Towards a Guide for Designing Innovative Human-Centred Transitional Justice Processes; Lessons from Rwanda, Sierra Leonne and South Africa.

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A dissertation submitted in partial fulfilment of the requirements of the Master in Creativity and Innovation

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Abstract

The past century has been characterised by brutal cycles of violence, especially in the African continent. As a response, transitional justice mechanisms aiming to deliver justice in post conflict contexts have drastically changed in the way that issues of justice at a local level are addressed. However, the challenge of how to best design processes that deliver a sense of justice to the local communities remains, as current models treat local communities as passive agents in the process. This dissertation advocates for further cross fertilisation between the innovation and justice field by exploring how human-centred design processes could help transitional justice designers better understand the end user. A number of human-centred design frameworks were explored and a working framework was deduced from literature. The working framework was later tested against three transitional justice experiences, Rwanda's Gacaca Courts, Sierra Leone's Special Court and South Africa's Truth and Reconciliation Commission. The framework was further refined during the discussion of the findings, shedding light on the importance of having non-linear cohesive design processes that focus on continuous deconstruction of the problem whilst designing the solution. This research highlights the need for further collaborations that should take place between the innovators and justice practitioners to ensure that justice instruments continue to truly deliver the justice that local communities need.

Keywords: justice innovation, human-centred design, Gacaca, transitional justice, TRC, SCSL

To my Mama and Baba

for always bringing out the best in me…

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List of Acronyms

TJ	Transitional Justice
NGO	Non-Governmental Organisation
ICTJ	International Centre for Transitional Justice
UN	United Nations
ICTY	International Criminal Tribunal for Former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
ICC	International Criminal Court
ASF	Avocats Sans Frontières
HCD	Human-Centred Design
VIP	Vision in Product Design
NADI	Needs and Aspiration for Application in Design and Innovation
SCSL	Special Court for Sierra Leone
TRC	Truth and Reconciliation Committee
INGO	International Non-Governmental Organisation
RPF	Rwandese Patriotic Front
UNAMIR	United Nations Assistance Mission for Rwanda
UNSC	United Nations Security Council
NURC	National Unity and Reconciliation Commission
NPFL	National Patriotic Front of Liberia
RUF	Revolutionary United Front
ECOMOG	Economic Community Military Observer Group
UNAMSIL	United Nations' Mission to Sierra Leone
NCD	National Commission for Democracy
ANC	The African National Congress
IDASA	Institute for a Democratic Alternative for South Africa
CODESA	The Convention for a Democratic South Africa
MPNP	Multi Party Negotiation Process
NP	National Party
PNUR	Promotion of National Unity and Reconciliation Act

CHAPTER ONE: INTRODUCTION

1.1. Introduction and Problem statement

Justice is a central concept in social life which, in turn, shapes society's moral standards. It has been compared to "human hunger or thirst" (Pascal, Pensees, cited in Hirschman, 1982, p. 91), or "banging on the table: an emotional expression which turns one's demand into an absolute postulate" (Ross, 1959, p. 274). In fact, justice for Sobel (2002) is subjective in nature. Denning (1955) recognises that our institutionalised justice systems are flawed as they are less concerned with understanding the essence of justice and more concerned with the interpretation and enforcement of man-made laws. Law is not an end in itself and nor is it merely a tool for social engineering (Denning, 1955). Conversely, legal professionals should engage in the exploration of what people, as the end users, consider as justice.

Transitional Justice (hereafter termed TJ) processes are justice mechanisms applied in a post-conflict context. They could be considered as one of the most innovative and drastic creations in the justice field in recent years (Call, 2004) due to their continuous pursuit to capture local perceptions of justice and delivering it in an effective way. Being involved in TJ advocacy on ground, the researcher realised the need to approach justice from a fresh, innovative perspective that would allow a true exploration into how to best deliver justice in the most effective manner in the complex context of post-conflict scenarios. Concepts such as local ownership and engagement of local populations are not uncommon to the student or practitioner of TJ. However, such concepts are charged with imperialistic jargon and are highly

indicative of external involvement in local affairs (Tunstall, 2013). The form of local ownership and type of local engagement, if any, is highly dependent on the context (Kent, 2016). Instead, this dissertation uses the term 'human-centred processes' that place the human at the core of its design. Human-centred TJ processes are instigated by deep knowledge of human nature and do not perceive the end-user as a passive subject of the process, but rather, as a co-designer throughout the process in question.

Furthermore, numerous international bodies such as the International Centre for Transitional Justice (ICTJ, n.d.), consider innovation as a cornerstone for designing appropriate TJ mechanisms. However, there is little research that deals with concepts of justice innovation and innovative TJ processes from an academic perspective, as the field remains fragmented and unfocused.

1.2. Research Aim and Purpose

This dissertation aims to address the gap that exists in academic literature by shedding more light on the process of designing innovative TJ mechanisms by exploring innovation and design literature. Moreover, this dissertation aims to clarify ways in which both fields converge, and identify where further collaborations on a practical level could take place. Delving into literature on human-centred design would allow future practitioners to focus on understanding people's needs, goals, motivations, aspirations, and assessing the usefulness, usability and meaningfulness of the TJ mechanisms being designed (van der Bijl-Brouwer and Dorst, 2017). Therefore, this dissertation aims to formulate a framework which is initially elucidated from literature, and later, tested and substantiated by looking into real life case

studies to adapt it to the context of TJ mechanisms. This framework aims to enrich the field of justice innovation and its literature, as well as pave the way for further research in the field. Furthermore, it also envisions to provide practitioners, be it NGOs, governmental agencies, international bodies or international organisations, with a framework that primarily focuses on the end users and their needs.

1.3. Research Context

Africa has been the world's most conflict-ridden continent in recent years and the number of conflicts is continuously increasing (Collier and Hoeffler, 2002). African countries have struggled to cope with the violent, divisive colonial legacy and subsequent authoritarian regimes (ICTJ, 2009a). In fact, Africa's series of violent cycles since the 1990s have challenged international and local actors to craft innovative solutions to deal with large scale atrocities, ensuring justice whilst not undermining peace processes (AU Panel of the Wise, 2013). It is for this reason that the African context has also provided a lot of room for innovation and experimentation (Bosire, 2006), with numerous mechanisms being developed at a grassroots level to tackle complex justice issues. Therefore, it proved to be a rich context through which the researcher could truly understand how such innovative mechanisms could be designed in contexts where local justice is fragile.

1.4. Dissertation Overview

This dissertation shall first outline relevant literature in both the justice and innovation field within Chapter 2 in order to formulate a working definition of justice innovation. TJ is explored and researched in terms of its design outlines. Furthermore, the literature review chapter

explores the design field and analysis various design processes to formulate a working framework that best fits the context.

Chapter 3 outlines the methodology and research design used in this dissertation. It further outlines the research approach, data collection, and analysis methodologies used. Additionally, the chapter introduces the three case studies: Rwanda's Gacaca courts, Sierra Leone's Special Court and South Africa's Truth and Reconciliation Commission.

Chapter 4 lays out the findings for each of the three case studies in a structured manner. Each case study is independently explored and discussed thoroughly. The latter is conducted in the chronological order of the design, as well as through the grouping of different design activities into different clusters according to the framework.

Chapter 5 highlights the key findings and discusses them in relation to the working framework. This concluding chapter puts forwards a final framework that is deduced to be the best suited for the context of TJ mechanisms. Furthermore, the researcher puts forward suggestions for future research, recommendations for practice based on the findings, as well as the limitations of the dissertation.

CHAPTER TWO: LITERATURE REVIEW

2.1. Introduction

This chapter presents a critical analysis of literature that is relevant for both the justice, as well as the innovation field, in an attempt to support the dissertation's exploration of design processes for TJ processes. The chapter opens with a discussion on what it means to innovate within the justice field. This is followed by a discussion of the concept of TJ as well as supporting literature that help formulate the researcher's conceptualisation of justice. Innovation is later explored with a focus on designing human-centred innovation. A working framework is deduced from the literature after a thorough assessment of a number of human-centred design frameworks.

2.2. Innovating Justice

Traditionally, the justice field is not perceived as a promising area for societal innovation (Fox and Grimm, 2013). It is a field characterised by concepts such as "certainty, consistency and adherence to well-defined processes" (Fox and Grimm, 2013, p.67), as well as structural hierarchy, command, and control. Nonetheless, the Annenberg Innovation Lab (2018) calls it an industry ripe for disruption. Aylwin and Simmons (2017) highlight that, traditionally, innovation in the justice sector has been equated with the increased use of technology and argue that, on the contrary, justice innovation should include organisational change, policy innovation, new forms of collaborations, as well as practicing law in ways that changes the internal culture of justice institutions.

However, with scant literature delving into the conceptualisation and definition of justice innovation, the field remains fragmented and unfocused. Amongst the advocates for an innovative approach to justice are Muller and Barendrecht (2012), who argue that the justice sector may be improved through continuous innovation just like the type seen in the healthcare, education, or the energy sectors. They argue that a justice innovation approach encompasses all of society and harnesses knowledge available in other fields. They define justice innovation as the "effort to create better or more effective justice products, processes, services, technologies, or ideas that are accepted by markets, governments, and society" (Muller and Barendrecht, 2012, p.17). Similarly, The Hague Institute for Innovation of Law asserts that justice innovation (Krasteva, 2016) is the cumulative sum of the independent definitions of both justice and innovation. Therefore, in their assessment of what defines a justice innovation, they delve into ascertaining whether an idea is one that relates to justice, and whether it could be classified as an innovation.

Nowadays, the image of justice institutions is largely modelled on institutions developed during a period of Western history where monarchies were being replaced by rule of law institutions (Muller and Barendrecht, 2012). Since then, most justice innovations have taken place outside the already established institutions. One could mention negotiation and mediation as examples of innovative mechanisms that were later adopted within formal institutions, only once they proved their effectiveness outside of the latter. Muller and Barendrecht argue that governments should *not* be perceived as the structures that solve problems within society, but on the contrary, should be acknowledged as an entity that

empowers innovators that are closest to the problem, and who are thus able to resolve close-to-ground issues innovatively.

The fragile contexts of societies transitioning from an abusive past to an inclusive future have proved to be suitable contexts for innovating in the justice field. In fact, TJ processes could be considered as one of the most innovative and drastic creations in the justice field in recent years (Call, 2004). The emergence of international criminal courts, hybrid courts, truth commissions, grassroots social justice programmes, as well as the rise of indigenous systems, have all reshaped our understanding of justice, and challenged long established justice institutions.

In order to develop an understanding of how justice innovation takes place and how to design innovative justice processes, the approach of The Hague Institute for Innovation of Law is adopted where the separate conceptualisations of justice and innovation are analysed to understand the overall concept of justice innovation.

2.3. Justice in periods of social transformation

One must first keep in mind that TJ is not a special type of justice (ICTJ, 2009b), but is a form of justice that is adapted to societies during a period of transition and transformation. The precise definition of TJ is deeply contested due to the changing contexts, conceptual boundaries and the evolving nature of the field (Domingo, 2012). One of the first innovators of TJ, Zalaquett, acknowledges that understanding the "transitional" aspect of the concept is

vital to its definition and application (Arthur, 2009). Indeed, Winter (2013) argues that there are two pragmatic approaches to the concept of "transition" in TJ. The first approach looks into the transition from authoritarian regimes to democracy (Teitel, 2003; O'Donnell, Scmitter and Whitehead 1998; Huntington, 1998), while the second approach looks into a type of transition from conflict, to peace, and social balance (ICTJ, 2009b UN, 2010).

At first, highly influenced by the European and South American experiences, the end of the transitional period was identified as one marked by fair and periodic elections (Huntington, 1998). It presupposes that states move through a linear process as well as a political rite of passage that represent the end of a violent past, and a movement towards a democratic, shared, and brighter future (Teitel, 2000). Kent argues that such a linear process may suggest that there is a straightforward and clear beginning and end to the conflict. It makes it easy for "interveners" (Kent, 2016, p.2) and past colonial powers to reconstruct themselves as saviours and benevolent others. It overlooks underlying economic, social and institutional legacies, and universalizes justice related values in a manner that excludes local perceptions and context.

Conversely, Kent (2016) perceives TJ as a manner through which societies that are emerging from conflict and division may "come to terms" with the past. In fact, Timothy Garten Ash (1998) notes that the linguistic invention of "transitional justice" is inadequate, and unable to encompass the full range of processes and ongoing social interactions. Terminology has both a descriptive and an evaluative nature, and implies a particular, normative judgement to the

situation (Skinner, 1988). Ash suggests two, more appropriate German words: *Geschichtsaufarbeitung* and *Vergangenheitsbewältigung,* which are used to describe the situation. The words translate to: treating the past, working over the past, confronting it, coming to terms with it, and overcoming it. The wide range of concepts such words encompass in translation shows the complexity and fluidity that the term "transitional justice" lacks (Ash, 1998) when describing the processes, social interactions, past legacies and conflicting identities that are at play in post-conflict scenarios.

In more recent times, the Guidance Note of the Secretary General (2010), moves away from the linear definition, and defines TJ as a range of mechanisms and processes aimed to help societies address legacies of large scale and past abuses, with the aims of ensuring accountability, serving justice and achieving reconciliation. Similarly, the International Centre for Transitional Justice (ICTJ) (2009b) acknowledges that TJ must be adapted to societies transforming themselves following a period of "pervasive human rights abuses" (ICTJ, 2009b, p.1). Such a transformation may be one that happens suddenly or one that takes decades of change. In this definition, the ICTJ does not confine TJ to a specific definition, but acknowledges that it is 'special', in the sense that it operates during a period of societal transformation.

Pinning down a definition that would do justice to all TJ experiences is difficult. In fact, to assume that TJ mechanisms are able to 'travel' (Kent, 2016) and acquire a universal form with sets of discourses, mechanisms and tools, would strip the concept of its most innovative

element: the grass-root innovations, the victim-centred approaches, as well as its contextually moulded mechanisms (Demian, 2016). Therefore, this dissertation echoes the United Nations (UN) and ICTJ definitions and upholds the view that TJ is a form of justice that operates in times of social change, with the aim of restoring justice and creating balance between different groups in society.

2.3.1. Justice: a state of harmony or an active agent which exists through conflict?

TJ theories are built on the assumption that there is a distinction between justice during 'stable' periods of societies, as opposed to justice during periods of societal transformation. However, an important discussion in shaping our understanding of the design of TJ processes is a reflection on the *nature of justice*. Is justice an end to be achieved, wherein a just society is one characterised by harmony? Or is justice an active agent that mitigates conflicts, thus creating a just society that keeps the balance between conflicting groups?

Indeed, different conceptualisations of justice ultimately originate from two main schools of thought. The first perceives justice as harmony. Utopian philosophers such as (1901), More (1925) and Rawls (1971) attempt to develop an understanding of the ultimate, just society. A just society is one that is harmonious and where conflict is perceived as a threat to the common good, as well as an infringement of the social contract. Plato is one of the first champions of this theory and asserts that justice is an idea that is manifested through the state. According to Plato, similar to one's individual soul, the state is made up of three social

classes representing reason, spirit, and appetite (Bhandari, 2002). Therefore, justice is the harmony between these classes, where citizens within a city do actions to which their nature was best adopted," Justice is doing one's own job" (Plato, 1901 Book IV, 443 b). Similar to Plato, Nozick's (1974) concept of justice is one that is understood through the analysis of human beings in a pre-political condition, at the state of nature. Nozick proposes that justice is a state where human beings live in peaceful coexistence as independent individuals. Unlike Plato and Nozick, Rawls' theory of justice presents the ultimate state of justice as one that is socially, not naturally constructed, where free rational beings deduce justice principles to govern a modern social order. Consequently, one could say that justice is delivered once these proposed justice principles are implemented in the state. Although they differ in their understanding of how the state of justice is construed, such conceptualisations of justice are built on a conviction that the state has a *telos*, an ultimate form where all members of society live harmoniously without conflict.

In contrast, the second school of thought perceives justice as an active agent in the universe, which only exists through conflict and strife (Macintyre, 1988). Heraclitus argues that the state of peace is impossible if there exists not the warring of opposites. Essentially, justice keeps the balance between both conflicting opposites to ensure that none override the other. According to this theory, the world is only understood through conflict, and a society's history and identity is mainly construed around a series of conflicts (Mcintyre, 1988). Hampshire agrees with Plato's assertion that the city is a larger representation of the soul, but unlike Rawls, argues that rationality does not create consensus and harmony within the soul and state. Instead, every soul is, by nature, a ground for conflicting aims and tendencies. Correspondingly, the state, reflects such conflict in thought and beliefs (Hampshire, 1999).

Kahn (1981) notes that identifying justice in terms of conflict is not necessarily divisive, for it allows opposing modes of thoughts, beliefs and understandings to engage in arguments, and continuously define and redefine concepts. Opotow and McClelland (2007) assert the importance of conflict in ascertaining a group's sense of identity, where groups define themselves based on their opposition. Consequently, they argue that justice is constructed around a group's understanding of their identity, as well as their relationships and conflicts with out-group members.

One's conceptualisation of justice is not merely philosophical but has implications on how justice systems are designed and administered. Taking the view of justice as an active agent in society places a lot of importance on the design of justice mechanisms and institutions. Therefore, justice is not only grounded in an external, substantive view of a good life (Nozick, 1974), but is also concerned with how processes are designed and applied (Heywood, 2004). It is no longer the outcome of the process that is of primary concern, but the process itself. Furthermore, it has implications on how injustice is remedied and how balance is restored in society.

2.3.2. Remedying injustice: justice, society and identity

To understand how one could remedy injustice, one must recognise the relative nature of people's understanding of '*what is just*'. Clayton (2015) explains that one's understanding of what is considered *just* is highly subjective and is influenced by a range of factors which include the cultural context, and the relationship between the parties involved. Clayton stresses the link between justice and identity, as she argues that the group-based shared

values influence the individual's evaluation of just actions. Group identity is an important defining context for people's perception of justice (Clayton, 2015).

However, if justice is a relative concept that is highly context-specific, how effective are umbrella, one-for-all rules and procedures in remedying injustice? In fact, Okimoto and Wenzel (2015) argue that whilst traditional justice institutions focus on the offence type to identify the right resolution methodology, one should shed light on the victims' salient concerns. Therefore, instead of classifying an act under a specific offense, and consequently applying the corresponding punishment, they advocate for an approach that explores the implications of such acts of aggression on the individual, as well as and society, and subsequently apply rules and processes that would tackle such salient implications. Therefore, the relationship between offence type and methodology varies accordingly.

For justice to be restored in cases of infringements to one's status and power, the victim feels the need to restore moral proportionality (Vidmar, 2000) by affirming the importance of the victim's membership in the group and stripping the offender of his or her power or status (Murphy and Hamption, 1988). On the other hand, restoring justice for unjust acts that breach shared values, implies affirming the validity of such group values and re-establishing consensus (Okimoto and Wenzel,2015). These are indicative and not absolute, clear-cut differences. Therefore, Okimoto and Wenzel's (2015) assertion highlights that not only are perceptions of justice relative to one's context, identity and group membership, but that to ensure justice is delivered, the salient needs of the victims must be identified and tackled.

This further sheds light on the importance of designing justice processes that truly take into consideration the underlying cause of the injustice and remedy, in a manner that is best fit for the specific context of the conflict.

2.3.2.1. Retributive and restorative mechanisms of remedying justice

As we speak of undoing injustice and restoring balance in society, one must shed light on the debate on retributive and restorative measures for delivering justice. It could be argued that justice as usually discussed in literature is retributive in nature. Retributive justice seeks to deliver justice by a process of assertion and imposition through suffering, deprivation, degrading or humiliation (Okimoto and Wenzel, 2015). Bloom (1999) claims that retributive justice as implemented by Western justice systems is based on three main questions: *1) What laws were broken? 2) Who did it? 3) What punishment do they deserve?* Bloom argues that in a restorative setting the questions are different and are more concerned with restoring relationships within a society. Therefore, it asks 1*) Who has been hurt? 2) What are the needs of victims, offenders and the community? 3) What are the obligations and whose are they?* In a restorative system of justice, there is a recognition that violations create obligations, and such obligations are bilateral (Bloom, 1999). Daly (2000) argues that whilst retributive justice focuses on offense, blame and is aimed at punishing the offender; restorative justice is more concerned with the victim and changing future behaviour of the offender.

Barton (1999) dismisses such distinction between restorative and retributive justice, arguing that restorative mechanisms may have a punitive and retributive element to them as well. He argues that it is the disempowerment of the victims and their families that is the primary failure of many modern criminal justice systems. Therefore, he argues for a restorative justice model that does not rule out retributive measures, but engages the victims, the families and

the community at large. Duff (1992) argues that we must see restorative justice as a way for alternative punishments, and not as an alternative to punishment. In fact, Okimoto and Wenzel (2015) suggest that restorative and retributive measures fulfil different justice needs and are both relevant in their own domain. People from a more collectivist culture are more likely to endorse restorative forms of justice such as counselling, while people from a more individualistic society are more likely to endorse a retributive form of justice based on loss of privilege (Hamilton and Sanders 1988). Restorative and retributive justice mechanisms are not exclusive but must be applied in conjunction with a justice system.

2.3.3. Transitional Justice Mechanisms

After a thorough discussion of the underlying principles that support the concept of justice, it is only appropriate that we discuss how justice has materialised in a transitionary setting. Two decades of different TJ experiences have provided a range of innovative TJ mechanisms (ICTJ, 2009b). The UN (Secretary General, 2010) acknowledges that when developing a strategy for TJ, both judicial and non-judicial, as well as retributive and restorative mechanisms, should be employed. Avocats Sans Frontières (ASF, 2013), summarise transitional mechanisms in four main categories: truth seeking, justice initiatives, reparations and guarantees of non-recurrence. Nonetheless, different mechanisms must be employed in a complimentary and mutually reinforcing manner (de Greif, 2012). The Mechanisms are summarised in Table 2.1.

Table 2.1. TJ Mechanisms

Truth Seeking and Truth Telling	Truth seeking often takes place in the form of truth commissions whose aim is to give voices to victims and restore the social balance after periods of violent turmoil. Truth commissions establish an official record of what happened, inform future institutional reform, as well as establish a shared truth within the nation for purposes of reconciliation (Domingo, 2012). Restorative in nature, truth commissions are innovative in their institutional design and significantly differ from one experience to another (Hayner, 2001).
Judicial initiatives	Justice in transition has proved to be fertile space for innovations in judicial institutions. The establishment of the International Criminal Tribunal for former Yugoslavia (ICTY) and consequently, the International Criminal Tribunal for Rwanda (ICTR) are considered to be two of the most innovative tools in international criminal law (Austin, Fischer & Giessmann, 2011). This led to the establishment of the International Criminal Court (ICC), which has the jurisdiction to prosecute the most serious crimes of international concern. The ICC statute established a new, innovative concept of complementarity which emphasises the importance of national courts in dispute resolution. This means that the ICC became a court to be turned to only as a last resort, when the state is unable or unwilling to prosecute (ASF, 2013). International courts were criticised for being disconnected from the local population and raised concerns regarding their legitimacy as the public perceived them as imperialistic (Higonnet, 2005). As a response, hybrid international/local courts emerged as a middle ground that helped establish local legitimacy and a sense of ownership over the judicial process without undermining international procedural standards (Nouwen, 2006). Retributive forms of justice were often perceived as inadequate, as they did not necessarily play a decisive role in peace building and national reconciliation. Therefore, restorative justice mechanisms, especially indigenous justice and dispute resolution processes such as the Gacaca courts in Rwanda and the *oput* in Northern Uganda,

	took new innovative forms and emerged as an alternative (Domingo, 2012). Such processes emphasise harmony and reconciliation and use traditional authorities as arbitrators where penalties are enforced through social pressure and "ritualised reintegration" rather than State coercion (Jorstad, 2015).
Reparation and restitution	During peace negotiations, victims are often overlooked in light of other priorities and their suffering and misfortunes are not acknowledged and addressed. Reparation aims to redress systematic violence by providing the victims with a range of material and symbolic benefits to restore justice in the social order (General Secretary, 2010). Winter (2013) ascertains that reparation is a manner in which the state may affirm legitimacy and establish trust by improving the life chances of victims and survivors. The ICTJ (2007) stress that out of all the dimensions of TJ, reparation remains the one that upholds the status of victims as bearers of rights that are owed restitution. Bassiouni and Rothenberg (2007) maintain that reparation should consider restoring victims to the situation they were before the offence.
Guarantees of non-recurrence	Guarantees of non-recurrence are a range of different initiatives whose aim is to instil trust in public institutions and ensure non-recurrence through institutional reform while ascertaining a sense of political justice (Lambourne, 2008). Institutional reform is a process where state institutions are transformed from instruments of repression and corruption to ones of public service and integrity (ICTJ, 2007) that sustain peace and foster a culture of respect to the rule of law (Secretary General, 2010). Mahmood Mamdani (2001) argues that political justice requires delinking political identity from cultural identity and transform both political institutions and political relationships to eliminate corruption and foster a fair participation of the general public (Lambourne, 2008).

2.3.4. Designing Transitional Justice Processes

Designing a strategy to help nations deal with large scale past abuses requires a high level of flexibility along with an evolving continuous involvement of the local population (Bassiouni and Rothenberg, 2007). Different TJ processes operate at different levels, such as individual and collective psychological levels, attitudinal and cultural levels, as well as international, domestic and sub-national levels (Domingo, 2012). Keeping this in mind, ASF (2013) suggest that different categories of people within society may resort to different TJ mechanisms and processes. Such a complex relationship between different mechanisms is not necessarily a linear one, and justice does not cascade from one level to another easily. Therefore, designing TJ mechanisms needs to take in consideration a number of factors that may facilitate or inhibit the trajectory of TJ in that specific context.

In fact, ASF (2013) stress the importance of designing TJ processes and mechanisms that address the contextual root causes of the conflict as well as the underlying societal problems and frictions. The nature, extent and timing of the violations are deemed important factors, alongside the balance of power within the social structure between social, political and armed actors. Both the ASF and Fletcher, Weinstein and Rowen (2009) agree that the capacity and strength of the legal and political institutions as well as civil society influence the form of TJ strategy required. The timing of TJ efforts, any post conflict reforms, as well as political commitments to address such atrocities on a local and international level are perceived as vital. An important emphasis that Fletcher, Weinstein and Rowen (2009) make, which ASF (2013) fails to capture, is the perceived legitimacy of justice processes by the general public as well as the legacy of colonialism in the country. Colonial systems created mixed, imported

legal systems that at times lacked legitimacy and utilised such flawed systems to further enforce justice. This might do more harm than good.

Therefore, to summarise the first section of the literature review:

- TJ is not a special type of justice, but is indicative of the transitionary context within which justice is being applied.
- Justice in this context is understood as the continuous effort of peace building that aims to restore balance in society by ascertaining group values and restoring moral proportionality. Social identities and structures play an important role in determining the boundaries of the sphere of justice and in articulating a community's conceptualisation of justice.
- Therefore, justice, its application, as well as its institutions are highly contextual and relative to the specifics of the community in question.
- The context of justice during transitional periods has forced justice designers to be extremely innovative in the way they tackle social issues and seek to restore social balance. TJ mechanisms show the wide range of techniques and approaches employed in different contexts to tackle complex social problems.

Therefore, designing innovative and impactful TJ processes must be based on a thorough understanding and analysis of the context. However, it becomes essential to explore the nature of innovation and how it differs from mere invention in the way it seeks it deliver value and ensure impact. Justice is a social construct and is mainly concerned with social interactions and changes in social dynamics. Therefore, an understanding of innovation in the

field of justice must also bring about an understanding of the relationship and dynamics between innovation and society. The following section shall delve deeper into an understanding such concepts.

2.4. Innovation

Innovation has been defined in relation to a number of independent fields. Therefore, establishing a basic universal definition is a challenge (Damanpour and Schneider, 2006). Barnett (1953) defines innovation as "any thoughts, behaviour, or thing that is new because it is qualitatively different from existing forms" (Barnett, 1953 p. 7). In using the phrase "qualitatively different", Barnett places the focus on the restructuring of parts to develop new patterns, rather than the quantitative addition or subtraction of the number of components. Barnett gives the example of a stool. Decreasing the number of stool legs from four to three is not an innovation, unless it is accompanied with a rearrangement of the three legs to create a tripod support instead of a four-post pattern. In this theory, innovation is characterised by the newness of an idea, but only in so far as the interrelationship of the parts in question.

However, contesting theories take a teleological approach to defining innovation, placing the emphasis on the impact, value and appropriateness of the innovation, as well as the social change it provokes (Freeman, 1982, Rouse 1992). Trott (2011) defines innovation as the successful implementation of creative ideas. By successful, he means that an idea can progress from the design, to the implementation stage. Von Stamm (2008) further supports this argument, and suggests a formula explain innovation, as shown below:

(innovation = creativity + implementation)

Here, creativity is defined as the thinking of novel and appropriate ideas (Trott, 2011) that are not spontaneous acts of inspiration, but rather, a concept that spurs from an acquired and refined knowledge base (Von Stamm, 2008). It is such knowledge that would inform both the newness of the idea, and its appropriateness. On the other hand, implementation is the organised and methodological process of putting ideas into practice (Von Stamm, 2008). Deductively, the equation can also be written as:

(innovation = (novelty +appropriateness) + implementation)

However, how do we judge what is an *appropriate* idea? Ries (2011) argues that the context of an innovation is a key element in its definition. In other words, an idea which could be innovative in one context, may not quality as innovative in another. The Business Council Australia (Carnegie, 1993) further highlights the importance of value in the process of innovation: an idea is innovative if it adds value to its recipients. Value, similar to appropriateness, is based on the recipient's context. Similarly, a joint statement by a number of international organisations (UNICEF et al., 2008) define innovation from an international development perspective as new solutions that have the ability to accelerate impact. Therefore, such theories perceive an idea as innovative if it eventually generates added value in its context, whether in the form of accelerating impact in a development scenario, or developing better products, services or processes through a thorough knowledge of the environment.

Building on the importance of value, Kelley (2010) proposes that innovation is concerned with how value is created, as well as how it is channelled and translated. He refuses to summarise the definition of innovation in a summative equation as showcased earlier and, instead, proposes a multiplicative equation:

(Innovation = value creation x value access x value translation)

An innovation must create some form of added value, but such value must also be usable by the end user and must be translated in a manner that helps the targeted population understand *how* the innovation adds value. These components are multiplicative and a weakness in one would weaken the innovativeness of an idea. The concept of value access and translation could be loosely equated to the prior concept of 'implementation'. However, although very pragmatic, this definition's exclusion of the concept of 'novelty' strips innovation of one of its historic cornerstones and blurs the line between valuable products and innovative products.

It is not merely the 'novelty' or 'appropriateness', in terms of context informed value creation, that makes up an innovation. Trott (2011) argues that the process of implementation is what differentiates an invention and an innovation. Whilst the invention is the final product, innovation is a process made up of interrelated sub process (Myers and Marquis, 1969), aimed at creating added value in a novel manner (O'Sullivan and Dooley, 2009).

2.4.1. Innovation and Society

Understanding innovation in terms of novelty and value created underlines the subjective nature of innovative ideas. Are innovative ideas objectively innovative, or are they subjective to the social context they operate in? Barnett (1953) argues that many of the conditions that affect the development of new ideas are dependent on the social realities of the individual, and their innovativeness is largely dependent on considerations of their consequent acceptance within the community. Barnett argues that innovation depends largely on the "accumulation of ideas" (p. 41) in the community, where innovators within a specific community build upon existing knowledge, cultural possessions and technological devices available to them.

Perceptions of innovation are fundamentally affected by social realities. Moreover, societies are also largely influenced and altered by innovative ideas. Innovation processes are often used to influence and change social structures. In fact, the type of innovation that is primarily concerned with fulfilling some form of a social need (Mulgan, 2006), where "collective, intentional, and goal-oriented actions" (Cajaiba- Santana,2014, p. 44) is employed to create societal change is known as social innovation.

Furthermore, Lehtola and Stahle (2014) differentiate between social and societal innovation. Whilst the former's aim is generally profit-making with an interest in how social practices are changed through innovative ideas (Van Der Have and Rubalcaba, 2016), the latter is concerned with the conscious and deliberate act of propagating change in the social sphere.

Societal innovation further involves systematic change in the relationship between state and civil society, and places focus on the state's role as a co-creator of innovation. Edvinsson (2016) argues that innovation involves a process of intelligence for sustainable navigation and gives the example of the Conference of Parties on Climate Change 21 as an innovative policy for sustainability.

Therefore, when designing innovations with a social aim, one must keep in mind both the social context, and the eventual impact of the innovation, whilst utilising the right tools to empower a deliberate act of societal innovation.

2.4.2. Designing Innovations

An article by Brown and Wyatt (2010) published in the Stanford Social Innovation Review, narrates a real-life story of a girl called *Shanti*. Shanti lives near Hyderabad in India, where she fetches unsafe water daily from a local borehole that is 300 feet away from her home. The Naandi Foundation-run community treatment plant, less than a third of a mile away from her home, offers safe treated water at an affordable price. However, Shanti chooses to drink from the unsafe water from the borehole although she is aware that it periodically made her and her family sick. The designers of the plant overlooked a small, but very relevant detail when designing the facility. Firstly, the facility requires that villagers buy five gallons of water, while Shanti only uses three gallons on average. Furthermore, the water was provided in a rectangular shaped container that Shanti found difficult to carry home. Her husband was not around to help and the facility was closed by the time he got home. The plantation designed

a great system to make clean water available for the villagers, and it worked very well with families who owned a bike, or had a son who could help in carrying the heavy water containers. However, the designers did not delve deeper into analysing the realities and constrictions that exist within the village that could make safe water inaccessible for many other villagers.

This omission, although unintentional, is not uncommon. Many innovations that aim to deliver value and to create sustainable and impactful change can fail as they do not take into consideration the needs, goals and aspirations of the targeted population. Due to this shortcoming, many societal innovators are turning to design thinking as a methodology that "humanises" the innovation process (der Bijl-Brouwer and Dorst, 2017), and provides, as well as funnels, knowledge about both the context, as well as the different stakeholders involved throughout the innovation cycle (Gobble, 2014). Design thinking supports the fostering of innovation within a targeted population and blurs the line between the designers and end-users in order to ensure the viability, desirability and feasibility of innovations (Chasanidou, Gasparini and Lee, 2015). Human-centred design (hereafter termed HCD) is the result of an evolution in design practices that primarily focus on understanding and gaining insight about the end-user (Martin, 2009), which in turn enables the designer to understand people, their goals, concerns, aspirations and motives (Hekkert & Dijk, 2011), and channels such innovations to design successful societal innovations.

2.5. Human-Centred Design

The earliest reported use of deliberate structured methods of design that put human beings at the centre of the process emerged during the 19th century and were made popular by the well-known Hathorne study (Baba, 1986). Management researchers and designers collaborated with anthropologists to explore ways to increase the productivity of factory workers. This underlined how informal social processes affected the efficiency of workers (Otto and Smith, 2013). Through what was termed as the *engineering psychology and human factors analysis* (Reese, 2002), designers were inspired to match the skills and abilities of workers to the task at hand (der Bijl-Brouwer and Dorst, 2017). Such methodologies were later adapted to design products that fit the physical characteristics of the consumers through the analysis of anthropometric data about the targeted population. This marked a shift in design thinking from looking at human factors engineering as a common-sense issue, to seeing it as an analytical and organised science (Beakley and Chilton, 1973) that paved the way to further collaborations between social scientists and designers.

Soon after, computer scientists adopted similar approaches and moved towards ethnographical research in the field of *computer-supported cooperative work* and *human-computer interactions*. They required detailed attention to situated actions and observable patterns in human behaviour to inform interactions between people and computers (Otto and Smith, 2013). In fact, Nickerson (1969) recognises that we do not need computer-oriented people as much as we need people-oriented computers. The usability of products which used to be tested in controlled experiments inside innovation labs, soon proved to be insufficient to truly understand the consumer's behaviour (der Bijl-Brouwer and Dorst, 2017).

Consequently, the field of *socio-technical* design later emerged as a guiding philosophy, rather than a methodology, (Mumford, 2006) to encompass the complex interactions between humans, machines and their contexts (Ritter, Baxter & Churchill, 2014). Based on the Scandinavian experience of participatory design methodologies, innovations started being validated in their real-life context.

Around the 1980s, human-centred design, hereafter termed HCD, emerged as an independent field out of a realisation that designed systems affect the human behaviour and their abilities beyond the direct interaction with the system and interface. The move from user-centric to human-centric design is an intentional one that moves away from focusing on people's desires and needs within the sole context of their use of the innovation. Contextual and societal dimensions, such as gender, race, power and status, ought to be considered when designing systems in tandem with technical aspects of the development. This blurred the boundaries between the technical and the societal, recognising and incorporating in the design the fact that both are in a continuously changing, and evolving state (Ritter, Baxter & Churchill, 2014). HCD informs design through the critical analysis of the larger structural issues that surround humans. Buchanan (2001) goes as far as to suggest that designers must be held responsible for the ways in which their designs impact the targeted population.

Therefore, the field of human centred-design evolved into an inherently optimistic, constructive and experimental philosophy of thinking about innovations. It looks beyond the face value assumptions and needs of the community, to truly immerse the designer in the contextual reality of the targeted population (Brown and Wyatt 2010). Through a study of the

evolution of the HCD field, Zhang and Dong (2008) summarise the main characteristics of HCD as:

- Human beings being at the centre of the process
- A holistic understanding of the people
- Multi-disciplinary collaboration in understanding humans
- Involving the end-user throughout the design of the process
- Making products, services or processes that are useful, usable and desirable. (To this last characteristic der Bijl-Brouwer and Dorst (2017) add *meaningful*.)

An advocate for decolonising design anthropology, Tunstall (2011), argues that HCD should go one step further to challenge our existing ideas about human experiences by attempting to understand the role of design processes in defining what it means to be human. Designing processes that are driven by local non-Western communities requires an understanding of three essential elements. Firstly, one must understand the **value system** that is in place and that provides meaning for the community's experience of the world. Secondly, the designer must explore the **local value creation processes** that transform the community's values into concrete innovations. Thirdly, it is essential to have a holistic understanding of the local communities' current and past **experiences**, in relation to these communal values. People seek to create meaning in their lives and, consequently, pass on these values to future generations. Therefore, a truly human and community centric design framework should seek to understand the local conceptualisation of value and purpose.

2.5.1. HCD Frameworks

A number of design frameworks exist with the aim of empowering the innovation process. However, below we review and analyse design frameworks which claim to be human-centric and which include, to a large extent, the five characteristics of HCD mentioned in the previous section. Furthermore, as TJ processes often take place in non-Western societies and the context that this dissertation explores is Africa, it was also necessary to look at Tunstall's three essential elements of the decolonisation of design.

2.5.1.1. *Vision in Product Design*: purpose and visioning

Hekkert and Dijk's (2011) Vision in Product Design (VIP) framework is a recent, non-linear multi-level framework aimed at developing a sense of human purpose and direction through visioning. As Wahl (2006) explains, visioning is the process of understanding present conditions and challenges, as well as bringing about community consensus on how to overcome such problems. In fact, the VIP framework is based on two important phases that are at play simultaneously. On the one hand, there is the knowledge-seeking preparation process of "deconstruction" which explores current trends and contexts. It is retrospective and analytical in nature. The other corresponding phase of "designing" allows the forging of a vision by looking into possible future scenarios and using it to flesh out products or interventions that are context-driven and interaction-centred (Boeijen, Daalhuizen, Zijlstra & Schoor, 2014). The model as depicted by the authors is shown in the diagram below.

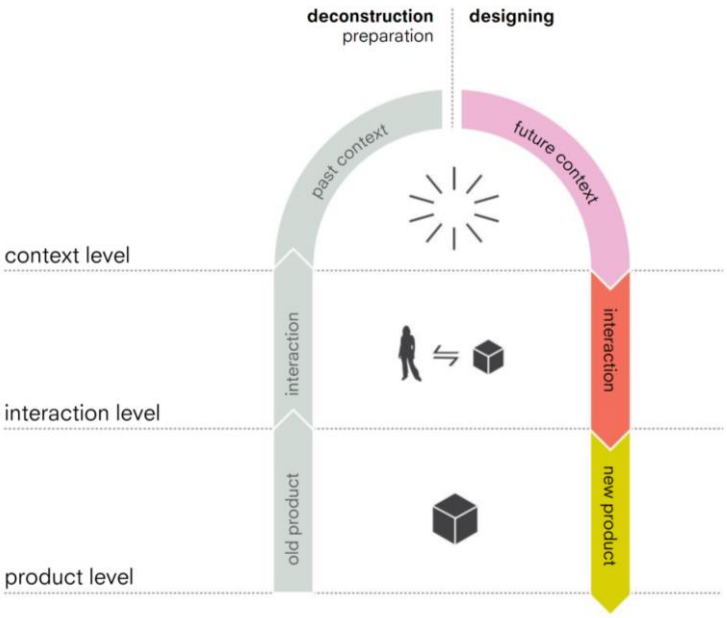

Figure 2.1.VIP Model. Source: (Hekkert and Dijk's, 2011)

In HCD frameworks, it is essential that systems provide a process of inquiry that is driven by a communal vision (Mahan, 1970), where acquired knowledge is applied "to the betterment of man and society" (p. 195). As previously highlighted by Tunstall, this framework enables the exploration of a holistic understanding of a community's past and current experiences. It sheds light on the importance of being able to successfully transition from a "deconstructing" phase that is heavily based on analytical exploration, to a "designing" phase, where ideas are articulated into more concrete concepts.

However, what the VIP framework falls short of is moving beyond the mere understanding of past contexts and direct interactions with the innovation and exploring implicit underlying assumptions within a system. Although the VIP model is driven by the concept of visioning, it

does not place much focus on human purposiveness, community values, and how communities extract meaning, which was one of the pillars that Tunstall repeatedly highlights.

2.5.1.2. Simon Sinek's Golden Circles: purpose in an organisation

Simon Sinek's (2011) *Golden Circles* highlight the importance of understanding meaning and purpose in the design process. Sinek takes a pragmatic approach towards purpose in design, as his theory aims to develop a practical design framework that translates the purpose into tangible innovations. Sinek argues that a successful product or service, is one that is able to correspond to the customer's beliefs and values. Consequently, he places the purpose, which he calls the '*why',* at the heart of the design process. Unlike the VIP model, Sinek's Golden Circles are circular, with the '*why'* layer at the centre, enveloped by the '*how*' and '*what*' phases.

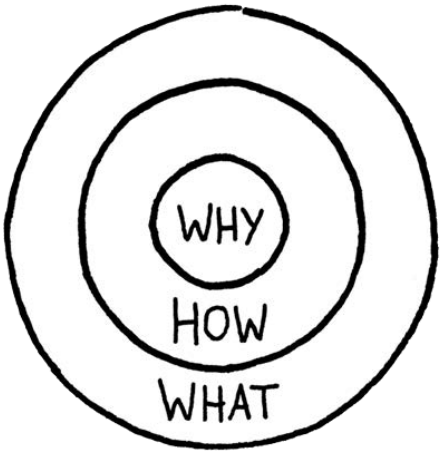

Figure 2.2.: Golden Circles. Source: (Sinek, 2011)

In this design process, the '*why*' drives the '*how'* and '*what'* levels. The 'why' level explores the purpose and values that are at the basis of the innovation. The '*how'* level looks into the methods and channels through which the '*why'* is delivered to the customer. At the outer

layer sits the '*what'*, which represents the consequent, concrete innovations that were born out of a deep analysis and understanding of the '*why'* and '*how'*.

Although it focuses largely on purpose, the *Golden Circles* model falls short of providing the space in the design process that allows the thorough, in-depth study of the more immediate context in which the innovation will operate. The next framework is able to incorporate a sense of purpose, whilst providing space for in-depth inquiry on the context.

2.5.1.3. Jantsch's Education Innovation system: purpose, meaning and values

A monumental attempt at developing a framework that attends to the human's sense of meaning and purposefulness in design is Jantsch's (1972) Education/Innovation System. Echoing Churchman (1968), Jantsch dismisses the idea that social systems should be perceived as autonomous, scientific, value-free systems that detach the human from their context in the pursuit of an abstract understanding the nature of humans. Instead, he argues that social systems are, by, nature largely dependent on the purpose they serve.

In fact, Jantsch's multi-level, multi-goal framework explores empirically manifested actions, and digs deeper to understand their underlying meaning and purpose. Similar to Tunstall's view regarding value creation, Jantsch and Max-Neef (2005) place a lot of importance in understanding the larger value systems that are in place. Jantsch's (1972) Education/Innovation System Trans-Disciplinary Model focuses on the cooperation and coordination between different disciplines based on the values introduced at a purposive

level. He identifies horizontal organising languages at each level, as shown in the diagram below.

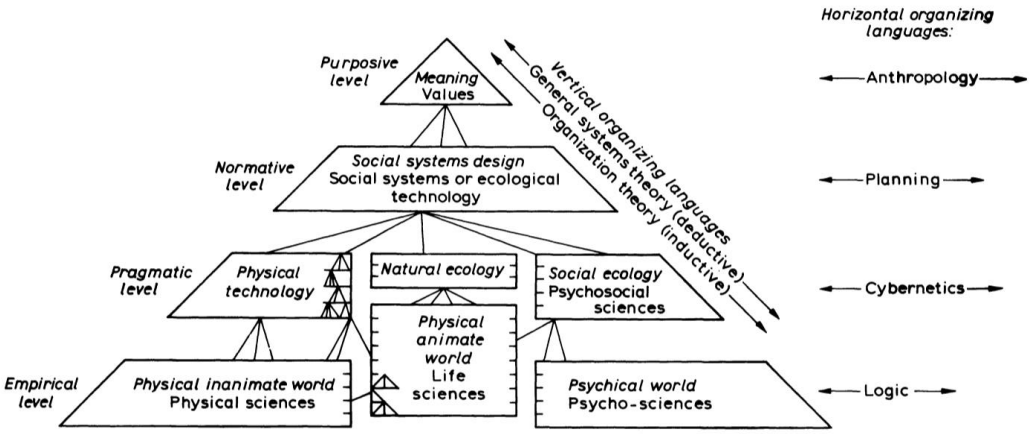

Figure 2.3.: Education/Innovation System. Source: (Jantsch, 1972)

On a *purposeful level*, Jantsch believes that anthropology should be the organising language that brings to our attention the value systems and dynamics in place within a particular environment. For Jantsch, anthropology is the science of how to "create an anthropomorphic world" (Jantsch, 1972, p. 21), where humans can survive in a dynamically changing setting.

On the other hand, the *normative level* focuses on social systems design, as well as the intersection of social and environmental/ecological systems technology. Moving from the largely idealistic and conceptual themes developed at a purposeful level, the normative level looks into systems that reflect how humans take an active role in shaping the world around them and designates planning as the organising language at this level. In fact, he places institutions and innovation driving initiatives at this level.

Subsequently, the third level takes a *pragmatic approach* to physical technology, natural ecology, and social ecology. The difference between the pragmatic and normative levels is made clearer by the designated languages. Whilst the normative level is characterised by a language of planning, the pragmatic level uses cybernetics as a transdisciplinary approach to explore how humans, animals, and machines, control and communicate, especially as we speak of systems that are *self-controlling* or *adaptive* (George, 1971). The adaptive element suggests that the system is continuously receiving feedback, particularly negative feedback, which is channelled to modify the input, and improve consequent outputs of the system.

The *empirical level*, characterised by an organising language of logic, aims to describe the world as it is. It is essentially concerned with the physically manifested attributes of the world we live in. Here, we look into subjects such as life sciences or psycho sciences. This is the level at which a trans-disciplinary approach has been the most successful (Jantsch,1972).

Jantsch's framework proves to be very influential in the study of interdisciplinary approaches to research. However, his system is also very influential in the field of design and innovation as shown by Van der Bijl-Brouwer and Dorst's framework.

2.5.1.4. Needs and Aspirations for Application in Design and Innovation

Building on recent developments in HCD, Van der Bijl-Brouwer and Dorst's (2017) *Needs and Aspiration for Application in Design and Innovation* (NADI) framework does not merely focus on the end user's current needs, but also explores their aspirations, long-term hopes, desires,

ambitions, as well as latent unexpressed needs. Whilst the individual human remains at the centre of the exploration process, the framework also looks into the user's interactions with the social, technological and ecological systems surrounding him/her. Similar to the Education/Innovation System model, the model builds up from a concrete, empirical and pragmatic approach to a more abstract, normative and purposeful level. The empirical solutions level looks into the Golden Circles' 'what', the pragmatic scenarios level looks into the 'how', whilst the 'why' is explored over two levels; the goals level and themes level.

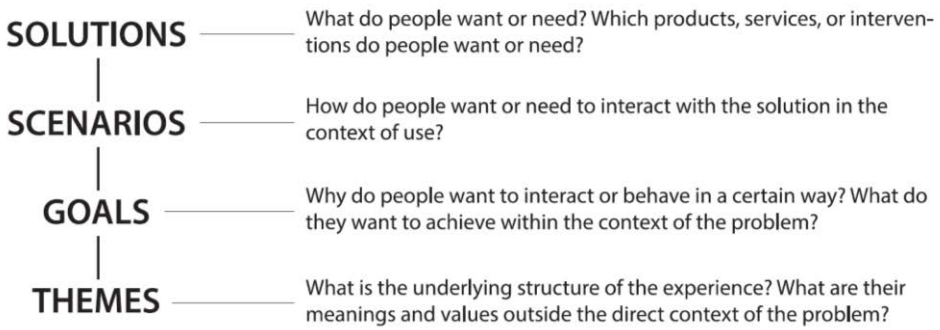

Figure 2.4.: NADI Model. Source: (Van der Bijl-Brouwer and Dorst, 2017)

At the most concrete level, *Solutions*, designers explore the needs and wants of people by looking into the desirable characteristics and elements that people wish to have in a product or service. On the *Scenarios* level, designers explore the context of the solution and develop a deeper understanding of how people interact with the proposed solution and its impact on the larger societal context. In the 'why' levels of *Goals* and *Themes*, the NADI model looks into two different frames of reference in terms of human purpose and meaning. In *Goals*, one looks into what people want to achieve within the context of a specific problem. On the other hand, *Themes* takes a wider phenomenological perspective by looking into underlying needs and aspirations of humans, enabling an enriching analysis of 'what is this problem really

about?' It is this enriching study of humans that enables the shaping of our understanding of how humans within that specific context make sense of the world. On a *Themes* level, the examination, which is anthropological in nature, explores human needs and aspirations beyond the specific context of the innovation.

One cannot understand the fundamentals of the *Themes level* without taking a deeper look into phenomenological theories on human experiences. The study of phenomenology primarily focuses on destabilising assumptions that organise our engagement with reality (Desjarlais and Throop, 2011) in order to understand essential invariant features of our experiences. A phenomenological approach to the *Themes* level seeks to uncover the *essence*, the subconscious underlying meanings and structures of a person's lived experiences within a phenomenon and the environment through which this phenomenon is shaped (Bynom and Varpio, 2018). Therefore, the *Themes* level is not the practice of deducing some form of grounded theory and applying it in a practical situation. However, it allows us to develop insight that brings us closer to an understanding of how people experience the world and their reality (Ajjawi and Higgs, 2007). Unlike the short-term context situated goals, themes of human experiences take a relatively longer time to change, allowing for strategic long-term planning and design. It is the fulfilment of these needs that helps in the subsequent adoption and success of these innovations.

Although thorough, both the Education/Innovation System and NADI models fail to provide a smooth transition from the process of exploring the problem, to that of designing a solution. It is essential that the framework provides a space to prompt the act of conscious and

deliberate design and highlight the difference between developing a knowledge base and designing solutions.

2.5.2. A working framework for Human Centred TJ Design

Therefore, a framework that allows both a thorough study of the problem, and an explorative creative process of the possible innovations must be nonlinear and allows self-learning and adaptation. It must be purposeful and must enable a deep understanding of the purpose. It must also show a transition from an analysing to a creating phase.

Similar to the VIP model, the proposed framework, which shall, for now be termed as the *working framework*, has both a deconstruction and designing phase. However, it is not a linear process. Instead, it resembles the circular evolutionary nature of the Golden Circles where the deconstruction and designing phase could potentially be taking place at the same time, or at different intervals depending on the context of design. The deconstruction phase is based on the Education/Innovation System model's four levels; empirical, pragmatic, normative and purposeful. The organising languages are also adopted in this *working framework* as they further clarify the distinction between different levels. On the other hand, the designing stage is based on the NADI model's four stages: the Themes, Goals, Scenarios and Solutions.

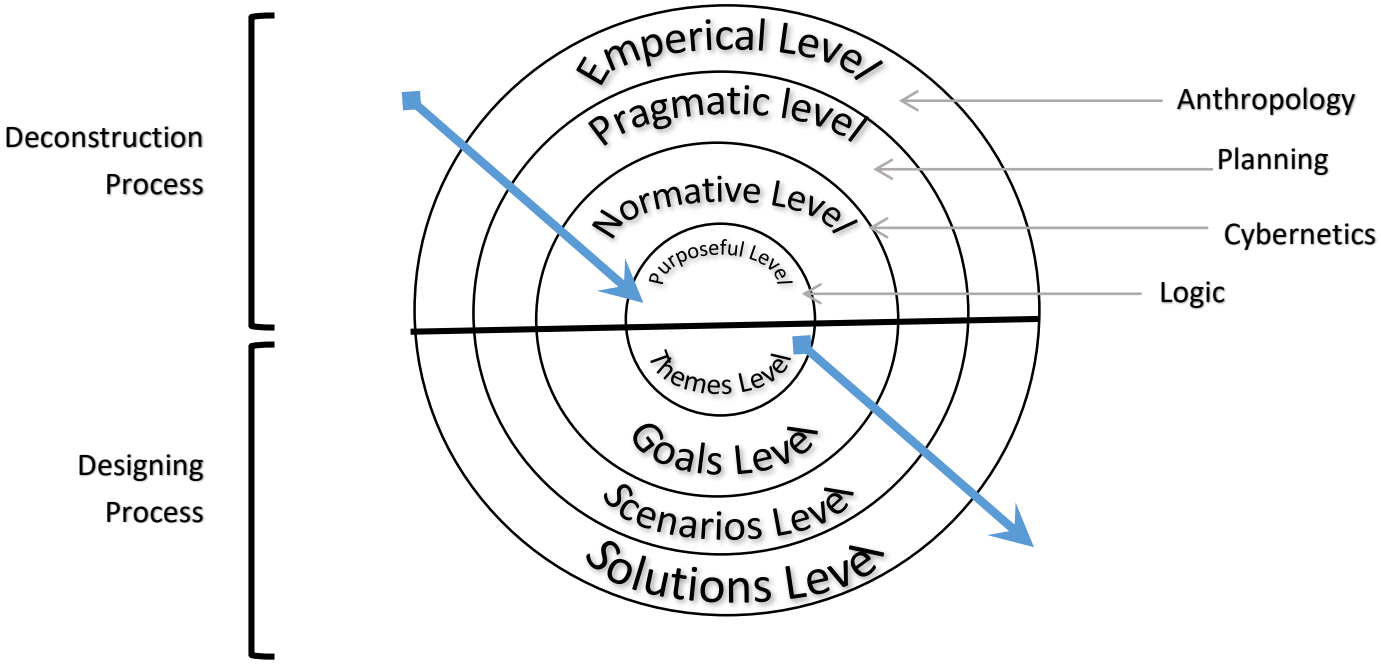

Figure 2.5.: The Working Framework

An important emphasis made by Tunstall in her advocacy towards the decolonisation of design anthropology is to allow a bottom up approach to understand the problem. Therefore, the deconstruction stage is one that starts from an empirical level towards a purposeful level. Figure 2.6. outlines the different deconstruction levels.

The Deconstruction Phase

Empirical Level

- The **empirical level** focuses on the immediate and obvious needs and wants of the target population. It looks into how the tangible physical world is experienced by the end user.

Pragmatic Level

- The **pragmatic level** takes a deeper look into the different technological, ecological and social systems that are in play within that specific issue. Using cybernetics as an organising language, this level sheds light on the immediate setting and environment, in which the problem is taking place, and maps them out. It further takes note and analyses how the context is shaping the problem, and how the different players and stakeholders involved.

Normative Level

- With planning as its organising language, the **normative level** is the first step towards a thorough understating of the '*why*'. At this level, we explore the institutions and systemic social structures that support and influence the problem at hand. We discover the function that the problem has evolved to play within the said social structures.

Purposeful Level

- Anthropology being the organising language, the **purposeful level** is primarily interested in understanding human nature and asking why humans act as they do in given circumstances. Taking a hermeneutical phenomenological approach, this level allows the extraction of the main recurring themes from the analyses of the underlying meanings in the lived experiences of the population under study. It is these themes that would later frame the purpose of design for the designing phase.

Figure 2.6.: The Working Framework's Deconstruction Phase

On the other hand, the designing phase is themes-driven and moves from the themes level to the solutions level. The designing phase is outlined in Figure 2.7.

The Designing Phase

Themes Level

- Once the underlying themes surface at the deconstructing purposeful level, the ***Themes* level utilises the acquired insight to** create a purpose for the design and a sense of direction. It would ask questions such as: *Is the underlying purpose of why people ask for revenge after aggression meant to give everyone their due? Or to re-instate their status within society? Does it involve a power struggle within the social structure?* If so, the purpose that drives the innovation is not merely there to ensure that justice is served, but to ensure that the status of the victim is reinstated. This purpose helps us look beyond traditional solutions and look for innovative ways through which we could deliver value and solve the social problem.

Goals Level

- The ***Goals* level** is the stage where concrete goals and milestones are shaped. Using the insight that was gathered as well as the vision ascertained in the previous level, this level is where the innovation becomes clearer, and the abstract general purpose is refined to the specific context. The purpose is further contextualised within the social structure and the 'why' is now representative of the specific background of the end-user..

Scenarios Level

- The ***Scenarios* level** fleshes out the systems within which the solution shall operate. Alongside the empirical solutions level, these two levels are the most creative parts of the process. Here, the 'why' is detailed into more concrete innovation systems. Looking into the technological, ecological, and social systems that were explored in the deconstructing phase, this level looks into developing adaptive systems rather than concrete products. It is however, at the next level that innovations are further detailed into finished concrete products and projects. It is vital at this stage that the system is designed to be flexible and adaptive to enable the continuous development and betterment of the design.

Solutions Level

- **The Solutions level** is where the concrete and tangible specifications of the innovation are detailed. This engages with the context to understand the anthropometrics needed in the design.

Figure 2.7.: The Working Framework's Designing Phase

Informed by literature on HCD as well as literature on TJ design, the proposed working framework combines elements of different design processes in an attempt to provide a framework that could be used when designing TJ processes.

2.6. Conclusion

Societies in transition have proven to be a fertile space for experimentation and innovation. The emergence of a number of drastic innovations in the TJ field over the past few decades has brought to life new justice mechanisms which include international criminal courts, the truth telling commissions and others, all of which have enriched the justice field. Similar to innovation, justice as understood in TJ processes, is not an end in itself but is a continuous process that aims to keep balance in society between conflicting interests. Conceptualisations of justice are dependent on the context within which they operate as social identities play a crucial role in shaping the boundaries, and spheres of justice. This impacts the way justice is applied and the manner in which justice mechanisms are designed.

Justice innovation can be understood as the sum of the individual definitions of "justice" and "innovation". Therefore, innovation is defined as a new idea that adds value within the specific context in which it is implemented. However, the deliberate act of innovating to propagate societal change, as is the case with TJ, highlights the role of the state in co-creating innovations and developing a platform through which grassroots innovators could implement their innovations. Such a specific and contextual form of innovation requires design processes that empower a thorough exploration of their end users' immediate environment, as well as a deeper exploration of the social, technological and ecological systems the end user is embedded in. This highlights the need for HCD which puts the human at the centre of the design process and blurs the rigid lines that used to exist between the designer and user.

This chapter has explored four main HCD frameworks: Vision in Design, The Golden Circles, Education/Innovation System and the Needs and Aspirations for Application in Design and Innovation (NADI). The *working framework for Human Centred TJ Design* adapted from the aforementioned models ascertains the importance of developing purpose driven design processes that take a phenomenological approach to deconstructing design. This derived framework is later tested and refined against real life TJ case studies.

The next chapter presents the methods used to test the working framework.

CHAPTER THREE: METHODOLOGY

3.1. Introduction

An essential part of any research is the development of a research design that is best suited for the research question. This chapter explores and explains the research paradigm and approach taken by the researcher throughout the data collection and analysis stages. Furthermore, this chapter explores the sampling process through which the cases were chosen, and later specifies the data collection methodology. Data analysis strategies are further explained by highlighting the researcher's process of forming meaning out of the data collected. This chapter further recognises issues of trustworthiness and how the researcher ensures that the research remained trustworthy. Furthermore, this chapter identifies this dissertation's limitations.

3.2. Research Paradigm and Approach

3.2.1. A Constructivist Approach

This dissertation approaches the study with a constructivist paradigm, one that emphasizes that knowledge is constructed rather than transmitted (Applefield, Huber, Mahnaz, 2001), and one that recognizes the importance of the individual in the process of the creation of meaning (Miller & Crabtree, 1999), and constructing reality (Charmaz, 2006). The constructivist sees reality as local and specific based on shared perceptions (Galbin, 2014). An interpretative constructivist approach focuses on analytically disclosing the meaning-making

practices of humans, as well as understanding why, how and using which tools do such practices arrange themselves to generate outcome (Charmaz, 2017). Such an approach requires the examination of different variables as it focuses on the subjectivity of knowledge.

3.2.2. A Qualitative Methodology

Correspondingly, a qualitative methodology was adopted for this study to allow the thorough explanation of social phenomena and a deep understanding of 'why' reality is at is (Marshall, Rossman, 2016). The nature of qualitative data is narrative and descriptive, as it values uniqueness and particularity (Save the Children, n.d.), and allows for a thematic exploration. A qualitative research was deemed the best fit for this dissertation as the subject matter is one that is significantly influenced by a number of complex factors affecting its setting. Qualitative data allowed the collection of multiple sources of data that could present various versions of reality and allowed a methodical discussion of the design process. As an example, the success or failure of a specific TJ mechanism was judged differently by different stakeholders. Whilst governments were usually more positive, human rights organisations were much more cynical. Naturally, this reflected different conceptualisations of justice, as well as different experiences of reality.

3.2.3. A Case Study Research Strategy

A case study methodology was employed to enable the contextualisation of the suggested framework and to test the framework against a number of cases. In an attempt to define this

research strategy, Schramm (1971) explains that a case study tries to explore a set of decisions or processes, programmes or events (Yin, 2003), and looks into why they were decided upon, how they were implemented and what results came out of it. This exploration allows the analysis of complex, real life phenomena (Yin, 2003) that while not statistically generalizable, are analytically generalizable (Welsh and Lyons, 2001). This dissertation looks into the findings of multiple case studies which, although might differ to a certain extent, ultimately arrive to common conclusions (Yin, 2003).

3.3. Research Sampling

A number of African countries have implemented TJ processes throughout the past decades including Algeria, Chad, Central African Republic, Sudan, Zimbabwe and others (Fombad, 2008). However, for the purpose of this dissertation, the researcher chose to focus on three African experiences, each being a pioneer in a specific category of TJ mechanism. Choosing the right samples for the case studies was central to theory-building and testing (Mills, Durepos and Wiebe, 2010). In fact, Neuman (2009) suggests that within a case study research, there are three main sampling techniques: deviant, sequential, and theoretical sampling. This dissertation uses theoretical sampling, thus allowing theory and literature to guide the process of choosing the sample. In fact, the chosen cases had to pass two tests to be applicable for this study. They both needed to be a mechanism of TJ and also had to qualify as an innovation. As established in the literature review, TJ mechanisms are those that take place during periods of societal transformation whose ultimate aim is to deliver justice through restoring balance in society and resolving contesting claims. On the other hand, innovation was summarised as novelty, appropriateness and value, as well as

implementation. For the purposes of this dissertation, the three case studies chosen were: Rwanda's Gacaca Courts, the Special Courts of Sierra Leone, and South Africa's Truth and Reconciliation Commission. Each selected case underwent a process of testing in order to assess its qualification as an innovative TJ mechanism. The latter is demonstrated in Figure 3.1.

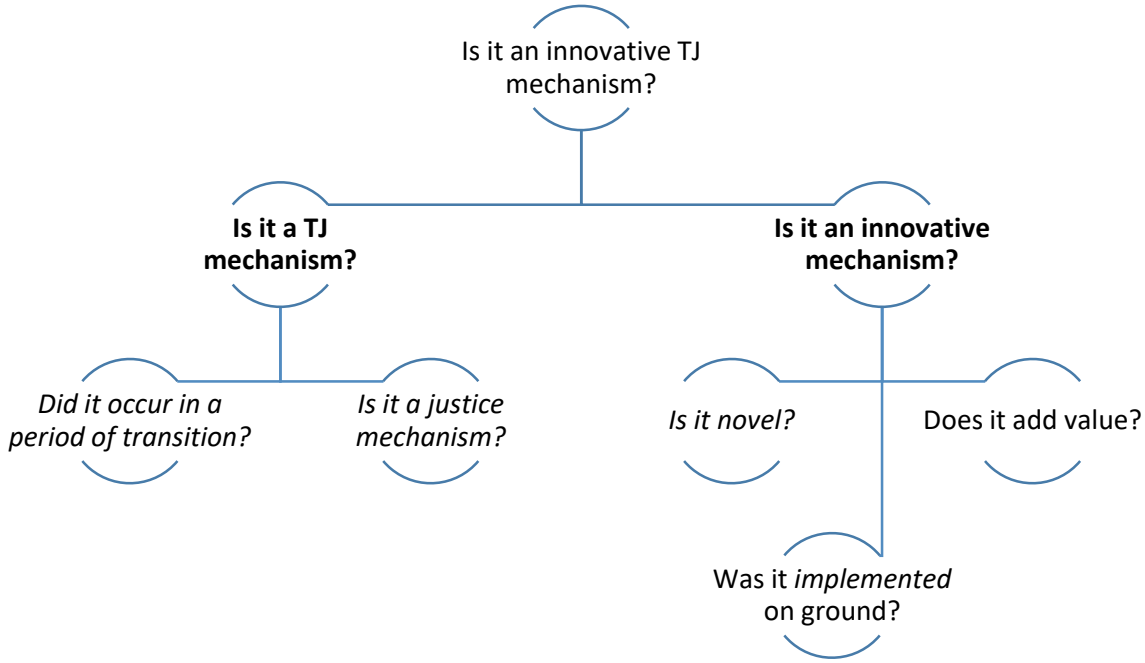

Figure 3.1.: Case Selection

In the next section, the aforementioned cases are further explored, and their applicability for the purpose of the categorisation of innovative TJ mechanisms is ascertained.

3.3.1. Rwanda's Gacaca courts

3.3.1.1. Background Information

Rwanda is a small, landlocked country in Central Africa inhabited by three main ethnic groups. The Hutus constitute the major part of the population, while the Twas and Tutsis constitute around 15% of the population. The Rwandan genocide took the lives of between 800,000 to 1 million Rwandans, mainly Tutsi and moderate Hutus, (Rwanda, 1995), in a time as short as 100 days. Most of the Tutsi population in Rwanda perished, with only 25-30% of the original Tutsi population surviving (Verpoorten, 2005). A number of mechanisms were developed to ensure that a proper social transition takes place in Rwanda. This included an international criminal tribunal, the reform of local judicial structures, various reconciliatory activities, institutional reforms, as well as reparation programmes. However, it was the Gacaca courts that caught the attention of the world, with its traditional restorative conflict resolution mechanisms that incorporate a modern, retributive twist.

3.1.1.2. Breakdown of the case

Is it a TJ mechanism?	***Did it occur in a period of transition?*** The Gacaca Court was formally discussed in 1999 and was later established in 2002 to hear cases specifically related to genocide. Its operation was time bound and its jurisdiction was also limited to crimes of genocide and crimes against humanity. Therefore, *it did take place in a period of transition.*
	Is it a justice mechanism? Gacaca, literally meaning "grass", is a form of traditional restorative conflict resolution mechanism utilised in varying forms in Rwanda to decentralise law making and empower community deliberation (Ingelaere --). *Therefore, it is a justice mechanism.*
Is it an innovative mechanism?	***Is it novel?*** The Gacaca courts themselves are existing traditional mechanisms. However, the structure used by the government to hear genocide cases , *the inkiko Gacaca*, is a refined and restructured form of Gacaca. Its novelty lies in the novel structure adopted by the government and the retributive twist it was given. Furthermore, it is also one of the first traditionally inspired courts to hear cases of genocide and crimes against humanity. Therefore*, it is a novel mechanism*.
	Does it add value? The Gacaca courts' value was in its contexual design that allowed the wide participation of community members. It also helped bridge the gap between the different ethnic groups and create a new narrative for a new Rwanda. *Therefore, it adds value.*
	Was it implemented on ground? The Gacaca was established in 2002 and operated until 2012**.** Therefore*, it was implemented on ground.*

Figure 3.2. Rwanda's Gacaca case breakdown

3.3.2. The Special Courts of Sierra Leone

3.3.2.1. Background Information

Sierra Leone is a West African country well known for its trade in illicit gems, called 'blood diamonds', which fuelled several conflicts after its independence. The Sierra Leonean civil war (1992 – 2002) was characterised by an unspeakable brutality, as well as the excessive and

systematic use of mutilation, abduction, sexual violence and child abuse as forms of torture and revenge (HRW, 2004). In an attempt to transition the society towards a peaceful shared future after the end of the war, the Sierra Leonean government established a Truth and Reconciliation Commission with the aim of providing a space for communal healing. Other initiatives, such as a reparation programme and institutional reforms, followed. However, this dissertation mainly focuses on the innovative hybrid court established through a bilateral contractual agreement between the UN and the Sierra Leonean government (Macaluso, 2001). The Special Court of Sierra Leone (hereafter termed SCSL) was the first of its kind, bringing together elements from both the international, and the local legal systems.

3.3.2.2. Breakdown of the case

Is it a TJ mechanism?	***Did it occur in a period of transition?*** The special court of Sierra Leone was mandated to prosecute those who bear the greatest responsibility for crimes committed after the signing of the failed Abidjan Peace Accord in 1996. Its mandate was time bound and it was established a few years after the end of the Sierra Leonean 10 year civil war. Therefore, *it did take place in a period of transition.*
	Is it a justice mechanism? The SCSL was a retributive justice mechanism aimed to address serious crimes against civilians and UN peacekeepers whilst helping the nation come to terms with its violent past*. Therefore, it is a justice mechanism.*
Is it an innovative mechanism?	***Is it novel?*** The SCSL is a unique internationalised local court which was established through a contractual agreement between the UN and the government. It has both local and international elements incorporating domestic and international laws. The court was truly one of a kind and was the creative output of negotiations between the UN and the Sierra Leonean government. *Therefore, it is a novel mechanism.*
	Does it add value? The SCSL was designed to both deliver justice to the Sierra Leonean people but also to upskill the justice system in Sierra Leone.The SCSL added a lot of value to the local justice scene as well as international criminal justice field. *Therefore, it adds value.*
	Was it implemented on ground? The SCSL was established in 2002 and operated until the 2013. *Therefore, it was implemented on ground.*

Figure 3.3. Sierra Leone Special Court case breakdown

3.3.3. South Africa's Truth and Reconciliation Commission

3.3.3.1. Background Information

South Africa has long suffered from racial segregation as the country's population is divided between the white Afrikaners, black indigenous people and the coloured migrants. Such racist policies culminated in the establishment of the apartheid regime in 1945 based on the belief that the white Afrikaner nation were superior. The Apartheid regime was not only violent, but was a system through which whites exerted superiority on blacks (Carter, 2003), in an

*"inhumane and degrading" (*TRC, 1998, p. 34*)* manner. In the time leading up to the end of the apartheid, the situation in the country was characterised by brutal violence, most of which was targeted towards blacks, fuelled by the white government (TRC, 1998). South Africa's experience of TJ is characterised by a widely criticised amnesty and its famous truth commission. A number of political, legal and civil reform programmes took place in an attempt to eradicate the legacy of apartheid. Although not the first commission of its kind, the South Africa's Truth and Reconciliation Commission (TRC) set a new global standard that highlighted the way in which post-conflict reconciliation could serve as a way to restructure and reengineer societies (Vinjamuri, 2014).

3.3.3.2. Breakdown of the case

Is it a TJ mechanism?	***Did it occur in a period of transition?*** The Commission is not permenant but was enacted to deal with past abuses and human rights violations to help the South African society come to terms with its violent past. The Commission's mandate was time bound and could only hear cases of abuses that took place within a specific time. Therefore, *it did take place in a period of transition.*
	Is it a justice mechanism? The Commission's aim was to promote national unity and reconciliation in the pursuit to overcome conflicts and divisions of the past (TRC, 1998). Therefore, the commission could be classified as a restorative justice mechanism which does not focus on punishment, but rather, on restoring harmony and moral correctness in the community. Therefore, *it was a justice mechanism.*
Is it an innovative mechanism?	***Is it novel?*** It was the first commission with the power to grant amnesty to individual perpetrators and hold public and inclusive hearings. The commission had various court-like mechansisms such as the power to search, seize and investigate thoroughly. It was also the first to set up a witness protection programme (TRC, 1998). Therefore, *it is novel.*
	Does it add value? The commission was vital in the restructuring and reengineering of the South African society to create a shared future (Vinjamuri, 2014). It played an essential role in 'healing the nation' (TRC, 1998). Therefore, *it did add value.*
	Was it implemented on ground? The Commission was established in 1995 and operated for three years. Therefore, *it was implemented on ground.*

Figure 3.4. South Africa's TRC case breakdown

3.4. Data collection methods

Secondary data analysis was the main data collection methodology employed. This method is frequently used in social sciences and education to re-examine and rethink existing data (Herron, 1989). Furthermore, secondary data collection methods simplify the logistics of data collection, enabling more time for the research analysis, whilst relying on data collected by more experienced and credible researchers (Herron, 1989). However, it is not without its limitations. Issues of accessing credible and quality data often proves to be a setback.

Secondary data may also be outdated, irrelevant, or biased (Dunn et al, 2015). In order to tackle this limitation, diverse sources of data were collected and categorised. The data collected in this dissertation could be categorised in five categories as shown in Table 3.1.

Table 3.1. Categories of Data collected

Category 1	Reports issued by relevant governmental departments, ministries, commissions or judicial bodies. Such reports are usually biased as they aim to draw a positive image of the work carried out by such government agencies.
Category 2	Reports issued by monitoring bodies such as NGOs, INGOs, UN and other governmental and non-governmental bodies charged with the responsibility to monitor a specific process. Such reports provide an outsider's view of the process however; they reflect the different agendas that drive their organisations. In fact, different monitoring bodies provide different views about the same process.
Category 3	Interviews conducted by newspapers, NGOs, INGOs, government bodies, outreach departments and others, with personnel who were involved in a specific process under analysis. This category further includes biographies and articles written by people who had been involved in such processes in some way or another. Such interviews and biographies provide first-hand

	information and details about inner discussions that have taken place outside formal institutions. They become very informative in understanding details and attitudes with which certain decisions were taken.
Category 4	Ethnographic research conducted by anthropologists recalling their experiences within specific systems and processes relevant to the study. Whilst reports and interviews often highlight structures, systems and details, ethnographic research focuses on social structures and how they have been affected by the war and consequent reconciliatory process.
Category 5	Other literature that bases its studies on the information provided by documents and papers of the categories above. Often, such literature would also include the added primary data collected by the researcher through his or her own interviews. Literature often points the researcher towards Category 1,2,3 and 4 sources that could be taken in consideration in the data collection process.

In each case study, a combination of data sources was used to ensure credible and unbiased research findings.

3.5. Data Analysis Methods

The data analysis technique used for this dissertation was an open coding process where the researcher "identifies and tentatively names the conceptual categories into which the phenomena observed would be grouped" (Thomas, 2010, p.317). Therefore, the concepts emerged from the raw data and were guided by the working framework. Subsequently the concepts were grouped into conceptual categories to allow analysis and comparison (Strauss and Corbin, 1998). The first step in the data analysis was to create a chronological order of the design process. Later, each step was explored in more detail to better inform the specific category it belonged to from the *working framework* presented in Chapter 2. The different, distinct design activities throughout the design process were then identified as either part of the deconstruction phase, or the designing phase. Later, each design activity was accordingly labelled with the *working framework* level it corresponded to. To facilitate the labelling and categorisation, a number of questions were set for each level.

The questions guiding the deconstruction phase are as highlighted in Figure 3.5.

The Deconstruction Phase

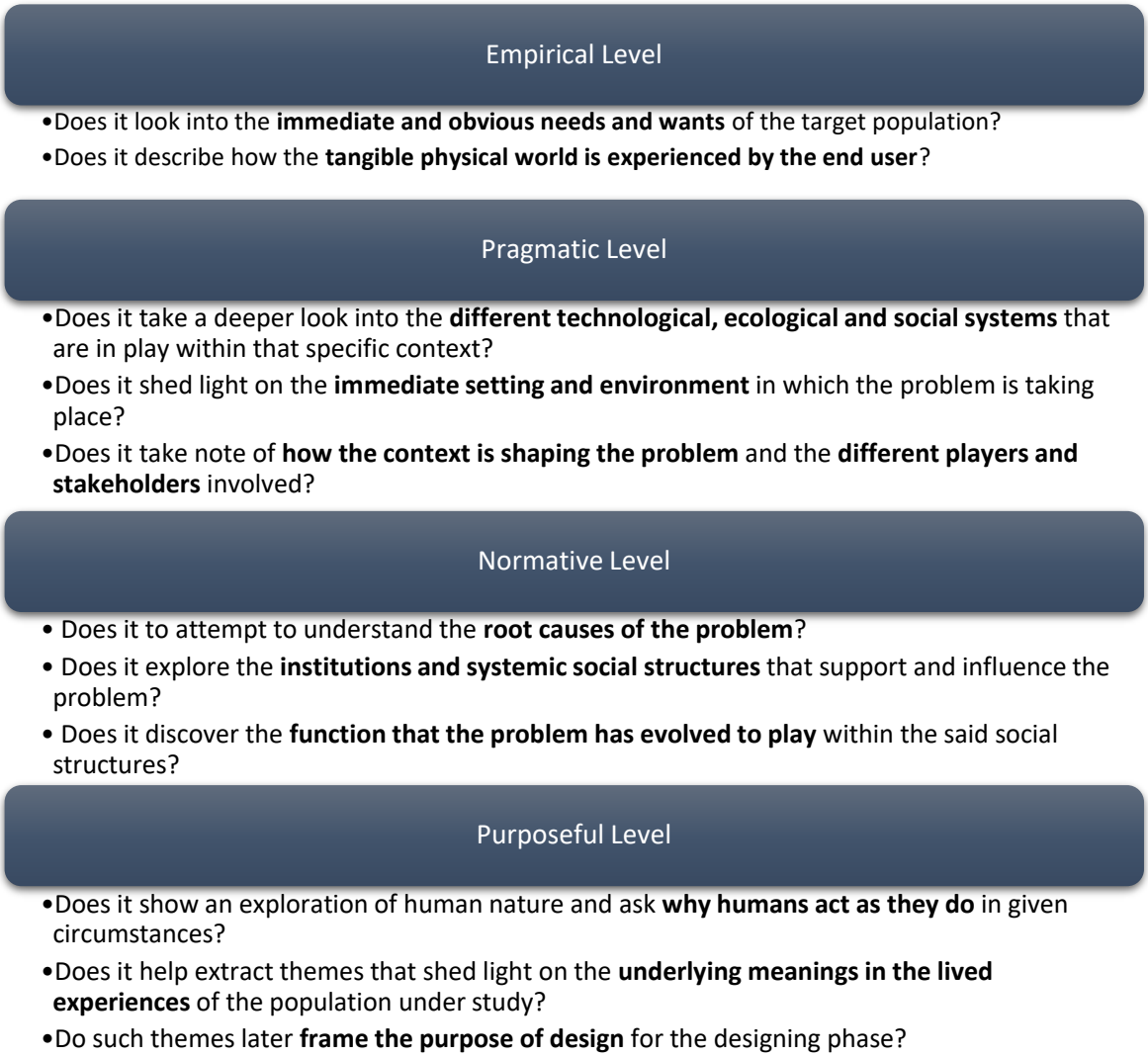

Figure 3.5. The Deconstruction Phase Guiding Questions

The questions guiding the designing phase are as highlighted in Figure 3.6.

The Designing Phase

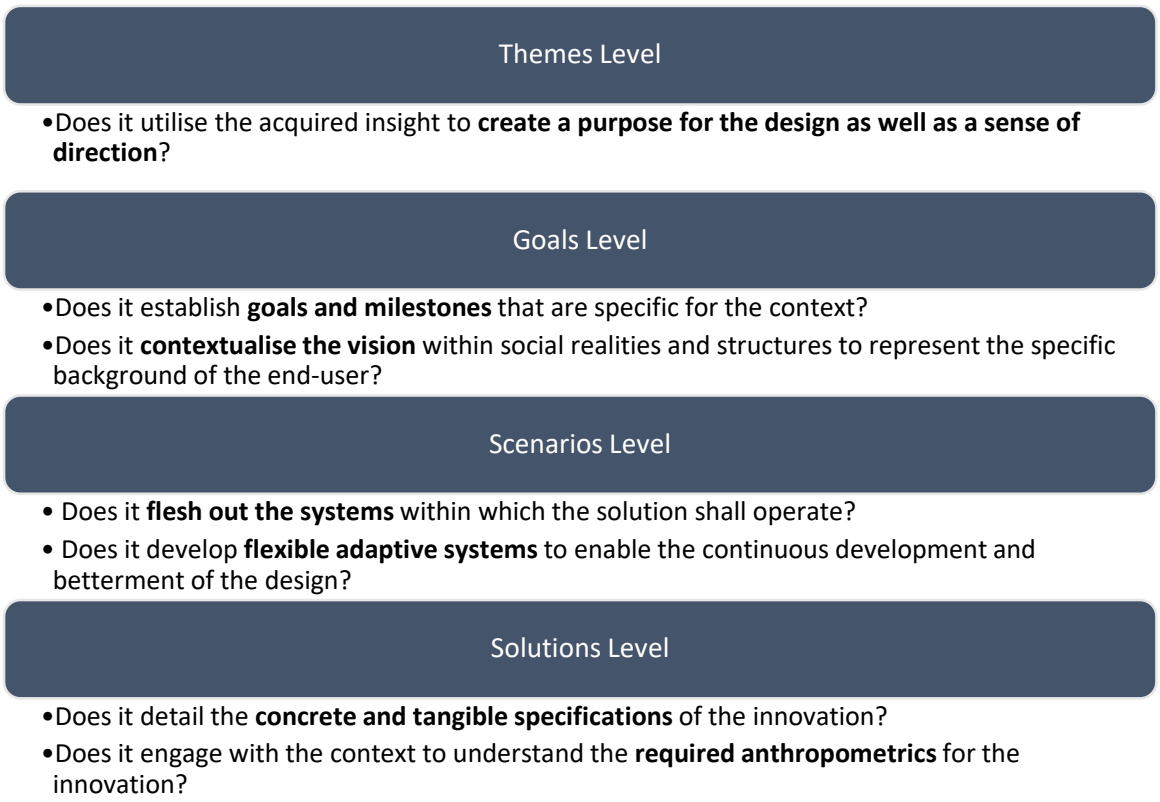

Figure 3.6. The Designing Phase Guiding Questions

Each level was given a colour, and each activity was highlighted with the corresponding colour to facilitate the process. Later, design activities that were categorised in the same level were grouped and discussed. This happened for each case study separately.

Such a process facilitated the deduction of an overall analysis of the design process for each case study. A comparison between the *working framework* and the design process which emerged from each case study later took place to refine the *working framework*, as well as to

explain the shortcomings of some design failures. This enabled the presentation of a more refined, finalised framework.

3.6. Issues of trustworthiness

Relying on secondary data for the study meant that the researcher had to take a number of precautions to ensure the trustworthiness of the research findings. Four main elements are essential when discussing trustworthiness (Shenton, 2004); credibility, transferability, dependability and credibility, as well as reflexivity.

3.6.1. Credibility

Ensuring credibility is essential for a trustworthy study as it ascertains the congruency of the findings with reality (Merriam, 1998). To ensure credibility, the researcher undertook two safeguards:

1) *Triangulation*: triangulation is the use of different data sources and methods of data collection to compensate for the individual limitations of each source (Guba, 1981). The researcher consulted five different categories of data from different stakeholders to ensure that the issue is analysed from different perspectives.
2) "*[T]he development of an early familiarity with the culture*" of case studies in question (Shenton, 2004, p. 65) was also essential to ensure an informed exploration. Therefore, the researcher delved into an exploration of the roots of the conflict, the ethnic and social realities of the country as well as ethnographic work that explores

the social interactions and behaviour of the locals. Furthermore, the researcher watched footage of all the mechanisms under analysis as they were operating, and, how different actors behaved within the set setting. This ensured that the researcher approached the analysis process well informed of the context within which it operated.

3.6.2. Transferability

The degree to which the results deduced from a qualitative research are transferable to other contexts had to be ascertained by describing the context of the innovations at length. Such dense description allows the data to be meaningful to the outsider (Korstjens and Moser, 2017). The different categories of sources ensured that the researcher was able to provide a detailed context for the data.

3.6.3. Dependability and Confirmability

To ensure a dependable and confirmable research where findings are stable over time, and, consistently confirmable by other researchers, the researcher documented and presented the different steps of data collection in this methodology chapter. Moreover, the researcher provided a categorical explanation of the sources utilised. The data collection process was guided by a working framework as well as a grounded literature review reflecting the approach that the researcher took when discussing the findings. This secured the inter-

subjectivity of the data (Korstjens and Moser, 2017). Furthermore, the process of data analysis was explained and the conceptual categories highlighted in detail.

3.6.4. Reflexivity

Being African and heavily immersed in the field brought with it its own biases, which the researcher had to recognise and continuously challenge (Korstjens and Moser, 2017). It is for this reason that the researcher went through a rigorous and thorough literature review that went beyond the surface to explore phenomenological perspectives of both justice and innovation. Furthermore, the researcher was transparent throughout the writing of the dissertation, continuously discussing her own reflections and explorations throughout the writing of the findings and discussion chapters.

3.7. Limitations

The main limitations faced in this dissertation were time constraints, word limitation, and geographical limitations. Unfortunately, due to the time and word limitations, the author was not able to conduct interviews with people who were involved in the processes to further substantiate the research. Furthermore, the time and word limit did not allow the author to delve deeper into informal processes that took place outside the formal, structured design process. Instead, the author largely focused on the intentional and deliberate formal design process. However, it would be interesting for future research to look into the role that informal processes play in the overall design process.

Geographical limitations meant that the author was physically distant from the cases being studied. Therefore, the author had to rely significantly more on Category 3 and 4 sources that provided rich and thick social descriptions. Moreover, some TJ processes have historically attracted much more literature and discussion than others. Therefore, whilst there were ample resources that truly conveyed different aspects of the process for the Rwandan and South African experiences, this was less so for Sierra Leone. It meant that the author had much less Category 3,4 and 5 data sources for Sierra Leone and therefore, this proved to be a major limitation.

3.8. Conclusion

This chapter has outlined the research design adopted by the researcher. The constructivist approach adopted recognises that humans' experience of the world is socially constructed and differs from one person to another. Therefore, a qualitative methodology allowed for a thorough exploration of social phenomena and how societies make sense of the world around them. A multiple-case study research strategy was deemed to be suitable for the present inquiry as it enabled the analysis of complex real-life phenomena through rich descriptions of cases. To recapitulate, three case studies which were deemed to be innovative TJ mechanisms were chosen for the purpose of this dissertation; Rwanda's traditional Gacaca courts, Sierra Leone's Special Court and South Africa's Truth and Reconciliation Commission.

Secondary data was the main data collection methodology, with the data collected divided into five categories to ensure the exploration of the cases form different perspectives. The

data analysis methodology was further detailed as issues of trustworthiness were discussed. The dissertation's use of various sources and recognition of limitations ensured that the dissertation is trustworthy in its methodological framework.

CHAPTER FOUR: FINDINGS

4.1. Introduction

This chapter presents the key findings of the research conducted, as elucidated in the methodology chapter. Firstly, the present chapter explains the adopted structure for reporting the findings of the case studies. Secondly, each case study is independently laid out and an exploration of the history and background of each of the case study's conflicts takes place, leading up to a chronological detailing of the specific TJ mechanism's design process that was adopted. The process is colour coded to represent different levels of the *working framework*. The latter is followed by an analysis of the design process grouped into phases and levels corresponding to those of the working framework.

4.2. A Guide to the Findings Chapter

The findings chapter mirrors the data analysis methodology explored in the previous chapter. Each case study is presented separately.

1. **Historical and social roots of the problem and TJ mechanisms**

An important element of case studies and qualitative research is the thick descriptions and contextual understanding of the root conflict. Therefore, the researcher found it vital to present a historical record of the conflict and to summarise the 'root of the conflict'.

2. The chronological, design process

Later, the design process is laid out in a chronological order based on which design activity took place first. In some circumstances, certain activities overlap with others, having taken place at the same time. Furthermore, the design activities are accompanied by four different colours at the right or left hand margin, separated by two columns. The colours represent the different levels of the *working framework*, and the margins separate the deconstruction and designing phase. The colours resemble the different levels as shown in Figure 4.1. The activities highlighted in purple represent non-design events important in the design process.

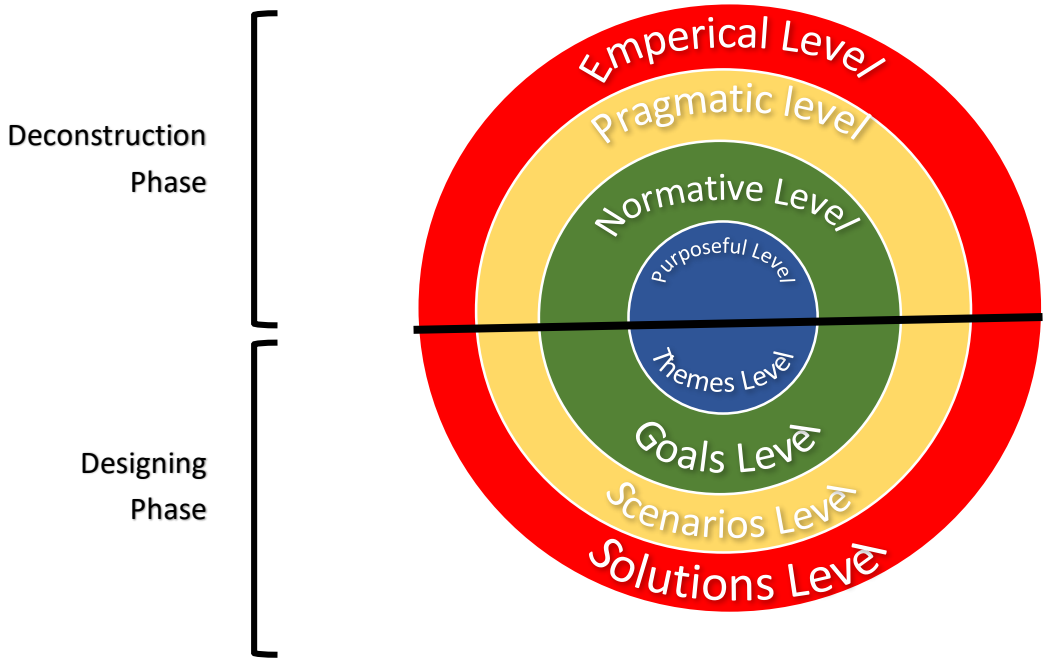

Figure 4.1. Design Process colour coding

3. A discussion of the *working framework* in each case

The *working framework* is later used to discuss each design phase and level, and how it manifested in the cases' design process.

4.3. Case Study One: Rwanda's Gacaca Courts

4.3.1. Brief history of the civil conflict

Rwanda's civil war and genocide did not happen in a vacuum but was the culmination of years of ethnic tension and violence. Below is a chronological timeline highlighting the most important events leading up to the 1994 genocide.

Table 4.1.: Rwanda's Conflict Timeline

Year	Event	Description
1880s	**First European Settlers arrived in Rwanda**	European Settlers arrived in Rwanda to find three groups. The Tutsis were the cow herders, the Hutus were farmers and the Twas were the artisans. A Tutsi dominated kingdom ruled over Rwanda.
1884	**Ruanda-Urundi becomes part of German East Africa**	In the Berlin Conference, Rwanda was assigned to Germany to form part of the German East Africa. (UN) Later on, German missionaries started arriving in Rwanda.
1924	**Belgium is granted League of Nations mandate to govern Ruanda-Urundi**	During the first world war, Belgium took control over Rwanda. The League of Nations was granted the mandate to govern Ruanda-Urundi where they ruled through the Tutsi kings.
1932	**Identity cards distinguishing different groups**	Belgium introduced identity cards in Rwanda to differentiate between Hutus, Tutsis and Twas. The three labels no longer merely represented occupation, they were now fixed, ethnical divisions that were not changeable.
1957	**The Bahutu Manifesto is issued**	The Parmehutu (Party for the Emancipation of the Hutu People) was established and the Bahutu Manifesto was issued by nine Hutu intellectuals criticising Tutsi rule.

1959	**Hutu peasant uprising or the "*social revolution*"**	After years of exploitation and oppression, the Hutus rebelled against the Tutsi elites and the colonial powers, forcing over 150,000 Tutsis into exile, and resulting in the death of hundreds. The end of the Tutsi domination heightened tension between the different groups.
1960	**Rwanda's First local election**	A referendum ended the monarchy and in the subsequent elections, the Hutu-led Parmehutu party received 78% of the votes.
1962	**Rwanda becomes independent**	The Belgians withdrew from Rwanda.
1962 - 1967	**Ethnic conflict instigated by exiled Refugees**	Exiled Tutsis started forming guerrilla bands, who were called 'Inyenzi' (cockroaches), and subsequently launched attacks on Hutu officials in 1963 with the hope of returning to Rwanda. These attacks instigated a reprisal in the brutal and indiscriminate Hutu attacks towards the Tutsis where another 10,000 Tutsis were killed, instigating another wave of migration towards neighbouring countries.
1973	**Coup d'état**	By 1973, the government had no money, tension between the different groups was very high, and corruption and money laundering infiltrated the political scene. Promising to restore order, Major General Juvenal Habyarimana assumed power through a coup-d'etat where he declared a moral revolution that would end the hostilities between different ethnic and political groups. He founded a new party - National Republican Movement for Democracy and Development (MRND), which later became Rwanda's only political party as he was re-elected several times into office in what many believed to be fraud elections. Habyarimana's regime did not depart much from its predecessors as his policies systematically discriminated against Tutsis, depriving them from rights such as education and political participation. His ethnic balance policies deepened tension amongst the Hutus, discriminating against clans which were traditionally closely associated with the Tutsis.
1988	**Establishing the Rwandan Patriotic Front**	It was in 1988 that the stateless Rwandese people in exile formed the Rwandan Patriotic Front (RPF) after ethnic tension in neighbouring countries forced many Rwandese back to Rwanda.

1990's		By the 1990s, poverty, overpopulation and the environmental crisis further enhanced political tension, forcing the government to rely on foreign aid. Negotiations between Habyarimana and UNHCR regarding the right of return of refugees were re-opened as western donors pressured the country to move towards a multi-party democracy. However, shortly after, RPF commanders, invaded the northern parts of Rwanda, hoping to start talks with the government from a position of power. Ethnic violence broke out again in Rwanda where over 300 Tutsis were killed as local Hutu media spread rumours and labelled all the Tutsis as accomplices. The war was an excuse for the government to eliminate many of the opposition as it mass detained between 8,000 to 10,000 political opponents, most of whom were Tutsis. Various other human right violations followed.
1990's	**Training of Civilian Militias**	The Rwandan army began the training of the civilian militias called the Interahamwe – 'Those who stand together', who were indoctrinated with extreme Hutu genocidal ideologies and who played a critical role in the 1994 Genocide.
1993	**Signing of the Arusha Accords**	After three years of negotiations between the RPF and Rwandan government with the help of the UN, the Arusha peace agreement was signed. The United Nations Assistance Mission for Rwanda (UNAMIR) was established with the aim of supporting the peace process in Rwanda. The situation of Rwandan refugees was becoming catastrophic as over 900,000 Rwandan refugees faced hunger and famine. 500,000 were reported to have returned to Rwanda, a result of the signing of an agreement with regards to the return of refugees. Later, irrefutable evidence showed that whilst the Hutu government was negotiating peace talks with

		the RPF, it was already planning the extermination and genocide against the Tutsis of Rwanda.
1994	**Presidents of Burundi and Rwanda's plane crash**	In April 1994, the plane of President Habyarimana of Rwanda and President Ntaryamira of Burundi crashed in Kigali. The crash sparked violence in Rwanda's capital as Tutsi 'cockroaches' were blamed for the death of the president. Media aired hate propaganda that dehumanised the Tutsis. Furthermore, they distributed lists of targeted individuals. Rwanda's Prime Minister as well as ten UN peacekeepers were killed, forcing the UN to reduce its peacekeeping mission.
June 1994	**RPF take control over Kigali – the end of the Genocide**	RPF took over Kigali and announced their intention to form a new government. The Hutu-led government officials fled to nearby Zaire. By July, the RPF announced that the war was over and that the RPF were in control of most of the Rwandan territories.

4.3.2. The Root of the Conflict

There are two different historical narratives that attempt to explain the root of the ethnic tension between the Hutus and the Tutsis (Omaar and de Waal, 1994). The first ascertains that the differences between the two groups were primarily socioeconomic, representing different occupational statuses. The Tutsis were cattle owners, the Hutus farmers, and the Twas hunters and artisans. It is believed that the European settlers arrived to find a population that was generally homogenous (Uvin, 1998). The colonisers chose to rule through existing political structures where the Tutsi Nyiginya kingdom had effective control over most of the land. However, the native political structures were eventually transformed into a system of exclusive, oppressive rule in favour of the Tutsis.

On the other hand, another ideology emerged amongst Hutu intellects. The differences between the Tutsis, Hutus and Twas were believed to be ethnic, with the Tutsis being perceived as foreigners who migrated to Rwanda from Ethiopia. The Tutsis were regarded as cattle herding foreigners who had conquered, exploited and oppressed the locals for years.

Although no scientific knowledge is available to support either claim, both narratives were amplified and distorted by different players and stakeholders throughout Rwandan history for their own political benefits (African Rights, 1995).

4.3.3. Transitional Justice in Rwanda

There were a number of TJ mechanisms adopted in Rwanda to fight impunity. The United Nations Security Council (hereafter termed UNSC) adopted Resolution 955 to establish an International Criminal Tribunal for Rwanda (hereafter termed ICTR) in order to prosecute *"persons responsible for serious violations of international humanitarian law"* (UNSC, 1994). The ICTR's design was particularly applauded for its ability to provide the accused with a fair and impartial hearing that respected international procedural standards. However, the Government perceived the latter process as inadequate and ineffective, stripping local Rwandese courts of the opportunity to prosecute (Mose, 2005). Indeed, various reports have shown that most Rwandese perceive the ICTR as distant and

implemented by lawyers who were from “a faraway country” (African Rights, 1995, p. 728, Bizumuremyi and Rubasha’s, 2012).

However, Rwanda’s national courts system had completely collapsed during the genocide and the country had no functioning courts, prosecuting services or police (Gahima, 2013). Although national courts presumed prosecutions for genocidal crimes in 1996 (Clark, 2010), even at its fullest speed, they would not have been able to prosecute the enormous number of accused persons (Republic of Rwanda, 1999). The dissatisfaction with the justice system was repeatedly brought up by different attendants of the *Urugwiro* meetings, and the process of identifying innovative and alternative ways in order to deliver justice and to reconcile the nation began.

4.3.4. The design process of the Gacaca Courts

The revival of a new form of Gacaca – *inkiko Gacaca* – was a particularly challenging task for the government as it had to deal with a number of pressing issues in the post-genocide country (Gahima, 2013). In Figure 4.2., we explore the different activities during which the Gacaca courts were being designed.

Rwanda's Gacaca Courts Design Process (Figure 4.2.)

Urugwiro Reflective Meetings

In 1998, President Pasteur Bizimungu launched the weekly reflective meetings, called the Urugwiro, where he invited a very wide cross-section of party leaders, civil servants, the military, and other members of society as required for a discussion about the future of Rwanda. It is important to note that although the meetings included both Hutus and Tutsis, Tutsis constituted the majority of those present in the meetings, amongst whom previously exiled Tutsis were the majority. The Urugwiro meetings were set up to discuss a common vision for the future of Rwanda and five main topics were highlighted as priorities: 1) The unity of Rwandans, 2) Problems regarding democracy, 3) Problems regarding justice, 4) Economic problems, 5) Problems regarding security. Each problem was discussed extensively, and at times, external experts were asked to join the meetings to give their opinion. In some cases, Commissions were established to help better analyse the implications of certain actions or to research possible options. Such Commissions allowed for a more informed debate to take place (Republic of Rwanda, 1999).

Commission for Unity of Rwanda

The Commission for Unity of Rwanda was established by the Urugwiro meetings with thirteen members who had extensive experience in history and politics. Its aim was to look into the historical roots of the divisive ideology in Rwanda. The Commission's results paved the way for discussions to take place at the Urugwiro that would later shape, refine and ascertain the new historical narrative that the government wished to push forward. It provided the space to lead an exploration into Rwanda's history, culture, language, national symbols and other factors that would later help in the design of the new Rwandan social order (Ingelaere, 2012).

Commission for Gacaca Jurisdiction

After discussing the roots of the problem in Rwanda and finalising the report of the previous commission, the Urugwiro participants turned to justice. After long and heated debates about what forms of justice should be implemented in Rwanda, and the president's advocacy for a traditional form of justice – Gacaca; another Commission was set up. The Commission for Gacaca Jurisdiction was made up of prefects and lawyers as well as senior representatives from the Ministry of Justice. This provided another space for further discussions and explorations between opposing ideologies about the role that justice would play in the Rwandan context. Whilst prefects were primarily concerned with reconciling the nation, the legal professionals were concerned over the legalities and possible legal repercussions of the proposition (Gahima, 2013 -).

Deconstruction

Designing

Post-Commission - report Urugwiro Meetings

Once the Commission for Gacaca Jurisdiction submitted its report to the Urugwiro ensemble, discussions turned to how Gacaca could be edited to fit the challenge at hand. A number of legal professionals were asked to join the heated debate about Gacaca. Many opposed the idea as they saw it as a manner through which perpetrators would evade proper judicial prosecution. However, the president was keen on seeing Gacaca materialise on a national scale. Gacaca represented the perfect extension to the vision and narrative that the government was pushing for.

National Unity and Reconciliation Commission (NURC) consultation

The NURC was established with the aim of promoting reconciliation, fostering tolerance and creating a culture of peace in Rwanda, as well as denouncing any extremist ideology. One of its main aims was to create a space for public debate and education about reconciliation and peace in Rwanda. The NURC ran a national consultation in 2000 and has continued to run consultations and release reports since. Its consultations informed the design process for Gacaca as well as other mechanisms that developed as part of the overall TJ process in Rwanda.

Pre-Gacaca Programme

After the passing of the Gacaca Law, the government had to look into practical ways in how Gacaca could be altered to cater for the challenge at hand. Therefore, pre-Gacaca hearings took place in prisons where government-appointed procurers conducted hearings to see whether there was enough evidence to keep detainees in prison. Such detainees could still be summoned again for the formal Gacaca process. A number of international NGOs were asked to help conduct and monitor the process. Later, the government and the NGOs were able to design a better Gacaca system that could take place nationally (Phil Clark, 2010, Sullo 2018).

Gacaca Pilot phase

The prison was not the only way through which Gacaca was piloted and amended. A data gathering phase was conducted to collect information about how and where violations had taken place. This allowed a better understanding of the cases that needed to be heard and the amount of violations that had taken place in each area. This was later followed by a Gacaca pilot phase where Gacaca was implemented in only twelve sectors (PRI, 2005). The pilot phase was essential as it provided feedback for the national implementation. The Gacaca design was amended based on the recommendations of the pilot phase.

The Gacaca was officially launched in 2002

4.3.5. A framework-based discussion of the Gacaca design process

Below is an exploration of the different phases and levels of the Gacaca design process as ascertained by the working framework.

4.3.5.1. The Deconstruction Phase

The deconstruction phase leading up to the design of the Gacaca courts was mainly driven by the RPF. Gahima (2013) admitted that the government at the time was reluctant to consult external literature or expertise on TJ. They believed that the solution had to be home-grown.

4.3.5.1.1. Empirical level

The grassroots and NURC consultations were vital for a thorough understanding of the needs and aspirations of the end users, and to enable a true human centric design that tended to the needs of the community. The failure of the ICTR to involve the local population further highlighted the need for a strong empirical exploration of the problem. However, there were concerns over whether the Hutus were equally involved in consultations and whether their needs were taken into consideration by the Tutsi-majority government (Longman, 2009).

4.3.5.1.2. Pragmatic level

A pragmatic level exploration of the societal structures took place throughout the design process: at the *Urugwiro* meetings, commissions' reports and NURC research papers, as the design process allowed an understanding of the context and the current situation of the

communities after the genocide. The work carried out by the Commission for Gacaca courts was mainly pragmatic as it looked into the existing Gacaca structures and built on them. The discussions also looked into the effects of Gacaca on communities and on the state of reconciliation. One must re-assert the concerns over biased reporting as the Hutus, as well as opposition groups, were a minority in the *Urugwiro* meetings and other design mechanisms.

4.3.5.1.3. Normative Level

Understanding the nature and roots of the conflict was an essential step in the deconstruction phase and largely occupied the *Urugwiro* participants throughout the first meetings. In fact, discussions on unity and the Rwandan identity took place over a long period of time and involved different groups, including the extremist *Permehutu* party, each pushing forward their historical perception of the root of the conflict. The Commission for Unity of Rwanda provided a space to further discuss the opposing ideas, but to also push forward the narrative favoured by the government. Many perceived the normative level as a tool for propaganda to legitimise the government's narrative and strengthen Tutsi rule over Rwanda.

4.3.5.1.4. Purposeful stage

During the *Urugwiro* meetings, a number of experts were asked to join the debate. The discussion often looked into the concept of identity and how it could create tension. The *Urugwiro* meetings showed that the participants looked into and thoroughly discussed how to enforce a sense of national belonging and unity. The discussions show a deep awareness of the root of the problem and a recognition that stability and justice could only be delivered once the root causes of the conflict are also tackled. However, the government's

unwillingness to resort to research carried out outside its main structures (Gahima, 2013) raised concerns over biased discussions and government manipulation of information ().

4.3.5.2. The Designing stage

4.3.5.2.1. Themes Level

One thing that is very evident when one reads the report of the *Urugwiro* meetings as well as consequent government discussions on the matter, is the clarity of the 'why'. The *Urugwiro* meetings provided a platform for the government to establish a clear vision, a number of priorities, as well as to clarify its position on a number of issues. The new historical narrative that was discussed at the meetings enabled a form of social re-engineering that paved the way for a new Rwanda, metaphorically and literally (Doughty, 2015). All of the systems that were consequently put in place supported and materialised this vision which avoided the collective criminalisation of the Hutus. This vision was vital to allow space for the subsequent forgiving and reconciliation in Gacaca.

4.3.5.2.2. Goals Level

Once the vision was established, it was essential to set specific goals and ascertain clear priorities. Justice alone would not have been able to heal the torn social fabric and simultaneously address the root causes of the conflict (Gahima, 2007, NURC, 2016). In fact, four essential and mutually dependent priorities were ascertained by the *Urugwiro* meetings to help address the root of the problem. These were: good governance and democracy, economic growth, unity and reconciliation, as well as justice and accountability. Strategies and specific mechanisms were set for each priority and whilst this dissertation explores

Gacaca courts, a similar design process could be mapped for each priority. Each priority was accompanied with a set of specific and measurable goals.

4.3.5.2.3. Scenarios Level

At a Scenarios level, it was essential that the goals could be transformed into actionable plans. The design of the Gacaca courts occupied the participants of the *Urugwiro* and Commission for Gacaca meetings for a while as discussions looked into possible Gacaca court structures. Tthe structure of the Gacaca courts itself was designed to be flexible, highly contextual, whilst being supported by more established government institutions, allowing the courts to tap into a pool of expertise. Figure 4. 3.. summarises the support systems involved in the design of the Gacaca courts.

Two particularly important bodies were the National Service for Gacaca Jurisdiction, and the Ministry of Justice. The first was established to administer, supervise, and coordinate the Gacaca activities and issue regulations supporting the continuous adaptation of the Gacaca structure. On the other hand, the Ministry had the responsibility of updating laws and decrees to allow the organic development of the Gacaca courts. In fact, by the end of Gacaca's work, 70% of the laws governing Gacaca were amended (Mukantaganzwa, 2018), reflecting the dynamic and continuous nature of the design process.

Another vital aspect of the systems designed to support the Gacaca was the National Unity and Reconciliation Commission (NURC). Although not directly intended to tackle justice

issues, the NURC acted as the outreach unit of the Gacaca court. Through its *Ingando* solidarity camps promoting peace, *Itorero* educational programme promoting common Rwandan values, as well its research and seminars, the NURC continuously conducted consultations on Gacaca (NURC, 2016).

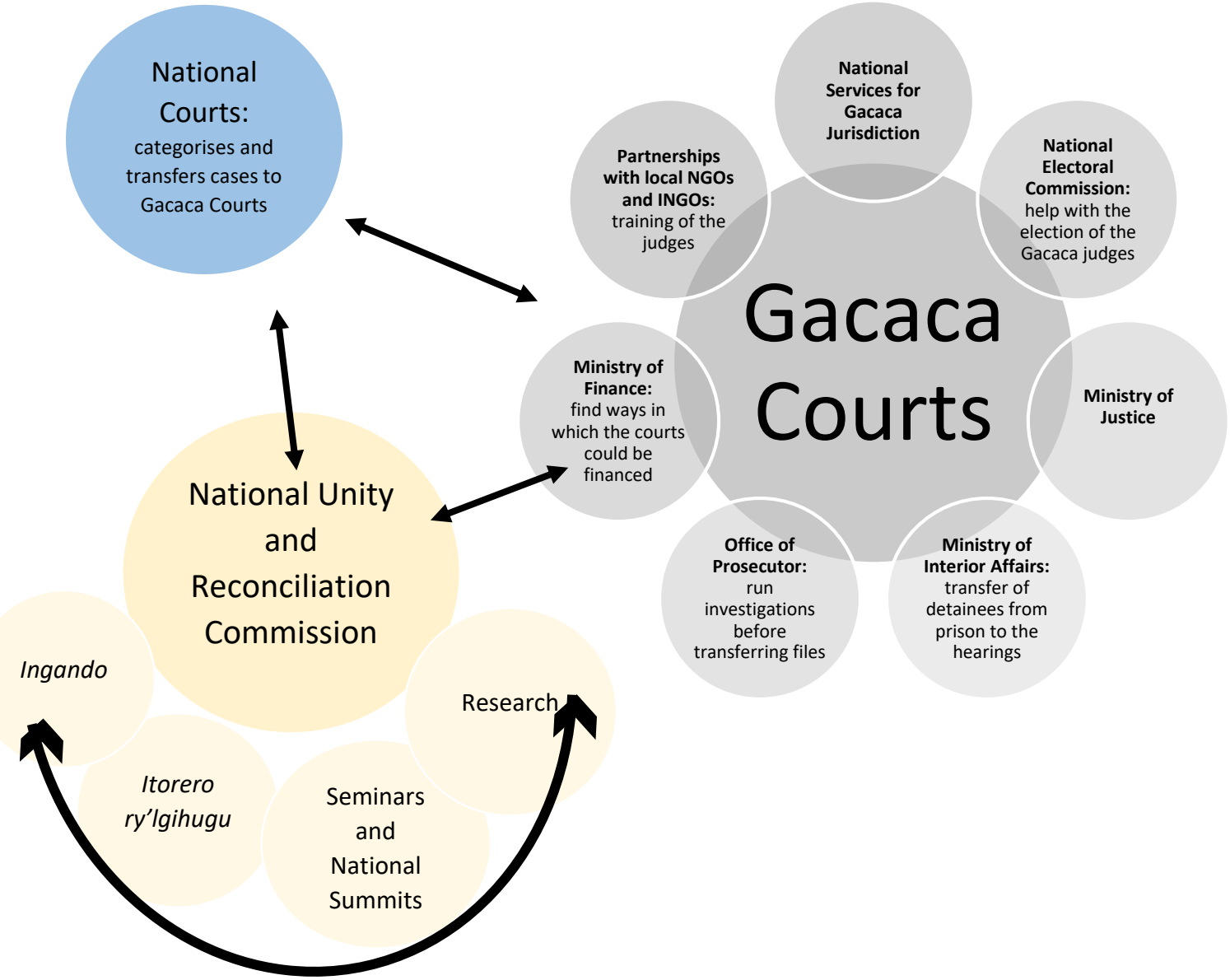

Figure 4.3.: Gacaca Pragmatic Support System

4.3.5.2.4. Solutions Level

Once the systems that supported the running of the Gacaca Courts were established and a holistic view of how justice could be delivered in the form of Gacaca was clear, it became critical to ensure that the Gacaca structure was accessible and executable on ground. The Gacaca structure gave local administrators a lot of creative freedom on how to adapt the process in the local context. In fact, the smallest Gacaca court administration was on a cell level with around 150 inhabitants.

The data gathering phase was essential to understand the nature as well as the extent of trials that needed to take place in each cell and sector and adapt accordingly. Furthermore, the Gacaca pilot phase allowed for the further fine tuning of technical details on the implementation of the courts and allowed the administrators to see how Gacaca could be implemented on ground. The continuous feedback loop was essential, especially due to the scale and importance of this new innovation. Furthermore, since there were over 12,000 Gacaca courts, as opposed to the twelve chambers of the national courts, a greater deal of flexibility was allowed. Ethnographic studies have shown that different cells were running Gacaca courts in different manners as the community was continuously debating and redefining the structure of the courts within the limits established for Gacaca (Macdonald, 2015).

4.4. Case Study Two: The Special Court of Sierra Leone

4.4.1. Brief history of the civil conflict

To be able to understand the context out of which the SCSL emerged, one must delve deeper into the historical elements of the conflict. A chronological timeline of events is summarised below after consulting the relevant literature.

Table 4.2.: Sierra Leone's Conflict Timeline

Date	Event	Description
1897	**Sierra Leone becomes a British Protectorate**	Throughout the British rule over Sierra Leone, the country was mainly utilised to export natural goods to Europe and the Americas, prioritising certain areas that were vital for the trade. Rural villages were largely marginalised.
1961	**Sierra Leone is recognised as an independent nation**	Sierra Leone remained as one of Britain's colonies in West Africa up until 1961, when it gained its independence.
1967	**First Sierra Leonean elections since the independence**	With very high hopes for democracy, the Sierra Leonean opposition, the All People's Congress, (APC), was elected to power.
1970	**All People's Congress (APC) party formed a stable government**	The APC's one party regime was characterised by massive corruption, plundering of public assets and bringing about extreme poverty.
1991	**Revolutionary United Front (RUF) launched their rebellious war with the aim of overthrowing the government**	The RUF rebels consisted of three main groups of fighters: 1) Youngsters who had had received military training in Libya 2) Sierra Leoneans whose families were exiled in neighbouring Liberia 3) The extremist National Patriotic Front of Liberia (NPFL) soldiers, which included Liberian and Burkinabe mercenaries The RUF, under the leadership of Foday Sonkah, aimed to overthrow the one-party government of

		President Momoh and fight tribalism and corruption.
1992	**Coup d'etat against President Momoh and then another against Captain Valentine Strasser**	Once the RUF troops got closer to Freetown, President Momoh was flown outside the country. Captain Strasser ceased power but once he failed to keep his promise of organising a multi-party elections, he was overthrown by a military junta.
1994	**RUF occupied major diamond mining areas**	By 1994 and after years of fighting, the RUF had occupied the major diamond mining areas.
1996	**First Sierra Leonean election since 1967**	Ahmed Tejan Kabbah from the Sierra Leonean People's Party was elected. President Kabbah started the process of peace talks with the RUF.
1996	**Abidjan Accord is signed between the RUF and the government**	The RUF leader initially refused to recognise the election results but eventually signed the Abidjan peace Accord. The agreement was short-lived.
1997	**Military Coup supported by the national army and the RUF**	General Johnny Paul Koroma led a coup d'etat forcing Kabbah to find refuge in neighbouring Guinea.
1998	**The intervention of the Nigerian Peacekeeping force, also known as the Economic Community Military Observer Group (ECOMOG)**	The ECOMOG intervened in February 1998 with the aim of restoring Kabbah's government.
1999	**The RUF gained control over Freetown, Sierra Leone's capital**	By January 1999, RUF took the ECOMOG off-guard and took control of Freetown along with a large part of Sierra Leone's territory.
1999	**RUF expelled from Freetown by ECOMOG and Kabbah's government is reinstated**	ECOMOG chased the RUF out of Freetown and reinstated Kabbah's government. However, a large part of the city was burnt down and over 3,000 children kidnapped.
May 1999	**A ceasefire was agreed upon**	Haunted by their actions during the war, both parties agreed to a cease fire and peace negotiations commenced once again.
July 1999	**The Lome Peace Agreement was signed by both parties**	The negotiations paved the way for the Lomé Peace Agreement's signing. The UN established the United Nations' Mission to Sierra Leone (UNAMSIL) to oversee the implementation of the peace agreement. Despite the signing of the agreement and the UN's deployment of peacekeeping missions, the grave violations continued. The RUF refused disarmament.
2000	**Britain launches Operation Barras**	The RUF attacked the UN basis in Sierra Leone and took hundreds of peacekeepers as hostages.

		Britain launches Operation Barras to rescue the British soldiers being held by a militia called the *West Side Boys*, and to push the RUF away from Freetown.
2000	**Foday Sankoh, the RUF's most notorious leader captured**	With the capturing of the RUF leader, the tension between the UN and the RUF increased. Talks about the possibility of setting up an international court to try war criminals started as the government finalised a draft to be sent to the UNSC for the establishing of an international tribunal. Later that year, the UNSC passed a resolution agreeing to establish the SCSL.

4.4.2. The Root of the Conflict

The Sierra Leonean civil conflict did not happen overnight; it took years to culminate into the eventual conflict. The main cause of the conflict could be attributed to the predatory, repressive state structures (UNDP, 2006) built on the colonial, over-centralised, administrative legacy that had out-casted and disregarded the needs of the citizens of rural villages (NCD, 1999). This over-centralisation of power in the capital, Freetown, led to the collapse of local governance and forced opposition to go underground. Without a clear class or ethnic division that politicians could use as a scapegoat, politicians used tribalism and the North/South divide as a way to obtain support, which led to the collapse of the social fabric. Furthermore, extractive economic government policies increased state corruption and centralised wealth in the hands of a few elites. Thus, the country remained largely poor and the youth became marginalised (Nillson, 2008), making them susceptible to rebellious ideologies.

4.4.3. Transitional Justice in Sierra Leone

The need for justice during and after the civil war was marked at various design activities as shown in the next section. The Lomé Peace Agreement, having provided a blanket amnesty to the RUF, established the Truth and Reconciliation Commission with the aim of supporting national reconciliation and peacebuilding through creating an impartial historical record of the violations (TRC, 2004). However, both the civil society and President Kabbah were keen to see perpetrators being prosecuted in Sierra Leone and to break the cycle of impunity in the country (Nkansah, 2008). However, pursuing justice locally was a challenge since Sierra Leone's national laws did not incorporate a number of war crimes. Furthermore, the war had exhausted the country's economy which made it difficult for Sierra Leone to fund its own war courts (Sieff, 2001). This forced President Kabbah to ask the UN for international help.

4.4.4. The Design Process of the Sierra Leonean Special Court (SCSL)

Leading up to the Lomé Agreement, there were two parallel deconstructions and designing processes taking place within Sierra Leone. One was run by the UN with the help of international organisations, the other by Kabbah with the support of the National Commission for Democracy (hereafter termed NCD). Figure 4.4. details the different activities that led up to the design of the SCSL.

Deconstruction

Designing

Deconstruction

Designing

The Special Court of Sierra Leone Design Process (Figure 4.4.)

The Government's Design Activities

The NCD established

The National Commission for Democracy (NCD) aimed to strengthen democratic values within Sierra Leonean society (The National Commission for Democracy Decree, 1994). The NCD collaborated with the government on a number of occasions to organise nationwide consultations. Furthermore, in 1998, the NCD set up a number of monitoring committees to monitor the effects of the conflict (OHCHR, 2009).

Local Consultations and Chiefdom Meetings

In the preparations for an upcoming National Consultation Conference, a system of traditional consultative mechanisms for local communities took place (Barnes and Polzer, 2000). As such consultations took place outside the formal governmental framework, little information is available on the methodologies used. However, it was a way through which the empirical concerns of the everyday citizens could be represented at the National Conference, especially due to the difficulties of organising nationwide consultations at the time (OHCHR, 2009).

The UN's Design Activities

Reports of the Secretary General on the Situation of Sierra Leone & UNOMSIL

Reports of the Secretary General on the Situation of Sierra Leone were continuously being presented to the Security Council starting from 1995 to inform the Council of the situation in Sierra Leone. The reports generally explained the current state of affairs in the country; such as the state of democracy in the country, the peace processes, breakdown of the funds given to the Sierra Leonean government, humanitarian concerns, the security situation and others Such reports were informed by committees and personnel sent either by the UN or other regional entities to analyse the situation on ground. Although comments were continuously made on the empirical needs of the society at large, this was never presented in depth.

The United Nations Observer Mission in Sierra Leone (UNOMSIL) was established to report on the disarmaments of combatants and the restructuring of the nation's security forces (UN, 2000).

Deconstruction

Designing

National Consultation Conference

The National Consultation Conference brought together 250 participants from different sectors of society including: students, trade unions, traditional rulers, media and performing arts, internally displaced people, war victims and others (NCD, 1999). The conference was mainly aimed towards discussing the Lomé Peace Agreement. Throughout the three-day conference, a number of research papers and talks were presented by different sectors regarding the cause and origin of the Sierra Leonean conflict, the history of the country, and uniting factors for Sierra Leoneans. The current state of the country was discussed, its institutions and social fabric, political and power sharing issues as well as issues of security, disarmament and a possible ceasefire.

Deconstruction

Designing

UNAMSIL and UN Consultations

In 1999, the United Nations conducted a number of national consultations in collaboration with other organisations in preparation for the Lomé peace agreement (OHCHR, 2009). The consultations included war victims within the country as well as refugees in neighbouring countries (OHCHR, 2009).

INGOs Monitoring Programmes

Many of the horrid atrocities that took place in Sierra Leone during the 10-year war were very well documented by international organisations (INGOs) such as Human Rights Watch and Amnesty International working in collaboration with the UN. These served as a basis upon which the context of the Sierra Leonean war was made clear to the UN (HRW, 2004).

The Lomé Peace Agreement

Letter of President Kabbah to the Secretary General

President Kabbah's letter gave an overall description of the horrid repercussions of the civil war and detailed some of the RUF's crimes. President Kabbah further explained the situation of the judiciary in Sierra Leone and its inability to prosecute locally. He then asked for help from the UN and attached a suggested framework with the letter on how he envisaged the above mentioned judicial body. It was President Kabbah that suggested the inclusion of a blend of Sierra Leonean and international laws.

4.4.5. A framework-based discussion of the SCSL design process

Below is an exploration of the different levels of design as suggested by the *working framework*.

4.4.5.1. The Deconstruction Phase

The deconstruction phase in the Sierra Leonean context mainly focused on the pragmatic and normative levels, making sense of the immediate context of the conflict as well as a basic

understanding of the reasons and social structures supporting the conflict. The empirical and the purposeful levels remained largely unexplored.

4.4.5.1.1. Empirical Level

Empirical exploration took place during the consultations that were run by the NCD in collaboration with the government as well as the informal Chiefdom Meetings. This paved the way for the National Consultative Conference and empowered local civil society to become active in the peacebuilding process. Furthermore, international NGOs, in collaboration with local ones, played an important role in monitoring and reporting the struggles of victims and everyday citizens.

However, Barnes and Polzer's (2000) ethnographic findings showed that during consultations, many Sierra Leoneans outside of Freetown felt that the over centralisation of activities in Freetown excluded them from the process. There seemed to be an assumption (Barnes and Polzer, 2000) that only the educated and elite sect of Sierra Leonean society was able to lead the way forward, excluding and marginalising traditional structures and traditional leaders (Park, 2010) in the process.

4.4.5.1.2. Pragmatic Level

Most of the deconstruction process took place on a pragmatic level. The intensity of the fighting and the violations forced the government and the international community to speed up the negotiations, which meant that there was a lot of focus on the immediate context of

the conflict in different regions. The reports of the Secretary General to the UNSC were thorough and detailed. The NCD, Local Chiefdom Meetings, and the National Consultative Conference largely focused on understanding the extent of the conflict to inform how it could be diffused.

4.4.5.1.3. Normative Level

Although challenging, there was also a continuous attempt to understand the root of the problem and the Sierra Leonean social and political structures that supported the conflict. By 1999, the UN reports started recognising the importance of shedding light on the roots of the problem as the UNSC became more involved in the peacebuilding process. Furthermore, the National Consultative Conference was also an opportunity for the civil society and traditional leaders of Sierra Leone to explore the roots of the problem and come up with possible solutions.

4.4.5.1.4. Purposeful Level

Deconstruction on a purposeful level was limited in Sierra Leone as the government and UN were pressed by time to reach a peaceful negotiation with the RUF. Therefore, there was neither a process, nor a committee commissioned to understand the salient, unexpressed and unsurfaced roots of the problem. Instead, there was a basic assumption that conflict in Sierra Leone occurred between groups that had dehumanised themselves through in and out group politics (Jackson, 2015, UNDP,2006, Jalloh, 2011). The designers of the court failed to dig deeper and understand why there were no clear ethnic or religious division within the country, and how the structures of power and alliances were continuously fluctuating

(Richards, 1996, NCD, 1999, TRC, 2004, UNDP, 2006, ICTJ, 2009c, Jackson, 2015). The lack of a purposeful exploration of the problem meant that TJ processes dealt with imminent security threats but did not provide real consolidation for victims (ICTJ, 2009c). Nonetheless, during the National Consultative Conference, there were a number of papers presented that tackled the problem from a phenomenological perspective, especially those presented by the civil society.

4.4.5.2. The Designing Phase

The designing of TJ processes happened at different stages in Sierra Leone and were not the result of one, coherent strategy.

4.4.5.2.1. Themes Level

Although a number of discussions on a united vision for the future of Sierra Leone took place during the various national consultations and meetings, there did not seem to be a consorted governmental effort towards pushing forward a holistic vision for the future of Sierra Leone. In fact, Sierra Leone's justice design process was essentially driven by an external agenda, as well as an ideal for a liberal-democratic state that did not necessarily reflect the values, structures and beliefs of the local community (Mahony, Friedman and Ainley, 2015). Furthermore, due to the disconnection between the deconstruction and designing phase, there was no united narrative upon which the government was able to support the goals it had set.

4.4.5.2.2. Goals Level

A number of milestones towards peace were established during the National Consultation Conference, later, during the Lomé Peace Agreement, and then, within different institutions. The United Nations itself, the co-creator of the SCSL, had a number of goals in terms of its involvement in the overall peaceful transition in Sierra Leone, highlighted in its UNAMSIL mandate (Security Council resolution 1270, 1999). Furthermore, a number of institutions, bodies and commissions were developed to support the country's goals of transition to peace; such as the Anti-Corruption Commission and the National commission for Social Actions. However, the mechanisms were incoherent (Young, 2013, Nkansah ,2008), and rather than representing an overall vision, they worked independently and rarely supported each other (D. Alie, 2008). Different governing laws provided specific goals for each institution.

4.4.5.2.3. Scenarios level

The designers of the SCSL were mainly concerned with the pragmatic details of how to make the court work in Sierra Leone. The SCSL had been applauded for its ability to uphold international standards, which reflects the thorough and technical process of designing that took place on a pragmatic level. The SCSL was the innovative creation of the talks between the Sierra Leonean government and the UN. Therefore, there were no existing, supporting systems that could support the SCLS's operations. A number of supporting units within the court were set up to aid the court achieve its mandate. The complex and well-organized units within the SCSL ensured that the court fulfilled its mandate in a remarkably efficient manner (Jackson, 2015). The court did what it was mandated to do with the limited budget it had.

Figure 4.5. illustrates the designed SCSL internal structures and supporting systems. The involvement of both the government and the UN in the design process meant that the SCSL was able to tap into local and international resources. The SCSL had the power to ask any national court to defer jurisdiction to it. Moreover, the SCSL received a lot of assistance from international criminal justice systems when needed such as the UN Office of Legal Counsel (SCSL, 2005). The UN also set up the Management Committee which oversaw the non-legal aspects of the court; such as securing funding, providing advice and policy direction (Sierra Leone UN Agreement, 2000, Article 7). The Management Committee was made up of interested States and provided a powerful backing for the SCSL (ICTJ, 2004). Furthermore, it allowed the re-visiting of the mandate and work of the SCSL when needed and ensured that the special court could adapt to possible political changes. No such committee was set up by the government to monitor the local social realities and adapt accordingly.

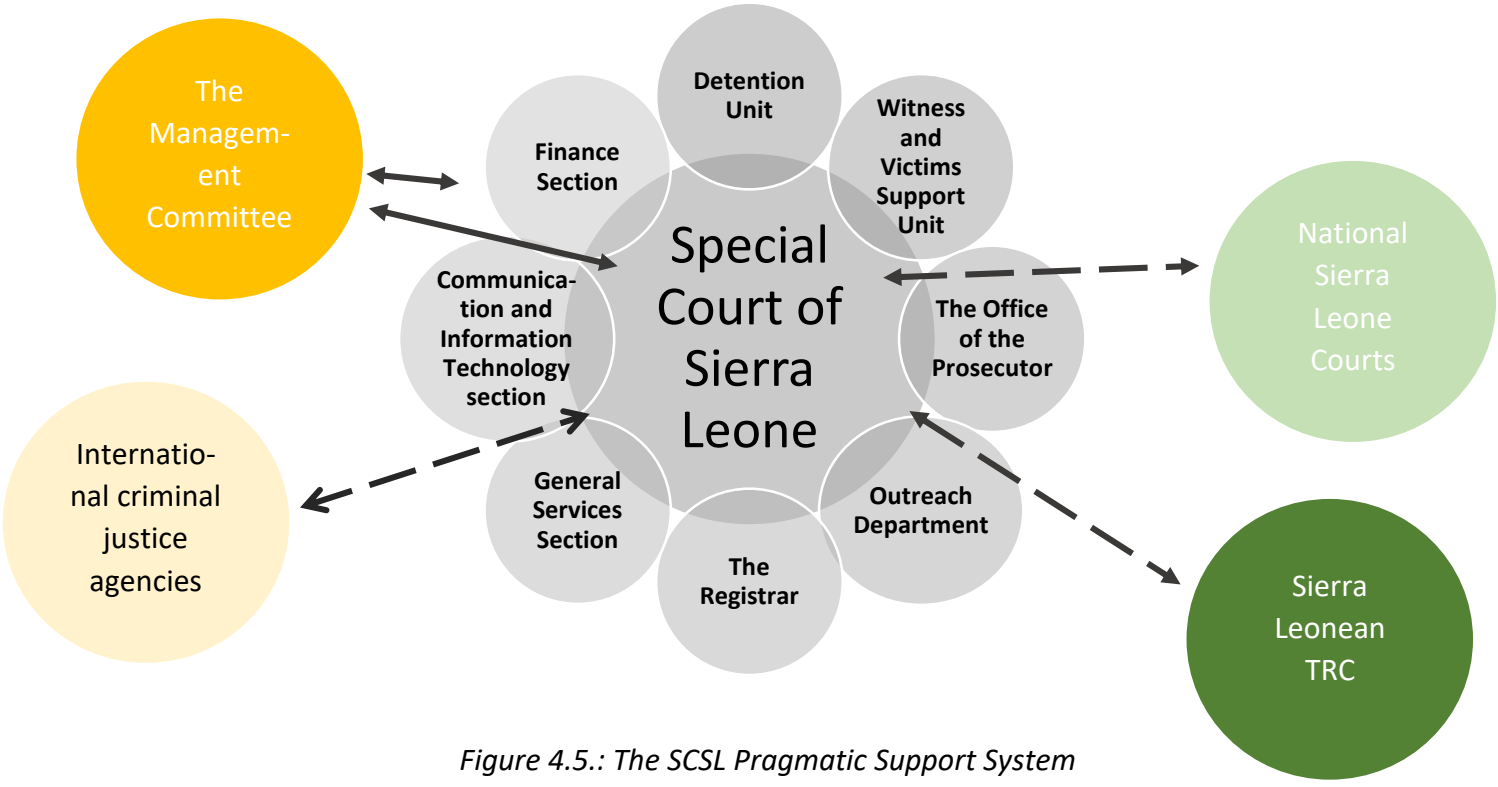

Figure 4.5.: The SCSL Pragmatic Support System

Whilst the TRC and SCSL were seen as complimentary, with the former seeking a restorative form of justice, the latter a retributive form of justice, they often encountered a lot of tension (D. Alie, 2008, Jalloh, 2011) ad they were not planned as cohesive parts of an overall vision (Nkansah's, 2008). The two were overseen by different bodies that were not in sync, making it difficult to forge a shared path together.

4.4.5.2.4. Solutions Level

Once the general structure and internal system of the SCSL were discussed at the first set of government/ UN meetings, the second set, preceded by the UN's brief consultation of local actors, focused more on the solutions level. These meetings were primarily concerned with the localisation of the court to increase its legitimacy in Sierra Leone (UN, 2000). The need for a strong outreach programme was realised and a unit was set up. The outreach programme of the SCSL was particularly applauded for its extensive work and diverse activities that sought to engage with the local population. Town hall meetings, as well as debates and radio and newsletter appearances allowed the SCSL to become part of the everyday life of many Sierra Leoneans (HRW, 2004). Such meetings allowed the SCSL staff, who were half foreign and half local, to discuss with the local population and amend their outreach activities accordingly.

4.5. Case Study Three: The South African Truth and Reconciliation Commission

4.5.1. Brief history of the civil conflict

Below is a chronological timeline leading up to the negotiations to end apartheid as found in literature.

Table 4.3.: South Africa's Conflict Timeline

Date	*Event*	*Description*
1652	**First European Arrivals in South Africa**	A Dutch ship landed in the Cape of Good Hope with settlers from Netherlands, Sweden and Germany, calling themselves *Boers* (farmers), or *Afrikaners* (Africans). Many other Europeans followed. The Christian *Boers* believed that they were superior to the godless '*kafir*' (literally meaning pagan), black indigenous population.
1883	**Gold was discovered in South Africa**	Gold was discovered in Witwatersrand and within a period of ten years, Johannesburg developed into South Africa's largest city, attracting immigrants from Asia.
19th Century	**War began between Afrikaners and the British Empire on who should rule**	War broke out between the Afrikaners, descendants from the Dutch, and the British empire on who should rule. In this war, the Afrikaners were perceived as the natives and the British as the colonisers. Britain won the war in 1902, promising the 'native' Afrikaners self-governance.
1909	**The South Africa Act was passed by British Parliament**	The South Africa Act (Act of Union) united the four British South African colonies into one nation under one constitutional arrangement that transferred power to the white voters, who constituted a minority. Only white men over the age of 21 could vote.
1912	**The African National Congress (ANC) was formed**	The ANC was a response to the Act of Union, representing the views of South Africa's educated African citizens and was seen as the responsible Voice for African opinion.

End of 20th century	**Out of the 6 million South Africans, 2 million were Afrikaners**	Nonetheless, laws were passed to limit black people power and education. **The Natives Land Act** (1913) gave 7.3% of the land to blacks, the rest to white Afrikaners.
1920's	**Hertzog's government was elected, passing a number of discriminatory laws**	Prime Minister Hertzog's government passed laws to limit black people's access to education in 1926, prohibiting interracial relationships in 1927, as well as making *Afrikaans* (the language of Afrikaners, a descendant of Dutch), the official language of South Africa.
1936	**Promulgation of the Representation of Natives Act**	The Act disenfranchised African voters who were no longer allowed to vote.
1944	**The establishment of the ANC Youth League**	The ANC became and remained a somewhat elite movement, out of touch from the society at large. However, the ANC Youth League played a crucial role in transforming the ANC movement into mass movement.
1948	**Dr Daniel Malan's National Party elected to government**	The National Party (NP) believed in the natural superiority of Afrikaners over blacks and started the establishment of the apartheid regime. People were categorised into three racial groups: • Whites representing Afrikaners and other whites, • Coloureds representing children with a mixed heritage as well as Asian people, • Natives representing black people,
1950's	**A number of laws further legitimised the apartheid regime**	**Population Registration Act, 1950**; the national register also recorded the race of the person, **Bantu Authorities Act 1951**, abolished representative councils and gave new powers to headmen and chiefs, **Immorality Act of 1950** prohibits extramarital sexual relations between whites and non-whites, **The Group Areas Act of 1950** extended the land apportionment principle to all races within all African reserves, **The Suppression of Communism Act of 1950, The Criminal Law Amendment Act and Unlawful Organisations Act** allowed the state to illegalise any form of opposition or activity by the ANC, **The Native Urban Areas Amendment Act 1955** put an end to the accommodation of non-white home servants on the top floor of buildings,

		The Abolition of Passes and Coordination of Documents Act, 1952 made it obligatory for all black men to carry a reference book, **The Reservation of Separate Amenities Act in 1953** compelled races to use different public amenities including transport, restaurants and bathrooms, **The Bantu Education Act 1953** placed all African education institutions under State control, no longer under churches and mission societies, **The Resettlement of Natives Act 1954** removed blacks from squatter camps in the western suburbs of Johannesburg and resettled them in Meadowlands, Black parliamentary representation was abolished in a 1959 Act.
1955	**The establishment of the Freedom Charter in Kliptown**	The ANC collaborated with a number of other liberation movements such as the Congress of Democrats, South African Coloured People's Party, and the Indian Congress to establish a **Freedom Charter** that highlighted the common grievances of the non-white communities of South Africa and ascertained that there should be no discrimination on basis of colour, sex or race in South Africa as it belonged to those who live in it.
1960	**A number of revolts started taking place in South Africa**	69 were killed in the 1960 Sharpeville protests as police fired at unarmed black protestors.
1960	**The Umkhonto we Sizwe (MK), the armed wing of the ANC was formed**	The ANC gave up the Gandhian-inspired, non-violent liberation movement and started its armed struggle. Instead, the MK started targeting government facilities and violence escalated.
1962	**UN applied economic and diplomatic sanctions against South Africa**	Concerned about the state of apartheid in South Africa as grassroots movements were calling to end the apartheid, the UN isolated the South African government and imposed sanctions.
1960's	**The Cold War and the global war against Communism**	The Cold War played an important role in the apartheid as European and American powers continued to support the South African government as a strategic ally against the communist Soviet Union. Anti-apartheid organisations such as the ANC and its offspring, the Pan Africanist Congress (PAC), were perceived as a communist threat funded by the Soviet Union. Many were imprisoned, and others fled the country.

		A number of harsh mandatory sanctions against South Africa were vetoed by the UK and US in the Security Council during this period.
1977	**Arms Embargo against South African became obligatory**	The Security Council made the arms embargo against South Africa obligatory.
1980	**The South African Economy was struggling against international pressure**	The South African economy struggled as its occupation of Namibia since the end of the 2nd World War had exhausted the economy.
1988	**South Africa ends its occupation of Namibia**	Through a bilateral agreement, South Africa ends its occupation of Namibia. The end of the Cold War weakened its relationship with allies such as the US.
1989	**Prime Minister P.W. Botha resigned after failing to bring order back to the country**	Faced with international pressure and isolation, as well as rising violence and riots against the regime in South Africa, Prime Minister P.W. Botha resigned.
1990	**F W de Klerk gave his famous speech lifting the ban on liberation movements**	His successor, F W de Klerk, announced in 1990 that the ban against black African liberation movements, as well as the ANC, was lifted and released a number of political prisoners. Nelson Mandela was released from prison after 27 years in 1990. The process of transition to democracy began.

4.5.2. The Root of the Conflict

Apartheid was a project of large scale, social engineering that was decades in the making. The root causes leading to apartheid could be summarised in four main arguments. The White Afrikaner nationalist movement believed that their identity was somewhat divine (Gordimer, 1992). They believed that mixing with blacks would swamp the Afrikaner identity and subsequently destroy it. Segregation was perceived as the only way to protect their identity. On the other hand, white supremacy, and the belief that races are 'fundamental divisions of humanity' (Thompson, 1985 p. 69), with inherently different cultural and physical qualities, also played an important part in shaping apartheid.

Furthermore, segregation in South Africa could also be attributed to the segregationist policies that were developed as a result of labour needs in South Africa's gold mines. Deep-level mining for gold was exceptionally expensive. Therefore, goldminers had to reduce labour costs by using unskilled cheap black labour. A number of policies and laws were enacted to ensure that there was a supply of such labour. On the other hand, social historians argue that as disadvantaged groups were increasingly recognising the restrictions placed upon them, policy makers felt the need to enact harsher policies to keep the status quo (Apartheid museum, 2008). All of these elements led up to the establishment of apartheid.

4.5.3. Transitional Justice in South Africa

Other than the Truth and Reconciliation Commission, hereafter termed TRC, no formal justice mechanisms were established in South Africa due to the Amnesty provided for both parties of the conflict. South Africa's unwillingness to prosecute perpetrators of gross human right abuses was due to the specific context of negotiations, as well as social realities of the country. South African transition to democracy took place in a peaceful manner and there was no real victor (de Hollanda, 2013). Therefore, the state could not impose a victor's justice through criminal prosecutions. Furthermore, the transition from apartheid to democracy in South Africa took place through lengthy negotiations and had any party known that they would be prosecuted, the negotiations would have stalled, sending the country into endless and vicious cycles of violence (Boraine, 2008). There was the recognition that society could not heal overnight and that no justice system could

immediately make everyone forget the violent past. However, the TRC could set the path for healing (Francis, 2016).

4.5.4. The Design Process of the South African Truth and Reconciliation Commission

Figure 4.6. shows an overview of the design process for the South African TRC.

The South African Truth and Reconciliation Commission Design Process

(Figure 4.6.)

The establish-ent of IDASA and subsequent IDASA Conference s

In 1986, Alex Boraine and Fredrick van Zyl Slabbert resigned from the South African parliament and started an organisation called the Institute for a Democratic Alternative for South Africa (IDASA) to start and manage talks to transition South Africa from apartheid to democracy. IDASA played an important role in the establishment of the TRC. IDASA's work was inclusive. They often visited towns and talked with locals to understand the problems South Africans were facing. Furthermore, a landmark conference took place in 1987, allowing a number of thought leaders as well as civil society members to explore the problems of Apartheid and research possible solutions.

Initiation of Political Negotiation s

The IDASA paved the way for further secret negotiations to take place between the liberation movements and the South African government (Francis, 2016). The Groote Schuur Minute meeting established a working group to define political offences within the context of the South African experience and look into possible mechanisms to release political prisoners as well as grant immunity for political offences. The working group brought together members from both opposing parties and allowed an exploration of the political offences and how to best deal with them (TRC, 1998).

ANC's Conference s and Public Meetings and CODESA

Being the primary negotiating party from the liberation movement's end, the ANC had led a number of exploratory meetings with other anti-apartheid political parties to discuss the next steps for South Africa. The ANC's All-Party Congress, later called 'The Convention for a Democratic South Africa (CODESA)' brought together a number of South African political parties to discuss the issue of apartheid and the transition to democracy on a normative goals level. Furthermore, the ANC held a number of consultative conferences such as the National Negotiations Consultative Forum and the National Policy Conference, which allowed for an empirical, pragmatic and normative exploration of the issue at hand and the possibilities available (O'Malley, n.d.).

Multi-party Negotiating Forum

Once the CODESA collapsed, there were demands for multi-party negotiations. The ANC and NP signed a Record of Understanding where they agreed on electing an interim government and establish an interim constitution. However, the substance of the constitution was discussed with other parties. A Negotiation Planning Conference was later held to discuss issues of disagreement and possible restructuring of the negotiations process, as well as officially launching the Multi Party Negotiation Process (MPNP). The MPNP had a number of technical committees that explored various issues and opinions of different parties, and eventually presented reports on the matter. The Afrikaner homeland ideology was rejected and the underlying constitutional principles upon which the new South Africa would emerge were discussed (O'Malley, n.d.).

ANC Inquiries and Proposal

In1993, the ANC responded to allegations that its members had committed human rights violations in camps outside the country by setting up three internal inquiries (Manjoo, 2004): The Stuart, Skweyiya and Motsuenyane commissions (TRC, 1998). These inquiries showed that gross violations had indeed taken place in camps by exiled ANC members. Inspired by these internal inquiries and Professor Kader Asmal's calls for establishing a commission to investigate abuses flowing from the policy of apartheid the ANC put forward the proposition to set up a commission that would inquire on human rights abuses since 1948. As debates about the commission surfaced, the possibility of judicial processes were put forward, and, eventually rejected (Majoo,2004). Discussions were heated as the government insisted on a blanket amnesty whilst a number of opposing parties insisted that amnesty would be accompanied with a truth commission (TRC, 1998). In fact, a compromise was only reached after the constitution was drafted and it was added as a post amble to the interim constitution.

The Interim Constitution

IDASA Workshops and consultation-ns

In 1994, IDASA and Justice in Transition, two organisations co-founded by Alex Boraine, played a crucial role in mobilising civil society to look for possible TJ mechanisms for South Africa. IDASA conducted a number of workshops as well as conferences to look into what justice meant within the specific context of South Africa. IDASA provided opportunities for local South Africans and policy makers to meet with experts from countries who had gone through a similar transition (Verdoolaege, 2006) through workshops and country visits. A number of publications and researches (Graybill, 1998) looked into the matter from both a purposeful phenomenological level, all the way to a pragmatic, contextualised level. IDASA conducted a number of surveys (Theissen,1999) to understand the local perception and expectations of the TRC as well as a number of local consultations.

The Parliament-ary Portfolio Committee on Justice's Public Hearings

Besides the monumental work of IDASA, the Parliamentary Portfolio Committee on Justice held public hearings and consultations on the draft of the Promotion of National Unity and Reconciliation Bill that would detail the mandate of the TRC (TRC, 1998, Maisel, 2013). Civil society played a crucial role in the discussions which led to significant changes to the Bill (Boraine,n.d.)

The Promotion of National Unity and Reconciliation Bill

Civil Society Consultation

The appointment of the Commissioners was a transparent process that involved the civil society. Civil society organisations were asked to nominate prospective commissioners, and were invited to monitor the hearings leading up to the appointment TRC, 1998, Boraine, n.d.)

The Commission Meetings

Once set up, the TRC commissioners held a set of three meetings through which empirical details of the TRC were fleshed out. It is essential to mention that the commissioners appointed were themselves very involved in the deconstruction phase leading up to the setting up of the TRC, such as Alex Boraine, and Desmond Tutu (TRC, 1998, Boraine, n.d., Boraine, 2008). In these meetings, the national office address was discussed as well as the commissioners who would be leading the different committees within the TRC. By the second meeting, the logistical plan and organisational plan were discussed. By the third meeting, the staffing plan was finalised as

The TRC started its work

4.5.5. A discussion of the *working framework* in the TRC design

An overview of the TRC design process organised per phase and level as suggested by the *working framework* follows.

4.5.5.1. The Deconstruction Phase

As Alex Boraine explains (n.d., 2008), the designers of the TRC were fortunate as they had a lot of groundwork that would support the design process. The TRC deconstruction process was thorough, although not without its flaws.

4.5.5.1.1. Empirical Level

IDASA's numerous surveys, studies and visits explored and humanised the plight of black citizens. On the other end of the spectrum, the ANC and other mass liberation movements remained close to the black communities, holding various meetings and rallies before, as well as throughout the negotiation process (Suttner, 2007). This ensured that throughout the negotiation process, whilst the NP represented the ruling whites, the liberation movements were able to represent the blacks. In this case, the MPNP was seen as an essential platform to include as many different views as possible. One must also recognise the contribution of civil society throughout the process, especially as the TRC details were being shaped. The civil society brought a richer understanding of the needs and wants of every day citizens and represented different sectors of society (Gready & Robins, 2017).

4.5.5.1.2. Pragmatic Level

Beyond the immediate needs of the communities, there were a lot of discussions about the social structures and backgrounds at play in South Africa. IDASA was crucial in the mapping out of community structures and how such structures could later impede the economic and democratic development of the nation (IDASA, 1987). The Groote Schuur working group was also essential in defining political offences and pave the way for amnesty in a manner that would not compromise peace in the country. Later on in the negotiations, the MPNP's technical committees were vital as they were able to look into implementation details that the MPNP's Negotiations Council could not explore. This helped in the shaping of a new vision and narrative for South Africa. Throughout the process, an understanding of the changing community contexts and party alliances was vital. Therefore, IDASA and Justice in Transition played a crucial role in continuously monitoring the context and involving communities in the process.

4.5.5.1.3. Normative Level

Normative level discussions on the roots of the conflict took place throughout the political negotiation process, and greatly contributed to the development of the vision. IDASA was the first to start a formal and inclusive conversation about race, history and power in South Africa, as well as look into the normative structures that enforced such ideologies (IDASA, 1987). The Groote Schuur working group looked into existing, legal structures in South Africa, and highlighted the gaps in legal structures (O'Malley, n.d.). This also fuelled the discussion of what defined a political offense within the South African context, and how to categorise such offences. The MPNP committees further looked into the Afrikaner

homeland ideology as well as the historic systematic exploitation of blacks in the country (O'Malley, n.d.).

4.5.5.1.4. Purposeful Level

A purposeful discussion was primarily conducted by IDASA and subsequently, by the civil society and human rights organisation (Van der Merwe, Dewhirst and Hamber, 1999). IDASA took an academic approach to the conflict and explored the origins of conflict from a phenomenological perspective. The organisation looked into concepts of nationalism, violence, and ideologies upon which democracy was built (IDASA, 1987). Furthermore, the Justice in Transition initiative explored local meanings of justice and the contextual needs of justice during transitional periods of society. To ensure that such knowledge was later cascaded in the design of the TRC, Dr. Boraine, co-founder of IDASA and Justice in Transition, was chosen to co-chair the TRC to oversee its implementation. It is through discussions and research that took place on a purposeful level that informed the design of the united vision that was based on forgiveness and unity.

4.5.5.2. The Designing Phase

With a strong deconstruction phase and strong linkage between the deconstruction and designing phase, the designing process of South Africa's TRC was exceptionally vision-driven.

4.5.5.2.1. Themes Level

The political negotiations between the South African government and the anti-apartheid movements required a lot of compromises through which a new vision and narrative for South Africa emerged. As noted by Professor Kader Asmal (2000, 2006), who was involved with the ANC throughout the negotiation process, the negotiations highlighted the need to reconstruct society in order to abolish the existing racial contract (Mhlauli, Salani and Mokotedi, 2015), and the inequalities it brought with it. The aim of the transition to democracy was not to move from an all-white, to an all-black government. On the contrary, it was meant to transform South Africa (Asmal, 2000) into a country that belonged to all those who lived in it. Having a strong Christian background, this vision was based on four Christian concepts, drawn from *Psalm 85:10*; that of mercy, truth, justice and forgiveness (Wielenga,2013). The Interim Constitution and subsequently, the Promotion of National Unity and Reconciliation Act, hereafter termed PNUR, were the codification of this new vision. The Constitution provided *"a historic bridge between the past of a deeply divided society… and a future … for all South Africans, irrespective of colour, race, class, belief or sex*" (Constitution of The Republic of South Africa, Act 200, 1993), while the PNUR Act strengthened the "*need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu [kindness] but not for victimization*" (Republic of South Africa, 1995, preamble) It is this vision of a united society, where perpetrators were forgiven and kindness was able to reach everyone that created the right environment to provide amnesty to perpetrators without fear of retaliation.

Talks about the vision were discussed once again as the PNUR Act was negotiated. Doubts about the power of restorative justice in helping South Africans reconcile with each other and 'heal the nation' resurfaced. In fact, the TRC was given a retributive element by enforcing the fact that amnesty could only be given if confessions were made, and that such amnesty hearings were made public (TRC, 1998).

4.5.5.2.2. Goals Level

Once the vision of a new South Africa was set, there were talks of the structures and mechanisms that would be utilised to deliver the vision. The political negotiations were the first setting through which such institutions were discussed, and compromises from both ends had to be given. It is at this stage that discussions of how different policies, mechanisms and institutions could help South Africa transition towards democracy were conducted. The IDASA conferences and workshops allowed for an exploration of overall governmental structures as well as a unified strategy informed by other countries' past experiences. The Parliamentary Portfolio Committee on Justice's Public Hearings allowed civil society and the community at large to participate in discussing the government's strategy towards reconciliation and provide feedback on areas of improvement. Asmal (2006) recognised that developing a strategy for transition in South Africa had to be tailored to the specific needs of the communities in the country. In this strategy, the TRC was only part of a broader national process of reconciliation. (TRC, 1998 p. 103)

Pragmatic Level

The ANC inquiry and proposal proved to be an influential experience that allowed South Africans to test the possibility of holding truth hearings and served as a pilot to the eventual TRC formation. However, it was only after the Interim Constitution was enacted, and the new South African government elected, that talks about a South African TRC became prominent. The IDASA workshops and civil society involvement were vital in identifying how to best design the internal structure for the TRC that could respond to the underlying, salient needs of society. The PNUR Act set up a number of committees within the TRC. Furthermore, the Department of Justice was asked to assist with establishing the infrastructure for the TRC.

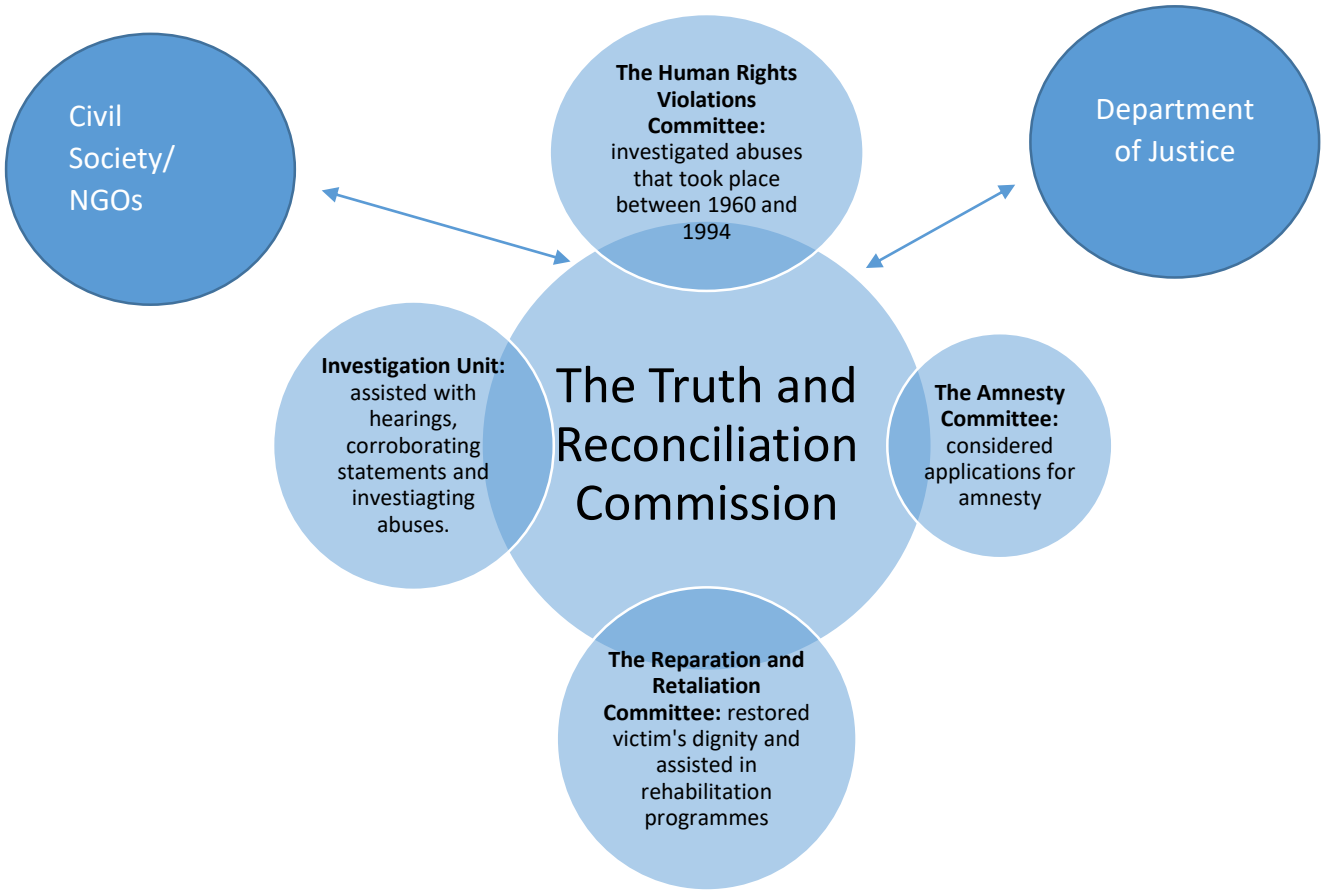

Figure 4.7. The South African TRC Pragmatic Support System

NGOs were highly involved in supporting the South African TRC, both in the design process as well as in its running (van der Merwe, Dewhirst and Hamber,1999).

Empirical Level

On an empirical level, NGOs and civil society were highly involved in the designing and running of the TRC (Boraine, n.d.). In fact, the appointment of commissioners was informed by nominations from civil society. The involvement of actors who were vital in the deconstruction process in the Commission meant that decisions taken on an empirical level were informed by the insight gathered throughout the deconstruction phase. A number of regional offices were established to ensure that the TRC was able to reach out to as many people as possible, and a number of sub-units and offices were eventually established. The structure of the commission was small but rather flexible, making it possible to continuously alter the operations as the Commission's priorities changed (TRC, 1998).

4.6. Overview of the Findings Chapter

This chapter summarised the findings of the three case studies chosen to test the *working framework* developed from the literature review. Each case study has highlighted different, important elements of the framework and has enriched the researcher's pursuit in refining the *working framework* to be best adapted for the design process of TJ mechanisms. On the other hand, it proved to be a vital exercise in understanding how such large-scale design processes progress, and whether there is a pattern in the sequence in which the process moves from one phase and layer, to another.

The following chapter further discusses the main learning points from this research exercise and attempts at presenting a final framework that could be used in cases of designing innovative and human centred TJ mechanisms.

CHAPTER FIVE: DISCUSSION AND CONCLUSION

5.1. Introduction

This chapter outlines the key findings that emerged from the Findings Chapter, and discusses their implications on the overall, final framework. It further outlines the framework after taking into consideration the findings of the research by detailing any changes and ascertaining concepts that emerged from the literature. Additionally, the present chapter puts forward suggestions for future research and practice in the field.

5.2. Discussion of Key Findings

The key findings that emerge from the analysis of the case studies in the previous chapter are grouped into four main clusters. The first cluster discusses the deconstruction phase, the second looks into the designing phase, the third explores what the case studies have shown in relation to the process and progression of the design process, and the fourth cluster looks into the human-centric nature of the working framework.

5.2.1. The Deconstruction Process

The deconstruction phase has proved to be a lengthy and continuous sub-process throughout the overall design process. In fact, it is less of a phase, and more of a process in itself. Three important elements can be deduced from the findings in relation to the deconstruction process. The first recognises the different forms of deconstruction that take place. The second

is the need to develop and maintain platforms through which purposeful deconstruction can take place. The third highlights the importance of having a multi-disciplinary, deconstruction process.

5.2.1.1. Two forms of deconstruction

The findings suggest that there are two main forms of knowledge being explored during the deconstruction process. The first form is insight about the end user, and the second is technical insight about possible design solutions. Ritter, Baxter and Churchill (2014) recognise the difference between both forms, claiming that HCD is the balance of both. The findings show that most of the technical insight was taking place on a pragmatic and empirical level. On the other hand, insight about the end user was primarily carried out by local actors and was more prominent in the process early on. By the end of the process, technical insight was becoming more essential.

A good case practice on technical deconstruction is the SCSL, which is arguably the most well-organized and technically complex mechanism of the three. Having the UN's connections and expertise helped shape a system that is both efficient, and able to uphold international standards of a fair trial. An open innovation model from the UN's end, where a number of stakeholders and agencies were pooling in technical insight on the subject matter, meant that the designing process was detailed and complex. It is a pity that such a mechanism was so detached from its local context.

On the other hand, Rwanda's government thoroughly explored the context and ensured the continuous involvement of the end user, which resulted in a very strong vision and goals. However, its mechanisms were highly controversial. The Rwandan government was reluctant to cooperate with the UN and other international organisations to create a more open, technical deconstruction process (Gahima, 2013). However, the government did cooperate with certain international NGOs, who monitored the process and provided recommendations. Involving more international expertise in the process could have eliminated a number of concerns over the Gacaca's neutrality as well as its ability to uphold international standards of a fair trial.

South Africa's IDASA and Justice in Transition were empowered to look beyond the borders of South Africa for solutions and tap into international expertise. A number of conferences and seminars of international relevance were held in South Africa, bringing together experts on the field from all around the globe. This was evident in the TRC's strong internal structure as well as its ability to fulfil its mandate efficiently within two years (TRC, 1998).

5.2.1.2. Deconstruction platforms

An important element in the deconstruction process is the creation of the right platforms that enable an intentional, and purposeful act of acquiring knowledge for design. Such platforms resemble Rwanda's *Urugwiro* meetings and South Africa's different negotiation forums, as well as Sierra Leone's Consultation Conference. However, it is equally essential that such platforms are purpose driven. Jantsch (1972) asserts the importance of purposeful inquiry

and the case studies have outlined the importance of embedding deconstruction processes within the larger, overall design process.

An example of thorough deconstruction which is not purposefully designed is Sierra Leone's Consultative Conference. Whilst a lot of insight and knowledge was produced during the monumental conference, it had little effect on the formal design process as the conference was not set as part of the overall design structure. In other words, it was a standalone event.

Good case practices of purposeful inquiry are Rwanda's Gacaca and Unity Commissions, which were set up as part of the larger design process taking place in the *Urugwiro* meetings. The commissions were driven by the purpose set in the meetings and were pivotal in the design of the Gacaca courts. Moreover, the working groups model employed in South Africa at the Groote Schuur Meeting and, later, the MPNP discussions, were mandated to research specific topics that were essential in the overall design process. As a result, they were able to significantly contribute to the body of knowledge that fuelled the design process.

Furthermore, permanent, purposeful inquiry structures, as opposed to ad hoc committees such as Rwanda's NURC, Sierra Leone's NCD and South Africa's IDASA, also played an important role in ensuring long term engagement with the end user. They proved to be helpful in creating relevant knowledge as well as monitoring and evaluating the changing societal contexts.

5.2.1.3. Multi-disciplinary approach to deconstruction

In summarising the characteristics of HCD, Zhang and Dong (2008) ascertain the importance of a multi-disciplinary approach to design. Jantsch elaborates further and advocates for a trans-disciplinary model for an innovation-driven approach to knowledge. This heavily featured during the deconstruction processes of all three case studies. There was a recognition that justice does not happen in a vacuum (Gahima, 2013), and that an effective TJ process is one that is cohesive and vision-oriented (Nkansah, 2008). Therefore, a deep exploration of the context usually uncovers a vast range of social, economic, and political issues that need to be tackled in order to ensure that justice is delivered.

In Rwanda, the *Urugwiro* meetings included professionals of different sectors and fields. Furthermore, the Commissions allowed for a trans-disciplinary exploration of the Rwandese context where professionals from different fields were brought together. This was also seen in the South African experience where working groups and technical committees were set up to deal with different issues and, later, discuss such converging issues in the Negotiation Council. In Sierra Leone, this could be seen in the National Consultative Conference where different sectors were represented and diverse ideologies were discussed. Furthermore, students, victims as well as practitioners were involved. This could have been a powerful platform had it been continued in a more sustainable manner.

Therefore, the above discussion highlights that deconstruction is not merely knowledge production, but instead constitutes the embedding of knowledge within the overall design

processes. Deconstruction is an intentional, structured, and purposeful act which empowers an informed designing process.

5.2.2. The Designing Process

The findings show that the designing sub-process is usually shorter and more focused than the deconstruction process. A thorough deconstruction process ensures that designing is a more coherent process. Two main patterns have emerged from the findings in relation to the designing process: the importance of visioning, and the essentiality of developing self-learning and adaptive design systems.

5.2.2.1. Visioning in design

One thing that was evident in all case studies is that the vision, on a thematic level, is the first part of the designing process that takes place. As ascertained by Hekkert and Dijk (2011) in, visioning is an essential part of designing, which takes place at the very beginning of the process. Without a clear vision and narrative, the other levels struggle to put forward goals and practical solutions that are embedded within an overall cohesive system aimed at resolving the real causes of the conflict. In fact, the author of the present inquiry proposes that the Themes Level ought to be renamed to the Visioning Level to better describe the purpose of the former level.

Two case studies had a strong visioning level: The Gacaca and TRC design processes. Both show that an effective vision requires some form of social re-engineering or systematic re-structuring of society in order to eliminate social issues that have given rise to the conflict. Both cases have shown that a strong vision requires a strong analysis of the 'why' on both the normative and purposeful level. This was not the case in the SCSL, where more focus was placed on the pragmatic levels of deconstruction rather than the normative and purposeful levels. This did not enable a true, unified vision to emerge.

5.2.2.2. Designing adaptive systems

An essential element of HCD is developing self-learning or adaptive systems (Jantsch,1972) that utilise negative feedback for the improvement of the design. Considerations of how to create adaptive systems generally take place at the end of the process on a scenarios and solutions level. From the findings, three factors emerge that illustrate ways in which such adaptive systems could be designed.

1) Piloting

South Africa's TRC was piloted on a smaller level within ANC structures. This allowed designers to see how the TRC could operate on ground. Based on this, the ANC was able to provide a more informed proposal on how a South African TRC could operate. In the Rwandan case, the Gacaca piloting phase was longer, more systematic, and took place in different settings to truly explore the potential of Gacaca. The piloting phase not only ensured that Gacaca could work in the context of genocide, but it also proved to be beneficial in designing a system that is truly accessible. In fact, a substantial part of the Gacaca design was amended after the pilot (Mukantaganzwa, 2018).

2) Feedback Loop

Negative feedback is essential in order to create adaptive systems that are sensitive to their settings. This was done in South Africa by consulting civil society organisations during the Scenarios and Solutions levels whose recommendations were taken up. Furthermore, the design of Gacaca itself ensured a continuous refining process, even as Gacaca was in operation. 70% of the Gacaca law was amended by the time Gacaca was closed down (Mukantaganzwa, 2018). In Sierra Leone, the strong outreach programme allowed for interaction with the local population and a feedback loop was created.

3) Flexible structures

The flexibility of the designed structure of the mechanism itself, and its ability to change and adapt accordingly, is very important. This was the case with Rwanda's Gacaca structures which operated on a very small cell-level, allowing each cell to redefine and design the structure as it went along. Furthermore, in the case of the SCSL, although the structure itself was not flexible, the outreach programme provided room for the streamlining of feedback. However, this feedback was largely used for outreach programmes and had little effect on the design of the court itself. In South Africa, the internal structures of the TRC were rather fluid and units were often assigned different job descriptions as the need arose (TRC, 1998). Therefore, this allowed for a learning and adaptive process to take place.

Designing human centred innovative TJ mechanisms requires a strong understanding of the vision, which in turn emerges from a thorough deconstruction process. One must also

recognise that designing does not end with the launch of the mechanism, rather, a truly effective design is one that is self-adapting and that continues to function till the closing down of the mechanism. The process, although structured, is not linear. In fact, the next section explores a number of important elements that have emerged in relation to the process of design.

5.2.3. The Design process and progression

The findings highlight a number of patterns in the relationship between the different phases and levels. Two main elements emerge; firstly, the importance of having a strong linkage between the deconstruction and designing phases, and, secondly, the recognition that the design process in not a linear one.

5.2.3.1. Linkage between the deconstruction and designing phase

Having a strong link between the act of deconstructing and that of designing is essential for a truly human centric design. In Rwanda and South Africa, where a strong link existed between the deconstruction and designing sub-processes, the end result constituted mechanisms which were more vision-driven and human-centric. However, in the case of Sierra Leone, where the two processes happened in an ad hoc manner, it resulted in a fragmented vision and institutions that did not complement one another.

Such linkage was established through developing platforms for purposeful inquiry that were embedded within the overall design process. The reporting and monitoring of the design process, especially during the deconstruction process, ensured that information was stored for future usage. However, such reports were useless if their purpose and potential use weren't highlighted from the start, and if the designers did not make an intentional effort to utilise such information. A prime example of the latter are the reports issued at the end of the Consultative Conference in Sierra Leone. The reports were overlooked by the designers who had their own assumptions of the context.

Involving individuals who were part of the deconstruction process in the designing process enriched the design and ensured the link between both processes. This was the case in the South African negotiation meetings, where the main parties, the ANC and NP, remained as the leaders of the design process. This was also the case with Boraine, the co-founder of IDASA, who was appointed as co-chair of the TRC. In Rwanda, both deconstruction and designing mainly took place within the *Urugwiro* meetings, where participants remained fairly the same, thus ensuring continuity. Furthermore, many party officials who took part in the internal RPF debates and RPF grassroots consultations were involved in the *Urugwiro* meetings where Gacaca was being discussed. This also ensured a better flow of information.

5.2.3.2. Non-linear Progression

As highlighted by Kent (2016) when he discusses TJ processes, and Jantsch (1972) in his Innovation/Education System, a truly HCD process is non-linear. This is further highlighted by the findings of the case studies. Although there are patterns in how the design process

progresses, there is no clear separating line between deconstruction and designing. On the contrary, both processes must take place parallel to one another, with a larger focus on certain levels at certain times.

The patterns show that the beginning of the overall design process is one of deconstruction. An HCD is one that is based on a thorough understanding of the end user (Brown and Wyatt, 2010), and only once enough insight is gathered can the designing process commence. Designing the vision and, later on, the goals generally constitute the first two levels of designing. These could be revisited later on in the process, as was the case with the South African TRC. Later, the technical elements of the design are explored on a Scenarios and Solutions level. In between and in parallel with the designing process, the deconstruction process is still ongoing.

It is also important to note that the manner of progression from one phase and level to another is relative to the context. Sierra Leone focused a lot on the pragmatic level due to the context of the conflict and eventual involvement of the UN. In the designing phase, the focus was mainly on the goals and scenarios. In fact, the technical elements of the SCSL were outstanding in comparison with the other case studies. The design process was short and mainly included the UN and the government, although the deconstruction process was lengthy. The short, exclusive design process developed an efficient system that was, unfortunately, not impactful on the end user. On the other hand, the Gacaca design process first focused on the normative and purposeful level and worked towards ascertaining a vision. Once again, this is due to the social and historic roots of the problem that needed to be

tackled through developing a new, unified historic narrative. South Africa's TRC process was more complex since whilst a new South African narrative of nationhood was being developed, a number of mechanisms were taking place in tandem to monitor the changing contexts and power dynamics on a pragmatic level. The design process took place over a longer period and was much more in depth.

Furthermore, the findings show that whilst there is a more structured progression in the designing phase from the themes to the solutions level, this is less so with the case of the deconstruction phase. Discussions on a purposeful level were still taking place at very late stages of the design process, whilst empirical level explorations were not necessarily the first to take place. Therefore, the assumption that one should move inwards in the deconstruction phase, whilst one should move outwards in the designing phase of the framework, has proved to be inaccurate.

The next section focuses on how such design processes ensured that they remained human-centric.

5.2.4. The Human Centric nature of the framework

A defining element in HCD is the continuous involvement of the end user (Brown and Wyatt, 2010). In this specific case, the end user is the local community, that has been affected by conflict and is awaiting the delivery of justice.

In Rwanda, the grassroots consultative meetings were an essential starting point. Furthermore, the *Urugwiro* meetings were also an important platform for the involvement of the end user. The *Urugwiro* meetings were similar to an idea lab where end users interacted with experts throughout the design process. Furthermore, the Gacaca court itself was very contextualised and allowed the participation of the community at large, both in the proceedings, as well as in the overall design. The NURC activities played an important role in engaging a larger percentage of end users through their consultations, their research papers, as well as reconciliation activities. The NURC was able to reach a vast variety of citizens. However, the concern over the limited involvement of the Hutus in the design process remains, especially in the first phases of vision and goal setting. During the pragmatic and particularly, empirical level, the Hutu population was involved more through local chiefs and elected judges.

In Sierra Leone, civil society was involved in the deconstruction process and represented the end user. The NCD and their consultations were also vital in empowering the local community throughout the process. The Local Chiefdom Meetings could have been an interesting platform through which further empowerment of the end user could have taken place, if further exploited. However, most of the end user involvement happened in the deconstruction process and was marginally involved in the designing process. However, the Sierra Leonean experience highlights the fact that the end user should not be perceived as the passive subject under study, involved only as far as his contribution in sharing knowledge about his own traits. On the other hand, the end user must be involved in both the

deconstruction and designing phases to ensure that his needs and aspirations are being reflected in the design. Civil society's exclusion in the designing process meant that the court was not the one that was able to attend to people's needs and aspirations.

Although no formal grassroots consultations took place in South Africa, the ANC and other liberation parties' meetings and rallies were a way through which everyday citizens could voice their opinions. Therefore, the parties were seen as representatives of different communities and ideologies. In fact, the MPNP, which had included a number of political parties besides NP and ANC, ensured that there was the representation of diverse views. Furthermore, IDASA and Justice in Transition's seminars and workshops were a way through which end users were involved in the design of the process. The empowerment of civil society by the end of the design process through consultations was another way in which the end users were being involved.

To conclude, the findings reflect a number of assertions that have emerged out of literature; such as the importance of multi-disciplinary approaches, the visioning process, the need for non-linear adaptive systems, and the importance of involving the end user throughout the design process. Furthermore, the findings have also enriched the literature with further important considerations; such as the relationship between different forms of deconstruction, the vitality of purposeful inquiry as well as patterns in the progression in the design framework. The findings also reiterate the importance of understanding the context and using local processes of knowledge and value creation. The complex nature of TJ reflects the complexity of the innovative TJ mechanisms design process. Therefore, in the next

section, the final framework for designing innovative human centred TJ mechanisms is presented.

5.3. A framework for Designing Innovative Human-centred Transitional Justice design processes

The findings show that the working framework suggested in Chapter 2 does indeed reflect the general design process of innovative TJ mechanisms. The framework was also vital in pinpointing the weaknesses in certain design processes. However, a number of amendments were made to fit the specific, complex context of TJ, more precisely, within the context of Africa. The final *Framework for Designing Innovative Human-Centred Transitional Justice Mechanisms* is shown in Figure 5.1.

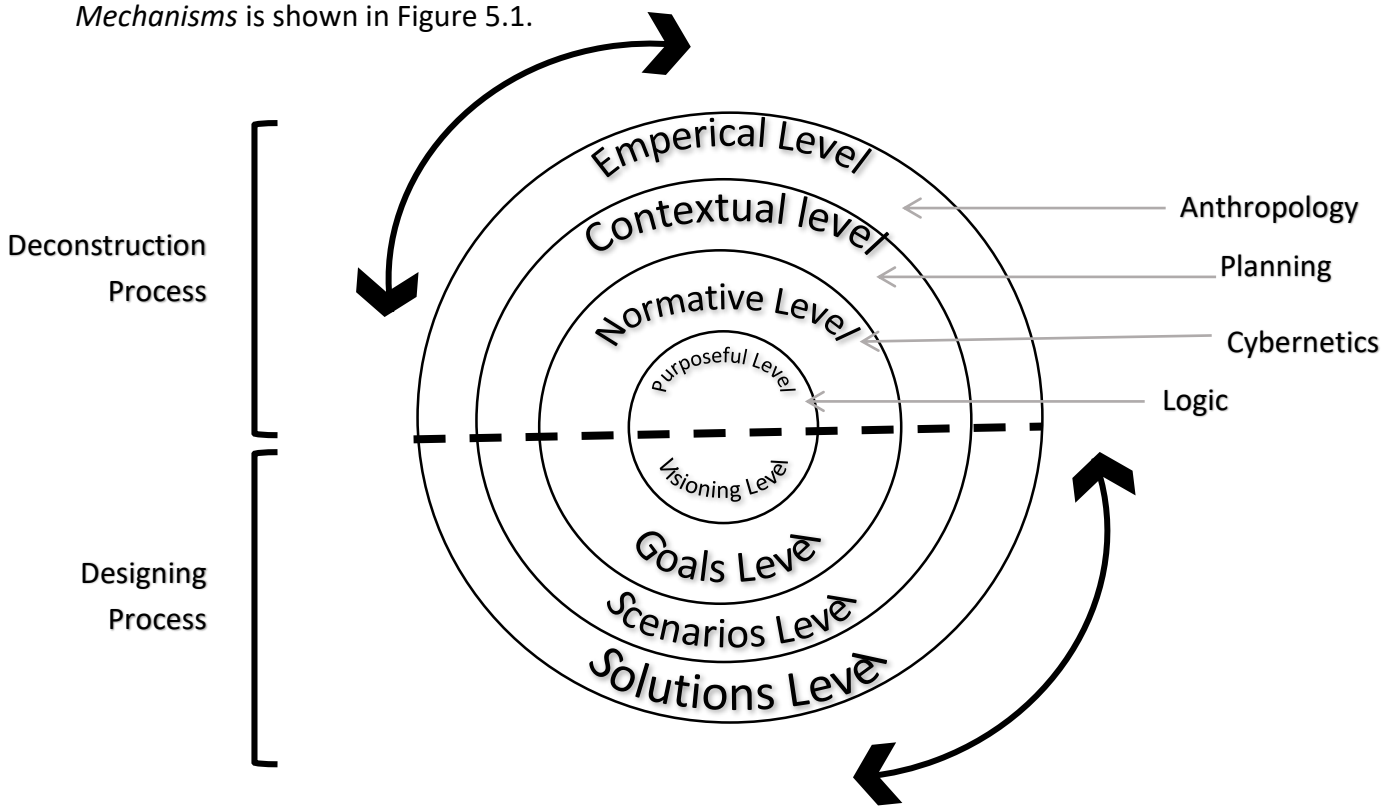

Figure 5.1. The Framework for Designing Innovative Human Centred Transitional Justice Mechanisms

The two deconstruction and designing ‘phases’ are now recognised as sub-processes of the overall design process. The term *process* denotes continuation rather than the limited concept of *phase*. Furthermore, within both processes, some levels have been renamed to better reflect their function within the specific context of TJ. Therefore, the pragmatic level was renamed to ‘contextual level’ to assert that it is the level at which the context is explored. Furthermore, the themes level is now called ‘visioning level’, further clarifying that it is the stage at which a unified vision is devised. The arrows no longer denote a specific progression. Instead, they are circular in form, and circle the framework to denote the relationship between the different deconstruction and designing sub-processes and levels. Furthermore, the line dividing both sub-processes is no longer a solid line, denoting that in many cases, both processes converge and diverge.

The organising languages, although not directly featured in the process, are great indicators of what sort of insight is required at each level. The circular nature of the framework remains, as it is important to show the relationship between the different levels. The nature of the different levels is as explained in the second chapter and they reflect the diverse elements of a holistic design process. There is, however, further awareness on the manner in which the framework could be utilised in this specific case, as discussed in the previous section.

The next section details suggestions and recommendations for both future research and practice in the field.

5.4. Suggestions for Future Research

This research was limited in a number of ways, and future researchers could potentially look into the areas this research could not explore.

This research recognises the formal design processes that were taking place within governmental or formal institutional settings. It would be interesting for future research to look into informal design processes, and how they, in turn, influenced the overall process.

This dissertation looked into three case studies which took place in Africa. Future research could test the framework on different TJ mechanisms within other contexts, such as the Latin American experience or Eastern European TJ processes. This would enrich the framework and further highlight elements based on best practices of other cases. Additionally, this would also highlight whether vastly different meaning creation processes could affect the way the design processes progress.

Due to time and logistical limitations, this dissertation utilised secondary data to formulate the independent design processes of each case. Future research could further enrich the presented design processes in Chapter 4 by conducting interviews with key individuals who were part of the design process. As Gahima (2013) noted, a lot of the designing takes place behind closed doors and is therefore, only available through personal notes, biographies and interviews conducted with people who were involved in the process.

Although for the purpose of this dissertation the designing process ended after the launching of the innovative mechanisms, an interesting avenue for future research could be to look at the continuous re-designing and refining processes that take place in adaptive learning systems, after the launch of the mechanisms.

There is dire need for further research on the concept of justice innovation that includes researchers from both the legal, and innovation field. Furthermore, a definition is yet to be established for justice innovation, and with a growing interest in the field, it becomes even more essential to develop a definition that reflects the field in question.

5.5. Recommendations for practice

The justice field, and more specifically, that of TJ, could significantly benefit from research that is available in the innovation field, both in the concept of designing, as well as in maintaining and administering innovative justice mechanisms. This dissertation asserts the need for further collaboration between both fields, as well as developing the necessary spaces for knowledge sharing.

Designing an innovative TJ mechanism is a structured and intentional process. The TJ design process cannot happen in an ad hoc manner, it must be vision-driven and holistic in its approach. Dissecting the issue and tackling separate, imminent threats is important for an all-encompassing approach. However, practitioners must ensure that this takes place within an overall design process.

Practitioners in the field of TJ must also recognise that there is no one textbook process for designing innovative TJ mechanisms. On the other hand, the process is organic and largely depends on the context. It is a long and complex process that must be flexible and able to adapt to any sudden changes in the context.

A successful, innovative TJ mechanism is not one that merely engages the local population. The TJ field must recognise that local populations are not the passive subjects of the design. On the other hand, TJ design processes must recognise local value and meaning creation processes. They must ensure that the local communities are both involved in the formulation of the design process, as well as the creation of design spaces that are of value to the local communities.

5.6. Concluding Remarks

Looking at justice processes from an innovation perspective enriches it and highlights elements previously overlooked. This dissertation has shed the light on the need for further cross fertilisation between both fields to ensure better quality and accessibility within the justice sector.

The framework presented in this dissertation is a first step towards making sense of the design of the innovative TJ mechanisms, however, as outlined throughout this research, there is need

for further exploration. This dissertation has also ascertained the need to shift towards innovation terminology as we describe design elements of TJ mechanisms. Instead of local engagement, this dissertation speaks of human-centred processes. Different design activities are further categorised depending on the purpose they fulfil within the overall design process such as deconstruction platforms or designing spaces. Moving towards a structured, intentional and deliberate design process recognises the purpose of all parts of the overall strategy.

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