392). The hope in publicising individual events such as this was that South African society would find inspiration in the emotive visual representation of a reconciliatory spirit. Ultimately however, these interactions involved only the individual disputants, while wider society voyeuristically watched reconciliation take place from a distance, personally removed from the process.

Despite critiques regarding the fullness of truth uncovered through the TRC, it is undeniable that the project illuminated the realities of apartheid to the broader population, particularly the oblivious white portion. This is significant as the legal apparatus of the apartheid government had rendered the black population practically invisible to the eyes of white South Africans. Laws such as the Group Areas Act, the Bantu Authorities Act and Bantu Homeland Citizens Act had removed black people from the South African landscape or restricted them to positions of service and thus subjectively invisible to the gaze of the ruling race (Jones, 2014:19).

The TRC process worked to highlight the experiences of the oppressed majority, forcing the white population to see the plight of their fellow citizens in a way they had never before been expected to do. Thus, the TRC was in some ways able to force a change in society by disrupting the structures that had allowed human rights abuse to take place on this scale. The hope is that consequently this should prevent injustice of the same kind happening again in the future. This is a condition that Melish (2012:276) argues is indicative of more long-term success of a transitional justice mechanism.

As stated by Hayner (1996:22) and Wiebelhaus-Brahm (2010:24), truth commissions generally are expected to create a more knowledgeable citizenry that will be able to recognise similar patterns of oppression in the future and avoid return to oppressive rule. Having held thousands of hearings, accepted tens of thousands of witness testimonies and produced a large five-volume Final Report, the TRC did provide the public with an abundance of new knowledge on the hidden realities of apartheid violence (Gibson, 2004b:130). The revelations of the TRC were instrumental in South Africans being forced to recognise culpability on all sides of the conflict, creating more of a common history that without the TRC is unlikely to have surfaced, nor been so widely publicised (Gibson, 2006:427).

To provide some empirical evidence of the reconciliatory success of the TRC, one can look at a study using a nationally representative sample of ordinary South Africans conducted by Gibson (2004a; 2006:414). He finds that truth did not undermine reconciliation during the TRC process and that those who subscribed to the TRC's truth are more likely to be reconciled. What was less clear from his findings is the validity of the causal claim that truth *created* reconciliation.

While the hope for amnesty to provide a full truth was well-intended, as was the case with the confessions given in *gacaca*, there are doubts as to the fullness of truth found through the TRC. Perpetrators are said to have used 'tactics of negotiation' in order to avoid taking full

responsibility for their actions (Stanley, 2001:527). As would be expected there were also victims who did not experience the cathartic healing hoped to be a result of testifying, and some felt like pawns in the national healing process, having to sacrifice individual justice for the sake of building the nation (Wielenga, 2011:42). The family of Black Consciousness activist Steve Biko are an example of a high-profile group that was openly against the amnesty process and were reluctant to participate, threatening the legitimacy of the proceedings (Evans, 2016:713).

One could question, if the TRC sacrificed criminal and social (retributive) justice in a project of truth-finding, yet arguably failed to produce a full truth, was it able to contribute to the reconciliation of South African society at all? The real problem here is not necessarily the lack of criminal justice, but the lack of social justice that limits the reconciliatory potential of the mechanism.

While *gacaca* was directly focused on destroying the culture of impunity that allowed the genocide to take place, the amnesty granted by the TRC arguably allowed a culture of impunity to flourish in the South African context. With regards to officers of crime control, impunity has created long-term crises of legitimacy, as many perpetrators under apartheid were crime control officers whose actions were allowed to go unpunished, creating a legacy of impunity in crime control in democratic South Africa (Stanley, 2001:536).

Empirically, the surveys conducted by the SARB provide information on public perception regarding the state of reconciliation in South Africa. The SARB found that in 2017 only 56.1% of South Africans agree that South Africa has made progress towards reconciliation since the end of apartheid, however, slightly more do believe the TRC provided a good foundation for the country to achieve reconciliation at 62.4% (Potgieter, 2017:22). This Report also found that in terms of perceptions of change with regards to race relations, 38.3% of South Africans reported race relations have stayed the same since 1994, and 29.4% believe they have worsened. This discovery is described as a “somewhat damning indictment” of the progress made towards reconciliation in this crucial post-1994 period, indicating that progress is taking place but at a slow pace (Potgieter, 2017:23).

In terms of its overall transformative potential, what the TRC failed to do was to challenge the structural inequalities that apartheid policies were founded on. In this way neither the perpetrators nor the beneficiaries of apartheid were obligated to make substantive changes to their lives and self-definitions (Zehr, 1997). The subsequent ‘middle-ground’ between peace and justice that the TRC occupied can be seen in the lack of reparations to victims, the lack of

prosecution of passive perpetrators, the lack of responsibility taken by the beneficiaries of apartheid and the lack of developmental change in South African society (Stanley, 2001:527). The findings of the SARB show interestingly that out of the four apartheid-era race groups, white South Africans are the most inclined to believe both the oppressed and oppressors of apartheid must come to the table for reconciliation to work but in practice they are not doing so themselves (Potgieter, 2017:22). This suggests that white South Africans recognise that reconciliation requires two sides coming together but do not feel obligated to personally act on this recognition.

It is interesting to note that in a study conducted by Vora and Vora (2004) into South Africans' perceptions of the TRC according to three ethnic groups, the Afrikaans and English (i.e. white) respondents generally had a more negative perception than the Xhosa respondents. In the question of whether the TRC was effective in bringing out the truth, all respondents perceived the TRC to be effective however Afrikaners believed it to be less effective than the English, and even less effective than the Xhosa (Vora & Vora, 2004:308). When asked if the TRC was effective in bringing about reconciliation, the mechanism was generally not perceived to be effective, however Afrikaners and English respondents perceived it to be significantly less effective than Xhosa respondents (Vora & Vora, 2004:310). Finally, in the question of whether the TRC had a positive effect on South African society, Xhosa respondents perceived it to have been significantly more positive than Afrikaner and English respondents (Vora & Vora, 2004:311). This is a noteworthy study as it demonstrates the reality that the beneficiaries of apartheid are generally the groups more uncomfortable with the TRC process and its outcomes.

It is at this point that the long-term reconciliation effects in the two countries become relevant. In 2019, as Rwanda reaches 25 years since the end of the genocide and South Africa reaches 25 years since the first democratic election, assessments of the longer-term impact of these reconciliatory efforts are possible. In both countries, at the most basic and pragmatic level, one could say that consolidated reconciliation was achieved simply by the fact that open conflict as was seen pre-democracy has not been repeated in either nation. However, in terms of relational transformation at the root cause of conflict, it can be argued that Rwanda has achieved more than South Africa.

As evidenced by the SARB statistics provided above, only a slight majority of South Africans (56.1%) believe that the country has made progress towards reconciliation since apartheid (Potgieter, 2017:22). The RRB on the other hand found in 2015 that the state of overall

reconciliation in Rwanda was 92.5% (NURC, 2015:xiii). While Rwandan survivors report being able to live alongside perpetrators, greeting one another and sharing meals (De Brouwer & Ruvebana, 2013:952), continued racial division in South Africa has begun to show its effects such as in the nationwide #FeesMustFall protests that began in 2016.

The cases give validity to the claim made by Ramsbotham *et al* (2016:208) highlighted in Chapter Two, that true resolution of conflict through mediation requires not that the mediator appeals to disputants' humanity, but that they are able to inspire fundamental shifts in parties' interests, goals and self-definitions. The *gacaca* courts forced Rwandan society as a collective to recognise responsibility for the atrocities committed during the genocide but also for the reconstruction project that was required as a consequence. By breaking down the experiences of communities collectively, the community as a whole was able to reconstruct a complete narrative of their history and in the process reconstruct Rwandan society (both literally and figuratively) from the ground up. Rwandans' redefinition of the self is most clearly exemplified in the terms 'Hutu' and 'Tutsi' being replaced by *Umunyarwanda* (Rwandan) (NURC, 2015:49). The TRC on the other did not encourage redefinition of the self in relation to the other, and thereby failed to create a new national identity based on transformed disputant relationships between races.

In linking the transformative success of the projects to the characteristics of the model, a primary finding of this study is the importance of community participation for the transformative impact of a process-based mediation project. The direct, compulsory public participation of the *gacaca* encouraged collective accountability for the reconciliation effort and placed all adult Rwandans as personally involved in the process. Although it must be noted that the TRC was a truth commission in its formulation, given that it was the primary transitional mechanism and remains the only state-administered national reconciliatory effort, its reach was simply not broad enough. This difference suggests that community-based public participation would be an important characteristic for the transformative potential of a process-based mediation project.

In terms of context-specificity, there is a link between this characteristic and the former, as it was the recognition of a need for widespread participation, based on the historical reality of the Rwandan conflict, that led to the *gacaca* success in transforming the conflict relationships of an entire nation. The use of a traditional, locally based dispute mechanism also contributed to the legitimacy of the proceedings and the common truth that it created. The TRC was successful

to an extent in linking the process to the African values of *ubuntu*. However, its failure to recognise the need for broad-based participation to engender a feeling of collective responsibility for the reconciliation project, meant that wider society in the end did not personally experience reconciliation, limiting the society-wide transformative potential of the mechanism. Context-specificity was therefore key to the transformative potential of the *gacaca*, suggesting the characteristic is also vital for this model of process-based mediation.

The importance of the Insider-Partial mediator to the transformation of conflict relationships is less convincing in these two cases than was expected. Neutrality, at least in the political sense, appears to have been an important characteristic of the authority figures leading these projects, as a lack of political influence was needed to give legitimacy to the proceedings. However, the Insider status of both the *inyangamugayo* and Chairperson Tutu did give them inside knowledge of the conflict contexts and what was required for their transformation. In terms of the Partial aspect of the Insider-Partial mediator, the necessary partiality stems from the mediator's Insider status in that their persona and actions should reflect a vested interest in the constructive resolution of disputes. These cases therefore indicate that mediator identity continues to be a topic of contestation in mediation theory, but also give credence to the assertion of Nathan (2007:12) that regardless of debates over partiality, African mediators should be chosen with much more contextual consideration than they have in the past.

The differences in transformative success between the projects are also indicative of the implications of resource pressure, as the limited time frame of the TRC compared to that of the *gacaca* inhibited its reach, a point which was decidedly problematic in its transformative potential. While it was able to uncover previously unknown truths that played an important part in the process of recognition throughout society, these efforts should have been complemented by a system of community-based projects that addressed the grassroots-level division left behind by the apartheid system. The decade over which the *gacaca* courts operated and the limited physical resources required to conduct the process in each community, meant that each individual was in some way personally involved in the national reconciliation project. It also allowed for trust in the process to develop over time, which slowly overcame the problems of the Hutu fear of an ethnic witch-hunt and the Tutsi disdain for meetings dominated by a Hutu majority. This was an important factor in the transformative potential of the *gacaca* as it encouraged public buy-in to both the process and the common truth it created, highlighting the importance of this characteristic for sustainable transformation.

Finally, both the *gacaca* courts and the TRC illustrate the importance of a relational focus for long-term transformation of disputant relationships. Given the widespread impact of conflict within both these countries, had the respective governments kept transitional conflict resolution purely at the level of elite negotiation, society would have been left with deep remnant fractures and no forum for their transformation. Despite the differing extent of transformation that the two mechanisms produced, both included society in a way that traditional mediation projects would never before have considered. In creating a demarcated space for recognising the different sides of the conflicts and empowering disputants to create a common narrative out of their differing experiences, these projects afforded participants with the social mediative capacity Lederach (2002:92) argues is necessary to engender a constructive change process. Although the TRC did not extend as far as the *gacaca*, limiting its ability to transform society as a whole, it did create the foundation for relational change to take place, at the very least for those disputants directly involved as victims and perpetrators of gross human rights violations. The cases thus suggest that if mediation projects are formulated with an intentional focus on transforming the quality of relational interaction between disputants at a broad-based community level, there is great potential for process-based mediation projects to engender societal conflict transformation.

4.4 Conclusion

The TRC and the *gacaca* courts both provide compelling examples of African transitional conflict resolution mechanisms with the mammoth task of reconciling a deeply divided nation in the aftermath of violent conflict. This study aims to provide support for a model of process-based mediation that could be used to combat such deep divisions by altering disputant relationships at a grassroots community level in the aftermath of future conflicts. Through the application of process-based mediation as an analytical model, Chapter Four has compared the relative manifestation of each characteristic of the model within the two cases. By investigating the similarities and differences between these characteristics, and the subsequent differences in the projects' transformative success, several deductions on the validity of the model could be made.

The primary findings showed firstly that in many ways these characteristics are linked, which necessitates a conscientious approach in the formulation of mediation projects. Practitioners should be aware of the effect that each decision they make can have on the transformative success of the project. In terms of the individual characteristics, the analysis showed that public

participation is vital for the transformation of contemporary intra-state conflict. Widespread citizen participation, whether as victims, perpetrators or bystanders, requires a conflict response that reaches all those who will have been affected by it – thereby necessitating a society-wide response. This leads on to the finding that practitioners should be mindful of the local conflict dynamics in order to suit the project to the context at hand, while at the same time remaining wary of the influence this context may in turn have on the project.

In being mindful of matching the mediation project to the context in which it operates, this analysis showed that particular care should be taken in the choice of mediator. Contrary to initial expectations, the impartiality of the mediator at least in a political sense was shown to be important in legitimising the projects to their respective citizenries. However, as the characteristic of context-specificity would suggest, the Insider status of the mediator was shown to be a positive characteristic in understanding local dynamics and gaining citizens' trust. Furthermore, the analysis suggests that in deeply divided societies limited resource pressure is necessary to engender sustainable transformation of deeply rooted societal fractures. The reason for this is in line with the necessity for widespread public participation in that transforming disputant relationships on a national scale requires a project that reaches throughout society, which inevitably requires extended time frames and as little resource pressure as possible.

Finally, in building process-based mediation projects with the aim of building sustainable peace, the study shows that a relational focus at the community level is warranted. In the contemporary era where conflicted parties must continue to live alongside one another once violence has come to an end, mediation projects that remain in the realm of elite-level negotiation will not have the societal impact that is necessary for extended peace. These projects showed that where disputants were brought together face-to-face in the presence of their communities, reconciliation was possible, even for those who had committed the worst of atrocities against one another. These findings suggest that if a project is formulated with the goal of affecting constructive change in the quality of relational interaction between disputants, transformation is plausible and could lead to more sustainable peace.

Following this analysis, Chapter Five will now return to the original research question, providing a conclusion as to whether this comparative case study suggests process-based mediation can succeed as a tool for conflict transformation in African nations.

CHAPTER FIVE – CONCLUSION

5.1 Introduction

This fifth and final chapter serves as a conclusion and summary of the primary findings of the comparative case studies presented in the previous chapter. In doing so it will present the answer to the research question posed in Chapter One as to what extent process-based mediation succeeds as a tool for conflict transformation in African nations. Given the preoccupation with settlement-focused strategies in traditional mediation literature and African mediation practice, this study aimed to present a newer model of mediation suited to the contemporary realities of African conflict and focused on sustainable conflict transformation. This chapter will discuss whether the model achieved this aim. It will conclude with a reflection on the part of the author and recommendations for further research.

5.2 Evaluation of the Research Question

As a tool for conflict resolution, mediation has traditionally been situated within the field of conflict management or settlement (Mitchell, 1981:275; Burton, 1988:2; Ramsbotham *et al.*, 2016:24). This “task-oriented” (Fisher, 2011:159) and “interest-based” (Furlong, 2005:110) approach is focused on the outcomes of the mediation process, quantifying mediation success as the signing of a peace agreement, settlement or ceasefire (Touval & Zartman, 1985:14; Bercovitch & Gartner, 2006). While there is of course merit in such efforts that bring an end to the destruction of violent conflict, the purpose of this study was to show that mediation has potential not only as a tool for conflict management but also for the transformation of conflict relationships at their root cause.

When situated as a tool for conflict transformation, mediation initiatives target the foundations of conflict by altering the way actors perceive themselves and their opponents, thereby disrupting the ‘interactional crisis’ between disputants that is ignored by problem-solving approaches (Bush & Pope, 2002:73). By focusing on the fractured relationships between disputants upon which outward conflict is founded, mediation reformulated as a tool for conflict transformation is expected to create more durable society-wide peace. In the context of the African continent with its history of extended violent conflict, there is a need for resolution mechanisms that address the root causes of conflict, to avoid the recurrence of violence and ensure limited available resources are used in the most efficient and sustainable manner. Africa therefore presented a meaningful testing ground for a newer theory of mediation focused on driving a process of society-wide conflict transformation.

In order to address this research problem, this study asked the question to what extent a ‘process-based’ mediation project succeeds as a tool for conflict transformation in African nations. The discussion was to be framed by two sub-questions, investigating under what conditions a mediation project can be deemed ‘process-based’, and further under what conditions such a project can be deemed ‘successful’.

The answer to the first of these two sub-questions was developed through a careful reading of the mediation literature and its progression from the traditional outcomes-focused to a process-focused approach. This approach redirects the attention of mediation practitioners away from the outcomes of settlement and ceasefire towards the constructive changes in relationships brought about through the process of mediation. By resituating mediation practice within the paradigm of conflict transformation, a set of characteristics was devised to shape the model of process-based mediation that forms the core structure of this study. These characteristics were community participation, context-specificity, the Insider-Partial mediator, an absence of resource pressure, and a relational focus. The answer to the first sub-question that would serve as the analytical framework of the case analysis to follow was therefore deducible from the mediation literature.

The answer to the second sub-question, that of under what conditions a mediation project can be deemed ‘successful’, proved more challenging than the first. As with many abstract terms dealt with in social science research, measuring such concepts as ‘reconciliation’ and ‘conflict transformation’ can warrant whole research projects on their own. The approach therefore taken in this study was simply to follow the case study research design and build a detailed picture of the conflict contexts and how they reacted to their respective transitional mechanisms, using the available secondary data. The research question did therefore encounter a challenge to its answerability here, however the case studies and their subsequent comparison did provide insights into transformation in the countries.

In terms of the overarching research question, the case study design held true to its promised strength of allowing for detailed understanding of complex phenomena within their natural context (Miller & Brewer, 2003:22). The historical dynamics of division in these cases were vital to the analysis, the complexities of which would have been lost without a detailed qualitative discussion. While the case study design encompassed the complexity of the cases, the problem of comparability in the face of infinite possible variables was mitigated through George’s method of structured, focused case comparison (George & Bennett, 2004:67-70). By

developing the structured analytical tool and applying it to the cases, their similarities and differences relevant to the study were easily identified.

The application of the analytical model of process-based mediation to the cases, and the comparison of their relative characteristics and transformative successes, therefore provided the answer to the research question. The main findings contribute to the development of contemporary mediation theory, affirming its potential as a tool for conflict transformation. These main findings will be discussed below.

5.3 Main Findings

In answer to the primary research question, this study has found that process-based mediation, formulated according to the five characteristics outlined in this model, does have the potential to transform conflict in African nations. This is not to say that traditional mediation practice should be excluded from conflict resolution discourse in Africa but presents process-focused projects as an option for peacebuilding authorities in post-conflict societies. It does suggest that the restriction of mediation practice to the level of elite-level negotiation has restricted its potential in engendering longer-term sustainable peace in African societies. This potential can be utilised however if practitioners resituate mediation practice within the field of conflict transformation as opposed to conflict management and focus on the benefits of the mediation process as opposed to mediation outcomes.

According to this model, the first main characteristic that an African process-based approach would include is that of direct public participation. Post-Cold War conflict is most often contained within national borders, as was the case in Rwanda and South Africa, meaning that most citizens' lives are impacted by the division. A mediation project that aims not to induce a ceasefire or settlement, but to use the process as a means for transforming conflictual relationships, must reach all those involved in the conflict. Therefore, such a project should be community-based, involving everyday citizens, with the cumulative effect of transforming national disputant relationships.

In Rwanda, community participation was compulsory and *gacaca* hearings were essentially community gatherings. Individual citizens were encouraged to tell their stories and speak out about their grievances, with the community as an audience. In this way the process touched the lives of all Rwandans and posited the reconciliation project as a national responsibility. The TRC on the other hand limited direct participation to victims and perpetrators of gross human rights violations and left the extent of public participation in the hands of the individual.

Despite the fact that the apartheid regime had in some way involved every South African, the majority of the nation was left to watch the reconciliation project happen from a distance, inhibiting its potential to transform societal relationships. While Rwandans are able to interact quite freely after the atrocity of genocide, South Africans still live largely separate lives based on racial division, a reality that arguably resulted from a lack of participation in the transitional reconciliation project.

Next, the study found that context-specificity is also an important element to the transformative success of process-based mediation, as the conflict response must match the contextual conflict dynamics. Particularly in cases such as South Africa and Rwanda where protracted conflictual relationships have been shaped by previous interaction, addressing the cause of the division will require cognisance of the dynamics that created these fractures in the first place.

In both cases the division of society was not a consequence of conflict, but a cause thereof and predicated on a history of entrenched separatism. In Rwanda the pre-colonial hierarchy based on difference in resource ownership was exploited by the colonial authorities, creating deeply entrenched definitions of the self versus the Other between the Hutus and the Tutsis. The apartheid regime in South Africa had manufactured a divided society on a designated system of separatist laws, distancing groups from one another both physically and emotionally on the basis of race. The conflict response used in both cases could not ignore these historical realities and required a reconciliation project that directly addressed the needs of the conflicted society. As a traditional dispute resolution mechanism, the *gacaca* was already afforded a level of trust from the Rwandan public, and the participatory nature suited the widespread involvement in the genocide. In South Africa, attempts to link the TRC to the values of *ubuntu* did connect the citizenry via a common cultural-ethical tradition, however in avoiding the disruption of the status quo the project did not address the extensive impact apartheid had on societal relationships and therefore limited its transformative ability.

Considering the third characteristic, that of Wehr and Lederach's (1996) Insider-Partial mediator, places this study as yet another contribution to the ongoing mediation debate over impartiality of the mediator. Initially this study expected to agree with authors such as Touval and Zartman (1985:12) who consider partial and interventionist mediation as both possible and potentially useful. With regards to the Insider positioning of the mediator and their partiality to the cause of true reconciliation between groups, this mediator type was shown to be

constructive. However, the cases did show that impartiality in the political sense can be an important factor in gaining participants' trust and affording legitimacy to the proceedings.

This dynamic was illustrated by the case of the *gacaca*, as the *inyangamugayo* were both respected and feared as a result of their partiality to the groups in conflict. Due to the contextual reality of a Hutu majority in Rwanda, most of these elected judges and the majority of the General Assemblies consisted of Hutu individuals. In some cases, this led to bias in favour of the perpetrators and was cause for discomfort on the part of testifying survivors. However, these judges were elsewhere described as professional and were valued for their connection to the community which demonstrated empathy between the Bench and those testifying. In the case of the TRC, the impartiality of Chairperson Tutu was also regarded as vital to the success of the process in creating a common narrative, as his lack of political connections led to trust in the TRC process and its collected truth. However, as was the case with the *inyangamugayo*, his Insider status as a celebrated leader of the liberation inspired trust in his position, in the proceedings and the Reports produced as a result. It can therefore be said that at least in terms of the Insider position of the mediator, this characteristic is important to the process of transformative mediation.

The fourth characteristic concerning an absence of resource pressure was found to be important to the transformative potential of both the analysed projects, especially considering the protracted nature of societal division. As the goal of traditional mediation theory is producing a settlement or ceasefire as quickly as possible, time and resource pressure is seen as a positive inducement of compromise. However, as these agreements are rushed and based on just that, an interest-based compromise, they are often not self-enforcing and rely on continued mediator presence to remain intact. This model suggests therefore that if durable conflict resolution is to take place, conflict responses must prioritise the constructive change that happens during the mediation process, as opposed to the tangible outcomes it may produce. Particularly in examples of widespread national conflict, as is the case in many African countries, the societal fractures that precipitate violent outbreaks have deep historical foundations. A mediation project aimed at transforming these historical relationships must therefore be afforded the necessary time to fully deconstruct and reconstruct such relationships.

In both the case of Rwanda and South Africa, societal divisions were deeply embedded and therefore reconciliation at the root of the conflict required a long-lasting, holistic conflict response. In Rwanda this was achieved, as *gacaca* required few physical resources and was

conducted over a decade, allowing the space for the project to reach the depth and breadth of the conflicted relationships. It also notably allowed time for citizens to gain trust in the process, an element that would prove important in the legitimacy of the mechanism and of the communal narrative it produced. In the TRC on the other hand, limited resources and the resultant limited mandate meant that the primary transitional conflict resolution mechanism was limited to only the most adversarial of conflicted relationships between victims and perpetrators of gross human rights violations. As is suggested by the need for community participation, in conflicts that permeate the whole of society, a mechanism that is limited to only a small portion of disputants severely reduces the potential for societal transformation.

The final finding with regards to the characteristics of this process-based model was the demonstrated relevance of a relational focus for transformative mediation attempts. This portion of the analysis showed the validity of the main premise on which this study is based – that mediation can be used as a tool for conflict transformation. While most traditional discussions regarding mediation, and most of the African mediation literature, operate on the assumption of mediation being an interest-based approach, this study makes a contribution to more contemporary mediation theory in supporting the idea that the mechanism can be used to transform conflict relationships. Particularly when posited as a communal effort with the potential for individual transformations, community-based mediation projects can create the space for communication and open dialogue, encouraging mutual understanding and the recognition of one another as moral equals. This is the most important element of the process-based approach, and the vital component in creating a sustainable peace.

Given their twin aims of mediating a common national truth surrounding their respective conflict histories, both the TRC and the *gacaca* were focused on the process of disputants sharing their experiences and, in this way, inspiring recognition of one another's perspectives. Both projects included reconciliation as one of their stated aims and it was hoped that the mutual understanding encouraged by the process would achieve this end. What is perhaps the most important point to take away from this analysis is that these projects created a designated mediative space that encouraged a level of interaction between disputants that is otherwise unlikely to have happened. Gibson (2006:431) states quite succinctly that "if societal change is to take place, some exogenous force must convince ordinary people to rethink their views about the contentious past." This, as mentioned at the very beginning of the study, is one of the main positive characteristics of mediation and the inclusion of a third-party and is a reason that expectations of its transformative potential must be extended.

Overall, a final important finding was the evident links between these characteristics, which give support for the presentation of this study as a multi-faceted model. Each of these characteristics could indeed warrant empirical analyses in their own right, particularly if strong causal claims are to be made between each element and a project's transformative success. However, the links found between the characteristics show the validity of researching and presenting a multi-faceted model for process-based mediation which shows at the very least that when formulating conflict responses with the aim of transformation, practitioners need be aware of each of these elements.

5.4 Reflection

Although this study has achieved the aim of providing support for a conflict transformation mechanism that could provide future conflicted societies with longer-lasting peace, the difficulty of reconciliation in the developing world was a clear theme throughout the readings for the cases of Rwanda and South Africa. As has been highlighted in the process-based model, context cannot be ignored, and the contemporary African socio-economic/political reality is important in understanding the potential extent of reconciliation in its nation-states.

In the case of Rwanda, despite impressive efforts at economic growth averaging at 7.5% over the decade of 2008 to 2018, the country is still in the initial stages of development, with poverty remaining stagnant at around 39% between 2014 and 2017 (World Bank, 2019a). This means that many citizens, particularly survivors, still live under the poverty line and therefore endure socio-economic struggles while suffering from latent trauma and diseases such as HIV/AIDS (De Brouwer & Ruwebana, 2013:945). While South Africa retains a stronger economic position than Rwanda, the country is still rife with socio-economic issues such as the high unemployment rate of 27.1% in the fourth quarter of 2018 (World Bank, 2019b). Vast inequality also remains a persistent legacy in South Africa with the richest 10% of citizens holding around 71% of net wealth in 2015 while the bottom 60% held only 7% of net wealth (World Bank, 2019b).

Given the persistent economic subjugation of large portions of society in both South Africa and Rwanda, along with many other nations on the African continent, emotive goals of national peace and reconciliation do occasionally feel somewhat naïve. As someone who was not present during these violent parts of history reading of the atrocities experienced by individuals in both countries analysed in this study, one feels almost astonished at the progress that has been made even in 25 years. South Africans themselves seem to realise the threat that continued

economic difficulties present to reconciliation demonstrated by the SARB finding that 63.4% of citizens believe reconciliation is impossible while those who were oppressed under apartheid remain poor (Potgieter, 2017:23).

Furthermore, it became clear through reading around the procedures of these mechanisms that state-sanctioned projects do, necessarily, become highly institutionalised and legalistic in nature. Even in the case of the TRC where there were no legal trials involved in its mandate, it could only begin work once the debate and discussion behind the Promotion of National Unity and Reconciliation Act No. 34 was closed, and then after it was passed the mechanism was limited to the bounds of this law upon which it was founded. It is logical that in countries attempting to transition to democracy that the rule of law is important for legitimising the institutions of the new government. However, when dealing with issues such as reconciliation that are often wrought with emotion and changing dynamics, a more flexible transitional process may be better suited. One gets the sense that these legalistic state-administered projects engender stringent processes that fulfil the need for government oversight but are ultimately quite restrained. This dynamic therefore gives even more reason to the argument of Ramsbotham *et al* (2016:215) concerning the importance of Track II civil society efforts that may be less constrained and more reactive to the grassroots communities they interact with.

It is therefore recognised that a mediation project such as that presented in this study is unable to solve every socio-economic and political reality that constrains reconciliation in a post-conflict society. True reconciliation undoubtedly will require economic and political development in both Rwanda and South Africa, in order for previously oppressed citizens to feel more comfortable with their lives and deter resentment over the historical injustice that placed them in a disadvantaged position. However, as has been reiterated throughout this study, the nature of contemporary conflict results in disputant groups having to live alongside one another once conflict has ended. Deep historical fractures must be intentionally transformed if sustainable peace is to be a possibility. The forum created by this model of mediation has the potential to transform adversarial relationships, at least to the point of mutual recognition as moral equals. The hope is that in rebuilding the nation through a communal narrative and inter-group trust, projects of socio-economic development will take on new meaning and inspire national cooperation.

5.5 Recommendations for Further Research

Given the demonstrated applicability of the analytical model, this research could be replicated using more cases to further investigate the importance of each characteristic in the process-based mediation model. Aside from the improved comparability it affords between complex cases, this was the reason for using George's methodology of structured, focused comparison (George & Bennett, 2004:67-70). As this study presents a new model for mediation which falls within a contemporary movement in mediation theory, reproducing a similar investigation would further contribute to the generalisability of the model.

Furthermore, having developed a specific model for community-based mediation projects, in the instance that an appropriate conflict setting and the required resources were available, a further study could put this model into practice and formulate a conflict response following the characteristics of the model. This would provide the most concrete evidence of the transformative potential of the mechanism, as monitoring of the changes in disputant relationships as a result of the project would demonstrate whether the theory translates into practice.

5.6 Concluding Remarks

Violent conflict and deep societal fractures continue to be a looming presence in contemporary African societies. In order to build a more sustainable peace than has been achieved in many of these countries, innovative approaches focused on the transformation of deeply rooted conflictual relationships are necessary. This study was undertaken with the purpose of positing mediation as an approach suited to these transformation goals. By pulling the attention of a mediation project away from the outcomes it produces and focusing on the transformative potential of the mediation process itself, this study provides one such innovative approach.

The model for process-based mediation was formulated with five basic characteristics: community participation, context-specificity, the use of an Insider-Partial mediator, limited resource pressure, and a relational focus. Using these characteristics as an analytical tool, a comparative case study was undertaken concerning the transitional mechanisms of the Rwandan *gacaca* courts and the South African Truth and Reconciliation Commission. The analysis that followed suggests that conflict responses formulated according to this model have the potential to transform conflict at its root cause, thereby showing that mediation does not have to be limited to the realm of conflict management and fulfilling the purpose of this study.

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