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UNDERSTANDING THE PAST TO BUILD A BETTER FUTURE:
TRANSITIONAL JUSTICE AND DEMOCRACY

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Abstract

During a transition from a cruel autocratic regime to a democracy, societies often face the dilemma of how to finally confront the atrocities committed by the outgoing regime. In the latter half of the twentieth century, transitional justice tools such as human rights trials and truth commissions have been increasingly used to accomplish this task. The use of transitional justice methods is theoretically useful for establishing essential elements of a democracy, such as the rule of law. This study sought to empirically determine whether these transitional justice tools actually succeed in helping a society transition towards democracy. By building a dataset that includes over 100 countries that have used transitional justice methods, I quantitatively determined the relationship between transitional justice and democracy. This study found that there is a positive relationship between the use of transitional justice methods and democracy, although results vary by method type and region. Furthermore, this study examined the specific stories of several countries' attempts at facing the human rights violations of the past in order to discover why and how exactly these tools helped a society – or failed to do so.

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I. Introduction

In many countries throughout the world, authoritarian rulers and suppressive regimes have historically committed crimes against humanity. These acts of political violence range from disappearances to genocide. Under such a regime, the citizenry become fearful that words or actions will provoke retribution from the aggressors. Then, political pressures from inside and occasionally outside the country trigger a transition towards democracy. The dictator is overthrown or the military regime is forced to resign. Many countries attempting to build a democracy then face the challenge of whether and how to face the crimes committed under the former regime.

Several methods have been used to help nations address these past crimes, and together, these methods comprise the process that is transitional justice. A very common transitional justice method is a human rights trial, which seeks to find and prosecute people who committed politically motivated crimes. A second method is a truth commission, which is a government body that attempts to resolve mysteries of what happened under the former regime. Thirdly, there is vetting, a method that far fewer countries have used. This is the process by which countries screen employees that are hired by the new, democratic regime to ensure that the employees had no meaningful affiliation with the former regime. Finally, amnesty is a method frequently used to grant immunity to members of the former regime, often with preconditions. While there are other transitional justice methods, this study will focus on these four.

While many studies and histories have been written about this process, less research has focused on whether transitional justice methods truly do positively contribute towards a country's democratization efforts. Several studies have come to the

preliminary conclusion that transitional justice does benefit democracy. However, these studies have largely been unable to convincingly determine causality. Thoms et al. point out that studies may find that democracy improves in countries where transitional justice occurred, but these studies fail to address the problem of “endogeneity.” Democracy may not be the result of transitional justice. Rather, both phenomena may simply be the result of the same political process.¹

This study seeks to establish a more convincing explanation for how and why transitional justice affects democracy. Therefore, my central research question is, “Does transitional justice positively and significantly affect the level of democracy?” While this is my overall research question, there are also several secondary research questions I would like to investigate. These include:

- What transitional justice methods most benefit democratization?
- Are there regional differences in the success or failure of transitional justice?
- If transitional justice does affect democracy, how does it do so?

My preliminary hypothesis is that transitional justice will prove to have a positive effect on democracy. The purpose of addressing past human rights violations is to bring accountability into government and to establish a clear break with the past. This in turn should increase the legitimacy of the new government. A legitimate government that is accountable to its people will most likely be a democratic one.

While my expectation is that transitional justice will overall be positively associated with democracy, I also expect that this trend will not be true in all countries

¹ Oskar N.T. Thoms, James Ron, and Roland Paris, “Does Transitional Justice Work? Perspectives from Empirical Social Science,” Working Paper Series, <http://ssrn.com/abstract=1302084>.

across all regions. Unique histories, ethnic groups, languages, and traditions must be taken into account. For this reason, it is important to understand what can be generalized about all cases of transitional justice, some cases, and what is only true in unique cases.

To accomplish this task, this study will first examine the whole universe of countries that used human rights trials, truth commissions, vetting and amnesty from 1972 to 2007. This time frame was chosen primarily because most cases occur during this period. Furthermore, most democracy data is not available before 1972. Through linear regressions, the relationship between the use of transitional justice mechanisms and democracy will be quantitatively determined. Then, to understand more fully why and how transitional justice works, I will delve into depth with seven country case studies. The end result should be a new understanding of the macro relationship between transitional justice and democracy, in addition to important nuances that will certainly impact policymaking in the future.

II. Dataset Construction

Method of Transitional Justice	Definition
Human Rights Trial	Judicial investigations of those responsible for human rights violations ²
Truth Commission	Commissions of inquiry that have the primary purposes of investigating and reporting on key periods of recent past abuse ³
Vetting	Processes for assessing the integrity of individuals to determine their suitability for continued or prospective public employment ⁴
Amnesty	An act of sovereign power immunizing persons from criminal prosecution for past offenses ⁵

In order to study the universe of transitional justice cases from 1972 to 2007, I needed to construct a dataset that included all cases of human rights trials, truth commissions, public vetting, and amnesty. If a country conducted a trial or truth commission, or passed a vetting or amnesty law at any point in its history since 1972, I included it in my dataset. I included countries that transitioned to democracy after authoritarian rule or a civil war and countries that were newly created since 1972.⁶

I also included countries that used transitional justice methods but failed to become democracies. I needed to include these instances of transitional justice so that the data were not biased towards countries that only had an increase in levels of democracy. However, I did not include any countries that were already consolidated democracies at

² “What is Transitional Justice?” International Center for Transitional Justice, <http://ictj.org/en/tj/>.

³ “What is Transitional Justice?” International Center for Transitional Justice, <http://ictj.org/en/tj/>.

⁴ “Vetting and Transitional Justice,” International Center for Transitional Justice, <http://www.ictj.org/en/research/projects/vetting/thematic-studies/2143.html>.

⁵ Michael P. Scharf, “Amnesty,” *Genocide and Crimes Against Humanity*, eNotes.com, <http://www.enotes.com/genocide-encyclopedia/amnesty>.

⁶ I did not include the state of Lethoso, which transitioned from a civil war in 1999, due to lack of information on its amnesty process. I also did not include Taiwan, which transitioned to democracy in 1992, given that its status as a sovereign nation is ambiguous and sources for data on Taiwan are lacking.

the time they used transitional justice methods. The purpose of this study is to understand if transitional justice methods aid a country's process towards achieving and consolidating democracy. It is difficult to measure how democracy improves in a country that is already highly democratic.

In addition, I included countries that did not use any of the four transitional justice mechanisms, yet did experience a transition from authoritarian rule, a civil war, or were newly-created states. My goal is to understand if transitional justice positively affects democratic consolidation. I needed to include countries that did not use transitional justice to provide a comparison and control group, so that I could see how democracy improved (if it did) in these countries.

As my source for human rights trials, I used the list compiled by Hunjoon Kim and Kathryn Sikkink for their work, "Do Human Rights Trials Make a Difference?"⁷ Next, to include truth commissions, I used the list in "What is a Truth Commission and How Can We Understand It?" by Eric Brahm, Geoff Dancy, and Hunjoon Kim.⁸ For cases of vetting, I used the examples included in Moira Lynch's "Vetting in Transitional Societies."⁹ Lastly, I included amnesty as it was listed by country-year in Louise Mallinder's *Amnesty, Human Rights and Political Transitions*.¹⁰

⁷ Hunjoon Kim and Kathryn Sikkink, "Do Human Rights Trials Make a Difference?," Chicago: Law School at the University of Chicago.

⁸ Eric Brahm, Geoff Dancy, and Hunjoon Kim, "What is a Truth Commission and How Can We Understand It?" (paper presented at the annual meeting of the ISA's 49th Annual Convention, Bridging Multiple Divides, San Francisco, CA, USA, March 26, 2008).

⁹ Moira Lynch, "Vetting in Transitional Societies" (Paper presented at the annual meeting of the MPSA Annual National Conference, Chicago, IL, April 3, 2008).

¹⁰ Louise Mallinder, *Amnesty, Human Rights and Political Transitions* (UK: Hart Publishing, 2008).

Once completed, my dataset consisted of 108 countries that used transitional justice since 1972. It also contained eight countries that did experience a transition, but did not use any transitional justice methods. These numbers alone demonstrate the prevalent use of transitional justice methods since 1972.

To code instances of transitional justice in the dataset, I listed every country by country-year, and used dummy variables to code whether a transitional justice method had been used in that year or not. For instance, Panama held a human rights trial from 1991 to 1999. For all years in that range, I coded Panama a “1.” If no method was used, then I coded that as “0.” For human rights trials and truth commissions, the dummy variables capture the duration of the trial or commission. For vetting, the dummy variable records when the vetting law or process began until when the law expired or the process ended. For amnesty, each year that amnesty was officially granted by the government is recorded.

After coding each of the four transitional justice mechanisms, I included democracy scores for every country. To measure democracy, I used the Political Terror Scale (PTS), from the University of North Carolina, and Freedom House. The Political Terror Scale codes a country’s level of political violence on a one-to-five scale, with the score of a five being the most severe. Severe political violence on the level of a five means that the leaders of a state have no limits on what they will do to impose their personal or ideological goals on the whole population.¹¹

¹¹ M. Gibney, Cornett, L., & Wood, R., “Political Terror Scale 1976-2006,” Political Terror Scale, <http://www.politicalterror scale.org/ptsdata.php>.

The coders of PTS use information from Amnesty International and the State Department to determine the severity of violence and terror in a country and assign two separate scores for each year, one based upon each data source. For example, for Argentina in 1976, the PTS coders assigned the score of a five using Amnesty International data and the score of a four using State Department data. In general, although not always, the score from Amnesty International data tends to be higher than the score from the State Department data. In my dataset, I included both PTS scores and calculated the average PTS score for each year. Therefore, Argentina's average PTS score for 1976 is 4.5. Later, when running the models, I used the PTS average score in order to correct for the frequent discrepancy between the two scores.

Freedom House, like the Political Terror Scale, does not measure democracy directly. Rather, it tests another symptom of a healthy democracy, which is "freedom," or more specifically the prevalence of civil liberties and political rights. Every year, Freedom House experts examine each country using a list of criteria and assign two scores for each country-year, one for civil liberties and the other for political rights. The scores are on a one-to-seven scale, with seven being the least free. For my dataset, I added these two scores together for a Freedom House sum score. A score of fourteen is the least free and two is the most free. Frequently, political scientists reverse the coding of Freedom House so that a higher FH score corresponds to a higher level of democracy. However, since both PTS and FH scores operate in the same direction, with a lower score designating a more free and democratic country, I did not reverse FH scores.

I decided to use the Political Terror Scale as the primary method of measuring improvement in democracy. In her study, "The Impact of Human Rights Trials in Latin

America,” Kathryn Sikkink also uses the Political Terror Scale to measure improvements in democracy, and then uses Freedom House as a check. I use the same approach with my dataset. Different democracy scores measure different features of democracy.

Transitional justice seeks to understand and account for acts of political terror in the past, and then ensure that such violence is reduced in the future. Therefore, the Political Terror Scale is theoretically most able to describe the changes in violence and whether countries actually improve upon this aspect of democracy. This makes it a suitable measure to use for observing the effects, if any, of transitional justice in particular.

The only drawback of relying on the Political Terror Scale for this study is that there are no scores before 1976. When collecting data for each country such as GDP per capita, I used the year 1972 as the beginning year. However, since PTS scores are not available until 1976, Freedom House scores are the only available measure for democracy from 1972 until 1976.¹²

For this study, the presence (or absence) of transitional justice is the independent variable and the democracy score is the dependent variable. In my dataset, I also included various control variables that could potentially affect the democracy score of a country. First, I included GDP per capita in US dollars with information available from the United Nations Statistics Division. I included GDP per capita because many political scientists have established in various studies the positive correlation between higher GDP per capita and high levels of democracy.

¹² If a country did not exist, then there are no data up until the state’s creation. This is true except for former Yugoslavian and USSR nations. For these cases, I included democracy scores from Yugoslavia and the USSR until the point of the nation’s independence.

Second, I included measures of ethnic, language, and religion fractionalization (ELF fractionalization).¹³ Many well-known conflicts around the world have roots in ethnic and religious differences. Therefore, I hypothesized that fractionalization, or the extent to which there are differences in a country along ethnic, linguistic, or religious lines, would affect the level of democracy. Generally, I expected that a higher level of fractionalization would correspond with a lower level of democracy.

Finally, I used the Uppsala Conflict Data Project to record each year a country was in conflict (either civil or inter-state war) and the intensity of the conflict. My reasoning for the use of this variable was similar to my reasoning for using ELF fractionalization, which is that if the level of conflict is higher in a country, democratization will be suppressed. Therefore, I expected that if a country had many years of conflict, the level of democracy would be adversely affected.

¹³ I used the measures given in Alesina et al.'s paper, "Fractionalization" in the *Journal of Economic Growth* published in Volume 8, 2003. Due to the very slow change in a country's ethnic, language, and religious variance, I used the single values given in Alesina's paper for every country-year for each country.

III. Quantitative Results and Analysis

Does transitional justice make a difference?

Table 2: Does Transitional Justice Make a Difference?						
	Transitional Justice			No Transitional Justice		
	N	Mean	St. Dev.	N	Mean	St. Dev.
PTS	257	2.32	.78	3,327	2.93	1.04
FH	324	9.94	3.40	3,765	9.30	3.52

The first step of the process was to compare countries that did use transitional justice methods during any year from 1972 to 2007 to countries that did not. To do this, I conducted a difference of means test between the mean Political Terror Scale and Freedom House scores for both groups of countries. When compared, the differences in means were statistically significant for both measures of democracy ($p < .01$). The difference between PTS score means was unexpected given my initial hypothesis. I expected that the mean PTS score for countries that underwent transitional justice would be lower than the mean for countries that did not.¹⁴ The opposite was true. Meanwhile, a comparison of Freedom House means did conform to expectation. The mean score for transitional justice countries was significantly lower than for countries without transitional justice.

These descriptive statistics suggest that transitional justice does have a positive impact on democracy in terms of political rights and civil liberties. However, in terms of the actual level of political violence, countries that underwent transitional justice had a higher level of violence. One explanation may be that countries decide to use transitional

¹⁴ When scores *decrease*, democracy has improved.

justice methods if they experience particularly high and lengthy periods of political violence.

In order to determine whether this explanation was true, for every country that used a transitional justice method after 1976, I calculated each country's average PTS score for the years prior to the use of any transitional justice mechanisms. Then, I calculated the average score across all these countries. Using this method, the average PTS score prior to justice for countries that used transitional justice after 1976 is 2.88.

Then, for the countries that did not use any transitional justice mechanisms, I calculated each country's average PTS score for the years prior to the year of transition.¹⁵ For example, since Guyana transitioned to democracy in 1992, I calculated the average PTS score for all years from 1976 to 1992. Then, I averaged each country's average together. The average PTS score prior to transition in these countries is 2.47. Therefore, the average PTS score for countries that did not use transitional justice is slightly lower than the score for those that did. While this is a slight difference, it provides one plausible explanation for why countries that underwent transitional justice have a higher PTS mean score.

What differences exist between the four methods?

Next, I examined more closely the differences in effect that the various methods of transitional justice had on democracy. To empirically evaluate the differences, I conducted robust linear regression analysis to determine the relationships between the variables. My study included human rights trials, truth commissions, vetting, and

¹⁵ I used the years established in Sikkink and Kim's work "Do Human Rights Trials Make a Difference?" as the year of transition for each country.

amnesty, which acted as the independent variables. The two different democracy scores were the dependent variables.

For both the Political Terror Scale and Freedom House scores, all methods had a negative effect. However, when looking at the PTS scores, only vetting seems to have any significant effect. When looking at Freedom House scores, all four methods of transitional justice are statistically significant. A truth commission was the most effective method, followed by vetting, human rights trials, and then amnesty.

It may be that the difference in effect can be explained by the two different symptoms of democracy that the Political Terror Scale and Freedom House measure.

Variable	PTS	Freedom House
Score _{t-1}	.79*** (0.01)	.93*** (0.01)
Human Rights Trial	-0.06 (0.04)	-0.28*** (0.08)
Truth Commission	-0.01 (0.06)	-0.46*** (0.14)
Vetting	-0.12** (0.05)	-.40*** (0.13)
Amnesty	-0.02 (0.04)	-0.24*** (0.09)
GDP per capita (US \$)	-0.00001*** (0)	-0.00002*** (0)
Ethnic Fractionalization	0.14*** (0.05)	0.01 (0.10)
Language Fractionalization	-.07 (0.05)	0.02 (0.09)
Religion Fractionalization	-0.001 (0.04)	0.003 (0.09)
Conflict Intensity	0.17*** (0.02)	0.18*** (0.03)
Constant	.55*** (0.04)	.54*** (0.09)

Note: Standard errors are reported in parentheses. *p<0.10; **p<.05; ***p<.01.

Theoretically, since Freedom House measures the civil liberties of citizens, which includes the rule of law, a government using a more aggressive method of justice, like a truth commission, would have a higher score than a government using a passive method of justice, like amnesty. Transitional justice enhances the democratic nature of a government in terms of political rights and civil liberties.

This is contrary to my original assumption, which is that the Political Terror Scale would more accurately reflect the effects of transitional justice. Now, based upon the results, I would posit that Freedom House is a more sensitive measure of the effects of transitional justice. Since successful transitional justice presumably promotes certain features of a society that follows the rule of law and rights of the individual, Freedom House would be able to capture these phenomena.

Regional Differences

An important aspect to consider when deciding whether transitional justice methods will work in a particular country may be the region the country is located in. While grouping by region is only a rough way of categorizing countries with similar historical backgrounds and cultures, some regional trends emerged by looking at the data.

A cursory look at the data showed that certain regions relied more heavily on some transitional justice methods than others. For instance, ten countries that formerly belonged to the Soviet Union used vetting to prevent former members of the old Soviet regimes from joining the new ones. In addition, fourteen countries used human rights trials and eleven countries used truth commissions in the Western Hemisphere, which

indicated the desire of the new democratic governments to thoroughly expunge the legacies of the old military dictatorships.

Table 4 shows the effects of transitional justice methods as measured by the Political Terror Scale. The data show that human rights trials were highly significant in the former Soviet Union countries. They also were significant in the Western Hemisphere and the Middle East. Truth commissions were only significant in the Western Hemisphere. Vetting was highly significant in the Middle East, and very significant in former Soviet Union countries. The only method that showed no significance in any region was amnesty.¹⁶

Human rights trials, truth commissions, and vetting almost always had a negative

Table 4: Regional Differences with Political Terror Scale Data						
Variable	Western Hemisphere	Europe	Africa	Middle East	Asia	Former Soviet Union
Score _{t-1}	0.74*** (0.03)	0.68*** (0.05)	0.73*** (0.02)	0.85*** (0.03)	0.80*** (0.03)	0.67*** (0.05)
Human Rights Trial	-0.09* (0.05)	-0.11 (0.08)	0.06 (0.12)	0.16* (0.08)	-0.07 (0.18)	-0.42*** (0.15)
Truth Commission	-0.20* (0.12)	-0.10 (0.22)	0.09 (0.10)	0.09 (0.12)	0.001 (0.13)	–
Vetting	-0.03 (0.13)	-0.05 (0.07)	-0.13 (0.20)	-0.25*** (0.08)	–	-0.57** (0.26)
Amnesty	-0.05 (0.08)	0.005 (0.13)	-0.08 (0.07)	-0.003 (0.08)	0.06 (0.08)	-0.007 (0.14)
GDP per capita (US \$)	-0.00002* (0.00001)	0 (0)	-0.00006* (0.00003)	0 (0.00001)	0 (0.00001)	-0.00003* (0.00002)
Ethnic Fractionalization	-0.06 (0.12)	1.12** (0.58)	0.16 (0.13)	-0.07 (0.18)	0.35*** (0.14)	0.06 (0.80)
Language Fractionalization	-0.07 (0.13)	-0.71 (0.46)	-0.13 (0.09)	-0.06 (0.14)	-0.21 (0.13)	0.24 (0.87)
Religion Fractionalization	-0.17 (0.13)	-0.08 (0.16)	0.31*** (0.08)	0.11 (0.11)	-0.12 (0.14)	-0.98* (0.35)
Conflict Intensity	0.27*** (0.06)	0.47*** (0.15)	0.16*** (0.04)	0.10*** (0.04)	0.15*** (0.04)	0.22*** (0.06)
Constant	.86*** (0.13)	0.49*** (0.10)	0.59*** (0.11)	0.50*** (0.15)	0.55*** (0.11)	1.15*** (0.23)

Note: Standard errors are reported in parentheses. *p<0.10; **p<.05; ***p<.01.

¹⁶ I describe a method as being highly significant if p<.01, very significant if p<.05, and significant if p<.10.

effect on the PTS score in countries where the methods had a significant impact. The only exception was the use of human rights trials in the Middle East, which had a significant *positive* effect on the PTS score. Human rights trials had the most negative effect in the former Soviet Union compared to its use in other regions, with a coefficient of -0.42. Vetting also had a relatively strong negative effect in that region (-0.57).

Table 5 shows the effects of transitional justice methods as measured by Freedom House scores. Human rights trials were highly significant in former Soviet Union countries, very significant in Africa, and significant in the Western Hemisphere. Truth commissions were highly significant in the Western Hemisphere and Asia. Vetting was highly significant in the Middle East and very significant in the former Soviet Union countries. Finally, amnesty was highly significant in the Western Hemisphere and Europe.

In all instances where transitional justice methods had a significant impact, they also had a negative impact on the Freedom House scores. Some methods in certain regions had a drastically negative impact, such as vetting in the Middle East with a coefficient of -1.87 and the former Soviet Union (-1.08). Truth commissions were also particularly effective in the Western Hemisphere (-0.94), and amnesty had a relatively significant negative impact in Europe (-0.82).

Variable	Western Hemisphere	Europe	Africa	Middle East	Asia	Former Soviet Union
Score _{t-1}	0.84*** (0.03)	0.94*** (0.02)	0.92*** (0.02)	0.91*** (0.03)	0.92*** (0.02)	0.87*** (0.03)
Human Rights Trial	-0.21* (0.12)	-0.21 (0.17)	-0.72** (0.30)	-0.06 (0.08)	-0.28 (0.24)	-0.53*** (0.19)
Truth Commission	-0.94*** (0.34)	0.24 (0.24)	-0.11 (0.17)	-0.20 (0.12)	-0.96*** (0.25)	–
Vetting	0.11 (0.32)	-0.33 (0.24)	-0.70 (0.47)	-1.87*** (0.11)	–	-1.08** (0.53)
Amnesty	-0.61*** (0.21)	-0.82*** (0.30)	-0.16 (0.13)	0.06 (0.08)	0.25 (0.25)	-0.21 (0.21)
GDP per capita (US \$)	-0.00008*** (0.00003)	-0.00002 (0.00001)	-0.0001*** (0.00005)	0.00003* (0.00001)	-0.00006*** (0.00002)	-0.0001*** (0.00004)
Ethnic Fractionalization	-0.53 (0.12)	0.75 (0.85)	0.14 (0.17)	0.15 (0.33)	0.73** (0.31)	-5.29*** (2.01)
Language Fractionalization	0.57* (0.30)	-0.65 (0.66)	-0.18 (0.13)	0.16 (0.23)	-0.81*** (0.29)	5.68*** (2.17)
Religion Fractionalization	0.22 (0.32)	0.52 (0.45)	0.01 (0.14)	0.41* (0.22)	0.40 (0.29)	-2.24*** (0.76)
Conflict Intensity	0.34*** (0.13)	0.02 (0.22)	0.17*** (0.05)	0.05 (0.06)	0.15** (0.07)	0.37*** (0.12)
Constant	1.31*** (0.31)	0.06 (0.22)	0.82*** (0.19)	0.69** (0.30)	0.65*** (0.24)	2.09*** (0.61)

Note: Standard errors are reported in parentheses. *p<0.10; **p<.05; ***p<.01.

There were notable similarities between the results from the two scores. Human rights trials were highly significant in the former Soviet Union and significant in the Western Hemisphere. Truth commissions in the Western Hemisphere were highly significant by Freedom House scores and significant by PTS scores. Vetting was highly significant in the Middle East and very significant in the former Soviet Union. Several of these conclusions were expected given the history of the regions' use of transitional justice methods.

One surprising result was that vetting was highly significant in the Middle East. Iraq was the only Middle Eastern country to use vetting, which it did during the De-

Ba'athification process in 2003. The coefficient for vetting in the Middle East using Freedom House data is -1.87, which is even higher than the coefficient for the former Soviet Union (-1.08), the region that used the vetting process the most. This perhaps can be explained by the small sample size of Middle Eastern countries. The Middle East is the smallest group, thus magnifying the effects of any transitional justice process that takes place within the group.

There were also some notable dissimilarities between the conclusions of the two measures. Amnesty was not significant at all when using Political Terror Scale data, but it was highly significant in the Western Hemisphere and Europe when looking at Freedom House data. Human rights trials were not significant at all in Africa when looking at PTS data, but were very significant when looking at Freedom House data. Finally, truth commissions were not significant in Asia when looking at PTS data, but were highly significant when looking at Freedom House data.

These differences in results are most likely explained again by the two different symptoms of democracy that the Political Terror Scale and Freedom House measure. Amnesty may not be significant when looking at changes in violence, but may be a result of better political institutions and development of the rule of law, which Freedom House would capture. Human rights trials in Africa may not have had an effect on the level of violence, but their very presence may have enhanced political liberties and the rule of law, which Freedom House would measure.

Conclusions

First, I conclude that between the Political Terror Scale and Freedom House data, Freedom House is a more sensitive measure of the effects of transitional justice. Theoretically, this is because transitional justice signals a turn to a more sophisticated judiciary and political sensitivity to personal freedoms and civil liberties. Freedom House is better able to capture these phenomena.

Second, by looking at Freedom House data, I can conclude that transitional justice does have a significant impact on improving democracy. The data also suggest that truth commissions have the most significant impact, followed by vetting, human rights trials, and finally amnesty.

Third, the data show that while transitional justice may be effective overall, regional differences do exist. For example, human rights trials and vetting were very effective in the former Soviet Union based upon both democracy scores. Truth commissions were also highly effective in the Western Hemisphere. These regional characteristics suggest that while transitional justice may be a global trend, the usefulness and effectiveness of these methods can rely upon individual countries' history and situation. Countries within the same region also may influence each other in terms of how they transition to democracy.

As with all statistical analysis, these data do not presume to end the debate on whether transitional justice is effective when building a democracy. While I chose to use Political Terror Scale and Freedom House scores to measure democracy, other scores like Polity may have been sensitive to characteristics of democracy that the two scores I used

were not. In addition, many other variables can determine whether democracy is successful. For instance, my data showed that GDP per capita was an exceptionally strong predictor of democracy in the countries I included, which is theoretically consistent with the work of other political scientists. Finally, this analysis cannot explain individual instances of transitional justice methods that are not effective in some countries, but are considered successes in others.

Therefore, for the second half of this study, I sought to understand on a deeper level why sometimes transitional justice “works,” and other times it does not. My statistical analysis looked at the whole universe of cases and drew conclusions that may be applicable to individual countries. By using case studies, I explored what happened in individual countries that could translate into broader conclusions for other countries considering transitional justice. To accomplish this, I qualitatively evaluated the circumstances that faced a group of countries, how these countries handled past atrocities, and what lessons could be learned from these countries’ experiences with transitional justice.

IV. Case Study Selection

When choosing case studies, I wanted to find countries that had particularly compelling or unique stories of transitional justice that worked well, or failed to deliver. One method of finding countries that might have experienced a success or failure was to find dramatic changes in a country's democracy score. A drastic rise in a democracy score may indicate a return to violence or authoritarianism even after transitional justice, or an instance where transitional justice methods could be necessary. Conversely, a dramatic fall in a democracy score could indicate a highly successful transitional justice effort. Table 6 lists countries that experienced a dramatic one-year rise or fall in democracy scores. Some countries appear multiple times.

Several countries immediately appeared compelling due to their appearance multiple times. For instance, Chad had one of the largest single drops in the Political

Table 6: Dramatic Rise or Fall in Democracy Score									
Political Terror Scale				Freedom House					
-3	-2.5	+2	+2.5	-9	-8	-7	+7	+8	+9
Chad	Macedonia	Macedonia	Suriname	Former GDR	Czech Republic	Panama	Nigeria	Guyana	Chile
South Africa	Congo (Rep.)	Russia	Burundi		Slovakia	Guyana	Thailand	Suriname	Gambia
	Kyrgyzstan	Georgia	Rwanda		Greece	Bolivia	Fiji		
	Kazakhstan	Azerbaijan	Somalia			Bulgaria			
		Chad*	South Africa						
		Congo (Rep.)	Pakistan						
		Burundi							
		Rwanda							
		Somalia							
		Angola							
		Comoros*							
		Sri Lanka							
		Nepal							
		Fiji							

*These countries achieved a drastic rise twice.

Terror Scale (-3), which according to the data, it achieved in 1985. Chad also experienced two dramatic one-year rises in its PTS score in 1983 and 1999 (+2). Chad passed many amnesty laws throughout the 1980s and 1990s, and conducted a truth commission from 1990 to 1992. However, since Chad experienced a resurgence of violence in 1999, the truth commission did not seem to have a lasting effect on peace. This preliminary view into Chad's history of violence and reconciliation made Chad a potentially enlightening case study into the failures of amnesty and truth commissions.

Guyana also stood out due to its appearance on both a rise and fall in Freedom House scores. Guyana experienced a dramatic rise (+8) in 1974, and then an immediate fall (-7) in 1975. However, Guyana, unlike most countries in Latin America, did not use any transitional justice methods whatsoever. The Freedom House scores indicate that in 1974, Guyana experienced a governance crisis. However, since the country decided not to use any transitional justice, this makes Guyana a compelling case to examine how countries achieve transition without addressing any crimes of the past.

Chad and Guyana were chosen as case studies due to their unique democracy score patterns. However, other case studies were chosen more subjectively out of the list in Table 6. I wanted to choose a group of countries that represented all four methods of transitional justice. Many countries on the list used the same methods, and while all may have been excellent case studies, I could only choose a few. I chose the rest based upon availability to information, access to interviews with people familiar with specific transitional justice efforts, the advice of those within the transitional justice community, and cases with contemporary international attention and coverage. They are mainly chosen from the list in Table 6, with the exception of Haiti.

Table 7: Transitional Justice Case Studies			
Human Rights Trial	Truth Commission	Vetting	Amnesty
Former Yugoslavia Rwanda	South Africa Sri Lanka	Haiti	Chad

My chosen case studies are listed in Table 7. Not included on the table is Guyana, which is a case where transitional justice could have potentially been used, but was not. The International Criminal Tribunal for the former Yugoslavia, or the ICTY, was chosen due to its contemporary relevance, the amount of information available on it, and the personal opinion of the former deputy prosecutor of the ICTY, David Tolbert, that the tribunal is an example of justice that has been executed with relative success.

Rwanda was also chosen for the amount of information on the trials after the 1994 genocide and access to the experiences and accounts of a traveling filmmaker in Rwanda, Cody Stokes. The Rwandan gacaca trials and UN tribunal have received international attention, yet the positive effects of these efforts are still uncertain.

South Africa's truth commission has also received much international attention, largely for its successes. I chose South Africa as a case study for this reason, in addition to the personal recommendation of Jean Scrimgeour, a South African native. While the South African truth commission is in many ways an achievement, there are aspects of the process that failed to deliver.

Sri Lanka received much media coverage in 2009 as the civil war between the Sri Lankan government and the rebel Tamil Tigers came to a violent end. The conflict had racked this country for decades, despite truth commissions held in 1994. With the

valuable input of Sri Lankans Sajeeva Samaranayake and Indika Bulankulame, I will examine how the truth commissions both helped the healing process and were a reminder of the limitations of the truth-telling process.

I chose one case instead of two for the methods of vetting and amnesty. Based upon my statistical analysis, vetting was largely successful in the former Soviet Union countries, and each of these countries passed similar lustration laws during the 1990s. I chose Haiti because a cursory look at Haiti's PTS and Freedom House scores shows that Haiti has been plagued by instability and violence for many years, despite attempts to stabilize. A case study of Haiti could reveal instances where vetting can be challenging.

Finally, I decided to examine Chad as a case study in amnesty. Chad passed many amnesty laws, and as noted earlier, did try to use the more active method of a truth commission. I wanted to see why a truth commission was used after a decade of passing amnesty laws, and what impact the combination of these methods had on the process towards peace.

First and foremost, I wanted to understand in greater depth the mechanisms by which transitional justice methods succeed and fail. In a large majority of these cases, there is no clear answer as to whether there was an overall "success" or failure." Some aspects of the methods "worked," while others did not. All of these case studies merit a research project unto themselves to understand more fully how the transitional justice methods operated. Some cases do have entire bodies of work analyzing the effects of these methods. Given this, my approach to researching these case studies was to answer these questions:

1. What happened? What is the explanation for the conflict?
2. What was the nature of the state terror?
3. When did transitional justice occur?
4. What civil society and political motivations were there for the transitional justice method(s)?
5. What transitional justice method was used? How did it work?
6. What were any challenges or setbacks that the transitional justice method faced?

In addition to these questions, I also evaluated how these methods affected the process of democratization in the case countries. How were these justice attempts related to the process of creating democratic institutions? How was democratic consolidation affected by the consequences of transitional justice? Do transitional justice attempts truly have a relationship with the establishment of democracy? By answering these questions, I hoped to broaden our understanding of how governance is affected by transitional justice.

V. The Former Yugoslavia

*“The fact that they do not know the truth – even the worst truth, would be better for them than this uncertainty, this constant, perpetual uncertainty as to what happened to their loved ones . . .”*¹⁷

Historical Background

The conflict that erupted in the Balkans in the early 1990s, like many modern conflicts, was ethnic and nationalistic in nature. Prior to the wars in Yugoslavia, the country was a union of different nations – Croatia, Slovenia, Bosnia, Montenegro, Albania, Macedonia, Kosovo, and Serbia. While Yugoslavia could be divided by national lines, ethnic divisions were less clear. For instance, ethnic Serbs and Croats had communities in other nations.¹⁸

In 1992, conflict began after Croatia, Bosnia, and Slovenia broke away from Serbia, despite Serbian desires to maintain a single country. Serbs fought Croats in Croatia, trying to prevent the disintegration of Yugoslavia. Conflict escalated in 1993 in Bosnia, with Bosnian Serbs holding Sarajevo under siege. Bosnian Muslims were driven from their homes due to Serbian efforts at ethnic cleansing. Bosnian Muslims were also fighting Bosnian Croats in a separate war in Central Bosnia.¹⁹

¹⁷ Carla Del Ponte, “The Role of International Criminal Prosecutions in Restructuring Divided Communities” (public lecture given at the London School of Economics, London, UK, October 20, 2003), http://eprints.lse.ac.uk/23448/1/DP24_TheRoleOfInternationalCriminalProsecution.pdf, 7.

¹⁸ BBC News, “Map of Yugoslavia,” British Broadcasting Corporation, <http://news.bbc.co.uk/hi/english/static/map/yugoslavia/>.

¹⁹ BBC News, “Map of Yugoslavia,” British Broadcasting Corporation, <http://news.bbc.co.uk/hi/english/static/map/yugoslavia/>.

In 1995, the Dayton Peace Accords created two separate entities within Bosnia – the Bosnian Serb Republic and the Muslim-Croat Federation. NATO provided the peacekeeping forces to enforce the agreement. Croatia took back much of the land captured by Serbia, leading to the exodus of roughly 200,000 Serbians from Croatia.

However, peace in the Balkans did not last. In 1999, Kosovo rebelled against Serbian rule, led by the mainly ethnic Albanian Kosovo Liberation Army. Serbian forces in Albania tried to suppress the rebellion. Thousands of Kosovo Albanian refugees left Kosovo with stories of Serbian atrocities. The violence in Kosovo prompted a NATO air strike against Serbia, which ended Serbian aggression. After this violence, Kosovo became a UN protectorate.²⁰

Human Rights Watch (HRW) reports described some of the mass atrocities that took place during these wars in the Balkans. In general, these atrocities included the killings of thousands of civilians, civilians kept in detention camps, destruction of property, rape, and torture.²¹ The 1992 HRW Report said that the Serbian government was largely responsible for attacks on Croatian civilians and ethnic Albanians, although it also noted that Croatian forces violated the human rights of Serbs. Serbian forces bombed Croatian towns, killing civilians in the process. There was one report of Serbian forces seizing Croatian civilians to use as a human shield during their advancement.²²

²⁰ BBC News, “Map of Yugoslavia,” British Broadcasting Corporation, <http://news.bbc.co.uk/1/hi/english/static/map/yugoslavia/>.

²¹ The United Nations International Criminal Tribunal for the Former Yugoslavia, “About the ICTY,” United Nations, <http://www.icty.org/sections/AbouttheICTY>.

²² Human Rights Watch, “Yugoslavia 1992,” http://www.hrw.org/legacy/reports/1992/WR92/HSW-08.htm#P995_282970.

In 1993, Human Rights Watch reported more ethnic violence. The 1993 Report characterized the violence perpetrated by Serbian forces to be ethnic cleansing — “The Serbian policy of “ethnic cleansing” involves the summary execution, disappearance, arbitrary detention, deportation and forcible displacement of hundreds of thousands of people on the basis of their religion or nationality. The goal is to rid all Serbian-controlled areas of non-Serbs, or at least to diminish their numbers significantly.”²³ The report also described acts of terror committed by Serbian forces, such as torture and rape, which were meant to intimidate the populations in Serbian-controlled areas. Croats and Muslim forces were also guilty of forcing Serbs out of their villages and lands, then burning the villages so Serbs could not return. Acts of intimidation by Croats were also reported.²⁴

Throughout the period of the Balkan wars, the Serbian president, Slobodan Milošević, repeatedly denied Serbian aggression. HRW reported in 1995 that Serbian President Slobodan Milošević denied any acts of ethnic cleansing, and even denied that Serbia was at war.²⁵ However, it was clear to the international community that atrocities like ethnic cleansing were taking place, and someone needed to be held accountable. Although it would be years before Milošević himself would be personally held responsible, the United Nations began an ad hoc criminal tribunal in 1993 to make sure that these acts of violence were answered. This court was known as the ICTY.

²³ Human Rights Watch, “Yugoslavia 1993,” http://www.hrw.org/legacy/reports/1993/WR93/Hsw-10.htm#P671_238252.

²⁴ Human Rights Watch, “Yugoslavia 1993,” http://www.hrw.org/legacy/reports/1993/WR93/Hsw-10.htm#P671_238252.

²⁵ Human Rights Watch, “Yugoslavia 1995,” http://www.hrw.org/legacy/reports/1995/WR95/HELSINKI-20.htm#P813_249306.

Transitional Justice

The International Criminal Tribunal for the former Yugoslavia (ICTY) was established in 1993, and continues to operate in 2009. It was created while the violence in the Balkans was well underway. The tribunal was established at The Hague in the Netherlands. Their placement here was meant to remove the tribunal process from the scene of the violence.²⁶ The goal of the ICTY was to bring justice as well as peace to the Balkans region. The UN justified its intervention by invoking Chapter VII of the UN Charter, which mandates UN action in the face of threats to peace and acts of aggression. The United Nations deemed that the situation in Yugoslavia was a threat to international security, and therefore, it had jurisdiction.²⁷

Initially, there was much international skepticism surrounding the creation of the ICTY. Many felt that it was a half-hearted attempt by the United Nations to bring peace to the region after acting too slowly in stopping the conflict.²⁸ However, there was also much pressure from the international community for the human rights violations that took place to be addressed.

The ICTY recognized that there were thousands of people responsible for acts of atrocity during the violence in Bosnia and Croatia. Recognizing this fact, the trials did not seek to find everyone. Furthermore, the trials did not seek to lay collective guilt on any one group, but punish the main perpetrators and architects of the violence. The ICTY

²⁶ Human Rights Watch, "Yugoslavia 1995," http://www.hrw.org/legacy/reports/1995/WR95/HELSINKI-20.htm#P813_249306.

²⁷ Del Ponte, 4.

²⁸ Diane F. Orentlicher, *Shrinking the Space for Denial* (New York: Open Society Justice Initiative, May 2008), http://www.soros.org/initiatives/justice/focus/international_justice/articles_publications/publications/serbia_20080520/serbia_20080501.pdf, 11.

especially wanted to prosecute and punish those who had authority over subordinates who committed crimes, or those who had “command responsibility.”²⁹

The ICTY’s mandate was to “prosecute persons who committed war crimes, crimes against humanity, and genocide in the territory of the former Yugoslavia since 1991.”³⁰ The work of gathering evidence, building cases, and bringing criminals to trial started in 1993 and continues as of 2009. The ICTY does have a “completion strategy,” which is that the Tribunal will wind down its work and transfer low-level perpetrators to national courts by 2010.³¹

While the ICTY was the original justice body that investigated the crimes committed during the wars in Yugoslavia, eventually War Crimes Chambers were created in Bosnia and Serbia to handle smaller-profile cases. Often, a problem of handling prosecutions during and after a conflict is that the legal resources of trained lawyers, judges, and a court system are corrupt or do not exist. This was a main reason for United Nations leadership in prosecutions. However, Carla Del Ponte, Prosecutor of the ICTY, believed that international prosecutions also must help domestic judicial systems whenever possible. The “Rules of the Road” project helped Bosnian prosecutors handle their own cases. Bosnian prosecutors could also submit their files to the ICTY when they wished to bring war crimes charges against individuals.³²

²⁹ Orentlicher, 13.

³⁰ David Tolbert and Aleksandar Kontic, “The International Criminal Tribunal for the former Yugoslavia: Transitional Justice, the Transfer of Cases to National Courts, and Lessons for the ICC,” in *The Emerging Practice of the International Criminal Court*, ed. Carsten Stahn and Göran Sluiter (Boston: Martinus Nijhoff Publishers, 2009), 136.

³¹ Orentlicher, 20.

³² Del Ponte, 8.

Challenges and Setbacks

For the ICTY, a purely logistical challenge was the collection of evidence from a war zone. For example, after the bombing of Kosovo ended, many refugees wanted to return to their homes and collect their dead. Such movement and disturbance sometimes made it difficult for investigators to gather evidence.³³

Since transitional justice, theoretically, is meant to help the victims of the violence, the opinions of the affected public are important. Bosnians and Croats were very supportive of the work of the ICTY. Many citizens wanted the violence and crimes that had been committed in their homeland to be exposed and punished. In her testimony at the ICTY in 1998, Croat woman Ljubica Došen said, "...I would forgive them, perhaps, if my husband had taken up arms [against a Serb,] and if that same Serb had a weapon, and if they had shot at one another, but to kill the wounded that cannot defend themselves who have no arms, is terrible. It is a crime that has to be punished, and I appeal to you on behalf of my husband, my mother, and the children, that they be punished."³⁴ Even when sentences were not as harsh as they wished them to be, most Bosnians and Croats most affected by the Balkan wars remained supportive of the goals of the ICTY.³⁵

However, a major challenge was that a majority of Serbs were anti-Hague for a long period of time. During the 1990s, Slobodan Milošević greatly damaged the image of the ICTY in Serbia. Since most of the accused in the ICTY were Serbs, Serbian citizens believed that the ICTY was biased against them.³⁶ Serbian public opinion polls

³³ "Nailing the war-criminals," *The Economist*, June 26, 1999.

³⁴ "Voice of the Victims," ICTY, <http://www.icty.org/sections/Outreach/VoiceoftheVictims>.

³⁵ Orentlicher, 14.

³⁶ Orentlicher, 13.

demonstrated the root of Serbian negativity towards the ICTY. A 2004 poll found that 84% of Serbs believed that Serbs had the largest amount of victims in the 1991 to 1995 war. Furthermore, 71% of Serbs believed that Serbs committed fewer crimes than other ethnic groups. And only 8% believed that Serbs committed the greatest number of war crimes.³⁷ A significant number of Serbs even supported war criminals like Milošević during the trials because they felt the tribunals were inherently unjust.³⁸

Lack of Serbian cooperation had serious implications for the work of the ICTY. Serbian leaders sometimes inhibited the justice process by preventing high-profile perpetrators from being found. For example, two main perpetrators, Ratko Mladić and Radovan Karadžić, remained at large for years.³⁹ Karadžić has been turned over to the ICTY and his trial has recently commenced at the end of 2009, but Mladić has yet to be found as of 2009.

Serbian cooperation increased after Serbian Prime Minister Zoran Đinđić was assassinated in 2003. Đinđić had initially turned over Milošević to the ICTY in 2001, and then attempted to crack down on rampant organized crime that took place in the aftermath of the Balkan wars. These efforts led to his assassination, but after his death, government leaders and the Serbian public gave greater support to the ICTY.⁴⁰ Serbian support was also driven primarily by responding to Western pressure and Serbian leaders highlighting the pragmatic benefits of cooperation with the ICTY. For example, the European Union made it clear that Serbia's entrance hinged upon handing over war

³⁷ Orentlicher, 60.

³⁸ Jack Snyder and Leslie Vinjamuri, "Trials and Errors: Principle and Pragmatism in Strategies of International Justice," *International Security* 28 (2003/2004): 21.

³⁹ Orentlicher, 14.

⁴⁰ Orentlicher, 32.

criminals to the ICTY. The United States also required Serbian cooperation as a condition for financial aid.⁴¹

The trial of Slobodan Milošević was absolutely critical for the ICTY. It was highly anticipated and the most closely followed trial by the public. However, the trial highlighted several challenges to the tribunal process. First, the trial took twice as long as expected, running for four years instead of two. Second, Milošević died before the trial could be completed, which was a huge blow to many in the region who wanted a sense of closure from his punishment. Third, the trial itself demonstrated, embarrassingly, the lack of knowledge that the prosecutors and judges had of the language, history, and politics of the Yugoslavia region.⁴²

The ICTY was also criticized for its lack of outreach to those in the Yugoslavia region. Amazingly, the ICTY did not translate the sentences of completed trials into the local languages of Yugoslavia until 1999, six years after the ICTY was formed. This wide time gap allowed opponents of the ICTY like Milošević to publicly misconstrue the work of the tribunal. Furthermore, the tribunal was viewed by many in the Yugoslavia region as being remote and disconnected. A public outreach program was not established until 1999. Fortunately, the ICTY also began working with local NGO's in 1999 to promote awareness and understanding, which has had some notable successes especially among youth.⁴³

Another critical problem was simply the denial by Serbian citizens that Serb forces were a major actor in the mass atrocities that took place. Basic mistrust of the

⁴¹ Orentlicher, 35.

⁴² Orentlicher, 74-78.

⁴³ Orentlicher, 68.

ICTY and the withholding of information from the Serbian public prevented Serbian citizens from accepting the truth.⁴⁴ However, during the trial of Milošević, video footage was broadcast of Serbian forces executing Bosnian Muslims during the 1995 massacre in Srebrenica, Bosnia. This visual was undeniable evidence that Serbs did play a significant role in committing atrocities during the Balkan war. After the airing of the footage, Serbian public denial of responsibility in the Srebrenica massacre notably decreased.⁴⁵

Evaluation of Effectiveness

Critics of the ICTY exist, and their arguments are significant. Transitional justice proponents often cite deterrence as a goal of justice and accountability efforts. If deterrence is a goal, then the ICTY clearly did not effectively deter the 1995 Srebrenica massacre and the violence in Kosovo in 1998 and 1999.⁴⁶ However, defenders say, in 1995, the work of the ICTY was just getting started, and since many ICTY suspects remained at large until the early 2000's, the effectiveness of the courts was not fully realized yet during the Kosovo war.⁴⁷

Critics also say that although the ICTY claimed to emphasize individual responsibility rather collective guilt, prosecutors did not succeed in making this distinction. Many Serbian citizens felt they were being made into scapegoats and that the Serbian ethnic group was being singled out.⁴⁸ As noted earlier, Milošević played an important role in promoting this opinion.

⁴⁴ Orentlicher, 18.

⁴⁵ Orentlicher, 70.

⁴⁶ Snyder and Vinjamuri, 20.

⁴⁷ Orentlicher, 16.

⁴⁸ Snyder and Vinjamuri, 21.

Supporters of the ICTY, including in Serbia, note that the work of the ICTY is fundamentally important in promoting reconciliation due to its commitment of revealing the truth in painstaking detail. Serbs note that one cause of the 1990s wars was that the history of previous ethnic conflicts in Yugoslavia was distorted in the hands of dictators. Since the ICTY is laying down the foundation of an unbiased history that does not favor any ethnic group, future leaders cannot distort the truth.⁴⁹

I had the opportunity to speak to Dr. David Tolbert, who served as a deputy prosecutor for the ICTY from 2004 to 2008. We discussed the merits of a truth commission versus a human rights trial. Dr. Tolbert expressed that, while his opinion may be biased due to his work, trials are preferable to truth commissions because of accountability. While discovering the truth is important, trials do unveil the truth while holding the guilty to account for their actions. His opinion is shared by Carla Del Ponte, former Chief Prosecutor of the ICTY. In an address to the London School of Economics, she emphasized that the truth-telling component of international prosecutions is very important. However, holding people accountable is of “paramount importance.”⁵⁰ The International Criminal Tribunal for the former Yugoslavia, despite its shortcomings, achieved that critical task.

The question of accountability and punishment is also crucial when evaluating the effect that the ICTY had on the process of democratization in the region. Critics say that the forces of democratization improved human rights in the region, and not the other way

⁴⁹ Orentlicher, 22.

⁵⁰ Del Ponte, 8.

around.⁵¹ However, many Serbs admit that without the ICTY, criminals would have been left to live their lives with impunity and would have perhaps been able to continue affecting governance and policy. The physical removal of criminals from the region, especially Slobodan Milošević, meant that Serbia was able to develop its democracy without the presence and involvement of these criminals.⁵² Furthermore, the prosecutions of these criminals meant that the rule of law and the application of justice returned to the region. While these elements do not completely construct a democracy, they are absolutely crucial to how a democracy functions. Creating accountability gives meaning to the laws of the land, and paves the way for leaders that respond to the people.

Conclusions on Transitional Justice in the Former Yugoslavia

By examining the ICTY, a few lessons for future prosecution efforts emerge. First, connections with the region directly affected by the violence are critical. For families and individuals who had their lives adversely affected by mass atrocities, having the opportunity to follow and read about the justice process in their local language can be very important. An open and democratic society implies that the citizenry are involved in the workings of justice and government. Therefore, public relations should be considered as important to the process as prosecutions are.

Second, thoroughness needs to be balanced with expediency. The ICTY was expedient in the sense that it was created right away and began gathering evidence in the midst of the conflict itself. However, the death of Milošević during his long trial was a huge blow. To those who wanted to see such a public figure punished for his role, they

⁵¹ Snyder and Vinjamuri, 24.

⁵² Orentlicher, 42

will now never have that opportunity. Every effort should be made to conduct trials as quickly as due process will allow.

When the ICTY was created in 1993, it was the first ad hoc international criminal tribunal of its kind since the Nuremburg trials after World War II. More than a decade later, it is easier for the international community to expect that even when mass atrocities are committed in far away lands, those who are responsible will not have impunity. This was not always true. Therefore, the ICTY is notable not only for what it did, even with its flaws, but simply for what it is.

VI. Rwanda

*“. . . now they have turned on each other, not with impersonal mortars or long-range rifles, but with machetes, hoes, clubs, and bare hands. Neighbors have killed neighbors, even old childhood friends. Men, women, and children have been slaughtered alike. Why? No one seems able to say.”*⁵³

Historical Background

Like the former Yugoslavia, the conflict in Rwanda was rooted in a complex mix of politics and ethnic divisions. However, those who have written about Rwanda are quick to say that Rwanda was not an ethnic conflict. Rather, it was a politically motivated conflict that was executed by creating and fanning ethnic divisions.

In Rwanda, there are two major ethnic groups, the Hutu and the Tutsi. Before the Belgians arrived to colonize, the divisions between the ethnic groups were flexible, with many shared customs and intermarrying. Under Belgian rule, the Tutsi were of a higher class and authority than the Hutu. The fairly flexible concept of ethnic division became much more cemented and rigid, with ethnicity noted on identity cards that all Rwandans carried. Furthermore, the history of the Tutsi and the Hutu was gradually constructed by German and Belgian accounts that described the Tutsi as the descendents of invaders from Ethiopia or the Middle East, while the Hutu were the indigenous hunter-gatherers in

⁵³ “Genocide in Rwanda,” *The Economist*, May 21, 1994

Rwanda.⁵⁴ This legacy of colonial ethnic divisions and imagined history contributed heavily towards feelings of difference and resentment between the two groups.

The foundations for ethnic divisions within Rwanda were built during Belgian colonial rule, and after independence in 1962, the relationship between the groups deteriorated. The Tutsi were increasingly limited to a strict sphere of influence as Hutus gradually took over in power and held the highest positions in government. Discrimination against the Tutsi grew, fueled by Hutu resentment at the powerful position Tutsis had held in colonial times. Hutu politicians began speaking out against the Tutsi minority.⁵⁵ Many Tutsis left the country, and these exiles eventually formed the Rwandan Patriotic Front.

The situation became much more volatile when the economic situation in Rwanda deteriorated. The world price of coffee fell drastically in the 1980s, causing Rwanda's trade deficit to increase. Since the Hutus were in power during this time, their position as the head of the government felt threatened. Political rhetoric blamed the economic crisis on a conspiracy of traders, merchants, and intellectuals, professions that were mainly held by Tutsis.⁵⁶

In 1990, the RPF (Rwandan Patriotic Front) invaded Rwanda from Uganda. Political corruption and military expenditures grew around this time.⁵⁷ As the economic

⁵⁴ Helen Hintjens, "Explaining the 1994 Genocide in Rwanda," *The Journal of Modern African Studies* 37 (1999): 247-52.

⁵⁵ Hintjens, 255.

⁵⁶ Hintjens, 256.

⁵⁷ Hintjens, 257.

crisis deepened and the military conflict continued, extremist politicians and military began to see genocide against the Tutsis as the “final solution” to holding onto power.⁵⁸

Further evidence that the Tutsis needed to be killed once and for all was the Bahima conspiracy. Hutus believed as early as the 1970’s that the Tutsis were planning on regaining control of power by murdering all Hutus. This justified the killing of the Tutsis, as it could be claimed that it was for self-defense. The closer the genocide of the Tutsis got, the more that propaganda was printed in the press and reported over the radio of Tutsi violence.⁵⁹

There is ample evidence that the genocide was carefully planned and executed. The plans for how it would be executed were written about in the media. Militias were being trained for the genocide. The radio station RTLM even reported of “a little something” that was planned for early April. The United Nations warned the Tutsis that something was amiss.⁶⁰ However, despite all the signs, the Tutsis probably could not believe that such drastic action would be taken against them.

In April 2004, the orders finally came for Hutus to take up arms against the Tutsi. This occurred immediately after an airplane carrying Rwandan President Juvenal Habyarimana was shot down over Kigali.⁶¹ This act of violence, most historians now acknowledge, was committed by Tutsis, and triggered the genocide. One characteristic of the genocide was the remarkable obedience and compliance displayed by those who did the killing. Those who refused to kill were murdered themselves. To identify Tutsi,

⁵⁸ Hintjens, 258

⁵⁹ Hintjens, 263-66.

⁶⁰ Hintjens, 268-270.

⁶¹ Hintjens, 241.

sometimes physical characteristics were used, although the similarity between the two races often made this difficult. More often, identity cards which still bore the ethnicity of its carrier were examined at check points throughout the country.⁶²

Most of the killing was done by Hutu death squads. There were bands of youth who stood at roadblocks and swept through villages, armed with “machetes, nail-studded cudgels and grenades.”⁶³ They were backed by the government but acted mostly independently of anyone’s direct orders. Members of the RPF fought Hutus and the death squads until finally, the genocide ended.

Hundreds of thousands of Hutu refugees fled the country for fear of RPF retribution. *New York Times* journalist Roger Rosenblatt visited a Hutu refugee camp in Tanzania and asked a group of young refugees whether he thought any Tutsis were left in Rwanda. Rosenblatt wrote, “A boy of 15 who [wore] a green baseball cap, [grinned] and slowly [drew] his index finger across his throat.”⁶⁴

While many Tutsis did survive the genocide, the final toll was devastating. In one hundred days, Rwanda’s ethnic Tutsis and moderate Hutus were hunted down and systematically killed. Approximately 800,000 people were killed in the violence⁶⁵, or an estimated five to ten percent of Rwanda’s population.⁶⁶

⁶² Hintjens, 271-273.

⁶³ “Genocide in Rwanda,” *The Economist*, May 21, 1994.

⁶⁴ Roger Rosenblatt, “A Killer in the Eye,” *The New York Times*, June 5, 1994, pg. 225.

⁶⁵ Christopher Le Mon, “Rwanda’s Troubled Gacaca Courts,” *Human Rights Brief* 14 (2007): 16.

⁶⁶ Hintjens, 241.

Transitional Justice

In the aftermath of the genocide, the first tribunal to be created was the International Criminal Tribunal for Rwanda. Like the ICTY, the ICTR was established by the United Nations, and it did not take place at the site of the violence, but in Arusha, Tanzania. The work of the ICTR is very similar to the work of ICTY. There were thousands of people involved in the genocide, and it was considered to be impossible to prosecute them all with due process. Therefore, as of 2009, the ICTR prosecutors continue to find leaders responsible for planning, organizing, and implementing the genocide.

Their work continues through 2009, even fifteen years after the genocide. As recently as October 5, 2009, former army captain and senior intelligence officer Idelphonse Nizeyimana was captured in Uganda after he entered the country by bus. A most wanted criminal, he was accused by ICTR prosecutors of preparing lists of Tutsi intellectuals to kill in addition to ordering the execution of Queen Rosalie Gicanda, former Queen of Rwanda, who was a symbolic figure to all Tutsis.⁶⁷ He will now be tried for these crimes.

Despite the work of the ICTR to try and convict those most responsible for the genocide, the Rwandan government, now led by former RPF leader Paul Kagame, wanted a way of addressing the crimes committed by the thousands of Rwandans who also played a role. After the genocide, over 120,000 Rwandans sat in prison awaiting

⁶⁷ George Obulutsa, "Top Rwanda genocide suspect pleads not guilty," *Reuters*, October 14, 2009.

prosecution. However, after about five years, only 6,000 cases had been tried.⁶⁸ The Rwandan government desired a way to expedite the process of justice. The result was creation of the gacaca (pronounced “gachacha”) courts, started in March 2005, over a decade after the genocide.

Historically, gacacas were community-based arbitration tools used to air grievances between parties and reach a compromise. The genocide gacacas were similar to this traditional institution. Their functions were to punish crimes committed during the genocide, create an accurate history, and reconcile Rwandans with each other.⁶⁹ All those who were considered not to be the chief architects of the genocide, but did commit significant crimes nonetheless, were brought in front of their community and urged to confess, apologize, and ask for forgiveness.

There was overwhelming initial support for the gacaca courts among Rwandans. The gacaca trials put an emphasis on confessions, and required apology given by the perpetrators was written into the law. Community service and restitution funds were used as methods of penance and offering to the victims. The gacaca courts only tried Hutus, not members of the Rwandan Patriotic Front.⁷⁰ This would become a source of significant criticism levied by the human rights community against these local trials.

Filmmaker Cody Stokes traveled to Rwanda in 2007 and had the opportunity to visit several gacaca trials. In the village that he visited, he described a common field

⁶⁸ National Service of Gacaca Jurisdictions, “Context or historical background of Gacaca Courts,” Government of Rwanda, <http://www.inkiko-gacaca.gov.rw/En/Generaties.htm>.

⁶⁹ Le Mon, 16.

⁷⁰ Lyn Graybill, “Pardon, Punishment, and Amnesia: Three African Post-Conflict Methods,” *Human Rights Quarterly* 25 (2004): 1123-24.

where the community members would meet. Participation was mandatory, and some citizens were more willing to go than others. The accused sat on the side, wearing pink outfits. A panel of judges sat in the front. The panel would call up the accused and ask them to recount their participation in the genocide. Then, those who admitted to crimes apologized to the group. Some denied any involvement; however, denial was seen as an effort to hide and was discouraged with the threat of longer prison sentences.

Challenges and Setbacks

There were several obstacles to both the work of the ICTR and Rwandan national justice systems. First, witness protection was a serious challenge. Approximately three hundred survivors who were scheduled to testify as witnesses in Rwanda were murdered between 1994 and 1997.⁷¹ The ICTR also could not grant witnesses protection upon their return from Tanzania.⁷² This was a serious deterrent to the gathering of testimony during the trials.

Second, although members of the Rwandan Patriotic Front committed violent acts to fight the genocide and come to power, members of the RPF have not been prosecuted. Since the RPF now governs Rwanda, they have not been prosecuted at all in gacacas or national courts. Human Rights Watch recently criticized the ICTR for not being more active in the prosecution of RPF members, arguing that RPF members were responsible for between 25,000 and 45,000 of those killed during the genocide.⁷³ However, when ICTR Prosecutor Carla Del Ponte attempted to bring charges against RPF members, the

⁷¹ Snyder and Vinjamuri, 27.

⁷² Graybill, 1121.

⁷³ "Rwanda: Tribunal's Work Incomplete," *Human Rights Watch*, August 17, 2009.

relationship between the Rwandan government and the ICTR soured.⁷⁴ De Ponte was fired for her efforts due to pressure from influential member nations of the UN that were displeased with her challenge to the Rwandan government. Lack of government cooperation has made the gathering of evidence against RPF members virtually impossible.

Third, the gacaca court system has faced serious criticism from the international human rights community for its lack of legal standards.⁷⁵ Many Rwandans also became disillusioned with the courts when reports of corruption and bribery of judges reached the media.⁷⁶ Mr. Stokes reported that when he witnessed gacaca trials, he was personally concerned by the lack of due process of the sort that is found in Western justice systems. The accused in the gacaca courts were given no defense, and the judges often also acted as the prosecution. Any attempts to argue or deny involvement in the genocide were met with threats of longer prison sentences from the judges if a confession and apology were not given.

Finally, critics of the gacaca process point out that Kagame is more interested in political gains than promoting true reconciliation and peace. These critics say that the purpose of the gacaca courts is to provide the illusion of justice and democracy so that Kagame can attract the support of the international community and foreign investors. Furthermore, Kagame may want to promote reconciliation and erase ethnic divisions to make sure his power is not challenged by dissatisfied Hutus.⁷⁷

⁷⁴ Graybill, 1121.

⁷⁵ Snyder and Vinjamuri, 27.

⁷⁶ Le Mon, 17.

⁷⁷ Alan Kuperman, interview with the author, November 3, 2009.

Evaluation of Effectiveness

The emphasis of the ICTR was on accountability and prosecution, whereas the gacaca trial process theoretically sought to promote reconciliation and healing. Since two different types of trial systems were used, their effectiveness must be measured differently. Both, however, can be evaluated for their impact on Rwandan citizens.

The ICTR has done important work in terms of making sure that the chief architects of the genocide do not go without punishment. Even a cursory look at the achievements of the ICTR reveals that many individuals have been given life prison sentences for crimes against humanity. There are three Trial Chambers in Tanzania and an Appeals Court in The Hague. Due process is followed closely. It is clear that the United Nations has brought the same thorough legal standards that were adhered to at the ICTY to address the Rwandan genocide.

Despite the important work of the ICTR, its impact in Rwanda is quite limited. Like the ICTY, its mere physical location means that its work seems disconnected and remote to the people. The work of the tribunal has been described as being “largely invisible to the Rwandan population.”⁷⁸ When I asked Mr. Stokes if the Rwandans he talked to had any awareness of the tribunal occurring in Tanzania, he reported that Rwandans were generally not interested or cognizant of the fact that a criminal tribunal was operating on their behalf. Problems of disconnect may be even more stark than they were in Yugoslavia given technological barriers and the relative remoteness of Rwandan communities.

⁷⁸ Snyder and Vinjamuri, 24.

Furthermore, Rwandans were disillusioned with the ICTR because Rwandans themselves could not determine which suspects to try and it was decided that there would be no death penalty for those found guilty. The most severe sentence that a convicted criminal could receive at the ICTR is life in prison. Many Rwandans found these standards dissatisfactory.⁷⁹

Another critique of the ICTR comes from critics who site deterrence as a desirable outcome of justice efforts. They point to continuing ethnic violence in Rwanda's neighbors, Burundi and the Congo.⁸⁰ The same ethnic groups that exist in Rwanda also live in Burundi and the Congo, and divisions cause some of the same conflicts there. Indeed, Mr. Stokes also reported that some of the same militias and contributors to the Rwandan genocide are currently fighting in the Congo, some waiting to return. This shows that simply the presence of international prosecutions may not be enough to stop violence. The United Nations or another international body may need to show willingness to use force to prevent conflict, as NATO eventually did to end the war in Kosovo.

How well the truth is revealed is another benchmark of effectiveness for transitional justice. When I asked Mr. Stokes if denial of the genocide is a problem in Rwanda as it was by Serbians, he firmly reported that denial is not a problem in Rwanda. He met people that openly talked about their experiences killing neighbors in the genocide. I also inquired about the use of visual evidence, which was effective in expanding awareness in Yugoslavia. Mr. Stokes described a video that is shown across

⁷⁹ Graybill, 1121.

⁸⁰ Snyder and Vinjamuri, 25.

the country annually on the anniversary of the genocide. It is footage from the Rwandan genocide. While it is intended to make sure that Rwandans do not forget what happened, and is meant to remind those responsible of their shame, it also serves as propaganda for the RPF. The RPF credits itself as being the liberators and peace-bearers that ended the genocide. This is a major justification for its current hold on power.

Due to the strong governance of Paul Kagame and the RPF, Rwanda today is not democratic by several measures. Mr. Stokes reported that as he was traveling around the country, he was acutely aware of being monitored and watched. His actions were questioned by strangers. Furthermore, the elections that keep Kagame in power are questionable, with some votes going to Kagame and the RPF by over 100 percent in some areas of the country.

The desire for justice and reconciliation with the past demonstrates that most Rwandans, including Kagame, do not want to return to the violence and ethnic hatred of the past, although admittedly, Kagame's motives may be disingenuous. However, due to the presence of a military state, Rwanda still cannot be characterized as a democracy. While state terror has been drastically reduced from the 1990s, Rwanda has yet to be categorized as a free state by Freedom House. Mr. Stokes explained that the dilemma of security versus democracy is present in Rwanda today. Kagame and the military government view themselves as the protectors of the state, keeping it safe from the threat of another massacre. Even though this does not mean free and fair elections, most Rwandans are satisfied with the stability that Kagame's regime gives.

Yet the transitional justice method of the gacaca courts has helped Rwandans in other ways. Many who attend the trials are able to learn what happened to their loved ones, even their final resting places. Mr. Stokes reported a general sense of unity, that most Rwandans believe that everyone is a Rwandan now. Fifteen years after the genocide, a whole new post-genocide generation is growing up in Rwanda with an awareness of what happened, yet with an astonishing sense of harmony. While opinions on the continuing use of gacaca vary, many families have appreciated the chance to face the guilty and move on. Mr. Stokes explained to me that in the West, we tend to characterize forgiveness and healing as an individual task. In Rwanda, he said, the justice efforts give people as a country, as a group, the chance to move forward.

Conclusions on Transitional Justice in Rwanda

The International Criminal Tribunal for Rwanda continues to demonstrate the value that international attention and cooperation can have in the justice field. Many of the worst criminals in the genocide were captured and prosecuted by the ICTR, and will spend the rest of their lives in prison. Like in Yugoslavia, removing these perpetrators from the region means that they will never again be able to contribute to acts of violence.

The gacaca courts present a dilemma. Traditional Western legal thought demands that even if a person is guilty of a heinous crime, he or she must still be granted the right of a defense. This concept is not recognized in the gacaca courts. However, it became apparent that to provide every accused person the right to a fair trial was logistically impossible. Strictly legal mechanisms are not able to prosecute 120,000 people for a crime within a reasonable time span. When this was the case in Rwanda, it made

logistical sense to turn to a more local method of justice. While many practices were not deemed acceptable by many in the international human rights community, the results of the gacaca trials appear to be favorable. Despite genocide beyond anyone's comprehension, there has been a remarkable amount of forgiveness, and at the same time, remembrance. This may mean that while justice must be pursued, the definition of justice itself should be flexible given time, resources, and local tradition.

VII. South Africa

“... there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimization.” – 1993 South African Constitution

Historical Background

Like the former Yugoslavia and Rwanda, South Africa is a nation of mixed cultures and ethnicities. There are eleven official languages in South Africa, ethnic groups that range from the descendents of British and Dutch settlers to indigenous Africans, and religions from Christianity to Islam.⁸¹ Settlers first came to South Africa in the form of the Dutch East India Company, which established control over the Cape of Good Hope. The company brought in slaves from East India. Under the Dutch, a social hierarchy in South Africa first emerged, with white settlers at the top, “mixed” races in the middle, and slaves and blacks at the bottom.⁸²

It was within this context that South Africa’s ruling regime enforced a policy of separation. In 1948, the National Party, a party that represented the minority whites, took power and implemented a policy of apartheid (separateness). This was a separation of races that dictated that blacks and whites needed to live in different communities, go to different schools, stand in different lines, and travel on different transportation. The government also attempted social engineering that forced hundreds of thousands of

⁸¹ BBC News, “Country Profile: South Africa,” British Broadcasting Corporation, http://news.bbc.co.uk/2/hi/africa/country_profiles/1071886.stm.

⁸² Mac Maharaj, *The ANC and South Africa’s Negotiated Transition to Democracy* (Germany: Berghof Research Center for Constructive Conflict Management, 2008), 7.

people to resettle.⁸³ In the 1970's, more than three million black citizens were forced to resettle into "homelands."⁸⁴

During the decades of apartheid, there was resistance to the policies of the ruling National Party. The African National Congress (ANC) was the most well-known group that organized resistance to apartheid, although other organizations like the Natal People's Congress (NPC), Pan Africanist Congress (PAC), and African People's Organizations (APO) also pressed for resistance.⁸⁵ These organizations began with intentions of pursuing peaceful resistance. However, the ruling government of South Africa brutally suppressed these opponents to the apartheid regime. For instance, in 1960 at the Sharpeville massacre, sixty-nine peaceful protestors were shot and killed by government security forces. Afterwards, the ANC and PAC were declared illegal by the government.

The increase in government suppression led the ANC to create a military wing, MK, in the early 1960s, which was led by Nelson Mandela. Mandela and the MK created sabotage attacks in resistance to the ruling apartheid regime.⁸⁶ In response, there were murders, abductions, and disappearances committed by the security forces, which were funded and ultimately supported by the South African ruling regime.

In instances of abductions and disappearances, families were frequently told that their missing family member must have gone into exile in another country. Many family

⁸³ BBC News, "Country Profile: South Africa," British Broadcasting Corporation, http://news.bbc.co.uk/2/hi/africa/country_profiles/1071886.stm.

⁸⁴ BBC News, "Timeline: South Africa," British Broadcasting Corporation, <http://news.bbc.co.uk/2/hi/africa/1069402.stm>.

⁸⁵ African National Congress, "Statement to the Truth and Reconciliation Commission," Truth and Reconciliation Commission, <http://www.doj.gov.za/trc/submit/anctruth.htm>.

⁸⁶ Maharaj, 8.

members, aware that their loved one participated in activities of resistance towards the government, were often fearful of searching for their family member in case they gave the security forces incriminating information about their family member.⁸⁷

A notable characteristic of the apartheid era was the amount of attention it received from the international community. Many governments, including the United States, imposed economic sanctions on South Africa because of its apartheid policies. South Africa was also excluded from participation in the Olympic Games in 1964.⁸⁸

During the 1980s, the political climate in South Africa intensified dramatically. Youth flocked to the resistance movement and the MK in droves. Local township governments launched open rebellions against the national government. The government needed to declare several states of emergency.⁸⁹ Churches also began playing a more active role in the resistance. While some churches maintained a theological justification for apartheid, the South African Council of Churches and Institute of Contextual Theology turned against the apartheid regime and pledged their support to the resistance movement.⁹⁰

The regime, recognizing the growing strength and anger of the resistance movement, attempted to cut cleavages within it by establishing separate Houses in Parliament for Indians and Coloreds. However, these racial groups rejected this move and expressed their solidarity with the African majority. The mainstream media, feeling the

⁸⁷ Human Rights Violations Committee, "Abductions, Disappearances, and Missing Persons," Truth and Reconciliation Commission, http://www.info.gov.za/otherdocs/2003/trc/4_1.pdf.

⁸⁸ BBC News, "Timeline: South Africa," British Broadcasting Corporation, <http://news.bbc.co.uk/2/hi/africa/1069402.stm>.

⁸⁹ Maharaj, 14.

⁹⁰ Maharaj, 15.

shift in climate, began reporting on the ANC and resistance movement with more sympathetic leanings.⁹¹ The ANC started reaching out to international supporters and advocated for the boycotting of South African goods, quarantining South Africa out of cultural and sporting events, and other sanctions.⁹²

In the later half of the 1980s, after decades of intensifying pressure, the apartheid regime began to crack. In 1985, President Botha extended an offer of freedom to Nelson Mandela, who was a political prisoner, with the condition that Mandela needed to renounce all political violence. Mandela, in return, replied that he could make no such contract because political prisoners could not enter into negotiations. This placed more pressure on the apartheid government to come to the negotiation table with their opponents as equals.⁹³

In 1989, the leader of the ANC, Oliver Tambo, drafted the Harare Declaration. It outlined what the ANC desired in terms of negotiations with the apartheid government. It stated that the resistance to the regime would continue until apartheid ended. It also stipulated that in order to create a “climate for negotiation,” all political prisoners had to be released, government troops must be removed from local townships, the ban on all organizations must be lifted, and political executions must cease. This declaration was sent to the Organization of African Unity, and then onto the United Nations. The purpose

⁹¹ Maharaj, 15.

⁹² Maharaj, 16.

⁹³ Maharaj, 17.

of this move was to rally the African and international community with the cause of the ANC, and to ensure that the ANC was given a spot at the negotiating table.⁹⁴

Next, Mandela and Tambo faced the considerable challenge of convincing their fellow resistance leaders that negotiation was a possibility. Also, violence within the African community was intensifying as people suspected each other of complicity with the apartheid regime. Local Peace Accords were established that calmed down the intra-black community violence. Furthermore, in 1990, the new president of South Africa F.W. Klerk released Mandela and released the ban on the ANC and other organizations. The ANC then voluntarily suspended armed conflict. This back-and-forth of concessions and cessation of violence allowed negotiations between all parties to continue towards democratization.⁹⁵

In December 1991, a Convention for a Democratic Africa was held, with negotiations of the terms for transition hammered out mainly by the National Party, the ANC, and the Inkatha Freedom Party (IFP). Important consideration was given to all sides' perspectives. The ANC conceded that the white minority was fearful of sudden black majority rule, and thus allowed for a joint governing coalition for the following five years. Also, proportional representation was chosen as the electoral method as opposed to a simple majority.⁹⁶

Finally, F.W. de Klerk repealed all apartheid laws, and worked with the ANC on

⁹⁴ Maharaj, 20-21.

⁹⁵ Maharaj, 23-24.

⁹⁶ Maharaj, 26.

developing a transitional constitution, which was implemented in 1993.⁹⁷ For their efforts to end apartheid, in 1993, de Klerk and Nelson Mandela shared the honor of the Nobel Peace Prize.⁹⁸ In 1994, the ANC won the first non-racial election, where suffrage was given to all races, and Nelson Mandela became president of South Africa.

Transitional Justice

The South African Truth and Reconciliation Commission is perhaps one of the most well-known instances of transitional justice to date. It is remarkable that even after decades of injustice and racial divides, a country could promote such reconciliation and forgiveness. Apartheid was a terrible time in South Africa's history, with a somber toll of 18,000 people killed, 80,000 apartheid opponents detained, and of those, 6,000 people tortured.⁹⁹ The truth commission sought to address and then ultimately move beyond this past.

The Truth and Reconciliation Commission was created by the Promotion of National Unity and Reconciliation Act, which was signed into law in 1995. During this time, there was a high level of national desire to learn the fates of loved ones under the apartheid regime. Many family members attended hearings and testimonies, trying to learn what happened to a loved one that may have gone missing many years before.

A further motivation for the decision to hold a truth commission was the fact that South Africa's apartheid was an "internationalized" conflict, as noted earlier. The United

⁹⁷ BBC News, "Timeline: South Africa," British Broadcasting Corporation, <http://news.bbc.co.uk/2/hi/africa/1069402.stm>.

⁹⁸ "The Nobel Peace Prize 1993," Nobel Foundation, http://nobelprize.org/nobel_prizes/peace/laureates/1993/.

⁹⁹ Graybill, 1117.

Nations had passed several resolutions condemning the apartheid as a crime against humanity. The United States laid economic sanctions against South Africa during apartheid. Due to the international focus and attention on apartheid, South Africa faced pressure to address human rights violations during its transition.¹⁰⁰

Scholars say that South Africa's decision to use a truth commission, as opposed to a more aggressive transitional justice method like a human rights trial, can be partially explained by the strong Christian faith in South African society. The model for forgiveness as opposed to punishment has its roots in Christian theology. In addition, the African concept of "ubuntu," which means caring and community, is another basis for restorative justice as opposed to retributive justice.¹⁰¹

The truth commission began in 1996, led by Archbishop Desmond Tutu. The work of the commission was done through three committees: the Amnesty Committee, the Reparations and Rehabilitation Committee, and the Human Rights Violation Committee. The work of the Human Rights Violation Committee was to identify victims of violence from 1960 to 1994. The nature of the violence against them, their fates, and whether the violence was purposefully planned by the government or an individual were investigated by the committee, at which point the case would be turned over to the Reparations and Rehabilitation Committee. The Reparations and Rehabilitation Committee sought to formulate policy proposals and recommendations based upon victims' experiences, and also provided some funds as reparations. The Amnesty Committee was responsible for receiving petitions for amnesty by individuals who

¹⁰⁰ Russell Ally, "The Truth and Reconciliation Commission : Legislation, Process and Evaluation of Impact, Paper 12," Centre for Human Rights, University of Pretoria, June 1999.

¹⁰¹ Graybill, 1118.

committed violent acts with a political objective between March 1960 and May 1994. Those who committed these acts had until September 1997 to petition for amnesty, which meant that the perpetrator was free from prosecution.¹⁰² While many who filed for amnesty were granted amnesty, some were not, and were subsequently prosecuted.

In total, commissioners took more than 20,000 statements from survivors and families of victims. There were over fifty public hearings held across the country over the duration of the commission. Over 7,000 applications were received for amnesty, most from prisoners.¹⁰³

Challenges and Setbacks

Many challenges to the truth commission originated from those trying to evade responsibility. When the transfer of government occurred from rule under the National Party to a democratically elected government, the outgoing National Party was less than cooperative towards the idea of a truth commission. Furthermore, during the last days of National Party rule, President de Klerk controversially granted amnesty to several security force officers. The National Party also wanted amnesty hearings to be held in private.¹⁰⁴ Frequently, the outgoing regime dictates that amnesty must be given to them as a condition of the transition. However, this clearly was a source of criticism of the NP, since it appeared that those who committed crimes were attempting to evade responsibility.

¹⁰² Truth and Reconciliation Commission, "The Committees of the TRC," South African Department of Justice, <http://www.doj.gov.za/trc/trccom.htm>.

¹⁰³ Gault Hunter, introduction to *Country of My Skull*, by Antjie Krog (New York: Three Rivers Press, 2000), v-viii.

¹⁰⁴ Human Rights Watch, "South Africa 1995," http://www.hrw.org/legacy/reports/1995/WR95/AFRICA-09.htm#P485_172720.

Lack of cooperation did not just originate from the outgoing party. The African National Congress felt angry that the truth commission was unbiased when it came to party. Many in the ANC felt that they should be treated as the liberators and thus remain immune from the justice process. However, the truth commission took the position that even those who were fighting for liberation had to reveal human rights violations and violence that they perpetrated.¹⁰⁵

Another challenge was the lack of resources available to the Reparations and Rehabilitation Committee. This committee was responsible for a financial compensation program for the victims of apartheid, a common model that has been repeated in many countries that have used truth commissions. Unfortunately, the work of this committee could not be completed because the government lacked the financial resources to fund it.¹⁰⁶

A final criticism of the design of the TRC was that the concept of apology and forgiveness could not be realized. Many people testified that they forgave the killers and perpetrators, sometimes without even knowing who those individuals were. Vice versa, many people who admitted their guilt offered an apology even though their victims were not there to hear it.¹⁰⁷ This diminished the impact of the truth commission, which was to give South African citizens the opportunity to finally face those who had committed crimes.

¹⁰⁵ Ally

¹⁰⁶ Jean Scrimgeour, e-mail message to author, September 23, 2009.

¹⁰⁷ Graybill, 1120.

Evaluation of Effectiveness

There are many opinions on the South African Truth and Reconciliation Commission, and most believe that the truth commission was successful in its purpose of providing the South African people with a peaceful way of reconciling with the past. Jean Scrimgeour, a South African native, wrote to me that the truth commissions are generally deemed to be a success in terms of moving on from apartheid – there has not been one single act of retribution since the truth commission was held.

Others have written that because South Africa immediately addressed the crimes that took place in the past, South Africa was better able to shape the future. If it took generations to look back at what happened, future conflict might have been the result. But by facing the past early on, the foundation was set for a better future.¹⁰⁸ Whether this is true remains to be seen.

In terms of the effect the truth commission has had on democracy in South Africa, the relationship is less than clear. However, several characteristics of the justice process certainly paved the way for a better-functioning democracy. South Africa has been categorized as a “Free” country by Freedom House since 1994, and surely the justice effort has been a contributing factor to this designation. As Ms. Scrimgeour pointed out, retributive violence could have been an outcome of the transition away from apartheid. The transitional justice process helped to ensure that this did not occur. Retributive violence would have had a debilitating effect on a nation attempting to craft a new

¹⁰⁸ Ally

political order based upon peace. Furthermore, no one group felt marginalized and victimized by the truth commission since perpetrators from every group were exposed. Preventing victor's justice of the sort that occurred in Rwanda has allowed groups to continue to be included in the political process.

Conclusions on Transitional Justice in South Africa

The truth commission has clearly played an important role in the South African healing process. Families that were torn apart, with no knowledge of what happened to their loved ones, were allowed to gain some sort of conclusion. The amnesty given to many perpetrators of the crimes was surely difficult for some who were directly hurt and affected. However, the newer generations can come of age with the knowledge of what happened, the lessons that can be learned from it, and a new national tone of reconciliation and cooperation, rather than further hatred and division.

The execution of the truth commission also reveals some lessons for future truth commissions. First, if a financial compensation program is to be enacted, it must be properly funded. Second, an apology or assurance of forgiveness loses its strength if it is not heard. Finally, the equal consideration given to all perpetrators of crime ensured that the new government truly started off with a new tone of conciliation, rather than a tone of continuing spite. For any transition to be successful, that truly requires a complete break from a history of violence and an effort from all sides to start anew.

VIII. Sri Lanka

“We will dig up every grave.” – President Chandrika Kumaratunga

Historical Background

In 1987, Steven Weisman wrote for a *New York Times* Special Report, “In Sri Lanka, there is no such thing as original sin. As with Northern Ireland, the Middle East and other historic areas of conflict, every atrocity is justified as revenge for an earlier outrage. The cycle of revenge has no end because it seems to have had no beginning.”¹⁰⁹ His observation is a concise description of the violence that plagued Sri Lanka until very recently.

Sri Lanka, a former British colony, is a nation of different ethnic groups, with a Sinhalese majority and Tamil minority. During colonial rule, British administrators favored the Sri Lankan Tamils and awarded them civil servant positions, and brought Indian Tamils to farm plantations. After independence, the tables turned and the Sinhalese took control of government. A 1956 law made Sinhala the official language, which effectively shut Tamils from important opportunities.¹¹⁰ The president at the time also established a quota for the number of Tamils that could be in civil service, universities, and other educational opportunities. Furthermore, Sinhalese were encouraged to resettle in the north and east regions of Sri Lanka, long considered the homeland of the Tamils.¹¹¹

¹⁰⁹ Steven Weisman, “Sri Lanka: A Nation Disintegrates,” *The New York Times*, December 13, 1987, pg. SM34.

¹¹⁰ William McGurn, “Sri Lanka’s Uncivil War,” *Wall Street Journal*, July 28, 1987, pg. 32.

¹¹¹ Weisman.

In July of 1983, the disputes between the ethnic groups boiled over into violence when thirteen members of the Sinhalese army were murdered by Tamils. This unleashed a massacre of Tamil civilians.¹¹² In Colombo, Sinhalese rioters used voting lists to find and track down Tamil citizens and attack them. The *New York Times* reported that in Colombo, “. . . hundreds of Tamils were pulled from their homes and burned alive, or hacked to death with axes in the streets.”¹¹³ The government placed the death toll at 400, which is considered to be a conservative estimate. Over 150,000 Tamils fled Sri Lanka to escape the violence.¹¹⁴

The Tamil ethnic group began demanding separation from Sri Lanka, and waged an insurgency against the Sri Lankan government. There are different opposition groups, the largest of which is the Liberation Tigers of Tamil Eelam. Tamil resistance fighters were responsible for violent attacks in Colombo and the killing of Sinhalese civilians, including Buddhist monks. In 1987, the Sri Lankan government attempted to make peace with the separatist Tamil groups, ultimately without success.¹¹⁵ After these peace attempts, an Indian military force arrived to help with peacekeeping. However, the situation deteriorated, and the Indian forces quickly became frustrated with the violence and the resentment shown towards them by the Tamils.

During the war between the Sinhalese army and the Tamil Tigers, a group of Sinhalese extremists, who did not want any concessions given to the Tamils and disliked Indian forces in Sri Lanka, revolted against the president, Ranasinghe Premadasa.

¹¹² McGurn.

¹¹³ Weisman.

¹¹⁴ “Sri Lanka: The Riots of 1983,” Library of Congress Country Studies.

¹¹⁵ McGurn.

Premadasa and the Sri Lankan Army responded by ruthlessly crushing the revolt, which led to more than 50,000 disappearances, executions, and torture.¹¹⁶ In 1990, Premadasa ordered the Indian forces to leave.¹¹⁷ After Indian peacekeeping forces left, the Liberation Tigers stepped up the guerilla war they were waging against the government. They bombed army camps in the north with rockets and mortars, and captured land in the north and east. Sri Lankan policemen and soldiers were captured and murdered. Civilians were caught in the crossfire, and many were injured.¹¹⁸ The government responded to these renewed attacks with widespread killing and “disappearances of suspected insurgents.”¹¹⁹

In the midst of this violence, citizens in Sri Lanka started questioning the actions of their government. In 1991, a human rights organization called the Mother’s Front began pressuring the government into giving them information on the 40,000 people they said disappeared during the past few years.¹²⁰ Finally, President Premadasa was killed in a bomb attack by the Tamil Tigers.¹²¹ In the midst of this violence, Chandrika Kumaratunga was elected president of Sri Lanka in 1994.

Transitional Justice

During the 1994 presidential campaign, candidate Chandrika Kumaratunga addressed the pressures from the public and promised that the disappearances and

¹¹⁶ Edward Gargan, “Sri Lanka Is Choking Off Long Ethnic Revolt,” *The New York Times*, March 20, 1993, pg. 1.

¹¹⁷ Truth Commissions Digital Collection, “Commission of Inquiry: Sri Lanka,” United States Institute of Peace, <http://www.usip.org/resources/commissions-inquiry-sri-lanka>.

¹¹⁸ “Back to the jungle,” *The Economist*, June 23, 1990.

¹¹⁹ Truth Commissions Digital Collection, “Commission of Inquiry: Sri Lanka,” United States Institute of Peace, <http://www.usip.org/resources/commissions-inquiry-sri-lanka>.

¹²⁰ “Bad behaviour,” *The Economist*, February 23, 1991.

¹²¹ BBC News, “Timeline: Sri Lanka,” British Broadcasting Corporation, http://news.bbc.co.uk/2/hi/south_asia/country_profiles/1166237.stm.

violence of earlier conflicts would be investigated. Mrs. Kumaratunga was herself the widow of a political killing in 1988, thus making her desire for truth personal.¹²² After winning the presidential election, President Kumaratunga issued three Presidential Proclamations that appointing three different Commissions of Inquiry to look into the disappearances and murders of people over the course of the conflict.¹²³

The three commissions were created along provincial lines. Later on, an “All Island” Commission was created to address the conflicts that these provincial commissions did not catch. The commissions’ mandate was to investigate the disappearances and violent deaths of persons during the conflict starting in 1988.¹²⁴ The commissions technically addressed two separate conflicts. One was the conflict between the Sri Lankan Army and the Tamil Tigers that took place in the North and East provinces. This conflict continued when the truth commissions were being held. The other conflict, which was between the government and the far left People’s Liberation Front, had already ended by the time of the truth commissions.¹²⁵

The truth commission proceedings included witnesses and relatives gathering in town halls and auditoriums, telling their stories of relatives that were abducted and subsequently killed.¹²⁶ When the perpetrators of the violence could be prosecuted, they were. Monetary compensation was also given to some families, usually in the form of

¹²² John Burns, “Sri Lankans Hear Details of Decade of Slaughter,” *The New York Times*, May 21, 1995, pg. 10.

¹²³ Truth Commissions Digital Collection, “Commission of Inquiry: Sri Lanka,” United States Institute of Peace, <http://www.usip.org/resources/commissions-inquiry-sri-lanka>.

¹²⁴ Truth Commissions Digital Collection, “Commission of Inquiry: Sri Lanka,” United States Institute of Peace, <http://www.usip.org/resources/commissions-inquiry-sri-lanka>.

¹²⁵ Burns.

¹²⁶ Burns.

payment of lost wages or scholarships to university.¹²⁷ In total, the three regional commissions investigated 27,000 complaints and established 15,000 disappearances. In their final reports, all commissions mentioned the excessive power that the state had exercised during the conflicts. The commissions also identified several thousand perpetrators of violence; however, less than five hundred were indicted.¹²⁸

Challenges and Drawbacks

One of the primary problems with the truth commission stemmed from the fact that Sri Lanka never truly made a transition from one government to another. People responsible for terrible crimes were never held to account, and stayed in positions of power. Many of the accused in the truth commissions became prominent leaders in the army and police force, thus making them difficult to prosecute. Amnesty International urged that the perpetrators not be given amnesty. However, many Sri Lankan citizens and authorities became dubious that blame could ever be fully determined and allocated.¹²⁹

Like in the former Yugoslavia, there were also technical challenges. Over time, facts and evidence were obscured, making cases difficult to prove. The disturbance of mass graves also made the gathering of evidence difficult.¹³⁰ Those who did not want evidence to be found typically had no trouble hiding the secrets of the past.

¹²⁷ Indika Bulankulame, interview with the author, October 4, 2009.

¹²⁸ Truth Commissions Digital Collection, "Commission of Inquiry: Sri Lanka," United States Institute of Peace, <http://www.usip.org/resources/commissions-inquiry-sri-lanka>.

¹²⁹ Burns.

¹³⁰ Burns.

Evaluation of Effectiveness

There are mixed opinions on the effectiveness of the Sri Lankan truth commissions. For those families who were able to receive restitution funds and see the perpetrators prosecuted, then it seemed as though some justice was delivered. However, according to Indika Bulankulame, a prominent human rights researcher in southern Sri Lanka, going back in time to complete a truth commission has its drawbacks. It can lead to re-victimization and re-traumatization. It can be quite painful to revisit the past. Prosecutions are not necessarily the best idea either when they cannot be done effectively, which was frequently the case in Sri Lanka. It was difficult hearing of the atrocities committed without having the means to bring the perpetrators to justice.

The truth commission experience for victims begged the question, what is the value of the truth? What can a government offer to someone who knows the truth? Indika said, sometimes knowing what happened can be as traumatizing as not knowing. Truth commissions should try to offer something for the future and a chance to move forward.¹³¹ Unfortunately for the Sri Lanka truth commissions, this sometimes turned out to not be the case.

Another characteristic of the Sri Lankan transitional justice effort is that the government did not truly undergo a transition after the conflicts. When I communicated with Sajeeva Samaranyake, a Sri Lankan citizen, he told me that the concept of transitional justice in Sri Lanka could never be applied because the violence was a direct result of the way the government operated, communicated, and governed. The

¹³¹ Indika Bulankulame, interview with the author, October 4, 2009.

government of Sri Lanka has never tried to reform or transition away from its dictatorial method of ruling. Without this, no transition can be possible and therefore, no transitional justice is possible.

Mr. Samaranayake, like Indika, questioned the usefulness of the truth commission method in Sri Lanka. He wrote, “Sri Lankans are heavily influenced by the criminal law and their acceptance of punishment as justice (as opposed to forgiveness as justice). Forgiveness is a well accepted tenet of Buddhism but it has no part to play in public affairs.” The model of forgiveness, which largely worked in South Africa, is clearly not transferable to every country.

Conclusions on Transitional Justice in Sri Lanka

By examining the use of truth commissions in Sri Lanka, the drawbacks to the discovering of truth become more apparent. While learning the truth can be healing in a country that has clearly attempted to separate itself from its past, when citizens must live with the same government that committed atrocities, the healing process becomes much more difficult.

The truth commissions themselves also did not particularly contribute to Sri Lanka’s transition to a democracy, given that a transition did not occur. As Mr. Samaranayake pointed out, the way that the government of Sri Lanka operates directly contributed to the prolonged violence. The truth commissions did not contribute to democratization since they did not truly force the government to change or be held to account for its past actions. In the case of Sri Lanka, human rights trials pursued with the genuine intent of removing criminals from governance may have been a better option.

IX. Haiti

“We remain committed to preserving peace against those who have lost the taste for it.”

– *United Nations Col. Mohammed Sabayleh*¹³²

Historical Background

Haiti is a small nation that shares a Caribbean island with the Dominican Republic, and it became the world’s first independent black nation when it was separated from France in 1804. It is also a country plagued by years of poverty and instability. In recent history, Haiti is mainly known for the twenty-nine years under which it was governed by two cruel dictators.

The first tyrannical ruler was “Papa Doc” Duvalier, who was elected President of Haiti in 1957 on the platform that he was the spokesman for the masses and black middle class. Duvalier represented a revival of the African roots of many Haitian citizens, including Voodoo religion. After his election, “Papa Doc” proceeded to shut down and suppress any opposition within academia, the military, trade unions, and the media.

By 1964, he had declared himself President-for-Life and had written a new autocratic constitution. He professed that his aim was to ensure that the black masses would control power over lighter-skinned elite, which was called the “Duvalierist Revolution.” “Papa Doc” also created the VSN (Volontaires de la Sécurité Nationale),

¹³² Ginger Thompson, “Fear and Death Ensnare U.N.’s Soldiers in Haiti,” *The New York Times*, January 24, 2006, pg. A1.

otherwise known as the *makout*. This secret paramilitary group was known for keeping a tight control on the Haitian citizenry with terror and blackmail tactics.¹³³

Just before his death in 1971, “Papa Doc” handed over power to his son, Jean-Claude. He was able to do so peacefully due to his carefully kept relations with the black middle class.¹³⁴ Jean-Claude, or “Baby Doc,” came to power when he was nineteen years old, and led a different regime than his father. He notably advocated for economic modernization, which earned him favor with the United States. However, Jean-Claude was not as careful to maintain good relationships with the black middle class, and his support fell.¹³⁵ One of his missteps in the eyes of the Haitian black middle class was his marriage to a mulatto, Michèle Bennett. Furthermore, a food crisis ignited the anger of the rural population against Jean-Claude, who was widely known for his excessive spending.¹³⁶ Jean-Claude was ousted in 1986 after naming a National Council of Government to succeed him. After his toppling, Haiti struggled with a period of military rule and coup d’états.¹³⁷

In 1990, Haitians elected Jean-Bertrand Aristide as their leader in a landslide vote of sixty-seven percent. Jean-Bertrand was an outspoken anti-Duvalierist and a former Roman Catholic priest, an important characteristic in a primarily Catholic nation. Aristide espoused populist ideas and vowed to rid Haiti of its harmful economic and racial hierarchy.¹³⁸ Aristide attempted to exert his control over the military, which was the chief

¹³³ “Haiti Country Profile, 2006,” Library of Congress Country Studies.

¹³⁴ David Nicholls, “Haiti: The Rise and Fall of Duvalierism,” *Human Rights Quarterly* 8 (1986):1240.

¹³⁵ Nicholls, 1244.

¹³⁶ “Jean-Claude Duvalier, 1971-86,” Library of Congress Country Studies.

¹³⁷ Human Rights Watch, “Haiti 1992,” http://www.hrw.org/legacy/reports/1992/WR92/AMW2.htm#P8_0.

¹³⁸ “Haiti Country Profile, 2006,” Library of Congress Country Studies.

perpetrator of human rights violations and a threat to the transition to democracy. During Aristide's presidency, improvements were made to the military and the judiciary. However, the military frequently committed violent acts against its detractors and Aristide supporters, including extrajudicial killings. The judicial system was in shambles.¹³⁹

In 1991, shortly after his election, Aristide was overthrown by the military in protest of his reforms. A junta was established, led by the Brigadier General Raoul Cédras. Under the new regime, the military was able to terrorize the nation.¹⁴⁰ Many Haitians responded by attempting to flee the country by boat. The U.S. Coast Guard rescued more than 40,000 Haitians that attempted to escape by sea. The United States and the international community intervened with economic sanctions. The United Nations also authorized the use of a multinational force to restore Aristide. With an invasion looming, the military regime stepped down.¹⁴¹ Aristide returned to power in 1994, although the country still struggled with brutality and extra-judicial killings.¹⁴²

Aristide completed his term in 1995, after disbanding the Haitian military and replacing it with the Haitian National Police. Then, René Préval, a close political ally and prime minister of Aristide, was elected president and together, they continued to collaborate with governing Haiti. Governance conditions became more corrupt as Préval and Aristide began to disregard certain stipulations in the Constitution concerning elections and committed human rights violations. The corruption of the regime led to all

¹³⁹ Human Rights Watch, "Haiti 1992," http://www.hrw.org/legacy/reports/1992/WR92/AMW2.htm#P8_0.

¹⁴⁰ Human Rights Watch, "Haiti 1992," http://www.hrw.org/legacy/reports/1992/WR92/AMW2.htm#P8_0.

¹⁴¹ "Haiti Country Profile, 2006," Library of Congress Country Studies.

¹⁴² BBC News, "Country Profile: Haiti," British Broadcasting Corporation, http://news.bbc.co.uk/2/hi/americas/country_profiles/1202772.stm.

foreign aid assistance being suspended in 2000. Aristide was once again elected president of Haiti in 2000 following an election that the opposition boycotted and was widely viewed as fraudulent.¹⁴³

Following Aristide's return to the presidency, the security situation in Haiti deteriorated. Pro- and anti-Aristide militants battled in the streets and the police and government-supported gangs known as *chimères* attacked opposition demonstrations. The Organization of American States pressed Aristide to restore good governance and security. Then, during the bicentennial celebrations in 2004, civilian unrest and riots against the government's ineffectiveness began in Cap Haïtien, and quickly spread to other cities. A full-country revolt ensued, and soon, armed rebels were demanding for Aristide to leave. In the face of resistance and opposition, Aristide resigned, leaving Boniface Alexandre, the president of the Supreme Court, to fill the presidency.¹⁴⁴

After the transfer of power, the UN deployed a stabilization force of 6,700 troops and 1,622 civilian police, mainly from Brazil, to attempt the restoration of political order in the country.¹⁴⁵ In 2006, in renewed effort to achieve democracy, René Prével was elected president again by a democratic election. However, as of 2009, much violence still exists between political groups and gangs, and the United Nations has described the human rights situation to be "catastrophic." The judiciary and police force continue to be corrupt partly due to the rise in drug trafficking that takes place in the country.¹⁴⁶

¹⁴³ "Haiti Country Profile, 2006," Library of Congress Country Studies.

¹⁴⁴ "Haiti Country Profile, 2006," Library of Congress Country Studies.

¹⁴⁵ "Haiti Country Profile, 2006," Library of Congress Country Studies.

¹⁴⁶ BBC News, "Country Profile: Haiti," British Broadcasting Corporation, http://news.bbc.co.uk/2/hi/americas/country_profiles/1202772.stm.

Transitional Justice

Haiti first attempted transitional justice in 1995, when President Aristide initiated the National Truth and Justice Commission, which investigated human rights violations under the interim military regime. This commission identified over 8,000 victims of human rights abuses that included sexual violence, abuses against the media, and the 1994 massacre in Raboteau during which members of the military attacked Aristide supporters. The truth commission's final report was eventually used to vet applicants into the police force. In addition, a few trials were held that resulted in fifty prosecutions, fifteen of which were later reversed. A vast majority of the victims still await and fight for justice.¹⁴⁷

Haiti's primary method of transitional justice since 2004 has been the vetting of the police force. Since the military had been disbanded during Aristide's first term, the Haitian Police Force remained as the only entity that could bring law and order to Haiti. Vetting is the process of screening employees that are hired into the government, military, or law enforcement agencies. The purpose of vetting is to prevent corrupt or violent participants in the former regime from rejoining the new, more democratic government. Since Haiti suffered from violence and instability, a professional police force was desperately needed to enforce law and order.

The Haitian Police Force remained a corrupted institution as former members of the military joined it, and as a result, violence in Haiti remained high. In 2004, in an effort to help Haiti, the UN created MINUSTAH (United Nations Stabilization Mission

¹⁴⁷ Truth Commissions Digital Collection, "Truth Commission: Haiti," United States Institute of Peace, <http://www.usip.org/resources/truth-commission-haiti>.

in Haiti). MINUSTAH was established by the UN under the authorization of Chapter VII of the UN Charter, which deemed that Haiti's instability was a threat to international security. One aspect of the UN's mission was providing peacekeeping forces to act as a temporary policing body. Then, a major component of the UN program was the formal vetting and reform of the HNP, which began in 2005.¹⁴⁸ Since then, the police force has been retrained in "Disarmament, Demobilization, and Reintegration" programs.¹⁴⁹ The police force was vetted to remove corrupt members.¹⁵⁰ The goal was to create a 14,000-strong police force by 2011.¹⁵¹

Initially, the transitional government had a difficult time reforming the police force. It was unclear exactly how many police officers there were, given the number of impersonators and others acting with illegal police power. Furthermore, a lack of strict background checks meant that former military members were able to join the police force. As a result, with the assistance of the International Center for Transitional Justice, the UN decided to enact an official "census and identification program" to determine who was a police officer, and who could join the police force. This program involved giving police officers official identity cards, which allowed the police force to know exactly who was on the force, and gave the public a tool to distinguish between an officer authorized to use force and a person using force arbitrarily.¹⁵²

¹⁴⁸ Arezou Azad, Alexander Mayer-Rieckh and Serge Rumin, *Census and Identification of Security Personnel after Conflict* (New York: International Center for Transitional Justice, 2009), 6.

¹⁴⁹ MINUSTAH, "Mandate," United Nations, <http://www.un.org/Depts/dpko/missions/minustah/mandate.html>.

¹⁵⁰ Azad, Mayer-Rieckh, and Rumin, 6.

¹⁵¹ "Reforming Haiti's Security Sector," International Crisis Group, <http://www.crisisgroup.org/home/index.cfm?l=1&id=5681&m=1>.

¹⁵² Azad, Mayer-Rieckh, and Rumin, 6.

Challenges and Setbacks

Problems with the vetting process included a lack of transparency in the hiring process and the lack of accountability within the Haitian National Police Force. Because of these problems, police officers that committed human rights violations were allowed to remain in the police force with impunity. This also led to a general mistrust of the police force by the public.¹⁵³ As of 2008, according to the most recent Human Rights Watch Report, police lawlessness is responsible for arbitrary arrests and excessive use of force.¹⁵⁴

Another major problem was the slow pace of the process and a lack of necessary resources. A report by the International Crisis Group found that the process of vetting the approximately 9,000 officers currently on duty was too slow and inefficient.¹⁵⁵ Also, despite training sessions offered by the United Nations, the Haitian police force lacked the basic equipment and qualified personnel that were necessary for true police reform.¹⁵⁶ However, now that Haiti is on track to becoming more democratic, international aid has commenced once again after it was suspended in 2000. In 2007, USAID used over \$246 million to support projects to improve governance and security in Haiti, such as training programs for police officers and specialized units to combat drug trafficking.¹⁵⁷

¹⁵³ Isabelle Fortin and Yves-François Pierre, "Haiti and the Reform of the Haitian National Police," The North-South Institute, <http://www.nsi-ins.ca/english/pdf/NSI%20-%20Haiti%20and%20the%20Reform%20of%20the%20HNP-Exec%20Summary.pdf>.

¹⁵⁴ Human Rights Watch, "Haiti 2008," <http://www.hrw.org/legacy/englishwr2k8/docs/2008/01/31/haiti17768.htm>.

¹⁵⁵ "Reforming Haiti's Security Sector," International Crisis Group, <http://www.crisisgroup.org/home/index.cfm?l=1&id=5681&m=1>.

¹⁵⁶ Human Rights Watch, "Haiti 2008," <http://www.hrw.org/legacy/englishwr2k8/docs/2008/01/31/haiti17768.htm>.

¹⁵⁷ U.S. Agency for International Development

Evaluation of Effectiveness

As recently as 2008, the UN Security Council deemed the situation in Haiti to still be “fragile.”¹⁵⁸ However, despite abuses and problems that continue to affect the HNP and stability in Haiti, the United Nations recently praised the decrease in crime in Haiti. In August of 2009, the UN mission in Haiti said the Haitian police force is bigger, more professional, and works closely with their UN counterparts.¹⁵⁹

The 2008 Human Rights Watch report painted a much less optimistic picture of modern Haiti. As noted above, they reported a general lawlessness in the Haitian police force. In addition, they wrote, “the HNP is largely ineffective in preventing and investigating crime.”¹⁶⁰

Despite the truth commission and vetting of the police force, Haiti still has not achieved the rule of law and standards of accountability necessary for a stable democracy. In 2009, Haiti’s government was ranked as the eleventh most corrupt out of 180 countries by Transparency International.¹⁶¹ Furthermore, rarely have individuals been held to account for past human rights violations. The essential idea of justice has not been developed. The experience of most of those who looked for justice with a truth commission found none. Police officers, whose duty it is to protect the citizenry, can still commit violence with impunity.

¹⁵⁸ Human Rights Watch, “Haiti 2008,”

<http://www.hrw.org/legacy/englishwr2k8/docs/2008/01/31/haiti17768.htm>.

¹⁵⁹ Joseph Guylor Delva, “United Nations hails security gains in Haiti,” *Reuters*, August 21, 2009.

¹⁶⁰ Human Rights Watch, “Haiti 2008,”

<http://www.hrw.org/legacy/englishwr2k8/docs/2008/01/31/haiti17768.htm>.

¹⁶¹ “Corruption Perceptions Index 2009,” Transparency International,

http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table.

According to Freedom House and Political Terror Scale scores, the security and governance situation in Haiti has improved to some extent. In 2004, Haiti reached its worst democracy score from Freedom House since 1993 with a score of 13. In 2008, the score had dropped to 9, which is considered to be “Partly Free.” For the Political Terror Scale, 2004 was also the year with the worst score, with an average score of 4.5. In 2008, the average score had dropped to 2.5. These two drops can most likely be explained by the recent presence of the UN mission in Haiti.

In 2007, *The Economist* reported, “Ask almost any resident of Cité Soleil [shanty town in Port-de-Prince] whether life has changed in the past six months and he will tell you, yes—before he used to be poor and shot at, and now he is just poor.”¹⁶² While ordinary life for Haitians continues to be difficult, the violence that plagued this Caribbean nation is being addressed at last.

Conclusions on Transitional Justice in Haiti

It is clear from reports by international watchdogs like Human Rights Watch and Transparency International that the political situation in Haiti has much room for improvement. However, the efforts of the United Nations force cannot be discredited. The security situation has notably improved with their presence. Haiti’s experience with vetting demonstrates how important it is to make sure that the hiring process is executed properly and members of formerly corrupt and violent institutions are not permitted to enter into positions of power. Furthermore, the justice system needs to work in tandem

¹⁶² “A Small Success for the UN,” *The Economist*, August 4, 2007.

with law enforcement to end the impunity of anyone who commits human rights violations. Without these elements, a democratic and stable society cannot improve.

X. Chad

“The situation is under control.” – President Idriss Déby

Historical Background

Chad, a country in Sahara Africa, continues to be marked by instability, violence, and poor governance. Much of the conflict in Chad has been fueled by a north-south demographic divide. Muslim Arabs inhabit the north, and Christians or animists inhabit the south.¹⁶³ Chad continues to be one of the most unstable countries in Africa. It has had a long history of civil wars and strife that continue into 2009.

Chad, a former French colony, gained its independence in August 1960. The first president after independence, Ngarta Tombalbaye, faced the formidable task of trying to unite a country that had different political traditions, ethnicities, languages, and had a poorly developed economy. Despite hopes that Tombalbaye would act as a uniting force, under the first years of his governance, Chad’s economy deteriorated, and the role of the state weakened considerably as Tombalbaye exercised authoritarian power to the dismay of many who desired democracy.¹⁶⁴ Tombalbaye attempted to pursue a policy of “Africanization,” which entailed removing French members of the government and military, and then replacing them with Africans. The Africans he chose were frequently

¹⁶³ BBC News, “Country Profile: Chad,” British Broadcasting Corporation, http://news.bbc.co.uk/2/hi/africa/country_profiles/1068700.stm#media.

¹⁶⁴ “Chad: Tombalbaye Era: 1960-75,” Library of Congress Country Studies.

Western-educated and French-speaking citizens from the south, which northerners grew to resent as much as they disliked French rule.¹⁶⁵

In 1965, conflict and riots erupted in protest of Tombalbaye's policies. The government's grip in Chad shrank until it held control over only three major towns. The conflict instigated the rise and development of rebel groups abroad, the most prominent of which was the Front de Libération Nationale du Tchad (FROLINAT). Tombalbaye, sensing that he was quickly losing his grip on power, reluctantly allowed French military forces and leaders into the country to introduce liberalizing reforms such as releasing judicial power to more local sultans. Tombalbaye ran unopposed in the 1969 election, and was elected president for another term. Chad, with the help of the French, became relatively stable for the next few years.¹⁶⁶

In 1971, Tombalbaye's reform efforts ended. Instead, he battled rebel groups such as FROLINAT more aggressively, attempted to address the worsening economy and devastating drought, and reshuffled military officers to remove southerners whom he had begun to distrust. Tombalbaye was then killed by angry junior officers in the military in 1975.¹⁶⁷

After Tombalbaye's downfall, Felix Malloum, a military officer, became the chairman of the Supreme Military Council that formed to continue the governance of Chad. However, this military government failed to address the immediate concerns of increasingly radicalized groups of students, laborers, and intellectuals. Furthermore, the

¹⁶⁵ "Chad: Tombalbaye's Governance: Policies and Methods," Library of Congress Country Studies.

¹⁶⁶ "Chad: Rebellion in Eastern and Northern Chad," Library of Congress Country Studies.

¹⁶⁷ "Chad: Fall of the Tombalbaye Government," Library of Congress Country Studies.

power of FROLINAT grew to such an extent that Malloum was forced to enter into a power-sharing agreement with Hissen Habré, a leader in the rebel group, who was made prime minister. FROLINAT continued to capture more territory in the north with assistance from Libya's government.¹⁶⁸ The Malloum-Habré alliance collapsed within a few months, and then civil war and violence continued between two political factions, one led by northerner Goukouki Oueddei and the other by Habré. Habré captured the capitol city, N'Djamena, in 1982 and consolidated his rule.¹⁶⁹

Habré proceeded to become one of Africa's worst dictators in terms of human rights. Human Rights Watch says, "His one party regime was marked by widespread atrocities. Habré periodically targeted various ethnic groups such as the Sara (1984), Hadjerai (1987) and the Zaghawa (1989), killing and arresting group members en masse when he perceived that their leaders were posing a threat to his regime."¹⁷⁰ Later, a truth commission in Chad would attempt to investigate the many horrendous crimes committed by under his governance.

In 1990, Habré was deposed by the Libyan-backed rebel Idriss Déby. Déby was Habré's former commander-in-chief of the Armed Forces until Habré suspected him of attempting a coup, which sent Déby into exile in Sudan. There, Déby founded the Patriotic Salvation Movement, which he then used to launch an offensive military attack against Habré that led to his overthrow. Upon coming into office, Déby promised freedom, justice, and multiparty democracy. With a united government, the situation

¹⁶⁸ "Chad: Malloum's Military Government, 1975-78," Library of Congress Country Studies.

¹⁶⁹ BBC News, "Country Profile: Chad," British Broadcasting Corporation, http://news.bbc.co.uk/2/hi/africa/country_profiles/1068700.stm#media.

¹⁷⁰ "The Case Against Hissène Habré, an "African Pinochet," Human Rights Watch, http://www.hrw.org/legacy/justice/habre/intro_web2.htm.

stabilized for a short time. From January to April of 1993, Déby held a “Conférence nationale souveraine,” with over 800 delegates meeting in the capitol to discuss the political future of Chad.¹⁷¹ Despite some reforms, the presidency remained the most powerful position in government. Many citizens expressed skepticism that a unified Chadian state existed at all.¹⁷²

There were some improvements in human rights between the Habré regime and the Déby regime. There was an increase in freedom of speech, and large-scale political disappearances were no longer ordered by the government, at least for the time being. However, control over the Armed Forces was not very tight, and soldiers often acted with impunity, massacring villagers. Rebel groups also committed acts of violence against the civilian population.¹⁷³ Rather than finding and punishing rebel groups, a national committee for reconciliation sought to make peace between Déby’s government and the rebel movements.¹⁷⁴

Déby was elected president in the 1996 election. However, in 1998 an insurgency began in the north, led by former defense chief Youssouf Togoimi. In 2002, a Libyan-brokered peace deal failed. Idriss Déby remains the leader of Chad in 2009, elected again in 2006, despite attempts by senior military officers and political elites to depose him. After Déby’s reelection, another rebel offensive brought Chad to the brink of a full-scale civil war. The government of France provided troops to support the Chadian Armed Forces, as they preferred Déby’s hold on power to the devastation and instability a lack of

¹⁷¹ William Miles, “Tragic Trade-offs: Democracy and Security in Chad,” *The Journal of Modern African Studies* 33 (1995): 55.

¹⁷² Miles, 56.

¹⁷³ Miles, 57.

¹⁷⁴ Miles, 60.

leadership would cause. As of 2009, Déby continues to fight rebel forces who do not accept his leadership.¹⁷⁵

Several other factors contribute to instability in Chad. Chad remains one of the poorest countries in Africa, despite its rich oil resources. Unfortunately, the autocratic leadership has led to the systematic embezzlement of profits from oil. Despite a promise to put oil revenue into programs for citizens, the government backtracked and put the revenue towards the military instead.¹⁷⁶ Due to a lack of democratic political space to challenge the status quo, opposition to Déby has remained radicalized and militarized.¹⁷⁷ Furthermore, violence and refugees have been spilling over from neighboring Darfur, Sudan. The government in Khartoum increased its support for rebel groups in Chad since N'Djamena was supporting rebel groups from Darfur with bases in Chad. This situation remains volatile.¹⁷⁸

Transitional Justice

Violent unrest has caused many crimes throughout Chad. There has been murder with impunity and rape. Both the government and roaming rebel groups are thought to be responsible for these crimes. The 2008 Human Rights Watch Report found:

“In northern and northeastern Chad insurgents wounded or captured during a rebel offensive in late 2006 were subject to summary execution and torture at the

¹⁷⁵ BBC News, “Country Profile: Chad,” British Broadcasting Corporation, http://news.bbc.co.uk/2/hi/africa/country_profiles/1068700.stm#media.

¹⁷⁶ Lydia Polgreen, “Chad Backs Out of Pledge to Use Oil Wealth to Reduce Poverty,” *The New York Times*, December 13, 2005, pg. A19.

¹⁷⁷ “Chad: Back Towards War?,” International Crisis Group, <http://www.crisisgroup.org/home/index.cfm?id=5993&l=1>.

¹⁷⁸ Human Rights Watch, “Chad 2008,” <http://www.hrw.org/legacy/englishwr2k8/docs/2008/01/31/chad17744.htm>.

hands of Chadian government soldiers. In the southeast civilians complain of extrajudicial killings, rape, beatings, arbitrary arrests, extortion and property theft in the wake of counterinsurgency sweeps conducted by government security forces, including government-backed militia groups. These violations have been met by near total impunity and have forced thousands of civilians into involuntary displacement, both internally and across the border into Sudan.”

Despite this dire situation in Chad, the transitional justice tools chosen by the government and President Déby have not succeeded at ending the rampant violence.

The primary transitional justice tool that the government of Chad had used during conflict was amnesty. Amnesty in Chad has been essentially a form of stalemate or temporary peace. While many amnesty laws and treaties have been passed in Chad since 1972, there are several particularly notable ones. Evaluators of human rights must bear in mind that these “amnesties” do not necessarily signify that the government is changing its course of action or attempting to become more democratic. Rather, in Chad, most amnesty laws have been used as essentially a method of declaring a ceasefire between rebel groups and the government.

In 1979, the government enacted the Kano Accord. When a transition of power occurred, the peace accords granted general amnesty to all political prisoners and political refugees living abroad.¹⁷⁹ Then, several decades later in 1997, the Chad government signed a peace agreement, the Moundou Accords, with FARF (Forces Armées pour la République Fédérale) that provided amnesty for all FARF members,

¹⁷⁹ David Lamb, “Cease-Fire May Be Chad’s Last Chance,” *Los Angeles Times* March 23, 1979, pg. B25.

activists, and sympathizers, and allowed for their integration into the Chadian army. FARF was both the victim of human rights violations in addition to the perpetrator of violations like murder and rape against the civilian population.¹⁸⁰

More recently, in 2007 the Chad national assembly voted in favor of amnesty for a rebel group that signed a cease-fire with the government.¹⁸¹ The 2008 Human Rights Watch report says that while the government of Idriss Déby has entered into peace accords with rebels, the prospects of sustainable peace look dim. Furthermore, “The government of President Idriss Déby has failed to protect its citizens from armed violence and has been responsible for direct attacks against civilians suspected of complicity with rebel groups seeking Déby’s overthrow.”¹⁸²

A second method of transitional justice used in Chad was a truth commission. This truth commission was enacted by Déby after the overthrow of Habré. The truth commission, which operated from 1990 to 1992, investigated the acts of torture and murder under Habré’s regime. Habré was accused by the commission of 40,000 political murders and 200,000 instances of torture.¹⁸³

The truth commission uncovered the names of many individuals responsible for human rights violations under Habré’s regime. It was also determined that more than forty of these individuals continued to operate in positions of power in Déby’s regime,

¹⁸⁰ “At least 80 people killed in Moundou, others arrested,” *Amnesty International Urgent Action Bulletin*, November 4, 1997.

¹⁸¹ “Chad: Lawmakers Pass Amnesty Law for Rebels,” *Associated Press*, February 27, 2007.

¹⁸² Human Rights Watch, “Chad 2008,”

<http://www.hrw.org/legacy/englishwr2k8/docs/2008/01/31/chad17744.htm>.

¹⁸³ “Africa’s many Pinochets-in-waiting,” *The Economist*, February 12, 2000.

however, no effort was made to remove them.¹⁸⁴ Habré, an exile living in Senegal, later faced the threat of charges in a Senegalese court, a notable event since it was the first time a developing nation suggested addressing the human rights violations in another.¹⁸⁵ Habré has also been sentenced to death in Chad, but he remains in Senegal as of 2009.

Challenges and Setbacks

The main challenge that faced the amnesty process was its lack of longevity and enforcement. Ceasefires and peace agreements never lasted long. The government of Chad is not a democracy, and rebel militant groups continue to exist and act due to their disenfranchisement from the government. Déby has many enemies, and the violence continues between forces loyal to him and rebel groups. The support that rebel groups receive from Khartoum in Sudan adds another element of difficulty to the peace process. Without a true commitment to peace and change, the amnesty process as a whole has proven to be simply a quick fix for a more pervasive and serious governance problem.

Evaluation of Effectiveness

In order to evaluate the effects of amnesty in Chad, it is useful to consider the goals or desired outcome of using amnesty as a tool of transitional justice. The overall goal of amnesty is not to provide any type of healing or reconciliation for the citizenry; rather, they are strategic methods used by the government to ensure a more peaceful transition.¹⁸⁶ Within the transitional justice community, one theory on amnesty is that it is

¹⁸⁴ Truth Commissions Digital Collection, "Truth Commission: Chad," United States Institute of Peace, <http://www.usip.org/resources/truth-commission-chad>.

¹⁸⁵ Moumine Ngarmbassa, "Habre death sentence won't alter Senegal case-Chad," *Reuters*, August 19, 2008.

¹⁸⁶ Elin Skaar, "Truth Commissions, Trials – or Nothing? Policy Options in Democratic Transitions," *Third World Quarterly* 20 (1999): 1110.

used when the influence of the perpetrator is greater than the influence of public opinion.¹⁸⁷ In Chad, since the influence of civil society has clearly not been greater than the power of dictator presidents and rebel groups, amnesty has been the best option. Amnesty is also often the preferred transitional justice method when the incoming regime did not defeat the criminals or perpetrators, and thus the relative power of the regime to pursue more active forms of justice is impossible. Since the perpetrators retain their strength, any attempts at justice or punishment may create further cleavages in an already fragmented society.¹⁸⁸ The continuing presence of rebel groups in Chad demonstrates the deep cleavages in Chadian society, and any attempts at stronger justice may not be possible.

Theoretically then, amnesty is the weakest tool in terms of ensuring a transition to democracy. By definition, it does not punish those who have committed crimes. Indeed, amnesty is often an indicator that the perpetrators of human rights violations are either still in government or retain relatively high influence in society. In Chad, this means that a violent government has remained in power and rebel groups have been able to operate with impunity. Democracy has not been developed in this context. It is clear that any amnesty given to rebels or dissidents was not meant to be any attempt at long-term democratization or reform. Amnesty was granted by the government for political purposes or as an attempt to appease the powerful rebel groups to prevent fighting in the short term.

¹⁸⁷ Skaar, 1110.

¹⁸⁸ Snyder and Vinjamuri, 18.

Looking at the Political Terror Scale, Chad has largely maintained scores within the 3 to 5 range. Occasionally the score will drop to a 2, but this score is never maintained. This means since 1974, Chad has had brief periods of relative stability, but overall, the Chadian state is violent. In 2008, Chad achieved a 5, the worst score since the beginning of the 21st century. Its Freedom House scores are not optimistic either. Chad has never achieved “Free” or “Partly Free” status, and its combined Political Rights and Civil Liberties scores have never dropped below a 10.

The Mo Ibrahim Foundation is a prominent non-profit that evaluates governance in Africa and provides another benchmark by which to measure Chad’s performance. Researchers at the foundation evaluate categories such as Safety and the Rule of Law, Participation and Human Rights, Sustainable Economic Development, and Human Development. Fifty-three African countries are given a score from 0 to 100 that reflects their ability to govern based upon these categories. The most recent data places Chad’s governance as the second *worst* in Africa, with only Somalia faring worse.¹⁸⁹ Combining this information with Political Terror Scale and Freedom House scores, it is clear that Chad has not achieved a successful democracy. Until Chad makes strong attempts to transition to democracy, transitional justice methods will have no meaning or substance.

Conclusions on Transitional Justice in Chad

In Chad, some small steps at transition must take place before meaningful justice is held. As of 2009, the violence and terror caused by the government itself, the rebel groups, and neighboring conflicts in Darfur prohibit any transitional justice tools,

¹⁸⁹ “Scores and Rankings,” The Mo Ibrahim Foundation, <http://www.moibrahimfoundation.org/en/section/the-ibrahim-index/scores-and-ranking>.

including amnesty, from having any positive or long-term effects for the citizenry. Since President Déby promised to bring change and freedom to Chad, it is time to hold him accountable. Until the Chadian government makes honest efforts to reform, a regime of violence will continue to prevail.

XI. Guyana

“The struggle will be long and hard, and sacrifices will be many, but time and history are on our side, and win we shall.” – Dr. Cheddi Jagan, Guyanese opposition leader

Historical Background

Guyana is a former British colony and the only English-speaking country in South America. It has a unique demographic, with about one third of the population descendents of African slaves brought in during Guyana’s time under the Dutch. About half of the population is of Indian descent due to Indian indentured servants brought in by the British once slavery was abolished.¹⁹⁰ This diversity was the source of political conflict throughout the later decades of the 20th century.

Guyana’s road to independence began in the 1950s. Two leaders were prominent in Guyana at this time. The first was Dr. Cheddi Jagan, the son of Indian immigrants and a dentist by profession, as well as a left-wing labor leader that Britain and the United States distrusted due to his Marxist sentiments. Jagan helped to found the People’s Progressive Party in 1950 and became its leader. Forbes Burnham was the other notable leader in Guyana at this time. Burnham, an Afro-Guyanese, was trained as a lawyer in England and then rose as a politician in Georgetown, Guyana. Burnham helped to found the PPP along with Jagan and became its Chairman.¹⁹¹

¹⁹⁰ BBC News, “Country Profile: Guyana,” British Broadcasting Corporation, http://news.bbc.co.uk/2/hi/americas/country_profiles/1211325.stm.

¹⁹¹ “Former Presidents of Guyana,” Guyana Government Information Agency, <http://www.gina.gov.gy/natprofile/formerpresidents.html>.

In 1953, the Progressive People's Party won national elections, which prompted the British to suspend the Guyanese constitution and install an interim administration. Then, in 1957, the People's Progressive Party split into two groups – the Indian, led by Dr. Cheddi Jagan, and the African, led by Forbes Burnham.¹⁹² After the split, Burnham created the more moderate People's National Congress.

The PPP won elections again in 1957 and 1961, leaving Dr. Jagan to form the government of Guyana. Dr. Jagan was known to have Communist leanings, thus making him unpopular with the US and Britain at the time. The CIA instigated racial violence that further destabilized Guyana and Jagan's government.¹⁹³ In the 1964 election, the PPP again won the majority of votes cast. However, the British managed to prevent Dr. Jagan from holding office by using proportional representation in elections.¹⁹⁴ Burnham made a coalition between his People's National Congress and the right-wing United Front (UF), which mostly represented Portuguese citizens and business interests.¹⁹⁵ Thus, Burnham's coalition held the majority.

In 1966, Britain granted Guyana its independence. In 1968, after elections, Burnham became prime minister. To protect against his lack of support from the Indian and Portuguese ethnic groups, he purged almost all non-African elements from the army and police.¹⁹⁶ He also transformed Guyana into what he called a "Cooperative Republic," with the nation's citizenry owning controlling shares of lucrative industries like the

¹⁹² "Racial Strife in Guiana," *The New York Times*, May 28, 1964, pg. 36.

¹⁹³ Festus Brotherson Jr., "The Foreign Policy of Guyana, 1970-1985: Forbes Burnham's Search for Legitimacy," *Journal of Interamerican Studies and World Affairs* 31 (1989), 13.

¹⁹⁴ "Independence for Guyana," *The New York Times*, November 22, 1965, pg. 36.

¹⁹⁵ Brotherson, 13.

¹⁹⁶ Ralph R. Premdas, "Guyana: Socialist Reconstruction or Political Opportunism?," *Journal of Interamerican Studies and World Affairs* 20 (1978): 137.

production of bauxite. Burnham stressed that Guyana and its economy needed to remain autonomous, not under the control of foreign investors.¹⁹⁷ Under Burnham, citizens of Indian descent protested against their perceived marginalization for jobs in the civil service, and believed that Burnham was against them.¹⁹⁸

Burnham progressively became more of an authoritarian ruler. In 1968, Burnham disposed of the UF and his party won in what was seen as a rigged election. After this, Burnham slowly began building a monopoly on power. The 1973 election that re-elected Burnham as prime minister was seen as more rigged than the 1968 election, the constitution was repeatedly revised to tighten political control, and “all opposition groups were harshly suppressed.”¹⁹⁹ For the rest of Burnham’s rule, the elections were repeatedly and obviously rigged. A referendum held in 1978 was on whether the Constitution should be changed to remove the requirement for referendums. While the opposition survived in Guyana, it was thoroughly suppressed.²⁰⁰

Burnham was obsessed about his international image. When Jagan tried to tie Burnham to Washington and the CIA, Burnham began to reach out to “progressive” leaders in Latin America like Castro.²⁰¹ The economy suffered under Burnham, whose focus on maintaining an image rather than addressing the poverty situation led to comparisons to Haiti’s Papa Doc.²⁰²

¹⁹⁷ Thomas Johnson, “Burnham Firm on Guyana Autonomy,” *The New York Times*, Jan 11, 1971, pg. 2.

¹⁹⁸ Richard Severo, “Guyana, Building 'Cooperative Socialism,' Wants Foreign Capital,” Special to *The New York Times*, Oct 31, 1972, pg. 12.

¹⁹⁹ Brotherson 14.

²⁰⁰ “Are you a house or a mouse?” *The Economist*, July 22, 1978.

²⁰¹ Premdas, 137.

²⁰² Premdas, 140.

Then in 1985, Forbes Burnham died while undergoing a throat operation in Georgetown Hospital. He was succeeded by Desmond Hoyte, the Vice President and Prime Minister under Burnham. Hoyte was then confirmed as president in the 1985 elections. Hoyte was more moderate than Burnham, since he recognized the detrimental effects many of Burnham's policies had on the economy and society. The citizenry expressed strong demands for change. Hoyte moved to embrace the private sector and in 1988, he lifted all curbs on foreign activity and ownership in Guyana. He also gave newspapers considerably more freedom and political harassment was curbed significantly.

Hoyte also ended what Burnham had called the "paramountcy of the party," which was a regime that placed the legislative, executive, and judicial branches all under the control of the PNC party.²⁰³ Hoyte also dramatically reformed the party structure of the PNC, making it less powerful and influential in government and reducing the size of its bureaucracy. All of these reforms paved the way towards democratization.²⁰⁴

Despite these changes, citizens in Guyana were deeply unhappy about the results of the 1985 election, which they viewed as a continuation of the electoral abuses of the Burnham regime and allowed for the corrupt PNC party to retain power. Due to intense criticism from the opposition and political activists, Hoyte was forced to reform the electoral process and concede control of the electoral machinery that had previously ensured PNC's power.²⁰⁵

²⁰³ Ivelaw L. Griffith, "Political Change, Democracy, and Human Rights in Guyana," *Third World Quarterly* 18 (1997): 270.

²⁰⁴ Griffith, 271.

²⁰⁵ "About Guyana," Guyana Elections Commission, <http://www.sdn.org.gy/elections/guyana.html>

The 1992 elections are considered to be the point of transition to democracy in Guyana. This time, the PPP worked hard to attract support outside its Indo-Guyanese base, and accrued the support of Guyanese civil society and business community. This new cooperative group called itself the People's Progressive Party/Civic, or PPP/C. The election was monitored by international observers, and resulted in the PPP/C winning the majority of votes. Dr. Jagan, still the leader of the PPP and who had been in the opposition for so long, at last became the democratically elected president of Guyana.²⁰⁶

Desmond Hoyte and a minority of citizens protested the results of the 1992 elections, but the results held.²⁰⁷ Over Jagan's term, he continued the process of reform that Hoyte started, and worked on stabilizing the economy and granting civil liberties like encouraging freedom of the press. Jagan was criticized, however, for not initiating constitutional reforms that many Guyanese citizens desired after experiencing decades of presidential abuse. Many citizens also believed that he did not deliver on his promise to bring national unity between racial groups and political views.²⁰⁸ A few months before presidential elections in 1997, Dr. Jagan died in office.

In 1997, the PPP/C party again won the elections with Dr. Jagan's widow, Janet Jagan, assuming the presidency. However, the results sparked demonstrations and violence in Georgetown due to perceived electoral irregularities. The Caribbean Community stepped in to broker peace, which resulted in the signing of the Herdmanston Accord between President Janet Jagan and Desmond Hoyte. The two parties agreed to

²⁰⁶ "About Guyana," Guyana Elections Commission, <http://www.sdn.org.gy/elections/guyana.html>.

²⁰⁷ "Losing, badly" *The Economist*, January 24, 1998.

²⁰⁸ Griffith, 277.

work together in externally auditing the election results, political dialogue, and constitutional reform. Finally, the PPP/C agreed to shorten its term and allow another election in January 2001.²⁰⁹

In 1999, President Janet Jagan stepped down as president due to concerns about her health. She was replaced by her Finance Minister, Bharrat Jagdeo. Jagdeo ran for president and won in the 2001 election. The 2001 elections reflected the constitutional reforms that had been written by a Constitutional Reform Commission. As of 2009, Jagdeo is the president of Guyana after being reelected in 2006, and has worked on issues such as improving international trade with the European Union.²¹⁰ In a matter of twenty years, Guyana dramatically changed from a Cooperative Republic under Burnham to a free, democratic, and economically robust nation.

The Case for Transitional Justice

Like many strongman leaders of Latin America, Burnham's authoritarian rule operated primarily by restricting the political liberties and participation of his opponents. Under Burnham, elections were clearly rigged to allow the continuity of his regime, opposition voices were disenfranchised, and civil liberties were lost. State terror was not nearly as prevalent in Guyana as it was in other countries in this study.

However, there were still human rights violations committed under Burnham. Prisoners were arbitrarily detained, abused, and executed by police who were under Burnham's control. Opposition members or intellectuals who voiced dissenting opinions

²⁰⁹ "About Guyana," Guyana Elections Commission, <http://www.sdn.org.gy/elections/guyana.html>.

²¹⁰ BBC News, "Country Profile: Guyana," British Broadcasting Corporation, http://news.bbc.co.uk/2/hi/americas/country_profiles/1211325.stm.

contrary to Burnham's regime were occasionally attacked or even assassinated. In one instance in 1973, a University of Guyana was severely wounded in what many believed to be an assassination attempt. In 1976, PPP member Isahak Basir was severely wounded by the police. Most notoriously, a famous historian and political activist, Walter Rodney, was murdered when a small radio transmitter held by Rodney exploded. Burnham's regime did nothing to investigate these acts of violence against dissidents.²¹¹ These human rights violations were clearly for the express purpose of allowing Burnham to retain tight control and power. After Burnham's death, human rights violations decreased considerably.

Guyana was unusual in comparison to other countries in this study in that differences in politics, race, or ethnicity did not cause the whole country to turn to violence. Furthermore, although Burnham advanced the interests of the Afro-Guyanese, the human rights violations committed by his regime were motivated primarily by neutralizing the opposition rather than ethnic conflict. Therefore, when Guyana managed to transition to democracy peacefully, the human rights violations under Burnham naturally phased out. When citizens felt included in their government and were able to voice opposition peacefully, most of them likely thought that looking back to the past was unnecessary. Through careful bargaining and reform, the presidents after Burnham were able to quickly move the country forward.

²¹¹ "Guyana: Human Rights Violations," Library of Congress Country Studies.

Conclusions on Guyana

Guyana is an example of a country where transitional justice may have been possible, but was not used. Their decision to transition without any justice for crimes committed during the past regime is most likely explained by the fact that the instances of human rights violations like killings with impunity were targeted towards the opposition and dissidents. Therefore, it was no mystery why these crimes were committed. In addition, the power of the authoritarian regime revolved around a singular figure, Forbes Burnham. Upon his death, Hoyte and then Jagan were able to successfully move the country beyond Burnham's tactics.

We have seen that transitional justice is helpful by removing criminals from society and restoring the rule of law. Since Burnham died and his regime was dismantled even by Hoyte, his prime minister, and democratic reforms were quickly introduced, any desire for more concrete justice was most likely dispelled. The reforms were far-reaching and effective. As of 2009, Guyana was designated a "Free" country by Freedom House, and has low levels of political violence.

XII. Conclusion

Transitional justice is a tool that societies theoretically use to reconcile with the political violence of the past. As the case studies have shown, many countries that used transitional justice methods successfully made a transition to democracy. Others did not, and many more are still improving their governance. Table 8 shows roughly where the countries in this study stand in terms of democracy, using the most recent Freedom House and Political Terror Scale data available. If a country was designated as a “Free” country in 2008 by Freedom House *and* had an average Political Terror Scale score of a 3 or less in 2008, the country is listed as a democracy. If a country was designated as “Partly Free” by Freedom House *or* had a Political Terror Scale score of a 3 or less, then that country is listed as a transitioning nation. If a country was determined to be “Not Free” *and* had a Political Terror Scale score of a 4 or above, then that country is not a democracy.

Table 8: Democratic Status of Case Study Countries			
	Democracy	Transitioning	No Democracy
Human Rights Trial	Serbia (F,2) Croatia (F,1) Slovenia (F,1) Kosovo (n/a, 1)	Bosnia (PF, 2) Montenegro (PF,2) Albania (PF,2) Macedonia (PF,2) Rwanda (NF, 2)	
Truth Commission	South Africa (F,3)	Sri Lanka (PF, 4.5)	
Vetting		Haiti (PF, 2.5)	
Amnesty			Chad (NF, 5)
No Transitional Justice	Guyana (F,2)		
Notes: The parentheses after the country provides the following information: (Freedom House category, PTS average score). All the countries within the former Yugoslavia have been individually listed.			

By looking at the stories of these seven nations and their paths to democracy, some overall lessons on transitional justice emerge. First, these stories confirm what the statistical analysis first suggested, which is that transitional justice is positively correlated with democracy. Transitional justice can be helpful in this process, as demonstrated by the fact that six out of the seven nations in the case studies are transitioning to or have already reached democracy. However, a country's history, cleavages within society, culture, power structure, and a host of other complex factors are important indicators as to how transitional justice will be implemented and the consequences it will have.

Next, transitional justice often arises out of the general public's desire for answers or punishment. Therefore, all efforts must be made to communicate with the public and keep the citizenry involved in the justice process. If the trials, commissions, or other justice attempts are perceived as being distant, the comfort of knowing the truth or relief at seeing a war criminal put behind bars is lost. One component of a democracy is that its citizenry is involved in the government process. Ensuring that the public is connected to the transitional justice method is one way of instilling this element of democracy and promotes public trust in the new government.

Another crucial consequence of transitional justice that cannot be overlooked is its success in removing criminals from government or society. Restoring the rule of law and peace in society is an intended consequence of democracy, and this cannot be achieved without the perpetrators of the past being removed from the new government. Trials are the most effective ways of realizing this, yet truth commissions and vetting can also be effective in revealing and removing the presence of criminals from a new regime. Without this process, a true break from the past may not be as visible or possible.

Furthermore, truth for truth's sake is not enough. Learning the facts about the past can be very unhelpful if solid attempts at reform are not implemented. Once a society learns who is responsible for past horrors, all efforts should be made to remove these elements. Otherwise, like in Sri Lanka and Chad, these perpetrators of violence are only a frustrating reminder that very little has changed.

Another lesson from these case studies is that the implementation of reform and justice process should be done as quickly and expediently as possible. For most nations in this study, transitional justice occurred during or just after transition. This ensured that a new government was built while elements of the corrupt regime were being exposed, punished, and removed. Furthermore, ensuring that this process is expedient reassures the public that justice was rendered. This was not the case for the trial of Slobodan Milošević. Conversely, perhaps transitional justice was deemed to be unnecessary in Guyana considering the speed at which reforms in governance were made after the death of Forbes Burnham.

Finally, a trend that emerged in most of these case studies is the critical role that the international community and intergovernmental organizations played in many justice efforts. The United Nations was responsible for the ad hoc trials in Yugoslavia and Rwanda. Cases brought against war criminals by other nations are becoming a more common practice, especially with the creation of the International Criminal Court. Haiti's reformation of its security force would not have been possible without the resources brought by MINUSTAH. Finally, the crumbling of South Africa's apartheid was partially brought about by the pressure of the international community. Domestic pressures and skepticism within nations around the world may inhibit cooperative efforts to address

gross crimes committed in other countries. However, the impact that international pressure and action can have on addressing human rights violations cannot be denied.

In conclusion, this study has unveiled more optimism than not in the field of transitional justice. While transitional justice is not the panacea for all countries' democratization attempts, its effects can be beneficial and far-reaching. Admittedly, the threat of punishment in the long term is hardly enough to thwart many leaders with a deadly mission in the short term. However, leaders throughout the world who govern by terror and suppression can no longer rely on doing so with complete impunity and international apathy. This alone has the potential to improve the lives of many thousands of people who desire to live peacefully under a government that works for its citizens, not against them.

Appendix

List of Countries

Transitional Justice

Haiti
Dominican Republic
Mexico
Guatemala
Honduras
El Salvador
Nicaragua
Panama
Colombia
Venezuela
Suriname
Ecuador
Peru
Brazil
Bolivia
Paraguay
Chile
Argentina
Uruguay
Spain
Portugal
Former GDR
Poland
Hungary
Czech Republic
Slovakia
Slovenia
Albania
Macedonia
Croatia
Serbia and Montenegro
Bosnia and Herzegovina
Greece
Bulgaria
Moldova
Romania
Russia
Estonia
Latvia
Lithuania
Armenia
Georgia

Azerbaijan
Guinea-Bissau
Gambia
Mali
Senegal
Benin
Mauritania
Niger
Cote d'Ivoire
Burkina Faso
Liberia
Sierra Leone
Ghana
Togo
Nigeria
Central African Republic
Chad
Republic of the Congo
Democratic Republic of the Congo
Uganda
Kenya
Burundi
Rwanda
Somalia
Djibouti
Ethiopia
Eritrea
Angola
Mozambique
Zimbabwe
Malawi
South Africa
Namibia
Madagascar
Comoros
Morocco
Algeria
Sudan
Iran
Turkey
Iraq

Egypt
Syria
Lebanon
Jordan
Saudi Arabia
Yemen
Afghanistan
Tajikistan
Kyrgyzstan
Uzbekistan
Democratic Republic of Korea
Republic of Korea
Pakistan
Bangladesh
Myanmar
Sri Lanka
Nepal
Thailand
Cambodia
Laos
Philippines
Indonesia
East Timor
Solomon Islands
Fiji

No Transitional Justice

Guyana
Ukraine
Belarus
Tanzania
Zambia
Turkmenistan
Kazakhstan
Mongolia

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Academic Vita of Valerie Rohrbach

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Education

B.A. Pennsylvania State University, Schreyer Honors College, December 2009

Major: International Politics

Concentration: International Political Economy

Honors: International Politics

Thesis Title: *Understanding the Past to Build a Better Future: Transitional Justice and Democracy*

Thesis Advisor: Dr. Gretchen Casper, Ph.D.

Work Experience

Scholar Assistant Intern, Woodrow Wilson International Center for Scholars

September 2009 – December 2009

Washington, DC

Program: Latin American Program

Supervisor: Dr. Jorge Lanzaro

Responsibilities:

- Read and summarized articles related to social democracy in Latin America
- Assisted Dr. Lanzaro in any tasks related to his project

Research Intern, Center for Strategic and International Studies

June 2009 – August 2009

Washington, DC

Program: Human Rights and Security Initiative

Supervisor: Lucy Moore

Responsibilities:

- Maintained a database of media items related to the human rights policies of the Obama administration
- Created a database of arbitrary detention policies around the world
- Attended conferences and meetings as needed by the program

Residential Assistant, Johns Hopkins Center for Talented Youth

Summer 2007 and Summer 2008

Easton, PA

Responsibilities:

- Directly supervised a group of 10 to 15 adolescent girls and addressed their everyday living needs
- Developed projects and weekend activities for the campers with co-workers

Teaching Experience

Teaching Assistant, Leadership Jumpstart

Fall 2007 and Fall 2008

Schreyer Honors College, University Park, PA

Supervisor: Dr. Judy Ozment, Associate Dean of the SHC

Responsibilities:

- Assisted Dr. Ozment in the formation and execution of lessons and activities
- Evaluated student performance in writing, activities, and community service projects
- Worked with other teaching assistants on course-related tasks and mentoring student teams

Grants Received

- Schreyer Honors College Fall 2009 Internship Grant
- Schreyer Honors College Summer 2009 Internship Grant
- College of Liberal Arts Summer 2009 Internship Grant
- Department of Political Science Summer 2009 Internship Grant
- Schreyer Ambassador Travel Grant, Spring 2008
- College of Liberal Arts Travel Grant, Spring 2008
- Department of Political Science John Newell Travel Grant, Spring 2008

Awards

- President's Freshman Award, Spring 2007
- Dean's List, Fall 2006 – Spring 2009

Professional Membership

Pi Sigma Alpha, Secretary and Treasurer Spring 2009

Presentations

Presenter, Undergraduate Research Exhibition

April 2009

University Park, PA

Title: *Transitional Justice and Democracy*

Presenter, Undergraduate Research at the Capitol

October 2009

Harrisburg, PA

Title: *Facing the Past to Create a Better Future: Transitional Justice and Democracy*

Community Service Involvement

- ESL Tutor, State College School District, Fall 2008 and Spring 2009
- Rules and Regulations Team Member, THON 2007
- “Project Prom” Team Member, Leadership Jumpstart Community Service Project, Fall 2006

International Education

University of Kent

Spring 2008

Canterbury, England, United Kingdom

Language Proficiency

Spanish, intermediate level