

## Transitional Justice – An Analysis of Restorative and Retributive Mechanisms in Sub-Saharan Africa

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## Abstract

Transitional justice is an essential part of the peacebuilding process, as the need to obtain justice for victims of conflict has been recognised as imperative when constructing peace. Subsequent to the established role of justice, the debate on approaches to justice has emerged. A debate concerned with whether restorative or retributive justice is suitable for the context, as the two are frequently presented as exclusive alternatives in academic debates.

Restorative justice favours inclusion and participation as instruments to repair harm caused by crimes, while retributive justice favours accountability through criminal punishment. This study, aspires to influence the discussion by analysing if the debate on restorative versus retributive justice is present in practice and if there is a trend of implementing restorative approaches to justice in this context. The objective of this study is relevant for transitional justice as there is a debate among scholars on the applicability of restorative justice in transitional societies.

The method of structured, focused comparison is applied to detect which mechanisms are implemented in four Sub-Saharan African post-conflict countries. The countries were selected based on their similarities, as it allows for a focused comparison. The theoretical framework adopted is the TARR-model. The elements of the model are applied as a basis for the structured, focused comparison. Further, the model is used to detect restorative and retributive mechanisms and to assess the restorative basis of transitional justice. The model was selected, as it is the only restorative value-based model available.

The findings detected the approaches to not be exclusive alternatives in practice. Further, a trend of fully restorative approaches to justice was not found in the four cases. However, retributive mechanisms were found to be contributing to restorative outcomes. A trend of combining the two approaches was detected. It is, therefore suggested, future research is conducted on hybrid approaches to justice, local ownership and traditional mechanisms.

**Keywords:** *Restorative Justice, Retributive Justice, Sub-Saharan Africa, Transitional Justice.*

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## List of Abbreviations

ICTR	<i>The International Criminal Tribunal for Rwanda</i>
RJ	<i>Restorative Justice</i>
SCSL	<i>Special Court for Sierra Leone</i>
TARR	<i>Truth, Accountability, Reconciliation and Reparation</i>
TJ	<i>Transitional Justice</i>
TRC	<i>Truth and Reconciliation Commission</i>
UN	<i>The United Nations</i>

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## Transitional Justice – An Analysis of Restorative and Retributive Mechanisms in Sub-Saharan Africa

### 1. Introduction

The international community, especially after the end of the Cold War, has awakened to the urgency to help engage in the long-term process of building peace in countries emerging from protracted social conflict (Llewellyn & Philpott, 2014:1-2). The objectives of constructing peace and ensuring justice has long been conflicting and perceived as exclusive alternatives, as maintenance of peace often proceeded justice (Ramsbotham et.al, 2011:246-252). There has however, been an increased tendency to adopt mechanisms of retributive<sup>1</sup> and restorative justice in the context of transitional societies, as special courts and truth commissions have become mainstream tools for peace and reconciliation (Llewellyn & Philpott, 2014:1-2). The debate concerning peace and justice is still fairly present even though, the dependency between the two has been recognised, as justice is now perceived as an instrument to sustain peace (Ramsbotham et.al, 2011:246). This has resulted in a shift in the debate from peace versus justice to restorative versus retributive justice, as scholars of restorative justice argue peacebuilding missions could be improved by adaptation of a restorative and contextualised approach (Llewellyn & Philpott, 2014:18; Aroussi, 2017; Pearsson, 2017). On the other hand, critics believe contemporary restorative principles to be unsuccessful, underdeveloped, problematic and ill-fitted for the context of post-conflict societies and therefore promote a retributive approach (Clamp & Doak, 2012; Zernova, 2017; Simangan, 2017; Asadullah, 2016). There is a limited amount of literature on restorative justice in relation to practical implementation in transitional justice<sup>2</sup>. There is, therefore, a need to analyse the restorative and retributive mechanisms applied in transitional justice in order to determine if these approaches are exclusive alternatives in practice or if this is a debate among scholars, and to establish if a trend of fully restorative approaches to justice, advocated by restorative scholars, exist. Furthermore, Wietekamp et.al (2006) suggests that retributive mechanisms can contribute to

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<sup>1</sup> *Retributive Justice*: An approach to justice which ensures accountability through criminal punishment, as a response to crimes and wrongdoings rather than rehabilitation (Schimmel, 2012: 162-163).

<sup>2</sup> *Transitional Justice*: Is the process of ensuring justice for victims of mass atrocities and systematic abuse in the context of post-conflict societies. It includes activities of criminal prosecution, truth-seeking, reparations and reform of laws and institutions (ICTJ, 2018).

restorative outcomes, this is also further explored throughout this thesis, as it provides for an alternative perception of the debate.

The concept of restorative justice (from here on abbreviated as RJ) emerged as an alternative approach to justice in the 1970s and has since then been reconceptualised several times, resulting in different definitions of the concept. It has been defined by scholars, such as Howard Zehr (2002), Tony Marshall (1996) and John Bazemore and Lode Walgrave (1999), to name just a few. Zehr is one of the founding fathers of the concept and he defines RJ as an alternative approach to retributive justice, and emphasizes the perception of crime as a violation of relationships. The concept recognises inclusion and participation before exclusion and punishment (Zehr, 2002:19-25). Marshall (1996:37) defines RJ as: “all parties with a stake in a specific offence coming together to resolve collectively how to deal with the aftermath of the offence and its implications for the future”. Bazemore and Walgrave (1999:48) define the concept as: “every action that is primarily oriented towards doing justice by repairing harm caused by the crime”. These definitions differ in their perception of RJ as either an outcome or a process. Zehr’s (2002) and Marshall’s (1996) definitions are process oriented while Bazemore and Walgrave (1999) emphasize on outcomes (Ewald & Turkovic, 2006:217-241). This difference in definitions has resulted in a lacking consensus on application of the concept within transitional justice (Gavrielides, 2015: xi), although the element of inclusion is highlighted in all three definitions.

Other scholars, such as Kerry Clamp and Jonathan Doak (2012) are critical of an adaptation of a fully restorative approach to justice, as they believe the current approach of RJ to be problematic and underdeveloped for the context of transitional justice (from here on abbreviated as TJ). Instead, they argue for a value-based approach to RJ, as this would allow for inclusion of both processes and outcomes. This approach uses a set of core-values to assess RJ as both a process and an outcome, these values are later presented in the chapter regarding the theoretical framework. This approach is also adopted for this study. They advocate for use of the TARR-model, as a yardstick for assessing RJ in relation to TJ. The authors perceive the elements of the model to be suitable to evaluate the restorative basis of TJ. However, the model is still in need of theoretical testing, in order for the relationship between reconciliation and RJ to be further discovered (Clamp & Doak, 2012). The TARR-model is based on a combination of the definition on RJ presented above, as the model outlines participation and inclusion of

stakeholders as essential in order to move forward after wrongdoings. The model advocates for a restorative approach to TJ with limited mechanisms of retributive justice (Wietekamp et.al, 2006). The TARR-model has been adopted as the theoretical framework for this thesis, in order to assess the restorative basis of TJ and to detect restorative and retributive mechanisms. The method of structured, focused comparison is applied to both detect restorative mechanisms and to assess the restorative basis of TJ.

## 1.2 Research Problem, Relevance and Research Objective

This thesis is concerned with the existing academic debate on restorative versus retributive justice in the context of TJ, as scholars are divided into two camps when addressing the question of which approach is suitable in transitional societies. Further, empirical research of practical implementation of restorative mechanisms in relation to the academic debate is limited. This is also the case in relation to material on how and if RJ works in the context of TJ, which restricted any studies of evaluating character, as the variety of approaches and definitions of RJ has caused different understandings of the role and result of the concept in practice. There is currently a research gap on comparison of restorative mechanisms used in this context. This study will include analysis of both restorative and retributive mechanisms, as the theoretical framework adopted for this study suggests that retributive mechanisms can contribute to restorative outcomes. By linking the academic debate to four well-known cases of practical implementation of TJ in Sub-Saharan Africa, this study aspires to contribute to the discussion on approaches to justice in the context of TJ as well as the understanding of retributive mechanisms having contributing aspects towards restorative outcomes.

Furthermore, this study is relevant as there are no comparative studies available which determine if the debate on restorative versus retributive justice is present in practice, in the region of Sub-Saharan Africa. By determining where the cases stand in the debate, this thesis thereby contributes with an analysis of the existing but limited empirical evidence on restorative and retributive mechanisms in TJ. In addition, there are no studies which investigate the claim of retributive mechanisms being a contributing aspect to restorative outcomes. This study intends to influence the debate by providing practical understanding of which mechanisms are applied in TJ, and if the approaches are exclusive alternatives, and if retributive mechanisms can contribute to restorative outcomes.



The objective of this thesis is to analyse restorative and retributive mechanisms used in four post-Cold War country cases in Sub-Saharan Africa, in order to determine where these cases stand in the debate on restorative versus retributive justice. Furthermore, the understanding of the approaches as exclusive alternatives is addressed along with the idea of retributive mechanisms contributing to restorative outcomes. By conducting this study, as mentioned above, a contribution to the limited empirical research is made. Further, by linking the debate to cases of practical implementation of the approaches, this study provides for an understanding of which approaches are used and if they are to be perceived as exclusive alternatives, as outlined in the academic debate. The cases of South Africa, Rwanda, Sierra Leone and Liberia are used to explore the practical implementation of approaches to justice in relation to the debate. Further, the method of structured, focused comparison is applied along with the theoretical framework of the TARR-model in order to assess the restorative basis of TJ and to detect restorative and retributive mechanisms. By applying the TARR-model possible contributions generated by retributive mechanisms to restorative outcomes are detected.

### 1.3 Research Questions

In order to meet the research objective, the following questions are asked in order to analyse restorative and retributive mechanisms applied in TJ:

- *What restorative mechanisms have been used in the four cases in relation to TJ?*
- *What retributive mechanisms have been used in the four cases in relation to TJ?*
- *How can retributive mechanisms contribute to restorative outcomes in the context of TJ?*

### 1.4 Thesis Structure

This study is divided into seven chapters. In the first chapter, *Introduction*, a short literature review concerning RJ is presented in order to outline the basis of the research topic, problem and objective. Further, the relevance of this study is presented in relation to earlier research. This is followed by a brief presentation of the theoretical framework and research method. Lastly, the selected research questions are presented.

In the second chapter, *Theoretical Framework*, the TARR-model, which is the theoretical framework of this thesis, is presented in-depth. First, the core-elements of the model and the

basis of these are presented. This is followed by the perception of judicial and non-judicial mechanisms of TJ and the relationship between the mechanisms is discussed in order to provide for why a value-based approach to RJ is adopted. The core elements of the model are further displayed and a restorative lens in form of four sub-elements is presented. Lastly, the use of the model and the reason behind the selection of the model is outlined.

In chapter three, *Methodological Framework*, the chosen methods are explained in depth along with discussions on advantages and disadvantages of these methods. This is followed by the case selections along with the limitations and delimitations of the study. In addition to this, the sources in relation to the cases are presented in a literature review. Lastly, ethical considerations are displayed.

Chapter four, *Background*, provides a condensed summary of each country conflict.

In the fifth chapter, *Findings*, the material generated through structured, focused comparison is presented. The material is presented by question and country.

Chapter six, *Analysis*, reconnects with the research objective and research questions of the thesis and thereby provide for a discussion on restorative and retributive justice, while using the material presented in chapter five. In addition, the analysis examines the division of mechanisms presented in figure two, the possible trend of restorative approaches along with the restorative basis of TJ.

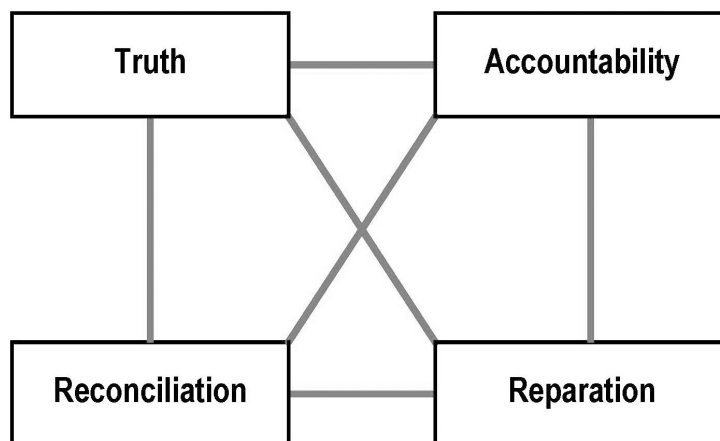
In chapter seven, *Conclusions*, the different aspects of the analysis are summarized and suggestions for future research are presented.

## 2. Theoretical Framework

For this study the TARR-model, as created by Wietekamp with colleagues (2006), has been adopted in order to locate restorative and retributive mechanisms and to assess the restorative basis of TJ.

### 2.1 The TARR-model

The model consists of four core-elements of TJ, which are; truth, accountability, reconciliation and reparation. Additionally, these elements are connected to four sub-elements which are participation, reintegration, personalism and repairing harm. The elements are based on key issues experienced by transitional regimes when addressing the past, maintaining peace and providing necessary tools for a sustainable future. The sub-elements are derived from the concept of RJ. In order to locate the elements and sub-elements, the authors draw upon research of other scholars within the field of legal and social science. These elements in combination generate values of wanting to produce truth about the past, ensure accountability and address the issue of impunity, to repair relationships and reconcile former enemies, along with providing means for reparation. This approach allows RJ to not be linked to certain mechanisms but instead function as values contributing to restorative outcomes (Wietekamp et.al, 2006). The core-elements of TJ, as perceived in the TARR-model are presented in figure one below.



*Figure 1: TARR-model. The core-elements of Transitional Justice (Source: Wietekamp et.al, 2006).*

The model is further described as a heuristic framework for addressing elements of TJ. It allows for an alternative approach to TJ, as justice is presented as a final result of the elements of TJ

in combination, instead of separately, which has been the case for past frameworks of analysis. The aim of the model is to underline the interdependence of mechanisms of TJ. By adopting a value-based approach, the model allows for both judicial and non-judicial mechanisms to be analysed, in terms of contribution to the four elements (Wietekamp et.al, 2006). Because of this the model has been claimed to be a valuable yardstick for evaluating the restorative basis of TJ (Clamp & Doak, 2012).

## 2.2 Judicial and Non-Judicial Mechanisms of TJ

The core-elements of the TARR-model can be used to detect tools of retributive (judicial) and restorative (non-judicial) mechanisms within the context of TJ. The model presented in figure two, provides an overview of these approaches along with a national and international perspective on mechanisms. This model is mainly based on analysis of Truth and Reconciliation Commissions and the International Criminal Court. In figure two, mechanisms are divided into international/national and judicial/non-judicial, this demonstrates the range of mechanisms used in TJ. Further, the model outlines the often considered binary relationship between judicial and non-judicial mechanisms, as the two are presented in relation to the other. As the model advocates for a value-based approach, it attempts to proceed the perception of restorative and retributive justice as binary alternatives and thereby outlines their shared possible contribution to a restorative outcome in relation to the core-elements of TJ (Wietekamp et.al, 2006).

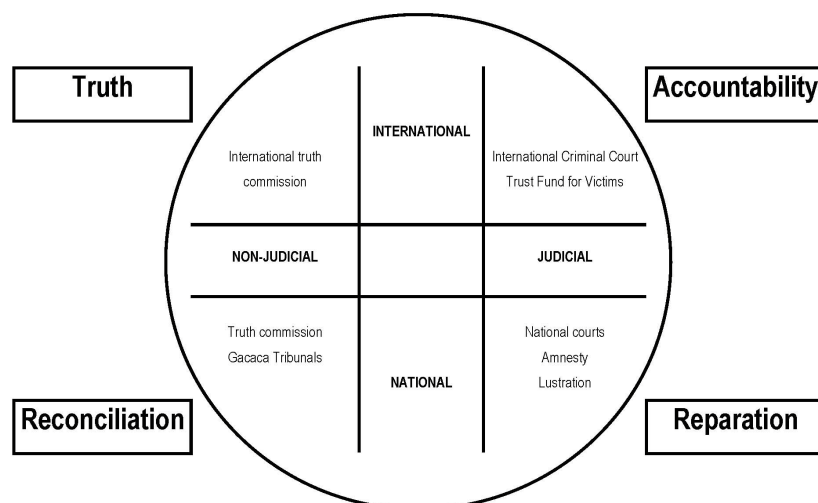


Figure 2: Retributive (Judicial) and Restorative (Non-judicial) along with National and International Mechanisms Presented in Relation to the Core-Elements of the TARR-model (Source: Wietekamp et.al, 2006).

### 2.3 The Elements and Sub-Elements of the Model

The elements are linked to the sub-elements, as it is claimed that: participation contributes to truth-seeking, through empowerment; reintegration is an essential aspect in the process of accountability; personalism or perception of crime as violation of relationships is necessary for the process of reconciliation and reparation of harms caused by the conflict will foster reparation in general. The model finds justice to be a process and not an end product, as it is often perceived by traditional western legal scholars, and therefore emphasizes inclusion and participation as an essential feature when addressing post-conflict societies. Additionally, the model is based on Siegel's (1998, 431) definition of democratization as TJ which reads as follows: "the study of the choices made and the quality of justice rendered when states are replacing authoritarian regimes by democratic state institutions." As this definition according to the authors allow for a neutral and broad understanding of the concept (Wietekamp et-al, 2006).

In relation to the first core-element; truth, the model outlines four notions of truth based on the final report of the South African Truth and Reconciliation Commission. These are; forensic truth, which is evidence-based truth; narrative truth, which is truth generated through the sharing of personal experience; Social truth, which is truth generated through social interaction with others; and restorative truth, which is evidential truth put in the context of human experience in order to start the process of healing. Each notion of truth is outlined as contributing to TJ and peace. Further, these notions can be perceived from both a structural and individual perspective. Retributive approaches are known to generate individual truth, such as forensic truth while restorative mechanisms are perceived to generate collective, narrative, social and restorative truth. Participation leads to empowerment which contributes to the collective notion of truth (Wietekamp et.al, 2006).

Accountability is outlined as an element of TJ based on the general assumption of wanting to hold someone accountable for crimes committed. This is a retributive approach to justice which is frequently applied in TJ, but in which the use of inclusion and reintegration can lead it to having a restorative essence. Accountability is essential for the establishment of a new government, as rule of law along with the structure of democracy is often desired in post-conflict societies. The element of accountability is thereby creating the authority needed for the establishment of a new state along with a moral consensus towards crimes. In relation to

reintegration, accountability is addressed as, one owing up to their wrongdoing, while the community makes an inclusive decision on punishment and strategy for reintegration. Whether it is punishment through imprisonment or through community services is up to the stakeholders of the conflict, as long as the punishment is perceived as suitable. A collective decision in punishment and a collective attempt for reintegration is needed for the process of TJ (Wietekamp et.al, 2006).

Reconciliation is described as the reparation of harmed relationships and the definition produced by Bloomfield et.al (2003:1) is applied: “creating trust and understanding between former enemies.” By adopting an approach of personalism, the authors argue the process of reconciliation could proceed faster. It is the element of emotional involvement which needs to be addressed and therefore, according to the model it would be successful to emphasize encounter between victims and offenders. This element is according to the authors missing in courts, as victims and offenders are represented by operators of law, hindering the stakeholders from meeting. Further, a personal perspective would allow for an inclusive bottom-up approach (Wietekamp et.al, 2006).

The element of reparation is essential for prevention of future crimes, as there is a need to compensate for the losses caused by the conflict. In order to cope with grievance and the socio-economic situation, many are in need of restitution, as peoples’ financial income has been altered. This is a mechanism which has been difficult to implement in the past and it is therefore highly emphasized in this model. Examples of compensation can be restitution of goods, material compensation and symbolic means to name a few (Wietekamp et.al, 2006).

By linking the elements and sub-elements together, as presented in figure three, the restorative basis of TJ can be assessed. Because of the model’s perception of justice, mechanisms of retributive justice can include restorative elements and thereby contribute to a restorative outcome. This allows for an analysis of for example the relationship between truth and accountability, as well as truth reconciliation and reparation. The model illustrates the interdependence of the four main elements. This means, the model adopts a gradual nature of justice instead of a binary relationship, which allows for an understanding of justice which is perceived as more or less, rather than existing or non-existing (Wietekamp et.al, 2006).

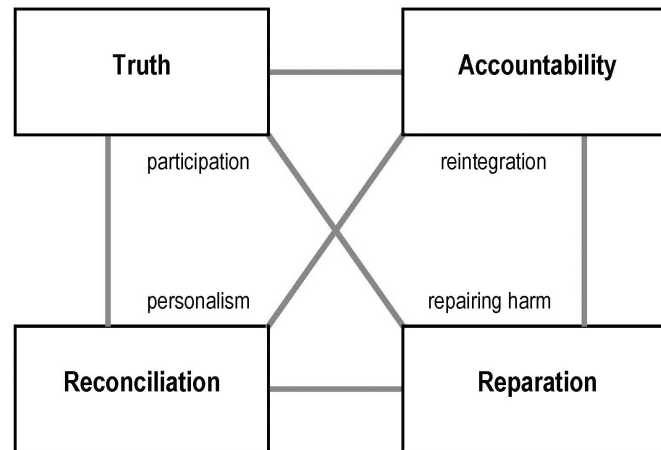


Figure 3: The TARR-model in Relation to Restorative Justice Principles (Sources: Wietekamp et.al, 2006).

## 2.4 The Restorative Basis of the Elements

The elements together generate tools to deal with the past while simultaneously providing means to look forward. Because the restorative aspect is not assigned to a certain mechanism but only to the core and sub-elements, TJ is according to the model more likely to be successful, as these four key elements allow for broader interpretation. Further, a value-based understanding allows for a deeper and broader assessment of TJ. By drawing on key elements of RJ, the authors use a set of definitions to underline their selection of sub-elements. As mentioned in the *introduction*, Tony Marshall's definition of RJ as "All parties with a stake in a specific offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future" (Marshall, 1996:37), demonstrate the relevance of restorative values in TJ. The "stake in a specific offence" is change to interest in a specific community, and the authors identify all members of the community as crucial stakeholders to resolve the conflict. Furthermore, Bazemore and Walgrave's definition of RJ as: "every action that is primarily oriented towards doing justice by repairing the harm that has been caused by the crime" (Bazemore & Walgrave, 1999:48) is presented in a goal-oriented perspective. While Zehr's perception of RJ, which mainly guide the process towards restoration, as Zehr emphasize the need to repair the harm caused by the wrongdoing. The perception of crime as a violation of people and relationships instead of a violation of law and the obligation to make things right, as presented by Zehr is essential for the model (Zehr, 2002). In addition, encounter between victims and offenders through dialogue on a voluntary basis is emphasized restorative means to reach the goal of transitional justice. As a result of combining these definition, the authors

produced the sub-categories of participation, reintegration, personalism and reparation of harm (Wietekamp et.al, 2006).

## 2.5 Use of Theoretical Framework

The TARR-model is used to detect restorative mechanisms and to assess the restorative basis of TJ. It is applied in this thesis as a basis for the questions generated for the research method.

## 2.6 Choice of Theoretical Framework

The model was selected, as it is the only model available which allows for assessment of the restorative basis of TJ.



### 3. Methodological Framework

The research strategy of this thesis is a qualitative and abductive desk study combined with text analysis of sources generated through empirical research. These strategies were chosen in order to analyse the restorative and retributive mechanisms used in four country cases of TJ in Sub-Saharan Africa, in order to determine where the cases stand in the debate on restorative versus retributive justice. Text analysis is applied on all four cases. Further, the research method of structured, focused comparison is adapted to the cases, in order to detect implemented restorative mechanisms and to assess possible contributions made by retributive mechanisms towards restorative outcomes. The elements of the TARR-model are used as the basis of the questions of the structured, focused comparison. In accordance with the available data on the subject in the region, the cases of Rwanda, Sierra Leone, South Africa and Liberia were selected. The selection of cases is based in the same region in order to not conduct too general claims concerning the debate but also to include a comparative element, as this demonstrates where the countries stand in the debate. Literature on the subject of RJ mechanisms in TJ of the region has been exhausted in relation to the limitations and delimitations.

#### 3.1 Qualitative Research

A qualitative research strategy was selected for this study due to available data on RJ in relation to TJ. The data available is limited, making the possibility of conducting quantitative research on this topic while using the method of desk study difficult at this stage. Further, this thesis is interested in both the debate on restorative and retributive justice, and the possible restorative values produced by retributive mechanisms, resulting in restorative outcomes. Qualitative research is not interested in numbers but in descriptions and understandings of concepts and phenomenon. A qualitative research method is adopted for this study, as it focuses on a smaller area and on a specific topic. For this study, the topic of approaches to justice along with the focus groups of four countries in Sub-Saharan Africa was selected. This led to an adaptation of a research strategy producing insights before numbers, hence an adaptation of a qualitative research strategy before a quantitative one (Bryman, 2012:35-37). Further, the epistemological and ontological understanding of qualitative research is suitable for analysing restorative and retributive approaches to justice, as RJ is described as a relational theory of justice, which means the world is shaped by relationships and interactions (Llewellyn & Philpott, 2014:22-

24). This could be coupled with the epistemological perspective of interpretivism and the ontological perspective of constructionism, linked to qualitative research, as this entails the world being interpreted by its participants and social property as outcomes of interactions between individuals (Bryman 2012, 380). In addition, the epistemological and ontological perspectives link to contextual and cultural understanding of RJ, as it cannot be used as a blueprint solution applied in the same way everywhere (Zehr, 2002:10; Llewellyn, 2012). For future research a quantitative study of restorative and retributive mechanisms in TJ may be suitable to gain a perspective representative of countries outside of Sub-Saharan Africa.

### 3.2 Desk Study and Text-Analysis

The research method of desk study and text analysis was chosen for this thesis due to the limited literature on comparison of cases in relation to the topic. The empirical evidence used in this thesis consist of both qualitative and quantitative research. This thesis does therefore not aim at contribution by generating new data but will instead contribute by filling the research gap by comparing cases where restorative and retributive mechanisms are applied. Further, the method allows for a cross-culture analysis. It also allows for more time spent on the analysis, as the data is already generated. The literature is produced by academics and scholars of the field which indicates validity concerning the evidence of the sources. The disadvantage of this method is however the lacking control over the data quantity and that there is a distance between the researcher and the participants. It is, therefore, essential for the researcher to be familiar with the context of the data collection (Bryman, 2012:312-316). Due to the limited literature, many cases of the region had to be excluded. If the study would have been carried out by the use of the method field study, other issues would be faced, concerning sources credibility and direct language barriers.

### 3.3 Abductive Reasoning

This study has adopted an abductive reasoning, as the findings from the cases is used to determine where countries of the Sub-Saharan region stand in the debate on restorative and retributive justice. The TARR-model is used as theoretical framework for the structured focused comparison of this thesis in order to assess the restorative aspects of TJ mechanisms. Abductive reasoning is applied in order to move away from the theoretical framework of the TARR-model and towards an understanding which is shaped by the practical implementation of mechanisms

in the countries of the area. The logic behind abductive reasoning, uses an observation or a statement as a focal point and then sets out to explain or detect the reason behind the event. Furthermore, abductive reasoning offers an explanation which could be applicable to other cases but does not have to be. This thesis is not interested in testing theory but in practical implementation of approaches, therefore, an abductive line of reasoning has been adopted (Bryman, 2012:401).

### 3.4 Structured, Focused Comparison

The method of structured, focused comparison includes a set of general questions which are generated based on the theoretical framework and research objective. These questions are asked systematically to a set of cases. Each case is asked the same set of questions, in order to compare findings on the same basis. It is important for the researcher to situate herself in the literature in order to detect the research gap, as mere interest is not reason enough to conduct research. The method is used to detect patterns and moves away from the ideas of separate studies of a phenomenon (George & Bennett, 2005:67-72).

For this thesis the method has been adopted in order to analyse restorative and retributive mechanisms implemented in the four cases. Further, the method allows for assessment of the restorative values of both approaches to justice. The theoretical framework of the TARR-model is applied as the basis of the questions. These are specifically based on the four core and sub-elements of TJ in relation to RJ as outlined in the model; truth/participation; accountability/reintegration; reconciliation/personalism; and reparation/repairing harm. The following questions will be asked systematically to all four cases in order to both assess the restorative essences of TJ but also to detect restorative mechanisms:

- *What mechanisms of transitional justice have been used in relation to truth-seeking, and how have participation affected the results of bringing truth forward?*
- *What mechanisms have been implemented to enhance accountability and reintegrate offenders, and how has this affected the issue of impunity?*
- *How has the perception of crime as a violation of relationships been highlighted and how has this contributed to reconciliation?*
- *What mechanisms have been used to repair harm caused by the conflict and how has this contributed to prevention in future crimes?*

By systematically asking these questions to the four cases, the aim is to detect which mechanisms have been used and to assess the restorative basis of TJ, and thereby answer the research question of: *how can retributive mechanisms contribute to restorative outcomes in the context of TJ?*

### 3.5 Case Selection: Limitations and Delimitations

The cases of this study were selected based on their similarities in implementation of restorative and retributive mechanisms, geographic location, having experienced intrastate conflict and the time of conflict's occurrence. Shared similarities were emphasized during the selection, as it is an important aspect for the chosen research method of structured, focused comparison. The delimitation to the region of Sub-Saharan Africa was decided based on the number of cases in each region, which to the most extent contained different restorative and retributive mechanisms, adopted on all levels of the community. Further, the delimitation of conflicts ending after the Cold War was implemented due to the international change in power structure which resulted after the Cold War. The four country cases of South Africa, Rwanda, Sierra Leone and Liberia were selected based on these criteria. Further, the delimitation of excluding peacebuilding mechanisms such as disarmament, demobilization and reintegration programmes, has been made in order to keep the analysis on restorative and retributive mechanisms within the context of TJ.

As mentioned above, this study only includes cases of intrastate conflict. This delimitation was made to further focus the comparison of this study. The case selection is comprehensive as the available data of the region has been exhausted on the basis of the countries which have implemented restorative mechanisms. There are single cases on restorative mechanisms in relation to TJ available both inside and outside of the region, however, these have been delimited based on the available data and the selected research method. In order for this study to adopt a focused comparison, the cases need to be similar in subject, and for this study a geographical delimitation was adopted in order to not make too general or broad claims about the debate or the theoretical framework (George & Bennett, 2005:67-72). Additionally, this study faces limitations in relation to the chosen research method, concerning quantity of data available on the topic along with dependency on existing literature produced by others. Another limitation is literature publicised in other languages than English, as these cannot be used due to language barriers.

The cases of South Africa and Rwanda are well researched and there is an extensive amount of literature on events occurring during and after these conflicts. Because of this, these cases were selected. Further, the remaining cases of Sierra Leone and Liberia are not as researched, which in this case means they were included based on being results in searches for RJ and country cases on diverse databases.

### 3.6 Sources

The material used for this study, consists of secondary empirical sources, containing both studies of qualitative and quantitative character. The sources of the cases used in this study has been selected based upon relevance for the subject and geographic area, along with the delimitations of the study. The sources used are academic journals produced during or after the transitional period of the country. It is important to note that because this study relies on secondary sources, the material has already been scaled down and analysed ones before, therefore, the result could have been different if another research method would have been adopted.

No potential mechanisms have been addressed, and countries such as South Sudan and Burundi were excluded early in the process. Further, the sources used focuses solely on TJ mechanisms and therefore material concerning other aspects of peacebuilding have been excluded.

The sources concerning TJ in South Africa are produced between the years of 1997-2016. These sources are all academic journals and they are all concerned with the work of the South African Truth and Reconciliation Commission. Some sources are more process oriented (Backer, 2010) while others are evaluative in character (Aiken, 2016). Many of the sources touch upon the subject of participation and the element of truth-telling, a highly debated subject, hence the extensive literature (Walaza, 2003).

In the case of Rwanda, the sources are produced between the years of 2002-2017. The sources are academic journals or reports, containing both negative and positive aspects of the Rwandan mechanisms for TJ. Some of the sources are based on interviews (Nowotny, 2015; Thomson, 2011; Schimmel, 2012) while others are based on observations and text analysis (Ephgrave, 2015; Ingelaere, 2009). The number of sources available is far more extensive on the subject of

the traditional Gacaca courts than on other transitional mechanisms implemented in Rwanda. This means, this study may not be representing each mechanism equally. The sources include mechanisms such as the International Criminal Tribunal (Schulz, 2017; Nowotny, 2015; Saul, 2012; UN, 2012), The National Genocide Trials (Saul, 2012; Apuuli, 2009), The Gacaca courts (De Brouwer & Ruwebana, 2013; Nowotny, 2015; Meyerstein, 2007, 473; Ingelaere, 2009; Ephgrave, 2015) and the National Unity and Reconciliation Commission (Melvin 2010; Clark 2010).

The sources found in the case of Sierra Leone are produced between the years of 2007-2016. These sources include mechanisms of The Special Court for Sierra Leone, The Sierra Leone Truth and Reconciliation Commission (Sawyer and Kelsall, 2007; Cole, 2012), and the traditional Fambul Tok programme (Cilliers et.al, 2016; Park, 2010; Cole, 2012).

The sources used in relation to Liberia are produced between the years of 2007-2018. The case of Liberia was the one with the most limited amount of sources on the subject. The sources are concerned with the work of the Liberian Truth and Reconciliation Commission along with the Diaspora project of the Commission. Sources in relation to outcome or impact of these mechanisms were highly limited and sometime non-existing, which affected the process. Many of the sources available are on the Truth Commission's final report (De Ycaza, 2013; Pajibo, 2007).

### 3.7 Ethical Considerations

Due to the research method of this thesis, there is no need for ethical considerations, as the material used is already produced and direct contact with individuals does not appear.

## 4. Background

Here a condensed summary of each conflict is presented below, in order to provide a contextual understanding of each case.

### 4.1 South Africa

South African apartheid system operated between the years of 1948-1994. The system was a discriminatory division of people based on racial identity groups. The system meant geographical division of racial groups which resulted in discrimination of social, political and economic rights. Since the 1950s this system was fought by the African National Congress (ANC) who through mass civil obedience demonstrated their dissatisfaction with the white minority privilege. The government responded to the obedience through violence, brutality and political oppression. During the 1990s, the conflict escalated, as ANC along with other liberation groups carried out bombings in response to the conduct of the government. Affected by both national and international pressure, the government began to negotiate with ANC. This resulted in a series of new political and social reforms along with the democratic election of President Nelson Mandela in 1994 (Aiken, 2016).

### 4.2 Rwanda

The Rwandan genocide took place during three months in the spring of 1994 and it was the climax of a four year long civil war and 100 years of ethnical and social discrimination. During the 100 days of the genocide approximately 800 000 Rwandans were killed, as the ethnic groups Tutsi and Hutu disrupted against each other. This was equivalent to 10 % of Rwanda's population (Drumbl, 2002). The Country has three major ethnic groups Tutsi, Hutu and Twa. The Tutsi population is a minority in the country, which possess a great deal of social and political power over the Hutu majority. During the genocide, the Hutu systematically used physical and sexual violence to eradicate the Tutsi population through direct killing and spreading of HIV. The conflict was triggered by years of unequal power relations and ethnic discrimination. The conflict ended with the Rwandan Patriotic Front taking over the government in 1994 (Melvin, 2010).

#### 4.3 Sierra Leone

Sierra Leone experienced civil war between the years of 1991-2002. The conflict started in connection to a coup d'état staged by fighters from the Revolutionary United Front (RUF) who invaded from Liberia. The RUF felt grievance against the government for not providing the population with social and economic opportunities and therefore felt deprived of their basic human needs and demanded democracy (Kieh, 2016). The Sierra Leone army fought against the RUF but RUF kept recruiting new members either by force or by people joining voluntarily due to poverty and limited living conditions. RUF systematically used sexual violence as weapon of war and the conflict was prolonged through founding gained by smuggling of diamonds (Cole 2012). The conflict ended in 2002 after international actors such as the UN had intervened in the conflict. The conflict cost 70 000 people their life along with around 2,6 million people being displaced either inside or outside of the country (Cole, 2012).

#### 4.4 Liberia

Liberia experienced two sets of civil war between the years of 1989-2003. The first war started in relation to an attack by the National Patriotic Front of Liberia (NPFL) on the north-central region of the country. The country had experienced turmoil since its independence in 1979, as relations between the Americo-Liberian and Indigenous-Liberian population were affected by unequal access to power (De Ycaza, 2013). The conflict was caused by multidimensional crisis of social and economic development along with failed leadership of the military regime, causing NPFL to commit violent attacks towards the governing power. The rebel groups committed horrifying acts towards civilians, as looting, murder, torture and rape were used as war tactics. Civilians who were targeted often belonged to ethnic groups whose social class was associated with the government's. The first war ended in 1997, with the rebels overthrowing the military regime along with the killing of the current leader of the country. The second war started only two years later, in 1999, caused by incomplete transitional activities such as disarmament, demobilization, rehabilitation and reintegration programme and the inability of the new regime to provide for social and economic opportunities after the first war. The trigger of the second conflict was an attack by Liberians United for Reconstruction and Democracy (LURD), who attacked from neighbouring country Guinea. LURD consisted of former militants from the first civil war who were dissatisfied with the new regime. Alongside LURD, the Movement for Democracy in Liberia was formed and the two fought against the regime until



2003 (Kieh, 2016). In 2003 the government of Liberia, LURD and MODEL along with remaining political parties of the conflict signed a comprehensive peace agreement, which officially ended the conflict (De Ycaza, 2013).

## 5. Findings

In this section, findings generated by the questions of the structured, focused comparison are presented.

### *5.1 What mechanisms of transitional justice have been used in relation to truth-seeking, and how have participation affected the results of bringing truth forward?*

#### 5.1.1 South Africa

In the case of South Africa, the main mechanism used was the South African Truth and Reconciliation Commission (from here on abbreviated as TRC or commission), which was a new approach to justice, moving away from retribution by adopting a commission of inquiry. The South African TRC made an enormous contribution to the TJ community, due to its restorative and victim-oriented approach. The commission's restorative approach was a part of the democratisation process in 1994. It operated between the years of 1996-1998 (Backer, 2010).

The aim of the commission was to collect a full account from perpetrators on their violations and to give victims an opportunity to reveal their suffering of the apartheid system, which would help the process of restoring human dignity (Walaza, 2003).

The commission only addressed cases of gross human rights violations, meaning structural human suffering was not addressed and many perpetrators or beneficiaries were not held accountable for their involvement in the system (Aiken, 2016). The commission collected more than 21 000 statements from people who identified as victims and 2000 of these were given the opportunity to testify in front of the commission. This was done in 80 community hearings which were held in small towns, urban centres and township around the country (Aiken, 2016; Backer, 2010). In terms of truth, the commission had trouble producing forensic truth, as individual and collective testimonies frequently included different versions of the truth in relation to one incident, making the truth generated by the commission narrative, social or restorative at best. Further, the commission has been criticised for lacking a gender perspective, as rape was not included as a category of torture or weapon of war. In addition, it has also been found that women who testified in front of the commission, often gave testimonies in relation to wrongdoings against their male family members, while men testified on their own suffering. This may have produced a partial truth (Walaza, 2003). Since structural discrimination was not

addressed, the country still struggles with issues concerning racial and socio-economic reconciliation, this is presented below in relation to reconciliation and reparation (Aiken, 2016). In terms of producing a collective truth through the process of truth-seeking, the commission is considered a success, even though issues concerning individual truth exist (Lamin, 2003).

### 5.1.2 Rwanda

In Rwanda, the following main mechanisms were implemented to deal with participation and truth. The political leaders of Rwanda wanted to adopt an approach including both retributive and restorative justice (Nowotny, 2015). The International Criminal Tribunal for Rwanda was established by the United Nations (UN) as a mechanism to handle the aftermath of mass atrocities of the genocide. Alongside this, national courts and the traditional Gacaca courts were implemented. In addition, the government implemented a National Unity and Reconciliation Commission to ensure reconciliation after the conflict (UN 2012). Further, the implementation of the traditional Gacaca courts was made to ease the burden of the national criminal court (Loyle, 2018).

#### 5.1.2.1 The International Criminal Tribunal for Rwanda

The international Criminal Tribunal for Rwanda (from here on abbreviated as ICTR or tribunal) was set up by the UN in 1994, and it was active until 2015. The mandate of the tribunal was to prosecute those who bore great responsibility for the crimes committed against humanity during the genocide. The tribunal's mandate included crimes committed between the 1<sup>st</sup> of January to the 31<sup>st</sup> of December 1994 (UN, 2012). The court generated forensic truth but had trouble with inclusion, due to both the mandate of the court and its location. This was especially apparent in the early years of implementation, as the Rwandan population lacked awareness about the work or process of the tribunal (Schulz, 2017). The tribunal was located in Arusha, Tanzania. A location which resulted in exclusion of civilian participation, due to language barriers, too complicated judicial systems and lacking financial means to travel. This generated a negative perception of the tribunal (Nowotny, 2015). Further, the work of the tribunal has been found to operate without local ownership, as decisions were made upon values of the international community. This resulted in the will and needs of local Rwandans not being considered (Saul, 2012). A tribunal outreach programme was implemented in order to inform civilians about the work of the tribunal after critic of lacking transparency. This programme was however

underfunded which resulted in low information outreach and low levels of civilian inclusion. (Schulz, 2017).

#### 5.1.2.2 The National Genocide Trials of Rwanda

The national court system of Rwanda was used to prosecute perpetrators who were accused of planning activities of the genocide or committing them. The court had tried over 10 000 cases concerning violations of human rights, rape and other serious mass atrocities by the year of 2006 (UN, 2012). The aim of domestic prosecution was to implement rule of law along with the creation of the history of the genocide. The mandate of the domestic court was to prosecute perpetrators who stayed within the jurisdiction of the country, while the International tribunal prosecuted perpetrators who breached international law, such as humanitarian law and international laws against war crimes. The court faced issues of people pleading guilty to crime they did not commit, in order to get a lighter sentence or conditional amnesty, and it is estimated 15-30% are innocent of the crime they are prosecuted for. This, of course, alters the perception levels of truth produced by the court (Apuuli, 2009). Both the national and international courts had trouble having an impact on the everyday lives of civilians and communities (Saul, 2012).

#### 5.1.2.3 The Rwandan Gacaca Courts

The Rwandan Gacaca courts are a traditional approach to justice, implemented in 2001 (De Brouwer & Ruvebana, 2013) and by 2005 the court had reached its full potential in terms of operational structure (UN, 2012). The Gacaca is perceived as a mini-court which includes the entire country on a grass-root level. More than 11 000 courts were created to handle around 120 000 cases (Nowotny, 2015). The goals of the courts were establishment of truth, to accelerate the process of justice, to transcend from a culture of impunity, to reconcile and unite the Rwandan population, and to demonstrate the capability of national mechanisms (Meyerstein, 2007:473). Participation in the Gacaca was mandatory for all residents over the age of 18 and each village arranged a day of Gacaca each week. The court consisted of nine locally elected judges who together with the perpetrator, victim and members of the village assessed crimes committed between civilians. The judges collect evidence by interviewing both the accused and the victim. The decision of punishment was determined based upon the findings of the interviews. At its launch, the Gacaca only addressed cases concerning killings and torture, and destruction of property, this changed in 2008 as cases concerning sexual violence were included

on the court agenda. The structure of the Gacaca courts has the functional equivalent of a TRC in terms of collection of testimony. However, the traditional aspect of the court is retributive. Encounter and inclusion was an essential aspect of the Gacaca, as participants were able to speak their mind about both what had happened, while expressing possible and suitable punishments. Levels of participation were high due to the mandatory attendance. Further, extensive amount of participation resulted in a general understanding of the truth about what had happened during the genocide (De Brouwer & Ruvebane, 2013).

Some critics argue that the court did not reach its full potential in relation to truth, as the punitive aspect of the court did not allow for narrative, social and restorative truth to be fully explored, as the need of forensic truth was prioritized (Ingelaere, 2009). The high level of participation did however, provide the opportunity for people to express their own truth, which is in one way a version of narrative, social and restorative truth, even though, this truth was not later recognised as evidential it can have contributed to the feeling of reconciliation and forgiveness (De Brouwer & Ruverbana, 2013). Further, the cultural understanding of truth and the structure of the court resulted in a “truth” constructed by authorities with the aim of reconciliation and the construction of one Rwandan population (Ingelaere, 2009). Studies show victims and witnesses feeling of security being compromised after testifying in the courts and how testifying resulted in re-traumatization of some witnesses (Brounéus, 2008). This was especially the case for women who after testifying felt threatened by the participating audience (Ephgrave, 2015). Additionally, the issue of power-relations affecting the testimonies before the court along with the ruling process of the court has been reported, as the Hutu population was presented as perpetrators even though crimes were committed by both ethnic groups. Further, the new regime’s will to reconcile the country and to create a unified Rwanda is reported to have affected the process of bringing truth forward (Thomson, 2011). Further, the process of the court could include public shaming, an element which has been criticized for eradicating the restorative element from the court (Nowotny, 2015).

#### 5.1.2.4 The National Unity and Reconciliation Commission of Rwanda

The National Unity and Reconciliation Commission was established by the Rwandan government to promote reconciliation and a feeling of unity among civilians in 1999, as perpetrators and victims share territory and therefore needed to reconcile in order to move pass the mass atrocities of the genocide. This effort operated until the year of 2009. The aim of the

commission was to, through education programmes, reconstruct the Rwandan identity in order to sustain peace. One of the major activities of the commission was its peace education programme which took place in solidarity camps. Other activities were seminars at grass-root levels along with a programme to promote Rwandan values (UN, 2012). The commission worked in spreading information but it did not operate in bringing truth of the genocide forward. Further, the commission was criticised for not adopting a democratic approach and for only working for the interest of national unity and reconciliation (Melvin, 2010). In addition, the commission has been criticised for not addressing ethical difference from the past and thereby adopting ethnical amnesia in order to push for the political agenda of reconciliation. The level of participation of the commission's programme was also low as only 29% out of 765 respondents had good knowledge about the work of the commission. The work of the commission could therefore have hindered the spreading of truth as unity was emphasised before dealing with differences (Clark, 2010).

### 5.1.3. Sierra Leone

In the case of Sierra Leone, the main TJ mechanisms used were the Special Court of Sierra Leone, the Sierra Leone Truth and Reconciliation Commission along with Non-governmental organisation Catalyst for peace's programme, Fambul tok. Fambul Tok was initiated to complement the work of the court and commission, in terms of reconciliation (Park, 2010).

#### 5.1.3.1 The Special Court for Sierra Leone

The special court for Sierra Leone (from here on abbreviated as SCSL or the court) was established in 2002 by the initiative of the Sierra Leone President and the UN. The court was a semi-international-domestic court with a mandate to prosecute those who bore most responsibility in breaching international humanitarian law and domestic law during the war. This included leaders of all three major parties. The court was located in Freetown, Sierra Leone, and has been criticized for not reaching out to people living outside of the city (Park, 2010). Further, the court has been criticized for excluding participants without social and political power and for being too focused on the population located in Freetown. Crimes of ordinary people on community level were not prosecuted in this court and civilians simply had the role of audience. The court had relatively low levels of participation and inclusion but was successful in bringing forward forensic truth on crimes committed by the political and social

elite (Cole, 2012). Although the general support of the court was high among civilians, it has been reported that few actually had knowledge concerning the work and process of the court. People did however, understand the work of the court as important. High illiteracy rates among civilians did effect the information outreach of the court, which hindered participation and inclusion in the process of truth-finding (Sawyer and Kelsall, 2007).

#### 5.1.3.2 The Sierra Leone Truth and Reconciliation Commission

The Sierra Leone Truth and Reconciliation Commission (from here on abbreviated as TRC or commission) was established in 2002 to constitute an impartial record on the history of the human right violations during the war. Further, the mandate of the commission was also to address a tradition of impunity while still emphasizing the needs of victims. This was done by focusing on truth-telling and inclusion before punishment of offenders (Park, 2010). The commission has been criticised for focusing too much on the political elite of Freetown, which therefore excludes a local perspective (Cole, 2012). Further the process of the TRC has been criticised for being selective and too short, as the commission only stayed a very short amount of time in each village when collecting testimonies. Although the commission did collect around 9 000 statements, little preparation was given to victims before giving their testimonies. An aspect which could have affected the truth-seeking process of the commission. High levels of illiteracy affected the process, as it complicated civilians access to information. Unqualified staff has also been reported to be hindering the work with collecting truth. Further, the commission and the court operated simultaneously, this has been found to be problematic as there was a fear of prosecution, which affected the truth generated by the commission (Park, 2010). This could be linked to the civilians' poor knowledge of the institutions, as people believed the two institutions to be working together (Sawyer and Kelsall, 2007). The commission did however have a gender inclusive approach which eased the process of testifying for women and later children, an important success for the commission in terms of inclusion in the truth-seeking process, considering the course of the conflict (Park, 2010).

#### 5.1.3.3 The Fambul Tok Project

Fambul Tok is a project launched by the American Organisation Catalyst for Peace and local actor John Caulker in 2007 and it translates to family talk in the Krio language. The project is

described as mini-truth commissions, as it is a local community-based programme where offenders, victims and community are brought together to reconcile. It consists of a range of activities and ceremonies, including truth-telling, reconciliation and forgiveness (Cole, 2012; Park, 2012; Iliff, 2012). These ceremonies typically occurred around a bonfire, as it has a traditional symbolic value (Park, 2010). The fundamentals behind Fambul Tok are that everyone is allowed to participate regardless of ethnicity, gender, age or political stand point, which is essential in order to bring forward truth and forgiveness (Cole, 2012). The project was launched five years after the end of the conflict and its purpose was to fill the reconciliation gap existing between the work of the court and commission and the local communities. Further, the project coordinators travelled around villages and prepared people for participation as well as following up with the participants after the ceremonies. The project was established in each chiefdom, as each got assigned a reconciliation committee with trained members. The confession component of the project was supposed to be contextual of the community but sadly this component has transformed to a theatrical event, in which people act in accordance with a general socially accepted behaviour while participating around a bonfire, which according to critics, harmed the authenticity of the ceremony. The programme has been criticised for treating truth-telling and reconciliation like an event instead of a process. However, the programme has been praised because of its approach to participation, making civilians a part of the TJ and peacebuilding process (Park, 2010).

#### 5.1.4 Liberia

In the case of Liberia, the main mechanism used for TJ was the Liberia Truth and Reconciliation Commission (from here on abbreviated as TRC or commission), as the people in power feared prosecution if a tribunal on war crimes was established, as the former president and warlord Charles Taylor had been prosecuted in the SCSL a few years earlier. A tribunal investigating war crimes and gross human rights violations was therefore never established (Steinberg, 2010). Alongside the commission, the TRC Diaspora programme was established to include Diasporas (Cole, 2018).

##### 5.1.4.1 The Liberian Truth and Reconciliation Commission

The Liberian TRC was set up subsequently to the signing of the peace agreement in Ghana in 2003 (Pajibo, 2007). The work of the commission started in 2006 and lasted until the



presentation of the final report in 2009. The aim of the commission was to create an opportunity for victims and offenders to meet and share experiences of human right violation, while simultaneously addressing issues of impunity. Further, the commission was to locate root causes of the conflict and provide measures for rehabilitation of victims. The mandates of the commission were to promote national peace and reconciliation through investigation of gross violations of human right along with means to address these violations. The commission gathered thousands of testimonies from witnesses and conducted public hearings in all 15 counties of the country and the diaspora community (De Ycaza, 2013). The public testimonies of the commission were broadcasted on radio, television and online, which extends the information outreach of the commission and the creation of collective memory (Cole, 2018). The work of the commission has however been heavily criticised on several aspects, as there are reports on power relations playing a big role during testimonies. Examples of when warlords talk down to the commissioners along with situations where the commissioners acted in an inappropriate manner, reducing the seriousness of crimes such as a rape and torture, have been found (Steinberg, 2010). This indicates an issue of collecting competent staff for the commission, an issue which may have affected the process of truth-finding (De Ycaza, 2013; Pajibo, 2007). Further, the final report of the commission was vague in its display of the basis behind each decisions and recommendations. However, it pointed out the need for establishment of a war tribunal and national criminal court of prosecutions, as 98 of the cases tried before the commission would not be granted amnesty and were therefore recommended for prosecution (Steingberg, 2010). A war tribunal has not yet been implemented (De Ycaza, 2013). In its final report, the commission recommended an implementation of a national truth-telling programme operating at a local level. This programme was perceived to have great potential for reconciliation and peacebuilding, as it would have included both participation and truth-telling among civilians. It has however been failed to be implemented and therefore there is no process of collecting further information on grass-root level (James-Allen et.al, 2010).

#### 5.1.4.2 The Liberian TRC Diaspora project

The TRC Diaspora project is outlined as the successful aspect of the commission, for systematic inclusion of the diaspora community in the process of detecting gross human rights violations and economic crimes (De Ycaza, 2013). Interviews were conducted to collect the experience and possible recommendations of Liberians living outside of Liberia and testimonies were collected in countries such as England, the United States and Ghana. The project had nine

appointed commissioners. The high level of refugees from the country during the period of war initiated the project and the majority of testimonies collected were from Ghana. The inclusion of diasporas also provided refugees from Liberia with knowledge about their lost family members back home, which brought truth forward even for those who fled the country during the war. As well as providing information on violations committed. This project extended levels of participation and truth-seeking to an international level (Young & Park, 2009).

## *5.2 What mechanisms have been implemented to enhance accountability and reintegrate offenders, and how has this affected the issue of impunity?*

### *5.2.1 South Africa*

In South Africa, the TRC adopted a restorative approach and implemented a conditional amnesty act, which was considered highly necessary for the nation to forgive and reconcile after apartheid. The commission was therefore focused on reparation, compensation and reconciliation, before actual reintegration programmes. Because the conflict was as a consequence of a systematic racial discrimination and not an actual civil war, the priority was to unify the country through democracy. An issue faced by the commission was however how to address accountability of bystanders and beneficiaries, an aspect which the commission received criticism, as beneficiaries from the white minority were not held accountable for their advantages of apartheid. Further, evidence suggests, the mandate of the commission was adopted to protect beneficiaries, indicates a culture of impunity (Aiken, 2016). Post-TRC prosecutions did however take place, as some cases were recommended for investigation by a court. However, many of the cases recommended by the commission were never tried as they were considered not worthy of court prosecution by the institutions addressing crimes after the commission. Several legal institutions were given the task of prosecution, depending on the crime and the time of investigation. Because of this, the element of accountability through criminal punishment became insignificant. The underlying reason for lacking prosecution of recommended cases, was underfunding and lacking experience among investigators. This of course affected levels of accountability (Bubenzer, 2014:23-66).

The conditional amnesty, included amnesty for those who confessed their crimes in detail in public and before the commission. If this was not done the perpetrator would be faced with possible retribution, as the case would be brought up in front of a court (Leebaw, 2003). The amnesty provision admitted crimes and offenses associated with political objectives, this

included both the groups of the liberation movement and the security forces of the government. This was an attempt to forward forgiveness and reconciliation, as means to repair harms, in from of finical compensation was provided to those who suffered. However, it has been criticized for not providing enough financial compensation and return of land. This can have hindered the reconciliation process, as socio-economic and racial discrimination still exist in the country today (Aiken, 2016).

### 5.2.2 Rwanda

In terms of reintegration and accountability the ICTR and the national court provided a retributive approach, which did not account for reintegration of offenders. Because the courts lacked local ownership and participation, the reintegration aspect of their work became problematic. Further, the will of providing justice through criminal punishment and thereby addressing the issue of impunity most likely exceeded a restorative approach of reintegration. Resulting in high levels of accountability connected to the aspect of criminal punishment (Saul, 2012).

The Gacaca courts were an essential part of the TJ process in Rwanda. In terms of reintegration and accountability, the court severed the purpose of providing perpetrators with lower sentences or community service in exchange for sincere and complete confessions. Up to half of a prison sentence could be replaced with community service if this criterion was met. The idea behind this, lies with reconciliation as an end goal, as offenders were to serve the family or the victim he or she had committed crimes against. However, few offenders did own up to their crimes, this affected accountability along with feeling of forgiveness and reconciliation (De Brouwer & Ruwebana, 2013). Since the process of testifying has been found to re-traumatize some witnesses, it is somewhat questionable if this approach to accountability was successful in terms of reintegration. In addition, some witnesses felt their security had been compromised after testifying, which could have been caused by the fact that their offenders did not experience retribution (Brounéus, 2008; De Brouwer & Ruwebana, 2013).

The Rwandan Unity and Reconciliation Commission did not provide much in terms of accountability and reintegration, as the commission emphasized the creation of one Rwandan people before addressing issues of ethnic division and discrimination (Clark, 2010).

### 5.2.3 Sierra Leone

In terms of reintegration and accountability the programme of Fambul Tok is the most prominent in the case of Sierra Leone, as the SCSL adopted a retributive approach which only included criminal punishment and not reintegration. Further, the president announced an amnesty act alongside the SCSL. This was controversial in term of accountability, as the court did not honour this provision due to the international community's will to implement rule of law. The court did however make an exception on children, as the judges of the court expressed that children were both offenders and victims of the conflict and the court was not interested in prosecuting children (Park, 2010).

The Fambul Tok programme, on the other hand, had a closer relationship with local communities, as it was not interested in prosecuting political elites. The programme adopted a restorative approach, including accountability without criminal punishment. After one month of preparation, the offender and the victim met face to face to exchange experiences and forgiveness. As the offender is forgiven, the victim and community works together to reintegrate the offender (Cole, 2012). A symbolic aspect of responsibility is present in this programme, as the community together work on a peace garden. The garden functions as a common goal, which contributes to acceptance of offenders after recognised accountability (Iloff, 2012). Because the programme emphasizes forgiving and not forgetting, communities are provided with tools on how to handle returning ex-combatants (Park 2010). The element of truth-telling as story-telling has been reported to provide both victims and offenders with means for forgiveness and reconciliation, as the ceremony itself becomes as defining step in the process of moving on (Cole, 2012).

The Sierra Leone TRC contributed to accountability by collecting of records concerning crimes of the civil war. The government who conducted the TRC, did alongside this promote reintegration through disarmament of 70 000 ex-combatants, and establishment of institutions for police and health services (Svård, 2010). People who were disarmed received protection by the blanket of amnesty, an important incentive for disarmament and reintegration. Here amnesty was used as an incentive for disarmament and reintegration, although this meant disregarding accountability (Lamin, 2003). The reintegration aspect was not as well received as hoped, as civilians felt there was a need for a more traditional bottom-up approach (Svård, 2010).

#### 5.2.4 Liberia

In Liberia, the adaptation of a TRC, as mentioned earlier, was done with the intention of avoiding accountability through criminal punishment (James-Allen et.al, 2010). Further, it has been found that several had trouble to reintegrate to the community, due to socio-economic obstacles, such as poverty, lacking education and homelessness. It was also found that several who testified in the TRC had not participated in peacebuilding processes such as disarmament, demobilization, reintegration and rehabilitation, which hampered the reintegration process (De Ycaza, 2013). Further, the commission had the power to grant individual amnesties along with determination of who was to be prosecuted in court. No amnesties were granted to violations of international humanitarian law, and special consideration was given to crimes committed by children. Warlords and the political elite of Liberia assumed to be protected by the amnesty provision. This was, however, not the case as the President was later recommended to have her violations determined in trial. This meant accountability was conducted through both the use of retributive and restorative justice (Pajibo, 2007). Due to the commission being poorly conducted during its early years of implementation, the commission lacked credibility among civilians. In its final report of 2009, the commission recommended two measures of prosecution for those cases which were not granted amnesty, a national criminal court along with an extraordinary criminal tribunal. Such courts have so far failed to be established and several of the recommendations has not yet been implemented, accountability and reintegration are relatively low (James-Allen et.al, 2010).

#### *5.3 How has the perception of crime as a violation of relationships been highlighted and how has this contributed to reconciliation?*

##### 5.3.1 South Africa

In terms of reconciliation, the TRC provided means for reparation, in form of economic compensation, which was supposed to accelerate the reconciliation process. It was early in the process realized that reconciliation would not be possible in post-apartheid South Africa without financial compensation. To even out the unequal socio-economic present between racial groups reparation programmes were established (Aiken, 2016) This is also addressed in the reparation section, as these two connects.

The issue of beneficiaries is here once again present, as people belonging to the minority did not fully take responsibility for their status in the system. This hindered full racial

reconciliation. In a survey from the year of 2000, only 38% of white South Africans believed they had benefited from the system. This shows a resistance in responsibility of the group, which most likely affected the reconciliation and forgiveness process of other members of the society. Many felt material and financial compensation was needed mostly due to the amnesty provision, as there was a justice deficit to fill. These reparation programmes did however not live up to their promises, and many did not receive the expected compensation. The inter-racial inequalities still exist today and for many black and coloured people the socio-economic situation has remained the same, which indicates that there are still underlying aspects to be dealt with in order to reconcile fully (Aiken, 2016).

In addition, Kaminer (et.al, 2001) found, participation in the truth-seeking process of the commission, not to have the significant effect on peoples' experience of forgiveness and reconciliation expected. The level of forgiveness of participants of the commission was significantly lower among women in relation to men who testified, which indicates that the commission should maybe have considered a gender-sensitive perspective in order to reach a more inclusive result.

### 5.3.2 Rwanda

In term of reconciliation, the ICTR implemented an outreach programme in order to promote reconciliation among civilians, by ensuring civilians understood the work of the tribunal. This programme was however not successful, due to low funding and inaccessible centre locations (Schulz, 2017). The National Genocide trials and the ICTR contributed to reconciliation through the adoption of a retributive approach, as it was argued, victims needed to see their offenders be prosecuted in order to reconcile. Further, this approach helped the Rwandan polity to gain authority, which through a long-term perspective promotes peace. If this actually contributed to reconciliation is however debated among scholars (Saul, 2012).

The Gacaca courts were successful in producing truth on atrocities committed and on where remains and corpse had been left. This it contributed to individual closure concerning the loss of family members, which contributed to the process of reconciliation, forgiveness and healing (De Brouwer & Ruwebana, 2013). Forgiveness was also a part of the process, as offenders who confessed often asked for forgiveness, an element which was important for the reconciliation process. However, the court was criticised for focusing too much on the perpetrator, as they were provided with guidance for their testimony while the survivor was not prepared. This

resulted in an unfair situation which could have affected the healing process (Nowotny, 2015). Further, the reconciliation aspect of the Gacaca is related to RJ, even though the court had a retributive approach. Because people could get their sentence lowered if they confessed their crimes before the court, it could be seen as a more relational approach to crimes. If this approach actually resulted in enhanced feeling of individual reconciliation is however, debatable, as especially female witnesses experienced compromised security and therefore wished their offenders were sentenced a severe punishment. This was prominent in cases concerning rape and murder of family members (Brounéus, 2008; Ephgrave, 2015). Others felt their confrontation with the offender helped them cope with their past experiences. The collective understanding of the violent past produced by the courts contributed to general feeling of reconciliation (Nowotny, 2015). Gacaca provided a space for forgiveness, as in some cases, when the offender was genuinely regretting his crime, survivors would come to forgive the offender. There are, however, cases of offenders not owing up to their crimes, which of course did not positively contribute to the process of forgiveness and reconciliation. Therefore, it is evident, participants had mixed feelings about the impact of the Gacaca courts, as some think it contributed to national reconciliation by being a starting point in the reconciliation process while others felt aspects of failed restitutions only contributed to national socio-economic separation (Nowotny, 2015; De Brouwer & Ruverbana, 2013).

In terms of the Rwanda's national unity and reconciliation commission, the aim was to promote a reconciled and unified country. The issue of not recognising the causes of conflict complicated the work of the commission. Because the goal of the commission was to create a notion of one people, the goal proceeded from the process, and the work of the commission became insignificant, as the ethnic division which caused the conflict was ignored and the wanted result was not obtained (Clark, 2010).

### 5.3.3 Sierra Leone

In terms of reconciliation and perception of crime as a violation of a relationship, the SCSL was to contribute with a firm and structured foundation for reconciliation and sustainable peace, through the establishment and maintenance of legal order. However, this objective is considered not have been achieved, as some argue it is too early to tell if its effects while others found that the complicated relationship between the court and the commission hindered the reconciliation aspect, thereby resulting in national separation instead of reconciliation (Jalloh, 2011).

The commission contributed with producing child-friendly versions of the final report, in order to reach out to the children who either participated or suffered from the war. In terms of reconciliation efforts, it was found not to be the main priority of the commission, as a small budget and a limited amount of time constrained these efforts. Because the commission only stayed in each village for a short time, reconciliation efforts had to be taken on by locals, which means the commission did not fully contribute to reconciliation and forgiveness on the expected level (Park, 2010).

The Fambul Tok programme contributed to reconciliation and forgiveness through inclusion of rural civilians, as this group was not included in the work of the court or commission. This programme contributed to small-scale and individual reconciliation and forgiveness, as the events arranged by Fambul Tok was perceived as the starting point of the reconciliation process (Park, 2010). Another aspect which is considered key for the success of the programme is the starting point of local communities, which is where the war started in the first place, in other words, the programme addresses root-causes behind the conflict in order to provide tools for peaceful settlements. The inclusion of political and religious leaders is also a contributing factor, as the programme gains authority within the community. People who participated in the programme got a greater feeling of reconciliation, as they were allowed to be a part of the process themselves and could therefore reconcile with their offender. The question concerning long term results is yet to be determined, as the programme has only been operating since 2006 (Cole, 2012).

#### 5.3.4 Liberia

In terms of reconciliation in Liberia, the commission had little impact on reconciliation of civilians within the country. This is due to failure to implement the recommendations produced by the commission. Therefore, no further attempts have been made on an institutional level to proceed the process or to include the experience of civilians. The commission did produce suggestions which could be valuable for the future (De Ycaza, 2013).

The impact of the Diaspora programme is hard to determine, however it was seen as an essential part of the national reconciliation process, as diasporas still affect the social and economic situation in the country even though they are stationed abroad. Further, the diaspora programme provided refugees with information on violations against their loved ones, which may have contributed to their individual reconciliation and forgiveness process (Young & Park, 2009).



#### *5.4 What mechanisms have been used to repair harm caused by the conflict and how has this contributed to prevention in future crimes?*

##### *5.4.1 South Africa*

In terms of reparation the commission established a reparation programme in order to address socio-economic inequalities existing between racial groups. The programme faced considerable limitations, as only 22 000 “official” victims, who had provided statements before the commission would be granted material compensation, even though millions of people suffered from the system. Around 14 000 people were granted a small sum between R2000 and R7500, to cover urgent medical, economic and emotional costs. Further, it was recommended that all “official” victims received a larger amount of R17000-23000 per year. These compensations were however never given, as after three years of delayed payments the government decided on only to give out a one-time sum of R30 000. The delayed payments of compensation have by expects been outlined as hindering factor of the reconciliation process. Further, it has been perceived as a betray by the government, as victims gave up justice in accepting conditional amnesties, in return for promised material compensation. When victims were finally compensated, the gesture was considered too little too late, as a grievance towards both the commission and the government had already been established. The reparation programme had little impact on interracial reconciliation, as 30-40% of the black population is outside of the formal sector, and even though more interracial meetings occur on mixed working places, the socio-economic inequalities are still very present. Although the country is not in conflict today, it is safe to say the reparation programme of the commission had little success and has not been a contributing factor in prevention of future crimes caused by socio-economic inequalities (Aiken, 2016).

##### *5.4.2 Rwanda*

The ICTR did not address the needs of victims and did therefore not include any efforts considering restitution or material compensation, which is considered a flaw of the court (Schimmel, 2012).

In relation to the Gacaca courts, many participants felt restitution was needed for their healing process to begin. This is the traditional perception of how to deal with the loss of a family member, as people often provide the family with gifts to compensate their loss. This aspect was not considered in the Gacaca, as the majority of cases where restitution was given were property

crimes (De Brouwer & Ruwebana, 2013). Although material or financial compensation was promised by both the national and Gacaca courts, very few participants actually received any means of reparation. In addition, punishment was preferred by participants before restitution or community work, as this was perceived to bring justice. However, other believed compensation to be more important and did not feel satisfied with their offender getting prosecuted with prison or community service, as this did not help them in continuing their everyday lives (Nowotny, 2015).

#### 5.4.3 Sierra Leone

In terms of reparation mechanisms in Sierra Leone, compensation was to be provided by the SCSL to victims who testified, through housing and financial compensation for lost wages during the time of the testimony, no restitution was given to compensate the crime the victim had experienced (Horn et.al 2011). Further, the Commission has been known to contribute little to compensation, an aspect which according to Sierra Leoneans should be addressed, as the socio-economic situation, consequent of the war is creating obstacles for reconciliation (Millar, 2011). There was a will to establish a special fund for war victims, however this was never implemented (Iloff, 2012).

The Fambul Tok programme did not provide for material compensation but did instead through the use of ceremonies create a process to repair the harm caused by the war. As this programme was carried out by an organisation, it did not have either the interest or the financial means to provide for restitution and therefore worked in creating social reparation of relationships (Iloff, 2012)

#### 5.4.4 Liberia

In its final report the TRC of Liberia recommended material compensation for victims of human rights violations, in order for civilians to reconcile after the war. These have however not been implemented there are no results to be found (De Ycaza, 2013).

## 6. Analysis

In this chapter, the findings are analysed in order to answer the research questions of: *What restorative mechanisms have been used in the four cases in relation to TJ?*, *what retributive mechanisms have been used in the four cases in relation to TJ?* And *How can retributive mechanisms contribute to restorative outcomes in the context of TJ?* These questions are asked in order to meet the research objective of this thesis, namely to analyse the restorative and retributive mechanisms used in the four case studies, in order to determine where these cases stand in the debate on restorative versus retributive justice. Furthermore, the third question addresses the possibility of retributive mechanisms having a contributing factor to restorative outcomes in the context of TJ.

### 6.1 Restorative versus Retributive Justice

As mentioned in chapter one: *introduction*, there is a debate on restorative and retributive mechanisms in TJ. The two are often presented as exclusive alternatives, as scholars of TJ and RJ tend to display the approaches as separate paradigms of justice. The TARR-model promotes a restorative approach with limited mechanisms of retributive justice (Wietekamp et.al, 2006). Further, Clamp and Doak (2012) argue the four elements of the model to be a valuable yardstick for assessing the restorative basis of TJ, as other approaches are according to the authors too focused on either processes or outcomes. This analysis, therefore, addresses the discussion of restorative versus retributive justice by analysing the findings of the four cases in order to determine where in practice these cases stand in the debate. Further, the advocated trend of a restorative approach to justice is discussed along with the restorative essences of retributive mechanisms which contribute to restorative outcomes, by drawing upon evidence of the findings.

*Table 1: Findings on Restorative and Retributive Approaches. Displayed by Mechanism.*

<b>Findings on Restorative and Retributive Approaches. Displayed by Mechanism</b>			
<b>Mechanisms of Transitional justice</b>	<b>Restorative Approach</b>	<b>Retributive Approach</b>	<b>Mixed Approaches</b>
<b>South African TRC</b>	X		
<b>ICTR</b>		X	
<b>National Genocide Trials of Rwanda</b>		X	

<b>The Gacaca Courts</b>			X
<b>The National Unity and Reconciliation Commission of Rwanda</b>	X		
<b>SCSL</b>		X	
<b>Sierra Leone TRC</b>	X		
<b>Fambul tok programme in Sierra Leone</b>	X		
<b>Liberian TRC</b>	X		
<b>The Liberian TRC Diaspora project</b>	X		

First of all, the findings display a range of results in relation to mechanisms of restorative and retributive approaches which were adopted by the transitional societies of this study. Table one, demonstrates the answers to the first two research questions of: *What restorative mechanisms have been used in the four cases in relation to TJ?* and *what retributive mechanisms have been used in the four cases in relation to TJ?* as each mechanism is presented in connection to each approach to justice. Further, by applying the elements of the TARR-model, one can see that, a retributive approach can have restorative values which can come to contribute to the process of healing and reconciliation. This was generally found in all cases, as the questions of the structured focused comparison demonstrates the restorative value of both restorative and retributive approaches. Both cases where retributive mechanisms in form of courts were implemented, the retributive approached seemed to have made contributions to TJ as an end goal, in relation to establishing truth and accountability, which was found to be necessary steps for the process of healing and the creation of consensus towards violations of human right. One example is Rwanda, where the main approach of retributive justice was found to be adopted but where contributions were found to these elements were made by retributive institutions and restorative mechanisms such as the National Unity and Reconciliation Commission had little or no impact in relation to the elements of TJ. Another, important aspect found, was that in cases where only restorative mechanisms where used or in the Gacaca court where incentives of lowered sentences were adopted, some civilians felt the element of criminal punishment was missing and would have wanted their perpetrators to received criminal punishment.

As seen in table two, below, South Africa and Liberia both adopted mainly a restorative approach to justice by focusing on the mechanism of TRCs, while in Rwanda, a mixed approach was adopted, although the main approach was of retributive essence. Lastly, in Sierra Leone a

mixture of both restorative and retributive justice was adopted. Further, the findings demonstrate that in Sierra Leone and Rwanda, the approaches were implemented with the intention of complementing each other. This was also the aim of the recommendations of the Liberian TRC. These findings, therefore, contradict the understanding of the two mechanisms being exclusive paradigms of justice. This leads one to draw the conclusion of the two approaches not being exclusive alternatives in practice when comparing the four countries of South Africa, Rwanda, Sierra Leone and Liberia.

Further, the reasons behind each country's adoption of their approach to justice are worth addressing as South African leaders found it difficult to adopt a culture of criminal punishment while dealing with a system of discrimination. However, this approach has been highly criticised for not addressing bystanders of the system and therefore adopting a culture of impunity. In Rwanda, leaders felt a retributive approach was needed in order to prevent similar incidents in the future. In Sierra Leone, leaders wanted an inclusive approach, considering many offender and victims were civilians. In Liberia, leaders wanted a fully restorative approach in order to avoid being held accountable through criminal punishment. One could therefore wonder if a fully restorative approach is wanted, if it in practice results in a culture of impunity.

In addition, the acclaimed approach of RJ with limited retributive mechanisms, presented in the TARR-model is not present in the findings of this thesis, as it is only in South Africa, such an approach can be somewhat found. This as Rwanda and Sierra Leone adopted mixed approaches and Liberia failed to implement the recommended actions of the TRC. The evidence does not provide comprehensive information on evaluation of this formula of justice and therefore one cannot disregard or reaffirm this claim. The findings of the four cases did not indicate a trend of completely restorative approach either, which means the advocated trend is not present in the four countries of this study. This does not mean it is not present at all, as other cases may indicate differently.

*Table 2: Findings on Restorative and Retributive Approaches. Displayed by country*

<b>Findings on Restorative and Retributive Approaches. Displayed by country</b>			
	Restorative Approach	Retributive Approach	Mixed approaches
<b>South Africa</b>	Mainly	Partly	Partly
<b>Rwanda</b>	Partly	Mainly	Mainly

<b>Sierra Leone</b>	Partly	Partly	Mainly
<b>Liberia</b>	Mainly	Non- existent	Non-existent

The findings presented in table two, demonstrate three of the four cases to have adopted both approaches to justice, mainly or partly when addressing crimes of conflict. The exception being Liberia, in which retributive mechanisms were never implemented due to non-comprehensive recommendations of the country's TRC. In addition, when comparing the results of table one with table two, one can see that although South Africa had adopted a fully restorative approach to justice when dealing with consequences of apartheid, there were retributive elements operating in relation to crimes not covered by the conditional amnesty provision. Although the findings in relation to retributive justice in South Africa show retributive elements to have had little significance and the process of determining criminal punishment to often be delayed. The findings thereby show all cases, with the exception of the missing information and failed implementation of recommendations in Liberia, to have adopted both approaches simultaneously or consecutively. This is highly evidential in Rwanda and Sierra Leone, where mixed methods and approaches were found. In these two cases traditional mechanisms were also applied, these will be further discussed below. When comparing table one and two the findings indicate the two approaches not to be exclusive alternatives in practice. Further, when applying the TARR-model, it is evident that the outcomes and values of the mechanisms are both contributing to the process of healing and reconciliation disregarding of restorative or retributive approach to justice. One can therefore, claim that when analysing the four cases of this study, retributive mechanisms can be found to be contributing to restorative outcomes. Furthermore, local ownership is found to be a contributing factor, as this was a lacking aspect of the ICTR and national court of Rwanda while being outlined as a successful element of the Fambul tok programme in Sierra Leone. Further, the findings demonstrate unequal power-relations to have been affecting factors for the work of the mechanisms, regardless of its approach to justice. This is an aspect which is not relevant for this particular study but it a subject which is needs of further investigation in relation to future research of this context.

In relation to the third research question, the findings show that retributive mechanisms can be a contributing factor in generating restorative outcomes, as the structure of the Gacaca courts, for example allowed for a restorative outcome although, the court relied on a retributive approach. However, the findings indicate there to be no clear cut answers on people's

experience of either restorative or retributive mechanisms, as people benefited from different mechanisms in all four cases. Furthermore, the findings display, the retributive approach to be wanted, as the cases where offenders were given a lower sentence, the victims felt the need for harsher punishments, in order for them to move on. On the other hand, the Fambul tok programme in Sierra Leone show that the element of inclusion is essential for reconciliation to occur. One could therefore argue in favour of inclusion and participation, disregarding of which approach is adopted. In addition, the findings of this thesis does not provide enough evidence to answer this question fully, however, one can see that retributive mechanisms did contribute to restorative outcomes. The questions of how and to which extent, is still in need of further research, as this is not elaborated on enough in the findings of this essay.

## 6.2 The TARR-model – An Evaluation

Table 3: Findings on International and National Mechanisms. Displayed by Mechanism.

<b>Mechanisms of Transitional justice</b>	<b>International</b>	<b>National</b>
<b>South African TRC</b>		X
<b>ICTR</b>	X	
<b>National Genocide Trials of Rwanda</b>		X
<b>The Gacaca Courts</b>		X
<b>The National Unity and Reconciliation Commission of Rwanda</b>		X
<b>SCSL</b>	X	
<b>Sierra Leone TRC</b>		X
<b>Fambul tok programme in Sierra Leone</b>		X
<b>Liberian TRC</b>		X
<b>The Liberian TRC Diaspora project</b>	X	

In table three, the findings display levels of implementation. As presented in chapter two; *theoretical framework*, figure two, the TARR-model divides the mechanisms into international and national along with non-judicial (restorative) and judicial (retributive) in relation to the four core-elements. The findings collected when using the core-elements and restorative sub-elements of the model, indicate, the division presented in figure two, to be problematic. This is evident when assessing the Gacaca courts, a mechanism which is in the model placed as national

and non-judicial and in relation to reconciliation while the findings of this thesis demonstrate the Gacaca courts to be a judicial (retributive) mechanism which contributed to all core-elements. This could however, be linked to interpretation of the model, as the circle could be indicating the Gacaca to have contributed to all elements. If this is the case, it is still highly misleading to place the Gacaca court in the non-judicial box, on the basis of it being a traditional approach to justice, as the court included criminal punishment. Further, the division presented in the model leads the reader to believe all traditional mechanisms are linked to the restorative approach, which findings of this thesis demonstrate is not the case in practice, as the Gacaca court adopted a retributive approach while the Fambul Tok programme in Sierra Leone adopted a restorative one. The findings thereby demonstrate the model to be successful in presenting restorative and retributive approaches as complementary to each other but it creates obstacles for analysis in its division of judicial and non-judicial along with national and international mechanisms, as the division found in practice is not clear-cut.

On the other hand, the model's value-based understanding allows for hybrid approaches to justice, which is found in Rwanda and Sierra Leone. Further, this approach allowed for an understanding of the possibility of retributive mechanisms contributing to restorative outcomes in relation to the four core-elements of TJ, as presented in the TARR-model.



## 7. Conclusions

The findings demonstrate, the debate on restorative and retributive justice in terms of being exclusive alternatives not to be present in practice in the four countries of this study. Further, there is no evidence indicating a trend in adaptation of completely restorative approaches to TJ, in the cases. This does not mean the advocated trend is to be disregarded, as other country cases may indicate different results. Instead, the findings indicate the practical approach to justice to be mainly hybrid, even though, each case leaned towards one approach more than the other. In addition, the elements of the TARR-model allowed for detection of restorative mechanisms in TJ along with assessment of the restorative basis of both restorative and retributive mechanisms. Retributive mechanisms were found to have a contributing value to restorative outcomes, however, this needs to be further analysed, in order to determine to which extent.

Furthermore, local ownership was found to be a contributing factor to the four elements of TJ in the four cases. The acclaimed formula of the TARR-model, which advocates for RJ with limited retributive mechanisms cannot be either acclaimed or disregarded using the evidence of this thesis. However, the reason behind Liberia's choice of justice indicates RJ to be perceived as adopting a culture of impunity in practice of this country. Additionally, the division of mechanisms found in figure two, in relation to retributive and restorative along with international and national proved to be problematic when analysing the evidence of this thesis, as the mechanisms proved to be more complex than the division allowed for.

For future research, this thesis suggests evaluation of the mechanisms used in TJ disregarding their foundational approach to justice. Further, analysis of hybrid approaches to justice within the field of TJ is recommended, as this would allow for a more extensive understanding of how the approaches do and can complement each other. Traditional and context-based approaches to justice along with local ownership are also recommended as future areas of study in relation to TJ, as these aspects appeared as contributing to the elements of TJ in the four cases on several occasions. Furthermore, it would be beneficial to conduct future research on how and to which extent retributive mechanisms contributes to restorative outcomes in the context of TJ.

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