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Transitional Justice: Prioritizing Truth Commissions or International Tribunals to Ensure Healing and Reconciliation

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Abstract

There is a recent increased examination of the effects of international funding for truth commissions and criminal tribunals in post-conflict societies as they transition to peace. The discourse on whether to prioritize truth commissions or international criminal tribunals and which form of transitional justice more effectively fosters healing and reconciliation continues to be highly polemical. This paper explores whether, in terms of post-conflict healing and reconciliation, international funding would be better spent on truth commissions than on international criminal tribunals or vice versa. It examines the complexities and heterogeneity of transitional societies and suggests that international funding for transitional justice should be less rigid and prescriptive. A victim-centric approach that takes into account practical realities on the ground should be the driving force behind the decision to fund particular forms of transitional justice. In the paper, first, theories of healing and reconciliation are conceptualized. Second, three case studies involving truth commissions are presented and analyzed. Third, through the lens of competing arguments on the role of prosecution in terms of healing, reconciliation, and deterrence, additional country cases involving recent hot-spots are dissected. Based on the examination of the unique characteristics of these examples of post-conflict societies, the paper argues that international funding should be based on wide-ranging factors that are country specific.

“A wrong is something that ought not to exist and calls to be obliterated. If anyone is able to remove it, he is obligated to do so or the wrong will also be partly his.”

Wolgast, 1987

Introduction

Wolgast’s message underpins the strong moral need to fight injustice everywhere and to demand societal accountability when injustice remains unchecked. In post-conflict societies, healing and reconciliation are fundamental components in forming a solid foundation for stability, the re-establishment of social norms, democracy, the rule of law, and institution-building. Transitional states must address healing and reconciliation in order to maintain peace in the aftermath of civil conflicts. Given the magnitude of atrocities committed against innocent civilian populations during civil conflicts and political repressions, victims are left with severe physical and emotional scars that make healing and reconciliation elusive. Given the enormity of the crimes committed, victims’ resentment toward those who caused their suffering is profound. Resentment, hatred, and a strong need for retribution are understandable. Authorities must recognize the legitimate grievances of victims and empathize with their unwillingness to forgive or forget their suffering or relinquish the past. Authorities must work with these individuals and groups to formulate policies that best ensure healing and reconciliation.

A serious impediment to healing and reconciliation is victims’ awareness that the very perpetrators of the heinous crimes committed against them continue also to live among them and usually maintain positions of power in the aftermath of violent civil conflicts. Perpetrators parade the corridors of governments with impunity and remain at the apexes of the socio-political and economic pyramids. They possess tremendous power and wealth, typically procured at the expense of victims’ suffering. Victims are left to deal with their physical and emotional injuries in the ruins of war and deprivation, often with little material and psychological support. In many instances, these disparities in economic wealth and other social structures in post-conflict societies stem from the forced domination and subjugation of civilian populations through the barrels of guns, and not through credible democratic processes.

Using Amartya Sen’s capability framework, Murphy (2010) identifies violence, economic oppression, and inequitable constructions of group identity as categories of unjust acts during civil conflict. These disparities in post-conflict societies must be rectified to ensure healing and reconciliation. Murphy contends that being recognized and respected at the individual and group levels as members of a political community and allowing individual participation in the economic, political, and social life of the community also contribute to healing and reconciliation. The historical milieu that nurtures the subjugation of groups and the contemporary forces that connive to ensure continued group suffering are unique in many instances. Therefore, any form of transitional justice must consider the context in which these violent acts have occurred.

The discourse regarding the selection and prioritization of the form of transitional justice that most directly fosters lasting healing and reconciliation continues to be highly polemical. Truth commissions and international tribunals require millions of dollars and are funded by national governments, international organizations such as the United Nations, and non-governmental organizations (Knoops, 2006). The international community also facilitates the judicial process by providing additional judges, lawyers, and forensic investigators. Despite this international support, truth commissions have remained underfunded (Scharf, 1997) and under-resourced, constraining their ability to effectively achieve their specific mandates. Additionally,

costs and resource needs regarding the implementation of either form of transnational justice are country specific, yet the implementation of such forms of justice can be prescriptive.

In this paper, we explore whether, in terms of post-conflict healing and reconciliation, international funding would be better spent on truth commissions than on international criminal tribunals. We examine the complexities and heterogeneity of transitional societies and suggest that funding priority for any form of transitional justice should be less rigid and prescriptive and should adapt to country specific and regional needs to improve ownership of transitional justice processes. We organize the paper as follows. First, theories of healing and reconciliation are conceptualized; second, three case studies involving truth commissions are presented and analyzed; and third, through the lens of competing arguments on the role of prosecution in terms of healing, reconciliation, and deterrence, additional country cases involving recent hot-spots are dissected. Based on the examination of the unique characteristics of these countries, the argument is made that international funding for transitional justice should be based on wide-ranging factors that are country specific.

Conceptualizing Healing and Reconciliation

Lasting healing and reconciliation are negotiated processes through complex systems that demand multifaceted approaches. Healing involves transformation from illness to wellness, enacted through culturally salient practices (Kirmayer, 2004). In the aftermath of violence, acknowledgement of the historical and political contexts in which the violence occurred is important for healing. Effective healing practices are embedded in larger cultural systems that uniquely identify different types of trauma and prescribe appropriate interventions. Healing practices provide personal, social, religious, and moral significance for experiences of trauma and recovery. Healing invokes forms of empowerment, including personal feelings of efficacy and self-control, and larger forms of economic, political, or spiritual power (Kirmayer, 2004).

Staub et al. (2003) notes that healing from the trauma of victimization potentially prevents victims from engaging in retaliation, revenge, and pre-emptive acts of violence, especially if perpetrators continue to live among the survivors. In order for reconciliation to occur, perpetrators must also begin to empathize with the suffering of victims, rather than continue the dehumanization and exclusion of victims as “the others” or “the enemies.” Perpetrators must also assume personal responsibility for their actions, rather than continue to blame the victims or justify their violence using ideological rationalizations. Healing and reconciliation processes are especially important if victims and perpetrators continue to live together and are essential in minimizing the likelihood of renewed violence (Staub et al., 2003).

Philpott (2006) defines reconciliation as comprising diverse political processes of restoring right relationships within a civil society, which does not necessarily involve official procedures. Murphy (2010) conceptualizes political reconciliation as (a) forgiveness and the overcoming of widespread negative emotions in order to restore damaged political relationships; (b) the creation and stabilization of normative expectations and legal trust within a political community; (c) institutionalizing democratic political values based on free and equal citizenship; and (d) the constituting of a political community. Further refining the conceptualization of reconciliation, Hayner (1999) views reconciliation as (a) an assessment of how the past is dealt with in the public sphere, in order to gauge the influence of the past on political and other public relationships; (b) the determination of whether relationships between former opponents are based on present common challenges and interests rather than on the past; and (c) the ability to

reconcile contradictory facts of the past when they appear in conflict. Reconciling conflicting historical views leads to the creation of a shared history that can be accepted by both sides and lessens feelings of blame, mistrust, and antagonism (Staub et al., 2003).

Some form of apology or public recognition of wrongdoing is an essential element of healing and reconciliation (Kaminer et al., 2001; Hamber, 2007). Bringing perpetrators to justice is integral to healing and reconciliation (TRC of South Africa, 1998), which are achieved when justice has been served and the victims are satisfied with the process. Healing and reconciliation are difficult to achieve when victims are aware that perpetrators continue to enjoy the proceeds of their actions or occupy advantageous positions in society that stem from past ills and injustices. Healing and reconciliation are achievable when basic benchmarks of justice and social justice are met and the shared humanity among different groups in post-conflict societies is recognized.

Country Case Studies Involving Truth Commissions

South Africa

European settlement in South Africa began in the 17th century. Initially, British and Dutch settlers engaged in a series of conflicts over land, mineral wealth, indigenous labor, and political rule. These conflicts culminated in the Boer War of 1899. The conflict ended with the acceptance of British rule by the Dutch settlers. The government formulated policies with the intention of marginalizing indigenous black South Africans from the country's economic system (Thompson, 2001). Lowenberg and Kaempfer (1998) note that apartheid in South Africa originated with South Africa's industrialization during the 1920s and with the ensuing job competition, which became the driving force of the South African political economy. They note that low skilled white workers with voting rights were outnumbered by their black competitors, who lacked similar voting rights and were willing to work for significantly lower wages. In order to stifle such competition, white workers successfully mobilized government power to enact successive legislations, formally ushering in a political system of apartheid in 1948, a system which, by all accounts, ensured the subjugation of other human beings. Communities were separated based on skin color, and non-whites were relegated to living on unfertile land.

Apartheid existed for more than four decades, with widespread political violence committed by the ruling white minority and its security apparatus and, to some extent, by those opposing apartheid. Accounts exist of the state security forces drinking beer and barbecuing the bodies of tortured and killed opposition members. The remains of victims were dispersed in acts of disappearance in order to render them untraceable. Death squad killings were pervasive. Children were tortured and killed. Hatred and resentment festered in poor, black communities.

During the transition from apartheid, members of the ruling party feared that relinquishing power to the African National Congress (ANC), a predominantly black activist party, would translate into retribution and widespread violence against whites. The apartheid government negotiated a transitional constitution that ensured amnesty of some form and assured that a smooth transition would occur, without widespread retribution. Many observers around the world anticipated a full-blown civil war. South Africans compromised on the creation of a Truth and Reconciliation Committee (TRC) that would look into past atrocities. It was agreed that perpetrators would openly confess their human rights abuses and prove that such atrocities were committed with political motive. Perpetrators did not have to express contrition for their crimes. Prerequisites for amnesty were limited to public confession and proof that atrocities were

politically motivated (TRC of South Africa, 1998). The TRC was empowered to grant such amnesty. A deadline was set for those applying for amnesty and a parallel criminal investigation was initiated. Those perpetrators refusing to appear before the TRC were denied amnesty and recommended for prosecution. Although some recommendations were never acted on, some military officers of the apartheid regime who had participated in human rights abuses were tried and convicted. Due to the threat of prosecution, rights violators hurried to testify and applied for amnesty (TRC of South Africa, 1998). However, application for amnesty plummeted after a high-level trial acquitted a former defense minister and nineteen others for rights abuses, rendering the threat of incarceration less realistic.

South Africa's transition from apartheid to democracy illustrates that multiple complex factors can influence not only the form and direction of transnational justice itself but also the decision to prioritize a particular form of transitional justice over another. South Africa set out during the transitional phase to prioritize truth-seeking over prosecution, partly to ensure a smooth transition and an end to apartheid. In other countries, victims and national governments aggressively advocated and pursued prosecution of most human rights violators, while in South Africa, a truth commission ensured some form of closure. The process of healing and reconciliation may begin with truth commissions, depending on the context and political opportunities and compromises. The South African TRC, regarded as the paragon of truth seeking in transitional societies, represented a political compromise that guaranteed a non-eventful transfer of power from the minority apartheid regime to a democratic and inclusive government. While South Africa did not prosecute those who fully cooperated with the TRC, the country did prosecute those who refused to cooperate. The TRC was a prominent body that helped to close the dark chapter of apartheid.

Chile

In Chile, after General Augusto Pinochet assumed power in 1973, mass human rights violations occurred under his regime. Disappearances, torture, and killings were common. People often did not know the whereabouts of their loved ones. Victims were referred to as "the living dead," an oxymoron that speaks to the agony endured by their relatives. Mothers demonstrated and walked the streets daily with images of their sons and demanded to know their whereabouts. After Pinochet lost a plebiscite in 1988, he continued to lead the military and to wield tremendous power. He remained untouchable and answerable to none. A large segment of society continued to support him and justified his actions as a protection against the spread of Marxist ideology within the country.

Facing mounting pressures, Pinochet retired as head of the military in 1998 and assumed his position as an unelected senator for life. Before leaving the presidency, he hurriedly appointed the majority of Supreme Court judges, whom he expected would decide his fate at a later date. Pinochet also granted his regime amnesty for atrocities committed from 1973 to 1978, the period of utmost brutality (US Institute of Peace, 2003). Patricio Aylwin assumed the presidency in 1990 and constituted a National Commission on Truth and Reconciliation (the Rettig Commission) (US Institute of Peace, 1990). Upon releasing the commission's report, President Aylwin pleaded with the nation, asking for forgiveness on behalf of rights violators. The commissioned report did not bring closure to victims; rather, it opened a fierce debate among opposing sides. Partly due to the polarity of Chilean society concerning the Pinochet regime's actions, the new government was weak and could not act decisively.

However, based on findings by the commission, the Spanish courts issued an arrest warrant for Pinochet for atrocities committed under his regime (Bianchi, 1999). Based on the principle of universal jurisdiction, Spanish law allows for the prosecution of human rights abusers outside of Spain. The Spanish Judicial Power Organization Act 6/1985 allows Spanish national criminal courts to exercise extraterritorial criminal jurisdiction and to prosecute certain categories of crimes, whether or not those crimes were committed outside of Spanish territory and/or by persons who are not Spanish citizens (United Nations, 2009). The arrest warrant was an important moment in Pinochet's demise. In 1998, Pinochet was arrested in London for extradition to Spain. The extradition process dragged out in the British legal system. Pinochet was released by a British court in 2000 on grounds that he was medically unfit to stand trial. Following his return to Chile from London, he was no longer untouchable. Pinochet faced multiple charges and court appearances until his death (US Institute of Peace, 1990; 2003).

Pinochet's grip on power after leaving the presidency was sufficient to stall political reform and prosecution. The commission lacked the power to take action against perpetrators, as Pinochet continued to wield tremendous influence over the Chilean military and society. The commission did not have jurisdictional authority and could not interfere with court cases. Further, it could not compel testimony and could not publicly name perpetrators, which effectively granted them impunity. However, despite significant limitations on its mandate, the commission was important in providing information that raised awareness of the scale of Pinochet's atrocities and pressured the Chilean courts to bring perpetrators to justice (TRIAL, 2013).

Rwanda

The Rwandan Civil War began in 1990 and ended with the Arusha Peace Accords, signed by the government and the Rwandan Patriotic Front (RPF) in August 1992. The Peace Accord instituted a commission of inquiry to investigate human rights violations committed during the civil war. The commission began its work in 1993. Hundreds of Rwandans presented oral and written testimonies to the commission, and the commission found systematic human rights violations in Rwanda during the period under its investigation (1990-1992). Several large-scale massacres of the Tutsi did occur and were attributed to local officials following orders from their superiors. Mass graves were discovered. The commission documented rights abuses on both sides of the conflict. The Rwandan Armed Forces engaged in torture, summary execution, and the rape and impregnation of girls as young as 12 years old. On the other hand, the RPF attacked civilian targets, recruited child soldiers, and engaged in forced deportations. There was widespread violence by both the state and rebel forces, and the judicial system was nonfunctional (The International Commission of Investigation on Human Rights Violations in Rwanda, 1993).

In 1994, genocide ensued after the death of the Hutu President, Juvenal Habyarimana, when his plane was shot down. In 100 days, an estimated 800,000 people were massacred. The majority of victims were Tutsi; some moderate Hutus and human right activists considered to be sympathizers of the Tutsi were also victims. Neighbors were instructed by propaganda radio to use machetes to hack their neighbors to death. Many ordinary civilians were slaughtered as they hid under their beds and in churches and as they walked the streets. UN peacekeepers were ordered to retreat, a decision that Koffi Annan, then head of UN peacekeeping operations and later Secretary General, stated that he most regretted. The genocide ended when Paul Kagame, the Tutsi rebel leader and current president, assumed control of Kigali. The UN Security Council then authorized the International Criminal Tribunal for Rwanda (ICTR).

Some of those accused of genocide were tried in local courtrooms and executed. Many remained in pretrial detention; some went under the Gacaca court system (a local form of community justice), and others were sent to the ICTR that was established and worked from Arusha, Tanzania. The tribunal remains in place and continues its work. The ICTR tried a few high and mid-ranking officers who had orchestrated and implemented the genocide. The Kigame government was displeased that alleged genociders received humane treatment and comparatively less stringent sentences for their crimes. Under this court, sponsored by the international community, perpetrators were given the presumption of innocence and appointed qualified lawyers. Their rights were respected, and, if convicted, they were to serve their prison sentences in a humane setting. The ICTR allowed witnesses and victims of the genocide to testify before judicial authorities and raised the international community's awareness of the atrocities committed during the genocide (Nsanzuwera, 2005).

The commission of inquiry in Rwanda, which preceded the 1990-1992 Civil War, did not result in peace. Enduring ethnic tensions and rivalries remained. There were no mechanisms put in place to address long-standing historical disputes. There were few genuine attempts to heal the scars of past sufferings or reconcile past differences. The ethno-political and economic divides remained. The Rwandan commission of inquiry did not foster healing and reconciliation (Human Rights Watch, 1993). The mayhem and carnage in Rwanda in 1994 serve as stark reminders that healing and reconciliation can be elusive, even after a formal airing of grievances. There is no guarantee of peace and security if the structures that foment violence and inequalities in societies remain intact.

Burnet (2009) notes that even after the 1994 genocide, the RPF forced the repatriation of close to one million refugees from neighboring Democratic Republic of Congo (DRC) in 1996 and arranged the mass killing of hundreds of thousands more under the guise of the Banyamulenge rebellion.¹ A strategic goal of the Rwandan government in the DRC was purportedly to prevent the Democratic Forces for the Liberation of Rwanda (FDLR), a militant group founded by perpetrators of the 1994 genocide, from carrying out similar atrocities. The fluid situation on Rwanda's border with the DRC conveys the continuous fragility of post-conflict peace and security processes and the potential extension of conflict beyond national borders.

The Role of Prosecution as Deterrence and Fostering of Healing and Reconciliation

Wars were once fought between armies, and civilian populations were spared the carnage and horrors of the battle field. This conventional understanding of warfare is no longer the norm. Despite the great human tragedies of the two world wars of the past century, Kim and Sikkink (2010) note that the total number of people killed by their own governments in the 20th century exceeds the number of those killed in combat in both world wars combined. The country cases presented in this study attest not only to this reality but also to the complex nature of civil conflicts and political repressions. The cases underscore the dilemmas faced by transitional societies and the international community as to which form of transitional justice to prioritize in post-conflict nations. Human rights violations committed by these regimes included torture, extra-judicial execution, massacres, genocide, war crimes and crimes against humanity, shame trials of political opponents, imprisonment, disappearances, and ethnic cleansing. Hayner (1999) notes that prescribing the means to achieving healing and reconciliation is difficult if the ends are

hard to define or measure, impossible to guarantee, and depend in part on circumstances beyond one's control.

Many human rights practitioners have advocated for prosecution as a normative response to rights abuses. They contend that adherence to the rule of law and consistency in judicial applications are fundamental in ensuring deterrence and satisfying victims' needs for justice, thereby contributing to healing and reconciliation (Owen, 2004). In this context, adherence to the rule of law connotes that wrongdoers are accountable for their actions in a court of law, irrespective of their status and that tyranny is not condoned and should never go unpunished. For them, prosecution deters would-be perpetrators of heinous crimes, reduces the severity of victims' scars, and ensures lasting reconciliation. Within this context, Mani (2002) writes that justice is essential for healing trauma, which is a recipe for reconciliation and peace, and Bass (2005) suggests that victims desperately want punishment for perpetrators.

Further, Kim and Sikkink (2010) find that transitional countries that prosecute human rights violators and countries with neighbors that prosecute human rights violators are less repressive. Their argument supports the view that deterrence can be achieved by prosecuting perpetrators of atrocious acts or that deterrence is possible by the mere threat of prosecution of would-be perpetrators. Legal scholars and political philosophers have grappled with the question as to whether an "eye for an eye" can ensure deterrence for future offenders or healing of the wounds of victims. From this perspective, accountability is not merely about retributive justice; it is also about preventing future crimes and about saving future generations from the scourge of violence. If this thesis is accepted, then it can be expected that recurrent acts of violence will decrease as prosecution increases. This would create a political space to foster healing and reconciliation as time elapses.

Recent evidence in international justice suggests that the threat of prosecution is not an entirely effective deterrence strategy. For example, the former president of Liberia, Charles Taylor, and the president of Sudan, Omar Hassan Ahmad Al-Bashir, have both been indicted by the International Criminal Court (ICC) for crimes against humanity. The former was successfully prosecuted, while the latter is still at large. However, the immediate neighbors of both Liberia and Sudan continued to engage in acts of atrocity against their civilian populations. Taylor's trial at The Hague did not dissuade political leaders in Liberia's neighboring countries, Guinea and Cote d'Ivoire, from engaging in serious acts of violence against innocent civilian populations. In fact, these incidents occurred during the period of Taylor's trial.

Amnesty International reported that on September 28, 2010, more than 150 people were massacred, 1,500 were injured, and scores of women were publicly raped by security forces as peaceful demonstrators gathered in a stadium in Guinea. Social media and international news organizations showed graphic images of the violence. In 2011, post-election violence in Cote d'Ivoire reached a low point when forces loyal to then-president Gbagbo fired on unarmed female protestors. Responding to the violence in Cote D'Ivoire, Hillary Clinton, US Secretary of State at the time, asserted that such action demonstrated "a callous disregard for human life and the rule of law" and that it "[preyed] on the unarmed and innocent" (US Embassy, Abidjan, 2011). Hundreds of civilian deaths followed, with reports of mercenaries coming from neighboring Liberia. UN Secretary General Ban Ki Moon (2011) denounced the violence in Cote d'Ivoire as "a direct consequence of Mr. Gbagbo's refusal to relinquish power and allow a peaceful transition to [then elected] President Ouattara." In 2011, Gbagbo was transferred to the ICC's custody for his role in the post-election carnage.

Similarly, despite the ICC's arrest warrant for Sudanese President Al-Bashir, neighboring Chad and Libya committed serious crimes against their people. Amnesty International (2009) documented that security forces in Chad murdered and tortured their own people and called on the government to investigate these crimes. In 2011, the Libyan government was alleged to have killed hundreds of civilians during anti-government protests (Amnesty International, 2011). The former Libyan leader, Muammar Gaddafi, and his son, Saif Al-Islam Gaddafi, were also indicted by the ICC for war crimes against the Libyan people. Further, the Syrian regime was not deterred by the ICC indictment of the Gaddafis. These cases suggest that actual or perceived prosecution by international tribunals does not entirely deter regimes from committing human rights abuses.

The pendulum on international prosecution has not settled. It should not be surprising that tribunals do not entirely deter crime, just as prosecutions do not entirely deter common street crime. Of additional concern are the suggestions that the ICC targets countries in the global south and that decisions on transitional justice may in part be reflective of the power asymmetry between the north and south (International Criminal Court, 2013). These issues highlight that prosecution is neither the sole means of deterrence nor the only path to ensure healing and reconciliation or peace and security. This analysis does not by any means imply, however, that the international community should abandon the court system. Rather, it highlights the need for new innovation in international jurisprudence—an innovation that is less prescriptive and more adaptive to situations on the ground.

The Role of Truth Commissions in Fostering Healing and Reconciliation

Truth commissions can be therapeutic, or they can be counter-productive. Advocates for truth commissions contend that the power of truth can ameliorate victims' pain and forge healing and reconciliation. Hayner's (2002) faith in truth-telling resonates when she warns, "Bury your sins, and they will reemerge later. Stuff skeletons in the closet, and they will fall back out of the closet at the most inauspicious time. Try to quiet the ghosts of the past, and they will haunt you forever" (p. 30). Yet Murphy (2010) cautions that sometimes "truth commissions can descend into a public forum for settling old scores and for airing grudges, prejudices, and incidents tangentially related to the mandate of the commission (p. 162)... and may instead become a forum for recrimination and revenge, further entrenching denial and division" (p. 163).

Current arguments regarding the most effective form of transitional justice are based on a prevailing notion that truth commissions are tantamount to amnesty and tribunals to retribution. This dominant mode of thought derives from the South African Truth and Reconciliation Commission. As Hayner (2002) notes, however, truth commissions do not necessarily result in amnesty. She cites the 1995 Burundi conflict in which the UN Special Envoy to Burundi called for the establishment of a truth commission to investigate past abuses but was met with resistance because of the widespread belief that truth commissions signified amnesty. This prompted the Special Envoy to refer to such a body as a Commission of Inquiry, which was then accepted. Findings from truth commissions potentially serve as precursors to amnesty or prosecution. These forms of transitional justice are not mutually exclusive.

The selection of truth commissions, international tribunals, or local prosecution depends on the protractability of the violence, the intensity of the conflict, and the scale and numbers of both victims and perpetrators of violence. In violent conflicts wherein vast segments of the society are victims or perpetrators, neither the state nor the international community can afford to prosecute all who participated in gross human rights violations. For example, in times of conflict,

children are besieged to commit acts of violence with immense barbarity. Certainly, many would agree that there is little comparison between atrocities committed by child soldiers under the influence of psychoactive drugs and the leaders who orchestrate violent acts, purchase weapons, and voluntarily participate in widespread atrocity. Given the status of infrastructures, the availability of resources, and the level of wide-spread past violations, post-conflict societies and the international community also lack the capacity to prosecute every perpetrator; with resource scarcities and serious competing priorities, the international community simply cannot afford to incarcerate sizable segments of post-conflict societies. Arguably, at the very least, although selective prosecution for atrocities committed on a large-scale is unfair, measures such as prosecution of top-ranking officials—if not all perpetrators—can be implemented instead of granting total amnesty.

Ideally, when atrocities are committed, the law should be non-selective in application, and all offenders should be prosecuted, as prosecuting only some can be considered unfair. However, pragmatically, it is impossible to prosecute all offenders. When events on the ground are conducive, high-level perpetrators should be considered for prosecution at the local or international level. Thus, Wiebelhaus-Brahm (2007) argues that compared to international tribunals, truth commissions are more appealing because of their low cost.

Conclusions: Employing Diverse and Victim Centered Approaches to Transitional Justice

Transitional justice must employ victim-centric approaches that account for practical realities on the ground. Asserting that international funding in post-conflict settings is more effectively spent on truth commissions than on international criminal tribunals or vice versa is a perilous prescription that cannot treat all the maladies of post-conflict societies. Policies more likely to foster lasting healing and reconciliation are numerous and vary in different settings. These policies or courses of action include the establishment of truth commissions; the prosecution of ring-leaders of groups that have committed heinous crimes against civilian populations in local or international courts; lustrations; and reparations for victims of economic injustices. Healing and reconciliation processes differ for individuals, groups, societies, and nations, yet they are critical components of peace, security, and the reestablishment of functional societal norms. Members of post-conflict societies, including both victims and perpetrators, must engage in healing and reconciliation processes, adopt mechanisms for conflict resolution, and work to prevent the occurrence of future conflicts. They must work to resettle and reintegrate all persons into society. If adequate settlement is not available for victims, then the propensity exists for self-seeking or vigilante retributive justice, which could lead to further conflict.

Although truth commissions should be encouraged, the international community should not entirely rule out prosecution for high-level officials who orchestrate and commit crimes against humanity. International tribunals play an important role in providing a forum for legal proceedings in a court of law that has been duly authorized to render judicial dispositions and sanctions. Truth commissions are not authorized to provide these kinds of judicial actions. In circumstances in which prosecution is feasible and victims are keen to such, the international community must focus on international tribunals that enable the prosecution of such perpetrators at an international institution, without fear on the part of national leaders of nascent and fragile governments of repercussions from their followers. Based on the unique nature of each situation, funding could be directed to truth commissions if they ensure healing and reconciliation, or to tribunals if they satisfy victims' quest for justice and ensure healing and reconciliation. Truth

commissions, which are non-judicial, and international tribunals, which are judicial in nature, are complementary processes that are most effectively articulated based on the national contexts and needs of the particular society seeking to foster healing and reconciliation. The international community should evaluate the cultural, political, and historical contexts of the society and work with national governments to determine the appropriate course of action that is victim-centric. Healing and reconciliation do have different parameters in different cultures. A one-size fits all model cannot be applied in all circumstances.

Goldstone (1998) argues that criminal litigation and non-judicial commissions can coexist and that truth commissions can help the tribunal clarify the broader context within which atrocities were committed. These processes work in concert or separately to prevent or break the vicious cycle of recurrent violence and to create an environment that nurtures healing and reconciliation. The debate over the efficacy of truth commissions and amnesty versus prosecution and purge (and vice versa) is passionate, with each side producing convincing arguments. Both forms of transnational justice involve dynamic and evolving processes and are not singular events. Despite the passionate debates regarding which form of justice to prioritize, it should be noted that healing and reconciliation have not been the principle aims of truth commissions and international criminal tribunals. Truth commissions collect large amounts of data on gross human rights abuses; conduct analyses on how such cataclysmic political violence is set into motion; statistically analyze patterns of abuses; name, in some cases, perpetrators of abuses; and make recommendations for reparations, institutional reforms, and prosecution. In contrast, international tribunals are primarily concerned with personal accountability and deterrence. However, both forms of transitional justice have the potential to foster healing and reconciliation. As such, forms of healing and reconciliation should be intrinsic, with victims engaged in deciding what is appropriate. These determinations depend on multiple factors, which are at times inter-related and at times conflicting, and the international community should respect and facilitate such processes. Determinations should be based on fairness for victims. Putting the interests of the victims as primary and recognizing what the victim perceives as a satisfactory form of justice (as opposed to the simple implementation of a prescriptive solution) should be central to healing and reconciliation processes.

This paper has argued that healing and reconciliation cannot be viewed through a singular lens. Post-conflict societies differ in many aspects; it is imperative that policy-makers understand these differences in order to make informed judgments as to forms of transitional justice that facilitate healing and reconciliation. International funding should focus on truth commissions when human rights violations are widespread and systemic and should focus on prosecution for those at the top of command and most responsible for heinous crimes. Justice must be victim-centric. This prioritization fosters healing and reconciliation; serves as deterrence for present and future generations; prevents vigilante justice; legitimizes the current regime; and paves the way for closure of past wrongdoing.

Countries employ diverse means in confronting past human rights violations. Strategies to be applied in a particular post-conflict society that ensure healing and reconciliation are contextualized and account for factors that are characteristic of the specific society. These strategies depend on country specificities, including historical and political experiences, the level of violence committed, economic wealth, and political will. However, these specificities do not exclude existing universal standards and outcomes, such as some form of accountability for orchestrators and perpetrators of the most egregious human rights violations and a sense of fairness and justice for victims and their families. Sriram (2004) eloquently captures these

complexities by noting that “some states may need public articulation of the truth, some states amnesty, some states prosecution, and most a complex admixture of several” (p. 13). Historically, transitional societies have employed various forms of transitional justice with varying rates of success. This is an emerging field, and analysis of the past is still in its infancy.

¹The Banyamulenge minority group, consisting primarily of ethnic Tutsis, is marginalized within Congolese society. An intent of the Banyamulenge Rebellion was to combat extremist Hutu forces that continued to engage in genocidal practices. The rebellion garnered widespread public support against Mobutu’s authoritarian regime and evolved into a general revolution (Afoaku, 2002).

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