

TRANSITIONAL JUSTICE: HOW A LACK OF LEGITIMACY IS HINDERING  
DEMOCRATIZATION

by  
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## **Abstract**

Transitional Justice is a method to inject a sense of accountability and promote reconciliation in a post-conflict society laced with human rights abuses, war crimes, and poor governance structures. The methods consist of both judicial and non-judicial options meant to hold bad-actors accountable, unify divided factions, and work towards democratization. Building trust within the community and having the process viewed as legitimate is critical to the transition's success. Without the affected populations supporting the process, it can have an adverse effect and deepen the divisions it is supposed to heal. This thesis shows how legitimacy is an integral process to transitional justice proceedings succeeding. The paper compares countries where its leaders have been indicted for crimes against humanity by either the United Nations or a criminal tribunal created to specifically deal with the alleged transgressions. It will outline the three main areas where legitimacy is most frequently undercut and how it deteriorates the process's integrity. The three areas, trust between the local populations, the role of political elites, and the lack of social mobilization are discussed below.

The first chapter shows how political elites, both domestic and international, engineer transitional justice's implementation to meet their own goals. As seen in Serbia, and Iraq, they co-opt revolutions and transitions; they manipulate the process for political gain and they ignore repercussions on the population. The second chapter demonstrates how different transitional justice methods are perceived among local populations and how choosing the right combination of methods to apply in each situation is challenging. Comparing transitional justice implementation in Uganda and Rwanda shows how both judicial and non-judicial methods presented pitfalls in the transition. Judicial measures

were challenging when determining who should be tried, if victims included soldiers fighting against their will, and if trials were exploited by the victors to punish their enemies. Finally, the paper demonstrates the importance of reaching out to affected populations to establish legitimacy during the transition. Those implementing transitional justice are unable to overcome their obstacles while conducting outreach and fail to research best-practices, make outreach a priority, and allocate adequate funding. Modeling best practices on global health campaigns operating under similar constraints provides a foundation for next steps. Realizing how poor outreach decimates a transition's chance at success is an under prioritized but important component of any transition.

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## Table of Contents

Introduction.....	01
Chapter 1: Political Elites: The Puppeteers of Transitional Justice.....	07
Chapter 2: Transitional Justice: Several Options, No Solutions.....	26
Chapter 3: Outreach: Making it a Priority.....	55
Conclusion.....	78
Bibliography of Research .....	81
Curriculum Vitae.....	89

## **INTRODUCTION**

Violent non-democratic regimes are frequently marred by decades of gross human rights violations and have institutionalized the worst governing practices. Reversing these practices, building new, legitimate and lasting institutions, and helping a nation or region heal are among the main hurdles when these regimes are removed from power. Transitional justice represents a set of both judicial and non-judicial measures that countries can implement to help a population mend and rebuild governing institutions.

My thesis shows how mistrust can be a major challenge while a country transitions between governments and I will examine three different areas that may lead to increased trust, participation and legitimacy from a country's population. This transition is important because several experts suggest that transitional justice furthers democratization, helps populations heal in a post-conflict society, and can ease divisions between once warring societies. Additionally, transitions can occur in countries where U.S. and other armed forces are present and failings within the transition process leave soldiers and peacekeepers at risk. Furthermore, for countries where soldiers are not present, international governments (mainly from the West) outside of the affected conflict zone largely contribute to funding these transitional justice proceedings and therefore have an interest in seeing them performed well.

The first chapter shows how the political elite's involvement affects the implementation of transitional justice measures. The second chapter argues how different transitional justice measures employed in a transition can contribute to the population's perception of legitimacy. Lastly, the third chapter shows how transitional justice's implementers' efforts to reach out to its population and inform them about

transition efforts, to encourage their participation, and make victims feel that perpetrators are held accountable leads to greater acceptance amongst the population.

Improving transitional justice practices is critical for post-conflict societies and is of interest to the United States. Not only does the U.S. serve as a large contributor to the international organizations that tackle these transitions, but their own security interests require them to prevent further degradation in conflict-ridden societies.

For example, as of 2014, conflict in Syria has left over three million Syrians displaced, hundreds of thousands killed, and spawned the creation of the Islamic State of Iraq and the Levant (ISIL). The conflict features strong sectarian overtones, accusations of war crimes, and a growing humanitarian crisis. The U.S. has provided over \$3 billion in humanitarian aid alone since the conflict began. Additionally, the United States and dozens of other countries have launched a coalition against ISIL, putting U.S. soldiers at risk. When this region transitions into a post-conflict society, it will be in dire need of proper transitional justice proceedings to stave off further sectarian conflict and rebuild the region.

This critical restructuring is nuanced and despite the myriad of options put forth by the international community and academic research, clear definitions for best practices in conducting transitional justice prove difficult to find. Current transitional justice practices lack the tools needed to build trust amongst the community, preventing the justice process from being viewed as legitimate. I argue that losing legitimacy is one of the biggest obstacles transitional justice must overcome. Democratization, good governance, and reconciliation amongst affected populations all rely on a successful transition.

The first chapter demonstrates the difficulties in uniting fractured societies and multiple stakeholders, especially political elites, within a transitioning society. The chapter argues that the elite's interests play a large role in post-conflict societies. As such, they can act as puppeteers that incite political unrest, promote revolutions, and thereby influence the methods of transitional justice being applied. Examining U.S. actions in Iraq during de-Baathification and transition activities in Serbia after Yugoslavia split shows both domestic and international political elites manipulating the process for personal gain.

In Iraq, U.S. officials disbanded the entire Iraqi military and civil service, leaving hundreds of thousands of people unemployed, angry at the U.S., and armed. In an effort to rid the government of members loyal to Saddam Hussein, the U.S. dismantled almost all public services including teachers and other administrative officials who joined the Baath party just to have access to employment. In Serbia, the new government reluctantly implemented transitional justice to gain recognition and financial aid from the West. They only committed to the bare minimum, underfunded the process, and never completed many of the objectives they stated. Furthermore, candidates seeking political office either supported or thwarted the process based on their allegiances to the West. Without any concern for domestic consequences, they performed the process poorly, politicized who they arrested to gain political points, and incited ethnic tensions to win elections.

In both cases, domestic and political elites overtook the transition to further their own political agenda for financial and political gain. They failed to take into consideration the impact their decisions would have on the transition. Both instances bred

mistrust amongst the community and further inflamed ethnic tensions that the transition was meant to quell.

In the second chapter, I argue that transitional justice being viewed as legitimate is critical to ensuring its success. Deciding who, how, and where proceedings are conducted sets the foundation for a strong transition. Since establishing legitimacy is a main component to the transition, ensuring the process is conducted by people the community trust is a major factor. Neglecting to do so hinders the process and breeds mistrust. Failing to incorporate the potential for mistrust when deciding who conducts transitional justice is a major crack in the transition's foundation. To demonstrate the significance, I use a comparative case study of Uganda and Rwanda, showing issues with both judicial and non-judicial options, and emphasizing the importance on deciding who will carry out the methods of transitional justice.

Violence in Uganda spanned several years, became divided along tribal lines, and devolved from a counterinsurgency against the Ugandan government into an ethnic conflict. The rapid and indiscriminant nature of Rwanda's genocide produced an immediate need for justice and reconciliation between tribal groups but both judicial and non-judicial options were problematic. Examining transitional justice efforts in regards to the Lord's Resistance Army in Uganda and Rwanda's genocide show how post-conflict divisions serve as an obstacle to a successful transition.

The final chapter shows how transitional justice practitioners fail to increase participation in the process. Referred to as outreach, it is how a country engages with its citizens in regards to implementation. A variety of tools can be used including the media, distributing information, or grassroots mobilization to enhance legitimacy and increase

participation. The third chapter hypothesizes that increased outreach efforts yields increased levels of participation and better perception during transitional justice proceedings.

When the population perceives transitional justice mechanisms being used as illegitimate they are less willing to participate. Activities to increase their participation can translate into a more successful transition. While outreach has been designed specifically to motivate participation, it is a largely ignored mechanism. The hurdles outreach programs face overwhelm the implementers and lead to little or no outreach being conducted. Outreach is under prioritized, underfunded, and underutilized. The lack of literature and research on the subject prompts the paper to examine global health campaigns to show how valuable effective outreach can be. Since global health campaigns operate in many of the same conditions as transitional justice implementers, comparing their methods is a useful tool. Better understanding the potential of outreach efforts along with examples of best practices taken from global health campaigns can help determine if increased funding levels for that purpose would be helpful in the overall process.

This thesis demonstrates the importance of transitional justice and shows how the process is delegitimized. It argues theories on best practices are inconclusive and methods are under-researched. First, I show how political elites are truly the puppeteers of transitional justice and greatly diminish legitimacy to serve their own purposes. Then, I argue current practices are not sufficient in deciding which methods, judicial or non-judicial, are best-suited for particular situations to increase legitimacy. Lastly, I show how outreach and social mobilization campaigns are consistently underutilized during the

transition, leaving local populations misinformed, unaware of proceedings, and disillusioned by the process.

## **Chapter 1: Political Elites: The Puppeteers of Transitional Justice**

### **INTRODUCTION**

When non-democratic regimes that commit gross human rights violations disregard international law and poor governing practices are overthrown, a critical transition must take place. These regimes carried out human rights violations over decades and have institutionalized the worst governing practices. Reversing these practices, building new, legitimate and lasting institutions, and helping a nation or region heal are among the country's main hurdles. To tackle the work ahead, countries can implement transitional justice, a set of both judicial and non-judicial measures, to help a population heal and rebuild governing institutions. The tools available for transitional justice can be judicial—International Criminal Court (ICC), ad hoc tribunals, or a hybrid of the two—or non-judicial—Truth and Reconciliation Commissions (TRC), victim compensation, non-criminal sanctions, amnesties, or a concept of forgetting atrocities to move forward.<sup>1</sup> Regardless of the method chosen, the tools are meant to either punish or pardon the perpetrators, with the hope of balancing reconciliation with retribution.

Transitional justice tools can be instrumental after a violent regime is overthrown, when political stability is absent, and the state's judiciary, military, and civil societies are in flux. Additionally, a transition usually features several actors. These can include the recently ousted political leaders who are hoping to avoid prosecution, factions fighting to take control of the new government, the general public, and various international actors; all of whom can have agendas ranging from upholding international law to influencing

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<sup>1</sup>For a further breakdown of these methods, please review Neil Kritz, "Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights," *Law & Contemporary Problems* 59 no.4 (1996): 127-152.

budding institutions. Despite the extensive options available, reconciling competing stakeholder's motives to establish governmental stability is still difficult.

The downward spiral of failed policies mimics the warnings Dietrich Dörner references in *The Logic of Failure: Recognizing and Avoiding Error in Complex Situations*. This break down is an important tool that can be applied to transitional justice proceedings to see where the political elites made mistakes and derailed the reconciliation process. Dörner's decision-making trends that led to failure were:

[1] acted without prior analysis of the situation, [2] failed to anticipate side effects and long-term repercussions, [3] assumed that the absence of immediately obvious negative effects meant that correct measures had been taken, [4] let over-involvement in "projects" blind them to emerging needs and changes in the situation [5] were prone to cynical reactions.<sup>2</sup>

Political elites are "persons whose strategic positions in large and powerful organization and movements enable them to influence political decision-making directly, substantially, and regularly."<sup>3</sup> Current transitional justice focuses on healing and reconciling the population and enforcing international law. Stability is often best achieved by understanding the prominent players' (political elites) motives and working to reconcile their concerns. This helps ensure all stakeholders work together in rebuilding their government.

International organizations, governments, civic organizations, and security forces can all benefit from a better understanding of political elites' goals and how they might interfere with transitions. Failed transitions can breed dysfunction and destabilize the security, economic and political apparatus in both the transitioning state and its

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<sup>2</sup> Dietrich Dörner, *The Logic of Failure: Recognizing and Avoiding Error in Complex Situations*. Translated by Rita Kimber and Robert Kimber (New York: Basic Books 1996, 18.

<sup>3</sup> John Higley and Gwen Moore, "Political Elite Studies at the Year 2000" *International Review of Sociology* 11 (2001): 176.

neighbors. For a country that has spent decades enduring extrajudicial killings, abuse, kidnappings and torture, and justice, redemption by the repressed will be a top demand.<sup>4</sup>

How to forge trust between divided communities and multiple stakeholders, especially political elites, within a transitioning society is still largely unresolved within transitional justice literature. In the following sections, I show how political elites factor into transitioning states. I argue that the elite's interests often play a large role in a transition, and can act as puppeteers that incite political unrest, promote revolutions and thereby prompt forms of transitional justice to be applied. Citing examples from Croatia, Serbia, Iraq, and Egypt, I explain how political elites can alter the transition's course. Lastly, using the de-Baathification in Iraq, I illustrate the national security concerns posed for both the civilian and security populations when process goes awry.

### **Political Elites and Uprisings**

Regime change can come about in different ways. Countries primed for regime change may have populations that peacefully demand change, freedom from oppression, equal treatment, and a voice in government. Regime change may also occur as the result of mass demonstrations, rallies, and even armed conflicts. World leaders frequently tout these "popular" uprisings as a call for democracy. For example, in a statement on January 14, 2011, President Obama called the uprisings in Tunisia a, "brave and determined struggle for the universal rights that we must all uphold."<sup>5</sup>

Literature also suggests that elites often act as puppeteers to ignite the masses and prompt regime changes to benefit their own interests. The following section uses the

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<sup>4</sup> Neil Kritz, "Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights," *Law & Contemporary Problems* 59 no.4 (1996): 127.

<sup>5</sup> U.S. President (Obama), "Statement by the President on the Events in Tunisia," press release, January 14, 2011, at <http://www.whitehouse.gov/the-press-office/2011/01/14/statement-president-events-tunisia>.

literature to show how political elites can play influential roles in political uprisings and are invested in the uprising's outcome. Specifically, political elites are interested in who comes to power once an uprising is over and how those formerly in power will be held accountable. The literature points out the elite's involvement in the outcome which helps the paper show why they would have an interest in inserting themselves into potential transitional justice proceedings.

While protestors genuinely ask for justice, democracy, and truth, the elites may be exploiting their grievances. The unhappy populace may be nudged by elites looking to legitimize the rebellion and garner popular support. End-results, such as over-thrown governments, may secure the elites' goals for political, economic and security control. Paul Collier explores the connection between a population's grievances and civil conflict in the world's poorest countries, and finds business interests or commodity control drive rebellion more frequent than repression or income inequality.<sup>6</sup> He suggests that rebel motivations are often times as dubious as the oppressors.<sup>7</sup> Research also shows that economic stagnation and decline combined with a nation's access to commodities, such as diamonds and oil, increase chances for conflicts and rebellions pushing for regime change.<sup>8</sup> Collier cites diamond mines and control of natural resources as ulterior motives for conflicts in Sierra Leone, Zaire and the Republic of Congo.<sup>9</sup> Furthermore, research shows that rebels in search of economic and political control exploit or even fabricate

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<sup>6</sup> Paul Collier, *The Bottom Billion: Why the Poorest Countries Are Failing and What Can Be Done about it* (Oxford: Oxford University Press, 2007), 19.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid., 21.

<sup>9</sup> Ibid., 25-29.

grievances, whereas the populations that are actually marginalized are too impoverished and destitute to rise up.<sup>10</sup>

A similar tale unfolded in Egypt, where political and military elites are competing for control amid uprisings, elections and political unrest. Mubarak reigned over Egypt for decades suppressing freedom of press, religion and assembly. Mubarak's government built up a strong military, discouraged civil society from flourishing, and prevented any unbiased judiciary from taking hold. In 2011, Egyptians took to the streets calling for his resignation and end to his dictatorial role. Astonishingly, the military refused to aid Mubarak in his efforts to quiet down protestors. The military's unwillingness to get involved received international praise, and Mubarak was soon overthrown.<sup>11</sup> Some literature contradicts the suggestion that the Egyptian political system was brought down by unrelenting pressure of the masses. Contrary to calls for democracy being the reason for Mubarak's downfall, some literature suggests the uprising was actually born out of political elites fighting over who would succeed Mubarak.<sup>12</sup>

Prior to the revolution, Hosni Mubarak was promoting his son Gamal as his potential successor. This worried the military and ruling elite, because Gamal's background was very different from previous Egyptian leaders. After Egypt's monarchy was overthrown in the 1950s, the Egyptian leaders strong-armed their way to the top with assassinations, overthrows and the military's backing. Leaders came in only after military approval and demonstrated support of the protectionist economic policies that were in

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<sup>10</sup> Ibid., 24.

<sup>11</sup> Ewan Stein, "Revolution Or coup? Egypt's Fraught Transition" *Survival* 54 (2012): 45-46.

<sup>12</sup> Ibid.: Gumer Isaev. "Russia and Egypt: Conflicts in the political elite and protest movements in 2011–2012," *Journal of Eurasian Studies* 5 (2014): 60-62.

place and would continue to benefit the ruling elite.<sup>13</sup> Gamal's lack of military experience, combined with his support for liberal economic policies, went against tradition.<sup>14</sup> The military failed to intervene and quell protests in Tahrir Square, seeing an opening to disrupt Mubarak's family succession and appoint someone from their own guard in the process.<sup>15</sup> Predictably, in March of 2014, Egypt's top military leader, General Abdel Fattah al-Sisi, once heralded as a champion for the people, announced his intention to run for president of Egypt. Simultaneously in March, Egyptian courts sentenced over 600 people to death for supporting the recently deposed Mohammed Morsi.<sup>16</sup>

### **Political Elites and Transitions**

Aside from monopolizing on conditions to incite rebellion, political elites also play a role in transitions, jockeying for power as new institutions and norms are established. Some elites from former regimes may attempt to maintain power and their own safety. Others, likely central to the rebellion, maybe ready to become the new elite and take control of the power structures they sought to overturn. Critical goals of the transition are to quell fears of retribution against the former elite, incorporate the new elite and avoid accusations of conducting victor's justice.<sup>17</sup>

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<sup>13</sup> Isaev, "Russia and Egypt," 61-64.

<sup>14</sup> Ibid.

<sup>15</sup> Stein, "Revolution Or coup?" 45-46.

<sup>16</sup> "Amnesty International," *Amnesty International*. April 28, 2014. <http://www.amnesty.org/en/news/egypt-unfair-trial-death-sentences-make-mockery-justice-2014-04-28> (accessed April 26, 2014).

<sup>17</sup> Robert Inman and Daniel L. Rubinfeld. "Federal Institutions and the Democratic Transition: Learning from South Africa" *Journal of Law, Economics, and Organization* 28, no.4 (2012): 784.

### ***Elite Capture***

As mentioned before, political elites strive to stay in power to control precious resources and commodities.<sup>18</sup> They can use these resources to cement their financial standing, and also use control of precious resources to either gain political support among some factions, while withholding those resources and marginalizing others.<sup>19</sup> The literature calls this “elite capture.” Elite capture can include using “public goods for private gain; community resource theft; falsifying financial accounts...biased selection of beneficiaries [and] exclusion of specific community members or groups from receiving benefits or social goods.”<sup>20</sup> While repressive regimes often have similar characteristics, scholars purport elite capture occurs when influential people participating in the peace building process misuse their power to their advantage. To mitigate elite capture, those implementing the transition can either exclude the elites, known as “counter elite approach” or try and find the elites who can be persuaded to use their power for good, labeled the “co-opt elite approach.”<sup>21</sup>

### ***Intra-Elite Conflict***

Literature regarding political elites in transitions also outlines intra-elite conflict, which can devolve into intra-elite violence. Intra-elite conflict takes many forms. Factions mobilize against their competitors and vie for control of powerful resources. This power-struggle can occur by organizing protests against their competitors or through patronage for contractors and businesses they favor.<sup>22</sup> The conflict can also escalate into

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<sup>18</sup> Collier, *the Bottom Billion*, 24-25.

<sup>19</sup> Melissa T. Labonte, “From Patronage to Peacebuilding? Elite Capture and Governance from below in Sierra Leone” *African Affairs* 111, no. 442 (2012): 93.

<sup>20</sup> Labonte, “From Patronage to Peacebuilding,” 95-96.

<sup>21</sup> *Ibid.*, 104-105.

<sup>22</sup> Karl van Holdt, “South Africa: The Transition to Violent Democracy” *Review of African Political Economy* 40 (2013): 598-600.

intra-elite violence, where members resort to eliminating their opposition through assassinations, violence, intimidation, and mobilizing activists to become violent.<sup>23</sup>

These conflicts can subside if stable elite coalitions are brokered and factions feel they have effective non-violent avenues to impact change.<sup>24</sup>

### **International Political Elites**

Academics also spend time examining the role international political elites play in transitional justice's implementation. As conducting transitional justice becomes more commonplace in post-conflict society, the United Nations (UN) has become increasingly active.<sup>25</sup> The UN has been involved in several stages of the justice process. It assists in constitution-drafting, judicial proceedings, setting up reconciliation commissions and outlining victim reparation programs. In several cases, it will also either train or provide its own judges, lawyers, and clerks to supplement in-country efforts.<sup>26</sup> The other way international elites can get involved is via conditionality. Explored further in the Serbia case study, conditionality is when international actors tie assistance, loans, international acceptance, and foreign policy decisions to a post-conflict state with their willingness to engage in transitional justice practices; most frequently, in regards to arrests, criminal tribunals, and extraditions to the Hague.<sup>27</sup>

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<sup>23</sup> Ibid., 599-600.

<sup>24</sup> Ibid., 602; John Higley and Michael G. Burton, "The Elite Variable in Democratic Transitions and Breakdowns [1989] *Historical Social Research* 37 (2012): 251.

<sup>25</sup> Patricia Lundy and Mark McGovern, "Whose Justice? Rethinking Transitional Justice from the Bottom up," *Journal of Law & Society* 35 (2009): 270-271.

<sup>26</sup> Ibid., 274.

<sup>27</sup> Marlene Spoerri, "Justice Imposed: How Policies of Conditionality Effect Transitional Justice in the Former Yugoslavia," *Europe-Asia Studies* 63 (2011): 1827.

## **Elites and their competing interests**

The literature shows that ulterior motives and power grabs, not oppression, are a major cause of regime change. Competing interests of political elites can derail the transition process and put both civilians and soldiers at risk. Understanding the competing factions and their motives can lay the foundation for the challenges on the road to stability. It can help provide models for what to expect in future transitions and enable us to predict the obstacles en route to democracy. Only after a nation has stabilized, and risk for devolution into more violence is minimized can legitimate governing institutions take root. Neutralizing elite factions can calm hostilities and enable political elites to make productive decisions that bring civil rest to their society.

## **METHODOLOGY**

A comparative case study of Serbia and Iraq effectively illustrates how both domestic and international political elites can co-opt transitional justice procedures and disregard the need for reconciliation among victims. Comparing these two countries shows the importance of focusing transitional justice policies on affected populations to foster trust amongst the community.

Serbia and Iraq were chosen because both countries experienced conflicts in which their leaders were tried for crimes against humanity. Furthermore, both countries have well-documented instances of political elites dictating policies that created mistrust and fueled sectarian angst that transitional justice implementation works to counter. The case studies trace how transitional justice proceedings in Serbia and Iraq furthered domestic divisions and, especially in Iraq, deepened divisions between already warring religious factions.

Years of conflict in the former Yugoslavia and the eventual independence of Serbia came at the expense of thousands massacred, including young children, with disregard for ethnic lines. The U.S. led invasion of Iraq ousted its brutal dictator Saddam Hussein. The West's efforts to promote democratization and repair Iraq's civil and military institutions by removing perceived political bad actors left people feeling unjustly victimized and unemployed with easy access to arms. Examining transitional justice efforts in both Serbia and Iraq shows how post-conflict reforms can quickly become dominated by political elites, leaving those most in need of reconciliation as an afterthought.

## **Serbia**

In the 1990s, as Yugoslavia began to split, the region spiraled into violent ethnic-driven conflict led by Serbian leader Slobodan Milosevic. Constant shelling, bombings, and brutal murders by Milosevic's soldiers forced people underground and into shelters. When they emerged, they recounted sites of corpses of both adults and children indiscriminately strewn about after being dismembered mercilessly.<sup>28</sup> Serbs were also rounded up, interned in camps, summarily executed, and disposed of in mass graves.<sup>29</sup>

Upon Serbia's creation, the new government reluctantly implemented transitional justice policies to deal with atrocities such as the massacre in Srebrenica that left 7,000 young boys and men dead.<sup>30</sup> Competing goals from elites in the international community and the new governments resulted in a diluted process focused on placating power-

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<sup>28</sup> Janin Natalya Clark, "The ICTY and Reconciliation in Croatia." *Journal of International Criminal Justice* 10 (2012): 401.

<sup>29</sup> Clark, "The ICTY and Reconciliation in Croatia," 402.

<sup>30</sup> Jelena Subotic, "The Paradox of International Justice Compliance," *International Journal of Transitional Justice* 3 (2009): 367.

players instead of reconciling the population.<sup>31</sup> In this case, emerging leaders faced pressures from the International Criminal Tribunal of Yugoslavia (ICTY) to extradite Slobodan Milosevic and other accused war criminals to stand trial. However, the population did not believe that exporting the process to the ICTY would deliver results, nor were they confident the ICTY could provide catharsis by holding protracted trials for only a few high-ranking individuals.<sup>32</sup> Since Serbia was undergoing transition, the international community leveraged aid and assistance in return for compliance to its preferred transitional tools.<sup>33</sup>

After Milosevic fell from power, a nationalist president, Vojislav Kostunica, and democratic-leaning prime minister, Zoran Djindjic, were sworn into office.<sup>34</sup> The West pushed the new leaders to support transitional justice policies immediately. Unfortunately, much of the Serbian population did not want their government to hand former leaders over to the ICTY and furthermore, Djindjic and Kostunica disagreed on how to move forward.

Only 11% of Serbs supported the transfer of Milosevic to The Hague. However, the United States and the European Union (EU) tied much-needed aid and loan packages to Serbia complying with international standards and turning over Milosevic.<sup>35</sup> This policy, known as conditionality, pushed Serbian leadership to balance the desire between staying in office with the need for procuring international assistance and Western support, including a pathway into the EU. Kostunica, opposed to the idea of international compliance, refused to cooperate despite international threats to cut off aid. He also

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<sup>31</sup> Brian Grodsky, "International Prosecutions and Domestic Politics: The Use of Truth Commissions as Compromise Justice in Serbia and Croatia," *International Studies Review* 11 (2009): 687.

<sup>32</sup> Grodsky, "International Prosecutions," 690.

<sup>33</sup> *Ibid.*, 700.

<sup>34</sup> Subotic, "The Paradox," 368.

<sup>35</sup> Grodsky, "International Prosecutions," 696.

offered local alternatives for undertaking justice such as domestic trials and truth and reconciliation commissions.<sup>36</sup>

His decisions to ignore the West and implement his own methods of transitional justice were largely ineffective. First, Prime Minister Djindjic, prioritizing EU acceptance and aid, arranged for Milosevic to be arrested behind President Kostunica's back.<sup>37</sup> Soon after, Serbia's paramilitary forces assassinated Djindjic, leaving a power vacuum to be filled with radical and nationalists that ignored international indictments and funded the accused criminals' defense before the ICTY.<sup>38</sup> The ICTY applied pressure once again, this time indicting military officials that served in the Serbian government.<sup>39</sup> In response, Kostunica turned over three generals under the policy of "voluntary surrenders." Subsequently, the generals received significant domestic support and were labeled as patriots whose sacrifices served the good of their country. Additionally, Kostunica avoided having to explain the generals' crimes.<sup>40</sup>

Kostunica's local justice efforts were thinly veiled attempts at alleviating international pressure without accomplishing any reconciliation. The reconciliation commission was hastily created with poor funding, no international consultation, and was authorized to gather its information solely from open-source material. Additionally, the commission was primarily staffed by Serbian nationalists who were given no clear guidelines, and had no authority to interview the civilian or military populations.<sup>41</sup>

Several local leaders later stated on the record that the commission was an international

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<sup>36</sup> Ibid.

<sup>37</sup> Subotic, "The Paradox," 369.

<sup>38</sup> Ibid., 370.

<sup>39</sup> Ibid.

<sup>40</sup> Subotic, "The Paradox," 371.

<sup>41</sup> Grodsky, "International Prosecutions," 697.

ploy that lacked real substance. In the end, it failed to publish any findings and its website eventually turned into a pornography site.<sup>42</sup>

## **Iraq**

After the United States invaded Iraq, it quickly wanted to employ a process akin to de-Nazification in an effort to purge the civic and security institutions of the Baath Party, the party of Saddam Hussein. Originating in Syria, Baathism “is a secular Arab nationalist political ideology... is vague and heavily nationalistic.”<sup>43</sup> The Baath Party was set up to rely on secretive and personal relationships with membership only being reserved for a small group of people. After Hussein’s ascension to power, he relaxed the registration process to increase membership and include all sectors of military and civilian institutions.<sup>44</sup> This made the Baath Party the ruling party in Iraq. The exact structure of the Baath Party is still murky because of its secretive nature. Saddam’s tendency to control the country through propaganda, education, and security forces ensured that Baath Party members ran most of the civic and security institutions. At the time of Hussein’s fall, some estimates show party membership was around 2 million people.<sup>45</sup>

After the 2003 U.S.-led invasion of Iraq, the U.S. implemented a policy of de-Baathification to prevent the party and its elites from returning to power, and preventing successful democratization. In May 2013, the U.S. Department of Defense recruited former ambassador L. Paul Bremer to spearhead de-Baathification efforts via the Coalition Provisional Authority (CPA). CPA was the temporary government set up by

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<sup>42</sup> Ibid., 697.

<sup>43</sup> Miranda Sissons and Abdulrazzaq Al- Saiedi, "A bitter legacy: Lessons of de-Baathification in Iraq." *International Centre Transitional Justice*, New York (2013):3.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid., 6.

the U.S. and its coalition forces to shepherd Iraq through its transition from Saddam Hussein's rule to a more democratic structure. The CPA dismissed members from civil services based on their rank within the party, assuming that more senior members were ideologically tied to party ideals and more likely to have committed atrocities.<sup>46</sup> While the original policy was to dismiss the top two levels of civil society, Bremer decided the top four levels of the Iraqi government and ministries were "true believers" and expanded the policies. This expansion led to 85,000 civilians losing their jobs, including 40,000 teachers who joined the Baath Party solely to gain employment.<sup>47</sup>

The decision was additionally made to completely disband all military and security forces, which took the estimated number of soldiers impacted from 25,000 to 400,000.<sup>48</sup> Disbanding the military left thousands of young men with access to weapons, unemployed, and stripped of their prestigious social standing. Many critics argue this complete disarmament greatly influenced the bloody insurgency that took place from 2004-2008, claiming lives of Iraqis and Americans.<sup>49</sup> In civil society, teachers, administrators, judicial, provincial and state employees were all let go of and banned from participating in the future government positions. Schools stopped working, civil institutions ceased to exist and students were unable to receive an education or graduate on time.<sup>50</sup> These purges were done without individual criteria or investigations into past actions. The decision was based on rank in the party and led to sweeping layoffs that

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<sup>46</sup> Ibid., 9.

<sup>47</sup> James P. Pfiffner, "US Blunders in Iraq: De-Baathification and Disbanding the Army." *Intelligence & National Security* 25 (2010): 78-79.

<sup>48</sup> Carnes Lord, *Proconsuls: Delegated political-military leadership from Rome to America today*. (New York: Cambridge, 2012), 194-195.

<sup>49</sup> Sissons, "A bitter Legacy," 21.

<sup>50</sup> Ibid.

disproportionately impacted the Sunni minority who already feared retribution from the Shiite majority in a post-Hussein Iraq.<sup>51</sup>

## **ANALYSIS**

Comparing the two cases to existing literature on transitional justice policies confirms predictions that elites can control and capture the process for their own benefit. Additionally, analyzing events in Iraq and Serbia against Dörner's trends on failure shed light on where things went wrong. Examining the failed de-Baathification process sheds light on the decision making process by international political elites, in this case, the U.S. national security and defense advisors. In Serbia, the transition was somewhat successful because of the ICC's ability to prosecute bad actors and Serbia's free and fair elections. However, the new government largely ignored reconciliation efforts due to friction between domestic and international political elites. Both cases exhibited many of Dörner's signs regarding poor decision-making and ineffective policies, and were driven by the motives of political elites.

In Iraq, Bremer acted without prior understanding of the situation. He lacked appropriate relevant work experience. He "had no background in the Middle East, did not know Arabic, had never been in the military, and had never run a large organization."<sup>52</sup> Not speaking the local language and failing to understand the complexities of U.S. - Middle East relations, specifically with Iraq, was detrimental.

Bremer's decision to completely dissolve Iraqi security forces was made without adequate consultation with his superiors in Washington, D.C., thus prohibiting him from seeing the ripple effects the actions would cause. His decision led to larges masses of unemployed men who could readily access arms. They were stripped of their respectable

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<sup>51</sup> Ibid., 15.

<sup>52</sup> Lord, *Proconsuls* 191.

positions and presumed guilty without individual investigations.<sup>53</sup> Moreover, the readings indicate Bremer failed to consider other less-extreme options, such as removing loyal Baathists while reinstating less radicalized soldiers into the new security apparatus.<sup>54</sup>

Furthermore, it took time for the insurgency to take hold and its lack of immediate appearance allowed U.S. forces to think this policy was successful. This delay in consequences led Bremer to believe he was on the right track, further encouraging him to continue down the same path without re-examining the policies' effectiveness.

Additionally, the fear of Baathist's coming back into power clouded decision-makers' judgments. They were fixated on delegitimizing the Baath Party rather than reconciliation or rebuilding strong governing institutions. Bremer became focused on delegitimizing the Baath Party and tied a successful transition to their dismantling. As a result, he was unable to have a holistic view of the different dynamics in Iraqi politics; especially the impact religious tensions have on reconciliation efforts.

Lastly, reports frequently noted Bremer's lackluster attitude in dealing with the Iraqi people. Instead of cultivating relationships with future Iraqi leaders, Bremer scoffed, assumed their incompetence, and treated them as a hurdle to surpass to implement his agenda. Insulting the Iraqi population garnered more mistrust between the U.S. and Iraq at a time when the U.S. needed to exert itself as a central player in Iraq's reconstruction in order to accomplish its policy objectives.

In Iraq, international political elites wanted to prevent a violent regime from regaining power and instill the beginnings of a new democracy. Unfortunately, their strong-armed tactics fueled ethnic conflict, raised unemployment, and ignored the

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<sup>53</sup> Sissons, "A bitter Legacy," 15.

<sup>54</sup> Lord, *Proconsuls* 193-195

importance of reconciliation between Sunnis and Shia Muslims. Instead of working with domestic and international civil societies to foster trust between divided communities, top-down regulations from political elites co-opted useful transitional justice policies and enabled tribal and ethnic divisions to overpower good governing practices.

In Serbia, at least three of Dörner's five indicators were clearly present. While international elites understood the importance of transitional justice, they misjudged long-term consequences of their actions on reconciliation. Due to their success with capturing bad actors and subsequent trials, international elites felt they were on the right track.

Both international and domestic political elites over-looked the long-term effects their policies would have on reconciliation efforts within the former Yugoslavia. The domestic political infighting caused domestic turmoil and hindered cooperation with the ICC. The most notable failing in Serbia was both the international and domestic elites' over-emphasis on short-term objectives. Unable to assess ripple effects of their actions, political elites detracted from their end-goals of legitimate governance and accountability within Serbia's new government. Putting re-election efforts ahead of reconciliation, domestic elites conducted sham fact-finding missions and treated truth and reconciliation commissions as a political tool instead of a vital part of implementing transitional justice. Internationally, success was closely tied to retribution and ignored reconciliation efforts. Internally, political parties focused wholly on acceptance by either domestic or international elites and were unable to balance the two.

The conflicting goals of both domestic and international political elites soiled the ICTY's attempt to promote transitional justice proceedings and reconciliation. Looking

solely at the empirics, the data seems impressive but can be misleading. Slated to end its work in 2014, the ICTY boasts 161 indictments, 64 arrests and 47 surrenders.<sup>55</sup> Though the top military officials were captured and many convicted, the numbers do not properly represent the ICTY's successes. While the main goal of accountability may have been achieved, the supplemental and equally important goals of reconciliation and truth seeking were left ignored. Studies have been conducted both on a national and local level in Serbian regions where heavy fighting occurred, and showed that people continue to suffer from mistrust in their government, mistrust in their neighbors, and a mistrust of what really happened during the conflict in the 1990s.<sup>56</sup>

## **CONCLUSION**

Transitional justice proceedings may be complicated, expensive, and require outside counsel. Countries and other interested stakeholders such as international organizations, human rights groups, security forces, and peace keeping groups all need to remain vigilant of domestic and international elites hindering the process. As seen in Iraq, international political elites can unintentionally thwart the process by prioritizing holding bad-actors accountable while failing to soothe ethnic tensions and promote reconciliation. As showcased in Serbia, domestic elites can manipulate proceedings to bolster ratings with their domestic constituencies while courting the international community in exchange for aid and influence. New elites can be hesitant to defer to international tribunals conducted at The Hague when establishing their own legitimacy. The potential

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<sup>55</sup> Patrice McMahon and Jennifer Miller, "From Adjudication to Aftermath: Assessing the ICTY's Goals Beyond Prosecution." *Human Rights Review* 13 (2012): 421.

<sup>56</sup> Patrice McMahon and Jennifer Miller, "From Adjudication to Aftermath: Assessing the ICTY's Goals Beyond Prosecution." *Human Rights Review* 13 (2012): 421-442; Janin Natalya Clark, "The ICTY and Reconciliation in Croatia." *Journal of International Criminal Justice* 10 (2012): 397-422.

exists of provoking rebellion from the outgoing-elite and appearing weak and unable to consolidate power themselves<sup>57</sup>.

Regime change in a post-conflict state creates a window of opportunity for transitional justice policies to be implemented. With hopes of reconciling a divided, grieving, and wounded citizenry, the tools of transitional justice can lay the foundation for better governing practices. The combination of judicial and non-judicial options can help foster trust by holding perpetrators accountable and shedding light on the brutal tactics violent regimes frequently suppress during their reign. Carefully choosing which methods to employ and continuously monitoring their progress is necessary to ensure proceedings remain objective is an important way to foster reconciliation, soothe inter-country tensions, and promote good governing practices.. This constant vigilance can help ensure the proceedings benefit the population and do not become politicized actions used to benefit domestic and international elites.

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<sup>57</sup> Grodsky, "*International Prosecutions*," 690.

## **CHAPTER 2: Transitional Justice: Several Options, No Solutions**

### **INTRODUCTION**

This paper demonstrates the importance of choosing transitional justice methods that are viewed as legitimate and how the absence of which has consequences for years after a conflict has been resolved. The literature looks to be a conglomerate of different experts, academics or researchers who are writing based on their own experiences, research, or expertise in a particular country or region. I find that current writings present an amalgam of options, past experiences, and potential solutions. Unfortunately they lack a resounding theory or reliable solutions with consistently successful outcomes.

Governments, international organizations, human rights groups, security forces and peace keeping groups all have a vested interest in defining successful models for transitional justice. Effective implementation of transitional justice carries untold consequences for the regional, security, and economic development in the nations undergoing regime-change. With several changes underway post-Arab Spring, justice will be one of the top demands for millions of people who have been subjected to extrajudicial killings, abuse, kidnappings and torture for decades under ruthless despots in countries such as Egypt and Syria.<sup>58</sup>

The Egyptian people's overthrow of Hosni Mubarak and their revolt against former President Morsi (who was deposed early into this first term) shows how years of oppression led the population to demand justice. Mubarak's regime was marred with kidnapping, torture, and extrajudicial killing. Reports tell stories of men being kidnapped and not returning, and if they did return, they bore signs of torture as a result of opposing

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<sup>58</sup> Paul R. Williams and Colleen (Betsy) Popken, "U.S. Foreign Policy and the Arab Spring: Ten Short-Term Lessons Learned." *Denver Journal of International Law & Policy* 41 (2012): 56.

the regime.<sup>59</sup> Despite the nondemocratic regime being overthrown and Arab Spring protestors calling for more personal liberties, there were reports of disappearances being carried out by the military.<sup>60</sup>

In Syria's case, if/when President Bashar Al-Assad is overthrown the transition may be two-fold. The country will first grapple with the brute force of Assad, and then with the merciless killings their recent revolution digressed into. What many thought was another revolution has devolved into a violent war showing signs of ethnic divisions with reports of Sarin gas usage from both sides of the conflict.<sup>61</sup> As of December 2014, both of these cases are still unfolding and already showing how transitional justice could be a necessity for both countries.

The following sections outline transitional justice's methods and show that one of the things the literature does agree on is that transitional justice efforts must be viewed as legitimate to yield the best results. The methods governments apply directly correlates with the population's perception of what is most legitimate. However, forging trust between divided communities and the several stakeholders within a transitioning society still seems to be a largely unresolved issue in the readings. After explaining the tools available, this paper will use the cases of both Uganda and Rwanda to exemplify obstacles in implementing transitional justice in a way that maximizes legitimacy and participation. This paper analyzes conflicts in both of these countries to demonstrate the importance of choosing transitional justice methods that are viewed as legitimate and how the absence of which has consequences for years after a conflict has been resolved.

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<sup>59</sup> David Keyes, "Hosni Mubarak's Human-Rights Horros," *The Daily Beast*, February 6, 2011.

<sup>60</sup> Liam Stack, "Egypt's Missing, Tales of Torture and Prison," *The New York Times*, February 17, 2011.

<sup>61</sup> U.S. State Department. "Syria Country Specific Information." Last Modified June 21, 2013.

[http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_1035.html](http://travel.state.gov/travel/cis_pa_tw/cis/cis_1035.html)

## **Tools of Transitional Justice**

Despite a lack of clarity on best practices in transitional justice, authors suggest that the more effective the implementation of transitional justice, the smoother and stronger the shift to democracy.<sup>62</sup> This assumption stems from both practical experience and mental health studies. According to Oscar Encarnación, international legal scholars strongly believe transition periods for administering justice are an essential way to deal with post-conflict countries.<sup>63</sup> He cites the Nuremberg trials after World War II that resulted in the conviction of several high-ranking Nazi officials coupled with Germany's transition towards democracy as a major contributing factor.<sup>64</sup> Neil Kritz, one of the resounding voices in international law and post-conflict situations, suggests conducting transitional justice is also steeped in the human psychology findings that utilizing mechanisms promoting closure after experiencing trauma are a key element to sound mental health and stability.<sup>65</sup> The tools available in the case of transitional justice are meant to either punish or pardon the perpetrators with the hope of balancing reconciliation with retribution. The judicial options are the International Criminal Court (ICC), ad-hoc tribunals or a hybrid of the two. The non-judicial options can be Truth and Reconciliation Commissions (TRC), victim compensation, non-criminal sanctions, amnesties or a concept of forgetting atrocities to move forward.

### ***Judicial Options***

States can utilize the judiciary and hold trials for those who committed the atrocities. Trials can be useful for holding criminals accountable and send a warning to

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<sup>62</sup> Neil Kritz, "Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights," *Law & Contemporary Problems* 59 no.4 (1996): 127.

<sup>63</sup> Omar G. Encarnación, "Justice in Times of Transition: Lessons from the Iberian Experience," *International Studies Quarterly* 56 (2012): 179.

<sup>64</sup> Encarnación, "Justice in Times of Transition," 179.

<sup>65</sup> Kritz, "Coming to Terms," 127.

future perpetrators that their actions will not go unpunished. They may also provide a sense of justice and catharsis by providing formal institutions where grievances are addressed and justice is served. Writings by both sociologists and conflict-management specialists say trials prevent collective guilt or anger towards large groups of people such as ethnicities or religious groups by labeling specific individuals as the ones responsible.<sup>66</sup> Luc Huyse, a sociologist specializing in group behavior as a result of inequity or inclusion writes that prosecutions also administer justice and can prevent victims from feeling ignored or wronged, which can lead to vigilante justice and further instability in an already struggling nation.<sup>67</sup>

The judicial system can operate on local or international levels. The ICC is a permanent court that tries individuals according to international law and responds to accusations of genocide, war crimes, crimes against humanity, et al. Ad-hoc trials are tribunals created to specifically deal with in the aftermath of the tragedy; such was the case in Nuremberg, Tokyo and Yugoslavia.<sup>68</sup> They are typically mandated by the United Nations Security Council and focus on the case's specific needs instead of operating within a larger judiciary. Ad-hoc trials can take place in the country in question on a local level as opposed to at The Hague, and focus around domestic laws.

Lastly, new regimes can employ a combination of both and host hybrid trials that combine international and domestic procedures. Trials are held locally and adhere to local demands but are overseen by an international body. Hybrid trials can use legal personnel from an international organization but instead of having traditional trials with a

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<sup>66</sup> Kritz, "Coming to Terms," 128.

<sup>67</sup> Luc Huyse. "Justice After Transition: On the Choices Successor Elites Make in Dealing with the Past." in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes Volume I: General Considerations*, ed. Neil Kritz (Washington, DC: United States Institute of Peace, 1995), 340.

<sup>68</sup> Kritz, "Coming to Terms," 130.

prosecution, defense, and conviction, they focus more on local traditions that would resonate more with its participants.<sup>69</sup> In some cases, there may be confessions in exchange for punishment and the court may administer rehabilitative local rituals possessing greater symbolic meaning for the indigenous population and is therefore easier for participants to accept.<sup>70</sup>

Some scholars suggest the ICC is more likely to be viewed as impartial and their actions are less likely to be viewed as retributive by the incoming regime. An international body conducts proceedings as opposed to the succeeding regime, whose actions may come across as vengeful. The ICC is already staffed with people experienced in international law and the procedures for responding to widespread abuses that occurred over long periods of time.<sup>71</sup> Kritz points out that when perpetrators have fled from the regions where violations occurred, as was the case in Bosnia, international organizations may be the only ones with the resources and jurisdiction to extradite individuals and put them on trial, whether in the ICC or at an ad-hoc tribunal.<sup>72</sup>

Despite the advantages of international trials, there are still shortfalls that can lead to alienating parts of the populations and increasing mistrust. If using the ICC, only the few high-ranking officials involved in planning the crimes are prosecuted, while the several hundred men and women who carried out the crimes are often not included in the process.<sup>73</sup> Using the ICC may fail to resonate with a local population since the trials are in a foreign land, using foreign procedures, and not trying the criminals that victims crossed paths with during the conflict.

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<sup>69</sup> Rosanna Lipscomb, "Restructuring the ICC Framework to Advance Transitional Justice: A Search for a Permanent Solution in Sudan," *Columbia Law Review* 106 (2006): 183-184.

<sup>70</sup> Lipscomb, "Restructuring the ICC," 183-184.

<sup>71</sup> Kritz, "Coming to Terms," 127.

<sup>72</sup> *Ibid.*, 129.

<sup>73</sup> *Ibid.*, 133.

If an international tribunal is used, more members of the outgoing regime can be tried, but this presents its own set of challenges. International tribunals can handle a larger amount of cases, but since they are set up with help from the new regime, they can be viewed as retributive and biased against the old regime.<sup>74</sup> As was the case with the Nuremberg trials, Kirchheimer notes that the judges were selected from the winners of World War II and included no German judges.<sup>75</sup> He goes on to say that the exclusion of German judges from the trial left Germans defendants at the mercy of a system they were not familiar with, which was sometimes viewed as advantageous to the prosecution. Tribunals can solve the issue of not trying enough people but can also result in large numbers of the old regime's sympathizers being expunged from the new political framework. This expulsion can breed feelings of isolation, creating an underground opposition hostile to the democratization underway.<sup>76</sup>

Hybrid tribunals can resonate strongly with the local population by incorporating the local customs and traditions while following international standards. According to Rosanna Lipscomb, a hybrid tribunal "allows for strengthening of the domestic rule of law while ensuring fairness and impartiality."<sup>77</sup> Hybrid courts take from both international and domestic prosecutions and have been credited with legitimizing local courts, improving domestic rule of law and helping to build support around a newly

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<sup>74</sup> Otto Kirchheimer. "Trial by Fiat of the Successor Regime" in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes Volume I: General Considerations*, ed. Neil Kritz (Washington, DC: United States Institute of Peace, 1995), 368.

<sup>75</sup> Kirchheimer, "Trial by Fiat," 368.

<sup>76</sup> Huyse, "Justice After Transition," 347.

<sup>77</sup> Lipscomb, "Restructuring the ICC," 182.

formed government.<sup>78</sup> This can be most useful in cases such as Sudan, where the conflict had ethnic undertones, or in Rwanda, which had a large number of participants.<sup>79</sup>

Unfortunately, hybrid tribunals' efforts to conform to local laws can lead to them conflicting with international laws, and therefore losing credibility on the global stage while simultaneously undermining international law and years of precedence. Hybrid tribunals can also be difficult to set up, and, since they are conducted on a local level, are also prone to being labeled as "victor's justice." As a hypothetical, when using local traditions, which tribes' rituals do you use? Are traditions meant for healing in one region, offensive or meaningless to another? Incorporating local norms can foster complications and lead to proceedings easily being labeled as biased, unfair or retributive by the local population.

### ***Non-Judicial Options***

A widely used non-judicial option is a Truth and Reconciliation Commission to investigate what happened and produce official accounts of the abuses.<sup>80</sup> As defined by Priscilla Hayner, "Truth commissions ... are bodies set up to investigate a past history of violations of human rights in a particular country – which can include violations by the military or other government forces or by armed opposition forces."<sup>81</sup> They have been used in several countries and can provide solace to victims and their families who were mistreated for years, but sometimes under the guise of legitimacy, denials, or lack of

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<sup>78</sup> Ibid., 189.

<sup>79</sup> Ibid.

<sup>80</sup> Kritz, "Coming to Terms," 141.

<sup>81</sup> Priscilla B. Hayner, "Fifteen Truth Commissions – 1974 to 1994: A Comparative Study," in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes Volume I: General Considerations*, ed. Neil Kritz (Washington, DC: United States Institute of Peace, 1995), 225.

acknowledgement of what was happening.<sup>82</sup> In other instances, there are several versions of the truth that can be divided by ethnicity and region. Creating official accounts may help bridge divides and lend a voice to people who have been silenced for generations.<sup>83</sup> The literature praises Truth Commissions for being capable of addressing a wide range of abuses that include disappearances, mass graves, torture, kidnapping, and gender-based violence.<sup>84</sup> This official accounting of events can also be used to determine levels of guilt as was done in Rwanda and Germany.<sup>85</sup> Additionally, articles by Priscilla Hayner and David Forsythe purport that these commissions can also promote reconciliation by including both victim statements and guilty confessions. Lastly, experts recommend Truth and Reconciliation Commissions due to the fluid nature of these commissions; they can be easily adapted for different regions, accommodate multiple violations, and be tailored to meet the conflict's regional undertones.<sup>86</sup>

Despite the importance of truth telling in the transitional justice process, Truth and Reconciliation Commissions can present their own set of problems in relation to building trust amongst a community. When commissions are created, there is always a mandate, creating boundaries, and stating the commissions' objectives. While this helps define the commission's responsibilities, it can also result in biased reporting, and the presentation of a particular set of truths instead of a clear picture of the entire situation. Hayner points to Uruguay's mandate to investigate disappearances, which left out

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<sup>82</sup> Neil J. Kritz and Jakob Finci, "A Truth and Reconciliation Commission in Bosnia and Herzegovina: An Idea Whose Time has Come," *International Law Forum Du Droit International* 3(2001):50.

<sup>83</sup> Kritz and Finci, "A Commission in Bosnia," 50.

<sup>84</sup> David P. Forsythe, "Forum: Transitional Justice: The Quest for Theory to Inform Policy," *International Studies Review* 13 no. 3 (2011): 559.

<sup>85</sup> Karl Jaspers, "The Question of German Guilt," in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes Volume I: General Considerations*, ed. Neil Kritz (Washington, DC: United States Institute of Peace, 1995), 159.

<sup>86</sup> Hayner, "Fifteen Truth Commissions," 260; Forsythe, "Forum," 570.

detention and torture, where most of violations took place.<sup>87</sup> A narrow scope also impacted outcomes in Uganda when time constraints prevented the commission from examining the current regime in charge, thereby only reporting on a previous regime's transgressions while ignoring the one currently in power.<sup>88</sup> Hayner also suggests commissions can be a political tactic used to improve their international reputation with regards to their human rights policies.<sup>89</sup> She states, "Given the mandate of commissions, by definition, to look at the past rather than the present, it is easy for a new government to justify not being subject to the investigations of the commission, while professing improved human rights policies."<sup>90</sup> Moreover, many commissions are mandated by the country's incumbent president, which can quickly lead it to being labeled as victor's revenge since the ruling party is in charge of creating the mandate and setting the scope. There can also be a fear that these commissions will re-open old wounds and lead to new violence. Commissions have no prosecutorial jurisdiction, so after uncovering detailed accounts of violence and publically naming the perpetrators, participants can be left without any promise of prosecution and vulnerable to violent retribution.<sup>91</sup>

Truth and Reconciliation Commissions can provide insight into the victims and what they require to heal. Consequently, this led to the idea of victim reparation, especially in impoverished regions where basic needs may trump the mental healing that trials or reconciliation brings.<sup>92</sup> If possible, states can provide material reparations such as monetary compensation, improperly seized property, or cover costs such as healthcare,

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<sup>87</sup> Hayner, "Fifteen Truth Commissions," 247.

<sup>88</sup> *Ibid.*, 229.

<sup>89</sup> *Ibid.*, 228.

<sup>90</sup> *Ibid.*, 229.

<sup>91</sup> Hayner, "Fifteen Truth Commissions," 230.

<sup>92</sup> Gearoid Millar. "Local Evaluations of Justice through Truth Telling in Sierra Leone: Postwar Needs and Transitional Justice," *Human Rights Review* 12 no. 4 (2011): 525.

education, or provide employment.<sup>93</sup> Victims subjected to violence were regarded as second-class citizens and were robbed of property, belongings, and all their assets. As evidenced in Sierra Leone, inquiries showed that citizens were more concerned with basic needs, the costs of education, health care, clothing, and jobs.<sup>94</sup> As the Sierra Leone example shows, repaying some of this, including returning seized property, can help make the transition more comfortable.<sup>95</sup>

While victim compensation may help address some of the more immediate concerns after years of brutal repression, it can also fail to heal wounds and make a population feel as if justice was served. On a practical level, many new governments may not be equipped to hand out reparations amidst this transition. The literature reminds us that many governments undergoing this transition have inherited a country reeling from violence. This violence is likely to have also impacted its economic performance and therefore monetary compensation could further destabilize the country's financial security.<sup>96</sup> Furthermore, since the process of transitional justice frequently implies regime change, a new regime would be in charge for handing out reparations for crimes they may not have committed.<sup>97</sup> Lastly, the literature suggests victims may also not be in favor of compensation because they may feel like they are being bribed or that

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<sup>93</sup> van Boven, Flinterman, Grünfeld, and Westendorp, "Seminar on the Right of Restitution," 502.

<sup>94</sup> Millar, "Local Evaluations," 525.

<sup>95</sup> Theo van Boven, Cees Flinterman, Fred Grünfeld, and Encarnación Westendorp, "Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms: Summary and Conclusions," in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes Volume I: General Considerations*, ed. Neil Kritz (Washington, DC: United States Institute of Peace, 1995), 502.

<sup>96</sup> Ellen L. Lutz "After the Elections: Compensating Victims of Human Rights Abuses," in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes Volume I: General Considerations*, ed. Neil Kritz (Washington, DC: United States Institute of Peace, 1995), 552.

<sup>97</sup> Lutz, "After the Election," 552.

their pain has a price tag.<sup>98</sup> This perception of being given “blood money” can be exaggerated if the compensation is not paired with punishment for those responsible for the committing these violations.<sup>99</sup> Hesitation regarding victim compensation from both the new government and its victims can make it a risky move not guaranteed to build trust or legitimacy; the literature shows that by itself, victim compensation is unable to bridge communities or promote legitimacy in the transitional justice process.

Another option frequently employed when abuses were carried out by large groups of people with support of collaborators or sympathizers are non-criminal sanctions.<sup>100</sup> These sanctions include purges from political, security and military institutions, confessions of guilt and subsequent bans from participation in the new regime. The literature suggests non-criminal sanctions apply to the passive participants that created buffers between victims and the people who were involved first-hand in the planning or execution of war crimes. Examples include regime sympathizers, political elites, or parties that were knowledgeable and complacent amidst the wrongdoings. To account for this group, new regimes can employ non-criminal sanctions to purge them from sectors of society. They can be removed from political office, the military, or local security forces. As was done in Greece, France and Germany, people can be interrogated about their level of involvement, dismissed from civil institutions and banned from political participation.<sup>101</sup> Also referred to as Lustration, it can sidestep criminal

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<sup>98</sup> Ibid., 553.

<sup>99</sup> Ibid.

<sup>100</sup> Kritz, “Coming to Terms,” 138.

<sup>101</sup> Kritz, “Coming to Terms,” 139.

prosecution and act as a middle ground between criminal sanctions and widespread amnesty.<sup>102</sup>

Lustration can also lead to mistrust and deepen divisions in an already fragile state. If not done carefully, Herman Schwartz suggests lustration can give the appearance of placing collective guilt on large sectors of society generating feelings of alienation.<sup>103</sup> In addition, as seen in post-communist Eastern Europe, new regimes may purge people from jobs or political office and then face accusations that their dismissals were motivated by personal vendettas or discrimination.<sup>104</sup> Lustration may be viewed as ill-willed by the new regime and make the population once again feel like they are becoming victims of “victor’s justice.”

The last mechanism at one’s disposal is the process of “forgetting,” which can be a combination of sweeping amnesties and the new government’s declaration to not revisit past abuses. Forgetting is implemented with hopes of speeding up reconciliation without the drawn out process of reliving its past.<sup>105</sup> The literature analyzing transitional justice methods does not spend a great deal of time examining “forgetting.” The majority of writers seem to be operating under the assumption that choosing to not revisit the past is akin to ignoring it and could undermine democratization.<sup>106</sup>

An exception to this is Oscar Encarnacion, who uses Spain and Portugal as counterfactuals to point out transitional justice theory needs to diversify its research and

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<sup>102</sup> Huyse, “Justice After Transition,” 339.

<sup>103</sup> Herman Schwartz. “Lustration in Eastern Europe” in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes Volume I: General Considerations*, ed. Neil Kritz (Washington, DC: United States Institute of Peace, 1995), 462.

<sup>104</sup> Schwartz, “Lustration in Eastern Europe,” 464.

<sup>105</sup> Encarnación, “Justice in Times of Transition,” 180.

<sup>106</sup> Kritz, “The Dilemmas of Transitional justice,” xxii.

options.<sup>107</sup> In the 1970's Spain's government decided that moving on quickly was necessary for the country to move past General Francisco Franco's dictatorship.<sup>108</sup> The government feared revisiting the past would increase instability, prompt vigilante violence and create anxiety for families of those in the military that participated in the abuses. As a result, the Spanish government made an agreement called Pacto del Olvido (Pact of Forgetting), which Encarnacion describes as, "collective amnesia about past political excesses."<sup>109</sup> The pact delivered amnesties and lacked any trials, reconciliation commissions or purges from the government or military. There was a conscious decision to avoid any proceedings examining past abuses. The literature suggests that the Spanish people then rallied around democratization, in part because they did not have to relive the past.<sup>110</sup> Alternatively, in Portugal, the government immediately started with military purges that quickly expanded to the civil service, business elite, educators, media and the church.<sup>111</sup> The country-wide expulsion "turned into a veritable witch-hunt that dispensed justice so arbitrarily and radically that it nearly derailed the democratic transition."<sup>112</sup>

Although these two examples go against most transitional justice scholarship and present alternative insights, they do not speak to building trust amongst communities. Portugal's case once again explains how transitional justice, if not conducted properly, can devolve into acts of revenge that destabilize an entire nation. Spain's decision not to allow for any prosecution or reconciliation commissions prevents both domestic and international communities from having access to how people may feel about the process.

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<sup>107</sup> Encarnación, "Justice in Times of Transition," 180.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

This could prevent any additional insight from being shed Francoism's impact on the Spanish psyche.

In addition to providing judicial and non-judicial options, transitional justice scholarship provides observations based on implementers' past experiences. For example, understanding the role of the outgoing regimes factors into which methods the incoming regime may choose. The manner of the outgoing regime's abuses and how they relinquish power can provide indicators about next steps. Understanding outgoing regimes contributes to how a country can decide on which transitional justice processes to apply to promote inclusion and reduce alienation amongst the people. Strong authoritarian regimes that voluntarily ended were not prosecuted as frequently or as harshly as regimes that collapsed or were overthrown.<sup>113</sup> In addition, if regimes turned power over peacefully or through negotiations they were given a more prominent role in the new regime. They were also less likely to be prosecuted and more likely to be part of a negotiated settlement that allowed them to continue operating as a political party. This post-transition role also helped determine the extent that abusers were punished or pardoned.<sup>114</sup>

The literature also distinguishes between militant and liberal democracies to show another consideration when employing transitional justice. Militant democracies were more common in Europe, especially because of the pre-war Weimar Republic Germany's tailspin into Nazi Germany and World War II. The Nazi party's reliance on propaganda,

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<sup>113</sup> Guillermo O'Donnell and Philippe C. Schmitter, "Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies." In *Transitional Justice: How Emerging Democracies Reckon with Former Regimes Volume I: General Considerations*, ed. Neil Kritz (Washington, DC: United States Institute of Peace, 1995), 63.

<sup>114</sup> Pion-Berlin, "To Prosecute or Pardon?" 94.

manipulation and lies against non-Aryan communities led the new governments to be more cautious and restrictive to things like hate speech and holocaust deniers.<sup>115</sup> On the other hand, the American Revolution was hypersensitive to receiving proper representation and created a liberal democracy focused on protecting minority rights and free speech.<sup>116</sup>

The literature however, does not account for internal conflict playing a large role in transitional justice; most cases are presented as a non-democratic regime versus a united and oppressed electorate. In Uganda, the conflict is presented as the Lord's Resistance Army against the government; in Rwanda it was the Hutus and the Tutsis. Both of these generalizations do not account for diversity in culture, religion, social class or level of victimization. Now, the same thing is happening with the civil war in Syria is between supporters and opposition to Bashar Al-Assad. However, Syria is made up of several ethnic minorities including Druze, Christians, Alawites, and Muslims. Some of these groups may be temporarily united in their struggle with or against Assad; but, they still struggle with their own ethnic tensions which will re-emerge after the civil war has ended.

Tackling the challenges of reconciliation between a past-regime and post-transition society is complicated by a country that has several internal divisions it has to overcome. This will make it harder for governments to promote legitimacy and rein in instances of collective guilt or retributive justice. The countries undergoing regime-change and nations expected to undergo changes over the next half-century are not homogenous

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<sup>115</sup> Ruti Teitel, "Militating Democracy: Comparative Constitutional Perspectives," *Michigan Journal of International Law* 29(2007): 54.

<sup>116</sup> Teitel, "Militating Democracy," 68.

societies, and understanding the impact of domestic divisions will help yield better transitional justice.

Despite previous experiences and case studies there are still unaddressed concerns that may prevent safe, stable, and democratic transitions. Chief among these concerns is how to account for tribal and internal strife. In past cases of transitional justice, conflicts tend to be defined by the oppressors and the oppressed. That can lead to a generalization of who the victims were and who was at fault. For example, in regimes involving forced military conscription, or participate for fear of violence against their family; those who committed crimes may feel like victims may be treated as the perpetrators in a tribunal or reconciliation commission. Failure to account for these facets could be hurtful for future transitions. In Egypt, Afghanistan, and Syria, countries that may need to employ transitional justice methods in the near future, governments will not only have to deal with past abuses but also account for deep ethnic, tribal, religious and cultural divides within their borders.<sup>117</sup>

Since the legitimacy of transitional justice is a key to ensuring its success, who conducts the proceedings sets the foundation for its success. I will study how mistrust impacts deciding who conducts transitional justice. Regardless of the country, when transitional justice is taking place, there are several factors of society that have to be incorporated into the process, and failing to do so hinders the process in either the short or long term. To demonstrate the importance, I will use a comparative case study method with Uganda and Rwanda, showing the difficulties with both judicial and non-judicial

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<sup>117</sup> Nader Hashemi, "The Arab Spring, U.S. Foreign Policy, and the Question of Democracy in the Middle East." *Denver Journal of International Law & Policy* 41 (2012): 31.

options, and emphasizing the importance on deciding who will carry out the methods of transitional justice.

In Uganda's case, decades of conflict led to multiple sectors falling victim to violence. The case study shows that the widespread conflict led to differing needs amongst the population, creating several variables in the transition process. In Rwanda's case, the government and international community quickly found that the genocide's nature made it difficult to establish legitimacy and label victims and perpetrators, because much of the violence was coerced. Rwandans worked to implement both judicial and non-judicial forms of justice to deal with the genocide's organizers and also its perpetrators.

## **METHODOLOGY**

A comparative case study of both Uganda and Rwanda will effectively illustrate the difficulties in deciding which methods of transitional justice to implement, especially when trying to maximize legitimacy. Comparing these two countries allows the paper to argue the importance of building trust amongst the community by examining conflicts that struggled with both judicial and non-judicial options, in both quick and drawn-out conflicts.

The case studies will specifically focus on Uganda and Rwanda, both countries that experienced conflicts where leaders have been indicted for crimes against humanity by the United Nations because they incorporate instances of documented cases of violence against large swaths of society. The case studies will trace how these conflicts create deep divisions between different sectors of the population and which methods of

transitional justice, involving either domestic or international actors, would be carrying out the justice.

Violence in Uganda spanned several years and was characterized by violence that became divided along tribal lines and transformed a counterinsurgency against the Ugandan government into an ethnic conflict. The swiftness of Rwanda's genocide created an urgent and unfamiliar need for justice and reconciliation where both judicial and non-judicial options were problematic. Examining transitional justice efforts in regards to the Lord's Resistance Army in Uganda and Rwanda's genocide will show how post-conflict divisions can serve as a hindrance to a successful transition.

## **Uganda**

Two decades of conflict and violence in Uganda exacerbated the already existing ethnic cleavages. With child abductions for the purpose of forced conscription in the Lord's Resistance Army (LRA), extreme poverty, torture, and war, at its peak, the country lost 1,000 people every week.<sup>118</sup> The protracted conflict touched the lives of nearly every Ugandan and created a need to reconcile several million people who all experienced the LRA's violence in different ways. The following is a brief re-telling of how the main campaigns between Uganda's government and the LRA, along with the country's diversity created several challenges in choosing a strategy to help reconcile its people.

In the early 1980's, an institutional vacuum was created as Uganda recovered from the brutal overthrow of Idi Amin's military dictatorship. Intrastate power struggles ensued and the new government's army was a loosely held conglomerate of former

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<sup>118</sup> Erin Baines, "Spirits and Social Reconstruction After Mass Violence: Rethinking Transitional Justice," *African Affairs* 109 (2010): 410.

militias.<sup>119</sup> The police and military forces were fractured and incapable of maintaining law and order. As factions fought for power, the National Resistance Movement Army (NRA/M) emerged and was faced with the task of fighting off rival armed groups. After a cease-fire between the NRA/M and insurgent forces fell apart, some of the insurgency's militias re-grouped and LRA was created under Joseph Kony's leadership.<sup>120</sup>

The NRA/M countered the LRA with a scorched-earth policy and recruited civilian volunteers, ex-soldiers, and rebels along the way. They provided policing, crowd-control, broke up demonstrations and riots, and fought back the LRA.<sup>121</sup> The NRA/M recruits were generally grouped by ethnicity and protected local villages from rebel attacks. These groupings gave the illusion that the allegiances were ethnicity-based and blurred civilian and military lines, causing the conflict to escalate quickly. Indiscriminate violence began on both sides and the LRA interpreted any lack of enlistment in its ethnic strongholds as a sign of sympathy to the NRA/M.<sup>122</sup> Kony's forces began treating civilians as targets and started torturing, maiming, raping and murdering them. He indiscriminately massacred villages and enslaved children in the military.

In response to Kony's growing power, Sudan agreed to help Ugandan forces by launching another militia, Operation Iron Fist.<sup>123</sup> The operation forced the LRA to retreat into the north, but instead of weakening them, the LRA consolidated its forces and the conflict intensified in areas where the government's presence was weakest. Eventually militias were able to drive the LRA from the region but their tactics drew criticism from fellow Ugandans. Just as the LRA had committed several human rights violations whilst

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<sup>119</sup>Paul Omach, "Political Violence in Uganda: The Role of Vigilantes and Militias," *The Journal of Social, Political, and Economic Studies* 35.4 (2010): 436.

<sup>120</sup>Omach, "Uganda," 439.

<sup>121</sup> Ibid., 440.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid., 441.

fighting, the Operation Iron Fist militias were also viewed as “trigger happy, brutal, hiring out guns for robbery and criminal violence; engaging in corrupt practice such as falsification of documents, impersonation and sale food rations.”<sup>124</sup>

Uganda’s weak government was devoid of any law enforcement or security structure. Lack of democratic institutions and constant violence led to a heavy reliance on militias. The Ugandan militias managed state security, waged war, and attempted to provide basic security to its citizens being slaughtered by the LRA. They were central tenets in Uganda’s security structure at every level, from local and riot police with batons to soldiers fighting the LRA.

The use of militias in lieu of traditional state security was detrimental to the Ugandan government and its people because they lacked legitimacy and blurred the lines between fighters and civilians. The lack of clarity increased violence and morphed the insurgency into an ethnic war with gross atrocities committed by both sides. Judging from Paul Omach’s analysis of militias in *Political Violence in Uganda: the Role of Vigilantes and Militias*, an emphasis on creating legitimacy and centralizing power could have been more effective. Instead of using precious resources to recruit and train local militias the Ugandan government should have streamlined resources to improve the state security system.<sup>125</sup> Doing so may have unified people, provided legitimacy and encouraged cohesion among an ethnically diverse population. The state could have provided security, but more importantly, distinguished between government forces and militias. This may have helped enforce the boundaries between law enforcement and vigilante violence hoping to soften the ethnic undertones. Instead, deepened divisions

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<sup>124</sup> Omach, “Uganda,” 444.

<sup>125</sup> Ibid., 448.

pitted the population against one another, and escalated the conflict, making the process of reconciliation very complicated.

Using children in the military was also one of the Kony's defining tactics. He would abduct hundreds of thousands young boys and girls and use them as soldiers and sexual slaves respectively. The United Nations Convention on the Rights of the Child recognized the basic unalienable rights of all children and drafted a piece of legislation titled, "Optional protocol on the involvement of children in armed conflict" (CRC-OP-AC), which included laws on the military use of children.<sup>126</sup> It split the military use of children into three subsections of child soldiers, sexual slaves and human shields. Violation of this international law led to a hurdle for transitional justice because perpetrators were often young kids indoctrinated into the military by force.

Bridging these divisions meant bringing together not only different religions and ethnic groups but also multiple income-levels and different types of victims. People were assaulted, beaten, and robbed but there were also children forced into conscription who committed crimes under fear for their own lives. There are accounts of children being kidnapped by the LRA and forced to attack their neighbors, former classmates, family members, and friends.<sup>127</sup> The diversity in victimization creates what Erin Baines refers to as "an erosion of social trust."<sup>128</sup> Additionally, participation in a vigilante militia to police one's neighborhood became a cultural norm in Uganda. Many young boys were expected to take up arms against intruders, thus blurring the lines between civilians, targets,

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<sup>126</sup>Nsongurua J. Udombana, "War is Not Child's Play! International Law and the Prohibition of Children's Involvement in Armed Conflicts," *Temple International & Comparative Law Journal* 20 (2006): 57.

<sup>127</sup> Baines, "Spirits," 411.

<sup>128</sup> *Ibid.*, 410.

victims, and perpetrators.<sup>129</sup> As the conflict drew to a close and people returned home from displacement camps, they were forced to live near former neighbors who may have betrayed them in the past. In response, the Ugandan government attempted to implement a comprehensive plan of reconciliation commissions and prosecutions which did little to promote trust or legitimacy.<sup>130</sup>

The United Nations launched the *Commission of Inquiry into Violations of Human Rights in Uganda*. While researching participation levels, the UN found the general population eager to participate, but not the elite.<sup>131</sup> The elite did not want to bring more attention to the conflict, fearing they would not lead to prosecution for the perpetrators. People had similar reactions to a Truth and Reconciliation Commission and thought reliving the past would increase hostility in already unstable communities. Many people lived in close proximity to perpetrators, and, although fear of retribution was high, agreed that ignoring the past was not an option.<sup>132</sup> This lack of trust in international or national proceedings led to the suggestion of using local rituals and tribal practices to ease tensions and help reunify the villages.<sup>133</sup> Local elders performed cleansing ceremonies, such as egg-stepping, to help foster a fresh-start and move past any atrocities committed by people before returning home.<sup>134</sup> Erin Baines gives the example of a young boy who felt haunted by the spirit of a boy the LRA forced him to kill. He felt as

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<sup>129</sup> Omach, "Uganda," 432.

<sup>130</sup> Ibid., 411.

<sup>131</sup> Arthur H. Oder "Commission of Encarnación Into Violations of Human Rights." In *Transitional Justice: How Emerging Democracies Reckon with Former Regimes Volume 2: Country Studies*, ed. Neil Kritz (Washington, DC: United States Institute of Peace, 1995), 517.

<sup>132</sup> Baines, "Spirits," 412.

<sup>133</sup> Ibid., 413.

<sup>134</sup> Ibid., 429.

though the spirit would leave him alone if he confessed to the village and the boy's family, feared admitting his mistakes, even if reconciliation was at stake.<sup>135</sup>

Under Joseph Kony's notorious leadership, the LRA used rape as a weapon, forced child-recruitment and tortured, maimed and murdered countless men, women and children. These tactics pitted communities against one another and intensified mistrust in the community; consequently, the tactics now pose obstacles to successfully implementing the most commonly used forms of reconciliation. Unable to find comfort in traditional transition options, villages focused on encouraging spiritual healing to help communities live together once again. Though these traditional efforts may have helped bring communities back together, they did not coincide with international norms, nor did they address the LRA's habitual violations of international law. They were not able to provide accountability against perpetrators but did contribute to reconciliation.

Both judicial and non-judicial options were unable to garner participation from the elite and poor populations. While spiritual mechanisms did encourage some participation on a micro-level operating within the confines of villages or tribes, they were unable to translate to a national effort. Traditional methods also ignore a founding characteristic of transitional justice methods, to respond to violations of international law. Enforcing international law will hold people liable but set an example for other bad actors. It will also let affected populations know that the international community is committed to holding these violent leaders accountable. Spirit-healing does not incorporate legal proceedings, record-keeping, or any mechanisms to ensure honesty and transparency. Lastly, it is stewarded by local leaders and does not require interaction with

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<sup>135</sup> Ibid., 411.

the national government, therefore making it difficult to tie local mechanisms to a national effort to encourage democracy and trust in a new government.

## **Rwanda**

The genocide in Rwanda was quick and bloody. It was conducted by militias and civilians who killed nearly a million people in just a few months.<sup>136</sup> These tremendous acts of violence stretched across all sectors of society, pit two tribes against one another, and created serious obstacles to both judicial and non-judicial transitional justice options. Trials proved to be expensive, lengthy, and unrealistic, because of the large amount of civilian participation. Non-judicial options which were able to reach a larger amount of people came rife with biases, lack of quality control, and ignored some violations altogether. The following is a summary of Rwanda's genocide and an account of the trouble the country faced when implementing transitional justice. It outlines considerations both the international and local community took into during implementation and explains why multiple attempts failed to establish legitimacy or ease tribal tensions.

In 1994, the Rwandan president's plane went down near its capital city of Kigali, which was viewed by many as involving suspicious circumstances. The next four months set off a bloody genocide that claimed the lives of nearly one million people and left another two million displaced. Hutu members of the government and military used radio and propaganda to encourage civilians and militias to take up arms against the Tutsis and they promised money, food, and land.<sup>137</sup> Hutus massacred anyone suspected of being a Tutsi or suspected of sympathizing with them. During this time, foreign forces in the area

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<sup>136</sup> Emil Towner, "Documenting Genocide: The "Record of Confession, Guilty Plea, Repentance and Apology" in Rwanda's Gacaca Trials," *Technical Communication Quarterly* 22 (2013): 290.

<sup>137</sup> Towner, "Documenting Genocide," 291.

were evacuated immediately, fearful of what was to come. This sent a message to both perpetrators and victims that the violence was being ignored by the international community and allowed the conflict to escalate.

Reports show people were forced to participate in the massacres or face being labeled a sympathizer and at risk of death. The murders were especially brutal, using clubs, machetes, sexual violence, physical beatings, and burnings, often of neighbors and friends. In just a few months, an estimated 10% of the Rwandan population and 75% of the country's Tutsi population was murdered.<sup>138</sup>

To begin the healing process, in 1994, the United Nations established the International Criminal Tribunal for Rwanda (ICTR). An ad-hoc system was established to help Rwanda find a balance between international standards and cultural relativity, but failed to do.<sup>139</sup> Trials are expensive, as they require enough money to hire attorneys, conduct investigations, as well as other miscellaneous expenditures such as providing accommodations for the people taking part in the trial.<sup>140</sup> Reports suggest the estimated cost for the ICTR was 1 billion dollars.<sup>141</sup> This includes the full length of the trial, which is anywhere from two to five years. There was a large number of people to be tried and no way to efficiently prosecute them in a timely manner. It was also difficult to use the ICTR as a way to make the Rwandan population feel as if justice was being served because there were difficulties sending updates and coverage about what the tribunal was doing, even radio transmissions took too long to establish.<sup>142</sup> This led to the release of

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<sup>138</sup> Heide Rieder and Elbert Thomas, "Rwanda - Lasting Imprints of a Genocide: Trauma, Mental Health and Psychosocial Conditions in Survivors, Former Prisoners and their Children," *Conflict & Health* 7(2013): 2.

<sup>139</sup> Towner, "Documenting Genocide," 290-291.

<sup>140</sup> Rupert Skilbeck, "Funding Justice: The Price of War Crimes Trials," *Human Rights Brief* 15:3 (2008): 6.

<sup>141</sup> Skillbeck, "Funding Justice." 6.

<sup>142</sup> Kritz, "Coming to Terms," 132.

prisoners, blanket amnesties and the use of the Gacaca courts to help move the process along.

The Gacaca courts combined the structure of an international court and the reconciliatory nature of confessions and truth telling. The courts served as a vehicle for the Rwandan public trying those who had confessed to genocide.<sup>143</sup> It was initially viewed as more legitimate and thousands of people were willing to participate. The Gacaca's mission was tasked with the "organization and prosecution of offences constituting the crime of genocide and massacres or other crimes against humanity, committed between October 1, 1990 and December 31, 1994."<sup>144</sup> However, due to the court's scope, several crimes were left out, which deepened already troubling ethnic cleavages.

While the general population was much more in favor of Gacaca courts than the ICTR, it still came with its share of problems. Because of the time span of the court's mandate, the crimes were mainly committed by Hutus, and ignored violence committed by the Tutsis leading up to and near the end of the genocide. Some Rwandans also thought the Gacaca courts lacked efficacy, because they did not provide reparations for victims; some also felt they courts did not spend enough time addressing victims of sexual violence.<sup>145</sup> This led some people to label the Gacaca courts as biased, politically motivated and vengeful.<sup>146</sup> In addition, the mandate did not extend past Rwanda's

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<sup>143</sup> Towner, "Documenting Genocide," 285.

<sup>144</sup> *Ibid.*, 291.

<sup>145</sup> Lars Waldorf. "Mass Justice for Mass Atrocity; Rethinking Local Justice as Transitional Justice." *Temple Law Review* 79(2006): 3.

<sup>146</sup> Towner, "Documenting Genocide," 297.

borders and, by default, ignored violence that spilled into neighboring Uganda, Congo and Burundi.<sup>147</sup>

Additionally, the severity and gravity of violence led to psychological issues that continue to impact much of the population. Studies show that sixteen years after the conflict, nearly a quarter of all adults “suffered from [Post Traumatic Stress Disorder PTSD], clinically relevant depression and/or anxiety, reflecting the serious mental health situation as well as the long-term consequences of mass violence...”<sup>148</sup> The study also shows that victims and perpetrators alike experienced PTSD. This finding distorts the line between oppressors and oppressed and adds yet another angle to the reconciliation process. Unfortunately, the Gacaca strictly defined the scope of inquiry and gave the perception that Hutus and Tutsis were perpetrators and victims respectively. This generalization hindered reconciliation efforts and delegitimized the process in the eyes of families who felt the courts were driven by victor’s justice and mislabeled Hutus that also fell victim to the genocide’s brutality. Limiting the scope of the trials and labeling one group as the oppressors, with the others as the victims, is exactly the type of generalization that hinders reconciliation. Failing to address the complexity of these conflicts and the situations their victims faced deepened ethnic cleavages and made marginalized minorities feel even more at risk.

Determining guilt and if perpetrators acted under a direct threat of violence create different types of victims that may benefit from the transitional process. The nature of violence also led to psychological scarring in addition to the physical brutalities. The Rwandan genocide presented issues from the onset in determining which form of

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<sup>147</sup> Ibid., 297.

<sup>148</sup> Rieder, “Rwanda-Lasting Imprints of Genocide,” 10.

transitional justice to use. Soon after establishing international courts, the Rwandan government realized they needed a tool that would reach more people and be viewed more favorably by the average Rwandan. These courts could have served as a compromise to enforce international law while appealing to local populations. While this blend sounds like the solution to build legitimacy, the Gacaca courts were viewed as a tool for the ruling party and a vindictive measure enabling victor's to humiliate the perpetrators and further intensify the hostile factions.

## **CONCLUSION**

Transitional justice comes in many forms and is often seen as vital when replacing an oppressive regime with a democratic institution. In using both restorative and retributive forms of justice people hope to help a nation find closure with their pasts and create a new cohesive element to lead into the new government. Transitional justice can also hold perpetrators accountable for their actions while sending a message to the international community that certain acts are intolerable. Even though it makes sense to find closure, new regimes still shy away from implementing transitional justice because of how hard it is to find the balance between promoting closure and revisiting bad memories. However, neglecting the past can create its own set of problems, leaving developing nations and the international community in a difficult predicament.

This chapter outlined the variety of methods available to implement transitional justice, showing both pros and cons of each approach. After that, I observed that current tools need to be expanded to better deal with internal divisions which may lead to mistrust in the community and may delegitimize the transitional process. Analyzing the cases of Uganda's fight against the LRA and the Rwandan Genocide revealed that both

judicial and non-judicial options pose stumbling blocks on the road to recovery. There are multiple parts of society that transitional justice seeks to bring together including gender, socio-economic status, tribes and religions to name a few; however, the current methods boil down a complex problem to the sides of oppressor and oppressed. While this simplifies the process, it does not simplify the problem; it creates generalizations and does not account for the often blurred lines of perpetrator and victim. Determining which method to use is the first step in bringing legitimacy and setting the foundation for reconciliation.

### **Chapter 3: Why Transitional Justice Consistently Fails to Prioritize Outreach**

#### **INTRODUCTION**

As outlined in previous chapters, countries can implement transitional justice in the aftermath of a violent regime's departure. These violent regimes ignore international law while committing human rights violations and eliminating the rule of law. These judicial and non-judicial procedures aid the affected population's healing while rebuilding governing institutions. The tools available for transitional justice can be judicial—International Criminal Court (ICC), ad hoc tribunals, or a hybrid of the two—or non-judicial—Truth and Reconciliation Commissions (TRC), victim compensation, non-criminal sanctions, amnesties, or a concept of forgetting atrocities to move forward.<sup>149</sup> Regardless of the method chosen, the tools are intended to either punish or pardon the perpetrators, and balance reconciliation with retribution.

Though the process is intended to reconcile communities and hold perpetrators accountable, a delicate balance of several actors vying for control must be made. These competing interests may include local populations, political opposition, international actors, and outgoing elites afraid of prosecution. Bringing stakeholders together decide on and implement a process that brings them together is incredibly challenging. Additionally, since the countries in question have generally been marred by decades of abuses and violent governments, rebuilding trust is an essential component of moving forward. Having the affected populations buy-in to the process, view it as legitimate, and thereby be willing to participate is both difficult and necessary

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<sup>149</sup>For a further breakdown of these methods, please review Neil Kritz, "Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights," *Law & Contemporary Problems* 59 no.4 (1996): 127-152.

To encourage participation and spread information about the measures to be executed, implementers can conduct outreach programs. As defined by the International Center for Transitional Justice, outreach is, “a set of tools – combination of materials and activities – that a TJ [transitional justice] measure puts in place to build direct channels of communication with affected communities, in order to raise awareness of the justice process and promote understanding of the measure.”<sup>150</sup>

As mentioned in chapter one, several transitional justice experts suggest that implementing transitional justice advances democratization. Therefore, international organizations, emerging democracies, developed countries and their security forces can all benefit from gaining an understanding of how outreach programs alter transitions. However, forging trust between divided communities and multiple stakeholders within a transitioning society by implementing outreach is still unresolved within transitional justice literature. In the following sections, I show how outreach impacts transitional justice proceedings, how it is conducted, how it can be useful, and point out that it is unfortunately consistently underfunded and underutilized. Even though outreach programs bring legitimacy to the process, which is critical in a post-conflict society, there is very little discussion of why outreach continues to be underutilized. This paper posits this question and furthermore, asks why, if such a potential exists, research is not directed at understanding outreach’s underutilization.

I hypothesize that obstacles people face while conducting and organizing outreach programs hinders the process and shows why these programs are frequently

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<sup>150</sup> Clara Ramírez-Barat and Maya Karwande, “Outreach Strategies in International and Hybrid Courts” International Center for Transitional Justice, published April 2010. <http://ictj.org/our-work/research/outreach>: 7.

underutilized. Due to the lack of literature examining outreach, I bring in works from global health campaigns that face similar barriers in developing countries. Because global health campaigns are frequently conducted in developing countries, they face many of the same barriers that outreach programs do. They also lack infrastructure, either mid or post-conflict, and face similar logistical challenges. The major difference is the way they prioritize outreach, or as they call it, social mobilization. After outlining the processes and setbacks involved in outreach programs, the paper will show how global health campaigns overcome similar hurdles. This paper argues that altering the current outreach model to mimic best practices from global health campaigns, interested parties can better increase their outreach efforts, thereby having a more inclusive, informed, and reconciliatory process.

## **Outreach**

Informing the affected population about transitional justice methods being undertaken and creating a connection between the processes and the people they intend to help is a critical component of the transition. However, both judicial and non-judicial methods present their own sets of challenges. Experts state that both domestic and international criminal tribunals can be difficult to explain to local populations.<sup>151</sup> Non-judicial methods such as TRC's are heavily reliant on participation by the affected population and therefore also benefit from extensive outreach efforts. In the following sections, I use the current body of literature on transitional justice methods and outreach programs to show why outreach is critical, how the programs are conducted, and why it has historically been underutilized.

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<sup>151</sup> Janine Natalya Clark, "International War Crimes Tribunals and the Challenge of Outreach." *International Criminal Law Review* 9 no.1 (2009): 100.

### ***Why it is needed***

The literature states that outreach programs are an essential component to transitional justice proceedings and their eventual goals of retribution and reconciliation.<sup>152</sup> Successful programs bring much-needed legitimacy to the process among key victim populations as well as the general population of an affected region or country.<sup>153</sup> Conducting outreach also educates local populations on the rule-of-law, builds confidence in a judiciary, and helps the targeted population feel ownership in the process.<sup>154</sup> Research shows that outreach programs can help control the conversation, and prevent political factions or groups with ulterior motives from undermining the process.<sup>155</sup>

In the Central African Republic, researchers conducted a study to understand how outreach programs raised awareness about the International Criminal Court (ICC), how people in the region acquire their news and information, and how that impacted their perceptions of the ICC.<sup>156</sup> In the Central African Republic, the ICC used newspapers and radio programs to reach out to the local population.<sup>157</sup> They broadcasted programming in local languages, held workshops to engage the victims and answer questions, and explained the basic functions of the ICC.<sup>158</sup> The study found that people that used newspapers and radio as their primary information sources knew more about the ICC, and

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<sup>152</sup> Clark, "International War Crimes Tribunals," 115; Patrick Vinck and Phuong N. Pham, use *ibid* "Outreach Evaluation: The International Criminal Court in the Central African Republic," *International Journal of Transitional Justice* 4 no. 3 (2010): 422; Clara Ramirez-Barat and Maya Karwande, "Outreach Strategies in International and Hybrid Courts" International Center for Transitional Justice, published April 2010. <http://ictj.org/our-work/research/outreach>: 8.

<sup>153</sup> Vinck and Pham, "Outreach Evaluation," 422.

<sup>154</sup> *Ibid.*; Claire Garbett, "Transitional Justice and 'National Ownership': An Assessment of the Institutional Development of the War Crimes Chamber of Bosnia and Herzegovina." *Human Rights Review* 13 no.1 (2012): 65.

<sup>155</sup> Clark, "International War Crimes Tribunals and the Challenge of Outreach," 104.

<sup>156</sup> Vinck and Pham, "Outreach Evaluation," 425.

<sup>157</sup> *Ibid.*, 427.

<sup>158</sup> *Ibid.*

those that knew more about the ICC had a more positive view.<sup>159</sup> Those relying on neighbors, tended to be female, less educated, and poorer than those with access to newspapers; 32 percent of women, and only 16 percent of men were considered uninformed.<sup>160</sup> And, while 51 percent of those surveyed used print media, 38 percent relied on neighbors. Another important finding was that people that did not have access to radio and newspapers and instead relied on their local communities and friends for information were less aware of what the ICC was, its activities, and how it was performing.<sup>161</sup> These statistics show how those who are better informed about transitional justice proceedings are more likely to understand the processes and support them.

Further proof of outreach positively impacting the transitional justice process is seen in Cambodia during the Extraordinary Chambers in the Courts of Cambodia (ECCC). During the Khmer Rouge trials, outreach efforts conducted by the ECCC extended beyond the city of Phnom Penh, where the trials were held, and reached out to both survivors and the general population throughout the country.<sup>162</sup> Before the trials, surveys showed 39 percent of those surveyed did not know anything about the ECCC with over 40 percent having very limited knowledge.<sup>163</sup> 82 percent of respondents could not name the five individuals that would be tried and nearly half of all respondents did not know it was a hybrid court.<sup>164</sup> After television programming, radio shows, newspaper

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<sup>159</sup> Ibid., 437 and 439.

<sup>160</sup> Ibid. 431.

<sup>161</sup> Ibid., 437.

<sup>162</sup> Christopher Sperfeldt, “Broadcasting Justice: Media Outreach at the Khmer Rouge Trials.” *Asia Pacific Issues* no. 115 (2014): 5.

<sup>163</sup> Ibid.

<sup>164</sup> Ibid., 5-6

articles, along with other outreach efforts, another survey was taken.<sup>165</sup> The follow-up survey showed that “awareness of the Court had increased among the adult population, with 25 percent of all respondents saying that they had no knowledge of the ECCC (compared to the 39 percent in 2008). In addition, 67 percent could adequately describe the Court as a hybrid court (compared to the 53 percent in 2008), and 11 percent could correctly name the individuals who had been arrested (compared to 3 percent in 2008).”<sup>166</sup> Here the results once again show a correlation between outreach efforts and increased awareness of outreach efforts and knowledge of transitional justice proceedings.

The literature also shows how failing to conduct outreach programs from the outset of transitional justice proceedings creates an information vacuum leading to people being both uninformed and misinformed with the process. Politicians, elites vying for power, or those trying to discredit the process can fill the void with false or tainted information with hopes of pushing their own agendas.<sup>167</sup> The International Criminal Tribunal for the former Yugoslavia’s (ICTY) delayed outreach programs allowed domestic political elites to color the process as biased, one-sided, and ethnically-motivated.<sup>168</sup> A lack of educational outreach during Peru’s TRC and lack of engagement with the local media was cited as a major factor in the commission’s inability to educate Peruvians on the TRC’s purpose.<sup>169</sup>

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<sup>165</sup> Sperfeldt, “Broadcasting Justice,” 1-11; Clara Ramírez-Barat and Maya Karwande, “Outreach Strategies in International and Hybrid Courts, 9-10.

<sup>166</sup> Sperfeldt, “Broadcasting Justice,” 8.

<sup>167</sup> Clark, “International War Crimes Tribunals and the Challenge of Outreach,” 104.

<sup>168</sup> Ibid.

<sup>169</sup> Lisa J. Laplante and Kelly Phenicie, “Media, Trials and Truth Commissions: ‘Mediating’ Reconciliation in Peru’s Transitional Justice Process.” *International Journal of Transitional Justice* 4 no. 2 (2010): 218.

### ***Victim Participation***

Victim participation, getting affected communities to participate in the proceedings by providing testimony during trials, taking part in healing rituals, contributing accounts for TRC's, and other such activities are a critical part of both the reconciliatory and retributive goals of transitional justice mechanisms.<sup>170</sup> Scholars say that victim participation is not only necessary to conduct proceedings, but their inclusion “empowers survivors, engender[s] individual healing and social trust, and promote[s] accountability and the rule of law.”<sup>171</sup> This participation also requires finding the victims, informing them of the proceedings, explaining what is needed, and sometimes physically transporting them to trials, commissions, or other proceedings. Per the literature, a significant reason outreach is helpful for victim participation is its potential to tackle to above-mentioned challenges.<sup>172</sup> During conflict, thousands and sometimes millions of victims may flee to neighboring villages, cities, or countries in search of safety.<sup>173</sup> These peoples are often victims themselves or witnessed the atrocities committed. Experts purport that reaching out to these affected diasporas to gain an accurate recounting of what occurred, as well as gathering testimony for trials, can be essential to uncovering the truth and promoting reconciliation.

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<sup>170</sup> Harry Hobbs, “Victim Participation in International Criminal Proceedings: Problems and Potential Solutions in Implementing an Effective and Vital Component of Justice.” *Texas International Law Journal* 49, no. 1 (2014): 5, 10; Clara Ramirez-Barat, “Making an Impact: Guidelines on Designing and Implementing Outreach Programs for Transitional Justice.” International Center for Transitional Justice, published January 2011. <http://ictj.org/our-work/research/outreach>: 24.

<sup>171</sup> Hobbs, “Victim Participation in International Criminal Proceedings,” 1.

<sup>172</sup> Huma Haider, “Transnational Transitional Justice and Reconciliation: The Participation of Conflict-Generated Diasporas in Addressing the Legacies of Mass Violence.” *Journal of Refugee Studies* 27, no. 2 (2014).

<sup>173</sup> Haider, “Transnational Transitional Justice and Reconciliation,” 211.

## *Underutilization*

Despite outreach programs' role in aiding a transition, they continue to be underutilized in transitional justice proceedings. The examination of why they are being underutilized, even though they are helpful in building legitimacy and accountability, is also under-examined. There is an expanding body of literature surrounding transitional justice proceedings, international law, and post-conflict societies, but Outreach programs' impacts and best practices have not been researched and analyzed at length.<sup>174</sup> This lack of research also contributes to the question of why Outreach programs continue to be underutilized. Some of the obstacles briefly mentioned in the literature are related to funding, security concerns, logistics, delays in getting started, and language barriers.

Funding was low or very inconsistent in several cases, which led to understaffing, delays in getting offices set up, inability to cover the necessary ground, and programming inconsistencies.<sup>175</sup> Outreach programs additionally faced logistical problems which added to the cost. A lack of physical infrastructure or electronic networks makes transportation and disseminating information difficult and expensive. Furthermore, the multitude of languages spoken in a region requires translators, and printed materials and broadcasts require several languages. This is both time consuming and expensive.<sup>176</sup>

In some cases, the conflict may be unresolved, which may cause security concerns. Workers are denied access to the area either by their own governments, the

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<sup>174</sup> Vinck and Pham, "Outreach Evaluation," 424; Sperfeldt, "Broadcasting Justice," 4.

<sup>175</sup> Clark, "International War Crimes Tribunals and the Challenge of Outreach," 113; Vinck and Pham, "Outreach Evaluation," 423; Sperfeldt, "Broadcasting Justice," 7.

<sup>176</sup> Clark, "International War Crimes Tribunals and the Challenge of Outreach," 110.

governments of the countries they are operating in, or other international organizations.<sup>177</sup> This may prevent programs from reaching out to affected populations and can also add to the cost, whether it is to keep people safe or to find alternate means of getting those in danger access to information. Lastly, the lack of prioritization leads to long delays in getting these programs started. At times, outreach programs do not start until five or six years after transitional justice proceedings are already underway. This leaves ample time for outside sources, biased political groups, to establish misperceptions in the affected communities.

## **METHODOLOGY**

This paper hypothesizes that outreach practices are underutilized because of the obstacles they must face. The case studies will show the main obstacles to conducting successful outreach programs. Then, comparing the main obstacles with outreach programs to the success of global health social mobilization campaigns will show why these hurdles leave outreach programs severely underutilized.

These hurdles are often the main reason why the programs are underutilized. Outreach programs are not a priority for those conducting transitional justice. As a result, it is consistently underfunded and overwhelmed by challenges of operating in conflict-ridden societies. They have issues with logistics, cost, staffing, funding, and gaining access to victims.

Since global health campaigns frequently operate in countries with similar hurdles, they often face similar challenges regarding logistics and access. However, they conduct extensive social mobilization campaigns, their version of outreach, and view it as critical to a global health campaign's success. Comparing the two methods, operating

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<sup>177</sup> Ibid., 115.

under the same in-country constraints, can shed light on how transitional justice operations can better incorporate outreach into their efforts, bringing much-needed legitimacy to their efforts.

### **Under Prioritized**

Outreach fails to be seen as a priority when establishing transitional justice proceedings. Despite the expansive body of literature examining transitional justice, there is very little work dissecting outreach programs. It is understudied and under-analyzed making best practices even harder to identify.<sup>178</sup> Even though there are some studies on the tribunals and commissions, very few of the studies seek to understand the relationship between outreach programs and increased awareness of the proceedings.<sup>179</sup>

This lack of prioritization often shows itself when the transitional justice methods are first employed, and outreach is frequently late to follow. Building a framework to get the process started as quickly as possible is critical to the transition's success.<sup>180</sup> While offices and programs are established, courts, commissions, and affiliated groups should start disseminating information about the proceedings, planning being undertaken, and any other salient updates (which they maintain throughout the duration of the proceedings). More recently, both Cambodia and East-Timor created steering committees to start organizing and getting information out while official offices were established.<sup>181</sup>

A failure to do this casts a shadow for the duration of the proceedings. Six years passed after the ICTY's creation for any outreach activities to begin.<sup>182</sup> The International

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<sup>178</sup> Sperfeldt, "Broadcasting Justice," 4.

<sup>179</sup> Vinck and Pham, "Outreach Evaluation," 424.

<sup>180</sup> Clara Ramírez-Barat, "Making an Impact: Guidelines on Designing and Implementing Outreach Programs for Transitional Justice," 9.

<sup>181</sup> Ibid.

<sup>182</sup> Clark, "International War Crimes Tribunals and the Challenge of Outreach," 101.

Criminal Tribunal for Rwanda (ICTR) also waited over five years before undertaking any outreach programs, allowing biased and inaccurate reporting to taint many people's view of the tribunals before their trials even began.<sup>183</sup> As mentioned in the previous chapter on political elites, people were not confident in the ICTY's ability to adequately prosecute those at fault, to deliver accurate verdicts, or to provide solace to the victims. Many of these feelings arose since domestic political elites manipulated the courts purpose for political gain. They supported or opposed the Tribunal based on their decision to either embrace or demonize the West. Political elites with interests tied to the Tribunals' outcome were also able to control the media's messaging. This made victims and affected populations feel the Tribunal was biased and ineffective.

Global health campaigns prioritize outreach much different than transitional justice efforts. They use social mobilization, which they describe as efforts to "to engage with communities and parents in order to facilitate demand and understanding on the importance" of their campaigns.<sup>184</sup> Over three decades of global health efforts have established social mobilization efforts as an indispensable core component of eradicating diseases around the world.<sup>185</sup> Another important distinction is that global health campaigns tie their social mobilization campaigns to its success. For example, when having trouble with Polio in Nigeria and Pakistan, they attribute some of their difficulties to lackluster or disorganized mobilization efforts.<sup>186</sup> The Polio Eradication Initiative

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<sup>183</sup> Vinck and Pham, "Outreach Evaluation," 423.

<sup>184</sup> "Social Mobilization and Communications," Global Polio Eradication Initiative. Accessed September 26, 2014, <http://www.polioeradication.org/Financing/Budgetcomponents/SocialMobilizationandCommunications.aspx>.

<sup>185</sup> Rafael Obregon and Silvio Waibord, "The Complexity of Social Mobilization in Health Communication: Top-Down and Bottom-Up Experiences in Polio Eradication." *Journal of Health Communication* 15 (2010): 27.

<sup>186</sup> Obregon and Waibord, "The Complexity of Social Mobilization in Health Communication," 28-29.

(PEI) is regarded as one of the most ambitious global health campaigns and its central focus is on engaging in complex and aggressive social mobilization.<sup>187</sup> While global health campaigns face many of the same issues that outreach programs do, they prioritize their social mobilization campaigns very differently than outreach programs. Many global health actors view social mobilization as a top priority, often including it in their core functions, and it is frequently endorsed as an effective strategy in increasing public awareness and participation.<sup>188</sup>

### **Cost**

One of the most frequently cited issues with conducting outreach programs is the lack of funding. Additionally, detailed information accounting for transitional justice expenditures is not available.<sup>189</sup> Even if approximations exist, they often concern particular tribunals or truth commissions and do not include a breakdown of costs to see how much money is spent on outreach efforts. It is important to point out that transitional justice procedures are incredibly costly to begin with and there are repeated instances of trials running out of money, stalling because of funding gaps, and costing hundreds of millions of dollars.<sup>190</sup> Furthermore, new democracies often have struggling economies recovering from years of conflict, and are less willing to spend large amounts of their budgets on these trials unless tied to international assistance.<sup>191</sup> However, most experts and scholars still agree that it is frequently underfunded. They come to this conclusion by

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<sup>187</sup> Ibid.

<sup>188</sup> Belinda G. O'Sullivan, Catherine M. Joyce, Matthew R. McGrail, "Adoption, Implementation and Prioritization of Specialist Outreach Policy in Australia: A National Perspective." *Bulletin of the World Health Organization* 92, no. 7 (2014): 512; Marjorie S. McConnell, "Hantavirus Public Health Outreach Effectiveness in Three Populations: An Overview of Northwestern New Mexico, Los Santos Panama, and Region IX Chile." *Viruses* no. 3 (2014): 986.

<sup>189</sup> Tricia D. Olsen, Leigh A. Payne, Andrew G. Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (Washington D.C., U.S. Institute of Peace, 2010), 65.

<sup>190</sup> Olsen, Payne, Reiter, *Transitional Justice in Balance*, 61.

<sup>191</sup> Ibid., 62.

showing that most tribunals, including the International Criminal Court (ICC) do not include outreach in their core-funding request. Most outreach programs are forced to rely on outside funding. They come from international organizations (European Union), individual donors, and other outside donations.<sup>192</sup>

Since global health campaigns prioritize social mobilization more than transitional justice prioritizes outreach, it is frequently funded in a different way. Because outreach programs are underfunded, there are not proper accounting measures to even show how outreach measures up to the rest of the procedures undertaken. With global health campaigns, social mobilization is frequently part of its core infrastructure and thereby well-funded.<sup>193</sup> In a polio campaign, organizations dedicated between twenty to thirty percent of their core funding to social mobilization.<sup>194</sup> They also have complex transparency and accountability with how their funding is budgeted. Furthermore, they bring in funding to fight these global campaigns from multiple sources and ask for multi-year commitments so funding does not lapse mid-program.<sup>195</sup> Additionally, global health campaigns work to bring in well-known advocates, such as Bill and Melinda Gates, to rally support, bring public awareness, and increase private donations to their causes. Their prioritization leads to funding that enables them to tackle many of the logistical challenges, outlined below, in a more effective manner.

## **Logistics**

Another major hurdle in conducting outreach is overcoming logistical barriers.

These logistics include access to the impacted regions, language barriers, and

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<sup>192</sup> Ibid., 65

<sup>193</sup> “Financing,” Global Polio Eradication Initiative. <http://www.polioeradication.org/Financing.aspx>.

<sup>194</sup> “Financial Resource Requirements 2013-2018,” Global Polio Eradication Initiative, published February 2014. <http://www.polioeradication.org/Financing.aspx>: 4.

<sup>195</sup> Ibid.

understaffing. Accessing certain populations can be difficult because of distances and security. Lack of infrastructure due to underdevelopment or damages inflicted during war leave roads, bridges, and public transportation decimated. Language barriers require translators to help disseminate information, translate documents, and craft culturally appropriate messaging. Understaffing also is also a result of not being prioritized enough but leaves those in charge of outreach ill-prepared to tackle the other obstacles proposed by logistics.

Better funding and prioritization leave social mobilization campaigns better equipped for handling logistics-related hurdles. They post public service announcements, design pamphlets and literature, reach out to affected villages, and have educational videos on their activities.<sup>196</sup> They are better staffed and therefore can disperse into more rural areas, covering more ground in less time. They are also able to hire translators, or hire people locally who are already familiar with the local dialects. In many countries such as Chile, Panama, Nigeria, Pakistan and Cameroon, social mobilization campaigns are working to employ similar methods to outreach programs, just scaled up.

## **Language**

During the War Crimes Chamber of the Court (WCC) of Bosnia and Herzegovina (BiH), cases were processed in Bosnian, Croatian, and Serbian to maximize understanding.<sup>197</sup> They also distributed materials with details about the Court's processes and verdicts to help build confidence and transparency amongst the locals.<sup>198</sup> This prevents the information vacuum from taking hold and crippling the process from the

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<sup>196</sup> Felipe Lobelo, Jürgen M. Steinacker, John Duperly, and Adrian Hutber. "Physical Activity Promotion in Health Care Settings: The "Exercise is Medicine" Global Health Initiative Perspective." *Schweizerische Zeitschrift Für Sportmedizin & Sporttraumatologie* 62, no. 2 (2014) 44; McConnell, "Hantavirus," 988.

<sup>197</sup> Garbett, "Transitional Justice and 'National Ownership,'" 77.

<sup>198</sup> Ibid.

start.<sup>199</sup> However, the ICTY did not start until several years into the proceedings. Only once outreach efforts began six years into the Tribunal, did the translations begin. Translations also slowed down efforts in the Special Court for Sierra Leone (SCSL), although to a lesser extent since there were fewer languages to translate into.<sup>200</sup>

Literacy rates are another issue these countries face. Years of conflict often lead to an impoverished and uneducated population.<sup>201</sup> Not only are language barriers evident for translating, but also for comprehension. Levels of illiteracy affected how outreach offices used written materials in the Central African Republic, along with many other African countries.<sup>202</sup> High levels of illiteracy require programs to find innovative ways to educate, inform, and communicate with the victims.

### **Access to Regions and Understaffing**

Gaining access to afflicted regions can also be difficult. Terrain, security, and permission may pose a challenge to outreach efforts and may add to the cost. Developing countries often lack sophisticated infrastructure; after years of war, the infrastructure they did have may be severely damaged. This makes indigenous or displaced populations difficult to contact.<sup>203</sup> In other regions, the conflict is either ongoing, or other conflicts are happening nearby. In Sudan, Chad, and the Central African Republic, outreach became very difficult because of security concerns. In Darfur, their government denied ICC staff permission to conduct outreach. This forced the ICC to arrange meetings in

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<sup>199</sup> Ibid.

<sup>200</sup> Clark, "International War Crimes Tribunals and the Challenge of Outreach," 110.

<sup>201</sup> Ibid., 115.

<sup>202</sup> Ibid.

<sup>203</sup> Ramírez-Barat, "Making an Impact: Guidelines on Designing and Implementing Outreach Programs for Transitional Justice," 25-26.

Europe and other parts of Africa to meet with legal representatives or NGO's affiliated with the victims.<sup>204</sup> This added time and multiplied costs.

Another hurdle occurs in dangerous conflict zones in which the United Nations restricts all personnel except those administering humanitarian aid for operating, as we saw in the Central African Republic.<sup>205</sup> Accessing certain populations is also difficult because they are not well organized. Internally Displaced People (IDP) and people with disabilities are difficult to contact since they are often scattered throughout the country and have moved far away from their home or the conflict zone.<sup>206</sup> These minority groups may also not have the resources, information, or ability to connect with others. In some countries, women are not allowed to organize or speak without men present.<sup>207</sup> This is an obstacle when conducting surveys or gathering information in conflict-ridden countries, aside from outreach efforts. Interviewing women is an important part of evaluating conflicts to understand if rape was used as a weapon in a conflict. Women are also frequently at home and in charge of the household, so they can accurately speak to what is going on their community. Consequently, reaching out to these displaced and hard to reach populations is a critical part of understanding a conflict and rebuilding a post-conflict society.

Establishing relationships with several sectors of society such as the media, government, and civil societies help lay the groundwork. As an example, the SCSL built a relationship with the media from the start; devising a strategy on which communities

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<sup>204</sup> Clark, "International War Crimes Tribunals and the Challenge of Outreach," 115.

<sup>205</sup> Ibid.

<sup>206</sup> International War Crimes Tribunals and the Challenge of Outreach," 115; Ramirez-Barat, "Making an Impact: Guidelines on Designing and Implementing Outreach Programs for Transitional Justice," 25-26.

<sup>207</sup> Hannah Bloch, "Female Heads of Household (And Hair) Reveal Afghanistan's Drug Use," *National Public Radio*, October 6, 2014, accessed October 6, 2014, <http://www.npr.org/blogs/goatsandsoda/2014/10/06/353507732/female-heads-of-household-and-hair-reveal-afghanistans-drug-use>.

they would help and what programming would be best; some authors cite this strategy as particularly useful when conflict involves strong cultural and ethnic divides, as were present in BiH.<sup>208</sup> Disseminating print materials is also critical and contains information about the goals, function, and proceedings taking place.<sup>209</sup> These materials present the information clearly, help explain the methods used, and their purposes.<sup>210</sup> Furthermore, materials can be crafted to target certain audiences, are easy to pass along, and can contain graphics, maps, and infographics, for quick consumption.<sup>211</sup> Crafting websites can also be helpful. These websites feature videos, frequently asked questions, quick explanations, photographs, and a mechanism that allows website's visitors to submit questions or comments.<sup>212</sup> Other interactive mediums to foster dialogue include blogs, discussion forums, and social media.<sup>213</sup> The literature outlines several instances where radio programming was used. They featured discussions with guests who understood the process and let people call-in with questions, as seen in Sierra Leone, Uganda, and the Central African Republic.<sup>214</sup>

All of this programming requires research, staff, and people experienced at building relationships with the affected populations. Due to the lack of attention paid to outreach, offices are incredibly understaffed and the extensive preparation and outreach needed is next to impossible. In the WCC in BiH, outreach offices did not have their own

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<sup>208</sup> Vinck and Pham, "Outreach Evaluation," 423, 424; Garbett, "Transitional Justice and 'National Ownership,'" 79.

<sup>209</sup> Clark, "International War Crimes Tribunals and the Challenge of Outreach," 113.

<sup>210</sup> Ibid.

<sup>211</sup> Ibid. ; Ramírez-Barat, "Making an Impact: Guidelines on Designing and Implementing Outreach Programs for Transitional Justice," 16.

<sup>212</sup> Ramírez-Barat, "Making an Impact: Guidelines on Designing and Implementing Outreach Programs for Transitional Justice," 15.

<sup>213</sup> Ibid., 18.

<sup>214</sup> Vinck and Pham, "Outreach Evaluation," 427; Clark, "International War Crimes Tribunals and the Challenge of Outreach," 113.

funding mechanisms and thus only employed three people.<sup>215</sup> Those three staffers are somehow expected to create the materials, disseminate them to the public, overcome language and location barriers, build a relationship with the media, and organize and host public forums for victims to learn about the transitional justice measures being used. Extreme understaffing is also present in the ICTY. Out of the 1,200 staff members working on the tribunal, only two people at The Hague worked on outreach.<sup>216</sup> Their regional offices are consistently staffed with one or two staffers, with only one authorized to speak on the record.<sup>217</sup> The SCSL also only had five staffers at The Hague working in the outreach office.<sup>218</sup> Whether in country or at The Hague, outreach offices are consistently grossly understaffed and underfunded, leaving just a handful of people to manage an entire country or region's outreach efforts.

Social mobilization campaigns create connections with local leaders and tribal elders to enter hard to reach or unsafe areas.<sup>219</sup> This helps global health workers convince those new to vaccines or other global health campaigns that the medicines and procedures are safe and that workers can be trusted. Establishing workers' legitimacy within rural areas is critical to treating people and preventing them from becoming information poor, resulting from inadequate outreach.

While outreach offices often hire between one and five staffers, polio campaigns reach out to thousands of religious and community leaders to participate in, and advocate for their goals.<sup>220</sup> Not only are they reaching out to thousands of local leaders, they also work with other global health organizations such as the World Health Organization to

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<sup>215</sup> Garbett, "Transitional Justice and 'National Ownership,'" 80.

<sup>216</sup> Clark, "International War Crimes Tribunals and the Challenge of Outreach," 105.

<sup>217</sup> Ibid.

<sup>218</sup> Ibid., 113.

<sup>219</sup> United Nations Foundation Immunization Campaign Observation Trip in Cameroon.

<sup>220</sup> Obregon and Waibord, "The Complexity of Social Mobilization in Health Communication," 33.

integrate thousands of regional employees into the effort.<sup>221</sup> Proven helpful in India and Pakistan, GPEI focused on educating and religious leaders and convincing them to advocate on behalf of the campaigns.<sup>222</sup> Religious leaders were able to help protect children seeking vaccinations and also were able to explain the good work of health workers to skeptical families. In certain circumstances, social mobilization campaigns also provided food or other critical services in combination with vaccinations.<sup>223</sup>

Global health campaigns also deal with the challenge of building relationships with the media outlets around them. The media will often work against their campaigns by spreading rumors and misinformation to discourage people from seeking treatment or receiving vaccinations.<sup>224</sup> The GPEI devised a strategy that helped improve relationships with the media. They found ways to counter biased messaging and worked one on one with journalists and members of the media. Since the media outlets are already operating in-country they are already well versed in the native languages. By improving relations and helping the media outlets recognize their own status as stakeholders in the community, it helped media coverage portray global health campaigns in a better light.<sup>225</sup>

## **ANALYSIS**

Comparing outreach efforts during transitional justice to social mobilization efforts in global health campaigns helps show how other institutions operating in developing and conflict-ridden countries can overcome the critical work of reaching out to their target audiences. Both outreach programs and social mobilization frequently operate in third-world countries with inadequate infrastructure, high rates of illiteracy,

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<sup>221</sup> “Polio Eradication and Endgame Strategic Plan 2013–2018,” Global Polio Eradication Initiative, published 2012. <http://www.polioeradication.org/resource/library/strategyandwork.aspx>: 56.

<sup>222</sup> Ibid., 7

<sup>223</sup> Ibid.

<sup>224</sup> Ibid., 36-37.

<sup>225</sup> Ibid., 37.

multiple languages, and a population that can be skeptical of their work. However, outreach programs are consistently underutilized. Poor outreach programs detract from the transition's legitimacy, a key component on the road to stability, good governance, and democratization.

Even though global health campaigns face similar challenges, they have been more successful in gaining favor amongst local populations. They have many of the same tactics, such as reaching out the local officials, working with the media, and traveling to hard-to-reach areas and rural populations. The above sections compared how outreach programs and social mobilization campaigns operate, to understand why global health campaigns are more apt at tackling these hurdles. Understanding how global health campaigns, which are more established and experienced than transitional justice practices, help form best practices to overcoming these obstacles and conducting successful programming in transitional justice campaigns.

The main differences between the two efforts are the way they prioritize outreach. With transitional justice, outreach is grossly understaffed with just a handful of workers working on an entire trial, commission, or conflict. Frequently, they are not funded through the ICC or the United Nations as the trials are, and forced to find alternate financing. At times, outreach does not begin until five or six years into the transition, and by that time the media and political elites with ulterior motives have already polluted the peoples' minds with biased and inaccurate information. Outreach is not treated as a priority or integral to the transition's success. Implementers consistently under prioritize outreach and fail to treat it as an indispensable part of transitional justice. The understaffing and underfunding that follows the lack of prioritizations leaves outreach

programs ill-equipped to manage language issues, travel expenses, and the other complex logistics associated with a successful program.

Global health campaigns view social mobilization as a main component of success. It is included as a core component of their strategy and successes in global health efforts are often attributed to a robust and relentless social mobilization effort. When crafting immunization campaigns, social mobilization is outlined as a main component. When faced with obstacles, they frequently use increased social engagement as a tool. Viewing it as a high priority ensures adequate funding, which they secure through multi-year commitments to enable long-term planning. Furthermore, they form a complex and coherent strategy employing hundreds of people and reaching out to thousands in the communities they are working with. The increase in staffing makes them able to reach out to IDP's, diasporas, and under-served communities. Their proactive approach and local connections provide better media relations and help them control the conversation, informing people why their work is important, safe, and why it should be trusted.

Transitional justice operations would greatly benefit from incorporating social mobilization practices into their efforts. Social mobilization faces the same troubles of language, terrain, access, expenses, media, and poverty issues. Viewing outreach as an integral part of the transition's success, and thereby making it a high priority, will enable the process to lay down roots much quicker in the communities they are entering. It will enable them to make better relations with the media to disseminate accurate and favorable information about their efforts. Offices will be staffed with qualified, experienced, and multilingual people to handle the onslaught of victims wanting to participate in the process.

## CONCLUSION

Enabling transitional justice processes to take root in the affected communities and having them viewed as legitimate is the key to their success. The departure of violent regimes and the end to conflict leave nations without rule of law, good governance, accountability or any transparency about past atrocities. Tackling these problems quickly and effectively to bring a sense of reconciliation and retribution amongst the affected populations is imperative. Using judicial and non-judicial options when conducting transitional justice is an option many countries and the international community have used in the past. Communities hold trials or tribunals to hold wrongdoers accountable and use truth commissions to unearth decades of violence and suppression. Moreover, granting amnesties to some bad actors or putting limitations on political parties for participating in the new government can help put both victims and low-level perpetrators at ease and more willing to reconcile their differences.

Ensuring this process is viewed as legitimate requires years of work, millions of dollars, and relentless efforts. When used correctly, conducting outreach programs to inform victims of what the transition seeks to accomplish helps ground the process. Outreach programs can range from town-hall style forums, news coverage, radio programs, disseminating pamphlets, transporting victims from their homes to proceedings, to one on one conversation. A lack of outreach leaves people misinformed and less willing to participate or trust the process.

Global health campaigns, facing many of the same challenges, have risen above them and worked to eradicate many diseases from the world's most remote areas. They employ a robust and long-term social mobilization campaign. Campaigns closely tie the

success of their campaigns to the success of their mobilization efforts. They build trust in-country from the federal level all the way down to the individual citizen by engaging local influencers, journalists, tribal elders and religious leaders. The extensive efforts allow them to tackle issues of cost, logistics, language, and access to underserved populations. Bringing over best practices from global health campaigns and applying them to transitional justice is a viable solution worth exploring to aid in the irreplaceable effort of rebuilding and reuniting a post-conflict society.

## **CONCLUSION**

This thesis showed how mistrust between local populations and transitional justice's implementers serves as a major obstacle as countries transition between governments, leaving a violent non-democratic regime behind, and hopefully moving towards democratization. The thesis defines transitional justice as a set of judicial or non-judicial tools used to both reconcile a conflicted population while holding bad actors accountable. It identifies the three main areas as mistrust as trust between the local populations, the role of political elites, and the lack of social mobilization.

The first chapter demonstrates the influence political elites have in the transition. The chapter explains how political elites have an interest in influencing regime change and any transitions that occur afterwards. Additionally, the chapter shows how political elites can manipulate transitions to further their own financial or political goals. The second chapter showed how both judicial and non-judicial transitional justice methods present pitfalls and can be ill-perceived by the people they are intended to help. The chapter uses several judicial and non-judicial examples and provides a plethora of instances where methods adversely affected their target audience and created mistrust between already tense populations and the transition's implementers. The final chapter stresses the importance of outreach efforts and shows how the outreach efforts contribute to a successful transition. Unfortunately, despite the success of outreach efforts, they are consistently underutilized. Conducting outreach operations requires overcoming several obstacles, which implementers are frequently unable to overcome. The paper compares transitional justice's lackluster outreach efforts to global health's robust outreach campaigns and provides a model for best practices moving forward.

The important goals of transitional justice will not be met until the local population views the process as legitimate. Many experts agree that implementing transitional justice can promote democratization and reconcile societies after they have been subjected to gross human rights violations. The Nuremberg Trials stand the test of time as a way to hold high-ranking Nazi officials accountable. Since then, similar trials have been conducted all over the world. However, the international community's inability to prioritize legitimacy enough to research and develop best practices has severely undercut the process and tampered its effectiveness.

Understanding which methods to use will help create a good foundation when the transition begins. Both judicial and non-judicial methods can be misinterpreted as victor's justice or one-sided. Understanding political elites and their motives will help implementers create proper incentive structures, encouraging behavior that is focused on a successful transition versus a power grab. Domestic elites can base their implementation on how their constituency views it, instead of convincing their constituency of the transition's importance. In the past, countries and organizations tied aid and international acceptance to implementation. This caused elites to tailor their response to the proceedings based on international relations versus the need to promote reconciliation. In the end, these actions have to be buttressed by strong outreach campaigns that inform the public, get them invested in the process's success, and encourage them to participate and promote reconciliation.

As demonstrated above, transitional justice proceedings can easily be delegitimized, but their success is imperative for democratization. Metrics to understand best practices will be critical moving forward. There is insufficient research regarding

cost breakdowns of the different methods, making it difficult to identify where money is being spent and how better to allocate it in the future. Further research should be directed at establishing best practices on creating and maintaining trust between the implementers and the community.

This paper argued how important legitimacy is to the success of implementing transitional justice, and, how the United States, international organizations, and NGO's all have a vested interest in improving the process. It showed how failing to quell ethnic cleavages leads to further conflict endangering American soldiers and costing billions of dollars. Transitional justice has the potential to heal struggling societies, save lives, and prevent post-conflict societies from devolving into more conflict. Understanding how to accomplish this successfully is a pertinent and timely issue, since conflicts and revolutions have arisen throughout Northern Africa, the Middle East and tension is growing in South Asia. It is vital that best practices and strong implementation strategies are crafted sooner rather than later. The need for reconciliation and retribution amongst warring societies will not be diminishing anytime in the near future, and current practices are inadequate in their response.

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