

# Is Transitional Justice Necessary to Establish Long Term Stability?

A Monograph

by

Frances P. Hartwell  
Interagency Student



School of Advanced Military Studies  
United States Army Command and General Staff College  
Fort Leavenworth, Kansas

2016

Monograph Approval Page

Name of Candidate: Frances P. Hartwell

Monograph Title: Is Transitional Justice Necessary to Establish Long-Term Stability?

Approved by:

\_\_\_\_\_, Monograph Director  
Daniel G. Cox, PhD

\_\_\_\_\_, Seminar Leader  
David W. Gardner, COL

\_\_\_\_\_, Director, School of Advanced Military Studies  
Henry A. Arnold III, COL

Accepted this 10<sup>th</sup> day of May 2016 by:

\_\_\_\_\_, Director, Graduate Degree Programs  
Robert F. Baumann, PhD

The opinions and conclusions expressed herein are those of the student author and do not necessarily represent the views of the U.S. Army Command and General Staff College or any other government agency. (References to this study should include the foregoing statement.)

Fair use determination or copyright permission has been obtained for the inclusion of pictures, maps, graphics, and any other works incorporated into this manuscript. A work of the United States Government is not subject to copyright, however further publication or sale of copyrighted images is not permissible.

## **Abstract**

Is Transitional Justice Necessary for Long-Term Stability, by Ms. Frances P. Hartwell, 81 pages.

Over the past two decades, the international community has employed various transitional justice mechanisms to promote reconciliation and establish the rule of law in countries transitioning from civil war. The effect of these mechanisms on long-term peace however, remains ambiguous. Despite the challenges of implementing transitional justice, the establishment of the rule of law and the reconciliation of victims and perpetrators of grave violations of human rights remain essential to ending violence and encouraging public participation in post-war society. This study examines the use of transitional justice mechanisms implemented at the end of the civil wars in Bosnia-Herzegovina, East Timor, and Rwanda to evaluate their impact on internal violence, cooperation among domestic constituencies, and the establishment of reliable democratic practices to discern whether these mechanisms contributed to long-term stability. This study ultimately found that transitional justice mechanisms contributed to stability in all three cases by fostering public trust in legal and democratic institutions that helped achieve stability.

## Contents

Acronyms .....	vi
Introduction .....	1
Transitional Justice .....	2
Justice Mechanisms .....	5
Reparations .....	7
Truth Telling Mechanisms .....	7
Institutional Reform .....	9
Recent Trends in Transitional Justice .....	10
Methodology .....	11
Analysis .....	14
Case Study: Transitional Justice in Bosnia-Herzegovina – Tenuous Success Achieved through International Economic and Political Incentives .....	15
Sources of Violence: Stoking Fires of Nationalism amid Winds of Post-Cold War Change ...	16
Sources of Ethnic Tension .....	16
A Paradox of Anti-Nationalism: Individual Rights Undermine ‘Brotherhood and Unity’ ...	20
Point of No Return: Economic Crisis Amplifies Internal Fissures .....	22
The Dayton Peace Accords .....	26
The International Criminal Tribunal for Former Yugoslavia (ICTY).....	27
Advantages of the ICTY .....	30
Challenges of ICTY .....	32
Overall Result: Tenuous Success Achieved Through International Economic and Political Incentives .....	33
Case Study: Transitional Justice in Rwanda – Successful, but at the Expense of Fairness and Democracy.....	34
Sources of Violence: Repeated Cycles of Genocide and Impunity .....	36
UN Intervention .....	44
International Criminal Tribunal for Rwanda.....	45
ICTR Advantages.....	46
ICTR Challenges.....	47
The Gacaca Courts .....	48
Advantages of the Gacaca Courts .....	54
Challenges of the Gacaca Process.....	55
Overall Result: Successful, but at the Expense of Democracy .....	57
Case Study: Transitional Justice in East Timor – Successful, Despite Inherent Inconsistencies ...	57
Sources of Violence .....	59
Colonial Period .....	60
Civil War.....	61
Indonesian Invasion and Occupation: 1975-1999.....	62

Fall of Suharto Regime and Prospects for Independence .....	63
UN Intervention .....	64
Transitional Justice Mechanisms in East Timor: The Serious Crimes Process (SCP) and Commission for Reception, Truth, and Reconciliation (CAVR) .....	67
Serious Crimes Process (SCP) .....	69
Challenges to the Serious Crimes Process (SCP) .....	70
The Commission for Reception, Truth, and Reconciliation in East Timor (CAVR) .....	74
Advantages of CAVR .....	77
Challenges to CAVR .....	77
Overall Result: Successful, but with Inherent Inconsistencies .....	78
Conclusion .....	79
Bibliography .....	82

## **Acronyms**

APODETI	Timorese Popular Democratic Association
ASDT	Association for a Democratic East Timor
CAVR	Commission for Reception, Truth, and Reconciliation
CDT	Decolonization Commission in East Timor
CNRT	National Council of Timorese Resistance
CRP	Community Reconciliation Process
ETTA	East Timor Transitional Authority
FRETILIN	Revolutionary Front for an Independent East Timor
HDZ	Croatian Democratic Union
ICIET	International Commission of Inquiry on East Timor
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Yugoslavia
INTERFET	Intervention Forces East Timor
JNA	Yugoslav National Army
Komnas HAM	Indonesian Human Rights Commission
KPP HAM	Indonesian Human Rights Commission of Inquiry
RPF	Rwandan Patriotic Front
FAR	Forces Armees Rwandaises (Rwandan Armed Forces)
SCIU	Serious Crimes Investigations Unit
SCP	Serious Crimes Process
SDA	Party of Democratic Action
SDS	Serbian Democratic Party
SPSC	Special Panels for Serious Crimes
TDF	Territorial Defense Force
UDT	Timorese Democratic Union

UN	United Nations
UNAMET	United Nations Assistance Mission in East Timor
UNMICT	United Nations Mechanism for International Criminal Tribunals
UNMISSET	United Nations Mission in Support of East Timor
UNMIT	United Nations Integrated Mission in East Timor
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
UNTAET	United Nations Transitional Administration in East Timor

## Introduction

Over the past two decades, the international community has employed various transitional justice mechanisms to promote reconciliation and establish the rule of law in countries transitioning from civil war. By employing various mechanisms of transitional justice, including international criminal tribunals, traditional dispute resolution, and truth and reconciliation commissions, the international community sought to address the root causes of internal violence and prevent the recurrence of civil war.<sup>1</sup> The effect of these mechanisms on long-term peace however, remains ambiguous. As a result of lessons learned from various attempts to establish the rule of law and bring perpetrators of genocide, mass atrocities, and war crimes to justice, the international community has gradually abandoned the creation of international tribunals like the ones established for the Former Republic of Yugoslavia and Rwanda. In successive conflicts at the turn of the 21<sup>st</sup> century, the international community instead opted for the creation of hybrid national-international tribunals as seen in Sierra Leone and East Timor, and eventually shifted the burden of prosecution to national courts under the sole authority of the post-conflict government as seen in Iraq.<sup>2</sup> In more recent international interventions however, like the one in Afghanistan, the United Nations (UN) and international community chose not to pursue any form of transitional justice.

This departure from the creation of internationally-organized and domestically-driven transitional justice mechanisms near the end of a conflict calls into the question the necessity and efficacy of transitional justice mechanisms to establishing lasting peace and stability. Notwithstanding this change in post-war reconstruction practices, transitional justice norms and

---

<sup>1</sup> United Nations Rule of Law, *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice*, March 2010, 3, accessed August 22, 2015, [http://www.unrol.org/files/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](http://www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf).

<sup>2</sup> Kingsley Chiedu Moghalu, *Global Justice: The Politics of War Crimes Trials* (Praeger Security International: Westport, 2006), xiii.



mechanisms remain relevant to preserving political stability within fragile societies. As Professor Anthony Joes argued with regard to counterinsurgency operations, “true victory is one that leads to true peace, a peace founded on legitimacy and eventual reconciliation.”<sup>3</sup> Legitimacy that leads to reconciliation is built upon the establishment of the rule of law in a manner that dissuades belligerents from continuing hostilities, and demonstrates the willingness and capacity of domestic institutions to protect the population, hold perpetrators accountable, and disallow impunity.

The internal conflicts over the past twenty years reveal that transitional justice mechanisms support the credibility and legitimacy of post-conflict government institutions and encourage public trust and support of domestic institutions. Governments that fail to reconcile victims and perpetrators of crimes against humanity and grave violations of human rights likely will find that unaddressed political tension and grievances over past crimes and human rights violations will leave their societies in a precarious state plagued by mistrust and a persistent risk of violence fostered by a legacy of impunity. Despite the dramatic shift away from efforts to redress victims of war crimes and human rights violations at the end of a conflict, the establishment of the rule of law through transitional justice mechanisms remains essential to ending violence and normalizing internal relations within previously divided societies.

### **Transitional Justice**

According to the UN and the International Center for Transitional Justice (ICTJ), transitional justice encompasses the judicial and non-judicial processes and mechanisms used by a society to redress histories of massive human rights violations in order to promote

---

<sup>3</sup> Anthony James Joes, “The Requirement of Rectitude” in *Resisting Rebellion: The History and Politics of Counterinsurgency* (Lexington: The University Press of Kentucky, 2006), 156.

accountability, justice, and reconciliation.<sup>4</sup> The concept of transitional justice as a means for addressing human rights violations and mass atrocities emerged at the end of the Cold War to describe the processes used by emergent democracies in Latin America and Eastern Europe to address the abuses of former authoritarian regimes.<sup>5</sup> Newly installed administrations as well as human rights activists created truth commissions and held criminal trials to address past repression and hold perpetrators accountable.<sup>6</sup> The apparent success of these mechanisms in newly democratic societies highlighted a possible correlation between the promotion of the rule of law and democracy to the realization of peace and stability in post conflict societies.<sup>7</sup> This newly found correlation thus increased the significance of transitional justice as a requirement for peace, reconciliation, and the rule of law.<sup>8</sup> Consequently, as the UN and international community increased their involvement in post-Cold War conflicts in the former Yugoslavia and Rwanda,

---

<sup>4</sup> United Nations, *Guidance Note of the Secretary General: United Nations Approach to Transitional Justice*, March 2010, accessed August 22, 2015, [http://www.unrol.org/files/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](http://www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf); International Center for Transitional Justice, *What is Transitional Justice?*, accessed September 28, 2015, <https://www.ictj.org/about/transitional-justice>; United Nations Security Council, *Report of the Secretary-General / The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2004/616, August 23, 2004, accessed August 22, 2015, <http://www.unrol.org/files/2004%20report.pdf>.

<sup>5</sup> David Forsythe, "Human Rights and Mass Atrocities: Revisiting Transitional Justice," *International Studies Review* 13, no. 3 (March 2011): 85; David P. Forsythe, "Forum: Transitional Justice: The Quest for Theory to Inform Policy," *International Studies Review* 13, no. 3 (September 2011): 554; International Center for Transitional Justice, *What is Transitional Justice?*, 2009, accessed September 28, 2015, <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>.

<sup>6</sup> International Center for Transitional Justice, *What is Transitional Justice?*, accessed September 28, 2015, <https://www.ictj.org/about/transitional-justice>; David Forsythe, "Human Rights and Mass Atrocities: Revisiting Transitional Justice," *International Studies Review* 13, no. 3 (March 2011): 85.

<sup>7</sup> Lia Kent, *Dynamics of Transitional Justice: International Model and Local Realities in East Timor* (Cornwall: Routledge, 2010), 2-4.

<sup>8</sup> International Center for Transitional Justice, *What is Transitional Justice?*, accessed September 28, 2015, <https://www.ictj.org/about/transitional-justice>; United Nations Security Council, *Report of the Secretary-General / The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2004/616, August 23, 2004, accessed August 22, 2015, <http://www.unrol.org/files/2004%20report.pdf>; Kent, 4.

they also expanded the application of transitional justice mechanisms to promote justice, peace, and stability after conflict.<sup>9</sup>

Professor David Forsythe in *Transitional Justice: The Quest for Theory to Inform Policy* noted that improved relations between the East and West at the end of the Cold War, and a Western desire to address atrocities in the former Yugoslavia and Rwanda without military intervention, ushered in a “renaissance” of “internationally organized criminal prosecution.”<sup>10</sup> As a result, while ethnic violence plagued the Balkans and Rwanda in the 1990s, The Hague created the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) to bring perpetrators of war crimes, crimes against humanity, and genocide to justice. Since the creation of these tribunals, the international community and national governments transitioning from conflict have employed a range of transitional justice mechanisms which can be divided into four categories: justice, including criminal trials, amnesties, and traditional dispute resolution; reparations; truth telling; and institutional reform.<sup>11</sup> These components of transitional justice are designed to accomplish the following: to punish perpetrators or pardon as appropriate (justice); redress victims for past harm

---

<sup>9</sup> Tricia Olsen, Leigh Payne, and Andrew Reiter, “Transitional Justice in the World, 1970-2007: Insights from a New Dataset,” *Journal of Peace Research*, 47, no. 6 (November 2010): 805; Martina Fischer, “Transitional Justice and Reconciliation: Theory and Practice,” in *Advancing Conflict Transformation: The Berghof Handbook II*, eds. Beatrix Austin, Martina Fischer, and Hans Giessman (Farmington Hills: Barbara Budrich Publishers, 2011): 407, accessed September 28, 2015, [http://www.berghof-foundation.org/fileadmin/redaktion/Publications/Handbook/Articles/fischer\\_tj\\_and\\_rec\\_handbook.pdf](http://www.berghof-foundation.org/fileadmin/redaktion/Publications/Handbook/Articles/fischer_tj_and_rec_handbook.pdf).

<sup>10</sup> David Forsythe, “Human Rights and Mass Atrocities: Revisiting Transitional Justice,” *International Studies Review* 13, no. 3 (March 2011): 85; David P. Forsythe, “Forum: Transitional Justice: The Quest for Theory to Inform Policy,” *International Studies Review* 13, no. 3 (September 2011): 554.

<sup>11</sup> Clara Sandoval Villalba, “Transitional Justice: Key Concepts, Processes and Challenges” (briefing paper for the Institute for Democracy & Conflict Resolution, July 2011), accessed August 22, 2015, [http://www.idcr.org.uk/wp-content/uploads/2010/09/07\\_11.pdf](http://www.idcr.org.uk/wp-content/uploads/2010/09/07_11.pdf); International Center for Transitional Justice, *What is Transitional Justice?*, accessed September 28, 2015, <https://www.ictj.org/about/transitional-justice>.

(reparations); investigate past atrocities (truth telling); and prevent future atrocities (institutional reform).<sup>12</sup>

### Justice Mechanisms

Justice mechanisms usually are retributive in nature and seek to punish individuals for crimes committed during conflict. Transitional justice mechanisms within this category include criminal tribunals, but can also include various forms of amnesty and traditional dispute resolution mechanisms. Proponents of tribunals as an essential transitional justice mechanism contend that criminal prosecution achieves the following objectives: redresses victims for past suffering; facilitates compensation; improves the protection of human rights; and deters future criminal acts.<sup>13</sup> Justice mechanisms emphasize the placement of individual accountability or responsibility for crimes and atrocities committed during conflict. Advocates of criminal tribunals also cite an obligation under international law to prosecute and punish grave crimes.<sup>14</sup> Foundational transitional justice literature suggests that the creation of accountability norms and practices through the placement of individual blame reduces tension created by collective guilt that often threatens long-term stability.<sup>15</sup> Supporters of criminal trials and retributive justice mechanisms also claim that accountability helps initiate institutional reform that builds respect for the rule of law and encourages equality.<sup>16</sup>

---

<sup>12</sup> Clara Sandoval Villalba, “Transitional Justice: Key Concepts, Processes and Challenges” (briefing paper for the Institute for Democracy & Conflict Resolution, July 2011), accessed August 22, 2015, [http://www.idcr.org.uk/wp-content/uploads/2010/09/07\\_11.pdf](http://www.idcr.org.uk/wp-content/uploads/2010/09/07_11.pdf).

<sup>13</sup> Villalba, 3; Brian Grodsky, “Reordering Justice: Towards a New Methodological Approach to Studying Transitional Justice,” *Journal of Peace Research* 46, no. 6 (November 2009): 820.

<sup>14</sup> Villalba, 3.

<sup>15</sup> Grodsky, 820.

<sup>16</sup> *Ibid.*

Notwithstanding these widely acknowledged benefits of retributive justice mechanisms, the ability of criminal trials to effect and maintain stability in a post-conflict society remains a point of contention among transitional justice scholars. Many researchers contest that criminal prosecution increases the risk of political instability.<sup>17</sup> Instead, these scholars claim that amnesties are a more suitable mechanism for deterring violence and strengthening the rule of law.<sup>18</sup> Professors Jack Snyder and Leslie Vinjamuri noted that trials are likely to increase the risk of violence in countries where political institutions are weak and perpetrators of past violence retain strong political influence.<sup>19</sup> In these cases, Snyder and Vinjamuri noted that transitional authorities often have to make politically convenient compromises with powerful spoilers to deter future violence and ensure broad respect for the rule of law. Toward this end, Snyder and Vinjamuri argued that amnesties may be essential to gaining compliance from powerful perpetrators.<sup>20</sup> Once powerful detractors are bought in to the new system, transitional authorities can establish formal institutions that promote the rule of law and respect for human rights more easily.<sup>21</sup> According to Snyder and Vinjamuri, long term objectives focused on strengthening the rule of law and creating norms-based institutions should outweigh attempts at punishment that could provoke violent repercussions.<sup>22</sup>

---

<sup>17</sup> Grodsky, 820; Jack Snyder and Leslie Vinjamuri, "Trials and Errors: Principle and Pragmatism in Strategies of International Justice," *International Security* 28, no. 3 (Winter 2003-2004): 20.

<sup>18</sup> Grodsky, 820; Snyder and Vinjamuri, 20.

<sup>19</sup> Snyder and Vinjamuri, 15.

<sup>20</sup> *Ibid.*, 6.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*, 14.

## Reparations

Transitional justice norms also recognize an obligation under international law to redress victims for harm suffered as the result of grave crimes and human rights violations.<sup>23</sup> Provisions of international law concerning reparations emphasize both state and individual accountability, and thereby allow victims to seek reparations from either the state responsible for crimes committed during a conflict or from an individual actor.<sup>24</sup> Courts, truth commissions, or administrative reparations programs can award reparations in the form of restitution, compensation, rehabilitation, and guarantees that previous criminal acts will not recur.<sup>25</sup> Professor Clara Sandoval Villalba noted problems in determining how to provide “adequate reparation” as required by international law.<sup>26</sup> Villalba acknowledged that due to the gross nature of the harm incurred, providing reparations that are proportional to the harm suffered and that return a victim to his or her status before he or she suffered harm is seemingly unattainable.<sup>27</sup>

## Truth Telling Mechanisms

Transitional justice scholars attribute several benefits to truth telling related to promoting justice and social healing, fostering reconciliation, and promoting democracy.<sup>28</sup> Professor David Mendeloff noted that advocates of truth telling mechanisms correlate individual rehabilitation to national healing and reconciliation.<sup>29</sup> Mendeloff explained that these scholars claim that feelings of satisfaction, dignity, and empowerment bestowed on individual victims who share their story

---

<sup>23</sup> Villalba, 6.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*, 7.

<sup>26</sup> *Ibid.*, 6.

<sup>27</sup> *Ibid.*

<sup>28</sup> David Mendeloff, “Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm,” *International Studies Review* 6, no. 3 (September 2004): 357.

<sup>29</sup> Mendeloff, 359.

can be diffused throughout a society.<sup>30</sup> According to Mendeloff, these scholars believe that the diffusion of this sentiment facilitates social and psychological healing that reduces the need for revenge and dispels popular myths that placed collective blame on rival ethnic groups for past crimes.<sup>31</sup> Mendeloff also noted that these scholars claim that truth telling encourages reconciliation by establishing a common history of past atrocities that increases public awareness.<sup>32</sup> This increased public awareness, in turn, is believed to help prevent the recurrence of violence. By establishing practices of conflict and dispute resolution through debate, Mendeloff highlighted that transitional justice experts also claim that truth telling mechanisms help promote democracy.<sup>33</sup> Mendeloff contended however, that the benefits of truth telling remain unknown. He claimed that widely cited benefits of truth telling are mostly based on presumption and lack supporting evidence.<sup>34</sup>

Despite these competing claims, truth telling proponents consider criminal trials and truth commissions to be the two most effective mechanisms for promoting truth telling. Truth commissions are particularly viable for providing a more politically feasible transitional justice mechanism than a criminal trial. Bronkhorst described a truth commission as a “*temporary* body, set up by an *official* authority to *investigate a pattern* of gross human rights violations committed over a period of time in the past, with a view to issuing a public report, which includes victims’ data and recommendations for justice and reconciliation.”<sup>35</sup> By design, truth commissions arguably achieve all the benefits of truth telling described above. Professor Brian Grodsky

---

<sup>30</sup> Mendeloff, 359.

<sup>31</sup> *Ibid.*, 360.

<sup>32</sup> *Ibid.*, 359-360.

<sup>33</sup> *Ibid.*, 361.

<sup>34</sup> *Ibid.*, 356.

<sup>35</sup> Eric Brahm, Geoff Dancy, Hunjoon Kim, “The Turn to Truth: Trends in Truth Commission Experimentation,” *Journal of Human Rights* 9, no. 1 (Winter 2010): 49.

however, also identified truth commissions as a “middle of the road” transitional justice mechanism that allowed post-conflict governments to strike a compromise between criminal trials and amnesties.<sup>36</sup> Grodsky observed that the formative democratic governments that arose after the fall of authoritarian regimes in Latin America and Eastern Europe often had to balance transitional justice norms against concerns for political stability.<sup>37</sup> As a result, Grodsky explained, these post-conflict administrations often resorted to restorative justice measures such as amnesties and truth commissions instead of criminal trials.<sup>38</sup> Grodsky posited that new administrations adopt truth commissions when international and domestic demands for justice conflict, and when new administrations take authority after ending internal conflict by a negotiated agreement and not by a decisive military victory.<sup>39</sup>

#### Institutional Reform

Institutional reform is the primary mechanism for preventing the recurrence of atrocities. Villalba noted that states transitioning from conflict also must identify the structures that enabled widespread violence and gross human rights violations, and reform them.<sup>40</sup> Reform aimed at preventing the recurrence of mass violence most often takes place in the justice and security sectors, and is intended to reform the culture and structure that permitted past atrocities and build weak or absent institutions.<sup>41</sup> Institutional reforms toward these ends include, vetting processes to ensure suitability for public service, the creation of disciplinary rules and codes of conduct to

---

<sup>36</sup> Brian Grodsky, “International Prosecutions and Domestic Politics: The Use of Truth Commissions as Compromise Justice in Serbia and Croatia,” *International Studies Review* 11, no. 4 (December 2009): 693.

<sup>37</sup> Grodsky, “Reordering Justice,” 821.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*; Grodsky, 693.

<sup>40</sup> Villalba, 9.

<sup>41</sup> *Ibid.*, 10.



sanction misconduct, and rule of law training.<sup>42</sup> Successful institutional reform depends on the political will of the transitional administration and international community.<sup>43</sup> Villalba noted that most efforts at institutional reform suffer from a lack of consistent international assistance, and missed opportunities for local capacity building.<sup>44</sup>

### Recent Trends in Transitional Justice

Over the past two decades, international and domestic actors have implemented various combinations of transitional justice mechanisms with mixed results. As a consequence, lessons learned from the application of various transitional justice mechanisms appear to have prompted a gradual decline in the internationally organized pursuit of transitional justice. Professor Kingsley Moghalu described how challenges to the legitimacy of international justice led the international community away from the creation of international tribunals, like the ones established for the former Republic of Yugoslavia and Rwanda, to the creation of hybrid national-international tribunals, as seen in Sierra Leone and East Timor, and eventually to the creation of national war crimes courts under the sole authority of the post-conflict government, as seen in Iraq.<sup>45</sup> During political negotiations at the end of more recent international military interventions however, particularly in negotiations concerning post-war Afghanistan, the UN and international community chose not to establish any transitional justice mechanisms.

The decreasing emphasis on internationally organized justice probably reflects increased appreciation for the complex political realities that often challenge the implementation of transitional justice mechanisms. As mentioned earlier, new administrations must often balance

---

<sup>42</sup> Villalba, 10.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Kingsley Chiedu Moghalu, *Global Justice: The Politics of War Crimes Trials* (Praeger Security International: Westport, 2006), xiii.

transitional justice norms against concerns for political stability when past perpetrators retain some degree of political influence within the national or local polity.<sup>46</sup> Transitional justice experts also recognize the need to develop transitional justice mechanisms that are appropriate within the specific political and cultural context of a country, and cannot establish general, one-size-fits-all institutions or practices. The decreasing trend in the application of internationally-led transitional justice mechanisms also likely reflects international efforts to avoid the high financial costs associated with international criminal tribunals and to respond to criticisms of the inability of international transitional justice mechanisms to build domestic judicial capacity and increase domestic confidence in national judicial institutions.

This departure from the automatic enforcement of transitional justice mechanisms at the end of a conflict seems to obviate the need for transitional justice to establish lasting peace and stability in war-torn societies. Nevertheless, transitional justice norms and mechanisms retain their relevance to preserving political stability within fragile societies. The reconciliation of victims and perpetrators of war crimes and grave human rights violations enhances the credibility of post-war democratic institutions and fosters popular support for developing government institutions and democratic practices. Over the long-term, post-conflict governments that fail to address past crimes and atrocities likely will find that unaddressed political tension and grievances over human rights violations will leave their societies in a precarious state plagued by mistrust left by a legacy of impunity.

### **Methodology**

This study will examine the use of transitional justice mechanisms at the end of the civil wars in Bosnia-Herzegovina, East Timor, and Rwanda. Examination of these case studies provides an opportunity to compare and contrast three conflicts fueled by similar sources of

---

<sup>46</sup> Grodsky, 821; Snyder and Vinjamuri, 15.

internal tension that adopted different transitional justice mechanisms at the end of hostilities. Variations in the transitional justice mechanisms applied after each conflict add to the comparison and contrast value of the study, but likely reflect international efforts over time to adopt more integrated and context-appropriate transitional justice mechanisms aimed at building legitimacy and domestic governance capacity. After examining the background of each conflict and the transitional justice mechanisms applied at their conclusion, the stabilizing or destabilizing effect of the transitional justice effort that followed each conflict will be evaluated by the presence or absence of the following factors in each society: continued violence, cooperation among domestic constituencies, and reliable democratic institutions and practices. An examination of these factors will evaluate whether transitional justice mechanisms achieved the transitional justice goals of peace, reconciliation, and democracy and contributed to long-term stability.

The first case study on Bosnia-Herzegovina examines the use of an international criminal tribunal as a means for effecting justice at the end of a civil war. This case study provides a unique examination of the impact of retributive transitional justice in a country divided along ethnic lines socially, politically, and geographically. In contrast to the cases of Rwanda and East Timor where ethnic groups and political factions remained organized under a single national government after the conflict, the international community divided the ethnic populations of Bosnia-Herzegovina into semi-autonomous administrative areas as a means to end and prevent ethnically motivated violence. The resolution of this conflict by political agreement that demarcated ethnic divisions within society would seem to pose additional challenges to establishing reconciliation through transitional justice.

The case of Rwanda examines the combined use of an international criminal tribunal and traditional dispute resolution. Similar to the first case, the exploitation of ethnic tension gave rise to the civil war in Rwanda. Unlike the conflict in Bosnia-Herzegovina, which ended by a negotiated political settlement and not in a decisive military victory by one of the competing factions, the conflict in Rwanda ended with one of the competing ethnic groups as a clear victor.

This characteristic of the end of the civil war in Rwanda seemed to aid the transitional justice process, since one faction enjoyed a stronger military and political position that allowed it to impose transitional justice norms on the defeated faction. In this case however, members of the defeated factions viewed the smooth transitional justice process as illegitimate due to perceptions of unfairness caused by an uneven focusing on the crimes and atrocities of only one side. In an effort to conduct more trials, increase local legitimacy, and build local judicial capacity, the Rwandan government and international community also incorporated the traditional gacaca court into their transitional justice strategy. Examination of this integrated application of transitional justice mechanisms allows further comparison of the legitimacy of international versus domestic transitional justice mechanisms.

Finally, the case of East Timor examines the combined use of a hybrid court and a truth and reconciliation commission. After the end of the conflict in East Timor, the international community was no longer willing to endure the expense of an international criminal tribunal, and sought transitional justice mechanisms that would increase national participation and promote reconciliation. The adoption of a hybrid court allowed the international community to pursue justice and individual accountability. The introduction of a truth and reconciliation commission allowed international actors to explore the utility of traditional restorative justice mechanisms. Unlike the conflicts in the previous two cases however, the civil war in East Timor was not fueled by ethnic tension, but by tension between domestic political factions. Additionally, the conflict in East Timor included an external aggressor, Indonesia, which inflicted most of the violence either by direct military action or by proxy. Nonetheless, the transitional justice mechanisms applied in East Timor follow the trend in internationally-led transitional justice over time, and provide a useful examination of the utility of hybrid methods of transitional justice to effecting peace, reconciliation, and legitimacy.

This study will not examine the cases of Iraq and Afghanistan in which the former used domestic courts to engender transitional justice and the latter made no provision for transitional

justice. Ongoing conflict in these countries also does not permit useful post-conflict comparison of applied or absent transitional justice mechanisms. Moreover, growing unwillingness within the international community to implement transitional justice mechanisms in these and other current conflicts obviates any useful analysis of whether transitional justice mechanisms contribute to long-term stability.

### **Analysis**

The overall stability of Bosnia-Herzegovina, Rwanda, and East Timor twenty years after some of the most egregious periods of internal violence in these countries highlights the varied utility of transitional justice mechanisms to promoting peace, reconciliation, and democracy after civil war. In each of these cases, various combinations of internationally-organized and domestically-driven transitional justice mechanisms contributed to long-term peace and stability by bringing perpetrators to justice and redressing victims' grievances. Since the end of these conflicts and the pending dismantlement of the transitional justice mechanisms instituted to resolve them, none of these countries has experienced violence that seriously threatened the political stability or existence of the current state, and each of these countries enjoys varying degrees of cooperation between its domestic constituencies.

Nonetheless, persistent challenges remain to overall objectives of reconciliation and open democracy in two of the cases examined. In Bosnia-Herzegovina, the division of democratic institutions and national territory along ethnic lines allows ethnic groups to target each other in judicial proceedings.<sup>47</sup> In Rwanda, free and open democracy have been hindered by an intransigent regime that suppresses opposition and interferes in the security and political stability of neighboring countries to prevent the possible return of ethnic rivals and former perpetrators of

---

<sup>47</sup> Rodolfo Toe and Sasa Dragoljo. "Serbia, Bosnia Leaders Clash Over 'Genocide Lawsuit,'" *Balkan Insight*, March 29, 2016, accessed April 19, 2016, <http://www.balkaninsight.com/en/article/vucic-accuses-izetbegovic-of-fostering-violence-between-serbia-and-bosnia-03-29-2016>.

genocide. Notwithstanding these challenges to the development of robust and potentially stability enabling democratic institutions and practices, none of the societies examined in this study is on a near-term trajectory for war or a resumption of open hostilities.

**Case Study: Transitional Justice in Bosnia-Herzegovina – Tenuous Success Achieved through International Economic and Political Incentives**

To hold perpetrators of the genocide in Bosnia-Herzegovina accountable, and to prosecute violations of international humanitarian law, the UNSC authorized the creation of the International Criminal Tribunal for the Former Yugoslavia (ICTY). This ad hoc international criminal tribunal was the first of its kind since the closure of the international military tribunals in Nuremburg and Tokyo after WWII. More than twenty years since its creation, the ICTY continues to operate under UN authority and is expected to complete its work by December 2017. Despite the prolonged administration and high financial costs of the tribunal, the ICTY has achieved moderate success in the prosecution of senior and mid-level officials responsible for organizing and executing ethnocide and other war crimes, and has helped strengthen the capacity of the international legal system and the national judiciaries of the former republics of Yugoslavia to address genocide-related crimes.

The moderate success of the ICTY has contributed to lasting stability and fostered the relatively stable administration of democratic institutions led by representatives of the various ethnic groups of the Federation of Bosnia and Herzegovina and the Republic of Serbia. Despite continued tension between ethnic and political factions, national leaders work to mitigate inter-ethnic tension in pursuit of political and economic incentives provided by potential membership in the European Union and regional trade. In light of these incentives, competing factions are unlikely to use their positions of political power to incite another war.

## Sources of Violence: Stoking Fires of Nationalism amid Winds of Post-Cold War Change

The general pattern of violence that plagued the countries of the former Federal Republic of Yugoslavia from the time of their liberation from imperialism through their eventual dissolution after the Cold War can be described by pre-modern periods of violence fueled by competing economic and geopolitical interests followed by modern internecine conflict for political autonomy and preeminence. As the historical intersection of former Western European and Eastern European empires, the territorial division of the former Yugoslavia between the Byzantine, Ottoman, and Austro-Hungarian monarchies forged ethnic and religious cleavages between Croats, Serbs, and Bosniak Muslims that facilitated the emergence of political ideological factions that competed either to unite diverse ethnic groups under a single national political vision, or divide them by ethnic-based pursuits of political autonomy and preeminence. Disillusionment and uncertainty within the former republic of Yugoslavia created by global economic recession and a rapidly changing world order at the end of the Cold War provided prime opportunities for autonomy-seeking political leaders to stoke fires of nationalism that would dissolve the former federation and allow them to pursue revisionist geopolitical interests through violent means.

## Sources of Ethnic Tension

Contrary to standard explanations of the conflict in Bosnia-Herzegovina as a product of “ancient hatreds” harbored by ethnically diverse populations who had been merged forcibly into a federation, researchers pointed out that ethnic tension evolved from problems that emerged after the creation of Yugoslavia.<sup>48</sup> Professor Patricia Kollander highlighted that the people of the

---

<sup>48</sup> Patricia Kollander, “The Civil War in Former Yugoslavia and the International Intervention,” in *Reflections on the Balkan Wars: Ten Years After the Breakup of Yugoslavia*, eds. Jeffrey S. Morton, R. Craig Nation, Paul Forage, and Stefano Bianchini (New York: Palgrave MacMillan, 2004), 4; R. Craig Nation, “Balkans in the Short 20<sup>th</sup> Century,” in *War in the Balkans, 1992-2002* (Carlisle: US Army War College), 45; Benjamin Denison and Jasmin Mujanovic, “Syria Isn’t Bosnia. And No, the Problem Isn’t ‘Ancient Hatreds,’” *The Washington*

multiple ethnic groups that comprised the republics of the former Yugoslavia did not live under a common political administration until the creation of the “First Yugoslavia” in 1918.<sup>49</sup> U.S. Army War College Professor R. Craig Nation also emphasized that the impetus behind the creation of a Yugoslav state came as a result of the collaborative efforts of Croat, Serb, and Slovene intellectual elites who proposed the unification of southern Slavs in light of their ethnic and linguistic similarities.<sup>50</sup> Professor Nation suggested that the real logic behind the move toward unification more likely arose from a need for collective security.<sup>51</sup> Prior to WWI, Serbia was the only sovereign state in the area with a formidable military.<sup>52</sup> Slovenia and Croatia continued to struggle for independence from Austria-Hungary and faced a growing threat of incursion from Italy.<sup>53</sup> Hence, to protect the independence of their respective territories in the face of threats that emerged after the fall of the Hapsburg Empire, the National Council of Serbs, Croats, and Slovenes established the Kingdom of Serbs, Croats, and Slovenes or the “First Yugoslavia,” in 1918.<sup>54</sup>

Ethnic tension eventually developed as a result of disagreements over how to organize the new federation. In the interwar period, political factions emerged to challenge the authority of the Serb monarchy that dominated the “First Yugoslavia.”<sup>55</sup> The Croatian Republican Peasant Party, in particular, demanded autonomy either as a republic or as part of a federation.<sup>56</sup>

---

*Post*, November 17, 2015, accessed April 16, 2016, <https://www.washingtonpost.com/news/monkey-cage/wp/2015/11/17/syria-isnt-bosnia-and-no-the-problem-isnt-ancient-hatreds/>.

<sup>49</sup> Kollander, 4.

<sup>50</sup> *Ibid.*; Nation, 45.

<sup>51</sup> Nation, 46-47.

<sup>52</sup> *Ibid.*, 47.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*, 46-47.

<sup>55</sup> *Ibid.*, 46.

<sup>56</sup> Kollander, 4-5; Nation, 48.



Increasing political tension and dissatisfaction with the monarchy eventually led the king to declare a dictatorship and reorganize the administrative boundaries of the newly declared Kingdom of Yugoslavia to obfuscate ethnic boundaries.<sup>57</sup> Croats and anti-Serb factions still resented the authority of the dictator and conspired to assassinate him in 1934.<sup>58</sup> After the assassination of the monarch, tension between the Serb monarchy and Croatian Republican Peasant Party approached culmination in 1939 with the signing of the Sporazum or agreement that established an autonomous Croatian administrative zone. This agreement however, did not alleviate internal tension and could not be implemented due to an impending Second World War.<sup>59</sup>

The outbreak of WWII created a chaotic opportunity for various Fascist, Communist, and Nationalist factions to engage in a civil war for political power. Shortly after their invasion, the Axis Powers divided the territory of Yugoslavia to support their political and military aims.<sup>60</sup> During the occupation, the Axis Powers absorbed most of Yugoslavia and established small satellite regimes in the remnant republics. Axis allies in the region gained the remaining portions of the Yugoslav territory. The Ustaše, a pro-Nazi Croat political faction, benefited greatly from its allegiance to the Nazi regime, and gained both statehood and territory that included all of Bosnia-Herzegovina.<sup>61</sup> Under Nazi tutelage, the Ustaše attempted to establish a Croat-only state through a deadly campaign of genocide that involved the murder or internment of Serbs, Roma, Jews, and some Croats.<sup>62</sup> Nation noted that the Ustaše campaign of genocide was most severe in

---

<sup>57</sup> Nation, 49; Kollander, 5.

<sup>58</sup> Kollander, 5.

<sup>59</sup> Nation, 49; Kollander, 5.

<sup>60</sup> Nation, 52-53.

<sup>61</sup> Kollander, 5.

<sup>62</sup> Elizabeth Neuffer, "Blood Ties to Blood Feuds," in *Key to My Neighbor's House* (New York: Picador, 2001), 16; Nation, 54; Kollander, 5.

ethnically diverse regions, like Bosnia-Herzegovina.<sup>63</sup> Journalist Elizabeth Neuffer highlighted that the internment camp at Jasenovac became a symbol of Croat aggression used by Serb nationalist leaders to incite war fifty years later.<sup>64</sup> Neuffer added that some of the Serb children who survived Ustaše brutality in WWII became war criminals after the Cold War.<sup>65</sup>

To defend against Ustaše and Nazi aggression, anti-Nazi and anti-Ustaše factions formed and expanded the scale of inter-ethnic conflict in Yugoslavia.<sup>66</sup> Serb royalists called Chetniks organized around a nationalist platform that sought the creation of a greater Serbia.<sup>67</sup> The Communist Party of Yugoslavia led by Josip Broz Tito organized Partisans under a broad national ideology that sought to unite all Yugoslavs against Nazi and Axis powers.<sup>68</sup> As these parties joined the war against the Nazis and Ustaše, they exploited opportunities to lash out against each other in the hope of establishing political preeminence after the war. To increase their odds for victory, the Chetniks eventually joined the Nazis and committed acts of genocide against Bosnian Muslims and Croats.<sup>69</sup> In Yugoslavia, WWII incited a widespread civil war marred by genocide. Neuffer highlighted that WWII pitted Serb Chetniks and multi-ethnic Partisans against each other and against the Ustaše. Bosnian Muslims fought on opposing sides of the conflict either as Partisans or as part of the Ustaše. The all out inter-ethnic conflict that emerged during the anti-Nazi and anti-Axis resistance of WWII sowed seeds of ethnic tension that would be revived for geopolitical purposes during the 1990s.<sup>70</sup>

---

<sup>63</sup> Nation, 54.

<sup>64</sup> Neuffer, 16.

<sup>65</sup> Ibid., 17.

<sup>66</sup> Kollander, 5.

<sup>67</sup> Nation, 55.

<sup>68</sup> Ibid., 55.

<sup>69</sup> Neuffer, 17.

<sup>70</sup> Ibid.

## A Paradox of Anti-Nationalism: Individual Rights Undermine ‘Brotherhood and Unity’

As a result of his military success against the Axis Powers in WWII, Communist leader Josip Broz Tito assumed central authority over the newly created Socialist Federal Republic of Yugoslavia (SFRY).<sup>71</sup> To unite the new republic and eliminate ethnic nationalism that had plagued the federation since its founding, Tito eliminated all ethnic designations and revised internal borders to balance out the distribution of ethnic constituencies and divide the large Serbian population that had held power since the end of WWI.<sup>72</sup> The redrawing of boundaries created the following six republics and two autonomous provinces: Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia; and Kosovo and Vojvodina.<sup>73</sup> Serbs resented Tito’s policies the most due to their discontentment over the autonomous status of their former province Kosovo.<sup>74</sup> Overall, however, Yugoslavs prospered under Tito’s initiatives. Although Tito was a Communist leader, he resisted the influence of the Soviet Union and asserted his independence as a founder of the Non-Aligned Movement.<sup>75</sup> This non-aligned status afforded Yugoslavia access to capital, advanced technology, and military equipment from the West, petroleum from the Middle East, and manufactured goods, including arms, from the Soviet Union.<sup>76</sup> In addition to the benefits of foreign trade, Yugoslav republics enjoyed a high-level of autonomy that allowed them to resist interference by the central government in their economic and administrative policies. The broad autonomy provided by the federal constitution provided a foundation for the future dissolution of the federation. In contrast to “ancient hatreds” theories,

---

<sup>71</sup> Nation, 55-56; Kollander, 6.

<sup>72</sup> Neuffer, 18; Edgar O’Ballance, “Sovereign Independence” in *Civil War in Bosnia 1992-1994* (London: MacMillan Press, Ltd., 1995), 3.

<sup>73</sup> Kollander, 6.

<sup>74</sup> Ibid.

<sup>75</sup> Susan L. Woodward, “The Bases of Prewar Stability,” in *Balkan Tragedy: Chaos and Dissolution After the Cold War* (Harrisonburg: R.R. Donnelly and Sons Co., 1995), 25-26.

<sup>76</sup> Ibid., 29.

Professor Susan Woodward perceptively proffered that long-standing constitutional conventions that protected internal and individual sovereignty eventually encouraged the republics to pursue their sovereign rights to their fullest extent.<sup>77</sup>

To mitigate ethnic tension and create a Communist society of “brotherhood and unity,” Tito attempted to create a system of equal republics joined in a single federation.<sup>78</sup> In its effort to ensure equality for all national groups, Woodward pointed out that the federal government effectively guaranteed national and ethnic rights.<sup>79</sup> Federal law established a quota system that ensured the distribution of federal appointments and resources according to the ethnic distribution of a constituent population.<sup>80</sup> National institutions also required equal representation by all groups and made decisions by consensus.<sup>81</sup> Woodward also highlighted that the federal system observed the fundamental principle of subsidiarity, which seeks to direct decision-making “as close to the ground as possible.”<sup>82</sup> As a result, republics enjoyed autonomy over their economic and financial decisions, and shared ownership of local industries.<sup>83</sup> Woodward noted that the high degree of autonomy and emphasis on equality within the federal system created tension between the federal government and the republics, and eventually led to increased demands for independence and the creation of ethnic-based communities.<sup>84</sup>

---

<sup>77</sup> Woodward, 21-22.

<sup>78</sup> *Ibid.*, 38.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*, 36-37.

<sup>81</sup> *Ibid.*, 38.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*, 40.

## Point of No Return: Economic Crisis Amplifies Internal Fissures

Despite a relatively prosperous co-existence through the 1960s and 1970s, growing economic disparity and economic instability under an increasingly weak federal system prompted republican leaders to push for more power over consolidated territory. To mitigate the effects of the global economic crises of the 1970s, federal leaders proposed economic reform to help stabilize the Yugoslav economy. Federal attempts to introduce reform however, only heightened tension between the federal government and the republics, and between the wealthy republics and the poor republics.<sup>85</sup> The wealthy republics of Slovenia and Croatia opposed reform that threatened their economic status. The pro-federalist administration in Serbia viewed reform as a means to improve the management of its local economy.<sup>86</sup> National debate over economic reform spanned an entire decade from 1979 to 1989 and provided the prelude to the rise of nationalism and dissolution.<sup>87</sup>

Debate over economic reform also included debate over the constitution since institutional reform required changes to the constitution.<sup>88</sup> Woodward highlighted however, two events in 1987 that set the stage for political change that overshadowed economic reform. First, Slovenian officials' resistance to federal incursion on republican sovereignty merged with the popular protests of young radicals and Slovene intellectuals who denounced federal military conscription.<sup>89</sup> Slovene officials championed the cause of their youth and began to push for the "socialization" of the army to begin the devolution of federal powers to the republics.<sup>90</sup> Second, Communist Party leader Slobodan Milosević made the plight of Serbs in Kosovo a political

---

<sup>85</sup> Woodward, 50.

<sup>86</sup> *Ibid.*, 62.

<sup>87</sup> *Ibid.*, 50.

<sup>88</sup> *Ibid.*, 68.

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

<sup>90</sup> *Ibid.*, 89-90.

priority and used this grievance to purge the party of liberal leaders. Woodward suggested that these events directly aligned national parties with the demands of nationalist elites and popular protests.<sup>91</sup> As a result, nationalism became a key theme of political debate and propaganda.<sup>92</sup>

Between 1987 and 1988, nationalist rhetoric intensified. Particularly, on April 24, 1987, Milosević gave a speech at the historic Kosovo field that inspired the nationalist sentiment of approximately 10,000 Serbs who resented systematic discrimination by an Albanian majority.<sup>93</sup> Kollander highlighted that this speech brought Milosević national acclaim as a creator of the strategy to establish a “Greater Serbia.”<sup>94</sup> Woodward pointed out that during this time, Milosević and Slovene party leader, Milan Kučan promoted similar claims to national rights over territory and a duty to protect their territories and people.<sup>95</sup> To generate mass appeal to his nationalist platform, Milosević characterized Serbs as victims who had suffered under Tito and emphasized a general need for protection to unite Serbs of all social classes, but particularly those most negatively affected by adverse economic conditions and reform.<sup>96</sup> Woodward noted that this broad appeal to Serbs throughout Yugoslavia would have consequences for the sovereignty of republics with Serb minorities living within their borders.<sup>97</sup>

In 1989, Milosević became president of Serbia and the federal system soon began to disintegrate. Shortly after assuming power, Milosević stripped Kosovo of its autonomy and refused to compromise on the issues of Kosovo autonomy or confederation.<sup>98</sup> To strengthen their

---

<sup>91</sup> Woodward, 89.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid., 90; Marchak 194-195; Kollander, 8.

<sup>94</sup> Kollander, 8.

<sup>95</sup> Woodward, 91.

<sup>96</sup> Ibid., 92-93.

<sup>97</sup> Ibid., 93.

<sup>98</sup> Kollander, 8.

autonomy and counter Serb nationalism, Slovenia and Croatia pushed for multiparty elections to select their respective legislatures and executives.<sup>99</sup> In 1990, nationalist and pro-independence parties won elections in Slovenia and Croatia. In Slovenia, Communist Party leader Milan Kučan won the presidency, but anti-communist, pro-independence candidates won the legislative election.<sup>100</sup> Franjo Tudjman and his anti-Serb, nationalist party, the Croatian Democratic Union (HDZ), won legislative elections in Croatia.<sup>101</sup> Tudjman sought to create a “Croat-only” Croatia, which aroused the fears of Serbs living in Croatia and prompted accusations from Milosević that Tudjman sought to revive Ustaše ideals.<sup>102</sup> Newly elected administrations in both republics soon declared their sovereignty.<sup>103</sup> In Bosnia-Herzegovina, elections results reflected the ethnic diversity of the population. As a result, candidates from the Muslim party, the Party of Democratic Action (SDA), the Serbian Democratic Party (SDS), and the Croatian HDZ agreed to share power in a collective presidency composed of two members from each major ethnic group and one representative of other minorities.<sup>104</sup> Remaining government posts were assigned to ensure equal representation.<sup>105</sup> As elections took place, Milosević decided he wanted Slovenia and Croatia out of the federation, but wanted to maintain control of Serb populated areas.<sup>106</sup> He began to prepare against possible military opposition to his objectives by depending on the Yugoslav National Army (JNA).<sup>107</sup>

---

<sup>99</sup> Woodward, 117.

<sup>100</sup> Ibid., 119.

<sup>101</sup> Ibid.; Kollander, 8-9.

<sup>102</sup> Kollander, 9.

<sup>103</sup> Woodward, 120.

<sup>104</sup> Ibid., 122.

<sup>105</sup> Ibid.

<sup>106</sup> Kollander, 9.

<sup>107</sup> Ibid.

During the 1990 elections, as it became apparent that pro-independence candidates would win in Slovenia and Croatia, the army began planning operations to prevent secession.<sup>108</sup> By August 1990, Serbs living in Croatia created militias and began to conduct violence against Croatian authorities.<sup>109</sup> These militias barricaded roads leading to Serb neighborhoods and villages and attacked or seized police stations and other government facilities.<sup>110</sup> Federal forces intervened to suppress the violence, but their actions were seen as pro-Serb by Croatian authorities.<sup>111</sup> As violence increased in between February and March 1991 and lasted through May of the same year, the conflict became a war between Croatian forces, converted from the Territorial Defense Forces (TDF), and the Federal Army.<sup>112</sup> About a month after the end of these hostilities, the republics of Slovenia and Croatia declared independence from the SFRY on 25 and 26 June 1991.<sup>113</sup> Serbia immediately responded to the declarations with war. Hostilities in Slovenia were brief, and lasted about ten days. In Croatia however, fighting lasted until January 1992.<sup>114</sup>

Even before war began in Slovenia and Croatia, Kollander highlighted that Bosnia was being fractured by Serb and Croat nationalist influence.<sup>115</sup> In January 1992, Bosnian Serbs declared the independence of the Serb Republic of Bosnia-Herzegovina.<sup>116</sup> In light of this event, Kollander emphasized that Bosnian President Alija Izetbegović knew that if Bosnia-Herzegovina

---

<sup>108</sup> Woodward, 136.

<sup>109</sup> *Ibid.*, 137.

<sup>110</sup> *Ibid.*, 138.

<sup>111</sup> *Ibid.*, 137.

<sup>112</sup> *Ibid.*, 146; Nation, 104; Kollander, 10.

<sup>113</sup> *Ibid.*

<sup>114</sup> Nation, 133.

<sup>115</sup> Kollander, 11.

<sup>116</sup> *Ibid.*, 12.



remained part of Yugoslavia, it would be dominated by Serb federal authorities. Izetbegovic instead chose to declare independence in March 1992, thereby provoking violent responses from Serbia and Croatia.<sup>117</sup> Unlike populations in Slovenia, Croatia, and Serbia, no single ethnic group enjoyed a majority within Bosnia-Herzegovina.<sup>118</sup> To adjust ethnic percentages and expand Serbian territorial control, Milosević and other Serbian nationalist leaders incited a campaign of ethnocide and genocide to gain control of an expanded, independent Serbia.<sup>119</sup>

#### The Dayton Peace Accords

U.S. and NATO air strikes brought the warring parties to the negotiating table in 1995.<sup>120</sup> In December 1995, the signing of the Dayton Peace Accords finally brought an end to the conflict over Bosnia-Herzegovina. The agreement included a General Framework for Peace and 11 annexes that outlined the role of the international community in securing peace.<sup>121</sup> To settle the competition for territory between the parties, the agreement divided the territory of Bosnia-Herzegovina into the Federation of Bosnia and Herzegovina, which joins the predominately Bosnian Muslim and Croat areas of the former republic, and the Republic of Serbia. The agreement also called upon Croatia, Serbia, and Bosnia-Herzegovina to cooperate with the ICTY and comply with orders from the tribunal for the arrest, detention, and surrender of indictees.<sup>122</sup> Cooperation from the former belligerents remained uneven immediately following the agreement,

---

<sup>117</sup> Kollander, 11.

<sup>118</sup> *Ibid.*, 11.

<sup>119</sup> *Ibid.*, 12.

<sup>120</sup> Patrice MacMahon, "Managing Ethnic Conflict in Bosnia: International Solution to Domestic Problems" in Morton et al., 191.

<sup>121</sup> *Ibid.*, 190.

<sup>122</sup> Nettlefield, 84-85; R. Craig Nation, "The Balkan Wars and the International War Convention" in Morton et al., 149.

but UN member nations helped enforce ICTY jurisdiction over the organizers and perpetrators of ethnocide and genocide.

#### The International Criminal Tribunal for Former Yugoslavia (ICTY)

On 6 October 1992, the UNSC authorized a Commission of Experts to investigate violations of international law in the former republics of Yugoslavia.<sup>123</sup> The Commission found serious violations of international humanitarian law occurring in the former republics and recommended that an international tribunal be created to address international legal violations.<sup>124</sup> Several months later, on 25 May 1993, the UNSC passed UNSCR 827 which authorized the creation of the ICTY under Chapter VII of the UN Charter and adopted a draft statute to govern the tribunal.<sup>125</sup> James Meernik pointed out that the UNSC believed that criminal prosecution would help restore and preserve peace in the former Yugoslavia.<sup>126</sup> He also highlighted that the judges of the tribunal considered the advancement of peace and reconciliation as part of their responsibilities.<sup>127</sup>

The ICTY is organized into three main components: the Prosecutor, who prepares investigations and indictments; the Chambers, which administer trials and appeals; and the Registry, which handles administrative matters for the Prosecutor and the Chambers.<sup>128</sup> The UNSC appoints the Prosecutor who supervises a staff of investigators and legal advisors that

---

<sup>123</sup> Stephen R. Ratner, Jason S. Abrams, and James L. Bischoff, eds., “The Progeny of Nuremberg: International Criminal Trials,” in *Accountability for Human Rights Atrocities in International Law*, 3<sup>rd</sup> ed. (Oxford: Oxford University Press, 2009), 213.

<sup>124</sup> Ratner, Abrams, and Bishoff, 213.

<sup>125</sup> Ibid.

<sup>126</sup> James Meernik, “Justice and Peace? How the International Criminal Tribunal Affects Societal Peace in Bosnia,” *Journal of Peace Research* 42, no. 3 (May 2005): 272.

<sup>127</sup> Ibid., 272.

<sup>128</sup> Ratner, Abrams, and Bishoff, 214.

conducts investigations and prepares indictments.<sup>129</sup> The UN General Assembly appoints judges to the Chambers from a list of candidates prepared by the UNSC.<sup>130</sup> Trial chambers are further divided into two or three sections to allow each chamber to preside over multiple trials concurrently.

According to the ICTY statute, the tribunal has jurisdiction over war crimes, genocide, and crimes against humanity committed in the former Yugoslavia since January 1, 1991.<sup>131</sup> The statute also grants the ICTY jurisdiction over three inchoate crimes related to genocide and ethnocide including, conspiracy, incitement, and attempt.<sup>132</sup> The tribunal has primacy over national courts for these crimes and may request a domestic court to defer to its jurisdiction or transfer cases for adjudication in domestic court.<sup>133</sup> The ICTY statute also requires the Chambers to uphold international legal standards for ensuring a fair trial. Under the ICTY statute, the trial Chambers must ensure that the defendant enjoys the rights to be presumed innocent, informed of pertinent charges, and have access to counsel.<sup>134</sup> The Chambers must also provide protection to victims and witnesses.<sup>135</sup>

Since convening its first trial in 1996, the ICTY has completed proceedings for 141 out of 161 suspects.<sup>136</sup> Over the course of these proceedings, the Chambers sentenced a total of 81 defendants and acquitted 19 former indictees.<sup>137</sup> Many of those convicted include senior political

---

<sup>129</sup> Ratner, Abrams, and Bishoff, 214.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid., 215.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid, 218.

<sup>135</sup> Ibid.

<sup>136</sup> International Criminal Tribunal for the Former Yugoslavia, "ICTY Digest," no. 156 (1 January- 6 April 2016), 5, accessed April 7, 2016, [http://www.icty.org/x/file/About/Reports%20and%20Publications/ICTYDigest/2016/icty\\_digest\\_156\\_en.pdf](http://www.icty.org/x/file/About/Reports%20and%20Publications/ICTYDigest/2016/icty_digest_156_en.pdf).

<sup>137</sup> International Criminal Tribunal for the Former Yugoslavia, "ICTY Digest," no. 156 (1

leaders, government officials, and military commanders who were responsible for the planning and execution of the ethnocide campaign. The Chambers also terminated a total of 36 cases due to withdrawn indictments or the death of the defendant.<sup>138</sup> On 24 March 2016, the tribunal issued one of its most significant verdicts when it convicted former wartime president of the Bosnian Serb republic Radovan Karadžić.<sup>139</sup> The ICTY found Karadžić guilty of genocide and nine counts of various war crimes charges and charges for crimes against humanity stemming from the murder of over 8,000 Muslims at Srebrenica, the numerous deaths of civilians by sniper fire during the siege of Sarajevo, and the forcible displacement of Bosnian Muslims and Croats under a Serbian-led campaign of ethnic cleansing.<sup>140</sup> Serbian military commander Ratko Mladić remains in custody and the tribunal expects to render a verdict concerning his role in the war in 2017. As of April 2016, two trials and two appeals remain pending at the ICTY. Given the few cases remaining in its chambers, ICTY officials expect the tribunal will complete its mission by December 2017.<sup>141</sup>

---

January- 6 April 2016), 5, accessed April 7, 2016, [http://www.icty.org/x/file/About/Reports%20and%20Publications/ICTYDigest/2016/icty\\_digest\\_156\\_en.pdf](http://www.icty.org/x/file/About/Reports%20and%20Publications/ICTYDigest/2016/icty_digest_156_en.pdf).

<sup>138</sup> Ibid.

<sup>139</sup> Barbara Surk, “Radovan Karadzic Found Guilty of Genocide in Srebrenica,” *Politico*, March 25, 2016, accessed April 14, 2016, <http://www.politico.eu/article/radovan-karadzic-found-guilty-of-genocide-in-srebrenica-icty-bosnia-serbia/>.

<sup>140</sup> Ibid.; Editorial, *The New York Times*, March 24, 2015, accessed April 14, 2016, [http://www.nytimes.com/2016/03/25/opinion/accountability-at-last-for-bosnias-agony.html?\\_r=1](http://www.nytimes.com/2016/03/25/opinion/accountability-at-last-for-bosnias-agony.html?_r=1); Editorial, *Bloomberg View*, March 24, 2016, accessed April 14, 2016, <http://www.bloombergvew.com/articles/2016-03-24/karadzic-verdict-a-victory-for-history>.

<sup>141</sup> International Criminal Tribunal for the Former Yugoslavia Office of the Registrar, “Registrar Presents ICTY and MICT Budget in New York,” *ICTY Digest* 155 (November/December 2015), 2, accessed January 27, 2016, [http://www.icty.org/x/file/About/Reports%20and%20Publications/ICTYDigest/2015/icty\\_digest\\_155\\_en.pdf](http://www.icty.org/x/file/About/Reports%20and%20Publications/ICTYDigest/2015/icty_digest_155_en.pdf).

## Advantages of the ICTY

As the first ad hoc international criminal tribunal since the closure of the international military tribunals at Nuremberg and Tokyo, the ICTY provided many advantages to the international legal system, to include the establishment of international jurisprudence in humanitarian and criminal law, and providing a model for the creation of the International Criminal Court.<sup>142</sup> In addition to these transnational benefits, the ICTY also has enabled efforts to build the judicial capacity of the republics of the former Yugoslavia to investigate and prosecute war crimes and crimes against humanity. As an ad hoc entity established by the UNSC, Chapter VII authority of the UN Charter allowed the UN to act quickly and bind all countries to the mandate of the ICTY.<sup>143</sup> The creation of the ICTY under Chapter VII of the UN Charter obliged UN countries to cooperate in the investigation, prosecution, detention, and transfer of indictees.<sup>144</sup> Moreover, the ICTY statute protected the independence of the tribunal by authorizing the Prosecutor to act independently and prohibiting the official from seeking or receiving instructions from any government.<sup>145</sup> In addition to the advantages provided by a strong legal foundation, Western countries facilitated the surrender of indictees by conditioning promises of financial assistance and EU accession to the post-conflict governments in the former republics of Yugoslavia on cooperation with the ICTY.<sup>146</sup> As a result, the ICTY was able to try and convict several planners and organizers of genocide.

The ICTY also helped countries of the former Yugoslavia build domestic their capacity to prosecute genocide-related crimes. In 2005, the UN and the Bosnian government established a

---

<sup>142</sup> Meernik, 272.

<sup>143</sup> Ratner, Abrams, and Bishoff, 213.

<sup>144</sup> *Ibid.*, 297.

<sup>145</sup> R. Craig Nation, “The Balkan Wars and the International War Convention” in Morton et al., 157.

<sup>146</sup> Ratner, Abrams, and Bishoff, 220.

hybrid tribunal to adjudicate cases transferred from the ICTY. As of early 2016, the ICTY has transferred eight cases involving 13 defendants to courts in Bosnia, Croatia, and Serbia.<sup>147</sup> The transfer of cases allows the ICTY to focus on completing its mission and allows national courts to assume responsibility for the prosecution of crimes committed in their territory.

In Bosnia-Herzegovina, national police continue to arrest war crimes suspects. In 2014, with additional funding from the European Union to support war crimes prosecutions, Bosnian prosecutors indicted up to 100 suspects.<sup>148</sup> The Office of the Prosecutor at the ICTY noted that the increased number of indictments accounted for one-quarter of the approximately 400 remaining indictments at the time.<sup>149</sup> The ICTY Prosecutor praised the quality of the investigations conducted by Bosnian law enforcement officials and observed that more than 80 percent of all indictments resulted in convictions.<sup>150</sup> Notwithstanding this affirmation, the ICTY Prosecutor continues to complain about the slow progress the national court was making on war crimes prosecutions.<sup>151</sup> Serbs and Bosnian Muslims also criticize national authorities for uneven prosecutions. The former claims the courts do not indict senior Bosnian Army officials for their crimes against Serbs.<sup>152</sup> Bosnian Muslims accuse the courts of failing to indict mid-level Serb military commanders for their past criminal acts.<sup>153</sup> A raid conducted by the national police on a

---

<sup>147</sup> International Criminal Tribunal for the Former Yugoslavia, “Transfer of Cases,” accessed April 13, 2016, <http://www.icty.org/en/cases/transfer-cases>.

<sup>148</sup> Denis Dzidic, “Bosnia Doubles Number of War Crimes Indictees,” *Balkan Insight*, November 13, 2014, accessed April 19, 2016, <http://www.balkaninsight.com/en/article/bosnia-to-indict-over-100-people-for-war-crimes-this-year>.

<sup>149</sup> *Ibid.*

<sup>150</sup> *Ibid.*

<sup>151</sup> Denis Dzidic, “Balkan States ‘Still Slow to Investigate’ 1990s War Cases,” *Balkan Insight*, June 4, 2015, accessed April 19, 2016, <http://www.balkaninsight.com/en/article/hague-prosecutor-criticizes-regional-war-crimes-record>.

<sup>152</sup> *Ibid.*

<sup>153</sup> *Ibid.*

Serbian police station and administrative buildings in December 2015 prompted Serb officials to threaten to cease all cooperation with the national police and judiciary.<sup>154</sup> To date, the Republic of Serbia continues to cooperate with the national court.

### Challenges of ICTY

Despite the advantages provided by the ICTY, the tribunal faces persistent criticism for being impartial, illegitimate, and too far removed from aggrieved parties to deliver justice.<sup>155</sup> In response to challenges brought before the Chambers that contested the legal authority of the tribunal, the ICTY, on the basis of its own uncontested authority, issued a ruling that affirmed its primary jurisdiction over genocide, war crimes, and crimes against humanity committed in the former republics of Yugoslavia.<sup>156</sup> Legal researchers also highlighted that Bosnian Muslims, Croats, and Serbs all perceived the tribunal as biased due to its exclusive prosecution of Bosnians, and apparent exemption of UN, U.S., and NATO personnel.<sup>157</sup> Moreover, the notably higher conviction rate of ethnic Serbs by the Chambers prompts Bosnian Serbs to question the partiality and legitimacy of the tribunal.<sup>158</sup> Professor Laurel Fletcher also pointed out that tribunal restrictions that barred Bosnians of any ethnic group from seeking employment in the Office of the Prosecutor or the Chambers denied Bosnian Serbs and Croats any sense of ownership or representation in the judicial process. As a consequence, this seemingly skewed pursuit of justice

---

<sup>154</sup> Dado Ruvic, "In Protest of War Crimes Raid, Bosnian Serbs Stop Cooperating with Police, Newsweek, December 10, 2015, accessed April 19, 2016, <http://www.newsweek.com/protest-war-crimes-raid-bosnian-serbs-stop-cooperating-national-police-403919>.

<sup>155</sup> Laurel E. Fletcher and Harvey M. Weinstein, "A World Unto Itself? The Application of International Justice in the Former Yugoslavia," in *My Neighbor, My Enemy: Justice in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein (Cambridge: Cambridge University Press, 2004), 32-33; Meernik, 277; Nation, 157; Ratner, Abrams, and Bishoff, 222.

<sup>156</sup> Nation, 157.

<sup>157</sup> Meernik, 277; Fletcher, 32.

<sup>158</sup> Ratner, Abrams, and Bishoff, 222-223.

perpetuates distrust of the tribunal across constituencies and fuels criticism of the tribunal from the population it seeks to redress.<sup>159</sup>

#### Overall Result: Tenuous Success Achieved Through International Economic and Political Incentives

Despite the successful conviction of many senior level perpetrators of ethnocide and genocide, relations between Bosnian Muslims, Croats, and Serbs remain fraught with tension. Nevertheless, national leaders painstakingly balance tenuous domestic relations in hopes of accruing economic and political benefits from foreign benefactors. Domestically, national leaders of different ethnic groups blame each other for the previous civil war and threaten criminal prosecution.<sup>160</sup> Internationally, Croatia uses its veto to block Serbia's accession to the European Union based on its complaints concerning the prosecution of war crimes and human rights.<sup>161</sup> Despite these tensions, Croat, Serb, and Muslim officials call for mutual understanding of each other's pasts and stress that history should not inhibit future relations.<sup>162</sup> Political leaders in Bosnia-Herzegovina, Croatia, and Serbia share a common interest in economic cooperation and future EU membership.<sup>163</sup> To improve Serbia's prospects for accession to the European Union, moderate Serb leaders who represent the majority of Serbia's elected officials openly condemn nationalist ideology and emphasize their commitment to peaceful relations with their

---

<sup>159</sup> Ratner, Abrams, and Bishoff, 222-223; Fletcher, 33; Nation, 158; Meernik, 274.

<sup>160</sup> Tanjug, "Izetbegovic and Vucic Trade Accusations of 'Threats,'" *b92*, March 30, 2016, accessed April 19, 2016, [http://www.b92.net/eng/news/politics.php?yyyy=2016&mm=03&dd=30&nav\\_id=97522](http://www.b92.net/eng/news/politics.php?yyyy=2016&mm=03&dd=30&nav_id=97522).

<sup>161</sup> Dejan Anastasjevic, "Croatia Veto on Serbia's EU Talks Causes Surprise," *EUObserver*, April 12, 2016, accessed April 19, 2016, <https://euobserver.com/beyond-brussels/133004>.

<sup>162</sup> Aida Cerkez, "Balkan Leaders Meet to Try to Improve Relations," *ABC News*, April 12, 2016, accessed April 19, 2016, <http://abcnews.go.com/International/wireStory/balkan-leaders-meet-improve-relations-38330105>.

<sup>163</sup> *Ibid.*



neighbors.<sup>164</sup> Although political tension persists, in most cases, national leaders and their constituencies desire the benefits of political and economic cooperation.<sup>165</sup> In light of the prospective benefits provide by cooperation in contrast to the high economic, political, and social costs of war, political leaders believe the varied factions of the federation lack the political will to re-engage in conflict.<sup>166</sup>

### **Case Study: Transitional Justice in Rwanda – Successful, but at the Expense of Fairness and Democracy**

Following the 1994 genocide in Rwanda, the UN created the International Criminal Tribunal for Rwanda (ICTR) to prosecute war crimes and crimes against humanity. In 2001, to address backlogs in prosecutions and facilitate the trial of perpetrators of genocide and crimes against humanity by national courts, the Rwandan government incorporated a traditional dispute resolution mechanism known as gacaca to prosecute those who committed acts of genocide during the conflict. These mechanisms allowed the international community and Rwandan

---

<sup>164</sup> Matthew Karnitschnig, “Who Knows What Spark Might Ignite Bosnia?” *Politico*, April 11, 2016, accessed April 14, 2016, <http://www.politico.eu/article/who-knows-what-spark-might-ignite-bosnia-balkans-kosovo-serbia-aleksandar-vucic/>; Ivana Nikolic, “Serbian PM Pledges to Oppose Seselj’s Politics,” *Balkan Insight*, April 1, 2016, accessed April 19, 2016, <http://www.balkaninsight.com/en/article/serbian-pm-vucic-pledges-to-confront-freed-radical-leader-politics-04-01-2016>; Matthew Karnitschnig, “Serbia’s Latest Would-be Savior is a Modernizer, a Strongman, or Both,” *Politico*, April 14, 2016, accessed April 19, 2016, <http://www.politico.eu/article/aleksandar-vucic-serbias-latest-savior-is-a-modernizer-or-strongman-or-both/>.

<sup>165</sup> Matthew Karnitschnig, “Who Knows What Spark Might Ignite Bosnia?” *Politico*, April 11, 2016, accessed April 14, 2016, <http://www.politico.eu/article/who-knows-what-spark-might-ignite-bosnia-balkans-kosovo-serbia-aleksandar-vucic/>; Aida Cerkez, “Balkan Leaders Meet to Try to Improve Relations,” *ABC News*, April 12, 2016, accessed April 19, 2016, <http://abcnews.go.com/International/wireStory/balkan-leaders-meet-improve-relations-38330105>; Barbara Surk, “For the Balkans, Peace is Bad Enough,” March 29, 2016, accessed April 14, 2016, <http://www.politico.eu/article/balkans-peace-is-bad-enough-karadzic-mladic-war-crimes-icty-hague-bosnia-croatia-serbia/>.

<sup>166</sup> “Mounting Security Risks Leave Bosnia Vulnerable,” *Balkan Insight*, November 13, 2015, accessed April 22, 2016, <http://www.balkaninsight.com/en/article/security-challenges-mount-in-weakened-bosnia-11-06-2015>.

government to demonstrate a strong commitment to the principles of transitional justice following the genocide.

Despite this display of commitment to justice, both mechanisms suffered internal and structural challenges that hindered their legitimacy and effectiveness. Foremost, the location of the ICTR in Arusha, Tanzania limited national participation and legitimacy. Justice imposed by the victors pursued by the predominately Tutsi government further damaged the legitimacy of post-genocide transitional justice efforts by solely focusing on the prosecution of Hutu perpetrators and granting effective immunity to former Tutsi militia leaders who likewise committed atrocities. In some locations, gacaca suffered from low participation that resulted in the postponement of trial proceedings.

In spite of these challenges, transitional justice appears to have contributed to stability in Rwanda. In the 20 years since the conflict, Rwanda has not encountered any internal violence that has threatened its stability, and most government institutions function effectively. The absence of violence and the efficiency of the government however, are likely facilitated by the government's seeming authoritarian domestic practices and intrusive regional security practices. NGOs claim that Rwandan military officials train and recruit Burundian refugees as proxies to incite violence in Burundi.<sup>167</sup> Since 1994, the UN and members of the international community also have criticized Rwanda for atrocities committed by its military and for its support to rebel groups in the Democratic Republic of the Congo.<sup>168</sup> Domestically, the Rwandan government oppresses most

---

<sup>167</sup> Judi Rever, "Rwanda Allegedly Fueling War in Burundi Says Refugee Organization," *Digital Journal*, December 13, 2015, accessed December 14, 2015, <http://www.digitaljournal.com/news/world/rwanda-allegedly-fueling-war-in-burundi-says-refugee-organization-breaking-news/article/452103>; Associated Foreign Press, "Burundi Refugees Recruited at Rebels in Rwanda Report," *Yahoo News*, December 14, 2015, accessed December 14, 2015, <http://news.yahoo.com/burundi-refugees-recruited-rebels-rwanda-report-130325617.html>.

<sup>168</sup> Chris McGreal, "Delayed UN Report Links Rwanda to Congo Genocide," *The Guardian*, October 1, 2010, accessed December 14, 2015, <http://www.theguardian.com/world/2010/oct/01/un-report-rwanda-congo-genocide>; "Rwanda Profile: Timeline," *BBC News*,

political opposition, and opposition leaders are subject either to unfair criminal trials or assassinated under uncertain circumstances.<sup>169</sup> Although transitional justice likely played some role in helping to promote stability in Rwanda, stability came at the expense of unencumbered democracy.

#### Sources of Violence: Repeated Cycles of Genocide and Impunity

Despite ostensibly peaceful relations prior to European colonization, tension between the Hutu and Tutsi ethnic populations of Rwanda gave way to violence near the end of Belgian colonial rule. During colonization, Belgian administrators divided local residents according to cattle ownership and physical appearance.<sup>170</sup> Based on this classification system, Belgian colonizers considered Tutsi cow herders to be superior to their Hutu neighbors, and established indirect rule of Rwanda and Burundi through the Tutsi minority.<sup>171</sup> This division of the ethnic populations caused members of the majority Hutu population to feel victimized by an alien ethnic group.<sup>172</sup> Once Belgian colonists departed, Hutus sought to redeem themselves from their marginalized status and exacted their grievances against the Tutsi.<sup>173</sup> From the late 1950s through the early 1970s as Rwanda transitioned from a colony to a republic, periodic violence erupted between the Hutus and Tutsi that created a legacy of impunity and set the stage for the 1994 genocide.<sup>174</sup>

---

accessed December 14, 2015, <http://www.bbc.com/news/world-africa-14093322>.

<sup>169</sup> Amnesty International, "Rwanda," in *The State of the World's Human Rights 2014/2015*, accessed December 14, 2015, <https://www.amnesty.org/en/documents/pol10/0001/2015/en/>.

<sup>170</sup> Patricia M. Marchak, "Rwanda: Democracy After a Genocide," in *No Easy Fix: Global Responses to Internal Wars and Crimes Against Humanity* (Montreal: McGill-Queen's University Press, 2008), 148-149.

<sup>171</sup> Marchak, 149.

<sup>172</sup> *Ibid.*, 149.

<sup>173</sup> *Ibid.*, 150.

<sup>174</sup> *Ibid.*, 150; Jean Baptiste Kaygamba, "Without Justice, No Reconciliation: A

After the Social Revolution of 1959 in which the Hutu majority took control of all social and political institutions in Rwanda, a culture of impunity spread in which Hutus killed Tutsi and destroyed their property without consequence.<sup>175</sup> Journalist Linda Melvern and Rwandan genocide survivor Martin Ngoga pointed out that genocide first occurred in Rwanda in 1959 and again in 1963 when the Hutu government mobilized the population to kill the Tutsi population.<sup>176</sup> Violence during this period forced up to 700,000 Tutsi to flee Rwanda. These exiles eventually formed the Rwandan Patriotic Front (RPF), a Tutsi political faction that hoped to return and overthrow Hutu authority.<sup>177</sup>

By the time the perpetual violence of the 1960s ended, Hutu leaders had institutionalized the use of ethnic violence for political purposes.<sup>178</sup> Following the genocide of 1963, the Rwandan government developed a strategy in which a government official supervised the elimination of political opposition in each prefect.<sup>179</sup> As part of this strategy, persuasive propagandists fueled ethnic tension at the local level and incited Hutus to kill Tutsi using agricultural tools, like machetes.<sup>180</sup> Mass killing methods used in 1994, such as killing in organized massacres, using militias and hate propaganda to incite local violence, and the use of roadblocks to prevent escape had been developed during the late 1950s and 1960s.<sup>181</sup> For more than 30 years, Hutu leaders

---

Survivor's Experience of Genocide, in *After Genocide*, eds. Phillip Clark and Zachary Kaufman (New York: Columbia University Press, 2007), 34.

<sup>175</sup> Kayigamba, 35.

<sup>176</sup> Linda Melvern, "The Past is Prologue: Planning the 1994 Rwandan Genocide," in *After Genocide*, eds. Phillip Clark and Zachary Kaufman (New York: Columbia University Press, 2007), 21.

<sup>177</sup> Marchak, 150.

<sup>178</sup> Alison DeForges, "History," in *Leave None to Tell the Story: Genocide in Rwanda* (New York: Human Rights Watch, 1999), 42, accessed December 15, 2015, <https://www.hrw.org/reports/1999/rwanda/>.

<sup>179</sup> Melvern, 24.

<sup>180</sup> *Ibid.*

<sup>181</sup> *Ibid.*, 22.

recruited and trained civilian militias to kill the Tutsi with impunity. To further entrench this culture of impunity, the national government enacted multiple laws between 1959 and 1991 that granted amnesty to those who committed atrocities during periods of interethnic violence.<sup>182</sup> This entrenched culture of impunity allowed perpetrators of the 1994 genocide to commit atrocities without fear of punishment.

The end of violence in the early 1970s that secured Hutu authority however, did not bring internal stability to Rwanda. To maintain control amid growing competition among rival Hutu factions, political leaders developed strategies to eliminate ethnic Tutsi and Hutu political opposition.<sup>183</sup> These strategies served as models for the 1994 genocide and led to the resurgence of civilian militias that carried out atrocities on behalf of the government in 1994.<sup>184</sup> Militias flourished in the early 1990s as a result of competition between Hutu political factions and the October 1990 invasion of the RPF. To increase their numbers and influence amid increasing insecurity, Hutu factions created youth wings and recruited members by force.<sup>185</sup> In response to increased opposition, Habyarimana and his party, the Rwandan National Development Movement (MRND), turned its youth group, the Interahamwe, into a formidable militia.<sup>186</sup> The Interahamwe, one of the main actors in the 1994 genocide, was larger than other militias and received regular military training from Rwandan soldiers.<sup>187</sup> This militia often collaborated with the military wing of the anti-Tutsi political party, the Coalition for the Defense of the Republic (CDR), another

---

<sup>182</sup> Martin Ngoga, "The Institutionalisation of Impunity," in *After Genocide*, eds. Phillip Clark and Zachary Kaufman (New York: Columbia University Press, 2007), 324-325.

<sup>183</sup> Melvern, 24.

<sup>184</sup> *Ibid.*, 24.

<sup>185</sup> De Forges, 62.

<sup>186</sup> *Ibid.*, 63.

<sup>187</sup> *Ibid.*

primary actor in the 1994 genocide.<sup>188</sup> Between 1992 and 1993, militias killed approximately 200 Rwandans and injured many others without consequence.<sup>189</sup>

Increasing instability caused by internal political dissension and RPF incursions eventually led to the adoption of a formal genocide strategy. To pacify competing factions within the senior military ranks, President Juvenal Habyarimana established a commission to determine how to defeat the RPF militarily, politically, and in public media.<sup>190</sup> The chair of the commission was Col. Théoneste Bagosora, the alleged planner of the 1994 genocide and now convicted international criminal.<sup>191</sup> Under his leadership, the commission released a report on 21 September 1992 that is believed to have provided the basis for a genocide strategy. The report identified all Tutsi and their collaborators as enemies of Rwanda.<sup>192</sup> A witness at the ICTR trial against Bagosora explained that senior military leaders believed the Tutsi had to be exterminated in order to stop RPF advances and stop the extermination of the Hutu.<sup>193</sup> To execute this strategy, the Hutu-led government considered mobilizing the entire population under the pretext of “civil self-defense.”<sup>194</sup> This initiative facilitated combat training for Hutu youth and ensured the wide distribution of weapons to civilian militias nationwide.<sup>195</sup> By 1994, national authorities were able to carry out genocide swiftly and systematically by relying on this national civil military structure.<sup>196</sup>

---

<sup>188</sup> De Forges, 63.

<sup>189</sup> Ibid.

<sup>190</sup> Melvern, 26 (citing A. Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (New York: Human Rights Watch, 1999), 71-72, accessed December 15, 2015, <https://www.hrw.org/reports/1999/rwanda/>).

<sup>191</sup> Ibid.

<sup>192</sup> Ibid., 27.

<sup>193</sup> Ibid.

<sup>194</sup> Ibid., 24.

<sup>195</sup> Ibid., 24-25.

<sup>196</sup> Alison DeForges, “Introduction,” in *Leave None to Tell the Story: Genocide in*

Habyarimana and his supporters took advantage of the precarious political and security environment following the RPF invasion to incite periodic ethnic and political violence in preparation for the 1994 genocide.<sup>197</sup> These attacks occurred in multiple communities between October 1990 and January 1993, and resulted in the deaths of approximately 2,000 Tutsi and tens of Hutu.<sup>198</sup> Planners organized attacks in response to perceived challenges to Habyarimana's authority. Significant attacks occurred after RPF attacks, massive demonstrations by Hutu political opposition, and after the signing of protocols to the Arusha Accords.<sup>199</sup> These attacks marked the first time political leaders used the Interahamwe to kill Tutsi and not just Hutu political opponents.<sup>200</sup> Local civilian officials directed the attacks and requested military assistance when needed. Former Human Rights Watch researcher Alison DeForges noted that Habyarimana supporters honed the methods they would use in 1994 during these periodic attacks.<sup>201</sup> De Forges noted that genocide organizers perfected tactics on how to: select an attack site; mobilize people through fear; isolate a target population; and build civilian, military, and militia cooperation to maximize the effect of an attack.<sup>202</sup>

Amid increasing political tension and continued RPF incursions, Habyarimana and the RPF eventually signed a cease fire agreement and the Arusha Accords. The political settlement however, did little to defuse tension between Hutu factions and the RPF. During the year of negotiations that preceded a final agreement to the accords, Habyarimana made several speeches

---

Rwanda (New York: Human Rights Watch, 1999), 8, accessed December 15, 2015, <https://www.hrw.org/reports/1999/rwanda/>.

<sup>197</sup> *Ibid.*, 106.

<sup>198</sup> *Ibid.*

<sup>199</sup> *Ibid.*

<sup>200</sup> *Ibid.*, 109.

<sup>201</sup> *Ibid.*, 114.

<sup>202</sup> *Ibid.*

rejecting the accords. Habyarimana also relied on members of other conservative Hutu factions to speak against the agreement and organize large public demonstrations to jeopardize peace negotiations.<sup>203</sup> Habyarimana supporters in local government positions and members of the military and police forces also resisted the treaty for fear of losing their positions under terms of the agreement that required the demobilization of more than half of the Rwandan Armed Forces and divided political power between the RPF and major Hutu political parties.<sup>204</sup> Hutu leaders feared that concessions to the RPF would encourage their Tutsi counterparts to seek greater concessions through continued violence.<sup>205</sup> Out of their unwillingness to demobilize or share power, conservative Hutu leaders continued recruiting and training militias under the “civil self-defense” program.<sup>206</sup> Mistrust of RPF intentions united Hutu leaders under the new radical movement, Hutu Power. RPF leaders also prepared for continued conflict due to concerns that their counterparts would not implement the Arusha Accords. By April 1994, Hutu and Tutsi parties to the conflict had taken combat positions.<sup>207</sup>

On 6 April 1994, the assassination of President Habyarima moved Rwandan forces into action and set off a nearly three-month long genocide that resulted in the deaths of up to 500,000 people.<sup>208</sup> Col. Bagosora immediately assumed command of the Rwandan government and either murdered or marginalized moderate leaders.<sup>209</sup> In the early days of the genocide, Bagosora and his subordinates resorted to tactics used during previous periods of violence, which included using mass media to incite ethnic tension and violence, assembling targets in single locations, and

---

<sup>203</sup> DesForges, 117.

<sup>204</sup> *Ibid.*, 164.

<sup>205</sup> *Ibid.*, 165.

<sup>206</sup> *Ibid.*, 169.

<sup>207</sup> *Ibid.*, 253.

<sup>208</sup> *Ibid.*, 15.

<sup>209</sup> *Ibid.*, 271.



barricading roads to prevent the escape of ethnic Tutsi and political opponents.<sup>210</sup> De Forges pointed out however, that the military and militias working under the authority of national and local political leaders could not have executed a widespread campaign of genocide in such a short time. She highlighted that the 1994 genocide required the cooperation of hundreds of thousands of ordinary citizens to spy, search, guard, and pillage, and tens of thousands to commit murder.<sup>211</sup>

The genocide continued for three weeks before the international community finally acknowledged the nature of the atrocities being committed in Rwanda. By mid-April, threats of an arms embargo from the UN Security Council and stipulations that required the Rwandan government to improve its image to receive foreign aid encouraged the organizers of the genocide to adopt a policy of “pacification” to remove military and militia violence from public view and to discourage civilians from engaging in ethnic violence.<sup>212</sup> As part of the policy, national and local authorities urged soldiers and militia members not to commit murder openly and urged civilians to render suspected traitors to the authorities.<sup>213</sup> Compliance with the new policy was mixed. Although perpetrators in some regions committed genocide more discreetly, militias in other regions continued conducting open massacres. Despite this new policy which was intended to reduce the scale of violence and reduce international criticism, the continued advances of the RPF through April and May prompted propagandists to openly contradict the pacification policy, and urge the military and militias to accelerate the genocide.<sup>214</sup>

By late May, as the RPF moved toward the capital, civilians became less willing to participate in the genocide.<sup>215</sup> With fewer Tutsi to target and as a result of the new policy of

---

<sup>210</sup> Des Forges, 288, 301, 303.

<sup>211</sup> *Ibid.*, 332-333.

<sup>212</sup> *Ibid.*, 420-421, 425, 434-435.

<sup>213</sup> *Ibid.*, 425, 429.

<sup>214</sup> *Ibid.*, 432, 441-442.

<sup>215</sup> *Ibid.*, 443.

pacification, militias began to harass the population, and Hutu factions began to exact violence against their political rivals.<sup>216</sup> De Forges noted that by the end of the war, Rwandans understood that a policy aimed at eliminating the Tutsi did not guarantee security for the Hutu.<sup>217</sup> By mid-June, senior Rwandan officials began to accept that RPF victory was imminent.<sup>218</sup> Attempts by the Rwandan Armed Forces and the militias to counter RPF advances throughout the month of June failed. On 4 July, the RPF took over Kigali and leaders responsible for the genocide fled the country two weeks later.<sup>219</sup>

After most of the hostilities had ended, the new Rwandan government led by former RPF commander Paul Kagame expressed its interest in a tribunal to try those responsible for the genocide.<sup>220</sup> The new government also advised that it would have to try the perpetrators if the international community did not establish a tribunal.<sup>221</sup> Shortly after taking office, the new government claimed it held 110 perpetrators of genocide in custody, but had no way to investigate or prosecute them since most of the legal professionals in the country had been killed or had participated in the genocide.<sup>222</sup> Once the international community finally acknowledged the genocide that had taken place in Rwanda, it quickly sought to create an international forum to bring genocide perpetrators to justice and to mitigate potential problems from bias and ethnic revenge.<sup>223</sup>

---

<sup>216</sup> Des Forges, 444-445.

<sup>217</sup> *Ibid.*, 449.

<sup>218</sup> *Ibid.*, 1018.

<sup>219</sup> *Ibid.*, 451.

<sup>220</sup> David Scheffer, "Credible Justice for Rwanda," in *All the Missing Souls: A Personal History of the War Crimes Tribunals*, (Princeton: Princeton University Press, 2012), 71-72.

<sup>221</sup> Scheffer, 72.

<sup>222</sup> *Ibid.*, 73.

<sup>223</sup> *Ibid.*, 72-74.

## UN Intervention

Planning for a criminal tribunal for Rwanda did not begin until June 1994, approximately two months after the genocide started.<sup>224</sup> On 14 June, the UN Security Council approved a Committee of Experts to conduct a four-month investigation into atrocities taking place in Rwanda.<sup>225</sup> The next day, then U.S. Ambassador to the UN Madeline Albright and U.S. State Department officials deliberated whether the UN should prosecute those responsible for committing criminal acts.<sup>226</sup> Ambassador Albright wanted to be prepared to create a tribunal in case the Committee of Experts discovered acts of genocide and other atrocities and to help the United States take the initiative in responding to the crisis in Rwanda.<sup>227</sup> U.S. State Department officials eventually devised three prosecution options while the Committee conducted its investigation: create a new ad hoc tribunal, expand the jurisdiction of the ICTY to include criminal acts committed in Rwanda, and create an international criminal court.<sup>228</sup>

After months of negotiation with representatives from the Rwandan government, the UN Security Council passed Resolution 955 to establish the ICTR on 8 November 1994. The single dissenting vote against the resolution came from Rwanda. Although the Rwandan government supported the creation of an international criminal tribunal, its representatives disapproved of several characteristics of the court, which included: the prohibition of the death penalty; the primacy of the tribunal over Rwandan courts; the 12-month temporal jurisdiction of the tribunal; the possible serving of prison sentences outside of Rwanda; and the location of the tribunal in Tanzania.<sup>229</sup>

---

<sup>224</sup> Scheffer, 69-70.

<sup>225</sup> *Ibid.*, 70.

<sup>226</sup> *Ibid.*

<sup>227</sup> *Ibid.*

<sup>228</sup> *Ibid.*, 69-70.

<sup>229</sup> *Ibid.*, 83-85; William Schabas, "Post-Genocide Justice in Rwanda: A Spectrum of

## International Criminal Tribunal for Rwanda

The UNSC attempted to model the ICTR after the ICTY.<sup>230</sup> Like its predecessor, the ICTR was comprised of three main bodies: one prosecutorial, one adjudicative, and one administrative. The adjudicative body consisted of three trial chambers that each had three judges who were assisted by nine ad litem judges, and an Appeals Chamber of seven judges.<sup>231</sup> The ICTY and ICTR shared a prosecutor until 2003 when the UN created a separate position for the ICTR prosecutor to facilitate the trial process.<sup>232</sup> UNSCR 955 set the temporal jurisdiction of the ICTR for 1 January through 31 December 1994. Although international proponents of the tribunal believed this timeline was objective, members of the new Rwandan government and the RPF were concerned that the timeline potentially exposed them to prosecution for acts they committed against the Hutu after July 1994.<sup>233</sup> Like the ICTY, the ICTR had jurisdiction over the following: genocide; crimes against humanity; violations of Article 3 of the Geneva Conventions; and conspiracy, incitement, and attempt to commit genocide.<sup>234</sup>

Since its creation over 20 years ago, the ICTR has indicted 93 individuals of various professions and social rank, and sentenced a total of 61 indictees.<sup>235</sup> Proceedings resulted in the acquittal of 14 defendants. More than 3,000 witnesses gave their personal testimonies over the

---

Options,” in *After Genocide*, eds. Phillip Clark and Zachary Kaufman (New York: Columbia University Press, 2007), 210.; Ratner, Abrams, and Bischoff, 224.

<sup>230</sup> Schabas, 208; Ratner, Abrams, and Bishoff, 224.

<sup>231</sup> Ratner, Abrams, and Bishoff, 224.

<sup>232</sup> *Ibid.*, 224.

<sup>233</sup> Scheffer, 81.

<sup>234</sup> Ratner, Abrams, and Bishoff, 225; De Forges, 1123.

<sup>235</sup> Laura Heaton, “Last Days for UN Court Trying Suspects of Rwandan Genocide,” *The New York Times*, December 14, 2015, accessed, December 14, 2015, [http://www.nytimes.com/2015/12/15/world/africa/last-days-for-un-court-trying-suspects-in-rwanda-genocide.html?\\_r=0](http://www.nytimes.com/2015/12/15/world/africa/last-days-for-un-court-trying-suspects-in-rwanda-genocide.html?_r=0).

course of 5,800 total days of proceedings at a total cost of \$2 billion.<sup>236</sup> To date, eight indictees remain at large. The Rwandan government also has issued over 400 indictments against perpetrators of genocide.<sup>237</sup> The ICTR closed its doors at the end of 2015 and pending cases were either transferred to Rwandan courts or to the UN Mechanism for International Criminal Tribunals (UNMICT).<sup>238</sup> This mechanism will process remaining cases from the ICTR and ICTY until 2017.<sup>239</sup>

### ICTR Advantages

Given its strong mandate, the ICTR made several notable contributions to international law and the execution of transitional justice. In light of its statute that provided jurisdiction over government officials and held them responsible for the crimes of their subordinates, the ICTR was able to try and convict many of the main organizers and perpetrators of the genocide.<sup>240</sup> Within its first ten years, the ICTR took Col. Bagosora and former Prime Minister Jean Kambanda into custody.<sup>241</sup> These former officials along with several other former government officials and propagandists currently are serving prison terms ranging from 15 years to life imprisonment.<sup>242</sup> The convictions issued by the ICTR also helped establish international

---

<sup>236</sup> Alastair Leithead, "Rwanda Genocide: International Criminal Tribunal Closes," *BBC News*, December 14, 2015, accessed April 19, 2016, <http://www.bbc.com/news/world-africa-35070220>.

<sup>237</sup> Laura Heaton, "Last Days for UN Court Trying Suspects of Rwandan Genocide," *The New York Times*, December 14, 2015, accessed, December 14, 2015, [http://www.nytimes.com/2015/12/15/world/africa/last-days-for-un-court-trying-suspects-in-rwanda-genocide.html?\\_r=0](http://www.nytimes.com/2015/12/15/world/africa/last-days-for-un-court-trying-suspects-in-rwanda-genocide.html?_r=0).

<sup>238</sup> *Ibid.*

<sup>239</sup> *Ibid.*

<sup>240</sup> Schabas, 211; Scheffer, 112.

<sup>241</sup> Scheffer, 112.

<sup>242</sup> United Nations Mechanism for International Criminal Tribunals, accessed December 31, 2015, <http://www.unmict.org/en/cases>.

jurisprudence on the crimes of genocide and rape.<sup>243</sup> The ICTR conviction of former mayor Jean Paul Akayesu was the first genocide conviction rendered by an international court. This verdict also was the first to recognize rape as a form of genocide and affirmed post-WWII jurisprudence that allows principles of command responsibility to apply to civilians.<sup>244</sup> These convictions set a legal precedent for future international and domestic trials for genocide and other crimes against humanity.

### ICTR Challenges

Despite these benefits of the ICTR, the tribunal suffered challenges that negatively impacted domestic perceptions of its capability and fairness. First, the location of the court in a neighboring country prevented broad participation and public awareness of court proceedings and rulings. Second, ICTR proceedings did not match Rwandan judicial proceedings. De Forges pointed out that in Rwandan courts, victims generally participate in court proceedings. At the ICTR, victims only participated when asked to offer witness testimony and not as a complainant describing harm incurred.<sup>245</sup> The ICTR process forced victims to yield responsibility for their complaint and evidence to the court staff with whom they had no contact.<sup>246</sup> In addition, the slow proceedings of the ICTR contrasted the shorter proceedings of Rwandan courts, which contributed to perceptions of ICTR inefficiency.<sup>247</sup> Last, defendants tried by the ICTR viewed their proceedings as unfair since no former RPF members were tried for atrocities committed against Hutus by Tutsi. In 2002, when former ICTR Prosecutor Louise Arbour sought to

---

<sup>243</sup> Ratner, Abrams, and Bishoff, 229.

<sup>244</sup> *Ibid.*, 229; De Forges, 1131.

<sup>245</sup> De Forges, 1124.

<sup>246</sup> *Ibid.*, 1133.

<sup>247</sup> *Ibid.*, 1134.

investigate crimes committed by the RPF, the government prohibited witnesses from traveling to Arusha and prevented investigators from accessing crime scenes.<sup>248</sup>

### The Gacaca Courts

In addition to the creation of the ICTR as a means to prosecute genocide, the Rwandan government and the international community sought additional transitional justice mechanisms to help rebuild Rwandan judicial capacity, facilitate trials for a rapidly growing prison population, and promote reconciliation.<sup>249</sup> By 1995, former U.S. Ambassador-at-Large for War Crimes David Scheffer realized the seeming impossibility of attempting to rebuild the Rwandan judiciary with conventional courts and judicial training programs given the extent of the genocide and the increasing number of suspects.<sup>250</sup> Scheffer also noted that by 1996, Rwanda officials were arresting approximately 600 to 800 suspects per week, which rapidly increased the prison population, and placed further strain on already overcrowded prisons.<sup>251</sup> To expedite criminal trials in Rwanda, the Transitional National Assembly passed the 1996 Organic Law on the Organization of Prosecutions for Offences Constituting the Crimes of Genocide or Crimes Against Humanity since 1 October 1990 and passed additional legislation in October 2000 to revive the traditional community-based dispute resolution mechanism called gacaca.<sup>252</sup> Under these laws, suspects of lesser crimes who were not subject to ICTR or national court jurisdiction could confess their crimes to transfer their proceedings to a local gacaca and receive a lighter

---

<sup>248</sup> Ratner, Abrams, and Bishoff, 228.

<sup>249</sup> Scheffer, 112; Timothy Longman, “Justice at the Grassroots?” in *Transitional Justice in the Twenty-First Century*, eds. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: University Press, 2006), 206.

<sup>250</sup> Scheffer, 112.

<sup>251</sup> *Ibid.*, 114.

<sup>252</sup> *Ibid.*, 112; Marchak, 173-174; Timothy Longman, “An Assessment of Rwanda’s Gacaca Courts,” *Peace Review* 12, no. 3 (August 2009): 306.

sentence.<sup>253</sup> This traditional dispute resolution method also attempted to hold perpetrators accountable while promoting reconciliation.<sup>254</sup> Proponents of the gacaca process hoped to make communities responsible for determining the guilt and punishment of offenders within their locale.<sup>255</sup>

In October 2001, Rwandan voters successfully elected approximately 250,000 judges to serve on gacaca panels across the country.<sup>256</sup> After a brief training period for the newly elected judges, the government inaugurated pilot gacaca proceedings in 2002, and expanded proceedings nationwide in 2005.<sup>257</sup> When the government officially revived the gacaca process, President Paul Kagame identified the following five objectives of the gacaca courts, to: make known the truth about what happened; accelerate judgments; uproot the culture of impunity; unify Rwandans on a basis of justice, while reinforcing unity and reconciliation; and demonstrate the capacity of the Rwandan family to resolve its own problems.<sup>258</sup> Although gacaca served as a means of community-based dispute resolution prior to European colonization, Professor Timothy Longman noted that gacaca proceedings began to wane in authority during colonization and eventually became a complement to national courts by the end of colonization.<sup>259</sup> Longman explained that during colonization, Rwandans began to take serious crimes to colonial courts.<sup>260</sup> Once colonization ended, Rwandans then used gacaca like a court of first instance. Longman clarified, that if an aggrieved party was not satisfied with the decision of a local chief, he or she took the

---

<sup>253</sup> Marchak, 177.

<sup>254</sup> Scheffer, 112; Longman, 207.

<sup>255</sup> Marchak, 183.

<sup>256</sup> Longman, 307.

<sup>257</sup> *Ibid.*, 307; Marchak, 183.

<sup>258</sup> Timothy Longman, *Justice at the Grassroots?*, accessed April 6, 2016, <http://faculty.vassar.edu/tilongma/gacaca.pdf>, 13.

<sup>259</sup> Longman, 12.

<sup>260</sup> *Ibid.*



claim to a national court where a judge often upheld the previous decision of the gacaca tribunal.<sup>261</sup>

The revised gacaca process merged elements of the traditional dispute resolution mechanism with Western legal practices and norms.<sup>262</sup> In keeping with tradition, voters selected gacaca judges or Inyangamugayo through official elections. In contrast with gacaca tradition that only allowed the most senior men of the community to serve as judges, Longman pointed out that women and young adults were encouraged to compete in elections under the revived gacaca process.<sup>263</sup> The modified gacaca process also had codified procedures and was organized under an additional branch of the Supreme Court called the National Service of Gacaca Jurisdictions.<sup>264</sup> In light of new codified procedures, an official relationship with the judiciary, and expanded jurisdiction over genocide-related crimes, Human Rights Watch advocates emphasized that, unlike the previous informal community-based tribunal, the new gacaca courts became part of the formal state system of prosecution and incarceration.<sup>265</sup> According to Human Rights Watch, this reorganization changed the traditional disposition of the gacaca process from one that emphasized restorative justice to one that focused on retribution.<sup>266</sup> As part of their revised mandate, gacaca courts also were expected to respect human rights and uphold international legal standards for fair

---

<sup>261</sup> Longman, 12-13.

<sup>262</sup> *Ibid.*, 14.

<sup>263</sup> *Ibid.*

<sup>264</sup> *Ibid.*

<sup>265</sup> Human Rights Watch, “The Initial Phase of Gacaca” in *Justice Compromised: The Legacy of Rwanda’s Community-Based Gacaca Courts*, May 31, 2011, accessed April 6, 2016, <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts#aeaf20>.

<sup>266</sup> *Ibid.*

trials.<sup>267</sup> To highlight the unique authority and proceedings of the revised gacaca process, the national government also renamed the gacaca forum, “inkiko gacaca,” or “gacaca courts.”<sup>268</sup>

Proceedings in the new gacaca courts followed two phases.<sup>269</sup> First, communities held weekly meetings to create a historical record of acts of genocide and to compile the names of genocide victims and perpetrators.<sup>270</sup> After the nationwide implementation of the gacaca process, small groups of local officials conducted this discovery process in place of the weekly forum to expedite the collection of information.<sup>271</sup> As part of the discovery process, communities also determined the appropriate charges to attach to perpetrators in accordance with the 1996 genocide law.<sup>272</sup> This law organized crimes and perpetrators into four categories ranging in descending degree of severity and responsibility. Crimes in category 1, such as murder, were punishable by death in Rwandan courts until 2007. Categories 2 through 4 included the crimes of rape, conspiracy, assault, and looting.<sup>273</sup> The 2001 gacaca law granted the community-based courts jurisdiction of all suspects except those in Category 1, which included high-level officials, organizers or instigators of genocide, and infamous murderers and rapists.<sup>274</sup> Categories 2 through

---

<sup>267</sup> Longman, 14.

<sup>268</sup> Ibid., 15.

<sup>269</sup> Ibid.

<sup>270</sup> Ibid.

<sup>271</sup> Human Rights Watch, “The Initial Phase of Gacaca” in *Justice Compromised: The Legacy of Rwanda’s Community-Based Gacaca Courts*, May 31, 2011, accessed April 6, 2016, <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts#aeaf20>.

<sup>272</sup> Longman, 15.

<sup>273</sup> Scheffer, 113; Marchak, 174.

<sup>274</sup> Scheffer, 113; Marchak, 174, Human Rights Watch, “The Initial Phase of Gacaca” in *Justice Compromised: The Legacy of Rwanda’s Community-Based Gacaca Courts*, May 31, 2011, accessed April 6, 2016, <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts#aeaf20>.

4 included suspects who were subject to criminal prosecution either in a national court or a community-based proceeding.<sup>275</sup>

According to a report on the efficacy of the gacaca courts published by Human Rights Watch in May 2011, by the end of the discovery phase, participants reported accusations against 818,564 suspects who fell within Categories 1 through 3 of the genocide law.<sup>276</sup> Gacaca courts retained jurisdiction over 610,028 suspected criminals.<sup>277</sup> To initiate the second phase or trial phase of the gacaca process, communities forwarded their lists of suspects and crimes to the appropriate gacaca court for trial by a panel of judges.<sup>278</sup>

Gacaca courts conducted trials across four distinct administrative levels in each province. Within the smallest administrative unit called the cellule, constituents elected 19 gacaca judges to hear cases involving crimes against property included under Category 4 of the genocide law.<sup>279</sup> These judges appointed gacaca judges to hear cases at the next administrative level called the sector.<sup>280</sup> Judges at the sector level heard personal injury cases under Category 3 of the genocide law. Sector-level judges also selected judges for district gacaca courts. District level judges heard cases involving Category 2 crimes such as murder and attempted murder.<sup>281</sup> Defendants convicted of crimes under Categories 2 and 3 could appeal to the gacaca court at the next administrative level or to the national courts.<sup>282</sup> Given the lenient nature of punishments imposed for Category 4

---

<sup>275</sup> Scheffer, 113; Marchak, 174.

<sup>276</sup> Human Rights Watch, “The Initial Phase of Gacaca” in *Justice Compromised: The Legacy of Rwanda’s Community-Based Gacaca Courts*, May 31, 2011, accessed April 6, 2016, <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts#aeaf20>.

<sup>277</sup> *Ibid.*

<sup>278</sup> Longman, 15.

<sup>279</sup> *Ibid.*, 16.

<sup>280</sup> *Ibid.*

<sup>281</sup> *Ibid.*

<sup>282</sup> *Ibid.*

crimes, defendants at the cellule level did not have the right to an appeal. By 2007, the Rwandan Parliament expanded the jurisdiction of the gacaca courts to include Category 1 suspects. The following year, the government transferred most of the genocide-related cases that were still pending in the national courts to the gacaca courts to reduce a backlog of cases and to allow the national courts to focus on crimes committed by provincial leaders and high-level officials.<sup>283</sup>

During the trial phase, gacaca panels heard witness testimony and issued verdicts against defendant members of the community.<sup>284</sup> Since gacaca courts did not have prosecutors or defense attorneys, gacaca judges initiated proceedings on the basis of accusations launched by a genocide victim or members of his or her family.<sup>285</sup> At the end of trial proceedings, gacaca panels directed sentences against convicted defendants and defendants who confessed their crimes before trial.<sup>286</sup> Sentences issued by gacaca panels ranged from life imprisonment to acts of community service called travaux d'interet general or TIG.<sup>287</sup> Community participation was a unique feature of the trial phase of the gacaca process. Lauren Haberstock highlighted that community members were

---

<sup>283</sup> Human Rights Watch, "The Initial Phase of Gacaca" in *Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts*, May 31, 2011, accessed April 6, 2016, <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts#aeaf20>.

<sup>284</sup> Lauren Haberstock, "An Analysis of the Effectiveness of the Gacaca Court System in Post-Genocide Rwanda," *Global Tides* 8, no. 4 (1 January 2014): 9.

<sup>285</sup> Human Rights Watch, "The Initial Phase of Gacaca" in *Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts*, May 31, 2011, accessed April 6, 2016, <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts#aeaf20>.

<sup>286</sup> Timothy Longman, "An Assessment of Rwanda's Gacaca Courts," *Peace Review* 12, no. 3 (August 2009): 308.

<sup>287</sup> Human Rights Watch, "The Initial Phase of Gacaca" in *Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts*, May 31, 2011, accessed April 6, 2016, <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts#aeaf20>; Marchak, 186.

encouraged to speak up to during trial to help the community discover the truth about what happened during the genocide.<sup>288</sup>

Throughout their administration, the gacaca courts worked swiftly to adjudicate genocide-related crimes and to fulfill their mandate within government prescribed timelines. On 18 June 2012, the Rwandan government finally closed the inkiko gacaca after ten years. Over this ten-year period, approximately 250,000 gacaca judges seated in over 12,000 courts across the country administered the trials of more than 1.2 million defendants.<sup>289</sup> Undoubtedly, the gacaca courts helped alleviate an overburdened national judiciary. Notwithstanding this advantage of the community-based tribunal, numerous shortcomings due to jurisdiction limitations and flaws intrinsic to community-based dispute resolution prevented the gacaca courts from meting out broadly acceptable and legitimate justice and from fully realizing their goals of reconciliation.<sup>290</sup>

#### Advantages of the Gacaca Courts

The gacaca courts provided several advantages to the Rwandan government and international community in their pursuit of transitional justice following the 1994 genocide. First, gacaca proceedings helped reduce the backlog of cases pending in the national courts. The adjudication of genocide-related cases in the gacaca courts allowed the national government and international community to hold perpetrators accountable and administer prompt justice. Second, the gacaca courts helped perpetrators and victims gain a better understanding of the violent events that occurred in their communities. In his analysis of the gacaca process, Longman stated that gacaca courts enabled discourse between victims and perpetrators and helped communities

---

<sup>288</sup> Haberstock, 10.

<sup>289</sup> Outreach Programme on the Rwanda Genocide and the United Nations, “Background Information on the Justice and Reconciliation Process in Rwanda, accessed April 6, 2016, <http://www.un.org/en/preventgenocide/rwanda/about/bgjustice.shtml>.

<sup>290</sup> Longman, 16-17.

develop a better understanding of what happened during the genocide.<sup>291</sup> Field researchers also noted that the gacaca process helped families achieve closure by providing information that allowed them to locate and bury the remains of relatives.<sup>292</sup> Third, in striking contrast to ICTR proceedings, gacaca courts allowed victims and their families to assume a more prominent role in their personal pursuit of justice and reconciliation. Longman attributed local popularity for the revised gacaca courts to a popular perception that gacaca judges understood their local communities, values, and the issues on trial.<sup>293</sup> Longman also asserted that the participation of the community improved the transparency of the proceedings and helped mitigate hazards posed by the absence of legal counsel.<sup>294</sup>

#### Challenges of the Gacaca Process

Despite their several advantages, the gacaca courts suffered from a number of inherent flaws that inhibited their ability to promote justice and reconciliation effectively. First, as a traditional dispute resolution mechanism not originally founded upon principles of due process afforded by international and constitutional law, gacaca proceedings did not observe fair trial standards that protect the fundamental rights of due process.<sup>295</sup> Given the serious nature of the crimes included under the expanded jurisdiction of the gacaca courts, practitioners contended that

---

<sup>291</sup> Longman, 308.

<sup>292</sup> Ibid.; Human Rights Watch, “Summary” in *Justice Compromised: The Legacy of Rwanda’s Community-Based Gacaca Courts*, May 31, 2011, accessed April 6, 2016, <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts#aeaf20>.

<sup>293</sup> Longman, 23.

<sup>294</sup> Ibid., 30.

<sup>295</sup> Human Rights Watch, “Balancing Community-Based Conflict Resolution Practices with Fair Trial Standards” in *Justice Compromised: The Legacy of Rwanda’s Community-Based Gacaca Courts*, May 31, 2011, accessed April 6, 2016, <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts#aeaf20>.

the Rwandan government should have ensured that gacaca judges received proper training regarding the sophisticated criminal law they were expected to enforce and ensured that gacaca procedures observed practices that protected the fundamental rights of defendants.<sup>296</sup>

The community-based features of the gacaca courts also rendered their proceedings vulnerable to manipulation by community members and government authorities. As a dispute resolution process initiated on the basis of individual accusations, government authorities and dissatisfied members of the community used gacaca courts to exact revenge on dissidents and fellow community members.<sup>297</sup> Low standards of proof permitted gossip as evidence in proceedings, and restrictions that prevented the gacaca courts from adjudicating cases against the RPF made victims and perpetrators reluctant to participate in proceedings for fear of retaliation or political persecution.<sup>298</sup> Longman noted that the gacaca courts often brought charges against government critics.<sup>299</sup> As a result, most people were afraid to testify on behalf of any defendant, and judges were unwilling to acquit the accused.<sup>300</sup> This uneven pursuit of justice made it easy for community members to use the gacaca process to seek revenge.<sup>301</sup> Consequently, gacaca courts often issued swift convictions on the basis of minimal evidence and exacerbated tension within Rwandan society.<sup>302</sup>

---

<sup>296</sup> Human Rights Watch, “The Community Dynamic of Gacaca” in *Justice Compromised: The Legacy of Rwanda’s Community-Based Gacaca Courts*, May 31, 2011, accessed April 6, 2016, <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts#aeaf20>.

<sup>297</sup> Longman, 309-310.

<sup>298</sup> Marchak, 182; Human Rights Watch, “The Community Dynamic of Gacaca” in *Justice Compromised: The Legacy of Rwanda’s Community-Based Gacaca Courts*, May 31, 2011, accessed April 6, 2016, <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts#aeaf20>.

<sup>299</sup> Longman, 309.

<sup>300</sup> *Ibid.*

<sup>301</sup> *Ibid.*, 310.

<sup>302</sup> *Ibid.*

## Overall Result: Successful, but at the Expense of Democracy

As the results of the ICTR and gacaca court proceedings suggest, international and domestic transitional justice mechanisms helped hold perpetrators of genocide, war crimes, and crimes against humanity accountable, but only according to the victor's one-sided terms of justice. The instruments of Rwandan government authority including the presidency, legislature, and judiciary, pursued this uneven form of justice by enacting laws and administering trials that actively suppressed dissenting voices and Hutu grievances. The official neglect of the ethnic Hutu population increased distrust between ethnic groups and recreated social disparities and tensions that fueled previous cycles of violence. The marginalization of the Hutu population and the use of repressive measures to silence dissenting opinions may preserve security over the medium to short-term, but these repressive measures effectively hinder the growth of democratic institutions and practices that generate broad trust and support of government institutions from all members of society, which in turn helps stabilize and unify previously fractured constituencies.

### **Case Study: Transitional Justice in East Timor – Successful, Despite Inherent Inconsistencies**

At the end of the 1999 political crisis in East Timor, the UN Transitional Administration in East Timor (UNTAET) established two transitional justice mechanisms to address both serious crimes and lesser offenses committed within the context of the political conflict. These two mechanisms each attempted to satisfy specific domestic and international interests in promoting justice and reconciliation by adopting retributive and restorative justice mechanisms.

The first mechanism, the Serious Crimes Process (SCP) attempted to mete out retributive justice in response to domestic and international demands to bring to justice those responsible for crimes against humanity and human rights violations. The SCP consisted of an investigative body and a hybrid tribunal of international and East Timorese judges. The investigative body, the Serious Crimes Investigation Unit (SCIU), investigated crimes against humanity and gross human rights violations for trial by the hybrid tribunal called the Special Panels for Serious Crimes



(SPSC). In light of donor fatigue over growing expenditures of time and money associated with operating international tribunals like the ICTY and ICTR, Katzenstein rightly noted that the SCP attempted to combine the strengths of an international tribunal with the benefits of local prosecution.<sup>303</sup>

The second mechanism, the Commission for Reception, Truth, and Reconciliation (CAVR) adopted traditional restorative justice methods to reconcile former militia members and perpetrators of lesser crimes back into their communities. CAVR also compiled the testimonies of victims, participants, and witnesses of the conflict from across the country into a historical record that offered recommendations for reconciliation and reform to the national government.

Each mechanism achieved moderate success at either redressing victims' demand for justice or promoting reconciliation. Notwithstanding these moderate achievements, CAVR proved to be the more successful of the two mechanisms. By 2004, CAVR successfully adjudicated 1,371 cases involving minor offenses and enjoyed broad public participation. Nevertheless, although these mechanisms were moderately successful at redressing victims for past crimes, they suffered from a number of inherent flaws that affected their overall effectiveness.

First, limitations on jurisdiction prevented the SCP and CAVR from bringing to justice those most responsible for the decades of violence in East Timor. The SCP and CAVR could not prosecute Indonesian senior military officials who bore the most responsibility for atrocities committed under their direction. Furthermore, Jakarta lacked the political will to prosecute its military officials through the Ad Hoc Court it created to investigate and prosecute Indonesians who had participated in the conflict. The Ad Hoc Court ultimately acquitted the 18 individuals it had indicted.<sup>304</sup> As a consequence, the SCP and CAVR could pursue low-level East Timorese

---

<sup>303</sup> Kent, 16.

<sup>304</sup> Ibid.

militia members only who often committed atrocities under duress from Indonesian military commanders.

Additionally, government leaders lacked the political will to pursue retributive justice against Indonesian and East Timorese perpetrators and instead focused on promoting reconciliation and national unity at the expense of individual victims' rights to justice. National leaders were more interested in the repatriation of former militia members from West Timor and establishing diplomatic relations with Indonesia to facilitate a stable political transition.<sup>305</sup> Kent perceptively noted that this failure to address individual needs for justice left tensions unresolved and left many East Timorese disillusioned with transitional justice.<sup>306</sup>

Despite these inherent flaws in the administration of transitional justice in East Timor, the SCP and CAVR contributed to long-term stability on the island. Since the conclusion of the 1999 conflict, East Timor has not experienced any potentially destabilizing violence since 2008. Moreover, political tensions in East Timor are no longer fueled by divisions within the internal polity, but instead focus on international subjects such as, a border dispute with Australia over access to undersea oil and gas and ASEAN accession.

#### Sources of Violence

Like many former protectorates that emerged from centuries of colonization, East Timor gained its independence after a protracted period of internal violence. Nearly five centuries of Portuguese occupation created artificial divisions between social classes and exacerbated economic inequality that sowed seeds of enmity which fueled the decades of violence following decolonization.<sup>307</sup> Professor James DeShaw Rae aptly noted that Portugal created obstacles to

---

<sup>305</sup> Kent, 139.

<sup>306</sup> *Ibid.*, 16.

<sup>307</sup> James Deshaw Rae, "Colonialism, Cold War, and Crimes Against Humanity," in *Peacebuilding and Transitional Justice in East Timor* (Boulder: Lynne Rienner Publishers), 40.

self-governance by abolishing traditional sources of authority, constructing new ethnic identities, and drawing new boundaries.<sup>308</sup> In its report chronicling the history of violence in East Timor, CAVR similarly noted three characteristics of Portuguese rule that contributed to the conflict, namely: divide and conquer tactics that hindered national unity; feudal administration that prevented self-governance; and the failure to institutionalize democratic and human rights values.<sup>309</sup> Given the divisive and unstable conditions created under colonial rule, the abrupt withdrawal of Portugal from East Timor created a power vacuum that incited civil war and facilitated the violent 24 year occupation by Indonesia.

### Colonial Period

Portugal refused to emancipate East Timor until political instability caused by the Carnation Revolution of 1974 prompted independence talks. After the overthrow of the Caetano regime, Portugal authorized the creation of political associations in East Timor.<sup>310</sup> Several major associations developed that would lead the struggle for independence. The first association to form was the Timorese Democratic Union (UDT).<sup>311</sup> This association was a pro-independence movement that promoted democracy and development within a Portuguese cultural framework.<sup>312</sup> The second association to form was the Association for a Democratic East Timor (ASDT), which later became the prominent resistance force Revolutionary Front for an Independent East Timor (FRETILIN). FRETILIN was a socialist-democratic association that promoted East Timorese

---

<sup>308</sup> Rae, 40.

<sup>309</sup> Commissao de Acolhimento, Verdade e Reconcilacao de Timor-Leste (CAVR), "The History of the Conflict," in *Chega!*, October 2005, 7, accessed November 8, 2015, <http://www.cavr-timorleste.org/chegaFiles/finalReportEng/03-History-of-the-Conflict.pdf>.

<sup>310</sup> Wise, 23.

<sup>311</sup> Wise, 24.

<sup>312</sup> *Ibid.*

culture and full political participation of all East Timorese.<sup>313</sup> The third major association to form was the Association for the Integration of Timor into Indonesia or the Timorese Popular Democratic Association (APODETI). This third faction promoted autonomous integration into Indonesia.<sup>314</sup> APODETI was less popular domestically than UDT and FRETILIN, but received generous clandestine support from Indonesia.<sup>315</sup>

As the major factions competed for popular support they fomented political intolerance in local areas and developed paramilitary capabilities.<sup>316</sup> By the time Portugal established the Decolonization Commission in East Timor (CDT) in April 1975, divisions between the factions were deeply entrenched. In light of growing suspicion among the major political factions, UDT launched an armed offensive on 11 August 1975. The brief civil war that ensued between UDT and FRETILIN following this initial offensive facilitated the invasion and subsequent 24 year period of occupation by Indonesian forces.

#### Civil War

On 11 August 1975, UDT staged a coup in Dili that spread throughout East Timor.<sup>317</sup> International organizations estimate between 1,500 and 3,000 were killed during the conflict.<sup>318</sup> Broad support from East Timorese members of the military helped FRETILIN quickly gain the advantage in the conflict. By early September, UDT and supporters of APODETI and other small political factions fled to West Timor. Portugal remained unable to gain control of the situation during the conflict, due to its unwillingness to suppress the conflict with Portuguese forces and

---

<sup>313</sup> Wise, 24.

<sup>314</sup> *Ibid.*

<sup>315</sup> *Ibid.*

<sup>316</sup> *Commissao de Acolhimento, Verdade e Reconcilacao de Timor-Leste*, 29.

<sup>317</sup> *Ibid.*, 41.

<sup>318</sup> *Ibid.*, 43.

due to Indonesian interference. Political instability at home also prevented Lisbon from intervening on behalf of East Timor. This set the stage for an imminent invasion by Indonesia. Near the end of the civil war, Indonesia began conducting incursions across the border into East Timor and began large-scale operations by early October. These cross-border incursions gave Indonesia control of a number of towns close to the border and set the stage for its full invasion and occupation.<sup>319</sup>

#### Indonesian Invasion and Occupation: 1975-1999

Although Jakarta previously rejected any territorial claims to East Timor, Indonesian intelligence officials later encouraged the Indonesian government to pursue control of the territory to ensure stability and prevent the spread of Communism in response to the increased influence of pro-independence movements on the island. As a result, Jakarta used regular diplomatic engagements with Portugal, the United States, and Australia to promote the integration of East Timor with Indonesia. Although these Western countries supported the right of self-determination for the East Timorese, they did not openly oppose annexation since they considered independence to be an unrealistic prospect for the economically depressed and politically unstable island.<sup>320</sup> Ultimately, by exploiting western fears of Communism prompted by the rise of Communist regimes in Viet Nam, Laos, and Cambodia, Suharto gained express approval from his western counterparts to integrate East Timor to prevent the spread of Chinese and Soviet influence.<sup>321</sup> After Portuguese officials expressed their approval of Indonesian support to APODETI, Suharto believed that Lisbon also approved Indonesian efforts to sway UDT and FRETILIN.<sup>322</sup>

---

<sup>319</sup> Commissao de Acolhimento, *Verdade e Reconcilacao de Timor-Leste*, 40.

<sup>320</sup> *Ibid.*, 35-36.

<sup>321</sup> *Ibid.*, 17.

<sup>322</sup> *Ibid.*, 36.

Without a formal declaration of war, Indonesia launched a full-scale attack on Dili in December 1975. Once in Dili, Indonesian forces committed mass atrocities on the civilian population.<sup>323</sup> By March 1979, Indonesia declared that it had pacified East Timor. Indonesian forces made life tense and fearful for the East Timorese. Without a functioning judiciary, civilians were subject to arbitrary arrest and torture at the hands of military authorities and lived under the strict supervision of the military.<sup>324</sup> Throughout the conflict and subsequent occupation, Indonesian forces suffered no consequences for their actions. This lack of accountability created an environment in which Indonesian forces could commit grave human rights violations with impunity throughout the 24 year occupation.

By the 1990s, events such as the Santa Cruz massacre, the detention of Xanana Gusmão, and the joint awarding of the Nobel Peace Prize to independence activists Jose Ramos-Horta and Bishop Carlos Belo drew international attention to the plight of the East Timorese and raised the international status of the independence movement.<sup>325</sup> The various national movements of East Timor also consolidated under a single political entity called the National Council of Timorese Resistance (CNRT).<sup>326</sup> The consolidation of all East Timorese political factions reduced the need for violence between the former resistance movements and helped reframe the international image of pro-independence leaders from former guerillas and aggressors to legitimate social activists.

#### Fall of Suharto Regime and Prospects for Independence

The 1997 Asian Financial Crisis created a political crisis in Indonesia that forced the resignation of President Suharto. After the fall of Suharto, the international community also

---

<sup>323</sup> Commissao de Acolhimento, *Verdade e Reconcilacao de Timor-Leste*, 62.

<sup>324</sup> *Ibid.*, 90.

<sup>325</sup> Wise, 30.

<sup>326</sup> *Ibid.*, 29; Commissao de Acolhimento, *Verdade e Reconcilacao de Timor-Leste*, 121.

increased its pressure on Indonesia to resolve the issue of East Timor.<sup>327</sup> In January 1999, President B.J. Habibie offered “special status” to East Timor and offered to hold a referendum in East Timor concerning its future.<sup>328</sup> Nevertheless, while Habibie made overtures of independence, the Indonesian military increased its training of armed militias.<sup>329</sup> In the weeks preceding Habibie’s proposal, militias committed a series of murders across the country. Gusmão called for a “general popular insurrection” against militia violence. Militias responded by storming the capital. Indonesian military Commander-in-Chief General Wiranto traveled to Dili to oversee a ceasefire agreement despite the fact that nearly all of the violence stemmed from militias killing unarmed civilians as opposed to violence between paramilitary factions.

#### UN Intervention

UN staff arrived in late May 1999 to establish the UN Assistance Mission in East Timor (UNAMET) to oversee the referendum. Violence levels decreased as UN staff and international media and observers arrived. Nevertheless, militia groups responsible for the increase in violence the previous month remained at large and continued to receive support from the Indonesian military and police. Efforts to establish peace between pro-independence and pro-autonomy factions were ineffective because they failed to address the role of the Indonesian military in the violence.<sup>330</sup> Militia disarmament before the referendum also proved to be merely ceremonial. Approximately 40,000 residents had been displaced by the violence in April 1999. East Timorese continued to be displaced in the weeks leading to the referendum due to militia intimidation.<sup>331</sup>

---

<sup>327</sup> *Commissao de Acolhimento, Verdade e Reconcilacao de Timor-Leste*, 124.

<sup>328</sup> Wise, 33.

<sup>329</sup> *Commissao de Acolhimento, Verdade e Reconcilacao de Timor-Leste*, 124.

<sup>330</sup> *Ibid.*, 134.

<sup>331</sup> *Ibid.*, 134.

On 30 August 1999, voters lined up at the polls to participate in the referendum. Violence against UN staff and pro-independence supporters began by the end of the day, and increased in the days following the referendum.<sup>332</sup> On 4 September, UN officials announced the results of the referendum in which a majority of Timorese voted for independence. Pro-autonomy militias responded with violent reprisals against the civilian population.<sup>333</sup> Crimes against humanity continued with impunity at the hands of Indonesian forces working in conjunction with the militias. With Indonesian approval, mass murder, rape, and the destruction of property occurred on a wide scale. In 1999, the Indonesian military killed between 1,200 and 1,500 East Timorese. Indonesian forces committed 900 of these murders after the referendum. During the crisis, over half the population, nearly 550,000 people fled. Militias forcibly relocated an additional 250,000 people to squalid refugee camps in West Timor.

CNRT leaders who had been evacuated at the beginning of the crisis pressed the international community to intervene. Although Habibie was against international intervention, broad international support for UN intervention in East Timor isolated Indonesia and garnered threats of sanctions from the European Union, United States, and United Kingdom.<sup>334</sup> Under intense international pressure, Indonesia relaxed its opposition to UN intervention. In response, the UN quickly established INTERFET, an Australian-led peace enforcement mission. Indonesian forces began to withdraw upon the arrival of INTERFET forces, but they inflicted a devastating scorched earth campaign as they departed. As Indonesian forces withdrew, they destroyed 70% of the major infrastructure, houses, and buildings in East Timor.<sup>335</sup> Within a month, INTERFET secured the country. By 30 October 1999, the last Indonesian forces withdrew from East Timor.

---

<sup>332</sup> *Commissao de Acolhimento, Verdade e Reconcilacao de Timor-Leste*, 134.

<sup>333</sup> Kent, 6; Wise, 34.

<sup>334</sup> *Commissao de Acolhimento, Verdade e Reconcilacao de Timor-Leste*, 150.

<sup>335</sup> *Ibid.*, 145.



Following the deployment of INTERFET, the UN Security Council passed UNSCR 1272 creating the UN Transitional Authority for East Timor (UNTAET) on 25 October 1999. This resolution charged UNTAET with six general tasks: to provide security and maintain law and order throughout the territory of East Timor; to establish an effective administration; to assist in the development of civil and social services; to ensure the coordination and delivery of humanitarian assistance, rehabilitation and development assistance; to support capacity building for self-government; and to assist in the establishment of conditions for sustainable development.<sup>336</sup> UNSCR 1272 called for the transitional mission to end on 31 January 2001.

Given expectations that the transition process would last only two to three years, UNTAET created a shadow administration, the East Timor Transitional Administration (ETTA), to assume authority once UNTAET left. On 30 August 2001, East Timorese voters elected an 88-member Constituent Assembly to take office on 22 March 2002. FRETILIN won overwhelmingly and on 14 April, Xanana Gusmão won the first presidential election. East Timor formally received independence on 20 May 2002. The UNTAET mission ended, but economic and political conditions remained fragile due to the failure of the international community and East Timorese national leadership to address the social and economic disparities that plagued the population.

The UN followed UNTAET with successive missions to support the stable political transition and development of critical institutions in East Timor. From May 2002 to May 2005, the UN authorized the UN Mission in Support of East Timor (UNMISSET) to aid the transition of East Timor post-independence. Following the political crisis of 2006, the UN established the UN Integrated Mission in East Timor (UNMIT) to support the development of political, judicial, and security institutions on the island. Despite initial expectations of a two to three year transition in

---

<sup>336</sup> United Nations Security Council, Resolution 1272, October 25, 1999, accessed November 14, 2015, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/312/77/PDF/N9931277.pdf?OpenElement>.

1999, the UN remained involved in the development of East Timorese political, judicial, and social institutions until the conclusion of UNMIT on 31 December 2012.

#### Transitional Justice Mechanisms in East Timor: The Serious Crimes Process (SCP) and Commission for Reception, Truth, and Reconciliation (CAVR)

UNSCR 1272 expressly condemned all violence and acts in support of violence in East Timor and demanded that those responsible for violence be brought to justice.<sup>337</sup> Following the deployment of INTERFET, the UN authorized an International Commission of Inquiry on East Timor (ICIET) to gather information on possible human rights violations and violations of international humanitarian law since January 1999 to enable recommendations on future action by the Secretary-General.<sup>338</sup> The Indonesian Human Rights Commission (Komnas HAM) also created a parallel commission of inquiry (KPP HAM) for the same purpose. In their reports, both commissions highlighted the need to prosecute those responsible and implicated the Indonesian military in human rights violations.<sup>339</sup> Despite these similar findings, the final recommendations of the commissions were notably different. KPP HAMM called for national prosecutions to hold Indonesian perpetrators accountable for human rights violations.<sup>340</sup> ICIET noted that the UN had a vested interest in participating in the investigation process, punishing those responsible, and promoting reconciliation.<sup>341</sup> To address gross violations of human rights and humanitarian law in

---

<sup>337</sup> United Nations Security Council, Resolution 1272, October 25, 1999, accessed November 14, 2015, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/312/77/PDF/N9931277.pdf?OpenElement>.

<sup>338</sup> United Nations Office of the High Commission for Human Rights (UNHCHR), Report of the International Commission of Inquiry on East to Timor to Secretary-General, General Assembly 54<sup>th</sup> sess., January 31, 2000, A/54/726, S/2000/59, accessed November 14, 2015, <http://www.unhcr.ch/huridocda/huridoca.nsf/%28Symbol%29/A.54.726,+S.2000.59.En>.

<sup>339</sup> Caitlin Reiger and Marieke Wierda, “The Establishment of the Serious Crimes Process” in *The Serious Crimes Process in Timor-Leste: In Retrospect*, March 2006, 15, accessed November 14, 2015, <https://www.ictj.org/sites/default/files/ICTJ-TimorLeste-Criminal-Process-2006-English.pdf>.

<sup>340</sup> Reiger and Wierda, 15.

<sup>341</sup> United Nations Office of the High Commission for Human Rights (UNHCHR),

East Timor, ICIET ultimately recommended that the UN establish two organizations: an international independent investigation and prosecution body that could also ensure reparations and consider truth and reconciliation, and an international human rights tribunal.<sup>342</sup>

International demand for an international human rights tribunal similarly reflected the demands of the East Timorese following the departure of Indonesian forces. Human rights observers rejected the prosecution of human rights violators by Indonesian courts as a viable solution in light of Indonesia's record of impunity in East Timor.<sup>343</sup> UN Special Rapporteurs also did not consider the East Timorese judicial system capable of sustaining the full scale and scope of investigations required to document crimes and human rights violations committed by the Indonesian military and further emphasized the need for an international tribunal.<sup>344</sup> The UN however, ignored the recommendation to create an international tribunal in light of donor fatigue and the perceived limited results obtained through the ICTY and ICTR over an extended period of time at a high financial cost.<sup>345</sup> UNTAET instead preferred a dual approach led by the parallel efforts of UNTAET and Indonesia.<sup>346</sup> The completion of an unenforced Memorandum of Understanding between UNTAET and Indonesia that outlined cooperation in the exchange of evidence, subpoena of witnesses, enforcement of arrest warrants, and transfer of suspects

---

Report of the International Commission of Inquiry on East to Timor to Secretary-General, General Assembly 54<sup>th</sup> sess., January 31, 2000, A/54/726, S/2000/59, accessed November 14, 2015, <http://www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/A.54.726,+S.2000.59.En>.

<sup>342</sup> United Nations Office of the High Commission for Human Rights (UNHCHR), Report of the International Commission of Inquiry on East to Timor to Secretary-General, General Assembly 54<sup>th</sup> sess., January 31, 2000, A/54/726, S/2000/59, accessed November 14, 2015, <http://www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/A.54.726,+S.2000.59.En>.

<sup>343</sup> Reiger and Wierda, 15.

<sup>344</sup> Ibid.

<sup>345</sup> Ibid., 14.

<sup>346</sup> Ibid., 14.

reflected UNTAET intentions for a dual approach and Indonesian intentions to pay lip service to the UN and international community.<sup>347</sup>

#### Serious Crimes Process (SCP)

In response to the demand of UNSC 1272 to bring those responsible for violence to justice, UNTAET exercised the authority of the Rome Statute of the International Criminal Court to establish the Serious Crimes Investigation Unit (SCIU) to investigate war crimes, crimes against humanity, murder, torture, and rape committed between 1 January and 25 October 1999.<sup>348</sup> The SCIU became the first step in what later became the Serious Crimes Process (SCP). Once the SCIU completed its investigation, it submitted its findings to one of the Special Panels for Serious Crimes (SPSC) for trial.<sup>349</sup> The SPSC was the second step of the SCP and was a type of hybrid tribunal comprised of two international judges and one Timorese judge.<sup>350</sup> To build the capacity of the national courts to prosecute serious crimes, UNTAET attached the SPSC to the Dili District Court under the authority of the Prosecutor-General of East Timor.<sup>351</sup> The SPSC also applied both Indonesian and international law to build domestic and international legal traditions that recognized human rights and international humanitarian law.

Although UNTAET established the SCP in June 2000, the SPSC did not begin trials until 2001. The SCIU did not begin full operations until April 2003.<sup>352</sup> From 2000 to 2005, the SCP operated under multiple UN mandates until its mission ended May 2005 when the UN Mission of

---

<sup>347</sup> Reiger and Wierda, 27; Kent, 13.

<sup>348</sup> Sukehiro Hasegawa, "Transitional Justice: Primacy of Truth or Justice," in *Primordial Leadership: Peacebuilding and National Ownership in Timor-Leste* (New York: United National University Press, 2013) 165.

<sup>349</sup> *Ibid.*, 165.

<sup>350</sup> *Ibid.*, 170.

<sup>351</sup> Kent, 75; Hasegawa, 165.

<sup>352</sup> Hasegawa, 170.

Support in East Timor (UNMISET) ended. By 2005, the SCIU had issued 95 indictments and charged 391 defendants for 684 murders out of an approximate total of 1,400 murders committed in 1999.<sup>353</sup> Those indicted included 37 Indonesian military officers, four Indonesian police chiefs, 60 Timorese officers and soldiers in the Indonesian military, a former Governor of East Timor, and five former District Administrators.<sup>354</sup> The SPSC called 101 of these defendants to trial and ultimately convicted 85.<sup>355</sup> Of the 101 defendants called to trial, charges against 13 either were withdrawn or dismissed, one was found unfit to stand trial, and two were acquitted.<sup>356</sup> 339 remaining suspects never were brought to court. UN officials suspect most of the remaining suspects fled to Indonesia.<sup>357</sup>

#### Challenges to the Serious Crimes Process (SCP)

Although the SCP experienced moderate success, transitional justice researchers and practitioners noted several fundamental flaws in the process that hindered its greater success. These intrinsic flaws however, stemmed from choices made by the international community and national leaders in light of precarious political realities that forced them to subjugate the pursuit of justice and individual accountability to the more needful pursuit of political stability and reconciliation. Moreover, by 1999, the international community suffered from donor fatigue and criticism for the seeming lack of return on its steep investments in the ICTY and ICTR.<sup>358</sup> As Reiger pointed out, by this time, the international community sought “faster and cheaper” justice

---

<sup>353</sup> Hasegawa, 166; Kent, 80.

<sup>354</sup> Reiger and Wierda, 24.

<sup>355</sup> *Ibid.*, 170.

<sup>356</sup> *Ibid.*

<sup>357</sup> Hasegawa, 166.

<sup>358</sup> Caitlin Reiger, “Hybrid Attempts at Accountability for Serious Crimes in Timor Leste,” in *Transitional Justice in the Twenty-First Century*, eds. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), 146.

from a hybrid tribunal.<sup>359</sup> As a result, flaws within the SCP from its limited jurisdiction and poor resources reflected the lack of political will shared by the international community and East Timorese national leaders for expensive, time consuming, and potentially destabilizing criminal trials.

As mentioned previously, limitations on SCP jurisdiction prevented it from prosecuting senior Indonesian military officials who were most responsible for human rights violations. During the tenure of the SCP, the SCIU filed 263 arrest warrants with INTERPOL for several senior Indonesian military officials it had indicted for various crimes against humanity.<sup>360</sup> Despite a Memorandum of Understanding that was supposed to facilitate Indonesian cooperation with UN authorities, Indonesia ignored SCIU requests.<sup>361</sup> Due to the limited mandate of the SCP, the tribunal lacked Chapter VII authority under the UN Charter to enforce Indonesian cooperation.<sup>362</sup> As a result, SCP prosecutions were limited to low-level East Timorese militia members who often had been coerced into the conflict by Indonesian forces as a result of pervasive social, political, and economic inequalities created by centuries of colonization and decades of military occupation.<sup>363</sup>

Temporal restrictions that limited SCP jurisdiction to crimes committed between January and October 1999 prevented the SCP from addressing systematic human rights abuses committed over the entire Indonesian occupation, the civil war, and Portuguese colonization. Consequently, Kent noted that this restriction in temporal jurisdiction reduced the unique geographic, historical, and political context of the conflict in East Timor to a series of isolated human rights

---

<sup>359</sup> Reiger, 146.

<sup>360</sup> *Ibid.*, 157.

<sup>361</sup> *Ibid.*; Rae, 177.

<sup>362</sup> Reiger, 156.

<sup>363</sup> *Ibid.*, 157; Rae, 177, Kent, 86; Burgess, 200.

violations.<sup>364</sup> According to Kent, this prevented the SCP from addressing the structural sources of violence that stemmed from the long-term suffering and manipulation of the East Timorese from colonization through the Indonesian occupation.<sup>365</sup>

Competing political priorities and lack of national and international political will to prosecute those most responsible for human rights violations and crimes against humanity also hindered the success of the SCP. After gaining independence, President Gusmão prioritized the peaceful repatriation of former militia members, border security, and the development of positive diplomatic relations with Indonesia as his most immediate political objectives.<sup>366</sup> Given the fragile political situation in East Timor following independence, Gusmão believed criminal prosecution and other forms of retributive justice would hinder these objectives.<sup>367</sup> As a result, CNRT leaders sought to distance themselves from efforts to prosecute Indonesian officials and laid responsibility for the SCP on the UN.<sup>368</sup> In support of CNRT repatriation and stability objectives, UN officials collaborated with the East Timorese authorities to delay or prevent arrests, and promoted lenient arrest policies that called into question their commitment to the prosecution of those most responsible for past crimes.<sup>369</sup> In the interest of internal and regional stability, Gusmão and CNRT leaders instead pursued reconciliation activities with militia members and senior Indonesian officials that often conflicted with local demands for justice.

Throughout the tenure of the SCP and during successive UN missions, CNRT leaders actively pursued reconciliation with Indonesian officials and pardoned militia members who had been convicted of crimes against humanity. In May 2004, in response to an arrest warrant issued

---

<sup>364</sup> Kent, 86.

<sup>365</sup> *Ibid.*

<sup>366</sup> *Ibid.*, 115.

<sup>367</sup> *Ibid.*

<sup>368</sup> *Ibid.*, 58.

<sup>369</sup> *Ibid.*, 54.

by the SPSC for former Indonesian Commander-in-Chief and then presidential candidate General Wiranto, President Gusmão and Indonesian President Megawati Sukarnoputri established a Commission of Truth and Friendship (CTF) to resolve human rights issues between their countries.<sup>370</sup> The CTF emphasized institutional responsibility for past crimes, and recommended restorative measures such as amnesty and rehabilitation.<sup>371</sup> Local human rights organizations disapproved of the CTF and criticized it as a tool for avoiding prosecution.<sup>372</sup> Although political exigencies during the 2006 crisis re-emphasized the need to address the past and eliminated the possibility of amnesty as a means to address human rights abuses, by 2008, a recently elected President Ramos-Horta pardoned more than half of the prison population, which included the majority of those previously convicted of serious crimes.<sup>373</sup> The following year, Ramos-Horta declared there would be no international tribunal and asked the UN to end its investigations.<sup>374</sup> CNRT leaders were unwilling to pursue prosecutions that could destabilize relations with Indonesia and provoke former militias in West Timor.<sup>375</sup>

UN officials similarly lacked the political will to pressure Indonesian authorities to prosecute those responsible for serious crimes and denied any responsibility to indict senior Indonesian officials.<sup>376</sup> Amid the contention surrounding the indictment and subsequent warrant for the arrest of General Wiranto, the UNSC gave the SCIU a deadline of November 2004 to complete its investigations, and also gave the SPSC until 20 May 2005 to conclude all trials.<sup>377</sup>

---

<sup>370</sup> Kent, 60.

<sup>371</sup> *Ibid.*, 61.

<sup>372</sup> *Ibid.*, 62.

<sup>373</sup> *Ibid.*, 68-72, 117; Rae, 194.

<sup>374</sup> Kent, 68-72, 117-118.

<sup>375</sup> Kent, 73.

<sup>376</sup> *Ibid.*, 55, 60.

<sup>377</sup> *Ibid.*, 60.



Remaining trials were transferred to the Ministry of Justice, which already was inundated with cases for minor crimes and civil proceedings. As Cohen highlighted, the UN measured success as completing its caseload and transferring any remaining files to East Timorese authorities.<sup>378</sup>

Cohen further noted that the UN did not end the SCP because it had prosecuted all cases under its jurisdiction, but because of UNSC interests in ending the seemingly prolonged peacekeeping mission in East Timor.<sup>379</sup>

#### The Commission for Reception, Truth, and Reconciliation in East Timor (CAVR)

In August 2000, the CNRT passed a resolution calling for the creation of a truth and reconciliation commission.<sup>380</sup> To execute this directive, UNTAET organized a steering committee to devise a truth and reconciliation process. After conducting a series of consultations at the district, sub-district, and village levels, the steering committee determined that those involved in lesser crimes did not need to stand trial, but should address their community members and victims.<sup>381</sup> Moreover, the steering committee determined that traditional justice mechanisms should be used, but also cautioned that such systems could not address large scale human rights violations.<sup>382</sup> To discover the truth of what happened, the committee determined that any investigation should inquire into atrocities that occurred from 1974 to 1999, beginning with the civil war through the occupation of the Indonesian military.<sup>383</sup> Based on the findings of the

---

<sup>378</sup> David Cohen, "Justice on the Cheap Revisited: The Failure of the Serious Crimes Trials in East Timor," *Analysis from the East-West Center*, no. 81 (May 2006): 4.

<sup>379</sup> Cohen, 4.

<sup>380</sup> Commissao de Acolhimento, Verdade e Reconcilacao de Timor-Leste (CAVR), "Community Reconciliation," in *Chega!*, October 2005, 8, accessed November 14, 2015, <http://www.cavr-timorleste.org/chegaFiles/finalReportEng/09-Community-Reconciliation.pdf>.

<sup>381</sup> Patrick Burgess, "East Timor's Community Reconciliation Processes," in *Transitional Justice in the Twenty-First Century*, eds. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: University Press, 2006), 183.

<sup>382</sup> Burgess, 183.

<sup>383</sup> *Ibid.*

steering committee, UNTAET authorized the creation of CAVR in July 2001.<sup>384</sup> CAVR was responsible for the following tasks: to inquire and establish the truth concerning the nature, causes and extent of human rights violations committed from April 1974 to October 1999; to assist victims and promote human rights and reconciliation; to support the reception and reintegration of individuals through the Community Reconciliation Process (CRP); and to compile a report of its findings on the extent, causes, and responsibility for human rights violations and recommend reform as appropriate.<sup>385</sup>

CAVR began operations in April 2002 and established a network of CRPs to reconcile perpetrators with their communities. Under this process, a perpetrator turned deponent provided a statement to a local CRP describing acts he or she committed and requested a hearing within a specific community.<sup>386</sup> Before a hearing could take place, the CRP forwarded the statement to the CAVR national office for review by a Statements Committee.<sup>387</sup> This committee determined whether the acts described should be addressed by the CRP, dismissed, or transferred to the Prosecutor-General. CAVR forwarded all statements to the Prosecutor-General to ensure that the deponent was not under investigation for serious crimes. After a review of the statement and any existing files on the deponent, the Prosecutor-General either retained the statement for prosecution of any serious crimes or returned the statement for adjudication by the CRP.<sup>388</sup>

If CAVR decided to proceed, the appropriate CRP conducted a hearing led by a panel of CAVR regional commissioners. This panel had to have appropriate gender and cultural representation, and usually included traditional elders, church leaders, and representatives of local

---

<sup>384</sup> Hasegawa, 163.

<sup>385</sup> Burgess, 183; Kent, 89.

<sup>386</sup> Burgess, 184-185.

<sup>387</sup> *Ibid.*, 185.

<sup>388</sup> *Ibid.*

youth and women's groups.<sup>389</sup> At the hearing, the deponent read his statement aloud and victims and community members had the opportunity to share their opinions. If credible evidence of serious crimes emerged during the hearing, the panel had to adjourn the process and refer the case to the Prosecutor-General. In all other cases, the panel and members of the public who were present at the hearing deliberated over an appropriate act of reconciliation for the deponent to complete to be reconciled with community. Acts of reconciliation usually consisted of public works or community service activities to be completed by the deponent for the harm he caused to the community. If the deponent agreed to the act, the CRP drafted a Community Reconciliation Agreement and filed the agreement with the appropriate District Court. Once the deponent completed the act of reconciliation, the District Court granted him or her immunity from all civil and criminal liability arising from the acts he or she admitted.<sup>390</sup>

By the end of its mandate on March 31, 2004, CAVR successfully completed 1,371 cases through CRP hearings.<sup>391</sup> Although the CRP received a total of 1,541 statements, the Prosecutor-General retained 85 statements, and the CRP had to adjourn 32 hearings after credible evidence of serious crimes surfaced or because the community rejected a deponent.<sup>392</sup> Over the course of its truth investigation, CAVR documented 7,669 statements across the country which included over 1,000 interviews of individuals who led various stages of the conflict.<sup>393</sup> CAVR estimated that approximately 40,000 East Timorese participated in CRP hearings, and an additional 3,000 people would have liked to have had CRP hearings to address their past crimes.<sup>394</sup>

---

<sup>389</sup> Burgess, 185; Kent, 91.

<sup>390</sup> Burgess, 185; Kent 91.

<sup>391</sup> Burgess, 187.

<sup>392</sup> Ibid.

<sup>393</sup> Kent, 91; Commissao de Acolhimento, Verdade e Reconcilacao de Timor-Leste, 20.

<sup>394</sup> Rae, 180; Burgess 187.

## Advantages of CAVR

As mentioned, CAVR proved to be the more successful transitional justice mechanism based on the volume of cases completed and the high level of participation in CRP hearings. The unique characteristics of CAVR also helped it to achieve many transitional justice objectives. CRP jurisdiction over minor crimes helped relieve the overburdened judicial system and aided the local delivery of justice.<sup>395</sup> Burgess noted that CRPs often were the only visible judicial presence at the village level.<sup>396</sup> The use of traditional dispute resolution methods under the auspices of the Prosecutor-General also increased the legitimacy of the CRP and the rule of law by linking formal legal authority to accepted customary practices.<sup>397</sup> Moreover, the use of traditional dispute resolution methods encouraged local participation and national ownership of CAVR and the CRP. Broad participation in a restorative process promoted reconciliation and stability by mitigating possible retaliation against former militia members who sought reintegration.<sup>398</sup> These unique features of CAVR also attracted international support. The local, restorative characteristics of CAVR likely appealed to international donors who sought alternatives to expensive retributive mechanisms.<sup>399</sup> As a result, the distinctive truth-seeking and restorative features of CAVR garnered increased international funding that likely contributed to its success.<sup>400</sup>

## Challenges to CAVR

Despite its many advantages, CAVR failed to meet victims' needs for justice. Similar to the SCP, CAVR could only receive the testimony of East Timorese deponents and excluded

---

<sup>395</sup> Kent, 15.

<sup>396</sup> Burgess, 191.

<sup>397</sup> *Ibid.*, 190.

<sup>398</sup> Kent, 89.

<sup>399</sup> *Ibid.*, 57.

<sup>400</sup> *Ibid.*

Indonesian perpetrators. The inability to compel Indonesian cooperation with East Timorese judicial authorities remained a constant source of dissatisfaction for victims.<sup>401</sup> The objectives of CRP hearings also did not necessarily match the interests of individual victims. CRP hearings were community events predicated on promoting national reconciliation. Kent noted that CAVR officials often selected participants who could serve emblematic purposes of national reconciliation.<sup>402</sup> These efforts circumscribed witness testimony. Moreover, victims of serious crimes resisted reconciliation.<sup>403</sup> In cases where a victim rejected a deponent, powerful local leaders attempted to force reconciliation by strongly discouraging the victim from seeking strict penalties.<sup>404</sup> Similarly, local leaders exploited CRP hearings to create order, and other participants used the process to pursue personal agendas.<sup>405</sup> Victims also found acts of reconciliation ordered by the CRP to be insufficient as they provided no direct reparation for harm suffered.<sup>406</sup> Victims' desires for retributive and redistributive forms of justice remained unmet.

#### Overall Result: Successful, but with Inherent Inconsistencies

Both the SCP and CAVR suffered similar challenges from jurisdiction limitations and a conflict between local and national objectives that hindered their success. As a result, after the SCP and CAVR ended in 2005, Kent observed that unreconciled issues remained and the limitations of transitional justice created widespread disillusionment within East Timor.<sup>407</sup> According to both Burgess and Kent, the people of East Timor still wanted the prosecution of

---

<sup>401</sup> Burgess, 197.

<sup>402</sup> Kent, 95.

<sup>403</sup> *Ibid.*, 156-157.

<sup>404</sup> *Ibid.*, 95.

<sup>405</sup> *Ibid.*, 157.

<sup>406</sup> *Ibid.*, 96, 154-155.

<sup>407</sup> *Ibid.*, 16.

Indonesian organizers of violence and reparations.<sup>408</sup> Burgess also noted that many East Timorese also wanted crimes committed from 1975 to 1999 to be prosecuted and requested CAVR to convene CRP hearings for murder and other crimes committed during this timeframe.<sup>409</sup> These cases however, were outside the jurisdiction of the CRP. As a consequence, Burgess observed, thousands of minor crimes and serious crimes went unaddressed by either the CRP or SCP, and thereby allowed perpetrators who bore the greatest responsibility for atrocities committed during the conflict to go unpunished.<sup>410</sup> Ultimately, Kent noted, the prevailing outcry of the East Timorese remained “no reconciliation without justice.”<sup>411</sup>

Notwithstanding, these persistent shortcomings of transitional justice. Mechanisms like the SCP and CAVR have made a significant contribution to long-term stability on the island. East Timor has not experienced any fundamentally destabilizing violence since 2008, and a brief crisis in 2006 crisis helped Dili and the UN refocus their attention on deep rooted sources of tension and violence and attempt to address them. Transitional justice mechanisms in East Timor also raised CNRT attention to popular demands for justice, obviated possible amnesties, and left open possibility of prosecution of senior Indonesian officials who eventually accepted the findings of the 2008 CTF report that directly implicated Indonesian responsibility for the deaths of up to 180,000 East Timorese.

## **Conclusion**

Despite the time and cost associated with the prosecution of war criminals and perpetrators of genocide and other atrocities, transitional justice continues to be essential to long-term stability. As reflected by the continued absence of open conflict, cooperation between

---

<sup>408</sup> Burgess, 197; Kent, 16.

<sup>409</sup> Burgess, 199.

<sup>410</sup> *Ibid.*, 199-200.

<sup>411</sup> Kent, 16.

domestic constituencies, and the presence of functioning democratic institutions in Bosnia-Herzegovina, Rwanda, and East Timor, transitional justice mechanisms help bring stability to previously divided societies and enhance the legitimacy of postwar government institutions. These cases also demonstrated the utility of applying internationally-organized and domestically-driven transitional justice mechanisms in tandem to ensure fair and prompt justice, and to build domestic judicial capacity. Effective transitional justice mechanisms promote long-term stability by applying a combination of internationally-organized and domestically-driven mechanisms that lend legitimacy to and cultivate national democratic institutions.

As the case of Bosnia-Herzegovina illustrated, the ICTY, an international criminal tribunal held those most responsible for planning and executing acts of ethnocide and genocide accountable, and facilitated domestic prosecution of genocide-related crimes. Despite criticisms that the ICTY was too far removed from the victims and denied Bosnians a role in the prosecution of genocide and war crimes, the transfer of cases to the national courts of the former Yugoslav republic, returned the responsibility of establishing the rule of law and building public trust in domestic institutions to the national government.

In Rwanda, the combined use of an international criminal tribunal and a traditional dispute resolution method helped facilitate the prosecution of genocide and crimes against humanity, and provided a forum for communities to address atrocities that directly impacted them. Despite similar criticisms that highlight the location of the tribunal outside the affected country and due process challenges of implementing community-based justice mechanisms, the ICTR and gacaca courts helped reduce impunity. The gacaca courts specifically helped victims learn about what happened to family members and learn how atrocities impacted their community. Last, in East Timor a hybrid tribunal combined with a community reconciliation program brought perpetrators to justice and allowed victims and perpetrators to resolve grievances in a familiar local setting. These transitional justice mechanisms helped mitigate

internal tension and build domestic support for domestic institutions that facilitated cooperation and compliance with civil authority.

The implementation of transitional justice is directly related to the successful achievement of desired end state conditions in stability operations. Without providing transitional justice mechanisms to punish grave human rights violations and build confidence in domestic institutions, the increased risk for a return to civil war results in an inefficient and ineffective use of U.S. military capabilities.



## Bibliography

- Amnesty International. "Rwanda." In *The State of the World's Human Rights 2014/2015*. Accessed December 14, 2015. <https://www.amnesty.org/en/documents/pol10/0001/2015/en/>.
- Anastasjevic, Dejan. "Croatia Veto on Serbia's EU Talks Causes Surprise." *EUObserver*. April 12, 2016. Accessed April 19, 2016. <https://euobserver.com/beyond-brussels/133004>.
- Associated Foreign Press. "Burundi Refugees Recruited at Rebels in Rwanda Report." *Yahoo News*. December 14, 2015. Accessed December 14, 2015, <http://news.yahoo.com/burundi-refugees-recruited-rebels-rwanda-report-130325617.html>.
- Burgess, Patrick. "A New Approach to Restorative Justice: East Timor's Community Reconciliation Processes." In *Transitional Justice in the Twenty-First Century*, edited by Naomi Roht-Arriaza and Javier Mariezcurrena, 176-205. Cambridge: Cambridge University Press, 2006.
- Cerkez, Aida. "Balkan Leaders Meet to Try to Improve Relations." *ABC News*. April 12, 2016, Accessed April 19, 2016. <http://abcnews.go.com/International/wireStory/balkan-leaders-meet-improve-relations-38330105>.
- Clark, Philip. *After Genocide: Transitional Justice, Post-Conflict Reconstruction, and Reconciliation in Rwanda and Beyond*. New York: Columbia, 2009.
- Cohen, David. "Justice on the Cheap Revisited: The Failure of the Serious Crimes Trials in East Timor." *Analysis from the East-West Center*, no. 81 (May 2006): 1-12.
- Commissao de Acolhimento, Verdade e Reconcilacao de Timor-Leste (CAVR). "The History of the Conflict." In *Chega!* October 2005, 1-186. Accessed November 8, 2015. <http://www.cavr-timorleste.org/chegaFiles/finalReportEng/03-History-of-the-Conflict.pdf>.
- Dancy, Geoff, Hunjoon Kim, Eric Brahm. "The Turn to Truth: Trends in Truth Commission Experimentation." *Journal of Human Rights* 9, no. 1 (Winter 2010): 45-64.
- Denison, Benjamin and Jasmin Mujanovic. "Syria Isn't Bosnia. And No, the Problem Isn't 'Ancient Hatreds.'" *The Washington Post*. November 17, 2015. Accessed April 16, 2016. <https://www.washingtonpost.com/news/monkey-cage/wp/2015/11/17/syria-isnt-bosnia-and-no-the-problem-isnt-ancient-hatreds/>.
- Dzidic, Denis. "Bosnia Doubles Number of War Crimes Indictees." *Balkan Insight*. November 13, 2014. Accessed April 19, 2016. <http://www.balkaninsight.com/en/article/bosnia-to-indict-over-100-people-for-war-crimes-this-year>.
- Dzidic, Denis. "Balkan States 'Still Slow to Investigate' 1990s War Cases." *Balkan Insight*. June 4, 2015. Accessed April 19, 2016. <http://www.balkaninsight.com/en/article/hague-prosecutor-criticizes-regional-war-crimes-record>.
- Editorial. *Bloomberg View*. "Karadzic Verdict a Victory for History." March 24, 2016. Accessed April 14, 2016. <http://www.bloombergview.com/articles/2016-03-24/karadzic-verdict-a-victory-for-history>.
- Editorial. "Accountability, at Last, for Bosnia's Agony." *The New York Times*. March 24, 2015. Accessed April 14, 2016. [http://www.nytimes.com/2016/03/25/opinion/accountability-at-last-for-bosnias-agony.html?\\_r=1](http://www.nytimes.com/2016/03/25/opinion/accountability-at-last-for-bosnias-agony.html?_r=1).

- Fischer, Martina. "Transitional Justice and Reconciliation: Theory and Practice." In *Advancing Conflict Transformation: The Berghof Handbook II*, edited by Beatrix Austin, Martina Fischer, and Hans Giessman, 407-414. Farmington Hills: Barbara Budrich Publishers, 2011. Accessed September 28, 2015. [http://www.berghof-foundation.org/fileadmin/redaktion/Publications/Handbook/Articles/fischer\\_tj\\_and\\_rec\\_handbook.pdf](http://www.berghof-foundation.org/fileadmin/redaktion/Publications/Handbook/Articles/fischer_tj_and_rec_handbook.pdf).
- Fletcher, Laurel E., and Harvey M. Weinstein, "A World Unto Itself? The Application of International Justice in the Former Yugoslavia." In *My Neighbor, My Enemy: Justice in the Aftermath of Mass Atrocity*, edited by Eric Stover and Harvey M. Weinstein, 29-49. Cambridge: Cambridge University Press, 2004.
- Forsythe, David P. "Forum: Transitional Justice: The Quest for Theory to Inform Policy." *International Studies Review* 13, no. 3 (September 2011): 554-578.
- Forsythe, David P. "Human Rights and Mass Atrocities: Revisiting Transitional Justice," *International Studies Review* 13, no. 3 (March 2011): 85-95.
- Gossman, Patricia A. *Documentation and Transitional Justice in Afghanistan*. Washington, DC: United States Institute of Peace, 2013. Accessed August 22, 2015. <http://www.usip.org>.
- Grodsky, Brian. "International Prosecutions and Domestic Politics: The Use of Truth Commissions as Compromise Justice in Serbia and Croatia," *International Studies Review* 11, no. 4 (December 2009): 687-706.
- Grodsky, Brian. "Reordering Justice: Towards a New Methodological Approach to Studying Transitional Justice." *Journal of Peace Research* 46, no. 6 (November 2009): 819-837.
- Haberstock, Lauren. "An Analysis of the Effectiveness of the Gacaca Court System in Post-Genocide Rwanda." *Global Tides* 8, no. 1 (1 January 2014).
- Hasegawa, Sukehiro. *Primordial Leadership: Peacebuilding and National Ownership in Timor-Leste*. New York: UN University Press, 2013.
- Human Rights Watch. *Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts*. May 31, 2011. Accessed April 6, 2016. <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts#aeaf20>.
- International Center for Transitional Justice. *What is Transitional Justice?* 2009. Accessed September 28, 2015. <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>
- International Criminal Tribunal for the Former Yugoslavia. "Transfer of Cases." Accessed April 13, 2016. <http://www.icty.org/en/cases/transfer-cases>.
- International Criminal Tribunal for the Former Yugoslavia Office of the Registrar. "Registrar Presents ICTY and MICT Budget in New York." *ICTY Digest* no. 155 (November/December 2015): 1-5. Accessed January 27, 2016. [http://www.icty.org/x/file/About/Reports%20and%20Publications/ICTYDigest/2015/icty\\_digest\\_155\\_en.pdf](http://www.icty.org/x/file/About/Reports%20and%20Publications/ICTYDigest/2015/icty_digest_155_en.pdf).
- International Criminal Tribunal for the Former Yugoslavia. "ICTY Digest" no. 156 (1 January- 6 April 2016): 1-5. Accessed April 7, 2016. [http://www.icty.org/x/file/About/Reports%20and%20Publications/ICTYDigest/2016/icty\\_digest\\_156\\_en.pdf](http://www.icty.org/x/file/About/Reports%20and%20Publications/ICTYDigest/2016/icty_digest_156_en.pdf).
- Joes, Anthony James. *Resisting Rebellion*. Lexington: The University Press of Kentucky, 2006.

- Karnitschnig, Matthew. "Who Knows What Spark Might Ignite Bosnia?" *Politico*. April 11, 2016. Accessed April 14, 2016. <http://www.politico.eu/article/who-knows-what-spark-might-ignite-bosnia-balkans-kosovo-serbia-aleksandar-vucic/>.
- Karnitschnig, Matthew. "Serbia's Latest Would-be Savior is a Modernizer, a Strongman, or Both." *Politico*. April 14, 2016. Accessed April 19, 2016. <http://www.politico.eu/article/aleksandar-vucic-serbias-latest-savior-is-a-modernizer-or-strongman-or-both/>.
- Kent, Lia. *Dynamics of Transitional Justice: International Model and Local Realities in East Timor*. Cornwall: Routledge, 2012.
- Kollander, Patricia. "The Civil War in Former Yugoslavia and the International Intervention." In *Reflections on the Balkan Wars: Ten Years After the Breakup of Yugoslavia*, edited by Jeffrey S. Morton, R. Craig Nation, Paul Forage, and Stefano Bianchini, 3-22. New York: Palgrave MacMillan, 2004.
- Leithead, Alastair. "Rwanda Genocide: International Criminal Tribunal Closes." *BBC News*. December 14, 2015. Accessed April 19, 2016, <http://www.bbc.com/news/world-africa-35070220>.
- Longman, Timothy. "An Assessment of Rwanda's Gacaca Courts." *Peace Review* 12, no. 3 (August 2009): 304-312.
- Longman, Timothy. "Justice at the Grassroots?" Accessed April 6, 2016. <http://faculty.vassar.edu/tilongma/gacaca.pdf>.
- Longman, Timothy. "Justice at the Grassroots? Gacaca Trials in Rwanda." In *Transitional Justice in the Twenty-First Century*, edited by Naomi Roht-Arriaza and Javier Mariezcurrena, 206-228. Cambridge: Cambridge University Press, 2006.
- MacMahon, Patrice. "Managing Ethnic Conflict in Bosnia: International Solution to Domestic Problems." In *Reflections on the Balkan Wars: Ten Years After the Breakup of Yugoslavia*, edited by Jeffrey S. Morton, R. Craig Nation, Paul Forage, and Stefano Bianchini, 190-209. New York: Palgrave MacMillan, 2004.
- Marchak, Patricia M. *No Easy Fix: Global Responses to Internal Wars and Crimes Against Humanity*. Montreal: McGill-Queen's University Press, 2008.
- Mbeki, Thabo and Mahmood Mamdani. "Courts Can't End Civil Wars." *New York Times*. February 5, 2014. Accessed August 1, 2015. [http://www.nytimes.com/2014/02/06/opinion/courts-cant-end-civil-wars.html?\\_r=0](http://www.nytimes.com/2014/02/06/opinion/courts-cant-end-civil-wars.html?_r=0).
- McGreal, Chris. "Delayed UN Report Links Rwanda to Congo Genocide." *The Guardian*. October 1, 2010. Accessed December 14, 2015. <http://www.theguardian.com/world/2010/oct/01/un-report-rwanda-congo-genocide>.
- Meernik, James. "Justice and Peace? How the International Criminal Tribunal Affects Societal Peace in Bosnia." *Journal of Peace Research* 42, no. 3 (May 2005): 271-289.
- Mendeloff, David. "Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?" *International Studies Review* 6, no. 3 (September 2004): 355-380.
- Milekic, Sven and Denis Dzidic. "Croatia Reacts Angrily to Vojislav Šešelj Acquittal." *Balkan Insight*. March 31, 2016. Accessed April 14, 2016. <http://www.balkaninsight.com/en/article/croatia-reacts-angrily-to-vojislav-seselj-acquittal-03-31-2016>.
- Mobekk, Eirin. "Transitional Justice in Post-Conflict Societies - Approaches to Reconciliation." In *After Intervention: Public Security Management in Post-Conflict Societies – From Intervention to Sustainable Local Ownership*, edited by Anja H. Ebnother and Philipp

- Fluri, 261-292. Geneva: GKS, 2005. Accessed August 22, 2015. <http://www.dcaf.ch/Publications/After-Intervention-Public-Security-Management-in-Post-Conflict-Societies>.
- Moghalu, Kingsley Chiedu. *Global Justice: The Politics of War Crimes Trials*. Westport: Praeger Security International, 2006.
- Morton, Jeffrey S., R. Craig Nation, Paul Forage, and Stefano Bianchini, eds. *Reflections on the Balkan Wars: Ten Years After the Breakup of Yugoslavia*. New York: Palgrave MacMillan, 2004.
- “Mounting Security Risks Leave Bosnia Vulnerable.” *Balkan Insight*. November 13, 2015. Accessed April 22, 2016. <http://www.balkaninsight.com/en/article/security-challenges-mount-in-weakened-bosnia-11-06-2015>.
- Nation, R. Craig. “The Balkan Wars and the International War Convention.” In *Reflections on the Balkan Wars: Ten Years After the Breakup of Yugoslavia*, edited by Jeffrey S. Morton, R. Craig Nation, Paul Forage, and Stefano Bianchini, 147-164. New York: Palgrave MacMillan, 2004.
- Nettlefield, Lara J. *Courting Democracy in Bosnia and Herzegovina*. New York: Cambridge University Press, 2010.
- Neuffer, Elizabeth. “Blood Ties to Blood Feuds.” In *Key to My Neighbor’s House*, 3-31. New York: Picador, 2001.
- Nikolic, Ivana. “Serbian PM Pledges to Oppose Seselj’s Politics.” *Balkan Insight*. April 1, 2016. Accessed April 19, 2016. <http://www.balkaninsight.com/en/article/serbian-pm-vucic-pledges-to-confront-freed-radical-leader-politics-04-01-2016>.
- Nikolic, Ivana and Marija Ristic. “Serbian Nationalists Rally Against NATO, Karadzic Verdict.” *Balkan Insight*. March 24, 2016. Accessed April 14, 2016. <http://www.balkaninsight.com/en/article/serbian-radical-boss-rallies-against-nato-hague-03-24-2016>.
- O’Ballance, Edgar. *Civil War in Bosnia*. Hampshire: St. Martin’s Press, Inc., 1995.
- Olsen, Tricia, Leigh A. Payne, and Andrew G. Reiter. “Transitional Justice in the World, 1970-2007: Insights from a New Dataset.” *Journal of Peace Research* 47, no. 6 (November 2010): 803-809.
- Outreach Programme on the Rwanda Genocide and the United Nations. “Background Information on the Justice and Reconciliation Process in Rwanda.” Accessed April 6, 2016. <http://www.un.org/en/preventgenocide/rwanda/about/bgjustice.shtml>.
- Rae, James DeShaw. *Peacebuilding and Transitional Justice in East Timor*. Boulder: Lynne Rienner Publishers, 2009.
- Ratner, Steven R, Jason S. Abrams, and James L. Bishoff. *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*. Oxford: Oxford University Press, 2009.
- Reiger, Caitlin. “Hybrid Attempts at Accountability for Serious Crimes in Timor Leste.” In *Transitional Justice in the Twenty-First Century*, edited by Naomi Roht-Arriaza and Javier Mariezcurrena, 143-170. Cambridge: Cambridge University Press, 2006.
- Reiger, Caitlin and Marieke Wierda. “The Establishment of the Serious Crimes Process.” In *The Serious Crimes Process in Timor-Leste: In Retrospect*. March 2006, 14-20. Accessed November 14, 2015. <https://www.ictj.org/sites/default/files/ICTJ-TimorLeste-Criminal-Process-2006-English.pdf>.

- Rettig, Max. "Truth, Justice, and Reconciliation in Postconflict Rwanda?" *African Studies Review* 51, no. 3 (December 2008): 25-50.
- Rever, Judi. "Rwanda Allegedly Fueling War in Burundi Says Refugee Organization." *Digital Journal*. December 13, 2015. Accessed December 14, 2015. <http://www.digitaljournal.com/news/world/rwanda-allegedly-fueling-war-in-burundi-says-refugee-organization-breaking-news/article/452103>.
- Ristic, Marija. "Hague Prosecutor Slams Serbia's Welcome for War Criminal." *Balkan Insight*. December 10, 2015. Accessed April 13, 2016. <http://www.balkaninsight.com/en/article/brammertz-critised-serbia-for-welcoming-war-criminal-12-10-2015>.
- Roht-Arriaza, Naomi, and Javier Mariezcurrena, eds. *Transitional Justice in the Twenty-First Century*. Cambridge: University Press, 2006.
- Rubin, Barnett R. *Afghanistan from the Cold War through the War on Terror*. Oxford: Oxford University Press, 2014.
- Ruvic, Dado. "In Protest of War Crimes Raid, Bosnian Serbs Stop Cooperating with Police, *Newsweek*. December 10, 2015. Accessed April 19, 2016. <http://www.newsweek.com/protest-war-crimes-raid-bosnian-serbs-stop-cooperating-national-police-403919>.
- "Rwanda Profile: Timeline." *BBC News*. Accessed December 14, 2015. <http://www.bbc.com/news/world-africa-14093322>.
- Sandoval Villalba, Clara. "Transitional Justice: Key Concepts, Processes and Challenges." *Briefing paper for the Institute for Democracy & Conflict Resolution*. July 2011. Accessed August 22, 2015. [http://www.idcr.org.uk/wp-content/uploads/2010/09/07\\_11.pdf](http://www.idcr.org.uk/wp-content/uploads/2010/09/07_11.pdf).
- Scheffer, David. *All the Missing Souls: A Personal History of the War Crimes Tribunals*. Princeton: Princeton University Press, 2012.
- Sito-Sucic, Daria. "Defiant Bosnian Serbs Honor Karadzic before Hague Genocide Verdict." *The Washington Post*. March 20, 2016. Accessed April 13, 2016. [https://www.washingtonpost.com/world/defiant-bosnian-serbs-honor-karadzic-before-hague-genocide-verdict/2016/03/20/7085d212-eedb-11e5-89c3-a647fccc95e0\\_story.html](https://www.washingtonpost.com/world/defiant-bosnian-serbs-honor-karadzic-before-hague-genocide-verdict/2016/03/20/7085d212-eedb-11e5-89c3-a647fccc95e0_story.html).
- Snyder, Jack and Leslie Vinjamuri. "Trials and Errors: Principle and Pragmatism in Strategies of International Justice." *International Security* 28, no. 3 (Winter 2003-2004): 5-44.
- Surk, Barbara. "For the Balkans, Peace is Bad Enough." March 29, 2016. Accessed April 14, 2016. <http://www.politico.eu/article/balkans-peace-is-bad-enough-karadzic-mladic-war-crimes-icty-hague-bosnia-croatia-serbia/>.
- Surk, Barbara. "Radovan Karadzic Found Guilty of Genocide in Srebrenica." *Politico*. March 25, 2016. Accessed April 14, 2016. <http://www.politico.eu/article/radovan-karadzic-found-guilty-of-genocide-in-srebrenica-icty-bosnia-serbia/>.
- Tanjung. "Izetbegovic and Vucic Trade Accusations of 'Threats.'" *b92*. March 30, 2016. Accessed April 19, 2016. [http://www.b92.net/eng/news/politics.php?yyyy=2016&mm=03&dd=30&nav\\_id=97522](http://www.b92.net/eng/news/politics.php?yyyy=2016&mm=03&dd=30&nav_id=97522).
- Toe, Rodolfo and Sasa Dragoljo. "Serbia, Bosnia Leaders Clash Over 'Genocide Lawsuit.'" *Balkan Insight*. March 29, 2016. Accessed April 19, 2016. <http://www.balkaninsight.com>

- [/en/article/vucic-accuses-izetbegovic-of-fostering-violence-between-serbia-and-bosnia-03-29-2016](#).
- United Nations Mechanism for International Criminal Tribunals. Accessed December 31, 2015. <http://www.unmict.org/en/cases>.
- United Nations Rule of Law. *Guidance Note of the Secretary-General: UN Approach to Transitional Justice*. March 2010. Accessed August 22, 2015. [http://www.unrol.org/files/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](http://www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf).
- United Nations Office of the High Commission for Human Rights (UNHCHR). *Report of the International Commission of Inquiry on East to Timor to Secretary-General*. General Assembly 54<sup>th</sup> sess., January 31, 2000. A/54/726, S/2000/59. Accessed November 14, 2015. <http://www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/A.54.726,+S.2000.59.En>.
- United Nations Security Council. *Report of the Secretary General: The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*. August 23, 2004. Accessed August 22, 2015. <http://www.unrol.org/files/2004%20report.pdf>.
- United Nations Security Council. Resolution 1272. October 25, 1999. Accessed November 14, 2015. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/312/77/PDF/9931277.pdf?OpenElement>.
- Wise, Amanda. *Exile and Return Among the East Timorese*. Philadelphia: University of Pennsylvania Press, 2006.
- Woodward, Susan L. *Balkan Tragedy: Chaos and Dissolution After the Cold War*. Harrisonburg: R.R. Donnelly and Sons Co., 1995.